

Occasional Paper No. 10

Missiles and Dynamite:

**The Israeli Military Forces' Destruction of Palestinian Homes
with Anti-Tank Missiles and High-Powered Explosives**

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Al-Haq 1993

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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).

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

Punishing A Nation: Human Rights Violations During the Palestinian Uprising, December 1987-December 1988, (Al-Haq, 1989).

Demolition and Sealing of Houses as a Punitive Measure in the Israeli-occupied West Bank, by Emma Playfair, Al-Haq Occasional Paper No. 5, (Al-Haq, 1987).

NEW:

An Ailing System: Israeli Military Government Health Insurance in the Occupied Palestinian Territories, by Linda Bevis and Zuhair Sabbagh, (Al-Haq, 1993).

An Illusion of Legality: A Legal Analysis of Israel's Mass Deportation of Palestinians on 17 December 1992, by Angela Gaff, Al-Haq Occasional Paper No. 9, (Al-Haq, 1993).

FORTHCOMING:

A Thousand and One Homes: Israel's Demolition and Sealing of Houses in the Occupied Territories, by Lynn Welchman, Al-Haq Occasional Paper No. 11.

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ABBREVIATIONS USED IN THIS REPORT

AI	Amnesty International
GCRL	The Gaza Center for Rights and Law
ICJ	The International Court of Justice
ICRC	The International Committee of the Red Cross
IDF	Israel Defence Forces
ILC	The International Law Commission
ILR	Israel Law Review
IYbHR	Israel Yearbook on Human Rights
MEW	Middle East Watch
PCIJ	The Permanent Court of International Justice
PYbIL	The Palestinian Yearbook of International Law
UN	The United Nations
UNRWA	The United Nations Relief and Works Agency for Palestinian Refugees in the Near East
YbILC	Yearbook of the International Law Commission

INTRODUCTION

Since the summer of 1992, the Israeli military forces have been pursuing a new strategy in the Occupied Palestinian Territories, ostensibly in their pursuit of "wanted" Palestinians.¹ This new Israeli policy permits the use of anti-tank missiles and high-powered explosives by the military forces during what the Israeli authorities describe as "military operations" conducted in order to arrest fugitive individuals. Anti-tank missiles and high-powered explosives are fired at and detonated inside Palestinian homes. The official rationale for the strategy is that such weapons are employed to force "wanted" Palestinians hiding inside to come out of the building and surrender to the Israeli military forces, while at the same time the lives of Israeli soldiers are protected. Soldiers are no longer required to storm the house in question in order to apprehend the individual inside, thus, it is claimed, ensuring their safety. As a consequence of the Israeli military forces using these weapons, many Palestinian homes have been destroyed and hundreds of Palestinians, men, women and children, have been left homeless.² A number of Palestinians have also been killed during these operations and many others have been treated inhumanely. Many legal and humanitarian questions are therefore raised by the implementation of this policy, not least of which is that of the long-term effects on the dozens of families affected. At the forefront of al-Haq's concerns is the need to investigate the legality of the practice in the context of international law and, in particular, the laws of belligerent occupation.

This report presents the results of al-Haq's documentation of Israeli operations involving the use of anti-tank missiles and high-powered explosives.³ The report relates to operations conducted since the summer of 1992 until the end of April 1993. Unless otherwise indicated, all the factual information presented in this report is derived from al-Haq's fieldwork and research. Al-Haq's fieldworkers documented the operations, gathering information and affidavits from affected inhabitants and examining the destruction and damage caused to each house or building.

In addition to presenting al-Haq's findings, the report

reviews the international laws protecting the property of the occupied population, as well as the laws regulating the use of force by military personnel engaged in the task of apprehending and arresting suspects. The report then sets out Israel's official arguments in support of the new policy, and those in support of the practices of its military forces during the operations. These are then analyzed in the context of the previously discussed laws and al-Haq's documented findings. Questions of redress, including Israel's state responsibilities and the role of the Israeli High Court, together with the legal duties of the international community, are also discussed.

It should be noted that the primary focus of the report is the destruction of property. Although the issue of inhumane treatment is discussed and some specific details of individual killings are revealed, the report does not attempt to provide a detailed examination of the legality of the killings that have occurred. This issue has already been addressed in reports issued by al-Haq and other human rights organizations.⁴

The operational policy discussed herein is a new development in the Israeli military forces' conduct in the Occupied Palestinian Territories. This report attempts to provide a detailed insight into the practices which have been carried out since the policy's introduction. It also raises the serious issue of the way in which laws, especially those of belligerent occupation, may be manipulated to serve purposes for which they were never intended. Among other issues raised is the scope of a state's legal duties once a breach of international law has been found to have been committed. These duties are not limited to the mere payment of compensation.

As this new Israeli policy has not been renounced and new operations are continuing to occur, this report cannot be considered the final word on this issue. However, it is hoped through its release that attention will be drawn to a policy which has largely failed, to date, to gain the attention of the international community.

In addition to the main text, the report contains five appendices. Appendix 1 provides a catalogue of all operations

documented by al-Haq. Appendix 2 presents two in-depth case studies, whilst appendices 3 - 5 reproduce, in translation, the responses of the Israeli Ministry of Defence and the Israeli Legal Advisor to questions raised in the Israeli Knesset and by al-Haq regarding the operations. Detailed endnotes are provided at the end of the report.

I. OPERATIONS DOCUMENTED BY AL-HAQ

This report begins by presenting the results of al-Haq's detailed investigations into the Israeli military forces' use of anti-tank missiles and high-powered explosives. Part A presents mainly statistical data, whilst Part B reveals factual details of how the Israeli military forces conduct these operations.

A. STATISTICS

In the period from the summer of 1992 until the end of April 1993, al-Haq documented 21 operations during which the Israeli military forces fired anti-tank missiles at and/or detonated high-powered explosives inside Palestinian houses and shops, officially as a tactic to force "wanted" individuals to surrender from the buildings. A total of 121 buildings were affected during the 21 operations. Most of the houses and shops were totally or partially destroyed by these methods. Israeli soldiers caused extensive internal damage to the remaining homes by entering them and firing live ammunition into the walls, furniture, and personal belongings. Seventeen of the operations were carried out in the Gaza Strip and the remaining four occurred in the Jenin District of the West Bank. All but four of the 121 buildings affected were located in the Gaza Strip.

**Buildings Destroyed and Damaged
During the 21 Operations**

Types of Destruction	Numbers Affected
Houses totally destroyed (rendered uninhabitable) by anti-tank missiles and/or high-powered explosives	38
Houses partially destroyed by anti-tank missiles and/or high-powered explosives	47
Shops partially destroyed by anti-tank missiles and/or high-powered explosives	5
Other houses internally damaged by gunfire	31
Total number of properties affected⁵	121

The sheer magnitude of the destruction caused by the Israeli military forces using anti-tank missiles and high-powered explosives can be gauged from the following statistics in relation to two large operations which were conducted in the Gaza Strip.

A single operation on 11 February 1993 in the al-'Araysha quarter of Khan Younes in the Gaza Strip affected 18 houses and 143 inhabitants. The Israeli military forces destroyed 12 houses, leaving 98 inhabitants homeless. According to engineers' assessments, the total cost of rebuilding all the houses affected in this operation would reach \$725,000.⁶

Another operation on 20 April 1993 in the al-Tuffah

neighborhood of Gaza City resulted in the total or partial destruction of 28 houses and shops. The damage in this case was assessed by engineers at over \$600,000.⁷

In only two of the 21 operations documented by al-Haq has the use of anti-tank missiles or high-powered explosives definitely led to the arrest of "wanted" persons. Four individuals were forced to surrender from a house bombarded by missiles; they were arrested on 26 March 1993 in the Rafah Refugee Camp in the Gaza Strip. A fifth individual was forced to surrender during the operation of 14 January 1993 in al-Jdayda village in the Jenin District of the West Bank. In one other operation, on 10 September 1992 in the al-Sayamat neighborhood in the north of the Shabura area of the Rafah Refugee Camp, one "wanted" Palestinian was arrested; it is unclear how the arrest occurred or at what stage of the operation the suspect was apprehended as al-Haq was unable to fully document the details of his arrest due to a lack of civilian eyewitnesses.

A number of other arrests occurred during the 21 operations but *not* as a result of the firing of anti-tank missiles or planting of high-powered explosives. On 11 December 1992 in al-Maghazi Refugee Camp in the Gaza Strip, one "wanted" person surrendered from a house, which was nevertheless bombarded with missiles after his surrender. On 11 February 1993 in the al-'Araysha quarter of Khan Younes, two Palestinians "wanted" by the Israeli military authorities were arrested without resistance; the Israeli military forces used missiles and explosives to destroy the houses after the two individuals had already been arrested. On 7 April 1993 in al-Qarara village in the Gaza Strip, two "wanted" men surrendered from a house after the military forces agreed to let the owner attempt to persuade the men to surrender. After the two men surrendered without resistance, the house was totally destroyed by anti-tank missiles and by explosives. Finally, on 30 April 1993 in Beit-Hanoun village in the Gaza Strip, three "wanted" persons were found asleep in a shed and were arrested without resistance. They were already in the custody of the military forces when the Israeli military conducted an operation in the area which led to the destruction of one house and the partial

destruction of another due to the use of anti-tank missiles. No other "wanted" persons were found.

Moreover, in 10 of the 17 operations in the Gaza Strip no "wanted" Palestinians were found to be either in the houses targeted or even in the surrounding area, and as a result no one was apprehended during these operations. In these 10 operations the Israeli military forces caused destruction or extensive damage to 67 houses and five shops.

The Israeli military forces have killed seven "wanted" individuals and two bystanders during the 21 operations, while two Israeli soldiers have been killed. Of these, four "wanted" individuals, a Palestinian bystander and two Israeli soldiers died during West Bank operations, whilst three "wanted" individuals and a Palestinian bystander died during Gaza Strip operations.

Of the seven "wanted" individuals, al-Haq was unable, due to an absence of civilian eyewitnesses, to comprehensively document the details of the deaths of 'Ataya Salama Hasan Abu-Samahdana and Ahmad Salama Yousef Abu-Sheiban who died on 10 September 1992 in the al-Sayamat neighborhood in the north of the Shabura area of the Rafah Refugee Camp or that of Zakariyya Ahmad al-'Abed al-Shurbaji who died on 20 April 1993 in the al-Tuffah neighborhood of Gaza City.

Ibrahim Jalamna and Ibrahim Zreiqi and one Israeli soldier died during the 26 August 1992 operation in Jenin in the West Bank during an armed clash, on which al-Haq has already published a detailed report.⁸ 'Isam Mousa 'Abd-al-Rahman Barahmeh and one Israeli soldier died, also in an armed clash, on 10 December 1992 during the 'Anza village operation.⁹ 'Ali 'Iqab 'Ali Mahmoud Abu-Maryam was killed by Israeli military forces on 14 January 1993 in the al-Jdayda village operation. He was shot while surrendering according to Israeli military personnel instructions, including orders that he hold his hands high in the air.

The two Palestinian bystanders were killed by Israeli military personnel during operations in the following circumstances:

- Maha 'Alauna was killed by Israeli military forces on 26 August 1992 in Jenin, West Bank. Israeli military forces opened fire, killing Maha 'Alauna and wounding her young children, Liwa'a (aged three) and Duwa'a (aged one-and-a-half) and two other bystanders. They had been members of a group in a house and had identified themselves, informed the military forces outside that they were leaving the house, and had stood in an illuminated doorway for a full minute when the fatal shooting took place. The Israeli military forces had promised them safe passage out of the house.¹⁰

- Sixty-four year-old Muhammad Salah Abu-Queita was killed by an Israeli undercover unit at the start of the 14 January 1993 operation in Deir-al-Balah Refugee Camp in the Gaza Strip. He was walking along a road and turned a corner when an undercover soldier opened fire upon him.¹¹

B. THE CONDUCT OF OPERATIONS

This section details how Israeli military forces have conducted the above-mentioned operations, and highlights a number of practices. There are apparent differences between operations conducted in the Gaza Strip and the West Bank. In the Gaza Strip, larger and more destructive operations, targeting many houses in an area, are standard, whereas in the West Bank, operations are conducted against specific houses where the army suspects "wanted" individuals to be hiding. As noted above, operations in both areas are marked by a general failure to apprehend "wanted" persons. In the Gaza Strip the vast majority of targeted houses contain no "wanted" persons; correspondingly no "wanted" individuals have been apprehended. In West Bank operations, on the other hand, operations have most frequently resulted in the death of the "wanted" individual.

As the primary aim of this report is to examine the destruction of property, the following account focuses on how the Israeli military forces conduct operations in the Gaza Strip. As noted above, the extensive destruction resulting from these

operations has almost exclusively occurred in that area. Further information on West Bank operations can be found in Appendix I and other al-Haq publications.¹²

In a typical Gaza Strip scenario, small numbers of undercover soldiers, dressed as Palestinians, enter a neighborhood, followed by regular soldiers who impose a curfew and declare the area a closed military zone. Operations usually begin under the cover of darkness, either before dawn or after dusk. Flares and/or powerful search lights placed on roofs may be used to illuminate the area. Helicopters are also employed, circling overhead. In the largest operations as many as 500 to 1,000 soldiers may be involved.

The military forces order the inhabitants to evacuate their homes, usually through loudspeakers or by ordering inhabitants to tell their neighbors to evacuate. Inhabitants will often be ordered to leave doors and windows open. A deponent to the events of the operation of 22 January 1993 in al-Tuffah neighborhood of Gaza City described how her family was ordered to evacuate:

Soldiers knocked on the door and ordered us all to leave the house. My sons and their families and I left. Twenty-three men, women and children in total. I asked the soldiers why they were doing this and they said that the house was going to be hit with rockets¹³

Inhabitants are not told or permitted to remove their money or valuables. In only one operation, on 26 March 1993 in Rafah, were inhabitants allowed to take their valuables with them. It should be noted that inhabitants are often forced to leave behind the life-savings of the entire extended family. These savings are often kept inside the family home due to religious beliefs and the severe restrictions which have been placed upon formal banking operations in the Occupied Palestinian Territories by the Israeli military authorities since 1967.¹⁴

In two operations, those of 10 September 1992 in the al-Sayamat neighborhood in the north of the Shabura area of Rafah

Refugee Camp, and 26 August 1992 in Jenin, Israeli military assaults upon the houses began without warning or evacuation of the inhabitants. In the former, part of a family's kitchen was destroyed while the family was in the house, and in the latter operation one of the inhabitants was wounded during the initial assault.¹⁵

Once inhabitants have been evacuated, soldiers escort the families away from the immediate area, separating the women and children from the men. All the male inhabitants are detained in houses or an open area nearby, or at a site completely out of the area. Identity cards are taken from all the men.¹⁶ Men under the age of 30 are hooded and bound with plastic handcuffs behind their backs. Older men are usually hooded but not handcuffed. Women and children are either detained or told to leave the area. One deponent recounted how she and her family were evacuated and detained:

I saw approximately 50 soldiers coming into the house, then some of them left the house. It seems that they spread out in the area. Then one of them spoke, saying in poor Arabic, "All of you leave the house." He pointed his gun towards us. My son Ziyad said to him, "Where do you want us to go in this rain? We have children." Then I saw the soldier hit my son Ziyad on the side with the butt of his gun, and he told Ziyad to shut up. My son Ziyad was holding his son Muhammad [one-and-a-half years old]. One of the soldiers ordered him to put him down and to put his hands up in the air with his face to the wall. Ziyad did so. Then they ordered Nabil [another son] to do the same. However Nabil is mentally impaired and doesn't understand much so he didn't obey the order. I saw the soldier start beating and kicking him, using his hands and feet. Nabil then did as his brother by imitating him. We started to leave the house. Behind us were four soldiers who led my sons, my

daughters-in-law and their children, and myself to the cemetery which is approximately dozens of meters away from our house. It was raining heavily on our heads. When we reached the cemetery the soldiers ordered us to sit on the ground. The ground was covered in mud and it was very cold. I looked at my grandchildren and saw that their faces and lips were blue¹⁷

On a number of other occasions inhabitants have been beaten. One female deponent recounted how women were beaten while detained in a closed room during the operation of 13 November 1992 in Qizan al-Najjar, an area to the southeast of Khan Younes, in the Gaza Strip:

The soldier was going to beat my son's wife, Salha al-Najjar, so I said that she was the wife of my son 'Ata. I told him that she was pregnant, but he hit her on her right side with a chair. She fell down, and the soldiers continued to hit the women.¹⁸

During their detention, male inhabitants may be taken away for interrogation; typically they are asked whether any "wanted" persons are inside their homes and ordered to explain what association they have with "wanted" persons. One deponent recounted his experience of the events of 14 January 1993 in Deir-al-Balah Refugee Camp in the Gaza Strip:

One of the soldiers was motioning the women and children to sit on the ground ten meters away from us, while another pulled me by my hand to a nearby street and asked me who else was still in the house and I answered there was nobody there. He said "you can go to the house to search it." I said "there is nobody there or in the house next to it, which also belongs to me and where only my sons and their families live." He told me then that they were

going to destroy the houses and if anyone died or if they found anyone inside they would know what to do to me and he hit me in my face, chest and abdomen with his fist¹⁵

As in the above case, men may be ordered to search the houses on behalf of the Israeli military forces as a method of checking if any "wanted" persons are inside. Another tactic, part of the strategy of employing inhabitants to serve the purposes of the Israeli military forces, was reported to al-Haq to have been employed during the operation in al-Tayba village on 4 January 1993 in the Jenin District of the West Bank; there, inhabitants were used as human shields to protect soldiers as they approached a house in order to throw grenades inside.²⁰

Other disturbing practices occurred during the operation of 11 February 1993 at al-Amal housing project in the al-'Araysha quarter of Khan Younes. Male inhabitants were bound and detained for approximately 11 hours. During their detention they were not allowed to go to the lavatory, and therefore were forced to soil their clothes. They were given nothing to eat. For a period during their detention soldiers guarding the detained men used a loudspeaker, calling out the names of particular men and urging them to surrender. However, all of the men called to surrender were already being detained by the guards who had also already confiscated their identity cards. When these men shouted out that they were already there, the soldiers told them to "shut up" and beat them with rifle butts.²¹

While the inhabitants are detained, the attacks upon the houses commence and may be heard to continue for up to 12 hours. Although there are no eyewitnesses to the tactics used by the Israeli military forces during this period, the inhabitants, who are often detained within a few hundred meters of the targeted houses, can hear operations being conducted. During the attacks, intense firing of machine guns and automatic weapons, as well as explosions, are heard. The explosions consist of two distinct types: anti-tank missiles, also known as rocket-propelled grenades, fired into the houses; and high-powered explosives detonated inside the

houses. Remains of the anti-tank missiles are often found afterwards, having been left behind either inside houses or protruding from walls. Where explosives have been planted inside the homes, craters from their detonation can be seen in the floors and ceilings.

Evidence suggests that during a number of operations, homes have been destroyed by anti-tank missiles and explosives *after* soldiers have already entered and searched the homes and determined that no suspects are inside. For example, during the operation of 13 November 1992 in Qizan al-Najjar neighborhood, southeast of Khan Younes, shooting began at 6 a.m. and continued until 11 a.m. Homes had clearly been entered during or prior to this time, from the evidence of the destroyed personal property that was found afterwards. Explosions were heard only in the last half hour of the operation, from 11 a.m. until 11:30 a.m., and immediately thereafter the soldiers evacuated.²²

The damage that the Israeli military forces have caused in a number of operations provides further evidence that destruction occurred after a determination that no suspects were present. Craters can be found in the floors and ceilings of the operations of 13 November 1992, 11 February 1993 and 20 April 1993 showing that homes were destroyed by high-powered explosives planted inside, as well as from having anti-tank missiles fired at them from the outside. The destruction caused on 11 February 1993 was assessed by engineering experts from the Engineering Faculty of the Islamic University in Gaza City, and the conclusion was reached that:

Explosives were put in critical places in the buildings especially near the pillars that were destroyed.²³

In other cases such as the operations of 22 December 1992 and 7 April 1993 the type of damage also indicates that high-powered explosives were planted inside the houses. Although in these cases the rubble of cement blocks covering the floors makes it impossible to determine whether craters exist, the evident

destruction of whole walls and ceilings is likely due to the use of explosives as well as anti-tank missiles. It is clear from the many sites visited by al-Haq that when anti-tank missiles alone are used on houses, large holes are blown in the wall but generally the whole wall is not destroyed; where high-powered explosives have been detonated inside, whole walls and ceilings are destroyed.

Further evidence comes from GCRL who conducted an extensive investigation of the events of the operation of 11 February 1993 in the al-'Araysha quarter of Khan Younes and found that:

Nine homes were struck by anti-tank missiles and had dynamite charges detonated inside ... [A]ll of the homes in which dynamite was used were first entered by soldiers firing their weapons. After 10 to 15 minutes inside they re-emerged, gathered dynamite, and entered a second time to set the charges.²⁴

When the operation ends, identity cards are returned. Soldiers evacuate, sometimes taking a number of male inhabitants who may be detained and interrogated for a number of days or weeks but are then usually released without charge.²⁵ None of the inhabitants remaining are informed of what has happened; they emerge from their detention to find their homes destroyed.

The scene that greets them is barely describable. Everything that families have built and saved for throughout their lives has been destroyed in a few hours. Houses of up to 300 square meters, originally built in thick concrete and cement, are left in ruins. Whole walls are blasted away; ceilings lie collapsed on top of floors below; floors and doors are ripped apart, and support pillars and walls are cracked and splintered. In some cases, fires are ignited by the explosions, leaving black, incinerated boxes in the place of what once were rooms, with all contents -- furniture, clothes and valuables -- reduced to ashes. Where houses have been entered by soldiers, the interiors are riddled with bullets, the result of deliberate firing into televisions,

toys and beds, while mirrors are intentionally smashed, clothes ripped, and foodstuffs mixed together. In some houses up to 500 spent bullet casings have been counted. Some inhabitants have also had their businesses and means of livelihood destroyed.²⁶

After a time, the families try to cope with their new circumstances. In some of the houses, ceilings are now held up by metal support poles put in place by the inhabitants in an attempt to hold the building together. Some families now live under these in the halls and stairways. Other families live in tents provided by UNRWA and the ICRC or have moved in with neighbors and relatives. In a few cases the local community has raised funds to try to rebuild some of the homes. However, the Israeli authorities have ordered that certain homes may not be rebuilt. For example, families affected by the operation of 20 March in Deir-al-Balah Refugee Camp have started rebuilding their homes. However, according to the inhabitants, the Israeli military authorities issued oral directives to the owners of the house from which "wanted" individuals surrendered, that they may not rebuild their home.²⁷

Badriyya Radwan 'Uthman al-Jbour, an inhabitant of the Jorat al-Lot neighborhood of Khan Younes, aged 59, provided al-Haq with the following description of what she and other families faced on returning to their homes after the Israeli military forces' operation of 22 December 1992:

The soldiers that were around us ordered us to go back to our houses. We did so. My sons Nabil and Ziyad returned and the rest of the men of the other families returned with me. When I entered the house I was shocked by the scene. The house was destroyed. The rooms were upside down and the clothes and closets sprayed with bullets. The bedroom furniture was also destroyed. I went to the kitchen and found the sugar on the floor and the salt in the oil and all the glass broken on the floor. Then, I went to see the houses of the neighbors and saw that they were the same. This was with the exception of the house of Saleh al-Jbour which was

completely demolished apparently by missiles.
There was only rubble remaining.²⁸

No "wanted" persons were found to be inside any of the houses destroyed or damaged during this operation or in the surrounding area.

C. SUMMARY

It is evident that the magnitude of these attacks and the power of these weapons is more in keeping with a war situation than with operations the stated purpose of which is to carry out arrests. Does the presence of a few individuals who are considered "wanted" by the Israeli authorities for violations of Israeli military orders provide a justification for such destruction? In the next section this report examines the international laws which control what military forces may and may not do in occupied territory and during operations to arrest individuals.

II. INTERNATIONAL LAW

The question to be answered is whether these practices are lawful and conform to international law. This section of the report examines those provisions of international law which are relevant to our study. In Part A provisions contained in the body of laws known as the "humanitarian laws of armed conflict" are considered. These provisions were formulated to protect people living in situations of war and belligerent occupation. In Part B of this section the UN Code of Conduct for Law Enforcement Officials is examined. The Code of Conduct articulates basic principles designed to regulate the levels of force which may be employed by military personnel engaged in tasks of law enforcement such as arresting individual suspects.

A. THE HUMANITARIAN LAWS OF ARMED CONFLICT

1. The Hague Regulations of 1907 and the Fourth Geneva Convention of 1949

Two international conventions are considered by the international community to govern the Israeli occupation of the Palestinian Territories: the 1907 Hague Convention Respecting the Laws and Customs of War on Land with its appended Regulations, and the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 1949.²⁹

These conventions, like all the laws contained in the body of laws known as the "humanitarian laws of armed conflict," were formulated and adopted by states to subordinate their claimed freedom of action during armed conflicts to higher humanitarian interests. By binding themselves to legal obligations, states formally agreed to refrain from employing any force not absolutely necessary for military purposes; thus, it was hoped, unnecessary suffering and destruction during armed conflicts would be prevented.

Specific provisions of the Hague Regulations and the Fourth Geneva Convention were formulated to protect property. Hague Regulation 23(g) provides that the destruction of enemy property is:

Especially forbidden ... unless such destruction ...
be imperatively demanded by the necessities of
war.³⁰

Forty-two years later this rule was reiterated by Article 53 of the Fourth Geneva Convention:

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.³¹

The Commentary to Article 154 of the Fourth Geneva Convention (a Convention of nearly universal character, now ratified by 181 states),³² explained that Article 53 of the Fourth Geneva Convention merely repeated Hague Regulation 23(g) with respect to occupied territories.

Without expressing an opinion on the subject, it may perhaps be permissible to refer to the inordinately wide use which has been made of the pretext of "the necessities of war" to justify destruction and seizure.

The Fourth Geneva Convention has repeated this prohibition [of destruction and seizure as contained in Hague Regulation 23(g)] in Article 53 in respect of destruction in occupied territory³³

The Commentary to the Fourth Geneva Convention has long been held to provide authoritative evidence of the meaning of the Convention. The two provisions cited above, Hague Regulation 23(g) and Article 53, therefore can be said to express a single rule. Article 53 of the Fourth Geneva Convention repeated the provision of Hague Regulation 23(g) in the language of the late 1940s, while the meaning of the two provisions must be regarded as identical in relation to occupied territories.³⁴

2. Military Necessity

It will have been noted that while Hague Regulation 23(g) and Article 53 of the Fourth Geneva Convention generally proscribe the destruction of property, exceptions are also made, which allow the destruction of property in limited circumstances. While some provisions of the humanitarian laws of armed conflict were formulated in absolute terms, most contain some form of permissible derogation. These rules attempt to protect humanitarian concerns while recognizing that the conduct of military forces will not be totally fettered during armed conflicts. States refused to

bind themselves to absolute prohibitions in certain areas of their conduct on the basis that certain actions are justified by the very nature of armed conflicts. Such actions, it was argued, are justified for reasons of "military necessity."

A noteworthy modern definition explaining the recognized limits of the general concept of "military necessity" has been formulated by W.V. O'Brien:

Military necessity consists in all measures immediately indispensable and proportionate to a legitimate military aim, provided they are not prohibited by the laws of war or the natural law, when taken on the decision of a responsible commander, subject to judicial review.³⁵

While this provides an excellent general definition, a balance of the need for humanitarian concerns with military necessity has been expressly incorporated into the rules contained in treaties, including the Hague and Geneva Conventions. It is those specific rules which must be examined to determine when a military force is allowed to take action derogating from the prohibition on property destruction contained in the rule. This is because today it is universally accepted that no derogation is permitted outside the terms of such express rules.³⁶ Otherwise states might be tempted to disregard these laws whenever they perceive it to be to their advantage to do so, by expanding the strict limits of permitted derogations contained in these laws, if any derogation is allowed at all. In the process, the essential object and purpose of these laws, which were formulated and accepted by states in the knowledge that their actions were and should be controlled by express laws, would be destroyed.³⁷

Hague Regulation 23(g) and Article 53 of the Fourth Geneva Convention contain a formulated expression of military necessity in their derogation. They allow military forces to destroy property *only* to the extent that it is "imperatively demanded by the necessities of war" or by the later formulation when "rendered absolutely necessary by military operations." It is therefore only

by understanding the limits of this express derogation that one can determine when military forces are permitted to destroy property in occupied territory.

3. The Limits of Permitted Derogation

As explained above, the Hague Regulation 23(g) and Article 53 of the Fourth Geneva Convention are identical provisions expressed in the languages of different times. To consider the meaning of the derogations provided for in these clauses, this report will concentrate on Article 53. There are two reasons for this approach: first, much more has been written about Article 53 than Hague Regulation 23(g) to help us understand the meaning of the derogation; and second, Article 53 was formulated later in time and was therefore expressed in language which might be considered more appropriate to armed conflicts today. It should be stressed however that the conclusions are equally valid for the earlier formulation expressed by Hague Regulation 23(g).

To repeat the derogation in Article 53: it states that destructions are prohibited "except where such destruction is rendered absolutely necessary by military operations." Three main questions therefore need to be examined. What are "military operations"? When can they occur? And lastly, what is the meaning of the words "absolutely necessary?"

(a) Military Operations

The United States Department of Defence has defined the term "military operations" to mean:

Military action or the carrying out of strategic, tactical, service, training or administrative military missions, the process of carrying on combat, including movement, supply, attack, defense and manoeuvre needed to gain the objective of any battle or campaign.³⁸

The Commentary on the 1977 Protocols Additional to the Geneva Conventions of 1949, prepared for the ICRC, explained "military operations" as:

The movements, manoeuvres and actions of any sort, carried out by armed forces with a view to combat.³⁹

The ICRC provided al-Haq with its interpretation of the words "military operations," as contained in Article 53, in a letter written on 25 November 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. [Emphasis in original]

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 both on the wording and the origin of the article.

The authors of the Commentary on the Fourth Convention were in full agreement with the ICRC on this, as confirmed by Mr. Jean Pictet, under whose direction the Commentary was published.⁴⁰

That authoritative Commentary to the Fourth Geneva Convention also explained the permitted derogation to the rule expressed by Article 53 in some detail. It reads:

The occupying forces may ... undertake the total or partial destruction of certain private or public property in the occupied territories when imperative military requirements so demand.⁴¹

The qualifying and operative word here is "imperative." The Commentary further elaborates that occupying commanders are given the power to "judge the importance of such military requirements" but that:

The Occupying Power must therefore try to interpret the clause in a reasonable manner: whenever it is felt essential to resort to destruction, the occupying authorities must try to keep a sense of proportion in comparing the military advantages to be gained with the damage done.⁴²

The Commentary then goes on to explain that otherwise

[it] is to be feared that bad faith in the application of the reservation may render the proposed safeguard valueless: for unscrupulous recourse to the clause concerning military necessity would allow the Occupying Power to circumvent the prohibition set forth in the Convention.⁴³

(b) When 'Military Operations' Can Occur

From the above, the words "military operations" are applicable to situations of "battle," or "combat" or as interpreted by the ICRC where "armed forces seek to engage in action," or where actions are taken by armed forces "with a view to fighting." The essential aim of a military operation is to gain a military

advantage during a campaign of action. As has been pointed out by Professor Pellet, in many of the provisions of the Fourth Geneva Convention the derogations cannot relate to anything except the security of the occupying forces or the needs of the local population, but in Article 53 the destruction of property is very strictly tied to military operations.⁴⁴ This can also be seen from the wording of Hague Regulation 23(g) which uses the words "demanded by the necessities of war." The invocation of the term "military operations" must, therefore, be understood as limited to situations of war, or those resembling war.⁴⁵

It is during this period that imperative requirements of military necessity will arise. Von Glahn explained this point when he wrote generally about military necessity:

Few 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 enemy territory.⁴⁶

Although Article 53 is placed in Section III of the Fourth Geneva Convention which is entitled "Occupied Territories," it should be understood that the word "occupation" as used throughout the Fourth Geneva Convention covers two different factual situations: the protection of civilians during the invasion phase of a "war," protecting the civilian population immediately in its relations with advancing troops; and thereafter during a longer-term occupation, should such occur.⁴⁷ From the above analysis it is evident that the reservation to the prohibition of destruction of property for reasons of "military operations" relates to the period of time covered by the first occupation situation, i.e., when the army is invading, and when international law is less demanding on the occupant regarding humanitarian concerns. Once

general hostilities have ceased and control over the territory has been secured, the rule expressed in Article 53 remains fully applicable, prohibiting the destruction of property. In this second phase, stringent measures against the occupied population, including the destruction of its property and resort to the derogation in Article 53, cannot be justified.⁴⁸

(c) Absolutely Necessary? The Principles of Proportionality and Discrimination

The third question relates to the meaning of the words "absolutely necessary" in Article 53 of the Fourth Geneva Convention. First, it should be noted that these words are attached to the requirement that a military operation is actually taking place. During a military operation, destruction of property is only allowed if it is absolutely necessary for the purpose of such an operation. When a military operation is not taking place destructions are never allowed. Beyond this basic point, the original formulation in the Hague Regulations used the words "imperatively demanded," and the ICRC interprets this requirement to mean "materially indispensable."⁴⁹

To understand the requirement in more detail a method explained by Jean Pictet in his book *the Development and Principles of International Humanitarian Law* may be used.⁵⁰ In order to understand the detailed application of provisions of international humanitarian law one can turn to the fundamental principles of international law in this area, principles which are inherent in all the laws contained in documents such as the Hague Regulations and the Geneva Conventions. By doing this it is then possible to arrive at an explanation of requirements such as the words "imperatively demanded" in Hague Regulation 23(g) and the words "absolutely necessary" as later used in Article 53. As Pictet explains, two of the most fundamental principles essential to "the humanitarian laws of armed conflict," which both arose due to the desire to reduce suffering and destruction during armed conflicts are the principles of proportionality and discrimination. These two

principles are explained and applied below.

The principle of proportionality has been explained to involve

Proportionality in relation to the adversary's military actions or to the anticipated military value of one's own actions⁵¹

For the purpose of our study this may be restated in the following way: *Attacks are forbidden which may be expected to cause loss or injury to life or damage to property which would be disproportionate in relation to the concrete and direct military advantage anticipated.* As Pictet wrote: in war, the aim is to weaken and finally destroy the war potential of the enemy but in the process

[h]umanity insists that capture is preferable to wounding an enemy, and wounding him better than killing him; that non-combatants shall be spared as far as possible; that wounds inflicted be as light as possible, so that the injured can be treated and cured; ...⁵²

The second principle, that of discrimination, has been explained as being; at a minimum, about

[c]are in the selection of methods, of weaponry and of targets⁵³

For the purposes of our study this may be restated by the following two rules: i. *Civilians and civilian objects shall not be the object of attack.* This is an accepted rule of customary international law in its own right. Civilian objects are all those objects which cannot be defined as military objects, which in turn can be defined as

Those objects which by their nature, location,

purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.⁵⁴

ii. *Careful consideration must be given to the selection of methods, weaponry, and of targets to ensure that the minimum possible destruction and suffering occurs when it is decided to attack a military objective.*

These rules spell out in clear and precise terms how military forces must conduct themselves during military operations. Any breach of the fundamental principles of proportionality and discrimination will be a violation of the requirement that destruction of property during military operations is only permitted if it is "absolutely necessary," and will therefore violate Hague Regulation 23(g) and Article 53 of the Fourth Geneva Convention.

B. THE UN CODE OF CONDUCT FOR LAW ENFORCEMENT OFFICIALS

The UN Code of Conduct for Law Enforcement Officials⁵⁵ codifies international laws governing the use of force by law enforcement personnel. The official commentary to Article 1 defines law enforcement officials as "all officers of the law ... who exercise police powers, especially the powers of arrest or detention." With respect to circumstances such as those in occupied territories, where military personnel exercise police powers, the commentary to Article 1 notes:

In countries where police powers are exercised by military authorities, whether uniformed or not, or by state security forces, the definition of law enforcement officials shall be regarded as including officers of such services

Article 2 states that, "in the performance of their duty, law

enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons. According to the Code, the use of force by such law enforcement personnel must be proportionate and necessary to the circumstances. Specifically, Article 3 of the Code states:

Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

Part (a) of the official commentary to Article 3 of the Code emphasizes:

The use of force by law enforcement officials should be exceptional; while law enforcement officials may be authorized to use force as is reasonably necessary under the circumstances ... in effecting or assisting in the lawful arrest of offenders or suspected offenders, no force going beyond that may be used.

Further, the commentary states that,

In no case should this provision be interpreted to authorize the use of force which is disproportionate to the legitimate objective to be achieved.

Again, the principles of proportionality and discrimination are of vital importance. These principles are presented differently in the Code of Conduct than in Hague Regulation 23(g) and Article 53 of the Fourth Geneva Convention because in the first body of rules the ultimate aim is not to weaken the war potential of the enemy but to effect the lawful arrest and detention of the suspect. When considering whether the force employed is illegal under this Code it is the latter aim which must be borne in mind when evoking the principles of proportionality and discrimination.

However, whether or not the operations constitute a

military or law enforcement operation. these overarching principles can be used to examine whether the military commander's decisions on whether the situation was imperative and what levels of force, weapons and tactics needed to be employed, as well as the conduct of the military forces in general, were reasonable in light of all the circumstances available to the military commander and the military forces at the time. It is by such an examination that the legality of the policy and practices revealed by this report should be judged.

III. ISRAEL'S JUSTIFICATIONS AND AL-HAQ'S RESPONSES

In this section Israel's arguments in support of the policy and practices documented in this report will be set out, together with al-Haq's responses thereto. While the Israeli authorities have been reluctant to explain the rationale for the use of anti-tank missiles and high-powered explosives, there are a number of sources from which Israel's official positions can be understood. Part A sets out Israel's justifications, whilst in Part B al-Haq's responses to these arguments are made on the basis of our documented findings and the international laws explained above.

A. ISRAEL'S JUSTIFICATIONS

1. To Arrest "Wanted" Persons

The aim of the operations during which anti-tank missiles and high-powered explosives are used by the Israeli military forces has officially been stated as being to arrest "wanted" individuals on a number of occasions. Deputy Defence Minister Mordechai Gur, in a written response to Knesset Written Question No.795 of 1993, explained:

In recent months there were a number of operations aimed at capturing armed wanted persons and during which damage to houses and furniture took

place.⁵⁶

The Legal Advisor to the Gaza Strip, in a letter to al-Haq dated 27 June 1993, stated that "[d]amages to houses is a result of operations to arrest wanted persons. ..."⁵⁷

This position is consistent with Israel's previous statements on the underlying aim of all its other operations in the Occupied Territories against "wanted" individuals. For example, in a letter dated 28 October 1992 to the human rights organization Middle East Watch regarding the use of undercover units in the Occupied Territories, Deputy Col. Yahav wrote:

[The undercover units'] job is to apprehend ... terrorists, to bring them to prison, to investigate them, and use legal procedures. The purpose is apprehending, and not any other purpose.⁵⁸

2. To Protect the Lives of Israeli Soldiers

Protecting the lives of Israeli soldiers during any operation conducted by military forces is an obvious aim of the IDF. While the strategy employed in the operations documented in this report has not officially been stated to be for this reason, Deputy Defence Minister Mordechai Gur, concluded his written response to Knesset Written Question No.174 of 1992, by stating:

The IDF will continue to act against those armed wanted persons ... without endangering the lives of IDF soldiers.⁵⁹

This statement confirms press reports citing unidentified official sources justifying the policy on the grounds that it is too dangerous for soldiers to enter the homes. These reports cite the argument that it is permissible to destroy houses with missiles, after the inhabitants have been evacuated, in order to force anyone remaining inside to surrender. This protects Israeli soldiers who are not then required to enter the building to apprehend any

"wanted" individual who may be inside. A "senior officer" told the *Jerusalem Post*:

We have all the time in the world. Why rush and risk lives? The technique of storming a house is too complicated and dangerous in these cases ... [O]rders were issued that in cases when wanted and armed terrorists hole themselves up inside a house and refuse to surrender -- or start shooting -- it is permitted to use anti-tank missiles fired from personal rocket launchers⁶⁰

From these statements it seems apparent that the protection of soldiers is one official reason for the introduction of anti-tank missiles and high-powered explosives to the Occupied Territories.

3. To Deter the Population of the Occupied Territories From Helping "Wanted" Persons, Particularly by Providing Refuge

Indications that by destroying large numbers of homes the Israeli authorities hope to discourage the Palestinian population from aiding or abetting "wanted" persons can be drawn from a number of sources. The Israeli Ministry of Defence replied to Knesset Written Question No. 795, by explaining,

In all these operations ... in such a house or on the periphery of the houses armed people found refuge and used the location for their operations and for shooting at the security forces. There is no need to exaggerate in words about the severity of the phenomenon of wanted persons and regarding the danger emanating from the existence of armed groups in the area.⁶¹

An unidentified source from the Civil Administration in the Gaza Strip was also reported to explain:

The use of warfare facilities, such as the missiles, bombs, and exploding grenades in order to blow up houses, has been conducted in the latest months in order to avert terror actions against IDF forces.⁶²

The Israeli authorities have also decided that claims for compensation for the destruction of their homes (an issue discussed in detail later in this report) will not be considered from inhabitants and their families whom the authorities believe help "wanted" individuals.

The following statement reported to have been made by Chief of General Staff Lt.-Gen. Ehud Barak in defending the policy of using anti-tank missiles before the Knesset Foreign Affairs and Defence Committee, removes any doubt that an official objective is that of deterrence:

The system is justified if it creates a situation in which a few Palestinians refuse to provide refuge or a few fugitives agree to leave their hiding place without resistance⁶³

4. Operations Are Conducted So As To Ensure the Safety of Local Inhabitants and Their Valuables

The Deputy Minister of Defence has stated that:

In every one of these operations the residents are called upon to get out of their houses. Also prior to the beginning of an operation, repeated checking is done in order to make sure that the residents have left their houses. In the process of the operations the residents are even demanded to bring with them personal items such as money, jewellery and photo albums.⁶⁴

Ill-treatment of the inhabitants once they have been evacuated has also reportedly been denied. In a government meeting held to discuss the details revealed by an article in *Ha'aretz* about the practices employed by the Israeli military forces on 11 February 1993, Chief of General Staff Lt.-Gen. Ehud Barak was reported to have denied the fact that inhabitants were tied up for long hours, abused and prevented from relieving themselves, and stated that the commander who led the operation in Khan Younes is known for his carefulness.⁶⁵

5. The Operations Are Legal Under Applicable International Law

(a) Applicability

First, it should be noted that the Israeli government and the Israeli High Court have consistently refused, throughout the occupation, to acknowledge the *de jure* applicability of the Fourth Geneva Convention to Israel's occupation of the West Bank and the Gaza Strip.⁶⁶ Therefore the Israeli authorities would appear to deny that Article 53 of the Convention should be used to judge the legality of operations in the Occupied Territories.

The Israeli authorities have, however, acknowledged the binding nature of the rules contained in the Hague Regulations, to their occupation of the West Bank and the Gaza Strip.⁶⁷

The relevance of the UN Code of Conduct for Law Enforcement Officials to the operations documented in this report has neither been acknowledged nor denied by the Israeli authorities. However, as Israel has officially stated that the operations are aimed at apprehending "wanted" individuals, the principles of proportionality and discrimination contained in this Code are automatically binding upon their military forces because these principles are known as customary international rules, which have been accepted by the international community as binding upon all nations.⁶⁸ Moreover, in the past the Israeli Foreign Ministry has affirmed that the behavior of its military forces in the Occupied Territories is governed by these principles. In January

1990 the Foreign Ministry stated:

Special efforts have been undertaken to make clear to Israeli security personnel that, however great the provocation, their behavior must conform to strict regulations and standards, and that restraint must be exercised.⁶⁹

(b) Military Operations For Military Necessity

The official Israeli view is that the operations using anti-tank missiles and high-powered explosives are the "military operations" carried out for reasons of "military necessity" and are therefore legal under Hague Regulation 23(g). The Legal Advisor to the Gaza Strip, in a letter dated 27 June 1993 to al-Haq, wrote:

Damage to houses ... is a consequence of military operations We call your attention to Article 23(g) of the Regulations appended to the Hague Convention of 1907.⁷⁰

The Ministry of Defence has also officially expressed Israel's position on the legality of the operations. Deputy Defence Minister Mordechai Gur wrote that the operations are "military operations based upon international law."⁷¹ He did not state whether this view was based upon an interpretation of Hague Regulation 23(g) or upon Article 53 of the Fourth Geneva Convention. Thus, while stating that the operations are law enforcement operations, the laws regarding military operations are officially cited as the legal justification for the use of anti-tank missiles and high-powered explosives.

B. AL-HAQ'S RESPONSES TO THESE ARGUMENTS

Al-Haq views the above arguments with concern. Many of them have been made by highly-placed Israeli officials. Al-Haq has undertaken extensive investigations into these operations and it is

accordingly and on the basis of the international laws previously explained that al-Haq here responds to these Israeli arguments. For ease of reference the following responses are set out in the same order as the above justifications.

1. The Actual Aim Is to Search for "Wanted" Persons

While the ultimate aim of these operations may be to arrest "wanted" individuals, the actual use of these weapons is rather to search for "wanted" persons. Although reports in the *Jerusalem Post*, as quoted above, have reported unidentified sources as claiming that it is only permitted to open fire when "wanted" individuals are inside a house, Israeli official statements contradict this assertion.

Deputy Defence Minister Mordechai Gur wrote that the operation of 13 November 1992 in Khan Younes was carried out as:

In the circumstances of the incident there was *a basis to suspect that in the area* in which the said houses were located there were armed wanted persons.⁷² [Emphasis added]

He also stated in response to Knesset Written Question No.795 that:

In all these operations there was reliable information that in such a house or *on the periphery of the houses armed people found refuge and used the location* for their operations and for shooting at the security forces.⁷³ [Emphasis added]

These statements suggest that on the basis of a suspicion that "wanted" persons are in the area, or upon receiving information that "wanted" persons have been in the area, the Israeli military forces are permitted to destroy the houses in that area to, in effect, conduct a general search for "wanted"

individuals. It is evident from the above and from questions that the military ask inhabitants during interrogations while the operations are being conducted (they are repeatedly asked if there is anyone inside the house), that the current policy allows Israeli military forces to destroy houses without having to actually know whether or not any "wanted" individuals are inside the targeted houses. It is permitted to open fire to find out if anyone is inside.

The owners and inhabitants of houses and shops destroyed or damaged are paying the price for this policy. Already, more than 38 homes have been totally destroyed and over 100 houses have been affected. Hundreds of inhabitants have been left homeless during these search operations. Moreover, the policy cannot even be regarded as a success on the basis that the aim is to force "wanted" individuals to surrender from suspected hideouts. Only five "wanted" individuals have been arrested due to the use of anti-tank missiles and high-powered explosives.

Al-Haq's documentation provides further evidence of the apparent search nature of these operations. In 10 of the 17 operations in the Gaza Strip no one was found during the operations at all, either in the houses destroyed or in the area of the operation, while the families of the 67 homes which suffered some form of destruction during these operations were either left homeless or left to live in partially or internally destroyed buildings. It cannot, surely, be argued that a policy permitting destruction of homes in the hope that a suspect may be inside is justifiable. This destruction cannot be argued to be absolutely necessary as required by the relevant international laws.

The assertion that the aim is only to search for and arrest "wanted" individuals must also be questioned. In addition to the above arguments and statistics, al-Haq's documentation has also revealed that the policy appears to allow the firing of anti-tank missiles into houses and the detonation of high-powered explosives inside them *after* the military forces have already searched the houses and determined that no one is inside.

Even where the suspect is known to be inside the house, the policy is still illegal under the principles of proportionality and discrimination. By firing missiles and detonating explosives, the

authorities ensures that any individuals inside the building are just as likely to be killed as arrested. options which appear to be viewed by the Israeli authorities as viable alternatives.

A source in Central Command, cited in *Ha'aretz* on 15 January 1993, appeared to admit this when he explained that:

Breaking into houses, in which there are "wanted" persons, is not carried out anymore ... the method used is to bomb the houses and destroy them altogether with the "wanted persons" inside⁷⁴

2. Illegal Measures Are Used to Protect Israeli Soldiers When Other, Legal Measures Are Available

While the Israeli authorities are, of course, entitled to take measures for the protection of their soldiers, the measures adopted must be in accordance with binding international laws. Despite the fact that articles of the Hague Regulations and the Fourth Geneva Convention allow the occupying forces to take measures against the occupied population for legitimate reasons of security, the destruction of property other than on the grounds laid out in Hague Regulation 23(g) and Article 53 is nowhere allowed. The important question to be addressed is whether the force allowed by the current Israeli policy exceeds the international customary requirements of proportionality and discrimination that ensure minimum injury as well as minimum destruction to the inhabitants' property, while the Israeli military forces pursue "wanted" individuals.

Al-Haq is of the view that the firing of missiles and planting and detonation of explosives are measures amounting to an excessive use of force which must be disproportionate to any aims of the operation. While inhabitants are first removed, missiles are then fired into, and high-powered explosives detonated inside, homes as a first option, when areas have already been totally sealed off and are under complete military control. There has been no use of other weapons of a less destructive nature, which would equally serve to protect soldiers, such as the use of tear gas or of

siege tactics. The weapons selected are similar to weapons employed during times of war. As shown above, massive damage to homes has thus resulted when in fact there is usually no one inside the houses against whom to protect the soldiers.

3. Deterrent and Collective Punishment Measures Are Illegal

Measures designed for deterrent purposes are illegal under international law as they amount to the collective punishment of all those against whom they are employed. Israel's position, as voiced by Chief of General Staff Lt.-Gen. Ehud Barak is, in effect, that the destruction of large numbers of homes, leaving hundreds of inhabitants homeless, is justified if a few "wanted" persons are apprehended or if a few Palestinians refuse to provide refuge. The ICRC's discussion of the rule expressed in Article 53 of the Fourth Geneva Convention explained that the prohibition of destruction for deterrent purposes was an essential aim of the article. In this sense the rule expressed by Hague Regulation 23(g) and Article 53 is closely connected to Article 33 of the Fourth Geneva Convention which absolutely prohibits all forms of collective punishment and measures of intimidation and terrorism. Article 33 reads:

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 of terrorism are prohibited.⁷⁵

Evidence that the destructions are designed as deterrent measures can be seen from the apparent wish to cause the maximum possible damage by using extremely powerful weapons even when it is not known if a "wanted" individual is inside the targeted house. Further evidence is provided by al-Haq's documentation of the operations. During the operations of 13 November 1992, as well as those of 11 February and 20 April 1993, houses were blown up from the inside with high-powered explosives as well as having anti-tank missiles fired into them.

During these operations the military appear to have known that no "wanted" persons were inside. In other operations, for example those of 11 December 1992 and 7 April 1993, "wanted" persons had already surrendered, but the military proceeded to destroy the houses anyway. It would thus appear that the destruction of houses is an aim in itself, despite the fact that the efficacy of this policy as a deterrent has never been shown.

The collective and therefore impermissible nature of this punishment is self-evident. Many of the houses attacked are those of the families or relatives of suspects, in areas where the suspects once resided. The destruction of homes in this way is an unjustifiable means of applying pressure on suspects, who see their families and friends made homeless, to surrender.

4. Operations Fail to Ensure the Safety of Local Inhabitants and Their Valuables

While inhabitants are usually evacuated from the targeted houses, al-Haq has documented many disturbing cases of deliberate suffering subsequently inflicted upon the inhabitants by Israeli military personnel. These practices include hooding and binding the inhabitants for long periods of time, beating individuals, and many other forms of abuse. This is another means by which pressure is applied to the families of "wanted" individuals. The documentation in this report shows that Chief of Staff Lt.-Gen. Ehud Barak's denials of the inhuman treatment of the local inhabitants are without basis.

Al-Haq's investigations have also shown that the Israeli assertion that inhabitants are allowed to remove valuables is untrue. In only one operation were inhabitants allowed to do so.

Such inhuman practices are totally unjustified in any circumstances. They serve no purpose but to terrorize the population, and cause widespread misery. They violate one of the most fundamental articles in the Fourth Geneva Convention, Article 27, which expresses the fundamental rights of the human being:

Protected persons ... shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof⁷⁶

5. The Operations Are Illegal Under Applicable International Law

(a) Applicability

Israel's position on the applicability of the Fourth Geneva Convention, a treaty ratified by Israel on 6 July 1951, as a treaty obligation has been examined extensively elsewhere.⁷⁷ Suffice it to say that the international community unanimously agrees that the Fourth Geneva Convention is fully applicable on a *de jure* basis and is binding upon Israel with regard to all the territories occupied in 1967, including Jerusalem. This consensus includes the United States of America,⁷⁸ the UN Organization,⁷⁹ and international organizations such as the ICRC.⁸⁰

Moreover, as this report has pointed out, the rule in Article 53 is identical to Hague Regulation 23(g) in respect of occupied territories. As the rule expressed by Hague Regulation 23(g) has long been accepted by the international community and the State of Israel as a rule of customary international law binding upon the whole international community, it stands to reason that Article 53 should also be accepted on that basis. It was drafted after the acceptance of Hague Regulation 23(g) as a rule of customary international law at Nuremberg, and was formulated to have exactly the same meaning. The International Court of Justice has expressly ruled that a provision can exist simultaneously as a rule of customary international law and as a treaty obligation.⁸¹ The view that Article 53 is a rule of customary international law as well as a treaty obligation is accepted by a number of eminent legal scholars.⁸² Although the Israeli High Court has not, to date, adopted a position that any provisions of the Fourth Geneva Convention reflect customary international law, al-Haq's view is that Israel's occupation of the Palestinian Territories is controlled

by Article 53 as a treaty obligation and as a rule of customary international law which can be pleaded before the Israeli High Court.⁸³

Turning to the UN Code of Conduct for Law Enforcement Officials, there would appear to be little argument that the rules it contains are binding on all states and on Israel's military forces in the Occupied Territories. The Israeli military forces' powers of arrest and detention are set out in detail by Israeli Military Order Number 378. Article 1 of the Code therefore relates to the conduct in the Occupied Territories of operations officially stated by the Israeli authorities to be to arrest and detain "wanted" individuals.

(b) The Operations Are Law Enforcement Operations and Are Carried Out in an Illegal Manner Under the UN Code of Conduct

The operations documented in this report can probably best be regarded as police or law enforcement operations, certainly not as military operations. The essential elements for a military operation are lacking. There is no war or battle in progress nor a sustained armed clash between opposing military or paramilitary forces involving the control of territory. The Israeli military is not destroying houses in order to make way for its forces to engage in action, nor taking action with a view to fighting or combat, as required by the ICRC's definitions. Rather, the Occupied Territories are the subject of a long-term military occupation by Israel, whose military forces have full control over the territories. Israeli forces are not attempting to destroy an enemy's war potential by attacks upon military objectives but are, as they officially claim, attempting to arrest individual men by forcing them to surrender from suspected hideouts.

The Israeli authorities wish to draw upon rules designed for combat situations in wars and to apply them, according to their own interpretations, to the occupation. By so doing the Israeli authorities then justify operations which they have stated are aimed to effect the arrest and detention of individuals under the rules governing combat situations in wars. The operations documented

in this report cannot be legitimately justified in this way. By loosely interpreting the concepts of "military operations" and "military necessity," the Occupying Power is attempting to unlawfully circumvent the prohibition set forth in the conventions. It is clear that the situations facing the Israeli military forces when they carry out the operations documented in this report are of a fundamentally different nature from those allowing military forces to destroy property under the laws of armed conflict. Thus these operations violate Hague Regulation 23(g) and Article 53 of the Fourth Geneva Convention because they are not "military operations" carried out due to "military necessity".

Even if they were justifiable "military operations", it is evident that the force used is also illegal under Hague Regulation 23(g) and Article 53. From the above arguments, particularly the conclusions that the operations are designed to search for "wanted" persons rather than arrest them, and that there exist alternative means by which to protect Israeli soldiers, it is evident that the present Israeli policy violates the principles of proportionality and discrimination cited earlier in this report which serve to regulate the conduct of military forces even if a military operation is taking place. The illegality of the policy is undeniable. The policy and the practices documented in this report violate the requirement of the Hague Regulation 23(g) and Article 53 that destructions must be "absolutely necessary."

Equally, when viewed correctly as law enforcement operations, the detailed arguments made above clarify that the force permitted by the Israeli policy is disproportionate and unnecessary, thus violating the provisions of the UN Code of Conduct for Law Enforcement Officials. Our findings reveal a pattern of illegal destruction where Israeli law enforcement personnel are permitted to employ force which is not "strictly necessary and to the extent required for the performance of their duty."⁴⁴

In fact, the conduct of the operations reveals a policy which appears to have more to do with the intimidation and collective punishment of the Palestinian population than the capture of "wanted" persons. In the last two years, the Israeli occupation

authorities have significantly decreased their use of extended 24-hour curfews over whole communities,⁸⁵ and of house demolitions carried out under Section 119 of the British Defence (Emergency) Regulations of 1945.⁸⁶ Such unlawful practices are employed less at a time when the international community is becoming increasingly aware of their use. In reality, however, these practices are being replaced by the resort to equally brutal methods, such as outright military attacks and bombardments, as well as measures of intimidation, as documented and discussed above.⁸⁷ Such measures amount to a punishment of all those suspected (and their families) -- by the military commander in charge -- of aiding and abetting "wanted" persons, and their families. According to the Commentary, such measures are absolutely prohibited under Article 33 of the Fourth Geneva Convention:

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. They strike at guilty and innocent alike. They are opposed to all principles based on humanity and justice and it is for that reason that the prohibition of collective penalties is followed formally by the prohibition of all measures of intimidation or terrorism with regard to protected persons, wherever they may be.⁸⁸

6. Summary: A Grave Breach of the Fourth Geneva Convention

In addition to violating the UN Code of Conduct, Hague Regulation 23(g), and Article 53 of the Fourth Geneva Convention, the Israeli policy is also a grave breach, the equivalent of a war crime, of the Fourth Geneva Convention. Article 147 of the Convention defines as a grave breach, "the extensive destruction ... of property, not justified by military necessity and carried out unlawfully and wantonly." Thus, to

qualify as a grave breach. destructions of property in breach of Article 53 must be "extensive" and have been carried out "wantonly."

The Commentary states that "to constitute a grave breach, such destruction ... must be extensive: an isolated incident would not be enough."⁸⁹ The present practice is carried out under a policy allowing for the destruction of houses. The destructions have been "extensive:" 21 operations were conducted prior to the end of April 1993, and one hundred houses affected. Further operations have been conducted since the end of April.⁹⁰

The term "wantonly" is not defined in the commentary to Article 147. In everyday usage the word has a meaning that combines elements of an intention to act and a disregard for the consequences of one's actions towards others. The Israeli policy and the pattern of destructions that has been carried out occurred intentionally without regard for the inhabitants' property. Houses were intentionally destroyed by the employment of excessive force, and personal property deliberately destroyed, leaving many families homeless and in despair. The policy permitting these practices is therefore "wanton" within the meaning of Article 147.

Certain consequences result for the State of Israel and other signatories of the Convention from a finding of a grave breach of the Fourth Geneva Convention. After the following discussion of Israel's responsibilities and an examination of the role of the Israeli High Court, the international community's responsibilities will be explored.

IV. RESPONSIBILITIES OF A STATE

This section discusses the legal responsibilities imposed upon a state in breach of international law. First, the section reviews the acts considered to be acts of a state which can give rise to international responsibility of the state. Those responsibilities are then discussed.

A. ACTS ATTRIBUTABLE TO A STATE

In the international legal system, as in all legal systems, responsibility arises for acts committed in violation of the law. The international responsibility of a state for every act committed in violation of a treaty obligation or in breach of a rule of customary international law has been identified by the ILC as:

One of the principles most strongly upheld by state practice and judicial decisions and most deeply rooted in the doctrine of international law.⁹¹

The ILC has also explained when an act is attributable to the state:

In international law, the State must recognize that it acts whenever persons or groups of persons whom it has instructed to act in its name in a given area of activity appear to be acting effectively in its name. Even when in so doing those persons or groups exceed the formal limits of their competence according to municipal law or contravene the provisions of that law or of administrative ordinances or internal instructions issued by their superiors, they are nevertheless acting, even though improperly, within the scope of the discharge of their functions. The State cannot take refuge behind the notion that, according to the provisions of its legal system, those actions or omissions ought not to have occurred or ought to have taken a different form. They nevertheless occurred and the State is therefore obliged to assume responsibility for them and to bear the consequences provided for in international law.⁹²

As demonstrated above, the means employed by Israel in the Occupied Territories to pursue suspects are illegal in a number

of respects under both its treaty obligations and under customary international law. As these illegal actions were implemented by soldiers under a policy formulated at the highest governmental and military levels, these acts are clearly actions which are attributable to, and bear consequences for, the State of Israel in international law.

There are three main duties imposed upon the State of Israel: to renounce the illegal policy in order to ensure that similar illegal acts are not committed in the future; to restore the situation of the houses and inhabitants, as far as possible, to the one that existed before the illegal acts were committed; and to prosecute those involved in the formation and implementation of the illegal policy. The first of these duties needs no explanation. In the following section the latter two duties will be explained.

B. THE DUTY OF RESTORATION

In the *Chorzow Factory Case*, the Permanent Court of International Justice observed that the obligation of a state to make reparation for any breach of international law "is a principle of international law, and even a general conception of law"⁹³

The Permanent Court of International Justice then explained this obligation in the following oft-quoted passage:

The essential principle contained in the actual notion of an illegal act -- a principle which seems to be established by international practice and in particular by the decisions of arbitral tribunals -- is that reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed. Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in

place of it -- such are the principles which should serve to determine the amount of compensation due for an act contrary to international law.⁹⁴

This universal principle of international law was also spelled out by the Commentary to Article 29 of the Fourth Geneva Convention in relation to breaches of the Convention and was expressed in Article 3 of the Fourth Hague Convention of 1907. For example, the former states:

A State which bears responsibility for a violation of the Convention is in duty bound to make good the damage caused, either by restoring everything to the former condition (*restitutio in integrum*) or by paying damages.⁹⁵

The State of Israel is therefore under an international legal obligation to re-establish the situation which would have existed if its military forces had not destroyed the inhabitants' houses and their contents, by rebuilding the houses or by paying compensation to the victims in amounts corresponding to the full value of all material and moral losses. The compensation to be paid in relation to the operations documented in this report consists of a number of different elements: the cost of rebuilding the houses and shops; the cost of replacing all personal property, money and valuables destroyed or damaged; loss of business income where businesses have been destroyed; and any further incidental losses such as rent payments made to others while rebuilding is being carried out and the costs of seeking alternative housing.⁹⁶ Lastly, there is a duty to pay the victims a sum for any physical suffering inflicted and also for mental suffering.⁹⁷ The German-American Mixed Claims Commission in *The Lusitania Cases* emphasized that when an illegal act has caused mental suffering the state is obliged to pay compensation. The position was explained in the following words:

That one injured is, under the rules of international law, entitled to be compensated for an injury

inflicted, resulting in mental suffering, injury to his feelings, humiliation, shame, degradation, loss of social position or injury to his credit or to his reputation, there can be no doubt, and such compensation should be commensurate to the injury.⁹⁸

Such sums should reflect the mental suffering and anguish of the families affected by the practices documented above, whether as a result of the destruction of their homes and property, or the illegal killing of a family member.

The official position of the Israeli authorities is that Israel is not legally obliged to pay any compensation for the destruction and damage that has resulted from the firing of missiles and the detonating of high-powered explosives. They consider the practices revealed in this report to be legal under Hague Regulation 23(g). They maintain that their actions have been carried out as a consequence of military operations for reasons of military necessity. The Legal Advisor to the Gaza Strip stated on 27 of June 1993, in a letter to al-Haq, that:

Damage to houses ... is a consequence of military operations and the Israeli Defence Forces are not obligated to compensate for it. We call your attention to Rule 23 (g) of the Regulations appended to the Hague Convention of 1907⁹⁹

The military commander is granted far-reaching powers to decide whether compensation will be granted under Military Order Number 846 (Gaza Strip) of 1984, which provides:

No applications shall be filed, and no compensation shall be given in accordance with this order, if the commander of the IDF in the region endorsed in a certificate that the claimed damage was caused as a result of a military operation which was carried out on account of military necessity.¹⁰⁰

Again, the importance of the meaning, and Israel's distortion of the meaning, of the words "military operations" and "military necessity" are highlighted. Israel's position is that because the destruction described in this report is caused by military operations which occurred on account of military necessity, it is under no legal obligation to pay compensation to the inhabitants. This report has already explained that this position is without basis in fact and law.

The Israeli military authorities have expressed a willingness in principle to compensate, without admitting a legal obligation to do so, but only in cases that can be proven to fall outside of the justifications which they have defined. The following statement by the Israeli Ministry of Defence clarifies the military's point of view:

Since these military operations are based upon international law the IDF will take upon itself to pay compensation to the residents whose houses were damaged *who did not wilfully assist the armed wanted persons*. An officer at the civil administration in charge of complaints was given instructions to immediately deal with every request for compensation.¹⁰¹ [Emphasis added]

The Legal Advisor to the Gaza Strip stated that the granting of compensation does not include anyone "who assists wanted persons by giving them shelter or in any other way ..." and that the decision whether or not to pay compensation,

[w]ill be taken by the Area Commander of the Israel Defence Forces, relying on confirmed information passed to him by the specialized sources.¹⁰²

Thus, the authorities have agreed to consider claims for *ex gratia* payments of compensation, but only in cases where they decide that the claimant is "innocent." This judgment is made

solely by the military commander. The inhabitants and their families are therefore excluded from claiming compensation if the military commander believes that a member of the family has "wilfully assisted the armed wanted persons" or "assist(s) wanted persons by giving them shelter or in any other way."¹⁰³ In other words, the Israeli Ministry of Defence has added another derogation -- that of suspected culpability -- to its sweeping interpretation of the concepts of military necessity and military operations, thus reducing the right of inhabitants and their families to receive compensation.

The criteria used by the Israeli military authorities to assess the level of damages have not been clarified, nor have the categories for which compensation may be paid been specified. The GCRL is representing over 100 families in their claims for compensation and began lodging claims in the autumn of 1992. On 6 August 1993 GCRL reported that "the progress of this claim has been tortuous." The GCRL also reported that apart from a letter from the Deputy Legal Advisor of the Gaza Strip dated 25 July 1993 (a letter similar to the one received by al-Haq quoted above) that:

Despite repeated attempts by the Gaza Center for Rights and Law to obtain further clarification of the criteria to be used for settling these compensation claims, no further information has been forthcoming. Indeed, the Israeli authorities have placed one obstacle after another in the way of the Center in its attempt to secure compensation for these families, despite the authorities' public declaration that they are willing to compensate for the damage caused.¹⁰⁴

On 16 August 1993 the military authorities announced, without admitting that they were under any legal obligation to do so, through the *Ha'aretz* newspaper, that a sum of compensation had been set aside for 39 families, and that they would only compensate inhabitants deemed "innocent."¹⁰⁵ The amount set

aside was 300,000 New Israeli Shekels. If this is divided equally between the 39 families it amounts to approximately \$2,650 for each family (at present exchange rates).¹⁰⁶ This derisory amount is the sum the Israeli authorities have decided to pay families whose houses and lives they have destroyed, in operations causing hundreds of thousands of dollars worth of damage. Out of such sums it would be absolutely impossible for families to rebuild their homes. Such sums merely add insult to injury. GCRL made the following statement in relation to this announcement:

It is very worrying that the authorities appear to be refusing to deal professionally with the GCRL in settling claims. Instead they are summoning families direct to the civil administration, where settlements are made to the families' disadvantage. The ability of families to insist on the presence of their lawyers is, no doubt, made difficult by the fact that families are effectively summoned by the civil administration by armed IDF soldiers. It is hardly surprising, therefore, that many families have been forced to make settlements without the benefit of legal advice.¹⁰⁷

On 19 August 1993, three days after the Israeli authorities' announcement, Israeli military forces launched two more operations, partially destroying four houses with anti-tank missiles and causing extensive internal damage to four other houses in the al-Zaytoun and al-Sheikh neighborhoods of Gaza City. Again, on 8 September 1993 the Israeli military forces launched an operation in al-Sayamat, in Rafah Refugee Camp, partially destroying one house and causing extensive internal damage to another. These events emphasized the fact that Israel has neither renounced its demolition policy nor restored the inhabitants to their pre-destruction situation.

C. THE DUTY TO PROSECUTE

The responsibility of the State of Israel does not end once an illegal policy has been renounced and restoration is complete, or even if *full* compensation is paid. International law does not limit the responsibility of a state to the mere restoration of the former situation or the payment of compensation as this would clearly be insufficient, as can be seen in relation to Israel's present policy, to ensure against the future commission of similar offenses. The late Hersch Lauterpacht, distinguished international lawyer and judge of the International Court of Justice, explained the position thus:

To limit responsibility within the State to *restitutio in integrum* would mean to abolish criminal law and a substantial part of the law of tort. To abolish these aspects of responsibility among States would mean to adopt, because of their sovereignty and dignity, a principle which is not only repulsive to justice but is in itself an inducement to injustice and lawlessness. It would mean that individuals, when grouped in the form of a State, acquire a degree of immunity in respect of criminal acts against the life and safety of their neighbors which they do not possess when acting in isolation; it is an immunity covering acts which, because they are collective and assisted by the almost infinite power of the modern State, are potentially of an unlimited destructiveness.¹⁰⁸

This passage was written in 1937. When the Geneva Conventions were formulated the drafters obviously had similar thoughts. The Commentary to Article 29 of the Fourth Geneva Convention explains that where a breach of international law is attributable to the state, the state "must make good the damage and punish the offender."¹⁰⁹ The Commentary further states,

[t]he fact that the State has made good the damage caused in no way diminishes the responsibility of the author of the offense and, *vice versa*, punishment of the offender does not relieve the State of its responsibility. The two forms of punishment for violations of the Convention thus run parallel to each other, a fact the Diplomatic Conference wishes to stress.¹¹⁰

In relation to grave breaches of the Convention, the obligation of the State to punish those agents is laid out clearly in Article 146 of the Geneva Convention:

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.

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.¹¹¹

As explained earlier, Israel's present policy of using anti-tank missiles and high-powered explosives together with the resulting destruction represent a grave breach under Article 147 of the Fourth Geneva Convention. Israel is under an obligation to prosecute all individuals involved in the present policy, from the highest level of policy formulation and command to the level of implementation.

V. ISRAEL'S HIGH COURT

While prosecution is a criminal matter, a civil remedy, the availability of which is often boasted of by the Israeli authorities, provides the possibility for inhabitants of the Occupied Territories to pursue a case of judicial review to the Supreme Court of Israel, sitting as High Court of Justice. The Court is empowered to review the legality or otherwise of any decision of an Israeli military commander acting in the Occupied Territories. This option does not affect in any way the responsibilities upon the State of Israel previously discussed. This section examines whether the High Court generally does provide an effective remedy and whether cases asking the Court to review the legality of the policy which is the concern of this report are likely to succeed.

A. SECTION 119 OF THE BRITISH DEFENCE (EMERGENCY) REGULATIONS OF 1945

The High Court of Justice is empowered to fully accept arguments based on customary international laws, including the 1907 Hague Convention and its Regulation 23(g).¹¹² However, in the past, in the numerous cases of house demolitions carried out under Section 119 of the British Defence (Emergency) Regulations of 1945,¹¹³ the Court has without exception failed to analyze the Israeli military forces' conduct in the light of Israel's international obligations. Customary international laws are ignored by the Court in preference to s.119 of the British Defence (Emergency) Regulations, despite the fact that these Regulations were revoked by the British before the creation of the State of Israel.¹¹⁴ These decisions of the Israeli High Court are illegal, as a matter of international law. Arguments based on Article 53 of the Fourth Geneva Convention have not been accepted since Israel and the Supreme Court of Israel have consistently refused to acknowledge the *de jure* applicability of the Convention to the territories it occupied in 1967.¹¹⁵

Therefore, the decisions of the Court with regard to house demolitions under s.119 usually proceed by disregarding all

arguments pleaded in respect of Article 53 of the Fourth Geneva Convention and Hague Regulation 23(g).¹¹⁵

B. SECURITY -- PRESUMPTION IN FAVOR OF THE MILITARY COMMANDER

These High Court interpretations are not entirely surprising in view of that Court's deference to the military authorities in nearly all cases brought before it in relation to the Occupied Territories. As Emma Playfair wrote:

As for the Israeli High Court, it shares the general reluctance to look behind a claim of security holding [in the case of *Hilu*] that:

The court is not the proper place to decide whether a military-security operation... -- if grounded in law and undertaken for reasons of security -- was indeed warranted by the security situation or whether the security problem could have been resolved by different means [I]ssues related to the army and defence, similar to issues of foreign affairs, are not among the subjects fit for judicial review.¹¹⁷

As Playfair then argued:

The petitioner ... faces a more or less insurmountable difficulty before the court. Judge Landau considered such evidence [expert brought by the petitioner to counter the evidence of the government security expert] in the *Amira* case and concluded that:

In a dispute such as this, involving questions of a military-professional character in which the Court does not have its own founded knowledge, it will presume that the professional arguments ... of those actually responsible for security in the occupied

areas and within the Green Line are valid. This presumption may only be rebutted by very convincing evidence to the contrary.¹¹⁸

Thus the Court generally refuses to apply its legal expertise to review the legality of decisions of the military commanders of the West Bank and the Gaza Strip in situations where the claim of security has been raised.

C. DETERRENCE

Deterrence is another argument accepted and supported by the Court. Meir Shamgar, now President of the Israeli Supreme Court, argued in 1971 that destructions with the aim of deterrence, can, in appropriate circumstances, be countenanced on the basis of Article 53 of the Fourth Geneva Convention.¹¹⁹ This position is in direct conflict with the interpretation given by the ICRC, but is one long held by the Court in relation to house demolitions carried out by military order under s.119 of the Defence (Emergency) Regulations of 1945.¹²⁰

D. HAGUE REGULATION 23(g) AND FOURTH GENEVA CONVENTION ARTICLE 53

In relation to destructions not carried out under s.119 there has been only one case to al-Haq's knowledge. This is an important case as it is likely that the High Court will follow this decision in cases submitted in relation to the practices contained in this report. In that case (*Bureij Case - HC 4112/90*) the Court reviewed the military commander's decision to destroy a number of homes and shops in the al-Bureij Refugee Camp in the Gaza Strip. This decision was taken in order to widen a road to allow for better control by the IDF over what happened along the road. The military commander stated that the decision had been taken due to the fact that the area along the road was a central point for violence against the military forces which had resulted in the killing of a soldier. The Court justified the demolition under

Hague Regulation 23(g) and Article 53 of the Fourth Geneva Convention. The case clearly involved a security issue and measures were therefore taken as described above. However, as explained earlier, security measures nevertheless must still comply with international laws. International laws were designed to allow wide and far-ranging security measures to be employed while forbidding other measures viewed as oppressive or as infringing too greatly upon the individual rights of the occupied population. The judgment in this case, however, relied, not on laws relating to permitted security measures, but on laws allowing for destructions only during military operations. The judgment proceeded with no analysis of the central words of the derogation to Hague Regulation 23(g) and Article 53, i.e. "military operations," and "military necessity." Instead, the Court justified the demolitions by viewing the derogation as including "needs of security," and "military needs," to argue presumably that the demolitions were of vital military necessity.

In deciding this, the Court also missed the crucial point that no military operation was in fact in progress, and merely stated, without indicating upon what basis the rules were being applied, that the measures were in accordance with Hague Regulation 23(g) and Article 53 of the Fourth Geneva Convention:

Both from the aspect of the vital need from the military-security aspect, as well as from the aspect of using careful consideration, fairness and maintaining the correct balance between the military-security needs and the measure of damage done to the destroyed property, have been maintained and asserted in full in the subject of this application.¹²¹

Thus the Court employed the reservations contained in Article 53 and Regulation 23(g) beyond their intended scope, appearing to view the word "security" as an all-encompassing excuse for destructions prohibited under international law.¹²²

E. SUMMARY

The option of an application for judicial review in the Israeli High Court does not often provide an effective remedy for the inhabitants of the Occupied Territories. Military commanders are allowed to make wide-ranging security claims, and to invoke laws applicable to the conduct of military operations in the field, to justify policies and decisions in situations to which such concepts and laws cannot be legitimately applied. The Court accepts these arguments without the detailed analysis of the international laws necessary to understand and judge whether those laws actually can be applied to the situations facing the military commanders and their armed forces. With such ill-defined concepts as "security" and "deterrence" the Court has thus allowed the military authorities to use methods -- which international law permits under very specific and limited circumstances -- to be employed unlawfully to meet what the military perceives to be its wide ranging security needs in the Occupied Territories.

Two petitions have been submitted to the High Court to review both the legality of the new methods used to destroy houses and the issue of compensation. It was reported in the *al-Quds* newspaper that the High Court had postponed the hearing of these applications for three months pending the outcome of negotiations between the Israeli authorities in the Occupied Territories and the inhabitants.¹²³ As discussed above, such negotiations have led to unrealistically low settlements accepted by destitute families often without proper access to legal counsel. In view of all of the above, there would appear to be only the remotest hope that the Israeli High Court will eventually declare the present policy and accompanying destructions to be illegal.

CONCLUSION: THE NEED FOR INTERNATIONAL PROTECTION

Given Israel's refusal to abide by its international obligations with regard to this policy, as well as the lack of any effective remedy available to the local population of the Occupied

Territories, the Palestinians' sole remaining hope for protection is the international community. Under Article 1 of the Fourth Geneva Convention all the High Contracting Parties to the Fourth Geneva Convention have agreed to "ensure respect" for the Convention "in all circumstances."¹²⁴ Other channels and means of protection are not open to the Palestinian population. Palestinians have no legal standing to bring claims or disputes before the International Court of Justice in the Hague.¹²⁵ Additionally, the role of UNRWA remains primarily that of a relief organization providing general assistance as opposed to an organization providing protection.¹²⁶

The Fourth Geneva Convention contains a number of options and mechanisms, as yet unused in the Occupied Territories, whereby the High Contracting Parties might provide protection. These include the assignation of protective roles throughout the provisions of the Convention through the system of Protecting Powers, as established by Article 9 of the Convention.¹²⁷ This system has not been implemented, however, and the role of the ICRC is not understood as one of a "substitute" for a Protecting Power, as articulated by Article 11.¹²⁸

Due to these circumstances the effective commitment of states to their legal duty under Article 1 to "respect" and "to ensure respect" for the Convention "in all circumstances" is of crucial importance for the protection of the Palestinian population. As the UN Secretary-General explained in a report to the Security Council in 1991,

[i]n the absence of a decision by Israel to apply in full the provisions of the Fourth Geneva Convention, the High Contracting Parties have an obligation under its article 1 to ensure that it is respected."¹²⁹

There are various means by which states can fulfill their own obligations and ensure that the State of Israel abides by its obligation under the Fourth Geneva Convention. One of the primary obligations upon the state signatories is the duty flowing from Article 146, cited above, to prosecute all individuals coming

within their territorial jurisdiction responsible for the present policy and its implementation and to request the extradition of those individuals if Israel remains unwilling to prosecute those involved. There are also numerous diplomatic and other measures available to the international community which are largely beyond the scope of this study.

However, it is clear, to date, that the diplomatic *démarches* and other preferred methods of intervention by the High Contracting Parties have been ineffective in ameliorating Israeli practices in the Occupied Palestinian Territories; the position appears to have changed little since 1968 when the Teheran Conference on Human Rights noted

[t]hat States parties to the Red Cross Conventions sometimes fail to appreciate their responsibility to take steps to ensure the respect of these humanitarian rules in all circumstances by other States, even if they are not directly involved in an armed conflict.¹³⁰

The challenge facing the international community is to build a just and equitable international order based on respect for and reliance on the just and equitable principles of international law. States are enjoined to honor their own legal obligations and to ensure by all necessary means that the State of Israel, while it retains *de facto* control over the Occupied Territories, honors its international obligations, thereby creating conditions necessary for a just and lasting peace.

In the instant case, the international community of states is required to direct efforts towards ensuring that Israel immediately:

1. Desist from and grant protection against the future employment of its ongoing policy of the use of anti-tank missiles and high-powered explosives in the destruction of Palestinian property. This policy is a grave violation of human rights and of Israel's international treaty obligations and of customary international law. Measures must be taken to ensure against the future commission

of similar actions.

2. Prosecute individuals and those in the military command responsible for the formulation of the policy, as well as its initiation and implementation. If such individuals are not prosecuted by Israel, the High Contracting Parties should request their extradition under existing bilateral extradition treaties.¹³¹

3. Fulfill its legal obligation to pay *full* compensation to all those who have suffered losses due to the implementation of the illegal policy.

To pursue these goals, the international community already has the authority, and the duty, under international law, to take measures to show its disapproval of Israel's continued disregard for international law and the human rights of the Palestinian population under its military control. This report has revealed yet another Israeli practice in the Occupied Territories to add to the many practices violative of international law that have occurred during the 26 years of Israeli military control based on a complex rule by law and by force. The international community is enjoined to ensure that Israel's future actions in the Occupied Territories are based on the rule of law and respect for human rights. Only then will a true basis for lasting peace have been achieved.

APPENDIX 1-A

Operations Documented by Al-Haq During Which the Israeli Military Forces Used Anti-Tank Missiles and/or High-Powered Explosives in the Gaza Strip*

1. 8 September 1992 in the 'Urayba neighborhood of Rafah City:

1 house partially destroyed.

No "wanted" persons arrested.

(See case study, Appendix 2-A).

2. 10 September 1992 in the al-Sayamat neighborhood in the north of Shaboura neighborhood, Rafah Refugee Camp:

2 houses partially destroyed.

2 "wanted" persons killed: 'Ataya Salama Hasan Abu-Samahdana and Ahmad Salama Yousef Abu-Sheiban. The exact circumstances of the deaths are unknown to al-Haq due to the absence of civilian eyewitnesses.

1 "wanted" person injured and arrested.

3. 13 November 1992 in Qizan al-Najjar neighborhood, southeast of Khan Younes:

1 house totally destroyed.

2 houses partially destroyed.

*The categories of destruction in this appendix are those used in the table in Section 1 of the report.

5 further houses sustained extensive internal damage.

No "wanted" persons arrested during the operation.

(See case study, Appendix 2-B).

4. 11 December 1992 in the al-Masadara neighborhood of al-Maghazi Refugee Camp:

1 house partially destroyed.

1 other house sustained extensive internal damage.

1 "wanted" person arrested during the operation. Missiles were fired into the house only after he had surrendered.

3 inhabitants arrested at the end of the operation: 2 were released within a week and the other was released within a month, all without charge.

5. 22 December 1992 in Joret al-Lot in Khan Younes:

1 house totally destroyed.

4 houses partially destroyed.

No "wanted" persons arrested during the operation.

6. 14 January 1993 in Deir-al-Balah Refugee Camp:

2 houses totally destroyed.

1 house partially destroyed.

4 other houses sustained extensive internal damage.

1 64-year-old inhabitant, Muhammad Salah Abu-Queita, of Deir-al-Balah Refugee Camp was killed by the Israeli military forces at the start of the operation. As he was walking along a road he was shot by an Israeli undercover unit soldier.

No "wanted" persons arrested during the operation.

7. 22 January 1993 in al-Tuffah neighborhood of Gaza City:

2 houses totally destroyed.

1 house partially destroyed.

4 others houses sustained extensive internal damage.

No "wanted" persons arrested during the operation.

8. 11 February 1993 in the al-'Araysha quarter of Khan Younes:

12 houses totally destroyed.

5 houses partially destroyed.

98 inhabitants rendered homeless; a total of 143 inhabitants affected.

2 "wanted" persons arrested prior to the use of missiles and explosives.

Damage assessed by the engineering experts at the Faculty of Engineering of the Islamic University in the Gaza Strip at \$725,000.¹³²

(For a newspaper article on this event see *Ha'aretz*, 19 February 1993¹³³).

9. 20 March 1993 in Deir-al-Balah Refugee Camp:

1 house totally destroyed.

11 houses partially destroyed.

7 other houses sustained extensive internal damage.

4 "wanted" persons surrendered from a house, including Ayman Sa'id Hasan Nassar who died in custody on 3 April 1993.

10. 23 March 1993 in Deir-al-Balah Refugee Camp:

2 houses partially destroyed.

No "wanted" persons arrested during the operation.

11. 26 March 1993 Block J of the Rafah Refugee Camp and part of nearby Rafah City:

2 houses partially destroyed.

7 other houses sustained extensive internal damage.

No "wanted" persons arrested during the operation.

12.-7 April 1993 in al-Qarara village in the Khan Younes District:

1 house totally destroyed.

The house owner and his son were beaten by Israeli military personnel and detained for eight days in Ansar II detention center, after which they were released without charge.

2 "wanted" persons surrendered from the house prior to the use of any missiles or explosives. Missiles and explosives were then used to destroy the house.

13. 11 April 1993 in al-Nuseirat Refugee Camp:

2 houses partially destroyed.

2 other houses sustained extensive internal damage.

No "wanted" persons arrested during the operation.

14. 11 April 1993 in al-Zawayda village, Deir-al-Balah District:

1 house partially destroyed.

No "wanted" persons arrested during the operation.

15. 15 April 1993 in al-Zawayda village, Deir-al-Balah District:

1 house partially destroyed.

No "wanted" persons arrested during the operation.

16. 20 April 1993 in the al-Tuffah neighborhood of Gaza City:

16 houses totally destroyed.

7 houses partially destroyed.

5 shops partially destroyed.

No "wanted" persons arrested during the operation.

1 "wanted" person killed: Zakariyya Ahmad al-'Abed al-Shurbaji. The exact circumstances under

which he was shot are unknown to al-Haq.

Detailed damage assessments were made by two institutions:

- the 23 April 1993 Report of the Association of Engineers of the Gaza Strip assessed damages at \$726,684.¹³⁴

- the 28 April 1993 Report of the Islamic University Engineers' Report assessed damages at \$604,000.¹³⁵

17. 30 April 1993 in Beit Hanoun village in the Gaza District:

1 house totally destroyed.

1 house partially destroyed.

1 other house sustained extensive internal damage.

Soldiers found 3 "wanted" persons asleep in a shed. They surrendered without resistance. A curfew was then imposed and an operation conducted in the area during which the above damage occurred. No further "wanted" persons were found.

APPENDIX 1-B

Operations Documented by Al-Haq During Which the Israeli Military Forces Used Anti-Tank Missiles and/or High-Powered Explosives in the West Bank**

1. 26 August 1992 in Jenin:

1 house partially destroyed.

No "wanted" persons arrested during the operation.

Two armed and "wanted" men on the second story of the building, Ibrahim Jalamna and Ibrahim Zreiqi, and an Israeli soldier were killed.

A bystander on the ground floor, Maha 'Alauna, was killed by the Israeli military forces. Israeli military forces opened fire, killing Maha 'Alauna and wounding her young children, Liwa'a (aged three) and Duwa'a (aged one-and-a-half) and two other bystanders. The members of the group had identified themselves, informed the military forces that they were leaving the house, and had stood in the illuminated doorway for a full minute when the fatal shooting took place. The Israeli military forces had promised them safe passage out of the house.

For further details see Al-Haq, "Wilful Killings: A Sustained Israeli Policy in the Occupied Palestinian Territories," Al-Haq Human Rights Focus, 21 November 1992.

** The categories of destruction in this appendix are those used in the table in Section 1 of this report.

2. 10/11 December 1992 in 'Anza village, Jenin District:

1 house totally destroyed.

9 inhabitants left homeless.

1 "wanted" person, 'Isam Mousa 'Abd-al-Rahman Barahma, and 1 Israeli soldier killed and 4 Israeli soldiers wounded during an armed clash.

No "wanted" persons arrested during the operation.

3. 4 January 1993 in al-Tayba village, Jenin District:

1 house partially destroyed.

No "wanted" persons arrested during the operation.

4. 14 January 1993 in al-Jdayda village, Jenin District:

1 house partially destroyed (structural damage).

1 "wanted" person killed: 'Ali 'Iqab 'Ali Mahmoud Abu-Maryam was killed by Israeli military forces outside the house as he surrendered to the Israeli military forces and was following their orders including holding his hands high in the air.

1 other "wanted" person surrendered, he was then beaten by soldiers and arrested.

Case Study of the Israeli Military Operation of 8 September 1992 in the 'Urayba Neighborhood of the Gaza Strip City of Rafah

On Tuesday 8 September 1992 at around 3:30 p.m. Ibrahim Hasan 'Atiyya Abu-Samahdana, 42 years old, sat in the street close to his home in the 'Urayba neighborhood of Rafah, with his 14-year-old son, Atef, and two neighbors. As a helicopter circled overhead, three cars stopped nearby. Soldiers and Shin Bet (General Security Services) intelligence officers, all disguised as Arabs, emerged pointing their rifles at the group of Palestinians, and ordered the inhabitants, in Arabic, to "turn around and face the wall." The soldiers blindfolded the Palestinian group with rags and bound their hands behind their backs with plastic handcuffs. Two armed, well-known collaborators, Jamal Jouda, known as "Cotton," and Bashir Za'reb accompanied the undercover unit. A huge force of soldiers then entered the area.

After half-an-hour the blindfolds were removed and Abu-al-Nar, a Shin Bet officer of Southern Command Intelligence in the Gaza Strip, asked Ibrahim, "Is Yaser at home?" (Yaser, Ibrahim's younger brother, had been "wanted" for a year). Ibrahim said that there was no one in his house except for his wife and children. Abu-al-Nar insisted: "I'm sure that you have him." Abu-al-Nar ordered Ibrahim to search the house. Still bound, Ibrahim managed to follow this order by opening the door and turning on the lights with his legs and head. He returned and told Abu-al-Nar again that only his wife and children were inside. Then, Ibrahim was ordered to search the plastic covered hot-houses where tomatoes and cucumbers were grown. When he entered, a soldier shouted: "Raise your hands." Ibrahim was unable to do so because his hands were still tied. He told the soldier in Hebrew that he had been sent by the officer.

Two soldiers took him out of the hot-houses to see Brigadier Yomtov Sami'a, and Abu-Rami, a Shin Bet officer. They asked where Yaser was, maintaining that he was in the area. Ibrahim denied this. The Brigadier informed him that the military was going to destroy his home using bazookas. Three soldiers grabbed Ibrahim; Abu-Rami told them that Ibrahim was Yaser's brother and to take good care of him.

Ibrahim was ordered to face a wall. He heard soldiers use loudspeakers to order the inhabitants to clear the area as they were going to destroy the house. Inhabitants evacuated. Shooting started at about 5 p.m. Live shots and explosions which sounded like cannon fire continued intermittently until 11:30 p.m. Ibrahim was forced to remain in the same spot throughout.

Late in the evening one of the Shin Bet officers informed him that they would negotiate peacefully, especially if he handed Yaser over to them. He told Ibrahim: "You are his older brother and the youngest should listen to their elders." Ibrahim recounted to al-Haq his answer as,

You are the state here and you are not able to catch him, so how can I influence him? ... Whose law permits you to bombard houses for six hours while you can demolish a whole state in four?

Ibrahim was reported by *Ha'aretz* as answering in the following manner:

You defeated the Arab World in six hours, but nine hours were not enough for my house? Nine hours they attack a home just for the sake of one 20-year-old youth armed with a pistol and four bullets who was not even there? They took Sheikh 'Beid from Lebanon in 15 minutes. But I know what they wanted -- they wanted to show to everyone that this is what would happen to houses where wanted

people hide, and that is what would be done to the families of the wanted. I told Brigadier Sami'a that just as he is not responsible for everything his 16-year-old daughter does, so I cannot not be responsible for what my younger brother does. You put your democracy in a suitcase and leave the suitcase at the Erez checkpoint.¹³⁶

Ibrahim then offered to escort the Shin Bet officer to the house but he refused. Soldiers then used flares to light up the area and after an hour evacuated. No one had been in the house and no "wanted" persons were found or arrested.

An al-Haq fieldworker visited the area on 19 September 1992 and assessed the following damage to Ibrahim's home: The kitchen was totally burnt out. Two other rooms were destroyed by anti-tank missiles. It was clear that soldiers had entered the house; internal walls and rooms were riddled with bullet holes and closets, clothes and personal belongings were likewise destroyed by live ammunition.

Case Study of the Operation of 13 November 1992 in the Area of Qizan-al-Najjar, Southeast of the Gaza Strip City of Khan Younes

On Friday 13 November 1992 at approximately 5:30 a.m., several hundred Israeli soldiers entered the area of Qizan al-Najjar, which had been under curfew since 11 November 1992. The area was declared a closed military zone. Soldiers ordered three inhabitants, 'Abdallah al-Najjar, 'Ata Jaser al-Sha'er, and Muhammad Jaser al-Sha'er to instruct the inhabitants of eight houses in the neighborhood to open the doors and windows of their homes and to evacuate them. Fatma Mahmoud 'Abd-al-Wahhab al-Najjar, an inhabitant, told her husband and woke her three sons, their wives and their 13 children. They left their home. Outside they saw a large force of armed soldiers surrounding the house and stationed on the roofs of nearby houses. Occupants of the other homes also evacuated. A soldier was seen videotaping the scene from a rooftop.

Soldiers ordered all the evacuating men to raise their hands and move to the home of Khalil al-Najjar. The women were ordered with their children to the home of Jaser al-Sha'er. Both houses are approximately 150 meters from the area. It was around 6 a.m. Soldiers searched the men, about 25 of them in total, and bound their hands behind their backs with plastic handcuffs. Soldiers also confiscated their I.D. cards. The younger men were hooded and separated from the older men. A female soldier searched the women with her hands and with a metal detector. Some 15 women and their 30 children were led by soldiers into a closed living-room and ordered to sit on the floor. The door to the room was shut. The women began to hear intensive shooting outside. Fatmeh feared that their husbands were being shot and so tried to see what was going on, but was beaten back.

Meanwhile, a number of the detained men were being interrogated, including 'Atef Jawdat who recounted his interrogation to us in the following words:

I heard somebody calling my name and they led me to the upper floor of the house. The blindfold was removed and I could see a person in a military outfit and a bullet-proof jacket and he had a gun. He made me go into a bathroom and asked me if I knew who he was. When I replied negatively he said that he was Abu-Kayed from the intelligence. I said: "Welcome." He asked me if I knew why I had been summoned -- I said: "No." Then he asked me what kind of cars I possess -- I said that: "I used to have a grey one but I sold it a month-and-a-half ago." He asked me if I knew the "First Lieutenant." I asked him: "Who's that?" He said: "First Lieutenant Usama al-Najjar." I told him that he was a relative but that our relationship was not good, neither between us nor between myself and his parents. He asked me how many times I had seen him and I told him that I knew nothing about him. He accused me of lying and I told him that I was telling the truth. Then he asked me if I had seen al-Batta's house. I asked: "Which one?" He said: "The one in which the 'First Lieutenant' died. I told him: "Yes, just like all the people have." He threatened that if I did not cooperate with him I would see my beautiful house just like it; he was referring to the destruction that followed it due to armed clashes with Usama al-Najjar at the beginning of August 1992. I asked him: "Why do you want to do this to my house when I have done nothing wrong and I work all day long from 6 a.m. to 7 p.m.?" He asked if I was sure that nobody comes to my house, I answered that I was positive, so he cursed me. A soldier blindfolded my eyes and

led me to the ground floor¹³⁷

Shaker Mas'oud al-Najjar was also interrogated by Abu-Kayed and gave the following report:

He [Abu-Kayed] asked me if I knew why we were forced out of our houses. My response was negative. He said it was because "we've had information saying that there were 'wanted' people in the neighborhood, and in your house in particular." I was surprised and said so. He said, "I am sure of what I say." I asked him if his information was reliable. He said, "Yes and you had better tell me the names of the 'wanted' persons and better still go to call them and persuade them to surrender." I denied having any "wanted" people in the house.

He then asked me if I was the head of the area. I answered him, "I am just an ordinary person who works all day to provide money for my own and my father's households and I don't have time for such things." He then asked me if I was sure there were no "wanted" people in the neighborhood. I answered that, "As far as my house is concerned, I am positive." He changed the subject and asked me how many times I had been to the mourning house of Anwar Isleih [a "wanted" person who died in martyrdom a month ago]. I told him, "I went like the rest of the people to give my condolences." He said that the "wanted" person, Usama al-Najjar, who died on the second of August, was my friend. I told him that: "Before being my friend Usama was my cousin, neighbor and schoolmate and that it is only natural that I was friendly with him." I also added that: "Since he became 'wanted' I haven't seen him and there has been no contact between

us." He asked me: "Why did they call Usama 'First Lieutenant' while they called Anwar 'Sergeant.'" although Usama's performance during the time he was 'wanted' had been much greater than Anwar's?" I told him that I didn't know.

Again he went back to the issue of the "wanted" people who were supposedly in my house, assuring me that he knew what was going on. He told me it would be for my own good to persuade them to surrender, because otherwise the army was going to blow the house up with missiles. So I suggested that he should accompany me to the house to search it. However, he refused saying that he wouldn't go or even think of sending any soldiers there because he had their safety to think of. He added that if I was still not willing to cooperate, he would blow up all the houses in the area. I told him: "Whoever informed you that there were 'wanted' people in the neighborhood was lying and they will be in deep trouble later on." Once more he blindfolded me and I was returned to the ground floor¹³⁸

The intensive shooting continued. A number of soldiers entered the house where the women were being detained and started shouting and beating the women. Fateh Mahmoud 'Abd-al-Wahhab al-Najjar recounted how:

The soldier was going to beat my son's wife, Salha al-Najjar, so I said that she was the wife of my son 'Ata. I told him that she was pregnant, but he hit her on her right side with a chair. She fell down, and the soldiers continued to hit the women.¹³⁹

At around 11 a.m. the first sound of explosions was heard. In the next half hour 10 further explosions were heard. At around 11:30 the shooting and explosions stopped. The soldiers then called out

the names of a number of the detained men: `Imad Sa`id al-Najjar, Yaser `Uman al-Najjar, `Uthman Hamed al-Najjar, `Atef Jawdat Rushdi al-Najjar, and Shaker Mas`oud al-Najjar. They were all driven away in a jeep and the soldiers evacuated the area. After 20 minutes the car with the five detainees stopped and the men climbed out. They were still blindfolded and bound and remained so for an hour-and-a-half. They were being held in the Israeli Civil Administration Headquarters in Khan Younes, Gaza Strip. Shaker heard the voice of the man who had previously interrogated him saying that he was Usama al-Najjar's friend. Shaker asked this man whether he had found any "wanted" people. Abu-Kayed replied "No," and Shaker told him that "this should prove to you that you did me an injustice when you accused me of knowing where they were." Abu-Kayed said: "I'm sure that you assist 'wanted' people." Shaker answered him: "You can take me to trial for this and I'm sure of my innocence." Abu-Kayed said: "What you need is a six-month administrative detention sentence that will teach you what you should know." Shaker was placed in administrative detention [detention without trial] in the Ansar III detention center in the Negev desert until 28 February 1993. The other four men were told to go without being interrogated and reached home at 1:30 p.m.

Earlier, at around 11:45 a.m., a boy from the neighborhood had unhooded the older men who were left hooded when the army evacuated. No calls for "wanted" persons to surrender had been heard at any stage by the detained inhabitants.

Al-Haq's fieldworker spent three days in the area (from 17-20 November 1992) documenting the events and talking to many inhabitants (approximately 70 inhabitants in total had been affected by the operation). They assessed the following damage:

Three houses were hit by anti-tank missiles: one had been rendered uninhabitable and two others had been partially destroyed and sustained extensive internal damage. Five other houses also sustained extensive internal damage when they were raided by

soldiers who used live ammunition to destroy private property and shot into the walls:

1. Mas'oud Shaker's house, a six-bedroom house in which 12 people lived, was destroyed and rendered uninhabitable. The western side of the house was totally demolished. The walls and pillars collapsed due to missiles. The eastern side walls are cracked. The house had a concrete floor. All the furniture inside the house was totally destroyed, and the walls were riddled with bullets.

2. The house of Jawdat Rushdi al-Najjar was hit by missiles and partially destroyed. Missile shells, grenades and over 500 bullet shells were found among the remains. There are two large holes in the walls and in the outer fence. The furniture, refrigerators, gas ovens, basins, televisions, 22 windows, 25 doors, closets, blankets and glassware had all been shot into. Part of the floor had been damaged by explosives planted inside the house.

3. The house of 'Attiyya Rushdi al-Najjar was hit by at least one missile. The northern wall of the ground floor of the house was totally demolished.

4. Extensive internal damage occurred to five other homes. For example, soldiers entered the home of Hamed Shaker al-Najjar and shot bullets into the walls, washing machine, televisions, bedroom cupboards, mattresses, kitchen crockery, mirrors, closets and clothes. Inhabitants also reported the loss of money and other valuables.

No "wanted" persons were found inside the homes or in the area and none was arrested during the operation.

APPENDIX 3-A

Written Knesset Question No.174 of 1992
Unofficial translation by al-Haq

To: Minister of Defence Yitzhak Rabin
From: MK Hashem Mahamid.

18 November 1992

Re: Demolition of houses by the IDF in Khan Younes by means of anti-tank rockets.

On 16 November 1992 *Hadashot* published a news item according to which the IDF demolished 9 houses in Khan Younes by using anti-tank rockets.

I would like to ask the respected Minister the following questions:

1. Are the details of the above-mentioned incident known to you?
2. Who gave the order to use rockets amongst the civilian population?
3. Is there any sort of limitation regarding the kinds of weapons permitted for use amongst the civilian population?
4. In the event that the incident was carried out without permission will the Minister be ready to act to prosecute those responsible for the incident?
5. What are the measures the Minister intends to take to prevent the repetition of similar incidents in the future?

Respectfully,

MK Hashem Mahamid.

APPENDIX 3-B

Written Answer by Deputy Defence Minister Mordechai Gur to
Written Question No.174
Unofficial translation by al-Haq

Dated 6 January 1993

From: Deputy Defence Minister Mordechai Gur

In the process of catching wanted persons a number of houses were damaged as a result of shooting by IDF forces. It should be stressed that the houses were not completely demolished. One house was severely damaged and the rest slightly.

In the circumstances of the incident there was a basis to suspect that in the area in which the said houses were located there were armed wanted persons.

In light of the above suspicion and past lessons the residents of the houses were called to evacuate the premises. A second check-up was carried out in order to ensure that the residents of the houses had evacuated the premises before the operation started.

During the operation there was no use of anti-tank rockets. In the aftermath of this operation damage was done to property, however no loss of life took place either of residents or of IDF soldiers.

The IDF will continue to act against those armed wanted persons with the aspiration of not harming innocent persons and without endangering the lives of IDF soldiers.

Therefore my answers to your questions are as follows:

1. Questions 1,2,4: There was no use of anti-tank rockets.
2. Question 3, the answer is positive.
3. Question 5, in light of the above-mentioned there is no need to take any measures.

APPENDIX 4-A

Written Knesset Question No.795 of 1993
Unofficial translation by al-Haq

To: Minister of Defence Yitzhak Rabin
From: MK Hashem Mahamid

2 March 1993

On 11 February 1993 in an operation that lasted from 5 a.m. until 6 p.m., the security forces demolished 22 houses in the al-Amal neighborhood of Khan Younes in which some of the houses were destroyed by anti-tank rockets. The house-owners were not allowed to remove their furniture because they were not given sufficient time. In the houses that were demolished on suspicion that wanted persons and weapons were inside, nothing was found.

I would like to ask:

1. Are these reports correct and what are the facts?
2. Due to the dangers to human life and the damage done to property as a result of using rockets, will orders be issued to the army not to use rockets in operation such as these?
3. Will the above-mentioned incident be investigated?
4. Will compensation be paid to the owners of the above-mentioned houses for damage done to them?

Respectfully,

MK Hashem Mahamid

APPENDIX 4-B

Written Answer by Deputy Defence Minister Mordechai Gur to
Written Question No.795

Unofficial translation by al-Haq

Dated 1 June 1993

From: Deputy Defence Minister Mordechai Gur

1. In recent months there were a number of operations aimed at capturing armed wanted persons and during which damage to houses and furniture took place. In all these operations there was reliable information that in such houses or on the periphery of houses armed people found refuge and used the location for their operations and for shooting at the security forces. There is no need to exaggerate in words the severity of the phenomenon of the existence of armed groups in the area.
2. The answer is negative. In light of the said suspicion and in light of past lessons, in every one of these operations the residents are called upon to get out of their houses. Also, prior to the beginning of an operation, repeated checking is done in order to make sure that the residents have left their houses. In the process of the operation the residents are even demanded to bring with them personal items such as money, jewellery and photo albums.
3. Since these military operations are based upon international law the IDF will take upon itself to pay compensation to the residents whose houses were damaged who did not wilfully assist the armed wanted persons. An officer at the Civil Administration in charge of complaints was given instructions to immediately deal with every request for compensation.

APPENDIX 5-A

Faxed Letter from al-Haq to the Legal Advisor of the Gaza Strip
10 May 1993

To: Colonel Yair Lutstein,
Legal Advisor for the Gaza Strip

Dear Colonel,

Further to our discussion last Thursday regarding the use of anti-tank missiles during operations to search and arrest wanted persons in the Gaza Strip and the procedures for claiming *ex gratia* payments from the Civil Administration we would be grateful if you could clarify the following points:

1. We understand the position to be that *ex gratia* payments will be made to those residents who do not have contact with wanted persons. Could you explain more precisely the level or type of conduct by a resident which might lead to a finding that compensation will not be granted. Further, which body is responsible for making that determination; is it a military board or the staff claims officer?
2. Upon what basis is the damage then assessed?
3. How long do claims usually take to be processed?
4. You mentioned that the operations are legal in international law. Could you refer us to those provisions of international law upon which this opinion is based?

Many thanks for your help.

Yours sincerely,

Mustafa Mar'i (Advocate)
Al-Haq

APPENDIX 5-B

Letter from the Legal Advisor of the Gaza Strip to al-Haq
Unofficial translation by al-Haq

To: Al-Haq

REF: 04708, 474/1 Al-Haq
DATE: 27/06/1993

SUBJECT: Compensation for owners of damaged houses

1. In response to your letter dated 10/5/93, my answer is as follows:

(a) Damage to houses is a result of operations to arrest wanted persons, and is a consequence of military operations; the Israel Defence Forces are not obligated to compensate for it. We call your attention to Article 23(g) of the Regulations appended to the Hague Convention of 1907. In spite of this, it has been decided as a matter of principle to provide compensation for owners of damaged houses.

Not included under that principle is someone whose house has been damaged in the process of the arrest of a person to whom they have given shelter or assistance or another kind, and to whom they have therefore associated themselves.

The decision not to pay compensation will be taken by the Area Commander of the Israel Defence Forces, relying on confirmed information passed to him by specialized sources.

(b) Compensation is given based on estimates conducted by the Israel Defence Forces, in discussion with the residents of houses who may provide their own information and estimates.

(c) It is difficult to estimate the period of time required to handle complaints. The period in question depends on the willingness of both parties to come to an understanding and agreement.

Instructions have been given to the authorities of the Israel Defence Forces specialized in these matters to handle them as speedily as possible.

With respect,

Ya'ir Luttenstein, Lt-Col. Legal Advisor

ENDNOTES TO THE REPORT

1. The first indication that a Palestinian has been placed on the Israeli military authorities' wanted list will usually be when the Israeli military authorities come to search the family's home. The family will then be ordered to inform the "wanted" individual that he must appear at the military authorities' local headquarters. The "wanted" individual has two choices: either to appear before the military authorities as requested or to go into hiding. Surrendering oneself means submitting oneself to a lengthy interrogation during which the individual will be subjected to torture. A 1991 random survey by al-Haq revealed that more than 85 percent of all Palestinians detained are subjected to torture and/or various forms of cruel, inhuman and degrading treatment or punishment. The routine practice of torture in Israeli prisons and detention facilities has been documented by al-Haq and by other Palestinian, Israeli, and international human rights organizations. See for example, al-Haq, *Palestinian Victims of Torture Speak Out, Thirteen Accounts of Torture During Interrogation in Israeli Prisons*, (Ramallah: Al-Haq, 1993). Also see, AI, *Israel and the Occupied Territories: Fear of Torture or Ill-Treatment*, AI Index: MDE 15/05/92, (London: AI, March 1992), and AI, *AI Report 1993*, (London, AI, 1993), p. 169.

2. In addition to al-Haq's documentation contained in this report, see GCRL, "GCRL Condemns Excessive Use of Force by Israel in Escalating Series of Human Rights Violations in Khan Younes," *GCRL Monthly Human Rights Report Series*, (15 November 1992); and "Israeli Security Forces Launch Massive Military Attack Against 19 Homes in Khan Younes," *GCRL Monthly Human Rights Series*, (13 February 1993). See also Amirah Hass, "Grenades, Missiles, and Helicopter Whir," *Ha'aretz*, 20 November 1992, (in Hebrew); Etan Rabin, "17 Houses were Damaged during IDF's Activities in Khan Younes," *Ha'aretz*, 16 February 1993, (in Hebrew); Gid'on Levi, "The Twilight Zone: Amidst the Destruction in the Neighborhood of Hope," *Ha'aretz Weekend Supplement*, 19 February 1993, (in Hebrew) and "Living Quarters as a Firing Zone," *Ha'aretz*, 23 February 1993, (in Hebrew). These and other pertinent reports and articles are available at al-Haq in English.

3. Al-Haq has also documented other, similar operations during which heavy machine-gun fire was employed but without the use of anti-tank missiles or high-powered explosives.
4. Al-Haq, "Wilful Killings: A Sustained Israeli Policy In The Occupied Territories," Human Rights Focus Series, (21 November 1992). Most recently, see the report of the U.S.- based human rights organization Middle East Watch; MEW, *A License to Kill: Israeli Operations Against "Wanted" and Masked Palestinians*, (New York: MEW, July 1993).
5. It should be mentioned that many of the houses in the first two categories also suffered from internal damage by gunfire but this fact is not represented in the table.
6. Engineering Faculty of the Islamic University Gaza City, "Report by the Engineering Faculty Experts at the Islamic University re: Damages Resulting from the Destruction of Houses in Khan Younes," reproduced in *Al-Quds*, 21 February 1993, (in Arabic), p.7.
7. Association for Engineers in the Gaza Strip, "A Report Issued by the Association of Engineers in the Gaza Strip re: Damages in the al-Tuffah Neighborhood," 23 April 1993, (in Arabic). This report assessed damages at \$726,684. The Islamic University of Gaza City, "A Technical Report Issued by the Engineering College Showing Required Renovations of Damaged Buildings due to Anti-Tank Bombing in al-Tuffah," 28 April 1993, (in Arabic), assessed damages at \$604,000.
8. See Al-Haq, "Wilful Killings," *supra* note 4, pp. 9,19.
9. See Al-Haq information attached to Questionnaire No. 92/1099.
10. Al-Haq, "Wilful Killings," *supra* note 4, pp. 9,19.
11. Al-Haq documentation, Database No. 93/394.
12. See, e.g., al-Haq, "Wilful Killings," *supra* note 4.
13. Al-Haq Affidavit No. 3787.
14. See, e.g., Israeli Military Order No.7 (8 June 1967) with subsequent amendments.
15. Al-Haq Affidavit No.3687, documenting the Rafah operation. For the Jenin operation, see al-Haq, "Wilful Killings," *supra* note 4, pp. 9,19.

16. All Palestinians who reach the age of 16 are required to carry an Israeli-issued identity card at all times.
17. Al-Haq Affidavit No. 3790.
18. Al-Haq Affidavit No. 3736.
19. Al-Haq Affidavit No. 3779.
20. Al-Haq Affidavit No. 3757.
21. Al-Haq information attached to Questionnaire No. 93/1261.
22. Al-Haq Affidavit No. 3734 and Al-Haq information attached to Questionnaire No. 93/1242.
23. Islamic University Engineering Faculty, "Report of Damages in Khan Younes," *supra* note 6.
24. GCRL, "Israeli Security Forces Launch Massive Military Attack," *supra* note 2, p. 2.
25. Those that are held are likely to be placed in administrative detention (detention without trial). On the issue of administrative detention, see Mona Rishmawi, "Administrative Detention in International Law: The Case of the Israeli Occupied West Bank and Gaza," *PYbIL*, Volume V, (1989), p. 83. Also see, Al-Haq, *Administrative Detention in the Occupied West Bank, Al-Haq Occasional Paper No.1*, (1985).
26. See, e.g., al-Haq Affidavit No. 3686.
27. The homes that are being rebuilt in this area consist of one-storey buildings.
28. Al-Haq Affidavit No. 3790.
29. See *infra* notes 78, 79, 80.
30. Regulation 23(g) of the Regulations appended to the 1907 Hague Convention (IV) Respecting the Laws and Customs of War on Land, in Adam Roberts and Richard Guelff, eds., *Documents on the Laws of War*, second edition, (Oxford: Clarendon Press, 1989), p. 52.

31. Article 53 of the Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War of 12 August 1949 in Jean. S. Pictet, ed., *Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, (Geneva: ICRC, 1958), p. 300.

32. ICRC, *Report on the Protection of War Victims*, (Geneva: ICRC, June 1993) p. 14 states: "By the 15 June 1993, the Geneva Conventions of 1949 were binding for 181 States, i.e. virtually the entire international community."

33. J. Pictet, *Commentary*, *supra* note 31, p. 615.

34. While Hague Regulation 23(g) and Article 53 of the Fourth Geneva Convention express the same rule in relation to occupied territory, Hague Regulation 23(g) is wider in its territorial applicability, being binding in any situation of armed conflict, not solely in occupied territories.

35. W.V. O'Brien, "The Law of War, Command Responsibility and Vietnam," *Georgetown Law Journal*, Vol. 60, (1972), p. 616. Cited by Geoffrey Best in, "The Restraint of War in Historical and Philosophical Perspective," in Astrid J.M. Delissen and Gerard J. Tanja, eds., *Humanitarian Law of Armed Conflict: Challenges Ahead*, (Dordrecht: Martinus Nijhoff Publishers, 1991), p. 16.

36. See for discussion, Theodor Meron, *Human Rights and Humanitarian Norms as Customary Law* (Oxford: Clarendon Press, 1991), pp. 215-217.

37. The relationship between express rules and derogations also finds expression in Article 1 of the Fourth Geneva Convention by which the signatories undertake "to respect and to ensure respect for the present Convention *in all circumstances*." [Emphasis added]

This obligation was interpreted by G.I.A. Draper:

Article 1 leaves no place to the principle of "military necessity." The Conventions control the operations of "military necessity" but are not subject to it. Certain provisions in the Conventions make express allowance for imperative "military necessity." Where this or analogous formulas are not inserted the effect of Article 1 is to exclude any consideration of "military necessity" in carrying out the obligation in question. In this the Geneva Conventions follow the precedent set in the preamble to the Hague Convention No.IV of 1907. The Regulations appended thereto were expressed to be inspired by the desire to diminish the evils of war, "so far as military requirements permit ...". They were formulated *after* "military necessity" had been taken into account. [Emphasis Draper's]

"The Geneva Conventions of 1949," Hague Recueil, 1965/I, p. 15.

38. U.S. Department of Defense, *Dictionary of Military and Associated Terms*, JSC Publication 1, (1979), p. 244, cited in M. Bothe, K.J. Partsch and W.A. Solf, *New Rules for Victims of Armed Conflicts*, (Dordrecht: Martinus Nijhoff Publisher, 1982), p. 286.

39. Y. Sandoz, C. Swinarski & B. Zimmerman, eds., *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, (Geneva: ICRC and Martinus Nijhoff Publishers, 1987), p. 67.

40. Letter to al-Haq issued in Geneva by J. Moreillon, Director of the Department of Principles and Law at the ICRC, (25 November 1991). The interpretation was approved by Jean Pictet, editor of the *Commentary*, *supra* note 31.

41. J. Pictet, *Commentary*, *supra* note 31, p. 302.

42. *Ibid.*

43. *Ibid.*

44. Alain Pellet, "The Destruction of Troy Will Not Take Place", in E. Playfair, ed., *International Law and the Administration of Occupied Territories*, (Oxford: Clarendon Press, 1992), p. 198.

45. Indeed when speaking of the military necessities that may justify what would otherwise be a grave breach of the Geneva Convention (under Article 147) the Commentary to the Fourth Geneva Convention states, "It will be noted that the destruction ... mentioned here [is] ... dependent on the necessities of war," in J. Pictet, *Commentary*, *supra* note 31, p. 601. It would appear only logical that the necessities referred to here are the same as those referred to in Article 53.

46. Gerhard Von Glahn, *The Occupation of Enemy Territory: A Commentary on the Law and Practice of Belligerent Occupation*, (Minneapolis: Univ. of Minnesota Press, 1957), p. 226.

47. J. Pictet, *Commentary*, *supra* note 31, p. 60.

48. *Ibid.* p. 63.

49. Letter to al-Haq, *supra* note 40.

50. Jean Pictet, *Development And Principles Of International Humanitarian Law*, (Geneva: Henry Dunant Institute and Dordrecht/Boston/Lancaster: Martinus Nijhoff Publishers, 1985), pp. 59-78.
51. Roberts and Guelff, *Documents on the Laws of War*, *supra* note 30, p. 5.
52. J. Pictet, *Development and Principles of International Humanitarian Law*, *supra* note 50, p. 62.
53. Roberts and Guelff, *Documents on the Laws of War*, *supra* note 30, p. 5.
54. As set out by Article 52 (2) of Protocol I Additional to the Geneva Conventions of 12 August 1949, see Y. Sandoz, C. Swinarski, and B. Zimmerman, eds., *Commentary on the Protocol*, *supra* note 39. Al-Haq considers this definition to be recognized as the customary law definition. By 15 June 1993, 125 states had ratified Additional Protocol I and 116 states had ratified Additional Protocol II of 1977. See ICRC, *Report on the Protection of War Victims*, *supra* note 32, p. 14. Israel has not, to date, ratified either of the Additional Protocols.
55. "UN Code of Conduct for Law Enforcement Officials," adopted by the UN General Assembly by Resolution 34/169 of 17 December 1979, (U.N. Doc. A/34/36/1979). Also see "Basic Principles on the Use of Force and Firearms by Law Enforcement Officials," adopted by the UN General Assembly by Resolution 45/121 on 14 December 1990.
56. Israeli Ministry of Defense Written Answer, (1 June 1993) to Knesset Written Question No.795, (2 March 1993), submitted by MK Hashem Mahamid regarding the operation of 11 February 1993 in al-Amal, Khan Younes, (original in Hebrew).
57. Letter from Legal Advisor's Department to al-Haq, (27 June 1993).
58. Middle East Watch, *A License to Kill*, *supra* note 4, p. 28.
59. Israeli Ministry of Defence Written Answer, (6 January 1993), to Knesset Written Question No. 174, (18 November 1992), submitted by MK Hashem Mahamid in relation to the operation of 13 November 1992 in Khan Younes.
60. Michael Rotem, "The Use of Missiles Against Terrorists," *Jerusalem Post*, 13 December 1992, p. 1.
61. Israeli Ministry of Defence Written Answer (1 June 1993), *supra* note 56.
62. "Five 'Wanted' Persons Were Trapped," *Ha'aretz*, 24 February 1993, (in Hebrew).

63. Dan Izenberg, "No Increase In Killings. Barak Insists." *Jerusalem Post*, 10 February 1993, p. 14.

64. Israeli Ministry of Defence Written Answer (1 June 1993), *supra* note 56.

65. "Some Ministers Demanded An Investigation of the Allegations Concerning Abusive Conduct in Khan Younes," *Ha'aretz*, 22 February 1993. (in Hebrew).

66. The Israeli government's legal position was presented in a letter from Colonel Singer to M. Michael Amiguet, Delegate General of the ICRC in the Middle East and North Africa, (13 July 1987), cited in Nissim Bar-Yaacov, "The Applicability of the Laws of War to Judea and Samaria [The West Bank] and to the Gaza Strip," *ILR*, Vol. 24, Nos. 3-4, (1990), p. 491. The letter reads in part, "Israel maintains that in view of the *sui generis* status of Judea, Samaria and the Gaza District, the *de jure* applicability of the Fourth Geneva Convention to these areas is doubtful. Israel prefers to leave aside the legal question of the status of these areas and has decided, since 1967, to act *de facto* in accordance with the humanitarian provisions of that Convention."

67. HC 302/72, *Sheikh Suleiman Hussein Odeh Abu Hilu et al. v. Government of Israel et al.*, summarized in *IYbHR*, Vol. 5, (1975), p. 384. The Israeli Ministry of Defence, *The Intifada And The Rule Of Law*, (Israel: Israel Ministry of Defence, 1993) p. 22 states:

Under Israeli constitutional principles Customary International Law is considered a part of Israel's own municipal law, unless contradicted by positive legislation. The rules of the Hague Regulations and the Customary International Law of Belligerent Occupation in general are, therefore, enforceable in Israeli Courts

68. Treaty obligations are only binding upon a state if the state has ratified or acceded to the treaty. Customary international laws, on the other hand, are laws which over a period of time, as a result of state practice, have come to be accepted by the international community as laws binding them in their future conduct. The only exception to the fact that a customary international law binds all states is if a state has consistently expressed its opposition to the rule in question from the time when state practice began to move in the direction of the new customary rule. In such cases that state may not be bound.

69. Israel Consulate General in New York, "Israel's Measures in the Territories and Human Rights," (January 1990). Cited in Middle East Watch, *License To Kill*, *supra* note 4, p. 27.

70. Letter to al-Haq, *supra* note 57.

71. Israeli Ministry of Defence Written Answer (1 June 1993), *supra* note 56.
72. Israeli Ministry of Defence Written Answer (6 January 1993), *supra* note 59.
73. Israeli Ministry of Defence Written Answer (1 June 1993), *supra* note 56.
74. Etan Rabin, "In the course of tracking two wanted persons in Deir al-Balah, the resident of the house in which they were hiding was killed," *Ha'aretz*, 15 January 1993, (in Hebrew).
75. J. Pictet, *Commentary*, *supra* note 31, p. 224.
76. *Ibid.* p. 199.
77. See, e.g., Adam Roberts, "Prolonged Military Occupation: The Israeli-Occupied Territories 1967-1988," in Playfair, ed., *Occupied Territories*, *supra* note 44, pp. 25-86.
78. The US Department of State, *Country Reports On Human Rights Practices For 1992*, (Washington: US Government Printing Office, 1993). On page 1019 in the section on the Occupied Territories it is stated that:
- Israel is not recognized internationally to have sovereignty over any of the occupied territories, but has asserted sovereignty over and annexed East Jerusalem [T]he United States considers Israel's occupation to be governed by The Hague Regulations of 1907 and the 1949 Fourth Geneva Convention Relative to the Protection of Civilians in Time of War.
79. For example, UN Security Council Resolution 799, (18 December 1992): "Reaffirms the applicability of the Fourth Geneva Convention of 12 August 1949 to all the Palestinian territories occupied by Israel since 1967, including Jerusalem."
80. The ICRC's position has been consistently made clear. See, e.g., ICRC, "Israel: ICRC Position on Treatment of Palestinian Detainees Under Interrogation," Press Release No. 1717, (21 May 1992), and ICRC, "Middle East: ICRC Urges Respect for International Law," Press Release No. 1732, (17 December 1992).
81. ICJ Reports 1986, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, p. 14.
82. This view is supported by, for example, Meron, *Human Rights and Humanitarian Norms*, *supra* note 36, p. 47. See also, Georg Schwarzenberger, *International Law as Applied by International Courts and Tribunals, Vol. II*,

(London: Stevens and Sons Limited, 1968) p. 315.

83. Customary international laws and treaty obligations are, of course, binding upon a state on the international level in relation to other states. However on the municipal level, i.e. in the local courts of the state, an individual can rely on customary international laws, as these automatically form part of the state's internal laws, but the individual may not be able to rely on provisions of a treaty ratified by the state. In Israel an individual can only rely on the latter if the State of Israel has incorporated the treaty provisions into internal Israeli law through legislation passed in the Knesset.

The Israeli High Court has adopted the position that the:

Entire [Fourth Geneva] Convention ... is in the nature of conventional international law to which, in the wake of the English law in practice here, our courts have no resort. Its enforcement is, rather, a matter for the countries as such which are associated with the Convention

(HC 69/81, HC 493/81, Value-Added Tax Cases extracts in *PYbIL* Vol. IV, (1987/88), p. 186. The High Court appears to therefore deny that any provisions of the Fourth Geneva Convention are customary international law.

84. UN, The UN Code of Conduct, *supra* note 55.

85. According to al-Haq documentation, in the first three months of 1992 the Israeli military authorities imposed curfews lasting 24 hours or more 153 times, while in the first three months of 1993 this figure fell to 51.

86. These are demolitions carried out by order of the Military Commander under the relevant enabling section of the Defence Regulations. Al-Haq documented 1,001 homes demolished under that legislation between 1981 and 1991. The ICRC has also clarified the illegality of these demolitions under article 53 of the Fourth Geneva Convention in *International Review of the Red Cross*, Vol. 27, (Jan-Feb 1987), p. 69. For a full discussion of this issue, see Lynn Welchman, *One Thousand and One Homes: Israel's Demolition and Sealing of Houses in the Occupied Palestinian Territories*, *Al-Haq Occasional Paper*, (Forthcoming) (Ramallah: Al-Haq, 1993).

87. In 1992 Al-Haq reported on another illegal measure used to apply pressure on "wanted" individuals in order to force them to surrender: Al-Haq, "Military Orders No. 1369 (West Bank) and No. 1076 (Gaza): A Grave Breach of Fourth Geneva Convention," *Al-Haq Human Rights Focus Series*, (25 August 1992).

88. J. Pictet, *Commentary*, *supra* note 31, p. 226.

89. *Ibid.* p. 601.

90. For example, on 30 May 1993 in the al-Daraj neighborhood of Gaza City, the Israeli military forces partially or totally destroyed seven houses and one shop and killed two "wanted" Palestinians (Muhammad Isma'il Siyam and Ibrahim Younes 'Ashour) and injured and arrested one other.

91. Commentary to ILC Draft Articles on State Responsibility, *YbILC*, Vol. II, 1973, p. 173, cited in D.J.Harris, *Cases and Materials on International Law*, 3rd ed., (London: Sweet and Maxwell, 1983), p. 375.

92. *Ibid.*, in *YbILC* p. 67 and in Harris, p. 387.

93. *Chorzow Factory (Indemnity)*, PCIJ (1928) Series A, No. 17. Extract quoted in L.C. Green, *International Law Through The Cases*, fourth edition, (New York: Oceana Publications, 1978), p. 608.

94. L.C. Green, *International Cases*, *supra* note 93, p. 611.

95. J. Pictet, *Commentary*, *supra* note 31, p. 210.

96. On the issue of compensation see J. Quigley, *The Legal Consequences of the Demolition of Houses by Israel in the Occupied West Bank and Gaza Strip*, (Forthcoming) (Ramallah: Al-Haq).

97. J. Pictet, *Commentary*, *supra* note 31, p. 211.

98. *The Lusitania Cases*, German-American Mixed Claims Commission, 7, *Reports of International Arbitral Awards*, 1923. Extract quoted in L.C. Green, *International Cases*, *supra* note 93, p. 637.

99. Letter to al-Haq, *supra* note 57.

100. For the equivalent order in the West Bank see West Bank Military Order No. 1101.

101. Israeli Ministry of Defence Written Answer (1 June 1993), *supra* note 56.

102. Letter to al-Haq, *supra* note 57.

103. Letter to al-Haq, *supra* note 57, and Israeli Ministry of Defence Knesset Written Answer (1 June 1993), *supra* note 56.

104. GCRL, "IDF Resume Military Attacks Against Palestinian Homes," *Monthly Human Rights Report - July 1993*, (6 August 1993).
105. "IDF sets aside 300,000 NIS for 39 residents in the Strip whose Homes were demolished by IDF fire," *Ha'aretz*, 16 August 1993, (in Hebrew), partly reproduced in, "Authorities decide to compensate families in the Strip whose houses were damaged from operations carried out by the Israeli army", *al-Quds*, 17 August 1993, (in Arabic), p. 2.
106. At an exchange rate of 2.9 NIS to one US dollar.
107. GCRL, "Palestinian Detainee Dies in Prison," *Monthly Human Rights Report - August 1993*, (6 September 1993), p. 6.
108. Hersch Lauterpacht, in E. Lauterpacht, ed., *International Law, Collected Papers of Hersch Lauterpacht, Volume 1, General Works*, (Cambridge: Cambridge University Press, 1978), p. 391.
109. J. Pictet, *Commentary*, *supra* note 31, p. 209.
110. *Ibid.*, p. 210.
111. *Ibid.*, p. 589.
112. This is the accepted position of the Israeli authorities as clarified in David Yahav, Uzi Amit-Kohn and Caroline B. Glick, eds., *Israel, the "Intifada" and the Rule of Law*, (Israel: Ministry of Defense Publications, 1993), p. 22.
113. See Lynn Welchman, *1001 Homes*, *supra* note 86.
114. For discussion see Martha Moffett, *Perpetual Emergency: A Legal Analysis of Israel's Use of The British Defence (Emergency) Regulations, 1945, In The Occupied Territories, Al-Haq Occasional Paper No. 6*, (Ramallah: Al-Haq, 1989).
115. Israel is of the view that customary international laws are enforceable in its courts unless specifically contradicted by positive legislation. See Israeli Ministry of Defence, *The Intifada*, *supra* note 112, p. 22. By doing so they are able to ignore customary laws such as Hague Regulation 23(g). On the municipal level they may well be able to do so. However, the actions of the military commander upon which the case was submitted *and the decision of the High Court itself*, will be illegal as a matter of international law, breaching, in this case, Hague Regulation 23(g). Thus states may be, and sometimes are, under a legal duty to pursue claims against the State of Israel for these breaches of international law. Hersch Lauterpacht, *International Law*, *supra* note 108 at p. 230, explained thus:

Municipal courts may be compelled to give judgements contrary to international law because of the absence of adequate municipal legislation or because of the existence of legislation positively violative of international law. But it is well established that those circumstances afford no good defence before an international tribunal; that the judgements in question constitute a breach of international law entailing the duty of compensation; and that, apart from such consequences in the domain of liability, they are, as the Permanent Court has said, mere facts

PCIJ Series A, no. 7, p. 19, Case concerning Certain German Interests in Polish Upper Silesia (Merits).

116. See Nissim Bar-Yaacov, "Applicability of the Laws of War," *supra* note 66, esp. pp. 500 - 502. For a case where Hague Regulation 23 (g) was accepted as applicable by the Court, not in the occupied West Bank or the Gaza Strip, but in the case of seizure of property in Southern Lebanon, see HC 574/82, *Al Nawar v. Minister of Defence et al.*

117. See *The Hilu Case*, *supra* note 67.

118. HC 258/79, *Amira et al. v. Minister of Defence et al.* This is cited in the passage quoted here from E. Playfair, "Playing on Principle? Israel's Justification for its Administrative Acts in the Occupied West Bank," in E. Playfair, ed., *Occupied Territories*, *supra* note 44, p. 233.

119. M. Shamgar, "The Observance of International Law in the Administered Territories," *IYbHR*, Vol.1, (1972), p. 276.

120. See generally, Lynn Welchman, *1001 Homes*, *supra* note 86.

121. HC 4112/90, *The Association of Civil Rights in Israel v The Military Commander of the Southern Command*.

122. In this case the Court also expanded the circumstances laid down previously in HC 358/88, *The Association of Civil Rights in Israel v The Military Commander of the Central Command*, which would be viewed as so urgent that the need to destroy the property would override the inhabitants' right to a judicial review of the military commander's decision to destroy the house or building.

123. "The Postponement of Two Petition's Regarding Affected Houses as a Result of Explosions," *al-Quds*, 13 September 1993, p. 2.

124. For discussion of this duty, see Marc Stephens, *Enforcement of International Law in The Occupied Territories*, Al-Haq Occasional Paper No.7, (Ramallah: Al-Haq, 1989). Also see Fateh Azzam, "The Duty of Third States to Enforce International Humanitarian Law," unpublished paper in al-Haq's library, (1992).

125. The first paragraph of Article 34 of the Statute of the International Court of Justice states: "Only states may be parties to cases before the Court." Even if Palestine were a recognized state the Court would have to have jurisdiction conferred upon it to hear the dispute, either through a special agreement between the parties to the dispute, or by the provisions of a treaty ratified by the parties to the dispute. In other words jurisdiction is conferred upon the Court only through the consent of the state parties to the dispute. Israel withdrew its recognition of the compulsory jurisdiction of the ICJ on 21 November 1985. See *ICJ Yearbook* No. 40, 1985-86, p. 60 as cited by Th.A. van Baarda, in "Is It Expedient to Let the World Court Clarify, in an Advisory Opinion, the Applicability of the Fourth Geneva Convention in the Occupied Territories," *Netherlands Quarterly of Human Rights*, Vol. 10, No. 1, (1992), p. 26. For a discussion of the question of which states have the right (or in some cases the duty) to bring a diplomatic claim, particularly where the issue relates to a treaty of a humanitarian or human rights character, see Marc Stephens, *Enforcement of International Law*, *supra* note 124, and Menno T. Kamminga, *Inter-State Accountability for Violations of Human Rights*, (Philadelphia: University of Pennsylvania Press, 1992), pp. 127-190.

126. For a discussion of the role of UNRWA, see Lex Takkenberg, "The Protection of Palestine Refugees in the Territories Occupied by Israel," *International Journal of Refugee Law*, Vol. 3, No.3, (1991), p. 414.

127. J. Pictet, *Commentary*, *supra* note 31, p. 80.

128. For discussion see, Al-Haq, *A Nation Under Siege: Al-Haq Annual Report on Human Rights in the Occupied Territories 1989*, (Ramallah: Al-Haq, 1990), pp. 641-69. See also al-Haq, *Protection Denied: Continuing Israeli Human Rights Violations in the Occupied Palestinian Territories 1990*, (Ramallah: Al-Haq, 1991), pp. 173-213.

129. *UN Doc. S/22472*, p. 14, cited in Kamminga, *Inter-State Accountability*, *supra* note 125, p. 185.

130. *UN Doc. A/CONF.32/41*, Resolution XXIII, Teheran Conference on Human Rights, 12 May 1968, cited in Kamminga, *Inter-State Accountability*, *supra* note 125, p. 184.

131. The second paragraph of Article 146 of the Fourth Geneva Convention states:

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 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.

See J. Pictet, *Commentary*, *supra* note 31, p. 589).

132. Islamic University Engineering Faculty. "Report of Damages in Khan Younes," *supra* note 6.

133. Gid'on Levi, "The Twilight Zone," *supra* note 2.

134. Islamic University Engineering Faculty. "Report of Required Renovations in al-Tuffah," *supra* note 7.

135. Association of Engineers in the Gaza Strip. "A Report on Damages in al-Tuffah," *supra* note 7.

136. Gid'on Levi, "The Killing Fields of Rafah," *Ha'aretz*, 25 September 1992.

137. Al-Haq Data Base Questionnaire No. 93/1242.

138. *Ibid.*

139. Al-Haq Affidavit No. 3736.