Introduction

WRITING AL-HAQ

This is a study of the origins of al-Haq, the first Palestinian human rights organization, and of the wider significance of the methodologies and approaches it instigated as it developed under Israeli occupation and into the early years of the Palestinian Authority. I was invited to write about al-Haq by Shawan Jabarin, who joined as a field-worker in 1987 and became general director of the organization in 2006. I worked intermittently with al-Haq from 1983 to 1993 in different capacities and, in common with many former staffers, have an enduring affection and respect for the organization and the people who worked there. For the record, I am hugely proud to have been a tiny part of it. The insider/outsider dynamics of this research affected the writing process somewhat, but I was not engaged in "participant observation" at al-Haq: I was working there, and those were different times. Thus, I step into this study in the first person very sparingly.

The book examines how al-Haq initiated, in areas of law and practice, lines of thinking and methodologies that were ahead of their time, and to which can be traced the origins of many foci of human rights work in Palestine and elsewhere today. It looks at the founders, the organization, its staffers ("al-Haqqers"), its work over its formative first decade, and its legacy. It considers the stresses placed on the young organization by developments under Israeli occupation including the first intifada, the Oslo process, and the arrival of the Palestinian Authority, and how such factors combined to force structural change in al-Haq in the 1990s and beyond. It is a study of some importance to the growing scholarship on the practice (and praxis) of local (as compared to international) human rights organizations and, incidentally, their impact on international groups. It is also a study of the origins of the Palestinian human rights movement and the increasing permeation of the law and rights discourse into the Palestinian public and political sphere. It is an account of Palestinian voices on their choice to work with international law

and human rights under occupation, despite the odds, and before human rights first became fashionable and then fell out of favor. This book examines the immediate times and places of al-Haq—that is, I do not present the longer history of Palestine or its people's struggles to stay on their land—and the West Bank (including East Jerusalem) is the main geographical focus, as it was al-Haq's.

In this study, I set the memories of those involved next to public and previously unpublished documents from the time, exploring how the organization formed, applied, and explained its founding principles, methodologies, and strategies. Al-Haq has been written about by its founders, by former staffers, and more recently by external researchers. It has also written about itself frequently; indeed, as a young organization, it engaged in a reflective practice that sought to explain itself to its friends and allies, to the local and the international communities with which it sought to engage. I have drawn on these sources as well as on documents from al-Haq's fading paper archives, the records of other organizations (the International Commission of Jurists [ICJ] and Amnesty International), and, from the personal archives of Nidal Taha (head of al-Haq's Board of Trustees), correspondence spanning the years 1977–80 to and from the ICJ in Geneva and a group of correspondents in the West Bank who became founders of Law in the Service of Man (LSM), as al-Haq was first known. I have also drawn on and been guided by my meetings, discussions, and interviews with a wide range of individuals—colleagues and friends—who worked at and with LSM/al-Haq in its formative period.[1]

The most prolific source of written record and reflection alike is cofounder Raja Shehadeh, several of whose publications are key to this study. His authoritative legal research and analytical works include the seminal *West Bank and the Rule of Law* (1980, with cofounder Jonathan Kuttab), which was al-Haq's first publication. It was critical to the fledgling organization's profile and development and indicative of its approach.[2] At the time he was assembling the material for this work, however, Shehadeh was also keeping a journal, extracts from which (from 1979–80) were published as *The Third Way* in 1982. They provide a vivid contemporary glimpse into life in the West Bank at the time when Shehadeh and friends were setting up LSM/al-Haq. Shehadeh has published three other sets of journal extracts since,[3] as well as a memoir (*Strangers in the House*, 2002), on which I draw for its reflections on establishing al-Haq. The book *Palestinian Walks*, which won the Orwell Prize in 2008, voices other memories and musings about the organization and its work that are the more poignant for being prompted by Shehadeh's walks in what the subtitle calls "a vanishing landscape," in a sense the epitome of what al-Haq was established to prevent. In addition, Shehadeh's recollections are presented in a number of journal articles and interviews. As well as reflecting the phases through which his own thinking has passed, these provide insights on the earlier times informed by perspectives developed and knowledge accrued over the decades.[4]

Al-Haq's first anniversary publication, *Twenty Years Defending Human Rights* (1999) includes an interview with Shehadeh as well as contributions from staffers and former staffers talking about campaigns, events, and projects such as the 1988 International Law conference. In 2005 al-Haq published *Waiting for Justice*, which doubled as a substantive annual report (along the lines of those issued in the first three years of the first intifada) and as an anniversary publication (*Al-Haq: 25 Years Defending Human Rights*). The report includes a retrospective about the organization and its work by Fateh Azzam, who joined in the late 1980s and who recalls with admirable brevity not only substantive work but some important organizational moments: for example, the time when the board resigned and the organization became staff-run, and the crisis of 1997 when the board sacked all but a handful of employees and al-Haq had to more or less start again. Azzam also summarizes the "very hot debates" over the killing of collaborators in the first intifada, and armed attacks against civilian targets inside Israel in the second.[5] In 2009, a distinctive, hard-backed anniversary publication (*Al-Haq: 30 Years Defending Human Rights*) includes testimonials from current and former staffers, the text of the first affidavit, a chronology of al-Haq's early years (based on its Newsletter), photos of events and awards, a list of all publications (except the *Know Your Rights* series), and what tries to be an exhaustive list of everyone who ever worked at the organization. This publication was produced under the directorship of Shawan Jabarin, whose "Detention Memoirs," smuggled out of prison and published in the organization's third annual report, *Protection Denied* (1991), illustrates what an al-Haq field-worker would consider of relevance to the organization at that time.

There are other documents, particularly from the 1980s, which help situate the young organization. A promotional brochure from 1983 endeavored to explain LSM's goals and activities to the public. This was followed by the Newsletter, published bimonthly in English and Arabic from May 1984 until the end of 1987, when the first intifada made it impossible to sustain. For three-and-a-half key years, the Newsletter diligently reported on activities, interventions, and developments in the legal environment. It also took the space to reflect on the organization's identity (hence, "Philosophy of LSM," "The Role of a Human Rights Organization under Occupation," and "Twenty Years of Occupation: A Time to Reflect").[6] Some of these pieces came out of collective discussions as the organization worked through persistent challenges in the 1980s. They are indicative of a fairly consistent pattern of institutional reflection, engaging management and workers across the organization. Those involved were more or less conscious of doing something new, something extraordinary, and explained themselves accordingly. Also from the 1980s, I draw on internal documents concerned with such issues as the establishment of a paid position as director, orientation/reorientation sessions for staffers, the methodology behind the database, and misplaced queries and interventions from external allies in the international human rights movement in whose education al-Haq invested considerable time and energy.

SCHOLARSHIP: AL-HAQ AND HUMAN RIGHTS

Al-Haq staffers also wrote about the organization. Joost Hiltermann published a number of pieces based on work he was doing with LSM/al-Haq in the 1980s, explaining in the *Twenty Years* anniversary publication that he was "forced to engage in extracurricular activities" such as writing these articles (and taking supplies to families whose homes had been demolished) by his frustration with the "infuriating but indispensable legalese of [al-Haq's] analysis."[7] A 1994 study of the organization by Mouin Rabbani is an informative and critical analysis, drawing on al-Haq publications and Rabbani's own experience in the turbulent years of the first intifada.[8] Two further examinations come from academic researchers who were not al-Haq staffers. The first study of the local human rights movement, and al-Haq's place in it, appeared in Lisa Hajjar's important 2001 article, which she opens by insisting that "to understand the history and politics of the human rights movement in [. . .] Israel/Palestine, it is necessary to highlight the politics of law."[9] Hajjar identifies LSM as playing the central role in the mid-1980s in the process of reframing in legal language issues previously considered as political. In her analysis, "this served to politicize law itself."[10] Later, in her compelling study of the Israeli military court system, Hajjar examined how "human rights provided new ways of thinking, talking about, and intervening in the conflict."[11] Her thinking about the work of human rights and law in reframing the political struggle underpins her finding that "framing resistance as demands for human rights [. . .] serves to internationalise local conflict"; this was key to the advocacy of LSM from its earliest years.[12] And the concept of human rights work as resistance was raised by a number of LSM/al-Haq colleagues interviewed for this current study. The debate on the impact of the recasting of "political" matters in legal/human rights language—specifically, whether this contributed to "taming" Palestinian resistance—is considered in chapter 4. But LSM/al-Haq's contribution to building the Palestinian case in law and human rights was enormous.

The second major examination of al-Haq comes in Lori Allen's anthropological study *The Rise and Fall of Human Rights: Cynicism and Politics in Occupied Palestine* (2013). Allen spent considerable time on field research observing different areas of work; her interest is in how, nowadays, human rights officials and professionals act "as if" human rights actually matters and works—that is, "acting as if the human rights industry could stop abuses outside of real political, structural change."[13] Through interviews with the founders and a number of staffers, she constructs a sensitive narrative of the early years of the organization, its practices and priorities. Indeed, it may begin to sound as if, over the decades, these narratives have settled into something of an official version. "It is true," says Tom Buchanan, explaining his interest in examining the origins of Amnesty International, "that organizations tend to develop versions of their past which serve their current needs and purposes."[14] In the narratives of al-Haq's origins there is no "one man's flash of inspiration,"[15] even if the pile of Israeli military orders awaiting scrutiny by

Shehadeh in his father's law office in 1977 is a compelling image. It is interesting how closely the narratives (sometimes grand narratives) are reflected in sources from the time. To be sure, some issues are more nuanced than usually presented: the role of non-Palestinian researchers at al-Haq, for example, needs unpacking. There are other stories that almost everyone knows (or knows bits of) but nobody wants to talk about—and that, I think, is a quality of discretion and compassion that is to be honored in the collective. But the focus on accuracy, evidence, building credibility, and documentation (Allen's "faith in evidence") does indeed reflect the impetus of the founders and the training and methodology of al-Haq workers, at a time when this was ground-breaking.

Allen notes that the dominant critiques of the "human rights industry" that interest her (inter alia, professionalization, NGO-ization and lack of accountability, legalization, subordination to foreign donor funding, and displacement of political activism proper) came after the early years when al-Haq was developing.[16] Nor indeed were the other criticisms of human rights that now preoccupy scholars so widespread during that period. As O'Connell observes, "it is now, in certain circles, in vogue to be 'against,' or to dismiss human rights."[17] Human rights was still relatively new as a discourse and as activism in the late 1970s and 1980s, and it was certainly unfamiliar in Palestine. Christine Bell traces a trajectory "from social movement outside academia, to praxis involving academics, to accepted status as a new (multi-disciplinary) field, to new established field to be critiqued." En route she feels that something is lost, perhaps, through "the academic crushing of law's possibilities for good as doomed to inevitable co-option in the quicksand of legalisation."[18] Philip Alston has paid tribute to the lessons provided by critical scholarship on human rights while observing that "critical scholars too need to take account of the 'unintended consequences' of a lot of the work that they do."[19] A key scholar in the debate, Makau Mutua, notes that he has been "othered" by "the human rights project" but that as a TWAIL thinker (Third World Approaches to International Law), he does not "seek to throw the baby out with the bath water" and neither does he find himself "vexed by the inherent contradiction" in the way he views human rights: "My project is to deconstruct, reconstruct, and build a world without hegemonies where conditions of underdevelopment—especially in the South, but also in the North—can be eradicated."[20]

For his part Fateh Azzam, who moved from al-Haq to human rights roles as funder, academic, UN representative, and consultant, has responded to critiques with a certain amount of exasperation.[21] Anthony Tirado Chase, as editor of the *Routledge Handbook on Human Rights and the Middle East and North Africa* (2017), argues that human rights are not in and of themselves a goal or an ideological world view:

> To the contrary, human rights are more about processes than ends—processes that can restrain state dominance, empower peoples and social groups, and advance individual and group agency. What is accomplished with that empowerment and agency

is not determined by human rights; it is determined by those who claim, use, and transform human rights.[22]

FRAMING THE WORK

Process is certainly a better description of the initial interest of al-Haq's founders in setting up the organization. All were (are) fundamentally practitioners looking for practical ways forward. The rule of law (not human rights) is the focus in their correspondence with the International Commission of Jurists in Geneva over the period 1977–79 examined in chapter 2. Like international law and human rights, the concept of the rule of law is the subject of critique, notably by law and colonialism scholars: "If the legal order is based on some originating violence, as it often is, the legitimacy of legal rules tends to be undermined."[23] Nevertheless, Chimni notes that "even critics of the positivist, formal and a-cultural conception of the rule of law concede its value. [. . .] A sanguine take on the rule of law is thus not in contradiction with the claim that law can legitimise a system of domination and exploitation." This last would appear to describe the approach of al-Haq's founders.

Many in the initial founding group were legal professionals operating in a West Bank environment where Israel as the occupying power had a clear monopoly on the idea of the "rule of law" and forcefully presented itself as the epitome of a rule-of-law state. "Indeed," as Hajjar observes, "it was Israel's enthusiasm for law and the ornate legalism of official discourse that catalysed and propelled the development of a local human rights movement, which served as the harbinger of legalistic resistance."[24] A flavor of what this meant at the international level can be read in the 1977 report of the London-based *Sunday Times* on Israel's torture of Palestinian detainees.[25] The *Sunday Times* team directed its five-month investigation at Israel, according to the paper's editorial, "because Israel occupies a special place in our world. Israel itself has always made justice, the rule of law and the fair treatment of Arabs central to its claim to nationhood."[26] The report writers underlined that Israel was "part of the West—and thus to be judged by Western standards," and that indeed this was "fundamental to Israel's ethos and to its claims for international support."[27] The editorial noted a "reticence" in "international bodies" and in the press (including the Israeli press) to report on allegations of human rights violations by Israel.[28] Concluding that "torture has become, on the evidence, an accepted Israeli practice," the INSIGHT team predicted that "some will reject our evidence as literally unthinkable [. . .] a paradox so distasteful as to demand better evidence than would be needed against other countries."[29]

Israel's constant pursuit of internal and external legitimation of its image and conduct was critical to the motivation and methodology of LSM/al-Haq's founders. In this ideological environment, the founders focused on the rule of law as articulated principally by the ICJ. This focus included human rights, but most importantly required a structural focus on cause (not only consequence) that

resonated with the founders' immediate concerns. As the decades have passed, frameworks other than belligerent occupation and rule of law have been proposed in response to Israel's developing policy and practice in the West Bank (including East Jerusalem) and Gaza Strip, then routinely referred to (inter alia by al-Haq) as the occupied territories.[30] Israeli scholar David Kretzmer has argued that Israel's rule (in view of the settlers and their treatment by the Israeli state) is "much closer to a colonial regime than one of belligerent occupation."[31]

The interdisciplinary frame of settler-colonialism is also applied, with its focus on the "elimination of the native" or the "erasure" of natives' presence by the settler-colonial power.[32] Sparked by a 2007 report from John Dugard, then UN Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967, the international legal framework of apartheid was the subject of a major international research project led by a South Africa–funded team and involving researchers from al-Haq.[33] As illustrated in the epilogue, it is now routinely invoked by al-Haq and other human rights NGOs to frame aspects of Israel's conduct and propose mechanisms of redress. It is easy to point to predictions of these frameworks in early al-Haq work. In 1985, Raja Shehadeh concluded, in regard to Israel's defense of its "land acquisition policy," that "thus, colonialism is to be formalized and made permanent in the guise of autonomy."[34] Al-Haq drew attention to the "massive Israeli colonisation effort that is underway in the Occupied Territories," obscured from outside view by the structure of military legislation, in its reflection on twenty years of occupation.[35] Both Shehadeh and Kuttab made public comparisons with South Africa's apartheid system in the early 1980s.[36]

These early invocations of legal frameworks other than occupation through which to assess and resist Israel's conduct resonated with the broader nationalist discourses of the Palestine Liberation Organization (PLO) alongside its alliances with the Non-Aligned Movement, Afro-Asian states, national liberation movements and post-colonial states, anti-apartheid struggle in South Africa and anti-colonial activism elsewhere, and the demands being made of the international system by "Third World" states and the Global South. In *Justice for Some* (2019), Noura Erakat "explores the role and the potential of law in the pursuit of Palestinian freedom" and applies Duncan Kennedy's concept of "legal work" ("the work that the legal actor performs to achieve a desired outcome") to survey achievements by the PLO and by Israel in shaping the law.[37] In a chapter titled "Pragmatic Revolutionaries," she reviews the "fundamental legal achievements" of the PLO during the 1970s, the period during which LSM's founders were completing their education and entering professional life, and which framed the discourses and expectations of the time.[38] In that sense, the founders of LSM (examined in chapter 3) were very much situated in time and place. They articulated ways in which they considered themselves nationalist, and their vision of LSM as part of the national struggle; in this regard, George Bisharat attributes such sentiments to lawyers in general:

> Both striking and working factions regard themselves as active participants, if not vanguards, in the struggle against Israeli power. This conviction is sometimes articulated frankly in nationalist terms, other times, more indirectly, through slogans concerning the defense and promotion of the general principles of the 'rule of law'.[39]

LSM/al-Haq field researchers also explained how they considered their human rights work to be part of the national struggle and a form of resistance. Shammas frames the work as struggle, while Shehadeh's non-LSM publications underpin Tripp's observation of *sumud* as a "recurrent theme in Palestinian resistance narratives."[40] But the founders deliberately distanced themselves from internal (factional) PLO politics in the occupied territories and the wider national movement. This was for professional reasons (the directive discussed in chapter 4 to "leave your politics at the door"), for organizational sustainability and personal security; but also as a result of personal disinterest and, it appears, a certain impatience with what they considered the limits of the prevailing nationalist discourse and tools. Insisting on not being affiliated with any particular tendency was novel at the time, and unsettling for some in Palestinian society. Instead, the founders proposed the rule of law as a framework for examining and resisting Israel's conduct as an occupying power; human rights, as shown in the correspondence examined in chapter 2, was a secondary discourse.

AL-HAQ CONTRIBUTIONS

Also in chapter 2, we see the innovative nature of LSM's organizational setup (as a not-for-profit company), designed to avoid, at least structurally, what Bisharat termed "over-control" on the part of the Israeli occupation authorities (control over funding by the designated Israeli army officer) and the various PLO factions (via partisan takeovers from a packed membership).[41] LSM's founders shared definite ideas about institutional governance that revolved around active participation and learning from staff, with the aim of growing together to build a "cadre of human rights activists," as Shehadeh put it. Chapter 4 examines how, once the organization outgrew its initial tight group of members and the need for change came, the organization's leadership reminded themselves that LSM/al-Haq was still to "serve as an institutional model to the community," inter alia with its all-staff general meeting remaining as "the highest decision-making body on programme-related matters." This model did not survive the turmoils of expansion and tensions of Oslo, although the underlying values are reaffirmed by some still in the field today. For LSM/al-Haq, seeking to set an institutional rule-of-law and participatory structure went alongside a declared commitment to attending to human rights issues in Palestinian society. This was manifested on the one hand in educational work about rights and legalistic resistance to the occupation, and the provision of the first public law library in the occupied territories; and on the other, in an early attention to an "internal" agenda including the rights of workers

and women within Palestinian society. The rule-of-law agenda here was extended to underpin individual and societal relations.

Human rights as a main reference for the founders developed alongside the ICJ's thinking on the right to development. In his introduction to the ICJ's 1966 publication *The Rule of Law and Human Rights: Principles and Definitions*, ICJ's then secretary-general Seán MacBride referred to the "new dynamic concept of the rule of law" developed through a series of meetings, congresses, and seminars in different parts of the world, mainly in the Global South. Jan Eckel considers initiatives at the UN in the 1970s by the Non-Aligned Movement and the Afro-Asia bloc of states to "frame their concern for economic development in human rights language" with the assertion of the right to development as a set of "human rights claims to expose the injustice of the post-colonial world order."[42] Here, LSM's founders can be seen to have been firmly in the corner of the Global South (and peers from "Third World" states and struggles), taking up the right to development in terms of collective as well as individual rights and attending to structure and causes of human rights violations (as discussed in chapter 5). In LSM's case, this was a consistent focus on the ways in which Israel was pursuing an annexationist agenda, itself unlawful, and which gave rise to other human rights violations against the civilian population when they manifested resistance to this agenda. The field research methodology developed by and with the fieldwork unit was groundbreaking, as was the way in which the organization sought to organize and retrieve the data it was collecting. LSM/al-Haq's lessons in field research methodologies and database development were drawn on by domestic and international human rights organizations around the world, and the organization was critical to the development of a number of other Palestinian human rights organizations in the occupied territories.

At the same time, as already noted, the concept of human rights was not familiar in the region; distrust of the human rights discourse was fueled by its selective deployment against the Soviet Union in the Cold War, and field researchers recruited in the early years recall initial concerns about serving a liberal Western agenda by joining LSM. LSM was among the first human rights organizations established in the Arab region, and although contact was limited during the early years, as shown in chapter 1, some of these concerns about the liberal discourse were shared with Arab peers. At the same time, the concept of human rights includes the right to self-determination, affirmed in both of the International Human Rights Covenants and discussed further in chapter 1. The founders of LSM refrained from attending to self-determination in any detail or calling for an end to the occupation as such. Others saw even in LSM's very early work the inevitable conclusion that occupation had to end, but the organization did not explicitly make that call at first; the correspondence with the International Commission of Jurists examined in chapter 2 demonstrates an extreme reluctance to be perceived as making any pronouncement that might be considered

"political." It was in its 1987 editorial on twenty years of occupation that al-Haq produced a sustained reflection on Israel's "systematic colonisation of the West Bank and Gaza."[43] "What first looked like a temporary military occupation," said al-Haq, "has been transformed into a long-term Israeli effort to colonise the Occupied Territories."

This 1987 piece reflected the thinking behind al-Haq's preparations for the first international law conference to be held in the occupied territories, which it convened in Jerusalem in January 1988 against the background, as it transpired, of the opening weeks of the first intifada. The impetus for this conference was a learning process—there were simply too many questions arising under international humanitarian law (IHL) from what was already then (at twenty years) being called a long-term or prolonged occupation. Al-Haq's plan was to invite experts in the field to help the organization think through some more obscure but absolutely vital implications of the laws of war for occupied territories under prolonged hostile military rule. For a still relatively young Palestinian NGO to engage in this way with a range of international scholars and practitioners was unusual, and there was a lasting impact from the collection of papers later published and contributing to the wider legal debate on the development of IHL.[44] The work of al-Haq's Enforcement Project arguably had an equally impactful effect in developing the thinking and debates on the implications for third-party states of their obligation "to ensure respect" for the Fourth Geneva Convention by the occupying power (evidenced in certain policy statements by European states) in the early nineties.

The innovative nature of this fledgling Palestinian organization and the creativity that sparked from the engagement of those involved meant that as well as setting standards for monitoring, investigating, documenting, and analyzing information on human rights violations in the West Bank, LSM/al-Haq was engaged in work that was to become a staple of human rights advocacy (Palestinian and international) in future decades. This included, for example, a call in 1984 for the question of Israel's Road Plan No. 50 to be referred to the International Court of Justice for an advisory opinion, and initial efforts, early in the first intifada, to document "grave breaches" of the Fourth Geneva Convention with a view to stimulating prosecutions under third states' domestic legislation.[45] Across the region, and indeed internationally, al-Haq is credited as an incubator for human rights activists, with many who worked there in its early years going on to hold senior and leadership human rights positions in Palestine, regionally and internationally.

LSM/al-Haq learned its trade in the moment of struggle that the West Bank and Gaza lived in the 1980s. Possibilities and challenges looked different. This study explores what that meant for those involved and for the organization. Interviewed for al-Haq's thirty-year anniversary, Raja Shehadeh reflected on the photos that had been assembled for the publication:

> For my generation of founding members these pictures bring memories of happy, hopeful and tense times when it was still not clear whether the organization would survive and succeed in fulfilling those aims for which it was established. It has. For those who live in these much crueller times without a memory of the past early years of the organization these pictures provide a window into a past when resilience and hard work defeated defeat and pessimism.

This study begins with those earlier times, before moving to al-Haq's present and "crueller" times, which includes the political and populist pillorying of the human rights and international law discourse on which the idea of LSM/al-Haq was based—indeed, before what currently appears to be a defeat for the realization of those principles through the systems apparently available to protect them. Erakat reminds us that "law's ability to oppress is evidence not of its failure but rather of the fact that it can be strategically deployed."[46] It was upon their understanding of this that LSM's founders acted, and in full knowledge of this that al-Haq continues its resistance today.