

IN THE NAME OF SECURITY: IDF MEASURES AND THE LAWS OF OCCUPATION

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The genesis of the current phase of the Israeli-Palestinian conflict lies in the occupation by Israel of the West Bank from Jordan, the Sinai (including Gaza) from Egypt and the Golan Heights from Syria during the 1967 Six-day War.¹ The West Bank and Gaza Strip, areas collectively referred to as the occupied territories, remain under effective control by Israel. This protracted conflict is now in its fourth decade and has been continuously marked by acts of political and state violence, widespread violations of human rights and a near total abandonment of the rule of law.

From the beginning of the occupation, the Israeli authorities have employed numerous controversial security measures in the occupied territories aimed at curbing Palestinian violence. Such measures have included house demolitions and sealings; curfews and closures; the construction of settlements in the territories; administrative detention; deportations; closure of educational facilities; disconnection of electricity, telephone and water supplies; targeted

assassinations; and the recent construction of a “security wall” between the West Bank and Israel. While the state of Israel undoubtedly faces a real threat to its security, many of these measures and the way in which they are employed would seem to go beyond what is permitted by international humanitarian and international human-rights law.

This article will explore the legality under the laws of occupation of a number of these security measures. Specifically, Israel’s policy of demolishing and sealing the houses of persons suspected or convicted of unlawful activity; the authorities’ use of strict and prolonged curfews; the closure of educational facilities; and the closure of cities, towns and villages will be examined. The impact of each of these measures on the conflict as a whole will be considered, as frequently repressive measures serve to antagonize and create resentment among the local population, rather than effectively dealing with threats to security. But first, a brief examination of the legal regime that applies in an

* Special thanks to Dr. Kathleen Cavanaugh for her helpful comments.

occupied territory and an outline of those specific norms of international humanitarian law of particular relevance to the Israeli-Palestinian conflict.

INTERNATIONAL LAW

While the views of the Israeli government and some commentators challenge the applicability of international humanitarian law in the West Bank and Gaza,² these arguments are entrenched in politics rather than law and go against the almost unanimous view of the international community as expressed through the U.N. General Assembly³ and Security Council.⁴ The prevailing view is that, because the West Bank and Gaza have been occupied by Israel since 1967, the laws of belligerent occupation are fully applicable in those areas.

The rules of this body of law are derived mainly from two treaties: the Regulations annexed to the Fourth Hague Convention of 1907⁵ and the Fourth Geneva Convention of 1949 Relative to the Protection of Civilian Persons in Time of War.⁶ Israel has not acceded to the 1907 Hague Convention but does consider itself bound by its provisions on account of their customary international-law status.⁷ Although Israel has signed and ratified the Fourth Geneva Convention, it has refused to recognise the full *de jure* applicability of this treaty in the occupied territories. Yet Israel claims that in practice any actions taken there have been in accordance with the “humanitarian provisions” of the convention.⁸ When hearing petitions relating to actions taken in the occupied territories, the Supreme Court of Israel has contended that it is only bound to look at those provisions of the Fourth Geneva Convention that reflect customary international law.⁹ It is worth noting in this regard

that the Fourth Geneva Convention has almost as many state parties as the Charter of the United Nations, with little, if any, hostility towards the rules contained therein.

The Laws of Occupation

Describing territory as occupied stems from the established principle that sovereignty over territory cannot be acquired by the use of force. Thus, any lands that have fallen under the control of a belligerent are seen as occupied until a post-war agreement determines their status.¹⁰ The laws of occupation seek to regulate the activities of the occupying power and correspondingly to guarantee the protection of the rights of the local population of the territory. Article 43 of the Hague Regulations, as the foundation of these rules, demands that the occupant take all measures “in his power to restore and ensure, as far as possible, public order and safety,¹¹ while respecting, unless absolutely prevented, the laws in force in the country.” The Fourth Geneva Convention contains a similar article, Article 64, which allows for the penal laws of the occupied territory to be “repealed or suspended by the Occupying Power . . . where they constitute a threat to its security or an obstacle to the application of the present Convention.” This article also provides that

The Occupying Power may, however, subject the population of the occupied territory to provisions which are essential to enable the Occupying Power to fulfill its obligations under the present Convention, to maintain the orderly government of the territory, and to ensure the security of the Occupying Power, of the members and property of the occupying forces

or administration, and likewise of the establishments and lines of communication used by them.¹²

The authoritative Commentary to the Fourth Geneva Convention clearly establishes that “these varied measures must not under any circumstances serve as a means of oppressing the population.”¹³ Article 78 outlines that “[i]f the Occupying Power considers it necessary, for imperative reasons of security, to take safety measures concerning protected persons, it may, at the most, subject them to assigned residence or to internment.”¹⁴

Article 47 of the Fourth Geneva Convention sets forth that the civilian population, as protected persons, “shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention.” This is seen as an attempt “to minimize the impact of occupation on the population, subject to the legitimate security concerns of the occupant.”¹⁵ The Geneva Convention expressly prohibits inhumane treatment of protected persons,¹⁶ individual or mass forcible transfers or deportations of civilians,¹⁷ forcing the population to serve in the military of the occupying power,¹⁸ and the destruction of property unless as an absolute military necessity.¹⁹ An occupying power is also subject to a number of positive obligations under the law of occupation. For example, the proper functioning of child-care and education institutions must be guaranteed;²⁰ the occupying power must ensure that food and medical supplies reach the population;²¹ medical and hospital services must be maintained;²² and national Red Cross societies must be allowed to carry out their activities.²³

It can be seen that the laws of occupation set down substantial protection for the

human rights of a population under occupation, while also giving due credence to the legitimate security concerns of the occupying power. I will now look at a number of security measures where the juxtaposition between these two duties of an occupying power is brought in to sharp relief.

SECURITY MEASURES

Defense (Emergency) Regulations, 1945

Several of the security measures taken by the Israeli army in the occupied territories rely on the 1945 Defense (Emergency) Regulations enacted by the British during the time of their mandate over Palestine.²⁴ These were subsequently repealed by the British government upon termination of the mandate.²⁵ However, the Israeli authorities, citing a procedural error and the “local law” requirements of the laws of occupation, argue that these laws were not effectively repealed and continue to remain in force in the territories.²⁶ The authorities’ assertion on this issue is strongly contested,²⁷ and their continued reliance on these laws and the use of the measures prescribed thereunder are highly questionable under the laws of occupation.

House Demolitions

The Israeli Ministerial Committee for Matters of National Security stated on July 31, 2002, that “[a]ccording to the evaluation of the government and security forces, destruction of the homes of attackers is a deterrent to the initiatives of potential attackers.”²⁸ A few days later, the Supreme Court of Israel effectively removed the right to judicial review of demolition orders issued by the military commanders of the occupied territories.²⁹ Since then, over 300 homes have been completely

demolished by the Israeli Defence Forces (IDF) in those territories.³⁰

Punitive house demolitions are carried out under Regulation 119(1) of the 1945 Regulations. The provision reads:

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, detonated, exploded or otherwise discharged, or of any house, structure or land situated in any area, town, village, quarter or street the inhabitants or some of the inhabitants of which he is satisfied have committed, or attempted to commit, or abetted the commission of, or been accessories after the fact to the commission of, any offence against these Regulations involving violence or intimidation or any Military Court offence; and when any house, structure or land is forfeited as aforesaid, the Military Commander may destroy the house or the structure or anything in or on the house, the structure or the land.³¹

Regulation 119(1) appears in a section of the 1945 Regulations titled "Miscellaneous Penal Provisions." The demolition of houses as punishment for actual or suspected crimes or as a deterrent against future acts of violence may constitute a violation of property rights and a form of collective punishment. Their use as a punitive measure is legally dubious, often involving a denial of due-process rights.³²

International humanitarian law affords substantial protection of the property rights of civilians,³³ subject to one important

caveat; military necessity. Article 23(g) of the Hague Regulations holds destruction of private property to be unlawful unless "imperatively demanded by the necessities of war," while Article 53 of the Fourth Geneva Convention prohibits the destruction of private property, except where "such destruction is rendered absolutely necessary by military operations."³⁴ The International Committee of the Red Cross views "military operations" as "movements, manoeuvres, and other actions taken by the armed forces *with a view to fighting*."³⁵ Punitive house demolitions are not usually carried out during combat,³⁶ but rather are taken in response to illegal actions, often several months after such actions have been committed. Acts of punishment cannot fall within the absolute military-necessity exception for property destruction.

The contention that house demolitions can be justified because of a claimed deterrent and thus security value³⁷ would also fall afoul of the military-necessity requirement. The laws of belligerent occupation make a clear distinction between actions of a *military* nature and those necessary for *security* reasons.³⁸ It is argued that the demolition of houses will serve to deter future attacks and thus such measures have an essential security function; however, the law is clear that property can only be destroyed on military grounds, and then only when it is *absolutely necessary*.

While punitive house demolitions are clearly unlawful on this front, their legality can also be challenged on other grounds. More often than not, house demolitions directly affect innocent persons who were not implicated in the original unlawful activity, in violation of the prohibition of

collective punishment. Article 50 of the Hague Regulations states that no penalty “shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible,”³⁹ while Article 33 of the Fourth Geneva Convention lays a prohibition on punishing persons for crimes they did not personally commit. The non-individual nature of the penalty of demolition is perfectly underscored where the offender was not the actual owner of the house,⁴⁰ where this

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punishment is imposed in addition to a term of imprisonment, and where the person who committed the initial offense is already deceased.⁴¹ As Palestinian houses are usually home to several nuclear families, innocent persons almost always suffer the penalty of demolition. One demolition order upheld by the Supreme Court left 27 people homeless,⁴² clearly illustrating the collective nature of the sanction. Professor David Kretzmer, a prominent Israeli academic and former member of the U.N. Human Rights Committee, would contend that “the *immediate aim* of demolishing the house is not to deny rights or freedoms of that person but to cause suffering to his family.”⁴³

As a form of punishment, house demolitions are both highly irregular and extremely harsh. One would be hard pressed to find domestic legal systems that would explicitly endorse the demolition of homes as a punishment for crimes. These demolitions can also be viewed as a form of cruel and inhuman punishment. The

U.N. Committee against Torture has held that demolitions may, in certain circumstances, violate Article 16 of the Convention Against Torture.⁴⁴ The laws of occupation set down a number of clear rules an Occupying Power must adhere to in the imposition of any sentences. For example, Article 71 of the Fourth Geneva Convention stipulates that “[n]o sentence shall be pronounced by the competent courts of the Occupying Power except after a regular trial.”⁴⁵ House demolitions are almost always imposed extrajudicially, in clear denial of the rights of due process.

Punitive house demolitions constitute an unlawful violation of property rights, a measure of collective punishment, and a form of cruel and inhuman treatment. Article 78 of the Fourth Geneva Convention limits security measures concerning protected persons to assigned residence or internment.⁴⁶ Israel, as an occupying power, by demolishing houses as a punitive measure, exceeds the powers granted to it under the laws of occupation.

Curfews

Throughout the Israeli-Palestinian conflict, lengthy curfews have regularly been imposed by the IDF in the occupied territories. Regulation 124 of the 1945 Regulations states:

A Military Commander may by order require every person within any area specified in the order to remain within doors between such hours as may be specified in the order, and in such

case, if any person is or remains out of doors within that area between such hours without a permit in writing issued by or on behalf of the Military Commander or some persons duly authorised by the Military Commander to issue such permits, he shall be guilty of an offence against these regulations.⁴⁷

Prima facie, the use of a curfew as a security measure would not be a considerable cause for concern. However, when curfews are imposed continuously for prolonged periods with only brief respites, and when their enforcement is policed with lethal force, their legality must be examined more closely. Since the commencement of Operation Defensive Path in June 2002, the use of lengthy curfews has become widespread throughout the West Bank.⁴⁸

An Israeli army spokesperson stated that the purpose of a particular two-month curfew in Hebron was “to enable the IDF soldiers to conduct battles in built areas with no obstructions, and to protect the lives of the residents . . . [and] to prevent Palestinian residents from joining the riots.”⁴⁹ Curfews have also been used to prevent disturbances during house demolitions, as a preventive measure on days of national or religious significance,⁵⁰ and also in direct response to the commission of illegal acts ranging from stone throwing to the killing of Israeli settlers, in order to allow for “unimpeded investigation” and the possible apprehension of the perpetrators.⁵¹

Article 43 of Hague allows an occupying power to “take all the measures in his power to restore, and ensure as far as possible, public order and safety.”⁵² An occupant may subject the population to provisions that are essential for orderly government and to ensure the security of

the occupying power.⁵³ As already stated, Article 78(1) of the Fourth Geneva Convention limits such security measures to, *at the most*, assigned residence or internment.⁵⁴ While curfews would seem less severe and thus permissible, the Commentary to this convention makes it clear that “there can be no question of taking collective measures; each case must be decided separately.”⁵⁵ The limited use of curfews as a means of maintaining public order and security can be considered legal under the laws of occupation, but those imposed as a preventive or deterrent measure and, more seriously, as retribution or punishment would be harder to justify.

Where a curfew is imposed as retribution in response to the commission of illegal acts, it may violate the prohibition of a collective punishment, through its harsh effects on persons who have not personally committed any crime.⁵⁶ One IDF soldier who served during Operation Defensive Shield stated that “[e]veryone, even the company and battalion commanders, said that the curfew is a means of punishment, that the population had to feel the pain so they’ll know that Arafat is a terrible leader.”⁵⁷ Acts of collective punishment are unlawful under the rules of belligerent occupation.

Preventive curfews, those enforced for extremely lengthy periods of time, have a serious effect on everyday life. Rights such as freedom of movement, the right to education, the right to employment, and the right of access to adequate food, water and healthcare are considerably abridged by such curfews.⁵⁸ Statistics supplied by the Palestine Red Crescent Society show that every major West Bank town has been subjected to extensive curfews over the past two years. The 130,000 people of

Nablus were under curfew for over 70 percent of the time during one particular eight-month stretch.⁵⁹ Twenty-four-hour curfews, without any break, were often imposed for periods of up to two weeks.⁶⁰ The Hague Regulations demand that “public order and civil life”⁶¹ be ensured and that “[f]amily honor and rights . . . must be respected.”⁶² Preventing workers from reaching their workplaces, businesses from opening, friends and relatives from visiting, and children from attending school is a clear affront to these legal obligations of an Occupying Power. It is also worth noting that curfews have always been imposed on a discriminatory basis between Palestinians and the settlers living in the occupied territories.⁶³

One of the most serious abuses of the curfew regime has been the use of live ammunition and tear gas by the IDF to enforce curfews. One human-rights NGO has reported that fifteen Palestinians, including nine children, have recently been killed by IDF soldiers enforcing curfews.⁶⁴ This is clearly an unjustified and excessive use of force, casting further doubt on the legality of these curfews.

Although the use of curfews is not explicitly prohibited by the laws of occupation, and their use can serve a genuine security purpose, the way in which the IDF has used them in the occupied territories would seem to greatly exceed what was envisaged by the drafters of the Hague and Geneva laws. Since March 2003 there has been a significant decline in the use of curfews as a security measure, with the notable exception of their continued use in Hebron. With the collapse of the current peace negotiations, it is to be wondered how long this hiatus will continue.

Closure of Educational Institutions

Since the late 1980s the Israeli army has regularly closed schools or universities on security grounds, particularly during times of increased Palestinian violence.⁶⁵ In January 2003, two Palestinian suicide bombers killed 22 Israeli citizens in Tel-Aviv.⁶⁶ The Israeli Security Cabinet decided, in the immediate aftermath of the bombing, that its response would include the closure of several Palestinian universities.⁶⁷ A military order was issued by the IDF for the closure of both Hebron University and the Palestinian Polytechnic, also in Hebron.⁶⁸ The university was closed on the grounds that illegal activities had taken place there and that “opening the institution may result in a threat to the region, and to the security of the defense army, and of the general public.”⁶⁹ Subsequently, the initial two-week closure order for the Polytechnic was renewed for a further three weeks, while the closure of Hebron University was extended until July.⁷⁰

Article 50 of the Fourth Geneva Convention compels Israel, as an occupying power, to “facilitate the proper working of all institutions devoted to . . . the education of children.”⁷¹ The frequent closure of schools and universities is a clear failure on the part of Israel to uphold its duties under the laws of occupation to maintain a degree of normal life in occupied territories. The United Nations has condemned the closure of educational institutions in the occupied territories.⁷² Furthermore, as already stated, the laws of occupation prohibit the punishment of persons for crimes that they did not personally commit. When universities are closed in the immediate aftermath of crimes, these actions bear all the hallmarks of prohibited acts of collective punishment. It is difficult to see

what security benefits can be derived from the closure of educational institutions. On the contrary, these actions would seem to be more of an encouragement for Palestinian youths to engage in hostile acts towards the occupying power.

Internal Closure

The closure of cities, towns and villages is another action taken by the IDF in the name of security. Closure involves physically preventing Palestinians either permanently or temporarily from leaving or entering those areas under closure. This is achieved by placing cement blocks, boulders, banks of rubble or earth, or manned checkpoints on all the roads leading to the closed town or village.⁷³ Throughout the West Bank, the presence of thousands of roadblocks has rendered travel almost impossible.⁷⁴ This is further compounded by the existence of a network of roads and highways in the West Bank, the use of which is reserved exclusively for the inhabitants of settlements,⁷⁵ and also by the fact that Palestinians cannot travel in certain areas unless they hold a particular I.D. or travel permit.

Closures involve a severe curtailing of the freedom of movement of the Palestinian inhabitants of the occupied territories, not unlike that endured under curfews. Access to employment and education is prevented and delivery of water, food and medical supplies interrupted. On occasion, persons needing urgent medical attention have died because of delays caused by roadblocks and army checkpoints.⁷⁶ In February 2002, the International Committee of the Red Cross initiated a Closure Relief Programme in an attempt to alleviate some of the suffering.⁷⁷ In addition, Human Rights Watch has reported that

soldiers enforcing the closure policy “often beat and humiliated [Palestinian drivers] and their passengers, slashed tires, shot at vehicles, and confiscated keys for lengthy periods.”⁷⁸

While manned army checkpoints do serve a genuine security purpose, their excessive proliferation in the occupied territories and the arbitrary and undue delays that have become an almost daily occurrence at checkpoints go far beyond what is required for security. Moreover, piles of rubble, earth or rocks are not insurmountable obstacles for would-be attackers. Any remote security aims that might be achieved by their use is clearly disproportionate to the drastic effect these have on daily life for the local population. In October 2003, despite the IDF’s imposition of a ‘complete closure’ in the territories, a Palestinian suicide bomber made her way from the West Bank to Haifa and killed 19 innocent people and injured more than 50 in an attack on a seafront restaurant.⁷⁹

Several nongovernmental organizations would view the use of closures as a form of collective punishment in violation of Article 50 of the Hague Regulations and Article 33 of the Fourth Geneva Convention.⁸⁰ The U.N. special rapporteur on human rights in the Palestinian territories has contended that checkpoints do not serve a *bona fide* security purpose but instead are “the institutionalization of the humiliation of the Palestinian people.”⁸¹ It is this author’s contention that closures, much like curfews, are exactly what Jean Pictet warned against in the Commentary to the Fourth Geneva Convention. They would seem to be measures taken under the guise of security which in fact “serve as a means of oppressing the population”⁸² of the occupied territories.

CONCLUSION

House demolitions, closure of educational institutions, prolonged curfews, and prevention of access to cities, towns and villages are a number of the actions taken by the Israeli military in the name of security. Punitive house demolitions are unmistakably illegal under international law. The other measures discussed may be viewed as forms of collective punishment and thus as an abuse of the power granted to an occupier under the laws of belligerent occupation. While the state of Israel undoubtedly faces a serious threat to its security, the actions taken by the IDF go beyond what an occupying power is permitted.

The Fourth Geneva Convention expressly prohibits collective penalties and “all measures of intimidation or of terrorism,”⁸³ not just for the benefit of the local population but also for the security of the occupier. Any measures of intimidation aimed at the local population for prevention of hostile acts have “by reason of their excessive severity and cruelty, kept alive and strengthened the spirit of resistance.”⁸⁴ Subjecting a population, the majority of whom live below the poverty line, to these repressive measures will not pacify and placate, but rather fuel further resentment towards the occupying power. The actions taken by the Israeli authorities in the name of security are probably more

successful at recruiting new members to the armed groups operating within the occupied territories than at guaranteeing the safety of Israeli citizens.

As one IDF refusenik has argued,

These actions on the part of the IDF provide no protection to Israel. They protect only the settlements built on conquered territory, where Israel has no right to establish settlements. The friction with the Palestinian population is caused by the need to provide settlers with freedom of movement, not by the need to prevent suicide bombers entering Israeli territory . . . I would be very glad to serve the IDF on any mission entrusted to us, as long as its objective is not connected with subduing the Palestinian population under our rule.⁸⁵

In his latest report, the U.N. special rapporteur has stated clearly that “[a] balance must be struck between respect for human rights and the interests of security.”⁸⁶ The laws of occupation prescribe clear limits on the actions that can be taken by an occupying power in the name of security. The above discussion has shown that throughout the ongoing occupation the IDF, with authorization from the Israeli government, has frequently exceeded those limits.

¹ Erik Goldstein, *Wars and Peace Treaties: 1816-1991* (London/New York: 1992), pp. 127-128.

² See, for example, Meir Shamgar, “The Observance of International Law in the Administered Territories,” *Israel Yearbook on Human Rights*, Vol. 1 (1971), p. 262.

³ A recent General Assembly resolution reaffirmed the applicability of the Fourth Geneva Convention and demanded that “Israel accept the de jure applicability of the Convention in the Occupied Palestinian Territory . . . and that it comply scrupulously with the provisions of the Convention”; see U.N. Doc. A/RES/56/60, February 14, 2002.

⁴ See, for example: SC Res. 237, June 14, 1967; SC Res. 446, March 22, 1979; SC Res. 605, December 22, 1987; SC Res. 607, January 5, 1988; SC Res. 1322, October 7, 2000.

⁵ *Convention IV Respecting the Laws and Customs of War on Land*, signed at The Hague, October 18, 1907

[hereinafter Hague Regulations].

⁶ *Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War*, adopted August 12, 1948, entered into force October 21, 1950, 75 U.N.T.S. 287 [hereinafter the Fourth Geneva Convention]. See generally Eyal Benvenisti, *The International Law of Occupation* (Princeton, NJ: 1993).

⁷ Esther Rosalind Cohen, *Human Rights in the Israeli-occupied Territories 1967-1982* (Manchester: 1985), p. 43.

⁸ Shamgar, *supra* note 2, pp. 262, 266.

⁹ See David Kretzmer, *The Occupation of Justice* (New York: 2002), pp. 43-56.

¹⁰ See J.G. Starke, *Introduction to International Law*, 8th ed. (London: 1977), pp. 597-598.

¹¹ The phrase used in the authentic French text read “l’ordre et la vie publics,” with the translation to English having been regarded as incorrect. See Edmund H. Schwenk, “Legislative Power of the Military Occupant Under Article 43, Hague Regulations,” *Yale Law Journal*, Vol. 54, 1945, p. 393. Schwenk, in footnote 1, suggests that the term “civil life” would be a more accurate meaning of “la vie publique.”

¹² *Supra* note 6.

¹³ Jean Pictet, *Commentary on Geneva Convention IV of 1949, Relative to the Protection of Civilian Persons in Times of War* (Geneva: 1958), p. 337 [hereinafter Commentary to the Fourth Geneva Convention].

¹⁴ Fourth Geneva Convention, *supra* note 6.

¹⁵ Hilaire McCoubrey and Nigel D. White, *International Law and Armed Conflicts* (Aldershot: 1992), p. 289.

¹⁶ Article 27.

¹⁷ Article 49.

¹⁸ Article 51.

¹⁹ Article 53. The Commentary to the Fourth Geneva Convention in addressing these various articles reveals that these prohibitions are based on various provisions of the Hague Regulations; for example, Article 53 of the Fourth Geneva Convention “reinforces the rule already laid down in the Hague Regulations, Articles 46 and 56,” *supra* note 13, p. 301.

²⁰ Article 50.

²¹ Article 55.

²² Article 56.

²³ Article 63. The extensive protections for a civilian population under occupation are required, by Article 6 of the Fourth Geneva Convention, to be observed up to one year after “the general close of military activities,” and after this time, the occupying power is bound to respect a specific number of articles: Articles 1 to 12, 27, 29 to 34, 47, 49, 51, 52, 53, 59, 61 to 77 and 143. The Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Victims of International Armed Conflict (Protocol I), adopted June 8, 1977, entered into force December 7, 1978, 1125 U.N.T.S. 3-608, [hereinafter Additional Protocol I], sets out in Article 3 (b) that the Geneva Conventions and Additional Protocol I will apply until “the termination of the occupation” and beyond this where the repatriation of persons is concerned.

²⁴ Defence (Emergency) Regulations, 1945, [1945] *Palestine Gazette* (No. 1442), Supp. No. 2, 1055, [hereinafter the 1945 Regulations].

²⁵ Palestine (Revocations) Order-in-Council, 1948. See Lynn Welchman, *A Thousand and One Homes: Israel’s Demolition and Sealing Of Houses in the Occupied Palestinian Territories*, Al-Haq Occasional Paper No. 11, Ramallah, 1993, pp. 14-17.

²⁶ See *Naazal v. IDF Commander in Judea and Samaria*, 39(3) P.D. 645, 1986, summarized in English in *Israel Yearbook on Human Rights*, Vol. 16, (1986), p. 329. [al] See generally Martha Roadstrum 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, 1989.

²⁷ See, for example, Martin B. Carroll, “The Israeli Demolition of Palestinian Homes in the Occupied Territories: An Analysis of its Legality in International Law,” *Michigan Journal of International Law*, Vol. 11, 1990, pp. 1202-1205; Cohen, *supra* note 7, pp. 94-96; For an opposing view, see Shamgar, *supra* note 2, p. 275, where the author asserts that these Regulations are “part and parcel” of the penal law in the occupied territories.

²⁸ Per Judge A. Matza, Supreme Court of Israel sitting as the High Court of Justice, Case HCJ 7289/02, *Bahar et al. v. IDF Commander of the West Bank*, August 17, 2002.

²⁹ *Amar et al. v. IDF Commander of the West Bank*, HCJ No. 6696/02, on file with author [unofficial

translation]. See Shane Darcy, "Punitive House Demolitions, the Prohibition of Collective Punishment and the Supreme Court of Israel," *Penn State International Law Review*, Vol. 21, Iss. 3, 2003, pp. 497-501.

³⁰ See http://www.btselem.org/english/House_Demolitions/Statistics.asp; last visited October 2003.

³¹ *Supra* note 24. Although there is no explicit mention of sealing off property in Regulation 119(1), such action has been inferred, as it is viewed as a lesser sanction than demolition and thus is permissible *a fortiori*. See D. Yahav et al., eds., *Israel, the "Intifada" and the Rule of Law* (1993), p. 143, cited in Yoram Dinstein, "The Israel Supreme Court and the Law of Belligerent Occupation: Demolitions and Sealing Off of Houses," *Israel Yearbook of Human Rights*, Vol. 29, 2000, p. 287.

³² See generally Dan Simon, "The Demolition of Homes in the Israeli Occupied Territories," *Yale Journal of International Law*, Vol. 19, Iss. 1, Winter 1994, p. 1; Carroll, *supra* note 27; Welchman, *supra* note 25; Dinstein, *supra* note 31, p. 287; John Quigley, *The Legal Consequences of the Demolition of Houses by Israel in the West Bank and Gaza Strip – A Study Prepared for Al-Haq* (Ramallah: 1994).

³³ Article 46 of the Hague Regulations demands that: "Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected. Private property can not be confiscated." Article 23(g) of the Hague Regulations sets out that it is "especially forbidden . . . To destroy or to seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war." The Fourth Geneva Convention states in Article 53 that: "Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations."

³⁴ *Supra* note 6.

³⁵ Cited in Kretzmer, *supra* note 9, p. 148.

³⁶ With the noted exception of the numerous house demolitions carried out in Jenin Refugee Camp in April 2002, following the killing of nine IDF soldiers there. See Amnesty International, *Shielded from Scrutiny: IDF Violations in Jenin and Nablus*, AI Index: MDE 15/143/2002, November 4, 2002, p. 69.

³⁷ See Shamgar, *supra* note 2, p. 276.

³⁸ See Kretzmer, *supra* note 9, p. 147.

³⁹ *Supra* note 5.

⁴⁰ Empirical data compiled by Al-Haq, the West Bank Affiliate of the International Commission of Jurists, shows that for the period 1981-1991, only in 8.4 percent of cases was the suspected offender the actual owner of the house. See Welchman, *supra* note 25, p. 31.

⁴¹ Welchman points out that data collected by Al-Haq in the period 1981-1991 shows that 28 individual orders were issued for demolitions where the suspect was deceased, *supra* note 25, p. 37.

⁴² *Qarabsa v. Minister for Defense*, H.C. 2665/90 (unpublished), cited in Simon, *supra* note 32, p. 53.

⁴³ *Supra* note 9, p. 150 [emphasis in original].

⁴⁴ See *Concluding Observations on Third Periodic Report Submitted by Israel*, CAT/C/XVII/Concl.5 of November 23, 2001, paragraph 6 (j).

⁴⁵ *Supra* note 6.

⁴⁶ *Ibid*.

⁴⁷ Defence (Emergency) Regulations, 1945, *supra* note 24.

⁴⁸ See generally B'tselem, *Lethal Curfew: The Use of Live Ammunition to Enforce Curfew*, October 2002.

⁴⁹ Major Efrat Segev, IDF Spokesman, Public Relations Branch, "Statement in response to B'tselm Report," January 30, 2001; annexed to B'tselem, *Civilians Under Siege: Restrictions on Freedom of Movement as Collective Punishment*, January 2001.

⁵⁰ Carmel Shalev, "Collective Punishment in the West Bank and the Gaza Strip" (Jerusalem: 1990), p. 18.

⁵¹ See, for example, *Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories*, presented to the U.N. General Assembly, October 18, 1994, U.N. Doc. A/49/511, paragraphs 349-399.

⁵² Hague Regulations, *supra* note 5.

⁵³ Fourth Geneva Convention, Article 64, *supra* note 6.

⁵⁴ *Ibid*.

⁵⁵ Commentary to the Fourth Geneva Convention, *supra* note 13, p. 367.

⁵⁶ Although it may be argued that prolonged curfews may have served to prevent an intangible number of

security breaches, Shalev has pointed out that “the efficacy of a given measure in furthering a security interest, even if proven, does not in itself serve as a test for its lawfulness,” *supra* note 50, p. 15.

⁵⁷ B’tselem, *Lethal Curfew*, *supra* note 48, p. 7.

⁵⁸ See Shalev, *supra* note 50, pp. 23-26.

⁵⁹ See Curfew Tracking, at www.palestinercs.org, last visited October 2003.

⁶⁰ *Ibid.*

⁶¹ Article 43, per the authentic French text (“l’ordre et la vie public”), see *supra* note 11.

⁶² Article 46.

⁶³ A curfew imposed in the H2 area of Hebron applied to 30,000 Palestinians but not to the 500 inhabitants of an Israeli settlement in that area; see Human Rights Watch (HRW), *World Report 2002* (New York: 2002), p. 442.

⁶⁴ B’tselem, *Lethal Curfew*, *supra* note 48, p. 12.

⁶⁵ See Jorene Soto, “The Application of Education Rights in the Occupied Territories” *Florida Journal of International Law*, Vol. 13, 2001, pp. 215-216.

⁶⁶ HRW has described these suicide bombings as “crimes against humanity.” See HRW, *Erased in a Moment: Suicide Bombing Attacks against Israeli Civilians*, November 2002; see also Amnesty International, *Without Distinction: Attacks on Civilians by Palestinian Armed Groups*, AI-index: MDE 02/003/2002, July 2002.

⁶⁷ Associated Press Report, *Israel Closes Palestinian Universities in Response to Bombings*, January 6, 2003.

⁶⁸ LAW – The Palestinian Society for the Protection of Human Rights and the Environment, *Weekly Round-up*, January 9-15, 2003. Available at: <http://www.reliefweb.int/w/rwb.nsf/s/9C176729488F220385256CAF00767ED6>.

At the time 2,500 students were registered at the Palestinian Polytechnic and over 4,000 at Hebron University.

⁶⁹ *Ibid.*

⁷⁰ Agence France-Presse, *Israeli Army Stages Massive Raid into Hebron, Violence Sweeps Territories*, January 30, 2003. Available at: <http://www.reliefweb.int/w/rwb.nsf/s/9CE46E7C4E7237EFC1256CBE005C996B>.

⁷¹ *Supra* note 6.

⁷² See, for example, General Assembly Resolution 44/47, December 8, 1989.

⁷³ See HRW, *World Report*, *supra* note 63, p. 442.

⁷⁴ See Amnesty International, *Israel/Occupied Territories: The International Community Must Act to End Israel’s Policy of Closures and House Demolitions*, AI Index MDE 15/066/2001, July 18, 2001.

⁷⁵ See Samira Shah, *The By-Pass Road Network in the West Bank: An Analysis of the Effects of the Network on the Palestinian Territories*, Al-Haq (1997).

⁷⁶ HRW World Report, *supra* note 63, p. 443; Amnesty International, *supra* note 74.

⁷⁷ ICRC, *Israel and the Occupied/Autonomous Territories: The ICRC Starts its “Closure Relief Programme,”* Press Release, Tel Aviv, February 26, 2002.

⁷⁸ *Supra* note 63, p. 443.

⁷⁹ Peter Beaumont and Orly Halpern, “Suicide Bomber Kills 19 in Holiday Horror,” *The Observer*, October 5, 2003, pp. 1-2.

⁸⁰ B’tselem argues that “internal closures have been imposed selectively as punishment for violent acts committed by one or more of the community’s residents,” see B’tselem Report, *supra* note 48, p. 8.

⁸¹ *Report of the Special Rapporteur of the Commission on Human Rights, John Dugard, on the Situation of Human Rights in the Palestinian Territories Occupied by Israel since 1967, Submitted in Accordance with Commission Resolution 1993/2 A, Advanced Edited Version*, September 8, 2003, E/CN.4/2004/6, p. 9.

⁸² Commentary to the Fourth Geneva Convention, *supra* note 13, p. 337.

⁸³ Article 33(1), *supra* note 6.

⁸⁴ Commentary to the Fourth Geneva Convention, *supra* note 13, p. 226.

⁸⁵ Haim Weiss, “A mission too far,” *The Guardian*, May 6, 2002, p. 14.

⁸⁶ *Supra* note 81, p. 2.