

AI WALAJA

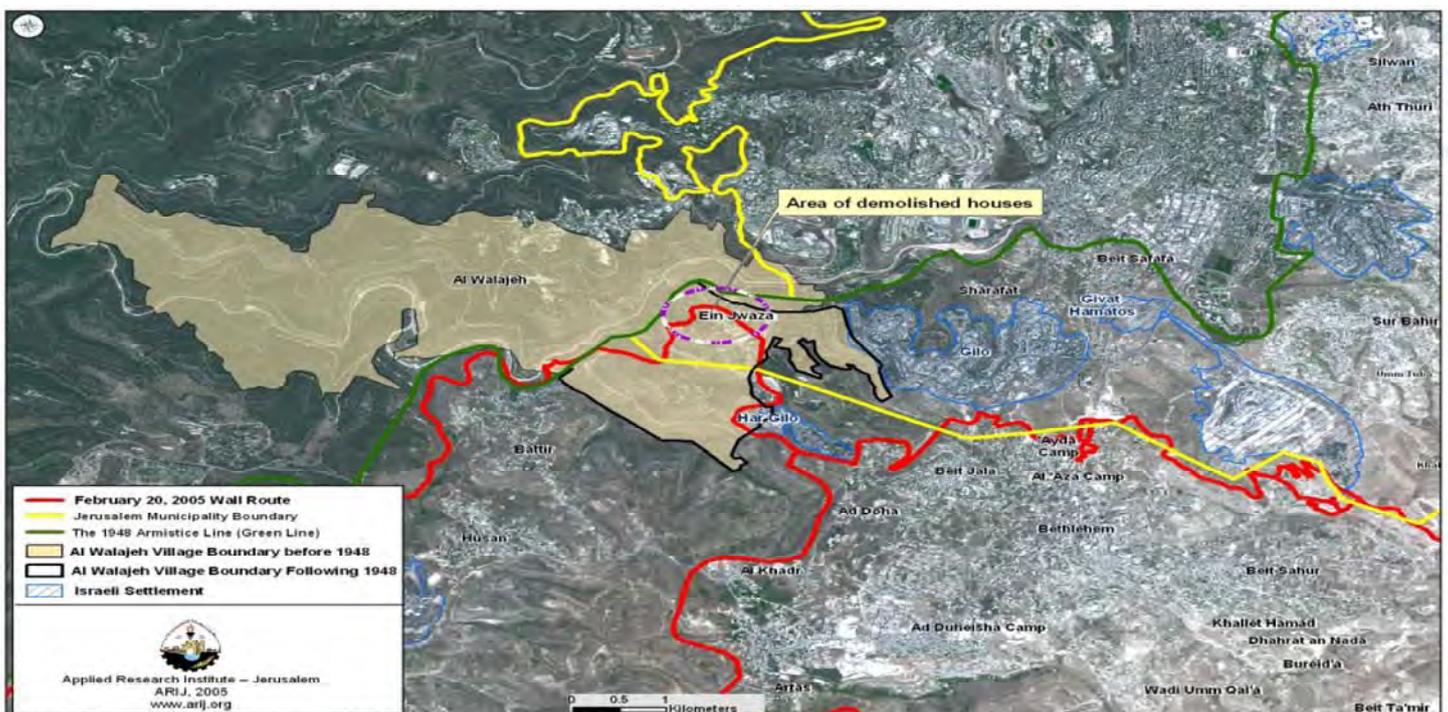
An Analysis under International Law¹

The village of Al Walaja, located nine kilometers southwest of the Old City of Jerusalem and four kilometers northwest of Bethlehem, has a population of more than 2,000. Almost all of the village's residents are registered as 'Palestine refugees' with UNRWA.² The original village was destroyed by Israeli forces during the 1948 war and thereafter, forcing its residents to flee to, or set up improvised homes in an area that became the current village of Al Walaja, situated on the then-Jordanian administered side of the 1949 Armistice demarcation line ("Green Line"), and what is now Israeli occupied Palestinian territory ("oPt").³ After the cessation of major hostilities in 1949, some 70% of the lands belonging to the old village were lost to Israel as such land fell on the Israeli side of the Green Line.



Fact#1: Annexation

Prior to 1967, Jerusalem was divided into West Jerusalem, covering an area of approximately 38 sq. km. under Israeli control, and East Jerusalem, with an area of around 6 sq. km. under Jordanian control. Following its 1967 occupation of the West Bank, including East Jerusalem, Israel unilaterally expanded the boundaries of Israeli-controlled Jerusalem and illegally annexed some 70 sq. km. of Palestinian territory consisting of East Jerusalem and an additional 64 sq. km. of surrounding land belonging to West Bank villages and municipalities.⁴ Included among the occupied territory illegally annexed by Israel was half of the new village of Al Walaja. The other half of Al Walaja remained part of the occupied Palestinian territory that Israel did not purport to annex and came under the military rule of Israel. In an effort to solidify and legitimize its unilateral post-1967 annexations of territory and illegal imposition of Israeli jurisdiction in and around East Jerusalem, Israel's Knesset adopted the so-called "Basic Law" in 1980 which proclaimed that: "Jerusalem complete and united, is the capital of Israel."⁵

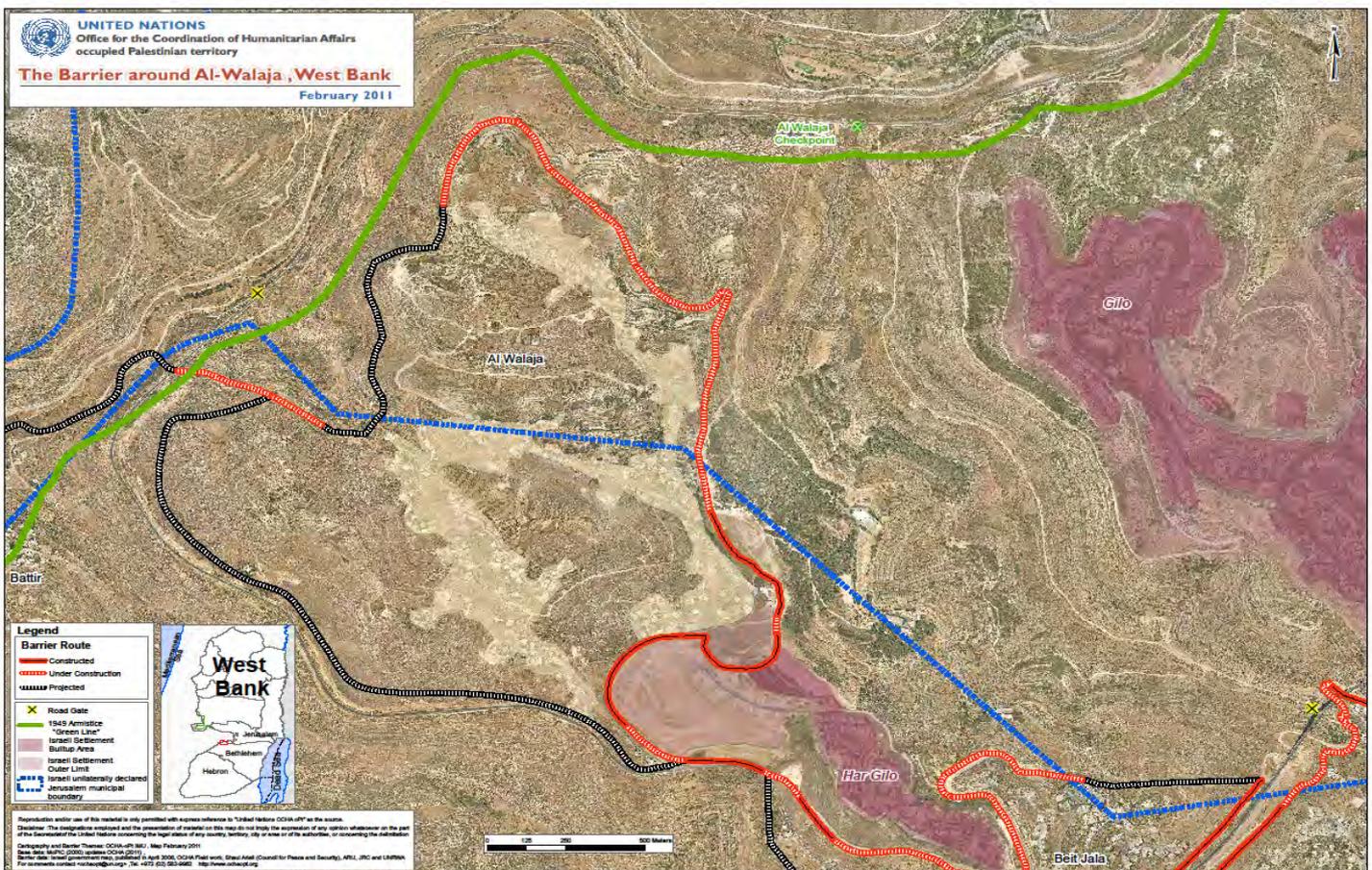


Law:

Israel's unilateral annexation breaches a central tenet of the United Nations (UN) Charter⁶ and violates the UN General Assembly's Resolution 2625(XXV) (1970), which states that "(n)o territorial acquisition resulting from the threat or use of force shall be recognized as legal" and adds that "(e)very State has the duty to refrain from any forcible action which deprives peoples ... of their right to self-determination."⁷ Israel's unilateral annexation of occupied Palestinian territory in and around Jerusalem also was declared invalid in the clearest possible terms in, among others, the UN Security Council Resolutions 267 (1969) and 298 (1971). The United Nations Security Council also rejected Israel's 1980 Basic Law in Resolution 478 (1980), reiterating the international community's overwhelming dismissal of Israel's illegal attempts to unilaterally annex occupied Palestinian territory in and around East Jerusalem and to alter the status of Jerusalem.

Fact#2: Residency and Housing Rights

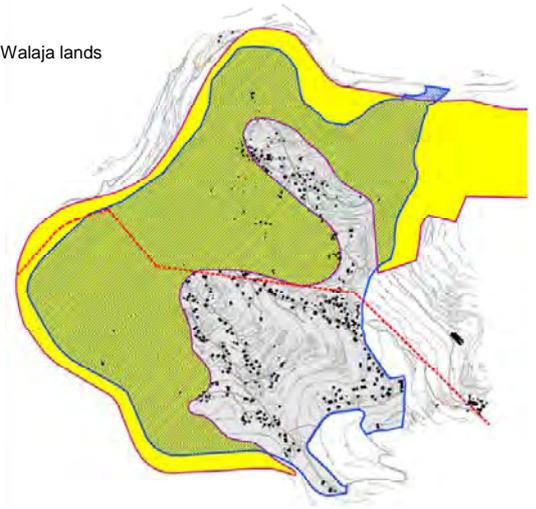
When part of the new Al Walaja was illegally annexed by Israel, Palestinians residing in the area were not informed that their homes had been subsumed within the expanded Jerusalem boundaries. At no point were they allowed to choose whether they wanted to be part of the Jerusalem municipality, nor were they offered Jerusalem ID cards or Israeli citizenship. Instead, they were issued West Bank ID cards. Under Israeli law, possession of a Jerusalem ID secures residency rights for Palestinians living within the expanded Jerusalem boundaries, whereas currently, Palestinians possessing a West Bank ID are not only barred from residing in Jerusalem but they also are prohibited from even entering Jerusalem without a valid Israeli permit. As a result, for the members of the Al Walaja community whose land was annexed to the Jerusalem municipality, the mere act of residing in their homes is illegal. Consequently, over the years many Al Walaja residents have faced multiple forms of harassment ranging from arbitrary detention to imposition of administrative fines for being in Jerusalem without a permit. In reaction to this impossible situation, residents on the Jerusalem side of Al Walaja appealed to the Israeli authorities in 1989, and again in March 2003, to include the land on which their homes stand in the occupied West Bank. The response from the Jerusalem Municipal Authority on 27 May 2003 was that the territory "belongs to the Jerusalem Municipal Boundaries annexed 28 June 1967."⁸ In 2004, they tried once more to legalize their residential status, this time requesting Jerusalem IDs for 280 residents on the Jerusalem side of the village. But, in 2008, their request was rejected.



Fact#3: Settlements

In the early 1970s the village yet again lost more land, this time to the then new settlements of Gilo and Har Gilo and the bypass road that connects them. Today, Gilo and Har Gilo are sprawling residential enclaves housing approximately 40,000 Jewish settlers. In 2004, private investors announced plans to build an additional new settlement called Givat Yael, consisting of 14,000 housing units, which would expropriate some 60% of the territory of the West Bank part of Al Walaja. This construction would radically urbanize, for the exclusive benefit of Jewish settlers, almost all of the Palestinian agricultural land in the area and isolate the village from the remainder of the West Bank.

Givat Yael on Al Walaja lands



Law:

Article 49(6) of the GCIV provides that “(t)he Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.” According to the authoritative International Committee of the Red Cross (ICRC) commentary to the Geneva Conventions, the purpose of Article 49(6) is to prevent a practice adopted by certain powers during World War II, “which transferred portions of their own population to occupied territory for political and racial reasons, or in order, as they claimed, to colonize those territories.”⁹ Israel is clearly in violation of the prohibition on settlements given its well-established policy, and well-documented practice, of providing security, generous benefits and incentives to encourage Jewish citizens of Israel to move to, and permanently reside in, the Israeli occupied Palestinian territory.

The Security Council has repeatedly called upon “Israel, as the occupying Power, to abide scrupulously” by the provisions of GCIV and “to rescind its previous measures and to desist from taking any action which would result in changing the legal status and geographical nature and materially affecting the demographic composition of the Arab territories occupied since 1967, including Jerusalem and, in particular, not to transfer parts of its own civilian population into the occupied Arab territories.”¹⁰

Fact#4: West Bank Barrier

The original route of the Barrier would have split Al Walaja into two following Israel’s 1967 unilaterally declared Jerusalem municipal boundary. However, the community appealed to the Israeli Court and in October 2004 won their petition to keep the community intact. The Israeli authorities modified the Barrier’s route in response. However the revised route will separate farmers from over 1,500 dunums of their agricultural land which they will only be able to enter through agricultural gates. Access is likely to be arbitrary and uncertain, based on current Israeli practice at other such agricultural gate locations. Accordingly, even the revised route of the Barrier will adversely affect the Al Walaja farmers’ ability to cultivate their lands.

In 2006 and again in August 2010, Israeli authorities confirmed to UN-RWA Israel’s plan to encircle Al Walaja with the Barrier, rendering it an isolated Palestinian enclave between Jerusalem and the Etzion settlement block. The village’s only physical connection to other Palestinian towns would be through a proposed road or tunnel. Construction work on the Barrier in the area resumed in April 2010 after several years of inactivity. Hundreds of trees (almond, olive, fig, apricot and grape) have been uprooted or damaged to clear the way for the Barrier, depriving families of an important source of food and income.¹¹



Law:

In 2004, the International Court of Justice (“ICJ”), the principal judicial organ of the United Nations, gave its advisory opinion on “The Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory” (Wall Opinion). The Court concluded that construction by Israel, the occupying power, of the Wall, including in and around East Jerusalem, and its associated régime, were contrary to international law and called upon Israel to terminate its breaches and make reparation for the damages caused.

The ICJ's detailed conclusions can also be applied to this community's plight.¹² Turning Al Walaja into an enclave imposes severe freedom of movement restrictions on its inhabitants. This fundamentally violates their right to liberty of movement.¹³ Under international law, this right may be restricted only if the restrictions are: (1) provided by law; (2) necessary to protect national security, public order, public health or morals or the rights and freedoms of others; and (3) consistent with the other rights recognized in the ICCPR.¹⁴ The restrictions must also conform to the principle of proportionality and must be the least intrusive instrument amongst those measures that might achieve the desired result.¹⁵ In its Wall Opinion, the ICJ found that the conditions necessary to justify the movement restrictions imposed by the Barrier were not met.¹⁶

The Barrier will tightly encircle the West Bank side of the village, leaving only a single entrance route. By completely surrounding the village and leaving the residents with just one way in and out, the Barrier and its associated régime will impact the residents' access to health, education and livelihood resources outside of the village – from obstructing the everyday access through long, costly and timely detours¹⁷ to rendering them vulnerable to being completely cut-off should the Israeli army impose a blockade, a gate or a checkpoint at the entrance. Significant delays in accessing proper and adequate health care, education, means of livelihood and family life¹⁸ would violate human rights enshrined in the ICESCR¹⁹ and in the Convention on the Rights of the Child (CRC) (1989).²⁰

Fact#5: Home Demolitions

As of April 2011, the Israeli authorities had demolished due to lack of building permits a total of 45 houses on both the Jerusalem and West bank sides of Al Walaja,²¹ while issuing an additional 56 demolition orders that are still pending. Generally building permits have not been issued in this community in the absence of a master plan for the area. Therefore many refugees have built houses in spite of the prohibition because they lack adequate living accommodation. These refugees have been fined by Israeli authorities for construction that has been undertaken and face the threat of imprisonment if they do not pay in full the large fines imposed by the Israeli authorities. Paying the fines imposed does not prevent the Israeli authorities from later demolishing these houses. Al Walaja residents, supported by the Israeli Committee against House Destruction (ICAHD), drafted a zoning plan of their own in light of the failure of the municipality to develop one. It was submitted and rejected in 2008 and then re-submitted and rejected again in 2009. After years of relative quiet, new demolition orders were issued by the Israeli authorities in April 2010 and May 2011.

Law:

Article 53 of the GCIV prohibits the destruction of personal property "except where such destruction is rendered absolutely necessary by military operations."

In cases where home demolitions are "not justified by military necessity" and are carried out "extensively", "unlawfully" and "wantonly", they may amount to grave breaches (or war crimes) under Article 147 of the GCIV. The demolition of homes in Al Walaja does not fall within the very strictly applied military necessity exception.²² Indeed, to UNRWA's knowledge, no administrative home demolition imposed by the Israeli authorities in the oPt has been executed on the basis of military necessity. Any administrative home demolition order must satisfy this military necessity test in addition to being consistent with the occupying power's obligation to administer the territory in the best interests of the occupied population.

While international humanitarian law obliges the occupying power to maintain public law and safety in the territory it occupies,²³ by maintaining a building permit system for instance, any such system also must accord with the occupying power's obligation to govern in the best interests of the occupied population. Furthermore, this inviolable duty must be performed "while respecting, unless absolutely prevented, the laws in force in the country".²⁴ The current permit regime governing construction in the occupied West Bank, including East Jerusalem, fails to meet these applicable international law standards. In April 2009, the UN Office for the Coordination of Humanitarian Assistance (OCHA) documented the inherent unfairness of the construction permit regime applied by the Israeli authorities both in East Jerusalem and in Area C of the West Bank.²⁵ OCHA concluded, among other things, that Israel, throughout its occupation, has restricted Palestinian construction in these areas significantly by expropriating Palestinian land for Israeli settlements and by severely limiting the possibilities for Palestinians to obtain building permits. As a result, reduced space remains for the development of Palestinian communities and virtually all Palestinian residents are unable to perform necessary construction with the necessary permit, thereby leaving them vulnerable to the constant threat of home demolition and ongoing displacement.

Home demolitions also violate a number of fundamental provisions of international human rights law, including the right not to be arbitrarily deprived of one's property²⁶ and not to be subjected to arbitrary interference with one's privacy, family, home or correspondence,²⁷ the right to an adequate standard of living, including housing²⁸ and the right to equal protection under the law and without discrimination.²⁹

Conclusion

The residents of Al Walaja continue to face progressive and grave threats to the integrity of their community and their livelihoods from acts committed by Israel, such as the designation of new borders, territorial annexation, denial of residency rights, settlement construction as well as the construction of the Barrier and its associated régime. When viewed collectively, the combination of all the above-described violations of international humanitarian and international human rights laws can arguably comprise to a practice leading to the indirect forcible transfer of persons from their place of ordinary residence.³⁰ In international law, indirect forcible transfer refers to the displacement of civilians outside or within occupied territories, which are not ordered by a government, but which can result from governmental actions or policies that create social and economic conditions intolerable for such civilians.³¹

A case of indirect forcible transfer would constitute a violation of Article 49(1) of the GCIV, which provides that: “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” so long as the transfer is contrary to the free will of the protected persons.³² Article 147 of the GCIV, holds that any such unlawful transfer amounts to a grave breach of international humanitarian law, a violation which all States parties to the GCIV are obligated to penalize under their national legislation as well as to seek and prosecute its perpetrators.³³ The only exceptions to the otherwise absolute prohibition on any kind of forcible transfer are instances where the security of the occupied population itself is in question or when it is imperative to military operations, both of which, in any case, should not result in permanent displacement.³⁴ In light of the facts in Al Walaja, Israel would be hard pushed to establish a justification based on these grounds given that the acts amounting to indirect forcible transfer occur outside the periods of intense hostilities.

UNRWA WEST BANK FIELD OFFICE
May 2011

- 1 This legal analysis will be limited to an application of international law and will not include a discussion of local (Israel, Palestinian or Jordanian) law.
- 2 Under UNRWA's operational definition, Palestine refugees are people whose normal place of residence was Palestine between June 1946 and May 1948, who lost both their homes and means of livelihood as a result of the 1948 Arab-Israeli conflict. UNRWA's services are available to all those living in its area of operations who meet this definition, who are registered with the Agency and who need assistance. The descendants of the original Palestine refugees are also eligible for registration.
- 3 Al Walaja: a case study (UNRWA, March 2010) (hereinafter "Al Walaja Case Study").
- 4 See http://www.btselem.org/english/Jerusalem/Discriminating_Policy.asp
- 5 Basic Law: Jerusalem (1980); for an unofficial translation, see the Israel Knesset website at: http://www.knesset.gov.il/laws/special/eng/basic10_eng.htm. For Israeli claims on Jerusalem being its 'eternal' and 'indivisible' capital, see the Ministry of Foreign Affairs' communiqué 'The Status of Jerusalem', Section III, 14 March 1999, available at: http://www.mfa.gov.il/MFA/MFAArchive/1990_1999/1999/3/The+Status+of+Jerusalem.htm
- 6 See Chapter 1, Art. 2 (4) of UN Charter (1945) "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations". A people's right to self-determination is also enshrined in Article 1 of both the International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966) and the International Covenant on Civil and Political Rights (ICCPR) (1966).
- 7 See UN General Assembly's Resolution 2625(XXV) (1970), entitled "Declaration on Principles of International Law Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations".
- 8 See Al Walaja Case Study, *supra* note 3.
- 9 Jean S. Pictet (ed.), *Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Geneva: International Committee of the Red Cross, 1958), p. 283 (hereinafter "ICRC Commentary").
- 10 See UNSC Resolution 446 (1979), Resolution 452 (1979), and Resolution 465 (1980).
- 11 See Al Walaja Case Study, *supra* note 3.
- 12 See Wall Opinion paras 132-37.
- 13 ICCPR, Art. 12(1).
- 14 ICCPR, Art. 12(3).
- 15 CCPR/C/21/Rev.1/Add.9, General Comment No. 27, para. 14.
- 16 Wall Opinion, para. 137.
- 17 For example, the families of 10 children who currently attend the Cremisan convent's school on the foothills of the village will have to undergo great additional costs and effort as the Monastery will be left on the other side of the Barrier and far from the only road in and out of the village. Instead of walking a short 1.5 km. on a pleasant and even path, the students will have to be taken by car on a 6 km. journey: uphill inside the village then out from its only entrance/exit, down a steep road along the circumference of the Barrier until they reach the school which is just on the other side of the Barrier from their original departure point.
- 18 It is worth noting that UNRWA runs a school inside the village for about 300 children up to Grade 9. Therefore, the right to primary education will not necessarily be affected by the Barrier.
- 19 ICESCR, Articles 11, 12 and 13.
- 20 CRC, Articles 24, 27 and 28.
- 21 Between 1985 to 2006, there were 30 home demolitions on the Jerusalem side of the village, and 15 on the West Bank side. See Al Walaja Case Study, *supra* note 3, for details.
- 22 To satisfy this test, the Occupying Power is obliged to interpret the exception in a reasonable manner. It must be intended to help in the military defeat of the enemy and the harm caused to civilians or civilian property must be proportional and not excessive in relation to the concrete and direct military advantage anticipated.

Footnote

- 23 *Id.* Art. 43.
- 24 *Id.*, Art. 43.
- 25 See UNOCHA special focus report of April 2009, available at http://www.ochaopt.org/documents/ocha_opt_planning_crisis_east_jerusalem_april_2009_english.pdf
- 26 Universal Declaration of Human Rights (1948) (“UDHR”), Art. 17.
- 27 UDHR, Art. 12; see also ICCPR, Art. 17.
- 28 ICESCR, Art. 11.
- 29 ICCPR, Art. 26.
- 30 Case law in the International Criminal Tribunal for the Former Yugoslavia (ICTY) has developed the concept of ‘forcible transfer’ under Article 49(1) GCIV to mean the forced displacement of persons from where they reside to a place that is not of their choosing which need not necessarily require the crossing of boundaries, be they military frontlines or international borders. See *Prosecutor v. Naletilić and Martinović*, IT-98-34-T, Judgment of 31 March 2003, para. 519.
- 31 In *Eritrea-Ethiopia Claims Commission*, established in December 2000 by the Permanent Court of Arbitration, the Commission accepted the liability of States *vis à vis* charges of indirect forcible transfer by way of social and economic conditions as legally sound, although it ultimately rejected the charge in this case due to a lack of evidence. See *Ethiopia-Eritrea Claims Commission*, Partial Award, Western Front, Aerial Bombardment and Related Claims, Eritrea’s Claims 1, 3, 5, 9-13, 14, 21, 25 and 26, paras 134-136.
- 32 The involuntary nature of the displacement is central to the establishment of the acts causing displacement as ‘unlawful’. See *ICRC Commentary*, p. 297.
- 33 Article 146(1) and (2) of the GCIV.
- 33 See Article 49(2) of the GCIV.
-