

WHERE VILLAGES STOOD

ISRAEL'S CONTINUING VIOLATIONS OF INTERNATIONAL LAW IN
OCCUPIED LATROUN, 1967-2007



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Al-Haq

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*To the people of 'Imwas, Yalo and Beit Nouba, and to all Palestinians
who remain displaced from their homes, their villages, their land.*

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Preface

Hundreds of metres separate you from your lands and the place your loved ones are buried, but you are unable to reach them because of military orders issued by a person and power that does not give any weight to your dignity, your needs or your rights. Rather, that foreign power persists in seeking to aggravate you and erode any hope that you may have of returning in the future. This is oppression. The people of the Latroun villages live this reality everyday, like millions of their fellow Palestinians who were forced to leave their land by Israel, finding themselves refugees elsewhere in Palestinian territory or scattered across international borders to the four corners of the world.

This study sheds light on the suffering of tens of thousands of Palestinians whom, since 1967 to this day, are prevented from returning to their villages in Latroun, while at the same time the ruins of their homes are built upon by an Occupying Power the deep-rooted Palestinian history of the land is concealed by parks for Israelis to enjoy their barbecues, masking the crimes and human rights violations committed. Complicit in these violations are organisations based in Canada, a modern democracy which has ratified the principle instruments of international human rights and humanitarian law, which and pushed for the establishment of the International Criminal Court.

Al-Haq has developed this study through a long and painstaking process of collecting information that is unavailable in any other study of its kind. We have had the benefit of accessing official Israeli archives containing documentation related to the crimes committed in the Latroun villages. The process involved detailed research and translation, as well as interviews of individuals who participated in or were eyewitnesses to the crimes.

The forced displacement of populations is an international crime that continues to be committed if the population remains displaced and prevented from returning to their homes or property, not least where it is committed for political ends. However, the aim of this study is not limited to the documentation of an international crime, but to also disclose the policy that stands behind it, and to place evidence in the hands of victims seeking justice, in the hope that the opportunity will one day arise for the perpetrators and architects of this crime to be held accountable. The question remains as to how realistic this hope is in light of the inability of third states to fulfill their clear obligations under international law. Unfortunately, political interests often prevail over the rules, principles and obligations of law, making the commission of human rights violations and international crimes a daily occurrence in the Occupied Palestinian Territory and other parts of the world. Perseverance in the hope of justice requires unwavering commitment and diligent work in order to keep the candle alight in the defence of human rights.

This study would not have seen the light of day but for the sustained effort and dedication of many people, both within and outside of Al-Haq. Special thanks, however, must be extended to our legal researcher John Reynolds for his efforts in coordinating, researching and writing the study itself.

Shawan Jabarin

General Director

Al-Haq

I. INTRODUCTION

2007 marks the 40th anniversary of Israel's belligerent occupation of the West Bank, including East Jerusalem, and Gaza Strip, together comprising the Occupied Palestinian Territory (OPT), with the meaningful exercise of the right of the Palestinian people to self-determination seeming increasingly distant. The pillar on which the law of occupation rests is that an occupying power is vested with only a temporary authority in order to preserve the status quo and minimise disruption of the lives of the occupied population until the occupation ends. In the case of Israel's prolonged and continuing occupation of the OPT, however, the danger arises that the occupation has become the status quo itself. The legality of such an occupation is therefore highly questionable, especially in light of the fact that the current Israeli occupation regime, in the formulation and implementation of its practices and policies, "has acquired some of the characteristics of colonialism and apartheid."¹

In the 40 years since a "messianic, expansionist wind swept over the country"² of pre-1967 Israel, its occupation of the OPT has developed into an institutionalised regime of systematic oppression and control. This has reached its nadir since the outbreak of the second Palestinian *intifada* in September 2000, with pervasive human rights violations becoming increasingly endemic and grave breaches of international humanitarian law increasingly rife. Israel's 'land grab' policy, however, has been consistently prevalent since the moment its troops entered the West Bank in June 1967.

Israel's appropriation of Palestinian land following the Six-Day War in June 1967 amounted to some 400 square kilometres pilfered from displaced persons and refugees.³ Palestinians in 'border areas' close to Israel were then, and continue to be, particularly vulnerable to land expropriation, property destruction and arbitrary dispossession. Nowhere was this more evident than in the three villages of the part of the West Bank known as the Latroun salient, which protrudes into Israel roughly 20 kilometres north-west of Jerusalem. In 1967, those villages – 'Imwas, Yalo and Beit Nouba – saw their entire populations of just over 10,000 people forcibly transferred, their houses and buildings completely levelled, and their land appropriated by Israel.

That the Latroun area of the West Bank has been targeted since 1967 for effective annexation by Israel is clear from the actions of the Occupying Power in establishing what it hopes will be irreversible 'facts on the ground.' A variety of means – appropriation of land, destruction of property, direct and indirect forcible transfer of people, implantation of settlements – have been employed in Latroun and elsewhere to achieve the same end: the establishment of absolute Israeli control over significant tracts of Palestinian land. For reasons that will be elucidated in this study, it is submitted that the Latroun area was targeted by Israel even before the occupation of the West Bank began.

Seeking to demonstrate the link between the policies initiated by the Israeli occupying authorities in 1967 and continuing in 2007, this study examines some of the defining attributes of Israel's occupation of the Palestinian territory through the lens of the Latroun villages. Drawing on field documentation and historical research conducted by Al-Haq, the study first intends to provide a comprehensive factual account of what has happened in 'Imwas, Yalo and Beit Nouba since June 1967. In this regard, assistance from Israeli organisation Zochrot in uncovering documents in Israeli political and military archives, as well as conducting interviews with former Israeli soldiers who participated in Israel's military operations in Latroun, proved invaluable.

¹ *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, John Dugard, 29 January 2007, UN Doc. A/HRC/4/17, para. 62.

² Benny Morris, *Righteous Victims: A History of the Zionist-Arab Conflict, 1881-2001* (New York, Vintage Books, 2001), p. 329.

³ Terry Rempel, 'International Protection and Durable Solutions' in Nur Masalha (ed.), *Catastrophe Remembered: Palestine, Israel and the Internal Refugees* (London/New York, Zed Books, 2005), p. 269.

The purpose of the legal analysis component of the study is to assess the legality, under international law, of the practices adopted by Israel in the Latroun villages, in particular property destruction and population transfer, and the subsequent appropriation of the land of those villages in order to pursue its own settlement construction and territorial annexation agendas. Where such actions amount to violations of international law, certain legal consequences arise – the rights of the residents with respect to their land; the responsibility and obligations of Israel and its individual agents for the perpetration of violations, as well as of those third parties whose acts or omissions render them complicit in illegal acts; and the legal duties incumbent on third states and the international community with regard to upholding international law. The study will also seek to explore whether the forcible transfer of the residents of the Latroun villages, who remain displaced to this day, can be said to amount to an ongoing or continuing crime under international law.

The Latroun enclave of the West Bank



Map: Israel/West Bank; with Latroun area circled

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II. THE STORY OF THE LATROUN VILLAGES

A. DESTRUCTION AND DISPLACEMENT DURING THE 1967 SIX-DAY WAR

Israel's premeditated design to destroy the three villages of Latroun was implemented during and following the Six-Day War. However, the seeds which were to ultimately sprout into this plan were sown in the first Arab-Israeli war, which followed David Ben-Gurion's declaration establishing the State of Israel on 14 May 1948. The strategic value of the Latroun area, overlooking Jerusalem and holding a dominant position above the old Tel-Aviv-Jerusalem highway, jutting irritatingly into the side of the territory controlled by the fledgling Jewish state, was afforded significant weight by both sides. Israel's forces suffered two major defeats in 1948 – one in and around the Old City of Jerusalem, and the other in Latroun, where long and gruesome battles were fought and lost, and engrained in the collective psyche of the Israeli military.

The battle for Latroun in 1948 was "vitaly connected to the battle for Jerusalem,"⁴ with Israeli forces seeking to gain control of the Latroun area so as to be able to provide relief to the besieged Jewish community of Jerusalem. With the last of the British troops departing from Mandate Palestine upon the declaration of the establishment of Israel, the Latroun area came under the control of the Arab Legion⁵ on 17 May 1948, meaning the road from Tel Aviv to Jerusalem would remain closed. This prompted serious fears among the Israeli leadership that without supplies and reinforcements, Jewish-controlled West Jerusalem would fall to the Arab forces. Thus, the decision was made that control must be taken of Latroun by attacking the Arab Legion, even though this meant breaching a tacit ceasefire accord which Israel's leaders had reached with Jordan's King Abdullah. Three times during the three weeks following 17 May 1948 the Israeli military forces attacked the area, and three times they were repelled, with heavy losses.

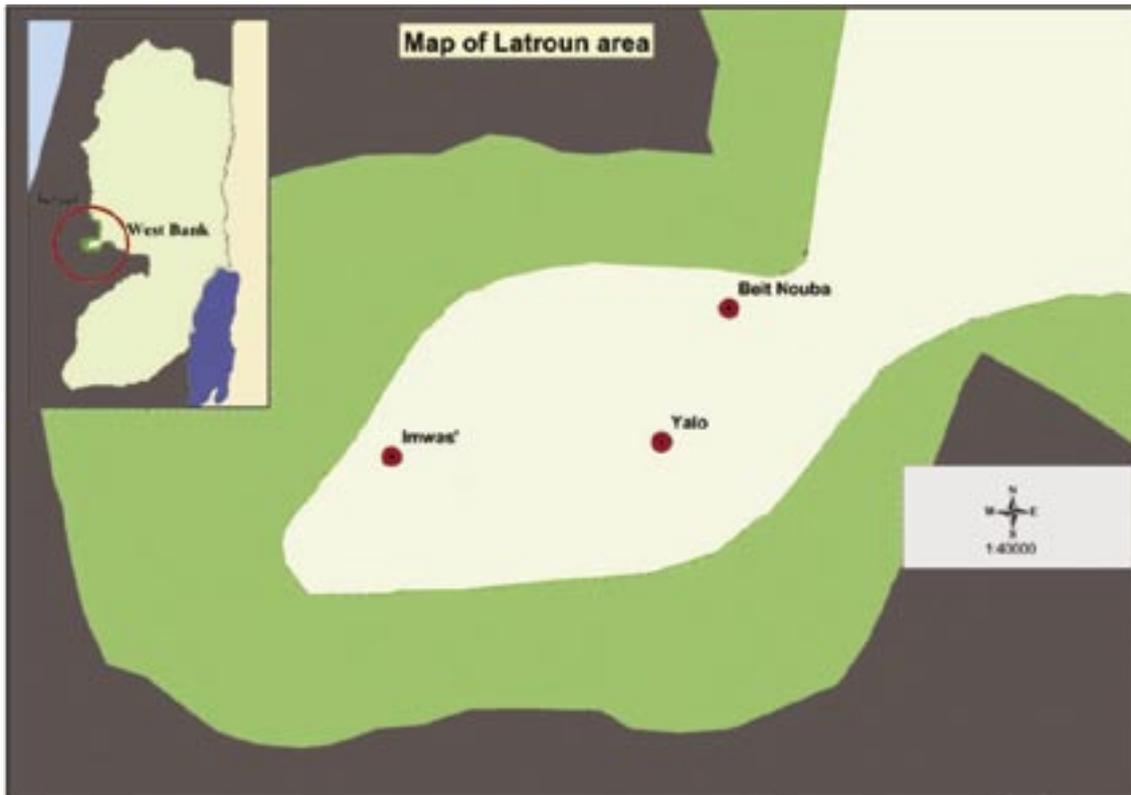
Arab control over the area was thereby preserved, and the Israeli authorities were forced to construct an alternative route around Latroun to facilitate access from Tel Aviv to Jerusalem. Despite further Israeli assaults on the area during *Operation Dani* in July 1948, the situation remained essentially unchanged by the time the armistice agreements were signed between Israel and Jordan in 1949, and so Latroun remained an enclave on the West Bank side of the Green Line,⁶ separated from Israel by a buffer zone, a 'No Man's Land.'⁷

⁴ See *supra* note 2, p. 226.

⁵ Subsequently renamed the Royal Jordanian Army.

⁶ The Green Line refers to the 1949 Armistice Line separating Israel and the West Bank. See map above.

⁷ A small Palestinian village known as al-Latroun fell within this no man's land, and as a result of the armistice agreements its residents were forced to move to neighbouring 'Imwas, outside the buffer zone. See Walid Khalidi (ed.), *All That Remains: The Palestinian Villages Occupied and Depopulated by Israel in 1948* (Washington DC, Institute for Palestine Studies, 1992), p. 393.



Map: Latroun area post-1948; showing the three villages in the West Bank, and No Man's Land (area marked in green) separating the West Bank from Israel. © Al-Haq/Mapping & GIS Dept., Arab Studies Society

The Arab Legion had defended the area “so tenaciously that the battle here would be engraved in the collective memory of the Israeli armed forces as its biggest defeat in the war.”⁸ Indeed, the battles of Latroun and the relatively large number of casualties sustained by Israel “were to go down in Israeli military mythology as prime examples of ill-planned attack and of waste of manpower and matériel,”⁹ while at the same time providing ammunition to fuel the fire necessary to preserve the appetite to exact revenge should the opportunity arise.

In 1967 that opportunity did come. General Uzi Narkiss, head of Israeli military Central Command, responsible for the West Bank front, described the operation to destroy the villages of Latroun and take complete control of the area as “a sort of revenge” for “the difficult souvenirs of '48.”¹⁰ Israeli historian Ilan Pappé notes that the “bitter memory” of 1948 provoked “feelings of revenge” which triggered a retaliation in 1967 “directed not towards the Jordanian [army], but towards the Palestinians.”¹¹ This retaliation was meted out in spite of evidence, as asserted in the aftermath of the Six-Day War by then Israeli Minister of Health, Israel Barzilai, that between 1948 and 1967 the Nachshon kibbutz on the Israeli side of the Green Line generally had “good neighbourly relations with the residents of the Latroun villages, and that there was good behaviour on their part,”¹² contrary to the claims of Minister of Defence Moshe Dayan that the villagers had posed a security threat to Israel.

⁸ Ilan Pappé, *The Ethnic Cleansing of Palestine* (Oxford, Oneworld Publications, 2006), p.169.

⁹ See *supra* note 2, p. 226.

¹⁰ Trish Woods, *Park With No Peace* (Canada Broadcasting Corporation, 1991).

¹¹ See *supra* note 8, p. 169.

¹² The Israel State Archive, *Protocols of the Confidential Meeting of the Government of Israel* [Unofficial Translation], 25 June 1967, ISA Ref. NA/SHCZ, p. 44. Note that there are stories of incidents of minor bickering over agricultural land between the Palestinian villagers on one side and the Israeli kibbutzniks on the other, but no armed hostilities.

That the incentive for the destruction of 'Imwas, Yalo and Beit Nouba contained an element of revenge for Israel's defeat in 1948 is evident. It was not the sole impetus, however. The supposed strategic importance of the area was also a decisive force driving Israel's desire to establish its full control over Latroun. However, this may have been motivated by Israel's desire to expand its borders. After the drawing of the Green Line in 1949, "[f]or years, Israel tried unsuccessfully to reach an agreement with Jordan to improve [sic] the border in the Latroun area."¹³ Then, in 1963, the Israeli army came up with "a plan code-named *Whip*, to occupy the West Bank, including East Jerusalem. A more limited proposal, code-named *Mozart*, involved "grabs" – takeovers of various spots that were not controlled by Israel at the time, such as ... Latroun, on the road to Jerusalem, and other areas."¹⁴

Thus, the objective to impose permanent Israeli control over Latroun had lingered since 1948, and would be realised, if necessary, by military action and eradication of the villages should the opportunity arise. Furthermore, "[t]he destruction, it was understood, would also facilitate Israel's retention of the [Latroun] salient under any future peace settlement."¹⁵ In the eyes of the upper echelons of the Israeli military, purging the area of its Palestinian population would not only punish the inhabitants for the actions of the Jordanian army in 1948, it would also deter any future resistance in the area and deprive the 'enemy' of a foothold in a part of the West Bank from which Israel could be especially vulnerable to attack.

And so when the armed conflict broke out in June 1967, the Israeli army did not hesitate to seize the opportunity created by the war to cleanse the Latroun region of its Palestinian inhabitants, to eradicate their villages from the face of the earth and to assert Israeli control over the area. The war started on 5 June 1967 when Israel's air force launched a devastating offensive in the Sinai Peninsula to wipe out most of Egypt's air force on the ground in one fell swoop. Jordan was then drawn into the war later that day. According to Uzi Narkiss, following attempted dialogue with Jordan over the course of 5 June 1967, Moshe Dayan, then Israel's Minister of Defence, confirmed at 10:20 pm that night to his military leaders that Israel was abandoning dialogue with the Jordanians "and at 10:50 pm the decision was taken to occupy Latroun. It was received by the command approximately one hour later."¹⁶ This was the green light the Israeli military had been waiting for. Narkiss admitted, "[t]he plan to occupy Latroun had already been prepared ahead of time by the Central Command."¹⁷ Tank platoons and commando units were deployed and, after minor setbacks due to the marshy nature of the terrain west of Latroun, "by 4:00 am [on 6 June 1967] all of the primary positions were taken."¹⁸

What ensued in Latroun is best described through the eyes of those who experienced it first hand – the Palestinian residents of 'Imwas, Yalo and Beit Nouba, and the Israeli soldiers from the units that emptied and destroyed those villages. Ahmad 'Ali Mahmoud 'Isa from Beit Nouba recalls the initial news filtering through that an Israeli invasion of the area was imminent:

I remember that indications of an impending Israeli attack on the village started on a Monday (5 June 1967). It was harvest season and I was with my mother and father when people started telling each other that there was going to be an Israeli invasion in the area and that residents who were in the fields should go back home. At dusk, my family, relatives and I gathered in one big house called "al-Balad." My uncle, the head of the family, left to get information. He returned with news that the Jordanian army had withdrawn from the area that morning (Monday) at 2:00 am. On the morning of Tuesday 6 June we heard that the Israeli army had invaded the neighbouring villages of 'Imwas and Yalo and had started expelling people by force.

¹³ Tom Segev, *1967: Israel, The War, and the Year that Transformed the Middle East* (New York, Metropolitan Books, English edition, 2007), p.176.

¹⁴ *Ibid.*, p. 175-176.

¹⁵ See *supra* note 2, p. 328.

¹⁶ Uzi Narkiss, *The Liberation of Jerusalem* (Tel Aviv, Am Oved Publishers, Hebrew Edition, 1976), p. 190.

¹⁷ *Ibid.*, p. 190.

¹⁸ *Ibid.*, p. 191.

Extract from Al-Haq Affidavit 2494/2005¹⁹

Given by Ahmad 'Ali Mahmoud 'Isa (resident of Bitouniya, Ramallah Governorate, West Bank; originally from Beit Nouba)

This significant fact – that the Jordanian military, knowing it would likely be outnumbered in Latroun and prioritising its defence of Jerusalem, had withdrawn its troops from the area on the eve of the impending Israeli invasion – was confirmed by witnesses on both sides. Ahmad Abu Ghosh, from 'Imwas, was one such witness:

On Tuesday 6 June 1967, when I was 14 years old, as I was sleeping in my family's home located on the eastern side of 'Imwas, my father woke me up at about 4:00 am and said: "Get up... get up... put on your clothes... we have to leave". I got up and found all my family awake... I looked out the window and saw a chain of lights coming towards our village from the west... At around 4:40 am, at dawn, my brother Yusef arrived at our house. He is older than me and was a volunteer in the Jordanian army in the Latroun Castle military camp. My brother told me that the Israeli army were about to enter the village and that the Jordanian army had already withdrawn from its military camps. My father decided that we should leave the village immediately and go to Beit 'Our village. We carried some clothes but left without taking any food or water, and left all the furniture. We proceeded towards the road of that would take us to Yalo village. We took this road because it is further from the border with Israel and the soldiers would not see us. We walked approximately three kilometres before we reached Yalo village. I did not see any Israeli soldiers. I only heard the sounds of explosives and occasionally that of bullets. I saw dozens of civilians both behind and in front of us.

Extract from Al-Haq Affidavit 3378/2007

Given by Ahmad Hasan Abu-Ghosh (resident of Ramallah city, Ramallah Governorate, West Bank; originally from 'Imwas)



Palestinian villagers fleeing the Latroun area during the Six-Day War

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¹⁹ All Al-Haq affidavits cited are available in full at www.alhaq.org.

Thus, two factors are very clear: that there was no resistance from the Jordanian military in Latroun, and that the residents of the villages began to take flight in the early hours of 6 June 2007, as soon as they could see the lights of the Israeli tanks approaching. Those who did not flee immediately, but who stayed in their homes or sought refuge in sanctuaries such as the Latroun monastery, began to be expelled, under duress, upon the arrival of the Israeli forces in the villages between 4:30 and 6:00 am. They were ordered to start walking in the direction of Ramallah, approximately 20 kilometres away, and in many cases given no time to gather clothes, food or water for the journey:

At dawn the following morning, 6 June 1967, some of the nuns went outside to inform the Israeli soldiers that several residents of 'Imwas village were present inside the monastery. The soldiers asked us all to get out. After we had done so, we were told by one of the Israeli captains to walk along the road to the city of Ramallah. He told us not to return to our houses and threatened to kill us if we did ... Thus, we were expelled on Tuesday 6 June 1967. The Israeli soldiers were lined up on both sides of the road and would admonish anyone who asked for permission to go to their house to bring milk or food for their children. I was one of those who asked as I had my wife and three children to look after. My eldest child was five years old, the second was three years old and the youngest was eight months old. My children were barefoot and half-naked. We walked on foot between the Israeli jeeps and tanks towards Beit Nouba and then to Beit Liqiya. There, the Israeli soldiers found a Jordanian soldier attempting to surrender. They started to beat him in front of everybody and then shot and beheaded him.

Extract from Al-Haq Affidavit 2495/2005

Given by Nihad Thaher Abu-Ghosh (resident of Ramallah city, Ramallah Governorate, West Bank; originally from 'Imwas)

The presence of Arab combatants in the vicinity of Latroun was limited to isolated examples of individual or small groups of Jordanian soldiers or Egyptian commandos left stranded in the area, either hiding or attempting to surrender upon the arrival of the Israeli troops. Those who were not killed were promptly captured.



Egyptian commando taken prisoner of war by Israeli forces in Latroun area during Six-Day War

© Yosef Hochman

The forced displacement of the villagers of 'Imwas, Yalo and Beit Nouba continued over the course of 6 and 7 June 1967, until the majority of the residents were gone. When Itzik Hadas and three of his companions (including photographer Yosef Hochman) from the Harel kibbutz on the Israeli side of the Green Line went to explore the area in search of a missing flock of sheep they found the first village they entered, Yalo, "emptied of its residents, save for an old man or woman sitting in a yard here or there, not comprehending what was happening to them ... The tables in the homes were set, as if people were about to eat ... When we asked a few soldiers who were passing what had happened, they told us that the people 'went away.' That was the response."²⁰ A small number, however, whose houses were on the outskirts of their respective villages, had stayed behind. One such person, 'Aysha 'Ali Hammad, from Yalo, recounts her experience of what happened on 9 June when some residents who had fled previously managed to return to the village:

On the fourth day, I believe it was 9 June 1967, several people who had fled the village returned. In the evening, my husband came home and said, "the Israelis are in the village and they are calling through loudspeakers." The Israelis were saying, "all residents of Yalo must leave to Ramallah. Those who don't will be in danger." I got my three children ready, but couldn't carry anything, as I was six months pregnant. We walked to the nearby village of Beit Nouba, only one kilometre from Yalo. As I entered Beit Nouba, I saw several bulldozers guarded by Israeli soldiers razing houses in the village to the ground.

Extract from Al-Haq Affidavit 3477/2007

Given by 'Aysha 'Ali Hammad (resident of Bitouniya, Ramallah Governorate, West Bank; originally from Yalo)

Thus, those who had remained were this time forced to leave, as well as those who had briefly returned. The rest of the residents were in the environs of Ramallah, on the hunt for food and shelter and recovering from, in most cases, two days of walking in intense heat, with little or no food or water.



The long road to Ramallah: residents of the Latroun villages expelled from their homes

© Yosef Hochman

²⁰ Interview with Itzik Hadas, member of Harel kibbutz, Israel. (Zochrot, 29 July 2007).

Unbeknownst to those in Ramallah, the destruction of their houses was already underway, and so the hope they were given by Israeli announcements in the city upon the conclusion of the war – that those displaced from their villages could now return – was a false one:

On 10 June 1967, I heard the Israelis saying in Arabic through the loudspeakers that everyone who had left his village could return. My brother Yousef came in the morning and discussed with my father about returning to the village. My father told him to go back to check the situation and come back to tell us. My brother Yousef left with a number of people from our village and the neighbouring villages. He returned in the evening and told us that he could not reach the village because the Israeli soldiers who were positioned at the entrance of Beit Nouba had opened fire on them and forced them to flee again.

Extract from Al-Haq Affidavit 3378/2007

Given by Ahmad Hasan Abu-Ghosh (resident of Ramallah city, Ramallah Governorate, West Bank; originally from 'Imwas)

There were at least ten Palestinian villages west of Ramallah which were forcibly evacuated by the Israeli military during the Six-Day War. The Israeli announcements that the residents could return to their villages in the aftermath of the war was applied to all of those villages except 'Imwas, Yalo and Beit Nouba. Residents of the other villages which are not located quite so close to the Green Line, such as Beit Sira and Beit Liqiya, were allowed to return, while the residents of the three Latroun villages were turned back by the Israeli military along the road to their villages.

It was only then, in the course of attempting to return, that the villagers of 'Imwas, Yalo and Beit Nouba began to realise the extent of what was happening – friends and relatives had died or been killed along the roads out of the villages, and houses demolished, including some allegedly destroyed over the heads of their elderly inhabitants:

We tried to enter the village from several locations, but we were prohibited from doing so by the soldiers. Accordingly, we were forced to take refuge in Beit Sira, which is close to our village. My father and I snuck to our house in Beit Nouba in order to bring back food, oil and mattresses. We saw horrible things along the way, namely several men and women who had been killed: Lutfi Mahmoud Hasan Abu- Rahhal, Mahmoud 'Ali Baker, who was blind and who appeared to have been killed as a result of his house being demolished while he was inside it The bodies of another three men who were also dead had been thrown amongst the trees: al-'Abed 'Ayyad, 'Isa Muhammad and 'Abdallah Zuhdi.

Extract from Al-Haq Affidavit 2494/2005

Given by Ahmad 'Ali Mahmoud 'Isa (resident of Bitouniya, Ramallah Governorate, West Bank; originally from Beit Nouba)

The Israeli forces wasted no time in effecting the destruction the villages, with Itzik Hadas recalling that no more than a week after the initial occupation of Latroun on 6 June 1967, “a great number of the houses were already gone ... the soldiers in the area told us that there was a plan to destroy the entire place. This was in process. When we asked why, we did not receive an answer.”²¹

As will be confirmed below, the order given to the Israeli soldiers assigned the mission of tearing down the property of 'Imwas, Yalo and Beit Nouba was that the villagers must not be allowed to see the demolition of their houses being carried out. Hence they were forced from their land and blocked from returning to the villages. As a result, there were very few Palestinians who actually witnessed

²¹ *Ibid.*

the destruction of the houses in action. Zakariya al-Sunbati from nearby Beit Sira was among them:

[O]ur father asked us to go the Latroun villages and look for agricultural produce or food of any kind, since we were only young children and the Israeli soldiers would not use force against us; whereas there were many stories circulating that the soldiers were killing the Palestinian men who tried to return to the Latroun villages. When we arrived in Beit Nouba we found many of the houses completely destroyed. While walking in the village I saw part of a dead man's body sticking out from under the rubble of a demolished house. I also saw two Israeli bulldozers demolishing the houses of Yalo village ...

We stayed in Kufr Ni'ma for two consecutive nights before returning to Beit Sira upon hearing an Israeli military jeep driving through the area and telling residents, via loud speakers, to return to their villages. It was 10 June 1967 when we returned to Beit Sira. I remember seeing Israeli soldiers, accompanied by tanks and military jeeps, imposing curfew on the villages every night at 6:00 pm. From my village I could see and hear the Israeli army destroying the buildings which belonged to Beit Nouba and Yalo villages. I saw thick dust rising from the demolished buildings, and I could hear the sound of the explosives they used for the demolitions.

Extract from Al-Haq Affidavit 3700/2007

Given by Zakariya Muhammad al-Sunbati (resident of Beit Sira village, Ramallah Governorate, West Bank)

Three important factors must be noted regarding the destruction of the villages. Firstly, the above affidavits correlate with the admission of Moshe Dayan that the houses of the Latroun villages were destroyed "not as a result of battle, but of punitive action by Israeli soldiers."²²

Secondly, Zakariya al-Sunbati alludes to the two different methods by which the houses of the villages were demolished – some of them flattened by bulldozers; others blasted with explosives. From the testimonies of Israeli soldiers involved in the operations in Latroun, it appears that the bulldozers were used primarily in the first demolitions initiated by 7 June 1967, and possibly as early as 6 June 1967. The fact that the bulldozers were ready and deployed so quickly provides further evidence that the destruction had been predetermined.



Israel

osef Hochman

²² Moshe Dayan, *Story of My Life* (London, Weidenfeld & Nicolson, 1976), p. 397.

Units of the Combat Engineering Corps that were not involved in the initial occupation of Latroun and transfer of its inhabitants were sent to the area towards the end of the war, on 8-9 June 1967. According to testimonies taken from members of these units, they found the area mostly empty of its residents (apart from, notably, several elderly people), and with some of the houses already destroyed. These particular units were tasked with placing a mine in the centre of every house that remained standing, connecting it to explosives, and detonating them. This process lasted several days and was meticulously undertaken, with particular care expended to ensure that the exact quantity of explosives necessary to collapse the houses inwards, rather than blasting them outwards, was used.²³



Israeli soldiers and kibbutzniks preparing explosives to demolish the houses in Latroun

© Yosef Hochman

Finally, it is important to note the types of property that were destroyed – not just the houses of the three villages but their police station, agricultural association, wells, medical clinic, schools, mosques and many archaeological landmarks.²⁴

Perhaps one of the most poignant accounts of what happened in 'Imwas, Yalo and Beit Nouba comes from the pen of an Israeli soldier involved in carrying out the orders to transfer the residents and destroy their villages. Amos Kenan was a professional journalist, performing his military service as a reservist in an Israeli combat unit posted in the Latroun area. His description confirms the statements of the residents who attempted to return but were forced to flee once more (while the Israeli bulldozers destroyed their property inside the villages), as well as providing an important insight into the nature of the orders given to the soldiers involved:

The commander of my platoon said that it had been decided to blow up the three villages in the sector – Yalo, Beit Nouba and 'Imwas – for reasons of strategy, tactics, and security. In the first place, to straighten out the Latroun "finger". Secondly, in order to punish these murderers' dens. And thirdly, to deprive infiltrators of a base in future. One may argue with this idiotic approach, which advocates collective punishment and is based on the belief that if the infiltrator loses one house, he will not find another from which to wait in ambush. One may argue with the effectiveness of increasing the number of our enemies – but why argue?

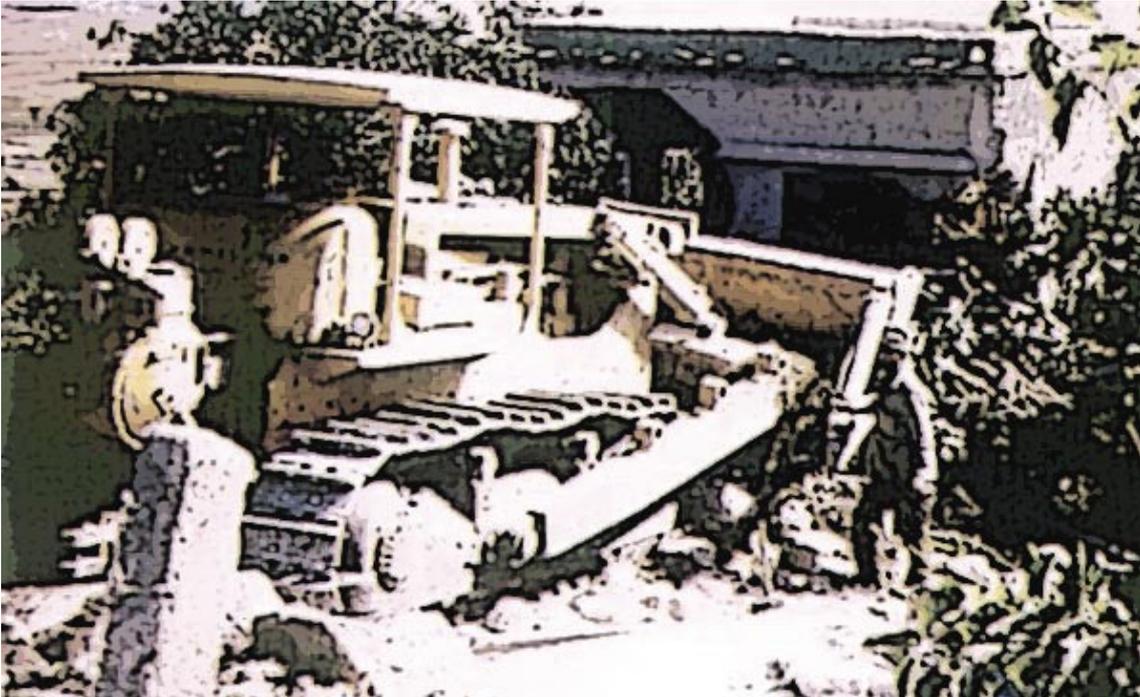
We were told it was our job to search the village houses; that if we found any armed men there, they were to be taken prisoner. Any unarmed persons should be given time to pack their

²³ See Appendix 1: Interview with Alon Gilad, former Israeli soldier involved in the demolition of the Latroun villages (Zochrot, 14 August 2007).

²⁴ See, for example, Al-Haq Affidavit 2494/2005.

belongings and then told to get moving – get moving to Beit Sira, a village not far away. We were also told to take up positions around the approaches to the villages, in order to prevent those villagers who had heard the Israeli assurances over the radio that they could return to their homes in peace, from returning to their homes. The order was: shoot over their heads and tell them there is no access to the village.

... At noon the first bulldozer arrived, and ploughed under the house closest to the village edge. With one sweep of the bulldozer, the cypresses and the olive-trees were uprooted. Ten more minutes pass and the house, with its meagre furnishings and belongings, has become a mass of rubble.



Israeli bulldozer demolishing house, 'Imwas

© Yosef Hochman

After three houses had been rowed down, the first convoy of refugees arrived, from the direction of Ramallah. We did not shoot into the air. We did take up positions for coverage, and those of us who spoke Arabic went up to them to give them the orders. There were old men hardly able to walk, old women mumbling to themselves, babies in their mother's arms, small children weeping, begging for water. The convoy waved white flags.

We told them to move on to Beit Sira. They said that wherever they went, they were driven away, that nowhere were they allowed to stay. They said they had been on the way for four days now - without food or water; some had perished on the way. They asked only to be allowed back into their own village; and said we would do better to kill them otherwise. Some had brought with them a goat, a sheep, a camel or a donkey. A father crunched grains of wheat in his hand to soften them so that his four children might have something to eat. On the horizon, we spotted the next line approaching. One man was carrying a 50-kilogram sack of flour on his back, and that was how he had walked mile after mile. More old men, more women, more babies. They flopped down exhausted at the spot where they were told to sit. Some had brought along a cow or two, or a calf – all their earthly possessions. We did not allow them to go into the village to pick

up their belongings, for the order was that they must not be allowed to see their homes being destroyed. The children wept. Some of our soldiers wept too.

We went to look for water but found none. We stopped an army vehicle in which sat a Lieutenant-Colonel, two captains and a woman. We took a jerry-can of water from them and tried to make it go round among the refugees. We handed out sweets and cigarettes. More of our soldiers started crying. We asked the officers why the refugees were being sent back and forth and driven away from everywhere they went. The officers said it would do them good to walk and asked, "[w]hy worry about them, they're only Arabs?" We were glad to learn that half an hour later, these officers were arrested by the military police, who found their car stacked with loot.

More and more lines of refugees kept arriving. By this time there must have been hundreds of them. They couldn't understand why they had been told to return, and now were not being allowed to return. One could not remain unmoved by their entreaties. Someone asked what was the point of destroying the houses – why didn't Israelis go and live in them instead? The platoon commander decided to go to headquarters to find out whether there was any written order as to what should be done with them, where to send them; and to try to arrange transportation for the women and children, as well as food supplies. He came back and said there was no written order; we were to drive them away.



Displaced residents flee the Latroun villages as an Israeli soldier looks on

© Yosef Hochman

Like lost sheep they went on wandering along the roads. The exhausted were beyond rescuing. Towards evening we learned that we had been told a falsehood – at Beit Sira too the bulldozers had begun their work of destruction, and the refugees had not been allowed to enter. We also learned that it was not in our sector alone that areas were being "straightened out"; the same was going on in other sectors. Our word had not been a word of honour; the policy was a policy without backing.

The soldiers grumbled. The villagers clenched their teeth as they watched the bulldozer mow down their trees. At night we stayed on to guard the bulldozers, but the entire battalion was seething with anger; most of them did not want to do the job. In the morning we were transferred to another spot. No one could understand how Jews could do such a thing. Even those who justified the action said that it should have been possible to provide shelter for the population; that a final decision should have been taken as to their fate, as to where they were to go. The

refugees should have been taken to a new home, together with their property. No one could understand why the fellah [villager] should be barred from taking his oil-stove, his blanket and some provisions.

The chickens and the pigeons were buried under the rubble. The fields were turned to desolation before our eyes, and the children who dragged themselves along the road that day, weeping bitterly, will be the fedayeen [freedom fighters] of 19 years hence. That is how that day, we lost the victory.²⁵

Another Israeli soldier who took part in the operation to destroy the villages later recalled that it was "the blackest hour of my life. Things were done here which should not have been done, and I participated in an action that I shouldn't have been a part of."²⁶ Thus it was clear even to the soldiers who were given orders from their superiors to destroy the three villages that such destruction was unjustifiable. Indeed, several of the Israeli troops refused to carry out the order to demolish the villages, and were subsequently disciplined as a result.²⁷

The destruction was carried out regardless, however, and in spite of the assurances of Uzi Narkiss that "all the Arabs were already out of the villages and, later on, the houses were destroyed,"²⁸ residents of the three villages have uniformly asserted that that several sick and elderly people who were not in fact out of the villages were killed in the course of the destruction. According to Dr. Ismail Zayid from Beit Nouba, now living in Canada:

In the course of the Israeli army's occupation and destruction of my village of Beit Nouba in June 1967, 18 people died under the rubble of their demolished homes because they were too old or disabled to get out of their houses in time, before the Israeli explosives were effected to destroy the houses ... One of those killed was Mohammad Ali Bakr, an uncle of my mother. He was old and infirm, and was buried alive under the rubble of his home in Beit Nouba, not far from ours. My mother also told me that when the Israeli army came to blow up our house, they told my uncle, Hussain Zayid, an elderly and arthritic man whose ability to move was severely limited, that they would first blow up the western part of our house, which was in a walled quadrangle. They said they would then move to destroy the eastern part of the house, and should he still be there, he would not be given the opportunity to leave.

***Statement of Dr. Ismail Zayid, Halifax, Canada, 26 July 2007.*²⁹**

Similarly, Dr. Moussa Abu Ghosh from 'Imwas spoke about the body of his cousin, Hasan Shukri, being found under the rubble that once was his home: "[h]e was nineteen, an invalid, paralysed from polio. They found his wheelchair outside and found his body underneath his house."³⁰ French monk Michel Khoury, from the Latroun monastery, went to 'Imwas two weeks after the war to look for two blind elderly sisters who had not been seen since the war. Upon reaching the site of their destroyed house he was ordered to leave by Israeli soldiers, but confirms that he "smelled the bodies under the ruins."³¹ 'Ali Nimer Salma managed to sneak into his village of Yalo, and testified that by this stage, most, but not all, of the houses had been destroyed. The ruins of a demolished house he entered held a dead body:

²⁵ Amos Kenan, *Israel, A Wasted Victory* (Tel Aviv, Amikam, 1970), p.18-21.

²⁶ Quoted in Eitan Bronstein, 'Restless Park: On the Latrun Villages and Zochrot' (Zochrot, July 2007), p. 18.

²⁷ See Michael B. Oren, *Six Days of War: June 1967 and the Making of the Modern Middle East* (Oxford, Oxford University Press, 2002), p. 307.

²⁸ See *supra* note 10. Although purporting to refute any allegation that civilians were killed inside their houses, this statement is at the same time self-incriminating, removing as it does any potential defence of military necessity for the property destruction.

²⁹ On file with Al-Haq.

³⁰ Quoted in John Goddard, 'Outrage at Emwas,' *Saturday Night*, November 1981, p. 11-13.

³¹ *Ibid.*

After 20 days (towards the end of June), I, together with another resident of my village, went to Yalo through the valleys, mountains and fields. As we reached the Beit Nouba fields, I saw four corpses laid out beside each other. They were: Ibrahim Shu'eibi, al-'Abed Tayeh, Zuheir Zuhdi and 'Isa Abu-'Isa. All of them were from Yalo. I did not examine the corpses because they were swollen. We entered the village at around midnight. We first went to the demolished home of Abu-Wasim where we saw the body of 'Isa Ziyada and more demolished houses. We were both very scared. We both took some stuff from the rubble of his house and left to go back towards Kharbatha.

Extract from Al-Haq Affidavit 3478/2007

Given by 'Ali Nimer Salma (resident of Bitouniya, Ramallah Governorate, West Bank; originally from Yalo)

Although the Israeli military asserts that it endeavoured to ensure that no Palestinian civilians were inside the houses of 'Imwas, Yalo and Beit Nouba when they were destroyed, Moshe Dayan's statement to the Knesset on 21 June 1967 did imply that if there were civilian casualties, this could be justified, as the residents of the villages "were not an objective, neutral population in this war, but part of the Kingdom of Jordan and of the deployment of those forces that began [sic] warfare against Israel ... The civilians in the various villages and their families were partners to this war."³²

No sooner had the war ended than the dividend to be yielded by Israel from the eradication of the Latroun villages was being justified by its officials. On 11 June 1967, then Prime Minister Levi Eshkol declared to a confidential meeting of the Cabinet:

For the first time since the establishment of the state, the security threat to Israel from the West Bank has been removed, and here I am reminded particularly of Latroun, which for us was a worry, as [in 1948] the territory in that area cost us much blood even though in the end it remained on the other side.³³

The erasure of what was left of 'Imwas, Yalo and Beit Nouba by the end of the war continued throughout June 1967. After the war, Amos Kenan presented his testimony to then Knesset member Uri Avnery, who later wrote:

I hurried there. The villages of 'Imwas, Yalo, Beit Nouba ... had already been destroyed almost to their foundations. I still had time to see the bulldozers demolishing the last houses. When I tried to take pictures, I was driven away by the Israeli soldiers. I went from there directly to the Knesset, and pleaded with some high-ranking people to intervene. After they spoke to whoever they spoke to, I was told it was too late. The demolition had been completed.³⁴

Three weeks after the war, Itzik Hadas and his colleagues from Harel kibbutz went back to the area "and found that of the villages nothing remained. Simply nothing ... Only desolation ... stone ruins and rubble which were also razed afterwards ... We tried to get an answer from the officers who were wandering around. If I recall correctly, one of them said, 'these are the results of war.'"³⁵ This wanton destruction, in fact entirely unconnected to the necessities of war, was executed in the weeks following the war completely under the radar of the international community. It was not until September of that year that details of the destruction surfaced in a report of the UN Secretary-General:

³² *Ibid.*

³³ Statement of then Israeli Prime Minister Levi Eshkol, The Israel State Archive, *Protocols of the Confidential Meeting of the Government of Israel* [Unofficial Translation], 11 June 1967, ISA Ref. MZ/SHKCZ, p.4.

³⁴ Uri Avnery, 'Crying Wolf?', *Hagada Hasmatit*, 16 March 2003.

³⁵ See *supra* note 20.

In the Latrun area are located the border-line villages of Emwas, Yalu and Beit Nuba, together containing a population of some 4,000 according to Israeli information, and 10,000 according to information from the refugees. In the same area are located the villages of Beit Likquia, Beit Sira and Beni Hareth, with an estimated total population of 3,300. The first three villages mentioned have been destroyed ... The Israeli Minister of Defence, in his meeting with the Special Representative, stated that he had ordered the destruction of [the Latroun] villages for strategic and security reasons since they dominated an important strategic area. The representative of the State of Israel had informed the representatives of these three villages that it would help their population "to develop other areas."³⁶

Despite such a clear account of the fate suffered by the three villages and their residents appearing in a UN report, the people and media of the outside world remained unaware of the acts perpetrated by the Israeli army in Latroun. British journalist Michael Adams travelled to the OPT after the Six-Day War and wrote a series of freelance articles for *The Guardian*, challenging the myth of Israel's "benign occupation" of the West Bank and Gaza which was prevalent at the time. This culminated in a description of the destruction of 'Imwas, Yalo and Beit Nuba which was initially rejected by *Guardian* editor Alastair Hetherington on the basis that the story must be exaggerated; otherwise, journalists based in Jerusalem would have reported it. The story was only published after an investigation by a Jewish journalist sent by the newspaper proved Adams' report to be accurate in its entirety. Recalling a visit to the Latroun area in early 1968, Adams wrote:

When my companion and I came to Beit Nuba six months after [Amos] Kenan, much had changed. Most significantly, the rubble had disappeared. It had taken the Israelis six months to clear it, in great secrecy; while relays of volunteers were engaged in this macabre task, the authorities closed the approach road to Latrun. When we came there on that January morning in 1968, the road had just been reopened.

Without a guide, I should probably have driven straight through without realising that there had been villages here at all. The demolition squads had been thorough. But when we stopped the car and got out to look, there were plenty of tell-tale signs; it isn't easy, even in six months, to wipe out a thousand years of history without leaving a trace. There were a few pieces of masonry, a broken tile, a twisted rod of steel from some concrete extension and – a sure sign that people had once lived here – the cactus hedges, which the Palestinians use to protect their gardens and orchards against marauders, were starting to grow back. They are very hard to eradicate.³⁷

Some of those cactus hedges still remain, but the only surviving structures from the three villages are the Muslim shrines of Abu-'Ubaydah Ibin al-Jarrah and Mu'ath Ibin Jabal in 'Imwas.

On 28 September 1967, Israel's first Prime Minister, David Ben-Gurion, recorded the following entry in his diary:

Searching through the protocols of the Provisional Government on the debate over the election system, I came across an even more important discussion. On 26 September 1948, I advised the government to attack Latrun ... [and] ... to capture the area from the south of Latrun to the Jordan River. Voting in favor (excluding myself): Fishman, Gruenbaum, Zisling, and Bentov. Against: Rosenblueth, Shapira, Levin, Bernstein, Kaplan, Remez, and Sharett (seven against five). In response to this I said, "There will be tears over this for generations." In the Six-Day War, the IDF put an end to the generations.³⁸

In doing so, of course, it created new generations of Palestinians illegally stripped of their homes and forcibly displaced from their land.

³⁶ Report of the Secretary-General under General Assembly resolution 2252 (ES-V) and Security Council resolution 237 (1967), UN Doc. A/6797, 15 September 1967, §. 58-61.

³⁷ Michael Adams, 'The Road to Emmaus,' *The Independent on Sunday*, 16 June 1991.

³⁸ S. Ilan Troen and Zaki Shalom, 'Ben-Gurion's Diary for the 1967 Six-Day War: An Introduction,' (1999) 4 *Israel Studies* 195, p.219.

B. ISRAEL'S USE OF THE LAND OF THE LATROUN VILLAGES

Proof of the Israeli army's intention to procure lasting control over the land of the Latroun villages came in the immediate aftermath of the Six-Day War, with what are known as "military organising orders" providing, in June 1967, that GOC Central Command was to be in charge of the area west of the Green Line *plus* the Latroun enclave.³⁹ These orders further stipulated that patrols were to be conducted day and night in the area close to the border – west of the Green Line *plus* the villages of 'Imwas, Yalo and Beit Nouba,⁴⁰ and that the mission of the troops was to secure the area *including* the Latroun enclave.⁴¹

As the Israeli occupying forces continued to demolish what remained of the Latroun villages, Moshe Dayan presented a choice to ministers of the Israeli government on 25 June 1967: "the question is whether to return [the Latroun villagers] to their places, or to transform these territories into Israeli territories."⁴² As will be detailed in Section II.C, below, the ministers opted for the latter, and over the subsequent years the Israeli authorities began to put into place facts on the ground in the interest of effecting such a transformation.

i. Mevo Horon Settlement

John Dugard, UN Special Rapporteur on the situation of human rights in the OPT, has recently asserted that the 149 settlements⁴³ housing approximately 460,000 Israeli settlers in the West Bank, including East Jerusalem, along with Israel's exploitation of resources in the West Bank for its own use and the use of the settlers to the exclusion of the Palestinian population, appear to amount to a "form of colonialism of the kind declared to be a denial of fundamental human rights and contrary to the Charter of the United Nations as recalled in the General Assembly's Declaration on the Granting of Independence to Colonial Countries and Peoples."⁴⁴

This declaration "solemnly proclaims the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations."⁴⁵ Similarly, the General Assembly's Declaration on Friendly Relations and Co-operation among States speaks of the duty of every State to promote, through joint and separate action, the realisation of the principle of equal rights and self-determination of peoples through, *inter alia*, "bringing a speedy end to colonialism."⁴⁶ Declaratory of customary international law, these two General Assembly resolutions provide confirmation that colonialism is absolutely contrary to international law. Indeed, since the dismantling of the European colonial régimes during the 20th century, the idea of colonialism is universally acknowledged as being oppressive and undesirable; inimical to the very notion of human rights.

³⁹ Israel Defence Forces and Defence Ministry Archive (IDFA), Military Organising Orders, June 1967, IDFA 901/2/281, section 4.

⁴⁰ *Ibid.*, IDFA 901/2/287, section 5(2).

⁴¹ *Ibid.*, IDFA 901/2/282, section 6(2)(B)(1).

⁴² See *supra* note 12, p. 18.

⁴³ Settlements are defined as organised communities of Israeli civilians established on land in the OPT with the approval and direct or indirect support of the Israeli government. Apart from a few exceptions in East Jerusalem, residence in these communities is not open to Palestinians but only to Israeli citizens and to persons of Jewish descent entitled to Israeli citizenship or residency under Israel's Law of Return. See UN Office for the Coordination of Humanitarian Affairs (OCHA), *The Humanitarian Impact on Palestinians of Israeli Settlements And Other Infrastructure in the West Bank* (July 2007), p.13. The figure of 149 settlements in the West Bank does not include settlement "outposts," which are established, generally by ideological or religious Israeli settlers, without the authorisation of the government of Israel, and of which there are now over 100 in the West Bank.

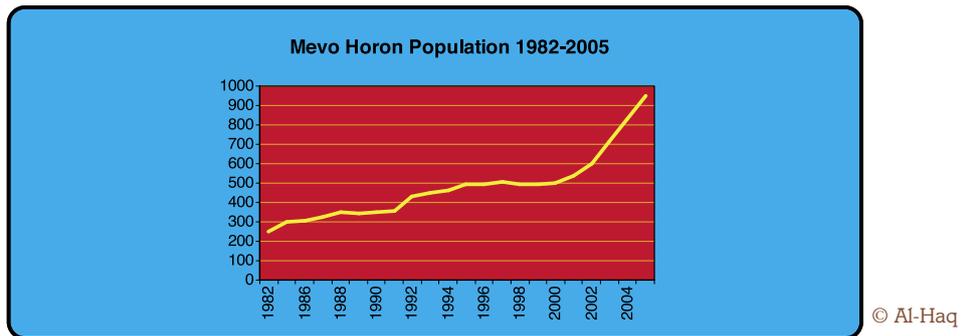
⁴⁴ See *supra* note 1, para. 60.

⁴⁵ UN General Assembly Resolution 1514 (XV), *Declaration on the Granting of Independence to Colonial Countries and Peoples*, 14 December 1960.

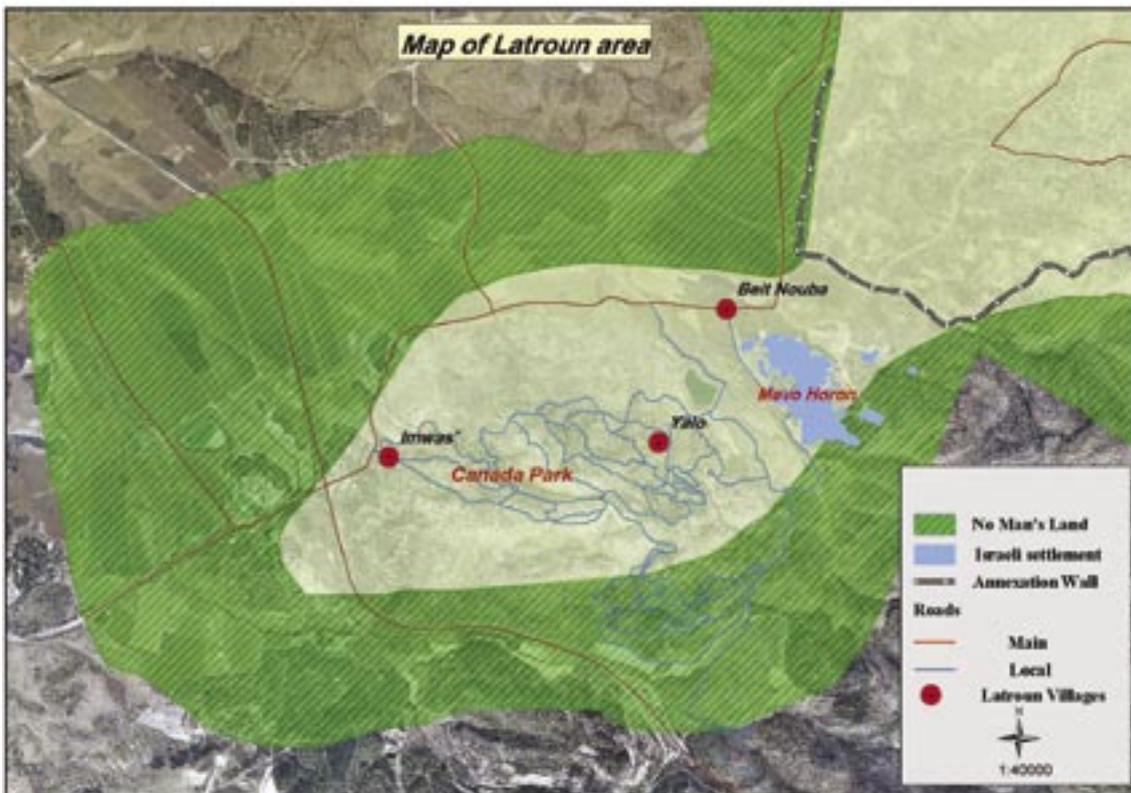
⁴⁶ UN General Assembly Resolution 2625 (XXV), *Declaration on Principles of International Law Concerning Friendly Relations and Co-Operation among States in accordance with the Charter of the United Nations*, 24 October 1970.

The history of settlements in the OPT began in September 1967, a mere three months after Israel occupied the West Bank and the Gaza Strip. Initially, the dominant justification for the creation and the placement of settlements was to redraw the borders of Israel in order to make them more secure and easier to defend. But by the dawn of the 1970's the emphasis had shifted to creating settlements throughout the OPT in order to seize as much land as possible, and cement Israel's control over it.⁴⁷

Mevo Horon was built in 1970, on the land of Beit Nouba village, with the obvious intention of bolstering Israel's claims over the Palestinian area of Latroun, an area of clear strategic interest to Israel. Initially a group of ideological religious settlers living in prefabricated buildings without proper utilities, Mevo Horon has been recently expanding in line with the overall trend of West Bank settlements, its population having almost doubled between 2000 and 2005.⁴⁸



The settlement contains a Jewish religious school and it exploits the surrounding land, to which Palestinian access is banned, for agricultural purposes.



Aerial map showing where the Latroun villages stood in 1967, in relation to where Canada Park, Mevo Horon settlement and the Annexation Wall stand in 2007

© Al-Haq/Mapping & GIS Dept., Arab Studies Society

⁴⁷ See Al-Haq, *Waiting for Justice* (Ramallah, Al-Haq, 2004), p. 138-139.

⁴⁸ See Foundation for Middle East Peace, Settlement Profile: Mevo Horon. Available at <http://tinyurl.com/yvc68z>.



Aerial Photograph: Mevo Horon

© Peace Now

 Total area

 Private Palestinian Land

 "Survey land"

The above aerial photograph shows the settlement of Mevo Horon, on the land belonging to the village of Beit Nouba. The settlement occupies a total of 1,476 dunums⁴⁹ of West Bank land. According to data from the Israeli Civil Administration, at least 670 dunums of this is accepted as being private Palestinian land (unlawfully appropriated by the Occupying Power), while up to a further 806 dunums is considered by the Israeli authorities to be what they call "survey land." This is defined by the Civil Administration as "land whose ownership is still being examined and whose standing still has to be determined."⁵⁰ It is generally used to delineate property where a Palestinian has title to the land, but that title or ownership is being challenged by the State of Israel.

Regardless of whether all of the land on which the settlement of Mevo Horon is built is privately owned or not, the bottom line remains that the settlement is constructed in its entirety on occupied territory. As will be shown in Section III.C, Mevo Horon (like all Israeli settlements in the OPT) is therefore irrefutably illegal under international law.

⁴⁹ A dunum is a unit of area used in the Ottoman Empire and still used, in various standardised versions, in many countries formerly part of the Ottoman Empire. In the OPT, Israel, Jordan, Lebanon and Turkey, one dunum is 1,000 square metres, or 10,764 square feet.

⁵⁰ For further reading and information on this, see Peace Now, *Breaking the Law in the West Bank – One Violation Leads to Another: Israeli Settlement Building on Private Palestinian Property* (Jerusalem, Peace Now, 2006).



Israeli military jeep patrolling area between the Annexation Wall and Mevo Horon

© John Reynolds/Al-Haq

ii. Canada Park

In 1973, Bernard Bloomfield, president of the Jewish National Fund (JNF) of Canada,⁵¹ spearheaded a campaign among Canada's Jewish community to raise C\$15 million to fund the establishment of a recreational park for Israelis. The requisite money was duly donated, and over the course of the following few years, trees were planted, lakes were created, and Bloomfield's vision was realised. The JNF brochure for Canada Park described the park as "a proud tribute to Canada and to the Canadian Jewish community whose vision and foresight helped transform a barren stretch of land into a major national recreational area for the people of Israel."

One detail that the JNF neglected to mention to its potential donors, however, was that the park would be developed in occupied territory, on the site of the destroyed Palestinian villages of 'Imwas and Yalo.

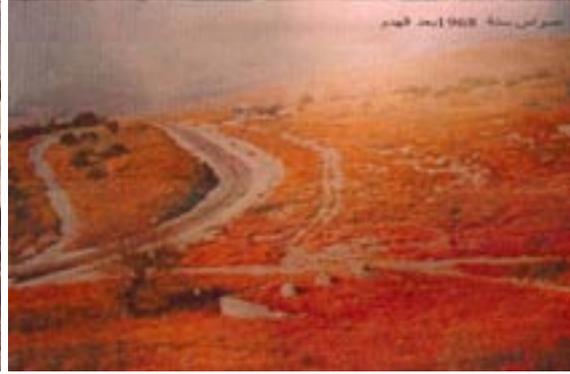
Benny Mushkin, a JNF official who worked in the park, was unconcerned by the history of the land or who may have lived there before 1967: "All we did was take the area that was here, reconstructed it, enhanced it and improved it ... The area is much, much nicer now than it was before."⁵²

⁵¹ The JNF of Canada is a branch of a worldwide organisation, now known as the Keren Kayemet LeIsrael-Jewish National Fund (KKL-JNF) and headquartered in Jerusalem, which was founded as an outcome of the Fifth Zionist Congress in Basel in 1901, for the purpose of raising money from Jewish communities around the world in order to acquire and develop land in Palestine for Jewish settlement and use.

⁵² See *supra* note 10.



1958



1968



1978



1988

Four pictures taken from the same place, with the Abu-'Abaydah shrine in the foreground, showing 'Imwas in 1958, the village completely erased by 1968, and the area forested with the development of Canada Park, 1978/1988.

© Pierre Medebielle/PalestineRemembered.com

The JNF had even initially tried to claim that the park was not located inside the West Bank, with Ewan Goldstein of the JNF of Canada alleging that no money was spent “beyond the 1967 borders.”⁵³ There are obvious reasons to try to bury the truth in a situation such as this, as acknowledged by the Director of the JNF in America: “It is a delicate situation, and one cannot expect an institution [such as the JNF] which gathers money from abroad, to publicise the issue [of the demolition of these villages].”⁵⁴ Ten years after a park for Israelis on Palestinian land was conceived, the JNF continued to refer to Canada Park as being “in Israel”.⁵⁵

This claim, presented by the JNF of Canada in its fundraising campaigns, is consciously misleading. Canada Park in its entirety is built in the occupied West Bank, not in Israel. Inside the entrance of the park, hundreds of metal plates with names of donors and their hometowns in Canada (including numerous prominent public figures, such as Bill Davis, ex-premier of Ontario, and Joe Pantalone, deputy mayor of Toronto) adorn a wall built from stone which the former residents of the Latroun villages maintain is the same stone with which the houses destroyed by the Israeli army in 1967 were built. Some of the donors demanded that their names be removed when they realised that the park was built on the land of occupied and destroyed Palestinian villages.

⁵³ *Ibid.*

⁵⁴ Quoted in Dr. Ismail Zayid, ‘Canada Park: Canadian Complicity in a War Crime,’ *Outlook* (Canadian Jewish Outlook Society), September/October 2001.

⁵⁵ See Appendix 2: Supplication sent out by the Jewish National Fund of Canada in 1984 seeking donations to “complete the Grove in Canada Park, in Israel.”



Section of the wall honouring donors, Canada Park

© John Reynolds/Al-Haq

The JNF also refused to include any mention of the Palestinian villages of 'Imwas and Yalo in the signs they erected in the park which detailed the history of the area and the land on which the park was built. From Roman times through the rule of the Hasmoneans, the Byzantines and the Ottomans, the land's past was chronicled, but no reference was made to the generations of Palestinians who populated the area for centuries before 1967. In June 2003, therefore, Zochrot wrote to the Israeli Civil Administration in the West Bank requesting that signs be added to complement the information already provided in Canada Park in order to educate the public about the Palestinian heritage of the area. The Civil Administration transferred the matter to the headquarters of the Israel's military's Central Command, which in turn passed it on to the Ministry of Justice. With no sign of any movement on the matter, Zochrot, represented by Adv. Michael Sfard, filed a petition in the Israeli High Court of Justice on 9 June 2005 against the Military Commander of the West Bank, the Civil Administration, and the JNF,⁵⁶ requesting that the Court order the respondents to give reason as to why they should not grant Zochrot permission to post signs in the area of Canada Park indicating that until the year 1967 the two Palestinian villages of Yalo and 'Imwas existed on the site of the park.

A hearing was set for 4 April 2006, but was cancelled when, in late March 2006, the JNF and the Civil Administration agreed to erect two new signs in the park, noting the existence of Yalo and 'Imwas. Despite the fact that such existence was described in language so laconic and euphemistic that no inference of the destruction of the villages and the expulsion of their residents could be drawn from the signs, only two weeks later one of them was uprooted and stolen; while after a month the second one was vandalised. In a gesture symbolic of the erasure of the 'Imwas and Yalo, the lower part of the sign, that part describing the recent Palestinian history of the area, was covered in black paint, while the text referring to the older history was left untouched.

⁵⁶ *Zochrot v. The Military Commander in Judea and Samaria et al.* [HC] 5580/05].



Vandalised sign, Canada Park

© Zochrot

Canada Park now goes under the name of Ayalon Park or Ayalon/Canada Park, the JNF having changed the park's name to reduce the embarrassment created when it became common knowledge that a park built on the ruins of illegally destroyed villages had been established with financial support from Canadian Jews. The JNF of Canada continues to administer the park, in any case, consolidating the control it has established over the Palestinian-owned land of the Latroun area. Although a report of a UN Special Committee expressed concern over the building of Canada Park on the land of the displaced Palestinian villagers, no action was ever taken towards rectifying the situation:

As may be seen from the information reflected in the report, the policy of annexation and settlement has continued to be implemented by the Israeli authorities. The Special Committee is deeply concerned by the fate of civilians evicted from their native land. One particular illustration of this situation is the fate of the inhabitants of Emmaus, Beit-Nuba and Yalou, reduced to the state of wandering refugees since their villages were razed by the occupying authorities in 1967. The Special Committee considers it a matter of deep concern that these villagers have persistently been denied the right to return to their land on which Canada Park has been built by the Jewish National Fund of Canada and where the Israeli authorities are reportedly planning to plant a forest instead of allowing the reconstruction of the destroyed villages.⁵⁷

Thus, the park remains intact as a place of recreation for Israeli citizens – on the land of the Palestinian villages, to which its owners and former residents now have no access. 'Aysha 'Ali Hammad from Yalo recalls a time when it was occasionally possible for the villagers to visit their land:

⁵⁷ Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories, UN Doc. A/41/680, 20 October 1986, p. 5.

I recall my first visit back to my village in 1978 to what is now referred to as "Canada Park." Some features of my village still remained and could be detected. I told my children, "This is the road to my father's house, the road to the mosque. Here is where our house used to be." Then I burst into tears. I also told my children that their father used to own 40 dunums of land. It is all gone.

Extract from Al-Haq Affidavit 3477/2007

Given by 'Aysha 'Ali Hammad (resident of Bitouniya, Ramallah Governorate, West Bank; originally from Yalo)

Even today, in 2007, more than 30 years after the establishment of the park and despite the controversy and adverse publicity over the origins of the land on which the park was built, the JNF of Canada still omits any mention of the fact that it is situated on occupied territory, choosing instead to refer to it as "Israel's Central Park." Far from considering removal of the park for the purposes of allowing the residents of 'Imwas, Yalo and Beit Nouba to return to their land, the JNF of Canada has recently launched a fundraising campaign for the renewal, upgrading and expansion of the facilities in the park,⁵⁸ indicating an intention to further consolidate this fact on the ground.

iii. The Tel Aviv-Jerusalem Railway

As part of a large expansion of Israel's rail network, work began in March 2003 on a high-speed line to connect Tel Aviv to Jerusalem, via Modi'in. Israel Railways Ltd. is the independent state-owned company responsible for the country's rail network. In October 2004, service began on the first part of this line, from Tel Aviv to Ben-Gurion airport. In September 2007, the next extension, as far as Paatey Modi'in, was opened; and by early 2008 trains are expected to be running between Tel Aviv and Modi'in Central Station. Although the centre of Modi'in is on the Israeli side of the Green Line, the city incorporates within its immediate catchment area Modi'in Illit, the largest Jewish-Israeli settlement in the OPT outside of East Jerusalem,⁵⁹ as well as Hashmonaim and Matityahu, also Israeli settlements built in the occupied West Bank.

The final part of the line, from Modi'in to Jerusalem, will cut through the OPT in the Latroun area, between Canada Park and Mevo Horon.



Construction underway on the Tel Aviv-Jerusalem railway in the Latroun area, June 2007

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⁵⁸ See Appendix 3: 2007 JNF request for funding for upgrade of Ayalon/Canada Park. Also available at: <http://www.jnftomegev.com/projects.html>.

⁵⁹ See OCHA, *supra* note 43, p.15.



Aerial map showing the planned route of the railway in between Canada Park and Mevo Horon.

© Mapping & GIS Dept., Arab Studies Society

The railway will also penetrate the Green Line and cut into the West Bank in the Beit Sourik area, closer to Jerusalem. To this end, therefore, a series of military orders signed in May 2006 by the head of the Israeli Civil Administration in the West Bank served to expropriate Palestinian land for the purposes of the construction of certain segments of this railway line in occupied territory. Work is continuing on this extension of the line to Jerusalem which is earmarked for completion by 2011, and will put Jerusalem within 28 minutes of Tel Aviv.

C. THE DENIAL OF THE RESIDENTS' RETURN

As has been elucidated above, there was a clear intent formulated on the part of the Israeli military before the Six-Day War broke out to occupy Latroun and rid the area of its Palestinian inhabitants. Hence the bulldozers were on hand almost as soon as the troops had entered the villages, as without their homes remaining, it would be a lot more difficult for the villagers to return. From the outset it appeared that the ideal scenario from the viewpoint of the Israeli army would be for the residents of 'Imwas, Yalo and Beit Nouba to end up on the other side of the river Jordan, where they would no longer be Israel's concern. To this end, the Palestinian villagers were told by Israeli army personnel along the road to Ramallah "to leave ... to 'Go to King Hussein in Jordan.'"⁶⁰

The previously mentioned report of the UN Secretary-General confirmed the testimonies of the villagers that they were unable to return to 'Imwas, Yalo or Beit Nouba after the war in the West Bank had ceased:

[The residents of the three Latroun villages] were joined on the road by people from the "second line" villages of Beit Likquia, Beit Sira and Beni Hareth. After three days they were told that they could go back but they were allowed to reach the "second line" villages only. Those who wanted to go on to Emwas, Yalu and Beit Nuba were turned back. They then returned to Ramallah and some of them went to the East Bank [Jordan]. According to the same sources, those who stayed behind in and around Ramallah in the "second line" villages persisted in their demands to the Israel Commander that they should be allowed to return to their homes. After two days, the Commander of the Latroun area came to Ramallah and met with representatives of the displaced villagers, who were informed that 70 per cent of their houses had been destroyed but that arrangements for their return could be made if they so desired. They were also told that there was a need for their labour in order to cultivate the extensive monastery lands in the Latroun area. The representatives of the villagers replied that their people wanted to go back, even though their houses had been destroyed. According to the information available to the Special Representative, however, these displaced villagers had not yet been able to return.⁶¹

40 years later, and they still have not been able to return. It is clear that from the outset of the occupation the Israeli army wanted the Latroun area permanently cleansed of its Palestinian population. Although many of the government ministers were of the same conviction, it seems as though there was no unanimous plan at the political level before the war to do so, with Moshe Dayan later admitting that the destruction of the villages was initiated by the military leadership "in defiance of government policy."⁶² It also appears that instructions were issued at some point in the immediate aftermath of the war that the villagers of 'Imwas, Yalo and Beit Nouba should not be prevented from returning to their villages to work the land belonging to them, as far as the Green Line east of No Man's Land.⁶³ As we have seen, however, this was not applied in practice, and was not in line with other orders given to the occupying forces in Latroun to "secure" the area.

On 25 June 1967, a confidential meeting of the Cabinet of the Israeli government was held to discuss the issue of the new wave of Palestinian "refugees" or displaced persons which had arisen out of the Six-Day War, primarily from Qalqiliya and the Latroun villages. It was during this meeting that the fate of the residents of 'Imwas, Yalo and Beit Nouba would be sealed. The meeting began with Prime Minister Levi Eshkol introducing the "pressing issue" of the "great numbers" of Palestinians displaced in the West Bank, and fleeing to Jordan, especially in the wake of the "destruction of homes in Qalqiliya."⁶⁴ His primary concern was that "the news about us removing residents in border areas and destroying their homes awakens strong criticism of us"⁶⁵ from the outside world. Moshe Dayan

⁶⁰ Al-Haq Affidavit 2494/2005.

⁶¹ See *supra* note 36, §. 62-64. Note that the "East Bank" refers to the land east of the Jordan river, namely Jordan.

⁶² See *supra* note 22, p. 397.

⁶³ See *supra* note 39, IDFA 901/2/288, section 9(a).

⁶⁴ See *supra* note 12, p.14.

⁶⁵ *Ibid.*

then mentioned that in addition to Qalqiliya, the villages in the Latroun area had been “evacuated with our assistance and because of our pressure.”⁶⁶ He suggested, therefore, addressing the two areas together in the discussion, and shamelessly told his fellow ministers that all of the demolition and destruction of houses in both Qalqiliya and Latroun was “done during the fighting,”⁶⁷ and that he could not argue with what was done. The question, with regard to Latroun, Dayan submitted, was whether to return the Palestinians of 'Imwas, Yalo and Beit Nouba to their villages, or to transform the area into Israeli territory.⁶⁸ He continued:

Minister of Defence M. Dayan: In relation to these two places, Qalqiliya and Latroun, it is possible to decide to return the residents to their places, apart from those who moved to the East Bank. It must be assumed that those who ran to the West Bank will return. It is possible to decide today that the residents of Qalqiliya will return, as Qalqiliya is empty. Latroun is empty – Yalo and 'Imwas are empty – and we in the meantime are watering their orchards. 50% of the houses were demolished, but they will be very happy to return.⁶⁹

There was a general disagreement between the position of the Israeli military leadership, as represented by the Defence Minister, and a number of government ministers about whether the destruction and displacement was justified. Health Minister Israel Barzilai expressed concern about public relations and refused to accept that the residents themselves were a security threat:

Minister of Health I. Barzilai: There are facts for which even the best public relations will not work such that they will be accepted by thinking people. If we bomb villages and expel people from their homes, this is something that will not be received by the best public relations ... [T]hat every Arab civilian can return to his village if he did not move to the East Bank, this we must uphold. If there is proof against someone that he is a dangerous element, he must be treated as a dangerous element, this is something else. This is not relevant to the matter of return or no return to his village.⁷⁰

These matters were dwelt on for a while, namely the issue of damaging Israel's reputation in the eyes of the world, and the fact that the population of Latroun were dutiful civilians who had enjoyed good neighbourly relations with the nearby Nachshon kibbutz. As civilians their rights could not be disregarded. Some of the ministers took a very strong position on this:

Minister without Portfolio Y. Sapir: Then we must fix up their homes so they can return, there is a limit to what is permitted to do, they did not fight directly.⁷¹

However, the return of the Latroun residents would conflict with the desire of the Israeli military leadership to establish full control over this area of strategic importance, a desire that, it became clear, many of the ministers sympathized with. The upshot of this was that the idea of resettling the residents elsewhere was floated by the Prime Minister:

Prime Minister L. Eshkol: I suggest we pay them money for their orchards and settle them in another place.⁷²

⁶⁶ *Ibid.*, p.15.

⁶⁷ *Ibid.*, p.17.

⁶⁸ *Ibid.*, p.18.

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*, p. 43-44.

⁷¹ *Ibid.*, p. 101

⁷² *Ibid.*

Dayan then essentially proposed a compromise where he would agree to return the residents of Qalqiliya in exchange for barring the return of the population of Latroun and completing the destruction of the villages:

Minister of Defence M. Dayan: I firstly suggest we separate between Latroun and the villages in that area and Qalqiliya. It will be easier for me to not object to the return of the people to Qalqiliya if we decide in the matter of the villages in the Latroun enclave, where I object to returning the people. However, if everyone will worry only about his position, I will object to the entire matter.

Minister without Portfolio Y. Sapir: But in relation to Latroun and the surrounding area, you object to returning the residents?

Minister of Defence M. Dayan: Certainly, and strongly. Primarily in relation to the three villages that I mentioned. I believe there is a dividing line between the West Bank and the Israeli part. If this was one country, it would not matter. Yet if there will be such a line, and to date I have not heard here that this line is completely rejected – this corner of Latroun is the one that overlooks the road to Jerusalem.⁷³

Regarding Qalqiliya, it was agreed by consensus without vote, that the people should be allowed to return. It had been pointed out by another minister that the matter of Qalqiliya had already been raised in the UN General Assembly, and in diplomatic discussions with Russia, and would undoubtedly come up again. Thus, the argument went, it would be better to return those displaced from Qalqiliya, and be able to show the world that Israel did respect its obligations to Palestinian civilians. The implication, of course, was that it would be easier to prevent the return of the residents of Latroun without it being picked up on the international radar and generating bad publicity for Israel. The Minister of Religious Affairs warned however, that it would be necessary to have a convincing explanation for this. Menachem Begin argued that the need to “straighten out” the route from Tel Aviv to Jerusalem could be used as a justification:

Minister without Portfolio M. Begin: The explanation is that this is a correction of the way to Jerusalem.

Minister of Health I. Barzilai: I object to this, and ask to vote. I am in favour that the decision about these villages will be the same decision as concerning Qalqiliya.

Minister without Portfolio Y. Sapir: Whatever will be, the Latroun enclave is part of Israel.

Minister without Portfolio M. Begin: In any case this is a humanitarian problem, where are these people located? They must be taken care of.⁷⁴

The debate continued along these lines. In light of the difficulties and complications which would arise from creating over 10,000 displaced Palestinians, the ministers voted (6-5) to postpone taking a decision until a later date as whether to allow the Latroun residents to return. But Dayan was unyielding, and continued to push the issue, stressing the urgency of the matter, and that the houses would be destroyed regardless (it must be noted that the destruction of the villages had by this stage, for all intents and purposes, already been completed by the army. Throughout the discussion, however, Dayan failed to disclose this, instead giving the ministers the impression that only 50% of the houses had been destroyed, and during hostilities at that):

Minister of Defence M. Dayan Located there are orchards and farms and if we do not decide in this matter, it will all be destroyed. I do not take upon myself responsibility for even one house that remains there. I am opposed to them returning to these homes, and I support that they do not return and we will take care of them. One who believes that if in one week we again return

⁷³ *Ibid.*

⁷⁴ *Ibid.*, p. 103-104

to this question, and in the meantime the villages remain as they are, must know that this is not so, the people are beginning to return.

Minister of Police A. Sasson: Where are these people now?

Minister of Defence M. Dayan: At the moment they are not yet in the villages. The mayor of Ramallah told me that he has 3,000 people from these villages, and he is taking care of them. He will try and absorb them as refugees, we will not now make a settlement plan for 15,000 Arabs.

Minister of Health Y. Barzilai: So I suggest that we take a vote on the matter itself.

Prime Minister L. Eshkol: I put to a vote the proposal to return the residents of Latroun and the surrounding villages to their homes.⁷⁵

And so ultimately it was decided, by a vote of 10 to 3, that the residents of the Latroun area were not to be allowed to return to their villages.⁷⁶

In the days before and after this debate was held, the displaced residents of the villages, taking refuge in Ramallah, or in villages between Ramallah and Latroun, were contemplating their situation, aware that their villages were being razed and that they would potentially not be able to return. Thus, the majority of them decided to flee to Jordan while they still could:

Rumours began to circulate started in Ramallah especially among the citizens of the three villages that the road to Jordan would be closed very soon and that the occupying forces would arrest the young men and imprison them. This caused panic and fear amongst the Palestinians, and forced them to seriously consider migrating to Jordan. As a result, the buses started to carry the residents of Latroun to Allenby Bridge crossing, near Jericho, from where they walked on foot to Amman. My family and I left for Amman on 17 June 1967, by bus to the bridge. The Bridge had been destroyed by the occupying forces, meaning buses could not cross it. So we crossed the bridge on foot. Many Israeli soldiers were deployed on the West Bank side of the bridge. I was carrying my child Imad, who was crying from thirst. An Israeli soldier came to give him water, but I refused, telling him, "you forced us out of our houses so don't pretend that you pity us." The soldier insulted me and ordered me to continue my way to Jordan. The number of Palestinian civilians who were crossing the bridge was tremendous.

Extract from Al-Haq Affidavit 3734/2007

Given by Fakhri Mahmoud Ahmad (resident of al-Naser, Amman Governorate, Jordan; originally from 'Imwas)

Those from Latroun who fled to Jordan in 1967, amounting to over 70% of the population of the villages, have since been unable to return to reside in the West Bank, never mind to their villages of origin, due to the closure policy imposed by the Occupying Power.

Some of the villagers remained in Ramallah and surrounding villages in the hope that they would be allowed to go back to their land. However, Captain Eli Zor, reporting to Israeli military leaders visiting the army's West Bank headquarters in Ramallah on 3 July 1967, reiterated that "[t]he refugees that were expelled [from the Latroun area] cannot be returned."⁷⁷ It seemed that of more concern to Captain Zor than the human rights of those displaced was the need to find someone else to harvest their land, which was replete with "grain crops that, should they not be harvested, will leave us facing a severe mouse problem."⁷⁸ However, as early as the first harvests in the months following the occupation of the villages it was clear that the Israeli authorities had no intention of allowing the

⁷⁵ *Ibid.*, p. 106-107.

⁷⁶ *Ibid.*, p. 108.

⁷⁷ See Michael Shashar, *The Seventh Day War: West Bank Military Government Diary* (Tel Aviv, Sifrit Poalim Publishing Group, Hebrew edition, 1997), p. 70.

⁷⁸ *Ibid.*

residents to return, even to harvest the crops they had sown. Rather, the decision was taken on 29 August 1967 that “the fruit picking and the field harvest will be done by the Israeli Ministry of Agriculture and not by the evacuated themselves. The value of the produce will be transferred to the military government fund.”⁷⁹

In refusing to allow the villagers to return to their land, the Israeli authorities felt they had to show an attempt at finding an alternative solution. The residents recall being contacted with a proposal to resettle them elsewhere.⁸⁰ Apart from disregarding the basic rights and entitlements of the villagers to return to their land, any offer they did receive was considered to be grossly inadequate both in terms of providing for their living needs and compensating them financially for their losses and suffering. Thus, the idea of accepting such a resettlement deal was never entertained by the people of 'Imwas, Yalo and Beit Nouba, and was seen as an artificial proposal by Israel as opposed to a genuine attempt at finding a just remedy for the villagers. Further, it seems that any offer made by Israel was done so informally, underlining the flippancy with which the Israeli authorities viewed the matter. No official documents elucidating the details of any resettlement package that was tabled could be found. References are limited to brief allusions from unofficial sources, such as an entry in the diary of Michael Shashar, an officer in the Israeli military headquarters in the West Bank, on 17 August 1967, which noted that the commander in charge of the headquarters “said that the residents of the villages of Latroun enclave need to choose where they want to be settled, but to their villages they can not go back. They were offered resettlement in Uja, near Jericho, but they refused.”⁸¹

Regardless, the implementation by the Occupying Power of its decision to bar the return of the populations of 'Imwas, Yalo and Beit Nouba to their villages continued unabated, with Military Order No. 146 of 1967,⁸² signed by Uzi Narkiss on 23 October 1967 declaring Latroun a “closed area.”⁸³ This military order thus regulated the confiscation of private Palestinian lands by the Israeli authorities in this area and went on to declare that “persons using the road will not delay their travel nor will they leave the road,” in order to prevent the return of the Latroun residents to their villages, as well as imposing curfews in the area. The office of Israel’s Attorney-General, in response to a query from Zochrot, recently confirmed that there has been no military order issued since then to override or cancel Military Order No. 146, and thus in theory it is still in force.⁸⁴ However, this order does not seem to be applied to Israeli citizens visiting Canada Park.

Since their expulsion, the inhabitants of the villages have endeavoured to return to their land. Their frequent appeals to Israeli officials to request that they be allowed to return have been consistently ignored by the Occupying Power. Numerous requests from inhabitants of the villages to the Israeli authorities have never been answered.⁸⁵ The most recent request submitted to the Ministry of Defence in November 2007 by Zochrot on behalf of the Latroun villagers has, as of the time of writing, not received any reply.⁸⁶

⁷⁹ *Ibid.*, p. 158.

⁸⁰ See Al-Haq Affidavit 2495/2005.

⁸¹ See *supra* note 77, p. 148.

⁸² See Appendix 4 for the English translation of Military Order No. 146, including the map attached to the order showing the closed area.

⁸³ Under Section 90 of Military Order No. 378, *Order Concerning Security Directives*, an Israeli military commander may declare a territory or an area within a territory to be a “closed area,” thereby determining that persons may not enter said area.

⁸⁴ See Appendix 5: copy of the letter of 30 July 2007 from the Israeli Attorney-General’s office for the West Bank area.

⁸⁵ See Appendix 6 for but one example: a letter sent by the residents of 'Imwas, Yalo and Beit Nouba to the Israeli Prime Minister, Minister for Defence and President of the Knesset on 17 March 1986, requesting that they be allowed to return to their villages.

⁸⁶ See Appendix 7: letter of 1 November 2007 from Zochrot to the Israeli Minister of Defence on behalf of the residents of the Latroun villages.

The more time that passes since the displacement of the villagers, and the more embedded the facts being created on the ground by the Occupying Power become, the more difficult it inevitably becomes for the villagers to have any hope of returning to their land. Many years after his army occupied the Latroun enclave, Yitzhak Rabin, Chief of Staff of the Israeli military during the Six-Day War and subsequently Prime Minister of Israel, declared to a Canadian interviewer: "I don't see any Israeli leader that will give it up ... Because we need it for Israel's security, to maintain the line of the road between Tel Aviv and Jerusalem totally secure, just as you wouldn't allow that the road between Toronto and Ottawa would be controlled by a potential enemy of Canada."⁸⁷ The disparity in this analogy, that the road between Toronto and Ottawa does not cut through an area recognised as occupied territory, does not seem to hold any weight among Israel's political and military leadership.

⁸⁷ See *supra* note 10.

III. LEGAL ANALYSIS

The primary instrument of international humanitarian law pertaining to the protection of civilians in times of armed conflict and occupation is the Fourth Geneva Convention,⁸⁸ ratified by Israel in 1951. The applicability of this convention during the 1967 Six-Day War is incontestable, and its applicability to the ongoing belligerent occupation of the West Bank, including East Jerusalem, and the Gaza Strip, was initially accepted by Israel. The Fourth Geneva Convention was recognised as the *lex specialis*⁸⁹ in 1967 by Article 35 of Israeli Military Proclamation No. 3, which stated that Israeli military courts “must apply the provisions of the [Fourth] Geneva Convention ... In case of conflict between this Order and the said Convention, the Convention shall prevail.” While this provision was subsequently cancelled and the Occupying Power reneged on its original stance, it is the virtually unanimous position of the international community and the United Nations (UN) that the Fourth Geneva Convention is indeed applicable to the OPT. This interpretation was confirmed by the International Court of Justice (ICJ), in its 2004 advisory opinion regarding Israel’s construction of the Annexation Wall in the West Bank, including East Jerusalem.⁹⁰ The earlier Hague Regulations⁹¹ also govern situations of armed conflict and occupation, and although not a signatory, Israel has accepted the applicability of the Hague Regulations to the OPT due to their established customary nature.⁹²

It is also clearly established that the existence of an armed conflict or occupation and consequent applicability of international humanitarian law does not preclude the application of international human rights law. To this end, the UN General Assembly and the International Committee of the Red Cross (ICRC) have confirmed that the two branches of law are complementary.⁹³ Israel’s claim that customary and conventional human rights law do not apply to the OPT as the Palestinian population is not within its sovereign territory has been almost universally refuted. Indeed, the ICJ recently confirmed that human rights instruments are “applicable in respect of acts done by a State in the exercise of its jurisdiction outside its own territory,”⁹⁴ such as by Israel, the Occupying Power, in the OPT.

In light of such authoritative statements from the ICJ, and the near unanimous position of the international community, the legal analysis in this study proceeds on the basis of the applicability of international humanitarian and human rights law during the Six-Day War and the subsequent and continuing occupation of the OPT.

⁸⁸ Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, 12 August 1949.

⁸⁹ The “special law,” superseding the *lex generalis*, or general law, applicable.

⁹⁰ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ (2004), para. 101.

⁹¹ Regulations Annexed to Hague Convention (IV) Concerning the Laws and Customs of War on Land, 18 October 1907.

⁹² The jurisprudence of the Israeli High Court of Justice has followed the traditional common law position that customary international law is considered to be part of a State’s internal law, and thereby domestically enforceable without the need for any special legislation, unless contradictory to another provision in internal law. See, for example, *Hilu v. Government of Israel, et al.* [HC] 302/72 and 306/72].

⁹³ See UN General Assembly Official Records, 25th Session, “Respect for Human Rights in Armed Conflict: Report of the Secretary-General,” UN Document A/8052, 18 September 1970,” Annex 1: “General Norms Concerning Respect for Human Rights in their Applicability to Armed Conflicts,” and Louise Doswald-Beck, “International Humanitarian Law and Human Rights Law”, *International Review of the Red Cross*, No. 293, April 1993.

⁹⁴ See *supra* note 90, para. 111.

A. FORCIBLE TRANSFER

*We must do everything to insure they never do return. The old will die and the young will forget.*⁹⁵

As will be further expounded below, the residents of the Latroun villages in June 1967 were protected persons under Article 4 of the Fourth Geneva Convention. The Convention prohibits the deportation or forcible transfer of such protected persons. Section II.A, above, paints a clear picture of how the residents of 'Imwas, Yalo and Beit Nouba were forced by the Israeli military to flee their homes and villages under duress; and how they were subsequently physically prevented from returning by the Occupying Power.

The prohibition in international humanitarian law on the deportation or transfer of civilians was first codified in the Lieber Code of 1863,⁹⁶ which provides that "private citizens are no longer [to be] carried off to distant parts."⁹⁷ There is no explicit proscription, however, of deportation or forcible transfer in the Hague Regulations, as "the practice of deporting persons was regarded at the beginning of [the 20th] century as having fallen into abeyance."⁹⁸ Like the internment of civilians by belligerents, the deportation or forcible transfer of protected persons "was generally rejected as falling below the minimum standard of civilisation and, therefore, not requiring express prohibition. To raise the issue of the illegality of the deportation of the population of occupied territories was considered unnecessary; the illegality was taken for granted."⁹⁹

In the wake of the forcible transfer of millions of civilians within and out of occupied territories during the Second World War, usually under inhumane conditions, the drafters of the Geneva Conventions set out very clear provisions to protect civilians from such a fate in future times of war or occupation. Article 49(1) of the Fourth Geneva Convention clearly stipulates:

Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.

Thus, both deportations and forcible transfers are explicitly illegal under international humanitarian law. The material difference between them is the place of destination – deportations are to a destination outside of the borders of the territory of residence, while forcible transfers are to a destination within the borders of the territory of residence. This distinction was clearly articulated by the International Criminal Tribunal for the former Yugoslavia (ICTY):

Both deportation and forcible transfer relate to the involuntary and unlawful evacuation of individuals from the territory in which they reside. Yet, the two are not synonymous in customary international law. Deportation presumes transfer beyond State borders, whereas forcible transfer relates to displacements within a State.¹⁰⁰

⁹⁵ David Ben-Gurion, in reference to Palestinians displaced by Israel, quoted in Michael Bar-Zohar, *Ben-Gurion, The Armed Prophet* (Englewood Cliffs, N.J., Prentice-Hall, 1968), p.157.

⁹⁶ U.S. War Department, General Orders No. 100, 24 April 1863. This manual, prepared on behalf of President Lincoln to govern the Union Army in the American Civil War, was one of the earliest codifications of a set of rules and limitations according to which armed conflict should be conducted, and was later formative in the shaping of the Hague Conventions.

⁹⁷ *Ibid.*, Article 23.

⁹⁸ ICRC, *Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Geneva, ICRC, 1958), p. 279.

⁹⁹ George Schwarzenberger, *International Law as Applied by International Courts and Tribunals, Volume II: The Law of Armed Conflict*, (London, Stevens & Sons Ltd, 1968), p. 227.

¹⁰⁰ *The Prosecutor v. Radislav Krstic*, Case No. IT-98-33-T, Trial Chamber I, Judgement, 2 August 2001, para. 521.

Consistent with the above definition, Al-Haq uses the term “deportation” for unlawful forcible displacements outside the OPT and “forcible transfer” for unlawful forcible displacements within the boundaries of the OPT. The term “expulsion” is used as a generic term for all forcible displacements. What is crucial to note, however, is that the difference between forcible transfer and deportation is merely a descriptive one; both are equally prohibited in international law, and both entail the same responsibility and liability of the perpetrators.

The residents of the Latroun villages were expelled from their villages under threat and use of force. Although there is evidence of Israeli soldiers ordering the villagers to go to Jordan,¹⁰¹ and providing free transport to take Palestinians to the border crossing to Jordan in the weeks following the war,¹⁰² there is no indication that the people of 'Imwas, Yalo or Beit Nouba were physically deported beyond the boundaries of the West Bank by the Israeli occupying forces. The focus of this paper thus proceeds on the basis that the Latroun villagers were forcibly transferred out of their villages to other areas of the West Bank, where some of them remained, unlawfully forcibly displaced. Others who subsequently fled to Jordan did so without being physically or directly deported but were subject to coercive circumstances of fear and intimidation created by the Occupying Power such that the protected civilian population was prevented from exercising a free choice, making the expulsion tantamount to indirect deportation.¹⁰³ Further, Israel has not allowed those that fled to Jordan to return to the West Bank since then, ultimately rendering them effectively deported from their own territory.

Whether some of the villagers were unlawfully deported or not, however, does not affect the salient point with regard to international law: *all* of the residents of 'Imwas, Yalo and Beit Nouba were forcibly transferred from their villages in stark violation of Article 49(1) of the Fourth Geneva Convention. However, Article 49 provides exceptions to the prohibition on forcible transfers in its second paragraph.

The first exception enunciated in Article 49(2) is when a total or partial “evacuation” is demanded for “the security of the population.” It is clear from the context of Article 49 that the population referred to is that of the occupied territory. The security of the population in a given area may be threatened if their area “is in danger as a result of military operations or is liable to be subjected to intense bombing.”¹⁰⁴ As we have seen, the Latroun area was occupied by Israel within a matter of hours, devoid of any resistance or fighting, without any further military operation planned in, or launched from, the area. The rest of the West Bank was similarly quickly conquered by Israel, ruling out any possible counter-attack against the invading forces in Latroun. Thus, in no way can it be said that the security of the population of 'Imwas, Yalo and Beit Nouba demanded their temporary, let alone indefinite, evacuation.

The second exception refers to permissible evacuations where demanded by the exigencies of “imperative military reasons.” The use of the adjective in this instance is critical in limiting the discretion of the Occupying Power under the principle of military necessity. According to the authoritative ICRC commentary to the Fourth Geneva Convention, “[e]vacuation is only permitted in such cases ... when overriding military considerations make it imperative; if it is not imperative, evacuation ceases

¹⁰¹ See, for example, Al-Haq Affidavit 2494/2005.

¹⁰² See *supra* note 2, p. 328.

¹⁰³ The ICTY has consistently ruled that deportation is illegal only where it is forced, but that “forced” is not limited to physical force. See, *inter alia*, *The Prosecutor v. Milomir Staki*, Case No. IT-97-24-A, Appeals Chamber, Judgment, 22 March 2006, para. 279-281: “it is the absence of genuine choice that makes displacement unlawful ... Therefore, while persons may consent to (or even request) their removal, that consent must be real in the sense that it is given voluntarily and as a result of the individual’s free will, assessed in the light of the surrounding circumstances ... the term “forced”, when used in reference to the crime of deportation, is not to be limited to physical force but includes the threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment. The determination as to whether a transferred person had a genuine choice is one to be made within the context of the particular case being considered.”

¹⁰⁴ See *supra* note 98, p. 280.

to be legitimate.”¹⁰⁵ With the Israeli forces having established control over the Latroun area, there can be no plausible justification of military necessity for subsequently transferring the protected civilian population out of their villages.

Even if it could be argued that an evacuation of the villages was required to ensure the security of the local population or for imperative military reasons, Article 49(2) stipulates very clearly that:

Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased.

It is firmly established that, unlike deportation and forcible transfers, evacuation is a provisional measure, to be taken in the interests of the evacuated civilians themselves. The Occupying Power is bound by international law to ensure that such protected persons are taken safely to “places of refuge” or “reception centres.”¹⁰⁶ It further has a duty, under the provision quoted above, to facilitate the return of the evacuees to their homes once hostilities in the area have ended.

Although it is acknowledged that “evacuation must not involve the movement of protected persons to places outside the occupied territory, unless it is physically impossible to do otherwise,”¹⁰⁷ this clause requiring the return of evacuees naturally applies both to evacuation inside the territory and to cases where circumstances have made it necessary to evacuate the protected persons to a place outside the occupied territory.¹⁰⁸

Two weeks after the end of the Six-Day War, the Minister of Defence stated clearly to the Cabinet of the Israeli government that “it is possible to decide to permit the people of these villages to return,”¹⁰⁹ unmistakably acknowledging that there were no military reasons to keep the residents displaced, and that Israel would decide whether or not to allow them to return on the basis of its own interests, in clear disregard of Article 49. The Minister did qualify his statement though, without giving any reason, as not applying to those who had been displaced to Jordan, similarly in breach of the stipulations of Article 49. Indeed, it has been over 40 years since the Six-Day War and Israel still allows neither the residents of Latroun displaced within the West Bank to return to their villages, nor those displaced in Jordan to return even to the West Bank.

The authoritative ICRC commentary confirms that the prohibition on forcible transfer contained in Article 49(1) is “absolute and allows of no exceptions, apart from those stipulated in paragraph 2.”¹¹⁰ As has been shown, these two exceptions are inapplicable to the situation of the residents of Latroun.

Article 49(3) of the Fourth Geneva Convention was also violated by the actions of the Israeli forces during the transfer of the population of ‘Imwas, Yalo and Beit Nouba. It provides:

The Occupying Power undertaking such transfers or evacuations shall ensure, to the greatest practicable extent, that proper accommodation is provided to receive the protected persons, that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated.

With the Latroun residents forced to flee their homes in an instant, without being given time to take adequate water or food supplies, and without being provided with such, with families separated amid the chaos, with reports of protected civilians dying on the road side due to exhaustion, and with no accommodation, let alone ‘proper’ accommodation, provided for the villagers in the surrounding villages or in Ramallah, it is beyond dispute that Israel disregarded this duty.

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.*, p. 281.

¹⁰⁹ See *supra* note 12, p. 18.

¹¹⁰ See *supra* note 98, p. 279.

The forcible transfer of the protected civilian population of 'Imwas, Yalo and Beit Nouba was perpetrated in gross violation of Article 49 of the Fourth Geneva Convention. The prohibition on deportations and forcible transfers codified in Article 49 is also reflective of customary international humanitarian law, as confirmed recently by the ICRC in its authoritative study on the customary rules of international humanitarian law.¹¹¹ Significantly, the ICRC noted the existence of contrary jurisprudence emanating from the Israeli High Court of Justice. This Israeli practice in derogation of state practice and *opinio juris*,¹¹² however, was not found sufficient to prevent the formation of the customary rule.¹¹³ Hence, the forcible transfer of the Palestinians from Latroun violates a norm of both customary and conventional international humanitarian law.

As well as constituting a violation of international humanitarian law, forcible transfer can also amount to a “grave breach” of the Geneva Conventions, entailing individual responsibility under international humanitarian and criminal law if the necessary elements are present to classify the transfer as a grave breach. These elements will be examined in detail in Section III.D, below.

The Appeals Chamber of the ICTY has also emphasised the link between the prohibition on deportation and forcible transfer of individuals, and the right of those individuals to their property: “[t]he protected interests underlying the prohibition against deportation include the right of the victim to stay in his or her home and community and the right not to be deprived of his or her property by being forcibly displaced to another location.”¹¹⁴ Not only were the Latroun villagers denied their right to stay in their homes, their homes were comprehensively destroyed. An analysis of this destruction under international law is thus required.

B. PROPERTY DESTRUCTION AND APPROPRIATION

*In 1967 we won the battle but lost the war big time. The destruction of the Latroun villages is part of the loss of the war.*¹¹⁵

The Hague Regulations make a number of references to the protection of property, most notably Article 23(g), which codified what was a long-established basic principle of customary international law: that it is “especially forbidden” to “destroy or seize the enemy’s property, unless such destruction or seizure be imperatively demanded by the necessities of war.” The regulations go on to stipulate that private property cannot be confiscated,¹¹⁶ and that the property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when state property, shall be treated as private property. All destruction, seizure of, or wilful damage done to institutions of this character is forbidden, and should be made the subject of legal proceedings.¹¹⁷

By the end of the Second World War, the Hague Regulations were accepted as the “laws and customs of war,” with the definition of war crimes in Article 6(b) of the Nuremberg Charter¹¹⁸ encompassing “plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity.” The Hague Regulations have, at least since Nuremberg, been authoritatively construed as an embodiment of customary international law,¹¹⁹ thus retaining their relevance, binding all States.

¹¹¹ Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law – Volume I: Rules* (Cambridge, Cambridge University Press, 2005), p. 457.

¹¹² *Opinio juris* is the subjective element of customary international law - the belief that an action was taken because it was a legal obligation.

¹¹³ See *supra* note 111, p. 458-459.

¹¹⁴ See *Staki*, *supra* note 103, para. 277.

¹¹⁵ Statement of Itzik Hadas, member of Harel kibbutz. See *supra* note 20.

¹¹⁶ See *supra* note 91, Article 46.

¹¹⁷ *Ibid.*, Article 56.

¹¹⁸ *Agreement for the Prosecution and Punishment of Major War Criminals of the European Axis, and Establishing the Charter of the International Military Tribunal (IMT)*, Annex, (1951) 82 UNTS 279.

¹¹⁹ *France et al. v. Goering et al.*, International Military Tribunal (Nuremberg), Judgment and Sentences, (1946) 41 *American Journal of International Law* 172. See also, for example, *Wall Advisory Opinion*, *supra* note 90, para. 89; *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, ICJ (1996), para. 75.

The subsequently concluded Geneva Conventions represented the “more complete code of the laws of war” which the preamble to the Hague Regulations had called for, and firmly reinforced the prohibition on the destruction of property in the lexicon of international humanitarian law. Under 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, 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.

This provision relates to the destruction of property by the Occupying Power in occupied territory, and is thus relevant to the destruction of ‘Imwas, Yalo and Beit Nouba in so far as it took place after Israel had gained effective control of the area during the Six-Day War. As documented in Section II.A above, the Israeli army began to destroy the houses and property of the Latroun villages while the war continued elsewhere. However, no destruction in the Latroun area came in the context of fighting, as there was none, but rather was initiated after the Israeli army had established its authority over the area and had begun to expel the residents. Article 42 of the Hague Regulations provides that:

Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.

The test of occupation is “effective control,” which exists if the military forces of the adversary could, “at any time they desired assume physical control of any part of the country.”¹²⁰ This test has been followed since the post-Second World War trials, including by the ICTY, which has consistently ruled that “occupied territory” denotes territory under the “overall control” of an enemy belligerent.¹²¹ One of the guidelines for determining such control was whether “the occupying power has a sufficient force present, or the capacity to send troops within a reasonable time, to make the authority of the occupying power felt.”¹²² On this premise, it is clear that Israel had assumed the role and responsibilities of an occupying power in the Latroun area when it started to destroy the property of the three villages. Furthermore, the majority of the destruction was not effected until after a ceasefire between Israel and the neighbouring Arab countries brought an end to the fighting on 10 June 1967. That the villages were destroyed in the context of occupying forces exercising effective control over the area as opposed to in the course of battle between two armies is significant in rendering Article 53 of the Fourth Geneva Convention applicable to all property destroyed in Latroun.

Military Necessity

The prohibition on the destruction of property under the Hague Regulations and Geneva Conventions only exists where such destruction is not justified by military necessity. A limitation on the use of force almost as old as organised warfare itself, the principle of military necessity was recognised in the 1868 St. Petersburg Declaration,¹²³ which specified that “the only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy.” It has been consistently construed in an extremely restrictive manner by the drafters of the international treaties governing international humanitarian law and the judicial implementation of those treaties. The concept of military necessity has been interpreted as one of “absolute military necessity,” with the judgments of the ICTY placing significant weight on this wording as employed in the Geneva Conventions.

¹²⁰ *Hostages case, Trial of Wilhelm List and Others*, UNWCC, LTRWC, vol.VIII, p. 56.

¹²¹ See *Prosecutor v. Naletilic and Martinovic* (Case No. IT-98-34-T), Judgment, 31 March 2003, para. 521.

¹²² *Ibid.*, para. 217.

¹²³ *Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight*, St. Petersburg, 29 November / 11 December 1868.

The wording of the authoritative ICRC study on customary international humanitarian law is similarly strong, speaking as it does to the prohibition on the destruction of property, “unless required by *imperative* military necessity.”¹²⁴ This mirrors the judgment of the post-Second World War *Hostages Trial* which established that “[t]he destruction of property to be lawful must be *imperatively* demanded by the necessities of war.”¹²⁵ The fundamental premise of military necessity was plainly expounded in this judgment: “Destruction as an end in itself is a violation of international law. There must be some reasonable connection between the destruction of property and the overcoming of the enemy forces.”¹²⁶ Thus, while acknowledging the potential for unavoidable destruction of property, military necessity permits only that degree and type of force, not otherwise barred by humanitarian law, which is needed for the partial or complete submission of the enemy with a minimal loss of time, life and physical resources.

This was patently not the case in 'Imwas, Yalo or Beit Nouba. The Israeli army was met with no resistance, and the destruction of civilian property carried out was in no way connected with the overcoming or weakening of enemy forces. The apparent presence of a handful of Egyptian commandos in the area, who were looking to surrender, would not alter this reality. The fact that the inhabitants of the Latroun villages were first evacuated from their homes and then transferred from their villages before the razing of their homes and properties extinguishes the very basis for even attempting to invoke a defence of military necessity to justify the destruction.

The principle of military necessity in international humanitarian law complements the more fundamental doctrine of distinction, which was also brazenly violated by the Israeli military's actions in Latroun. The principle of distinction, firmly embedded in customary international humanitarian law,¹²⁷ obliges parties to a conflict to distinguish at all times between the civilian population and combatants, and between civilian objects and military objectives, and to accordingly direct their operations only against military targets. The substantial destruction of civilian property in 'Imwas, Yalo and Beit Nouba conveys the disregard in which the Israeli army held what the ICJ described as “the cardinal principle contained in the texts constituting the fabric of humanitarian law.”¹²⁸

Collective Punishment

That the destruction of the villages of Latroun was tinged with a certain element of vengeance and punishment for the defeat exerted on Israeli forces there in 1948 is outlined in Section II.A, above, and has been openly acknowledged by relevant actors on the Israeli side. Uzi Narkiss spoke about “revenge” while Moshe Dayan admitted that the villages were destroyed “not as a result of battle, but of punitive action.”¹²⁹ Moreover, this was obvious to the Israeli soldiers ordered to facilitate and carry out the destruction, and led Amos Kenan to question “this idiotic approach [of] collective punishment.”

Article 33 of the Fourth Geneva Convention provides a concrete and absolute prohibition of collective punishment by emphasising the principle of individual responsibility: “No protected person may be punished for an offence he or she has not personally committed.” The prohibition of collective punishment “does not refer to punishments inflicted under penal law, i.e. sentences pronounced by a court after due process of law, but penalties of any kind inflicted on persons or entire groups of persons.”¹³⁰ Thus the scope of the prohibition is quite broad, and rules out the possibility of any interpretation which may lend itself to “the idea that the community might bear at least a passive responsibility”¹³¹ for actions previously committed by others.

¹²⁴ See *supra* note 111, p. 175-176.

¹²⁵ See *supra* note 120, p. 66.

¹²⁶ *Ibid.*

¹²⁷ See *supra* note 111, p. 3.

¹²⁸ *Nuclear Weapons Advisory Opinion*, *supra* note 119, para. 78.

¹²⁹ See *supra* note 22, p. 397.

¹³⁰ See *supra* note 98, p. 225.

¹³¹ *Ibid.*

To sum up, therefore, the destruction of 'Imwas, Yalo and Beit Nouba amounted to a violation of the laws and customs of war as codified in Article 23(g) of the Hague Regulations and Article 53 of the Fourth Geneva Convention, and an act of collective punishment in contravention of Article 33 of the Fourth Geneva Convention. Whether the destruction fulfils all the requisite elements to render it a grave breach of the Fourth Geneva Convention under Article 147 (thereby rendering its authors and perpetrators individually criminally responsible) will be discussed in Section III.D, below. This discussion will address the issues of whether the destruction was sufficiently "extensive" to amount to a grave breach, the protected status of the property, and the material and mental elements of the violation.

Unfortunately, the destruction of the property of the Latroun villages which was set in motion before the Six-Day War had ended was not an exceptional incident never to be repeated by the Israeli army in the OPT, but, rather, the start of a trend. This trend forged ahead with the destruction of the entire Mughrabi Quarter in the Old City of occupied East Jerusalem on the night of 11 June 1967, with 135 Palestinian families roused from their sleep to look on helplessly as Israeli bulldozers mowed down their homes and the area's two mosques. The trend has continued through the 40 years of Israel's occupation of Palestinian territory since the Six-Day War, resulting in the destruction of over 18,000 Palestinian homes¹³² and reaching its nadir during the second *intifada*, with destruction of property being carried out extensively and with impunity, from Jenin in the northern West Bank to Rafah in the southern Gaza Strip, in persistent violation of international humanitarian law.

C. SETTLEMENT CONSTRUCTION

*Everybody has to move, run and grab as many hilltops as they can to enlarge the settlements because everything we take now will stay ours ... Everything we don't grab will go to them.*¹³³

The illegality of Israel's settlements in the OPT is indisputable. Article 49(6) of the Fourth Geneva Convention states unequivocally:

The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.

This provision, according to the authoritative ICRC commentary, "is intended to prevent a practice adopted during the Second World War by certain Powers, which transferred portions of their own population to occupied territory for political and racial reasons or in order, as they claimed, to colonise those territories. Such transfers worsened the economic situation of the native population and endangered their separate existence as a race."¹³⁴ The motive and effects of Israeli settlement activity in the OPT are reminiscent of this. In addition, the unlawfulness of the plantation of settlers as enunciated in the Fourth Geneva Convention attains the status of a norm of customary international humanitarian law.¹³⁵

The Israeli government, in defending the legality of the settlements, attempts to argue that Article 49(6) only prohibits *forcible* transfer of the population of the Occupying Power into occupied territory, and consequently does not concern *voluntary* or induced migration.¹³⁶ However, nowhere does this provision restrict its scope to forced population movement. Indeed, it specifically uses the unqualified term "transfer" as opposed to "forcible transfer" as found in Article 49(1), which prohibits the forcible transfer of protected persons from occupied territory. To this end, the ICJ has confirmed that Article 49(6) "prohibits not only deportations or forced transfers of population...but

¹³² Statistics from the Israeli Coalition Against House Demolitions.

¹³³ Ariel Sharon addressing a meeting of the Tsomet Party, *Agence France Presse*, 15 November 1998.

¹³⁴ See *supra* note 98, p. 283.

¹³⁵ See *supra* note 111, p. 457.

¹³⁶ Israel Ministry of Foreign Affairs, 'Israeli Settlements and International Law,' May 2001. Available at <http://tinyurl.com/2jlg3>.

also any measures taken by an occupying Power in order to organize or encourage transfers of parts of its own population into the occupied territory."¹³⁷ It is thus clear that Israel's policy and practices involving the establishment of settlements, Mevo Horon included, in the OPT violate Article 49(6) of the Fourth Geneva Convention.

As well as entailing serious infringements of specific provisions of international humanitarian law, the Israeli settlements further defy the basic tenets of international law by virtue of the fact that they constitute an inherent violation of the right to self-determination. In its binding resolutions, the Security Council has confirmed that:

[A]ll measures taken by Israel to change the physical character, demographic composition, institutional structure or status of the Palestinian and other Arab territories occupied since 1967, including Jerusalem, or any part thereof, have no legal validity and that Israel's policy and practices of settling parts of its population and new immigrants in those territories constitute a flagrant violation of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War and also constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East.¹³⁸

Similar conclusions have been reached by the High Contracting Parties to the Fourth Geneva Convention,¹³⁹ as well as the ICJ, which concluded that "the Israeli settlements in the OPT (including East Jerusalem) have been established in breach of international law."¹⁴⁰

The broader significance of the Israeli settlements must also be emphasised. They are one of the definitive aspects of the occupation of the OPT, rendering it something more than what might be considered as a "traditional" military occupation along the lines of those seen in Europe during the Second World War. The impact the presence of the settlements has on daily Palestinian life is massive, resulting as it does in a matrix of bypass roads, movement restrictions and closed areas which severely limits the free movement of Palestinians. The settlements also serve to substantially appropriate Palestinian land and natural resources, particularly water. Thus, the existence of the settlements perpetuates many of the violations of human rights inherent in the occupation and contributes significantly to the process of erosion of the Palestinian right to self-determination.

Indeed, the creation of Israeli settlements represents the physical manifestation of the calculated State policy to incorporate into Israel as much as possible of the land recognised under international law as territory on which the Palestinian people is entitled to exercise its right to self-determination. In particular, settlements such as Mevo Horon situated in the western part of the West Bank, serve to effectively expand Israel eastwards and *de facto* erase the Green Line.

¹³⁷ See *supra* note 90, para. 120. It is worth noting that even if the erroneous, and simply wrong, Israeli argument was acceptable and there could be scope for settlements meeting certain conditions to be legitimate under international law (which there absolutely is not), Mevo Horon is nonetheless illegal under Israeli law. According to the Israeli Civil Administration, it is built partly on private Palestinian land, which cannot be developed by the State (according to its own laws); and partly on "survey land," which cannot be developed legally under Israeli law, either by the State, or by the Palestinian claiming ownership of the land (until such time as the status of the land is determined).

¹³⁸ UN Security Council Resolution 465, 1 March 1980, adopted unanimously at the 2203rd meeting of the Security Council. See also Security Council Resolutions 446, 452, and 471.

¹³⁹ See *Declaration of the High Contracting Parties to the Fourth Geneva Convention*, 5 December 2001. The High Contracting Parties are those States which have ratified and are bound by the Geneva Conventions.

¹⁴⁰ See *supra* note 90, para. 120.

D. GRAVE BREACHES AND INDIVIDUAL CRIMINAL RESPONSIBILITY

International criminal law is concerned with trying and punishing individuals, as opposed to States, for international crimes, including genocide, crimes against humanity and, significantly, war crimes, including “grave breaches” of the Geneva Conventions. This principle, elucidated quite clearly by the Nuremberg Tribunal,¹⁴¹ is reflected in the statutes of the various international criminal tribunals that have contributed to developing its legacy.¹⁴² An individual shall be criminally responsible for the perpetration of an international crime if that individual “commits such a crime;” “orders, solicits or induces the commission of such a crime;” or “aids, abets or otherwise assists in its commission.”¹⁴³

Grave Breaches of the Fourth Geneva Convention

The severity of the offences of forcible transfer and property destruction is highlighted by their inclusion as a “grave breach” of the Fourth Geneva Convention in Article 147 thereof. Grave breaches are the most heinous of violations of the Convention, and as the most serious war crimes entail a specific legal regime which applies to all High Contracting Parties at all times. Article 146 requires the High Contracting Parties to adopt any legislation necessary to implement the Geneva Conventions in their domestic legal system; that is, to provide “effective penal sanctions” for persons committing, or ordering to be committed, any of those violations detailed as grave breaches in the Geneva Conventions.

Regarding potential grave breaches committed in the Latroun villages, the primary responsibility is on Israel to ensure respect for the Conventions by its agents, and to investigate incidents which are likely to amount to violations of its obligations under international humanitarian law. Article 146 of the Fourth Geneva Convention, however, compels not just the State whose political or military officials have committed grave breaches, but every High Contracting Party, to search for such persons (irrespective of their nationality or that of the victims) and to bring them to justice, either before a domestic court or a foreign court, by regular extradition or by arrest while they are in the jurisdiction of the High Contracting Party concerned.¹⁴⁴ In other words, this regime demands that High Contracting Parties establish universal jurisdiction over grave breaches.

Article 147 includes both the “unlawful deportation or transfer” of protected persons and the “extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly” as grave breaches. This affords them a status equal to wilful killing and torture, thereby emphasising the egregious nature of the crimes, and the seriousness with which they were treated by the drafters of the Convention. The grave breaches of unlawful transfer and extensive property destruction have since been entrenched in modern international criminal law, with the linguistic formulation of the crimes appearing in the statutes of both the ICTY¹⁴⁵ and the International Criminal Court (ICC)¹⁴⁶ as carbon copies of the original Geneva Convention wording. These developments have served to fill the lacunae which existed in terms of the interpretation of the provisions of the Geneva Conventions on account of the relative lack of jurisprudence on their application during the Cold War period.

Article 147 of the Fourth Geneva Convention must be read in conjunction with Article 49, pertaining to forcible transfer, and Article 53, pertaining to property destruction. It has been clearly shown in Section III.A that the forcible transfer which occurred in the Latroun villages fulfilled the conditions for unlawfulness set forth in Article 49, and failed to fall within the scope of either of the exceptions whereby evacuation is permissible. Similarly, the analysis in Section III.B demonstrates that the

¹⁴¹ See *supra* note 119, p.221.

¹⁴² See, for example, *Rome Statute of the International Criminal Court*, UN Doc. A/CONF.183/9 (1998), Article 25.

¹⁴³ *Ibid.*, Article 25(3).

¹⁴⁴ See *supra* note 98, p. 590.

¹⁴⁵ See *Statute of the International Criminal Tribunal for the Former Yugoslavia*, UN Doc. S/RES/827, Annex. (1993), Article 2(d) and (g).

¹⁴⁶ See *supra* note 142, Article 8(2)(a)(iv) and (vii).

destruction of property in 'Imwas, Yalo and Beit Nouba was not justified by military necessity and as such was in violation of Article 53. For those responsible for the ordering and carrying out of the forcible transfer to be individually criminally liable for the commission of a grave breach under Article 147, however, a number of elements complementary to the violation of Articles 49 and 53 must be satisfied.

The nature of the grave breaches of forcible transfer and extensive destruction of property as articulated by the jurisprudence of the ICTY and by the "Elements of Crimes"¹⁴⁷ document (adopted by the Assembly of States Parties to the ICC Statute) can be added to the small body of post-Second World War judgments in order to determine whether the destruction of the Latroun villages and the transfer of their residents by the Israeli military in 1967 amount to grave breaches of the Geneva Conventions. The elements of crimes are similar in essence for the two grave breaches being examined; that there is a nexus with an armed conflict, that the persons or property concerned enjoy protected status under international humanitarian law, and that both the material and mental elements of the crime are fulfilled.

Nexus with an Armed Conflict

A basic prerequisite for a grave breach to occur is that an armed conflict (the definition of which includes military occupation) must exist; there must be a nexus between this conflict and the crimes alleged; and the armed conflict must be international in scope.¹⁴⁸ The transfer of the residents of 'Imwas, Yalo and Beit Nouba took place during the Six-Day War, which undoubtedly falls within the ICTY Appeals Chamber definition of an armed conflict as it was "a resort to armed force between States ..."¹⁴⁹ The displacement of those residents has continued throughout Israel's subsequent belligerent occupation of Palestinian territory, which also satisfies the definition of an international armed conflict.¹⁵⁰ The forcible transfer of the Latroun villagers came within the context of an international armed conflict; thus this element is satisfied.

Similarly, the destruction of the property of 'Imwas, Yalo and Beit Nouba took place during the Six-Day War between Israel and its neighbouring Arab countries, and its subsequent belligerent occupation of Palestinian territory, which undoubtedly falls within the ICTY Appeals Chamber definition of an armed conflict. The destruction of the villages came within the context of the conflict, thus this element is satisfied.

Protected Persons

For the grave breach of forcible transfer to be perpetrated, those transferred must be protected persons under the Fourth Geneva Convention. Article 4 of the Convention describes protected persons as "those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals." During the Six-Day War and subsequent occupation of the West Bank, the Palestinians of Latroun found themselves in the hands of Israel, a party to the conflict and subsequently the Occupying Power in the OPT, and thus protected under international humanitarian law.

While the Geneva Conventions provide forms of protection for various categories of persons – wounded, sick or shipwrecked combatants, prisoners of war, etc – the Fourth Geneva Convention relates specifically to the protection of civilians. Civilians are broadly defined as those persons not

¹⁴⁷ 'Elements of Crimes' in *First Session, New York, 3-10 September 2002, Assembly of States Parties to the Rome Statute of the International Criminal Court, ICC-ASP/1/3*, at p.108-155. This document was guided mainly by the ICRC Commentaries on the Geneva Conventions, themselves based largely on the *travaux préparatoires* of the Geneva Conventions.

¹⁴⁸ *Ibid*, Element 6, p. 128, and Element 4, p.129. See also, for example, *Naletilic and Martinovic*, *supra* note 121, para. 176.

¹⁴⁹ *The Prosecutor v. Tadic* (Case No. IT-94-1-AR72), Decision on Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, para 70.

¹⁵⁰ See *supra* note 147, p. 126, footnote 34, for confirmation that the definition of an "international armed conflict" includes military occupation.

belonging to armed forces. Under the Fourth Geneva Convention there are “two main classes of civilian to whom protection against arbitrary action on the part of the enemy [are] essential in time of war – on the one hand, persons of enemy nationality living in the territory of a belligerent State, and on the other, the inhabitants of occupied territories.”¹⁵¹ The Palestinians of Latroun can be said to fit into both classes at different stages, initially protected from arbitrary action on the part of the Israeli military forces as persons of enemy nationality living in territory administered by a State which was at war with Israel in early June 1967, and subsequently as inhabitants of an occupied territory.

As is manifest in the factual description of what happened in 'Imwas, Yalo and Beit Nouba, the residents of the villages did not fulfil any of the criteria necessary under international humanitarian law to define individuals as combatants belonging to armed forces rather than protected civilians: they were not members of the regular armed forces of a belligerent party; they were not members of a militia or volunteer corps; and they did not spontaneously take up arms to resist the invading Israeli troops in a so-called *levée en masse*. It must also be added that the description of the villagers by Moshe Dayan as “partners to this war”¹⁵² finds no basis in fact nor in international law, but rather smacks of disregard or lack of understanding of the fundamental principle of international humanitarian law of distinction. The status of the inhabitants of the Latroun villages as protected civilians under the Fourth Geneva Convention is indisputable.

Protected Property

It is similarly necessary to consider the status of property destroyed in the Latroun villages, given that for the grave breach of extensive destruction or appropriation of property to occur, the property must have been protected under one or more of the Geneva Conventions.¹⁵³ In this regard, the term “protected property” is not afforded a definitive delineation in the Conventions. Various articles of the Geneva Conventions establish different degrees of protection for distinct categories of property. The ICRC Commentary¹⁵⁴ and the jurisprudence of the ICTY¹⁵⁵ speak in unison of the existence of two basic types of property whose absolute protection is contemplated:

- Property that is specifically protected by the Geneva Conventions,¹⁵⁶ such as civilian hospitals, ambulances or medical aircraft, regardless of whether or not it is in occupied territory; and
- Real or personal property situated in an occupied territory (belonging to private persons or to the State).

The property which was destroyed in the Latroun villages was the real or personal property of the villagers, placing it in the latter category, which is derived from Article 53 of the Fourth Geneva Convention. This provision is contained in the section of the Convention which applies specifically to occupied territories and the responsibilities of the Occupying Power. It thus only relates to property destroyed by an Occupying Power in an area over which it is exercising effective control, and not property on enemy territory destroyed in the course of battle. As has been clearly shown above, the property of 'Imwas, Yalo and Beit Nouba falls within the ambit of property protected under Article 53, which thereby invokes the application of Article 147 should such property be destroyed extensively, wantonly, and without absolute military necessity.

In addition to this, some of the property destroyed by the Israeli occupying forces in Latroun also falls into other special categories of protection under international humanitarian law. Medical facilities such as the clinic in Beit Nouba¹⁵⁷ would have been classified as protected property even had they

¹⁵¹ See *supra* note 98, p. 45.

¹⁵² See *supra* note 30.

¹⁵³ See *supra* note 147, at 128, Element 4. See also *Naletilic and Martinovic*, *supra* note 121, para. 176: “...property subject of grave breaches must be defined as ‘protected’ in the Geneva Conventions.”

¹⁵⁴ See *supra* note 98, p. 601.

¹⁵⁵ See, for example, *Prosecutor v. Kordic and Cerkez* (Case No. II-95-14/2-T), Judgment, 26 February 2001, para. 336-341.

¹⁵⁶ See First Geneva Convention, Articles 19, 20, 33, 36, 37; Second Geneva Convention, Articles 22, 23, 39; Fourth Geneva Convention, Articles 18, 21, 22.

¹⁵⁷ See Al-Haq Affidavit 2494/2005.

not been situated in occupied territory. In relation to the mosques, schools and archaeological sites destroyed in the villages, the protection of cultural property in time of conflict can be traced back to the Lieber Code of 1863 and the 1874 Brussels Declaration, both of which influenced the Hague Conventions. As has been seen, Article 56 of the Hague Regulations protects the property of religious, charitable, and educational institutions, as well as historic monuments and works of art or science. It is established that such property, even when State-owned, shall be treated as private property and protected as such for the purposes of international humanitarian law. Express protection of such property is detailed in the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict,¹⁵⁸ the 1977 Protocols Additional to the Geneva Conventions,¹⁵⁹ and most recently under Article 8(2)(b)(ix) of the Rome Statute which characterises its destruction as a violation of the laws and customs of war. It is not however, given any specific protection under the grave breaches regime, other than as real or personal property in an occupied territory.¹⁶⁰

In any case, the first two criteria for the grave breaches at hand were clearly met in Latroun – there was a nexus between the alleged crimes and an armed conflict, and the Palestinian residents of 'Imwas, Yalo and Beit Nouba, and their property, enjoyed protected status under international humanitarian law. The material and mental elements of the grave breaches must now be examined.

Actus Reus

*** Forcible Transfer**

The *actus reus*, or material element, of the grave breach of forcible transfer is based on the stipulations of Article 49 of the Fourth Geneva Convention, which have been shown to be violated by Israel's actions in Latroun in June 1967. The ICTY has defined the *actus reus* of the grave breach of forcible transfer as "the occurrence of acts or omissions intended to forcibly remove civilians from their residence, or from the area where they are present, to a place outside of that area."¹⁶¹ The Court also echoed Article 49(2) of the Fourth Geneva Convention in holding that the material element of the crime of forcible transfer is satisfied provided that "the removal was not warranted for the security of the population or for reasons of imperative military necessity."¹⁶² That the residents of 'Imwas, Yalo and Beit Nouba were expelled from their villages, against their will, under the fear or threat of force by the Israeli army is clear from the facts detailed in Section II, which leave no doubt as to the fact that the *actus reus* of this crime was satisfied.

*** Property Destruction**

Regarding the *actus reus*, or material element, of the grave breach of extensive destruction or appropriation of property, the requirements for an act tantamount to this grave breach are that the destruction or appropriation of property occurred,¹⁶³ and that such destruction or appropriation was *extensive*.¹⁶⁴

¹⁵⁸ Ratified by Israel on 1 April 1958.

¹⁵⁹ First Additional Protocol, Articles 53, 85; Second Additional Protocol, Article 16.

¹⁶⁰ For further reading on the protection of cultural property during armed conflict, see Dieter Fleck (ed.), *Handbook of Humanitarian Law in Armed Conflict* (Oxford, Oxford University Press, 1995), chap.9; Yaron Gottlieb, 'Criminalising Destruction of Cultural Property: A Proposal for Defining New Crimes Under the Rome Statute of the ICC' (2005) 23 *Penn State International Law Review* p. 857; Karen J. Detling, 'Eternal Silence: The Destruction of Cultural Property in Yugoslavia', (1993) 17 *Maryland Journal of International Law & Trade* p. 41; Hírad Abtahi, 'The Protection of Cultural Property in Times of Armed Conflict: The Practice of the International Criminal Tribunal for the Former Yugoslavia' (2001) 14 *Harvard Human Rights Journal* p.1; David Keane, 'The Failure to Protect Cultural Property in Wartime' (2004) 14 *DePaul-LCA Journal of Art and Entertainment Law* p. 1; *Protection of Cultural Property in the Event of Armed Conflict: Report on the Meeting of Experts* (Geneva, ICRC, 2002).

¹⁶¹ See *supra* note 121, para. 211.

¹⁶² *Ibid.*

¹⁶³ See *supra* note 147, Element 1, p. 127.

¹⁶⁴ *Ibid.*, Element 3.

The first question to be posed is what actions are encompassed by “destruction.” There is no great complexity in this regard. Much of the jurisprudence on the matter stems from the war crimes committed during the Second World War. In the *Franz Holstein* judgment, “setting fire to buildings, vessels, boats, shops ... used as habitations”¹⁶⁵ was unmistakably held to be sufficient to convict the accused for destruction of property under Article 23(g) of the Hague Regulations and Article 434 of the *Code de Procédure Pénale Français*. Similarly, under the precedent of *Hans Szabados*, ample destruction within the framework of the Hague Regulations can occur “by means of explosives.”¹⁶⁶ Another guilty verdict was returned in *Lingenfelder*¹⁶⁷ under Article 257 of the aforementioned French Penal Code, which defined destruction as incorporating the pulling down, mutilation or damaging of protected property. Thus destruction is self-explanatory and can be committed by a range of actions. The Israeli army’s use of bulldozers and explosives to wipe out the buildings of the Latroun villages unquestionably amounts to “destruction.”

Of course, not only did the residents of the Latroun villages suffer the destruction of their property, but also the appropriation of their land, the majority of which was privately owned,¹⁶⁸ by virtue of the “widespread and systematized acts of dispossession and acquisition of property in violations of the rights of the owners” and in “violation of the laws and customs of war.”¹⁶⁹ Thus the essence of the crime of appropriation of property, “that the owner be deprived of his property involuntarily and against his will,”¹⁷⁰ is satisfied in the case of the Latroun villages.

In relation to whether the destruction and appropriation in Latroun was *extensive*, the authoritative ICRC commentary¹⁷¹ on Article 147 of the Fourth Geneva Convention makes it clear that an isolated incident would not generally be enough to satisfy the conceptual definition of “extensive.” Beyond this the determination is one for judicial evaluation. To this end, the ICTY has determined that as a rule the destruction must be on “a large scale,”¹⁷² and that the destruction must be extensive regardless of whether the property is characterised as carrying general protection or is protected because it is situated on occupied territory.¹⁷³ That the concerted erasure of three entire villages, home to some 10,000 people, by the Israeli occupying forces constitutes a sufficiently large scale destruction so as to be characterised as “extensive” and unlawful is undeniable.

Mens Rea

The general *mens rea*, or mental element, common to all grave breaches of the Fourth Geneva Convention has been defined by the ICTY as encompassing “both guilty intent and recklessness which may be likened to serious criminal negligence.”¹⁷⁴ It must be noted that the necessary mental element for grave breaches will depend on who exactly is being held responsible and the role they played, but for the purposes of this study the aim is to broadly demonstrate that there was the requisite intent and knowledge present at various levels of the Israeli political and military establishments.

*** Forcible Transfer**

In particular relation to the crime of forcible transfer, the post-Second World War trials affirmed that the mental element was satisfied when the perpetrator was found to have committed the crime “wilfully and knowingly.”¹⁷⁵ The *mens rea* was subsequently defined by the ICTY as “the intent of the

¹⁶⁵ *Trial of Franz Holstein and Twenty-three Others*, UNWCC, LTRWC, vol. VIII, p. 29.

¹⁶⁶ *Trial of Hans Szabados*, UNWCC, LTRWC, vol. IX, p. 59.

¹⁶⁷ *Trial of K. Lingenfelder*, UNWCC, LTRWC, vol. VIII, p. 67.

¹⁶⁸ Of the 35,000 dunums of land covered by Imwas village, for instance, approximately 22,000 dunums were registered in the names of the village’s residents. See Al-Haq Affidavit 2496/2005.

¹⁶⁹ *I.G. Farbenindustrie Trial (United States v. Carl Krauch et al.)*, *Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10*, 15 AD 668, at 673.

¹⁷⁰ *Ibid.*

¹⁷¹ See *supra* note 98, p. 601.

¹⁷² See *supra* note 155, para. 341.

¹⁷³ See *supra* note 121, para. 576.

¹⁷⁴ *The Prosecutor v. Blaskic* (Case No. IT-95-14-T), Judgment, 3 March 2000, para. 152.

¹⁷⁵ See *Flick and Five Others Case*, UNWCC, LTRWC, vol. IX, p.3; *A.Krupp Trial*, UNWCC, LTRWC, p. 74.

perpetrator to transfer a person,¹⁷⁶ or “the intent to have the person removed.”¹⁷⁷ Moreover, the intent to unlawfully remove an individual implies the objective that the person will not return.¹⁷⁸ The mental element further comprises awareness on the part of the perpetrator of the factual circumstances establishing the protected status of the civilians being transferred, as well as awareness of the factual circumstances that established the existence of an armed conflict.¹⁷⁹

It is illustrated in Section II, above, that the intent on the part of the Israeli military to permanently remove the Palestinian population of Latroun was present from the outset, and was subsequently backed by the Israeli government, ceding to the pressure exerted by Minister of Defence Moshe Dayan during the meeting of the Cabinet of 25 June 1967. In expelling the entire population of the three villages indiscriminately, Israeli military officials cannot possibly have been ignorant of the protected status of the village residents as civilians, nor the existence of the armed conflict in which they themselves were involved as members of a regular armed force. That the requisite mental intent was present in those involved in the planning, ordering and carrying out of the forcible transfer of the Palestinians of ‘Imwas, Yalo and Beit Nouba is therefore clearly established.

*** Property Destruction**

As far as the *mens rea*, or mental element, for the offence of extensive property destruction or appropriation is concerned, the ICTY has decreed that in order to satisfy the requisite mental element of “wanton” destruction, the perpetrator of the violation must have “acted with the intent to destroy the property in question or in reckless disregard of the likelihood of its destruction.”¹⁸⁰

The requisite guilty intent for this crime had undeniably been present in the upper echelons of the Israeli military; the then Chief-of-Staff, Yitzhak Rabin, having asserted some years after the Six-Day War that “I gave the order”¹⁸¹ to demolish the villages. The fact that destruction of the villages began almost immediately after the displacement of the residents shows that the intention to destroy this pocket of the territory was pre-existent, and would be carried out irrespective of the outcome of the rest of the war.

The motives for the premeditated destruction of ‘Imwas, Yalo and Beit Nouba, a combination of elements of revenge and “strategy,” are elucidated clearly in Section II.A above. It is also clearly established that the Israeli army faced no military resistance in the villages, and the fact that Israeli bulldozers and combat engineering units were deployed to the villages with the specific task of destroying all property therein, clearly indicates that the Latroun area was levelled by design rather than spontaneously in the course of battle. This final element for the grave breach to occur, that the destruction was not justified by absolute military necessity, is fully addressed in the analysis of the violation of Article 53 of the Fourth Geneva Convention in Section III.B, above.

Individual Criminal Responsibility for the Grave Breaches Committed

The relevant elements of the crimes satisfied, the forcible transfer of the Palestinian population of Latroun, and the extensive destruction and appropriation of their property, amount to grave breaches of the Fourth Geneva Convention within the ambit of Article 147. Individual criminal responsibility for such crimes under international law is reiterated in the statutes of the ICTY¹⁸² and the ICC,¹⁸³ with any individual Israeli actors who committed, ordered, knowingly allowed or otherwise assisted the transfer or destruction criminally liable for their actions.

¹⁷⁶ See *supra* note 121, para. 521.

¹⁷⁷ *Ibid.*, para. 520.

¹⁷⁸ See, for example, *Ibid.*, para. 520; and *Prosecutor v. Blagoje Simic et al.* (Case No. IT-95-9-T), Judgment, 17 October 2003, para 132.

¹⁷⁹ See *supra* note 147, p. 129, Elements 3 and 5.

¹⁸⁰ See *supra* note 155, para. 341.

¹⁸¹ See *supra* note 10.

¹⁸² See *supra* note 145, Article 2(g).

¹⁸³ See *supra* note 142, Article 8(2)(a)(vii).

Regarding those Israeli forces involved in physically demolishing the houses or forcibly evacuating the Palestinian residents of Latroun, their responsibility is self-evident. The fact that clear reservations were expressed by some of the soldiers themselves is further proof of their awareness of the fact that what they had been ordered to do was unjustifiable, although the majority of them proceeded to do it regardless. It must be noted here that a customary rule has evolved in international law whereby a crime by a subordinate may not be excused by the claim that he or she committed a crime under international law but was bound to do so under orders from a superior. Where serious violations of international criminal or humanitarian law, such as the grave breaches at hand, are committed, the perpetrator cannot be absolved of responsibility. The fact that that person acted in accordance with superior orders may however be considered in mitigation of punishment.¹⁸⁴

One of the major challenges facing war crimes prosecutors is the difficulty involved in establishing a tangible link between senior commanders and the crimes committed by their subordinates. However, military commanders and civilian superiors can also be responsible under the international criminal law principle of superior responsibility for the crimes committed by forces under their effective authority and control where that commander or superior knew, or should have known, that their forces were committing or about to commit such crimes, and failed to take all necessary or reasonable measures to prevent or repress their commission, or to submit the matter to the competent authorities for investigation and prosecution.¹⁸⁵

In the case of the Latroun villages, evidence of the direct responsibility and complicity of figures in the political and military leadership presents itself. The requisite mental element for the crime of extensive destruction of property, for instance, had undeniably been present in the upper echelons of the military. As noted previously, for example, the Chief-of-Staff, the most senior figure in the Israeli army, admitted to giving the order to demolish the villages. Indeed, Yitzhak Rabin went on to declare that "at war there are certain rules of war ... [but] ... whenever we are at war we will do whatever is needed to protect Israel,"¹⁸⁶ thereby acknowledging the existence of the rules of warfare but at the same time pronouncing that those rules may be broken if it is considered necessary to "protect Israel." In this particular instance the lack of correlation between the complete destruction of three civilian villages and the protection of Israel is patently discernible.

Although openly alluding to the element of revenge with which the Israeli invasion of the Latroun area in 1967 was tinged, and his own eagerness to receive the order to occupy the area, the military commander for the area, General Uzi Narkiss, did not implicate himself in the destruction of the villages and the consequent prevention of the residents from returning as directly as Rabin. He was, however, under the command of the Chief-of-Staff, and given that Rabin admitted he gave orders to demolish the villages, Narkiss would have been the one receiving those orders and passing them on to his local commanders in the area. Even if Narkiss did not pass on those orders himself, which is highly unlikely, he was responsible for the units in the area, and admitted he had been involved in formulating a plan to occupy Latroun in advance of receiving the order to do so. Narkiss can therefore also be shown to be accountable under the previously mentioned principle of superior responsibility. As the military commander in the area he must have know that his subordinates were about to commit such acts or had done so, but failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

¹⁸⁴ For further detail on superior orders, see Antonio Cassese, *International Criminal Law* (Oxford, Oxford University Press, 2003), p. 231-241. Article 33 of the Statute of the International Criminal Court stipulates that acting pursuant to an order of a Government or a superior shall not relieve an individual of criminal responsibility unless the individual was under a legal obligation to obey such orders, the individual did not know that the order was unlawful and the order was not manifestly unlawful.

¹⁸⁵ See, for example, *supra* note 142, Article 28; *supra* note 145, Article 7(3).

¹⁸⁶ See *supra* note 10.

Thus, Narkiss cannot be exempted from his responsibility for the crimes committed under his command. His concurrence with the policy of forcible transfer meted out upon the residents of 'Imwas, Yalo and Beit Nouba is also demonstrated in his statement in the wake of the Six-Day War: "We are talking about emigration of the Arabs. Everything must be done – even paying them money – to get them to leave."¹⁸⁷ Mid-level Israeli military commanders deployed in the area are similarly criminally responsible for transmitting orders to destroy the villages, transfer their residents, and deny their return, or if they did not transmit such orders for failing to take the necessary measures to prevent the carrying out of such manifestly unlawful orders.

The criminal intent of Moshe Dayan, Israel's Minister of Defence in 1967, similarly revealed itself. Dayan is quoted by General Arieh Bar-On, his Military-Secretary, as declaring in a meeting of the General Command, in September 1967, that "at the beginning of the war and during the war we carried out operations to destroy villages, for Zionist purposes in which I fully share."¹⁸⁸ His role in ensuring the erasure of anything left of 'Imwas, Yalo and Beit Nouba by 25 June 1967 is also clear from the Cabinet discussion on the matter described in Section II.C. Further, it is well established in international law since Nuremberg that no government officials or state representatives, no matter how senior, are immune with respect to crimes under international law such as genocide, crimes against humanity and war crimes:

The principle of international law, which under certain circumstances, protects the representative of a state, cannot be applied to acts which are condemned as criminal by international law. The authors of these acts cannot shelter themselves behind their official position in order to be freed from punishment in appropriate proceedings ... individuals have international duties which transcend the national obligations of obedience imposed by the individual state. He who violates the laws of war cannot obtain immunity while acting in pursuance of the authority of the State if the State in authorizing action moves outside its competence under international law.¹⁸⁹

As such, on no grounds could the Defence Minister claim diplomatic immunity from prosecution for the grave breaches of the Fourth Geneva Convention of forcible transfer and extensive destruction of property, for which he – as well as his Chief-of-Staff, military commanders and lower ranking soldiers who ordered, committed or assisted the crimes in any way – is individually criminally responsible. The same can be said of the Knesset ministers who took the decision not to allow the Palestinian residents of Latroun to return to their lands or homes. The considerable period of 40 years having passed, some of the individuals involved in ordering or carrying out the war crimes in Latroun have since been deceased, but others are still alive and eligible for prosecution, with no temporal limits on crimes of this nature. Also, the incumbent figures of authority, such as the current Minister of Defence and head of GOC Central Command, who are aware of the situation of the Latroun villagers and have refused to grant them their legal right to return to their villages, can similarly be held individually responsible if the forcible transfer of the Palestinian populations of 'Imwas, Yalo and Beit Nouba can be said to amount to a continuing violation of the Fourth Geneva Convention. This question will be addressed in the Section III.E, below.

The Transfer by the Occupying Power of Part of its Civilian Population into the Occupied Territory as a War Crime

All serious violations of international humanitarian law not listed as grave breaches of the Geneva Conventions nonetheless constitute war crimes for which the perpetrators are criminally responsible, just without invoking the specific legal regime relevant to grave breaches as detailed above. Under customary international law the transfer by an Occupying Power of part of its civilian population into the territory it occupies is considered as one such serious violation.¹⁹⁰ This customary status

¹⁸⁷ See *supra* note 77, p. 240.

¹⁸⁸ Arieh Bar-On, *Personal Signature – Moshe Dayan in the Six-Day War and After*, quoted in Dr. Ismail Zayid, 'Palestine: A Story of Ethnic Cleansing and Dispossession,' presented at McGill University, Montréal, 26 September 2002.

¹⁸⁹ International Military Tribunal (Nuremberg), *France et al. v. Goering et al.*, *supra* note 119, p. 221.

¹⁹⁰ See *supra* note 111, p.576, 578.

of the implantation of civilians in occupied territory as a war crime was recently codified in Article 8(2)(b)(viii) of the Statute of the International Criminal Court.¹⁹¹

Here it is important to clarify the identity of the author of this war crime. The settlers of Mevo Horon themselves are merely the instrument of the violation, having been effectively transferred by Israel, the Occupying Power. However, existing international law does not recognise the criminal responsibility of States. Rather, under the principle of individual criminal responsibility, those accountable for the crime are the people who, in their capacity as agents of the State of Israel, within the Israeli government and administration, planned and executed, or continue to execute, the settlement policy in Mevo Horon.

E. FORCIBLE TRANSFER AS A CONTINUING CRIME?

It has been established above that the forcible transfer of the Palestinians of 'Imwas, Yalo and Beit Nouba constituted a violation and a grave breach of the Fourth Geneva Convention when it happened in 1967, but in light of modern international criminal law, the question can also be raised as to whether it amounts to a continuing international crime.

The difference between a “continuing” or “continuous” crime, and a “completed” crime is relevant for establishing responsibility for the crime and also for establishing the temporal jurisdiction of any potential court or judicial body to deal with such an act. However, the potential prosecution of continuing crimes within the context of international criminal law is still an emerging principle. The Rome Statute of the ICC avoided setting out an explicit position on the issue, but notably did not preclude it from the scope of the Court’s jurisdiction, choosing rather to leave the matter for judicial interpretation. A strong argument can be made that the ICC has jurisdiction for crimes which started before the entry into force of the statute, but have continued subsequent to its entry into force. Examples which have been put forward include the crimes of enforced disappearance and, notably, forcible transfer or deportation of civilians.¹⁹²

When the International Law Commission (ILC) undertook the task of codifying the principles of international law concerning state responsibility in 2001, it defined violations of a continuing character as:

The breach of an international obligation by an act of a State having a continuing character over the entire period during which the act continues and remains not in conformity with the international obligation.

The breach of an international obligation requiring a State to prevent a given event occurs when the event occurs and extends over the entire period during which the event continues and remains not in conformity with that obligation.¹⁹³

Although relating to State rather than individual responsibility, these provisions nonetheless go some way in developing the distinction between completed and continuing violations of international law. A continuing wrongful act “occupies the entire period during which the act continues and remains not in conformity with the international obligation”¹⁹⁴ that has been breached. Relating this definition to the continuing failure of the Israeli authorities to fulfil their obligation to allow the people of 'Imwas, Yalo and Beit Nouba to return to their villages implies a responsibility on the part of those authorities for a crime of continuing forcible transfer. It is important to distinguish a violation such as this continuing forced displacement of the population of the Latroun villages, which is ongoing in nature, from a completed violation which has merely gone unpunished, such as the destruction of that population’s property.

¹⁹¹ *Supra* note 142.

¹⁹² William A. Schabas, *An Introduction to the International Criminal Court* (Cambridge, Cambridge University Press, 2001), p.59.

¹⁹³ International Law Commission, *Draft Articles on the Responsibility of States for Internationally Wrongful Acts*, Article 14.

¹⁹⁴ International Law Commission, *Draft Articles on the Responsibility of States for Internationally Wrongful Acts, with commentaries* (2001), p. 139.

The ILC also cites enforced disappearance, a crime comparable to forcible transfer in many respects, as an example of a continuing violation of international law.¹⁹⁵ Indeed, the jurisprudence of the Inter-American Court of Human Rights has held that enforced disappearance constitutes a continuing violation of a number of rights protected under international law.¹⁹⁶ The Court considered an individual's disappearance as marking the beginning of a situation which continues for as long as the person concerned remains disappeared, without limitation upon the length of that period of time.¹⁹⁷

Other relevant precedents where certain acts have been interpreted to constitute continuing violations include the *Rainbow Warrior* affair, the arbitration of which concerned the failure of France to detain two of its agents (convicted in New Zealand for their involvement in the sabotage of a vessel belonging to Greenpeace International) on the French Pacific island of Hao for a period of not less than three years, as required by an agreement between France and New Zealand. The *ad hoc* tribunal established to arbitrate the case in Geneva referred to the distinction between instantaneous and continuing violations, and held: "Applying this classification to the present case, it is clear that the breach consisting in the failure of returning to Hao the two agents has been not only a material but also a continuous breach. And this classification is not purely theoretical, but, on the contrary, it has practical consequences, since the seriousness of the breach and its prolongation in time cannot fail to have considerable bearing on the establishment of the reparation which is adequate for a violation presenting these two features."¹⁹⁸

The case of *Loizidou v. Turkey*¹⁹⁹ before the European Court of Human Rights (ECHR) arose from the Turkish invasion of Cyprus in 1974, as a result of which the applicant was denied access to her property in northern Cyprus. Turkey argued that under Article 159 of the Constitution of the Turkish Republic of Northern Cyprus of 1985, the property in question had been expropriated, and this had occurred prior to Turkey's acceptance of the jurisdiction of the ECHR in 1990. The Court held, however, that in accordance with international law and having regard to the relevant UN Security Council resolutions, it could not attribute legal effect to the 1985 Constitution; thus the expropriation was not completed at that time and the property continued to belong to the applicant. The conduct of the Turkish military in denying the applicant access to her property continued after Turkey's acceptance of the Court's jurisdiction, and was therefore held to constitute a continuing breach of the applicant's right to peaceful enjoyment of her property and possessions under Article 1 of the first protocol to the European Convention on Human Rights.

Applying this precedent of an individual prevented from returning to her property by an occupying power to the prevention of the Latroun residents from returning to their villages by the Israeli authorities, a case can be made to show that the ongoing forced displacement of the Palestinian villagers amounts to a continuing violation of the prohibition on the forcible transfer of protected persons as set out in Article 49 of the Fourth Geneva Convention, and defined as a grave breach under Article 147. Failing, or in parallel to, the establishment of individual criminal responsibility for the continuing crime of forcible transfer under international humanitarian law, the State responsibility of Israel can also be invoked under human rights law for the continuing violations of the rights of the residents to return to their land and to enjoyment of their property.

With respect to potentially continuing violations or crimes, the question is whether to interpret a given crime by reference to the start of the act constituting the crime, or by reference to the act itself which is continually renewed by virtue of the fact that it is ongoing – in this instance the Latroun residents still not being allowed to return to their villages. It is submitted that, in a case such as this, to consider the starting point of the act in isolation from the issue of continuity would be to ignore the intrinsic nature of the ongoing crime or violation.

¹⁹⁵ *Ibid.*

¹⁹⁶ See, for example, *Velásquez Rodríguez Case*, Inter-Am Ct. H.R., Judgment, 29 July 1988, Series C No. 4, para. 155-158; *Godínez Cruz Case*, Inter-Am Ct. H.R., Judgment, 20 January 1989, Series C No. 5, para. 163-166.

¹⁹⁷ *Blake Case*, Inter-Am Ct. H.R., Judgment, 24 January 1998, Series C No.36, para. 67.

¹⁹⁸ *Rainbow Warrior (New Zealand v. France)*, 30 April 1990, *UNRIAA*, vol. XX, (1990) 217, at p. 264, para. 101.

¹⁹⁹ *Loizidou v. Turkey*, Case No. 15318/89, Judgment, 18 December 1996, ECHR Reports 1996-VI, para. 58-64.

Thus, it can be said that the grave breach of international humanitarian law and violations of human rights law perpetrated when the Israeli military forcibly transferred the Palestinian population of Latroun from their homes in 1967 persist today as a continuing breaches of international law.

Finally, it is worth noting that the forcible expulsion and continuing displacement of the Latroun residents was not a once-off occurrence, never to be repeated elsewhere in the OPT. In the 40 years since the villagers of 'Imwas, Yalo and Beit Nouba were expelled, the Israeli authorities have continued to implement their policy of forcible transfer of Palestinians from certain parts of the West Bank. This has been more recently achieved by indirect, rather than direct, force,²⁰⁰ with former Prime Minister Ariel Sharon having stated that, "[y]ou don't simply bundle people onto trucks and drive them away ... I prefer to advocate a positive policy, to create, in effect, a condition that in a positive way will induce people to leave."²⁰¹ The Israeli occupying forces have achieved this in parts of the OPT through the creation of coercive conditions making it practically very difficult for the local Palestinian to remain: by virtue of house searches, arrests, physical harassment, cutting off water and power services, and restrictions on movement, access to land and economic activities.

F. DE FACTO ANNEXATION OF LAND

*The war will give us the land. Concepts of 'ours' and 'not ours' are peace-time concepts only, and they lose their meaning during war.*²⁰²

In addition to the serious violations of international humanitarian law perpetrated in 'Imwas, Yalo and Beit Nouba by Israel and its occupying forces, issues of public international law (relating to territorial acquisition and self-determination of peoples) and international human rights law (relating to the right to self-determination and the rights of refugees and displaced persons) also arise.

Historically, international law allowed for the right of a sovereign to acquire territory by force, known as the right of conquest. This was defined as "the right of the victor, in virtue of military victory or conquest, to sovereignty over the conquered territory and its inhabitants."²⁰³ The emergence of the principles of modern international law, which prohibit the use of force except in individual or collective self-defence, as well as detailing the absolute prohibition on the acquisition of territory, including occupied territory, through the threat or use of force, have long served to render the right of conquest defunct. Any attempts to *de jure* or *de facto* annex territory through conquest, are therefore impermissible. This is evidenced by the lack of recognition on the part of the UN and the international community (their failure to take any practical action notwithstanding) with regard to the measures taken by Israel in 1967 and since to change the status of occupied East Jerusalem.²⁰⁴

As noted previously, the question of unlawfully annexing the Latroun enclave was explicitly presented to the ministers of the Knesset in the aftermath of the war by Moshe Dayan: "the question is whether to return [the Latroun villagers] to their places, or to transform these territories into Israeli territories."²⁰⁵ They decided on the latter. Former Israeli Knesset member Uri Avnery emphasised that, all along, the Israeli army had been determined not only to neutralise Latroun but to make it part of Israel, highlighting, in Avnery's words, "the Israeli mentality ... that you change boundaries by changing populations."²⁰⁶

²⁰⁰ See, for example, Badil, *Displaced by the Wall: Forced Displacement as a Result of the West Bank Wall and its Associated Regime* (Bethlehem and Geneva, Badil Resource Centre for Palestinian Residency and Refugee Rights, 2006).

²⁰¹ Quoted in 'Forcible Removal of Arabs Gaining Support in Israel,' *The Times*, 24 August 1988.

²⁰² David Ben-Gurion, February 1948. Quoted in Meron Benvenisti, *Sacred Landscape: The Buried History of the Holy Land* (Berkeley, University of California Press, 2000), p. 120.

²⁰³ Sharon Korman, *The Right of Conquest: The Acquisition of Territory by Force in International Law and Practice* (Oxford, Oxford University Press, 1996), p. 8.

²⁰⁴ See, for example Security Council Resolution 267, 3 July 1969, adopted unanimously at the 1485th meeting of the Security Council: "all legislative and administrative measures and actions taken by Israel which purport to alter the status of Jerusalem... are invalid and cannot change that status"; and Security Council Resolution 478, 20 August 1980, adopted at the 2245th meeting of the Security Council by a vote of 14-0, with one abstention, which held Israel's Basic Law declaring Jerusalem as the eternal and united capital of Israel to be "null and void."

²⁰⁵ See *supra* note 12, p. 18.

²⁰⁶ See *supra* note 30.

Although Israel has since the outset of the occupation in 1967 displayed a clear intent to effectively annex the Latroun area, any actions or measures taken will remain invalid under international law, particularly in light of the basic tenets that occupation may only ever amount to a temporary condition, and that sovereignty can never vest in the Occupying Power. This stems from Article 55 of the Hague Regulations which asserts that the Occupying Power is permitted to act “only as administrator and usufructuary” of property in the occupied territory, and is therefore obliged not to alter the status of that territory. Moreover, under binding UN Security Council Resolution 242, Israel is required to withdraw from territories occupied in the Six-Day War, including the Latroun enclave of the West Bank.

The way the Occupying Power has gone about cementing its *de facto* sovereignty over the Latroun area since 1967 in spite of the clear illegality of doing so, however, is typical of the sequence of calculated policies implemented by Israel to realise the planned goal of annexing certain areas of the OPT. First, the forcible transfer of the Palestinian population out of the area. Second, the physical destruction of that population's property. Third, the confiscation or appropriation of Palestinian land through the closure of the area and establishment of Israeli military control over it by virtue of military orders.²⁰⁷ Fourth, settlement construction and the transfer of part of Israel's own civilian population into the occupied territory. Most recently, this process has been garnished with its final touch through the construction of the Annexation Wall, which envelops the settlements,²⁰⁸ in this case Mevo Horon, and keeps them in the ‘seam zone,’ physically contiguous with Israel, between the Wall and the Green Line. All of these steps contravene fundamental provisions of international law, and serve to create facts on the ground ultimately aimed at the acquisition of territory.

The illegality and inadmissibility of such acquisition is one of the core principles upon which modern public international law is built, as an inherent corollary of Article 2(4) of the UN Charter, which prohibits the use of force. Indeed, this prohibition is established as a norm of *jus cogens*:

“[T]he law of the Charter concerning the prohibition on the use of force in itself constitutes a conspicuous example of a rule in international law having the character of *jus cogens*.”²⁰⁹

Norms of *jus cogens*, or peremptory norms, are fundamental principles of international law which are universally accepted and from which no derogation is ever permitted. The *jus cogens* nature of the prohibition on the use of force is established. It cannot but follow, therefore, that *jus cogens* status similarly pertains to the invalidity of territorial acquisitions resulting from the use of force. To this end, it is worth noting the long-established legal principle of *ex injuria jus non oritur*, that an illegality cannot, as a rule, become a source of legal right to the wrongdoer. The dicta of the ICJ in its advisory opinion on the Wall affirms that the legal status of the norm prohibiting acquisition of territory through the threat or use of force is derived from and logically follows that of the norm prohibiting the use of force itself:

[T]he principles on the use of force incorporated in the Charter reflect customary international law; the same is true of its corollary entailing the illegality of territorial acquisition resulting from the use of force.²¹⁰

²⁰⁷ See Military Order No. 146, *supra* note 82, and, for example, IDFA 901/2/281, *supra* note 39.

²⁰⁸ The UN Special Rapporteur on the situation of human rights in the OPT has stressed that, rather than amounting to a justifiable security measure, the Wall is “principally aimed at advancing the safety, convenience and comfort of settlers.” See *supra* note 1, p. 2.

²⁰⁹ International Law Commission (ILC), ‘Draft Articles on the Law of Treaties, with Commentaries,’ *ILC Yearbook 1966* Vol. II, p. 247. See also *Case Concerning the Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, ICJ (1986), para. 190.

²¹⁰ See *supra* note 90, para. 87.

Thus, the acquisition of territory by conquest is absolutely prohibited by international law. It is also further prohibited in the Palestinian context as an inherent violation of the right to self-determination, a principle which also holds the status of *jus cogens*. The UN Commission on Human Rights has repeatedly emphasised the “the right to self-determination as an international principle and as a right of all peoples in the world, as it is a *jus cogens* in international law.”²¹¹ Similarly, UN Special Rapporteurs,²¹² justices of the ICJ,²¹³ and leading scholars of international law²¹⁴ have asserted that in the light of contemporary international realities, the principle of self-determination necessarily possesses the character of *jus cogens* and is therefore peremptory.

Any acquisition of Palestinian territory in the Latroun area by Israel, therefore, is absolutely prohibited as a violation of two peremptory norms of international law which override all other norms of international law and from which no derogation is permitted – the non-acquisition of territory by the threat of use of force, and the right to self-determination. It must also be borne in mind in the current geopolitical context in which “negotiations” and “peace agreements” are being discussed, that any accord transferring territory of the Latroun area to Israeli sovereignty would be null and void under Article 53 of the Vienna Convention on the Laws of Treaties, which holds that “a treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law.”

Thus, even if in fact the Latroun salient is treated as if it were part of Israel (access from the West Bank side is barred completely, while not a single sign of any kind exists to indicate that travelling through the area from Tel Aviv or from West Jerusalem entails crossing the Green Line), in international law the land remains part of the occupied West Bank over which Palestinian population is entitled to exercise its right to self-determination. Any *de facto* acquisition of the territory by Israel therefore remains inadmissible in law.

6. THE RIGHT OF THE RESIDENTS TO RETURN

The Palestinian civilians forcibly transferred from the three villages of Latroun endured different fates. Some of them ended up displaced within the West Bank, mainly in the Ramallah area where they remain today. Others, however, became externally displaced when they fled or were indirectly deported to Jordan during and after the Six-Day War. These residents have to this day been prevented by the Israeli authorities from returning to the West Bank, let alone to their villages.

Although the legal status of forcibly displaced persons may differ according to where they were displaced, their rights under international humanitarian law remain the same, with Article 49(2) of the Fourth Geneva Convention requiring that persons forcibly displaced “shall be transferred back to their homes as soon as hostilities in the area in question have ceased,” clearly indicating that protected persons may not be denied return. In the same vein and on the basis of the same principle (although not itself falling within the realm of international humanitarian law), binding Security Council Resolution 237, adopted unanimously in 1969 and since reaffirmed by a plethora of General Assembly resolutions, placed similar obligations on Israel with regard to Palestinians displaced as a result of the 1967 Six-Day War by calling upon the Israeli government “to facilitate the return of those inhabitants who have fled the areas since the outbreak of hostilities.”²¹⁵

²¹¹ See, *inter alia*, Human Rights Resolution 2005/1, UN Doc. E/CN.4/RES/2005/1, 22 April 2005.

²¹² See Hector Gros Espiell, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, *The Right to Self-Determination: Implementation of United Nations Resolutions*, UN Doc. E/CN.4/Sub.2/405/Rev.1 (1980), paras. 70-85.

²¹³ See *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South-West Africa) notwithstanding Security Council Resolution 276*, Advisory Opinion, ICJ (1971), Separate Opinion of Vice-President Ammoun, p. 90.

²¹⁴ See, for example, Ian Brownlie, *Principles of Public International Law* (Oxford, Oxford University Press, 3rd ed., 1979), p. 83.

²¹⁵ UN Security Council Resolution 267, 3 July 1969.

Those forcibly transferred from 'Imwas, Yalo and Beit Nouba to other parts of the West Bank can be classified as "internally displaced persons,"²¹⁶ to whom further specific entitlements with regard to international law apply. Principle 28 of the UN Guiding Principles on Internal Displacement bestows upon Israel the "primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence."

The situation with regard to those residents of Latroun forcibly displaced to Jordan presents a more complicated picture. A stark lacuna in the protection of their human rights exists in the way the UN has applied international human rights law to the situation they and other Palestinians found themselves in as a result of the war in 1967. The UN refers to those Palestinians displaced from the West Bank to Jordan as a result of the Six-Day War (and their descendants) as "displaced persons,"²¹⁷ rather than "refugees," in order to distinguish them from "Palestine refugees" forcibly displaced in 1948 from the 78% of historic Palestine over which the State of Israel came to exercise sovereignty. As "displaced persons," they do not fall under the mandate or qualify for the assistance of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), the agency primarily responsible for assisting "Palestine refugees" displaced during the 1948 Arab-Israeli war.²¹⁸

The Office of the United Nations High Commissioner for Refugees (UNHCR) has clarified that the 1951 Convention relating to the Status of Refugees may apply to protect Palestinians displaced in 1967, but only if the exclusion or cessation clauses contained in the Convention are not applicable to their situation.²¹⁹ As those displaced from Latroun to Jordan have since 1967 acquired Jordanian nationality, they are, according to the UNHCR, excluded from the protection of the Convention by the clause contained in Article 1E which holds that "the Convention shall not apply to a person who is recognised by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country." This interpretation conflicts with the fact that Palestinian "displaced persons" are entitled to the protection of the Convention under the inclusion clause contained in Article 1D, whereby until their position is "definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall *ipso facto* be entitled to the benefits of this Convention."

Despite these technicalities, the Latroun villagers in Jordan nonetheless hold an inalienable right to return to the OPT under instruments of international human rights law (as well as under previously mentioned Article 49(2) of the Fourth Geneva Convention and Security Council Resolution 237). Article 13 of the Universal Declaration of Human Rights, reflective of customary international law, affirms that "[e]veryone has the right to leave any country, including his own, and to return to his country." This right is held not only by those who fled to Jordan in 1967, but also by their descendants, once they have maintained genuine links with the territory of origin. The right of return is similarly enshrined in the International Covenant on Civil and Political Rights (ICCPR), Article 12(4) of which states that "[n]o one shall be arbitrarily deprived of the right to enter his own country." Article 12(4) of the ICCPR is not subject to the same restrictions as Article 12(1) and Article 12(2), which permit restrictions on freedom of movement for the purposes of protecting national security, public order, public health or morals, or the rights and freedoms of others. Indeed, the ICCPR's treaty-monitoring body, the Human Rights Committee, has determined that "there are few, if any, circumstances in which deprivation of the right to enter one's country could be reasonable."²²⁰

²¹⁶ The working definition of internally displaced persons, contained in the 1998 UN Guiding Principles on Internal Displacement, pertains to "persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised State border."

²¹⁷ See UN General Assembly Resolution 2252 (ES-V), 4 July 1967.

²¹⁸ UNRWA was established by UN General Assembly Resolution 302 (IV), 8 December 1949, to provide relief services and assistance to "Palestine refugees," namely those Palestinians displaced during the 1948 Arab-Israeli war.

²¹⁹ See UNHCR, *Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees*, October 2002.

²²⁰ Human Rights Committee, *General Comment No. 27: Freedom of Movement (Article 12)*, UN Doc. CCPR/C/21/Rev.1/Add.9, 2 November 1999.

As evidenced from the continuing displacement of the residents of Latroun, however, the political will to enforce this inalienable right to return has thus far been lacking. Article XII of the Oslo Declaration of Principles on Interim Self-Government Arrangements (signed by the State of Israel and the Palestine Liberation Organisation in 1993) provided for the establishment of a committee “to decide by agreement on the modalities of admission of persons displaced from the West Bank and Gaza Strip in 1967,” an idea which was reproduced in several subsequent agreements between Israel, the Palestinian representatives, Jordan and Egypt. All such agreements, however, are notable by their failure to bring about the implementation of the right of return for those displaced from the Palestinian territories in 1967. It is imperative, therefore, that any future agreements on the OPT provide more concrete mechanisms to facilitate such return, with the unassailable principles of international law as their basis.

As a final point, it must be noted that displaced persons unable to return to their home because it is occupied or has been destroyed, are legally entitled to compensation for losses and suffering. However, compensation is not a substitute for the right to return to the vicinity of one’s home.

H. THIRD PARTY RESPONSIBILITIES AND OBLIGATIONS

In addition to the State responsibility of Israel and the individual responsibility of its agents for the various violations of international law detailed above, what has taken place in the Latroun area during and since June 1967 also gives rise to legal obligations on third party states and private actors.

I. Third States

Under the grave breaches regime detailed in Section III.D, the High Contracting Parties to the Fourth Geneva Convention, not least Israel, have a positive duty to actively search for the perpetrators of the grave breaches committed against the residents of ‘Imwas, Yalo and Beit Nouba, and to bring them to justice under effective domestic penal legislation that reflects the rules of international humanitarian law. As previously noted, the substance of this legal obligation under Article 146 involves searching for, extraditing and prosecuting those responsible for ordering and committing the grave breaches of the Convention perpetrated in Latroun; namely the extensive destruction and appropriation of the property of the villages, and the continuing displacement of the residents of the villages.

Every High Contracting Party also has a broader obligation under Article 1 to “ensure respect” for the provisions of Convention, regardless of whether or not it is a party to a specific conflict. With regard to ‘Imwas, Yalo and Beit Nouba, the provisions proscribing destruction of protected property, forcible transfer of protected persons, and establishment of settlements in occupied territory are particularly salient.

Moreover, under customary international law, all States have a duty not to recognise and not to assist a situation arising from or giving rise to violations of international law. With regard to settlements, and specifically to Mevo Horon in this instance, the obligations on third party States are clear. UN Security Council Resolution 465 “[c]alls upon all States not to provide Israel with any assistance to be used specifically in connection with settlements in the occupied territories.”²²¹ This obligation of non-assistance extends to all illegal situations, including the unlawful acquisition of territory by force and the denial of the right to self-determination, and is complemented by the even more onerous obligation of non-recognition of an illegal situation, which entails a duty on States to abstain from doing anything that implies direct or indirect recognition of Israel’s illegal actions in Latroun.

²²¹ See *supra* note 138. This call was reaffirmed in UN Security Council Resolution 471, 5 June 1980, adopted at the 2226th meeting of the Security Council by a vote of 14-0, with one abstention.

Israel's attempted acquisition of territory in Latroun has been pursued through the occupation of the area and the subsequent creation and consolidation of facts on the ground, most notably the construction of Mevo Horon settlement, Canada Park and the Annexation Wall, aimed at rendering Israel's control over the area irreversible. The facts involved, comparable in nature to those examined by the ICJ in its advisory opinion on the Wall and its associated regime in the OPT, are similarly inextricably linked to the denial of Palestinian self-determination. Thus the findings of the Court with regard to the legal consequences of Israel's internationally wrongful acts as they pertain to other States are equally applicable in relation to the illegal situation in Latroun:

Given the character and the importance of the rights and obligations involved, the Court is of the view that all States are under an obligation not to recognize the illegal situation resulting from the construction of the wall in the Occupied Palestinian Territory.²²²

Similarly, the unlawful *de facto* acquisition of Palestinian territory in the Latroun area gives rise to a duty on all States not to recognise such acquisition. As discussed in Section III.D, both the prohibition on acquisition of territory by threat or use of force and the right to self-determination can be said to have such fundamental importance in international law to constitute non-derogable peremptory norms of *jus cogens*.

While *jus cogens* refers to the legal status that certain norms of international law reach, obligations *erga omnes* pertains to the legal implications arising out of the characterisation of certain legal principles or norms. The two concepts are thus distinct, and the relationship between them was never clearly articulated by the ICJ. They are however seen by many scholars as “two sides of the same coin,”²²³ or as “different aspects of the same rules, and ... therefore coterminous.”²²⁴ Indeed, the notions of peremptory norms and obligations *erga omnes* are considered sufficiently intertwined to be described as “partners.”²²⁵ It is generally accepted therefore that violations of norms of *jus cogens* necessarily give rise to obligations *erga omnes*.²²⁶

Such obligations are by their very nature “the concern of all States” and, “[i]n view of the importance of the rights involved, all States can be held to have a legal interest in their protection.”²²⁷ The violation of a norm giving rise to an obligation *erga omnes* comprises two legal effects for the international community. The first obligation is the “negative” obligation not to recognise the illegal situation created by this violation; the second being the “positive” obligation of doing all within the bounds of international law that States can, individually and collectively, in order to put an end to the illegal situation. Both the unlawful acquisition of territory in the Latroun area of the West Bank, and the denial of Palestinian self-determination by the Occupying Power give rise to such obligations. Indeed, the ICJ has explicitly affirmed the *erga omnes* character of the right to self-determination.²²⁸

What actions States may take to fulfil their obligations is determined by the rules of international law. If the continuing denial of the Palestinian right to self-determination by the Occupying Power, or the attempted acquisition of territory by force, are considered a threat to international peace and security, the international community may, via the UN Security Council, lawfully impose certain measures on Israel in accordance with Chapter VII of the UN Charter – economic and/or diplomatic sanctions under Article 41; or, failing that, as a last resort, the use of necessary measures under Article 42.

²²² See *supra* note 90, para. 159.

²²³ M. Cherif Bassiouni, *International Crimes: Jus cogens and Obligatio Erga omnes* (1996) 59(4) *Law and Contemporary Problems* 63, at p. 72.

²²⁴ Michael Byers, ‘Conceptualising the Relationship between *Jus cogens* and *Erga omnes* Rules’ (1997) 66 *Nordic Journal of International Law* 211, at p. 211.

²²⁵ John Dugard, ‘1966 and All That: The South West African Judgment Revisited in the East Timor Case’ (1996) 8 *African Journal of International and Comparative Law* 549, p. 554.

²²⁶ For further reading on the relationship between norms of *jus cogens* and obligations *erga omnes*, see, for example, *supra* note 223; *supra* note 224; and Christian J. Tams, *Enforcing Obligations Erga omnes in International Law* (Cambridge, Cambridge University Press, 2005), p. 139-157.

²²⁷ *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, Second Phase, Judgment, ICJ (1970), para. 33.

²²⁸ See *Case Concerning East Timor (Portugal v. Australia)*, Judgment, ICJ (1995), para. 29, and *Wall Advisory Opinion*, *supra* note 90, para. 88.

ii. Canada and the Jewish National Fund

While the obligations on third States with regard to the violations perpetrated in the Latroun area are clear, they have not been respected by the international community as a whole. Measures have not been taken to uphold international humanitarian law and put an end to the unlawful denial of the Palestinian right to self-determination. Nor have these obligations been upheld by certain individual states with regard to non-recognition of the illegal situation. Canada Park was built as a recreational area for Israelis on the land of the destroyed villages of 'Imwas and Yalo. It was funded by donations to the JNF in Canada which were subsidised as tax-deductible by the Canadian government. Canada considers development of occupied territory, other than for military security, illegal under international law, and thus by assisting the Canada Park project, albeit indirectly, it is in breach of its own stated policy.

The donations which funded, and continue to fund, the establishment, development and maintenance of Canada Park are subsidised as tax-deductible by virtue of the charitable status of the JNF.²²⁹ Indeed, the JNF is registered as a charity, and therefore benefits from tax exemptions, in many UN member states.²³⁰ Canada first granted "charitable" status to the JNF in 1967, the very year that would see the Palestinian villages of 'Imwas and Yalo destroyed, and their inhabitants forced off the land on which Canada Park would later be built. In order to attain this charitable status, the JNF projects itself as a non-governmental organisation (NGO) committed to sustainable development, water conservation and forestation.

The claim can be made, however, that the JNF, is in practice not an NGO but a parastatal institution involved in furthering a clearly defined political agenda. Under Israeli law, the JNF enjoys a special status and is granted the privileges of a public authority. Since its inception, predating the existence of the State of Israel, the JNF was central to the Zionist project of acquiring and developing land in Palestine for the exclusive benefit of Jews and only under leasehold agreement. The 1961 "Covenant between the State of Israel and the Keren Kayemet LeIsrael [KKL-JNF]"²³¹ put the JNF and the State of Israel as partners on an almost equal footing in the administration of the 93% of the land in Israel under the sovereignty of the State, owned either by the JNF itself or the State through a public body known as the Israel Land Administration (ILA). In accordance with the 1961 Covenant, this land was to be leased only to Jews.

In October 2004 a petition was filed in the Israeli Supreme Court challenging an ILA policy that prevents non-Jews from participating in bids for JNF-controlled land on the basis that the ILA, as a state body, is not allowed to discriminate between Jews and non-Jews.²³² The Supreme Court has continued to delay full hearing of the case to allow the final formulation of an agreement under the guidance of the Attorney-General which would regulate the relationship between the JNF and the ILA. The JNF's municipal lands would be transferred to the ILA so as to be available to Jews and non-Jews alike, although the ILA is to compensate the JNF with substitute land for any plot purchased by a non-Jew. Today, the JNF itself retains ownership of 13% of the land in Israel (the majority of which belonged to Palestinians displaced in 1948). As a private organisation, the JNF bylaws continue to operate uncurtailed, requiring it to lease this land to Jews only. Thus, the JNF continues to be party to the colonial project of "redemption of the land" for Jewish-only settlement or use. The UN Committee on Economic, Social and Cultural Rights has found that Israel has a decisive influence on the policies of the JNF (and the World Zionist Organisation to which it is related), that these agencies effectively exercise governmental functions, and that the transfer of responsibility for the majority of the land in Israel to such bodies amounts to institutionalised discrimination:

²²⁹ In 2006, for example, the JNF of Canada received revenue of C\$3,357,843 in tax-deductible donations, as well as a further C\$406,100 in donations from provincial or territorial governments in Canada. See 2006 Registered Charity Information Return for Jewish National Fund of Canada (Keren Kayemeth LeIsrael) Inc., available at <http://tinyurl.com/yufqr2>.

²³⁰ In addition, in July 2004 the JNF was approved as a United Nations Non-Governmental Organisation by the UN Department of Public Information.

²³¹ See Appendix 8: Covenant between the State of Israel and the Keren Kayemeth LeIsrael (KKL-JNF).

²³² *Adalah v. The Israel Land Administration, et. al.* H.C. 9205/04.

The Committee notes with grave concern that the Status Law of 1952 authorizes the World Zionist Organization/Jewish Agency and its subsidiaries including the Jewish National Fund to control most of the land in Israel, since these institutions are chartered to benefit Jews exclusively. Despite the fact that the institutions are chartered under private law, the State of Israel nevertheless has a decisive influence on their policies and thus remains responsible for their activities. A State Party cannot divest itself of its obligations under the Covenant by privatizing governmental functions. The Committee takes the view that large-scale and systematic confiscation of Palestinian land and property by the State and the transfer of that property to these agencies, constitute an institutionalized form of discrimination because these agencies by definition would deny the use of these properties by non-Jews. Thus, these practices constitute a breach of Israel's obligations under the Covenant.²³³

Regarding the JNF of Canada, its actions are governed by domestic Canadian law pertaining to charitable organisations registered by the Canada Revenue Agency (CRA)²³⁴ in accordance with the Income Tax Act. All charities registered thereunder can issue valid receipts for tax deductions. Common law jurisprudence provides that registered charities must fit into one of the following four categories of charitable purposes:²³⁵

- the relief of poverty;
- the advancement of education;
- the advancement of religion; or
- other purposes that benefit the community in a charitable way.

The JNF of Canada comes under the last category, with its area of work described as “social services.”²³⁶ According to the *2006 Canada Revenue Agency Policy Statement CPS-24: Guidelines for Registering a Charity: Meeting the Public Benefit Test*, the notion of “public benefit” is crucial to the status of every charitable organisation. This notion is two-pronged. Firstly, the work of the organisation must be of a benefit to the community at large. In this regard, there is a particular burden on organisations in the community or social services category to show an “objectively measurable and socially useful benefit,” the first three categories having historically been recognised as inherently beneficial to the public.

The second limb of the “public benefit” test relates to the meaning of the “public” who are to intended to gain from the aforementioned “benefit.” For the relief of poverty category, the test is less rigorous, as charities working to this end automatically have a narrowly defined beneficiary group. In general though, an organisation wanting to attain or preserve its charitable status “cannot restrict delivery of the benefits to a certain group of class of persons without adequate justification.” The CRA's guidelines go on to emphasise that restricting benefit to a specific group of beneficiaries (on the basis of ethnicity, gender, race, religion, etc) has “the potential of offending the public benefit test ... For example, a restriction imposed on eligibility based on a person's religion when the purpose of the undertaking is not religious in nature will likely fail the public benefit test and disentitle the applicant from being registered as charitable.”²³⁷ Under the “public benefit” test, therefore, an organisation whose activities and policies not only fail to benefit the public as a whole, but actively discriminate against the non-Jewish population of Israel and the OPT, is legally ineligible for charitable status.

Further, under Canada's *Income Tax Act*, *Revenue Canada Information Circular 87-1*, and the *2003 Canada Revenue Agency Policy Statement CPS-22: Political Activities*, a charity may only pursue political activities that are non-partisan, related to its charitable purposes, and limited in extent. It may not take part in an illegal activity or a partisan political activity. To do so entails grounds for revocation of status as a charitable organisation. The displacement of the Palestinian population of Latroun,

²³³ Committee on Economic, Social and Cultural Rights, *Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant*, UN. Doc. E/C.12/1/Add.27, 4 December 1998, §.11.

²³⁴ Previously the Canada Customs and Revenue Agency (CCRA).

²³⁵ See *Commissioners for Special Purposes of Income Tax v. Pemsel*, [1891] A.C. 531 (H.L.)

²³⁶ See *supra* note 229.

²³⁷ This is line with the position asserted by the House of Lords in *Inland Revenue Commissioners v. Baddeley*, [1955] A.C. 572.

which the JNF of Canada is helping to perpetuate through its sponsorship of Ayalon/Canada Park is a clearly illegal activity. Similarly, the acquisition of land for the exclusive benefit of a particular racial, national, ethnic or religious group seeking to consolidate its territorial and demographic majority within a particular territory by the KKL-JNF (from which the JNF of Canada cannot be viewed separately) amounts to discriminatory and partisan political activity.

On the basis, therefore, of the JNF's continuing relationship with the State of Israel and the JNF of Canada's breach of the regulations governing its actions under domestic Canadian law, it is submitted that the charitable status of the JNF of Canada ought to be rescinded. The planting of forests and development of recreational parks over ruins of destroyed villages in occupied territory is synonymous less with charitable activities and more with complicity in violations of basic principles of public international law, international human rights law and international humanitarian law.

Despite appeals to this end, however, the Canadian authorities have failed to amend the status of the JNF. Thus, by indirectly supporting the establishment, maintenance and expansion of a recreational park on occupied territory, Canada, far from fulfilling its positive obligation to put an end to the illegal situation created by Israel in this part of the OPT, is responsible for breaching its duty of non-recognition and is complicit in the creation of facts which consolidate the illegal situation and prejudice the realisation of the Palestinian right to self-determination.

In addition to Canada as a third State, the JNF as a third party actor is also operating contrary to basic principles of international law in general, such as respect for human rights and equality, and the specific provisions of international humanitarian law in relation to its actions in Latroun. Significantly, the application by the JNF of the United States for NGO Consultative Status with UN Economic and Social Council was rejected on 18 May 2007 on the basis of its relationship with the KKL-JNF, whose conduct in the OPT was considered to be inconsistent with the UN Charter and international humanitarian law.²³⁸

iii. Corporate Actors

In modern times the escalating prominence and influence of corporate entities has oft resulted in adverse impacts on the human rights of individuals. With regard to Israel Railways Ltd., the issue of corporate responsibility arises in relation to the obligation of the Occupying Power not to make any permanent alterations to the status of the occupied territory. By constructing a railway line for Israeli citizens through occupied territory and on protected Palestinian land unlawfully expropriated from its owners, Israel Railways Ltd. renders itself complicit in violations of international humanitarian law. Further, as alluded to in Section II.B, the railway will service the Israeli settlements in the West Bank environs of Modi'in. Under international law, any actors involved in an enterprise which recognises, assists and consolidates illegal settlements are also complicit in the illegal action.

As a still emerging phenomenon, the responsibility of corporate bodies during times of war and occupation is yet to be clearly defined or regulated by international law. A small number of interesting precedents regarding the accountability of corporate actors have arisen, however, primarily in the context of reparations for victims of human rights abuses and violations of international humanitarian law. One example which is particularly pertinent to the situation in the OPT and other occupied territories is the finding of the Commission for Reception, Truth and Reconciliation in East Timor that "Indonesian business companies, including State Owned Enterprises, and other international and multinational corporations and businesses who profited from war and benefited from the occupation"²³⁹ must contribute to the reparations scheme proposed to compensate the East Timorese victims of the Indonesian occupation.

²³⁸ See UN Economic and Social Council, ECOSOC/6270, NGO/621, Committee on NGOs, 21st and 22nd Meetings, 18 May 2007.

²³⁹ See *Chega! – The Final Report of the Commission for Reception, Truth and Reconciliation in Timor-Leste (CAVR)*, Part 11, p. 42.

Further, according to the ICRC, international humanitarian law binds not only States, armed groups and soldiers, but all actors whose activities are closely linked to a war or military occupation. Accordingly, although States and armed groups bear the greatest responsibility for implementing international humanitarian law, "a business enterprise carrying out activities that are closely linked to an armed conflict must also respect applicable rules of international humanitarian law."²⁴⁰ Difficulties will doubtless arise when it comes to determining which activities are "closely linked" to a conflict. The ICRC has clarified that a "whole range of other activities," apart from providing direct support for an army, are likely to be carried out by business enterprises which may suffice to attain the requisite link to a given conflict. Thus it is established that "business enterprises operating in zones of armed conflict should use extreme caution and be aware that their actions may be considered closely linked to the conflict even though they do not take place during fighting or on the battlefield. Likewise, it is not necessary for business enterprises and their managers to intend to support a party to the hostilities for their activities to be considered to be closely linked to the conflict."²⁴¹

Having not exercised sufficient caution when planning the building of a railway line over expropriated private land in the occupied West Bank, Israel Railways Ltd. is complicit in the perpetuation of facts on the ground in the Latroun area which prevent the return of its forcibly transferred residents in violation of Article 49 of the Fourth Geneva Convention. Notably, regarding this issue of displacement, the ICRC referred specifically to businesses "establishing transport routes in ways that may affect a civilian population's residential or agricultural land," and that in this context the taking of private property without due legal process may amount to pillage.²⁴² Indeed, corporate entities involved in ventures which have some connection to the forcible transfer of protected persons (or other grave breaches of the Geneva Conventions) run legal risks both in terms of criminal responsibility for the commission of or complicity in war crimes, as well as of civil liability for damages. In relation to the potential legal consequences for Israel Railways Ltd., it is worth noting the filing of a case by the Palestine Liberation Organisation (PLO) in France in October 2007 against Alstom SA and Veolia Environnement SA, the two companies involved in the construction and planned operation of the Jerusalem Light Rail,²⁴³ on the basis of violations of the Fourth Geneva Convention.

Moreover, like the Tel Aviv to Jerusalem line being constructed by Israel Railways Ltd., this light rail intends to cut through the OPT, impairing the potential exercise of the right of the Palestinian people to self-determination. On these grounds, therefore, as well as on the grounds of specific provisions of international humanitarian law, Israel Railways Ltd. is complicit in the State of Israel's violations of international law.

²⁴⁰ ICRC, *Business and International Humanitarian Law* (ICRC, November 2006), p. 14.

²⁴¹ *Ibid.*

²⁴² *Ibid.*, p. 24.

²⁴³ See Rory McCarthy & Angélique Chrisafis, 'PLO Disputes Jerusalem Rail Plan,' *The Guardian*, 26 October 2007.

IV. CONCLUSION

The meaningful exercise of the indispensable right of the Palestinian people to self-determination has become more and more improbable in the 40 years since the invading Israeli army forced the residents of 'Imwas, Yalo and Beit Nouba out of their homes. What began as a post-war military occupation in 1967 has steadily morphed into an exploitative and repressive regime defined by its voracious desire to procure permanent control over as much of the West Bank as possible, including East Jerusalem, and to pre-emptively fragment any future Palestinian state into nothing more than an assortment of isolated cantons.

The number 40 is significant in Jewish, Christian, Islamic and other Middle Eastern traditions. 40 years was the length of the Israelites wandering in the wilderness. In Jewish history, this period of time represented a generation, that is, the time it takes for a new generation to arise. Indeed, numerous Israelite leaders and kings, from Eli to Saul to David to Solomon, are said to have ruled for 40 years. Now, for 40 years, the Palestinian people of the West Bank, including East Jerusalem, and the Gaza Strip have been persistently denied their basic human rights by a foreign Occupying Power. Yet there is no indication of the next generation of Israeli leaders arising to cast out the destructive attitudes embodied in the political and military leadership of the occupation since 1967, or to facilitate the realisation of the fundamental human rights of Palestinians.

If Israel is serious about achieving a just and durable solution to the conflict, it must start to realise that its occupation of the OPT and the policies pursued therein over the last 40 years are the root cause of the conflict and instability with which it considers itself plagued. Without demonstrating a genuine commitment to justice and accountability, and without making the concessions necessary to grant the Palestinian people the rights owed to them under international law, Israel will continue to function as an oppressive occupying regime, provoking further despondency and division rather than revived hope.

The Latroun villages of 'Imwas, Yalo and Beit Nouba provide a prism through which many of the violations of international law endemic in Israel's belligerent occupation of the OPT can be examined. In light of the multitude of statements and official documents presented in this study which implicate the Israeli political and military authorities in the commission of numerous violations of international humanitarian law in Latroun, the obligation weighs heavy on Israel itself to uphold its purported commitment to justice and the rule of law by investigating and prosecuting those responsible. The study has shown that the displacement of the Latroun villagers was carried out on the basis of an official policy decision at cabinet level in 1967, and willingly perpetuated by successive Israeli administrations in the 40 years since then. It has been demonstrated that the current political and military leadership are responsible for the persistent denial of the right of the Palestinians of Latroun to return to their land, and for the resulting continuing violations of international law. In this light, it must be acknowledged that there is little genuine hope that the Occupying Power will conduct an investigation or take any meaningful action with regard to the international crimes committed in Latroun, without significant external pressure to do so.

Indeed, the current status quo is unlikely to change, and the Palestinian population of Latroun unlikely to be able to return to their land, without decisive action on the part of the international community to ensure the withdrawal of Israel from the OPT. The violation of Palestinians' rights will remain a fundamental feature of the occupation for as long as it is allowed to continue. 40 years of indifference on the part of the international community has allowed the Occupying Power to consolidate its control

over the OPT as a whole, and to essentially acquire territory by conquest in certain areas of the West Bank, the Latroun enclave among them. Such unlawful territorial acquisition and its inbuilt denial of the fundamental right to self-determination give rise to clear legal duties incumbent on all States to take action to remedy such illegalities, and to thereby invalidate the age-old argument presented by Anacharsis: that laws are like spider's webs; strong enough to entangle and hold the weak, but too weak to capture the strong.

U. APPENDICES

Appendix 1: Interview with Alon Gilad, former Israeli soldier involved in the demolition of the Latroun villages

Date of interview: 14 August 2007

Place of interview: Zochrot office, Tel-Aviv

Interview conducted by Esther Goldberg

Esther: As part of which unit were you deployed to Latroun in 1967?

Alon: I was in an engineering unit, whose number I don't remember. 266 or 262 or 226 or something like that. It was an engineering battalion, one of whose companies was sent to the three villages. Our platoon was deployed in one of the villages, I don't remember which one. We were there for, I think, four days. Three or four days.

Esther: In Latroun?

Alon: Yes. We would come in the morning and go back at night. We did not sleep there. Maybe two days.

Esther: An engineering battalion, one of whose companies was sent to Latroun?

Alon: One company, or at least part of the company, was sent to Latroun.

Esther: A battalion of the Central Area Command?

Alon: The Central Area Command, yes.

Esther: Belonging to the Area Command?

Alon: I don't remember, it was the first and almost the last time that I was with them in that battalion. My first military reserve duty.

Esther: Immediately after you were discharged from regular service?

Alon: A while afterwards.

Esther: The first reserve duty after regular service?

Alon: Yes.

Esther: And what was your position? An engineering combat soldier?

Alon: Originally, no. Although in that battalion, I was. I worked with all types of units, although I wasn't originally an engineering soldier.

Esther: Were you originally an infantry soldier?

Alon: I had been in the Nachal.²⁴⁴ I was conscripted to this battalion, and the first time I joined it was in '67 itself, during the war, which is also why I don't remember that well. After that I served maybe two more times in that battalion and that was it.

²⁴⁴ At that time, the Nachal was a programme that allowed Israelis to combine their compulsory three-year military service with volunteer-type "public welfare" activities.

Esther: Do you remember your company commander? Or others involved?

Alon: My platoon commander was called Shachar, and at the time he was a member of Kibbutz Gilil Yam. What became of him later I don't know. As for the company commander and the battalion commander, I have no idea.

Esther: On which day of the war, at which stage of the war did you arrive to Latroun?

Alon: We arrived after the war.

Esther: During the war you were somewhere else?

Alon: Yes. Maybe there was still fighting at this time in the Golan Heights, I'm not sure. It was towards the end of the six days anyway, or afterwards. It was definitely after Latroun had already been conquered, we weren't the first unit there, it wasn't us who conquered the place. We were also not the first who were sent to demolish the villages. At least one village was already demolished before the village that we demolished, my platoon was either in the second or third village of the three, the second village as far as I recall.

Esther: For what purpose were you told you were being sent to Latroun? On what mission?

Alon: I don't remember if they told us in advance what the purpose was, maybe they did. 1967 is a long time ago; at my venerable age I don't remember any more. I think it's reasonable to assume that they did tell what the purpose was, however, as we had to load explosive charges, and equipment to blow up the houses.

Esther: Do you remember whether you heard, before you got there, what was going on there? Was anything said about what was happening in Latroun before that?

Alon: No, nothing. We really didn't know anything about it. When we arrived there was already another unit there; a small number of soldiers, from some other unit, but not from engineering. It seemed to be some kind of secret or special unit. And they told us that there had already been one Arab village demolished, that was the first we knew of what had happened in Latroun.

Esther: And when you arrived, what were you told to do?

Alon: We were told that we needed to demolish the houses in the village, by placing a charge in every one, connecting it to explosives and blowing it up from the inside. Some of us, myself included, weren't sappers,²⁴⁵ so our job was so go through the houses and check there wasn't anyone inside them.

Esther: Was the unit gathered together and given these commands? Who issued the order?

Alon: Yes, at the entrance to the village. The platoon commander was the one who verbally issued the order.

Esther: With no further explanations?

Alon: I think that at some stage he was asked a question or two by the soldiers, to clarify something. But there was no discussion. We accepted it one way or another.

Esther: And this is what was done?

Alon: This is exactly what was done. The unit made its way through the village, house by house. The house was checked and inspected, before a charge was set in the centre of the house, and then the house was blown up.

²⁴⁵ A 'sapper' in the Israeli army is a Combat Engineering Corps soldier with specialised training in using mines and explosives to break through natural or artificial obstacles.

Esther: And your role was to check the houses before they were mined?

Alon: Correct.

Esther: Can you describe what you saw inside the houses? Were the houses intact when you arrived?

Alon: The houses were fully intact when we arrived.

Esther: What about the residents' property? Was it still inside the houses? Or taken out?

Alon: I really don't remember.

Esther: You don't remember if you saw property?

Alon: I remember there was some property, because there was talk at the time of a severe prohibition on looting. I remember that one of the soldiers who was with us did take loot. He took a sewing machine or something. So yes, some property must have been there, but I don't remember how much was there, whether there was property inside or outside the houses.

Esther: The houses you passed in, what do you remember seeing? Did you see people, residents of the villages?

Alon: Yes, not many, as most of the villagers had been removed beforehand. There were a few people remaining, mainly elderly. I don't think I saw more than four or five of them.

Esther: In different houses?

Alon: In different houses, yes. One of them in particular looked like he was really very old, and he was bent double. I remember that seeing someone like this was the part that made it difficult for us all. How this man would survive, what he would do, was he now being sent into exile? Did we ask then where they were being sent? They said they were being sent to Ramallah.

Esther: And these people were being removed? Physically forced out of their houses?

Alon: No, it wasn't by force. We had to help these people to come out. And they came out, there was no argument.

Esther: Were they all taken out of the houses?

Alon: They were all taken out of the houses.

Esther: You're sure there were no cases of... [houses being demolished with residents still inside]

Alon: No. I have heard that claim. When I was in Latroun subsequently with my students, there was one of the members of the refugee families committee who claimed that bulldozers had demolished houses on top of people's heads. At least in the village where my platoon was operating, we weren't using bulldozers, so it didn't happen there. But that's from one point of view, in one village.

Esther: But you don't remember which village you were in?

Alon: I don't remember, I really don't.

Esther: Do you know where it is located in Canada Park? Whether it's closer to the West Bank, or closer to Ramleh?

Alon: They brought us in from Ramleh.

Esther: When did you arrive, do you remember? At what time of the day?

Alon: In the morning. We were there for at least two days, probably three. Every day we would come in the morning, and we would be there until four or five in the afternoon, before being taken back to Ramleh.

Esther: Do you know if the unit stayed longer than the two or three days you were there?

Alon: No, not our unit. Once we were finished we were transferred elsewhere to perform other duties. It could be that other units stayed longer.

Esther: Were there other units present when you were there, or only your engineering unit?

Alon: Only the engineering unit, Along with those soldiers who were there before we arrived. It is likely that these soldiers were left to guard the area.

Esther: To prevent people from returning?

Alon: Yes, to prevent people returning. They were a small group of soldiers. They were there when we arrived, and it seemed to me that they were more or less overseeing the whole operation there.

Esther: Do you remember the rank or association of those soldiers?

Alon: No.

Esther: Was it they who confirmed that one of the villages had already been demolished before this one?

Alon: Yes it was. Indeed at the time I think they talked about bulldozers being used for some of the demolitions in that first village.

Esther: How did you know that the villagers were being transferred to Ramallah?

Alon: I don't remember who exactly informed us. When we arrived the villages were all but empty, the refugees were no longer there. We were told that the refugees had been transferred to Ramallah. So these soldiers must have been some kind of garrison, a unit left behind to guard the place against the residents returning.

Esther: Did you hear anything about fighting that had taken place in the area?

Alon: No, nothing. I understood that there was no battle. That our forces effectively took over the area without facing any army.

Esther: What happened to those elderly men whom you removed from the houses?

Alon: They were transferred in a vehicle in the general direction of Ramallah. I don't know where they ended up.

Esther: Who transferred them?

Alon: I don't know. There was a truck that transferred them. Although not immediately. We transferred all the villagers who were left at the end of our first day there, after having inspected the houses. They were all transferred, we were told, towards Ramallah.

Esther: You didn't come across anyone, a village resident trying to return?

Alon: No, I saw no attempts to return while I was there. It would have been very difficult to return, certainly in a situation where you can hear the explosion of the houses. And once we were there, almost within an hour houses were already being blown up. We did an inspection, and when we came out of a house, immediately the miners went in and placed the explosives. The inspections were all done on the first day, as was the removal of the people. Blowing everything up took longer, a few days.

Esther: Do you remember those who were with you while you were doing this?

Alon: I remember first names. Sergeant Matanya. Don't remember his surname. There was some guy called Falach from Hertzliya, Falach was a surname.

Esther: The guys knew each other?

Alon: Yes they knew each other. They had been in the unit longer. I was the new one.

Esther: How many people do you remember asking questions about what was going on here and why it was happening?

Alon: Not many. Only two even raised the question. And we received the answers. We always knew there was a problem with the road to Jerusalem. Latroun, the battles of Latroun, were always part of military history. In our consciousness it was logical and reasonable that this was being done in order to gain control the road to Jerusalem. There were two reasons stated; one concerned securing the road to Jerusalem. There was another statement, which I think was also made at that time, something about there having been Arab commando forces in the area. Which is of course an absolutely idiotic claim, because once you've captured a village, what does it matter if they were or weren't there before? It's irrelevant. The central claim was the road to Jerusalem. And even I who was a leftist in that atmosphere, I didn't like it but I saw it as a necessity.

Esther: After you carried out the mission, do you know what happened in the area subsequently?

Alon: I know they built a park there. Once the villages had been demolished there was nothing left there.

Esther: Do you remember what the village looked like when you left?

Alon: All that remained were heaps of rubble. I'm trying to remember whether we demolished the entire village, whether there was anything left standing. I believe that we destroyed the village completely but I can't guarantee it. My clearest memories are of mainly the first demolitions, the first explosions. It was very impressive, but at the same time horrendous. It was a strange combination. The job was carried out in a most meticulous and professional manner; the exact amount of explosives necessary to collapse a house inwards, not blast it outwards. It was a highly professional operation, which they conducted perfectly. But it still aroused a very unpleasant feeling, that deepened especially, I think, when I took the old man from his home. This raised many questions inside me; what is this old man supposed to do now, where is he going, what faces him in life? I came to an "empty village," but even then it wasn't empty. And what was clear was that it certainly wasn't empty before.

Esther: Did you have people with you who communicated with the residents, who could speak Arabic?

Alon: Some of our platoon did speak Arabic, but not sufficiently to communicate meaningfully, it was only on the level of giving instructions.

Esther: Did you physically remove them?

Alon: No, there was no such situation. The old man I mentioned for example, we told him they were going to blow his house up, and he had also heard the other houses being demolished, the prior explosions. And so he came out, it was clear to him what was about to happen.

Esther: Did nobody ask him what he was doing here, why he hadn't left with the rest of the village?

Alon: I don't think such questions were asked. They may have been, but our job was a purely technical one.

Esther: What comes into one's head when you see such a person?

Alon: What comes into one's head is what comes into one's head, but conversing or communicating is a different story, for which you need to speak Arabic. The image is there until this day, this old man walking bent with a stick. It's a terrible feeling. You take a young person out of his house, but he has his whole life ahead of him; whereas this man, being taken from his home, the house that he was born in, and he's being forced into exile at I don't know what age. Awful.

Esther: Do you remember others, how they reacted when they saw that old man?

Alon: Look nobody was making noise about it... That was the moment where some questions were asked, but they were quickly muted in the context we found ourselves in – war, and the great anxieties that arise before and during a war. These questions were perceived within the atmosphere that a war was in progress, and certain unfortunate things happen in war, but no kind of discussion developed.

Esther: Among you, the soldiers, nothing was said?

Alon: I assume there was something said, but I don't remember anything in the conversations between the soldiers that left any lasting impression on me. Just a few small statements, but nothing substantial. Although someone did mention that in one of the other villages one of the soldiers tried to do something to stop the destruction. This was something that circulated like a rumour, not some kind of deep debate, but was certainly mentioned, that there was someone who refused or didn't agree with the orders or tried to do something to stop it. How true or untrue it is I don't know.

Esther: Do you remember the effect it had on you after you left the village?

Alon: Yes. Ever since, it's been weighing on me all the time. At some stage the cloud of war lifted. The brain started working again. Emotions were awoken, I can't describe it exactly, but a very strong feeling. I once explained it to my students, that if there is any moment that I'm not proud of, it's that moment, where I went along with the herd. It gives me a feeling of uneasiness; an act that I believe at the end of the day was shameful. I'm not saying... I don't belong to Zochrot... I'm kidding. I can think of 1948-49 in certain terms and of 1967 in different terms. An orderly state, not under threat of annihilation or anything, such a state shouldn't have done what it did.

Esther: These are things you already thought back then?

Alon: Yes, mainly a little after but also during. It was also a thing of being with the troops, it was that kind of situation, and later when the political arguments began about the future of the occupied territories, it further strengthened my positions.

Esther: In the next mission you were transferred to, did these dilemmas return?

Alon: The next mission was removing landmines, such a positive and good thing, there were no such ethical dilemmas there. Problems of this kind didn't repeat themselves for me.

Esther: For how long were you conscripted?

Alon: Quite long, maybe a month and a half in total. From before the start of the war, around 18-19 May, for three or four days until, I think, August. We were in the Jerusalem area.

Esther: What is your connection to the place today?

Alon: I never enter Canada Park. Of course I knew that the park was built on the land of these villages. I find it sickening. I was there once with my students, and the second time with a cameraman for a documentary. They were the only two times I entered the park.

Esther: Have you met with people who were there at the same time?

Alon: Only that cameraman and the refugee who we met on a tour with the students.

Esther: Have you ever come across someone who went through a similar experience in '67?

Alon: No, no. Look I really don't know about other villages that were demolished.

Esther: The Golan Heights was cleared in the same method.

Alon: We were led to believe at the time that the Golan was empty. Many years passed until we understood that this wasn't the case. I believed the story like everybody else. We knew about Quneitra, but beyond Quneitra we knew only about Syrian and Druze soldiers. I thought this was the truth, until I later learned the reality. I toured the Golan a year later with some geography teachers. We went to Merom Golan, which at the time was inside Quneitra.

Before the war we did very little. We laid mines, of course. We dug trenches, we sat in Beit Lid, and when the war broke out I remember we were in the vicinity of Olesh. There was a minor bombardment by the Jordanians there, then we were moved. I think we were only in Olesh for one night before we were taken to Ramleh and then to Latroun, during or towards the end of the war.

No, actually we were longer in Beit Lid, I was mistaken. Because in Beit Lid I remember news of the successful occupation of Jerusalem, the conquering, the liberation of Jerusalem. There was incredible elation and we all signed out a bottle of Cognac. And so we weren't transferred to Ramleh until after Jerusalem had been taken, meaning on the fourth day, the 8th of June. Thus it was in the very last days of the war we were transferred to Ramleh, from where we were deployed to Latroun.

Without doubt, I was against going to war beforehand, but the feeling among us on the day before the war broke out, the conversations; the feeling was a horribly ominous one, as if graves were being dug in the Negev. Latroun was significant historically, part of what had gone before – hence the haste, to make some amendments. Latroun, Qalqiliya, there was a sense of necessity to do as much as possible to “widen the waist” a bit. It was not the start of something new, but a continuation of what had been aimed for before.

So there was elation, there was euphoria. On the 6th of June we heard that our forces were gone to war, and a few hours later we heard that the aerial forces of Egypt, Jordan and Syria had already been wiped out.

In Latroun I saw it in a problematic human context. Today I think it was a mistaken act, a disgraceful act. I don't think that at the time I thought it was such a disgraceful act. It was an act that gave me moral difficulty, but I understood it from a security perspective. We couldn't have the Arabs shooting at the road to Jerusalem.

Esther: These were things that were said to you when you were there?

Alon: Yes it was mentioned as a justification, the need to clear the road to Jerusalem. History is my area, back then it was already my area. I knew there had been many battles over that road, and that the road had been blocked; and here they were opening the road. I remember that joy of driving on that road, which had previously been so dangerous. Today I see this picture quite differently. I knew, however, from the first moment that I was against holding on to the Palestinian territories. It was a larger moral issue, not necessarily connected to this affair in Latroun. Being realistic, I was never going to start a fight to give the three villages in Latroun back.

Esther: How do you feel today when you speak about what you did there and what you all went through?

Alon: As I've told my students, it wasn't my finest hour. I constantly try to emphasise to them that a person is tested most in difficult moments, in those moments where he has to examine his values. So I question whether I withstood that test or not. I'm not sure there is a justification for what we did. Indeed I do have some feelings of guilt, shame, uneasiness – because the bottom line is clear: we shouldn't have done it.

Esther: But you maintain that you're not sure even if Israel gives back the Palestinian territories today, the Latroun villages should not be given back?

Alon: I have difficulty detaching it from the broader context of the return of refugees. I don't think Israel should accept the right of return of Palestinian refugees, not in its real and full sense. So I have a difficulty saying "yes, those from Latroun should be allowed to return." It would be a lot easier for me to say that if the other side would say "ok, let's agree on the 1967 refugees and find another solution for 1948." Because reiterate my opinion, that there is a huge difference between '48 and '67. In the latter instance we already had an established state.

Esther: Do you think you would do things differently if you were in that position again?

Alon: I think I should have been conscious at the time of using my head more, not to get carried away so easily. To ask myself whether this act is one that can be committed or which must not be committed. And on the basis of that I should have refused, I should have said, "I'm not doing this." What's more, I should have acted, should have seen whether I could use any means to stop it. I had some personal and political interests - not directly but indirectly, more through my father. I was 22. I told him what we were doing but he didn't exactly fall off his seat either. He was a member of Maki, the communist party. What we were doing bothered me, but more in an emotional place, it didn't bother me strongly enough in a political sense to say, "such a thing can not be done." In some sense I let the paranoia, the explanations and the excuses around me overcome the moral thinking about what is right and what is wrong, whether a country should act like this or not act like this.

Esther: Do you believe that the moment Latroun was occupied the villages should have been left as they were?

Alon: Yes. Like any other village, the people of Latroun should have been respected. There is no moral, political or security justification for what happened. All the justifications are false ones. I'm ashamed that I didn't see this at the time. It's so clear to me today, as indeed it was shortly after the event.

Esther: When you told your students about this, what were their reactions?

Alon: During the tour I participated in, there were three of us there to speak: a Palestinian who was born in one of the villages, myself, and another Israeli teacher who later became a mayor, Hulda'i, who tried to give the political-military context. He wasn't exactly the pinnacle of morality. He tried to defend me as a 22-year-old kid who was committing this act in the name of his country. The students listened attentively. Some of them took the view that "it was during the war, and during war you do things like that." But not all the students, as the students who were there had chosen to come, and so they would tend to listen and question more.

Esther: Did it change something in your relationship with the students?

Alon: I didn't really teach these students. It was only later, when they reached twelfth grade, that I taught them. I do remember the reaction of one of the students though, who generally had right-wing opinions. At that moment she really reacted to it, really related to what I said. But as for the others I don't really know.

Esther: Have you spoken to students about it again since then?

Alon: I think that tour was reported in the kibbutz newspaper. I remember a very harsh reaction from a former teacher, calling me a hypocrite, for living on '48 lands and criticizing the '67 occupation. We had some exchanges on the topic. But I don't I generally haven't told students since then because I'm not comfortable with what I did. I do try to teach them about the many moral difficulties that they need to withstand. And so I may have told them in the context of this topic of moral decisions. But I wouldn't just walk into class and tell the story.

Esther: Do you tell the story to family, to friends?

Alon: Look, I don't make a point of telling it. My wife, my daughters, they know the story. I don't think anyone else knows the story. Not even close friends.

Esther: What's our opinion on the situation of the Latroun refugees today? What is the correct solution, what is possible for them?

Alon: Like I said, I find it hard to detach it from the broader refugee issue, it's naïve to believe that you could do so. I'd be happy though if it could be detached. I'm also not at all against returning a certain number of refugees, certainly those of 1967. I just don't think that Israel can afford the return of all refugees as implied in the concept of the right of return. The moral right exists, I do not deny the moral right. I also recognise our right to exist as a nation-state, as a state for the Jewish people. What can I do, I'm sorry to say I'm still a Zionist, my opinions are Zionist, and there is a contradiction here. And because of this contradiction, I don't think I can agree to a right of physical, real return of all the Palestinian refugees. Although morally I accept that we certainly have a responsibility to deal with the issue and to contribute to solving the matter. I think that within the context of a general agreement the return of the Latroun refugees to their villages should be made possible, including the rebuilding of the villages and getting rid of Canada Park, and the sooner the better. But it cannot be an isolated act, I don't think it's possible. Because morally speaking, you have to ask why them and

not others? The problem is moral for the state; the state has a moral debt to itself. To stand in front of the mirror and to ask whether, as a state, it can act in this way. It needs to give itself an answer to this questions, like many other answers that it needs to give itself. The right of return, even if fulfilled only partially, will place a big question mark over the existence of Israel as a Jewish state. As a state with a Jewish majority, as a state that is open to Jewish immigration, as a state that is the national-political expression of the Jewish people, and so on. I believe the Palestinians have a right to self-determination, but we also have a right to self-determination. And I don't see a possibility of the return our refugees that does not impair our own right to self-determination. And therefore, I – with all the empathy and the remorse in the knowledge that we perpetrated the *Naqba*, that we are guilty of the *Naqba*, and that we have a responsibility and a debt and all that – I still believe we also have a debt to ourselves, to our history, and we need to discover how to live in this impossible reality, in the most moral way possible.

Appendix 2: Supplication for donations sent out by Jewish National Fund of Canada

**Yom Tov 5745
September 1984**

Dear Member:

In a few days, Jews will gather in synagogues to observe Yom Kippur. As we recite the Yiskor Prayer, we will recall our parents, relatives and friends who are no longer with us.

But Yiskor is more than just a reminder of the past. It is a summons to serve our people. It is a prayer whose key component is "tzedakah", as we act not only with prayers, but with deeds.

Your donation to the 'Yiskor Appeal' of the Jewish National Fund will enable the vital work of land reclamation, road-building, infrastructure preparation and tree-planting to continue. It will give meaningful expression to your prayers by linking the names of your dear ones with constructive efforts to strengthen the land and ensure a secure future for our people.

Please respond on the attached form. Income tax receipts will be issued for all contributions and your donation will help complete the Grove in Canada Park, in Israel, undertaken by the members of the Beth Hamedrash Hagadol-Tifereth Israel synagogue.

May you and your family be blessed with a New Year of Health, Happiness and Peace.

Sincerely yours,

Ben C. Hilner
President
Beth Hamedrash Hagadol

Nat S. Bernstein
Chairman, Synagogue Liaison
JNF of Montreal Tifereth Israel synagogue

Appendix 3: 2007 JNF request for funding for upgrade of Ayalon/Canada Park

A Park for Three Cities . . . and for an Entire Country

Ayalon/Canada Park extends over 1,000 acres of forests, natural woodlands and orchards in and around the Ayalon Valley. The park is situated near the Latrun interchange on the Tel Aviv-Jerusalem highway, half an hour's drive from each of the country's main cities and just ten minutes from the growing city of Modi'in, which already has a population of 100,000.

It is a very popular park with inhabitants of Central Israel and with people from all over the country who flock to it on weekends and on weekdays, at an average rate of 25,000 visitors weekly, Jews and Arabs, locals and tourists. As its name implies, Ayalon/Canada Park was founded and is supported by donors from JNF Canada. It is the flagship project of Canadians in Israel.

The Need for Renewal and Development

Over the years, the enormous volume of people using the park has inevitably led to wear-and-tear on its natural and man-made facilities. Moreover, the passing years have brought new concerns and emphases, such as heightened concern to protect the local environment, flora and fauna, and a commitment to ensuring that as many people as possible, including people with disabilities, can enjoy leisure and outdoor pursuits in the park.

For these reasons, and to enhance the status of Ayalon/Canada Park as one of Israel's leading outdoor leisure areas, JNF is seeking support for an ambitious project to upgrade and expand the facilities in the park. As the result of funds to be raised at the JNF Toronto Negev Dinner in tribute to Miles S. Nadal, the park will become "Israel's Central Park", a focus on diverse leisure and nature-based activities meeting the needs and expectations of twenty-first century Israelis.

With the advent of these changes to be financed by this year's Negev Dinner, Ayalon/Canada Park will now carry the further designation: ***THE MILES S. NADAL ENVIRONMENTAL COMMUNITY.***

What Difference Will Your Donation Make?

JNF leads the field of sustainable park development in Israel, leading a new approach to forest/parks as complex systems that include the environment and the people in it. Ayalon/Canada Park exemplifies this policy: the park is a mosaic of heritage and nature providing people with the ultimate outdoors experience, combining recreation and education. Your contribution will allow us to continue upkeep and development in this unique park in order to provide people in Israel with an unforgettable educational and recreational experience as well as enhancing the facilities.

The elements to be upgraded and to be developed and which make up Canada Park are designated as The Lake Area, The Valley of the Springs, The Heart of the Park Road, The Olive Grove Picnic Sites, Vantage Hill, The Natural Amphitheatre, The Village and Orchard Paths and The Events Centre.

The central location of Canada Park makes it an ideal site for educational outreach programs for diverse populations. Plans are to develop a number of programs, providing materials such as leaflets and booklets, organized transportation, utilizing trained instructors and guides. Hopefully, nighttime tours to see the large mammals that live in the park will be organized and there are plans to develop a major annual event to publicize the park and its amenities.

Diverse populations groups will be involved in upgrading and preserving the park, including soldiers, youth at risk and in distress, and people with special needs. The activities will be structured to create a positive encounter between different populations and between the participants and the park. Activities will include forestry work; caring for the ancient orchards; tours on foot and or bicycle enrichment and empowerment programs (art and crafts); archeology; ecology and physical and spiritual well being sports programs, relaxation techniques, etc.

Your gift to the 2007 Toronto Negev Dinner in tribute to Miles S. Nadal will make all of the above possible. The personal gift of Miles himself provides a significant foundation for what will be required. JNF looks forward to your support.

Appendix 4: Military Order No. 146 of 1967

[Unofficial Translation]

**The Israel Defence Forces
Military Order Number 146 of 1967
Order Declaring A Closed Area (Surface Area Z)**

According to the powers I have acquired from Article 70 of the Order Concerning Security Provisions, I hereby issue the following order:

Definition:

1. This order relates to the following:
Surface Area Z; which is the surface area that is highlighted in red on the map referred to as "The Map for Surface Area Z", signed by me and attached to this order and accordingly constituting an inseparable part of it.

Declaration of a Closed Area:

2. Surface Area Z is to become a closed area.

This order is to be delivered to:

3. The military commander's offices at the Ramallah Governorate and the Ramallah police station. The order is to be publicly available to whom it may concern, during regular working hours.

Validity of this order:

4. This order is valid starting from the date when it was signed.

Cancellation of Order Number 97

5. Military Order No. 97 – Order Concerning The Closed Area in the Ayalon Area of the West Bank, 5727 - 1967 is to be cancelled by this order.

Name:

6. This order shall be called "An Order Declaring A Closed Area (Surface Area Z)" in the West Bank, No. 146 of the year 5728 - 1967.

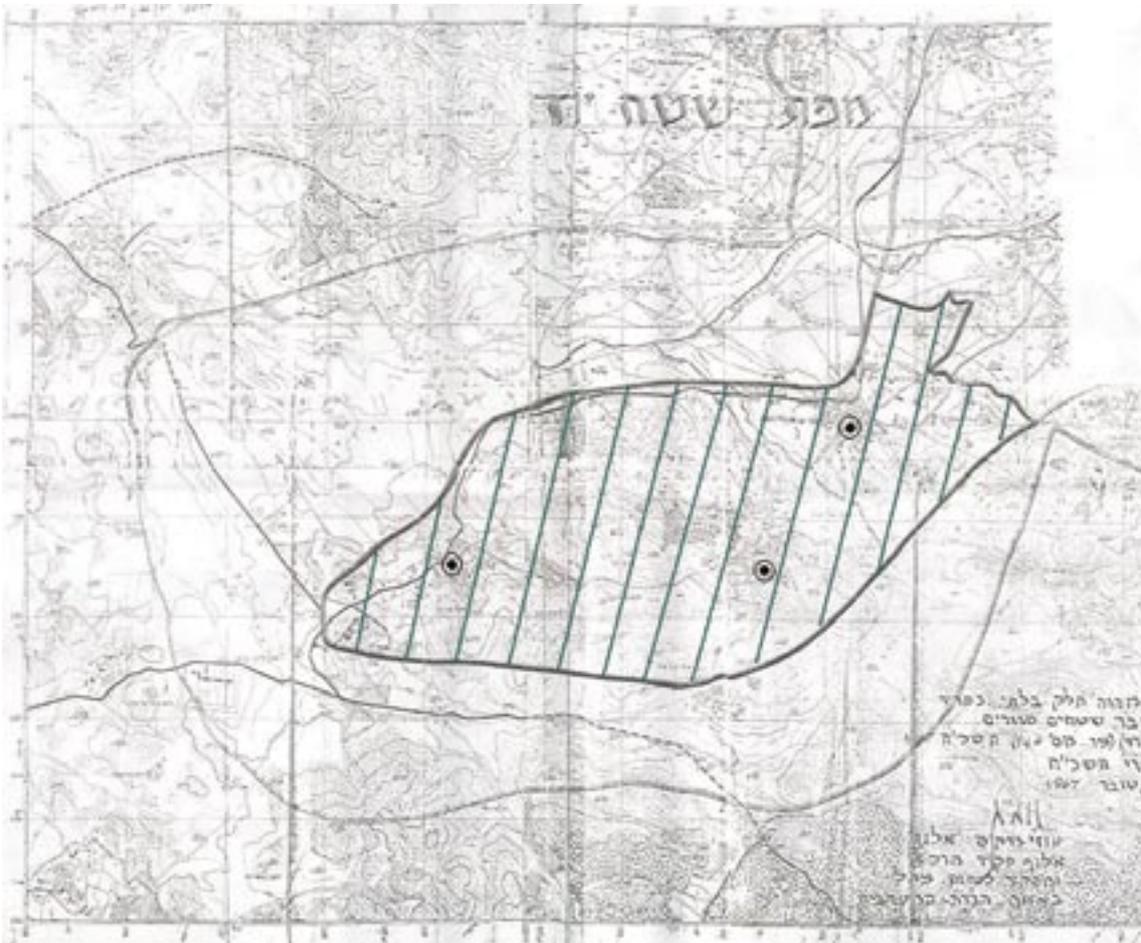
23 October 1967

General Uzi Narkiss
Officer in Charge of the Central Command
Commander of the Israel Defence Forces in the West Bank

Addendum: General Permission

1. According to my authority under Article 70 of the Order Concerning Security Provisions, I hereby permit each of the following to enter Surface Area Z (hereinafter 'the area') and to leave it, for purpose of passage only, via the Latroun-Ramallah road (hereinafter: 'the road'):
 - (1) Anyone entering the area from Israel with a lawful permit.
 - (2) The permit will not be in effect during hours of curfew set in the area.
2. This permit is subject to the following conditions:
 - (1) Whoever passes on the road will not delay on the road nor leave it.
 - (2) The permit will not be in effect during hours of curfew set in the area.
3. This permission will be effective from 1 April 1968.

Attached to the military order: **The Map for Surface Area Z:**



[Map attached to Military Order 146, showing the area designated as "closed," incorporating the three villages of 'Imwas, Yalo and Beit Nouba on the West Bank side of the Green Line and No Man's Land.]

Appendix 5: Letter of 30 July 2007 from the Office of the Attorney-General of Israel regarding the closure of the Latroun area

[Translation]

Unclassified

Area of Judea and Samaria
Office of the Attorney-General
PO Box 5, Beit El 90631
Tel: 02-9977071/711
Fax: 02-9977326
500/00 - 665521

15 Av 5767
30 July 2007

To:
Zochrot
C/O Ms. Amaya Galili
By Fax: 03-6953154 (Tel. 03-6953155)

Re: **Military orders concerning Latroun area**

Your letter: 2 July 2007

Dear Madame,

1. In response to your letter of 2 July 2007, we hereby inform you that on 23 October 1967 the then Commander of the Israel Defence Forces in the West Bank signed Military Order No. 146 regarding closed area Z. This order superseded Military Order No. 97, concerning closure of areas in the Ayalon/Latroun area. To the best of our knowledge, no additional orders have been signed that amend and/or cancel the closure order.
2. Enclosed are copies of the mentioned orders, as well as a map of the closure order, which is an inseparable part of Military Order No. 146.
3. We are at your service.

Respectfully,

Captain Romit Levin
Advisory Officer, Lands Section
Office of the Attorney General

Appendix 6: Letter sent by the Latroun residents to the Israeli authorities requesting that they be allowed to return to their villages

[Translation of original Arabic version published in *Al-Bayader As-Siyassi* on 12 July 1986]

H. E. The Prime Minister
H. E. The Minister of Defence
H. E. The President of the Knesset

17 March 1986

Re: Request to Return to our Villages

Your Excellencies,

As inhabitants of 'Imwas, Yalo and Beit Nouba, we have the honour to appeal to Your Excellencies in the hope that you will examine our legitimate request. We ask only for our legitimate humanitarian right to return to the villages from which we were driven and expelled. Before the war in 1967, we lived peacefully in our villages on the West Bank-Israeli border, with no problems with our Israeli neighbours. We were in no way a threat to security or a destabilising presence in the area. For no reason, from the very beginning of the war, we were driven out of our villages, on foot, with our children and elderly. The Israeli army ordered us to leave our houses, telling us we could return after the war. Since that day, we have been unable to go back to our homes, but we live in the hope that one day it will be possible. We have appealed to the West Bank military administration but have had no reply to date. We are therefore referring our request to Your Excellencies as supreme authorities of the State of Israel. Our houses were completely demolished and there is nothing left of our village. We were forced to leave our land and houses and all was destroyed along with our furniture, our livestock and all our possessions, but we still hope to be able to return. ... We are prepared to rebuild our houses ourselves without applying for compensation from the State and we are full of hope that we shall be able to live once again as in the past, as peaceful neighbours.

Yours respectfully,

The residents of 'Imwas, Yalo and Beit Nouba

Appendix 7: Letter of 1 November 2007 from Zochrot to the Israeli Minister of Defence on behalf of the residents of the Latroun villages

[Translation]



זאכרות
זוכרות
Zochrot

61-2 Ibn Gvirol Street
Tel-Aviv Jaffa 64362
Tel: 03-6953155 / Fax: 03-6953154
www.Zochrot.org

RC 580389526
1 November 2007

To: Ehud Barak
Minister of Defence
Kaplan 37
Tel-Aviv 61909

Re: Prevention of Return of Refugees and Displaced Persons from 'Imwas, Yalo and Beit Nouba to their Villages

Dear Minister,

Zochrot is in touch with the refugees and displaced persons from 'Imwas, Yalo and Beit Nouba. This relationship has yielded diverse activities to commemorate the existence of these villages on the lands on which "Canada Park" now rests. We would like to know why Israel does not allow the refugees from these villages, which were occupied in 1967, to return to their villages. Israel is a signatory, since July 1951, of the Fourth Geneva Convention of August 1949 relative to the Protection of Civilian Persons in Time of War. Article 49 of the Convention determines:

Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive. Nevertheless, the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons do demand. Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement. Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased. [...] The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.

Is not the prevention of these refugees' return an ongoing violation of this provision? Indeed, the right of displaced persons to return to their homes is a basic principle of the international laws of armed conflict and of international human rights law.

In anticipation of your prompt response,
Eitan Bronstein
Director,
Zochrot

Appendix 8: Covenant between the State of Israel and the Keren Kayemeth LeIsrael–Jewish National Fund

[Unofficial Translation]

Signed on 28th November, 1961

THIS IS THE COVENANT MADE THIS DAY IN JERUSALEM BETWEEN THE STATE OF ISRAEL, REPRESENTED FOR THIS PURPOSE BY THE MINISTER OF FINANCE, AND KEREN KAYEMETH LEISRAEL - WITH THE SANCTION OF THE WORLD ZIONIST ORGANIZATION - REPRESENTED FOR THIS PURPOSE BY THE CHAIRMAN OF THE BOARD OF DIRECTORS OF KEREN KAYEMETH LEISRAEL.

- A. Since its inception more than half a century ago, Keren Kayemeth LeIsrael has been engaged in acquiring land in Palestine and transferring it to the ownership of the people, reclaiming and afforesting land, leasing out land for settlement and housing, and administering its lands. The fundamental principle of Keren Kayemeth LeIsrael is that its lands shall not be sold, but shall remain the property of the people and shall be given on lease only.
- B. After the establishment of the State, the volume of the acquisition of land by Keren Kayemeth LeIsrael from non-Jewish owners has decreased, while the extent of the redemption of land from desolation has steadily increased. The State has become the owner of most of the land in Israel, and the Government administers and develops these domains.
- C. The Government of Israel and Keren Kayemeth LeIsrael have resolved to end the duplication resulting from the administration of their lands by different agencies, to concentrate the administration, conservation and care of these lands in the hands of the State, and to strengthen the hands of Keren Kayemeth LeIsrael in fulfilling its mission of redeeming land from desolation.

The parties to this Covenant have therefore agreed as follows:

- 1. Upon the coming into force of the Basic Law: Israel Lands (hereinafter referred to as "the Law"), the administration of the lands which are State land or land of the Development Authority or land of Keren Kayemeth LeIsrael, whether acquired in the past or to be acquired in the future, shall be concentrated in the hands of the State.
- 2. The Government shall establish an "Israel Lands Administration" (hereinafter referred to as "the Administration") and shall, after consultation with Keren Kayemeth LeIsrael, appoint a Director to head the Administration. The Director shall be subordinate to the Minister charged by the Government with the implementation of this Covenant (hereinafter referred to as "the Minister").
- 3. Notwithstanding the provision of clause 1, there shall be no change in the ownership of the lands as registered in the Land Registry, save to the extent that the parties to this Covenant agree, in respect of particular lands, to register them in the name of the State or in the name of Keren Kayemeth LeIsrael, either by way of exchange or in any other manner.
- 4. Israel lands shall be administered in accordance with the law, that is to say, on the principle that land is not sold, but only given on lease, and in accordance with the land policy laid down by the Board established under clause 9. The Board shall lay down a land policy with a view to

- increasing the absorptive capacity of the land and preventing the concentration of lands in the hands of individuals. The lands of Keren Kayemeth LeIsrael shall, moreover, be administered subject to the Memorandum and Articles of Association of Keren Kayemeth LeIsrael.
5. Where the Administration, in respect of a particular transaction, deems it necessary to deviate, in one or the other detail, from the principles of the land policy referred to in clause 4, such transaction shall only be made with the approval of the Board established under clause 9 and, where land registered in the name of Keren Kayemeth LeIsrael is concerned, with the consent of Keren Kayemeth LeIsrael or, where other Israel land is concerned, with the consent of the Minister.
 6. Any transaction in respect of Israel land shall be entered into by the Administration on behalf of and as the agent of the registered owner of such land, and any proceeds of Israel land shall be the property of the registered owner; and the State accepts, in consideration of this Covenant, to bear the expenses of the Administration.
 7. The Administration shall deliver to the registered owners of Israel land, once every three months (and for the first time at the expiration of six months from the day of the coming into force of the Law), a report of the income and expenditure of the administration of their land. The expenditure shall include a fixed amount determined by the Administration, either as a certain percentage of the income or as a quota on a certain unit of measurement of the land. Upon the delivery of such a report, any balance appearing therein to the credit of Keren Kayemeth LeIsrael shall be regarded as a debt due to it and payable by the State, and any balance appearing therein to the debit of Keren Kayemeth LeIsrael shall be regarded as a debt due from it and payable to the State.
 8. The Administration shall deliver to the Government and to Keren Kayemeth LeIsrael, once a year, a report of all its activities.
 9. The Government shall establish a Board, under the chairmanship of the Minister, which shall lay down the land policy, approve the budget proposal of the Administration and supervise the activities of the Administration and the manner in which this Covenant is carried into effect. The number of the members of the Board shall be thirteen; half of them, less one, shall be appointed upon the proposal of Keren Kayemeth LeIsrael. The members of the Board may be replaced in the same way as they were appointed. Notice of the appointment of the Board and of the names of its members, as appointed from time to time, shall be published in Reshumot.
 10. The reclamation and afforestation of Israel lands shall be concentrated in the hands of Keren Kayemeth LeIsrael, which shall establish a "Land Development Administration" (hereinafter referred to as "the Development Administration") for that purpose. Keren Kayemeth LeIsrael shall, after consultation with the Minister, appoint a Director to head the Development Administration, who shall be subordinate to Keren Kayemeth LeIsrael.
 11. The Development Administration shall draw up once a year (and for the first time at the expiration of three months from the day of the coming into force of the Law) a scheme for the development and afforestation of Israel lands, and shall submit that scheme to the Government and to Keren Kayemeth LeIsrael. The scheme shall be drawn up in complete coordination with the Minister of Agriculture.
 12. The Afforestation Section of the Ministry of Agriculture shall henceforth engage in afforestation research only. However, the Minister of Agriculture shall continue to be charged with the implementation of the Forestry Ordinance, 1926, through the Development Administration.

13. The Development Administration shall engage in operations of reclamation, development and afforestation of Israel lands as the agent of the registered owners; and Keren Kayemeth accepts in consideration of this Covenant, to bear the administrative expenses of the Development Administration.
14. The expenditure involved in operations of reclamation, development and afforestation of Israel lands shall fall on the registered owners of the land on which the operation is carried out; and the Development Administration shall deliver once every six months (and for the first time at the expiration of nine months from the day of the coming into force of the Law) a report to the registered owners of expenditure as aforesaid incurred in respect of their lands. Upon the delivery of a report as aforesaid, any balance appearing therein to the debit of the State or the Development Authority shall be regarded as a debt due from them and payable to Keren Kayemeth LeIsrael. Where the Government requests the Development Administration to carry out operations of reclamation, development or afforestation of land registered in the name of Keren Kayemeth LeIsrael, and Keren Kayemeth LeIsrael notifies the Government, in writing, before carrying out the operation, that it is unable to carry it out at its expense, the State shall bear the expenditure involved in the operation, and the amount thereof shall be paid to Keren Kayemeth LeIsrael either by a grant, loan or exchange of property or in any other manner, as may be agreed upon between the Government and Keren Kayemeth LeIsrael.
15. The Board for Land Reclamation and Development attached to Keren Kayemeth LeIsrael shall lay down the development policy in accordance with the agricultural development scheme of the Minister of Agriculture, shall approve the budget proposal of the development Administration, and shall supervise the activities of the Development Administration and the manner in which it carries this Covenant into effect. The number of the members of the Board shall be thirteen; half of them, less one, shall be appointed by the Government. The members of the Board may be replaced in the same way as they were appointed. The Board shall be headed by the Chairman of the Board of Directors of Keren Kayemeth LeIsrael or a person appointed in that behalf by Keren Kayemeth LeIsrael.
16. Keren Kayemeth LeIsrael shall continue to operate, as an independent agency of the World Zionist Organization, among the Jewish public in Israel and the Diaspora, raising funds for the redemption of land from desolation and conducting informational and Zionist-Israel educational activities; and the Government shall extend assistance to Keren Kayemeth LeIsrael in informational and propaganda activities in Israel and abroad.
17. This Covenant shall come into force on the day of the coming into force of the Law and shall remain in force for five years. Unless one of the parties to this Covenant, at least six months before the expiration of the five years, announces its intention not to renew it, its validity shall be automatically extended for another five years; and so on indefinitely from five-year-period to five-year period.
18. If the Law is repealed or amended, Keren Kayemeth LeIsrael may withdraw from this Covenant by giving notice of withdrawal, in writing, to the Government; however, Keren Kayemeth LeIsrael may not withdraw from this Covenant if the Government notified it in advance, in writing, of the proposed amendment or repeal, and Keren Kayemeth LeIsrael did not express opposition.
19. If this Covenant becomes void, whether by virtue of clause 17 or by virtue of clause 18, the position which existed immediately before the coming into force of the Law shall be restored; the Government undertakes to propose the necessary legislation to the Knesset.

20. If one of the parties to this Covenant considers that a change should be made therein, it shall give written notice to the other party, which shall reply to the proposal, favourably or unfavourably, within six months from the day on which notice is given. If the reply is favourable, the Covenant shall be deemed amended, in accordance with the proposal received from the day on which the reply is given.

21. From the day of the signing of this Covenant, the parties thereto shall do everything necessary and expedient for the implementation thereof and shall be bound by it in all respects.

IN WITNESS WHEREOF THERE HAVE HEREUNTO SET THEIR SIGNATURES, on behalf of the State of Israel, the Minister of Finance, Mr. Levi Eshkol, and on behalf of Keren Kayemeth LeIsrael, the Chairman of the Board of Directors thereof, Mr. Jacob Tsur, in Jerusalem, this 20th day of Kislev, 5722 (28th November, 1961).

LEVI ESHKOL
Minister of Finance

JACOB TSUR
Chairman, Keren Kayemeth LeIsrael



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