



# The legality of house demolitions under International Humanitarian Law

## Briefing paper

This note examines the legal aspects, under international humanitarian law (IHL), of Israel's practice of demolitions of Palestinian houses in the Occupied Palestinian Territory (OPT).<sup>1</sup> It outlines the basis, history, and practice of house demolitions, sets forth the relevant IHL provisions that impact house demolitions, and reviews the positions of the different parties involved on this issue.

### Relevant international humanitarian law

The law of belligerent occupation is primarily contained in two instruments, the Hague Regulations<sup>2</sup> and the Fourth Geneva Convention.<sup>3</sup> Israel accepts the applicability of the Hague Regulations to its occupation of the OPT but denies the applicability of the Fourth Geneva Convention, though it does purport to apply the Convention's humanitarian provisions. (A full discussion and analysis of the applicability of international humanitarian law to the OPT can be found in the HPCR briefing note entitled Review of the Applicability of International Humanitarian Law to the Occupied Palestinian Territory.) For purposes of the present note, it is considered that the Hague Regulations and the Fourth Geneva Convention apply to the OPT.

### Background

The term 'house demolition' refers to the intentional physical destruction of a house or portion thereof by government actors. Demolitions have been carried out in the OPT by the Israeli Defense Forces (IDF) since their occupation of the West Bank and Gaza in 1967.<sup>4</sup> Houses demolitions in the OPT fall typically into one of three categories:

- First, houses may be demolished by Israeli occupation forces because a building permit was not sought prior to their construction, or for some other technical breaches to applicable administrative law.<sup>5</sup> These demolitions are referred to as "administrative demolitions."
- Second, houses may be demolished as part of military operations. Such destructions are made necessary by the conduct of armed hostilities and fall under the rules of military necessity. For the purpose of this note, these demolitions will be referred to as "military demolitions."
- Finally, demolitions may occur outside the scope of military operations or Israel administrative power in the OPT and be used by the Israel occupation forces as a response against persons suspected of taking part in - or directly supporting criminal or guerrilla activities. These demolitions are referred to routinely as "punitive demolitions." This last term will be used in this note, though it should be noted that Israel disputes the punitive nature of these operations.

While the above three types of demolitions are distinct in nature, it can be difficult in practice to make clear separations among them. All of them are conducted by Israeli occupation forces and end up with the same result. Furthermore, motives for the demolition may change in the course of an operation: a punitive or administrative demolition operation may trigger a violent response from the community and turn into a full-fledged military operation. A military demolition may also be perceived by the community as a punitive action. In this context, it is important to assess the context under which the demolition was conducted in order to apply the appropriate legal rules.

## 1. Administrative demolitions

Administrative demolitions are regulated by the administrative powers of the competent public authorities. Under the law of occupation, the Occupying Power is responsible for the management of public land as well as the implementation of urban and zoning regulations (see Article 55 of the Hague Regulations). These powers are recognized by Article 43 of the Hague Regulations of 1907, which states that the Occupying Power is responsible to restore and maintain "public order and safety." These powers must, however, be exercised in accordance with the existing laws and regulations in the occupied territory and for the benefits of the local population. The Occupying Power cannot, unless absolutely prevented to do so, change the laws of the territory it occupies (see Article 43 of the Hague Regulations). Regardless of the scope of administrative powers of the occupying state, Article 53 of the Fourth Geneva Convention prohibits any destruction of property that is not absolutely necessary by military operations.

Administrative demolitions in the OPT are not the sole prerogative of the Occupying Power. Palestinian authorities under the Oslo Agreements, may undertake administrative demolitions. In the latter case, these administrative actions are regulated by Palestinian administrative laws and may involve obligations of due process under human rights treaties. This note focuses on demolitions other than administrative demolitions undertaken by the Israeli occupation forces.

## 2. Military demolitions

Military demolitions are conducted as part of military operations. Under Article 53 of the Fourth Geneva Convention, houses may be demolished if such destruction is "rendered absolutely necessary in the course of military operations."<sup>6</sup> The article states:

Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the state, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.<sup>7</sup>

It implies the following conditions:

- *The conduct of a military operation*

Houses can be demolished only if the Occupying Power is engaged in an operation that requires the use of military force. Houses cannot be demolished as part of law enforcement operations (e.g., as a riot-control measure). Occupation as such cannot be considered for all its means and purposes as a military operation. Individual interventions of the occupation forces require an additional condition to qualify for the term of "military operation": they must be undertaken in response to systematic acts of violence by organized armed groups that necessitate the use of military force. The Occupying Power must be able to demonstrate that the use of military force was warranted by the circumstances at the time, that it was facing systematic and organized lethal violence equivalent to one faced in an armed conflict<sup>8</sup>.

- *Absolute necessity*

A house can be demolished only if such demolition is absolutely necessary in the context of the given military operation. It implies that:

- i) The individual house was offering an essential and immediate contribution to the enemy's military operation and was, therefore, endangering the security of the occupation forces;
- ii) The demolition of the house was, at the time, an adequate response to that specific threat and there was no less intrusive response possible;
- iii) The demolition of the house offered concrete military advantages that outweigh the damage caused to the civilian asset and its consequences on the life of Palestinian individual and families.

These three cumulative criteria are at the core of any analysis of the validity of military necessity. The assessment of the situation and the extent to which a given planned demolition fits these criteria remains the responsibility of military commanders in the field. Third party, e.g., a military judge, can evaluate the validity of the commander's assessment after the operation.

- *Types of property*

Article 53 provides for the protection of real and personal properties. Not only houses but also all moveable assets are protected, being within the house (e.g., furniture, household assets, monetary values, etc.) or outside the house (e.g., car, agricultural equipment, animal farms, pets). The detachable character of these assets is important since it may imply that military commanders should let the inhabitants of the house pull out their movable property, if the circumstances allow, before the military unit proceeds with the demolition of the house.

#### *- Ownership of the property*

These real and personal properties are protected regardless of their ownership (public or private). Private property is protected regardless the status of the owner within the territory. While other personal protections under the law of occupation usually apply only to protected persons, primarily Palestinian inhabitants in the OPT, Article 53 applies to the real and movable assets of all private persons being resident or not of the territory, Palestinian or foreigners, including Israeli citizens. Therefore, the private property of all individuals in the OPT is protected by Article 53, including that of journalists, humanitarian workers, or visitors.

It should be noted however that, although the violation of Article 53 triggers the potential criminal liability of the violators, it does not grant a right for individual compensation. The issue of compensation is governed by civil responsibility and human rights laws. Finally, under Article 147 of the Fourth Geneva Convention, the extended demolition of property, private and public, carried out unlawfully and wantonly may amount to a grave breach of the Fourth Geneva Convention, commonly referred as a war crime.

### **3. Punitive demolition**

Punitive house demolitions are rooted in British military practices dating to the early twentieth century.<sup>9</sup> During the British mandate period, house demolitions were introduced into the legal structure of Palestine in response to increasing resistance to British rule.<sup>10</sup> Regulation 119 of the Defense Emergency Regulations of 1945 (hereinafter "DER 119") stated:

A Military Commander may, by order, direct the forfeiture to the government of Palestine of any house, structure or land from which he has reason to suspect that any firearm has been illegally discharged, or any bomb, grenade or explosive or incendiary article illegally thrown, or any house, structure or land situated in any area, town, village, quarter or street the inhabitants or some of the inhabitants of which he is satisfied have committed, or attempted to commit, or abetted the commission of, or been accessories after the fact to the commission of, any offense against these regulations involving violence or intimidation or any military court offenses; and when any house, structure or land is forfeited as aforesaid, the military commander may destroy the house or the structure or anything in or on the house, the structure or the land.<sup>11</sup>

A number of such demolitions took place under the British Mandate. Prior to expiration of the mandate, the British Government took action to repeal these regulations.<sup>12</sup> The repealing legislation was not, however, published in the official local publication, The Palestine Gazette. Therefore, DER 119 remains, according to Israeli courts, in force in all the territory covered by the British mandate (Israel, West Bank and Gaza).<sup>13</sup> Similarly, DER 119 was not repealed explicitly by Jordan or Egypt during their respective control of the West Bank and Gaza, between 1948 and 1967.<sup>14</sup>

Upon the entry of the Israeli army into the West Bank and Gaza in 1967, the military assumed full legislative and administrative authority for these areas.<sup>15</sup> However, unless repealed explicitly, laws that were in effect prior to the occupation were retained by the military government.<sup>16</sup>

Since 1967, punitive house demolitions pursuant to DER 119 have been carried out by the IDF in varying degrees. Generally speaking, the measure is resorted to more frequently in times of high tension, particularly during the Al Aqsa Intifada, which began in September 2000.<sup>17</sup> In some situations, the IDF has used the less severe alternative of sealing a home or apartment, allowing for potential reversal in the future.

Orders for house demolitions are issued by military commanders and reviewed by superiors, including legal services at the Israeli Minister of Defense.<sup>18</sup> Demolitions are executed typically by way of explosives or armored bulldozers accompanied by military units, and are carried out usually during declared curfews.<sup>19</sup> After demolition, the property is forfeited and often declared a "closed area."<sup>20</sup>

In the early years of the occupation, the IDF carried out "neighborhood punishment," under the broad language of DER 119, demolishing homes in areas proximate to a location where attacks had occurred.<sup>21</sup> Recently, application of DER 119 has become limited to instances in which an attack was launched from a specific house or cases in which an "inhabitant" of the house was suspected of involvement in an offense.<sup>22</sup> The term "inhabitant," however, has been broadly defined to include persons who do not necessarily reside in said house regularly, and often is applied to family homes in which a suspected offender previously resided.<sup>23</sup> Equally, the regular occupants' knowledge of the offense has been deemed irrelevant by the Israeli authorities.<sup>24</sup>

Those individuals suspected of an offense (related to the use of a house) are seldom tried and convicted prior to demolition. In most cases, demolitions are carried out after an accused offender has been taken into custody, but prior to a formal adjudication of an offender's guilt in the military court systems. In other instances, the accused is not yet in custody. In a few cases, demolitions have occurred in spite of the death of the alleged offender.<sup>25</sup>

Ownership of the house in question is similarly irrelevant for purposes of DER 119. A review of Israeli Supreme Court Cases through 1989 revealed that only five per cent of demolished homes were owned by the accused offender.<sup>26</sup> Definite statistics regarding house demolitions in the OPT are not readily available. The Israeli government reported that 1,265 houses were demolished between 1967 and 1981.<sup>27</sup> B'Tselem, the Israeli Information Center for Human Rights in the Occupied Territories, has compiled a summary of more recent demolitions based on available information.

**Table - Demolitions and Sealings from 1987 to 2004<sup>28</sup>**

Year	Complete Demolitions	Partial Demolitions	Complete Sealings	Partial Sealings
1987*	1	0	N/A	N/A
1988	125	24	39	26
1989	144	18	76	27
1990	107	11	97	11
1991	46	4	34	20
1992	8	2	25	16
1993	1	2	18	15
1994	0	1	4	3
1995	0	0	1	0
1996	11	0	0	0
1997	6	0	2	0
1998	0	0	0	0
1999	0	0	0	0
2000	0	0	0	0
2001	10	1	0	0
2002	254	1	1	0
2003	223	0	3	0
2004**	30	0	0	0

<b>TOTALS</b>	<b>966</b>	<b>64</b>	<b>299</b>	<b>118</b>
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\* Beginning December 9, 1987. \*\* Through March 7, 2004.

The legality of the punitive demolition needs to be examined under the applicable law of occupation. The provisions of the Hague Regulations and Fourth Geneva Convention relevant to punitive house demolitions can be grouped into three general categories: the local legal doctrine, the individual responsibility, and the right to a fair trial. The essential issue here is to analyze the extent to which the application of DER 119 by the Occupying Power contravenes IHL.

*a. Local Law Doctrine*

Both the Hague Regulations and the Fourth Geneva Convention contain provisions relating to the retention of preexisting law following the occupation of a territory by an occupying power. Article 43 of the Hague Regulations states:

The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.<sup>29</sup>

The relevant provision of the Fourth Geneva Convention, Article 64, states in part:

The penal laws of the occupied territory shall remain in force, with the exception that they may be repealed or suspended by the Occupying Power in cases where they constitute a threat to its security or an obstacle to the application of the present Convention.<sup>30</sup>

Therefore, local laws, including the laws of the British Mandate, remain in force and deploy their legal effects until they have been properly abrogated or modified. The Occupying Power should not change local laws unless absolutely prevented to do so. The main case under which the Occupying Power is forced to change, suspend or abrogate a domestic law is the situation where a local law constitutes an obstacle to the application of the Fourth Geneva Convention, in particular Article 53 prohibiting house demolitions in situations other than military operations. DER 119 provides the legal basis for illegal acts under the Fourth Geneva Convention as it authorizes the Occupying Power to demolish houses for security reasons outside the scope of military necessity (i.e., without concrete and immediate threat against the occupation forces). Considering its obligation under the Geneva Convention, the Israeli government should have suspended the application of DER 119 for the territory it has occupied since 1967.

*b. Individual Responsibility*

Furthermore, punitive demolitions affect houses that may only have a remote link to the attacker. In many cases, residents or the owner of the demolished houses were only relatives of the attackers. Such demolition, in addition to violating Article 53 of the Fourth Geneva Convention, may constitute the ground for collective punishment.

Both the Hague Regulations and the Fourth Geneva Convention prohibit collective punishment. Article 50 of the Hague Regulations states:

No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible.<sup>31</sup>

Likewise, Article 33 of the Fourth Geneva Convention states:

No protected person may be punished for an offense he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited.<sup>32</sup>

*c. Destruction of Property<sup>33</sup>*

Article 53 of the Fourth Geneva Convention generally prohibits the destruction of property, but provides an exception "where such destruction is rendered absolutely necessary by military operations." It states:

Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.<sup>34</sup>

*d. Fair Trial Rights*

Finally, punitive demolitions raise the prospect of the violations of the right of the occupied population to a fair trial. Articles 71 through 73 of the Fourth Geneva Convention require that an occupying power provide a criminal defendant with a fair trial. Article 71 prohibits imposition of any sentence on an individual except after a regular trial.<sup>35</sup> The basic requirements for a fair trial - including the right to counsel, the right to present evidence and call witnesses, and the right to an interpreter - are contained in Article 72.<sup>36</sup> The right to appeal is guaranteed by Article 73.<sup>37</sup> According to Article 147 of the Fourth Geneva

Convention, the systematic and willful violations of the right to a fair trial as part of the punitive demolition policy may amount to a grave breach of the Convention, again commonly referred to as a war crime.

Arguments that house demolitions do not violate international humanitarian law

The Israeli Supreme Court has acknowledged the applicability of the Hague Regulations to the OPT, and has further held that the Israeli army's relationship to the territory is that of an "occupying power."<sup>38</sup> The Court's reliance on the Hague Regulations in house demolition cases, has, however, been limited to invocation of the local law doctrine without explicitly mentioning Article 43 of the Regulations. Israeli authorities argue that under the local law doctrine, it is required to preserve DER 119. The Supreme Court has not analyzed other, substantive provisions of the Hague Regulations in its house demolition cases that would contradict the government's position.

Furthermore, the Israeli government rejects the applicability of the Fourth Geneva Convention to the OPT, and the Israeli Supreme Court has not ruled otherwise. Thus, the official position of the Israeli government regarding provisions of the Convention relating to house demolitions is generally limited to a denial of their applicability.

Individuals have, however, set forth arguments supporting the legality of house demolitions under the international humanitarian law provisions mentioned above. Some scholars have argued that the local law doctrine, as reflected in Article 43 of the Hague Regulations and Article 64 of the Fourth Geneva Convention, preempts other, substantive provisions of these instruments. This position concludes that the local law doctrine "seems even to require continuance of [DER 119]."<sup>39</sup>

Scholars supportive of housing demolitions have, likewise, denied that demolitions are prohibited as collective punishment under Article 50 of the Hague Regulations and Article 33 of the Fourth Geneva Convention. These arguments could traditionally be grouped into three categories. The first was that demolitions were, in fact, "never carried out as a collective punishment, but only and solely as a punishment of the individual involved."<sup>40</sup> This argument, popular in the early days of the occupation, has of late essentially been abandoned in the face of contrary facts.<sup>41</sup>

The second argument was that demolition is only resorted to when other residents of the house were aware of and involved in the offense.<sup>42</sup> This argument, which also enjoyed currency early in the occupation, is relied on less frequently nowadays, particularly in light of an Israeli Supreme Court decision confirming that authorities did not need to prove that other occupants had foreknowledge of the offense for DER 119 to be used.<sup>43</sup>

The third and more recent argument that house demolitions are not collective punishment is based on the assertion that house demolitions do not constitute punishment per se, but are solely a deterrent measure. This argument is strengthened by the Israeli Supreme Court's finding that the purpose of DER 119 is "to deter potential terrorist from carrying out their murderous acts."<sup>44</sup> The view that house demolitions are not akin to punishment is also the basis for the argument that the fair trial rights of Article 71 to 74 of the Fourth Geneva Convention are not implicated.

Scholars have also asserted that the destruction of property by the IDF fits the "military necessity" exception of Article 53 of the Fourth Geneva Convention. Because the official commentary to the Fourth Geneva Convention leaves it to the occupying power to gauge the proportion and importance of military activity, it may be difficult for others to challenge this discretion. In effect, under Article 53, the Israeli army is the judge of the necessity of its

own actions, and an outside arbiter would defer in some degree to that judgment. This argument has been echoed by individual Israeli officials, including former Attorney General Meir Shamgar,<sup>45</sup> who point out that the official commentary to the Fourth Geneva Convention allows for "the Occupying Power to judge the importance of such military requirements" and invoke the military necessity exception.<sup>46</sup>

An argument can also be made that the fair trial rights of Articles 71 to 73 of the Fourth Geneva Conventions do not apply to house demolitions. These provisions are meant to guarantee that criminal trials are conducted in a fair manner, which protects the rights of the accused. Israel considers DER 119 to be an administrative rather than criminal procedure, and the regulation itself places discretion for its use wholly in the hands of the military commander. Opponents wishing to invoke these provisions would have to establish that DER 119 is tantamount to a penal law, and that an order to demolish is the equivalent of a criminal sentence.

Arguments that house demolitions violate international humanitarian law

Opponents of house demolitions, including Palestinian officials, international experts, and some Israeli scholars, have challenged Israel's application of the local law doctrine. They argue that preexisting laws that run contrary to other provisions of the Fourth Geneva Convention - in particular Article 33 (prohibiting collective punishment), Article 53 (prohibiting the destruction of property except on grounds of military necessity), and Articles 71 and 73 (guaranteeing fair trial rights) - cannot be supported, under the Convention's Article 64 very wording.<sup>47</sup>

According to this argument, the purpose of the latter article is to protect the population from the imposition of oppressive criminal laws by the occupying power;<sup>48</sup> thus the Convention drafters' emphatic remark that an occupying power "should in no circumstances use the criminal law of the Occupied Power as an instrument of oppression."<sup>49</sup> The drafters point out that the official commentary to the Convention notes further that "when the penal legislation of the occupied territory conflicts with the provisions of this Convention, the Convention must prevail."<sup>50</sup> It has also been pointed out that the language of DER 119 is permissive; even if Israel is required to leave the regulation in place, it is not compelled to utilize it.<sup>51</sup>

Regarding the prohibition against collective punishment, Palestinians, Israeli human rights activists and many in the international community reject the argument that house demolitions are solely a deterrent measure. They assert that the presence of a deterrent effect does not necessarily mean that an action is not punitive. To the contrary, they point out, deterrence is one of the primary goals of punishment.<sup>52</sup> Furthermore, the nature and effects of house demolitions clearly contain punitive elements, and once these elements are established, Article 50 of the Hague Regulations and - more importantly - Article 33 of the Fourth Geneva Convention prohibiting collective punishments become relevant.

Opponents of house demolitions also rely on official comment to the Convention, which clarifies that Article 33 applies to "penalties of any kind inflicted on persons or entire groups of persons, in defiance of the most elementary principles of humanity, for acts that these persons have not committed."<sup>53</sup> The International Committee of the Red Cross subscribes to this view, and as early as 1968 asked the Israeli Government to "cease these practices which are contrary to Article 33 of the Fourth Geneva Convention and to ask for the reconstruction of [damaged] houses or for financial compensation to be paid."<sup>54</sup>

In addition, Palestinian activists have highlighted the fact that demolished houses are rarely owned by the suspected offender. The Ramallah-based non-governmental organization Al-Haq found that, between 1981 and 1991, only eight per cent of homes demolished by the IDF pursuant to DER 119 were owned by the actual offender.<sup>55</sup> Finally, they note, there can be no individual accountability in situations where the suspected offender is already deceased. Any consequences are therefore collective.<sup>56</sup>

Opponents of house demolitions take exception to the view that demolitions fall into the military necessity exception to the Fourth Geneva Convention's prohibition on property destruction found in Article 53. They rely on an interpretation by the International Committee of the Red Cross that the military necessity exception must be limited to actions taken as a response to an immediate threat.<sup>57</sup> Therefore, punitive demolitions that occur in response to previous terrorist attacks would not be justified under Article 53.

Finally, opponents have claimed that as a form of punishment, house demolition proceedings must conform with the fair trial proceedings of Articles 71 to 73 the Fourth Geneva Convention. Prior to a demolition, they argue, a

suspect must be afforded a regular trial and enjoy the rights that attach thereto. They bolster this claim by noting that fair trial rights are considered widely to be general principles of law.<sup>58</sup>

#### Key points

This note has reviewed the key legal aspects of house demolitions in the OPT under IHL. As final observations, one should retain that:

1. House demolitions are either administrative, military, or punitive in character.
2. House demolitions engage the responsibility of the occupying forces. The Israeli government is required to have a proper legal basis to engage in house demolitions. Illegal demolitions should be prosecuted as violations of IHL. Demolitions engage Israel state responsibility to apply corrective measures (i.e. rebuild the demolished house).
3. Military demolitions rely mostly on the assessment of military commanders regarding the adequacy and proportionality of the measure. Although the Convention recognizes a wide scope of discretion to the military commander, the concept of military necessity is not a "carte blanche" to the military. Military necessity incorporates clear conditions: (i) the presence of an immediate and concrete threat, (ii) that the demolition be an adequate response to the threat, and (iii) that, even if the first two conditions are fulfilled, such demolition must respect the principle of proportionality. If the demolition fails to fulfill one of the criteria, it is illegal.
4. Punitive demolitions remain a hotly debated issue. Although the practice has expanded over the recent year as a response to indiscriminate attacks against Israeli civilians, the legal grounds to justify the maintenance of the DER 119 have been under increasing pressure by legal scholars.

#### Footnotes:

- <sup>1</sup> Following the practice of the United Nations (UN), reference to the West Bank, the Gaza Strip, and East Jerusalem is made here collectively as the Occupied Palestinian Territory (OPT).
- <sup>2</sup> Hague Convention (IV) Respecting the Laws and Customs of War on Land, U.S.T.S. 539 (entered into force January 26, 1910), at Annex [hereinafter "Hague Regulations"].
- <sup>3</sup> Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 75 U.N.T.S. 287 (entered into force Oct. 21, 1950) [hereinafter "Fourth Geneva Convention"].
- <sup>4</sup> Dan Simon, "The Demolition of Homes in the Israeli Occupied Territories," 19 Yale Journal of International Law, 1, 7 (1994).
- <sup>5</sup> See, generally, Amnesty International, *Israel and the Occupied Territories: Demolition and Dispossession: The Destruction of Palestinian Homes* (1999).
- <sup>6</sup> Article 53 of the Fourth Geneva Convention.
- <sup>7</sup> *Ibid.*, Article 53.
- <sup>8</sup> For the definition of what is an armed conflict, please see Article 8 of the ICC Statute.
- <sup>9</sup> See Simon, *supra* note 4 at 8.
- <sup>10</sup> See David Kretzmer, "The Occupation of Justice: The Supreme Court of Israel and the Occupied Territories" 121 (2002).
- <sup>11</sup> Regulation 119, Defense (Emergency) Regulations (1945), 1945 Palestine Gazette (no. 1442) (Supp. 2) 1055.
- <sup>12</sup> See Palestine (Revocations) Order-in-Council (1948) S.I. 1948/1004, at 1350-51. It is the view of the British Government that the Regulations were effectively repealed. In a 1987 letter, the British Foreign Ministry indicated that "in view of the Palestine (Revocations) Order in Council 1948, the Palestine (Defense) Order in Council 1937 and the Defense Regulations 1945 made under it are, as a matter of English law, no longer in force." See Emma Playfair, "Demolition and Sealing of Houses as a Punitive Measure in the Israeli-Occupied West Bank," *Al Haq*, 33, April 1987.

<sup>13</sup> Special conditions for the continued application may be required in Israel. See Kretzmer, *supra* note 10, at 121.

<sup>14</sup> See Esther Cohen, *Human Rights in the Israeli-Occupied Territories: 1967-1982*, 94 (1985).

<sup>15</sup> See Brian Farrell, "Israeli Demolition of Palestinian Houses as a Punitive Measure: Application of International Law to Regulation" 119, 28 *Brooklyn Journal of International Law* 871, 876-77 (2003). See also, Proclamation on Government at Law (Area of West Bank) (Proclamation No. 2) paragraph 3 (June 7, 1967); and Proclamation on Government at Law (Gaza Strip and Northern Sinai) (Proclamation No. 2) paragraph 3 (June 7, 1967).

<sup>16</sup> See *ibid.* at 877-78.

<sup>17</sup> See Cohen, *supra* note 14 at 97-98; Kretzmer *supra* note 10 at 145.

<sup>18</sup> See Cohen, *supra* note 14 at 99.

<sup>19</sup> See Farrell, *supra* note 15 at 888.

<sup>20</sup> *Ibid.*

<sup>21</sup> See Cohen, *supra* note 14 at 97.

<sup>22</sup> See Kretzmer, *supra* note 10 at 146.

<sup>23</sup> See Cohen, *supra* note 14 at 96-97. The Israeli Supreme Court has upheld this broad definition. See *Khamri v. Commander in Judea and Samaria*, 36(6) P.D. 439 (1982), summarized in English in 17 *Israel Yearbook on Human Rights* 314 (1987); *Jabar v. Officer Commanding Central Command*, 41(2) P.D. 522 (1987), summarized in English in 18 *Israel Yearbook on Human Rights* 252 (1988).

<sup>24</sup> See Simon, *supra* note 4 at 17.

<sup>25</sup> See generally Farrell, *supra* note 15 at 890.

<sup>26</sup> See Simon, *supra* note 4 at 17.

<sup>27</sup> See Kretzmer *supra* note 10 at 145.

<sup>28</sup> B'Tselem, *House Demolitions - Statistics*, at [www.btselem.org/English/House\\_Demolitions/Statistics.asp](http://www.btselem.org/English/House_Demolitions/Statistics.asp).

<sup>29</sup> Hague Regulations, *supra* note 2 Article 43.

<sup>30</sup> Fourth Geneva Convention, *supra* note 3 Article 64.

<sup>31</sup> Hague Regulations, *supra* note 2 Article 50.

<sup>32</sup> Fourth Geneva Convention, *supra* note 3 Article 33.

<sup>33</sup> Article 46 of the Hague Regulations states that the Occupying Power cannot confiscate private property. This provision is not particularly relevant in terms of the question of house demolitions, insofar as confiscation means that the Occupying Power becomes the owner of the property in question. In house demolitions, the Occupying Power does not take over ownership of the house.

<sup>34</sup> Fourth Geneva Convention, *supra* note 3 Article 53.

<sup>35</sup> *Ibid.*, Article 71.

<sup>36</sup> *Ibid.*, Article 72.

<sup>37</sup> *Ibid.*, Article 73.

- <sup>38</sup> See *Ayyub v. Minister of Defense*, 33(2) P.D. 113 (1978), summarized in English in 9 *Israel Yearbook of Human Rights* 337 (1979). In *Ayyub*, the Court acknowledged the Hague Regulations status as customary international law. Following the English common law rule, customary international law is applicable and enforceable in Israeli courts. See Kretzmer, *supra* note 10 at 31.
- <sup>39</sup> Julius Stone, "Behind the Cease-Fire Lines: Israel's Administration in Gaza and the West Bank," in *Of Law and Man: Essays in Honor of Haim H. Cohn*, 79, 97 (Shlomo Shoham ed., 1971).
- <sup>40</sup> Colonel Dov Shefi, "The Protection of Human Rights in Areas Administered by Israel - United Nations Findings and Reality," 3 *Israel Yearbook of Human Rights* 337, 346 (1973).
- <sup>41</sup> See Farrell, *supra* note 15 at 928.
- <sup>42</sup> See Stone, *supra* note 39 at 96.
- <sup>43</sup> See Kretzmer, *supra* note 10 at 154 (quoting *Alzak v. Military Commander of West Bank*, 1987(1) Takdin-Elyon 1).
- <sup>44</sup> *Nazal v. Commander of the Judea and Samaria Region*, 42(3) P.D. 641 (1994), summarized in English in 19 *Israel Yearbook of Human Rights* 376 (1989).
- <sup>45</sup> See Kretzmer, *supra* note 10 at 147.
- <sup>46</sup> Jean Pictet, *Commentary - IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War* 302 (Major Ronald Griffin and C.W. Dumleton trans., 1958).
- <sup>47</sup> See Martin Carroll, "The Israeli Demolition of Palestinian Houses in the Occupied Territories: An Analysis of Its Legality in International Law," 11 *Michigan Journal of International Law* 1195, 1206 (1990); Simon, *supra* note 4, at 48.
- <sup>48</sup> See Gerhard von Glahn, *The Occupation of Enemy Territory* 95 (1957).
- <sup>49</sup> 2 Final Record of the Diplomatic Conference of Geneva of 1949, at 670 (1949).
- <sup>50</sup> Pictet, *supra* note 46 at 336.
- <sup>51</sup> See Farrell, *supra* note 15 at 922-24.
- <sup>52</sup> See *ibid.* at 927-930.
- <sup>53</sup> Pictet, *supra* note 46 at 225.
- <sup>54</sup> Raja Shehadeh, *Occupier's Law: Israel and the West Bank* 154 (1985) (citing a 1968 report of the International Committee of the Red Cross).
- <sup>55</sup> Lynn Welchman, "A Thousand and One Homes: Israel's Demolition and Sealing of Houses in the Occupied Palestinian Territories," *Al Haq* 296 (1993).
- <sup>56</sup> See Playfair, *supra* note 12 at 15.
- <sup>57</sup> See Shehadeh, *supra* note 54 at 155 (quoting an interpretation by Jacques Moreillon, Director of the ICRC Department of Principles and Law, dated November 25, 1981).
- <sup>58</sup> See, e.g., Theodor Meron, *Human Rights and Humanitarian Norms as Customary Norms* 49-50 (1991); Simon, *supra* note 4 at 73-74; Stone, *supra* note 39, at 96. See, generally, Cherif Bassiouni, "Human Rights in the Context of Criminal Justice: Identifying International Procedural Protections and Equivalent Protections in National Constitutions," 3 *Duke Journal of Comparative and International Law* 235 (1993).

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