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PERSONNEL QUESTIONS

RESPECT FOR THE PRIVILEGES AND IMMUNITIES OF OFFICIALS
OF THE UNITED NATIONS AND SPECIALIZED AGENCIES AND
RELATED ORGANIZATIONS

UNRWA staff detained in Lebanon by the Israeli authorities

Report of the Secretary-General

1. By resolution 37/236 B of 21 December 1982 the General Assembly, after drawing attention to the unprecedented character of the mass arrest by the Israeli authorities in the territory of Lebanon of a great number of officials of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), called upon the Secretary-General to establish the whereabouts, find out the charges made and arrange a meeting with the detained officials, in order to obtain their earliest release and requested him to inform Member States promptly about the measures taken by him and their results.
2. As was indicated by the Secretary-General in his report to the thirty-seventh session of the General Assembly entitled "Respect for the privileges and immunities of officials of the United Nations and the specialized agencies and related organizations" (A/C.5/37/34), following the Israeli invasion into south Lebanon in June 1982, more than 200 cases of arrest of UNRWA staff members in Lebanon by the Israeli Defence Forces were reported. 1/ Sixty-eight staff members were still believed to in detention on 17 October 1983, 29 of whom have been reported arrested in 1983 (see annex). Repeated attempts have been made to obtain information regarding the detained staff, to secure access to them and to obtain their early release. The steps that have been taken in this regard are outlined below.
3. The Director, UNRWA West Bank Field Office, 2/ took up the matter with the Israeli Ministry of Foreign Affairs at a meeting on 19 July 1982 as soon as UNRWA received information about the detention of some members of its staff in Lebanon by

the Israeli Defence Forces (IDF). This was followed, at the direction of UNRWA headquarters, with a note on 24 July 1982 to the Ministry of Foreign Affairs forwarding a list of staff then known to have been arrested. Since then UNRWA has followed up periodically with the Israeli Ministry of Foreign Affairs as well as with the Israeli armed forces in Lebanon. Thus the Lebanon Field Office took the matter up with the local IDF command in meetings in August and September 1982, as well as in writing.

4. On 13 and 18 October 1982 the Director, UNRWA West Bank Field Office, contacted the Israeli Ministry of Foreign Affairs while the UNRWA Field Office in Lebanon continued its efforts with IDF there. On 13 December 1982, the Commissioner-General of UNRWA took the matter up with senior officials of the International Organizations Department of the Israeli Ministry of Foreign Affairs. This was followed by a letter of 29 December 1982 from the Director, UNRWA West Bank Field Office, to the Ministry.

5. On 4 January 1983, the UNRWA Field Director in Lebanon, at a meeting in south Lebanon with an Israeli minister and certain other senior Israeli officials pressed again for access to staff under detention, for their early release and for information on them. As this meeting also did not yield concrete results, the Acting Commissioner-General of UNRWA wrote to the Israeli Ministry of Foreign Affairs on 14 January 1983, followed by a letter from the Director, UNRWA West Bank Field Office, on 15 February 1983 updating information on UNRWA staff detained thus far and reiterating the earlier requests including again, in particular, the request that arrangements be made for the Agency to visit its staff under detention. A reply was received from the Ministry on 18 March 1983 to the Acting Commissioner-General's letter of 14 January.

6. This reply made the point inter alia that no distinction could be made between UNRWA employees and other detainees regarding visits. It was also stated that UNRWA staff detained in Ansar in south Lebanon by IDF were not detained for any activities related to their official capacities and that, therefore, no question of the infringement of their functional immunities should arise. The Commissioner-General wrote in reply on 28 March 1983 to the Ministry of Foreign Affairs, focusing on the right of UNRWA (a) to be informed of the arrest of any of its staff; (b) to be informed of the reasons for the arrest so that it might judge whether that arrest related to the official functions of the staff member concerned; and (c) to have access to detained staff. Since then the Agency has taken the matter up both in south Lebanon with officials of the Israeli Defence Force and in Israel, but without success.

7. On 3 May 1983 the Secretary-General wrote to the Permanent Representative of Israel to the United Nations drawing attention to the position of the United Nations under international law and to the terms of the General Assembly resolution 37/236 B and requesting inter alia that his representatives be given facilities to visit UNRWA staff detained in south Lebanon at an early date, to speak to them and to assist them in their legal representation. The Israeli Permanent Representative in New York replied on 13 June 1983 to the Secretary-General's letter. In substance, the Israeli authorities took the position that they had the right to decide unilaterally the question of what constitutes an official function of a

United Nations official and that, furthermore, the Government of Israel considered that the United Nations had no standing as regards proceedings taken against its own staff members.

8. The Secretary-General, in his reply of 28 June 1983 to the Israeli Permanent Representative, noted that the position taken by the Government of Israel was not in conformity with international law and practice. In that letter, the Secretary-General also referred to the recognized principle that it is exclusively for the Secretary-General, as the chief administrative officer of the Organization, to determine the extent of the duties and functions of the United Nations officials. Given the large number of countries in which the United Nations operates, the possibility of conflicting decisions by national authorities as to whether a given act was official or not would be tantamount to a denial of immunity. With regard to the question of standing, the Secretary-General pointed out that the position of the Israeli Government was contrary to the well established right, under international law, of functional protection of the Organization. It was recalled that the International Court of Justice had held that international organizations had the power and responsibility to protect members of their staff. The Secretary-General urged that the Israeli authorities be informed of his deepest concern at their failure to respond to the appeals of the General Assembly and himself and that the matter be reconsidered urgently. The position of the Government of Israel as referred to above was also conveyed to the Commissioner-General of UNRWA on 1 June 1983 (in reply to his letter of 28 March 1983) to which the Commissioner-General replied on 21 June 1983, again drawing attention to the United Nations position and requesting a positive response from the Government of Israel.

9. On 12 October 1983, the Permanent Representative of Israel replied to the Secretary-General's letter of 28 June 1983. After assuring the Secretary-General that the Government of Israel fully appreciated his concern for the well-being of UNRWA employees detained at the Ansar Camp, the Permanent Representative went on to state that:

"Israel has detained certain individuals in Lebanon on account of their involvement in hostile activities, either directly or as accessories, with a view to preventing their involvement in further hostile activities which would endanger the people of southern Lebanon as well as the citizens of Israel. Their detention has no connection whatsoever with their professional activities, but only with actions which violated their functions as officials of the United Nations. It is quite impracticable for the Government of Israel to attempt to differentiate between locally recruited personnel who performed their hostile actions outside the scope of their functions and other detainees. In neither case is there any immunity."

The Permanent Representative closed by stating:

"However, I am glad to be able to inform Your Excellency that, as part of the ongoing review of the situation in southern Lebanon, a number of detainees - including some UNRWA employees - will be released in addition to those who have already been released so far. Under prevailing circumstances this release cannot comprise all the persons in whom you have expressed

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interest, until their background and activities have been fully investigated. At the same time, as Your Excellency is certainly aware, all detainees are being visited on a regular basis by the representative of the International Committee of the Red Cross and are permitted to appeal their detention before an Administrative Appeals Board."

In his reply dated 25 October 1983, the Secretary-General welcomed the promise of the release of a further number of UNRWA officials and expressed the hope that it would take place without delay. He further drew the attention of the Permanent Representative to the points raised in the Secretary-General's letter of 28 June 1983 which had not been addressed by the Permanent Representative stating:

"My concern for the well being of UNRWA detainees comprises not only the conditions under which they are being detained but also the respect for a fundamental principle underlying the international civil service. As you are aware from the debates in the Fifth Committee of the General Assembly, the Organization's right of functional protection with regard to arrested and detained staff members has been strongly reaffirmed by the General Assembly in a number of resolutions, most notably resolution 36/232 of 18 December 1981. I would, therefore, once again refer to the contents of operative paragraph 1 of resolution 36/232 and reiterate my previous requests that the Organization's right of functional protection be observed by the authorities concerned."

10. In a related development, the Secretary-General has taken note of a judgement which was given on 13 July 1983 in the Supreme Court of Israel sitting as the High Court of Justice. The petitioners in this case, the inmates of the Ansar detention camp, had applied to the High Court of Justice for an order directing the respondents, the Minister of Defence and commander of the camp, to inform them of the legal basis of their detention and to show cause why they should not be permitted to see their lawyers. The court ruled that the respondents were entitled to arrest and detain the petitioners in territory occupied by the Israeli army and that the detainees were subject to the rules laid down in article 78 of the Fourth Geneva Convention. ^{3/} The court also recorded the respondents' undertaking that the petitioners would be entitled to meet their lawyers, subject to the necessary safeguards. ^{4/}

11. In the view of the Secretary-General, the proceedings in the Supreme Court of Israel, in so far as they address the right of access and legal representation of detainees under the rules of the Fourth Geneva Convention, supplement and reinforce the United Nations position which is based on the right of functional protection. The Secretary-General notes, in particular, that Counsel for the respondents informed the court that respondents had decided in principle to permit visits and were considering the practical arrangements to be made for that purpose.

12. Taking into consideration all of the measures set out above and the observations and judgement of the Supreme Court of Israel, the Secretary-General can only reiterate his request that the continued detention of UNRWA staff be urgently reconsidered by the Government of Israel and that the Organization's right of functional protection be recognized. The Secretary-General will continue to

monitor the release of the UNRWA detainees by the Israeli authorities and, in view of the recent assurance given by the Permanent Representative, will provide to the General Assembly an updated list of UNRWA detainees taking into account any actions taken since 30 June 1983.

Notes

1/ The total number of UNRWA area staff posts in Lebanon on 1 April 1983 is 2,391 [Joint Inspection Unit, Report on UNRWA, (A/38/143) 1 August 1983, para. 118].

2/ The designations of UNRWA offices used in this report follow the UNRWA organizational chart (see document A/38/143, annex).

3/ Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949. Article 78 provides as follows:

"If the Occupying Power considers it necessary, for imperative reasons of security, to take safety measures concerning protected persons, it may, at the most, subject them to assigned residence or to internment.

"Decisions regarding such assigned residence or internment shall be made according to a regular procedure to be prescribed by the Occupying Power in accordance with the provisions of the present Convention. This procedure shall include the right of appeal for the parties concerned. Appeals should be decided with the least possible delay. In the event of the decision being upheld, it shall be subject to periodical review, if possible every six months, by a competent body set up by the said Power.

"Protected persons made subject to assigned residence and thus required to leave their homes shall enjoy the full benefit of Article 39 of the present Convention."

4/ This judgement was reported in The Jerusalem Post of 21 August 1983.

Annex

UNRWA STAFF UNDERSTOOD TO BE ARRESTED AND DETAINED
IN LEBANON BY THE ISRAELI ARMED FORCES

As at 17 October 1983

	Name	Employee number	Post title	Date report received of arrest
01.	ZAMZAM (008) Suleiman Mustafa	A-2175-S	Head teacher	20 Jun 82
02.	MUSA (009) Khalil Mohd	A-3115-K	Teacher	20 Jun 82
03.	ABU JAMOUS (011) Ali Mohammed	A-2842-B	Teacher	30 Jun 82
04.	MAYYALI (012) Samih Mahmoud	A-2845-M	Teacher	30 Jun 82
05.	HUSEIN (016) Khalil Asa'd	A-3113-N	Teacher	30 Jun 82
06.	SALEM (017) Mund Husein	A-3736-M	Driver	30 Jun 82
07.	ABU ALLUL (021) Hani Houran	A-3319-E	Teacher	30 Jun 82
08.	SHABAYTA (023) Nabil Jamil	A-2383-V	Technical instructor	30 Jun 82
09.	ISMAIL (025) Abed Ismail	A-3368-N	Trades instructor	17 Jul 82
10.	OTHMAN (028) Naim Mohammad	A-3318-J	Teacher	13 Jul 82
11.	AL NASR (029) Ahmad Said	A-3504-K	Teacher	13 Jul 82
12.	ZEIDAN (031) Mahmoud Tewfic	A-6044-N	Doorkeeper	13 Jul 82
13.	HAJEER (039) Abdel Karim Mohd	A-2778-M	Technical instructor	17 Jul 82

	Name	Employee number	Post title	Date report received of arrest
14.	HAJIR (050) Hussein Massad	A-2495-V	Teacher	13 Jul 82
15.	ABU HEIJA (060) Dr. Hussein Mohd.	A-3813-S	Medical officer	13 Jul 82
16.	AYOUB (062) Mohammed Salem	A-2685-J	Teacher	30 Jun 82
17.	ZAKARIA (069) Mahd Mohammad	A-2236-N	Teacher	26 Jun 82
18.	ZAKARIA (070) Omar Hassan	A-2270-N	Teacher	26 Jun 82
19.	JOHAR (072) Hassan Mohammad	A-1180-F	Teacher	26 Jun 82
20.	AYYOUB (075) Khaled Mohd.	A-6119-F	School attendant	26 Jun 82
21.	KAWWASH (081) Khalid Mustafa	A-2689-K	Instructor	26 Jun 82
22.	FLEIFEL (082) Ahmed Ibrahim	A-6536-R	Doorkeeper/cleaner	26 Jun 82
23.	EL ALI (083) Yusef Ismail	A-6542-F	Doorkeeper	26 Jun 82
24.	SHREIDI (087) Ahmed Said	A-1944-N	Teacher	26 Jun 82
25.	HAMADEH (099) Daoud Qasim	A-3488-R	Teacher	31 Jul 82
26.	AL MIARI (102) Saad Atwa	A-3341-V	Teacher	28 Jun 82
27.	EL ALI (106) Ahmad Saleh	A-2494-N	Teacher	23 Jun 82
28.	AL KUZLI (110) Mahmoud Musa	A-2837-K	Teacher	23 Jun 82

	Name	Employee number	Post title	Date report received of arrest
29.	ABU JAMOUS (116) Jamal Mohd. Ali	A-2635-M	Teacher	24 Jun 82
30.	KHATTAB (118) Taha Ahmad	A-2630-K	Teacher	25 Jun 82
31.	YASSIN (122) Yassin Abdullah	A-1379-N	Teacher	25 Jun 82
32.	ZEIDANI (125) Mohd. Abdulmagid	A-6411-H	Kitchen worker	20 Jun 82
33.	ATTIEH (133) Ahmad Yusef	A-2757-S	Teacher	15 Aug 82
34.	QASIM (152) Mahmoud Ali	A-3397-J	Teacher	09 Sep 82
35.	KASWANI (157) Abdul Karim Saleh	A-1903-B	Instructor	05 Oct 82
36.	AISHEH (158) Nazih Muhammad	A-3693-N	Teacher	04 Oct 82
37.	KHALAF (161) Suleiman Hassan	A-3693-N	Teacher	16 Nov 82
38.	SHEHADEH (162) Ibrahim Fares	A-2854-K	Teacher	20 Nov 82
39.	ABU SALEM (164) Abla	A-1130-H	Head teacher	(3rd arrest) 13 Dec 82
40.	JAMAL (165) Mustafa Ali	A-6294-H	Doorkeeper	15 Feb 83
41.	SHABAYTA (166) Muin Said	A-1859-E	Teacher	15 Feb 83
42.	EL SALEH (167) A/Latif Shehadeh	A-2174-K	Teacher	15 Feb 83
43.	KAWAH (168) Jawdat As'ad	A-3281-R	Teacher	11 Feb 83

Name	Employee number	Post title	Date report received of arrest
44. ZEIDAN (172) Mahmoud Hassan	A-2654-J	Teacher	24 Feb 83
45. AL NASR (173) Ibrahim Mahmoud	A-3795-B	School attendant	24 Feb 83
46. HAMADEH (175) Ali Qasim	A-3565-V	Teacher	24 Feb 83
47. HIJAZI (176) Nazmi Ahmad	A-3650-K	Teacher	24 Feb 83
48. DIAB (178) Naser Hassan	A-3087-M	Teacher	24 Feb 83
49. AL DAHER (179) Diab Fahed	A-6586-M	Guard	24 Feb 83
50. YUSEF (180) Osama A/Qader	A-3610-M	Labourer	24 Feb 83
51. BARAKAT (181) Muhammad Husein	A-3814-B	Lab. technician	24 Feb 83
52. MAROUF (182) Mounir Mahmoud	A-2909-M	Teacher	24 Feb 83
53. AL MAHMOUD (183) Ibrahim Nayef	A-2813-H	Teacher	24 Feb 83
54. EL FAOUR (184) Ibrahim Ahmad	A-2768-N	Teacher	24 Feb 83
55. AL JARAD (185) Othman Hamad	A-2798-E	Teacher	24 Feb 83
56. LEMHAMMAD (187) Ismail Suleiman	A-2331-F	Teacher	24 Feb 83
57. ISMAIL (188) Fayez Ismail	A-6558-E	Doorkeeper	24 Feb 83
58. KHATIB (189) Ahmad Ali	A-6399-K	Sanitation labourer	24 Feb 83

Name	Employee number	Post title	Date report received of arrest
59. EL TAYE (190) Nimor Hussein	A-2172-N	Teacher	24 Feb 83
60. AL MOUED (192) Mahmoud A/Qader	A-2840-K	Teacher	20 May 83
61. DOWAH (193) Daher Saleh	A-3354-N	Trade instructor	01 Jun 83
62. ZEITER (196) Fakhri Khaled	A-2405-B	Teacher	07 Jun 83
63. MAHMOUD (198) Kahlil Mahmoud	A-6414-J	School attendant	07 Jun 83
64. WAHID (199) Hasan Khalil	A-2470-B	Health centre clerk	09 Jun 83
65. BDEIWI (200) Saleh Husein	(Casual)	Kitchen worker	28 Jun 83
66. AL SAADI (201) Said Shehadeh	A-3638-M	Guard	(2nd arrest) 10 Sep 83
67. BALATA (202) Muhammad Hassan	A-6537-H	Kitchen worker	(2nd arrest) 24 Sep 83
68. MUSTAFA (203) Muhammad Diab (and son Diab, 14)	A-6588-J	School attendant	26 Sep 83
