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# **ACADEMIC FREEDOM UNDER ISRAELI MILITARY OCCUPATION**

**Report of WUS/ICJ  
Mission of Enquiry  
into  
Higher Education  
in the  
West Bank and Gaza**

*Adam Roberts  
Boel Joergensen  
Frank Newman*

**World University Service (UK)  
International Commission of Jurists**

box 4/44

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*By*

*Adam Roberts  
Boel Joergensen  
Frank Newman*

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**Boel Joergensen** is President of the University Centre of Roskilde in Denmark. Born in Sweden, she has been Associate Professor in Sociology at the University Centre of Roskilde since 1973, and President since 1978.

**Frank C. Newman** is a justice of the California Supreme Court, on which he served actively from July 1977 to December 1982. He then retired to resume full-time responsibility as Ralston Professor of International Law at the University of California, Berkeley, his home base since 1946. From 1961 to 1966 he served as Dean of the Law School at Berkeley. Then and in earlier years he was participant in Academic Senate affairs and in work of the Association of American University Professors. His international human rights work began in 1967. Since then he has been involved as teacher, writer, NGO representative, and activist.

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## Preface

The International Commission of Jurists and the UK Committee of the World University Service arranged in 1983 an independent mission to the West Bank and Gaza to enquire into the persistent problems faced by the Palestinian institutions of higher education in their relations with the Israeli military authorities in the occupied territories. As sponsoring organisations our concern, as expressed in the terms of reference, was to examine 'the extent to which the academic freedom of these institutions is affected by the military occupation and, in particular, by the military orders introduced by the occupation authorities'.

The concept of academic freedom of institutions of higher education is nowhere authoritatively defined. The authors of this report have rendered a signal service in bringing together the various norms of international law relevant to the subject, and have been guided by them in examining the question of academic freedom in the Israeli occupied territories.

It should also be said that conflicts concerning academic freedom are not likely to be resolved by purely legal considerations. Any military occupation is almost certain to result in some limitation on academic freedom, and conditions which may be though acceptable in terms of occupation law can result in serious limitations on academic freedom. Other considerations than legal ones must be taken into account in determining what limitations on academic freedom are proper during an occupation. This is particularly so in the case of the present occupation, which is unique both by reason of its longevity and the uncertainty as to the future of the area. Consequently, we welcome the suggestion of the authors of some form of international arbitration as a possible means of conflict resolution in this sphere. We hope that this may be examined further.

The views expressed in this report are, of course, the authors' own and do not necessarily represent the views of the sponsoring organisations. However, we commend it in the hope that it may make a useful contribution to the important debate on academic freedom in the occupied territories.

We are grateful to all those who gave time to present their views and give information to the mission. We wish to pay tribute to Professor Frank Newman, Mrs Boel Joergensen and Mr Adam Roberts for their commitment and thoroughness in preparing and carrying out their mission and in writing this report. In particular recognition is due to Adam Roberts for his painstaking work in drafting and editing the final report.

Niall MacDermot  
Secretary General  
International Commission of Jurists

Sarah Hayward  
General Secretariat Board  
World University Service (UK)

## Acknowledgements

We were fortunate to receive a great deal of practical help from a large number of people in Israel, the West Bank and Gaza: not only academic staff and students and government officials, but also lawyers, journalists, and many others. Some are mentioned by name in the course of this report, especially in Part III, but many besides those named gave us invaluable and unstinting help without which our task would have been impossible. To all of them go our warmest thanks.

From the London and Geneva end, we received a great deal of encouragement and help from Sarah Hayward of WUS and Niall MacDermot of ICJ. Both played a crucial role not only in defining our task, but also in enabling and encouraging us to complete it. We also owe thanks to the many people in Europe and the USA who provided us with background material, including Roger Hardy and Mark Cheverton of the London-based Friends of Birzeit University who compiled a dossier of university handbooks, press statements, reports, commentaries and other papers.

We owe special thanks to Carole Charlton, Stephanie Parsons and Elizabeth Stevens, who typed the report at Oxford; and to Angela Newman, who drew the map.

The usual disclaimer, that responsibility for any error of fact or of interpretation is ours and ours alone, is made with particular force in this instance. We received such notable help from Israelis and Palestinians alike in dealing with a situation quite new to us that there can be little doubt that the faults of this report are ours, not theirs.

A.R.  
B.J.  
F.N.

September 1984.

## **Part I:**

# **Terms of Reference for a WUS/ICJ Mission of Enquiry into Academic Freedom in the West Bank and Gaza**

The World University Service (WUS) and the International Commission of Jurists (ICJ) have agreed to send a mission of enquiry to investigate academic freedom in the Israeli-occupied territories of the West Bank and the Gaza Strip, with particular reference to higher education.

The three members of the mission will spend two weeks in the area, from 27 November to 9 December. They will be based in Jerusalem and will visit the institutions of higher education in the West Bank (An Najah, Bethlehem, Birzeit, Hebron University and Hebron Polytechnic) and the Islamic University in Gaza. They have been asked to determine the extent to which the academic freedom of these institutions is affected by the military occupation and, in particular, by the military orders introduced by the occupation authorities. The team may also wish to brief themselves on plans to develop a University in Jerusalem and the freedom of those involved to do so.

'Academic freedom' is generally taken to comprise those traditional educational, research and administrative functions which an institution of higher education may expect to carry out without hindrance, interference or pressure — notably, the freedom to teach, study, devise curricula, buy books and periodicals, recruit staff (whether locally or from abroad), travel to and from campus and improve or extend the campus facilities. Clearly the circumstances of military occupation create particular problems in these regards. The mission will consider academic freedom within this context.

The mission will investigate recent incidents including the closure of campuses, the deportation of teachers and other incidents of alleged harassment of either students or staff. They are asked to ascertain, as far as possible, whether the measures taken by the authorities were justifiable and if so, to what extent.

The mission will pay due regard to the legal framework within which the institutions currently operate both in the terms of relevant national laws and of international law. They will also consider their position within the communities they serve taking into account the political and economic context of military occupation.

The mission will seek meetings with the Council for Higher Education, the administrations of the institutions, local and expatriate teaching staff, student representatives, the military and civilian authorities in the territories, lawyers, academics, educationalists and others. Written submissions may also be requested.

The mission will draw up a report setting out the current situation of the institutions and putting forward conclusions and, if necessary, recommendations regarding academic freedom.

English will be the main working language of the mission.



**Members of the Mission:**

Ms. Boel Joergensen, Rector, Roskilde University Centre, Denmark. Professor Frank Newman, School of Law, University of California, Berkeley. Mr. Adam Roberts, Reader in International Relations, St. Antony's College, Oxford.

**Terms of Reference drawn up jointly by:**

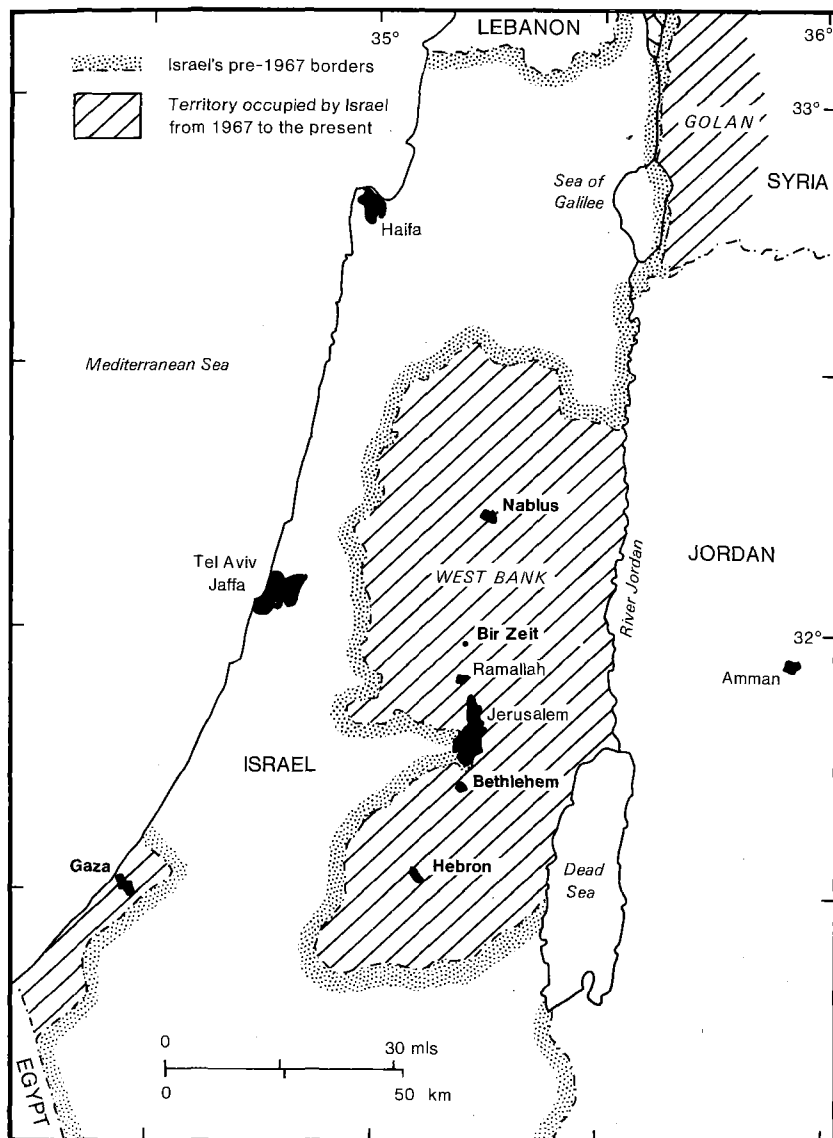
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November 1983

## Part II: Basic Facts and Figures

### A. MAP



## B. POPULATION FIGURES

### Approximate population at end of 1982

<b>Israel</b>	(including not only Israel in its pre-1967 boundaries, but also East Jerusalem, Golan, and 21,700 Israeli settlers in the West Bank and Gaza).	4,063,600*
<b>West Bank</b>	(under Israeli occupation since 1967)	747,500
<b>Gaza</b>	(under Israeli occupation since 1967)	476,300

\*This figure includes 690,400 non-Jews, most of whom are Arabs living within the pre-1967 boundaries of Israel.

**Source:** *Statistical Abstract of Israel 1983*, Central Bureau of Statistics, Jerusalem. The figures for the West Bank and Gaza are based on complex estimating techniques, as there has been no census in these territories since the Israeli take-over in 1967. Exactly the same figures are used in Benvenisti, *The West Bank Data Project*, Washington DC, 1984. Palestinian sources gave us virtually identical figures.

## C. CHECKLIST OF THE SIX PRINCIPAL INSTITUTIONS

The six largest institutions of higher education in the West Bank and Gaza are listed below in the order of our visits in November and December 1983. In this report these institutions are sometimes referred to collectively as 'the universities'. That, however, is shorthand. For example, Hebron Polytechnic is not a university; and at the time of our visit Hebron University was not fully recognised as a university by either the Council for Higher Education or the Union of Arab Universities.

The figures for the six institutions, supplied by the Council for Higher Education, are for the academic year 1983-84, and refer only to full-time students (11,046) and teaching staff. (The total number of students at all the institutions of higher education in the West Bank and Gaza, including the smaller vocational and teacher training colleges, was about 14,000 in 1983-84.)

**Birzeit University**, in Bir Zeit, near Ramallah. A university since 1975, previously a junior college, before then a secondary school. 2,276 students; 224 teaching staff. Four faculties: Arts; Science; Commerce and Economics; Engineering.

**An Najah University**, in Nablus. A university since 1977, previously a college and teacher training institute. 2,427 students; 176 teaching staff. Five faculties: Arts; Engineering; Science; Economics and Business Administration; Education.

**Bethlehem University**, in Bethlehem. Founded in 1973. Sponsored by the Vatican. 1,150 students; 76 teaching staff. Four faculties: Arts; Business Administration; Nursing; Science. Also has an Institute of Hotel Management.

**Islamic University of Gaza**, in Gaza. Operating at university level since 1978, an offshoot of the Palestine Religious Institute. 2,773 students; 118 teaching staff. Six faculties: Islamic Law; Islamics; Arabic Language; Education; Commerce and Economics; Science.

**Hebron Polytechnic Institute**, in Hebron. Established in 1978. Run under the auspices of the University Graduates Union in Hebron, which was founded

in 1953. 694 students; 36 teaching staff. Four departments: Electrical Engineering; Civil Engineering; Mechanical Engineering; Architectural Engineering.

**Hebron University**, in Hebron. Established as a Centre for Islamic Studies in 1971, its name was changed to Hebron University in 1980. 1,726 students; 32 teaching staff. Two faculties: Islamic Law; Arts.

## Part III:

# An Approach to the Problems

Before launching into the details of our report, we owe it to the reader to say something about how we approached our task. Although all three of us had followed events in the Middle East and two of us had been there before, none of us was *parti-pris* for any governmental or political interest in the area. We had read about problems relating to higher education in the areas held by Israel since 1967 — particularly about closures, and about the ‘anti-PLO pledge’ that foreign teachers had been asked to sign. However, none of us had been involved. When asked to take part in this mission, we were clear enough on the obvious point that we should listen to all the sides involved in any disputes. But beyond that there were questions about our whole enterprise and how we should proceed.

### Why These Particular Institutions?

The very fact of examining the issue of academic freedom with reference to one particular lot of universities and not another may look like an act of political partisanship. Some Israelis we met said there was at least as much ground for concern about the state of academic freedom in various Arab countries as in the West Bank and Gaza. While we claim no expertise in the matter, we have absolutely no quarrel with that view. The general point seems incontestable. In recent decades there have been serious problems of academic freedom in universities in many parts of the world, from Prague and Paris to San Salvador and San Francisco. We did not base our work on any assumption that the situation of the universities in the West Bank and Gaza, so far as academic freedom is concerned, is necessarily better or worse than elsewhere.

In our minds, two facts justify focusing attention on the universities in the Israeli-held lands. *First*, the universities are in territories in which there has long been legitimate international interest, including in the sphere of education. Thus the Palestine Mandate approved by the Council of the League of Nations in 1922 said in Article 15: ‘The right of each community to maintain its own schools for the education of its own members in its own language, while conforming to such educational requirements of a general nature as the Administration may impose, shall not be denied or impaired.’<sup>1</sup> The international interest in the area has, for good reasons, continued; and has been especially marked since the West Bank and Gaza were occupied in 1967. It is reinforced by the fact that there are large

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1. Quoted in the McNair Commission Report, *The System of Education of the Jewish Community in Palestine: Report of the Commission of Enquiry Appointed by the Secretary of State for the Colonies in 1945*, HMSO, London, 1946, p.4. Also in The Peel Commission Report, *Palestine Royal Commission Report*, HMSO, 1937, p.333. The succeeding pages contain sharp criticism of the nationalist character of both Jewish and Arab education in Palestine.

numbers of refugees in the occupied territories who are entitled to international assistance: numerous UN General Assembly Resolutions have referred to their need for higher education.<sup>2</sup> International interest may actually be of some use in occupied territories such as these, where the lack of effective local institutions of self-government means that problems can easily remain — even if recognised — still unresolved. When local means of resolving issues are restricted, outside voices may be helpful.

A *second*, and in our minds more important, consideration was simply that there was a plain conflict of evidence. This was not a straightforward case of universities widely recognised to be suffering under the weight of a tyrannical dictatorship. On the contrary, there were and are sharp clashes of opinion about an obviously complex situation. Israel, after all, is a country which has several excellent universities; and it had at the very least tolerated the development of new universities in the lands it had occupied since 1967. Some have seen the Israeli role as essentially benevolent, interfering with academia only when provoked beyond endurance by pro-Palestinian activity of one kind or another. Others have taken a much more critical view, seeing Israeli actions as a systematic assault on all efforts to advance the higher education of Palestinians. We had to try to establish where truth lay.

Similar considerations to the above had, as far as we can judge, influenced both WUS and ICJ in setting up our Mission of Enquiry and in drawing up our terms of reference. Within both these organisations, including in some of their national branches, the issue of the treatment of higher education in the West Bank and Gaza had come up in one way or another, with strong viewpoints being articulated. The need for further factual bases for any discussion of the issue was recognised.

### **Our Criteria**

What standards should one use in evaluating a situation as complex as the one we faced? Simply to import into a deeply troubled area the notions about academic freedom which we take more or less for granted in the very different circumstances of Berkeley, Oxford or Roskilde would be questionable to say the least. Equally, however, to leave such notions entirely out of the baggage we took with us to the Middle East would have been a betrayal.

It was first and foremost as three academics, sympathetic to the claims and needs of higher education, that we approached our task. We are practising teachers in western universities; and together we had some experience in the fields of university administration, international law, and international relations — all of which was relevant to our West Bank and Gaza assignment. Even so, we still had to ponder the question of criteria.

That question was examined when the three of us met on 26 November 1983 for a briefing meeting at the WUS London office. We did not expect to come up with a neat formula to solve all the problems. Our terms of reference, completed earlier in November (see Part I of this report) offered some guidance in the

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2. See for example the detailed provisions of the following UN General Assembly Resolutions on the overall subject of the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA): 32/90F of 13 December 1977; 35/13B of 3 November 1980; 36/146G and H of 16 December 1981; and 37/120C and D of 16 December 1982. See also UNGA resolution 35/122F of 11 December 1980.

matter. They not only refer to academic freedom as commonly understood, but outline much of the content of the idea. They mention law, including international law; and they indicate the need to take fully into account the context of military occupation.

As to academic freedom, we were aware that its content is spelt out nowhere in a juridically watertight way. We were also aware, right from the start, that the content of academic freedom can be very difficult to implement or realise in some situations: especially when there are fundamental disagreements within a society, and in circumstances where such disagreements can easily spill over into violence.

As for international law, indeed there are standards by which events generally in the West Bank or Gaza may be judged. The two main bodies of international law that have most bearing on the situation are: *first*, the law on occupations — i.e. that part of the laws of war which deals with military occupations, and finds its main treaty expression in the 1907 Hague Regulations and 1949 Geneva Convention IV; and *second*, international human rights law, including particularly treaties that bear on education, such as the 1960 UNESCO Convention Against Discrimination in Education.

These bodies of international law are more valuable for their general provisions and principles than for what they say specifically on the subject of higher education. Whether one looks at treaties, international custom, general principles of law, judicial decisions or legal writings, one does not get the explicit and detailed guidance on university matters that one might wish. However, there are useful provisions on these matters, as well as many other provisions and underlying principles that are applicable in one way or another to the situation we were to examine. We explore further in the next part of this report the international legal provisions we found relevant.

In the final analysis, probably the closest that international law came to giving us a generally applicable yardstick was in one underlying principle of the law of occupations. This is the principle according to which an appropriate balance has to be struck between, on the one hand, the legitimate security needs of the occupying power and, on the other hand, the needs, wishes and rights of the inhabitants. That idea of balance was in our minds throughout.

Sometimes national law (i.e. the law within a sovereign state) can provide a basis for evaluating events, and for seeing whether what is actually done measures up to what the lawmakers arguably intended. But we were conscious from the start that so far as higher education in the Israeli-occupied areas is concerned, those national laws applicable in the areas would not give us clear criteria. Before 1967 there were no universities in the West Bank and Gaza, so there was no adequate framework of either Jordanian or Egyptian law that applied in these areas and might have served as a benchmark for what has transpired since. Under the Israeli occupation certain military orders have related to higher education, adapting earlier Jordanian and Egyptian laws, but they have been intensely controversial. (These are discussed later, in Part VI.)

Accordingly, rather than make heavy weather of the search for clear and definitive criteria, we concluded when we met on 26 November that we would have to bear all the above-implied considerations in mind as best we could. We also felt that, where abstract criteria were not easy to pin down, precedents might be useful.

What precedents exist for the situation we were to examine, regarding the development of universities in a territory which is not independent, and where

aspirations to statehood are a major issue? A relevant case was close at hand. The ideas and aims behind the growth of Jewish higher education under the British mandate (1920-48) bore some striking similarities to the situation we were to look at in the West Bank and Gaza. In particular, at the time when the Hebrew University on Mount Scopus, at Jerusalem, was opened, many statements were made by many distinguished figures in Jewish public life on the thoroughly contemporary issue of the role of a university in an emerging national community. For example, Chaim Weizmann said in 1925 (in words so similar to what we were to hear in 1983):

It is essential that the University should fit into Palestine, become part of it and grow together with it. In order to ensure the latter, the institutes must not only play an important part in developing and fostering science and art in their abstract forms, but, as a living organism, must take part in the actual development of the country. The University must lead the way in solving the important problems which present themselves in connection with the reconstruction of the country.<sup>3</sup>

That and comparable statements serve as a reminder that universities are not abstract entities, cut off from the preoccupations of the society around them. They have a role within their own communities as well as being part of an international community of scholars; and that role often has a political (and even sometimes a military) element. There is nothing unusual in university students and staff discussing political issues, having political involvements, and playing a part in the development of a national consciousness. Yet there can be dangers in such involvements, both for a university's own life and academic work, and also for its relations with the outside world. We thus approached the universities in the West Bank and Gaza (1) with no fixed idea in mind of a supposed compartmentalisation between academic work on the one hand and politics on the other, but (2) with an awareness of the values attached to the distinction between those kinds of activity.

Another kind of precedent for which we searched was of a mission of enquiry looking specifically at the treatment of higher education in an occupied territory. It might have helped in the search for criteria, but we could find no pertinent precedent. Some previous enquiries to do with particular aspects of education in the Israeli-occupied territories were of assistance. These included a 1979 report by Professor Norman C. Hunt on the organisation and future development of higher education in the West Bank and Gaza; a report dated 12 August 1983 by a group appointed pursuant to UN General Assembly resolution 37/120C, on the question of a new university of Jerusalem; and a report dated 30 August 1983 by the Director-General of UNESCO on educational and cultural institutions in the occupied Arab territories. These contain much useful information, but none was a model for an on-the-spot investigation of the types of issues relating to academic freedom that confronted us.

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3. Chaim Weizmann, 'The University Emerges', *The New Palestine*, New York, 27 March 1925. For an excellent recent analysis of the significance of education in developing Israel as a nation-state see Amos Shapira, 'Legislative and Judicial Law-Making Concerning Educational Liberty and Equality: Some Israeli Constitutional Law Perspectives', *Israel Yearbook on Human Rights* 1979, p.181ff.



### **Unavoidable Political Issues**

A necessarily political point should be made about the way in which one evaluates questions of academic freedom in the West Bank and Gaza. Inevitably, highly charged political issues were often raised in the course of our work. For example, among Israeli officials there was considerable suspicion that an international inquiry such as ours might have an anti-Israeli bias, and that it might not do justice to their views of the matter and might not properly appreciate Israel's security concerns; while on the Palestinian side we heard the argument advanced many times that Palestinian Arabs seek a state of their own, and the universities are there to provide its infrastructure. It is not for us in this report to enter any more than is necessary into political debates or to wave national flags, still less should we purport to solve the vast dilemmas of Middle East politics of which many university troubles are a mere reflection. Nonetheless, we cannot avoid returning to these central issues in this report; and we should here record in passing, in the briefest form, some indication of our attitudes on such political matters. We think that Israel should and will continue to exist within its pre-1967 borders, and that its inhabitants have the same rights to a reasonably secure life as have the inhabitants of other countries. But we are sympathetic to the emerging sense of Palestinian national identity, and in particular to the desires of the inhabitants of the West Bank and Gaza for security within a political framework they regard as their own. These ideas are easy to articulate, but not to transform into reality. There are complexities at every turn. The encrusted bitterness of Arab-Israeli disputes, the emotiveness of issues of land, security and faith which are at their heart, the bitter memories of violence inflicted by adversaries, the extreme positions adopted by some political groups on both sides, and the deep divisions within the Arab world, all make progress difficult. However, our impression based on what we saw and heard is that the possibilities of eventual diplomatic settlement of West Bank and Gaza problems should not be discounted. But until such arrangements are concluded, or some cataclysmic change supervenes, the problem of the coexistence of Israeli administration on the one hand, and Palestinian universities on the other, will remain. It needs to be addressed conscientiously if it is not to become yet one more cause of conflict in a part of the world that has had more than enough already.

Politics is not just a matter of formal attitudes but also of language. The very terms we use about the lands held by Israel since 1967 contain political overtones. Israeli officials refer to the West Bank as 'Judea and Samaria', and to that plus Gaza as 'the Administered Territories'. We have preferred in this report to use the terms 'West Bank' and 'Occupied Territories', mainly because they are simple, direct, and widely used within the international community. For similar reasons we have used the term Jerusalem, not Al Quds. The fact that each of these terms has come to have political overtones, or is used more by one side than by the other, does not seriously reduce their value. No offence or bias should be inferred from such choices of words in this report.

### **Methods of Work**

Before setting out for Israel each of us consulted individuals with relevant knowledge; and we also surveyed written materials, including press reports, statements issued by the universities, official Israeli statements, and legal analyses by Israeli, Palestinian and other jurists.

At our meeting in London on 26 November 1983 we discussed the main

issues we wanted to address and the manner in which we should do so. We agreed that we should discourage all publicity, as this was to be a working trip, and also because we did not want to be asked about our conclusions before we had reached them. We decided to work in an informal manner, splitting up when appropriate, keeping notes rather than tape recordings, and talking to students and teachers as well as university administrators and officials. We used the English language for all our meetings, and despite the obvious drawbacks our lack of knowledge of Hebrew and Arabic seemed not to be a very serious problem. Only rarely did we need interpreters at meetings or translators for documents.

We flew from London to Israel on 27 November, and we remained based in Jerusalem and working on the enquiry for two weeks. We proceeded as follows.

As far as the universities were concerned, we allocated one day for each. In our first week we visited the campuses of Birzeit, An Najah, Bethlehem, Gaza, and Hebron, where we visited the Polytechnic as well as the University. In these and all other travels (in which our detailed schedules were not formally notified to the Israeli authorities), we encountered no difficulties, and even at roadblocks never had to show passports. The purpose of the visits was to get an overall impression of the institutions, and the people working and studying in them, to discuss their problems generally, and to get as much hard information as possible on questions regarding academic freedom. One day per institution seemed the minimum for the visits. We describe these visits in Part V.

As far as the Israeli authorities were concerned, we made clear from the start our anxiety to have meetings with the relevant officials, particularly those of the Israel Defence Forces. It is essentially the IDF that exercises responsibility in the West Bank and Gaza, even in matters such as education: this reflects the need to maintain an occupation administration, in accord with international law, on a separate basis from the government of Israel proper. We were also anxious to meet Foreign Ministry officials, especially those concerned with questions of international law and human rights. We guessed that neither we nor the Israeli authorities would think it necessary to devote quite as much time to these meetings as to our visits to the universities. In the event we had a long session in the Ministry of Defence at Tel Aviv on 6 December with Joel Singer (Head of the International Law Branch, Military Advocate General's Unit) and colleagues; in the Foreign Ministry at Jerusalem on 8 December we met with Mme. Anne-Marie Lambert-Finkler (Director of the Human Rights Division) and Jitzchak P. Alster (Office of the Legal Adviser); and in addition, again in the Foreign Ministry, Professor Newman met on 13 December with Colonel Ariel Beckenstein (Deputy Co-ordinator of the Administered Territories), Mr. Itzhak Zaccai (Assistant to the Deputy Co-ordinator) and Uzi Manor (Deputy Director of the Foreign Ministry's Human Rights Division). We had hoped also to visit officials at the headquarters of the Israeli civil administration for Judea and Samaria, which is situated at Beit El, near Ramallah. However, a letter WUS sent on 11 October 1983 to the then head of the civil administration, Brig.-Gen. Shlomo Elia, was not answered. We did subsequently arrange an appointment at Beit El for 7 December, but that morning we were informed that it had had to be cancelled. This was a pity, but we accepted the decision and, as noted above, saw other responsible officials in the succeeding days. We made a special effort to obtain from the Israelis as full a set as possible of all official statements with regard to the universities. We are grateful to the authorities for seeing and assisting us, often at rather short notice.

Other organisations and individuals visited or interviewed included the Council for Higher Education (described further in Part V) and its Executive Director, Dr. Samir Katbeh; Justice Haim H. Cohn, who among his many distinctions is Chairman of the Israel National Section of the International Commission of Jurists; Dr. Ruth Gavison and Dr. David Kretzmer, two Hebrew University law teachers who also work for the Association for Civil Rights in Israel, and had contributed to the Yaari report, issued in typescript form in the summer of 1981, on the condition of universities in the occupied territories; Lea Tsemel, an Israeli lawyer who has taken on a number of cases involving staff or students of the universities; Mr. Aburameh, a leading attorney in Gaza, and Dr. Shafi, Chairman of the Red Crescent Society there; Raja Shehadeh and Jonathan Kuttab, two West Bank lawyers who have written detailed and useful studies of the occupation, whom we saw in the office of 'Law in the Service of Man' in Ramallah; Dr. Moshe Ma'oz, Professor of Middle Eastern History at the Hebrew University, who had been Arab Affairs Adviser to the Defence Minister in 1979-80, and has since published a book on Palestinian leadership on the West Bank; and very many others — Israeli, Palestinian, British and American — who had specialist knowledge and practical experience that assisted us in our work. Wherever we went, we ensured that the principal officials with whom we had dealings had a copy of our terms of reference, so that they could know exactly what our enquiry was about.

### **Some Issues Not Investigated**

Our mission was not an examination of the academic standards of the institutions visited. Naturally we were aware of that issue and took more than a casual interest in it. Indeed, we refer to it at several points in this report. But we were not authorised or equipped to address this issue in any comprehensive way. Our core concern was the different though not entirely separate one of the treatment of the institutions by the Israeli authorities.

One question mentioned tentatively in our terms of reference we eventually decided not to pursue. This was the proposal to develop a new Arab university in Jerusalem, generally referred to as Al Quds University. The origins of the proposal are reflected in UN General Assembly resolution 35/13 of 3 November 1980, which requested the Secretary-General 'to study ways and means of establishing at Jerusalem a university of arts and sciences to cater to the needs of Palestine refugees in the area, under the aegis of the United Nations.' Subsequent explorations of the matter under UN auspices have clarified and developed the proposal somewhat. The initial idea of establishing a university to cater exclusively to the needs of Palestinian refugees appears, not surprisingly, to have been soft-pedalled, being largely replaced by a move to create Al Quds University from a cluster of four small existing colleges in or near East Jerusalem whose intake is not limited to refugees. These are (in the West Bank) the highly-regarded college of science and technology at Abu Dis, and the nursing college at Al Bireh; and (in East Jerusalem) the Islamic college at Beit Hanina, and the girls' art college. Between them these four colleges had 1,102 full-time students in academic year 1983-84. Our enquiries into the matter suggested to us that, on the Palestinian side, there were still unresolved issues to do with the exact nature and function of Al Quds University. Some people questioned the need to build up another fully-fledged university in the area when the population served is relatively small and the other universities, themselves very new, still need to

consolidate their position. In short, this was essentially, at least at this stage, an issue of educational policy, not of academic freedom. As such it was outside our remit.

In the event, and in view of the limited time at our disposal, we did not visit the four colleges mentioned above, nor the other small institutions of higher education, including the Islamic institute at Qalqiliah, and a number of vocational and teacher-training colleges.<sup>4</sup> We focused instead on the six largest institutions of higher education as spelt out in the third sentence of our terms of reference.

We have read of an attempt to establish an Arab University in Nazareth, within Israel;<sup>5</sup> and of a plan to build an Israeli University near Hebron in the West Bank.<sup>6</sup> However, we have not come across any detailed information about these projects, and in any case they are both outside our terms of reference.

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4. A fairly complete listing of institutions of higher education in the West Bank and Gaza, including a few small vocational schools not mentioned in this report, is in Ministry of Defence, Co-ordinator of Activities, 'Education and Culture in Judea, Samaria and the Gaza District, 1967/68-1982/83', Tel Aviv, 1983, pp.6-44. Taking all the institutions into account, the Israeli representative to UNESCO said on 16 November 1983: 'There are 14,461 students in institutes of higher learning, for a population of 1,225,000.' — Mrs Y. Vered in Commission V, the 22nd session of the General Conference of UNESCO, Paris, 16 November 1983.
  5. 'Research Centre for Arab Heritage: Information and Activities, First Circular', Tayiba, Israel, August 1983, p.2.
  6. Edward Witten, 'The Status of West Bank Universities', *New Outlook*, Tel Aviv, February 1984, p.22.

## **Part IV:**

# **The Occupied Territories: Historical and Legal Framework**

Although the past, present and future of the Israeli-occupied territories is a matter of deep and bitter controversy, certain conclusions about their current status, and about the body of international law applicable there, can be advanced with a fair degree of confidence. What follows relates particularly to the West Bank and Gaza, where all six institutions we looked at are located: it does not specifically refer to other areas occupied by Israel (namely East Jerusalem, the Golan Heights, and southern Lebanon). At the outset we stress that as far as the subject of our inquiry is concerned, the practical policy issues are at least as important as the legal ones — though the two categories inevitably overlap.

### **HISTORICAL PERSPECTIVES**

Before 1967 the West Bank and Gaza were under Jordanian and Egyptian administration respectively — a situation generally viewed internationally (especially so far as Gaza is concerned) as having had a provisional character, pending a political settlement in the area. Then during the six-day war of 5-10 June 1967 the Israeli army advanced into these territories, and has remained there from that day to this. Israel's position is widely viewed as also having a provisional character: that of an occupying power, with all the rights and duties associated with that status.

Israel's declared reasons for taking and holding on to these territories are above all to do with considerations of security. Israelis, looking back not only on the frightful experience of European Jewry in the Nazi holocaust, but also on Israel's experience of war since 1948, tend to argue that military defence is necessary, that they cannot trust in the goodwill of others, and that in the absence of secure and agreed boundaries they can only rely on their own military efforts. Ever since the State of Israel was proclaimed on 15 May 1948, the frontiers of that state have been a matter of dispute, and even the existence of the state has been challenged by its Arab neighbours with the exception, since 1977-78, of Egypt. From this perspective, the succession of wars in which Israel has been involved (1948-49, 1956, 1967, and subsequently) have been dictated by the absolute necessity of national survival in a hostile environment. Likewise, the holding of the West Bank and Gaza has been most often justified on the grounds that Israel needs secure and defensible borders: only in the event of a proper peace settlement and full recognition of its right to exist might Israel be prepared to consider withdrawing from these strategically important territories, close to the heart of Israel.

The Palestinian Arabs' perspective on these same historical events is totally different. They tend to see Israel as an alien entity, and as a threat. They cannot

forget the Arab exodus from Israel at the time of its creation. That exodus, prompted partly by atrocities such as the Deir Yassin massacre, led to a massive refugee problem, to which the refugee camps in the West Bank and Gaza still bear witness over a generation later. The Palestinian Arabs tend to see the 1967 Arab-Israeli war as a war of Israeli aggression and conquest, and they are reinforced in this view by the evidence that Israel intends to retain and eventually annex most of the territories occupied in that war. The Israeli settlements in the West Bank and Gaza are seen as proof of such intention. So are the official maps, published by the Israeli government, which show absolutely no distinction between what is often called Israel proper (i.e. Israel in its pre-1967 frontiers) and the occupied territories.

These radically different perspectives, so crudely outlined above, help to explain the difficulty of the whole issue of the universities in the occupied territories. Among some Israelis at least there does appear to be a fear that any educational activity that could help in the development of Palestinian nationalism must in some way, whether in the short or long term, pose a security threat to Israel. On the Palestinian side, any act of repression of universities in the occupied territories can be interpreted as yet another attempt to thwart the economic, political and cultural development of the Palestinian people in their own homeland.

Any serious attempt to establish a *modus vivendi* between the Israeli authorities on the one hand and the universities on the other has to take account of the reality of the concerns outlined above. It also has to take account of the framework of international law applicable in the occupied territories, especially as much of this framework is based on the bitter experience of past occupations elsewhere, and is intended to mitigate the worst effects of a situation where occupier and occupied have different views of the world and different loyalties. In order to establish what this framework is, it is necessary first of all to touch briefly on the question of the formal legal status of these territories.

## **JURIDICAL STATUS OF THE WEST BANK AND THE GAZA STRIP**

The question of the status in international law of the West Bank and the Gaza Strip has been the subject of several different interpretations. Since this question has some bearing on whether all the provisions of such international legal instruments as the 1949 Geneva Conventions are applicable there, we outline below the principal interpretations and indicate our views on them.

### **The Israeli View**

The official Israeli view since 1967 has been to call the West Bank and Gaza 'administered territories', and to assert that these lands were not previously accepted as belonging to another state and are therefore not 'occupied territories' in quite the normal sense. Before 1967, Israel had not accepted that these territories were part of Jordan or Egypt, nor had it made any territorial claims in respect of these territories. Since 1967, Israeli spokesmen have advanced the argument that these are not occupied territories in the precise sense envisaged in the 1949 Geneva Convention IV (the Civilians Convention). They have argued that the Convention, in accord with the terms of the second paragraph of common Article 2, applies only to 'occupation of the territory of a High Contracting Party'. They have claimed that the Convention is not strictly

speaking formally applicable to territory whose status is less clear, but have repeatedly said that Israel nevertheless applies the 'humanitarian provisions' of the Convention on a *de facto* basis. There has been less debate about the applicability of the 1907 Hague Regulations, which are widely accepted as part of customary international law.<sup>1</sup>

While Israel has been consistent in the main elements of its post-1967 position as outlined above, there have been some changes in its approach. After 1977, following the establishment of the Likud Government, its formal position regarding the applicability of 1949 Geneva Convention IV became more negative.<sup>2</sup> Also, after 1977, there was relatively less emphasis than before on the temporary character of Israeli administration in these territories, pending an eventual peace settlement with the neighbouring states. However, the 1978 Camp David agreement between President Sadat of Egypt and Prime Minister Begin of Israel did make provision for a self-governing authority for the West Bank and Gaza for a transitional period of five years, pending negotiations on the final status of these territories. In the event this plan was not implemented, but Israel has indicated continuing willingness to reactivate this part of the Camp David agreement.

### A Critique of the Israeli View

There is much in the Israeli view which is unexceptionable, but we are critical on two main points. First, we share the widespread unease about those Israeli statements and activities which imply a permanent Israeli presence in these territories, or a unilateral change in their status, even in advance of peace negotiations; and second, while Israel deserves full credit for accepting (albeit on a *de facto* basis) the applicability of the 1949 Geneva Convention IV, as well as the 1907 Hague Regulations, we disagree with any suggestion that the 1949 Geneva Convention IV is not applicable *de jure* and in its entirety.

The question of the applicability of 1949 Geneva Convention IV is somewhat complex, and requires elaboration here. The full text of common Article 2 of the four 1949 Geneva Conventions is as follows:

In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognised by one of them.

1. For full expositions of the Israeli viewpoint, see Yehuda Z. Blum, 'The Missing Reversioner: Reflections on the Status of Judea and Samaria', *Israel Law Review*, Vol.3, 1968, pp.279-301; Meir Shamgar, 'The Observance of International Law in the Administered Territories', *Israel Yearbook on Human Rights* 1971, pp.262-77; *The Rule of Law in the Areas Administered by Israel*, Israel National Section of the International Commission of Jurists, Tel Aviv, 1981; and Meir Shamgar (ed.), *Military Government in the Territories Administered by Israel 1967-1980: The Legal Aspects*, Vol.1, Hebrew University Law Faculty, Jerusalem, 1982. See also Appendix I of this report.
2. After 1977, 1949 Geneva Convention IV was viewed as not applicable to the West Bank on the grounds that the latter had been illegally annexed by Jordan. However, it was still applied on a *de facto* basis. Theodor Meron, 'West Bank and Gaza: Human Rights and Humanitarian Law in a Period of Transition', *Israel Yearbook on Human Rights* 1979, p.108.

The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.

All the states directly involved in the occupation of the West Bank and Gaza are full parties to the 1949 Geneva Conventions. Because this is so, it is not strictly necessary for us at this point to consider whether by now the 1949 Geneva Conventions can be considered as part of international customary law, and as such binding on all states irrespective of whether or not they are formal parties. We incline to a positive view on this matter, but this need not detain us here.

The arguments for insisting on the full *de jure* applicability of the 1949 Geneva Convention IV can be broken down into five parts, summarised briefly as follows.

First, it is far from clear that the term 'territory of a High Contracting Party' in the second paragraph of common Article 2 must necessarily be interpreted to mean territory which is internationally recognised as *de jure* part of a state's territory. Such a restrictive and legalistic interpretation would mean that civilians in disputed territory would be denied the protection of international law. There is no evidence that the negotiators at Geneva in 1949 intended this.

Second, there are many precedents for viewing a given state of affairs as an occupation, or asserting the applicability of the laws of war, even in situations which have varied somewhat from the formal conditions of application as indicated in the relevant conventions. For example, after the Second World War a number of international and national courts and tribunals ruled that the 1907 Hague Regulations, with their provisions on the conduct of occupations, were applicable even in certain cases where the occupation preceded the outbreak of the war, or where indigenous authorities remained nominally in charge of the occupied territory.<sup>3</sup> More recently there have been at least two instances of territories, namely Namibia and Western Sahara, being viewed as occupied even though they cannot strictly be said to be 'territory of a High Contracting Party'. The South African presence in Namibia has since 1968 been termed a 'foreign occupation' in UN General Assembly resolutions; and the 1971 Advisory Opinion of the International Court of Justice confirmed and elaborated on this categorisation.<sup>4</sup> Similarly the Moroccan presence in Western Sahara since 1975 has been termed an occupation in several UN General Assembly resolutions.<sup>5</sup>

Third, the 1949 Geneva Convention IV may in any case be formally applicable to this occupation by virtue of the *first* paragraph of Article 2 as quoted above, there being evidence that the second paragraph (which contains the

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3. See e.g. the statements about Czechoslovakia in the judgment of the International Military Tribunal at Nuremberg. *The Trial of German Major War Criminals*, Vol.22, p.467.

4. On Namibia, see UNGA resolutions 2372 and 2403, of 12 June and 16 December 1968; and the International Court of Justice's Advisory Opinion of 21 June 1971.

5. On Western Sahara, see UNGA resolution 34/37, of 21 November 1979; and 35/19, of 11 November 1980.



much quoted wording about 'territory of a High Contracting Party') was intended to deal solely with other types of occupation — namely those which are not opposed militarily.<sup>6</sup>

Fourth, while we repeat that Israel does deserve credit for its expressed willingness to apply the 'humanitarian provisions' of the 1949 Geneva Convention IV, the vagueness of the term 'humanitarian provisions' is disturbing. There appears to have been no authoritative clarification as to the precise meaning of this term. This has provided one basis for an Israeli tendency to interpret the Convention unilaterally, and to deny its applicability with regard to specific issues. The distinction between applying the Convention in full on a *de jure* basis, and applying its 'humanitarian provisions' on a *de facto* basis, is a substantial and significant one.<sup>7</sup>

Fifth, there is an element of arbitrary selectiveness in the Israeli attitude. Official statements sometimes justify Israeli actions in the occupied areas by reference to what some of the principal expositions of the body of international law on military occupations have said about the rights of an occupying power.<sup>8</sup> True, this is sometimes done in order to show that Israeli policy is moderate compared to what might be done within the limits of international law. Nevertheless, to claim such rights, while simultaneously denying the full *de jure* applicability of the 1949 Geneva Convention IV, seems on the face of it inconsistent.

#### A PLO View

Some, but by no means all, Palestinian writers have advanced the view that Israel is an aggressor occupant, and as such has no rights in international law.<sup>9</sup> Echoes of such an approach can be found in the PLO document on 'Universities in the Palestinian Areas Occupied by Israeli Military Authorities' which was submitted to the Director-General of UNESCO on 10 April 1981. That document denies the validity of Israeli arguments that as military occupants they have certain well recognised rights under international law:

We believe that the justifications made by the Israeli authorities of their

6. The authoritative *Commentary* on the 1949 Geneva Convention IV edited by Jean Pictet and published by ICRC, Geneva, 1958, p.21, supports this interpretation of the Convention. For an Israeli counter-argument that it makes little difference whether reliance is placed on the first or second paragraph of Article 2, see Shamgar (ed.), *Military Government*, p.40.
7. Thus in the *Elon Moreh Case*, in which judgment was given on 22 October 1979, the Israeli Supreme Court declared an Israeli civilian settlement near Nablus to be illegal, but relied only on the Hague Regulations, Article 52 (which deals with requisitions), and not on the more specific prohibition of population transfer in 1949 Geneva Convention IV, Article 49, sixth paragraph. The settlement was eventually built anyway, not far from its original site. For a text of the judgment see Shamgar (ed.), *Military Government*, p.404. See also the *Beth-El Case*, judgment given 15 March 1979, in *ibid.*, p.387. For further discussion of the settlements issue, see Part VI of this report below.
8. See for example the reference to von Glahn, and to the US and British military manuals, in Co-ordinator of Government Operations, *Judea-Samaria and the Gaza District: A Sixteen-Year Survey*, Ministry of Defence, Tel Aviv, 1983, pp.60-5.
9. See for example F. Yahia, *The Palestine Question and International Law*, Palestine Liberation Organization Research Center, Beirut, June 1970, p.184.

application to Order No. 854 on the basis of statements 'under international law' made by foreign authors in completely different contexts, are far from being valid and reliable. First of all to take the words of the British Manual (Section 534), Greenspan, Von-Glahn and the US Judge Advocate General, for granted, is sheer nonsense because the existing occupation has no similar precedence. It is an occupation which has been illegalized by the Community of Nations which unanimously requested putting an end to it on various occasions and in many resolutions.<sup>10</sup>

The argument advanced by the PLO might be questioned on the grounds that different interpretations of the facts are possible. There is, as is well known, much scope for debate as to whether Israel was an 'aggressor' in 1967, or whether it acted out of basically defensive intent; and there is also scope for debate as to whether the occupation has or has not been considered illegal by the international community. For the purposes of our enquiry, we see no need to enter into discussion on these contentious matters. This is because of the fundamental point that the laws of war, including the law on occupations, apply equally to all states, irrespective of whether they might be classified as aggressors or victims of aggression.<sup>11</sup>

### **The View of the International Community**

The view of almost all states apart from Israel is that the West Bank and Gaza are very much occupied territories, to which *all* the provisions of the 1949 Geneva Convention IV as well as a number of other instruments are applicable on a *de jure* basis. Numerous resolutions of the UN General Assembly have taken a clear line on this matter;<sup>12</sup> so have the nine members of the European Economic Community;<sup>13</sup> so have the International Committee of the Red Cross;<sup>14</sup> and some leading lawyers in the West Bank.<sup>15</sup>

On the question of to whether the West Bank was once, or should in future be, part of Jordan, there has in the past been slightly less unity of view in the international community. But over time there has been a tendency, reflected for example in UN General Assembly resolutions, to see both the West Bank and

10. The full text of this PLO document is to be found in UNESCO document 22 C/18, dated 30 August 1983. (The relevant section of the British *Manual of Military Law* is in fact numbered 537, not 534.)
11. See the 19 February 1948 judgment of a US Military Tribunal in *USA v. Wilhelm List et al.* (also called *The Hostages Case*) in *Annual Digest 1948*, p.637; A.D. McNair and A.D. Watts, *The Legal Effects of War*, Cambridge University Press, Cambridge, 1966, pp.371-2; and 1977 Geneva Protocol I on international armed conflicts, preamble.
12. See for example the series of publications entitled *Resolutions and Decisions of the General Assembly and the Security Council Relating to the Question of Palestine*, issued by the UN Division for Palestinian Rights in New York.
13. See for example the *British Year Book of International Law 1980*, pp.479-82.
14. See for example *Israel Yearbook on Human Rights 1971*, p.260; and ICRC *Annual Report* for 1968, 1973, 1975 and 1976.
15. See for example Raja Shehadeh and Jonathan Kuttub, *The West Bank and the Rule of Law*, International Commission of Jurists and Law in the Service of Man, 1980, pp.10-12.

Gaza as constituent parts of a future Palestinian state.<sup>16</sup> At all events the majority of states, including Israel, have indicated that such questions of status are ones which should be decided in future peace negotiations between Israel and its neighbours.

There is nothing infallible about the view of the international community. However, on the question of the legal regime applicable in the West Bank and Gaza it appears to us to be basically correct. The arguments for it are simple and straightforward: these are inhabited territories under foreign military control; that control is properly seen as provisional in character, pending an eventual peace settlement; and some well-defined body of international law is needed to regulate a complex and dangerous situation. The law on occupations, including not only the 1907 Hague Regulations but also 1949 Geneva Convention IV, is the main appropriate body of law.

However, in their different ways both the Israeli government and the PLO do have a point when they say that this occupation is *sui generis*. Certainly it is unique in many respects, not least that it has lasted for an exceptionally long time. Whether one attributes its seventeen-year duration to Israeli intransigence or to the reluctance of Arab states to enter into peace negotiations is immaterial. The fact is that the main body of international law on occupations was not drawn up with an occupation of such exceptional length in mind.<sup>17</sup> This does not mean that occupation law can be ignored, but rather that it is a less complete guide to the situation than in some other shorter-term occupations. Wartime emergency measures that may be tolerated in an ordinary occupation because they are presumed to be both rare and temporary are bound to be viewed much more critically if they continue over a very long period. The law on occupations, in the special circumstances of the Israeli-occupied territories, provides a minimum standard which should be improved upon wherever possible; and which should be supplemented by relevant provisions of the international law of human rights.

### THE LAW APPLICABLE IN THE WEST BANK AND THE GAZA STRIP

To assert clearly, as we do, that these are occupied territories does not solve at a blow the question of what law is applicable there. It does however serve as a guide. As far as the subject of our enquiry is concerned, the following bodies of law are relevant:

(1) International law on military occupations; (2) International human rights law; (3) The law of these territories prior to the Israeli take-over in 1967; and (4)

16. There are references to the 'inalienable rights' of the Palestinian people, including the right to 'national independence and sovereignty' in UNGA resolution 3236 of 22 November 1974; and to their 'inalienable national rights' in UNGA resolutions 3375 of 10 November 1975 and 33/29 of 7 December 1978.

17. A provision for the continued partial application of the convention 'one year after the general close of military operations' is contained in 1949 Geneva Convention IV, Article 6. This is modified by 1977 Geneva Protocol I, Article 3, which says that the 1949 Geneva Conventions continue to apply until the termination of the occupation. Israel is not a party to the latter protocol. The question of whether there has ever been a 'general close of military operations' is complex, and in the circumstances we do not think it necessary to address it. On the limited significance of the 'one year after' provision in 1949 Geneva Convention IV, see Michael Bothe, Karl J. Partsch, and Waldemar Solf, *New Rules for Victims of Armed Conflicts*, Nijhoff, The Hague, 1982, p.59.

The law imposed by the occupant in these territories. These are considered in turn.

As far as the first two categories are concerned, we do not except in passing discuss the justiciability of international legal provisions in Israeli courts: rather we discuss the obligations incumbent on the government of Israel in its formulation and execution of policy.

### **1. International Law on Military Occupations**

This body of international law is basically a part of the laws of war. Like all international law, its sources include not only formal international conventions (i.e. treaties), but also international custom, judicial decisions (of which there have been a very large number dealing with military occupations), and the work of distinguished legal experts. So far as international conventions are concerned, the main expressions of this body of law are the following:<sup>18</sup>

1. *1907 Hague Regulations*, annexed to 1907 Hague Convention IV on Land Warfare. Entry into force: 26 January 1910. Israel, Jordan and Egypt are not formal parties. However, the Convention was expressly recognised by the International Military Tribunal at Nuremburg as declaratory of customary international law, and it is widely accepted on this basis, including by the Israeli Supreme Court. Articles 42-56 of the Regulations relate specifically to military occupations.
2. *1948 Genocide Convention*. Entry into force: 12 January 1951. Israel signed on 17 August 1949 and ratified on 9 March 1950. Jordan acceded on 3 April 1950. Egypt signed on 12 December 1948 and ratified on 8 February 1952. This agreement applies equally in time of peace or war, and can also be viewed as part of the international law of human rights.
3. *1949 Geneva Convention IV on Protection of Civilian Persons in Time of War*. Entry into force: 21 October 1950. Israel signed on 8 December 1949 and ratified on 6 July 1951. Jordan acceded on 29 May 1951. Egypt signed on 8 December 1949 and ratified on 10 November 1952. The main provisions on occupations are in Section III (articles 47-78).
4. *1954 Hague Cultural Property Convention and Protocol*. Entry into force: 7 August 1956. Israel signed the Convention on 14 May 1954, ratified it on 3 October 1957, and acceded to the Protocol on 1 April 1958. Jordan signed both on 22 December 1954 and ratified both on 2 October 1957. Egypt signed both on 30 December 1954 and ratified both on 17 August 1955.
5. *1977 Geneva Protocol I Additional to the 1949 Geneva Conventions*. Entry into force: 7 December 1978. Israel is not a party. Jordan signed on 12 December 1977 and ratified on 1 May 1979. Egypt signed on 12 December 1977 but has not ratified.

Of the huge range of issues addressed in the law on occupations, two are particularly central to our enquiry: the media, and education. However, on neither of these subjects does the law on occupations offer as much guidance as

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18. For texts of these and other agreements, and information about states parties, see Dietrich Schindler and Jiri Toman (eds.), *The Laws of Armed Conflicts*, 2nd edn., Sijthoff and Noordhoff, Alphen aan den Rijn, 1981; or Adam Roberts and Richard Guelff (eds.), *Documents on the Laws of War*, Oxford University Press, 1982.

one would wish. These are among the many areas where the law on occupations can be said to suffer the occupant to take certain otherwise regrettable actions, without always specifically permitting or authorising such actions.

Regarding the media, occupants frequently seek to control press, radio, television, theatre, postal correspondence etc. For example they sometimes prohibit the publication or importation of particular newspapers, or permit them to continue subject to restrictions. The above-mentioned conventions say little about this. However, such activities — undesirable and unpopular as they may be — are viewed by some authorities as being within the rights of an occupying power.<sup>19</sup> A reasonable inference from the conventions and other sources is that censorship genuinely necessitated by security considerations may be permissible, but not censorship which arbitrarily undermines the rights of the inhabitants, or is aimed at bringing about a fundamental change in the beliefs of the inhabitants, or which would frustrate the application of the law on occupations.

Regarding education, the 1907 Hague Regulations, Article 56, prohibits seizure and destruction of institutions dedicated to education, but says nothing more. The 1949 Geneva Convention IV, Article 50, says: 'The Occupying Power shall, with the co-operation of the national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children. . .', and also requires the occupant to arrange that orphans be educated by people of their own nationality, language and religion: however, this Article does not seem to apply specifically to institutions of higher education, and one searches the convention in vain for more detailed guidance on educational matters.<sup>20</sup> Some other sources neglect the question of how the laws of war relate to education. For example, the US field manual simply quotes the text of Article 50 of 1949 Geneva Convention IV, but does not elaborate.<sup>21</sup>

Other writings on occupation law tackle educational issues in at least slightly more detail, but often on the assumption that there is a continuing war. Thus the American writer von Glahn contends that 'the occupant in essence may control and supervise such aspects of an educational system in occupied enemy territory as affect directly the military occupation and the conduct of hostilities.' He suggests that the occupant does not have a right to introduce its own language, or teachers of its own nationality. However, he says that the actual practice of most occupants has involved interference going beyond what most writers accept as permissible.<sup>22</sup> Section 537 of the UK military manual states in very broad terms that 'schools and educational establishments must be permitted to continue their ordinary activities, provided that the teachers refrain, if so required by the occupant, from referring to politics and that they submit to inspection and

19. US Department of the Army, *The Law of Land Warfare*, Field Manual No.27-10, Washington DC, 1956, p.144; UK War Office, *Manual of Military Law*, Part III, p.147; Gerhard von Glahn, *The Occupation of Enemy Territory*, Minneapolis, Minnesota, 1957, p.137ff.

20. Article 24 of the 1949 Geneva Convention IV also touches on educational matters, but does not add to the above-quoted provisions of Article 50.

21. *US Field Manual*, p.145.

22. Glahn, *Occupation of Enemy Territory*, pp.62-7. See also Glahn, 'The Protection of Human Rights in Time of Armed Conflicts', *Israel Yearbook on Human Rights* 1971, p.213, where he identifies as a striking weakness of the 1949 Geneva Convention IV that 'there are no regulations governing the operation of the educational system in occupied enemy territory'.

control by the authorities appointed.'<sup>23</sup> Gerson tentatively suggests that institutions, curricula and personnel ideologically adverse to the occupant need not be retained, but he goes on: 'Whether the occupant may then introduce in their stead new material, institutions and personnel, ideologically acceptable to him but repugnant to the occupied populace, is a different question.' He refers to possible mechanisms for outside mediation of educational disputes — through the Protecting Power system or through UNESCO.<sup>24</sup>

Despite the lack of specific reference to education, many general provisions of the law on occupations do have a bearing on the issues considered in this report. Examples include the requirement that the occupant must respect and protect the inhabitants of occupied territory; the injunction to respect, unless absolutely prevented, the laws in force in the country; the rules regarding collective punishments, fair trial, taxation, and many other matters.

Restraint in handling educational matters in occupied territory has in the past sometimes been urged on grounds of general prudence as much as because of any specific legal provisions. Thus Sir Arnold Wilson, who was British Civil Commissioner of Mesopotamia 1918-20, later wrote:

Few matters give in practice more anxiety to the Army of Occupation on the Civil Administrative side than how to prevent educational and religious institutions becoming centres of agitation. To close them does great harm; to arrest individual transgressors concentrates public attention and sympathy on them. The whole aim of the Civil Commissioner and his staff must be to create an atmosphere which will discourage 'seditious' or even tendentious talk by clergy and professors, generally patriotic men of great influence and authority.<sup>25</sup>

The actual practice of occupants in dealing with universities has by no means been uniformly repressive. For example, in western Germany from 1945 onwards, when the Allies were concerned to control German nationalism, they acted towards universities in a co-operative and restrained manner.<sup>26</sup>

We conclude that the law on occupations does not prohibit all interference by the occupant in all matters pertaining to higher education, undesirable as such interference may be. However, it is a reasonable inference from the evidence cited above that there is a presumption against such activities except in circumstances where they are genuinely necessitated by security considerations. As an occupation becomes more prolonged, and to the extent that the military threat to the occupant diminishes, so the rights of the occupant to intervene also diminish.

We note that Israel itself has in a number of ways indicated a willingness to go beyond the law on occupations on certain issues.<sup>27</sup> Regarding academic freedom an official publication has said: 'The requirements of international law

23. UK, *Manual of Military Law*, p.148. 'Politics' is not defined.

24. Allan Gerson, *Israel, the West Bank and International Law*, Cass, London, 1978, pp.181-2.

25. Sir Arnold Wilson, 'The Laws of War in Occupied Territory', *Transactions of the Grotius Society*, London, Vol.18, 1933, p.28.

26. David Phillips (ed.), *German Universities After the Surrender: British Occupation Policy and the Control of Higher Education*, University of Oxford Department of Educational Studies, 1983, 171 pages. See particularly the paper by James Mark at pp.38-50.

27. Shamgar (ed.), *Military Government*, pp.48-9.

as regards academic freedom are comparatively strict, but Israel adopts a liberal attitude and does not in fact exercise all its legitimate powers.<sup>28</sup> We disagree with the word 'requirements' in the above formulation: as indicated above, the law on occupations can be said to 'suffer' the occupant to take certain actions rather than 'require' him to do so. But in substance the Israeli statement strikes the right note. So does a briefing issued by the Israel Information Centre in 1981: 'Academic freedom is one of the hallmarks of the Israeli culture and way of life, and it is given full scope — in the Israel-administered areas as throughout the country.'<sup>29</sup>

## 2. International Human Rights Law

Apart from the laws of war, international human rights law is the other main body of international conventional law which is relevant to the situation in the occupied territories. Of course, the laws of war themselves deal quite extensively with human rights in armed conflicts and occupations. Indeed, the laws of war can be viewed as one particular part of human rights law.<sup>30</sup> International human rights law, as discussed here, is distinct from the laws of war partly by virtue of the fact that it is much more widely applicable: it applies in peacetime, and it applies within states, affecting for example the relations between governments and their own subjects.<sup>31</sup> It also goes into greater detail on certain matters, including matters relating to education.

The general principle of the applicability of international human rights law to occupied territories has been the subject of relatively little consideration, and is not specifically addressed in the conventions themselves. However, the modern movement for human rights law grew out of the almost universal reaction against Nazi practices in Germany and the occupied countries in the Second World War. A number of writers have asserted the applicability of human rights law in time of armed conflict and occupation.<sup>32</sup> It may have been partly with human rights law

28. Co-ordinator of Government Operations, *Sixteen-Year Survey*, p.64. We also note approvingly a statement by an earlier Co-ordinator for the Administered Territories, Brigadier-General Shlomo Gazit: 'Israel's techniques are simple. The first principle is the minimum use of military forces. Whenever we do not need troops, we do not put them in . . . The next point is minimal interference with the residents' way of life, especially in the areas vital to peace: freedom of speech, religion and education.' Gazit, 'Policy in the Administered Territories', *Israel Yearbook on Human Rights* 1971, p.281.
29. Israel Information Centre, 'How the Abuse of Academic Freedom led to the Temporary Closure of Bir Zeit University', 22 November 1981, p.3.
30. G.I.A.D. Draper, 'The Relationship Between the Human Rights Regime and the Law of Armed Conflicts', *Israel Yearbook on Human Rights* 1971, p.206.
31. On the scope of human rights law generally, and the way in which, as an authoritative interpretation of the UN Charter's human rights clauses, it is binding on all states, see Frank C. Newman, 'Interpreting the Human Rights Clauses of the UN Charter', *Human Rights Journal* 5 (1972), pp.283-9; and Newman, 'The International Bill of Human Rights: Does it Exist?' in Antonio Cassese (ed.), *Current Problems of International Law: Essays on UN Law and on the Law of Armed Conflict*, Giuffrè, Milan, 1975, pp.107-16.
32. Morris Greenspan, *The Modern Law of Land Warfare*, University of California Press, Berkeley, 1959, footnotes on pp.161, 247, 250 and 504; G.I.A.D. Draper, 'The Status of Combatants and the Question of Guerrilla Warfare', *British Year Book of International Law* 1971, p.218.

in mind (as well as the humanitarian laws of war) that the International Court of Justice pointed to the applicability of 'certain general conventions such as those of a humanitarian character' in Namibia, illegally occupied by South Africa.<sup>33</sup> The *Cyprus v. Turkey* cases before the European Commission of Human Rights have confirmed the general principle of the applicability of human rights law with regard to the Turkish-occupied areas of Cyprus.<sup>34</sup>

However, the particular mode of application of human rights law can raise problems so far as occupied territories are concerned, not least in those instances where (a) there are disagreements as to the exact legal status of an international human rights instrument; or (b) the occupying power is not a party to a particular instrument; or (c) the power which previously held the territory is not a party to a particular instrument, or at any rate was not a party at the time the occupation began. In addition to all this, the fact that derogations from certain provisions may be tolerated in certain circumstances adds an additional level of difficulty.<sup>35</sup> We refer to some of these problems further below, with specific reference to the West Bank and Gaza.

Of the very large number of international instruments which can be viewed as falling within the human rights stream, and as also having a potential relevance to the situation in the West Bank and Gaza, our discussion in the end focused on the following.<sup>36</sup>

1. *1948 Universal Declaration of Human Rights*. This document, adopted by the UN General Assembly on 10 December 1948, is not a legally binding instrument as such, and there is no machinery whereby states can become formal parties to it. Rather it has the status of an authoritative guide to the UN Charter, and many legal scholars view it as having acquired the characteristics of customary international law. Article 26 deals with education and includes the statement: 'Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.'
2. *1950 Agreement on the Importation of Educational, Scientific and Cultural Materials with Annexed Protocol*.<sup>37</sup> Entry into force: 21 May 1952. Israel

33. *ICJ Reports 1971*, Advisory Opinion of 21 June 1971, p.55.

34. *International Law Reports*, Vol.62, pp.5, 7, and 82-3.

35. On derogations generally, see Rosalyn Higgins, 'Derogations under Human Rights Treaties', *British Yearbook of International Law*, 48 (1976-77), pp.281-320. Yoram Dinstein has noted that two types of derogation are of special importance in the sphere of cultural rights: (a) in cases where human rights are abused to bring about their ultimate overthrow (e.g. if a teacher tries to inculcate anti-semitic theories); and (b) in war or other emergency, on which he concludes: 'It is clear that the occupant is entitled to ascertain that teachers do not indulge in political incitement against it under the guise of education, and that it is also empowered to examine textbooks and, if necessary, to change or amend them so that they will not include hostile propaganda.' Dinstein, 'Cultural Rights', *Israel Yearbook on Human Rights* 1979, pp.79-81.

36. The text of the agreements listed here (except where otherwise footnoted) is in Ian Brownlie (ed.), *Basic Documents on Human Rights*, 2nd edn., Oxford University Press, 1981. Information about states parties is from United Nations, *Multilateral Treaties Deposited with the Secretary-General*, and from the Treaty Dept. of the UK Foreign and Commonwealth Office.

37. Text in 131 *UNTS*, p.25.



signed on 22 November 1950 and ratified on 27 March 1952. Jordan acceded on 31 December 1958. Egypt signed on 22 November 1950 and ratified on 8 February 1952. Article I provides for no customs duties on books and certain educational, scientific and cultural materials; Article II requires states to grant necessary licences and foreign exchange for the import of books for libraries and collections of public educational, research or cultural institutions; Article V is an escape clause on grounds of 'national security, public order or public morals'; under Article VIII the Director-General of UNESCO can give an advisory opinion in the event of a dispute between contracting states 'relating to the educational, scientific or cultural character of imported materials,' but common agreement of the parties is needed for such an opinion to be sought.

3. *1960 UNESCO Convention Against Discrimination in Education*. Entry into force: 22 May 1962. Israel signed on 15 December 1960 and ratified on 22 September 1961. Jordan acceded on 6 April 1976. Egypt ratified on 28 March 1962. Article 1 specifies that the convention applies to all types and levels of education.
4. *1962 UNESCO Protocol on Conciliation and Good Offices*, additional to the 1960 Convention Against Discrimination in Education.<sup>38</sup> Entry into force: 24 October 1968. Israel signed on 10 December 1962 and ratified on 13 September 1967. Egypt acceded on 5 August 1974. Jordan is not a party. This establishes, under the auspices of UNESCO, an eleven-member Conciliation and Good Offices Commission, charged with seeking the settlement of disputes concerning the application or interpretation of the 1960 UNESCO Convention Against Discrimination in Education.
5. *1966 International Convention on the Elimination of All Forms of Racial Discrimination*. Entry into force: 4 January 1969. Israel signed on 7 March 1966 and ratified on 3 January 1979. Jordan acceded on 30 May 1974. Egypt signed on 28 September 1966 and ratified on 1 May 1967. (Both Egypt and Israel made reservations regarding Article 22.) Articles 5 and 7 contain specific but brief references to education. Articles 8-16 provide for the establishment of the Committee on the Elimination of Racial Discrimination.
6. *1966 International Covenant on Economic, Social and Cultural Rights*. Entry into force: 3 January 1976. Israel signed on 19 December 1966 but has never ratified. Jordan signed on 30 June 1972 and ratified on 28 May 1975. Egypt signed on 4 August 1967 and ratified on 14 January 1982. Article 13, on education, contains a brief reference to higher education.
7. *1966 International Covenant on Civil and Political Rights*. Entry into force: 23 March 1976. Israel signed on 19 December 1966 but has never ratified. Jordan signed on 30 June 1972 and ratified on 28 May 1975. Egypt signed on 4 August 1967 and ratified on 14 January 1982. Article 4 permits extensive derogations 'in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed'; but it goes on to specify that no derogations are permitted in respect of provisions in seven specified articles.

In the territories occupied by Israel since 1967, the applicability or otherwise of international human rights law has been the subject of some disagreement.

38. Text in 1969 *UKTS*, No. 23.

As far as international conventions generally are concerned, Israel has taken the view that where it is a party to a convention, it may have a right or even a duty to apply it in the occupied territories. This view has been most clearly and forcefully articulated with respect to certain human rights treaties on labour matters, especially the 1958 Convention Concerning Discrimination in Respect of Employment and Occupation, to which Jordan and Egypt are also parties.<sup>39</sup>

As far as the first item on the above list is concerned — namely the 1948 Universal Declaration of Human Rights — the situation is less clear. Israeli Military Courts in the occupied territories have doubted the formal applicability of the Universal Declaration.<sup>40</sup> However, successive UN General Assembly resolutions have urged that it be respected and implemented in the occupied areas.<sup>41</sup> Theodor Meron has suggested that the Israeli Government might consider whether those provisions of the Universal Declaration not in conflict with the security requirements of Israel are applicable to the inhabitants of the West Bank and Gaza.<sup>42</sup>

As far as the remaining six international instruments on human rights which we listed are concerned, we did not come across any clear and unequivocal Israeli statements saying that they are applicable or otherwise in the territories occupied since 1967. The memorandum in Appendix I indicates that the 1950 and 1960 agreements are viewed as applicable. Regarding some of the other agreements, the general position to be inferred from public statements seems to be as follows: Israel is not saying that such human rights conventions can be ignored, and it regards even those agreements which it has not ratified (i.e. the two 1966 covenants, one on economic, social and cultural rights, the other on civil and political rights) as setting significant standards. However, for one reason or another they may only be applied in part, and on a *de facto* basis.<sup>43</sup>

An indication of the rather flexible attitude of the Israeli authorities to various human rights instruments is to be found in a number of publications, including the Co-ordinator's *Sixteen-Year Survey*. The legal section of this official report begins as follows:

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39. For details of Israel's dispute with certain countries in the International Labour Organisation on this issue, see Theodor Meron, 'Applicability of Multilateral Conventions to Occupied Territories' in Shamgar (ed.), *Military Government*, pp.217-29. (Originally published in *American Journal of International Law*, 1978.)
40. See for example the decision of the Israeli Military Court in Ramallah in the 1968 case of *Military Prosecutor v. Halil Muhammad Mahmud Halil Bakhis and Others* in *International Law Reports*, Vol.47, p.486. The three defendants, caught infiltrating into the West Bank from Jordan, had then claimed freedom of movement by virtue of the Universal Declaration, Article 13.
41. See for example UNGA Resolutions 2443 of 19 December 1968; 2546 of 11 December 1969; 2727 of 15 December 1970; 2851 of 20 December 1971; 3005 of 15 December 1972; and 3092 of 7 December 1973.
42. Theodor Meron, 'West Bank and Gaza: Human Rights and Humanitarian Law in a Period of Transition', *Israel Yearbook on Human Rights* 1979, p.120.
43. For an account of an Israeli disagreement with Syria over the application in the occupied Golan Heights of the 1966 International Convention on the Elimination of Racial Discrimination (which Israel had not at that time ratified) see Theodor Meron, 'The International Convention on the Elimination of All Forms of Racial Discrimination and the Golan Heights', *Israel Yearbook on Human Rights* 1978, pp.222-39.

## The Rule of Law in the Areas Administered by Israel

### The Legal Background

The basic democratic rights, such as freedom of speech and expression, were formulated in the Universal Declaration of Human Rights of 1948 and several other international human rights conventions.

These fundamental freedoms are enjoyed by citizens of each subscribing state, but are concomitant to the existence of peace as expressly recognised by Article 4(1) of the 1966 International Covenant on Civil and Political Rights:

In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the states parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation.<sup>44</sup>

Surprisingly, this quotation from Article 4(1) of the 1966 International Covenant on Civil and Political Rights omits the final clause: 'provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.' Further, and again to our surprise, there is no mention of Article 4(2) of the Covenant, which reads: 'No derogation from Articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.'<sup>45</sup> The Israeli official publication's highly selective quotation from this 1966 covenant also omits all references to Article 5:

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognised herein or at their limitation to a greater extent than is provided for in the present Covenant.
2. There shall be no restriction upon or derogation from any of the

44. Co-ordinator of Government Operations, *Sixteen-Year Survey*, p.60. There had already been practically identical wording in *The Rule of Law in the Areas Administered by Israel*, Israel National Section of the International Commission of Jurists, 1981, p.75. Both documents go on to quote equally selectively from the 1950 European Convention on Human Rights, Article 15, omitting the second paragraph thereof which restricts derogations.

45. Briefly summarized, the seven non-derogable articles of the 1966 International Covenant on Civil and Political Rights concern the following matters:

Article 6: 'Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life . . .'

Article 7: 'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment . . .'

Article 8: Prohibition of slavery and servitude.

Article 11: No imprisonment for inability to fulfil a contract.

Article 15: Criminal law not to be applied retroactively.

Article 16: The right to recognition as a person before the law.

Article 18: Freedom of thought, conscience, and religion. (This article does, though, contain its own limitation clause as to 'public safety, order, health, or morals or the fundamental rights and freedoms of others.')

fundamental human rights recognised or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognise such rights or that it recognises them to a lesser extent.

Although Israel is not a formal party to the 1966 International Covenant on Civil and Political rights, if it cites this instrument at all in official documents it should do so in a less misleading way than is done in the Co-ordinator's Report.

In point of fact Israel has taken significant actions with respect to certain particular aspects of human rights in the occupied territories. For example, it has abolished capital punishment for murder.<sup>46</sup> But there is concern about its actual performance in regard to other matters. Its attitude to the various international human rights instruments is not just a matter of academic interest, but is of potential practical importance.

Our own conclusions on the applicability of the seven human rights instruments listed above can be summarised as follows:

1. All these instruments embody fundamental norms which should be implemented to the maximum possible extent in occupied territories.
2. There is a particularly strong case for regarding as *de jure* applicable in the West Bank and Gaza those instruments to which Israel is a formal party; and/or to which Jordan or Egypt are parties, especially where they were so before the occupation began.
3. There may very well be justifications for derogations from certain provisions, particularly on the type of ground which is specified in some of these instruments, namely a serious public emergency. It might even be conceded that the years since 1967 have constituted such an emergency, because of such events as the outbreak of war in 1973 and 1982, and the continuation of the various guerrilla or terrorist activities conducted under the aegis of the PLO. Even in these circumstances, however, derogations must only be to the extent strictly required by the exigencies of the situation; and, as noted above, certain provisions of these instruments are non-derogable.
4. Israel would perform a service to itself and to the inhabitants of the occupied territories if it made a clear public statement affirming the applicability of all these instruments in the occupied territories.
5. As far as issues related to academic freedom are concerned, these instruments contain many significant rules and guidelines, a few of which have been briefly enumerated above. Among other things, the provisions of one or other of these agreements establish a strong presumption in favour of freedom of belief in teaching, right to peaceful assembly and association, non-discrimination in education, and so on; they also make significant allowance for the security interest of states; they call for the prohibition of any advocacy of national, racial or religious hatred; and they place a clear obligation on educational institutions to promote understanding, tolerance and friendship among all nations, racial or religious groups. We make no attempt to synthesise all such rules here, but in Part VI we return to some of them with particular reference to the actual issues that have arisen in the West Bank and Gaza.

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46. Shamgar (ed.), *Military Government*, pp.45, 52, 54 and 215.

### 3. The Law of the Territories Prior to the Israeli Occupation

A central assumption of the law on occupations has long been that the legal system of a territory should remain in existence during an occupation. As the 1907 Hague Regulations, Article 43, puts it:

The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

Thus in the West Bank and Gaza, one significant body of law is that which was 'inherited' from the Jordanian and Egyptian administrations respectively in 1967. These systems were themselves quite multi-faceted. Thus under Jordanian rule the law in the West Bank was basically Jordanian, but contained elements of old Ottoman law, as well as law from the period of the British Mandate. In Gaza the law was basically that of the British Mandate, but with an admixture of Egyptian rules.

There are undeniably problems in maintaining all the pre-1967 laws in the West Bank and Gaza, especially because of the long duration of the occupation. Some of these laws (as happened in the matter of capital punishment for murder) may come to be viewed as undesirable. Other laws may need to be repealed or amended for other reasons: not least in matters where there are new social or economic developments. The foundation of universities is a clear example of a new development which was not specifically provided for in existing law.

Because of such considerations, we have some sympathy with Israel so far as the general principle of exercising its right to amend, repeal or add to local laws is concerned — at least in cases where it can claim that it is 'absolutely prevented' from maintaining the existing laws, or where it views them as plainly contrary to fundamental international norms and to the wishes and interests of the inhabitants. However, in such cases it must be very careful to act in a trustee-like role.

### 4. The Law Imposed by the Occupant

As a general principle, neither the law nor the ordinary civil or criminal jurisdiction in force in the occupant's own territory is considered to extend to occupied territory.<sup>47</sup> The occupant is entitled however, to set up his own administrative apparatus in the occupied territories, and to introduce orders and rules which are necessary to fulfil the occupant's obligations under international law, or to maintain the orderly government of the territory, or to ensure the security of the occupant's lines of communication, property, etc. Such provisions must be published before they come into force, and cannot be retroactive.<sup>48</sup>

Although the local courts normally continue to sit, and to deal with the great majority of cases, the occupant may set up special courts, usually called military courts, to deal with cases involving breaches of the law imposed by the occupant.

47. UK, *Manual of Military Law*, p.145. For more detail see Eli Nathan, 'Israeli Civil Jurisdiction in the Occupied Territories', *Israel Yearbook on Human Rights* 1983, pp.90-115.

48. 1907 Hague Regulations, Article 43; 1949 Geneva Convention IV, Articles 64, 65, and 67.

In both the West Bank and Gaza, military courts have been set up.<sup>49</sup>

Quite separately, Israel has made a noteworthy innovation: introduction of the right to petition to the Israeli Supreme Court against arbitrary or illegal acts by the occupant. The Supreme Court has asserted its competence to review the legislation and acts of the occupation authorities in the light of 'the relevant rules of customary international law embodied in the Hague Regulations annexed to the Fourth Hague Convention of 1907 and in some of the provisions of the Geneva Convention.'<sup>50</sup> So far as we are aware, few issues directly related to university-level institutions have been the subject of petitions to the Supreme Court, but one petition regarding building permits at Birzeit is pending at the time of writing. In the West Bank and Gaza we encountered some scepticism about this right of petition, whether on the grounds that it involved recognition of Israeli authority, or on the grounds of the actual performance of the court in the many cases it has heard: among other things there was criticism of its willingness to accept 'security' as a justification for acts by the occupant, and of its unwillingness to accept 1949 Geneva Convention IV as fully applicable and justiciable.

As far as universities are concerned, the main legal provision brought in by the Israelis has been that series of military orders colloquially known as 'Military Order 854', issued in July 1980. This is discussed further in Part VI.

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49. On the military courts, see the article by Dr Zvi Hadar in Shamgar (ed.), *Military Government*, pp.171-216; and the critical view in Shehadah and Kuttub, *The West Bank and the Rule of Law*, pp.22-5.

50. Article by Eli Nathan in Shamgar (ed.), *Military Government*, pp.168-9. See also the article by Fania Domb in *Israel Yearbook on Human Rights* 1981, pp.344-66.

## **Part V:**

# **A View of the Universities**

The six principal institutions of higher education in the West Bank and Gaza have all been founded, or else upgraded to university status, since the beginning of the Israeli occupation in 1967: indeed, almost all the expansion of higher education has taken place since about 1972. It is still continuing. The Israeli authorities appear to have given permission, either at the beginning or retrospectively, for all the institutions to open, and have co-operated with them in several ways. Thus their existence is within a framework of legality.

### **GROWTH OF HIGHER EDUCATION**

The reasons for the rapid expansion of higher education are not hard to identify. They are both practical and ideological. After the occupation began in 1967 various administrative obstacles were erected that made it more difficult for inhabitants of the West Bank and Gaza to continue to go to the outside universities to which they had traditionally gone. Some of the obstacles were created by Jordan and Egypt, and reflected an understandable concern on the part of those countries not to assist a slow process of depopulation of the occupied territories. In 1971 or so various moves were made by leading inhabitants of the occupied territories to develop several institutions there, including for example in the field of medical care. As for higher education, a committee was set up to advance the cause of a West Bank university. It included some advocates of an independent Palestinian state, others of a continued association with Jordan. Despite such political differences there was agreement on the need to develop higher education in the area, not least with a view to having skilled personnel available to run the territory and its economy if and when the Israeli administration left. All this took place against a background of a widespread and strong aspiration for higher education.

Birzeit is perhaps the prototype of the active development of higher education fairly early in the occupation. It was in 1972 that the Junior College at Bir Zeit set in train the large range of practical moves necessary to transform itself into a university with four-year courses; but the actual change of name to Birzeit University took place only in 1975. Similarly with Bethlehem, the main moves to set up the university were taken in 1972, but its formal foundation was on 1 October 1973.

Money in the hands of some Arab states following the October 1973 Middle East War and the accompanying oil embargo increased the funds potentially available for projects such as the establishment of universities in the occupied territories; but it is clear that the impetus to create universities preceded the war of October 1973, and reflected earlier motivations.

The rate of expansion of higher education has indeed been remarkable. In 1967, apart from a few small colleges some of which formed a nucleus for later growth, there was little in the way of higher education inside the West Bank and Gaza. By 1977-78 2,763 students were enrolled at the four main institutions: Birzeit, An Najah, Bethlehem and Hebron. By 1983-84 there were 11,046 at the six we visited, and some 14,000 altogether if the smaller colleges are included.

Inevitably there has been some debate about whether the universities are expanding too rapidly, or in appropriate directions, or without sufficient co-ordination with each other. In 1979 the Council for Higher Education invited Professor Norman C. Hunt of Edinburgh University to undertake an appraisal of higher education in the area, and his report that year said that 'future plans provide for too many university places and too few places for technical and vocational training.' He went so far as to recommend a moratorium on the establishment of any more universities in the West Bank and Gaza beyond the three which were already well established at that time — Birzeit, Bethlehem and An Najah. Since he wrote this report, both the Islamic University of Gaza and Hebron University have continued on the course of seeking to transform themselves into universities. It is not for us to comment on the optimum number or size of the universities, but the debate on the matter is clearly important and is likely to continue. This is especially so because the occupied territories have not escaped the problem of the unemployed graduate. We were informed that by the summer of 1981 there had been a total of 1,935 graduates from the five West Bank universities, of whom more than 400 were still out of work in June 1982. It may well be that some presently somewhat neglected subjects (business studies or agriculture, for example) need to be developed urgently if the problem is to be contained.

The haphazard growth of higher education has been noted by others besides Professor Hunt. For example, in 1980 two Birzeit teachers, in a scholarly study of education in the occupied territories, warned very frankly that in higher education 'excessive capacity and the subsequent reduction in standards pose a real danger'.<sup>1</sup> In 1981 Professor J.W. Pocock observed in his Report of a Pilot Survey on 'The Institutions of Higher Education on the West Bank and the Gaza Strip' (a study sponsored by the Council for Higher Education and supported by the US Consulate in Jerusalem and the US Information Agency):

It has been a random, spontaneous evolution of a higher education capability to fill a perceived educational void and carried out to date with variable planning within the individual institutions and no overall planning and co-ordination.

Of course there were reasons for the lack of co-ordination in founding the universities: strong local initiative was probably the best way to actually get things done in the difficult circumstances prevailing. The system has some advantages: all institutions are not affected by a conflict involving only one. But there are costs in doing things this way — not least that it nurtures a sense that each institution is in a different position from the others, and that there is not much by way of a buffer between each institution and the Israeli authorities. Moreover there is an obvious risk of duplication of academic effort in some subjects and neglect of others.

1. Khalil Mahshi and Ramzi Rihan, 'Education: Elementary and Secondary', in Emile A. Nakhleh (ed.), *A Palestinian Agenda for the West Bank and Gaza*, 1980, p.51.



## **SOME COMMON FEATURES**

The six main institutions differ from each other in history, in organisation, in religious (or secular) framework, in the emphases given to different subjects, and in physical appearance. But there are common features.

### **Buildings**

A first visual impression of the universities was an inevitable consequence of their newness. To a greater or lesser extent they all resembled building sites. Some, especially Birzeit and Bethlehem, have many old buildings. But almost everywhere, in addition to some buildings in settled use, there were half-finished buildings, preparations for further buildings, or else (at Bethlehem) older ones being refurbished. In many cases the physical expansion of universities was a major point of friction with the Israeli authorities: there were many complaints of building permits being denied or revoked, and there was a good deal of construction work in a state of suspended animation.

None of the universities is residential in the sense of having a significant proportion of the students accommodated on campus. Some — for example Birzeit — do provide some on-campus accommodation. But for the most part there is a variety of off-campus forms of housing: many students live at home, or in lodgings, or in a few instances in student hostels, often in very crowded conditions. A significant number of students at all the institutions come from the many refugee camps in the occupied territories, which house people displaced from their former homes in what is now Israel proper. The difficulties of studying in such circumstances are considerable.

### **Funding**

The funding and organisation of all the institutions is private, in the sense that they are not funded by the Israeli administration.<sup>2</sup> Apart from income from student fees and various other local sources, the institutions depend largely on funds from outside the occupied territories. We did not explore the complex area of university funds in detail, but outside sources of funds of which we were made aware included the Gulf States; a number of wealthy individuals in the Arab world; the Jordan-PLO joint committee (established in April 1979, in the wake of Camp David, to channel certain Arab funds to infrastructure projects in the West Bank and Gaza); various western aid agencies, as as AMIDEAST (America-Mideast Educational and Training Services Inc.); and, in the case of Bethlehem University, the Vatican. Getting these funds transferred into the occupied territories, as well as their use there by university administrators, has been another point of friction with the Israeli authorities.

Tuition fees are charged by all six institutions. For full-time students, depending on the institution and the subject studied, the range is roughly between 40 and 200 Jordanian Dinars per annum, equivalent to roughly US \$100-500. There are scholarship schemes at individual institutions whereby the fees can be reduced or even waived.

2. An Israel government memorandum sent to the Director-General of UNESCO on 19 June 1981, summarized in the UNESCO Director-General's 30 August 1983 report, Annex IV, pp.9-10, stated that the Israeli military administration had 'contributed to the budgets of some of these institutions'. This may have been so in the past, but we have no further details, and we have not seen the claim repeated more recently.

## **Admissions Policy**

All six institutions admit students of both sexes, and all cater almost exclusively for the Arab inhabitants of the West Bank and Gaza. (We received evidence that the Israeli authorities discourage Arabs from Israel proper from attending these institutions, but a few do in fact do so.) The admission of virtually all students is decided largely on the basis of their performance in the General Secondary School Certificate Examination, known as the Tawjihi. Some institutions — for example Birzeit, Bethlehem and An Najah — state openly in their publications that they admit only candidates who get an average mark of 70 per cent or above in the Tawjihi. (That is roughly 40 per cent of those who pass the examination.) On top of this, the institutions have their own entrance examinations. The three universities named above, unlike the other institutions we visited, have a record of accepting fewer than half of the many applications they receive. This is partly because they are the oldest, and it confirms our impression that those three are seen at present as the principal university-level institutions in the occupied territories.

The Tawjihi examination, which is so influential in determining entry, is an interesting example of the way in which education in the occupied territories is a matter involving Jordanian and Egyptian as well as Israeli administration. It is a very important examination, success in which is crucial for many white-collar jobs as well as for university admission. It is taken at the age of 17 and consists of a series of compulsory papers, failure to pass a single one of which can result in failure to matriculate that year. In the West Bank the Tawjihi is regulated by Jordanian law, and is organised under the auspices of the Jordanian Ministry of Education. In Gaza it is administered by Egypt and takes a slightly different form.

## **Academic Organisation**

As far as the universities are concerned, our impression was that the amount of administrative influence or control asserted by the Jordanian and Egyptian ministries of education in the West Bank and Gaza respectively is less than it is in the primary and secondary schools. However, it is not negligible. The universities attach considerable importance to their links with those countries and to recognition of their status there. Bethlehem specifies in its catalogue that its degrees and diplomas are officially stamped by the Jordanian Ministry of Education. Hebron Polytechnic's brochure states: 'Approval of the Jordanian Ministry of Education and the military authorities in the West Bank of Jordan had been secured before the Institute was initiated.'

All the universities award Bachelor's degrees, generally on the basis of four years' study, or five at Gaza. For the most part they follow a credit-hour system, similar to that used in the USA and many other countries. Typically, the academic year consists of two semesters (of 15 or 16 weeks each) and one summer session (of 7-8 weeks). A minimum number of credits is specified for each degree. (At Hebron Polytechnic the course of study lasts two years, leading to a Diploma.)

The languages of instruction at Birzeit, Bethlehem and An Najah are Arabic and English, and the large selection of books in English in their libraries testifies to the importance attached to the language. On the other hand there has been some student pressure for greater use of Arabic. In the other three institutions we

visited Arabic predominated, but there was some teaching and use of English. A number of other languages are taught in the six institutions, including for example Hebrew and French.

None of the universities had an active programme of postgraduate study. Thus although inhabitants of the occupied territories can now get first degrees without going abroad, if they want to follow this up by academic research or study for higher degrees they almost always have to go abroad. An exception is the MA programme at Birzeit, but students are not being admitted to it at present.

As regards academic research by staff members, there is less than one might expect from institutions of this size. However, we were shown some publications and other evidence of research by staff. The relatively modest volume of research output is probably due to the high student-to-staff ratios, to limited resources including libraries, to travel and other restrictions, and to practical difficulties inhibiting research in new institutions where so many other matters require attention, all of which difficulties are compounded by the circumstances of the occupation. We noted a general desire to improve research in quantity and quality, and to relate it to the needs of the Palestinians. We were told of a number of instances in which research on matters relating to the occupied territories had been obstructed in one way or another by the Israeli authorities (see p.68).

All the institutions have significant numbers of staff who are from outside the occupied territories, at least in the sense that they are foreign passport holders. Some are genuinely foreign in the sense that they view themselves as, say, American or British. Others, however, include members of the large Palestinian diaspora who were abroad when the occupation began and are therefore not classified as inhabitants of the territories. They may carry a foreign passport, most likely Jordanian; but in their own eyes they are also Palestinian. The substantial part played by 'foreign' teachers is a natural feature of the rapid expansion of higher education in the territories. It has led to some friction with the Israeli authorities.

### **Political Orientation**

The prevailing political orientation of faculty members and students in all six institutions can be roughly summarised as nationalistic. That is to say, there is widespread support for a Palestinian state of some kind. No secret was made of this. As we indicated earlier, we do not find such a political orientation surprising or improper. At An Najah some water pipes had been painted in the colours of the Palestinian flag; at other universities we saw pro-PLO posters and pictures. (Such manifestations are prohibited by Israeli Military Order 101 on the Prohibition of Incitement and Adverse Propaganda.)

Many questions are inevitably raised. Does being in favour of a Palestinian state mean being anti-Israel, in the sense of opposing the existence of the State of Israel? Does it mean identification with all the declared aims of the PLO? Does it mean support for any particular one of the groups which comprise the PLO? Does it mean supporting any or every activity done in the name of the PLO? Does it mean that the universities as such or their members should be involved in opposing the occupation?

When we discussed those issues while visiting the institutions, many people told us that they regarded the State of Israel (in its pre-1967 frontiers) as a reality

they were willing to accept: indeed, that seemed to be the majority view of those with whom we talked. However, other views on this certainly exist and have support.<sup>3</sup> In particular, members of families of Arab refugees from what is now often called Israel proper must find it hard to accept the permanence of the Israeli State. Many individuals articulated the view that the PLO, like a state, is a large umbrella organisation, general support for which does not necessarily mean approval of its every aim and activity. As a matter of record we should note that at the time of our visits, in late 1983, there seemed to be more support for Yasser Arafat, then beleaguered in Tripoli, than for his Syrian-backed adversaries: for instance, within many institutions students had put up his picture.<sup>4</sup>

On the issue of whether the universities or their members should get involved in acts of violence against the Israeli occupation, all with whom we discussed the matter indicated, perhaps not surprisingly, that they were opposed to this. We were urged to believe that the universities had not been involved in any guerrilla or terrorist actions. (We discuss the issue of violent demonstrations etc. in the next part of this report.)

The PLO is by no means the only political or cultural influence on the universities. Numerous other factors are in evidence. First, there is continuing Jordanian influence, and also (in Gaza) some from Egypt. On many issues Jordan and Egypt are likely to veer in very different directions from the PLO, as the stormy history of their past relations with that organisation shows. Secondly, there are many strong local influences on the universities. For example, it was often leading families and local civic, professional and business leaders who took the main burden of setting up the universities in the 1970's, and many of the same people occupy a crucial role today, for example as university trustees. Many of them are by nature cautious, even conservative: certainly they are aware that militant action could provide an excuse for Israeli repression and could even risk causing a new exodus of the population. Thirdly, there was evidence of what is often glibly called Islamic fundamentalism. The endorsement of basic Islamic ideas about society was most evident in Gaza and at Hebron University, but Islamic fundamentalism has also been influential elsewhere. The Muslims in the occupied territories are Sunnis, so the fundamentalism is not in any way a carbon copy of Khomeini's Shiite Iran, though it has certainly been affected by events there. Fourthly, there is a good deal of communist influence. Fifthly, we were struck by the extent of what might broadly be called 'Western' influence. All the institutions we visited had some links with Western European and North American universities. At Birzeit, Bethlehem and An Najah universities, there was a strong tendency to model themselves on, or compare themselves with, such Western universities at least as much as with any in the Arab world. Finally, there

3. A publication by Birzeit students shows no sign of coming to terms with the existence of Israel, which is referred to as 'the territories occupied in 1948' or 'the 1948 territories'. Birzeit University, Student Youth Movement, *An Analysis of the Military Orders Issued Pertaining to Education in the Occupied Territories*, 1983, pp.6, 23-4 and 26.
4. Our impressions on the extent of support for Arafat were confirmed by the results of an opinion poll conducted in the West Bank and Gaza for an East Jerusalem magazine, the contents of which were summarized in *The Jerusalem Post*, 2 December 1983. The poll indicated over 90 per cent support for Arafat as PLO chairman, but also showed strong support for dialogue with Jordan, Egypt and 'Israeli peace forces'.

was a strong tendency to compare themselves with the Israeli universities, whose quality is widely acknowledged and whose privileges are envied by Palestinians.

By no means all the political or public order difficulties in the universities are simple Palestinian-Israeli conflicts. We heard a number of accounts relating to such matters as: clashes between students of different factions; rivalries between nationalists of a PLO orientation on the one hand and Islamic fundamentalists on the other; students denouncing those foreign lecturers who had signed the so-called 'anti-PLO pledge'; and tension between militant student groups and more cautious university administrations. While such problems were not our main concern, they are real, and they add a further dimension to the difficulties of creating and strengthening universities in the occupied territories.

### **Disruption of Academic Life Under the Occupation**

Perhaps the most notable common feature of the institutions we visited was intangible. Those in charge felt they were living on a knife-edge. They clearly found it very difficult to make long-term plans and to concentrate on academic work or policy-making when they had no means of knowing whether they would be in business or closed next week; whether bank accounts would be frozen; whether permission for new facilities would be granted or refused; whether the students would be turned away at a roadblock; whether examinations could be held on time; or whether divisions within the student community, or between students and faculty, might exacerbate an already difficult situation. The multiple frustrations of trying to maintain and manage universities in the occupied territories were only too apparent.

### **THE COUNCIL FOR HIGHER EDUCATION**

There is a modest degree of formal collaboration between the various institutions of higher education in the West Bank and Gaza, through the Council for Higher Education. It did not create the universities: indeed, the moves to establish it were taken only in 1977, when Birzeit and Bethlehem were in full swing and An Najah was well advanced. Since its formation it has sought to exercise a co-ordinating rather than a directing role.

The Executive Director of the Council is Dr. Samir Katbeh, a medical practitioner specialising in paediatrics; and his office in Al Bireh serves also as a meeting place for the Council. The Council includes representatives from the main institutions of higher education in the West Bank and Gaza: not just from the four it recognises as universities (Birzeit, An Najah, Bethlehem and Gaza) but also from Hebron University, Hebron Polytechnic, the college of science and technology at Abu Dis, the nursing college at Al Bireh and the Islamic Institute at Qalqiliyah. It also includes representatives of a few small colleges in East Jerusalem, which has been annexed by Israel — an annexation not recognised by other countries. Thus the Council's area of concern extends beyond universities. Moreover, its membership includes representatives not only of the institutions mentioned, but also of professional associations (doctors, engineers, lawyers, etc.); and of UNRWA. It also includes the elected mayors of towns where institutions of higher education exist.<sup>5</sup> The Israel authorities have reportedly

5. For an interesting Israeli study of the role of the mayors generally, see Moshe Ma'oz, *Palestinian Leadership on the West Bank: The Changing Role of the Arab Mayors under Jordan and Israel*, Cass, London, 1984.

refused to have dealings with it.<sup>6</sup>

It was the Council for Higher Education which sponsored the two major reports mentioned above on academic development policy in the occupied territories — the one by Professor Hunt in 1979, and the other by Professor Pocock in 1981. So far as we are aware neither has been published, but they were made available to us by the Council. Both take a constructively critical look at the situation over which the Council in a sense presides, and they make broadly similar proposals for more emphasis on the polytechnic and vocational sector, for means of ensuring high academic standards, and for more co-ordination between these rather individualistic institutions. In fact the response to the many proposals contained in the two reports has been limited, especially as regards those calling for a strengthening of the Council's co-ordinating role.

The limited nature of the Council's role may be regrettable, but in the prevailing circumstances it is not surprising. As already indicated, the different institutions in the West Bank and Gaza, while collaborating with each other on many issues, are each very different, reflecting differing regional interests, intellectual approaches and religious backgrounds. Their financial support comes from many different sources. These factors alone would make extensive co-ordination of their work problematical. In the absence of an indigenous governmental system covering the occupied territories as a whole, it is hard to see how the Council for Higher Education could exercise the kind of co-ordinating and decision-making functions that elsewhere are performed by ministries of education and the various bodies that serve under them. Moreover, there is a strong undercurrent of concern that if the institutions were centralised more — for example by channelling all their funds through the Council — it might actually be easier for the Israelis to control their activities by administrative measures. Such considerations persuade us that for better or for worse the Council is not likely to extend its powers dramatically in the near future.

## THE SIX INSTITUTIONS, ONE-BY-ONE

### **Birzeit University**

This is the most famous of the universities in the occupied territories, not least because of its pioneering role in getting higher education established in the West Bank, because from its foundation to the present day it has been the focus of a number of critical disagreements with the Israeli authorities, and because it is widely viewed as having good academic standards. It has much the largest teaching faculty, and the best stocked library, with some 75,000 volumes, 55,000 of which are in the English language. It is situated in the largely Christian small town of Bir Zeit, and is split between the old campus, in old buildings which are on the main street, and the new campus, on which work is continuing and which is situated a little way outside the town.

6. The Israeli military authorities have apparently taken the view that the Council is directly controlled by the PLO and is therefore not a body with which they can have contact. (Yaari, 'Report on the Condition of Universities in the Occupied Territories', Jerusalem, 1981, p.2.). The book by Moshe Ma'oz (previous footnote), referring on p.172 to events in 1979, mentions in passing 'the PLO-led Council for Higher Education in the West Bank'. William Claiborne in the *International Herald Tribune*, 20 March 1980, reported a struggle in the Council as well as in other bodies between the 'moderate' (pro-Arafat) and 'radical' (pro-Habbash) groups.

Birzeit's problems with the Israeli authorities go back more than ten years. Its President, Dr. Hanna Nasir, was deported in 1974. Since that time he has operated from the university office in Amman, and he is also a member of the PLO Executive and other PLO bodies. Meanwhile Dr. Gabi Baramki, the widely respected Vice-President, has remained in day-to-day charge at Birzeit. Since 1979 the University has had an exceptionally large number of closures imposed on it.

At Birzeit, by chance, we witnessed two events symptomatic of problems in the occupied territories. First, driving there in the morning on the road from Ramallah and about a kilometre from Bir Zeit, our car overtook a stationary bus carrying Birzeit students: the bus had been stopped by Israeli soldiers and all the students had to get out to have their identity cards checked. This was apparently routine. Secondly, later that same morning the students organised a demonstration in the street just outside the old buildings of the university: this was to commemorate, or rather reassert Palestinian condemnation of, the UN General Assembly Resolution of 29 November 1947 — the Partition Resolution that outlined a plan for the partition of Mandated Palestine west of the River Jordan between a Jewish state and an Arab state. (29 November has also been designated by the General Assembly as an International Day of Solidarity with the Palestinian People.) The demonstration was peaceful and impressive, and there was no Israeli attempt to stop it. However, the fact that it was in protest against the UN's Partition Resolution served as a reminder of the extraordinary intractability of the national issues of the area: thus to condemn partition was bound to be seen by Israelis as a denial of Israel's right to exist as an independent state, and as a demand for the creation of a single state of Palestine to include all the territory of the former British Mandate.

Those two events notwithstanding, our overall impression was that this, of all our visits to institutions, was the one that felt most like going to a West European or American university. Why? Partly because (unlike the other two leading universities we visited on the next two days) Birzeit was open and functioning. It was busy in the usual way of universities: classes, lectures, a crush in the canteen, students working in the library and so on. Most of the staff members with whom we spoke were themselves familiar with European or American universities. Birzeit has extensive contacts with universities in France, West Germany, Switzerland, the UK and the USA, and a number of its students have been accepted at such universities for postgraduate work.

### **An Najah University**

An Najah National University (its full name) is predominantly Muslim, but with a small Christian element. From its beginnings as a college in 1918 it has always been associated with nationalism.<sup>7</sup> Although it was the last of the three leading institutions to get university status, it is the largest of them. Its relations with the Israeli authorities have not been easy, especially in recent years. In October 1982 the President, Dr. Munther Salah, was deported. Since then Dr. Sharif Kana'na, an Israeli Arab, has been Acting President, supervising the rapid expansion of the university.

Nablus, in the heart of Samaria (the northern part of the West Bank), is one

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7. Y. Porath, *The Emergence of the Palestinian-Arab National Movement 1918-1929*, Cass, London, 1974, p.204.

of the towns where there has been much tension between Arab inhabitants and Israelis, especially since the construction of Israeli settlements in the area in the past few years. On 28 November 1983, two days before our visit, an Israeli from a nearby settlement had been the victim of an axe attack in the Nablus vegetable market. That evening, presumably by way of reprisal, two Arab guards at An Najah University were attacked by individuals believed to be settlers. After those events the situation in the town was tense, and some Israeli settlers encamped at Joseph's Tomb in Nablus to put pressure on the Israeli government to ensure better security for them in the area. Other incidents followed, including a grenade attack on a police patrol. Less than two weeks later on 8 December, an 11-year-old girl, Aisha Adnan el-Baash, was shot dead in Nablus after an Israeli army raid on a trade union office in town. That sparked a demonstration and rock-throwing, and there were suspicions that the shooting was by Israelis who were not members of the security forces.<sup>8</sup> Such incidents are a reminder that the local milieu within which the university has to operate contains a microcosm of West Bank problems as a whole: conflict not only between the authorities and the inhabitants, but also between settlers and inhabitants, a succession of rock-throwing and other incidents, and tension between the Israeli authorities on the one hand and the settlers on the other.

An Najah University is on a hillside a short way out of the centre of Nablus. On 30 November our car was stopped briefly at an Israeli army roadblock not far from the university entrance. We then arrived at the university to find it almost deserted: just a few staff members were there, and no students. We toured the virtually empty buildings, looked at books in a well stocked but empty library, and had talks with senior academic staff and several of the university's trustees.

On the question of the roadblock, we were told that students and staff were being stopped there; that those staff we met on campus had come in by back ways; that the students feared to come in by such routes, especially since the attack on the university guards two nights before; and that closures by roadblock were common, having also occurred, for example, on 12, 13, 17, 23, 26 and 29 November. The university authorities said they had received neither written nor oral explanations for these roadblocks, which effectively brought the campus to a halt. Over the years they had adjusted to such patterns of interruption by extending semesters until 80 days of study had been done, and by postponing whatever examinations coincided with roadblocks.

The original college building has been greatly extended in the past few years to accommodate the necessary teaching facilities for the university with its increasing numbers of students. Fine new buildings have been erected. However, much building work was being held up, we were told, by the occupation authorities. We saw, for example, a half-completed administrative block: the foundations had been laid, and steel reinforcements and wooden formes were in place for the next stage of work. But when a fleet of lorries had arrived with concrete the Israeli military authorities said that they could not proceed with construction, and in the end the concrete had to be poured out by the roadside before it set in the lorries. Thus the building was left in a state of suspended animation. Parallel problems had evidently arisen with an engineering building being put up a few hundred yards further out of town. In both cases, we were

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8. Our account is based on reports in *The Jerusalem Post* between 30 November and 9 December 1983, as well as on information we gathered while in Nablus.



told, the municipality had given planning permission but the Israeli military authorities had not. Both levels of permission were required.

### **Bethlehem University**

This is the smallest of the three main universities in the West Bank. It has had a policy of cautious and steady expansion since its foundation in 1973. It has a good library, though with fewer books than Birzeit or An Najah, and a good academic reputation. The Vatican has played a considerable role in its foundation and continued support, with the local administrative co-operation of the De La Salle Brothers (Brothers of the Christian Schools), who are described in the university's admirably comprehensive catalogue as the largest professional teaching congregation in the world. However, despite its strong Catholic connections the university is not exclusively Christian. Indeed, some 70 per cent of its students are Muslim. There is a hint of ecumenism in the statement of purpose: '... to serve the people of the West Bank and the Gaza Strip as a center of learning for the advancement, preservation, dissemination and use of knowledge. The highest aspiration of the University is to imbue the human mind with knowledge in a spirit of understanding and ethical vision, and moral principles held in high esteem throughout the world. . .'

The University is situated on the highest hill in Bethlehem, only eight kilometres south of Jerusalem. When we visited it on 1 December it was closed, for an odd reason. On 2 November (Balfour Day, when Palestinian Arabs remember bitterly the Balfour Declaration of 2 November 1917) the Israelis had ordered the university to close for two months. This followed a violent clash between students and soldiers on the previous day — a clash which in turn was a consequence of heavy-handed Israeli treatment of a 'Palestinian Heritage Exhibit' set up by students in October. The university authorities sensibly decided to use the two-month closure to effect various repairs and refurbishments of the premises. They were thus caught on the hop when at the end of November the Israelis back-tracked under international pressure and allowed the campus to reopen. We thus saw the interregnum between formal permission to reopen and actual reopening. Only a handful of students and staff members were around. We saw, in the laboratories, botanical experiments which had been wrecked by the closure and, in the main building, reinforced glass being put into the windows to reduce the ever-present hazard of Israeli tear-gas grenades being lobbed into the premises during IDF interventions.

A unique difficulty faced by Bethlehem University is that the town of Bethlehem is notably dependent on the tourist industry. Therefore the local inhabitants as well as the Israeli authorities are nervous about anything that smacks of trouble. The university authorities contend that it is natural that their students want to demonstrate their opposition to the occupation. Yet the costs of any such demonstrations, at least if they lead to violent clashes or are reported as doing so, can be high.

Bethlehem University, besides offering degree courses in arts and sciences, also makes a special effort to meet local needs for trained personnel in service industries. Thus it has a baccalaureate nursing programme, and an Institute of Hotel Management offering a four-year diploma course.

### **Islamic University of Gaza**

Although the Gaza Strip contains a population of around half a million, it had

nothing even resembling a university until 1978. From about 1972 onwards there had been efforts to establish a university, but these had run into difficulties. We discussed these early efforts in the town of Gaza with two of the leading individuals involved. They had evidently sought to set up a secular university and had approached both the Egyptian and Israeli governments about it. In the end the Israelis gave a verbal refusal, and this had been repeated when an attempt was made to revive the project at around the time of the 1978 Camp David agreement.

The project which in fact went ahead in Gaza was far from secular. The Islamic University of Gaza, founded in 1978, is indeed a distinctively Islamic institution. The most obvious signs of this are that the men and women students are taught in separate parts of the campus, that the women wear traditional Islamic clothing and that there is extensive provision for prayer. The university has evolved from an older and much smaller body, the Palestine Religious Institute. Its development has been the most rapid in terms of student numbers of all the six institutions we visited: from some 120 students in 1978-79, it expanded to almost 2,800 in 1983-84.

We heard allegations that the Israeli authorities had in the 1970's deliberately encouraged the growth of specifically Islamic institutions such as this, on the ground that they would be a diversion from the more secular brands of nationalism exemplified by the PLO. According to this argument, only after 1979 (with the overthrow of the Shah of Iran) did the Israelis seriously begin to distrust militant Islamic fundamentalism. Whatever the merits of this argument, we also heard evidence that the PLO itself took the line in 1979 that there should be only one university in Gaza, and it should be an Islamic one. We have reached no definite conclusions on these suggestions, but report them as one indication of the sensitivity and complexity of the issue of secular versus Islamic education. The US State Department has said of Gaza: 'Religious and intercommunal strife on the campus in 1983 disrupted the school year and rekindled local interest in creating a secular, two-year technical/vocational college.'<sup>9</sup>

The Islamic University of Gaza presents a spectacle completely different from that of the three universities described above. Many of the buildings have a temporary appearance. They and the concrete pathways, all laid out directly on the sand, are inelegant but bustling with activity. The atmosphere seemed much more like a high school than a university. Large classes in crowded classrooms, with teachers at the blackboard, seemed to be characteristic. Virtually all the teaching we witnessed was in Arabic, though the University puts some emphasis on the teaching of foreign languages, and indeed is unique in the occupied territories in making learning of Hebrew compulsory. The library, with some 8,000 volumes, is small even for a small university.

The Islamic University of Gaza has had a long series of problems in its relations with the Israeli occupation authorities in Gaza. The President, Mohamed Saqr, described disputes over building permits, and we saw some classes taking place in half-finished buildings. There have also been problems over work permits for staff (whether from Gaza or outside), over Israeli freezing of the University's funds in the local bank, and over Israeli army interventions on the campus, including one in early 1982 after a Palestinian flag was flown there. Others in Gaza with whom we spoke confirmed the impression that there had

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9. US Department of State, *Country Reports on Human Rights Practices for 1983*, Washington D.C., February 1984, p.1304.

been extensive Israeli interference, of such a kind as to frustrate its proper development as a university. We note that Israeli publications we have examined never use the University's official name, and refer to it, if at all, by other names including 'Islamic College'.

### **Hebron Polytechnic Institute**

The town of Hebron, in the heart of Judea, has been the scene of exceptionally strained relations between Jews and Arabs at many stages of its history. Although it is overwhelmingly Arab in population, for many Jews it has great historical and symbolic significance. In recent years several Israeli settlements have been built in the immediate vicinity of Hebron, and there are settlers even in the centre of town. On the day we visited Hebron, a building near the vegetable market was being demolished, evidently by settlers, while Israeli soldiers stood guard. That there was a conflict of interest and a state of tension between the inhabitants and the occupants was evident. The fact that there have been several violent incidents in the town, involving casualties on both sides and even deaths, confirms our sense that Hebron may be the most difficult environment of all in the occupied territories in which to manage an institution of higher education. In fact Hebron has two. They are totally different from each other — one secular and concerned with meeting the need for trained technicians, the other Islamic and concerned almost exclusively with non-technical subjects.

To take Hebron Polytechnic Institute first, this is much the smallest of the six institutions we visited, and the only one not claiming university status. It offers two-year courses in various fields of engineering (mechanical, civil and electrical) and in architecture. Much stress has been placed on getting the proper facilities and equipment (laboratories, machine tools and so on) for the training it provides. It gives the impression of having well-defined educational goals and meeting them in practical and competent ways.

Like all the institutions we visited, Hebron Polytechnic has had difficulties with the Israeli authorities over matters to do with buildings and the receipt of funds. At present the Polytechnic is dispersed, occupying one main site and using a number of others as classrooms or workshops. Several requests for planning permission for new buildings have been turned down or ignored by the Israelis. As a result the Polytechnic has had to resort to short-term expedients, including renting premises or classrooms — acts which the Israeli military authorities say require their permission. Similarly as to funds, the principal officers say that incoming grants from Western sources have been held up because of Israeli insistence that permission is needed before any aid is passed on. The Polytechnic has had other problems with the Israeli authorities, including lack of a telephone (they use the phone in the University Graduates Union), and difficulties in bringing in much-needed machinery.

### **Hebron University**

Often called the Islamic College, this institution developed from the Centre for Islamic Studies, which was established in 1971 on the initiative of the then mayor of Hebron, Sheikh Muhammad Ali Ja'bari, whose family remains well represented on the board of trustees. It is distinctively Islamic, and has just two faculties: Islamic Law, and Arts (where the great majority study Arabic). Yet its bustling campus on rocky ground on the edge of Hebron is not segregated in the manner of the Islamic University of Gaza, nor is traditional Islamic dress imposed

on the women students, who indeed outnumber the men. (The other institutions we visited all had a predominance of male students.) It changed its name to Hebron University in 1980 but at the time of our visit in December 1983 it was not yet fully recognised as a university either by the Council for Higher Education (of which it is a member) or by the Union of Arab Universities.

Its relations with the Israelis, apparently quite good at the time of its foundation in 1971, have degenerated in recent years. We heard accounts from students of harassment while travelling to Bethlehem in January 1983; we also heard of roadblocks round the campus, of a two-month closure of the campus in 1983 following an incident in the main street of Hebron, and of difficulties in bringing in funds from outside the occupied territories. But by far the most serious issue, which dominated our discussions, was the armed attack on 26 July 1983.

The events of 26 July 1983 constituted the most serious single incident at the universities. Shortly before mid-day some armed men got out of a car on a quiet road bordering the campus and came up the hilly ground at the side of the main buildings, shooting dead two students who were sitting there. In the main building the men threw grenades and fired off their machine guns. The filing room was riddled with bullets. The attackers then left the way they had come, leaving a total of three dead and thirty-three wounded. (Seven of the injured were hurt jumping out of upper floor windows in the panic.) Some injuries were permanently disabling. Both staff and students take the view that it was a miracle not more had died in this murderous attack.

Who was held responsible for this act of terrorism? Those with whom we spoke on campus, including eye-witnesses to the shootings, had no doubt that the attackers were Israeli. Some thought that Israeli officials were involved and claimed in support of this that the telephone had gone dead shortly before the attack. The majority view was clearly that Israeli settlers were responsible, probably from the nearby settlement of Qiryat Arba. This seemed a likely explanation. At the time, the attack was seen by many as revenge for the murder on 7 July 1983 of an 18-year-old Jewish religious student in the town of Hebron.<sup>10</sup>

Our discussions at the campus revealed a notable lack of confidence in the subsequent Israeli investigations into this shooting. For example, one woman student who had seen the face of one of the attackers told us that when she went to give an account to police investigators they had discussed in Hebrew whether or not to show her photos of possible suspects, and in the end had shown her none. Since our visit, however, there have been developments in the official investigations. After explosive charges were attached to five Arab-owned buses in Jerusalem on 27 April 1984, and successfully defused by the Israeli authorities, nineteen Jews were arrested in connection with what was alleged to be a network of Jewish settler-based terrorism. Two of those arrested confessed to the attack of 26 July 1983.<sup>11</sup>

## POSTSCRIPT

Our brief preceding account of the six institutions may, we hope, have assisted readers in answering the question, several times put to us by outsiders: Are they

10. See e.g. the reports of the attack in *The Times*, London, 27 July 1983; and the *Jerusalem Post International Edition*, 31 July-6 August 1983.

11. *International Herald Tribune*, 3 May 1984.

really universities? Clearly, in the extraordinary circumstances in which they operate, they cannot be exactly like universities elsewhere. They are new and have been going through a phase of rapid expansion with all the problems that inevitably ensue. The institutions are still small and inadequately developed as universities go, and cannot cover the full range of subjects one looks for in a university. They are more self-consciously committed to the idea of nation-building than are other universities in more comfortable circumstances. Political controversy and practical difficulty can never be far below the surface. We noted that Birzeit is already quite widely regarded internationally as achieving university-level standards; and among all six there is evidence of serious educational purpose which is likely over time, and given good direction and a reasonable chance, to result in a significant and much needed improvement of higher education in the occupied territories. We now turn to the question of whether a reasonable chance for that evolution exists or can be created.

## **Part VI:**

# **The Problems Regarding Academic Freedom**

Here we face directly the problems that led to our enquiry — namely those particular points of friction and conflict between the universities and the Israeli authorities which involve issues of academic freedom.

At least in formal terms, the points at issue between the universities on the one hand and the Israeli authorities on the other are limited and detailed. The arguments involve the conduct of one side or the other, the activities of students, the treatment of funds, and so on: they are not explicitly about the right of the universities, or indeed of states in the region, to exist.

### **INTERPRETING FACTS**

In the course of our enquiry we were often struck by the difficulty of reaching a sure conclusion on many matters we had to address. Among those who we interviewed there were frequently disagreements as to matters of fact, or else different theories about what had caused a known set of events. One illustration of the way in which the same facts can be interpreted differently by the different parties arises from events which took place at Birzeit University two months after our visit. On 31 January 1984 there was a student demonstration there, followed by an intervention by Israeli forces and a military-ordered closure of the old campus for three months. What had sparked such a reaction? An Israeli official announcement issued on 2 February said:

The Military Government decided today to close the old campus of Birzeit University for a 3 months period, following violent disturbances and grave violations of public order which took place at the campus on January 31st, 1984.

In the course of these events, some 400 students gathered at the campus, paralysed the studies, raised PLO flags, rushed into the nearby streets and laid road blocks, set tires on fire and stoned the security forces which came to enforce order at the scene.

Birzeit University has been a permanent scene of violation of public order, and its old campus has been constantly exploited by the students to perform acts of incitement and violation of public order.

The University authorities have been warned more than once, and recently again, that it is their responsibility to prevent usage of the campus by the students for a non-academic activity. . .

The IDF and the Civil Administration will not permit students who are motivated by the PLO and activated by hostile elements to exploit the institutes of higher education in Judea, Samaria and the Gaza district for the purposes of incitement and hostile activities.

However, the university's account of the same events is very different. A statement issued by the Public Relations Office of Birzeit on 4 February said:

On the afternoon of January 31, the army came to the University where a peaceful student gathering was being held inside the campus to protest the attempted attack on Al Aqsa Mosque and the killing of a student in Nablus. A tense situation ensued, and the army surrounded the campus for five hours. Ten students were detained, and hundreds forced to spend the night at Birzeit, as checkpoints blocked all roads leading from the University. Up until and since that time, the University had been functioning normally.

Birzeit University once again affirms that students inside the University walls have the right to express their views peacefully without military interference. Freedom of expression is a cornerstone of academic freedom anywhere. If the army would refrain from coming to the University, no problems would occur. . .

We have quoted extensively from these two statements not because we are in a position to adjudicate between them as to the facts (we most assuredly are not), but because they convey accurately the kinds of argument advanced on both sides in respect of many other incidents over the years. Also, we are strongly of the opinion that both the Israeli and Palestinian views need to be understood and taken into account. Perhaps the underlying perspectives of the two sides are more important than the detailed facts about particular points of friction. In discussions with both government and university officials we occasionally noted a degree of vagueness, or a lack of complete documentation, about certain incidents, issues or dates; and there was a tendency to return to the types of basic themes addressed in the above statements. For example, at a meeting in the Ministry of Defence we did not get detailed answers in respect of all the particular complaints we reported, but one wall of the room had been decorated with pro-PLO posters seized in raids on the universities, and containing violent images of grenades, clenched fists and the like: an answer of sorts. We were told, somewhat to our surprise, that equivalent posters could never be displayed in our own universities.

We do not purport to give a final judgement as to the facts on the numerous points at issue between the universities and the Israeli authorities: an impossible task in the circumstances. Rather we seek to present some of the main problems that have arisen and indicate our views as to the particular issues raised.

## **MAIN BONES OF CONTENTION**

Our task was complicated by the need to distinguish (1) alleged encroachment on academic freedom in universities, from (2) allegedly unjustified Israeli interference with West Bank and Gaza affairs generally — in business, professions, local government, secondary schools, cultural activities, etc. Many university students who 'protest', for example, may indeed resent the crunch of military power more because it impedes their activities at home and in town than because it affects their academic work.

In the survey that follows we deal mainly with issues specific to the universities. We do not in this report question Israeli actions in the territories generally, except where they have impinged on universities directly. We reject the

argument that difficulties affecting the universities can only be solved in the context of a settlement of the entire Palestinian problem in all its aspects. At least some of the university problems can be tackled on their own merits.

### **Military Interventions**

On many occasions IDF forces have entered university premises, thrown tear gas into them, and deployed soldiers around them at checkpoints or in a 'siege'. We received detailed evidence that such intrusions had occurred at all the institutions we visited, and this seems not to be disputed by the Israelis. The argument is about the justification for the interventions, some of which were followed by closures.

The Israelis say their acts have been necessitated by conduct at or near the campuses. Their version typically reads:

Over the years, universities in Judea-Samaria have repeatedly engaged in political activities directed against the Israeli authorities. Such activities have, on occasion, included the initiation, organisation and participation in violent demonstrations against the authorities and against the state of Israel, and the disruption and stoning of traffic on public thoroughfares. Beyond their own campuses, these students have at times incited pupils of elementary and secondary schools to engage in similar activities. Other student activities — far removed for anything even remotely connected with genuine academic concerns — have included incitement to work stoppages; the scrawling of anti-Israel slogans, on campus and beyond; distribution of incendiary anti-Israel literature; and involvement in terrorist activity.<sup>1</sup>

This is a substantial bill of charges. Further particulars have been given by the Israelis from time to time regarding specific incidents, including for example the troubles at Bethlehem in October 1983. The Israeli representative to UNESCO said on 16 November 1983:

Students have too often been involved in violent activities such as erecting roadblocks, stoning passing vehicles and wounding passengers, both Arabs and Jews. Thus some 30 passengers have been wounded this year on the Bethlehem road by the students of Bethlehem University . . .

. . . On 22 October 1983 an exhibition of the so-called Palestinian cultural heritage was opened at Bethlehem University, which included material and posters inciting to war, hatred and subversion, as for instance a recorded song saying 'We are coming, we are coming carrying our Kalachnikovs. We have liquidated the Jews', or a poster saying 'Hand in hand towards the establishment of a progressive Palestinian-Jordanian front to overthrow the repressive regime of Amman (Jordan)'. All those and others were accompanied by big maps of Palestine from which Israel had disappeared. As this material had been confiscated by the Israeli authorities, the students staged a violent demonstration on the main road leading to Bethlehem. The population

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1. Ministry of Foreign Affairs, Information Division, 'Higher Education in Judea and Samaria under the Israel Administration 1967-1983', p.4.



of Bethlehem appealed to the Israeli authorities to intervene, to restore law and order . . .<sup>2</sup>

Bethlehem University authorities gave a very different account of the same events. They viewed the Palestinian Heritage Exhibit as 'miles within the boundaries of the "rules of the game"'. They were clearly surprised by the Israeli reaction to it, and most of all by the fact (not mentioned in the above-quoted Israeli statement) that the Israelis had arrested the whole student council on 27 October, and it was only several days after this, when the students were concerned about the fate of their arrested colleagues, that the stone-throwing incidents occurred that led to the Israeli intervention 'to restore law and order'.

We are inclined to think that most incidents have been less clear-cut than the above-quoted Israeli bill of charges indicates. Rather than go into every incident in detail, it is more profitable to consider the issue as to whether in general IDF forces should intervene in university campuses.

An obvious solution would be to leave all questions of order on campus to the university authorities to manage as best they can. Such an approach appears to have been tried in about 1980 or 1981, when a 'gentleman's agreement' was reportedly reached according to which the Birzeit authorities undertook to maintain order on the campus, while the military government promised that if this undertaking was kept there would be no interference with regular studies and activities.<sup>3</sup> This arrangement broke down under the pressure of events. However, a roughly similar approach does seem to have operated in an *ad hoc* way at Gaza, where the university president told us that he has vigorously opposed Israeli military involvement on campus, but has been firm with students that stone-throwing will not help their situation, and the time to fly the Palestinian flag has not come.

We were told several times that any military presence near a campus tends to provoke violence, and that trouble would not have arisen in particular cases if the IDF forces had kept away. It was even suggested to us that IDF forces know exactly how to provoke students into acts of violence. The reverse may be true as well. These and other considerations suggest that the IDF should avoid involvement in universities wherever possible. Should such interventions occur, they should be an absolute last resort after all other remedies have been exhausted, and the greatest possible care should be taken that they are not carried out in such a way (as has happened in the past) as to actually increase the risk of violence and disorder. For example, the use of firearms should be avoided. As to exhibits, etc., it would be wrong to seize such materials without making beforehand a statement of objection. Unexplained military interventions destroy any chance of dialogue, convey an impression of arbitrary use of power, and further imply that the authorities are opposed to an entire exhibition or institution rather than to specific offending items. Although we cannot say that all military interventions are in all circumstances contrary to international law, they are bound to be viewed very critically in the light of Israel's legal obligations, and an account of their very serious implications for academic freedom.

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2. Mrs Y. Vered in Commission V, the 22nd session of the General Conference of UNESCO, Paris, 16 November 1983.  
M. Yaari and others, 'Report on the Condition of Universities in the Occupied Territories', 1981, p.12.

## University Closures

Complete closures of the university for a fixed period of time have been imposed by the Israeli authorities on numerous occasions. We have been informed of the following closures of this kind. *Birzeit*: 2 weeks from 15 December 1973; 4 days from 26 March 1979; 2 months from 3 May 1979; 1 week from 14 November 1980; 2 months from 4 November 1981; 2 months from 16 February 1982; 3 months from 8 July 1982; 1 month from 2 April 1984 (which overlapped with the closure of the old campus which, as noted above, had been imposed on 2 February 1984); *An Najah*: 3 months from 4 June 1983; 4 months from 30 July 1984; *Bethlehem*: 3 weeks from 16 June 1982; 1 week from 13 September 1982; 4 weeks from 10 March 1983; 2 months from 2 November 1983 (later reduced to 1 month); *Hebron University*: 2 months from 9 March 1983. We were not informed of any complete closures at Hebron Polytechnic or the Islamic University of Gaza.

All except one of the closures listed above occurred since the beginning of 1979 — an indication that relations between the universities and the Israelis have deteriorated badly in the past five years. However, the very different incidence of closures at the different institutions should be noted. The closures are generally defended by the authorities on security grounds. They appear to be seen more as a means of punishment than as a device for letting tempers cool.

Views on the rights and wrongs of closures may be influenced by the fact that there have been some instances in which the universities themselves have felt obliged to close for a period. Thus *Birzeit* was closed by its own authorities for several weeks from 5 June 1983, following violent clashes between different elements of the student body. On 2 November 1983 — Balfour Day — it was again closed by its own authorities for a day because of a fear that demonstrations might lead to IDF intervention. During academic year 1982-83 *An Najah* was also closed twice by its own authorities, for a total of about six weeks, because of violent clashes within the university. Such closures by the universities' own authorities raise serious though somewhat different issues compared to externally-imposed closures.

Closures are obviously extreme measures. They seriously disrupt university work, which depends on continuity and stability. Sometimes they have been criticised as 'collective penalties', which are prohibited in 1949 Geneva Convention IV, Article 33. However, because closures are a relatively non-violent form of punishment, and because the universities themselves have occasionally resorted to them, it is not self-evident that they should be viewed as 'collective penalties' within the meaning of Article 33, which appears to have been intended to deal with penalties inflicted in defiance of elementary principles of humanity. We may concede that in principle certain closures may be justified, but only when there are very strong reasons, when the reasons are made public, and when there is a serious prospect that the closure may improve or at least not exacerbate the situation. We are far from satisfied that these conditions have been met in the case of every closure mentioned above. In particular we have doubts as to whether a pattern of repeated closures is likely to be effective as a means of bringing direct or indirect pressure to bear on those students engaging in violent acts or waving PLO flags.

Complete closures for a fixed period are not the only kind. As mentioned in Part V of this report, we encountered at Nablus the much less publicised phenomenon of *ad hoc* closures, which resulted simply from an Israeli army

checkpoint being set up outside the university for a few hours or for a day. The Israeli authorities, who do not appear to have given a reason for these roadblocks to the authorities at An Najah, later told us that they had been set up because many non-students had been entering the campus, and because there had been riots in the town of Nablus. They added that the students could have gone past the checkpoint, but were refusing to do so. Whatever the truth of the matter, the effect of these roadblocks, of which there have been many at Nablus, was to further disrupt university work.<sup>4</sup>

### **Physical Violence Against Students and Staff (a) by IDF Forces**

We heard a large number of accounts of physical violence by Israeli soldiers in dealing with university staff and students, especially when under detention. By nature such cases are not easy to prove or disprove, particularly for an enquiry team such as ours. Only cases of violence which occur in front of witnesses, or are particularly well documented, or lead to subsequent investigations, provide a really safe basis for outside judgement. There have been some such cases. For example, Anne Scott, a British research assistant at Birzeit, was beaten in July 1982 by Israeli women soldiers while in custody in Ramallah. After her well-documented complaints and some public pressure, it was reported that the two Israeli women soldiers involved had been given prison sentences.<sup>5</sup>

On such evidence as we have heard, we incline to the view that the pattern of the IDF in treating detainees generally has been one of occasional maltreatment and brutality, not of systematic torture. However, some reports suggest a more general pattern of violence. For the most part this is not an issue specific to the universities, but affects the West Bank and Gaza as a whole. For the reasons indicated, important as this issue is, we do not think it useful to pursue it here. We cannot leave it, however, without recording our concern on this point, and recalling the duty of the occupant to protect the inhabitants.

### **Physical Violence Against Students and Staff (b) by Settlers**

We heard some evidence of violence against students and staff members by Israeli settlers. The Hebron University incident of 26 July 1983, described earlier, was the most serious, leading to three deaths and 33 injuries. It appears to have been the work of a small extremist group among Israeli settlers. As indicated earlier, there are suspicions that settlers were also involved in violent incidents at An Najah on 28 November 1983. At Birzeit, a university student is reported to have been shot by an Israeli settler in 1979;<sup>6</sup> and we have received a report of an incident in Bir Zeit village on 4 January 1984 involving a bus carrying Israeli settlers, some of whom fired their automatic rifles into the air.<sup>7</sup>

The number of Israeli settlers in the West Bank has increased dramatically. From 1,182 in 1972 it rose to 10,001 in 1979 and 27,500 in 1983. There were also

4. A report of earlier roadblocks there, 'Military clamps down on Nablus university', appeared in the *Jerusalem Post*, 13 January 1983. Other roadblocks there, on 10 and 17 April 1983, are reported in An Najah Public Relations Office, 'Closed by Military Order', p.10.

5. *The Times*, London, 15 July 1982; interview in London, 17 December 1983.

6. Shehadeh and Kuttah, *The West Bank and the Rule of Law*, 1980, p.91.

7. Birzeit University, Public Relations Office, press release, 5 January 1984.

some 900 in the Gaza Strip by 1983.<sup>8</sup> Whereas the early settlements were mainly in the thinly-inhabited Jordan valley, during the last decade new settlements have been built close to the main Arab-inhabited towns. This happens to be where the universities are as well. There is little doubt in our minds that the development of new settlements has complicated the position of the universities in several ways. Students have seen the settlements as symbols of Israel's annexationist ambitions, and have made their opposition pretty clear. For their part settlers have seen the universities as hotbeds of Palestinian nationalism, or perhaps as centres of indigenous development which may delay the settlers' rush to dominate the area. On a few occasions some settlers seem to have viewed the universities as suitable targets for reprisals. Even apparently small matters like planning consents for new university buildings are complicated by the presence of settlers, who do not want university buildings to overlook the roads which they have to use.

The whole issue of law enforcement in relation to West Bank settlers was addressed in the Karp Report, drawn up by a committee headed by the Deputy Attorney-General of Israel, Judith Karp. The report described 'an ugly atmosphere in the relations of Israeli residents of Judea and Samaria to the local populace', and mentioned 'a vicious circle in which occurrences aren't investigated for lack of complaint, while complaints aren't submitted because of a lack of proper investigation.'<sup>9</sup> It is noteworthy that this report was presented to the Attorney-General on 25 May 1982, over a year before the Hebron University killings. In December 1983 we asked Israeli officials why this report had not been published. Eventually it was published on 7 February 1984. Had it been published and acted upon in 1982, the killings and injuries at Hebron in 1983 might not have occurred.

Even now we remain deeply apprehensive about the potential for violence in a situation where armed settlers are in close proximity to Palestinian universities. We are concerned here above all with the particular issue of universities, not with the settlement question as a whole. But the effect on universities does constitute one additional reason, in itself perhaps small, for concern about the settlements policy, which has in any case and quite separately been criticised as contrary to international law.

### **Military Order 854**

The Israeli authorities have asserted their legal right to exercise some degree of control over the West Bank universities through a series of military orders all issued on 6 July 1980, namely:

- Order No. 854 Concerning Jordanian Education and Culture Law No. 16 of 1964;
- Amendment to the Regulation Regarding Teacher Certification No. 23 of 1965 (itself an amendment to Jordanian Education Law No. 16 of 1964);
- Amendment to Order No. 34 of 1967 and relating to inhabitants of the administered territories;

8. Figures from the Central Bureau of Statistics, Jerusalem; also used in Meron Benvenisti, *The West Bank Data Project*, 1984, p.61.

9. Karp Report, Government Press Office translation, 7 February 1984, concluding section, pp.2 and 4.

● Amendment to Order No. 34 of 1967 and relating to Israel and foreign inhabitants.

Although only the first of these is actually numbered 854, they are closely inter-related, and we will follow the general practice of calling them collectively 'Military Order 854'. (We do not discuss here the comparable steps which were taken in Gaza to control the Islamic University of Gaza on the basis of Egyptian Order No. 380 of 1955, which had established governmental control over the then al-Azhar religious school.)

The actual meaning of the complex phraseology of Military Order 854 is clear and is not in dispute. The first order listed above co-opts the Jordanian Education and Culture Law No. 16 of 1964, which covers primary and secondary schools, and also two-year post-secondary institutes; extends its scope of application to cover universities; adds to it new powers to control the employment of teachers convicted under security legislation, or placed under administrative detention; and transfers control of education from the Jordanian Ministry of Education to a 'responsible official' appointed by the Israeli authorities. The remaining three parts of 854 as listed above elaborate on the powers to control the employment of teachers; and require all teachers and students (whether inhabitants of the occupied territories, Israel or foreign countries) to obtain personal permits issued in writing by a military commander.

The Jordanian Education and Culture Law No.16, thus co-opted by the Israelis, grants the Jordanian Ministry of Education the authority to set curricula, select textbooks, licence educational institutions, and issue teaching certificates. It also states: 'Teachers are prohibited from becoming members of political parties, or from any party political activity either within or without the educational institutions.' In other words, this Jordanian law leaves very restricted space for academic freedom. Its co-option and its application to universities, by the mechanism of Military Order 854, was bound to be intensely controversial.

The best Israeli defence of the introduction of Military Order 854 that we have been able to find states:

With the increase in the number of institutions of higher education in the Region and their natural desire for growth and development, and in view of requests for the establishment of further institutions, it eventually became obvious that a legal framework was essential.

A special commission composed of lawyers and experts in the field of education was accordingly set up, and it considered three possible courses of action: applying the provisions of the said Jordanian University Law; adapting the Jordanian Education and Culture Law to cover institutions of higher education; or drafting new legislation based on Israeli law.

In pursuance of the practice established by the Israeli authorities of retaining Jordanian law as far as possible, the second alternative was adopted. The rationale for this choice was the fact that the Jordanian University Law provides for rigorous supervisory measures by the Jordanian Government, whereas the Education and Culture Law includes a chapter on private educational institutions, over which the supervision is less rigorous. Since the higher education institutions established in the Region since 1967 are all privately owned, it was considered that amendment of the Education and Culture Law would be

the most suitable course.

Accordingly, in 1980, an Order was issued by the Regional Commander extending the application of the Education and Culture Law to institutes of higher education in the Region — a classic example of the obligation of an occupant to amend the local law to meet a changing situation.

During the deliberations on the establishment of this legal framework, the question of security supervision was a minor factor compared with the educational considerations taken into account. Thus, the provisions already in force in the Region enabling the military government to take measures required to ensure and maintain public order and safety in accordance with the rules of international law, apply in any event to educational institutions.<sup>10</sup>

We are not in the end persuaded by this defence of Military Order 854. Although it refers to the Jordanian Law for Amman University No. 17 of 1964, it does not adequately explain why that law was considered unsuitable, and fails to mention some of the significant differences between Law No. 16 and Law No. 17, particularly that the latter does not contain the article restricting political activity that is to be found in the former.

Some critics of Military Order 854 have argued that such new legislation is necessarily contrary to 1949 Geneva Convention IV, Article 64.<sup>11</sup> We do not altogether agree. We do not in principle reject the idea that the Israeli authorities may legislate for the universities. However, the actual content of 854 is unfortunate. Unlike some other Israeli legislation in the occupied territories, it brings in retrograde provisions — which were never in any case intended by the Jordanians to apply to universities. It appears to tackle the whole complex area of universities, including matters relating to certification, as a public order issue. It seems to require the universities to register with the Israeli authorities on a year-to-year basis. It permits a single appointed official to end the career of anyone who has been detained, even if no charge was brought and no evidence presented. Its provisions are in very sharp contrast to some of the general Israeli statements about academic freedom which we quoted above in Part IV. We cannot see that legislation of this crude character, which appears to emasculate the universities politically and make them utterly dependent on the occupation authorities, ever had the slightest chance of achieving what we must presume was its object: preventing friction and disorder in relations between the universities and the Israeli authorities. On the contrary, the evidence we saw and heard suggests that it made these problems worse.

Many provisions of Military Order 854 have not in fact been implemented. For example, the provision whereby a 'responsible official' appointed by the Israeli authorities has the final say in matters relating to curricula and textbooks; and the requirement for universities to have operating permits issued by the authorities. This non-implementation is probably due to the widespread local and

10. *The Rule of Law in the Areas Administered by Israel*, Israel National Section of the International Commission of Jurists, 1981, pp.81-2.

11. Kuttub, 'Analysis of Military Order No.854', *Law in the Service of Man*, 1981, pp.1 and 7-8; Birzeit University, 'Report on How Israeli Military Order No.854 Affects Higher Education', 1983, p.3; Birzeit University, Student Youth Movement, *An Analysis of the Military Orders Issued Pertaining to Education*, 1983, p.25.

international criticism of the law, including the impressive and well argued critique by a group of Hebrew University professors in 1981.<sup>12</sup> It is also due to the refusal of West Bank universities to co-operate in its implementation: for example, an attempt by the authorities in September 1982 to require students travelling from one area to another to obtain special passes in addition to their Israeli identification papers failed, as the students refused to apply for these passes. It was after this, on 10 October 1982, that the acting head of the civil administration in the West Bank announced that the implementation of Military Order 854 was suspended 'for a while'. Nonetheless, Military Order 854 must be presumed to be still technically on the books, and it was frequently described to us, in our view quite reasonably, as a 'sword of Damocles' hanging over the universities. Maintaining on the books a military order which has been the subject of so much criticism, and which is in any case not implemented, cannot be in the interests of Israel. It should be rescinded, along with the equivalent legislation in Gaza.

What if anything might replace Military Order 854? It is not self-evident that the universities have to be regulated by a specific law. Until 1980 they operated without such a law, and since then they have essentially continued to do so because 854 has not in fact been applied. We doubt whether a law is really needed to establish the status of institutions of higher education, since this is bound to depend much more on recognition by universities and educational organisations in the area and around the world than on any one official's say-so. It may be that a specific law is needed for other reasons, such as to clarify the tax obligations and privileges of universities. If new legislation is needed, it should be of a very different character. Israel's legitimate security concerns are better dealt with in general legislation (which already exists in ample quantities) than in legislation specific to educational institutions. Our very provisional view is that if new legislation really is necessary, which is a matter on which we remain to be convinced, then something closer to the legislation that regulates Israeli universities might be appropriate.

### **Anti-PLO Pledge for Foreign Teachers**

The universities, as we mentioned in Part V, have always had a significant proportion of foreign passport-holders as members of their teaching staff. We note with satisfaction that the Israeli authorities have for the most part accepted this situation. Such teachers have always required entry permits and work permits. Sometimes even before 1982 there were difficulties over these: for example, long delays over processing applications, or the issuing of an entry permit but not a work permit.<sup>13</sup>

However, much the most serious problem regarding the foreign passport-holders arose in summer 1982, shortly after the Israeli invasion of Lebanon, and at a time when the Israeli authorities were trying to implement certain parts of Military Order 854. From August onwards these teachers were told, on connection with applications for work permits, that they had to sign a statement that they would not support the PLO or any other 'terrorist organisation' in any way. Otherwise their applications would not be considered. In September and October minor verbal alterations were made to this pledge, but the West Bank

12. Yaari Report, pp.8-13.

13. *Ibid.*, p.6.

universities, the foreign passport-holders, and the Council for Higher Education all remained strongly opposed to it.

During September and October refusals to sign the pledge brought harsh consequences. At least thirteen Jordanian passport-holders at An Najah were expelled from the West Bank, including the university's vice-president and president. At Bethlehem, where over half the teaching staff held foreign passports, ten were prohibited from teaching and one, a UK passport-holder, was forced to leave. The vice-chancellor of Bethlehem said on the occasion of his departure:

We do not object to a request to declare obedience to the law or to refrain from any and all political activities. We do object to an unreasonable declaration that thrusts our teachers into the centre of the political debate which divides and dominates this region.<sup>14</sup>

The row over the pledge continued in November, with continuing expulsions and prohibitions from teaching. This led to adverse publicity abroad and diplomatic pressure on Israel. On 19 November US Secretary of State George Shultz told a press conference in Washington that the expulsion of 22 foreign teachers and the threat to expel as many as 100 others was a threat to academic freedom reminiscent of the McCarthy era in the USA.<sup>15</sup>

Two days later, on 21 November 1982, there was a further modification to the anti-PLO pledge. A new work permit application form was issued which had to be used by all foreigners seeking a work permit (not just university teachers), and which did not require a direct personal undertaking by applicants. Instead it spelt out the conditions under which the permit would be granted. The wording of the relevant part ran:

During the period in which the permit is in force, the recipient of the permit will refrain from any act which is harmful to security and public order, and will observe the law and the security regulations prohibiting any action, and the rendering of any service, of a collaborative or helpful nature, to the PLO or any other hostile organisation, as defined in the Order Concerning the Prohibition of Acts of Incitement and Hostile Propaganda (Amendment No. 1) (Judea and Samaria) (No. 938), 5742-1981.<sup>16</sup>

Most of the foreign lecturers were not prepared to accept the anti-PLO pledge even in this less personal form. Their refusal, which made their position very insecure, led to some negotiations, after which the Birzeit authorities were told on 15 February 1983 that the foreign lecturers had until 20 February to sign the undertaking as quoted above, but further modified by an additional phrase, 'I have read and understood the above.' This formula was opposed, particularly by students, and in the event it took much more than five days for a solution to be found. A few people did sign the pledge either in its original forms or in this modified form. We were told, for example, of six teachers at An Najah who did

14. Bethlehem University, 'Report on Loyalty Oath for Foreign National Lay Teachers', 1 February 1983, p.2.

15. Report in *The Times*, London, 20 November 1982.

16. Text in Ministry of Foreign Affairs, Information Division, 'Higher Education in Judea and Samaria under the Israel Administration 1967-1983', Jerusalem, 30 October 1983, p.9.



so in about May, only to find that the students were violently opposed to them over this. But most of the foreign passport-holders did not sign it. Only in November 1983, after a year of confrontation, negotiation, and bitterness, was the issue more or less resolved. A new application for a work permit was introduced. The text, which we have examined, contains no reference to the PLO at all. The only faint echo of the original pledge is in the final paragraph, which says: 'I have read and understood the conditions which will be in effect upon the receipt of the work permit.' This was a victory of sorts for the universities, but the whole issue had caused serious losses and divisions, and much valuable time had to be wasted on it.

The rights and wrongs of the anti-PLO pledge require little comment from us. To make conditions for the receipt of a work permit is not itself unusual. What is exceptional about this case is the sweeping character of the pledge, the way in which it was applied to people already in employment as a means of expelling them, and the undoubted fact that the main targets were universities. The argument that the pledge was a needlessly provocative addition to an already extensive set of security regulations is persuasive. If the aim of the pledge was to destroy PLO influence in the universities at the same time as the PLO centres in Lebanon were under assault, we doubt whether this was or could have been achieved by such means.

### Censorship

That Israel maintains an extensive censorship system in the West Bank and Gaza is not in any way disputed. However, its exact scope and character is the subject of different interpretations. Here we consider only the censorship of books, not newspapers or broadcasts. Overwhelmingly the issues revolve around Arabic books published in Arab countries.

An official statement has indicated that the censor bans three kinds of subject matter: (a) Material damaging to state security and public safety, such as instruction manuals explaining how to assemble an explosive charge; (b) Incitement of hatred of Jews, such as translations of the anti-semitic classic *Protocols of the Elders of Zion*; and (c) Incitements to violence or war. It gives some persuasive examples of crude inflammatory material banned on these grounds. It also says:

Between 1967 and the first quarter of 1982, some 1,100 titles have been banned on the basis of these criteria — less than one per cent of the total number of titles whose publication or distribution has been permitted.<sup>17</sup>

A more recent official publication has described Israeli practice thus:

In practice, censorship is applied only with regard to passages which clearly incite to hatred and disorder, thereby constituting a threat to security and day-to-day life. . .

The supervision of books is designed to control the import into the region of tendentious material published abroad. In fact, during the sixteen years of Israeli administration, the import of only 648 such books — all of which were published in countries which are still in a state of war with Israel — has been prohibited.

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17. Israel Information Centre, 'Israel's Censorship Policy in Judea, Samaria and the Gaza District', 1982, p.4.

An example is an adaptation for children of Shakespeare's play *The Merchant of Venice*, which was clearly aimed at inciting children to anti-semitism. This was distorted by various critics into an allegation that the play itself had been banned. In fact, the authentic version of the play has always been readily available in the bookshops of the Judea and Samaria area.<sup>18</sup>

There are some inconsistencies between these two statements about the number of titles banned. In addition, the first document quoted shows that some material published in Egypt is banned, though Egypt is not one of those countries 'still in a state of war with Israel' mentioned in the second statement.

Furthermore, some critics of Israeli policies have indicated that the censorship system is more extensive than these statements imply, and have defined its purpose differently. A study directed by Dr. Benvenisti has suggested that about 1,600 books have been prohibited in the West Bank. It says that although this is only perhaps 3 or 4 per cent of imported Arabic titles, the censored ones 'represent 100 per cent of all works that express, instill or foster Palestinian-Arab national feelings and national heritage.' At least some of the evidence presented to buttress this conclusion is persuasive.<sup>19</sup>

Whatever disagreements there may be with regard to Arabic titles, the position on English-language publications (widely used in the main universities) is much clearer. There are some prohibitions, including reportedly the book by George Antonius, *The Arab Awakening*, and of course PLO publications. However, on the whole it appears that Israel's policy regarding English-language publications is tolerant, and although there were some complaints we were persuaded by evidence that the overwhelming majority of titles can be obtained. This appears to be true of books and journals in European languages generally.

As far as international law is concerned, a good deal of the Israeli censorship is probably justifiable. We noted earlier that censorship, however regrettable, is not outside the rights of an occupying power; moreover, several of the human rights accords we listed do leave room for limits on freedom of expression, for example to restrict propaganda for war and advocacy of national, racial or religious hatred, or to protect public order, health or morals and so on.<sup>20</sup> However, Dr. Benvenisti's study suggests that some of the censorship may not be justifiable on grounds such as these, except on the most elastic interpretation.

Quite apart from such legal considerations, there are grounds for criticising some of this censorship. Like so much censorship, it contains an element of the absurd. Some of the titles that West Bank institutions are not permitted to acquire are available in the library of the Hebrew University of Jerusalem, where members of West Bank universities can consult them. Some of the titles that cannot be sold in Ramallah can be bought quite openly in Jerusalem. Some of the titles that are banned in Arabic are available in English. Books may be controlled,

18. Co-ordinator of Government Operations, *Sixteen-Year Survey*, 1983, pp.63-4.

19. Meron Benvenisti, 'Israeli Censorship of Arab Publications', New York, 1983, pp.116-7 and 129-66.

20. Grounds for justifying prohibitions of material damaging to security, or inciting hatred or violence, may be found in the 1948 Universal Declaration of Human Rights, Article 29(2); 1950 Agreement on Importation of Educational Materials, Article V; 1966 Convention on Elimination of Racial Discrimination, Article 4; 1966 Covenant on Civil and Political Rights, Articles 19(3) and 20.

but foreign broadcasts are not. Because of factors such as these, we have sympathy with the view expressed by one independent witness: 'The censorship is a silly business. It is silly to impose it, and to complain about it.'

An argument can be made that a university library should be permitted greater latitude than bookshops. Many governments have limited public sale of certain books (e.g. those ruled obscene) but have allowed their use (perhaps with certain restrictions) at libraries used by scholars. We may agree with Yoram Dinstein when he says: 'A teacher (even in a minority school) may not rely on the right to impart education — or on freedom of expression — if he is trying to inculcate racial or religious discrimination (e.g. anti-semitic theories).'<sup>21</sup> However, it does not follow that anti-semitic theories are unfit for university study.

Our overall view is that the censorship is an inconvenience to the institutions, but not a serious impediment to scholarship. The existence of censorship has meant that consignments of books have been held up, or have had to be secured by indirect routes. The censorship policy should be reconsidered, especially as it affects the universities, but we urge this on the grounds indicated above, rather than because of any specific allegation of illegality. In schools, the extremely sensitive problem of eliminating objectionable material in textbooks from Jordan and Egypt was eventually resolved sensibly through the good offices of UNESCO, and if disputes over other aspects of censorship persist, the services of that or another outside institution could be sought.<sup>22</sup>

### **Problems in Importing Books and Equipment**

Quite apart from the question of censorship, a series of administrative difficulties has been encountered in importing books and other materials. For example, we heard of a consignment of books from the University of Kuwait and intended for An Najah that was held up and turned back at the Jordanian frontier.

As regards books sent through the post, for example by booksellers abroad to the university libraries, two issues arise. The first is administrative procedures. Parcels of books have to be collected from the main post office in Jerusalem, a business which involves much travelling and waiting as well as the payment of charges mentioned below. The imposition of this time-wasting chore would seem to be contrary to the 1950 Agreement on the Importation of Educational, Scientific and Cultural Materials, Article IV: 'The contracting States undertake that they will as far as possible . . . simplify the administrative procedure governing the importation of educational, scientific or cultural materials. . .'

A second issue arising from the import of books is the charges levied, for example when they are collected from the main post office. Small charges for insurance, and also tax (15 per cent Value Added Tax, and 3 per cent for the Lebanon war), have to be paid by the recipients, adding about 20 per cent to the cost. We have noted the Israeli claim that Birzeit 'is not subject to any customs duties, with regard to the importation of books.'<sup>23</sup> This may be technically correct, but it is incomplete or out of date. Twenty per cent of the cost does not

21. Yoram Dinstein, *Israel Yearbook on Human Rights* 1979, p.80.

22. On the school textbooks and UNESCO see Gerson, *Israel, the West Bank and International Law*, pp.181-3. Also UN, *Report of the Commissioner General of UNRWA*, 1983, p.12.

23. Israel Information Centre, 'Facts About Bir Zeit University', 1979, p.2.

necessarily become easier to pay or more acceptable just because it is called insurance and tax rather than customs dues.

A basic question about these charges on books is whether they are contrary to international law. There is not necessarily any suggestion of discrimination: we were told that the same charges are paid by Israeli universities, though perhaps more leniency is shown regarding individual consignments. More importantly, the general principle of applying normal internal taxes and charges other than customs duties is allowed for in the 1950 Agreement mentioned above, Article 1. There has, however, been some question about the validity of introducing VAT at all in the occupied territories;<sup>24</sup> and questions might also be raised about the validity in international law of imposing the Lebanon war tax on the inhabitants of the occupied territories.<sup>25</sup> But these latter questions are general ones, not specific to the universities, and they are undeniably complex. For these reasons we merely record these questions here, rather than seeking to answer them. Our conclusion on this matter is that Israel's general practice of levying charges on imported educational books would bear re-examination, not so much because of any presumed illegality, significant as this issue may be, but rather because it is undesirable, especially in view of the notable (and at present probably inevitable) dependence of the West Bank institutions on imported books.

So far as equipment is concerned, we received evidence of very high customs, taxes and other charges in connection with the import of building materials, laboratory equipment and furniture, and electronic equipment, including computers. For example, Birzeit gave us figures for the year up to 30 September 1980 showing that it had paid about US\$40,000 in charges for a computer and spare parts valued at \$63,000. Birzeit's figures covering a wide range of items indicated that there had been great variations in the charges, but they averaged out at roughly 50 per cent of the value of the goods themselves. Some other university sources asserted that the average was even higher, and the handling of importation obstructive and arbitrary. Israeli officials did not deny the existence of import charges, but advised us that similar charges are imposed on Israeli universities: however, they gave conflicting and uncertain evidence as to whether government sources later hand out reimbursements in any form for customs dues, either to the Israeli universities or to those in the occupied territories. It seems to us that there is a *prima facie* case that the high charges imposed in respect of such items as computers are contrary to Article I of the above-mentioned 1950 Agreement, especially as computers may reasonably be viewed as covered by the definitions of educational and scientific materials in Annexes C and D of that agreement.

Taking the importation of books and equipment together, we are in no

24. On the introduction of VAT in the occupied territories, see the decision of the Supreme Court of Israel summarised in *Israel Yearbook on Human Rights* 1983, pp.348-59, in which an appeal claiming that this tax was contrary to international law was dismissed in a detailed and well-researched judgment.
25. Von Glahn has gone so far as to say: 'While the occupant is legally empowered to collect existing taxes, he is not permitted to create new and additional taxes, either for his own benefit or for that of the occupied territory.' *The Occupation of Enemy Territory*, p.150. This view implies that both VAT and the Lebanon War Tax are of doubtful validity in the occupied territories. The latter tax raises special problems because it is clearly not for the purpose of the administration of the occupied territories.

doubt that there is an urgent need to comply with the letter and the spirit of the 1950 Agreement on the Importation of Educational, Scientific and Cultural Materials, both as regards charges and as regards administrative procedures. We would favour the introduction of a uniform system of exemptions for the import of materials for educational purposes, applying equally to universities in Israel and in the occupied territories. This would ensure that the practice in this matter was in accordance with the 1960 UNESCO Convention Against Discrimination in Education. In the event of any dispute arising as to the educational etc. character of imported materials, we would favour the interested parties, (e.g. the supplying state and Israel) referring the matter to UNESCO for an advisory opinion in accord with Article VIII of the 1950 Agreement.

### **Control of Academic Activities**

There was quite widespread agreement that as a rule the Israeli authorities have not intervened directly in detailed academic matters such as development of the curriculum, examining and so on. Unfortunately this does not mean that there is no Israeli intervention in academic matters. This takes several forms. Israeli permission does appear to be needed for any large new projects, such as founding new faculties and universities. In itself this is not surprising, but it can lead to problems. For example, we have already referred in Part V to the apparent Israeli pressure in favour of creating specifically Islamic institutions in the 1970's. We have other evidence of official controls on research projects and other academic activities. Some is in the form of oral complaints. It was reported to us that some attempts to develop particular institutions or faculties had been frustrated; and that academic research on primary and secondary education has been made difficult by a requirement that schools receive military permission before divulging information.

Other claims are supported by documentation. We have seen forms which show clearly that some purely academic projects require specific written permission from the Defence Ministry. Moreover they show that this permission is often either refused, or else given subject to quite unusual conditions. In 1979 AMIDEAST (America-Mideast Educational and Training Services) proposed financial support to facilitate further training at Western universities for teachers at the three main West Bank universities. This was turned down with the explanation: 'We prefer that . . . resources be allocated to upgrading the Administration local officials.'

The same objection was made to undergraduate scholarship schemes for these three universities. Support for training programmes in a variety of practical subjects was 'approved on condition that every step be co-ordinated with the relevant staff officer.' In 1980, fellowships in the educational field were 'approved on condition that the majority of candidates be designated by the Regional Command and mainly amongst the Administration's local officials.' A proposed health survey was disapproved as 'information can be obtained from the Health Staff Officer.' An education survey was likewise disapproved as 'information can be obtained from the Education Staff Officer.' Support for English teaching at An Najah was also opposed: 'There are enough teachers in the areas.'<sup>26</sup> Such responses, even if not in every case final (some have later been

26. Source: copies of such applications, with the Israel Defence Ministry's response, 1979 and 1980.

reversed under outside pressure), indicate a high level of interference in academic matters, and a general discouragement of Palestinian higher education.

### **General Administrative Constraints**

We were struck by the number and extent of administrative constraints affecting the universities: building permits refused or withdrawn; work permits refused or delayed; transfer of funds from abroad heavily controlled; permission to import equipment withheld; bank accounts frozen; travel abroad stopped; telephones restricted to a single line or none at all; an unexplained refusal to grant a learner driving licence to a university teacher; and so on. We were not able to check the details of each and every allegation. When we raised these issues with Israeli officials we found that the existence of these administrative constraints was not for the most part denied, but possible reasons were advanced for them: funds may have been frozen where they originated with the PLO-Jordan joint committee, phones are in short supply even in Israel, and so on. These explanations were often rather vague. In general we were convinced that a wide range of administrative measures was being used, often without any clear written explanation and possibly, in some cases, without justification.

### **Arrests etc. of Students**

Perhaps the most serious administrative measures, affecting large numbers of students, are arrests, detentions and imprisonments. To a large extent this is a general issue, not specific to the universities. But it does affect universities in many ways. Town arrests are often used as a means of control. Student leaders at Birzeit told us that five students, including two members of the student council, were under town arrest at the time of our visit, preventing them coming to Birzeit. We received a vast quantity of evidence relating to Israeli raids on student hostels, detention without charges, and other disturbing practices. In some instances very harsh sentences have been imposed for seemingly minor offences. For example, a number of Birzeit students who allegedly participated in a protest on 27 July 1983 against the killing of three students at Hebron University the previous day were charged with 'disturbing public order' and were sentenced to prison terms of 18 months to two years.<sup>27</sup> We also received reports that schemes to enable students in prison to continue their studies (in which the International Committee of the Red Cross has assisted) were being discouraged or stopped.

Sometimes pre-university students have been arrested at the time of taking the Tawjihi (matriculation) examination. Students have to sit one series of Tawjihi exams in about January each year, the other series in about June. If they happen to be arrested at either of these times then they lose their chance for that year of going to university, polytechnic etc. We have names of 35 of the Tawjihi candidates who were arrested and detained during June 1983. They were in Nablus, Jenin, Ramallah and Hebron, and were held for a few days and then released, apparently without being charged or told the reasons for their arrest.<sup>28</sup>

27. Birzeit University, Public Relations Office, press release issued 8 August 1983, giving an account of a court session on 7 August at which eight of the 28 students arrested on this matter were sentenced.

28. Undated 7-page document on 'Tawjihi students' given to us by Raja Shehadeh and Jonathan Kuttub at the office of Law in the Service of Man, Ramallah, 6 December 1983.

From the Israeli side, we were told that the number who could not be present at the Tawjihi was 'about 20', and that there had been much stone-throwing of cars before, involving one death and another injury.<sup>29</sup> An Israeli official expressed the hope that there would not be any such arrests at Tawjihi time in the future; and it does appear from the latest information that the problem, while it still exists, is on a lesser scale.<sup>30</sup>

The West Bank military government has reportedly conceded in a letter that in the past Tawjihi students had been arrested during the period of their exams, but said that this was not done to prevent the students from completing their education, but only for security reasons, and that it was coincidental that such arrests occurred at the time of exams.<sup>31</sup> We are sceptical as to whether the timing was coincidental, and we are at a loss to understand the justification for such detentions, which appear to have been without charge, and to have occurred neither at the time of nor in specific connection with any incidents.

Action which delays or prevents students from proceeding to higher education is serious. As Grahl-Madsen has said: 'With respect to education, it seems clear that if a person will be excluded from institutions of learning in his home country for political reasons, this will affect his whole life much more profoundly than a relatively short term of imprisonment.'<sup>32</sup>

As far as international law is concerned, any arbitrary arrests having the effect of preventing a student from proceeding to higher education would appear to be contrary to the Universal Declaration of Human Rights, Articles 9 and 26; the 1949 Geneva Convention IV, Article 50; the 1960 Convention Against Discrimination in Education, Article 1(a); and the 1966 International Covenant on Economic, Social and Cultural Rights, Article 13, paragraph 2(c).

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29. On 15 June 1983, shortly before the Tawjihi examinations began, the representative of Israel at a UNESCO Executive Board meeting had referred to a recent incident in which a 20-year-old woman from Beer Sheva had been killed by a stone while near Hebron, and another incident in which schoolchildren at Kalandia Camp, on the road between Ramallah and Jerusalem, had broken the windows of a car and seriously injured a 7-year-old girl.
  30. By letters dated 26 June and 16 July 1984, Law in the Service of Man, Ramallah, informed us of the arrest of three students during the June 1984 Tawjihi exams, and commented that there appeared to be no security justification for these arrests.
  31. Details are contained in the letter from Law in the Service of Man dated 26 June 1984.
  32. Atle Grahl-Madsen, *The Status of Refugees in International Law*, Sijthoff, Leyden, 1966, Vol.I, p.215. See also the German cases from 1955 to 1960 mentioned on pp.210-11.

## **Part VII:**

# **Conclusions and Recommendations**

The problems which we examined are undeniably complex and difficult. Honest people on both sides can and do disagree about them. It was our strong impression that the universities on the one hand and the occupation authorities on the other were caught in a drama whose tragic direction would not easily be changed. However, we did arrive not only at some conclusions about the issues, but also at some suggestions for changes. These are naturally tentative in character, intended to start rather than to end a discussion.

### **A. THE DEVELOPMENT OF THE UNIVERSITIES**

#### **1. Some Credit Due to Israel**

When Israel occupied the West Bank and Gaza in June 1967, the existing provision for higher education actually within these areas was modest: little more than a nucleus for what has grown up subsequently. Although there are many arguments about Israel's precise role regarding the various local attempts to set up institutions of high education from 1971 onwards, it is ultimately to Israel's credit that such an expansion of higher education was in the end tolerated. The emergence of the six main institutions in their present form between 1973 and 1980 is good for the teachers and students concerned and for the West Bank and Gaza as a whole.

#### **2. The Nature of the Problem**

There is an undeniable conflict of interest between these institutions and the Israeli authorities. The universities reflect the widespread desire of Palestinians for some kind of statehood; the Israeli authorities oppose that aspiration. In the resulting collisions, the only point of convergence between the two positions that is really easy to imagine is that the Israelis might have an interest in stunting the growth of these universities at the same time as the universities might have an interest in appearing to be persecuted. A better basis for the relationship must be found.

#### **3. The Character of the Institutions**

There is no way in which these six institutions can be said to have yet reached the level of the better universities around the world. However, they were founded for good educational and other reasons, and we saw much evidence of serious educational purpose. We are in no doubt that there is a large and serious demand for higher education in the West Bank and Gaza, and that these institutions go a long way towards meeting this demand.

There is no disagreement about the fact that these institutions reflect the



turbulent politics of the area. Often they have been characterised as pro-PLO, and although this may be correct it is not the whole truth: there is a variety of financial, political, cultural and religious influences, local, Jordanian, Egyptian, European, US, Muslim, and others. The facts that these universities see themselves as having a part to play in nation-building, that some students sometimes demonstrate or throw stones, and that there is some PLO influence, does not in itself prove that these are not academic institutions. Indeed, the university which has been viewed as the most 'political', Birzeit, also happens to be one which is widely viewed as having achieved respectable academic standards. By contrast, an institution which has been involved in less really serious trouble, Gaza, still has a good way to go if it is to catch up academically with the northern universities.

While we accept that the universities need to do more to establish their academic credentials, we reject completely any argument that the universities are not academic institutions and therefore, by implication, not entitled at all to academic freedoms.

## **B. INTERNATIONAL STANDARDS**

### **4. The Relevance of International Law**

Granted that there is an inherent conflict of allegiance and interest between these universities and the Israeli occupation authorities, there is an obvious need for a framework of rules to cope with the situation. Some rules may be uncodified and informal, or derive from the ethical systems of the parties. However, some more fully codified rules are relevant to the situation in the West Bank and Gaza.

In their relations with the universities, the Israeli authorities have a very proper wish to observe the relevant rules of international law, and to be seen to be doing so. Only rarely have they conceded any illegality in Israeli conduct. More commonly, when under pressure from critics they have raised legitimate questions as to whether a particular international legal instrument is formally applicable to the occupied territories, or they have interpreted its terms differently, or they have suggested that the facts of the case are different from what critics have asserted. Because of these problems, it is worth going to some lengths to work out what rules are applicable and what the facts of the matter are.

### **5. Applicable International Legal Instruments**

As regards the laws of war, we are in no doubt that such key instruments as the 1907 Hague Regulations and the 1949 Geneva Convention IV are *de jure* applicable to the Israeli occupation of the West Bank and Gaza, and we are not wholly satisfied with Israel's contention that its *de facto* application of the Geneva Convention's 'humanitarian provisions' amounts to the same thing.

As regards human rights law, we have listed seven international instruments in that field which are relevant to the problems we faced. Although some of them present some problems of applicability, and contain extensive derogation and limitation clauses, we have concluded that they ought to be implemented to the maximum possible extent in the occupied territories. We have commented on a very misleading statement in the Co-ordinator's *Sixteen-Year Survey* on the applicability of human rights provisions. Our specific enquiries of the Israeli authorities regarding the applicability of some of these human rights instruments produced an answer (see Appendix I) which still leaves unresolved certain

questions, including the applicability of the Universal Declaration of Human Rights. We are unconvinced by arguments to the effect that, because the humanitarian provision of the laws of war are applicable, therefore certain human rights instruments are not.

## **6. Means of Clarifying Legal Questions**

It is very unsatisfactory that, seventeen years after this occupation began, there is still basic disagreement about what parts of international law are formally applicable to the situation in the occupied territories. If the legal position is not rapidly clarified we would suggest that an authoritative legal ruling be sought. Bearing in mind the frequency with which the members of the United Nations have expressed interest in the events in the occupied territories, we would suggest that an appropriate organ of the UN (e.g. the General Assembly) seek an Advisory Opinion of the International Court of Justice at The Hague on these legal questions in accord with Article 96 of the UN Charter and Article 65 of the Court's Statute.

The legal questions to be put to the Court could include whether 1949 Geneva Convention IV is applicable in the occupied territories on a *de jure* basis and in its entirety; whether international human rights instruments, of the seven we have listed in this report, are applicable in occupied territories, and if so to what extent; and whether settlements by nationals of the occupying power are in accord with international law.

## **7. Specific Content of the Law**

The international law we have examined, including conventions, custom, court decisions, and legal writings, does not prohibit all interference by an occupant in matters pertaining to higher education, undesirable as such interference may be. But it does suggest that there is a presumption against such activities except when they are necessitated by genuine and urgent considerations, for example relating to security. It also prohibits discriminatory practices which have the purpose of limiting a group to education of an inferior standard; and places a clear obligation on educational institutions to promote understanding, tolerance and friendship among all nations, racial or religious groups.

Although it is common ground that international law does not say a great deal directly on the subject of higher education, many provisions of the laws of war and the law of human rights have a bearing on the position of the universities in the West Bank and Gaza. Examples are provisions which relate to the import of educational materials; censorship of objectionable publications; protection of the inhabitants of occupied territories; humane treatment of detainees; and so on. Thus its lack of much specific reference to higher education does not mean that international law is irrelevant to the problems addressed in this report.

## **8. The Idea of Academic Freedom**

The idea of academic freedom does not appear to be spelt out anywhere in a comprehensive legal form, but it is nonetheless widely understood. As our terms of reference say, it is generally taken to comprise those traditional educational, research and administrative functions which an institution of higher education may expect to carry out without hindrance, interference or pressure. Since universities play a role within their communities, academic freedom also

encompasses political discussion and involvement.

We recognise that academic freedom is easily undermined in some situations, especially where there are fundamental disagreements between occupants and inhabitants, in circumstances where such disagreements can and do sometimes spill over into violence. Nevertheless, academic freedom needs to be constantly borne in mind as a principal criterion by which to judge the Israeli authorities' treatment of the universities.

Israeli official statements have shown a proper recognition of the value attached to academic freedom. As one official briefing put it: 'Academic freedom is one of the hallmarks of the Israeli culture and way of life, and it is given full scope — in the Israel-administered areas as throughout the country.'

## **C. THE PROBLEMS FACED BY THE INSTITUTIONS**

### **9. The Crisis Since 1979**

All the evidence we received suggests that Israel's relations with the universities worsened in about 1979 or 1980, and have yet to recover. Closures have been a persistent feature of the life of some universities since 1979. The years-long crisis over Military Order 854 started in July 1980, and the 14-month crisis over the 'anti-PLO pledge' started in August 1982. The shooting which caused three deaths at Hebron University was in July 1983. Although some issues have been resolved, the atmosphere of crisis continues. In 1984 there have already been two major university closures, at Birzeit and An Najah. The underlying reasons for this crisis atmosphere have included:

- \* the rapid expansion of the six institutions, which had less than 3,000 students altogether in 1977-78, compared to over 11,000 in 1983-84;
- \* the growing presence in the environs of these institutions of Israeli settlers, whose total numbers in the West Bank tripled from 10,000 in 1979 to about 30,000 in 1984;
- \* the imposition of a relatively harsh policy towards the institutions, especially after the resignation of Ezer Weizmann as Defence Minister in June 1980;
- \* the growth of student militance of various kinds, including pro-PLO, in response to various events and pressures, including Israeli actions in the occupied territories, and the invasion of Lebanon in June 1982.

### **10. An Aggravating Factor: PLO Policies**

Two aspects of PLO policy, at least as perceived by Israelis, seem to us to have had the effect of making the position of the universities more vulnerable. First, the formal commitment to the destruction of the State of Israel. (This policy has been heavily modified in many statements, but is still in the Palestinian National Covenant.) Secondly, the support for violent attacks against more or less random civilian targets. (One such attack, upon a bus in Jerusalem, occurred while we were there, killing four people, two of them children, and wounding 43. A PLO agency 'claimed responsibility' for this act.) The combined effect of these two approaches is to make the Palestinians seem a particularly dangerous threat in the eyes of Israelis, to make Palestinian demands seem unrealistic and therefore not worth negotiating about, and even to make the universities (being perceived as symbols of an undifferentiated Palestinian nationalism) seem like suitable candidates for punishment. The events at Bethlehem University in October 1983, discussed in part VI, are a particularly clear example of this effect.

These two aspects of PLO policy are part of a wider tendency of the more extreme forces in each community to deny the national or even human rights of the other. It is not for us to suggest exactly what Palestinians should do about this problem, but should it not be addressed openly and realistically both in the universities and outside, especially bearing in mind the obligation on universities to promote understanding between nations?

### **11. Summary of Specific Findings on Israeli Policies**

There has been a large number of Israeli military interventions inside university premises, and closures of universities on a long-term or day-to-day basis. While we do not claim that all such actions are necessarily beyond Israel's rights as an occupying power, they are serious violations of academic freedom. Their frequency has been such as to impede the work of these institutions, and we are not satisfied that in every case they were either necessary or adequately explained.

The 'anti-PLO pledge', required of foreign passport-holders in 1982, represented a clumsy attempt to force workers from outside the territories, especially university teachers, to make an overtly political statement. Eventually, due to their own non-co-operation and to help from outside, the universities won a victory of sorts on this issue, but only after it had caused serious losses and divisions. If the Israeli intention in introducing the pledge was really to destroy PLO influence, we doubt whether this was or could have been achieved by this ill-judged means.

Censorship of foreign books is within Israel's rights in international law, for example insofar as it relates to such publications as incite to national, racial or religious hatred. Israel's censorship is mostly of Arabic books and some of it does not appear to be justifiable on grounds such as these. The policy on English-language publications is much more liberal. The book censorship policy is an inconvenience to the institutions, but not a serious impediment to scholarship. It should be reconsidered, especially as it affects the universities, mainly because it contains so many built-in absurdities.

On the importing of books and educational equipment, administrative procedures have been followed, and charges levied, which have been questionable in international law. For example, the authorities have imposed high charges for the import of such items as computers. Some such charges appear to be contrary to the 1950 Agreement on the Importation of Educational, Scientific and Cultural Materials.

Israel has not for the most part intervened directly in academic matters, but it has on occasion sought to use its administrative powers to affect academic decisions. In 1979 and 1980, it turned down some proposed financial support for particular universities on some remarkable grounds: 'We prefer that . . . resources be allocated to upgrading the Administration local officials.' Another reason given was: 'There are enough teachers in the areas.'

General administrative constraints on the universities have been remarkable in their number and extent. They relate particularly to the wide range of activities, including transferring funds from abroad and starting building works, which require an official permit. It appears that such permits are often refused without explanation and often without justification. Some measures, such as the freezing of university bank accounts, are very extreme.

Arrests and detentions of students, and raids on university hostels, have occurred with disturbing frequency, and harsh sentences have been imposed for

seemingly minor offences. In June 1983 about 35 pre-university students were arrested at the time of their Tawjihi (matriculation) examination: such arrests appear to be contrary to specific provisions of a number of international agreements, including the 1949 Geneva Convention IV and the 1960 Convention Against Discrimination in Education.

## **12. Overview of Israel's Policies**

The universities present Israel with some genuinely difficult dilemmas. Aspects of Israel's position have not always been properly understood in some criticisms of its policies towards these institutions. The statements made by Israeli officials in defence of their actions are serious and deserve sympathetic consideration. However, taking all the evidence into account, we conclude that the pattern of Israeli treatment of these universities over the past five years has been one of harassment going beyond what might be reasonably justified on grounds of public order or security. This harassment has not been so extreme as to prevent the dramatic growth of the universities in this period, but it has sapped their energies and hindered the much-needed raising of academic standards. It has also contributed to student militance. We do not agree with those who think that Israel has a consistent aim of preventing the emergence of strong universities, but we cannot deny that some of the evidence is alarmingly consistent with that interpretation.

Are Israel's policies taken as a whole contrary to international law? We do not think it useful to rush to any general allegations of illegality in a situation as complex as this, but there are questions in our minds concerning the observance of particular agreements, as we have indicated at various points in the text. The most fundamental question is whether the net effect of all the problems has been to limit the inhabitants of the occupied territories to 'education of an inferior standard', contrary to the 1960 Convention Against Discrimination in Education, Article 1. Certainly some action is needed by all parties to prevent such an outcome.

## **D. SOME RECOMMENDATIONS**

### **13. Military Order 854**

We recommend that Military Order 854, issued in July 1980, and the equivalent law in Gaza, be rescinded. The extraordinary powers over academic life for which it provides naturally led to a storm of protest, and in October 1982 its operations were suspended 'for a while'. That is not enough. The potential threat to academic life which it represents creates distrust and prevents sensible coexistence. There are grounds for doubting whether special legislation for the universities is needed. If it really is, then, as we have indicated, a better basis could be found than a 1964 Jordanian law never meant to apply to universities. If there are to be future efforts at legislation, a greater degree of consultation than was evident in 1980 is needed.

### **14. Interventions Only as a Last Resort**

We recommend that the military authorities be very much more discriminate in their use of military interventions, closures, and the vast array of other measures against the universities and the students. In cases where measures do have to be taken this should be an absolute last resort, and should be properly explained,

wherever possible in writing. Such interventions are bound to be viewed very critically both on international legal grounds and because of their serious implications for academic freedom.

### **15. The Duty of Protection**

The duty of protection which Israel owes to the inhabitants needs to be reaffirmed, and assurances are needed that the problems of law enforcement *vis-à-vis* the settlers in the occupied territories, as identified in the Karp Report, have been tackled.

Israeli authorities should be more cautious about using 'security' in a one-sided way. The record suggests that for the most part any actual security threat which student activities have posed has been low-level, whereas some security threats that students and staff have faced — most particularly at Hebron in 1983 — have been extreme. Israel's duty of protection was not performed by the delay in publishing and acting upon the Karp Report, a delay which may have contributed to the deaths of the Hebron students.

### **16. Reconsideration of Administrative Measures**

There is a clear and urgent need to reconsider the wide range of administrative measures and practices affecting the universities, including particularly:

- \* measures restricting the import of foreign funds, which are vital to these six institutions;
- \* the imposition of customs and other charges on imports for educational purposes;
- \* refusals of planning and other permits;
- \* administrative measures preventing students in prison from receiving books and other educational assistance.

### **17. Need for More Positive Overall Approach by Israel**

Above all, there is a need for a more positive policy towards these institutions. It is not enough to take some of the credit for their emergence. There is also a need to recognise more positively the role they can play in the economic, intellectual, cultural and political development of the area. At some future date, in one form or another, whether it involves a state, a federation, a confederation or whatever, a *modus vivendi* to enable the Israelis and the inhabitants of the West Bank and Gaza to live as neighbours will have to be worked out. The universities have a small but significant role to play in that large process.

### **18. The Need for Academic Development and Improvement of Facilities**

One prerequisite of academic freedom is a strong academic centre. Further development of the academic standards of these institutions is needed for its own sake, and should help to strengthen their position in the society they serve as well as *vis-à-vis* the Israelis. We particularly favour supporting the already existing faculty development programmes, aimed at giving advanced training in European and North American universities to young academics at these institutions. We also favour schemes enabling highly qualified foreign staff to teach at these institutions, or to act as assessors, visiting examiners, academic visitors etc. Anything assisting scholarly research output is to be welcomed. The libraries at all the institutions need to be strengthened, and the general level of equipment and physical conditions for teaching and study improved. We incline to agree with the

view that was represented to us that it is more important to strengthen the existing institutions than to create more new ones. However, some important subjects may need to be developed or expanded, for example medicine, agriculture and business studies; and the whole vocational training sector needs strengthening.

The local facilities which have a strong bearing on the conditions in which students work clearly need to be improved. In particular, in view of the fact that many students live far from the campus or have difficulties in reaching it, a considerable strengthening of municipal libraries in the area is needed.

### **19. Contact With Israeli Universities**

Some of the universities, but not all, have at times had quite extensive contacts with the Israeli ones. We heard reports of some student pressure to reduce such contacts. That is unfortunate, and university officials should encourage the elimination of barriers. Social, political and cultural tolerance will hardly be enhanced if the exchange of ideas is in any way inhibited. Contacts may indeed be beneficial to both sides and should be continued.

### **20. Outside Educational Bodies and Contacts**

The interest of outside educational bodies in the universities has been of much assistance to them in recent years and should be extended. Foreign agencies of an educational character and with small offices serving the area, such as AMIDEAST (which has a substantial budget for scholarship and faculty development programmes) should continue and if possible expand their work, which is vital in the process of maintaining international academic contacts and raising academic standards. The British Council's work in the area has also been useful, for example in assisting the hiring of foreign academic staff, but it is at present notably under-financed and under-staffed.

The various support groups abroad for the West Bank and Gaza universities, and the various links with Western universities, have performed an essential service assisting academic development, and in getting the position of the institutions known and publicised, especially at times when they were under heavy pressure. This role will go on being needed. Non-governmental organisations of various kinds are in many cases the most appropriate bodies to assist universities.

A more general effort should be made to increase practical assistance to the universities. This would be in accord with various UN General Assembly resolutions on the matter which have received near-unanimous voting support. For example, Resolution 37/120 of 16 December 1982, with the support of over 140 states, bemoaned UNRWA's recurring financial difficulties, which have compelled it to reduce its special allocations for grants and scholarships. It also called on states, specialised agencies and non-governmental organisations to augment their allocations for grants and scholarships in respect of higher education of Palestine refugees; for graduate and post-doctoral fellowships; and for contributions to the Palestinian universities.

Existing difficulties over the transfer of foreign funds to these institutions might be tackled by putting more emphasis on the role of some UN or other recognised international or educational agencies.

### **21. Procedures for Resolving Disputes**

Governments and individuals directly involved might usefully devote further

thought to suitable procedures for dealing with at least some of the issues which have arisen between the universities and the Israeli authorities. We have mentioned some particular issues — disputes over censorship of books, and over restrictions on the importation of educational materials — where internationally-agreed mechanisms for resolving disputes already exist, and could be invoked by agreement between the parties in the event that local attempts to resolve the issues fail.

On some other issues, too, there may be scope for negotiation, arbitration, or mediation. Possibilities of involving universities or individual academics from outside the occupied territories in such processes should be considered. There may also be issues on which petitions to the Israeli Supreme Court would be justified despite the existence of certain reservations we have reported about adopting this course. In general it is desirable that the parties involved should not merely nurture complaints, but should go to great lengths to document them in full and to exhaust reasonable remedies in trying to resolve them.

For various reasons we do not think it right for us at this stage to propose that the overall question of possible discrimination be tackled by the Conciliation and Good Offices Commission in accord with the 1962 UNESCO Protocol mentioned above in Part IV. However, as a last resort, if concern about discrimination in the field of higher education is considered to be well-substantiated and serious, and if all bilateral attempts to resolve the problem should fail, one possibility open to a state would be to pursue the matter in accord with Article 12 of the 1962 Protocol.

## **22. Some Issues for Governments**

Above all, outside governments, particularly that of the USA but also those of many other countries, are in a position to influence Israeli policy in a more positive direction if they choose to do so. Considerations relating to the universities will only be a minor factor in their policy-making on the Middle East. However, outside influence has sometimes modified Israeli policies. One instance was when US Secretary of State George Shultz blew the whistle over the 'anti-PLO pledge' in November 1982. Quieter diplomatic pressure may also have been effective at times, for example assisting the re-opening of Bethlehem University in December 1983. Governments have an interest in the observance of international norms, and in the amelioration of the Middle Eastern problem. Clearer and more consistent policies regarding what is actually happening in the West Bank and Gaza, including in the institutions of higher education, could contribute to these ends. The international community, both in the United Nations and in other ways, must act to ensure that a basically defenceless people, faced with a foreign occupation and the presence of armed settlers, is not the victim of discriminatory treatment in higher education or in other matters of such a kind as to lead to a status of educational disadvantage and permanent inferiority.



# Appendix I:

## Israeli Legal Memorandum

As we indicate in Part IV of this report, the question of what international agreements are applicable to the occupied territories has several distinct aspects. Among other things there has been a need for clarification regarding those agreements falling broadly within the human rights stream of law. Therefore in the course of our enquiry we several times, both orally and by letter, sought information from the Israeli authorities regarding the applicability of some or all of the seven accords relating to human rights listed above in Part IV. Eventually we received the following memorandum dated 12 September 1984, prepared by the Office of the Legal Adviser in the Israeli Foreign Ministry. While it will by no means resolve all differences regarding the applicability of international agreements in the occupied territories, it is a useful general exposition, and notable for its clear statement regarding the application of the first two agreements it covers — ones that have an explicit bearing on higher education. We reprint the text of the memorandum in full.

\* \* \* \* \*

### Text of Memorandum

#### **1. The 1950 Agreement on the Importation of Educational, Scientific and Cultural Materials.**

a) The above-mentioned Agreement, together with its annexed Protocol, is applied in Judaea and Samaria. Jordan acceded to the Agreement in 1958. According to Jordanian law which is applied in that area (The Customs and Excise Law No.1, 1962) an exemption from customs duties is granted regarding equipment, etc., intended for schools for the purpose of study or research, as long as the schools are authorized by the Council of Ministers and the Minister of Education and Culture (Article 83(b) of the law).

b) Since the commencement of the Israeli administration in 1967, Israel has applied Jordanian law, and Israeli officials fill those functions referred in the law, to the Council of Ministers and the Minister of Education.

c) In addition to the above, Article 3 of the Order issued by the Area Commander, concerning Customs Tariffs (Judaea and Samaria) No.103, 1967, as amended in Order No.584 of 1975, enables exemption from customs duties for goods brought into the area from Israel, which enjoy exemption from duties when imported to Israel from abroad — as long as the same conditions which merit that exemption exist in the area.

d) A similar exemption exists as regards import of education material to the Gaza District.

## **2. The 1960 Convention Against Discrimination in Education.**

Israel is party to this Convention, as is Jordan since its accession on 6 April 1976 (i.e. after the commencement of the Israeli administration in June 1967). The basic educational policy followed by Israel in the administered areas adheres to the provisions of that Convention, in that each sector of the local population enjoys its particular form of education, whether it be education as determined by the Jordanian syllabus and requirements of the Arab population, or by the Israeli syllabus and requirements for the Jewish residents of the area. As regards the general educational approach, the standards required as well as conditions of study provided, accord with the provisions of the Convention.

## **3. The 1962 Protocol Instituting a Conciliation and Good Offices Commission to be responsible for seeking the settlement of any disputes which may arise between States Parties to the Convention against Discrimination in Education.**

Israel became party to this Protocol in September 1967. Jordan does not appear to be party. To the best of our knowledge the provisions of this Protocol have not been activated with respect to, or by Israel.

## **4. The 1948 Universal Declaration of Human Rights.**

**The 1966 International Covenant on Economic, Social and Cultural Rights.**

**The 1966 International Covenant on Civil and Political Rights.**

a) The question of the applicability of these documents, and, in fact, of 'human rights law' in general in the administered areas requires some elucidation, in view of the nature of the circumstances prevailing in those areas. As has been stated officially, since 1967, the areas are being administered by Israel pending the final settlement of their status through a peace process between the Parties concerned. Pending the successful completion of that process, it has from the outset, been the declared policy of the State of Israel that its military and civil organs abide by the *humanitarian* provisions of the Hague Regulations and the Fourth Geneva Convention (without entering into the academic question of the legal applicability of those documents).

b) The unique political circumstances, as well as the emotional realities present in the areas concerned, which came under Israeli administration during the armed conflict in 1967, render the situation *sui generis*, and as such, clearly not a classical situation in which the normal components of 'human rights law' may be applied, as are applied in any standard, democratic system in the relationship between the 'citizen' and his government. Hence the criteria applied in the areas administered by Israel, in view of the *sui generis* situation, are those of 'humanitarian law', which balances the needs of humanity with the requirements of international law to administer the area whilst maintaining public order, safety and security.

c) In this context, it is most relevant to refer to a memorandum prepared by the Government of Jordan, and presented to the Secretary-General of the United Nations and circulated on 30 October 1981, regarding a Jordanian proposal for inclusion of a new item in the agenda of the General Assembly, entitled 'New International Humanitarian Order' (A/36/245). In the annex to its letter, the

Jordanian Government, *inter alia*, drew a comparison between the law of human rights and the humanitarian law of armed conflicts:

This humanitarian law of armed conflicts must be distinguished from the law of human rights, whether international, as in the two United Nations Covenants of Human Rights of 1966, or the regional law of the European Convention of Human Rights of 1950. In the human rights regimes the purpose is to defend the individual human being from loss of life and liberty and from cruel treatment and oppression at the hands of the State to which he is subjected, whether as a citizen or as a 'person temporarily subject to its jurisdiction'. Human rights are the legal shield against the oppression of the Government of the State directed at the human being and his development. In the humanitarian law of armed conflicts the purpose is to balance the needs of humanity against the nature of warfare: no easy task.

There has been a modern tendency to relate closely human rights with the law of war, as exemplified in the accepted United Nations parlance of 'Respect for human rights in armed conflicts'. This is, in juridical terms, a fundamental confusion of distinct legal regimes. With the law of war, one is dealing with States and their populations, or other entities which are in the relation of hostility, one to another, to an extent that those States have resorted to armed force against the enemy State. In the realm of human rights the law is concerned with the relationship between the citizens of a State and the State Government, that is, ensuring a system of protection of the governed against the Government. (A/36/245 Annex, pp.4, 5)

##### **5. The 1966 International Convention on the Elimination of All Forms of Racial Discrimination.**

Jordan acceded to this Convention in 1974. Israel ratified the Convention in 1979, and — in accordance with Article 9 thereof, duly presented its first report to the Committee for the Elimination of Racial Discrimination on 2 May 1980 (CERD/C/61/Add.1). This report included reference to the situation in the administered areas. At its 22nd session in New York on 7 August 1980, objections were raised to the inclusion of such references and the report was not discussed by the Committee, some of whose members requested deletion of such references. An amended report (CERD/C/61/Add.1/Rev.1) was discussed by the Committee at its ensuing 23rd session in Geneva (CERD/C/SR503 — 27 March 1981) where the general question of reporting on matters concerning territory under administration was not conclusively settled.

In actual fact, in applying international humanitarian law provisions in the administered areas, as well as basic principles of natural justice as derived from its own system of law, Israel thereby applies the relevant principles of the Convention on the Elimination of All Forms of Racial Discrimination in those areas, including the concomitant strict juridical supervision of the actions of the Israeli administrative and military authorities by the Israeli High Court of Justice.

(It might be added that theoretical examination of the detailed application of provisions of the Convention in the administered areas indicates some complicating factors such as Article 1(2) according to which the Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State

Party between citizens and non-citizens. Hence, the question regarding citizens of a State Party and residents of a territory under its administration requires consideration.)

Office of the Legal Adviser,  
Ministry of Foreign Affairs,  
Jerusalem.

12 September 1984

## Appendix II:

### Select List of Sources

This list is confined to sources available in the English language. It consists of a selection of books, articles, reports, press releases, etc. which contain material either specifically on the West Bank and Gaza universities or on the immediate circumstances in which they operate. It does not contain (1) sources which deal in a more general way with Middle East problems, international law or educational matters; (2) the handbooks or catalogues issued by the various institutions; (3) any of the large number of press reports on these institutions; or (4) all of the sources mentioned in this report or used in its preparation. Sources which are only in typed, photocopied etc. form are in quotation marks, without any italics. Many of the latter have not been published.

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