SPECIAL DOCUMENT

HUMAN RIGHTS WATCH WORLD REPORT 1992: "THE ISRAELI-OCCUPIED WEST BANK AND GAZA STRIP"

MIDDLE EAST WATCH

[The report is reproduced in its entirety, except for the sections "The Right to Monitor." "The Works of Middle East Watch," and descriptive passages on the administrative detention of Sari Nusseibeh, Dr. Mamduh al-Aqer, and Taher Shriteh.]

Human Rights Developments

The year got off to a devastating start for Palestinians, with the imposition on the eve of the Persian Gulf war of a blanket curfew throughout the West Bank and Gaza Strip that was to last six weeks in most areas. By virtue of its comprehensiveness and duration, the curfew was the most severe act of collective punishment of the twenty-four-year occupation. It inflicted lasting harm on the economy and welfare of Palestinians.

After the curfew was substantially lifted in early March, rights conditions improved in some respects and deteriorated in others. The numbers of fatal shootings, administrative detentions, house demolitions, school closings and certain other abuses continued on the downward trend begun in 1990. However, even with this decline, human rights were violated in a widespread and systematic fashion.

The greatest deterioration in the welfare of Palestinians during 1991 was economic. The already depressed Palestinian economy was hard hit by the month-long curfew, new restrictions on working in Israel, a drop-off in funds from abroad due to the Gulf crisis, and the continuing tactics of both sides during the intifada. While economic conditions are not ordinarily a focus of concern for Middle East Watch and the other divisions of Human Rights Watch, they highlight the traditional civil and political rights concerns raised by the arbitrary and discriminatory manner in which Israeli authorities imposed restrictions with economic consequences for Palestinians.

Another issue of growing importance in 1991 was the killing by Palestinians of per-

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sons said to be suspected of collaborating with Israeli authorities. Despite some efforts by Palestinian leaders to curtail this practice, the number of such killings rose for the fourth consecutive year.

This chapter highlights some of the year's trends and developments, but is not an exhaustive survey of human rights conditions in the occupied territories. Among the topics not covered which impinge on civil and political rights are violence committed by settlers, arbitrary methods of land confiscation, restrictions on commercial life, and the building and expanding of Jewish settlements, which continued at an accelerated pace in 1991 in the occupied West Bank and Gaza Strip.

The Curfew during the Gulf War and Related Developments

By confining 1.7 million Palestinians to their homes for a full month during the Gulf war, Israeli military authorities completely shut down the Palestinian economy and education system, and turned day-to-day living into an ordeal. On January 16, the day after the UN-imposed deadline for Iraq to withdraw from Kuwait, Israeli authorities imposed a blanket round-the-clock curfew on the Gaza Strip; an identical curfew was imposed on the West Bank the following day.[1] This curfew, like previous ones, did not apply to the more than 100,000 Jewish settlers residing in the Gaza Strip and the portions of the West Bank outside of East Jerusalem.

Israeli authorities justified the curfew as a precaution necessary to prevent an explosion of violence in support of Saddam Hussein,[2] at a time when, inside Israel, a state of emergency had been declared, schools and many workplaces were closed, and citizens were on constant alert to retreat to sealed rooms in their homes in the event of Iraqi missile attacks.[3] Authorities claimed that Palestinians in the territories, many of whom voiced support for Iraq in its confrontation with the U.S.-led coalition, had been instructed by the Palestine Liberation Organization (PLO) to wage violence against Israel should war break out.[4]

While such security concerns could legitimately be advanced in support of a curfew, the comprehensiveness and duration of this curfew revealed Israel's disregard of its obligations under international law to attend to the welfare of the population under occupation, and to weigh the steps it takes for its own security needs against that obligation.[5] Israel did not, for example, make adequate and timely efforts to lift the curfew to test its continuing necessity, or to allow exceptions for localities that had been relatively quiet during the intifada and presumably posed a lesser threat to security and public order.

Absent such efforts to tailor Israel's security requirements to the most fundamental needs of the occupied population, the curfew increasingly appeared to be an act of collective punishment against Palestinians for their widespread support of Iraq. Curfews imposed or prolonged punitively are, like all forms of collective punishment, absolutely prohibited by international law.[6]

During the curfew, work was not permitted, except for certain basic services, such as health care, legal defense, food distribution, and some municipal and relief functions. Even these sectors operated at greatly reduced capacity, since many workers did not receive passes to leave their homes. Medical services, particularly non-emergency and preventive care, were heavily impeded. Outside of some rural areas away from main roads, farmers were unable to work in their fields.

Palestinians without curfew passes could not leave their homes, except for occasional periods of one hour or longer when, on a rotating basis, residents of specified areas were permitted outdoors to shop and run essential errands. All Palestinian schools in the West Bank and Gaza remained closed, even after schools attended by Israeli citizens began to reopen on January 27.

Difficulties mounted for many Palestinians as the curfew continued and they spent their savings and stockpiled goods. While hunger did not become widespread, there were shortages of various staples, and some families, deprived of income, were unable to feed themselves properly. In these respects, Israel violated its duties under Articles 55 and 56 of the Fourth Geneva Convention.[7]

Israel's disregard for its humanitarian obligations was also shown in its failure to provide Palestinians with the same protection from Iraqi missiles that it provided its own citizens. Shortly after Iraq's invasion of Kuwait, Israel began preparing civil-defense measures against possible chemical-weapon attacks, distributing free gas masks and anti-gas protection kits to Israeli citizens living on both sides of the Green Line. Palestinians were informed that they would not receive this equipment.

This policy changed only after Israel's High Court of Justice on January 14 labeled it "patent discrimination" and ordered the immediate distribution of masks to the entire population of the occupied territories. Israel was slow to comply with the order, claiming

that it did not have enough masks on hand. Some three weeks later—after eight volleys of Iraqi missiles had landed on Israel and the West Bank—only four percent of the population of the West Bank and Gaza Strip had received gas masks.[8] Nor did authorities provide the occupied territories with the sort of air-raid sirens that inside Israel warned citizens of incoming missiles.

During the curfew, Israel carried out large numbers of arrests. In the first four weeks, 3,005 Palestinians were arrested in the West Bank and 642 in the Gaza Strip, according to the Israeli human rights group B'Tselem. Of those arrested in the West Bank, 1,714 were accused of breaking the curfew; many were held for several days or longer and then released after undertaking to pay stiff fines.

Others were detained on apparently political grounds. Among the prominent cases were philosophy professor Sari Nusseibeh, physician Mamduh al-Aqer and journalist Taher Shriteh, none of whom had been detained before. Their cases exemplify the kind of arbitrariness and ill-treatment to which so many other Palestinians have been subjected when arrested. Of the three, two were never charged at all, and the third was charged only after spending five weeks in detention. . . .

After the Gulf War

The blanket curfew imposed at the outset of the Gulf war began to be lifted gradually in mid-February. In limited numbers at first, schools reopened and workers were allowed to return to their jobs in Israel. On March 3, the daytime curfew was lifted from the entire Gaza Strip for the first time since January 16. However, the nighttime curfew imposed on all 700,000 residents of the Gaza Strip since 1988 remained in effect. The West Bank curfew was lifted with the exception of several towns and villages.

With the lifting of the curfews, Palestinians confronted tough new restrictions on their freedom of movement into and through Israel, including annexed East Jerusalem. These measures dealt a severe blow to the already ailing Palestinian economy.

Before the Gulf war curfew, West Bank Palestinians had been permitted into Israel and annexed East Jerusalem unless explicitly forbidden.[9] After the war, the presumption was reversed. West Bank residents were forbidden to enter unless explicitly permitted.

For Gazans, this reversed presumption had already been in effect since 1989, when military authorities began requiring persons wishing to enter Israel to obtain permits, in the form of magnetic cards. Many men were refused permits either on security grounds or for alleged nonpayment of taxes. In the spring of 1991, the system in Gaza was tightened further when magnetic-cardholders were required to obtain an additional permit to enter Israel.

As a consequence, many workers from the West Bank and the Gaza Strip were forced to abandon jobs or day labor inside Israel and annexed East Jerusalem. On March 8, only 47,200 Palestinian workers entered Israel with permits, according to the *Jerusalem Post*. Eight months later, the number of Palestinians working inside Israel had climbed back to 70,000, according to Israeli television. Nonetheless, this represented a loss of 40,000 to 50,000 jobs compared to one year earlier, when Palestinians employed in Israel accounted for one-third of the West Bank labor force and twenty-five percent of its gross national produce, and forty percent of the Gazan labor force and half of its gross product.[10]

The official justification for reducing the number of Palestinian workers inside Israel was a rash of knife attacks, some fatal, in late 1990 and March 1991, perpetrated by Palestinians on Israeli civilians and soldiers inside the Green Line. The cutback in Arab labor was made more feasible economically for Israel by the entry into the workforce of thousands of Soviet immigrants.

Palestinians without explicit permission to enter Israel were also effectively prevented from traveling between the West Bank and the Gaza Strip, since the connecting roads pass through Israel; and between the northern and southern halves of the West Bank, since the connecting road passes through Jerusalem.

While Israel has the right to restrict entry at its borders, the manner in which the policy has been implemented is objectionable on at least two grounds. First, Palestinians who have not obtained permission to enter Israel are also barred from annexed East Jerusalem, the largest city and *de facto* capital of the occupied West Bank. These Palestinians are thus prevented from reaching not only what the international community considers an integral part of the West Bank, but also such important facilities as the al-Aqsa mosque, Jerusalem's prominent hospitals, and the headquarters of nearly all Palestinian newspapers and professional associations.[11] Second, Israel has restricted entry in an arbitrary and indiscriminate fashion, barring virtually every Palestinian who has ever been arrested on security grounds, including some who had been picked up and then released without charge, as well as others who have never even been

arrested.

Many of those affected by the ban were former administrative detainees who had been accused of political activism in the PLO but never of having committed acts of violence. These included professors, journalists, and other professionals. Since the reason offered for the new restrictions was to prevent knife attacks on Israelis, the inclusion in the travel ban of people with no history of violence was clearly arbitrary. That someone has been interned without trial or meaningful avenue of appeal, or has been picked up and then released without charge, should provide no legitimate basis for restrictions on their freedom of movement.

The arbitrariness of the restrictions is compounded by the limited means provided to contest them. Persons whose movements have been restricted may file a written "objection" with the Civil Administration, but are offered no opportunity for hearing and, if the restrictions are upheld, no specific reasons why they have been imposed. They have no recourse to the courts other than appealing to Israel's High Court of Justice, which gives wide discretion to the judgment of the Israel Defense Forces (IDF) in deciding which security measures are necessary. Even in cases in which the authorities have rescinded travel restrictions, it has taken as long as six months from the time of filing the objection to obtain renewed permission to travel, according to lawyer Tamar Pelleg of the Association for Civil Rights in Israel.

The restrictions have been disastrous for the Palestinian economy, which during twenty-four years of occupation has grown dependent on exporting labor to Israel, partly as a result of Israeli policies. Workers who lost their jobs had few readily available alternatives in the bleak post-war economy, and unemployment grew rapidly. Israel's failure to provide relief to the affected population arguably violates Article 39 of the Fourth Geneva Convention, which states in pertinent part, "Where a Party to the conflict applies to a protected person methods of control which result in his being unable to support himself, and especially if such a person is prevented for reasons of security from finding paid employment on reasonable conditions, the said Party shall ensure his support and that of his dependents."

As Palestinian employment inside Israel declined, Israeli authorities in 1991 announced several measures to stimulate the economy in the territories.[12] While these may strengthen the private sector in the West Bank and Gaza Strip over time, this policy cannot compensate in the near-term for the pauperization of thousands of Palestinians due, among other factors, to the sudden loss of jobs in Israel.

The new restrictions on entry into Israel exacerbated the obstacles surrounding family visits for Palestinians being held in prisons inside Israel, although the problems were gradually resolved during the autumn months. After the Gulf war, the same restrictions on crossing the Green Line required visiting family members to obtain permits from the Civil Administration. In September, visits to prisons other than the Ketsiot Detention Center[13] resumed after Israel dropped the permit requirement for relatives as long as they traveled to and from the prisons in buses operated by the International Committee of the Red Cross (ICRC).

In October, inmates at Ketsiot began to receive family visits for the first time since its opening three and-a-half years earlier. The visits had been prevented by a standoff between the IDF and the Palestinian leadership over the requirement that family members obtain permission from the occupation authorities to travel to Ketsiot, which is in a closed military zone inside Israel. Palestinians insisted that family visits to prisoners should take place as a matter of right, and objected to being forced to submit to an application process involving unrelated conditions. These processes, also endured by Palestinians seeking permission to do such things as travel abroad or obtain a drivers license, usually entail long waits, the approval of numerous agencies, including the security services, and proof that all taxes have been paid.

The impasse was broken when Palestinians and the IDF agreed that the ICRC would act as intermediary between the families and the Civil Administration, so that permits for visits would be granted without the relatives having to apply directly to the authorities. As with other prisons inside Israel, families travel back and forth on ICRC buses.

Middle East Watch holds Israeli authorities responsible for the above-mentioned obstacles to family visits to Palestinian prisoners held in Israel, since the problem stems from Israel's transfer of well over half the Palestinians it holds to facilities inside the Green Line, in violation of the Fourth Geneva Convention. Article 76 of the Convention requires that residents of occupied territories detained or imprisoned serve their sentences in the occupied territory.

Excessive Force and Accountability for Abuses

While the post-war period began with a

tough new policy on freedom of movement, the incidence of certain other types of human rights abuses continued to decline. During the first eleven months of 1991, security forces shot dead eighty-seven Palestinians, according to the Israeli human rights group B'Tselem. While this number is higher than during any year before 1988, it represents a monthly average that is less than half the average for the thirty-seven months of the Palestinian uprising through the end of 1990.

Though lower than in previous years, the number of Palestinians wounded or killed continues to include many avoidable casualties that are the foreseeable result of Israeli policies. These policies include open-fire orders that are excessively permissive in that they do not conform to internationally accepted principles of permitting the use of lethal force only to counter a mortal threat and only when no lesser means are available.[14]

After four years of the intifada, the IDF continues to use live ammunition in riot-control situations, instead of relying on less lethal means of quelling unrest, and conventional riot gear such as protective shields. Large numbers of Palestinians continue to sustain bullet wounds in the upper parts of their bodies despite open-fire orders requiring soldiers to aim at the legs. The IDF also seemed to step up more pinpointed actions, such as using undercover units to capture suspected activists,[15] and placing sharpshooters authorized to shoot stone-throwers on roads where drivers were considered to be at risk of such attacks.[16] Moreover, a continuing laxness in investigating and disciplining soldiers encouraged them to believe that they are unlikely to face meaningful punishment if they exceed their orders.

The decline in fatalities reflects mainly a drop in the level of confrontations between Palestinian youths and Israeli soldiers, rather than greater restraint on the part of soldiers in opening fire in given situations, or a tightening of the standing open-fire orders. Some observers attribute the reduction in part to a policy implemented in 1990 under newly installed Defense Minister Moshe Arens to reduce the amount of contact between IDF troops and the Palestinian population. Under this strategy, troops cut back their routine patrols through populated areas to reduce the opportunities for the kind of stone-throwing confrontations that so often ended in gunshot injuries and deaths.

However, when confrontations occurred, the IDF continued to respond with excessive force. One particularly permissive aspect of the open-fire orders concerns firing live ammunition at suspects who ignore orders to halt. The definition of "suspect" in the orders is sufficiently broad to include persons who are posing no imminent physical danger to others.

In May 1991, the Ramallah-based human rights organization al-Haq charged that of the twenty-nine Palestinians it said had been shot and killed by security forces during the first quarter of 1991, ten—thirty-four percent—had died while fleeing from Israeli soldiers. Al-Haq identified "two dominant patterns of the use of lethal force against fleeing suspects: (a) opening fire upon a person, apparently simply because he/she runs away from military personnel; (b) opening fire upon persons suspected of stone-throwing."[17] To this may be added several youths who were injured or killed by live ammunition when or shortly after they were spotted writing political slogans on walls.

There have also been allegations by al-Haq and other human rights organizations that Israeli security forces have ambushed and deliberately executed a number of wanted suspects whom they could have captured.[18] Despite Israeli denials the army's open-fire orders, at the very least, amount to a "wanted-dead-or-alive" policy toward certain categories of unarmed fleeing suspects.

Even those liberal orders may have been routinely exceeded in some units with the approval of the commanders, as testimony in a recent court-martial suggests. Contrary to the IDF's claim that undercover units must follow its standard open-fire orders, a member of an undercover unit testified in October 1991 that his commander had instructed soldiers to aim at the midsection of suspects, in defiance of orders to aim only at the legs. The commander, a lieutenant colonel, is facing charges in connection with the killing of a youth in Gaza. The trial was continuing as this report went to press.

The fatal consequences of liberal open-fire orders are compounded by the IDF's laxness in investigating and punishing soldiers who violate those orders. In 1991, the military justice system continued to treat abuses by security forces with leniency: few soldiers who injured or killed Palestinians in questionable circumstances were court-martialed, and even fewer received prison sentences.

The Israeli criminal justice system once again showed greater willingness to expose abuses by security forces than to mete out appropriate punishments. Nowhere was this better illustrated than in the vigorous inquest into the October 8, 1990 killings at the Temple Mount/Haram al-Sharif in Jerusalem. Af-

ter seven months of hearings into that event, presiding judge Ezra Kama released a report in July which blamed police officers for using excessive force at several specific moments that morning against those gathered in the sanctuary.[19] Despite the detailed evidence produced by the judge, not a single policeman or officer involved in the incident has been charged or punished. In a letter dated October 20, 1991, a Justice Ministry spokesman told Middle East Watch that the State Attorney's office was still reviewing the report of Judge Kama.

Similarly, military courts during the past year declined to give prison sentences to the first two high-ranking officers to be convicted for intifada-related abuses. Colonel Yehuda Meir was convicted of aggravated battery—an offense which carries a maximum sentence of twenty years' imprisonment—for ordering his subordinates to arrest, tie up and severely beat a group of twelve West Bank Palestinians in 1988. While calling his orders "patently illegal," the court sentenced him to only a demotion, to the rank of private. Colonel Yaakov Sadeh, who was convicted of negligently causing the death of a Gaza youth he shot during a disturbance in 1989, was given a suspended six-month sentence and a reprimand.

As this report went to press, two court-martials of lieutenant colonels were in progress. In the first, cited above, the commander of an undercover unit is charged with manslaughter for giving his unit illegal open-fire orders. The second involves an officer in charge of a wing of Ketsiot detention center who is charged with beating inmates.

Fortunately, a bill to amnesty soldiers outright for human rights abuses committed during the early months of the intifada did not advance in the Knesset, after encountering opposition from Defense Minister Moshe Arens and Justice Minister Dan Meridor. Such an amnesty would violate Israel's obligation to punish those responsible for gross abuses.

Elsewhere, the rule of law was undermined by inflammatory statements made by Police Minister Ronnie Milo and other officials urging Israeli policemen and civilians to take the law into their own hands. In March, after a number of knife attacks by Palestinians had left seven Israelis dead and several wounded, Milo declared: "If any Israeli, whether policeman or not, sees someone with a knife trying to kill, he should shoot . . . . If in the past there were doubts and fears [about shooting to kill], they have no place today."

Milo's incitement to shoot to kill encourages Israeli civilians and police officers to ignore lesser means when they, too, may be effective in stopping an attack, such as striking an assailant with a rifle butt or firing to wound or disarm him. In this respect Milo's position contradicts both Israeli police regulations and the applicable law. Israeli police regulations require an officer who fires a gun to show that "no other means of force was available to ensure implementation of the mission and that the nature of that mission justified the use of this extreme means." For civilian use of firearms, the applicable section of the penal code is Israel's "law of necessity," which states:

> a person may be exempted from criminal responsibility for any act or omission if he can show that it was done or made in order to avoid consequences which could not otherwise be avoided and which would have inflicted grievous harm or injury on his person, honor or property or on the person or honor of others whom he was bound to protect or on property placed in his charge, provided that he did no more than was reasonably necessary for that purpose and that the harm caused by him was not disproportionate to the harm avoided.[20]

While somewhat open-ended, this statute makes clear that a civilian's gunfire must adhere to the dual principles of necessity and proportionality.

Milo's endorsement of shooting to kill has not led to any revision of the applicable laws or regulations. Nevertheless, his comments, which he has neither retracted nor adequately clarified, constitute an endorsement of lawlessness by the country's top law enforcement official.

Abuse during Interrogation

Torture is common during the interrogation of Palestinian security suspects by Israel's General Security Service (Shin Bet or GSS), as was persuasively documented in reports issued this year by B'Tselem and Amnesty International. For those who are brought to trial, abuse during interrogation is followed by systematic failure to accord a serious hearing to any claim that a confession had been improperly coerced.

Available data is insufficient to determine whether the level of abuse during interrogation increased or decreased in 1991 compared to earlier years. However, several dramatic developments placed torture on the public agenda inside Israel, beginning with the release of the B'Tselem report in March. B'Tselem reported:

> Virtually all our sample [of forty-one detainees from the West Bank and Gaza Strip] were sub-

> ject to: verbal abuse, humiliation and threats of injury; sleep and food deprivation; hooding for prolonged periods; enforced standing for long periods, sometimes in an enclosed space, hands bound behind the back and legs tied; being bound in other painful ways (such as the "banana" position); prolonged periods of painful confinement in small, specially constructed cells (the "closet" or "refrigerator") and severe and prolonged beating on all parts of the body (resulting sometimes in injuries requiring medical treatment).[21]

Amnesty International reported similar abuses, charging that "torture or ill-treatment seem to be virtually institutionalized during the arrest and interrogation procedures preceding the detainee's appearance before a military court."[22] Both reports provided evidence to support the kinds of allegations that have been persistent since the early years of Israel's occupation of the West Bank and Gaza Strip.

The B'Tselem report prompted the formation of various governmental committees to investigate its allegations. To date, however, those committees have yet to yield tangible results. The committee formed by the IDF, the only one to publicize its findings so far, helped to initiate several investigations of IDF interrogators for alleged abuses, but made no recommendations that would rein in agents of the Shin Bet, who are primarily responsible for the abuse.

In July, the International Committee of the Red Cross, in a rare departure from its policy of communicating privately with governments, went public with its concerns about the treatment of detainees. "In view of the lack of response to previous representations," the ICRC announced in a July 16 press release that it was submitting "a further report to the highest authorities of the State of Israel, on the situation of detainees undergoing interrogation." The ICRC urged Israel "to give special attention" to this issue and "to implement the recommendations it has already made."

Israel's courts in 1991 deliberated on several important cases involving torture. In a challenge to Shin Bet practices in general, an alleged torture victim from the Nablus district asked the High Court of Justice to order the General Security Service to revise its interrogation methods. In particular, the petition asked the court to declare illegal the endorsement by the government in 1987 of the GSS use of "moderate physical pressure" when interrogating security suspects—a practice approved in general terms by the government-appointed Landau Commission in a 1987 report and formally endorsed by the government; the classified appendix to the report outlined more specifically the approved methods. The lawyer for the petitioner, Avigdor Feldman, submitted the B'Tselem report as supporting evidence. In November, the Shin Bet replied to the petition, claiming that it would be impossible to halt "terrorist" activities in the territories "without the security elements being able to use, in the appropriate circumstances and within the legal limits, the permissible actions [of moderate physical pressure] recommended by the Landau Commission." The case is pending.

In an encouraging development, the Knesset ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted by the UN General Assembly in 1984), along with three other major human rights conventions.[23] The Torture Convention defines torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession." The General Security Service, in responding to the petition before the High Court of Justice, denied that the forms of "moderate physical pressure" approved in the classified annex to the 1987 Landau Commission report amounted to torture. However, the Convention's definition of torture is easily met by several of the routine methods of pressuring suspects that were documented in 1991 by B'Tselem and Amnesty International.

In a positive step for accountability within the Shin Bet, two interrogators received six-month sentences for negligently causing the death of suspect Khaled Sheikh Ali during interrogation in 1989. The sentences, which were the outcome of a plea bargain in which the charge of manslaughter was dropped, were deplorably short. Nevertheless, they are believed to be the first time that Shin Bet agents were imprisoned for abuses. The sentences were upheld by Israel's Supreme Court.

Detentions, Deportations and House Demolitions

The number of Palestinians in administrative detention— internment without charge or trial—declined during 1991 to 457 as of October 22, according to the office of the IDF spokesperson.[24] For much of the first two years of the intifada, the number exceeded two thousand; by mid-December 1990, however, it had declined to 910, according to the IDF Judge Advocate-General.

Despite the welcome drop in the number of administrative detainees, Israeli use of administrative detention does not conform to the limited use of this extrajudicial measure permitted by the Fourth Geneva Convention. Article 42 of that Convention authorizes the internment of individuals "only if the security of the Detaining Power makes it absolutely necessary." The authoritative commentary to that Convention stresses the exceptional character of that measure.[25]

Under Israeli law, military authorities have the power to place individuals under administrative detention for renewable twelve-month periods. Most orders are initially of shorter duration. Probably the longest-held detainee at present is Sami Samhadana of the Gaza Strip who, if he serves out his current term in Ketsiot, will have spent a total of five and a half years in administrative detention since 1985, with only brief intervals outside. The Association for Civil Rights in Israel (ACRI) has filed a suit with the Israeli High Court of Justice challenging Samhadana's lengthy internment without charge.[26]

The total number of West Bank and Gazan Palestinians incarcerated by Israel by all means—both administratively and on criminal charges—appears to have declined slightly during 1991 from more than 14,000 earlier in the year to approximately 13,000 in September, according to official sources. If considered as a separate country, the occupied Gaza Strip and West Bank (excluding annexed Jerusalem) would have an incarceration rate of roughly 750 per 100,000 Palestinian residents, which is higher than any country that issues such statistics.[27] The vast majority of these inmates are being held not for common crimes but for offenses or accusations that Israel considers security-related. Within this population, Middle East Watch views as political prisoners those in administrative detention and those who have been arrested or convicted on charges of belonging to, or serving, any outlawed political organization, including the PLO, as long as they have not been convicted of individual responsibility for activities directly linked to violence.

Military authorities continued to demolish the homes of the families of Palestinians suspected of committing grave, politically motivated acts of violence, nearly always before the suspect had been tried or convicted. As with other extrajudicial measures, families may file an appeal before Israel's High Court of Justice, but such appeals rarely succeed, since the court will not scrutinize the IDF's assessment of security needs, but examines only narrow issues of procedure and whether the military officials exceeded their broadly defined authority.

In 1991, the number of demolitions declined somewhat compared to previous years. From January until October 18, forty-eight houses were totally demolished as punishment for security offenses, five were partially demolished, thirty-five were totally sealed and thirteen were partially sealed, according to the human rights organization al-Haq.[28]

Middle East Watch until recently had been unaware of any country besides Israel that punished the families of suspected offenders by demolishing their homes. This year we ascertained that Israel shares this distinction with Iraq, where the regime of Saddam Hussein has been known to demolish the homes of families of suspected dissidents.

In 1991, the practice of deporting suspected activists was revived, despite vigorous international opposition. No deportations had been carried out since the first two years of the intifada, when fifty-eight Palestinians were expelled on security grounds. In January 1991, four Gazans were deported to Lebanon after being accused of inciting violence against Jews, and another four were deported on the same grounds in May. In both instances, the arrests and deportation orders came after a rash of stabbings inside Israel by Palestinians, but in neither case did the authorities accuse the deportees of direct involvement in the stabbing incidents.[29]

On a positive note, one Palestinian deported in 1985 was permitted to return to the West Bank in September 1991 as part of a deal between Israel and Palestinian groups to obtain the remains of an Israeli soldier killed in Lebanon several years ago.

Family Reunification

The expulsion of Palestinians related to legal residents of the territories but who lack Israeli-issued residence papers themselves became a contentious issue again in 1991 after the practice was halted in early 1990. Affected are Palestinians who have been unable to obtain residency permits which would allow them to live legally in the territories with spouses or children who are legal residents. The vast majority of Palestinians who apply for permanent residence in the territories on family-reunification grounds are turned down by the Israeli authorities, including those filed on behalf of immediate relatives.[30] Because of the cost, conditions and uncertainties of the application process, many Palestinians without residence permits do not bother to file an application but instead enter on a

short-term visitor's visa and then stay on illegally after the visa expires, risking expulsion.

Palestinians in this predicament include those who were outside the occupied territories when Israel conducted a one-day census of the area shortly after the June 1967 war, and refugees who grew up in Jordan or elsewhere and then married residents of the occupied territories. Also affected are the children of one spouse who is a legal resident and one who is not, because such children are not automatically given resident status.

In the fall of 1991, two Israeli human rights organizations, B'Tselem and the Association for Civil Rights in Israel (ACRI), accused the military authorities of breaking a pledge made in the spring of 1990 to grant "non-resident" Palestinian wives and children longer-term visitor visas so that they could remain with their Palestinian husbands in the West Bank and Gaza. The IDF defended its actions by explaining that the more liberal procedures it announced in 1990 applied only to wives and children already in the territories, and not to those who entered the territories subsequently. ACRI and B'Tselem presented the names of more than twenty "non-resident" women who had been ordered to leave, and filed a suit in Israel's High Court of Justice challenging the restrictive reunification policy. That suit is pending.

In expelling non-resident Palestinians, Israel claims that it is exercising its sovereign right to deport illegal aliens. Middle East Watch disputes this claim; Israeli policy in this area, both in the arduous application process and the rejection of the vast majority of reunification requests, including those made to reunite immediate family members, violates the occupying power's obligations under Article 27 of the Fourth Geneva Convention to respect the "family rights" of the protected population "in all circumstances." Middle East Watch believes that family rights encompass, at the very least, the right of husband and wife and dependent children to live together, although it is not explicitly stated in the Convention.[31] Insofar as Israel refuses to grant residency rights to former long-time residents of Israel or the occupied territories, we also maintain that the Israel policy violates the right of Palestinians to enter their "country," as affirmed in Article 12 of the International Covenant on Civil and Political Rights; there is no reason to believe that the framers of that covenant meant to exclude from this right persons residing in occupied or administered territories.

Israel's restrictive policy on family reunification also exacerbated the problems faced by Palestinians who fled or were forced to leave Kuwait during Iraq's occupation and the post-liberation period, as described in the chapter in this report on Kuwait. Since the start of the Gulf war, Israel has admitted some thirty thousand West Bank and seven thousand Gazan Palestinians who had been living and working in Kuwait and Saudi Arabia.[32] However, an indeterminate number of Palestinians residing in Kuwait who were born either in British Mandate Palestine or the Gaza Strip, as well as their children, could not enter the occupied territories on the grounds that they lacked residence papers. Most Kuwaiti Palestinians who have Jordanian passports fled to Jordan; of these, only a portion wished to reside in the West Bank or Gaza Strip but are prevented from doing so, while many preferred to remain in Jordan. But an estimated 23,000 to 25,000 Palestinians of Gazan origin faced possible expulsion from Kuwait with nowhere to turn because Israel would not permit their return to Gaza, either because their Israeli-issued residence papers had expired or because they had left Gaza prior to the 1967 occupation. Israel's indefensibly restrictive policy on granting residence status to Palestinians thus helped to worsen the effects of the refugee crisis emanating from the conflict in the Gulf.

School Closures and Curfews

Military authorities permitted three Palestinian universities to reopen in 1991, leaving only Bir Zeit, the flagship of Palestinian universities, still closed. In early December, the Defense Ministry renewed the closure order of Bir Zeit through the end of February 1992. All six campuses had been closed since at least early 1988. In 1990, al-Quds and Bethlehem universities were permitted to reopen, but were closed down again at the start of the Gulf war. In mid-March, they were permitted to reopen. In May, Hebron University was permitted to reopen, followed by al-Najah University and Gaza's Islamic University in the fall.

With the exception of the period of the Gulf war curfew, elementary and secondary schools were closed less frequently than in previous years. For the first time during the intifada, military authorities permitted schools to remain open in the summer months to make up for lost days.

Since April 1991, the scope of curfews seems to have declined somewhat compared to previous years, both in geographical scope and duration.[33] However, in December, a harsh two-week curfew was imposed on more than thirty thousand residents of the West

Bank towns of Ramallah and el-Bireh, after unknown assailants fatally shot a Jewish settler in the vicinity. Denying that the measure was collective punishment, West Bank Commander Major General Danny Yatom said that the curfew was intended to facilitate the hunt for the perpetrators of the slaying.[34] Schools and workplaces were shut, and soldiers conducted extensive house-to-house searches, arresting scores of persons.

The Killing of Suspected Collaborators

Murders and violent acts committed by Palestinians against suspected collaborators with Israeli authorities continued to be a major concern in 1991. According to the tally of the Associated Press, 471 Palestinians said to be suspected of collaboration have been killed by other Palestinians since the beginning of the intifada, 147 of them during the first eleven months of 1991.

It is the duty of the Israeli government, as the *de facto* power in the occupied territories, to arrest, charge and prosecute those who commit such violent assaults and homicides. Indeed, many Palestinians have been given long prison sentences for killing or injuring collaborators.

There is, of course, no Palestinian state apparatus with the capacity to perform these law-enforcement and judicial functions. Nor is there a Palestinian government to hold responsible for the killings. However, the Tunis-based PLO and the pro-PLO Unified National Leadership of the Uprising (U.N.L.U.) inside the occupied territories, as the political entities that wield the most influence over Palestinians, have a duty not only to refrain from such acts but also to use their influence to curtail them through public condemnation and repudiation. Middle East Watch deplores the failure of both entities to do so in an unequivocal manner.

The data on collaborator killings is inevitably imprecise. The basis for the charge of collaboration is rarely made public in any detail; some of the killings appear to have had other motives. It is also often difficult to know who is behind individual attacks; some appear to have been carried out by persons acting independently or on behalf of groups outside the PLO umbrella, such as breakaway PLO factions and Islamic groups.

Some Palestinians defend the killing of suspected collaborators as necessary to protect the population from informants who aid Israeli security forces by identifying intifada activists and thus put these activists at risk of arrest or physical injury. In addition, Palestinian collaborators, some of whom are issued arms by the Israeli army, have themselves been responsible for killing thirteen other Palestinians from the beginning of the intifada through the end of November 1991, according to B'Tselem. They have also caused injuries and property damage in many instances.

Palestinians claim that most of those who are punished for alleged collaboration had received warnings and an opportunity to respond to the allegations during some form of trial. However, such warnings and "trials" fall far short of guaranteeing accused collaborators due-process rights. There is no independent tribunal or assured right to representation by counsel, and torture is reportedly employed in at least some cases to secure confessions.

These violations of due process are all the more disturbing in light of the severe punishment meted out. They cannot be excused on the grounds that the military occupation prevents the establishment of a formal Palestinian-run judiciary and penal system. Nor can they be justified by the gravity of the accusations against any suspected collaborator. Even if one were to accept the contention that some collaborators are combatants and therefore legitimate military targets, those executed while in the custody of the perpetrators were *hors de combat* and thus entitled to full due process protection according to the principles of humanitarian law set forth in the 1949 Geneva Conventions. The PLO, by seeking to become a party to the Geneva Conventions in 1989, has pledged to abide by these standards.[35]

Since late 1989, the public position of Palestinian leaders of the killing of "collaborators" has improved, but still generally falls short of a clear and absolute prohibition. At the end of 1990, for example, the U.N.L.U. issued orders forbidding activists from killing suspected collaborators unless a decision is taken at the highest level—suggesting that the U.N.L.U. continued to approve of killing collaborators in principle, even if under the circumstances it was trying to bring the problem under control.

In 1991, the persistence of such killings prompted the most extensive public airing of concerns to date by several Palestinian leaders in the territories. The killings, however, have continued.

It does not help that the Palestinian leadership continues to send mixed signals about attacks on those who cooperate with Israel. In leaflets issued in the fall of 1991, the U.N.L.U. affirmed that a death sentence will be executed against anyone "who is proven to

have sold, or to have contributed to selling, one inch of [the West Bank, East Jerusalem, or Gaza Strip] to Jews." Although the issue of land sales is in many respects distinct from what Palestinians term "collaboration," the decision to declare it a capital offense at a time when Palestinians are executing several collaborators each month lends legitimacy to acts of violent retribution.

U.S. Policy

Before Iraq invaded Kuwait in August 1990, Israel was criticized publicly for human rights abuses by the Bush Administration more often than any other country in the Middle East. Frequent criticism is wholly appropriate since Israel, a country of only five million people, receives more U.S. aid than any country in the world, and more than the sum of what all other countries in the Middle East receive. Of course, appropriate public criticism should also be leveled, at minimum, at other major aid recipients with poor human rights records, such as Egypt and Morocco.

The criticism that the United States has leveled at Israeli abuses against Palestinians under occupation has been less effective than it could have been for two principal reasons. Foremost is the Administration's unwillingness to link, at least publicly, Israel's human rights record with the amount of aid it receives or the favorable trade relations it enjoys, although, as discussed below, President Bush has twice dragged his feet on housing loan guarantees as a way of pressuring Israel on the peace process and settlements.

Second, the United States has long made clear that its concern for human rights abuses committed by Israel is subservient to the goal of bringing Israel and her neighbors into a peace process. Administration officials have often either chosen to avoid chastising Israel on the grounds that this would be counterproductive to the peace process, or denounced Israeli abuses not as human rights violations but as impediments to the peace process.

In 1991, the subordination of human rights concerns to other regional policy objectives became more pronounced than ever. During the Gulf war in January and February, U.S. relations with Israel seemed to focus entirely on dissuading Israel from retaliating against Iraq for its Scud attacks or from doing anything to Palestinians under occupation that would threaten Arab participation in the U.S.-led coalition against Iraq. American officials made almost no public comments about human rights issues, as discussed below.

Then, with the war concluded, the Bush Administration launched its most vigorous effort yet to coax Israel and its neighbors into face-to-face peace talks. During Secretary of State James Baker's eight trips to the region between March and October, the Bush Administration said virtually nothing publicly about the human rights abuses being perpetrated by any of the governments that it was trying to bring to the negotiating table.

The U.S. Administration is not alone in its implied view that the cause of human rights for Palestinians is best served by focusing on the larger goal of a peace settlement that ends the military occupation and addresses Palestinian political aspirations in some fashion. Many Palestinians and Israelis have articulated this view in various forms.

Middle East Watch is aware of the merits of this argument, as well as of the delicate nature of the diplomacy needed to advance this process. Nevertheless, given that the peace process is likely to take years, the United States cannot simply stand silent in the face of the grievous abuses that are, unfortunately, likely to continue in the region. The United States, we maintain, can forcefully advocate human rights in the region without jeopardizing its status as a neutral arbiter of peace, so long as its advocacy of rights is perceived as even-handed and consistent toward all countries of the region. Indeed, we believe that a failure to address human rights violations as an integral part of the move toward peace reflects a narrow view of regional security which is likely to produce a weak, hollow and short-lived peace.

Israel has received U.S. financial support since its creation in 1948. Since 1976, it has been the largest aid recipient each year. This aid is justified on the grounds of the close strategic and political alliance between the two countries, and the continuing state of belligerency between Israel and some Arab states. The aid is also intended "to provide the kind of support for Israel that will make Israeli decisions in the peace process easier to take," Deputy Assistant Secretary of State for Near Eastern and South Asian Affairs Daniel Kurtzer told the House Subcommittee on Europe and the Middle East on March 6.

The United States has been "Israel's closest friend in the world" for more than forty years, President Bush declared on September 12, vowing that this relationship would continue. On November 13, he reportedly told Jewish leaders that he remained committed to Israel's qualitative edge in armaments.

The four billion dollar figure cited by President Bush consists of the annual package

of $1.2 billion in economic grants, $1.8 billion in military grants that Israel has been receiving each year for several years, and several additional programs. In March 1991, the U.S. government approved a one-time cash grant of $650 million to compensate Israel for losses sustained during the Gulf war. Israel also benefits from drawdowns in defense equipment and an unusual arrangement by which its aid is delivered in full at the beginning of the year, allowing Israel rather than the United States to earn the interest on the money.

U.S. aid to Israel comes with the stipulation that it is not to be used anywhere across the Green Line, so that in theory, it does not directly subsidize practices of the occupation authorities that violate human rights. U.S. military assistance is for the acquisition of big-ticket items like aircraft and not for the kind of equipment used in suppressing demonstrations. While Israel signs this stipulation each year, the money is, of course, fungible; grants to Israel free up money that can then be allocated to activities in the occupied territories. This fungibility was the impetus in 1991 for an amendment proposed by the House of Representatives to trim the aid package to Israel by $82.5 million, the amount that Washington estimates Israel spent on settlements in the territories. That amendment was easily defeated in June.

Each year, the most detailed—though not necessarily the most influential—statement of the U.S. view of human rights conditions in Israel is contained in the State Department's *Country Reports on Human Rights Practices*, released in February. The chapter on the occupied territories in 1990 covered virtually every major category of human rights violations in a technically accurate fashion. However, the report failed to convey the systematic nature of the abuses, because it failed either to characterize their extent or to place them in the appropriate context.

In 1990, it was revealed that the State Department's Human Rights Bureau in Washington had softened the critical tone of the draft chapter covering 1989 which had been prepared by the highly regarded team of officers at the Jerusalem consulate and Tel Aviv embassy who are responsible for human rights monitoring.[36] This editing by the bureau in Washington was heavier than is commonly the case for other chapters.

The tone of the 1990 chapter is disturbingly similar, although it is not known whether this is due to rewriting in Washington. Facts are presented accurately but disembodied from their larger contexts, and findings about certain controversial but important matters, such as the prevalence of torture, are attributed to others without a clear position being taken by the State Department. A few examples are provided here.[37]

- On torture, the report states on pages 1479–80 that "critics" allege that various forms of mistreatment are inflicted on suspects under interrogation, and that such abuses "reportedly have continued since they were confirmed in the 1987 report of the officially appointed Landau Commission."[38] By contrast, in response to a congressional question posed in February 1991 about the Landau Commission's endorsement of "moderate physical pressure" by the Shin Bet, Assistant Secretary of State for Human Rights and Humanitarian Affairs Richard Schifter stated, "We have made it clear that we consider all forms of 'physical pressure' on persons under detention unjustifiable." It is disappointing that this categorical position is not reflected in the bland treatment of torture in the *Country Reports*.
- The report states on page 1487 that when soldiers were disciplined in cases involving the deaths of Palestinians, "some punishments appeared lenient." In fact, leniency is endemic: only a handful of soldiers have been sentenced to at least one year or more in prison for a wrongful death during the intifada, and no soldier has received more than a two-year prison term.
- On page 1491, the report cites Israeli claims that in 1990, 326 family-reunification applications were approved for Palestinians to reside in the West Bank and Gaza and 269 were rejected. This figure misleadingly suggests that most "non-resident" Palestinians who apply are given permanent-resident status by the Israeli authorities. To be fair, the State Department report should also have included data on how many applications were submitted and are still pending, and how many Palestinians have given up applying altogether because of the cost and duration of the application process.[39]

Defending their tempered response to Israeli human rights practices, U.S. officials often claim that most of their communication with Israel is through private channels. Secretary Schifter asserted in 1990 that the United States communicated with Israel on human rights matters more than with any other country.[40]

In our view, private human rights diplomacy is insufficient to address Israel's human rights abuses. Private diplomacy theoretically

could be effective coupled with representations that aid or other benefits will be cut if human rights abuses are not curtailed, but the Bush Administration's public posture makes it unlikely that such representations are being made. Absent such linkage, the only effective U.S. human rights policy toward Israel must be based on the stigmatization that consistent public criticisms of abuses can help to produce.

In 1991, U.S. officials adopted a quieter approach to Israeli human rights abuses than in previous years. Criticisms were less frequent and usually uttered by lower-level officials, despite Secretary Baker's eight visits to Israel between March and October, after not having visited the country once during his first two years in office.

The marked difference from late 1990 to 1991 revealed the degree to which U.S. human rights policy toward Israel is held hostage to other objectives. From October 1990 until mid-January 1991, the United States took an unusually active role in criticizing Israel at the United Nations, backing two Security Council resolutions on the Temple Mount/Haram al-Sharif killings and one on deportations. On January 4, following a particularly violent week in the territories, the United States did not block a Security Council statement "deploring" Israel's use of force against Palestinian civilians.

Those who dismissed the new U.S. zeal on human rights as a stratagem to preserve the anti-Iraq coalition could feel vindicated once the war began on January 17. As soon as Iraqi Scud missiles began landing in Israel, the principal U.S. policy objective became to persuade Israel not to enter the war. Human rights criticism virtually stopped.

Most noteworthy was the U.S. silence on the matter of the blanket curfew in effect for over a month in the West Bank and Gaza Strip. We are not aware of a single public statement by U.S. officials concerning this devastating restriction on the lives of 1.7 million people. No public comment on the curfews came during Deputy Secretary of State Lawrence Eagleburger's two trips to Israel in January, during Defense Minister Moshe Arens's meetings in Washington in February with President Bush, Secretary of State Baker and Secretary of Defense Dick Cheney, or at any other time. It seemed as if the U.S. was relieved that relative calm had been achieved in the territories by confining all Palestinians to their homes, minimizing the risks of a Temple Mount-like conflagration that would jeopardize continued Arab participation in the U.S.-led alliance.

It is not known whether U.S. officials privately voiced concerns to their Israeli counterparts about the effects of the curfew on the Palestinian populace. What is clear, however, is that the mild reaction to the curfew continued even after the war had ended, as was made apparent by Secretary Schifter's written reply to questions for the record about the curfew posed by the House Subcommittee on Human Rights and International Organizations on February 26:

> Q. Are curfews still being imposed on the territories due to the war? What effect have these curfews had on the Palestinian community in the territories? Do you think the measure is warranted?
>
> A. The wartime curfews have been ended. They severely restricted economic life in the Occupied Territories. The Israeli government evidently considered them a necessary measure. Curfews continue to be widely imposed following security incidents. These, too, can cause economic and social hardships.

When specifically requested for the U.S. view on the wartime curfew, Schifter merely stated that the Israelis considered it necessary. Nor did the Administration use the occasion of granting Israel $650 million in March, as compensation for losses during the Gulf war, to call attention to the proportionately greater economic losses to Palestinians, due, in part, to the stringent wartime curfew imposed by Israel.

While failing to respond to the single most pressing human rights issue during this period—the curfew and its effects—the United States did voice dissatisfaction at the detention without charge of certain prominent Palestinians, a practice which it has often criticized in the past. The administrative detention of Sari Nusseibeh in January prompted a statement from State Department spokeswoman Margaret Tutwiler that "The charges against Dr. Nusseibeh, like those against other administrative detainees, ought to be made public and a chance should be given to him to defend himself in a court of law." A nearly identical statement was issued when Gaza journalist Taher Shriteh was detained one month later.

In March, the United States deplored Israel's decision to deport four Palestinians, as it has criticized deportations consistently in the past. Both U.S. Ambassador Brown and the State Department spokeswoman deplored the measure, and the United States supported a critical presidential statement from the U.N. Security Council. The Department spokeswoman again criticized the deportations when they were finally carried out in May, and said

that Secretary Baker had raised the matter when he was in the region.

If Secretary Baker had indeed raised the matter, he did so only privately. From March onward, his efforts were devoted almost exclusively to the sensitive task of persuading Israel, the Palestinians and Syria to attend peace talks. Both he and other senior U.S. officials shunned public criticism of human rights abuses by Israel.

Typical of the State Department approach during this period was its reaction to reports of a March 31 Israeli cabinet decision to increase deportations, house demolitions and restrictions on the entry of Palestinians into Israel, in response to a spate of knife attacks on Jews by Palestinians inside Israel. Administration comment came in the form of a statement issued by the State Department on April 12 which blandly stated that the United States had raised its "concerns" with the government of Israel, and that "Israel should be looking for ways of promoting and developing dialogue and trust with the Palestinians, not imposing new restrictions."

In July 1991, the Administration avoided commenting on the release of the report by the Israeli investigating judge that some of the shooting deaths at the Temple Mount/Haram al-Sharif in October 1990 had been unjustified. "The president and Department of State reacted to the Temple Mount tragedy right after it happened on October 8 [1990]," the spokesperson said on July 19. While the original statements condemning the use of excessive force were both strong and public, there was a new development that was worthy of comment: an Israeli investigation had determined that unjustified deaths had occurred, and yet not a single police officer or commander had been charged or disciplined in connection with the incident.

While avoiding direct criticism of human rights abuses, Secretary Baker reportedly asked Israel to consider confidence-building gestures during this period such as halting deportations, releasing prisoners, and reopening closed universities. On the eve of Baker's visit to the region in April, Israel announced a new tax-incentive plan for investment in Gaza and the release of some one thousand Palestinian prisoners, a higher number than it usually releases at that time of year, on the occasion of the Muslim holy month of Ramadan. An Israeli Defense Department spokesman denied that these measures were a response to the U.S. call for goodwill gestures.[41]

The issue that senior U.S. officials raised most insistently in public was Israel's accelerated construction and expansion of settlements on the West Bank. In our report on U.S. Policy toward Israel in 1990, we praised the Bush Administration for using the occasion of Israel's request for $400 million in housing loan guarantees to express disapproval of Israel's settlement policies in the occupied West Bank and Gaza Strip. The delay in releasing those guarantees until 1991 while the Administration demanded stronger assurances that the money would not be used for construction in the occupied territories provided a mild but, under the circumstances, potent reminder of how the United States should be using its considerable aid to Israel to focus attention on human rights concerns.

In 1991, a request by Israel for $10 billion in housing loan guarantees again provided the only occasion on which the Bush Administration behaved as if aid to Israel should be conditioned on its policies toward Palestinians. Unhappy with the Shamir government's conditions for participating in peace talks and its continuing policy of building and expanding Jewish settlements in the occupied territories, President Bush prevailed on Congress in September to delay for 120 days consideration of the loan guarantees.

As critical as the Bush Administration has been of settlements, it has never publicly characterized them as illegal under the Fourth Geneva Convention—a view expressed by the Carter Administration but not since. Nor have senior officials publicly condemned the arbitrary means by which land for settlements has been confiscated from Arabs, or the discrimination that favors Jewish settlements over Palestinian communities in terms of building and land use permits, government funds and services, and the pricing of water. By condemning settlements only as obstacles to peace, the United States has given Israel a pretext to continue settlements as a bargaining chip in the peace process, rather than as an illegal act that should be halted unconditionally.

The tension over settlements began building shortly after the Gulf war. In his first visit to Israel in March, Secretary Baker is said to have voiced concern with Prime Minister Shamir about reports that Israel was planning ten thousand housing units for new immigrants in the occupied territories.[42] The following week, the State Department delivered to Congress a report charging that Israel was building and expanding settlements more rapidly than most people were aware, and that four percent of the Soviet Jews who had emigrated to Israel in 1990 had settled in the occupied territories including East Jerusalem.

Reacting to reports of a new settlement, White House spokesman Marlin Fitzwater again called settlements "an obstacle to peace" on April 16. The U.S. ambassador in Tel Aviv, William Brown, denounced the settlements in a speech on May 3 before an audience of Israeli businessmen.

The sharpest criticism of settlements came from Secretary Baker, when he told the House Foreign Affairs Committee on May 22:

> Nothing has made my job of trying to find Arab and Palestinian partners more difficult than being greeted by a new settlement every time I arrive. I don't think that there is any bigger obstacle to peace than the settlement activity that continues not only unabated but at an enhanced pace.

President Bush followed with hints that if Israel persisted in building settlements, he might oppose the ten-billion dollar loan guarantee which Israel was planning to seek from the United States to help resettle Soviet immigrants.[43] In a July 1 press conference, he declined to state this condition publicly, but forcefully condemned the settlement policy:

> I don't think [approval of the loan guarantees] ought to be a *quid pro quo* [for an Israeli pledge not to build new settlements]. What I do think, and I've said this over and over again, that it is against U.S. policy for these settlements to be built. So, I'll leave it right there and avoid the linkage that you understandably ask about . . . . [But] we have not changed our position . . . on settlements, and we're not going to change our position on settlements. So please, those in Israel, do what you can to see that the policy of settlement after settlement is not continued. It is counterproductive [to the peace process].

Tension over the settlement issue came to a head in September, the month that Israel intended formally to request the loan guarantees. Eager to avoid complications to the now-likely peace conference, Secretary Baker urged Prime Minister Shamir to postpone the request. When Shamir refused, President Bush asked Congress to put off consideration of the request for four months, explaining: "It is in the best interest of the peace process. . . . We don't need an acrimonious debate just as we're about to get this peace conference convened."

The debate became acrimonious anyway, and the Administration's position hardened in response to Israel's refusal to retreat. President Bush said in a September 13 press conference that "during the current fiscal year alone, and despite our own economic problems, the United States provided Israel with more than $4 billion in economic and military aid, nearly $1,000 for every Israeli man, woman, and child, as well as with $400 million in loan guarantees to facilitate immigrant absorption."

Then, on September 17, Secretary Baker made explicit to reporters what had been implicit for months: the Bush Administration intended to link the loan guarantees to tough new restrictions on the construction of settlements in the occupied territories. For the first time, the Administration seemed to be threatening to condition aid on Israel halting its settlement policy.[44]

By the end of September, President Bush had mustered support for delaying consideration of the loan request until after the peace talks had begun, and on October 2, the Senate formally agreed to the postponement. The month-long confrontation over the issue was a humiliating defeat for Israel, which had apparently overestimated American support on this issue.

The toughening U.S. stand on settlements is consistent with a muted approach to other human rights abuses committed by Israel: both are guided by a desire to avoid complicating the peace process. To its credit, the Administration devoted more effort in 1991 to advancing that process than any administration had since the Camp David accords were signed in 1978. The coming year may well reveal much about whether the single-minded promotion of peace talks can also be an effective human rights policy.

NOTES

1. Some areas had already been under curfew for days or weeks.
2. Brigadier General Freddy Zach, deputy coordinator of government activities in the territories, as reported in Martin Merzer, "West Bank Curfew: 1.7 Million Trapped," *Miami Herald*, February 4, 1991.
3. Iraq's missile attacks on Israel and Saudi Arabia violated the laws of war by targeting civilians indiscriminately. The attacks are discussed in the above chapter on Iraq.
4. See, *e.g.*, the interview with Shmuel Goren, coordinator of government activities in the occupied territories, Jerusalem Israel Television Network in Arabic, February 1, 1991, as reported in Foreign Broadcast In-

formation Service (FBIS), February 4, 1991.

5. This obligation was recognized by the Israeli High Court of Justice beginning with a concurring opinion in 1971 which held: "The occupant is entitled to impose its authority on the population of the territory . . . . But alongside the right of the occupant is its duty to be concerned with the welfare of the population." The Christian Society for the Holy Places v. The Minister of Defense *et al.*, HCJ 337/71, Summarized in English in 2 *Israel Yearbook on Human Rights* (1972), pp. 354-356.

6. See Article 33 of the Fourth Geneva Convention of 1949. Israel has ratified the Fourth Geneva Convention, but maintains that it is not applicable to the territories it has occupied since 1967. Virtually the entire international community, including the UN Security Council, the United States and the International Committee of the Red Cross, maintains that Israel is obliged to comply with the Convention in its administration of all occupied territories.

While disputing the convention's *de jure* applicability, Israel has said that it will voluntarily comply with the Convention's "humanitarian provisions." However, it has never specified which provisions it regards as humanitarian, and the Israeli courts have declined to enforce the Fourth Geneva Convention.

7. Article 55 requires an occupying power to ensure "the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territories are inadequate." Article 56 states:

> To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring and maintaining, with the cooperation of national and local authorities, the medical and hospital establishments and services, public health and hygiene in the occupied territory . . . . Medical personnel of all categories shall be allowed to carry out their duties.

8. *Jerusalem Post*, February 4, 1991.

9. Since 1989, the Israel Defense Force has issued to several thousand West Bank residents green identification cards which forbid them from entering Israel, including annexed East Jerusalem. In November 1990, Defense Minister Moshe Arens said he had agreed to issue 2,400 new green cards, bringing the total to 10,000. *Jerusalem Post*, November 20, 1990.

Most green-cardholders are men who have served sentences in prison or administrative detention, for whom the travel restrictions are either an improper *ex post facto* penalty, insofar as they are punishment, or a blanket and arbitrary act of discrimination, insofar as they have a security rationale.

10. Brigadier General Freddy Zach, deputy coordinator of activities in the territories, quoted in the *Jerusalem Post*, January 3, 1991.

11. See al-Haq, "Restriction of Access to and through East Jerusalem," *Human Rights Focus*, April 4, 1991.

12. See "Israel Begins Plan for Arab Business," *The New York Times*, December 1, 1991.

13. Ketsiot, which Palestinians call Ansar III, is the largest detention facility of any kind in Israel or the occupied territories. It was built in 1988 at a remote location in the Negev desert near the Egyptian border, to help to accommodate the thousands of Palestinians arrested since the start of the intifada.

Ketsiot's population consists of Palestinian residents of the occupied territories who have been arrested on security grounds. Authorities at Ketsiot gave its population on October 9, 1991 as 5,897, composed of 466 administrative detainees, 4,640 sentenced prisoners and 791 awaiting trial, including both those not yet charged and those ordered held until the end of trial proceedings. These figures represent a decline from late March, when Ketsiot held over 7,000 inmates.

14. See Middle East Watch, *The Israeli Army and the Intifada: Policies that Contribute to Killings*, 1990.

15. The existence of undercover units, which have been active in quelling the intifada since 1988, was confirmed by the IDF in a June 21 broadcast on Israeli television. They have been accused of deliberately executing a number of wanted activists, as discussed below.

16. According to *Ha'Aretz* of December 21, 1990, the IDF judge advocate-general asserted that the sharpshooters were following the standing orders for opening fire, shooting only when there is a threat to human life or when a suspect disobeys orders to halt and tries to flee. (See FBIS, December 28, 1990.) Nevertheless, the deployment of sharpshooters with live ammunition appears to be a disproportionate use of force. A December 13, 1990 *New York Times* story said the army acknowledged that while there had been many injuries, not one Jewish driver had been killed as the result of a hurled stone since the Palestinian uprising began three years earlier. Joel Brinkley, "Israel Sends Snipers To Stop Car Stonings."

17. Al-Haq contended that soldiers often violated their written orders to shout a warning to halt and then fire a warning shot before opening fire at fleeing suspects. "The Illegal Use of Lethal Force against 'Fleeing Suspects,' " *Human Rights Focus*, May 1, 1991.

18. See al-Haq, *Nation under Siege*, 1990, pp. 60-67.

19. The inquest by Judge Kama was a vast improvement over the exculpatory report on the events issued October 26, 1990 by the government-appointed Zamir commission.

20. Section 22 of the Penal Law, 1977.

21. *The Interrogation of Palestinians during the Intifada: Ill-treatment, "Moderate Physical Pressure" or Torture?*, March 1991, p. 106.

22. *Israel and the Occupied Territories: The Military Justice System in the Occupied Territories: Detention, Interrogation and Trial Procedures*, July 1991, p. 45.

23. They are the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the UN Convention on the Rights of the Child.

24. Cited in B'Tselem, *Human Rights Violations in the Territories 1990–91*.

25. "The Convention stresses the exceptional character of measures of internment and assigned residence by making their application subject to strict conditions. . . . [O]nly absolute necessity, based on the requirements of state security, can justify recourse to these two measures, and only then if security cannot be safeguarded by other, less severe means. All considerations not on this basis are strictly excluded." *Commentary*, IV Geneva Convention, p. 258.

26. At one point, the IDF proposed to release Samhadana if he agreed to stay abroad for three years. He refused. ACRI's petition is pending.

27. By comparison, Northern Ireland's rate of 120 per 100,000 in 1989 made it one of the few places in Western Europe to exceed 100 per 100,000. The U.S. rate

that year was 426 per 100,000. Marc Mauer, "Americans behind Bars: A Comparison of International Rates of Incarceration," The Sentencing Project, Washington, D.C., 1991.

28. Many other houses were demolished not for security offenses but, rather, on the grounds that they had been built without the required permit. Such permits are inordinately difficult for Palestinians to obtain, especially when compared to the ease with which Jews are able to build or expand settlements in the West Bank. See B'Tselem, "Limitations on Building of Residences on the West Bank," August 1990, and Database Project on Palestinian Human Rights, "Israel's War by Bureaucracy," August 1988.

29. The four Gazans deported in January were accused of being active in the militant Islamic organization Hamas, which had called for lethal attacks against Israelis and had claimed responsibility for the fatal stabbing of three Israelis in Jaffa on December 14, 1990. The four deported in May were accused of being active in the mainstream PLO wing Fatah and, according to Defense Minister Moshe Arens, of stirring up the atmosphere "that leads in the end to murder." Thomas L. Friedman, "U.S. Condemns Deportations in Gaza," *The New York Times*, March 26, 1991.

30. Al-Haq reported in 1990 that seventy-five percent of applications that failed involved residents applying to be reunited with their spouses and/or children. Al-Haq, *The Right to Unite: The Family Reunification Question in the Palestinian Occupied Territories: Law and Practice*, 1990, p. 10.

31. The authoritative commentary to the Fourth Geneva Convention develops the concept of family rights, but stops short of affirming a family's right to live together: "Respect for family rights implies not only that family ties must be maintained, further that they must be restored should they have been broken as a result of wartime events." pp. 202-203. For more discussion of the relevant international law, including the right to leave and return to one's own country and the rights of the child, see al-Haq, "The Right to Unite," 1990, pp. 20-26.

32. *Al-Hamishmar*, September 16, 1991. The Israeli Consulate in New York told Middle East Watch on October 18, 1991 that between 35,000 and 40,000 West Bank and Gazan Palestinians returned home from the Gulf since August 1990.

33. Partial statistics are provided in B'Tselem, *Human Rights Violations in the Territories*, 1990/91.

34. Al-Haq press release, December 8, 1991; Clyde Haberman, "Israelis Restrict Movement of Palestinians at Night," *The New York Times*, December 16, 1991; and Jackson Diehl, "Israel Sets New Ban in West Bank, *The Washington Post*, December 16, 1991.

35. Paul Lewis, "P.L.O. Seeks to Sign Four U.N. Treaties on War," *The New York Times*, August 9, 1989.

36. See Human Rights Watch, *World Report 1990*, p. 477fn.

37. Further analysis of the *Country Reports* chapter can be found in critiques prepared by al-Haq and the Lawyers Committee for Human Rights.

38. This tentative language contrasts with the report's characterization of abuse in Morocco:

> The number of credible reports of torture and degrading treatment remains relatively high. . . . Torture and other forms of cruel treatment occur most often during incommunicado detention following initial arrest in order to extract confessions which are then used to convict the suspect. Methods of torture include beatings, sleep deprivation, keeping prisoners blindfolded and handcuffed for weeks on end (p. 1548).

39. While the available statistics are sometimes incomplete or inconsistent, the State Department could have given longer-term figures to suggest the magnitude of the problem. For example, on January 30, 1990, then-Defense Minister Yitzhak Rabin told the Knesset that Israel had granted 13,509 of 88,429 requests for reunification since 1967. (Sami Aboudi, "Israel Temporarily Halts West Bank Deportations," *The Washington Post*, February 1, 1990.) The International Committee of the Red Cross was reported in *The Washington Post* of January 30, 1990 (" 'Non-resident' Palestinians Forced Out") as saying that nine thousand of 140,000 requests had been granted between 1967 and 1987. Although current cumulative figures are not available, decisions since 1990 have not altered the basic practice of rejecting the vast majority of applications.

40. See Human Rights Watch, *World Report 1990*, p. 476.

41. Jackson Diehl, "1,000 Arab Prisoners Are Freed by Israel as Baker Visit Begins," *The Washington Post*, April 9, 1991.

42. David Hoffman and Jackson Diehl, "Baker Asks Israel for Peace Moves," *Washington Post*, March 13, 1991.

43. Jon D. Hull, "The Good Life in Gaza," *Time*, July 1, 1991; and Thomas L. Friedman, "Bush Presses Syria and Israel on Peace," *The New York Times*, July 2, 1991.

44. In delaying the $400 million in loan guarantees in 1990 the U.S. attached explicit conditions only to how that particular sum was to be used, not to Israel's settlement policy in general.