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**Legal Consequences of the  
Demolition of Houses by Israel  
in the West Bank and Gaza Strip**

**by  
John Quigley**

**A Study Prepared for AL-HAQ**



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**the West Bank Affiliate of the  
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## THE AUTHOR

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*A Thousand and One Homes: Israel's Demolition and Sealing of Houses in the Occupied Palestinian Territories*, Occasional Paper No. 11, 1993, 140 pages. \$3

*Missiles and Dynamite: The Israeli Military Forces' Destruction of Palestinian Homes with Anti-Tank Missiles and High-Powered Explosives*, Occasional Paper No. 10, 1993, 98 pages. \$3

*An Illusion of Legality: A Legal Analysis of Israel's Mass Deportation of Palestinians on 17 December 1992*, Occasional Paper No. 9, (Al-Haq, 1993) 112 pages. \$2

*An Ailing System: Israeli Military Government Health Insurance in the Occupied Palestinian Territories*, (Al-Haq, 1993) 110 pages. \$2

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

*Occupier's Law: Israel and the West Bank*, Revised Edition. Institute for Palestine Studies, 1988, 259 pages. \$10. Arabic also available from Palestine Yearbook, Box 4247, Cyprus. \$4

*Town Planning Under Military Occupation: An Examination of the Law and Practice of Town Planning in the Occupied West Bank*, (Dartmouth, 1992) 221 pages.

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## **PREFACE**

Al-Haq was founded in 1979, as Law in the Service of Man, with the twin purposes of defending human rights and promoting the rule of law in the Palestinian Territories occupied by Israel in the aftermath of the 1967 war. Today the staff of al-Haq implement a varied program which includes monitoring, documentation, research, a computerized database of selected human rights violations, a public law and human rights library, and the provision of legal services to the community. Al-Haq's interests within the universe of human rights include women's rights, labor and children's rights, and economic rights. In addition to periodic reports on policies and practices affecting human rights and law, al-Haq publishes studies and in-depth analyses on certain issues of particular topical or timely importance. All of al-Haq's efforts aim to achieve the optimal protection of human rights as defined and standardized in international human rights and humanitarian legal instruments.

The present study was commissioned by al-Haq as part of its efforts to halt the demolition and sealing of Palestinian homes by Israeli military forces for alleged security reasons. A concentrated effort was launched in 1992, following the success of the organization's first campaign which publicized the problems of Palestinian family reunification. Al-Haq's campaign to "Stop Destroying Palestinian Homes" aims to do just that. It also aims to achieve recognition that these practices violate international law, to gain redress for the victims, including compensation, and to acquire permission to unseal or rebuild the house on the same lot. As part of its campaign, al-Haq has facilitated a fact-finding mission on housing rights, commissioned and distributed educational media materials, published news articles on housing rights, comprehensively documented the homes demolished or sealed for the period 1981 to 1991, and published two occasional papers on the subject. (See list of recent al-Haq publications).

While researching the issue of house demolitions and sealings, al-Haq consulted Mr. John Quigley, Professor of law at Ohio State University. Professor Quigley has long been active in studying Palestinian legal issues and was a valued participant in al-Haq's 1988 conference which considered international and


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domestic legal principles in the administration of occupied territories. When we asked him for a study of the issues surrounding house demolitions and sealings, once again his contribution was immediate and valuable. Al-Haq believes that the resultant study by Professor Quigley presents a concise summary of the legal consequences of house demolitions and sealings, and complements the other, more detailed analyses that we have published.

Professor Quigley's study analyzes the destruction of homes for "security" reasons as a violation of property rights and the rights required to be observed in criminal proceedings. Additionally, it is a collective punishment of household members and an unlawful sanction against the entire community of Occupied Territory residents. Such an international crime carries with it serious consequences, requiring just redress, including compensation for the victims.

Al-Haq hopes that this study will clarify the consequences of this illegal Israeli policy and help mobilize international support, legal and activist, for the immediate cessation of house demolitions and sealings for alleged security reasons by the Israeli military authorities.

Fateh Azzam  
Program Coordinator



## LEGAL CONSEQUENCES OF THE DEMOLITION OF HOUSES BY ISRAEL IN THE OCCUPIED WEST BANK AND GAZA STRIP

One of the most controversial practices of Israel's occupying army in the Gaza Strip and West Bank has been the demolition of houses as a punitive measure. Initially, the Israel Defence Force demolished homes of persons it charged with offenses of violence,<sup>1</sup> but during the Palestinian uprising that began in 1987, it demolished homes of persons it charged with less serious offenses.<sup>2</sup> Particularly controversial were instances in which the IDF discovered after demolishing a house that the house's inhabitant in question was not responsible for the act charged.<sup>3</sup> The demolitions are carried out pursuant to a law that Israel deems to be in effect as domestic legislation, namely, the Defence Emergency Regulations.<sup>4</sup> Regulation 119(1) states that a military commander may order the forfeiture to the government

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,

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<sup>1</sup> Cheryl V. Reicin, "Preventive Detention, Curfews, Demolition of Houses, and Deportations: An Analysis of Measures Employed by Israel in the Administered Territories," 8 *Cardozo Law Review* 515, 547 (1987).

<sup>2</sup> Pinhas Inbari, "Harsher Punishments: Homes of 'Inciters' Also Demolished," *Al-Hamishmar*, Apr. 6, 1988, in Israeli League for Human and Civil Rights, *Report on the Violations of Human Rights in the Territories During the Uprising, 1988-95* (1988).

<sup>3</sup> Penny Johnson, "Behind the Interpretations: Faces of the Palestinian Uprising," 5 *Mideast Monitor* 3 (No. 2, 1988).

<sup>4</sup> Defence (Emergency) Regulations, *Palestine Gazette*, No. 1442, Supp. No. 2, Sept. 27, 1945, at 1055, 1089; also published as Government of Palestine, *The Defence (Emergency) Regulations, 1945 (as amended until 2nd March, 1947)* (1947).

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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, or been accessories after the fact to the commission of, any offense against these Regulations involving violence or intimidation or any Military Court offense; and when any house, structure or land is forfeited as aforesaid, the Military Commander may destroy the house or the structure or anything growing on the land.<sup>5</sup>

Regulation 119(1) does not require any judicial determination of guilt, or even of probable cause, regarding the offense charged but leaves the matter to the discretion of the military commander.

The Defence Emergency Regulations were enacted in 1937 by Great Britain, which administered Palestine at the time, for the purpose of suppressing a Palestinian revolt against its rule. Before withdrawing from Palestine in 1948, the British government repealed the regulations.<sup>6</sup> Nonetheless, the Israeli government deemed them to be valid law in Israel, on the false rationale that they were part of the law in force at the time Israel came into existence.<sup>7</sup> When Israel occupied the West Bank and Gaza Strip in 1967, it put the Defence Emergency Regulations into force there

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<sup>5</sup> *Ibid.* Regulation 119(1).

<sup>6</sup> Palestine (Revocations) Order in Council, sec. 2, para. 2, May 12, 1948, Statutory Instrument No. 1004 (1948).

<sup>7</sup> Law and Administration Ordinance, art. 11, 1 *Laws of the State of Israel* 7 (1948).



as well.

Beyond the fact that the Defence Emergency Regulations were, as a result of having been repealed by Great Britain, invalid as domestic Israeli law, Israel's application of them to the Gaza Strip and West Bank, beginning with its occupation of those territories in 1967, was illegal. The Defence Emergency Regulations had not been in force in the Gaza Strip or West Bank from 1948 to 1967, and thus, by putting them into force there Israel was making new law.

Under the laws of belligerent occupation, however, an occupying power must continue to observe the law in force in the territory it occupies. The law of belligerent occupation is codified in two treaties, one being the Hague Regulations of 1907. The Hague Regulations in Article 43, state that the occupant must "respect, unless absolutely prevented, the law in force in the country."<sup>8</sup>

The other treaty is the Convention Relative to the Protection of Civilian Persons in Time of War, commonly known as the Geneva Civilians Convention, Article 64 of which states that the penal laws of the occupied territory "shall remain in force," but that the occupant may "subject the population of the occupied territory to provisions which are essential" to enable it to "maintain the orderly government of the territory, and to ensure the security of the Occupying Power."<sup>9</sup> Thus, while the occupant has some ability to enact new laws, it is severely limited in that regard. The Defence (Emergency) Regulations, being a complete set of emergency provisions, designed by the British government as exceptional laws, cannot be justified as essential for Israel's security purposes.

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<sup>8</sup> Convention Respecting the Laws and Customs of War on Land, Oct. 18, 1907, Annex: Regulations Respecting the Laws and Customs of War on Land, 36 Stat. 2277 (1910); also in 1 Bevens, *Treaties and Other International Agreements of the United States of America 1776-1949* 631 (1968) (hereinafter Hague Regulations).

<sup>9</sup> Convention Relative to the Treatment of Civilian Persons in Time of War, Aug. 12, 1949, 75 U.N.T.S. 287 (hereinafter Geneva Civilians Convention).

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Beyond the question of whether the Defence Emergency Regulations, including Regulation 119(1), can be considered validly to be in force, the demolition of houses as practiced by Israel under Regulation 119(1) is unlawful under a number of international law norms applicable to the situation.

### DEMOLITIONS AS A VIOLATION OF PROPERTY RIGHTS

Article 53 of the Geneva Civilians Convention states:

Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, ... is prohibited, except where such destruction is rendered absolutely necessary by military operations.

The International Committee of the Red Cross, which plays a major role in administering the law of belligerent occupation, interprets the final phrase of Article 53 to mean that the destruction is required "for the armed forces to engage in action, such as making way for them." This exception, it says, "cannot justify destruction as a punishment or deterrent, since to preclude this type of destruction is an essential aim of the article."<sup>10</sup> Article 53 clearly prohibits the destruction of real property outside the scope of actual military operations. A similar rule is found in the Hague Regulations, which prohibit destruction of property "unless such destruction be imperatively demanded by the necessities of war."<sup>11</sup>

As Attorney General of Israel, Meir Shamgar gave as one

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<sup>10</sup> Communication of I.C.R.C., Nov. 25, 1981, cited in Emma Playfair, *Demolition and Sealing of Houses as a Punitive Measure in the Israeli-Occupied West Bank* 12 (Al-Haq, 1987).

<sup>11</sup> Hague Regulations, *supra* note 8, art. 23 (g).

justification for the demolitions "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," he stated, "is a military base, not different from a bunker in other parts of the world."<sup>12</sup> This factual scenario, however, is far from that involved in the use of demolition by Israel in the Occupied Territories. The demolitions are directed, rather, against a person charged with a security-related violation in which the house typically was not used as a site from which to launch the action. Shamgar's argument also is deficient in that there was no "war" in progress in the Gaza Strip or West Bank even if an individual or a group were to initiate a violent act from a house.

Shamgar's other justification under Article 53 was that it is important to Israel's military hold on the territories to establish a credible deterrence to acts of resistance. The demolition practice is, he wrote, "of utmost deterrent importance, especially in a country where capital punishment is not used against terrorists killing women and children."<sup>13</sup> Dov Shefi, the Military Advocate General of the Israel Defence Force, elaborated on this justification, saying that the demolition practice is "a sanction against the offending individual for his attack on security."<sup>14</sup>

In litigation in Israeli courts challenging demolitions, the government of Israel has similarly justified them as a deterrent, and the High Court of Israel has upheld them on that basis. "The aim of the regulation," said the Court, referring to Regulation 119(1), "is 'to achieve a deterrent effect,' and such an effect should naturally apply not only to the terrorist himself, but to those

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<sup>12</sup> Meir Shamgar, "The Observance of International Law in the Administered Territories," 1 *Israel Y.B. on Human Rights* 262, 276 (1971).

<sup>13</sup> *Ibid.* at 276.

<sup>14</sup> Dov Shefi, "The Reports of the U.N. Special Committees on Israeli Practices in the Territories: A Survey and Evaluation," in *Military Government in the Territories Administered by Israel 1967-1980: The Legal Aspects* 285, 301 (M. Shamgar ed. 1982).

surrounding him, and certainly to family members living with him. He should know that his criminal acts will not only hurt him but are apt to cause great suffering to his family."<sup>15</sup>

The prohibition against property destruction in the Hague Regulations and the Geneva Civilians Convention, however, permits of no exception for the use of house demolition as a penal sanction. In addition, the demolitions violate human rights law, which protects the right to property. Under the Universal Declaration of Human Rights, "no one shall be arbitrarily deprived of his property."<sup>16</sup> To destroy a house as a penal sanction, and particularly to do so on the basis of the suspicion of a military commander, is "arbitrary" within the meaning of the Declaration.

The demolitions also violate the internationally protected right of privacy and family life. "No one," states the International Covenant on Civil and Political Rights, to which Israel is a party, "shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation."<sup>17</sup> Privacy is infringed on by the demolition of one's home. The family suffers severe interference, and the sanctity of the home is violated. Thus, Israel's demolition practice violates the right of property as found both in the law of belligerent occupation and in human rights law.

### DEMOLITIONS AS A PENAL SANCTION

If the government of Israel rationalizes demolitions, as it does, as a penal sanction, then it must follow norms prescribed for

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<sup>15</sup> High Court of Justice Case 698/85, cited in Playfair, *supra* note 10, at 12.

<sup>16</sup> Universal Declaration of Human Rights, art. 17, G. A. Res. 217, Dec. 10, 1948, U.N. Doc. A/810 at 71 (1948). See also African Charter on Human and Peoples' Rights, art. 14, June 27, 1981, entered into force Oct. 21, 1986, 21 *Int'l Leg. Mat.* 58 (1982); 7 *Human Rights Law Journal* 403 (1986).

<sup>17</sup> International Covenant on Civil and Political Rights, art. 17, Dec. 16, 1966, entered into force March 23, 1976, 999 U.N.T.S. 171, reprinted in 6 *Int'l Leg. Mat.* 368 (1967) (hereinafter International Covenant).

the imposition of penal sanctions. Under the International Covenant on Civil and Political Rights, a penal sanction may be imposed only after a "fair and public hearing" at which the accused has been advised in detail of the charge, and where he has an opportunity to defend, through counsel of choice if desired.<sup>18</sup> Since Israel's army destroys houses prior to a trial, the demolitions do not meet the requirements of the Covenant for a penal sanction. The sanction is imposed before any determination of guilt.

The Covenant, moreover, requires signatory states to observe the presumption of innocence in criminal cases.<sup>19</sup> Where the accused's house is demolished prior to a trial, the presumption of innocence is flagrantly violated. The Human Rights Committee that monitors compliance with the Covenant has said that one aspect of the presumption of innocence is that "the burden of proof of the charge is on the prosecution and the accused has the benefit of doubt. No guilt can be presumed until the charge has been proved beyond reasonable doubt."<sup>20</sup> The Israeli practice requires no proof of any fact before any tribunal prior to demolition.

Requirements similar to those found in the Covenant are contained in the Geneva Civilians Convention. It states, regarding criminal proceedings, that the court may apply only such provisions as "are in accordance with general principles of law,"<sup>21</sup> and that "accused persons who are prosecuted by the Occupying Power shall be promptly informed, in writing, in a language which they understand, of the particulars of the charges preferred against them."<sup>22</sup> Accused persons have "the right to present evidence necessary to their defence and may, in particular,

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<sup>18</sup> *Ibid.*, art. 14.

<sup>19</sup> *Ibid.*

<sup>20</sup> *Report of the Human Rights Committee*, 39 U.N. GAOR, Supp. (No. 40) at 144 para. 7, U.N. Doc. A/39/40 (1984).

<sup>21</sup> Geneva Civilians Convention, *supra* note 9, art. 67.

<sup>22</sup> *Ibid.*, art. 71.

call witnesses. They shall have the right to be assisted by a qualified advocate or counsel of their own choice, who shall be able to visit them freely and shall enjoy the necessary facilities for preparing the defence." Finally, "No sentence shall be pronounced by the competent courts of the Occupying Power except after a regular trial."<sup>23</sup> Following a trial, the convicted person, according to the Geneva Civilians Convention, is entitled to a right to appeal.<sup>24</sup>

Where demolitions are carried out immediately after an incident, the panoply of rights required under the Geneva Civilians Convention is violated. Instead, Israel applies a penal sanction without a pretense of compliance with the rules required in criminal proceedings.

#### DEMOLITIONS AS A SANCTION AGAINST THIRD PARTIES

Demolition affects other members of the household of the person charged, and, in addition, the house's owner, if it is owned by someone not living in the house. Part of Israel's rationale of deterrence is that demolitions encourage household members or owners not themselves engaged in hostile acts to pressure others to abstain. Thus, the demolitions are a penalty against those who do not pressure potential violators. As explained by one analyst, "the destruction may cause family members to make concerted efforts to discourage their children or siblings from committing acts of violence; landlords may also interfere by evicting those suspected of terrorist involvement."<sup>25</sup>

This being the rationale, the demolitions are conceived in part as a criminal measure against household members or house owners who are not themselves charged with hostile acts. Thus, the requirements of criminal sanctions must be met with respect to

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<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*, art. 73.

<sup>25</sup> Reicin, *supra* note 1, at 547.

these persons. These persons, however, just like the person charged with the hostile act, are deprived of any of the safeguards of the criminal process. Like the person charged with the hostile act, they are penalized before any determination of guilt.

Moreover, since the criminal charge does not lie against them, they have even less opportunity to present objections than the person charged with the hostile act. A landlord or other household member may have been unaware of the activity. That fact is not considered by the authorities, however, because the person would have no forum in which to raise such pleas.

Punishment of persons not directly involved in unlawful activity is prohibited by the law of belligerent occupation. It prohibits sanctions against third parties not involved in the activity that leads to the sanction. Article 50 of the Hague Regulations states, "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 and severally responsible."<sup>26</sup> After World War II, the Dutch Special Court of Cassation considered the meaning of this provision when a German officer who had been in command in German-occupied Holland asserted in defense to charges of violations of the rights of an occupied population that Article 50 applies only to acts that affect the entire population. The Dutch court said in reply that Article 50

fully applies also to cases in which the Occupant might feel tempted to strike at smaller groups of innocent persons in revenge for hostile acts committed by individuals. 'Passive responsibility' can only be deemed to exist when the individuals concerned have known of the hostile acts and could have prevented them and not simply when, in consequence of their

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<sup>26</sup> Hague Regulations, *supra* note 8, art. 50.

attitude of mental opposition to a cruel enemy, they inwardly approved them *a posteriori*.<sup>27</sup>

The Dutch court said that to impose a sanction on an innocent party was "contrary to every principle of justice."<sup>28</sup> In the Israeli practice, the punishment of demolition is inflicted without inquiry into whether the affected persons other than the suspect had prior knowledge of the acts and could have prevented them.

Similarly, the Geneva Civilians Convention prohibits the punishment of persons not directly implicated. It says that no person "may be punished for an offence he or she has not personally committed."<sup>29</sup> The same prohibition is found in the International Covenant on Civil and Political Rights, whose provisions on criminal proceedings presuppose that a person is being sanctioned for acts personally committed.<sup>30</sup>

#### DEMOLITIONS AS A SANCTION AGAINST THE COMMUNITY

An occupant has obligations not only to individuals, but to the community of persons who have fallen under its control. Article 43 of the Hague Regulations requires a military occupant to maintain the "order and the public life" (*l'ordre et la vie publics*) of the occupied territory.<sup>31</sup> That phrase means "social

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<sup>27</sup> In re Rauter, Holland, Special Court of Cassation, Jan. 12, 1949, 16 *International Law Reports* 526, 541 (1955).

<sup>28</sup> *Ibid.*

<sup>29</sup> Geneva Civilians Convention, *supra* note 9, art. 33.

<sup>30</sup> International Covenant, *supra* note 17, arts. 14-15.

<sup>31</sup> The phrase in art. 43, "l'ordre et la vie publics," is incorrectly rendered in the English translation of the Regulations, found in 36 U.S. Congress, *Statutes at Large* 2277, as "public order and safety." The only official text of the Hague



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functions and ordinary transactions which constitute daily life."<sup>32</sup> An occupant is obliged to permit the ordinary activities of the occupied population to continue unimpeded.

Use of residences is necessary to the ordinary life of the occupied territory. The population cannot lead a normal life when one segment of the population has been rendered homeless and must be cared for by others. The demolitions have created a large population of homeless persons, since the houses demolished have frequently been of substantial size, housing large numbers of persons. The International Committee of the Red Cross has provided tents to families whose houses were demolished.<sup>33</sup> The United Nations Commission on Human Settlements has called on Israel to stop house demolitions and has said that the practice conflicts with the Commission's goals of providing shelter for the homeless.<sup>34</sup>

### DEMOLITIONS AS AN INTERNATIONAL CRIME

Demolitions as practiced by Israel in the West Bank and Gaza Strip are unlawful under both the law of belligerent occupation and the law of human rights. They violate the property rights of the owner, and the rights required to be observed in criminal proceedings. They violate the rights not only of the suspect, but as well of house owners and other household members. In addition, they constitute a punishment of the entire community.

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Regulations was the French text.

<sup>32</sup> Edmund H. Schwenk, "Legislative Power of the Military Occupant under Article 43, Hague Regulations," *54 Yale Law Journal* 393, 398 (1945).

<sup>33</sup> Michele Jacquier, "All in a Day's Work: Gaza South," International Committee of the Red Cross, *Bulletin*, No. 151, at 2 (Aug. 1988).

<sup>34</sup> United Nations, Commission on Human Settlements, Res. 11/10, *Reconstruction of Palestinian Homes*, Apr. 12, 1988. Vote: 35-1-9, in U.N. Division for Palestinian Rights, 11 *Bulletin* 12 (No. 6, June 1988).

The demolitions have been persistently condemned by the international community of states as a violation of Palestinian rights under both human rights law and the law of belligerent occupation. The Israeli counter-arguments have not gained acceptance. The United States Department of State, analyzing human rights in the Gaza Strip and West Bank, has stated, "In violation of the Geneva Convention, houses of individuals believed to have been involved in terrorism have been demolished."<sup>35</sup> The United Nations General Assembly has also strongly condemned the demolitions as a violation of Palestinian rights.<sup>36</sup>

The demolitions have drawn such sharp criticism not only because they are unlawful in and of themselves, but because they are viewed by the international community as part of Israel's broader effort to settle its citizens in the Gaza Strip and the West Bank, and to pressure Palestinians to leave these territories.<sup>37</sup> Thus, behind the demolitions lies a political aim that transcends the allegations the Israeli government may have against the inhabitant of a particular house. The demolition issue thus is part of a larger violation by Israel of Palestinian rights in the Gaza Strip and West Bank and is, appropriately, addressed by the international community in that light.

The United Nations Security Council has called for increased vigilance by states parties to the Geneva Civilians Convention to pressure Israel to cease its violations of the Convention.<sup>38</sup> Under the Convention, all states parties are required to "ensure respect" for the Convention "in all

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<sup>35</sup> U.S. Dept. of State, *Country Reports on Human Rights Practices for 1979* 764 (1980). See *ibid.* for 1988, at 1379.

<sup>36</sup> See, e.g., G.A. Res. 41/63D, 41 U.N. GAOR, Supp. (No. 53) at 10, U.N. Doc. A/41/53 (1987).

<sup>37</sup> John Quigley, "Family Reunion and the Right to Live in Occupied Territory," 6 *Georgetown Immigration Law Journal* 223 (1992).

<sup>38</sup> S.C. Res. 681, U.N. Doc. S/RES/681 (1990).

circumstances."<sup>39</sup> This means that they all bear a collective responsibility to ensure that Israel complies with the Convention. It was on the basis of this obligation that the Security Council made its call on the states parties to monitor Israel's practice. High on the list of priorities of these states should be the question of demolitions.

Under the Geneva Civilians Convention, demolitions are viewed as a matter of great seriousness. The Convention singles out for special treatment rights violations it characterizes as "grave breaches."<sup>40</sup> Included as "grave breaches" are extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly, and "wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention."<sup>41</sup> Both these guarantees of the Convention are violated by Israel's demolition practice.

Where a "grave breach" of the Convention is committed, serious consequences follow. Every state party to the Convention, which includes over 160 states, "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."<sup>42</sup> This provision thus makes the carrying out of demolitions an international crime for which perpetrators should be prosecuted and punished. It also establishes universal jurisdiction over the offense, so that any state that is a party to the Geneva Civilians Convention has the right and obligation to punish perpetrators. The offense is committed, as the Convention states, both by those who commit it directly and by those who order it committed. Thus, the military officers who have made the decision to carry out

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<sup>39</sup> Geneva Civilians Convention, *supra* note 9, art. 1.

<sup>40</sup> *Ibid.*, arts. 146-147.

<sup>41</sup> *Ibid.*, art. 147.

<sup>42</sup> *Ibid.*, art. 146.

demolitions, and the military personnel who physically did the demolitions must be prosecuted. So too must the Israeli government officials who established and oversaw the practice of demolitions. Since the demolitions have been carried out consistently since 1967, this means the leading government officials of Israel from 1967 to the present.

### COMPENSATION FOR DEMOLITIONS

Beyond the question of terminating the demolitions and punishing the guilty lies that of providing redress to the victims. A state that violates rights is required under international law to restore the situation as it was before the illegal act.<sup>43</sup> 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." If it is impossible to restore the prior situation, a state must compensate, typically by a money payment.<sup>44</sup>

Palestinians who have suffered material or moral loss as a result of the demolition of a house have a right to compensation from Israel. This includes those who are owners of demolished houses and those who inhabited them and were displaced. The principle of restoring the *status quo ante* requires that Israel provide owners a monetary sum sufficient to re-build the house and to compensate for lost rent following the demolition.

Non-owner inhabitants of demolished houses must be compensated for the expenses they incurred in securing alternate housing. Since most of these persons were not able to locate accommodations as desirable as what they enjoyed in the demolished house, they must be compensated additionally for the suffering and inconvenience caused by their displacement.

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<sup>43</sup> Clyde Eagleton, *The Responsibility of States in International Law* 182 (1928).

<sup>44</sup> *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* 677-78 (1934). See also Eagleton, *supra* note 43, at 182.

Israel is legally obliged to ensure that these payments are made. It could fulfill this obligation in one of two ways. First, it could establish a claims procedure whereby Palestinians can detail their losses, which would 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.

Israel thus has a number of ways in which it could fulfill its obligation to provide redress to Palestinians injured by its demolition practice. If Israel does not ensure the payment of just compensation, the states parties to the Geneva Civilians Convention are under an obligation to force it to do so.<sup>45</sup>

This could be done by the other states parties in the first instance by making appropriate representations to Israel to remind it to fulfill its obligations. If Israel refused, the other states would be authorized under international law to take what are called "counter-measures," namely, acts in retaliation for Israel's breach of its obligations. Such counter-measures could be diplomatic or financial.

In addition, the United Nations Security Council should consider a continuation by Israel of its demolitions practice and its refusal to make compensation as a threat to international peace. Given that the demolition practice is part of a larger Israeli policy of taking over territory that it occupied in wartime and to which it has no title, the matter clearly involves the international peace. Under Chapter 7 of the United Nations Charter, when states threaten the peace, the Security Council is required to make serious efforts to remove the threat. These efforts should in the first instance involve a proposal to the offending party to cease its offending practice, but if that does not suffice, then the Security

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<sup>45</sup> Geneva Civilians Convention, *supra* note 9, art. 1.

Council is required to proceed to diplomatic and economic sanctions, and, as a last resort, to military force organized by the United Nations.<sup>46</sup>

The seriousness with which the Geneva Civilians Convention and the United Nations Charter view the demolitions is reflective of the seriousness of the hardship caused by Israel's demolition practice, both to individual Palestinians and to the Palestinian community of the Gaza Strip and West Bank as a whole. Effective measures must be taken by the international community to bring about a termination of the practice and the awarding of just compensation to the victims.

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<sup>46</sup> United Nations Charter, arts. 39-42.