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A THOUSAND AND ONE HOMES:

ISRAEL'S DEMOLITION AND SEALING OF HOUSES IN THE OCCUPIED PALESTINIAN TERRITORIES

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SOME OF AL-HAQ'S PUBLICATIONS

Protection Denied: Continuing Israeli Human Rights Violations in the Occupied Palestinian Territories. 1990 (Al-Haq, 1991) 213 pages. $4

A Nation Under Siege: Al-Haq Annual Report on Human Rights in the Occupied Palestinian Territories, 1989 (Al-Haq, 1990) 672 pages. $6

Punishing A Nation: Human Rights Violations During the Palestinian Uprising, December 1987-December 1988 (Al-Haq, 1989) 335 pages. Also available from South End Press, 116 St. Botolph Street, Boston, MA 02115, USA. $4

International Law and the Administration of Occupied Territories: Two Decades of Israeli Occupation of the West Bank and Gaza Strip, proceedings of a conference organized by al-Haq, edited by Emma Playfair (Clarendon Press: Oxford,1992) 534 pages.

Occupier's Law: Israel and the West Bank, prepared for al-Haq by Raja Shehadeh. Revised Edition. Institute of Palestine Studies, 1988, 259 pages. $10. Arabic also available from Palestine Yearbook, Box 4247, Cyprus. $4

Perpetual Emergency: A Legal Analysis of Israel's Use of the British Defence (Emergency) Regulations, 1945, in the Occupied Territories, by Martha Moffett, Occasional Paper No. 6, 1989, 92 pages. $2

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PREFACE

In 1992, al-Haq launched an international campaign to stop the destruction of Palestinian homes. The campaign had three immediate aims:

1. To secure a halt, in accordance with the requirements of international law, to the demolition and sealing of Palestinian homes on so-called "security" grounds by the Israeli occupation authorities;
2. To obtain full compensation for all those who have been affected by this policy;
3. To obtain permission for all those whose homes have been demolished or sealed under this policy to rebuild on the same site or to have their homes unsealed.

Al-Haq's campaign was conceived as a response to the massive increase in the number of houses demolished and sealed by the Israeli authorities in the Occupied Palestinian Territories since the beginning of the uprising in December 1987. In preparation for its campaign, al-Haq set out to document, as exhaustively as possible, cases of the demolition or sealing of buildings for "security" reasons over the 11-year period beginning 1 January 1981 and ending 31 December 1991. The statistics given in this study are all based on this information, unless an alternative reference is given. Of the 1001 cases arising from 1981-1991 and documented in preparation for the campaign, 786 occurred in the first four years of the uprising. Despite vigorous condemnation of this policy as a serious violation of international law in the international community, the Israeli military authorities continue to issue demolition and sealing orders, and Israel's highest court, the Supreme Court, sitting as the High Court of Justice, continues to rule that the policy is legal. The severe trauma and enormous financial consequences inflicted on the large numbers of Palestinian families affected by this particular human rights violation lead al-Haq to consider that particular attention should be focused, at this particular time, on realizing the aims

stated above.

Al-Haq has examined the Israeli policy of punitive house demolition and sealing for "security" reasons in a number of its past publications. In 1987, the organization published a study by Emma Playfair entitled *Demolition and Sealing of Houses as a Punitive Measure in the Israeli-Occupied West Bank*. The al-Haq annual reports on human rights violations in the Occupied Palestinian Territories during the first three years of the uprising (*Punishing a Nation*, covering the period December 1987-December 1988, *A Nation Under Siege*, covering 1989, and *Protection Denied*, covering 1990), included detailed consideration of developments in the policy and its implementation over those periods. Israel's use of the Defence (Emergency) Regulations, 1945, in the Occupied Palestinian Territories has also been examined in detail in Martha Moffett's *Perpetual Emergency*, published by al-Haq in 1989. The reader is referred to those sources for further information on a number of points raised in this paper.

The current study aims to collate and update (for the purpose of the international campaign), al-Haq's previously published work on the subject, and to set in context the results of the extensive fieldwork carried out by al-Haq (in preparation for the campaign). The study also includes previously unpublished case studies selected to illustrate particular aspects of Israel's house demolition and sealing policy. It is hoped that the study will help individuals and organizations participating in the campaign.

A. CONTEXT

1. Introduction

> **[U]nparallelled in any civilized country ... the defense regulations passed by the government in Palestine destroy the very foundations of justice in this land."[1]**

These were the words used in 1946 by Dr. Yaacov Shapiro, later to become Israeli Minister of Justice, to describe the Defence (Emergency) Regulations issued by the British Mandate authorities in Palestine the previous year. In the 1990s, the Israeli military authorities, under policy set by the Israeli government and upheld by the High Court of Justice, continue to use these same regulations when they demolish or seal the homes of Palestinians suspected of committing acts defined as "security offenses" against the 26-year-old Israeli occupation of the West Bank and Gaza Strip.

On 28 November 1988, soldiers entered a village near Bethlehem and imposed a curfew. They then informed the Salah family, whose son Khaled had been detained 13 days previously, that it had one hour to remove its belongings from the house. Although the family was unable to remove all of its possessions in time, the soldiers demolished the two-storey home with dynamite. The sixteen family members sought shelter in tents and with relatives and friends. At the time, Khaled was still under interrogation and had not been convicted of any crime. Later, he was sentenced to eight years' imprisonment (of which five years were suspended) for throwing Molotov cocktails.[2]

House demolitions and sealings for "security" reasons have been carried out by the Israeli authorities throughout the occupation, with varying levels of intensity. Over the period 1981-1991 for which al-Haq has obtained detailed information, Israel's policy affected 1001 buildings, 215 in the first seven years documented and 786 in the first four full years of the Palestinian uprising (1988-91).[3] At least 9299 people living in these buildings

were affected by the measures taken against their homes, which ranged from the total demolition or sealing of the structure to partial demolition or partial sealing. Demolition and sealing orders are imposed by written order on the decision of the Area Military Commander as an extra-judicial punishment; although in most cases (942) documented by al-Haq the order was imposed on the basis of alleged acts by an individual suspect resident in the house, in only 98 cases had this person been convicted of the alleged offense. In the remainder, the suspect on the basis of whose alleged acts the order was imposed was either awaiting trial at the time of the demolition or sealing or was still under interrogation. In some cases, this person was either already dead or had not even been arrested. In a number of other cases, there was no suggestion that a person suspected of a "security" offense resided in the house but rather that an offense had been committed from or in the vicinity of the house. During the uprising, demolition and sealing orders have been implemented on the basis of allegations of, for example, the throwing of stones or Molotov cocktails without any resultant injury.

Orders for house demolition or sealing are imposed *in addition* to any sentence that a military court may later pass on the person accused. The order constitutes an additional punitive measure that most immediately affects the family of the suspect; over the period 1981-1991, in only 8% of the cases documented by al-Haq was the suspect the owner of the house, while in the remainder of the cases the building was owned by relatives of varying degrees and in 78 cases (8%) by persons of no relation at all. Over 9000 people were affected, as residents of these buildings. Demolition and sealing orders are, in short, a severe form of collective punishment imposed extra-judicially and in absolute disregard of the requirements of international law.

Al-Haq's consideration of the legal arguments used by the Israeli authorities to justify their policy is based on the applicable provisions of international law governing the conduct of Israel as an Occupying Power in the Occupied Palestinian Territories. The following section is intended as a general introduction to international humanitarian law as it applies to Israel's occupation

of the West Bank and Gaza Strip.

2. International Humanitarian Law and the Israeli Occupation

The major instruments of international humanitarian law governing Israel's occupation of the Palestinian territories are the Regulations appended to the Fourth Hague Convention of 1907 (hereinafter, the Hague Regulations), and the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 1949 (hereinafter, the Fourth Geneva Convention). The Hague Regulations form part of customary international law binding on all states and Israel has acknowledged their applicability to the Occupied Palestinian Territories, with the exception of East Jerusalem. Israel is furthermore a contracting party to the Fourth Geneva Convention, along with the majority of states in the international community. As its title suggests, the Convention was drawn up to protect civilian persons during times of war or belligerent occupation, just as, in the other Geneva Conventions, the categories of prisoners of war and other persons placed *hors de combat* are protected.[4] The Fourth Geneva Convention lays down absolute prohibitions on certain forms of conduct by an Occupying Power in order to protect, for the duration of military occupation, the fundamental human rights of the civilian population temporarily under its control. Among the practices outlawed are all forms of collective punishment, the deportation of protected persons, torture, willful killing, and the wanton and unlawful destruction of property. The international community of states, as Israel's co-party to the Convention, as well as the International Committee of the Red Cross (ICRC), hold Israel to be legally bound to apply the provisions of the Fourth Geneva Convention as a matter of law to the Occupied Palestinian Territories.[5] At the very beginning of the occupation, Israel appeared inclined to agree, but by October 1967 the Area Military Commander had repealed a previous reference to the Convention contained in a military order; since then Israel has formally refused to acknowledge the applicability of the Convention to the territories it has occupied since 1967.[6]

The arguments relied on by Israel in its refusal to be bound by the Convention in the Occupied Palestinian Territories have been expounded at length.[7] In brief, and on what Professor Yoram Dinstein called "dubious legal grounds,"[8] Israel has argued that because Jordan and Egypt, the former rulers of the territories, were never recognized as legitimate sovereigns over the land in question, the Convention cannot apply as a matter of law as it would to the sovereign territory of another state occupied by Israel; however, it should be noted that Israel also refuses to apply the Convention to the Golan Heights, part of Syrian sovereign territory also taken in the 1967 war and annexed by Israel. Professor Theodor Meron observes with regard to Israel's approach:

> It seems that in formulating its positions with regard to the Fourth Geneva Convention, the Government of Israel has been excessively concerned with the implications of the application of the Convention on the legal status of the occupied territories.[9]

The arguments made by Israel against the applicability of the Convention have been rejected by the majority of jurists and Israel's co-parties to the Convention; the ICRC holds the Convention to apply. The Convention is widely seen as being "concerned primarily with people, rather than territory; with human rights, rather than with legal questions pertaining to territorial status."[10] In the authoritative *ICRC Commentary to the Fourth Geneva Convention*, the following extract comments on the past action of states using the claimed absence of a sovereign state as an excuse not to apply humanitarian law:

> [T]he temporary disappearance of sovereign states as a result of annexation or capitulation, has been put forward as a pretext for not observing one or other of the humanitarian Conventions. It was necessary to find a remedy for this state of affairs, and the change which had taken place in the whole

> conception of such Conventions pointed the same way. They are coming to be regarded less and less as contracts concluded on a basis of reciprocity in the national interests of the parties and more and more as a solemn affirmation of principles respected for their own sake.[11]

The United Nations General Assembly and Security Council, as well as individual states, have repeatedly affirmed that the Convention applies to all the territories occupied by Israel since 1967, and have called on Israel accordingly to comply with its provisions.[12] Successive Israeli governments since 1967, however, have maintained that the Convention does not apply, although Israel claims to respect on a *de facto* basis what government spokespersons describe as the "humanitarian" provisions of the Convention. Similarly, the official Israeli position is that the Occupied Palestinian Territories are "administered" rather than "occupied" by Israel - with the exception of East Jerusalem, which Israel has illegally annexed.[13]

Israel has never clarified what it means by the "humanitarian" provisions of the Fourth Geneva Convention. The range of violations of the Convention committed by the Israeli occupation authorities over the past quarter of a century (including *inter alia* willful killing and torture, deportation, and various forms of collective punishment, all absolutely prohibited by the Convention) begs the question as to what the Israeli authorities consider to be "humanitarian." Furthermore, the Convention, a major part of international humanitarian law since 1949, is humanitarian in its entirety and admits of no derogation from specific provisions; an approach that denies obligations under this law, and purports to "pick and choose" between its provisions can only damage the integrity of the law itself, as well as surrender to the whim of the Occupying Power the very people that the Convention was drawn up to protect. As Professor Adam Roberts observes:

> [T]he hint of *ex gratia* about Israel's application of the Convention could be considered as carrying an implication that it might unilaterally interpret, or eventually abrogate, its terms.[14]

Israel's refusal to be bound by the Convention in accordance with its obligations as a High Contracting Party, and its suggestion that some of the provisions of the Convention are non-humanitarian, have not been accepted by the international community. Nevertheless, Israel's co-parties to the Convention have not succeeded in obliging Israel to abide by its obligations, nor have they succeeded in restraining the Israeli authorities from pursuing a political agenda in the Occupied Palestinian Territories that is explicitly annexationist. This agenda is most obvious in Israel's annexation of East Jerusalem and its extensive policy of land expropriation and the settlement of Israeli nationals on confiscated land in the territories. In pursuit of this agenda, successive Israeli governments have ordered and endorsed the use of severe and illegal measures of control to confront resistance to the occupation from the Palestinian population. It is in this context that the policy of house demolition and sealing must be seen. The sealing and demolition of houses as a punitive measure holds enormous financial and social implications for affected families; it is used both as a crushing reprisal for specific acts of hostility to Israel's political agenda in the Occupied Palestinian Territories, and as a form of intimidation against the population as a whole.

Israel's policy of the demolition and sealing of Palestinian houses has been widely and consistently condemned in the international arena. Just nine months into the occupation, on 8 March 1968, the United Nations Commission on Human Rights sent a telegram "calling upon the Government of Israel to desist forthwith from acts of destroying homes of the Arab civilian population in areas occupied by Israel."[15] The Commission has since regularly condemned the policy.[16] Frequent resolutions in the United Nations General Assembly have strongly condemned Israel's demolition and sealing policy.[17] The United Nations Relief and Works Agency for Palestine Refugees in the Near East

(UNRWA), which administers the refugee camps in the Occupied Palestinian Territories and in neighboring Arab states, has seen refugee shelters in the camps sealed and destroyed under Israel's policy, and has protested strongly to the Israeli authorities against "such collective punitive action," requesting that full compensation be paid for the damage inflicted on the homes.[18] The ICRC considers house demolition and sealing as a punitive measure to be in violation of the Fourth Geneva Convention and reports seeking from the Israeli authorities either the reconstruction of the affected buildings or payment of compensation.[19]

The general outrage at Israel's punitive house demolition and sealing policy can be seen to arise both from humanitarian and legal bases: the fact that the measure has such severe impact on families in the Occupied Palestinian Territories, and the fact that it so clearly contradicts the applicable provisions of international law. Al-Haq's position on the illegality of the policy can be summarized as follows:

- The Defence (Emergency) Regulations no longer constitute valid law, the British government having revoked the Regulations on the eve of their departure from Palestine in May 1948. The Regulations were artificially revived by the Israeli authorities in 1967;

- Destruction of property in occupied territories is forbidden under Article 53 of the Fourth Geneva Convention unless "rendered absolutely necessary by military operations," which exception does not apply to Israel's house demolition and sealing policy;

- House demolitions and sealings constitute collective punishment, in violation of Article 50 of the Hague Regulations and of Article 33 of the Fourth Geneva Convention;

- House demolitions and sealings constitute extra-judicial punishment in violation of Article 10 of the Universal Declaration of Human Rights; and

- The policy of house demolition and sealing constitutes a grave breach of the Fourth Geneva Convention, the equivalent of a war crime under customary international law. Those affected by the policy have the right to claim full compensation from the Israeli authorities.

The following section of this study will consider these points in turn.

B. LEGAL ARGUMENTS

1. Israel's Use of the Defence Regulations, 1945, in the Occupied Territories

The Israeli authorities claim the authority for punitive house demolition and sealing for "security" offenses on the basis of Regulation 119 of the Defence (Emergency) Regulations issued by the British Mandate authorities in Palestine in 1945. Regulation 119 appears to have been modelled closely on the martial law regulations used by the British in Ireland in the early 1920s which allowed for the dynamiting or burning of houses as an "official reprisal."[20] Regulation 119(1) reads as follows:

> A Military Commander may by order direct the forfeiture to the Government of Palestine of any house, structure or land from which he has reason to suspect that any firearm has been illegally discharged, or any bomb, grenade or explosive or incendiary article illegally thrown, or of any house, structure or land situated in any area, town, village, quarter or street the inhabitants or some of the inhabitants of which he is satisfied have committed or attempted to commit, or abetted the commission of, any offence against these regulations involving violence or intimidation or any Military Court offence; and when any house, structure or land is forfeited as aforesaid, the Military Commander may destroy the house or structure or anything growing on the land.

Under the terms of this text, the Military Commander had only to "suspect" or "be satisfied" that either the structure had been in an area connected with an offense, or some of its inhabitants had been in any way involved in the commission of an offence, for him to order the confiscation of the property and destruction of the building. Other extra-judicial measures and

punishments provided for by the British in the Defence Regulations included the deportation of citizens of Palestine, the imposition of curfews and town arrest orders, administrative detention, and censorship, all without referral to any form of judicial process. The Regulations were enacted "at his unfettered discretion" by the British High Commissioner of Palestine as empowered by the King of England.[21] The 1945 Regulations and the earlier emergency laws which they revised were issued for "the maintenance of public order and the suppression of mutiny, rebellion and riot" and were used against both Arabs and Jews in Mandatory Palestine.[22] The 1945 Regulations were vigorously condemned by members of the Jewish community in Palestine at the time.

In May 1948, two days before the end of the British Mandate in Palestine, the Defence (Emergency) Regulations were explicitly revoked by virtue of the Palestine (Revocations) Order in Council, 1948.[23] In 1949, Israel participated in the discussions on the final text of the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, which explicitly prohibits the use by an Occupying Power of various of the measures provided for by the 1945 Defence (Emergency) Regulations. Israel signed the Convention on 8 December 1949 and ratified it on 6 July 1951. In 1967, the Israeli occupation authorities revived the British Defence (Emergency) Regulations for use against the Palestinian population of the Occupied West Bank and Gaza Strip.[24] In its 1989 study, al-Haq identified as follows the arguments used by Israel to justify its use of the Defence (Emergency) Regulations in the West Bank and Gaza Strip:

> First, Israel asserts that the British Defence Regulations were never explicitly revoked and thus remain part of the local law of the West Bank. Second, Israel contends that international law allows and even requires a military occupant to continue to apply the local law of the occupied territory. Third, Israel asserts that the measures it carries out under the authority of the British Defence

> Regulations, including deportation and house demolitions, do not in fact violate relevant international law norms.[25]

The first two arguments identified above depend directly upon Israel's claim that the Defence (Emergency) Regulations of 1945 remain in force, and as such will be dealt with briefly here. The third argument is considered in the remainder of this section.

Israel disputes the British revocation of the Defence Regulations on the basis that the revocation was not published in the *Palestine Gazette*, although at the time this was not a requirement for Acts or Orders enacted by the British monarch (such as the Revocation Order).[26] The Israeli High Court of Justice has further ruled, on the basis of Interpretation Order No. 224 of 1968, issued by the Israeli Military Commander in the West Bank, that the implicit revocation of the Regulations by the Jordanian authorities in the area in May 1948 was not valid because it was other than explicit.[27]

For their part, the Jordanian authorities have made it very clear that they consider the British Defence (Emergency) Regulations to have been implicitly repealed by a Proclamation issued in May 1948 by the Jordanian Military Commander and that the Regulations were not implemented during Jordanian rule of the West Bank.[28] The British too have been very explicit about their revocation of the Regulations in May 1948. On 22 December 1988, addressing the House of Commons in London, Foreign Office Minister William Waldegrave declared himself to be:

> irritated by the way in which the Israelis say that punishments such as deportations are based on British law. The Mandate territory Regulations under which such punishments were carried out were repealed long ago and are not part of British law.[29]

Lord Glenarthur, Foreign Office Minister in the House of Lords, was even more specific:

> Israeli apologists sometimes argue that these punishments are provided for in regulations surviving from the British Mandate. Let me take this opportunity to make clear ... that such is not the view of Her Majesty's Government. As a result of the Palestinian (Revocations) Order in Council 1948, the Palestine Defence Order in Council 1937, and the defence regulations made under it, have not been in force, as a matter of English law, since the making of the 1948 revocation order. If the Israelis now seek to apply the same or similar regulations, that is their decision for which they must take responsibility.[30]

The issue of "taking responsibility" is indeed raised by Israel's arguments in response to criticism of its use of the Defence (Emergency) Regulations. In Israel itself, the Regulations were considered to be valid despite their revocation by the British, and they were not repealed by the Israeli government. They were used against the Palestinian Arab population of the new state of Israel and, less frequently, against Israeli dissidents.[31] In 1971, Ya'acov Shapiro, then Israeli Minister of Justice, whose opinion in 1946 of these Regulations was quoted at the beginning of this study, was asked why Israel should not pass its own emergency laws. The question concerned Israel's use of the Mandate legislation to impose preventative (or administrative) detention. Mr. Shapiro replied:

> It is one thing for the military to use someone else's law. It is quite another thing for the Knesset to enact as its own a preventative detention law.[32]

Although the Knesset did later pass its own legislation permitting preventative detention, and although it does not use, for example, the Regulations on deportation and house demolitions against citizens of Israel,[33] attempts to repeal the Defence (Emergency) Regulations of 1945 have failed.[34] Writing in 1978,

Israeli legal scholar Baruch Bracha suggested two main reasons for this: first, because of Israel's particular security situation, "special powers" were needed to restrict persons threatening the state whom the regular court system might not be able to convict; and second because:

> it was convenient for the Government to attribute the blame for these Regulations adversely affecting individual liberties on the doorstep of Mandatory legislation and thus declare itself innocent.[35]

It must be assumed that there is at least something of this attitude in Israel's continued use of the Defence (Emergency) Regulations to impose deportation and house demolition and sealing orders against Palestinians in the Occupied Territories, as well as to impose a variety of other measures.[36] In al-Haq's opinion, there is no basis in local law for these orders, since the Defence (Emergency) Regulations are no longer valid in the Occupied Territories. Israel, however, continues to insist that they form part of local law, and argues that international law allows and even requires an Occupying Power to continue to apply the local law of the territory it is occupying. The Israeli authorities base this second argument on Article 43 of the 1907 Hague Regulations which provides:

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

In addition, Article 64 of the Fourth Geneva Convention states, in relevant part:

> The penal laws of the occupied territories shall remain in force, with the exception that they

> may be repealed or suspended by the Occupying Power in cases where they constitute a threat to its security or an obstacle to the application of the present Convention .... The Occupying Power may, however, subject the population of the occupied territory to provisions which are essential to enable the Occupying Power to fulfill its obligations under the present Convention ... and to ensure the security of the Occupying Power....

Israel contends that because, according to its first assertion, the Regulations are still valid in the Occupied Palestinian Territories, the Israeli occupation authorities are entitled to apply them as part of local penal law.[37] In 1971, Meir Shamgar, then Attorney General of Israel and later a Justice of the Israeli Supreme Court, observed that the texts of the Fourth Geneva Convention do not support the thesis that "if there is another rule of international law according to which the local law is regarded as inhumane or contrary to a basic norm of international law, this rule of international law supervenes the rule of local law."[38] A different view is expressed in the authoritative *ICRC Commentary to the Fourth Geneva Convention*, in a comment on the two reservations contained in Article 64 to the general rule of maintaining local penal law. For the first, relating to the security of the Occupying Power, it gives examples such as provisions (in local law) regarding recruitment or resistance to the enemy; this connects with a later provision for the occupier's right to issue provisions for its own security. The *Commentary* then continues:

> The second reservation is in the interests of the population and makes it possible to abrogate any discriminatory measures incompatible with humane requirements .... This means that when the penal legislation of the occupied territory conflicts with the provisions of the Convention, the Convention must prevail.[39]

With regard to Article 43 of the Hague Regulations, Oppenheim deems the Occupying Power entitled to disregard the local law of the territories it is occupying in circumstances where that law "is such as to flout and shock elementary conceptions of justice and the rule of law."[40] The example he gives is the suspension of Nazi laws during the post-war occupation of Germany by the Allied Powers:

> It may be said without unduly straining the interpretation of Article 43, that the Western Powers were "absolutely prevented" from administering laws and principles the application of which within occupied territory was utterly opposed to modern conceptions of the rule of law.[41]

The fact that in implementing such measures as deportation and house demolition Israel is violating prohibitions contained in the Convention means that it is not just entitled to disregard the Defence Regulations (as an "obstacle" to the application of the Convention) but that it must under no circumstances implement them in violation of the Convention.

Israel, however, has revived the Regulations and implemented them against the Palestinian population of the Occupied Territories in absolute disregard of international humanitarian law. Furthermore, it has recently given an extra-territorial dimension to the Military Commander's authority under Regulation 119. In 1991, military orders were passed in the West Bank and Gaza Strip with the following text:

> The Military Commander may likewise exercise his authority under Regulation 119 of the Defence (Emergency) Regulations, 1945, towards a house, structure or land situated in the area due to an act committed outside the area which, had it been committed in the area, would have given rise to the implementation of his authority under the aforementioned Regulation.[42]

This amendment was challenged before the Israeli High Court of Justice on the grounds that the Military Commander had exceeded his authority, but the Court did not find the argument significant.[43] The Court had long ago ruled that the Defence (Emergency) Regulations are part of local law in the Occupied Palestinian Territories[44] and had upheld the authority of the Area Commander to order the demolition and sealing of Palestinian houses thereunder.

2. Military Necessity and Article 53 of the Fourth Geneva Convention

According to Professor Von Glahn, writing in 1957:

> The basic problem in connection with the laws governing armed conflicts has been that of balancing "military necessity" against a humanitarian standard of conduct as the latter appeared.[45]

The balancing of "military necessity" and humanitarian concerns is evident in the codified texts of the laws of war. Adam Roberts and Richard Guelff, in the Introduction to their *Documents on the Laws of War*, add a third principle, "chivalry," and give the following definition:

> The principle of military necessity provides that, strictly subject to the principles of humanity and chivalry, a belligerent occupier is justified in applying the amount and kind of force necessary to achieve the complete submission of the enemy at the earliest possible moment and with the least expenditure of time, life and resources. The principle of humanity prohibits the employment of any kind or degree of force not actually necessary for military purposes.[46]

Von Glahn details the principle of military necessity beyond the overall aim of "the prosecution of the war to a successful conclusion" to include "the usual meaning of the term which recognizes that a special necessity to achieve an immediate military objective will justify exceptions from the rules of war, expressly justified by reference to military necessity."[47]

Consideration of military necessity has been made both implicitly and explicitly in the codification of the laws of war by which states have bound themselves. In general, there are two types of prohibitions on conduct and practice by an Occupying Power in both the Hague Regulations and the Fourth Geneva Convention. First, there are absolute prohibitions, which are subject to no reservations and admit of no exceptions; the practices outlawed by these provisions have been held to be of such severe humanitarian consequence that they cannot be allowed on any grounds. There can, for example, be no defense of a violation of these provisions on the grounds of it occurring "in the heat of battle" or in other extraordinary security or military circumstances, since the Hague Regulations and the Fourth Geneva Convention were drawn up with precisely those pressing circumstances in mind.[48] Second, there are provisions that contain a reservation to the prohibition, permitting a measure that is otherwise similarly outlawed to be taken in the case of certain constrained requirements of military necessity. In both the Hague Regulations and the Fourth Geneva Convention, the provisions prohibiting the destruction of property by an Occupying Power contain such reservations. Article 23(g) of the Hague Regulations provides that:

> It is especially forbidden ... to destroy or seize the enemy's property, except when such destruction or seizure be imperatively demanded by the necessities of war.[49]

Article 53 of the Fourth Geneva Convention provides that:

> Any destruction by the Occupying Power of real or personal property belonging individually or

> collectively to private persons, or to the State, or to other public authorities, or to social or co-operative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.

In 1971, Israeli Attorney General Meir Shamgar stated that in view of these reservations to the prohibition, even if Regulation 119 of the Defence (Emergency) Regulations were no longer valid, "demolitions can be based, in appropriate circumstances, on Article 53 of the Convention," because of the reservation on "military operations" in the article, which Shamgar described as "military requirements."[50] He continued:

> Military requirements can be of two kinds: On the one hand, there is the necessity to destroy the physical base for military action when persons in the commission of a hostile military act are discovered. The house from which hand grenades are thrown is a military base, not different from a bunker in other parts of the world. On the other hand, there is the necessity to create effective military reaction. The measure under discussion is of utmost deterrent importance....[51]

In this passage, the legal reservations on "necessities of war" and "military operations" are expanded by Shamgar to include "effective military reaction" and by extension "deterrence." Dov Shefi, writing in 1982 and at the time Military Advocate General of the Israeli armed forces, described house demolition and sealing as a "sanction" and continued:

> It is a military-security step permissible in certain circumstances under Article 53 of the Geneva Convention.[52]

The Israeli authorities have an extremely expansive perception of "security" which affects the integrally linked rationale of "deterrence" which is necessary to achieve "security" objectives.[53] A consideration of the term "military operations," however, shows that Article 53 of the Fourth Geneva Convention does not lend itself to an interpretation that would support an explicit policy of punitive destruction of property, but that on the contrary the Article exists to prohibit such measures. The following is an extract from an "Interpretation by the ICRC of Article 53 of the Fourth Geneva Convention of 12 August 1949, with particular reference to the expression 'military operations'" issued in 1981:

> In the opinion of the ICRC, the expression "military operations" must be construed to mean the movements, manoeuvres and other action taken by the armed forces *with a view to fighting*. Destruction of property as mentioned in Article 53 cannot be justified under the terms of that article unless such destruction is absolutely necessary - i.e. materially indispensable - for the armed forces to engage in action, such as making way for them.
> This exception to the prohibition cannot justify destruction as a punishment or deterrent, since to preclude this type of destruction is an essential aim of the article. This has always been the ICRC's interpretation, based on both the wording and the origin of the article.[54]

Accordingly, Shamgar's first scenario, regarding "persons in the commission of a hostile military act," might at first glance seem compatible with the intentions of the article. However, as Professor John Quigley points out, under Regulation 119, "[t]his factual scenario is far from that involved in the use of demolition by Israel in the Occupied Territories."[55] Houses are not demolished under Regulation 119 because there are persons inside in the process of launching an attack on Israeli military personnel;

there is no question of "making way for the armed forces to engage in action." To this point, Professor Draper remarked:

> It would appear that after the guerrilla has used the house from which he committed hostile acts, the blowing up takes place in circumstances wholly unrelated to military operations which may not even be in progress at the time. To appeal to the humanitarian element by stating, which is true, that the inhabitants are first removed before blowing up the house, destroys the very basis of his argument for the application of article 53 under its exceptive clause.[56]

The Israeli authorities do not usually attempt to justify punitive house demolition or sealing on the basis of "military operations" in the strict sense of the term. The intention and effect of the exceptive clause in Article 53, as noted by the ICRC above, is extremely restrictive and does not include a punitive policy; the Israeli authorities have used "deterrence" and "reaction" as if these concepts were subsumed within "military operations."

More generally, Von Glahn, writing on "The Doctrine of Military Necessity and the Destruction of Property" in 1957, makes the following observation on the applicability of the "military necessity" reservation during a belligerent occupation:

> [F]ew if any of the measures likely to be undertaken by occupation authorities in enemy territory will reasonably contribute decisively to the end of the conflict, to the surrender of the enemy, or will be invested with supremely vital character; in other words, necessity proper will be almost impossible to prove, except in a few minor situations during the initial combat phases of the invasion of the enemy territory. It must be remembered that practically all measures of real importance undertaken by an occupant in hostile territory fall in a period of time

> when the military phase of active hostilities has passed from the occupied territory and when the occupant attempts to establish an orderly administration. Hence, there is an absence of nationally vital necessity and a lack of real necessity which would enable a successful employment of the defence in question.[57]

In 1990, however, the Israeli Supreme Court, sitting as the High Court of Justice, relied on an expanded interpretation of the military necessity reservation. The case differed somewhat from previous consideration of the policy of house demolition and sealing, and the court upheld a decision by the Military Commander in the Gaza Strip to demolish over 30 houses and commercial stores in the Bureij Refugee Camp in the Gaza Strip. The decision followed the death in the camp of a uniformed Israeli soldier on 20 September 1990; the soldier drove at high speed into the camp in a civilian vehicle, hitting and injuring two children in a mule cart. Residents of the camp stoned the soldier's vehicle and set it on fire, killing the soldier. A curfew was imposed for 12 days and approximately 500 residents of the camp were arrested.[58] An Israeli Cabinet minister stated that "all houses within 100 meters of the incident must be destroyed"[59] and an unidentified army source was quoted as stating that steps would be taken that would "change the landscape of the camp," including "the demolishing and sealing of the homes of those suspected of involvement in the killing of the Israeli soldier."[60]

Despite the clearly punitive intention explicit in such statements, in his statement to the Court, the Military Commander, Matan Vilnai, stated that "the decision to demolish was based on the military necessity and was not adopted as a punitive measure;"[61] he had issued the orders on the basis that security needs dictated that the road at the entrance to the camp be widened. The Court upheld the Commander's judgment, holding that he had acted in accordance with local and international law, and citing Article 23(g) of the Hague Regulations and Article 53 of the Fourth Geneva Convention, quoting the *ICRC Commentary* in support:

> The prohibition of destruction of property situated in occupied territory is subject to an important reservation: it does not apply in cases "where such destruction is rendered absolutely necessary by military operations."[62]

Although it has refused to challenge the government's position that the Fourth Geneva Convention does not apply, the Court has often been at pains to argue that even if it did apply, various policies of the Israeli occupation (such as deportation, settlement, house demolition and sealing) would not be considered violations thereof.[63] In the Bureij case, the Court took note of the fact that these demolitions had not been ordered on the basis of Regulation 119, that the Commander had stated they were not being ordered for punitive reasons, and that those to be affected had been told they could apply for compensation; it thus distinguished, as did the Military Commander, between these demolitions and punitive demolition under Regulation 119. The Military Commander had informed the Court that in addition to these demolitions he had also issued two demolition orders on the basis of Regulation 119 with regard to two people he alleged had been involved in the killing of the soldier. The High Court thus acted in the manner envisaged earlier by Meir Shamgar, on the basis that "demolition can be based, in appropriate circumstances, on Article 53 of the Convention."[64] The Court had the following to say on the issue of demolitions under Regulation 119:

> Such an order ... involves a type of punitive action regarding whoever was involved, in the view of the Military Commander, in the actions specified in the said article -- even if the legal clarification has not yet taken place and a verdict not yet issued -- and the main aim of the order is to deter whoever is involved....

As al-Haq pointed out in its 1990 report,[65] in making this distinction between demolitions carried out because they are seen as "absolutely necessary for military operations" (and therefore in

the Court's view justified by the reservation in Article 53), and punitive demolitions based on Regulation 119, the Court failed to rationalize how, if the former are lawful under Article 53 the latter are also somehow lawful. Logic would require that the latter type, having been distinguished, would therefore not be included in the exceptional clause of Article 53, and would be therefore absolutely prohibited under the Article. That this logic does not prevail can be seen clearly from other decisions by the High Court of Justice, which has clearly held punitive demolition for the purpose of "deterrence" to be legal.[66]

The ICRC's Interpretation of the exceptive clause of Article 53 of the Fourth Geneva Convention, cited above, points out that punitive destruction of property is precisely the kind of destruction that Article 53 outlaws. The intention of Article 53 is not the permitting of demolition for military reasons but the prohibition of any destruction except in the case of imperative military necessity arising from military operations. As Professor Frits Kalshoven observed in 1971:

> [I]t needs no argument that in the instances discussed here, i.e. in regard to the occupied territories, there was no question of military operations, let alone those that could have made the demolitions absolutely necessary.[67]

The ICRC Commentary compares the substantive prohibition of destruction of property contained in Article 53 to the prohibitions on pillage and reprisal in Article 33.[68] Article 33 absolutely prohibits pillage, reprisal, and collective punishment; there is no exceptive clause or reservation regarding military necessity. The ways in which Israel's punitive house demolition and sealing policy violates this article are considered below.

3. Collective Punishment, Reprisal, and Article 33 of the Fourth Geneva Convention

The principle of personal responsibility requires that a

person is liable for punishment only for offenses that he or she has personally committed. Although long established in domestic law, this principle is a relatively recent absolute in the laws of war, a mark of the resolve of the community of states in light of the various measures of collective punishment taken against civilians in occupied territory during the Second World War. The ICRC Commentary to the Fourth Geneva Convention defines collective punishment as "penalties of any kind inflicted on persons or entire groups of persons ... for acts that these persons have not committed."[69] Many of the measures of collective punishment imposed on civilians during the Second World War already constituted violations of Article 50 of the 1907 Hague Regulations in force at the time:

> No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly or severally responsible.

Largely as a result of the atrocities against civilian populations during the war, the community of states revised the wording of the customary rule of the Hague Regulations in 1949, introducing an absolute and unambiguous prohibition on any form of collective penalty in Article 33 of the Fourth Geneva Convention, which states:

> No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or terrorism are prohibited. Pillage is prohibited. Reprisals against protected persons and their property are prohibited.

The *ICRC Commentary to the Convention* observes with regard to the prohibition that:

> Responsibility is personal and it will no longer be

> possible to inflict penalties on persons who have themselves not committed the acts complained of.[70]

The textual connection in Article 33 between collective penalties and "all measures of intimidation or terrorism" is explained in the *ICRC Commentary*:

> During past conflicts, the infliction of collective penalties has been intended to forestall breaches of the law rather than to repress them; in resorting to intimidatory measures to terrorize the population, the belligerents hoped to prevent hostile acts.[71]

Similarly, the ban on reprisals against protected persons and their property in Article 33 is a logical "sequitur" to the prohibition on collective penalty. Reprisals are defined in the *ICRC Commentary* as "acts otherwise prohibited by the laws of war, which can be taken exceptionally for the purpose of compelling the enemy to discontinue illegitimate acts of warfare."[72] The lawfulness of such acts depends ***inter alia*** on their proportionality to the violations of international law which they are intended to halt.[73] Von Glahn points out that in practice reprisals "frequently have taken the form of destruction of property, such as the burning of homes ... if illegal warfare had been waged from them and the guilty persons could not be identified...."[74]

The major development in the 1949 Geneva Conventions regarding reprisals was the removal of certain categories of persons from inclusion as legitimate targets of reprisals:

> The essence of these provisions [of the Geneva Conventions] is to prohibit action against certain targets. In other words, it is irrelevant whether the action taken is proportionate.[75]

Article 33 of the Fourth Geneva Convention accordingly

lays down an absolute prohibition against the taking of any form of reprisal against the population of occupied territory protected by its provisions. Al-Haq has previously argued that, given the repeated justification of house demolition and sealing on the basis of a "deterrent" objective, the policy constitutes "a reprisal in intent."[76] In 1971, Professor van Glahn considered whether the demolition of houses by an occupying power was an illegal punishment or a reprisal taken as a deterrent. Given the provisions of Article 33, he held that "no legitimate reprisal was involved."[77]

The *ICRC Commentary to the Fourth Geneva Convention* concludes its consideration of the prohibition in Article 33 on reprisals against protected persons as follows:

> [R]eprisals constituted a collective penalty bearing on those who least deserved it. Henceforth, the penalty is made individual and only the person who commits the offence may be punished. The importance of this development and its embodiment in the new [i.e. the Fourth] Geneva Convention is clear.[78]

However, the resolute step taken by the international community in establishing an absolute and unequivocal ban on collective punishment appears to have left Israel behind. Although a party to the Convention and bound by its terms, through demolishing and sealing the houses of Palestinians in the Occupied Territories, the Israeli authorities are pursuing an official and systematic policy of collective punishment against persons protected by the Convention. In the vast majority of cases, the person on the basis of whose alleged acts the house is demolished or sealed is not the owner of the building, and the people most immediately affected by the measure are those members of the suspect's family who live with him or her. As al-Haq has pointed out: "When an entire family is punished for the merely suspected deeds of one of its members through the destruction of the home, and no other members are accused of any offence, there can be

little doubt that the punishment is a collective one, primarily affecting people whose only crime is to be related to a person suspected of an offence."[79]

That the policy of house demolition and sealing constitutes a collective punishment is strenuously denied by the Israeli government and those who support and uphold its policies. Meir Shamgar, asked whether the prohibition of reprisals had any relevance to the policy, replied:

> [D]emolition of houses is a punitive measure, according to the local law, which is directed personally only against the person who has been culpable of the commission of a certain offense....[80]

Similarly, Colonel (later Brigadier-General) Dov Shefi, in response to the UN's categorization of the destruction of houses as a collective punishment in violation of Article 33 of the Fourth Geneva Convention, asserted that:

> Demolition is never carried out as a collective penalty but only and solely as a punishment of the individual involved.[81]

These statements appear absurd next to the facts that emerge from an examination of the policy of house demolition and sealing. First, the destruction or alienation (through sealing) of a house constitutes an enormous financial penalty that is incurred most directly by the owner of the affected building. According to al-Haq's figures, of the 1001 demolitions and sealings it documented that were carried out from 1981-1991, in only 84 (8.4%) of the cases was the owner of the house the person on the basis of whose alleged offenses the action was taken. Of the other cases where there was an identified accused, in 729 cases this person was a close relation of the owner, and in 51 cases a more distant relative. In 78 (7.8%) of the cases the suspect was no relation at all to the owner of the building. In brief, in 858 of the

cases, the huge and direct financial penalty fell on a person other than the individual on the pretext of whose alleged acts the measure was implemented.

Second, although few of the suspects had been tried and convicted at the time of the demolition or sealing, in most of the cases (850, or 85% of the total) the suspect was in the custody of the Israeli authorities. The people who experienced the immediate effect of homelessness or displacement were, therefore, those who shared the house with the suspect -- usually family members. These often include both very young and elderly people. From 1981-1991, al-Haq documented a total of 9299 persons affected in this way, including the suspects; this means over 8000 persons were affected besides the persons whose alleged actions were the pretext for the demolition or sealing.

Finally, the claim that house demolition and sealing is directed as a punitive measure only against a person suspected of an offense becomes blatantly absurd in cases where the person accused is already dead. Al-Haq's data shows that in 28 cases from 1981-1991, houses were demolished or sealed on the pretext of acts allegedly carried out by persons who had already been killed, often in the course of an armed confrontation with the Israeli authorities. In these cases, the alleged offender being dead, the *only* people to suffer the penalty of house demolition or sealing were the remaining family members.

In the face of the facts, the major justification given by the Israeli authorities is the "deterrence" factor. The fact that the uninvolved relatives of a suspect suffer the penalty of house demolition or sealing, and indeed that this is part of the aim of the policy, has been explicitly recognized by Israel's High Court of Justice. In a 1985 case, *Daghlas et al v. The Military Commander of the Judea and Samaria Region*,[82] the Court stated as follows with regard to the implementation of Regulation 119:

> The aim of this Regulation is to "achieve a deterrent effect" (HCJ 126/83, 434/70), and such an effect should naturally apply not only to the terrorist himself, but to those surrounding him, and certainly

> to family members living with him (HCJ 126/83). He should know that his criminal acts will not only hurt him but are apt to cause great suffering to his family....

The Court went on to point out that the houses to be demolished were indeed where the suspects lived and concluded:

> In any case the "punishment" has not been imposed on the homes of uninvolved persons, and it is difficult to understand the origins of the claim that we are here dealing with a case of collective punishment.

In a more recent case, Justice Netenyahu stated in her written ruling:

> I am not overlooking the fact that destroying the structures in their entirety will hurt not only the petitioners themselves but also their families. However, this is as a result of the necessity of deterring the public so that they may see and learn that by their criminal acts, they not only harm individuals, endanger public safety, and incur severe punishment on themselves, but also bring hardship to the members of their households.[83]

These statements show a recognition of the collective nature of the penalty justified by appeal to the argument for the need for "deterrence." There is indeed clear recognition that the desired "deterrence" effect actually relies on the fact that the family of the suspect, or other persons, will suffer. This approach is very similar to the description in the *ICRC Commentary*, cited above, of collective penalties being used to intimidate members of the local population in an attempt to forestall breaches of the law. The Fourth Geneva Convention prohibits collective punishments absolutely, regardless of motive or of anticipated effect. As the

ICRC Commentary points out:

> The solemn and unconditional character of the undertaking entered into by the States Parties to the Convention must be emphasized. To infringe this provision with the idea of restoring law and order would only add one more violation to those with which the enemy is reproached.[84]

A further response that has been made to the charge of collective punishment is that there is always a direct connection between either the house and the person suspected or the offense itself.[85] Cases where it is alleged that the house itself was a "base" of some sort are the exception; in most cases, the family house is demolished or sealed because the suspect resided there along with family members. In response to the petitioners' claim in *Daghlas* (1985), the Court stated:

> In their [the petitioner's] opinion, only the terrorists and criminals themselves should be punished, and house demolition punishes additional family members who will be left without shelter. Such an interpretation, if accepted by us, would leave the above Regulation and its orders void of content, leaving only the possibility of punishing a terrorist who lives alone....[86]

A person tried and convicted of security offences in the Occupied Palestinian Territories is of course punished, in most cases through a prison sentence. What the Court apparently meant was that were they to accept the petitioners' argument, a suspect could not, in addition to incurring a prison sentence in a personal capacity, be subjected to the additional, extra-judicial punishment of having his or her family's home demolished. The development of human rights principles and humanitarian law in the forty years that elapsed between the issuing of the Defence (Emergency) Regulations in 1945 and the Israeli High Court's consideration of

this case in 1985 would, were it to be effective, indeed have the effect envisaged implicitly by the Court: that of rendering void of content draconian and inhumane legislation in light of the considerations of humanity and human rights.

In addition, the High Court has held that Regulation 119 authorizes the destruction of property even where the persons accused are not habitual residents. In *Hamri v. The Commander of the Judea and Samaria Regions*, the High Court considered a petition against a demolition order made against the petitioner's house on the basis of actions allegedly carried out by his son and a nephew. The petitioner's lawyer pointed out that, most of the time, the suspects were not actually living in the house. The Court observed:

> The fact that during the school year [the suspects] are not in their parents' house does not prevent them from residing in and being inhabitants of their parents' house during the period in which they are with their parents.[87]

The fact that in the view of the Court the suspect does not have to be permanently living in the affected building further undermines any claim that the demolition or sealing is a "personal punitive measure" taken against an individual suspected of an offense. On the contrary, it is a collective punishment taken against the homeowner and the resident family members. Al-Haq illustrated this point with the case of two houses demolished in the village of Jab'a in the district of al-Khalil in 1985. The parents of Muhammad Ahmed al-Tus had moved with their family from their old four-room house in the village to a new one. When Muhammad married, he moved with his wife back to the old house. Following Muhammad's arrest, and while he was under interrogation, the old house in which he had been living with his wife and children was demolished on 8 October 1985. His wife and children moved to live with Muhammad's parents and the rest of his family in the new house. On 27 November 1985, the army came back and demolished this house too.[88]

Authorities other than those in the Israeli government, military command, or High Court of Justice have no problem with the conclusion that the policy of house demolitions and sealings on the basis of Regulation 119 constitutes collective punishment, and that as such, and regardless of any other factors, it is illegal.[89] For example, the following is the view of the British Government, as successor to the Mandate authorities who issued Regulation 119:

> Collective punishments, such as the demolition of houses ... are prohibited not only by Article 50 of the 1907 Hague Regulations, but also by Article 33 of the Fourth Geneva Convention.[90]

4. Extra-judicial Punishment

The Universal Declaration of Human Rights (UDHR), widely recognized as declarative of customary international law, provides:

> Art. 10: Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.
>
> Art. 11(1): Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.

These principles are confirmed in other human rights instruments, including the International Covenant on Civil and Political Rights,[91] which Israel ratified on 3 October 1991. The Fourth Geneva Convention lays down detailed provisions for penal procedure with regard to protected persons.[92] Any penalty imposed without due legal process, including the presumption of innocence and a fair public trial, is correctly termed an

"extra-judicial punishment."

Since the beginning of the occupation, the Israeli authorities have imposed various forms of extra-judicial punishment as a matter of policy in the Occupied Palestinian Territories. These punishments consist of administrative measures taken formally on the order of one individual in the military hierarchy (in most cases the Area Military Commander) and have included town arrest, deportation, administrative detention, and house demolition and sealing.

In the view of Professor Quigley, "[i]f the government of Israel rationalizes demolitions, as it does, as a penal sanction, then it must follow norms prescribed for the imposition of penal sanctions."[93] As an extra-judicial punishment, the policy of house demolition and sealing contravenes the most fundamental principles of justice and due process. The data collected by al-Haq on the implementation of the policy in the years 1981-1991 show that in the 942 cases where the measure was ordered on the basis of the alleged actions of an individual suspect, in 287 the accused was still under interrogation, and in 465 the accused had been charged but not tried; in 64 cases the suspect had not yet been arrested, and in 28 cases the suspect was already dead. In only 98 cases had a conviction for the alleged offense been made before the punishment was imposed.

Thus, for example, on 27 September 1990, in the wake of the killing of the soldier in Bureij Refugee Camp, an army force came to the house of Mufid al-Shaqra, told the family that their 15-year-old son Mu'tasem had been arrested, and sealed the house up on the spot. The 6-room house, an UNRWA refugee shelter in Bureij Camp, was home to Mu'tasem's father and mother, their three daughters, three unmarried sons (including Mu'tasem), and two married sons and their wives. In fact, at the time of the sealing, Mu'tasem was not in custody; he was arrested over a month later, on 3 November 1990, and subsequently received a one-year prison sentence on the charge of throwing a stone at a military vehicle in the camp.[94]

The demolition and sealing of houses of suspects who are already dead or have not yet been arrested belie an earlier

description of policy made by General Shlomo Gazit, speaking in 1969 as Military Administrator of the Occupied Territories, to the effect that if the suspect had not been arrested or had not confessed, no demolition would occur.[95] General Gazit made his comment after describing the advantages of the absence of due legal process for the imposition of a punishment under Regulation 119, in the pursuit of "deterrence":

> The effectiveness of the blowing-up of houses lies in the fact that it is an immediate punishment and if we want to deter somebody, we cannot stop and wait for the normal, legal machinery.... If we want to deter terrorists the effects must be seen immediately by the population. Employing these Regulations, we have the possibility of doing this immediately.[96]

The High Court of Justice in Israel has only recently in 1988 established a general principle (subject to exceptions) to the effect that in accordance with the principles of Israeli law, homeowners should have the right to raise their objections to the demolition or sealing order before the order is carried out.[97] This procedure, as will be shown below, is not a substitute for an appeal based on the facts of the case. In the complete absence of other norms of due process involved in the implementation of Regulation 119, the court has failed to challenge the extra-judicial nature of the penalty and has in fact consistently upheld it. Thus, for example, in a recent case, the Court once again upheld the flouting of the principle of "innocent until proven guilty" which, by definition, involves a fair trial and conviction before the imposition of a penalty. In HCJ 2665/90, *Karabsa v. Minister of Defence et al*,[98] the court took note of the fact that the suspect had made a detailed confession and found that the Military Commander's intention to demolish a house of 17 rooms, leaving 25 people besides the suspect homeless, was justified:

> not by the charges brought but by the extremely

> serious nature of the offences admitted to in the suspect's confession. Therefore, the fact that the suspect's trial has not yet begun does not justify our intervention in the decision....

It is worth recalling in this regard the results of the Landau Commission Report commissioned by the Israeli Government to investigate interrogation methods used by the Israeli General Security Services (GSS) against Palestinians suspected of "hostile terrorist activity." The Report, published on 30 October 1987, with the exception of a secret unpublished appendix, found that Israeli interrogators had lied in court by denying the use of any physical pressure on the accused. As al-Haq pointed out in 1989, the Report unequivocally condemned perjury, but recognized a dilemma faced by the GSS resulting from the tension between the need to coerce information from suspects and the constraints of legally permitted methods of interrogation. The Landau Commission attempted to resolve the dilemma confronting GSS interrogators by legitimizing the use of "a moderate measure of physical pressure" and "non-violent psychological pressure" during interrogation. According to the Report:

> The interrogation of individuals who are accused of carrying out terrorist activities won't be successful and fruitful without using pressure in order to overcome their will, their refusal to reveal information, and their fear of the organization [to which they belong] in case they reveal information.[99]

The Report was officially endorsed by the Knesset, Israel's parliament. This context must cast further uncomplimentary light on the willingness of the High Court of Justice to endorse the imposition of extra-judicial penalties based on pre-trial confessions by the accused. In *Hamri* (HCJ 361/82), the lawyer for the petitioner presented affidavits from the two suspects stating that their confessions had been unlawfully extracted, and that at the

time of issuing the order, the Military Commander had had an insufficient evidential base for his decision. The court stated in response:

> As is known, a Military Commander does not require the conviction of a judge, and he himself does not constitute a court of law. From his point of view, the question is whether a reasonable person would regard the material before him, as being of sufficient demonstrative value.[100]

Noting that the affidavits did not in any case deny the acts attributed to the suspects, the Court held that "we believe that the existence of these affidavits does not adversely affect the evidential basis lying before the Military Commander."

A more recent position on the evidential rules, or lack thereof, came in a 1990 case, *Shawahin v. Military Commander in the West Bank.*[101] The court was considering a request for an *order nisi* and temporary injunction to stop the execution of a demolition order. The demolition order had been issued over two months before the arrest of the suspect Ibrahim Shawahin, while the latter was "wanted" by the security forces. In this case, the High Court of Justice demonstrated its willingness to rely on the confessions of other persons implicating a suspect who had not yet been arrested and on "secret material" that the judges themselves were not allowed to see.[102] The Court allowed an administrative order to stand on the basis of information (neither the details nor the sources of which were revealed to the court) that became available some time after the administrative order was made.[103] The 11-room family house was demolished on 10 September 1990, displacing Ibrahim's family of 12.[104]

Israel's policy of house demolition and sealing conforms to none of the accepted norms of penal sanctions. It constitutes extra-judicial punishment imposed in addition to, and quite independently of, any process of fair trial, conviction, and sentencing of the suspect on the basis of whose alleged acts the measure is taken. As early as 1971, Professor Frits Kalshoven observed:

> Any attempt to justify the destructions as punitive measures inflicted on the individual suspects is bound to fail, in view of the conspicuous absence of anything like a fair and regular trial preceding the execution of the measures and establishing the liability to punishment of the persons in question.[105]

5. Grave Breaches and Reparations[106]

In Article 1 of the Fourth Geneva Convention, each contracting state (High Contracting Party) undertakes "to respect and to ensure respect for" the Convention in all circumstances. This article imposes two duties: the duty on states to ensure that they and their agents respect the Convention, and the "inter-state" obligation to ensure that other state parties also respect its provisions.[107] This second duty amounts to an ongoing responsibility on each High Contracting Party to ensure that the provisions of the Convention are enforced whenever and wherever they apply, using the lawful means at their disposal. The Convention itself makes provision for internal mechanisms of enforcement and supervision, the institution of the Protecting Power, and related mechanisms for inquiry and conciliation.[108] In the case of Israel's occupation, however, these mechanisms are inoperative, due to Israel's refusal to recognize the applicability of the Convention to the territories it has occupied since 1967. There being no Protecting Power to oversee, on behalf of the High Contracting Parties, the implementation of the Convention, they are themselves directly, jointly and severally, responsible for ensuring the Occupying Power's respect for the Convention and implementing the protections it guarantees to a civilian population under belligerent occupation.

In the case of certain specified violations of the Convention, those listed as "grave breaches," states parties are under a particular and means-specific duty to ensure respect through activating their own legal systems to prosecute the

perpetrators. As al-Haq pointed out in 1989, the difference for an individual offender between grave breaches and other violations of the Convention is that commission of a grave breach entails individual criminal responsibility for an international crime. The difference for a state party to the Fourth Geneva Convention is that while it retains a direct duty to repress all breaches of the Convention to ensure respect for it, in the case of a grave breach its duty is to utilize a mandatory and specified mechanism to repress such breaches, that is, to exercise the principle of universal jurisdiction in seeking out and prosecuting those responsible.[109] Article 146 of the Fourth Geneva Convention provides that:

> The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.
>
> Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a *prima facie* case.

The term "grave breaches," used also in the other three Geneva Conventions of 1949, is synonymous with "war crimes" in customary international law. They give rise to the same consequences as the war crimes defined in the Nuremberg Charter of the International Military Tribunal: individual criminal liability and universal jurisdiction for prosecution with no statute of limitations. In many cases the violations of the Conventions defined as grave breaches coincide with the violations of the laws

of war defined by the Charter as war crimes.[110] Professor Lauterpacht observes, with regard to this provision and its equivalent in the other Geneva Conventions of 1949, that "[n]o more emphatic affirmation of the principle of universality of jurisdiction with regard to the punishment of war crimes could be desired."[111]

The establishment of universal jurisdiction to try the perpetrators of war crimes, or grave breaches of the Geneva Conventions, arises from recognition of the severity of those crimes. Grave breaches take place in times of war or belligerent occupation when the domestic legal system is incapable of inhibiting persons from committing such crimes, that is, in a situation where the perpetrators feel they can act without fearing retribution through the courts in the country where they commit these crimes and, similarly, do not feel vulnerable to prosecution by their own national justice system. As al-Haq observed in 1989, the international community therefore tries to combat such practices by denying their perpetrators any form of protection against prosecution, such as the protection gained by claiming immunity from the jurisdiction of courts in a country of which those accused are not nationals. Universal jurisdiction for these crimes is supposed to undermine the capacity of a government, in time of war or occupation, to order its armed forces and other agents to carry out such actions, through insisting on the individual criminal liability of those persons, whether or not they were acting under orders:

> [I]ndividuals have international duties which transcend the national obligations of obedience imposed by the individual state. He who violates the laws of war cannot obtain immunity while acting in pursuance of the authority of the state, if the state in authorizing action moves outside its competence under international law.[112]

The international criminal liability established for the perpetration of war crimes, or grave breaches of the Geneva

Conventions, is not reserved for soldiers in the field. Article 7 of the Charter establishing the international tribunal at Nuremberg provided that:

> The official position of defendants, whether as heads of state or responsible officials in government departments, shall not be considered as freeing them from responsibility or mitigating punishment.[113]

Under the terms of Article 146 of the Fourth Geneva Convention, those who give the orders for the commission of a grave breach and those who carry them out are equally liable to punishment in the court of any High Contracting Party to the Convention. Should a government in time of war or occupation either order the perpetration of acts constituting grave breaches, or fail to prevent its agents from committing such crimes, the other states of the international community, as High Contracting Parties to the Convention, are under an obligation, according to Article 146, to redress this situation by themselves bringing those responsible to justice. An article published in the *International Review of the Red Cross* summarizes the aim of the duty placed on each state party to the Geneva Conventions to bring to justice persons accused of grave breaches of their provisions as:

> protecting the minimum standard of treatment due to human beings in the worst circumstances; that is, the minimum degree of humanity, to be perpetually protected against the attacks made on it for "reasons of state" and military necessity.[114]

Among the violations of the Fourth Geneva Convention listed as grave breaches in Article 147 is the "extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly." The *ICRC Commentary to the Convention* notes that this refers to violations of Article 53 of the Convention, according to which the Occupying Power may

not destroy real or personal property in occupied territory except "where such destruction is rendered absolutely necessary by military operations." The Commentary further notes that:

> to constitute a grave breach, such destruction and appropriation must be extensive: an isolated incident would not be enough.[115]

The meaning of the term "military necessity" or "military operations" under the terms of Article 53, has already been considered.[116] The 1001 cases of house demolition and sealing documented by al-Haq as having occurred over the period 1981-1991 do not represent isolated incidents; they are the result of a systematic and publicly declared policy of punitive destruction in clear violation of Article 53 of the Convention. In al-Haq's view, given the scope of destruction to which it has given rise over the years since 1967, Israel's policy of punitive house demolition and sealing falls clearly within the definition of grave breaches of the Fourth Geneva Convention involving violations of Article 53, as cited above.

Organs of the United Nations have repeatedly condemned grave breaches by Israel of the Fourth Geneva Convention in the Occupied Palestinian Territories. In 1986, for example, the United Nations General Assembly condemned:

> the continued and persistent violation by Israel of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and other applicable international instruments, and condemns, in particular, those violations which the Convention designates as "grave breaches" thereof.[117]

Similarly, in 1983, the UN Commission on Human Rights declared that:

> Israel's continuous grave breaches of the [Fourth]

> Geneva Convention ... and of the Additional Protocol to the Geneva Conventions are war crimes and an affront to humanity.[118]

In 1989, the Commission on Human Rights was more specific:

> Israeli violations of the [Fourth] Geneva Convention ... applicable to the Palestinian population and territories under Israeli occupation, including ... the confiscation of their property, raiding and demolition of their houses ... all constitute war crimes under international law.[119]

Professor John Quigley, who argues that Israel's punitive house demolition policy is a grave breach of the Convention,[120] considers that those liable to prosecution under the universal jurisdiction established in Article 146 of the Convention would include the Military Commanders on whose decision the demolition orders were issued, the military personnel who carried out the demolitions, and the Israeli government officials who established and supervised the policy. In his view, "[s]ince the demolitions have been carried out consistently since 1967, this means the leading government officials of Israel from 1967 to the present."[121]

Unlike the case of certain other grave breaches of the Convention committed by the Israeli occupation authorities, such as torture and willful killing, Israel's house demolition policy is an example of a grave breach where responsibility can be traced directly and unambiguously to identifiable persons at the top of the Israeli military command in the territories (i.e. the Area Commanders who sign the demolition orders) and ultimately to the Minister of Defense, responsible for policy in the Occupied Territories.[122] There is, as noted above, no statute of limitations that restricts the exercise of universal jurisdiction over persons committing or ordering the commission of grave breaches.

Having considered the issue of international criminal liability, it remains to consider the liability of the Israeli state to

provide compensation for losses sustained by members of the protected Palestinian population as a result of the demolition and sealing of their houses. According to Quigley:

> A state that violates rights is required under international law to restore the situation as it was before the illegal act. Restoration must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed.[123]

In the summer of 1992, al-Haq consulted five engineers in the Occupied Territories on the construction costs of houses, according to whether these houses were built from stone, concrete, or blocks. Taking an average of the five professional opinions, al-Haq applied the estimated costs to the data it had collected on houses totally or partially demolished over the period 1981-1991. On this basis, al-Haq estimates the cost of reconstruction at 1993 prices of the houses totally demolished from 1981 to 1991 to be $US 11,748,000, and of reconstruction of parts of houses in the case of partial demolition to be just over $US 1,237,900.[124] This makes a total estimate for the houses affected by demolition over those years to be $US 12,985,900. In the case of sealed houses and rooms, although the measure is "reversible" in the sense that the houses and rooms can be unsealed, substantial damage is sustained during the period the structure remains sealed, particularly over a prolonged period. Al-Haq believes that the following factors are among those that would also have to be taken into account in assessing compensation due for material losses sustained as a result of illegal house demolition and sealing:

1. Alienation of the land on which the structure was situated (through expropriation of the rights over that land "to the benefit of the Israeli armed forces" prior to demolition);
2. Costs incurred through affected residents having to

seek alternative housing (moving costs, for example, or costs arising if an owner-occupier family moved to rented accommodation, or in the case of a rented structure being affected, any increase in the rent in the new accommodation);

3. Loss of income incurred by those whose residence also served as a workplace;
4. Loss of income incurred by landlords in the case of rented property being affected;
5. Replacement costs for any possessions destroyed or damaged during or as a result of the demolition or sealing operation.

Besides the material losses, the substantial suffering, inconvenience, and emotional trauma sustained by families having their houses pulled down or sealed up, sometimes at less than an hour's notice, should also be taken into account.

According to Quigley, Israel has two ways of meeting the obligation to make compensation payments for damage and loss incurred through house demolition:

> First, it could establish a claims procedure whereby Palestinians can detail their losses, which could then be paid by the Israeli government. Alternatively, its courts could entertain suits by Palestinians against either the Israeli government, or against the individual military officers or government officials who committed the demolitions. If a court ruled against a particular government official from whom collection were impossible, then the government would be obliged to make the payment itself.[125]

Given the consistent condemnation of Israel's punitive house demolition and sealing policy, Palestinians have the right to expect the international community of states to uphold and support their right to compensation for these violations of the Fourth Geneva Convention. Von Glahn is of the opinion that in the case

of the "deliberate destruction of 'individual'" property in occupied territory, beyond the "obvious demands of a genuine military emergency":

> the offending belligerent would be subject to claims for such losses, that legal action would be undertaken against him and against the individuals responsible for the destruction even if a subsequent peace treaty were to provide for restitution or reparation. This opinion is based on the wording of Article 53 of the Fourth Geneva Convention....[126]

C. NON-LEGAL ARGUMENTS

1. The "Deterrence" Argument

The Israeli authorities have placed great emphasis on the "deterrent" effect that they claim is served through the punitive demolition and sealing of houses. In November 1988, towards the end of the first year of the current uprising, Chief of Staff Dan Shomron stated before the Knesset's Foreign Affairs Committee that:

> [D]espite the long range damage caused by the blowing up of houses, we cannot allow the intifada to "run wild" without end. Nor can the significance of this measure as a deterrent be overlooked.[127]

Similarly, in 1985, the year when the Israeli authorities under then Defence Minister Yitzhak Rabin imposed the "Iron Fist" policy in the Occupied Palestinian Territories, it was reported that security experts were of the view that house demolition was one of "the most effective deterrents."[128] The deterrence argument has been used in relation to particular demolitions as well as to the general policy; following the demolition of two houses in Yatta in 1985, military sources were quoted as stating:

> The [demolition of houses] in Yatta was for deterrence. Today following the operation, the villagers know they can be surrounded by soldiers, and that every home is liable to be demolished.[129]

The justification of "deterrence" has also been used when the Israeli authorities have focused their attention on particular phenomena or activities. This has been especially clear during the course of the uprising that began in the Occupied Palestinian Territories in December 1987. In January 1989, for example, Defence Minister Yitzhak Rabin included house demolition in a package of tougher measures introduced in an attempt to put an

end to stone-throwing; according to the West Bank Area Commander at the time, 'Amram Mitzna, "[t]he aim is to catch the stonethrower and to make him pay a price that will make him reconsider."[130] Other specific developments in the Israeli authorities' policy have selected particular categories of persons as a target group for measures justified by the need for "deterrence." These have included the demolition or sealing of the houses of Palestinians wanted by the Israeli authorities and suspected of throwing petrol bombs.[131]

The justification of the policy of house demolition and sealing on grounds of deterrence has been explicitly accepted by the High Court of Justice.[132] However, as Judge Cheshin pointed out in a minority opinion in a 1991 petition:

> [T]he dividing line between "penal" and "deterrent" may sometimes become blurred -- for surely deterrence is one of the aims of penalization....[133]

In any system of criminal law, a major aim of the sentence imposed upon conviction of an offense following normal due process of law, and indeed a major aim of having publicly known penalties for offenses, is to deter the commission of such offenses. In the case of alleged offenses on the pretext of which house demolition or sealing is carried out, the person suspected of the alleged offense is, if arrested and convicted, usually penalized by a prison sentence. House demolition and sealing is an extra punishment imposed in addition to the penalty already provided for in military orders against the individual perpetrator of the alleged offense. The claim that it has a "deterrent" value is clearly related to its collective and extra-judicial nature. In a normal criminal law system, deterrence is a legitimate objective that is sought through legitimate means. In the case of Israel's house demolition and sealing policy, however, attempts to justify the policy on the grounds of "deterrence" have no legal or defensible basis.

Israel's concept of "deterrence" appears to be closely linked to its notion of "security." Those setting policy appear to find it legitimate to seek to deter any acts perceived as threatening their

concept of Israeli security in the Occupied Palestinian Territories. While the law of belligerent occupation provides for measures to be taken for the protection of the legitimate security concerns of the Occupying Power, in particular the physical safety of its armed forces in the occupied territory, Israel's definition of "security" is so wide-ranging that it makes it irreconcilable with that law.[134] The context here is important; defending and facilitating Israel's pursuit of its political agenda in the Occupied Palestinian Territories -- primarily expressed through the process of annexation, whether *de jure* (East Jerusalem) or *de facto* (settlement policy) -- has for years been presented as co-terminus with "security concerns" in official Israeli policy. Any form of expression of nationalist Palestinian aspirations is perceived as threatening Israel's political agenda in the territories and, therefore, as a "security offense." More broadly, any offense against any military order can be considered a security offense: the military orders issued by the Israeli military authorities since 1967 number over 1300 in the West Bank and over 1000 in the Gaza Strip, many of them restricting or prohibiting activities such as planting a tree without a permit, being in possession of a "non-authorized" book, or attending a peaceful political meeting.[135]

Both under the "Iron Fist" policy in 1985 and in the face of the uprising from 1987 onwards, the Israeli authorities made increased use of "deterrent" measures to confront opposition to the agenda of annexation pursued throughout the prolonged occupation and hence to repress expressions of Palestinian nationalist identity and aspirations. In particular, this meant the increased use of administrative measures such as administrative detention (or internment), deportation, and house demolition. The first point to be made in any discussion of the "deterrent" effect which the Israeli authorities attribute to such measures as deportation and house demolition is that they are absolutely prohibited by international humanitarian law and may not be carried out under any circumstances. Both the deportation policy and the house demolition policy constitute grave breaches of the Fourth Geneva Convention. The second point is that it is by no means to be taken

for granted that such measures do in fact produce the claimed deterrent effect. With regard to the past use of collective punishment, the *ICRC Commentary to the Fourth Geneva Convention* observes that:

> in resorting to intimidatory measures to terrorize the population, the belligerents hoped to prevent hostile acts. Far from achieving the desired effect, however, such practices, by reason of their excessive severity and cruelty, kept alive and strengthened the spirit of resistance....[136]

The absolute ban on collective punishment has arisen because collective punishments against a civilian population are fundamentally incompatible with modern concepts of law and humanity; in the codification of humanitarian law, the concern of states to outlaw such practices outweighed any utility they might have been perceived to have in pursuit of military victory. During a visit to the territories in March 1991, the Director of Operations of the ICRC raised the issues of settlements, house demolition and deportation with members of the Israeli government, and stressed that "these practices were contrary to the provisions of the Fourth Geneva Convention, and pointed out that their recurrence inevitably brought about serious humanitarian consequences and increased tension."[137]

For their part, the Israeli authorities do not appear to have made significant efforts to determine whether or not in fact house demolition and sealing (or indeed other illegal measures imposed for their alleged "deterrent" effect) do have the effect at which they claim to be aiming. This question has been raised in the High Court on a number of occasions. The positions the Court has taken on the subject were recalled in HCJ 2209/90 *Shawahin* and are worth citing in full:

> The general and accepted position (on this question) is that: "The very fact that the violation of public order in the area continues in spite of the

> use of Regulation 119 does not indicate that the use of Regulation 119 is ineffective. We have no reason not to accept the position ... that if not for the use of Regulation 119 there would have been more and worse violations of the public order." (HCJ 798/89 unpublished).

It was also stated (in HCJ 982/89, 984/89, unpublished), that: "Even if there is a concept according to which the said measures are not effective at all, opposite to it stands the position of the Respondent that these measures have had great influence and that had he not employed them, the situation in the area would have deteriorated further. We therefore are dealing with contradictory views and different evaluations of the situation, the correctness of one of which over the other cannot be proven in judicial instances."[138]

Thus, the Court finds itself unable to adjudge the question one way or the other and will accept the military's assessment of the effectiveness of house demolition as a deterrent. An assessment of whether house demolition does in fact produce the kind of deterrent effect the Israeli authorities claim to intend would indeed need an in-depth examination of the long-term effect of demolition in isolation from other measures. No such evidence has been presented by the authorities, who continue, however, to justify the policy explicitly on the grounds of deterrence. In 1990, B'Tselem/The Israeli Information Center for Human Rights in the Occupied Territories reported the unsuccessful efforts of Attorney Leah Tsemel at the High Court to obtain statistics in support of her argument that so far as any "deterrent" effect was concerned, the sanction of house demolition and sealing "is not effective and is therefore unreasonable."[139] In its annual report for 1989, al-Haq pointed out that the statement by Chief of the General Staff General Dan Shomron in November 1988, that he believed demolitions created a "not inconsiderable deterrent"[140] completely disregarded the overwhelming indications, borne out by later events, that despite a huge increase in the number of homes demolished and sealed over the course of the preceding 11 months,

the uprising showed no signs of abating. Indeed it was, according to most assessments, intensifying. Al-Haq continued:

> The deterrence argument ignores another reality as well; it is common knowledge that the uprising was in no inconsiderable part a reaction to Israel's "Iron Fist" policy. Announced in 1985 by Minister of Defence Yitzhak Rabin, this policy sanctioned, among other extra-judicial punishments, the large-scale demolition of houses.[141]

Even before the uprising, in its 1987 study on house demolition and sealing, al-Haq pointed out that it had evidence of "many instances in which following the demolition of a home, others in the same area and even members of the same family have been convicted of offenses similar in nature to those in response to which the house was demolished" and of "many villages and quarters where the Israeli authorities have repeatedly considered it necessary to demolish houses throughout the period of occupation." In addition, al-Haq pointed to statements from military sources made in March 1986, almost a year after the large increase in house demolitions and sealings under the "Iron Fist" policy, to the effect that armed attacks in the northern part of the West Bank had doubled during the course of that year.[142]

Furthermore, the military authorities and government ministers may themselves change their assessment of the deterrent effect of extra-judicial administrative punishments. This has happened explicitly with regard to deportation. In March 1991, then Defense Minister Moshe Arens was quoted as saying that "[o]ur experts assure us that expulsion is the most effective deterrent step we can take."[143] Just over a year later, on 26 August 1992, Prime Minister Yitzhak Rabin was reported as saying that "in his capacity as defense minister, he and most of those advising him on the territories were convinced that the value of deportation as a punishment or as a deterrent had grown less as the intifada went on."[144] This did not of course prevent Mr. Rabin from ordering the mass deportation of over 400 Palestinians

in December 1992. The varying assessments of the "deterrent" effect achieved by these extra-judicial measures condemned as illegal by the international community seem to owe as much to political context (both domestic and international) as to "professional military assessment," and to be motivated more by punitive intent or desire for revenge than by a calculated assessment of "deterrence."

2. The "Alternatives" Argument

In its 1987 study on house demolition and sealing, al-Haq considered the argument "that demolition or sealing of a house is preferable to more drastic punishment," for example, a long prison term.[145] As al-Haq pointed out, the argument is based on a false premise. Demolition is not carried out by the Israeli authorities as an alternative to imprisonment but as an additional penalty. The suspect is tried in a military court quite separately from the process of the issuing and execution of a demolition or sealing order, and many suspects have received sentences of 20 years or more.

In HCJ 698/85, the Israeli High Court made an argument against the characterization of house demolition as a collective punishment that was based on the same line of thinking:

> He should know that his criminal acts will not only hurt him, but are apt to cause great suffering to his family. From this point of view, the above sanction of house demolition is no different than the punishment of imprisonment imposed on the head of a family, or on a father whose small children will be left without a supporter and breadwinner. Here, too, members of the family are affected.[146]

As al-Haq pointed out in 1987, "the appropriate comparison is not between having a breadwinner imprisoned and having a home demolished. It is between having a breadwinner imprisoned on the one hand, and having a breadwinner imprisoned *and* a home

demolished on the other."[147]

The "alternatives" argument has also been made with regard to the death penalty by, for example. Dov Shefi:

> It can hardly be claimed that from the humanitarian point of view, a system which prefers a punishment that involves the demolition of property of an individual to the taking of his life ... is lacking in sensitivity to humanitarian reactions.[148]

It is of course true that house demolition is a less severe penalty than capital punishment, which is not imposed by the Israeli military courts in the Occupied Palestinian Territories. However, the fact that the military courts do not impose the death penalty cannot legitimize the imposition of an illegal penalty. Furthermore, when the military courts impose their maximum sentences, consisting for example of multiple life sentences, house demolition has been imposed in addition to, not instead of, those sentences. In addition, mention has already been made of cases where houses were demolished following the deaths of the alleged suspect at the hands of the Israeli authorities; al-Haq pointed out in 1987 that in these cases "the measure is carried out in addition to an effective death penalty."[149]

Finally, it is not the case that those whose houses are demolished or sealed would be liable for the death penalty, were it to be in force, on account of the acts on the pretext of which the measure is ordered.[150] Al-Haq has documented many cases of house demolition where the nature of the charges, and the length of the prison sentences imposed by the military court, indicate that the suspect was certainly not indicted with anything that would be considered a capital offense. For example, al-Haq documented three cases where homes were totally demolished while the alleged suspects received sentences of only six months. Similarly, a seven-month sentence was all one alleged suspect received when his home was totally sealed. In fact, of the 1001 cases of house demolition or sealing that al-Haq documented from 1981-1991, in more than 50% (543) of the cases the alleged suspects on the

pretext of whose actions the measures were taken received a prison sentence of five years or less.

D. THE ROLE OF THE ISRAELI HIGH COURT OF JUSTICE

During the occupation, Palestinians in the Occupied West Bank and Gaza Strip have been granted access to the Israeli Supreme Court sitting as the High Court of Justice to challenge administrative decisions of the Military Government in the territories, including orders for house demolition and sealing.[151] In general, however, the Court has upheld or conceded to Israeli government policy on legal matters and to assessments of military/"security" requirements made by officials of the military government in the Occupied Palestinian Territories.

Thus, as noted above (Section 2:1), the High Court of Justice has consistently upheld the validity of the Defence (Emergency) Regulations in the Occupied Territories[152] and has upheld the extensive nature of the Area Commander's authority under Regulation 119. In *Alamarin v. Area Commander in the Gaza Strip*,[153] Judge Bach referred to a dissenting opinion placed on the record in an earlier case[154] on the matter of "separate living units," to the effect that if different family units live in separate rooms in one building, even if they share facilities, then implementation of Regulation 119 should be restricted to the "separate living quarters of the suspect." Judge Bach responded:

> It does not seem that the Regulation in question, either in wording or spirit, provides any support for an interpretation which imposes such a significant restriction on the military commander. On the contrary, the interpretation which regards the authority as more extensive has been adopted and implemented by various benches of this court in a considerable number of similar petitions....

The Court has furthermore declined to accept a challenge to the further extension of the Area Commander's authority to implement Regulation 119 on the pretext of acts committed outside the Occupied Territories.[155] It has ruled in favor of the Area

Commander on various specific justifications for exercise of his authority -- for example, the demolition of houses on the pretext of the throwing of petrol bombs, without any injuries or damage having been caused, and the demolition of rented houses on the pretext of alleged offenses by the tenants.[156]

Many of these positions appear to arise from the constraints imposed by the Court upon the scope of its powers to review the discretion of the military:

> The supervision of the Court over the judgement of a military commander, like judicial supervision of an act of the [Civil] Administration, has to do with judicial supervision of the lawfulness of his judgement, and not with the factual supervision of the effectiveness or wisdom involved in the employment of that judgement.[157]

The Court has thus determined that it will only intervene if it has *prima facie* evidence that the Area Commander exceeded or abused his powers.[158] This level of review has, however, been subject to changing interpretations. At first the Court declared that it would not consider the wisdom or reasoning behind the decision made by the Commander but would "endeavour to ensure that the employment of this measure be conducted with proper consideration, untainted by blatant unreasonableness."[159] Reviewing whether the Commander acted reasonably, or at least not blatantly unreasonably, involved matching the gravity of the alleged offense to the severity of the measure to be taken under Regulation 119; the Court noted on several occasions the options open to the Commander, ranging from partial sealing to total demolition, and stated that demolition should only take place in "special circumstances."[160]

Most recently, in *Turqman* (HCJ 5510/92),[161] the Court reviewed the Military Commander's exercise of discretion using a proportionality test:

> In determining proportionality, the forbidden behavior, to deter which Regulation 119 was used, on the one hand, must be balanced on the other hand by the suffering that will be caused to those against whom the deterring measures will be used (see HCJ 2722/92 ... *Al-Amarin*....).

It is questionable to what degree application of this proportionality test will actually change the outcome of the Court's review of the military commander's exercise of powers. Applying the test in *Turqman*, the High Court ruled that implementation of a total demolition order against a house where a substantial number of other persons resided, including a distinct subgroup of the extended family, "would be out of proportion and unreasonable" and, since partial demolition was not physically possible without affecting the entire house, the Court held that "less drastic -- though equally serious -- measures should be taken, that of sealing off part [of the house]." The Court emphasized that the extended family of the man on the pretext of whose action the demolition order was made could actually be divided into two groups: the mother and unmarried siblings on the one hand, and the married brother and his family on the other. The Court seemed concerned for the latter group; it recommended the sealing off of two of the three rooms in the house. Thus the ruling, although reached by application of a proportionality test, meant that the mother, eight brothers and sisters, and the family of the married brother would have the use of only one room of their home for the indefinite future.

In *Alamarin*,[162] the Court gave a non-exhaustive list of criteria that the Military Commander should consider before taking his decision:

> the gravity of the act attributed to one or a few of the occupiers of the building; to what extent the other occupiers knew of, or had reason to know of, the suspect's activities; to what extent it was possible to separate the suspect's quarters from

> other parts of the building; how seriously other occupiers, unconnected either directly or indirectly with the terrorist activity, would be affected, and what was their number and relationship to the suspect.[163]

The Court does not appear to have maintained any degree of consistency regarding such factors. Usama Halabi, a Palestinian attorney who has represented Palestinian petitioners in house demolition cases at the High Court, notes that in one case he handled the Court appeared to expand the terms of its review to include "the extent to which the other inhabitants of the house helped the suspect to commit the alleged offence" but then proceeded not to apply this rule to the case at hand.[164] The discussion on the "separate living unit" has been mentioned above; the Court has held that it would be unreasonable "for example if a commander proposed to destroy a building of many storeys, containing many apartments, because a suspect terrorist lived in one;"[165] in 1993 the *Jerusalem Post* reported that in recent cases where this issue was raised, and where the minority opinion held that a separation could be made in relation to the particular structures in question, the majority bench upheld the Commander's decision to affect the whole of the house.[166] The extent to which large numbers of occupants other than the suspect have been affected, and the Court's ruling, for example, that rented houses could be demolished for the acts of a tenant, also suggest that the last mentioned factor is not taken into account consistently.

A major factor in the Court's exercise of its review of these and other criteria has been its acceptance of the military's assessment of the measure as a deterrent, and of the military's view of the need for such deterrence both generally and in specific circumstances. In *Hamri* (HCJ 361/82)[167] the Court observed that:

> The consideration of the Military Commander that in the circumstances of the matter before us, a vigorous act which has a deterring factor is called

as conventional international law has not been incorporated into the domestic law of Israel.[170] Furthermore, it has held that even if the Convention did apply, no violations thereof are involved in house demolition and sealing:

> It is unnecessary to look into the question of whether the Respondent was bound to comply with the provisions of the Geneva Convention, for even if that were the case, there is no contradiction between the provisions of the Convention to which Mrs Tsemel [Counsel for the petitioners] referred, and the use of the authority vested in the Respondent.[171]

Specifically, the Court has rejected the argument that house demolition and sealing as carried out by the Israeli authorities constitute collective punishment, and as such are prohibited both by the Hague Regulations and by the Geneva Convention.[172]

Finally, the Court has held that in procedural terms, the burden of proof lies on the petitioner: when an application is made for an *order nisi*, "the application carries the obligation to indicate any reason whatsoever, due to which it is fitting to invalidate the action of the authority against which the application is directed."[173] In a situation where secret evidence can be used, where there may not even be any charges against the suspect on the basis of whose alleged acts the measure has been ordered, and given the positions already taken by the Court, this burden of proof is extremely difficult to discharge.

It is not surprising that the role of the High Court is viewed with considerable skepticism by Palestinians affected by illegal policies of the military government, such as house demolition and sealing. Petitioning the Court is seen by many as at best a way of postponing execution of the measure. In addition, prior to 1989, there was a major practical obstacle in the way of presenting to the High Court an application for an *order nisi* (to require the relevant authority to show why the order should be carried out) and a temporary injunction (prohibiting execution of the order until such

time as the Court has made a decision in the case). This obstacle was the extremely short notice given of the intention to demolish or seal a house:

> The operation is usually carried out at night to ensure least disturbance, or, if during the day, a curfew is imposed or a closed military area declared. The first formal notification the family receives of an impending demolition or sealing order is when the soldiers arrive at the house and inform the family that they have a period, typically of between half an hour to two hours, to remove their belongings from the house. Sometimes there is no opportunity to remove belongings, or the soldiers may do it themselves, often breaking or damaging household possessions in the process. The length of time given and the curfew ensure that the family have no opportunity to contact their lawyer or other assistance....[174]

Thus Moshe Negbi, former head of the international law section of the Military Advocate General's office, stated in 1985 that "at least in the case of demolition of houses we cannot talk about an effective possibility of appealing to the High Court of Justice."[175] Those petitions that were presented were possible because, unusually, more notice was given, or because the residents of the house anticipated the order as a result of the gravity or nature of the accusations being made against a family member, or were given tangible cause for apprehension by, for example, soldiers coming to photograph or measure the house in preparation for demolition.[176]

In 1989, however, the High Court introduced a change in this situation in its ruling on a 1988 petition submitted by the Association for Civil Rights in Israel (ACRI).[177] ACRI had earlier in 1988 appealed on behalf of the village of Beita, where, in April 1988, some 14 houses were demolished by the military following a clash between villagers and armed settlers during

which one of the settlers killed two Palestinians as well as one of his own companions.[178] The Court ruled that the military could not demolish any more houses in the village without first allowing homeowners at least 48 hours to appeal the order. In August 1988, ACRI sought to extend this ruling to the rest of the Occupied Territories. The military authorities opposed this but, apparently fearing a negative precedent from the Court, particularly after the wide publicity given to their actions in the Beita affair, proposed that they would integrate into the standard procedure instructions to allow an order to be appealed except in "severe and exceptional cases" where the alleged offense had resulted in death or injury or where in the view of the Military Commander a "speedy act of deterrence" was required. ACRI did not accept this position and the Court finally ruled on their petition on 30 July 1989.[179] The Court began by reiterating its position that the Defence (Emergency) Regulations constitute valid local law in the territories and then went on to note the severe punitive nature of house demolition. It continued that "fair principles" required that

> a person who is to be subjected to a severe injury to person or property should be given advance notice of this and be granted the opportunity to raise questions concerning the matter. This principle should be applied even when the law permits action on the spot, for example immediate confiscation of property.

The Court therefore held that, except in certain cases, persons receiving demolition orders against their houses made under Regulation 119 should be given the opportunity within a specific time period (48 hours) to choose a lawyer and inform the Area Commander of their objections before execution of the order; should the Commander reject their objections, they should be given a further period (another 48 hours) in which they could have recourse to the High Court of Justice should they so choose. The Court required orders made under Regulation 119 to notify the

recipients of the orders of these options, and it noted that the authorities could ask the Court to prioritize consideration of the petitions. The exceptions to this rule, in which the right to "raise questions" would not apply, were described as:

> military operation circumstances in which the matter of judicial control is incompatible with the conditions of time and place, or with the nature of the circumstances; for example, when a campaign unit carries out an operational action in the framework of which they remove an obstacle or overcome resistance, or react on the spot to an attack on the army forces or on civilians, which took place at that time, or similar circumstances in which the military authority sees an operational need to act immediately.

The Court also held that in undefined "urgent cases" the military authorities could seal a house on the spot, but could only demolish a house sealed in this way after the persons concerned had been given the opportunity to object to the Area Commander and then to the High Court if they wished. In this regard, immediately following the High Court decision, then Defense Minister Yitzhak Rabin declared that: "If the High Court of Justice has decided that we cannot demolish the homes of murderers then we will seal them."[180]

In its annual report for 1989, al-Haq stated that it considered that "the High Court ruling offers, if anything, a palliative rather than a cure" and noted that by November 1989,

> it became clear that the wording of the High Court ruling was sufficiently vague for the military authorities to demolish houses despite an appeal to the Area Commander. On 29 November, the military demolished the home of Jamal Muhammad Abd-al-'Ati in al-Shati Refugee Camp. The demolition order had been issued on 26 November

> and Abd'al-'Ati's lawyer, Raji Sourani, appealed the order that same day, well within the 48 hours specified by the High Court of Justice ruling. As of 11 December, Advocate Sourani had not even received a reply to his appeal, let alone the opportunity to appeal the demolition order to the High Court of Justice, but the Abd-al-'Ati home already lay in ruins. On 7 December, the military demolished five more homes in the Gaza Strip, again ignoring written appeals by Advocate Sourani.[181]

On 7 January 1990, another Gaza family was given reason to doubt the extent to which the High Court's ruling afforded any protection. Ihsan al-Luh had been arrested from his home in the Rimal area of Gaza City the previous September. At 7 pm on the evening of 7 January 1990, his family was told it had three hours to get the furniture out of the house; a curfew was imposed and the two-room rented house was bulldozed at about eleven o'clock that evening. There had been no prior notice; the owner of the building, which also contained another apartment rented by a different family which was not affected, was no relation to his tenants, the al-Luh family. The demolition of their home displaced Ihsan's mother, three brothers and a sister, his wife and three children.[182]

The Court itself has since considered exceptions to the rule it set in HCJ 358/88. In 1990, ACRI submitted a petition to ask why the Area Commander in Gaza would not apply the 48-hour rule to the widescale demolitions being ordered in Bureij Refugee Camp following the killing of a soldier there. The Court dismissed the petition, upholding the Commander's argument that the army had an operational need to establish security and to carry out the demolitions immediately.[183] In another case, the Court clarified at least one aspect of its ruling that in "urgent cases" a house could be sealed on the spot, pending the hearing of an appeal submitted against the demolition order. On the basis of the confessions of two suspects to a murder inside Israel, the Area

Commander had issued an order for the sealing of their houses which were to be confiscated and demolished. The suspects had since received life sentences. The Court upheld the decisions of the Commander, noting that "such a step should be taken only in cases of serious attacks, in which an immediate deterrent response is required," and held that this was in accordance with its 1989 ruling in the ACRI petition.[184] This wording would appear similar to the exception initially proposed by the military authorities during the progress of the claim in the ACRI petition, allowing the period for objection to be bypassed in the case of a need for a "speedy act of deterrence."

Although through its ruling in the ACRI petition the Court insisted on the right, in most cases, for persons affected by demolition and sealing orders to have the decision reviewed by the Court, the nature of the review it then carries out has not changed. This is clear even from a case in which, exceptionally, the Court accepted a petition, cancelled the Commander's order, and returned the case to him for reconsideration.[185] The decision came as a supplementary ruling in a petition submitted in 1989 regarding three houses against which orders had been issued under Regulation 119. The Court first upheld the Area Commander's decision to confiscate and seal the houses of the two petitioners and then, with the agreement of all parties, proceeded to consider the Commander's decision to seal and demolish the inner walls of the third house belonging to a neighbor of one of the petitioners. This house was home to 'Abd-al-Rahim Abayed and the order had been issued on the pretext of offenses attributed to him. Advocate Lea Tsemel, for the petitioners, had pointed out a discrepancy in the facts that the Area Commander had laid before the court in his response to the *order nisi* to show cause for his decision. He had stated that the suspect had confessed to certain activities which were not in fact included in the suspect's confession statement made available to the court. Judge Kadmi pointed out *inter alia* that the suspect had confessed to other offenses and that:

> in such circumstances, we must establish whether the actions specified in Abed Abayed's confession

are sufficient basis for the Respondent's decision....

The other two judges on the panel, however, accepted the reasoning that:

> when the Respondent based his decision on the facts and reasons specified in his reasoning, and it transpires that he erred regarding a significant part of these facts and reasons, then it is only proper and just that the decision be revoked and the matter returned to the Respondent for his perusal and reconsideration....

In this case, then, because the Commander had erred in the facts he presented to the court, the order was cancelled. However, Judge Or also made significant statements regarding the extent of the High Court's powers of review. Responding to the minority opinion of his colleague, he stated:

> I do not agree ... that we must establish whether the acts described in Abed's confession can serve as a sufficient basis for the Respondent's decision. However, I do not intend to express my opinion on this matter. The decision to destroy or seal a structure is the Respondent's decision. His decision does, it is true, face the scrutiny of this court, but in exercising this scrutiny, the court does not put itself in the position of the Respondent, or decide in his place what should be done .... The question is whether the Respondent, in considering and making his decision, acted properly and reasonably, taking into account the genuine facts of the case ... the question is not what this Court thinks should have been done in light of the true facts of the case, but whether the respondent, in making his decision, had the true facts of the case in mind.

This statement underlines the Court's view of the extent of its review of decisions of the military authorities. In the same case, Judge Alon disputed the suggestion that confession by the suspect was necessary to constitute a basis for the Commander's decision, stating "[t]his is not the place to discuss the degree of proof needed for the implementation of the aforementioned Regulation."

Despite the extreme rarity of the Court actually ruling against the military authorities, a petition to the High Court can have the effect of modifying the decision of the Area Commander, for example from demolition to sealing or from an order affecting the whole of the structure to one affecting only part. This can occur as a result of the Court recommending such action to the Commander, or as a result of the Commander either cancelling or modifying his decision before a decision is issued by the Court, whether in anticipation of the Court making such a recommendation or as a result of discussions during the progress of the petition. [186] The Israeli human rights organization B'Tselem reported in 1990 that it had asked the army for data on the incidence of changes from more severe to less severe measures but that the military authorities had replied that no statistics were available.[187]

The fact remains that the High Court of Justice, through its acceptance of the discretion and arguments of the military and its failure to challenge the fundamentally extra-judicial nature of the penalty, has not provided an effective appeal against demolition and sealing orders. It has consistently given judicial sanction to orders that violate absolute prohibitions in international humanitarian law and fundamental principles of human rights.[188] Professor Adam Roberts, at the end of a consideration of the role of the Israeli Supreme Court, poses a question:

> Overall, the question arises whether the approach adopted by the Supreme Court -- on the applicability, justiciability and interpretation of international conventions -- has not had the effect of reducing the Court's possibilities of intervention. Is there an extent to which the court has served as

> a buffer to soften the apparent conflict between international legal provisions on the one hand, and Israeli policy and practices, on the other?[189]

By upholding the policy of punitive house demolition and sealing for "security" reasons, the Court has indeed acted, or attempted to act, as a "buffer," giving an appearance of legal proceedings and legality to an act that is a serious violation of international humanitarian law. Consequently, it has implicated itself in the pursuit of a government-set and military-executed policy of grave breaches of the Fourth Geneva Convention.

E. PRACTICE

The practice of demolishing and sealing houses of Palestinians suspected of "security" offenses has been carried out by the Israeli military authorities since the beginning of the occupation. In the early years it was used on a very wide scale, the Israeli authorities themselves giving the figure of 1265 houses blown up in the first 15 years of occupation,[190] excluding entire Palestinian villages destroyed during and in the aftermath of the 1967 war (notably Yalu, Um Was, and Beit Nuba in the West Bank). Other estimates for those years are much higher.[191] Towards the end of the 1970's, this policy and other administrative punishments (particularly deportation and administrative detention) were increasingly condemned internationally and also within Israel and, probably due to the resulting pressure, the use of the policy of house demolition and sealing decreased notably in the late 1970s and early 1980s, although it was never entirely discontinued. Al-Haq's information on the period preceding 1981 is limited, but the detailed documentation compiled on the years 1981-1984 shows that in 1981, a total of 16 houses were demolished or sealed, whether totally or partially, in the West Bank and Gaza Strip for alleged "security" offenses. In 1982 the total was 16, in 1983 it was 33, and in 1984 it was seven.

In 1985, this trend was reversed. In August of that year, the Israeli military authorities announced an "Iron Fist" policy towards the population of the Occupied Palestinian Territories. From August to the end of the year, as many houses (57) were demolished or sealed as had been affected over the whole of the previous three years. Of these, 23 (40%) were totally demolished, 19 (33%) were totally sealed, two (4%) were partially demolished, and 13 (23%) partially sealed.

The policy provoked international criticism and interventions by organizations concerned with the promotion of human rights and the rule of law.[192] In the next two years, the Israeli authorities, apparently in response to the criticism, made increasing use of sealing of homes, both partial and total, lowering the percentage of houses totally demolished. Thus in 1986, of a

total of 45 houses affected, 12 (27%) were totally demolished; and in 1987, 10 houses (24%) were totally demolished out of a total of 41.

In December 1987 the uprising began in the Occupied Palestinian Territories. The first complete calendar year of the uprising, 1988, showed both a dramatic increase in the overall number of houses demolished or sealed and an increase in the proportion of houses totally demolished as compared to the preceding years. In succeeding years of the uprising, although the proportion of houses totally demolished has gone down in comparison to 1988, it remains higher than during the "Iron Fist" years. The following table shows a breakdown of the specific measures taken against the houses in the West Bank and Gaza Strip according to al-Haq's documentation for 1981-1991.

Demolitions and Sealings in the Occupied Palestinian Territories -- 1981-1991

Year	Total Dem.	Part Dem.	Total Seal	Part Seal	Part Dem. & Part Seal	Total
1981	14	/	1	1		16
1982	6	3	3	4		16
1983	6	2	11	14		33
1984	3	/	1	3		7
1985	23	2	19	13		57
1986	12	1	8	24		45
1987	10	1	14	15	1	41
1988	117	23	38	22	1	201
1989	114	29	62	30	1	236
1990	101	27	80	22	2	232
1991	50	5	36	26		117
Totals	**456**	**93**	**273**	**174**	**5**	**1001**

The table also shows that according to al-Haq's documentation, after the first full year of the uprising there was a steady increase in the proportion of houses totally and partially sealed, as against those totally or partially demolished. In 1988, the proportion of buildings that were subject to demolition orders (whether total or partial) was 70%; in 1989, 61%; in 1990, 55%; and in 1991 for the first time during the uprising it fell below 50% to 47%. However, the table also shows that when demolition occurred, it was taken against the entire structure (i.e. total demolition) in 46% of the cases from 1981-91; in the case of sealing, 27% of the houses affected were totally sealed and 17% partially sealed. The decrease in the number of houses demolished and sealed in 1991 is as likely to reflect a decrease in the kind of incidents that previously might have provoked a demolition or sealing as to reflect any change in the practice of the Israeli authorities. The decrease is, however, relative to the previous three full calendar years of the uprising; the total number of houses affected in 1991 was still over twice the number in every year of the "Iron Fist" policy.

Events during the uprising have also served to overwhelmingly disprove previous claims by the Israeli authorities that houses are demolished only in the most serious cases. In 1971, Meir Shamgar stated that "[d]emolitions have been applied as personal punitive measures against a person in whose house acts of terrorism against the Army or the civilian population have been prepared, committed, or arms caches found."[193] Ten years later, in 1981, the Israeli section of the International Commission of Jurists stated that Regulation 119 "has been used with extreme caution and has been invoked only where houses were used to prepare explosives and store ammunition or as bases for the use of arms and the throwing of grenades, and generally only when terrorist acts have resulted in the murder of innocent people."[194] Another 10 years on, the section on the Occupied Territories in the US Statement Department Country Human Rights Report for the year 1991 contained the following statement:

> Israeli authorities assert that they demolish or seal only rooms or houses occupied by Palestinians known to have actively participated in a murder or caused serious physical injury.[195]

This assertion can hardly be taken seriously against the background of events such as the widespread demolitions in Beita in 1988, when Israeli public opinion was inflamed by the death of an Israeli girl who, it was later proven, was shot and killed by the Israeli guard accompanying her party of settlers.[196] Similarly, in the northern West Bank village of Bidya in March 1988, village residents clashed with the village mukhtar, known to local residents as a collaborator with the Israeli authorities. After the mukhtar had shot at some local youths, settlers turned up in the village, shooting at the villagers and followed by the military. Some days later, a number of youths were arrested and three houses were demolished. These youths were later given sentences ofimprisonment ranging from eight months' to two years on charges of incitement.[197] It is clear from al-Haq's data that even before the uprising, the sentences later given by the military authorities to detainees on the pretext of whose actions the measure was taken indicate that the military judges did not in every case regard those actions as offenses of the greatest severity. For example, in 1981, a nine-room house in the village of Beit Sahour was blown-up on the pretext that two of the owner's sons, aged 15 and 16, had thrown petrol bombs as part of an organized "cell." Both sons were under interrogation at the time of the demolition; the 15-year-old later received a prison sentence of three-and-a-half years, and his brother was sentenced to one year and eight months.[198] In 1982, a four-room UNRWA shelter in 'Ayda Refugee Camp near Bethlehem, home to a family of 12, was blown up on the allegation that a son and daughter of the family had thrown Molotov cocktails, in one case resulting in the injury of a woman soldier. Both detainees later received three-year prison sentences; their family spent three-and-a-half years living in a tent following the demolition of their home.[199]

During the uprising, the authorities have had increasing

recourse to house demolition or sealing where no death or injury has been caused as a result of the alleged offense on the pretext of which the measure is implemented. In particular, demolitions and sealings appear to have been used to target those accused of specific types of offenses that at a given time are of particular concern to the authorities. As al-Haq pointed out in 1988, these changes in the use of the measure appear to reflect both political criteria and the continued frustration of the authorities at their failure to end the uprising.

Thus, for example, Jewish settlers living in the Occupied Palestinian Territories have repeatedly called for the destruction of houses, and indeed entire villages, where people who have thrown Molotov cocktails reside.[200] In June 1988, some six months into the uprising, the West Bank Military Commander at the time, General Amram Mitzna, stated that demolitions were being used because they were "a powerful deterrent action to signal and clarify that we will do everything and take all measures to stop this phenomenon of petrol bombs."[201] Many houses have been demolished or sealed during the course of the uprising on petrol-bomb related charges, whether or not a death or serious injury was alleged to have been caused thereby. In March 1989, for example, two detainees, an 18-year-old and a 19-year-old from the village of Saniriya, were charged with throwing petrol bombs at houses and cars in a nearby settlement. There was no allegation that any injury or damage had been caused by their action. Before their trial, the army demolished the family homes of both detainees, leaving the parents, grandmother, and six brothers and sisters of one detainee and the parents, grandmother, and seven brothers and sisters of the other without shelter. Each detainee was later sentenced by a military court to one year and 10 months' imprisonment.[202]

In March 1988, in the village of Silat al-Harethiyya, three houses were totally demolished on the basis of allegations made against sons of the families living there that included the throwing of Molotovs and incitement. One of the youths, whose family of 12 was displaced as a result of the demolition of the 10-room house, was later tried on the charges of throwing Molotovs at

soldiers and of membership in a banned organization and was sentenced to eight months imprisonment.[203] The second was never charged for the offenses that the army cited when they came to demolish his family's house -- active membership in a banned organization and "intifada activities" such as throwing Molotovs -- but was sent to the Ansar 3 prison camp in the Negev desert for six months of administrative detention.[204] The third house was demolished on the pretext that one of the family's sons had incited others to throw Molotov cocktails; not only was this youth not charged with "incitement" but he was not even interrogated about the allegation. Like the second, he was sent to the Negev for six months of administrative detention.[205]

In 1989, a similar "offensive" was taken against those accused of stonethrowing, described in January of that year by General Mitzna as "the most troublesome phenomenon" and "the core of violent activity."[206] On 17 January 1989 it was reported that a "judicial basis" was being prepared "allowing defence authorities to seal or demolish the homes of families residing in the occupied territories when it is found that stones thrown from them caused severe damage."[207] On 25 January 1989, it was reported that Defense Minister Yitzhak Rabin had told the Security and Foreign Affairs Committee of the Knesset that: "We destroy the house of every person who confesses to throwing stones. If there is no confession, we do not destroy."[208] Just over a year later, in February 1990, it was reported that the army had begun implementing a new policy of sealing the homes of families of Palestinians arrested on suspicion of stone-throwing."[209] The army's Judge Advocate in the West Bank, Ahaz Ben-Ari, was quoted as saying that use of the house-sealing penalty was being extended because of "the danger of stone-throwing":

> Because this phenomenon is still deeply rooted, and lately, to our great regret, is on the increase, it was decided to widen the sanctions for this phenomenon....[210]

Since January 1989, houses have indeed been demolished or sealed on the pretext that stones had either been thrown by a resident or from the vicinity of the house. For example, two houses were demolished and two sealed in al-'Eizariyya near Jerusalem, over the two days 25-26 May 1989, because four inhabitants were said to have thrown stones at a passing car driven by a settler, causing it to crash and injuring four passengers.[211] On 8 July 1990, two houses in Gaza were partially sealed on the grounds that youths living there with their families had thrown stones; both youths later received prison sentences of nine months.[212]

Furthermore, al-Haq has documented 31 cases over the intifada years 1988-1991 where houses were demolished or sealed on the grounds that stones or petrol bombs were thrown from their vicinity; in 21 cases it was allegedly because of stones, in nine cases because of Molotovs, and in one case it was alleged that both types of projectiles had been thrown.[213] No allegation was made that a person suspected of the offense was a resident of the house. Of these, al-Haq documented five cases from 1988, 10 from 1989, 11 from 1990, and five from 1991.[214]

Finally, the authorities have also implemented house demolition and sealing orders against the family houses of persons "wanted" by the authorities: that is, the houses of "fugitives." Although the majority of house demolitions and sealings take place before the trial of the suspect on the pretext of whose alleged offenses the order is issued, until the uprising there were only isolated cases of houses being demolished or sealed before the suspect had been arrested.[215] As al-Haq pointed out in 1989, the phenomenon of large numbers of "fugitives" in the Occupied Palestinian Territories is, with the exception of the Gaza Strip in the immediate aftermath of the 1967 war, unique to the uprising.[216] A number of measures designed to link material costs to continued resistance have been employed by the military to pressure the families of these "fugitives" to convince them to surrender. One of these has been house demolition or sealing. In 1988, 17 houses were sealed or demolished in such circumstances; in 1989, 14; in 1990, 15; and in 1991, 12. In addition, threats of

demolition or sealing were reported by families of other "fugitives."[217]

With regard to the specific issue of "wanted persons" and extra-judicial punishment, mention should be made of Military Orders 1369/1992 (West Bank) and 1076/1992 (Gaza Strip), in force as of 28 May 1992. The orders provide for a seven-year prison sentence for anyone who fails to obey a "special summoning order." The special summoning order is defined as "an order signed by an [Israeli] officer which orders a named person to appear for interrogation at a place and time stated by the order." The order can be served on the person him/herself or on a family member who "appears to be over 18." Susceptibility to the seven-year prison sentence arises 30 days after the summons is served. It is not clear from the order whether a regular trial would be held prior to imposition of the sentence, although there is a "defense" if the person being summoned can discharge the burden of proof to establish that he or she did not in fact have knowledge of the order. There is no need for a particular offense or charge to be mentioned in the special summoning order.[218] It is thus theoretically possible, under current Israeli legislation, that persons whom the authorities are seeking on suspicion of an offense may find their family home demolished and themselves liable to seven years in prison before they have even been questioned.

F. DAMAGE TO ADJACENT BUILDINGS AND COMPENSATION

In a letter sent in 1989 to then Minister of Defense, Yitzhak Rabin, Member of Knesset Shulamit Aloni observed:

> [S]ince we may easily assume that the army is trained to blow up a house without damaging adjacent buildings ... one may conclude that the damage wrought upon neighbouring buildings results from malicious intent or criminal negligence i.e. toward the neighbors, or operational negligence on the part of the troops involved.[219]

Given the sheer numbers of homes that have been demolished by the Israeli army over the course of the occupation, one may indeed assume that the expertise exists to accomplish the set task without causing damage to neighbouring houses. Al-Haq's data shows that during the total demolition of 456 houses over the period 1981-1991, in 132 cases (29%) damage was caused to adjacent buildings. In the years before the uprising documented in detail by al-Haq (1981-87), damage was inflicted on adjacent buildings in 20% of the cases of total demolition; over the intifada years 1988-91, this rose to 31%. In the calendar year of 1988, in 50 (43%) out of the 117 incidents of total demolition, damage was caused to adjacent houses. In some cases, particularly during the uprising, the damage involved large numbers of neighboring buildings. Substantial damage was caused to neighboring houses in, for example, the villages of Beita and Bidya and in the Jenin and al-Jalazon Refugee Camps in 1988.[220] In 'Arroub Refugee Camp, a total of 18 adjacent houses sustained damage following the demolition of two buildings on 15 May 1989.[221] In 1991, when Samir Ahmad Sabbagh's house was demolished in Jenin Refugee Camp using a bulldozer and dynamite, two neighboring houses were also destroyed and three others rendered uninhabitable through the damage they sustained; about 10 others sustained less serious damage.[222]

Al-Haq believes that the extent of damage caused to adjacent houses arises either from willful (and therefore criminal) negligence, or constitutes an extension of the collective nature of the penalty -- that is, from intent. The following is an extract from an affidavit given by a neighbor of a family in Nablus whose house was demolished on 7 March 1989:

> After evacuating Nayef's house, the soldiers told us and the other families to leave our homes as well because they wanted to demolish the al-Na'nish house. I asked one of the officers: "Will our house be affected as a result of the demolition?" He said, "Yes." I told him: "Instead of using explosives and harming the adjacent houses, why don't you use axes?" I was worried about my house and those of the neighbors. He said: "This is a collective punishment."[223]

In 1990, the attention of the High Court of Justice was explicitly drawn to this subject. Having obtained a temporary injunction against the execution of the demolition order issued against the house of Mohammad Hassan Shawahin in the village of Yatta, one of the arguments presented by the lawyer for the petitioner was that the foundations of the house slated for demolition were connected to the foundations of neighboring buildings, and therefore there was a risk of damage to these houses should the demolition order be executed. The Court stated in its written judgment:

> The fear that damage will be caused to neighbouring houses is an issue which must be considered with all sincerity. Execution of the measure of house demolition is aimed at the house in which the detainee lived, and is not aimed at causing damage of any kind to the neighbouring house. We are satisfied with the declaration of the representative of the military commander that the

> demolition of the house will be carried out by means of mechanical equipment and not by means of explosives. Thus a controlled demolition will be carried out, without causing damage to the neighbouring houses.[224]

On 10 September 1990, the house was demolished using a bulldozer. As a result, an adjacent cement wall collapsed and, together with the second-storey walls of the house, caused the main support beams of the nearby houses of Mahmoud Shawahin and 'Abdallah Shawahin to buckle and crack. An engineer's report of 15 December 1991 estimated the cost to repair the damage to one house at NIS 26,390 and to the other at NIS 29,000 (at a cost of NIS 145 per square meter).

Those whose residences have sustained damage as a result of the demolition of an adjacent dwelling may submit an application for compensation under the provisions of Military Order 271/1968 (Order Pertaining to Claims) (West Bank) or 234/68 (Gaza Strip).[225] Under this order, written applications may be submitted to the Claims Officer, a military officer appointed for this purpose by the Military Commander, by those who have the right to compensation for damage resulting from actions of soldiers or persons working with the army within a year of the damage occurring or their knowledge of it. Claims considered by the Claims Officer have to be brought before the Military Commander for his approval.[226] The decision following the inquiry of the Claims Officer as to whether and how much compensation should be paid can be "appealed" to a three-member military objections committee, presided over by an officer with legal qualifications who is not bound by the rules of evidence.[227] The decision of the objections committee is final.

In answer to a question from Member of Knesset Haim Ramon, then Defense Minister Yitzhak Rabin stated on 13 July 1989 that since December 1987 (the beginning of the uprising), 34 requests for compensation had been approved under these provisions and a total of NIS 50,335 disbursed accordingly in payments to the claimants.[228] The Association for Civil Rights in Israel

sent an engineer to examine houses damaged in al-Arroub Refugee camp as a result of the demolition of neighbouring buildings. In one case the engineer estimated the damage at NIS 12,135, but the compensation award was only NIS 400; in another, the estimate was NIS 14,491, but only NIS 1200 was awarded.[229] On 16 June 1988, the 12-room house of Alia Amer was blown-up in Jenin Refugee Camp three weeks after the arrest of one of her sons. She was given 10 minutes to empty her home, and the soldiers also evacuated the neighbors from nearby houses. The explosion that demolished her house damaged some 30 others in the vicinity. The Engineers' Association in the West Bank formed a committee and drew up reports on the damage sustained by 22 of these houses. In the end, only eight of the affected families were compensated, again at inadequate levels. The Union estimated, for example, total losses to Muhammad Zbeidi resulting from damage to his home caused by the explosion at NIS 51,922; he received NIS 22,000 in compensation. The walls of the house of Jamal Zbeidi were fractured by the explosion and his losses were estimated by the Union at NIS 10,000; he finally received NIS 780 compensation.[230] It is clear that in none of these cases was the sum awarded anywhere near adequate to compensate for the damage inflicted.

G. REBUILDING/UNSEALING AFFECTED HOUSES

The demolition or sealing of a family's home in the Occupied Palestinian Territories is a punishment of unspecified duration. Even in the case of total house demolition, where the measure is irreversible, there is a further, ongoing penalty inflicted on the family in the fact that they are not allowed to start again and build another house on the site of their demolished home. A demolition or sealing order made against a structure on the basis of Regulation 119 of the Defence (Emergency) Regulations commences with the announcement of the confiscation "to the benefit of the Israel Defence Forces" (i.e. the Israeli armed forces) of the building and the "expropriation of the rights of the owner of the building over the land on which the building stands." In the immediate aftermath, some families relocate to the houses of relatives or neighbors if these persons are able to take them in; others remain on the site sheltering in tents provided by the ICRC or perhaps by UNRWA. In some cases the site is further declared a "closed area" and the family is not even allowed to remain on the site, except with the permission of the Area Commander. Military Orders prohibit the family from rebuilding its house on the site or unsealing it without the permission of the Area Commander.[231] The terms of Military Orders 465/1972 (West Bank) and 420/1972 (Gaza) (Pertaining to the Prohibition on Building) provide for the destruction of any building constructed on such a site without such permission and in violation of the Order. Al-Haq's documentation includes the case of the al-Ramahi family in the al-Jalazon Refugee Camp, whose house was sealed in 1987; the family pitched a tent on the roof of the house and lived there and on the veranda of the house until, following the serious illness of their four-year-old daughter, they obtained a license from UNRWA to build a two-room structure on top of the sealed shelter. The Israeli military came to check that the house was still sealed and ordered the family to vacate the two new rooms immediately; interventions regarding the health of the little girl, who apparently needed kidney dialysis, were to no avail.[232] In another case in 'Beidiyya near Bethlehem in 1991, the military

destroyed a 40 cm wall built by the Abu Sarhan family in the depths of the winter to stop water running into the tents in which they had been living since their house was demolished the previous November; the military collapsed the tents and put the rubble from the demolished wall on top of them.[233] Later that year another family was reported to have been forcibly removed from the tents they had erected on the site of their demolished home in Rafah in the Gaza Strip, on the grounds that the site had been confiscated.[234]

In the US State Department Country Human Rights Report for 1991, it was reported that:

> Israeli authorities assert there is a formal procedure whereby owners may apply to regional military commanders for permits to rebuild or unseal and that there are a few cases where owners have received relief in this manner. They acknowledge that the process is difficult and complex, because individuals must first regain possession of the confiscated land.[235]

In July 1992, al-Haq wrote to the Legal Advisor in the West Bank military government requesting details of this "formal procedure."[236] The reply from the Office of the Legal Advisor[237] commenced by citing the above-cited Article 2(a) of Military Order 465/1972, and continued:

> There is no written procedure on this matter, nor is there any special form that must be submitted for the purposes of an application to the Area Commander. All that is required is a letter stating the factual background and the reasons why the building or unsealing is necessary and the justification for [the granting of] such permission, given the confiscation of the site. (para. 2)

The Military Commander considers every case on its merits,

examines the circumstances on a case-by-case basis, consults with various parties at his discretion, and makes his decision based on the information available to him, while taking into account the security needs of the area. (para. 3)

Neither this letter nor the military order to which it refers gives any indication of criteria that would be sought or considered by the Area Commander; the "formal procedure" thus appears to consist of writing a letter that will be considered by the Area Commander on the basis of unknown criteria. The decision to bring the ongoing penalty to an end insofar as that is possible -- i.e. in the case of demolition, through allowing the family to rebuild on the site of the home if financially possible, and in the case of sealing, through opening up the house -- is thus similar to the decision to impose the penalty in the first place, in that it is entirely at the discretion of one person, the Area Commander. However, whether through declared policy statements or through statements of the High Court, some of the criteria used in the decision to demolish or seal are at least to some extent public. For example, it is known that the killing of an Israeli national or the launching of a military operation will be likely to provoke demolition of the family home; similarly, the policy statements regarding the targeting of houses of persons causing injury through the throwing of Molotovs or stones were very specific in regard to categories of actions that would be likely to result in implementation of orders made under Regulation 119.[238] However, when it comes to obtaining permission to rebuild or unseal a structure so affected, there are no such indications.

In HCJ 274/82 (*Hamamra*)[239] the High Court considered a petition by the owner of a house that had been totally sealed following the arrest of his son for setting an explosive charge on a road that resulted in the wounding of a soldier. The sealed house comprised three rooms and five storerooms used for commercial purposes by the family. The sealing displaced the detainee's elderly grandparents, his parents, four brothers, two sisters, and the wife of one brother and their two sons.[240]

The petitioner argued that his young son had been influenced by other people and pointed out that sealing had not

only left his family without shelter but also without the means to earn a living due to the sealing of the part of the house used for income generation. The Court responded that the Commander had been within his authority to implement an order under Regulation 119 and observed that each case was evaluated on its merits as regards the severity of the offense committed and the means implemented as a response. It noted that "the act of confiscation is not a final act and those responsible may at any time annul the confiscation in total or in part and restore the status quo ante, either wholly or partially." The Court rejected the petition but noted that the petitioner could go to the Area Commander at any time and request that he exercise his authority to annul the confiscation order and allow the unsealing of the house.

The son was meanwhile sentenced to 14 years' imprisonment of which five years were to be suspended. After the son had completed his sentence in November 1991 and was released from prison, the family applied again to the Military Government in Bethlehem for permission to unseal the house. The Military Governor of Bethlehem subsequently informed them that the application had been refused because of the gravity of the offenses on which the detainee, now released, had been convicted; he told the family that they could apply again 10 years after the date the house had been sealed. In March 1993, the house was still sealed.

The nature of house demolition and sealing as an additional, extra-judicial, and collective penalty is clear from this example. The suspect had been convicted in court and had served a lengthy sentence; the additional penalty of having the family house sealed up continued in force at the discretion of the Area Commander on the pretext of those same offenses for which the youth had served nine years in prison. There was no guarantee for the family that when the period of 10 years, apparently set completely arbitrarily by the Area Commander, had passed, it would be allowed to regain possession of its home and workplace.

In another case documented by al-Haq, this time in 1986, a boy of 13 1/2 years was sentenced to six months' imprisonment on the charge of having prepared and thrown a Molotov

cocktail.[241] The army sealed one room of the three-room house that his family of 10 rented from a third party. The family reported having requested permission to unseal the room on a number of occasions to no avail: the room remained sealed in March 1993, eight years later.

The lack of criteria upon which families could assume their application would be positively considered adds to the conviction that it is of little use to seek permission to rebuild or unseal a house. This feeling is borne out by the very low success rate for those who do apply. According to al-Haq's data on the houses demolished and sealed from 1981-1990,[242] permission to rebuild or unseal was sought in a total of 199 cases, only about 22% of all the cases documented by al-Haq. Of these, in only 35 cases (18% of the applications) was permission granted. Of these, 24 cases were for a house to be unsealed and 11 for permission to rebuild on the site of a demolished house.

In addition, in many of the cases where permission was finally obtained, multiple previous attempts were unsuccessful; and by no means did all of them follow the "formal procedure" described above for applying. In some cases permission was granted following the personal intervention of third parties,[243] in others cases were raised in court,[244] and in yet others permission appears to have been granted after the presence in the area of particular military officers whom the family addressed directly on the matter.[245] Finally, in a few cases, the family obtained a building permit from the Planning Department and then fought a subsequent demolition order made against the new house in court.[246] In short, the chances of success for an application made through the "formal procedure" is even lower than the figure of 18% given above where permission to unseal/rebuild was successfully sought through various means.

H. CONCLUSION

On 23 August 1992, the Israeli Prime Minister, Yitzhak Rabin, announced a "series of conciliatory measures designed to coincide with the resumption of peace negotiations in Washington."[247] The *Jerusalem Post* reported that:

> Some houses which were sealed as a punishment for anti-Israel activities at least five years ago will be opened up after an examination of each case, Rabin ordered.[248]

Rabin's announcement followed comments made a few days earlier by the Justice Minister, David Liba'i, who had stated that he had recommended that deportation orders pending against 11 Palestinians be suspended as a "goodwill gesture" on the eve of the talks in Washington (a move subsequently announced on 25 August 1992) and called on the Palestinians to "stop their violence as a counter-gesture."[249] Liba'i continued that he opposed the policy of demolishing the houses of "suspected terrorists:"

> especially when a house in which other family members reside is involved. Were my appeal to be heard and the [Palestinians] to stop their violence, the need for this sanction would disappear.

This is of course good news for those families who may regain possession of their homes under this "conciliatory measure." The fact that according to the newspaper reports of the statement these homes are among those sealed "at least five years ago" means however that the numbers might be rather less than might have been implied by the tone of Rabin's declarations on the eve of the Washington talks; the uprising is currently in its fifth year, having started in December 1987, so no houses sealed during the course of the uprising would come into this category. Nearly 80% of the house demolitions and sealings documented by al-Haq over the period 1981-1991 occurred during the uprising. In fact,

during the six months following this announcement, al-Haq documented the unsealing of only nine homes.

Any unsealings of houses that occur as a result of the Israeli Government's "conciliatory" declarations in the summer of 1992 will have the effect of removing an ongoing punishment that some families have been suffering for several years, a punishment that was illegal when inflicted and illegal while maintained. To remove the penalty is doing no more than removing the ongoing illegality; it does not redress the illegality of the original action. At the time of writing, no equivalent relief has been announced for those families whose homes were demolished and who have been forbidden to rebuild on the site.

At the same time, it must be stressed that these "conciliatory" declarations do not amount to a suspension of the policy of house demolition and sealing, which continues in force. Since the summer of 1992, a disturbing new trend has emerged in Israel's house demolition policy: the use of anti-tank missiles and/or high-powered explosives against houses in which it is alleged "wanted persons" are hiding. Justifications for these attacks are made on the basis of "military operations." These claims, however, are seriously undermined by such incidents as the massive attack which affected 19 houses in Khan Yunis in the Gaza Strip on 11 February 1993, when dynamite charges and anti-tank missiles were used in houses which had already been thoroughly searched by soldiers.[250] In the 21 such demolition operations documented by al-Haq prior to the end of April 1993, a total of 116 houses were affected; 38 of these were totally destroyed. In addition to the 116 houses, five shops were partially destroyed. The attacks have affected hundreds of people and caused more than one million dollars worth of damage. The vast majority of houses affected have not been found to have been harboring "wanted persons" at the time of the operation; only fourteen "wanted persons" have been arrested in connection with these operations, and only five of these have demonstrably been arrested as a direct result of the use of anti-tank missiles or explosives.[251] This trend has undermined the few procedural protections that Palestinians had acquired in house demolition

cases; now Israeli military personnel evacuate hundreds of Palestinians from their homes at a moment's notice, without giving them the chance to remove any personal belongings or valuables and with no right to stay the impending demolitions until an appeal has been adjudicated.

It is also worth noting, in regard to the Israeli Government's attempts to deflect criticisms of its policies, that the 11 Palestinians whose deportation orders were suspended as a "goodwill gesture" were immediately placed in administrative detention, without charge or trial. Less than four months later, in December 1992, Yitzhak Rabin ordered the mass deportation of over 400 Palestinians from the Occupied Territories, a decision formally approved by the Israeli cabinet and upheld by the Israeli High Court of Justice.

In other words, there is no suggestion that Israel is reconsidering its extra-judicial administrative punishments in the Occupied Palestinian Territories, including that of house demolition and sealing, in light of its obligations under the applicable provisions of international law. Nor is there any indication that the Israeli government is recognizing any responsibility for its grave breaches of that law and the incalculable trauma and suffering it has inflicted on countless Palestinian families through those policies. As stressed in this study, under the provisions of international humanitarian law by which Israel is bound as an Occupying Power, Israel is absolutely prohibited from implementing its house demolition and sealing policy under Regulation 119 on any of the pretexts that it puts forward.

As a Palestinian organization dedicated to defending human rights and promoting the rule of law, al-Haq takes exception to the implication that such measures as suspending deportations or unsealing houses, both actions addressed being serious violations of international humanitarian law, can be portrayed as "goodwill gestures" that justify a counter-gesture in return from those against whom the violations have been perpetrated. Israel is absolutely bound to comply with the provisions of the Fourth Geneva Convention and other applicable instruments of international law

so long as it continues in occupation of the territories. The policy of house demolition and sealing, as well as other policies illegal under that law, must be halted *as a matter of law*, and may not be used as bargaining chips in a negotiating process that is itself sponsored by states bound as High Contracting Parties to the Convention to ensure respect for its provisions in all circumstances.

Al-Haq has in the past voiced its concern at the fact that those states best placed to take effective action to ensure Israel's respect for the provisions of international law have failed to take such action and have in deed and in effect, if not in word, tolerated Israel's serious violations of humanitarian law for over 25 years. In December 1990, the United Nations Security Council unanimously passed Resolution 681, in which the Council:

> *Urge[d]* the Government of Israel to accept the *de jure* applicability of the Fourth Geneva Convention, of 1949, to all the territories occupied by Israel since 1967 and to abide scrupulously by the provisions of the said Convention;
> *Call[ed]* upon the high contracting parties to the Fourth Geneva Convention, of 1949, to ensure respect by Israel, the occupying Power, for its obligations under the Convention in accordance with Article 1 thereof.

The Security Council's call on states in this watershed resolution to ensure Israel's respect for the Convention gives a further mandate in addition to the duty in Article 1 of the Fourth Geneva Convention for states to consider the options at their disposal, within the bounds of legitimate state action, to bring about a halt to Israel's violations, including its house demolition and sealing policy as well as other illegal policies and practices. Furthermore, since in al-Haq's view this policy constitutes a grave breach of the Fourth Geneva Convention, Israel's co-parties are under an obligation to exercise universal jurisdiction in bringing those responsible for setting and implementing the policy to justice

in their national courts. Finally, there is the issue of full compensation for all those who have been adversely affected as a result of the policy since the beginning of the occupation.

However, since the Madrid launch of the regional talks, any meaningful discussion of enforcement action against Israel for its violations of international law, including action pursuant to Resolution 681, appears to have been frozen. Influential members of the international community, in particular the US and the member states of the European Community, appear to be heeding the argument raised by the Israeli government to the effect that legitimate enforcement action against Israel to secure its compliance with international law would compromise Israel's ability to maintain its participation in the regional talks. The result is a consistent undermining of international law itself and of the authority of the United Nations Security Council which, while pursuing vigorous enforcement policies against other states in the region for contravention of its resolutions, makes no meaningful attempt to secure Israel's compliance with resolutions requiring it to comply with its basic existing obligations under international law.

On the ground, the results of an absence of vigorous and impartial commitment to the implementation of international humanitarian law by the states charged with obeying and upholding the Fourth Geneva Convention have been made abundantly clear to the Palestinian population of the Occupied West Bank and Gaza Strip. Israel has maintained its control over these territories for over 25 years, during which time it has vigorously pursued its own political agenda in the territories and has committed numerous serious violations of international law, some, as in the case of house demolition and sealing, as a matter of declared policy. The failure of Israel's co-parties to the Convention to oblige Israel to comply with the law throughout this period does not detract from the urgency for them to do so now. Otherwise, the precedent of politically-motivated disregard of humanitarian law in pursuit of an annexationist agenda will have been set by one state and tolerated by others. This precedent stands to further undermine international humanitarian law, a process which can only set the

stage for the perpetration of further violations and war crimes in future conflicts by states considering themselves immune from and proof against the rule of international law and the will of the international community to enforce it.

Appendices

Seven Case Studies of Families Whose Homes Were Demolished or Sealed for "Security" Reasons

1. Nowhere to Live Except the Camp Hospital: The Bureij Demolitions and Sealings[252]

"What good is my right to appeal if you are going to seal my house immediately?" This was Mufid Muhammad al-Shakra's reaction when soldiers forced their way into his house in Bureij Refugee Camp, Gaza Strip, on the night of 27 September 1990 and handed him a written order permitting them to seal his house that night and mentioning his right to appeal. They gave him one hour to evacuate his house and store.

The sealing of Mr. al-Shakra's home was one of a series of sealings and demolitions carried out by Israeli military authorities in Bureij after the killing of a reserve soldier on 20 September 1990. The soldier had driven through the camp at about 120 kilometers per hour, hitting a donkey cart carrying two children. The children were injured and camp residents pelted the soldier's car with stones. Then they set fire to the car while he was inside and the soldier died. Immediately, the Israeli authorities detained 500 young men from the camp, accusing them of killing the soldier. A curfew was imposed for 11 consecutive days. During this time, the authorities demolished 22 houses and 29 stores and sealed three houses, including the al-Shakra home.

With their neighbors' help, the al-Shakra family emptied their house and placed all of its contents outside in the street. Some belongings were destroyed in their haste to remove everything in just one hour. Then soldiers sealed the house.

The 11 family members spent the night beside their belongings strewn outside. In the morning, they moved to the Hospital for Chest Diseases and Illnesses in the camp, where they met many other families from the camp who had just had their homes demolished or sealed. When the al-Shakras arrived, Mr. al-Shakra and four of his sons moved into a tent; his wife,

daughters-in-law, and daughters moved into one room of the hospital. Another son went to live with his uncle, while Mervat, one of the daughters, moved in with relatives who lived near her school.

Approximately 256 persons, including many children, had been left homeless as a result of the sealing and demolishing procedures in Bureij. The families stayed in the hospital until the end of that winter. They faced many difficulties. The weather was cold and wet and many cracks in the walls, windows, and ceilings leaked cold air and water into the rooms. A terrible odor permeated the hospital. They lived in close quarters with sick patients and many people, especially the children, became sick with colds and 'flu. The families had to share bathroom facilities and found the lack of privacy very embarrassing. Mrs. al-Shakra discussed these circumstances:

> After the sealing of our home, we became homeless and we had no place to live except the hospital where I and my daughters and daughters-in-law lived. Our room had broken windows and was a utilities room, serving as a kitchen and laundry room and a place for everything else to be done. I was scared because we had heard that the hospital contained many contagious diseases, such as tuberculosis. We spent the winter there. Many times rainwater came in through the windows. While we were there, we did not leave the room except for emergencies because the hospital was crowded with many other homeless families and visitors.

In December, the Israeli authorities decided to close the hospital and turn it into a boys' secondary school. On 13 December, the hospital's remaining patients were transferred to al-Shifa Hospital. Workers began coming to repair and reconstruct the building. The homeless families continued to live there although they suffered from the construction debris, and many of

the women did not feel comfortable moving about because of the presence of the workers.

In March 1991, the military commander for the Deir al-Bala region decided that the families had to leave the building. Muhammad Ismail Hassan Abu Sa'da, head of a 17-member household which had moved to live in the hospital after their two-story house and stores had been sealed on 2 October 1990, described their predicament:

> The Military Commander asked me to leave the hospital and look for another place to live. So I told him that I had no other place to go, you sealed my house and you scattered my family to various places. So the Commander said to me: "I don't care. Try to find a solution. Just be sure to leave this place as soon as possible."

The Abu Sa'da family could not find another place to live so it stayed for most of the following year at the hospital. According to Mr. Abu Sa'da, conditions there deteriorated:

> I felt very anxious because I could not provide a home for my family. My health deteriorated under the stress. My diabetes got worse. We couldn't sleep because of the mosquitoes. The food was very dirty with flies crawling all over it, so we could not eat. Rats and mice lived in holes in the walls and it was very hot. It became worse when they opened the school in September 1991. Our shelter was in the center of the schoolyard and it was embarrassing to have lots of students around us and have no privacy. My daughters could not go shopping or hang out the laundry until after students left for the day. In winter, my family suffered a lot from the cold and leaks. There was no electricity and therefore no heat. It became worse when the head of the school cut off the water to force us to

> leave. This meant that we had to bring water from the neighbors. This made our life hell. We were deprived of the minimum rights -- water and electricity.

The al-Shakra family's circumstances were no better. When ordered to leave the hospital, the family had moved in with the brother of Mr. al-Shakra and his 13-member family:

> The house became very crowded and there was no place to even lie down. My teenage daughters had to live in close quarters with their male cousins; this was embarrassing to everyone. The bad financial circumstances made our lives even worse. After the bus company in Gaza where I worked as a mechanic let me go, we depended on help from UNRWA for food.

Mrs. al-Shakra added: "The number of people in the house was 24, served by one kitchen and one bathroom. You can imagine the daily line to the bathroom! We had the continuing feeling that we were burdening them."

On 13 January 1992, eight members of the Abu Sa'da family moved into a garage where they had to cook, bathe, and sleep in the only room. The rest of the family moved into a two-room house (with outside kitchen facilities) whose owner had given the family permission to use it temporarily. The collective punishment of the families whose houses were sealed or demolished in Bureij continues. When the authorities destroyed their homes, they also confiscated their land and refused to allow rebuilding or unsealing. The Abu Sa'da family still keeps its furniture in storage because it lives in very cramped quarters. The al-Shakra family still has no home of its own.

2. Preventing the Construction of a New Home Although It Had No Connection to the Demolished One[253]

16 relatives of one detainee were punished not only by demolishing their home, but also by forbidding them to build another home on a separate plot of land. The authorities refused the family's application for a building license even though it had been approved by all necessary planning bodies.

Khaled Saleh 'Abd- al-Salam Salah from al-Khader Village, Bethlehem, 16, was detained and interrogated by soldiers and General Security Services (intelligence) personnel who forced their way into the home at about 8:30 pm on 15 November 1988. At 3:30 pm on 28 November 1988, many soldiers entered the village and used megaphones to announce a curfew. They went to the Salah house and told the family that the authorities had decided to demolish the house because of Khaled's detention. They gave the family one hour to remove all of its belongings.

Some of the neighbors tried to help, but the soldiers beat them and ordered them to leave because there was a curfew. The family tried to remove only important, necessary, or expensive items. When the hour had passed, most furniture and appliances from the bedrooms, kitchen, and cupboards remained in the house. Despite this, the authorities blew up the two-story house (210 square meters) with dynamite.

The Salah family separated. Some members moved into two tents provided by the International Committee of the Red Cross (ICRC), while the others went to stay with neighbors and relatives. After two years of separation and displacement, and frustrated by living with relatives and neighbors, Khaled's two married brothers rented two apartments for 80 Jordanian Dinars (JD) each in Beit Jala, seven kilometers away. Five of their younger brothers moved in with them. The parents stayed in the village and lived in a small home belonging to Khaled's uncle. The main room was 25 square meters. The kitchen and storage room combined comprised 12 square meters. There was a bathroom outside but there was no water or sewage system.

In an effort to reunite, the Salahs bought a dunum (1,000

square meters) of land from a relative and registered it in Khaled's mother's name: Mrs. Rasmiya Ismail Salah. The land was very near the 30 dunums of land where their former house had stood. But those 30 dunums had been confiscated by the authorities who declared it a closed military area when they demolished the house. The family began the necessary procedures to obtain permission to build on the new land. An engineering specialist surveyed the land and provided a map to the necessary departments: the Custodian of Absentee Property and the Antiquities Authorities. These departments granted permission to build and the family completed all required procedures successfully.

Everything went smoothly until the application went to the Military Commander of the Bethlehem district and he refused permission to build. Khaled's mother received an official letter from the commander which refused permission without giving any reason. Khaled's mother went to the commander's office many times but could not change the decision which remained negative even after Khaled had finished his three-year prison sentence and been released (he had been convicted of throwing a Molotov cocktail at an Israeli bus and a collaborator).

The family hired an Israeli lawyer who pursued the case with both the Commander and the Legal Advisor in the Beit El Israeli Civil Administration. As a last resort, the lawyer appealed to the officer in command of the central region, Yitzach Mordechai, but could not change the decision. Eventually, the Salahs could not afford to pursue their case further. However, they continue to visit the Bethlehem Military Commander and say that they are still optimistic that this ongoing collective punishment will cease.

3. They Even Demolished Tents[254]

Moving into tents after their four homes had been sealed and then demolished was only the first displacement for the relatives of one prisoner. After the families built a low wall around their tents to keep out the winter rains, Israeli authorities demolished the wall and drove the families from their tents.

On the morning of 21 October 1990, Israeli media announced the arrest of 'Amer Sa'ud Saleh Abu Sarhan, one of the residents of al-'Beidiyya, Bethlehem, because he had stabbed four Israelis in West Jerusalem. Three of them died and the fourth, a female soldier, was injured. That evening, large forces of soldiers, GSS personnel, and border police entered 'Amer's village and pronounced it a closed military area. They went to the houses of the prisoner, his father, and his two brothers and announced that they would seal the four homes. The families were told to remove all their belongings and the houses were sealed that same night.

The next day, the Abu Sarhan families appealed to the High Court through Advocate 'Abed 'Asali but the appeal was rejected. The 19 displaced persons moved to the tents provided by the ICRC. Soldiers patrolling the village in military jeeps harassed the families in the tents by threatening them and swearing at them.

This punishment was followed by another military order to demolish all four houses. At approximately 2 am on 1 November 1990, while the village was surrounded by a large military force, soldiers came and demolished the houses with dynamite and bulldozers. Altogether, 610 square meters were destroyed. 'Amer's mother, Khadra, described her feelings when their homes were demolished:

> At the moment of demolition, we felt as if we had lost something very close to us. These houses represented everything that we had gained during our lives. We had spent many precious moments in them, and there was a very special relationship between our traditions, our land, and our homes.

Life inside the tents was very crowded and the families suffered most just before and during the Gulf War (which began in mid-January 1991). At that time, all the families in the village who could were making rooms in their houses airtight against possible chemical warfare. But the Abu Sarhan families could not make their tents airtight and their children became very scared. According to Khadra Abu Sarhan: "The neighbors and everyone around us were preparing themselves and their houses and we felt like aliens, as if everything did not concern us."

The families also suffered greatly during that winter from the weather. In February, they built a 40-centimeter-high wall around the tents to prevent run-off from the heavy rains from flooding their tents. However, in March, approximately 30 soldiers came to the tents, accompanied by the officer in charge of town planning in Bethlehem. After checking the area surrounding the tents and noticing the wall, they declared the wall to be illegal. Mr. Abu Sarhan protested that the wall had been built only to keep the water out and that he would destroy it after winter had passed but the officer did not seem to care. The soldiers then cut the tent lines and the tents collapsed while the families were inside. They ran out and the officer ordered them not to change anything around the tents. The family pitched the tents again.

After a week, a large military force with seven military vehicles and one bulldozer and the town planning officer came and destroyed the wall, placing all the rocks and dirt on the tents which they collapsed again. The town planning officer threatened the family: "We've taken photographs of this place and I'm warning you not to change anything; soldiers will come periodically to make sure that you aren't changing anything." The military jeeps came once a week after that.

The families then moved to live in stores which belonged to the village mosque. But due to the difficult conditions, 'Amer's wife, Mona, soon returned to her own family's house with her newborn daughter, Jihad. The oldest son, Fayez, moved to Jordan with his family of four. The three stores where 16 members of the family remained had narrow rooms with an area totaling only 70 square meters. The families' furniture, along with the mosque

furniture, occupied most of the space. The next winter of 1991-92 was the coldest in years and the big doors of the stores had a western exposure with a 10-centimeter gap between one of the doors and the floor. What made it colder, especially at night, was that the buildings were built from cement and bricks, not stone and plaster. The walls and floors were unfinished. Water seeped into the rooms from the walls and under the doors and soaked the families' bedding which was on the floor, causing the children to become ill. The children were also forced to remain indoors most of the time because the stores were on the main street and traffic passed frequently. According to Mrs. Abu Sarhan:

> There is no water, we can bring water from the mosque only at certain times of the day. We are living under emergency conditions and we have to be ready for anything at anytime.
>
> This situation is very frustrating -- even living in tents is better than this. My husband went to the military government asking for permission to rebuild the tents but they refused. Imagine this -- we cannot even live in the tents.

4. Tents, War, and Snow[255]

Four members of the al-Asmar family are still living in two tents in al-Bireh town, Ramallah, after Israeli military authorities sealed their house on 11 June 1990. One of Halima Ahmad Abdallah al-Asmar's sons had been arrested 11 months before, but he had not been tried at the time of the sealing. The Israeli High Court of Justice rejected the appeal submitted by Mrs. al-Asmar, 52 and a widow. The family therefore had to endure life in tents, exposed to one of the worst winters ever experienced in the region.

On 7 August 1989, the oldest son 'Omar Yusef al-Rahman al-Asmar, 24, was arrested by soldiers and GSS personnel at the "Jafar Sweets" shop where he worked. 'Omar earned JD 100 every month for working at the sweet shop in the mornings. In the evenings, he studied at al-Ibrahimiyya College in Jerusalem.

In early 1990, large forces of soldiers, GSS personnel, and Civil Administration officers came to the family's home and photographed it. They told the family that the house was to be either demolished or sealed and that the family had 48 hours to appeal the decision to the High Court. Mrs. al-Asmar went immediately to 'Omar's lawyer, Advocate Ibrahim Ata, and he submitted an appeal to the High Court on 22 February 1990.

At the inquiry on 3 May 1990, the Court rejected the appeal. According to Halima al-Asmar:

> I attended this court session. Everyone was speaking Hebrew and I could not understand what was happening. The lawyer talked for a long time. Then the judge talked with a smile on her face which made me think that she had canceled the authorities' order. After that, the session ended. I rushed to the lawyer to find out about the decision. He told me that they had decided to seal the house. I became very angry and upset and burst into tears. I was thinking about our destiny -- my poor family and its fate.

Told that the sealing would occur on 21 May, the family moved its furniture from the house into the yard. These were difficult moments for Mrs. al-Asmar because they brought back painful memories of the war in 1948, when she had been six years old and forced to flee her hometown of al-Hadetheh, Lod (now inside Israel). She and her family had moved into tents in Deir 'Ammar refugee camp in Ramallah District.

At midnight on 11 June 1990, soldiers came to the house. Mrs. al-Asmar was exhausted from having traveled over 200 kilometers that day to visit 'Omar in Megiddo Prison. One of the soldiers asked her to sign the sealing order and she did. Then the soldiers sealed the house by welding metal sheets to the windows and doors.

That night the family stayed in three separate places. Mrs. al-Asmar stayed with one of her neighbors: two daughters stayed with another neighbor; and one son, accompanied by a relative, kept guard over the pile of furniture in the yard. In the morning, the family met in the yard of their sealed home to try to decide what to do next. They spread blankets over a tree and sat down in the shade below the branches. At noon, representatives from UNRWA and the ICRC offered them two tents and some blankets. Some young men from the area helped them pitch the tents. The family remained in the tents because it could not afford to rent another house.

During the Gulf War in 1991, the family lived in a state of great fear. While people all around them were taking extensive precautions to make their houses airtight in expectation of chemical warfare and poison gas attacks, the al-Asmar family could do nothing. How could they protect themselves from lethal gases while living in a tent? Every time an alarm warned of a rocket attack, the family rushed to the neighbors' homes.

The winter of 1991-1992 brought heavy rains, massive snowfalls, and bitter cold. One day, the weight of the snow on the tent fabric collapsed the tent. Mrs. al-Asmar walked through the snow to the military center where she demanded to see the Military Commander and have her house unsealed. The soldier who stopped her at the entrance refused to let her in and told her

to go to the police. Mrs. al-Asmar went to the police station, but the police told her that this was none of their business and she should return to the Military Commander. She then attempted to convince the ICRC that it should help her family, but the organization refused, recommending that she rent a house. Next, Mrs. al-Asmar went to UNRWA. After several visits, UNRWA gave her a tent. The Harb family, whose house had also been sealed, gave her another tent.

The al-Asmar family is still living in their tents as of September 1992. Mrs. al-Asmar is attempting to meet the basic needs of her family by selling cigarettes on a nearby corner, but she has health problems and finds this very difficult.

Note: In 1993 'Omar al-Asmar was sentenced to 15 years' imprisonment, seven-and-a half actual and seven-and-a half suspended, for membership in an illegal organization and committing acts of aggression against the property of individuals suspected of collaborating with the authorities.

5. A Family's First House Sealed and the Second One Demolished[256]

The 12-member al-Ramahi family is now living in a new house in al-Jalazon Refugee Camp in the West Bank, the family's third dwelling since 1987. The first house was sealed in 1987 and the second was demolished in 1988. Each time, the houses were either sealed or demolished before the trial of the family member accused.

On the night of 6 November 1986, Mahmoud Mustafa al-Ramahi, 51, was arrested from his home in al-Jalazon Camp after large forces of soldiers and GSS personnel exhaustively searched his home. Around 10 am on 4 March 1987, before Mr. al-Ramahi had been tried, dozens of soldiers entered the camp and imposed a curfew. Then they burst into the al-Ramahi house without any warning, shocking the family. The children began to scream.

An officer approached Mrs. al-Ramahi, showed her a sealing order, and asked her to sign it. She refused. He became angry and said: "You have 10 minutes to get all your things out of the house." The family raced to remove everything from their three-room house in time. After 10 minutes the soldiers began to throw belongings out of the house into the rain. Then they confiscated the keys of the house and sealed the windows and doors by placing metal sheets over them and welding them shut. It took almost two hours to complete the process.

The family spent the first night on the veranda of the house; soldiers had not been able to close it because it was open on three sides. In the morning, representatives of the ICRC and UNRWA visited and donated a tent and blankets. The family pitched the tent on the roof of the house.

One night, the oldest son, Ayman, woke to his mother's screams: "Help! Your sister Samah has died. Come help me." His sister, not yet five, was shaking, unconscious, and unblinking -- but alive. They took her immediately to Augusta-Victoria Hospital in Jerusalem where she continued to suffer from a lot of pain and lost consciousness frequently. They transferred her to Hadassah Hospital which diagnosed a kidney infection and high

blood pressure. An operation improved her condition only slightly.

UNRWA, in charge of construction permits inside the camp, granted the family a license to build on the roof of their sealed house. The family built a two-room structure on the roof and moved in there.

One evening, "Maher," the GSS officer responsible for that area of the camp, came with other soldiers to check on whether the house was still sealed. When "Maher" saw the new structure, he said to Ayman: "I see you've built on top of your other house." Ayman explained that they had obtained UNRWA permission to build but "Maher" became angry, saying: "I'll show you." The next day, Ayman received a written summons to go to the Ramallah police station. There he met an officer named Yoval who told him that there was an order from the Military Commander to imprison Ayman for two months for violating a sealing order by building on military property. They kept Ayman for a few hours before releasing him after payment of bail. The family was ordered to vacate the structure immediately and, once again, the family moved into the tent and veranda. Ayman was never summoned to court.

Samah stayed in the hospital, too ill to live in the conditions that her family was experiencing. She needed kidney dialysis, warmth, and sanitary conditions. The family's lawyer appealed to an officer in the Israeli Civil Administration, Dr. Ephraim Sineh, to allow the family to reopen at least one room in the house for Samah to live in, or to permit them to finish building on top of their sealed home. After a long wait, Dr. Sineh rejected the appeal without any clear reasons.

On 15 September 1987, 10 months after Mr. al-Ramahi's arrest, and six months after the sealing, the court sentenced him to five years for attempting a bomb assault, membership in the Fateh party, and heading an armed cell. Ayman gave up his hopes of attending Birzeit University and went to work to support his family instead.

The al-Ramahi family realized that they had to find Samah a suitable place to live when she was released from hospital. With

the owner's permission, they moved into an empty house waiting to be sold. The al-Ramahis were finally able to buy the house with the help of UNRWA and a lawyer provided through the World Council of Churches. Samah was then able to move home after spending more than one-and-a-half years in hospital.

On 20 June 1988, five months after moving into the new house, Ma'moun al-Ramahi, 17, was arrested with some other people from the camp. At midnight on 4 August 1988 many military vehicles and two bulldozers entered the camp. A few minutes later, the al-Ramahi family saw soldiers entering the house of another family whose son had been arrested with Ma'moun. They were terrified to see that this other family then began to carry its belongings out of the house. A few minutes later, soldiers told the al-Ramahis to empty the house within a half hour because it was going to be demolished. Neighbors helped the family carry possessions outside. The family begged the officer in charge to leave one room standing for Samah, showing him medical reports, but within moments, bulldozers had transformed the house into rubble.

The demolition took place 11 months before Ma'moun was tried. In July 1989, he was sentenced to 51 months' imprisonment for throwing Molotov cocktails.

The family dispersed to live with various relatives, and then rented an apartment in Ramallah.

On 21 September 1988, Ayman was arrested and held for nine months.

Those of the family who remained lived in the Ramallah apartment for 10 months. After Ayman was released, they all moved back to a house in al-Jalazon that they had bought with the help of friends. Although Mr. al-Ramahi was released on 6 November 1991, their first house remains sealed and they are still prohibited from building any other structure on it.

For Mr. al-Ramahi, these are not the first homes he has lost; his family originally came from al-Mazra'a, Lod, and he was only seven years old when the circumstances of the 1948 war obliged him to leave his village.

6. Nine Houses Demolished on Mere Suspicion of Illegal Activity[257]

Suspicion of participation in attacks on a village headman, known to local residents as a collaborator, cost nine families their homes. In the early morning of 12 March 1988, Israeli authorities demolished three houses in Bidya village, Toulkarem. They belonged to Ghaleb Ahmad Jibril, Muhammad Talal Saleh Bulad, and Mustafa 'Issa Mustafa Salama. The demolitions occurred less than four hours after members of these families had been arrested. Along with hundreds of other people in the village, they had attacked the village mukhtar, Mustafa Salim Abu-Bakr (Abu Zeid), known to be collaborating with the Israeli authorities. On 14 October 1988, the authorities demolished another six houses belonging to other people, accused this time of killing the Mukhtar on 5 October. There was no notice given in any of the cases prior to the day of the demolitions.

On the evening of 5 March 1988, Bidya village residents heard that the mukhtar had shot at several young men, injuring one of them. Men, women, and children immediately went to the mukhtar's house and threw stones, glass, and Molotov cocktails at him. They set fire to his car and a gas stove in his garage. The mukhtar responded by shooting at them from his house, injuring eight people.

After about half-an-hour, many Israeli settlers from surrounding settlements came, led by the head of Ariel Settlement who was a friend of the mukhtar. The Israeli settlers shot at the Palestinians, injuring one person. About 10 minutes later, a large force of Israeli soldiers arrived and began shooting bullets, tear gas, and flares. People fled. The soldiers imposed a curfew and arrested approximately 80 persons.

Six days later, Israeli forces imposed a curfew and arrested Jibril Ghaleb Ahmad Jibril, 22, and three brothers: Mahmoud, Midian, and Mujahed Mustafa Issa Salama, ages 22, 21, and 20. Soldiers raided the house of Muhammad Talal Bulad, who had been arrested previously, in order to arrest his two sons, Fawzat and Amjad, but they did not find them. Before the soldiers took

the prisoners away from the village, and less than four hours after the arrests, they used dynamite to demolish three houses which belonged to the Jibril, Salama, and Bulad families.

Before demolishing the houses, soldiers had forced the residents of these and nearby homes to come out of their homes into the rain, without giving them a chance to put on proper clothes or take any belongings with them. For example, at 3 am many soldiers and GSS personnel, accompanied by the mukhtar, entered Ghaleb Ahmad Jibril's house. The mukhtar was armed with an automatic rifle. An officer showed Mr. Jibril the demolition order and ordered the family to leave the house. When Mr. Jibril asked if he could empty the house before its demolition, the officer answered that the soldiers would do it. They forced members of the family to leave the house so suddenly that Mr. Jibril did not even have time to put in his false teeth. The family, including Mr. Jibril's wife; his father, 85; mother, 83; aunt, 83; and son, 14, emerged from the house into the cold and rainy night. The soldiers ordered them to go to the boys' secondary school. Many other villagers were also there, having been obliged to leave their houses in the same manner. Two hours later, they heard explosions.

When the soldiers left the village, Mr. Jibril and his family returned to the site of their house; they found scattered rubble and remnants of furniture, which the soldiers had placed outside very near the house before blowing it up. Their neighbors discovered that their two-storey house had been cracked and its windows shattered from the nearby explosion. These conditions were found throughout the village wherever soldiers had demolished a house.

After a few months, the military court sentenced the accused persons who had lived in these houses to different periods in prison, ranging from eight months to two years, for inciting other villagers to attack the mukhtar.

Note: On 5 October 1988, unidentified people shot and killed the mukhtar. Military forces imposed a curfew and arrested dozens of villagers. On 14 October 1988, Israeli forces demolished five houses belonging to people who had been arrested

but not yet sentenced following the death of the mukhtar. They demolished a sixth house belonging to Saleh Ahmad Abu-Safiyya a few hours after his arrest. As of this writing one of the detainees, Fayez Saleh Abu-Safiyya, is still awaiting trial. The other detainees were sentenced to terms of imprisonment of between four years and life imprisonment.

7. Thirty Homes Affected By One Demolition Order[258]

Alia' 'Abd al-Rahman Muhammed Amer, 53, from Jenin Refugee Camp has been restricted from travelling outside the country since 1989 although no reason has been given. Her three sons are currently in detention in various prisons and detention centers in Israel and the Occupied Territories: Imad in al-Naqab (Ansar III), Muayad in Atlit, and Ziad in Jenin Prison. She is now living with the rest of her family in an unfinished house after Israeli military authorities demolished her 12-room house. The demolition occurred three weeks after her son, Ziad Ibrahim 'Eid Amer, had been arrested on 23 May 1988, for allegedly throwing a Molotov cocktail at military vehicles and assisting in killing a female collaborator. The Amer house was demolished before Ziad's trial, where he was sentenced to 17 years imprisonment. Due to the demolition by dynamite, at least 30 nearby homes were affected. Although some of these owners were compensated, the amount paid was much less than the amount of the actual damage.

On the night of 16 June 1988, about 40 male and females soldiers surrounded Mrs. Amer's house and one of them informed her of the demolition order. She told them:

> You don't have the right to demolish the house because it's not Ziad's house alone; it is the whole family's property and it's the fruit of my husband's and my earnings since we were married 28 years ago. We built it brick by brick and if you want to demolish it you'll have to do it over my dead body.

The soldiers paid no attention to her outburst and told her to vacate the home within 10 minutes. Soldiers began throwing her furniture out of the house. They hit her daughter Dalal, 15. When Dalal's uncle, Muhammed Zbeidi, 44, attempted to help her, the soldiers attacked and beat him. After the house was emptied, Mrs. Amer prostrated herself before the front gate, screaming and shouting. The soldiers picked her up and deposited

her in the yard where one female soldier bound her hands behind her back and blindfolded her. When Mrs. Amer would not be silent as they ordered, they gagged her with a cloth strip. She was able to remove the bindings on her hands and grabbed the female soldier's belt and began to hit her. A group of soldiers threatened her with their weapons but she would not stop screaming and cursing. Finally, she fainted.

The Amer family watched the demolition from a nearby rooftop. After the soldiers had evacuated other nearby houses, a large explosion occurred and bursts of light could be seen, followed by a cloud of dust. When it settled, people saw a big pile of debris where the house had been. After the soldiers left, hundreds of people gathered and placed a Palestinian flag over the debris. They chanted Palestinian songs. The curfew that was imposed lasted for eight consecutive days.

For the next 15 days, the Amer family lived on top of the remains of their house. They borrowed blankets from neighbors and the ICRC brought them a tent. They erected a canopy over the house debris and lived under it. The family could not afford to buy land or build its own house. Then, one of their neighbors volunteered to let the family move into his house, while he moved into his father's house. After three months, some of the camp residents and UNRWA gave the family a piece of land on a mountain in the western part of the refugee camp. With the financial help of friends and neighbors, the family began to build a new house there. Although the Amers could not complete the house because they were already JD 7000 in debt, they moved into the unfinished house.

The explosion that demolished the Amer home dislodged building fragments which paralyzed one woman in the leg; the explosion also caused partial destruction or structural damage to nearby houses. For example, the four-room house of Basem al-Sabagh is now unfit to live in. The Engineers Union formed a committee of several engineers and visited more than 30 houses affected by the demolition. Their subsequent reports described the damages and losses sustained by 22 of the houses. In addition, an Israeli expert visited some of the damaged homes following

complaints filed by residents. Despite the documentation, only eight families were compensated, and the amount of compensation was not equal to the amount lost. Of these families:

The entire 144-square-meter house of Mr. Muhammed 'Abd al-Rahman Mahmoud Zbeidi, 44, brother of Mrs. Amer, was destroyed, along with all of its contents. The Zbeidi home was next door to the Amer family and on the second floor. Mr. Zbeidi and his eight-member family lived for two days and nights over the house debris without blankets or any facilities. Then Mr. Zbeidi managed to build a one-room shelter from zinc metal sheets. The family lived there for three months until he could build another house. After one year, he was compensated by the authorities NIS 22,000 after his lawyer had filed a complaint. According to the Engineers Union, his losses actually totalled NIS 51,922.

Jamal 'Abd al-Rahman Muhammed Zbeidi, 37, along with his wife and three children, lived on the ground floor below his brother Muhammed. Demolition of the Amer house fractured his walls and forced him to move into the house of one of their neighbors. After the demolition, Jamal was arrested and administratively detained for six-and-a-half months. When he was released, the authorities offered him NIS 480 as compensation. Through his attorney, Leah Tsemel, he was able to get NIS 780, despite the fact that his actual losses, according to the Engineers Union, totaled NIS 10,000. Jamal was able to build a new house in stages after he received his severance pay for 15 years of work in Israel. Wasfi Ibrahim Mahmoud Kaffrini, whose house was 10 meters away from the Amer house, found 60 out of 130 square meters demolished in his house. In addition, wall fractures had appeared throughout the house and furniture and equipment (TV, video, etc.) had been damaged. He and his family of eight stayed in the fractured part of the house, although it was unfit to live in, until he had the house repaired at his own expense. Later, he received the equivalent of JD 1,000 as compensation after he filed a complaint against the Ministry of Defense.

ENDNOTES

1. See S. Jiryis, *The Arabs in Israel* (Beirut: 1968) p. 4. Cited in E. Playfair, *Demolition and Sealing of Houses as a Punitive Measure in the Israeli-Occupied West Bank*, al-Haq Occasional Paper No. 5 (Ramallah:1987) pp. 33-34 note 11.

2. Al-Haq Database Serial Nos. 88/1248-9.

3. For implementation of the policy prior to 1981, see below, Section Five. The total figures given in this study include some 29 buildings demolished in Bureij Refugee Camp without the issuing of an order under Regulation 119 but on the pretext of military necessity/security. See below, Section 2:1. The total of 1001 includes 25 commercial structures, mostly shops; the remainder were residences.

4. The First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; the Second Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea; and the Third Geneva Convention Relative to the Treatment of Prisoners of War.

5. A. Roberts, "Prolonged Military Occupation: The Israeli-Occupied Territories Since 1967," *American Journal of International Law* Vol. 84/1 (January 1990) pp. 44-103, at p. 69, notes that "a remarkable degree of unanimity prevails on this matter." See his footnotes 85 and 86 p. 69, listing United Nations General Assembly resolutions to this effect. As regards the Security Council, see for example Resolution 681 (1990) of 20 December 1990.

6. Military Proclamation No. 3 of 7 June 1967, issued by the Israeli Military Commander on entry into the territories, required Israeli military courts to respect the provisions of the Convention in all matters concerning court procedure. In October 1967 this section of the Proclamation was repealed and replaced by an unconnected text containing no reference to the Convention. See R. Shehadeh, *Occupier's Law: Israel and the West Bank* (Washington, D.C.:1988) p. xi.

7. See for example M. Shamgar, "The Observance of International Law in the Administered Territories," 1 *Israel Yearbook on Human Rights* (IYHR) 1971, pp. 262-277, at pp. 263-6; and Y. Blum, "The Missing Reversioner: Reflections on the Status of Judea and Samaria," 3 *Israel Law Review* (ILR) 1968, pp. 279-301, at p. 279. See also the discussion of Israel's position in E. Cohen, *Human Rights in the Israeli-Occupied Territories 1967-1982* (Manchester:1985) pp. 43-56; and, generally, T. van Baarda, "Is It Expedient to Let the World Court Clarify, in an Advisory Opinion, the Applicability of the Fourth Geneva Convention to the Occupied Territories?," 10/1 *Netherlands Quarterly on Human Rights* 1992 pp. 4-28.

8. Y. Dinstein, "The International Law of Belligerent Occupation and Human Rights," 8 IYHR 1978, pp. 104-143 at p. 107. This comment came in the following context: "The Government of Israel ... took the position that it does not concede the applicability of the Convention to these areas.... But this position is based on dubious legal grounds, considering that the Fourth Geneva Convention does not make its applicability conditional on recognition of titles."

9. T. Meron, "The West Bank and Gaza: Human Rights and Humanitarian Law in the Period of Transition," 9 IYHR 1979, pp. 106-120, at p. 108.

10. T. Meron, *supra* note 9, p. 109. See also Y. Dinstein, *supra* note 8; M. Moffett, *Perpetual Emergency: Israel's Use of the Defence (Emergency) Regulations, 1945, in the Occupied Territories*, al-Haq Occasional Paper No. 6 (Ramallah:1989) pp. 21-22.

11. J. Pictet, ed., *ICRC Commentary to the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War* of 12 August 1949 (Geneva: 1958) p. 18. The passage continues that states proclaim the principle of the protection of civilians "out of respect for the human person."

12. For example, in a 1981 UNGA resolution (No. 35/122A) specifically on the applicability of the Convention to the Occupied Palestinian Territories, the General Assembly voted 141 in favor with one abstention (Guatemala) and one against (Israel).

13. On Israel's annexation of East Jerusalem, see H. Cattan, "The Status of Jerusalem Under International Law and United Nations Resolutions," 10/3 *Journal of Palestine Studies* 1981, pp. 3-15; and A. Cassesse, "Legal Considerations on the International Status of Jerusalem," 3 *Palestine Yearbook of International Law* (PYIL) 1986, pp. 13-39.

14. Roberts, *supra* note 5, p. 66.

15. UN Doc. E/CN.4/L.1040. Recalled in UN Commission on Human Rights Resolution No. 6 (XXV) 4 March 1969, reproduced in G. J. Tomeh, ed., *United Nations Resolutions on Palestine and the Arab-Israeli Conflict* Vol. 1 1947-1974 (Beirut:1975) p. 163.

16. The following are resolutions of the UN Human Rights Commission up to and including 1986, "condemning Israel's policies and practices affecting the human rights of the inhabitants of the occupied territories" and specifically mentioning house demolition: No. 6 (XXV) 4 March 1969 (Tomeh, *supra* note 15, p. 163); No. 9 (XXVII) 15 March 1971 (Tomeh p. 166); No. 3 (XXVIII) 22 March 1972 (Tomeh p. 167); No. 4 (XXIX) 14 March 1973 (Tomeh p. 168); No. 1 (XXX) 11 February 1974 (Tomeh p. 169); No. 6 (XXXI) 21 February 1975 (in R. S. Sherif,

ed., *United Nations Resolutions on Palestine and the Arab-Israeli Conflict* Vol. 2, p. 207); No. 2 (XXXII) 13 February 1976 (Sherif p. 209); No. 1 (XXXII) 15 February 1977 (Sherif p. 211); No. 1 (XXXIV) 14 February 1978 (Sherif p. 213); No. 1 (XXXV) 21 February 1979 (Sherif p. 216); No. 1 (XXXIV) 13 February 1980 (Sherif p. 220); No. 1 (XXXVII) 11 February 1981 (Sherif p. 224); No. 1982/1 11 February 1982 (in M. Simpson, ed., *United Nations Resolutions on Palestine and the Arab-Israeli Conflict* Vol. 3. p. 240); No. 1983/1, 15 February 1983 (Simpson p. 240); No. 1984/1 20 February 1984 (Simpson p. 248); No. 1985/1 19 February 1985 (Simpson p. 252); and No. 1986/1 20 February 1986 (Simpson p. 258).

17. See for example until 1986: No. 2546 (XXIV) 11 December 1969 (Tomeh, *supra* note 15, p. 76); No. 2851 (XXVI) 20 December 1971 (Tomeh p. 90); No. 3005 (XXVII) 15 December 1972 (Tomeh p. 97); No. 3092 (XXVII) 7 December 1973 (Tomeh p. 104); No. 3240 (XXIX) 29 November 1974 (Tomeh p. 112); No. 3525 15 December 1975 (Sherif, *supra* note 16, p. 16); No. 31/106 16 December 1976 (Sherif p. 31); No. 32/91 13 December 1977 (Sherif p. 52); No. 33/113 18 December 1978 (Sherif p. 78); No. 34/90 12 December 1979 (Sherif p. 104); No. 35/122 11 December 1980 (Sherif p. 125); No. 36/147 16 December 1981 (Sherif p. 166); No. 37/88 10 December 1981 (Simpson, *supra* note 16, p. 29); No. 38/79 15 December 1983 (Simpson p. 73); No. 39/95 14 December 1984 (Simpson p. 113); No. 40/161 16 December 1985 (Simpson p. 151); No. 41/63 3 December 1986 (Simpson p. 244).

18. For example, UNRWA Press Release No. HQ/12/81 issued by the Public Information Division at UNRWA Headquarters in Vienna on 25 June 1981.

19. 1968 Annual Report of the ICRC, cited in Shehadeh, *supra* note 6, p. 154. In Press Release No. 1667 issued in Geneva on 29 March 1991 to report on a recent official visit to the area by the ICRC Director of Operations, the ICRC stated that in meetings between the Director and members of the Israeli government:

> [a]mong other issues discussed was the applicability of the Fourth Geneva Convention and its respect by the Occupying Power, in particular with regard to the Government's settlement policy, the demolition of houses and the expulsion of residents from the Occupied Territories. The ICRC Operations Director stressed that these practices were contrary to the provisions of the Fourth Geneva Convention, and pointed out that their recurrence inevitably brought about serious humanitarian consequences and increased tension.

20. See generally C. Townsend, *The British Campaign in Ireland 1919-1921* (Oxford:1976); and C. Campbell, *Emergency Law in Ireland 1918-1925* (Oxford:forthcoming).

21. See Moffett, *supra* note 10, p. 3.

22. Moffett, *supra* note 10, pp. 3-4.

23. Enacted on 12 May 1948; effective as of midnight 13 May 1948. See Moffett, *supra* note 10, pp. 6-7.

24. To this purpose, the Military Commander issued two Interpretation Orders in the West Bank: Nos. 160/1967 and 224/1968. For details, see Moffett, *supra* note 10, pp. 11-15. See below, notes 26 and 27.

25. Moffett, *supra* note 10, p. 1.

26. See Moffett, *supra* note 10, pp. 12-13. Interpretation Order 160/1967, issued by the Israeli Military Commander in the West Bank, states that "so as to remove any ambiguities ... any Hidden Law does not have, or has ever had, any effect." "Hidden Law" is defined in the order as:

> any legislation, whatever it is, which was enacted between 29 November 1947 and 15 May 1948 and which was not published in the Official Gazette, in spite of the fact that it was the kind of legislation whose publication in the Official Gazette was required during that period whether by necessity or custom.

27. Order No. 224/1968, Article 2(b) provides that: "emergency legislation is rendered null and void solely by legislation which is not emergency legislation and which explicitly repeals it by name." See Moffett, *supra* note 10, pp. 14-15 and note 34 p. 53.

28. See Moffett, *supra* note 10, p. 16; Appendix F, pp. 89-92, Arabic original and English translation of a letter to al-Haq on this subject from the Jordanian Department of Military Justice, 25 June 1988; and Appendix B, pp. 69-78, text of an affidavit submitted on this subject to the Israeli Supreme Court by Palestinian advocate Aziz Shehadeh in 1980. In a 1977 article ("Human Rights in West Bank Military Courts," 7 IYHR 1977, pp. 222-252 at pp. 224-5), Arie Pach (former Military Prosecutor in the West Bank) states that: "The Defence Regulations remained part of Jordanian law in the West Bank as the Jordanians employed them quite often against the Palestinians in the area, who tended to rebel against the King...." Pach gives no source for or examples of this assertion. Cohen, *supra* note 7, makes a similar statement (note 122 p. 170) citing as her source the above article (7 IYHR 1977, pp. 224-5). Jordan had its own Defence Law dating from

1935, and it was on the basis of that law and the regulations made under it that various emergency measures were imposed during the period of Jordanian rule in the West Bank.

29. *Hansard* (Official Records, House of Commons), 22 December 1988, p. 665.

30. *Hansard* (Official Records, House of Lords) 15 December 1988, p. 1113. See further the letter of 22 April 1987 sent to al-Haq from the British Foreign Office on this subject, reproduced in Moffett, *supra* note 10, Appendix D, pp. 83-84.

31. See E. Playfair, *Administrative Detention in the Occupied West Bank*, al-Haq Occasional Paper No. 1 (Ramallah:1986) p. 3; and Moffett, *supra* note 10, pp. 17-20.

32. A. Dershowitz, "Preventative Detention of Citizens During a National Emergency -- A Comparison Between Israel and the United States," 1 IYHR 1971, pp. 295-321, at p. 313, cited in Playfair, *supra* note 31, p. 3 and p. 36 note 2. Dershowitz (at p. 314) continues that Shapiro indicated he personally could not vote for an Israeli law on preventative detention, saying: "I have seen the inside of a prison, and not as a visitor. I know what it means to be preventatively detained. People like us could not bring ourselves to vote for an Israeli law of preventative detention."

33. These regulations are not used against Israeli citizens whether they live in Israel or in Jewish settlements in the Occupied Palestinian Territories. The measures of house demolition or sealing under the Defence Regulations of 1945 have been used however against Palestinian residents of East Jerusalem who hold East Jerusalem identification papers, even though Israel has purported to annex East Jerusalem.

34. For details, see Moffett, *supra* note 10, pp. 19-20.

35. B. Bracha, "Restrictions of Personal Freedom Without Due Process of Law According to the Defence (Emergency) Regulations, 1945," 8 IYHR 1978, pp. 296-323, at p. 318. Cited in Moffett, *supra* note 10, p. 20 and note 65 p. 56.

36. For example, in 1988, a Military Order was passed citing Article 84(1)(b) of the Regulations on "illegal organizations," and defining local "popular committees" as such illegal organizations under the terms of the Regulations. The popular committees were established throughout the Occupied Palestinian Territories during the early months of the uprising, in significant part to provide social services, including alternative neighborhood teaching programs at a time when all schools and institutes of education in the Occupied Territories were closed. See further al-Haq, *A Nation Under Siege: Al-Haq Annual Report on Human Rights in the Occupied Palestinian Territories* 1989 (Ramallah:1990) p. 464.

37. Brigadier-General Dov Shefi (then Military Advocate General of the Israeli armed forces), in "The Reports of the U.N. Special Committees on Israeli Practices in the Territories" (in M. Shamgar, ed., *Military Government in the Territories Administered by Israel, 1970-1980: The Legal Aspects* Vol. 1 (Jerusalem:1982) pp. 285-334), quotes from Professor Julius Stone to support this view. For Shefi's argument on the continuing validity of the Defence (Emergency) Regulations as part of local law, see pp. 294-299.

38. Shamgar, *supra* note 7, p. 276.

39. Pictet, *supra* note 11, pp. 335-6.

40. L. Oppenheim, *International Law: A Treatise* Vol. II (London:1952) p. 446, cited in Moffett, *supra* note 10, p. 38.

41. Oppenheim, *supra* note 40, p. 447, cited in Moffett, *supra* note 10, p. 38. In 1971, British Professor G. Draper, an expert in international humanitarian law, told a seminar in Israel that he had personally tackled the British Secretary of State for War about an idea that the Defence (Emergency) Regulations of 1945 might be used as a model for some special military courts in Cyprus. Draper noted that:

> I am proud to say that I and others made a great fight about this, advised the Secretary of State for War, and sold him the idea that they were thoroughly bad regulations. If Israel wants to draw some satisfaction from leaving British regulations of that type intact, I might venture to suggest to those in authority that they might be good regulations to decant into the dustbin. They have very little merit....

Symposium on Human Rights, Tel Aviv, July 1971, reported in 1 IYHR 1971, pp. 361-418, at p. 383.

42. Article 5(b) of Military Order No. 332 of 1969 Pertaining to Punishments (West Bank), as amended by the Order Pertaining to Punishments (Amendment No. 9) (Temporary Regulation) Order No. 1323/1991; and Article 5(b) of M.O. 277 of 1969 Pertaining to Punishments (Gaza Strip and Northern Sinai).

43. *Muhammad Alamarin v. Military Commander of Israeli Armed Forces in the Gaza Strip* HCJ 2722/92 (unpublished); ruling on 4 June 1992, written judgment issued 14 June 1992. Justice Bach stated that the argument:

> does not seem significant to me, especially as in the case in question, the authority was implemented due to an act of terrorism committed within the State of Israel. The approach which regards a violent act perpetrated in Israel as some kind of

act committed "abroad" from the point of view of the Gaza Strip seems to me, for the purposes of this case and within its framework, artificial.

44. See D. Shefi in Shamgar, ed., *supra* note 37, who cites at p. 299 *Abu Awad v. The Area Commander for Judea and Samaria* P.D. 33(3) 309 (a deportation case). See also Moffett, *supra* note 10, p. 12 and note 34 p. 53, citing *Nazzal et al. v. Commander of Judea and Samaria* HCJ 513/85 PD 39(3) 645. In *Daghlas et al v. Military Commander of Judea and Samaria* HCJ 698/85 PD 40(2), the issue of the Defence (Emergency) Regulations was raised again in relation to house demolitions. Justice Ben Dror stated: "It seems to the petitioner's representative that it is her privilege to again raise these claims before judges who have already decided on this subject. The little we can say on this subject is that these previous decisions are acceptable to us as well." Cited in Playfair, *supra* note 1, pp. 27-28. Text of *Daghlas* translated in full in Playfair, *supra* note 1, pp. 37-41.

45. Von Glahn, "The Protection of Human Rights in Time of Armed Conflict," 1 *Israel Yearbook on Human Rights* 1971, pp. 208-227, at p. 209.

46. A. Roberts and R. Guelff, eds., *Documents on the Laws of War* (Oxford:1982) p. 5. They define the principle of "chivalry" as denouncing and forbidding "resort to dishonorable means, expedients, or conduct, in the course of armed conflict."

47. Von Glahn, *The Occupation of Enemy Territory... A Commentary on the Law and Practice of Belligerent Occupation* (Minneapolis:1957) at p. 225. See generally on this subject Chapter 17 (pp. 224-231) "The Doctrine of Military Necessity and the Destruction of Property."

48. See Von Glahn, *supra* note 47, p. 224; Roberts and Guelff, *supra* note 46, p. 5.

49. Article 23(g) comes in Section 2 of the Hague Regulations, entitled "Hostilities" (rather than the section on occupation) and therefore, according to Pictet (*supra* note 11, p. 301), is of wider scope than the below-cited Article 53 of the Fourth Geneva Convention, which covers only property in occupied territory.

50. Shamgar, *supra* note 7, p. 276.

51. *Ibid.*

52. Shefi in Shamgar, ed., *supra* note 37, at p. 301.

53. See below Section 3:1.

54. Emphasis in the original. "Interpretation by the ICRC of Article 53 of the Fourth Geneva Convention of 12 August 1949, with particular reference to the expression 'military operations,'" issued in Geneva, 25 November 1981, by J. Moreillon, Director of the Department of Principles and Law at the ICRC. The Interpretation was approved by Jean Pictet, editor of the *Commentary to the Fourth Geneva Convention*.

55. J. Quigley, "Legal Consequences of the Demolition of Houses by Israel in the Occupied West Bank and Gaza Strip," paper prepared in 1992 at the request of al-Haq, p. 4.

56. G. Draper, "Military Necessity and Humanitarian Imperatives," 12 *Revue de Droit Penal Militaire et de Droit de la Guerre* 1973, pp. 140-141, cited in M. B. Carroll, "The Israeli Demolition of Palestinian Houses in the Occupied Territories: An Analysis of its Legality in International Law," 11 *Michigan Journal of International Law* 1990, pp. 1195-1217, at p. 1211.

57. Von Glahn, *supra* note 47, p. 226.

58. See al-Haq, *Protection Denied: Continuing Israeli Human Rights Violations in the Occupied Palestinian Territories* 1990 (Ramallah:1991) p.149.

59. *Al-Quds* newspaper, 24 September 1990; see *Protection Denied*, *supra* note 58, p. 149 note 8. The minister was Raphael Eitan, Minister for Agriculture.

60. *Ibid.* When the demolition orders were served on the owners (who were still under curfew), the Association for Civil Rights in Israel (ACRI) applied to the High Court of Justice for an *order nisi* and temporary injunction on the basis of the Court's previous ruling in a petition brought by ACRI, which had held that the occupiers of homes served with demolition or sealing orders should be given 48 hours notice to appoint a lawyer and present their objections to the Military Commander, and a further 48 hours following his decision (if negative) within which they could apply if they chose to the High Court. See below, Section Four. ACRI's petition in the Bureij case (HCJ 4112/90, *ACRI v. Commanding Officer, Southern Command* PD 44(4) asked why this procedure was not followed in this case.

61. HCJ 4112/90, *ACRI*, *supra* note 60. Application presented on 24 September 1990, session on 25 September 1990; written ruling issued on 31 October 1990.

62. See Pictet, *supra* note 11, p. 302.

63. Some of these arguments are considered below, Section Five, with regard to house demolition and sealing.

64. See above and Shamgar, *supra* note 7, p. 276.

65. *Protection Denied*, *supra* note 58, p. 18.

66. For example, in HCJ 274/82 *Hamamreh v. Minister of Defence, Military Commander of Judea and Samaria Areas* 36(2) PD; HCJ 361/81 *Hamri v. Commander of Judea and Samaria Areas* 36(20) PD; 434/79 *Schawil et al v. Commander Judea and Samaria Areas* 34(1) PD; 698/85 *Daghlas*, *supra* note 44. See below, Section Four.

67. F. Kalshoven, *Belligerent Reprisals* (Leiden:1971) p. 320, cited in Carroll, *supra* note 56, p. 1211.

68. Pictet, *supra* note 11, p. 301.

69. Pictet, *supra* note 11, p. 225.

70. At the 12th session of the Diplomatic Conference on the texts of the Conventions at Geneva (10 May 1949), the Italian delegate saluted the absolute ban on collective punishment as "the introduction of a new principle in international law." (Actes de la Conference Diplomatique de Geneve de 1949, vol. II, section A, p. 633). See also Van Glahn, *supra* note 47, p. 234: "a strictly personal responsibility has been substituted for the limited collective responsibility permissible under the Hague Regulations"; and R. I. Miller, *The Law of War* (Lexington:1975, p. 82), who calls the prohibition "a fundamental change from the customary law.... While it would be sanguine to believe that outrages of warfare against protected populations will be eliminated by the convention, it is somewhat consoling that such atrocities are now indefensible by law."

71. Pictet, *supra* note 11, pp. 225-6. Von Glahn similarly gives examples of collective punishments being used "sometimes as a result of a totally unwarranted and unlawful desire to intimidate the native population" (*supra* note 47, p. 233).

72. Pictet, *supra* note 11, p. 228. See on reprisals Playfair, *supra* note 1, pp. 18-19.

73. F. Hampson, "Belligerent Reprisals and the 1977 Protocols to the Geneva Conventions of 1949," 37/4 *International and Comparative Law Quarterly* 1988, pp. 818-843 at pp. 824-5.

74. Von Glahn, *supra* note 47, p. 235. In his opinion, these "reprisals" were actually collective punishments rather than reprisals in the technical sense, since they were not preceded by a violation of the laws of war by the belligerent but by disobedience to the regulations of the Occupying Power. It is worth recalling here

that the British termed their burning and demolition of houses in Ireland an "official reprisal," see above note 20.

75. Hampson, *supra* note 73, p. 826.

76. Playfair, *supra* note 1, p. 19.

77. Von Glahn, *supra* note 45, p. 226. Cited in Playfair, *supra* note 1, p. 19.

78. Pictet, *supra* note 11, p. 228.

79. *A Nation Under Siege*, *supra* note 36, p. 348.

80. M. Shamgar, in the Symposium on Human Rights, *supra* note 41, p. 380.

81. D. Shefi, "The Protection of Human Rights in Areas Administered by Israel: United Nations Findings and Reality," 3 IYHR 1973, pp. 337-361, at p. 346.

82. HCJ 698/85 *Daghlas*, *supra* note 44.

83. HCJ 4772/91 *Hizran v. Commander of IDF Forces in the Judea and Samaria Areas* and 5359/91 *Abu Muhsen v. Commander of IDF Forces in the Judea and Samaria Areas* (unpublished written ruling issued 23 March 1992). In a dissenting opinion in the Court's ruling on this petition, Judge Cheshin stated that "in implementing Regulation 119 of the Defence (Emergency) Regulations, 1945, the Military Commander has no authority to impose a collective sanction." Judge Cheshin was preoccupied with the issue of "separate living units"; he stated that he had no argument against the demolition of a house if the person suspected, for example a young son, lived (with other people) in the whole of the house. See below, Section Four.

84. Pictet, *supra* note 11, p. 228, concluding on the prohibition of reprisal against protected persons.

85. For example, Dov Shefi, *supra* note 81, p. 346, refers to "a connection between the building to be demolished and a terrorist or violent act." The Israeli National Section of the International Commission of Jurists (*The Rule of Law in the Territories Administered by Israel* (Tel Aviv:1981) p. 70) went even further: "Although this provision gives wide powers to the Regional Commander, it has been used with extreme caution and has been invoked only where houses were used to prepare explosives and store ammunition as bases for the use of arms and the throwing of grenades." Al-Haq's data show very clearly that this was not the case over the years 1981-1991. See below, Section 3:2. See also Playfair, *supra* note 1, pp. 15-16.

86. HCJ 698/85 *Daghlas*, *supra* note 44. The court made a reference to its previous ruling in HCJ 361/82 *Hamri*, *supra* note 66.

87. HCJ 361/82 *Hamri*, *supra* note 66; English translation in 1 PYIL 1984, pp. 129-133 (at p. 131).

88. Playfair, *supra* note 1, p. 16. Al-Haq Questionnaires Nos. 92/814 and 92/1180.

89. The US, for its part, "believes that the demolition or sealing of a home as punishment of families contravenes the Fourth Geneva Convention." (USIS Backgrounder on the State Department Country Report on Human Rights Practices for 1991, Israel and the Occupied Territories, p. 11).

90. Lord Glenarthur, British Foreign Office Minister, in an address to the House of Lords in London. *Hansard* (Lords) 15 December 1988, p. 1113.

91. Article 14.

92. Articles 67 and 71-75.

93. Quigley, *supra* note 55, p. 5.

94. See Case Study No. 1 in the Appendix to this study; al-Haq Database Serial No. 90/1904. Mu'tasem was released on 31 October 1991. The family applied to the Military Commander in Deir al-Balah on 15 December 1991 for permission to unseal the house but was refused. In other cases, the threat of demolition has been used as a form of pressure against the families of persons wanted by the Israeli authorities in an attempt to have the families persuade the relatives to give themselves up. See below, Section Five.

95. S. Gazit, *Israel's Policy in the Administered Territories*, 1969 p. 5, cited in Playfair, *supra* note 1, p. 17. His words were: "wherever there is the least doubt -- for example, if the man is not in our hands, or is in prison but has not admitted his guilt -- the house is not blown up."

96. *Ibid.*

97. HCJ 358/88 *ACRI et al v. Commanding Officer, Central Command et al* 43(2) PD. See below, Section Four.

98. HCJ 2665/90 *Karabsa v. Minister of Defence, Military Commander of Judea and Samaria Areas, OC Central Command*, cited in B'Tselem, *House Demolition and Sealing as a Form of Punishment in the West Bank and Gaza Strip, Follow-Up*

Report (Jerusalem:1990) pp. 17-18.

99. "Conclusions" of the "Report of the Commission of Inquiry into the Methods of Interrogation of the General Security Service in Regard to Hostile Terrorist Activity" ("The Landau Commission Report"). See *A Nation Under Siege*, *supra* note 36, pp. 171-2. [See further al-Haq's forthcoming report on torture].

100. HCJ 361/82 *Hamri*, *supra* note 66. Translated in 1 PYIL 1984, pp. 131-132. In a more recent case, *Alamarin* (2722/92, *supra* note 43), the Court said that it would "endeavor to ensure that the employment of this measure be conducted with proper consideration, untainted by blatant unreasonableness." See below, Section Four.

101. HCJ 2209/90 *Shawahin v. Military Commander in the West Bank*, 44(3) PD.

102. This had already been established by the Court in considering petitions against deportation orders notably in HCJ 792/88 *Mator v. Military Commander in the West Bank* 43(3) PD. Commented on and excerpted in *A Nation Under Siege*, *supra* note 36, pp. 313-5. See U. Halabi, "Demolition and Sealing of Houses in the Israeli Occupied Territories: A Critical Legal Analysis," *Temple International and Comparative Law Journal* Vol. 5/2 1991, pp. 251-271, at p. 266 and note 133. Halabi cites the *Mator* case: "the burden of proof lies on the petitioner to point to an argument that shows necessity to cancel the order."

103. The Court stated:

> We are speaking of a means aimed at deterring others from carrying out similar actions. For justifying the implementation of the means, all of the detainee's actions should be examined, whether those were known at the time the order was issued, or discovered afterwards.... As long as the order has not been carried out, it may be based on and justified by all the deeds attributed to the detainee.

104. Ibrahim Shawahin was later sentenced to three years in prison. Al-Haq Questionnaire No. 90/2059.

105. F. Kalshoven, *Belligerent Reprisals*, p. 321, cited in Playfair, *supra* note 1, p. 18.

106. The first part of this section is adapted from *A Nation Under Siege*, *supra* note 36, pp. 653-656.

107. For an examination of this basis for and implications of the duty "to ensure respect," see M. Stephens, *The Enforcement of International Law in the Israeli-Occupied Territories*, Al-Haq Occasional Paper No. 7 (Ramallah:1989). See also on Article 1 *A Nation Under Siege*, *supra* note 36, pp. 644-645.

108. See *A Nation Under Siege*, *supra* note 36, pp. 645-648.

109. *A Nation Under Siege*, *supra* note 36, p. 653.

110. The Charter of the International Military Tribunal annexed to the Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, signed on 8 August 1945, defines war crimes as:

> violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation for slave labor or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity.

See I. Brownlie, *Principles of Public International Law* (Oxford:1982) p. 563.

111. E. Lauterpacht, "The Revision of the Law of War," 29 *British Yearbook of International Law* 1952, p. 362, cited in von Glahn, *supra* note 47, p. 250.

112. Extract from a judgment of the Nuremberg Tribunal, cited in Brownlie, *supra* note 110, p. 566; see *A Nation Under Siege*, *supra* note 35, p. 655.

113. Cited in Von Glahn, *supra* note 47, p. 246.

114. J. Verhaegen, "Legal Obstacles to Prosecution of Breaches of Humanitarian Law," *International Review of the Red Cross* No. 261 1987, p. 608.

115. Pictet, *supra* note 11, p. 601.

116. See above, Section 2:2.

117. UNGA resolution 41/63 of 3 December 1986, reproduced in Simpson, ed., *supra* note 16, p. 186.

118. UN Commission on Human Rights, Resolution No. 1983/1 of 15 February 1983, reproduced in Simpson, ed., *supra* note 16, p. 244.

119. UN Commission for Human Rights, resolution of 17 February 1989, cited in J. Quigley, "The International Crimes of Israeli Officials." *The Link* Vol. 22. No. 4, 1989.

120. Quigley, *supra* note 119, generally, and *supra* note 55, pp. 10-11. Compare J. Rideau, "Le Problem du Respect des Droits de l'Homme dans les Territoires Occupes par Israel," 16 *Annuaire Francais de Droit International* 1970, pp. 204-232, discussing Article 147 and the destruction of property as a grave breach at p. 230: "While leaving a certain margin for action to the Occupying Power, the formula condemns pillage and the destruction of villages and of houses of which the Israelis are accused."

121. Quigley, *supra* note 55, p. 11.

122. This is also the case with deportation. See *A Nation Under Siege*, *supra* note 36, p. 312 and p. 657. For a detailed discussion of Israel's deportation policy, see J. Hiltermann, *Israel's Deportation Policy in the Occupied West Bank and Gaza*, (Ramallah:1988) (2nd edition). For a discussion of the implementation of Article 146 of the Fourth Geneva Convention in the domestic legal system of a high Contracting Party, using the example of deportation and Great Britain, see L. Welchman, "The Repression of Grave Breaches of the Fourth Geneva Convention Through the Domestic Legal System: Options in the United Kingdom," working paper reproduced in *Towards A Strategy for the Enforcement of Human Rights in the Israeli-Occupied West Bank and Gaza: Report of the Working Symposium*, published by the Labor Middle East Council and Conservative Middle East Council (London:1989).

123. Quigley, *supra* note 55, p. 11, citing C. Eagleton, *The Responsibility of States in International Law* (1928) p. 182, and *Chorzow Factory* (Ger. v. Pol.) Permanent Court of International Justice, Ser. A, No. 13, p. 47 (1928), reprinted in 1 Manley Hudson, *World Court Reports* (1934) pp. 677-78.

124. The exact estimate is $US 1,237,913.60. The cost per square meter to rebuild a stone house is $US 288; a concrete house is $US 226; and a block house is $US 184. To obtain all estimates of the current rebuilding costs, the engineers calculated the cost of each room destroyed, assuming that rooms whose areas were not known were the standard 16 square meters. Twenty square meters were added to the total area of the rooms in order to reach the total area of each house. In calculating the cost of partially demolished homes, the engineers added 10 percent to account for damage to adjacent walls.

125. Quigley, *supra* note 55, p. 12.

126. Von Glahn, *supra* note 47, p. 227.

127. *Al-Hamishmar*, 9 November 1988, cited in R. Talmor, "The Demolition and Sealing of Houses as a Punitive Measure in the West Bank and Gaza Strip During the Intifada," (Jerusalem:B'Tselem, 1989) p. 29 and p. 42 note 64.

128. *Jerusalem Post*, 5 August 1985, cited in Playfair, *supra* note 1, p. 2.

129. *Jerusalem Post*, 28 October 1985; Playfair, *supra* note 1, p. 20.

130. *Jerusalem Post*, 18 January 1989, cited in *A Nation Under Siege*, *supra* note 36, p. 346.

131. See above, Section 2:4 and *A Nation Under Siege*, *supra* note 36, p. 348.

132. *Inter alia* in its rulings in 698/85, *supra* note 44; 434/79 *Sahawil*, *supra* note 66; 274/82 *Hamamreh*, *supra* note 66; 361/82 *Hamri*, *supra* note 66; 947-9/90 *Mash'al, Abdallah and Abdallah v. Commander of Central Command et al* (unpublished); 4112/90 *ACRI*, *supra* note 60; 4772 & 5359/91 *Hizran and Abu Muhsen*, *supra* note 83; and 2722/92, *supra* note 43.

133. HCJ 4772 & 5359/91 *Hizran and Abu Muhsen*, *supra* note 83.

134. See Shehadeh, *supra* note 6, p. 109.

135. See al-Haq Human Rights Focus, "Military Orders Nos. 1369 (West Bank) and 1076 (Gaza): A Grave Breach of the Fourth Geneva Convention," 25 August 1992.

136. Pictet, *supra* note 11, pp. 225-6.

137. ICRC Press Release No. 1667, 29 March 1991.

138. *Shawahin*, *supra* note 101. See B'Tselem, *supra* note 98, pp. 15-16.

139. B'Tselem, *supra* note 98, p. 15. See *A Nation Under Siege*, *supra* note 36, p. 348. In its 1989 report on house demolition, B'Tselem (*supra* note 127, at p. 29) states that:

> To the best of our knowledge, no effort or attempt has been made to examine the questions of whether the demolition of houses does indeed deter security offences, or whether this measure is effective even in serving the security authorities' own interests.

140. *Jerusalem Post*, 9 November 1988. *A Nation Under Siege*, *supra* note 36, p. 346.

141. *A Nation Under Siege*, *supra* note 36, p. 346. In 1990, B'Tselem (*supra* note 98, at p. 15) quoted Brigadier General (res.) Aryeh Shalev as concluding after an examination of the deterrent effect of house demolitions that over time the policy "had the effect of increasing the opposition to Israeli rule."

142. Playfair, *supra* note 1, pp. 21-22; *A Nation Under Siege*, *supra* note 36, p. 346.

143. *Al-Fajr* Weekly, 1 April 1991.

144. *Jerusalem Post*, 26 August 1992.

145. Playfair, *supra* note 1, pp. 22-23.

146. HCJ 698/85 *Daghlas*, *supra* note 44, cited in Playfair, *supra* note 1, at p. 39.

147. Playfair, *supra* note 1, p. 29.

148. Shefi, *supra* note 81, pp. 346-7.

149. Playfair, *supra* note 1, p. 23.

150. See in this regard Cohen, *supra* note 7, p. 103; she considers the argument that demolition is to be preferred to the death penalty to be "out of place."

151. See Halabi, *supra* note 102, pp. 260-261; and Cohen, *supra* note 7, pp. 80-82 on the establishment and exercise of this jurisdiction by the Court.

152. For example in HCJ 698/85 *Daghlas*, *supra* note 44.

153. HCJ 2722/92, *supra* note 43.

154. HCJ 4722/91 5359/91 *Hizran and Abu Muhsen*, *supra* note 83. The dissenting judge, Judge Cheshin, had argued that partial demolition of only the separate unit of the suspect should be substituted for total demolition of the houses. In *Alamarin*, *supra* note 43, the same judge gave another minority opinion on the same point, and drew a distinction between "the spirit at the time that the Regulation was conceived, in 1945, and the spirit which a court of British Mandate judges would breathe into the Regulations" on the one hand, and the spirit of "the values of the State of Israel" on the other, which in his opinion required a different approach to the implementation of the Defence (Emergency) Regulations.

155. See above, Section 2:1 and notes 42 and 43.

156. Respectively, *Jerusalem Post* reports of 22 March 1989 and 3 August 1989. In the latter case, the newspaper reported that: "The fact that the person who committed such offenses is a tenant need not inhibit the authorities from destroying a house, the court said. Otherwise, the emergency defence regulations would lose their deterrent force." In this specific case, however, the house was sealed rather than demolished. See *A Nation Under Siege*, *supra* note 36, p. 353.

157. HCJ 272/82 *Hamamreh*, *supra* note 66, cited in Playfair, *supra* note 1, p. 27.

158. Playfair, *supra* note 1, p. 27.

159. HCJ 2722/92 *Alamarin*, *supra* note 43.

160. HCJ 358/88 *ACRI*, *supra* note 97; and HCJ 361/82 *Hamri*, *supra* note 66. Halabi, *supra* note 102, p. 265-6.

161. HCJ 5510/92 *Turqman v. Minster of Defense, Commander of the Judea and Samaria Region, and the Commander of the Central Command*, issued on 15 February 1993. See also *Jerusalem Post* 16 February 1993.

162. 2722/92 *Alamarin*, *supra* note 42.

163. Translation of this excerpt from the *Alamarin* ruling taken from *Jerusalem Post* Law Report of 22 June 1992.

164. Halabi, *supra* note 102, pp. 265-6 and notes 126 and 129; the case was *Shukri v. Minister of Defence* 1989, unpublished. See also above, Section 2:3 on collective punishment.

165. HCJ 2722/92 *Alamarin*, *supra* note 43.

166. HCJ 2722/92 *Alamarin*, *supra* note 43 and 4772 & 5359/91 *Hizran and Abu Muhsen*, *supra* note 83.

167. HCJ 361/82 *Hamri*, *supra* note 66.

168. In other cases too, the High Court has demonstrated its acceptance of the military's view of "the necessity of deterring the public" (HCJ 4772 & 5359/91, *supra* note 83), its "use of this deterrent measure" (HCJ 2722/92, *supra* note 43), and its use of the sanction "to deter others" (HCJ 698/85, *supra* note 44). See Section 3:1.

169. HCJ 982 & 984/89, cited in B'Tselem, *supra* note 98, p. 16.

170. According to E. Nathan, "The Power of Supervision of the High Court of Justice over Military Government," Chapter 4 pp. 109-169 in Shamgar, ed., *supra* note 37, at p. 136:

> [T]he Geneva Convention belonged to the category of international treaty law the enforcement of which is a matter for the contracting parties. Thus the Court found itself absolved from dealing with the question of the applicability of the Geneva Convention in regard to the Israeli administration of Judea and Samaria.

Halabi, *supra* note 102, p. 261 and note 89; Cohen, *supra* note 7, p. 86 and 91. Roberts, *supra* note 5, p. 94, observes that:

> The Court has relied heavily on the assumption that the incorporation of provisions of international conventions into municipal law is a principal form of evidence that such provisions have the status of customary international law. Has it placed excessive reliance on this one form of evidence of customary law?

171. HCJ 434/79 *Sahawil et al*, *supra* note 66.

172. HCJ 698/85 *Daghlas*, *supra* note 44; Halabi, *supra* note 102, p. 269 and note 150. See also Cohen, *supra* note 7, p. 86; Playfair, *supra* note 1, p. 28; and Section 2:3.

173. HCJ 2209/90 *Shawahin*, *supra* note 101, citing HCJ 792/88 *Mator v. Area Commander in the West Bank*, *supra* note 102. See *A Nation Under Siege*, *supra* note 36, pp. 313-315, where part of the court's ruling in *Mator* is reproduced. Halabi, *supra* note 102, p. 266 and note 133.

174. Playfair, *supra* note 1, p. 6.

175. From the unpublished proceedings of a symposium on "Administrative Punishment in the Administered Territories" organized in Jerusalem on 10 December 1985 by ACRI; cited in Playfair, *supra* note 1, p. 25 and note 36, p. 35.

176. Playfair, *supra* note 1, p. 25.

177. The following report on the ACRI petition is adapted from *A Nation Under Siege*, *supra* note 36, pp. 354-5.

178. In al-Haq, *Punishing A Nation: Human Rights Violations During the Palestinian Uprising December 1987-December 1988* (Ramallah:1988) p. 158 and p. 129 note 19, al-Haq reported the facts of the Beita incident. On 6 April 1988, a group of 16 settlers from the Elon Moreh settlement, accompanied by two armed escorts, went on a hiking trip in the vicinity of the village of Beita. Following a confrontation with villagers, two Palestinians and an Israeli girl were shot dead by Roman Aldubi, one of the armed escorts. Initially, it was assumed by Israeli politicians and the media that the Israeli girl had been killed by the Palestinian villagers. This presumption, which was later proven to be without foundation, provided the pretext for a range of punitive measures against the villagers of Beita: the area was sealed off from 6-30 April; a total of 14 houses were demolished and a number of others damaged; scores of olive and almond trees were uprooted; some 60 villagers were arrested and all other males rounded up in the village school, supposedly for questioning, where they remained for five days; and six villagers were deported to Lebanon. It was later proven that the Israeli girl had in fact been shot and killed by the armed Israeli guard escorting the settlers.

179. HCJ 358/88 *ACRI*, *supra* note 97.

180. *Al-Fajr* Weekly 7 August 1989, citing *Al-Hamishmar* 31 July 1989; *A Nation Under Siege*, *supra* note 36, p. 355.

181. *A Nation Under Siege*, *supra* note 36, p. 355. See also Halabi, *supra* note 102, p. 266.

182. Al-Haq Questionnaire No. 90/84.

183. See above, Section 2:2, on military necessity; most of the Bureij demolitions of that time were not ordered under Regulation 119.

184. HCJ 4772 & 5359/91 *Hizran and Abu Muhsen*, *supra* note 83.

185. HCJ 802/89 *Nasman et al. v. Area Commander in the Gaza Strip*, unpublished, supplementary ruling issued 6 May 1989.

186. See *A Nation Under Siege*, *supra* note 36, p. 353, and Playfair, *supra* note 1, p. 26.

187. B'Tselem, *supra* note 98, p. 6.

188. Compare in this regard Dershowitz, *supra* note 32, p. 314 note 20, citing a US judge, Justice Jackson, on US internment policy during World War Two: "The judicial approval of the army order detaining the Japanese was a far more subtle blow to liberty than the promulgation of the order itself."

189. Roberts, *supra* note 5, pp. 94-95.

190. *Jerusalem Post*, 23 November 1981. See Playfair, *supra* note 1, p. 1.

191. Playfair, *supra* note 1, p. 1 and p. 32 note 3. See sources referred to in the National Lawyers' Guild, *Report on Treatment of Palestinians in the Israeli Occupied Territories* (New York:1978) p. 65.

192. See *Punishing a Nation*, *supra* note 178, pp. 153-4.

193. Shamgar, *supra* note 7, p. 275.

194. Israel Section of the International Commission of Jurists, *supra* note 85, p. 70, cited in Playfair, *supra* note 1, p. 24.

195. US State Department Country Human Rights Report, Israel and the Occupied Territories, Backgrounder 1991, p. 11.

196. See above, Section Four and note 178.

197. See Case Study No. 6 in the Appendix to this study.

198. Al-Haq Questionnaire No. 92/688.

199. Al-Haq Questionnaire No. 92/693.

200. *Punishing a Nation*, *supra* note 178, p. 159.

201. *Jerusalem Post*, 20 June 1988.

202. Al-Haq Questionnaires Nos. 89/854 and 89/855.

203. Al-Haq Questionnaire No. 88/514.

204. Al-Haq Questionnaire No. 88/515.

205. Al-Haq Questionnaire No. 88/516.

206. *Jerusalem Post*, 18 January 1989.

207. *Ha'aretez*, 17 January 1989, cited in B'Tselem, *supra* note 127, p. 26.

208. *Hadashot*, 25 January 1989, cited in B'Tselem, *supra* note 127, p. 26 and note 53 p. 42.

209. *Jerusalem Post*, 7 February 1990.

210. *Ibid.*

211. Al-Haq Questionnaires Nos. 92/727, 89/629, 89/625, and 89/529. See *A Nation Under Siege*, *supra* note 36, p. 347.

212. Al-Haq Questionnaires Nos. 92/711 and 92/713.

213. In one of the cases the charge was added that the stonethrowing had caused the death of an Israeli soldier. Al-Haq Questionnaire No. 92/01208.

214. Other cases of house demolition and sealing where there was no accused resident in the house include some 29 commercial stores and houses in Bureij Refugee Camp affected in 1990. See above, Section 1:1 and note 3.

215. Al-Haq documented one case in each of the years 1981, 1982, 1983, and 1986, and two cases in 1987.

216. *A Nation Under Siege*, *supra* note 36, p. 348.

217. *A Nation Under Siege*, *supra* note 36, p. 346.

218. See al-Haq Human Rights Focus, "Military Orders 1369 (West Bank) and 1076 (Gaza): A Grave Breach of the Fourth Geneva Convention," 25 August 1992.

219. Letter from MK Shulamit Aloni to Yitzhak Rabin of 28 May 1989, ref. 587, reproduced as Appendix F in B'Tselem, *supra* note 127, pp. 51-52.

220. *Punishing a Nation*, *supra* note 178, p. 155.

221. *A Nation Under Siege*, *supra* note 36, p. 346 and p. 360 note 30.

222. Al-Haq Questionnaire No. 91/173.

223. *A Nation Under Siege*, *supra* note 36, p. 347 and p. 358 note 10; al-Haq Affidavit No. 1653.

224. HCJ 2209/90 *Shawahin*, *supra* note 101. But information contained in al-Haq Questionnaire No. 90/2059 and discussed in the following paragraph clearly shows that serious damage was sustained by adjacent buildings.

225. As amended by Military Orders 302/1968 (West Bank) and 263/69 (Gaza).

226. The Military Commander's prior approval can be given for general categories of cases or on an individual basis. Article 6 of M.O. 271.

227. Article 9(a) as amended in M.O. 302. Article 9(b) provides that the head of the committee can set down instructions on procedure but non-publication of such instructions has no effect on the legality of the proceedings. The committee can at any time decide to hold their hearings in closed session (Art. 8(c)).

228. Question from MK Haim Ramon, 18 April 1989; answer from Yitzhak Rabin (13 July 1989, ref. 7843), cited in B'Tselem, *supra* note 127, pp. 24-5, p. 41 note 45, and p. 37 note 9.

229. Reported by B'Tselem, *supra* note 127, p. 25. B'Tselem found the sums awarded as compensation for incidental damage to be "rather unrealistic."

230. See Case Study 7 in Appendix to this study.

231. In al-Haq Case Study 3 in the Appendix to this study, al-Haq describes the plight of a family whose house was demolished in 1988 and which has been refused permission by the Military Commander to build a new house on a new piece of land purchased for this purpose after the demolition of their old home.

232. The little girl stayed in hospital for one-and-a-half years, unable to live with her family in the conditions they were enduring. The family bought a new house with UNRWA assistance in 1988, which was demolished the same year following the arrest of another family member. See al-Haq Case Study 5 in the Appendix to this study.

233. See al-Haq Case Study 3 in the Appendix to this study.

234. *Al-Fajr* Weekly, 15 July 1991.

235. US State Department Country Human Rights Report, Israel and the Occupied Territories, Backgrounder 1991, p. 11.

236. Al-Haq letter of 18 July 1992, ref. 4301.

237. Letter to al-Haq from Aharon Mishniot at the Office of the Legal Adviser of 28 July 1992, ref. 627/1.

238. See above, Sections Three and Five.

239. HCJ 274/82 *Hamamra*, *supra* note 66.

240. Al-Haq Questionnaire No. 92/622. According to al-Haq's information, the house was sealed during a curfew imposed on the area; various items from the house were broken when the soldiers began throwing out the contents of the house before sealing it, and a number of family members who originally refused to leave the house were beaten.

241. Al-Haq Questionnaire No. 92/770.

242. Data for the houses demolished and sealed in 1991 are not included in these figures due to the recency of the measure.

243. For example, those documented in al-Haq Questionnaires Nos. 88/509, 88/610, 88/609, 92/687, and 92/688.

244. For example, according to al-Haq Questionnaires Nos. 90/869, 90/1980, 92/633.

245. For example, Questionnaires Nos. 90/060 and 90/108.

246. Al-Haq Questionnaires Nos. 92/679 and 92/820.

247. *Jerusalem Post*, 24 August 1992.

248. *Ibid.*

249. *Jerusalem Post*, 20 August 1992.

250. Gaza Center for Rights and Law Press Release, "Israeli Security Forces Launch Massive Military Attack Against 19 Homes in Khan Yunis," 13 February 1993.

251. See al-Haq's forthcoming study on the demolition of houses using anti-tank missiles, to be published in the summer of 1993.

252. Al-Haq Database Serial Nos. 90/1903-1904.

253. Al-Haq Database Serial Nos. 88/1248-1249.

254. Al-Haq Database Serial Nos. 91/43-44, 82-83.

255. Al-Haq Database Serial No. 90/2051.

256. Al-Haq Database Serial No. 92/836.

257. Al-Haq Database Serial Nos. 88/116, 511-513, 1125-8, 1221.

258. Al-Haq Database Serial No. 88/711.