

**Changing the Landscape:
Israel's Gross Violations of International Law in the Occupied
Syrian Golan**

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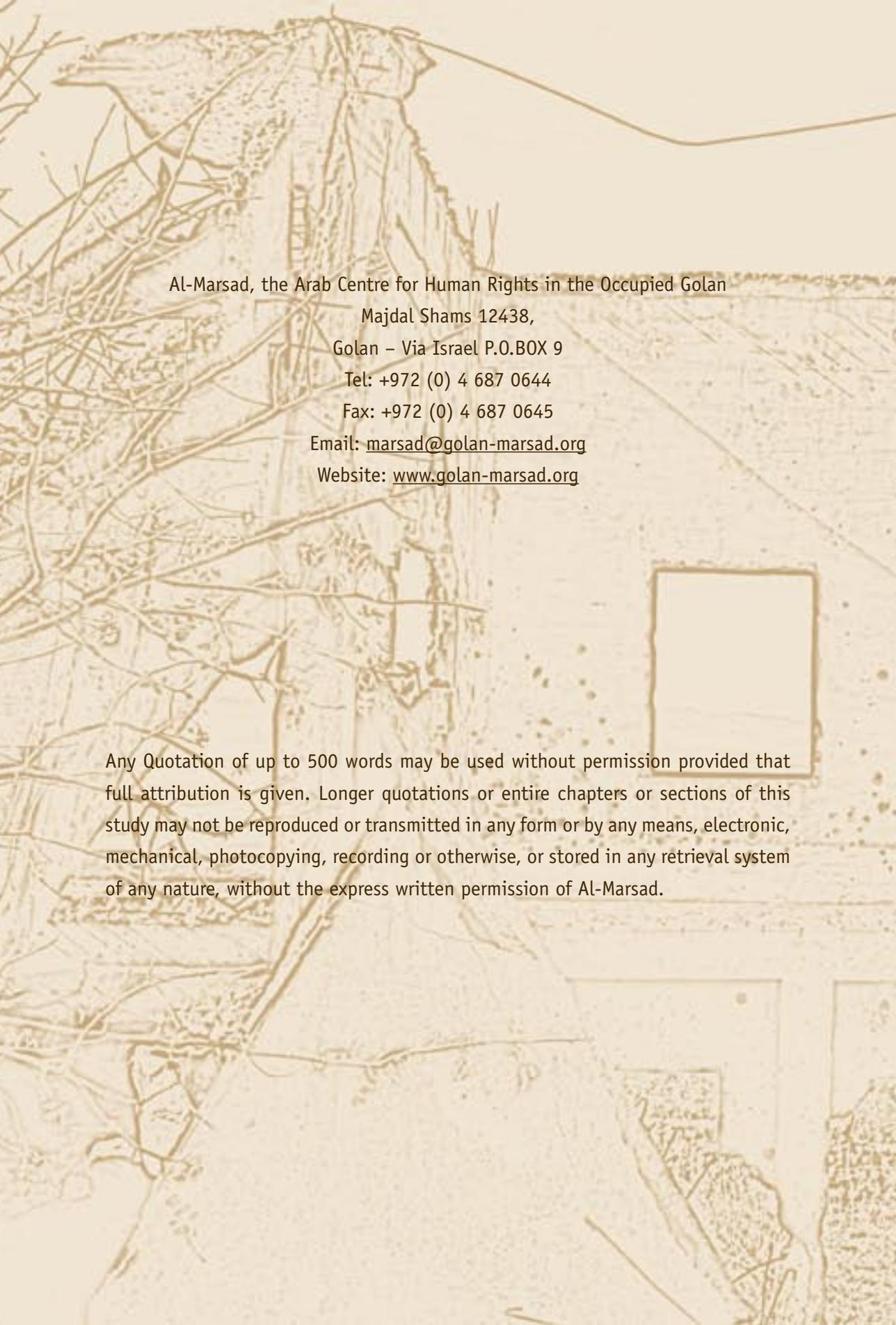
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Introduction

The area known as the Golan Heights is a mountainous region and plateau in southwest Syria that borders Lebanon to the north, Jordan to the south, and Israel to the west. The overall landmass of the Golan Heights is 1,860 square kilometres, which is approximately one percent of the total landmass of Syria.¹ Since 1967, reference to the area called Golan Heights has typically described the portion of the Golan Heights that was occupied by Israel beginning in 1967.² This area encompasses approximately 1,500 square kilometres of the Golan Heights region and is referred to as the Syrian Golan or Occupied Golan throughout this paper.



Israeli Military Unit patrolling the demilitarised zone, Syria in the background, Occupied Golan in the foreground

Picture sourced from Atef Safadi achieves

safadi@epa.eu

¹ Permanent Mission of the Syrian Arab Republic to the United Nations 'The Syrian Golan' at <http://www.un.int/syria/golan.htm>.

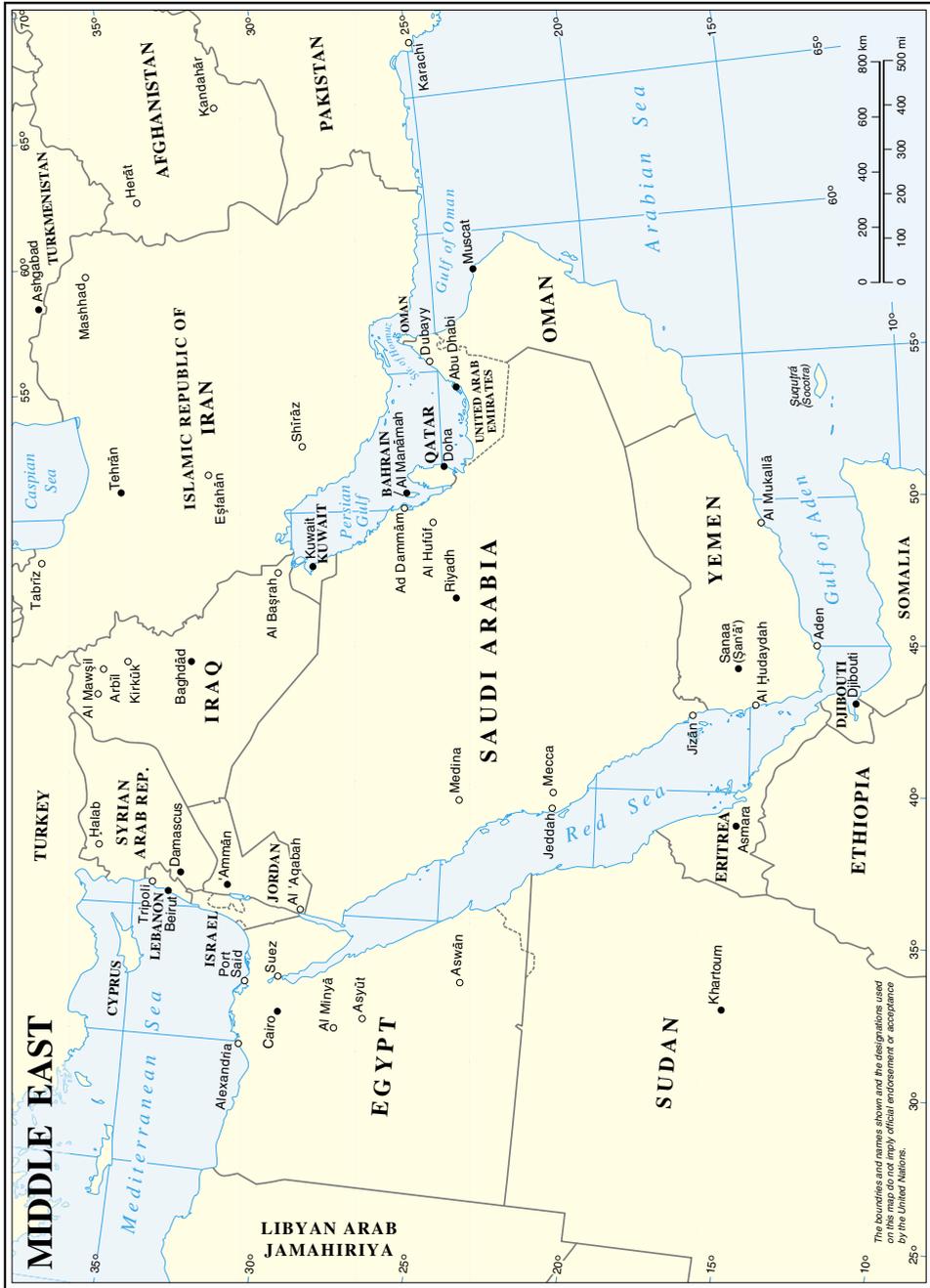
² *Ibid.*

Successive Israeli governments adopted numerous policies to control and contain the Syrian population since Israel began its occupation of the Syrian Golan. They have destroyed numerous villages, driven thousands from their homes, expropriated private and public property, prevented the remaining Arab villages from expanding and actively stopped the free movement of people. In 1981, Israel enacted legislation that purported to annex the territory.³ This move was widely condemned by the international community⁴ and from the perspective of international law, the Syrian Golan remains an occupied territory to which the laws of occupation apply.

The summer of 2008 marked the 41st anniversary of Israel's occupation of the Syrian Golan. This report examines the background to this occupation and the consequences for the local population. The report examines the action of the Israeli authorities and argues that certain practices by the Israeli occupying authorities constitute war crimes, which in some cases, may amount to grave breaches of the Fourth Geneva Convention governing the protection of civilians.

³ *Golan Heights Law*, Israeli Ministry of Foreign Affairs December 14, 1981 at <http://www.mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process/Golan+Heights+Law.htm>

⁴ United Nations Security Council Resolution 497 (1981), S/Res/497, 17 December, 1981.



Department of Peacekeeping Operations
Cartographic Section

Map No. 4192 Rev. 3 UNITED NATIONS
August 2004

Middle East Region

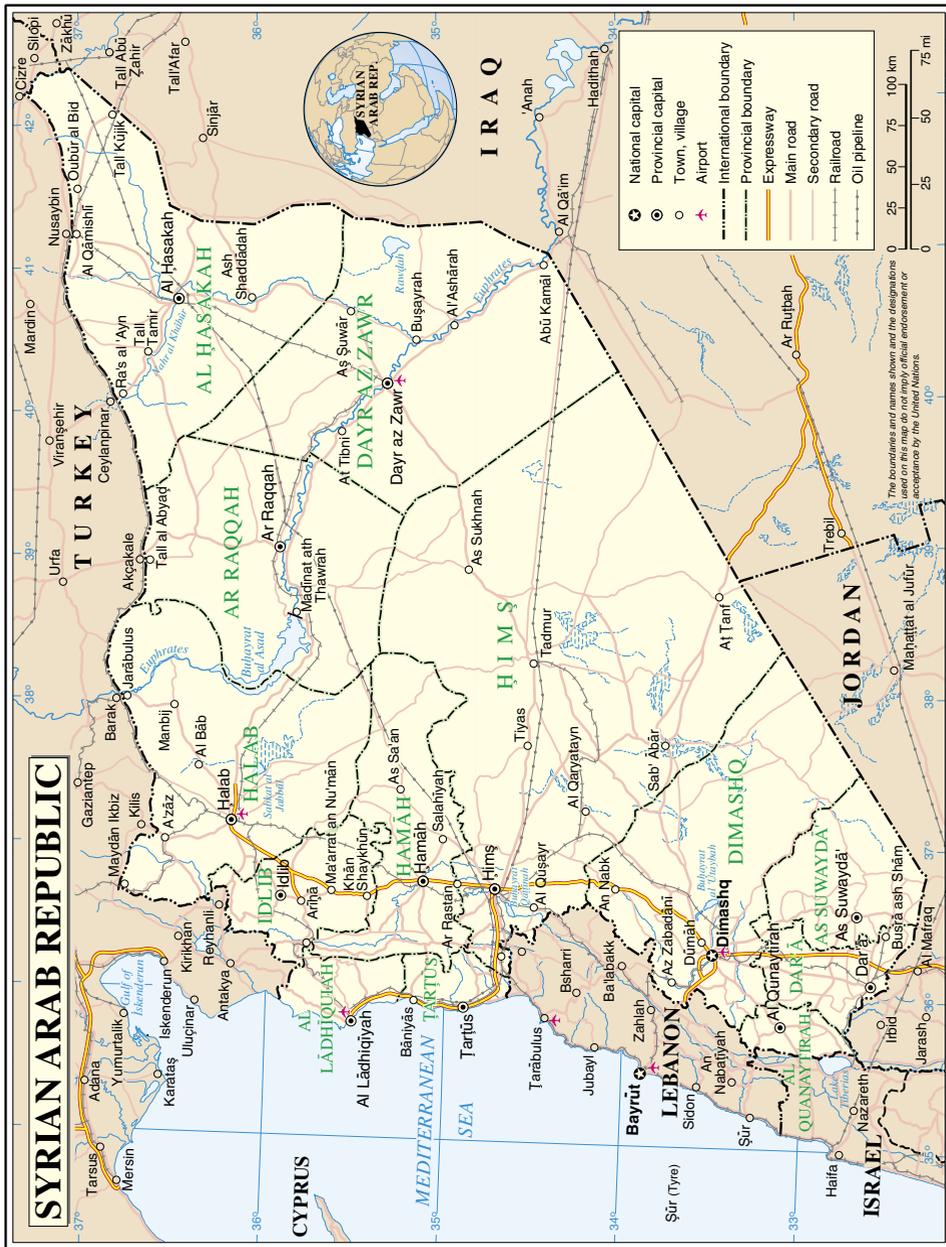
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Map No. 3584 Rev. 2 UNITED NATIONS
January 2004

Department of Peacekeeping Operations
Cartographic Section

Israel, Occupied Golan, West Bank and Gaza
Map sourced from the United Nations website



Syrian Arab Republic

Map Sourced from the United Nations website

1 The Occupied Syrian Golan: Overview

1.1 Background

The Syrian Golan region is important for a number of reasons. From a military perspective, the Golan offers exceptional geo-strategic value with commanding positions, overlooking southern Lebanon, much of southern Syria and also northern Israel. The mountainous terrain peaks at 2,224 meters above sea level at what is known in Israel as Mount Hermon or Jabal al-Shaykh in Syria.⁵ From an agricultural perspective, the Syrian Golan is a rich volcanic plateau. The disintegration of volcanic rocks has produced an extremely fertile soil. Prior to the 1967 occupation, the Golan produced grain, vegetables, milk, wool, honey, meat, eggs and fruit for the local population.⁶ Following Israel's colonisation of the territory, Israeli agricultural settlements have been established and are producing wine, beef, fruit and mineral water for the Israeli domestic and export market,⁷ generating considerable wealth for the Israeli economy. Finally, and probably the most important factor today, the Syrian Golan is a rich source of water for the region. Located in the mountain ranges are the headwaters of the Jordan River, considered 'the lifeblood of Israel in terms of water capacity'.⁸ Israel harvests all the water from the Banyas River, estimated at 121 million m³ per year.⁹ Exploitation of water resources by Israeli companies, Tahal and Mekerot, has led to the drying up of springs that supply the Golan Arab villages with water. This is having a drastic effect on the livelihoods of the Arab population and their agricultural yields.¹⁰ According to reports, the Occupied Golan is now supplying Israel with a third of its water consumption.¹¹

⁵ D. W. Lesch, *The New Lion of Damascus: Bashar al-Asad and Modern Syria* (Yale University Press, New Haven and London, 2005), p. 20.

⁶ Sakr Abu Fakhir, 'Voices from the Golan', (2000) 29:4, *Journal of Palestine Studies*, p. 6.

⁷ United Nations General Assembly, Economic and Social Council Report, (2007), A/62/75-E/2007/13, 3 May 2007, para. 68.

⁸ Lesch, *supra.*, p. 20.

⁹ United Nations General Assembly, *Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories* (2006), A/61/500, 9 October 2006, para. 84.

¹⁰ *Ibid.*

¹¹ United Nations General Assembly Economic and Social Council Report, *supra.*, para 72.

The history and politics of Israel's occupation and eventual annexation of the Syrian Golan is complex.¹² Border disputes involving the Israel-Syria border and access to water from the Jordan River and Lake Tiberias played into the struggle between Syria and Israel.

During the 1947 Arab-Israeli War, Syria captured three small areas of land bordering Israel, and negotiations conducted with United Nations support resulted in a compromise in June 1949 under which demilitarized zones were created in the disputed areas.¹³ Further negotiations led to talk of promising compromises between Syria and Israel, including an agreement by which Syria would accept half a million displaced Palestinians in exchange for Israel's agreement to divide the demilitarized zones. This division would have allowed Syria to have critical rights to water from the Jordan River and Lake Tiberias.¹⁴ However, Israel's then Prime Minister David Ben-Gurion would not concede territorial or water rights and the proposed compromise never materialised.¹⁵

In 1951, Israel began asserting control over the demilitarized zones. The zones were partitioned but tensions continued, leading to skirmishes in which Israeli and Syrian forces fired on each other and Israel conducted raids on Syrian military positions.¹⁶ An important factor in the struggle for the demilitarized zones was access to water in a region that was, and remains today, semi-arid and arid with little rain and scarce water resources. The Jordan River, which feeds into the north shore of the Sea of Galilee [Lake Kinneret in Israel or Lake Tiberias in Syria] is fed by three major tributaries, Dan, Hasbani, and Banyas, all of which spring in the mountains of the Golan.¹⁷ The Jordan flows through what prior to 1967 were the demilitarized zones and along with the Sea of Galilee have traditionally been key water resources for both Israel and Syria.¹⁸

¹² J. Slater, 'Lost Opportunities for Peace in the Arab-Israeli Conflict: Israel and Syria, 1948-2001' (2002) 27:1 *International Security* 79, p.82.

¹³ *Ibid.*, pp. 85-86.

¹⁴ *Ibid.*, pp. 86-87.

¹⁵ M. Maoz, *Syria and Israel: From War to Peace-Making* (Oxford University Press, New York, 1995), pp. 28-31.

¹⁶ A. Shalev, *Peace and Security in the Golan* (Jaffe Center for Strategic Studies, Tel Aviv University: Tel Aviv, 1994).

¹⁷ Lesch, *supra*, pp. 20-21.

¹⁸ M. Shemesh, 'Prelude to the Six Day War: the Arab-Israeli Struggle Over Water Resources', (2004) 9:3 *Israel Studies*, p. 1, at 2.

The Arab states saw Israel's desire for greater access to water as part of a plan for expansion in both population and economic development. This was viewed as a threat 'to [Israel's] neighbouring [Arab] states and their territorial integrity and liable to undermine [a solution to] the Palestinian problem in the future.'¹⁹ In 1961, the Syrian Ba'ath party announced that Israel's water plans were 'the most serious Pan-Arab problem today' in the Arab states' conflicts with Israel.²⁰

The struggle for access to water in the Golan region combined with other sensitive issues provided a mix of factors that escalated tensions between Israel and Syria that would spread throughout the region leading up to 1967. In 1966, 'King Hussein of Jordan declared that if Israeli troops attack Syria, Jordan would open a separate (eastern) front against Israel.'²¹ On October 12 of that year, the Soviet Union declared its support for Syria in the event of an Israeli attack. The following day, three Israeli soldiers were killed in a cross border skirmish. Expecting an Israeli attack on Syria, eleven Arab states declared their support for Syria.²² On 4 November, Syria signed a mutual defence pact with Egypt.²³ A further factor in compounding the tensions was the belief of Israel's former prime minister Ben-Gurion (who stepped down in 1963) – that the Golan Heights and parts of south-western Syria were parts of biblical Palestine and ought to be restored by historical and religious right to the state of Israel.²⁴ Moreover, because of the physical location and geography of the Syrian Golan, from which Israel claimed it could not adequately defend itself from Syria, the Syrian Golan was viewed by Israel as a Syrian military stronghold that presented a serious threat to Israel's security.²⁵ Outside forces in the context of the Cold War era also played a role in the escalating tension in the Middle East in the run up to 1967.²⁶

¹⁹ *Ibid.*, p. 7.

²⁰ *Ibid.*, p. 8.

²¹ M. Gilbert, *Israel: A History* (Black Swan, Israel, 1999), p. 362.

²² *Ibid.*

²³ *Ibid.*

²⁴ M. Shemesh, *supra*.

²⁵ M. Bard, 'The Golan Heights', (Jewish Virtual Library 2008) at http://www.jewishvirtuallibrary.org/jsource/Peace/golan_hts.html (8 May 2008).

²⁶ G. Golan 'The Soviet Union and the Outbreak of the June 1967 Six Day War' (2006) 8:1 *Journal of Cold War Studies* 3, 3. See also The Middle East Research and Information Project 'Palestine, Israel and the Arab-Israeli Conflict: The June 1967 War' at http://www.merip.org/palestine-israel_primer/67-war-pal-isr-primer.html and HC Metz, ed. 'Israel: A Country Study' (Federal Research Division, Library of Congress, 1988) at [http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID+il0034\)](http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+il0034)).

Following six days of war Israel emerged victorious and the occupant of Arab territory, including the Syrian Golan. Israel's occupation of the Golan in 1967 resulted in the establishment of an armistice line and almost immediate Israeli military control and settlement of the region.



Israeli tanks encounter Syrian soldiers giving themselves up as prisoners of war in the Syrian Golan, 1967

Picture sourced from the Guardian website,

Moshe Milner

After the Six Day War of 1967, tensions remained high in the Middle East. Then on 6 October 1973, to Israel's surprise, both Syria and Egypt launched a co-ordinated attack.²⁷ Syria's attempt to recapture the Golan ultimately proved unsuccessful and in 1974, Syria and Israel signed an armistice agreement.²⁸ In the negotiations that followed, Israel, despite winning the war, conceded some territory captured in the 1967 War, including Qunaytra, which the Israelis destroyed as they withdrew.²⁹

²⁷ A. La Guardia, *Holy Land Unholy War: Israelis and Palestinians*, (John Murray, London, 2001), p. 126. J. Carter, *Palestine: Peace Not Apartheid*, (Pocket, London, 2007), p. 34.

²⁸ 'Regions and Territories: The Golan Heights' *BBC News* (15 January 2008) at http://news.bbc.co.uk/2/hi/middle_east/country_profiles/3393813.stm.

²⁹ Guardia, *supra* pp. 129.



Destroyed Syrian town of Qunaytra

Picture sourced from the United Nations Website,

Yutaka Nagata

A demilitarised zone that runs north – south along the eastern edge of the Occupied Golan was also established and a United Nations peacekeeping force deployed to monitor the disengagement agreement.³⁰ The ‘Yom Kippur War’ and events in 1973 on the Golan once again demonstrated Israel’s potential vulnerability on its northern front with Syria.³¹

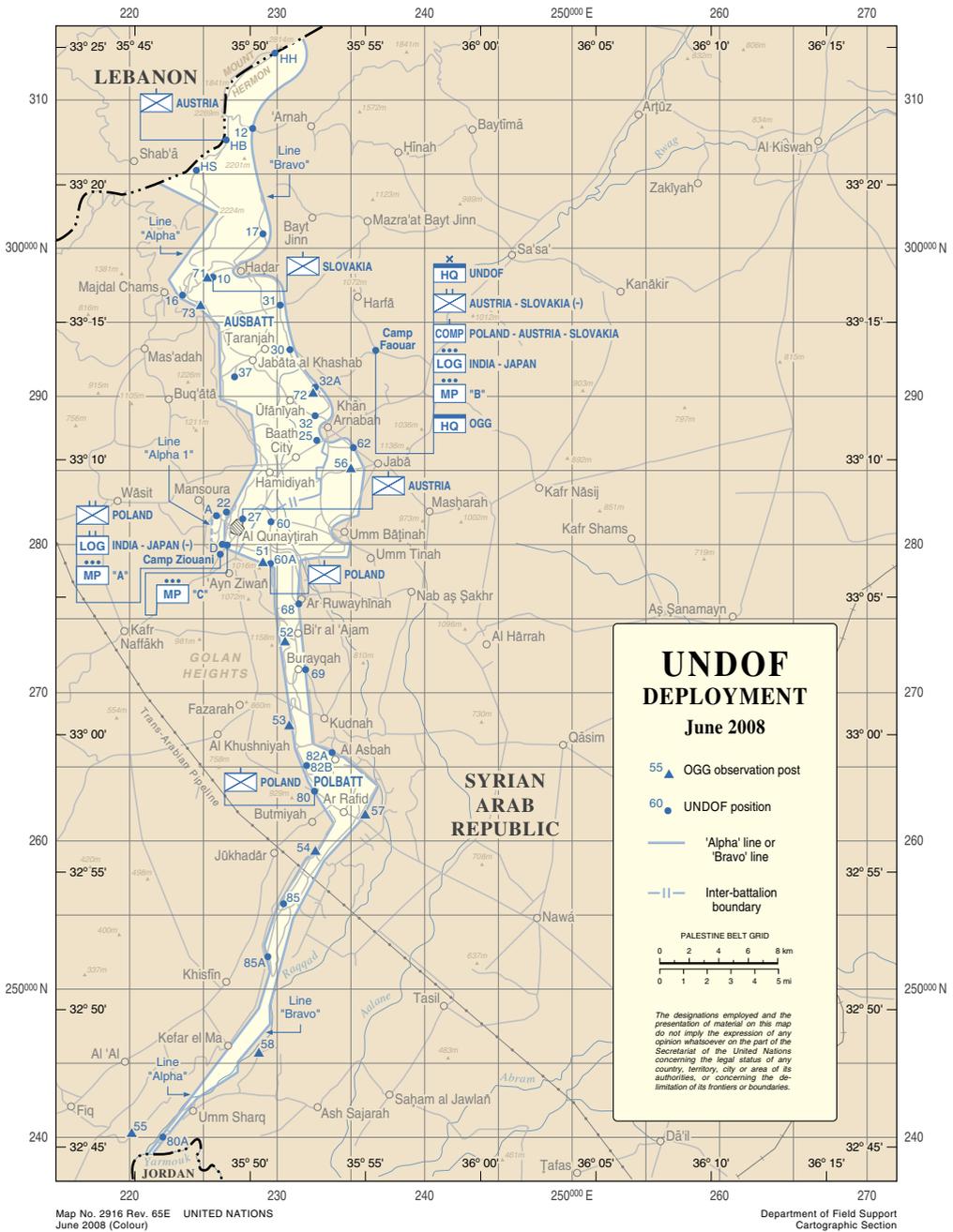
Proponents of Israel’s presence in the area today, consider that the Syrian Golan is of ‘little military importance’ so long as it remains in the hands of Israel or its allies.³² If controlled by a country hostile to Israel, however, some believe that the area has the potential to be a strategic threat to Israel.³³ In an era of advanced missile and rocket systems, such arguments have less weight. This was especially evident during the Israel-Hizbollah conflict in 2006.

³⁰ Lesch, *supra.*, p. 22. The United Nations Disengagement Observer Force (UNDOF) was established in 1974 in order to supervise the Agreement between Israel and Syria - see <http://www.un.org/Depts/dpko/missions/undof/>.

³¹ For an Israeli perspective, see C. Herzog, *The Arab Israeli Wars*, Arms and Armour Press, London, (1982), pp. 285-306.

³² M. Bard, ‘The Golan Heights’, (Jewish Virtual Library 2008) at http://www.jewishvirtuallibrary.org/jsource/Peace/golan_hts.html (8 May 2008).

³³ E. Zisser, ‘June 1967: Israel’s Capture of the Golan Heights’, (2002) 7:1, *Israel Studies*, 168, 170.



United Nations Demilitarised Zone

Map sourced from the United Nations website

Prior to its capture, 153,000 people lived in the Syrian Golan. During the 1967 War, Israel successfully captured 70% of the Syrian Golan that contained approximately 139 villages and 61 farms.³⁴ Before 1967, only 6% of the Golan population was Druze.³⁵ Like Greater Syria, the Golan was somewhat ethnically and religiously diverse, Syrian Arabs constituting the majority approximately 80% of the population.

The most serious impact suffered by the people of the Syrian Golan subsequent to Israel's occupation in 1967 was the 'uprooting and expulsion of the local Syrian population.'³⁶ According to reports it is suggested that up to 130,000³⁷ people were displaced as a result of the conflict and that those displaced and their descendents now number in the region of 500,000.³⁸ Thus, it is evident that the vast majority of Syrians and their families, who were expelled in 1967, did not return to the Occupied Golan.

Today approximately 18,000 indigenous Syrian people remain in the Occupied Syrian Golan, mostly members of the Islamic Druze sect who have retained Syrian nationality. Retaining Syrian nationality has led to a number of unfortunate outcomes for these people. For example, students who have travelled to Damascus to attend university (which is facilitated by the International Committee for the Red Cross), train mostly in the areas of law, pharmacy or medicine, yet such disciplines hold little employment opportunity in the Occupied Golan. Opportunities within the Israeli administration are also limited.³⁹

³⁴ Sakr Abu Fakh, *supra.*, pp. 5.

³⁵ Sakr Abu Fakh, *supra.*, pp. 6.

³⁶ Al Marsad, United Nations Periodic Report to the Committee on the Elimination of Racial Discrimination at <http://www.golan-marsad.org/pdfs/Periodicreport.pdf>.

³⁷ *Syria: Forty Years On, People Displaced From The Golan Remain in Waiting*, (2007), IDMC Internal Displaced Monitoring Centre at [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/11354A1A3BE82407C12573850037B6C6/\\$file/Syria_IDPs_Overview_Oct07.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/11354A1A3BE82407C12573850037B6C6/$file/Syria_IDPs_Overview_Oct07.pdf).

³⁸ See the Permanent Mission of the Syrian Arab Republic to the United Nations, *supra.*,

³⁹ International Labour Conference, Report of the Director – General, *The situation of workers of the occupied Arab territories*, 97th session, 2008, International Labour Office Geneva, 2008, para. 86.



A young bride from the Occupied Golan goes to get married in the demilitarised zone; her husband to be is from Syria proper. She must now renounce her Israeli identification card and wave goodbye to her family in the Occupied Golan, this may well be the very last time she sees them

Picture sourced from Atef Safadi achieves

safadi@epa.eu

The Occupied Golan also contains a community of Israeli-Jewish settlers. Figures are not consistent, but according to a report by the International Labour Organisation (ILO), there are approximately 17,000 Israeli settlers in the Occupied Syrian Golan.⁴⁰ Another report suggests that the number is somewhere between 18,000 and 20,000, while the number of illegal Israeli settlements constructed since 1967 is approximately 37.⁴¹

Following the capture of the region in 1967, the Israeli government handed all necessary power to its military commanders to control and administer the occupied

⁴⁰ *Ibid.*, para. 19.

⁴¹ See United Nations Security Council, *Report of the Secretary General on the Middle East (2006) S/2006/956*, 11 December 2006, para. 39; See also Facts About Golan Heights, Disputed Between Israel and Syria, *International Herald Tribune* (21 May 2008) at <http://www.iht.com/articles/ap/2008/05/21/africa/ME-GEN-Israel-Syria-Glance.php>.

territory. In 1981, Israel ended military rule with the enactment of the *Golan Heights Law*. This legislation purported to annex the occupied territory to the state of Israel, a move comprehensively denounced by the international community.⁴²



Israeli military tanks conducting training manoeuvres in the Occupied Golan, 2008

Picture sourced from *Jalaa Marey achieves*

jalaamarey@gmail.com



Israeli occupying forces conducting training manoeuvres in the Occupied Golan, 2008

Picture sourced from *Jalaa Marey achieves*

jalaamarey@gmail.com

⁴² Benevenisti, *supra.*, p. 114.

1.2 Israeli actions in the Occupied Syrian Golan

Since Israel began its occupation of the Syrian Golan in 1967, it has carried out numerous actions that have violated a number of the basic norms of international law. These actions have deliberately and negatively impacted on the Syrian population. The forcible transfer of civilians and the destruction of property have led to the mass depopulation of Syrian citizens from the occupied territory. A foreign ethnic group, namely, Israeli-Jewish settlers, has gradually replaced the Syrian population.

1.2.1 Forcible transfer of civilians from the Occupied Syrian Golan

The depopulation of the Syrian Golan of its native inhabitants was the first major abuse conducted in the Golan during and following the end of the 1967 war between Israel and its Arab neighbours. Prior to the occupation, the Syrian Golan contained approximately 153,000 inhabitants; following the capture of 70% of the Golan territory by Israel, approximately 130,000 were forcibly transferred or displaced to Syria proper⁴³ and forbidden from returning. The remaining population of Syrian inhabitants remained in six villages located at the extreme north of the Golan. These villages were Majdal Shams, Masa'da, Bqa'atha, 'Ein Qinyeh, Al Ghajar, and Su'heita. In 1967 Su'heita was partially destroyed and a military post built in its place. It was completely destroyed in 1971-2 and its population forcibly transferred to the neighbouring town Masa'da; the original inhabitants of Su'heita are still fighting today for the return to their village.⁴⁴

⁴³ *Syria: Forty Years On, People Displaced From The Golan Remain in Waiting*, (2007), IDMC Internal Displaced Monitoring Centre, 31 October 2007, at [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/11354A1A3BE82407C12573850037B6C6/\\$file/Syria_IDPs_Overview_Oct07.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/11354A1A3BE82407C12573850037B6C6/$file/Syria_IDPs_Overview_Oct07.pdf).

⁴⁴ Appendix: 'Testimonies from the Occupied Golan Heights' 1979, 8:3 *Journal of Palestine Studies*, 128.



Displaced Syrian citizens from the Golan on the move under the watchful eyes of the Israeli soldiers, 1967

Picture sourced from Al Marsad achieves

Israel succeeded in depopulating the Golan through a number of means, including its regime of Military Orders that were introduced to administer the newly occupied territory. For example, a number of Military Orders declared that certain areas were closed military zones, effectively meaning that no one was permitted to enter the zone and anyone doing so was severely punished. Military Order 39, 27 August 1967 ordered that 101 villages in the Occupied Golan be declared closed military zones. Nobody was allowed to enter the villages listed without special permission. Anyone who violated this order was subject to a punishment of five years imprisonment or a fine of five thousand Israeli Liras, or both.⁴⁵

Through such orders, Israeli enforced the depopulation of the occupied territory of its native Syrian inhabitants by prohibiting Syrian citizens, who had been forcibly transferred, displaced or who had fled the conflict, from returning to their place of residence in the Occupied Golan.

⁴⁵ Israel Defence Forces and Defence Ministry Archive (IDFA), Military Organisation Orders, Military Order No. 39, August 27, 1967. See appendix for unofficial English translation of Military Order No. 39.

Taiseer Maray, a resident of Majdal Shams, and Fatima Al-Ali, a resident of Al-Asbah, recall how the Israeli military forcibly transferred the people.

Taiseer Maray from Majdal Shams, Occupied Syrian Golan

Al-Marsad Affidavit

Extract 1.1

The Israelis forced the people to leave the village and also the other villages surrounding Majdal Shams. A lot of people came to hide in Majdal Shams because it was far in the mountains. Some people were hiding in the school others were hiding in the houses. Everyday, the Israelis came and started shouting at them. After two weeks the Israelis told the people who were hiding that they could return safely to their own villages. As the people came out of hiding the Israeli soldiers began to shoot at them to frighten them and make them run away to other parts of Syria. The people had been tricked by the Israelis into thinking it was safe to come out of hiding and return to their villages.

Testimony of Fatima Al-Ali, from Al-Asbah, Occupied Syrian Golan

Extract 1.2

The village elders said that those who had daughters should take them away, that people should take their wives away. They said: "Leave everything, including your livestock, and make good your escape with your family!" So everyone was trying to save their women and to take them out of the area so they would be safe... We left when the Israeli army entered Qunaytra and al-Kushniyya. Israeli aircraft were diving above our heads to terrorize us and make us leave. By that time there was no Syrian army or weapons or anything of the sort. When the Israelis got to Tal al-Ahmar they fired their weapons at night to wreak havoc. It was then that we ran away to al-Swaysa. We could see the tracer bullets like streaks of fire before us, but we did not see any Israeli military vehicles. I personally do not know anyone who was killed, but they were firing on anything that moved cars and even livestock.⁴⁶

⁴⁶ Testimony of Fatima al-Ali, born in 1952 in the village of al-Asbah, housewife, as reported in Sakr Abu Fakhr, *supra.*, p.12.

This report, for the purpose of simplicity, concentrates on one village 'Jubata Ez-Zeit', situated in the far north of the Syrian Golan. Jubata Ez-Zeit had a population of between 1,500 and 2,000 prior to the 1967 War. The Israeli occupying forces forcibly transferred the entire population of Jubata; the transfer took place towards the end of June 1967. Hammood Maray, also a resident of the neighbouring town of Majdal Shams, and Taiseer Maray, recall what happened to the people of Jubata Ez-Zeit.

Hammood Maray from Majdal Shams, Occupied Syrian Golan

Al-Marsad Affidavit

Extract 1.3

During the war in 1967 roughly about half the people from Jubata Ez-Zeit left their village and came to Majdal Shams to hide because it was perceived to be a safe place, because it was high in the mountain. They had left Jubata because they were afraid of the war. After the war the Israeli military occupied the village of Jubata and began to forcibly transfer the people who had remained in Jubata, the people who had left Jubata and tried to return once they thought it was safe were also transferred. The Israeli army began shooting in the air and towards the people, all the time, to frighten the people of Jubata, to transfer the people from the village. After the transfer Jubata became a closed military area; nobody could return. Before the war the village of Jubata had about 1,500 2,000 people something like that, after the transfer nobody remained.

Taiseer Maray from Majdal Shams, Occupied Syrian Golan

Al-Marsad Affidavit

Extract 1.4

We know of a number of cases from Jubata Ez-Zeit where disabled people were in the village; the Israeli army brought donkeys for them and put the disabled

people on the donkeys and transferred them out of the Golan. The transfer of the people of Jubata and other villages in the occupied Golan was an act planned by Israel. It's impossible, as I said before, that there would be no people left because some people, disabled people, some crazy people and some very old people, they would all want to stay in their homes. When you find that 100% of the people are gone from the villages, it means, without going to the details, these people were forced to leave their villages. For example, look at Palestine in 1948; some of the Palestinians remained it's the same in any conflict areas. Even the Israelis have said in a lot of documentation and also in a lot of T.V. programs how they practiced pressure in order to force the people of the Occupied Golan to leave...Ok I mean its very normal under conflict situation that people leave their villages, however, that does not mean they don't want to come back, if the Israelis were sincere about peace than I think the people that were forcibly transferred from the Golan should be allowed return.

1.2.2 The Destruction of villages and farms

With thousands of people forced to leave the Occupied Golan and unable to return, (an estimated 130,000 people), the Israeli military were, for the most part, unopposed in their administration of the newly occupied territory and began a widespread campaign that destroyed numerous villages and farms. The only villages to escape the campaign of destruction were Majdal Shams, Masa'da, Bqa'atha, 'Ein Qinyeh, and Al-Ghajar, five small villages in the valley of Mount Hermon. Israeli settlements were then built in a number of places over destroyed Arab villages and farms, in so doing, control was taken of the land and resources.

Hayel Abu Jabal and Hammood Maray residents of neighbouring Majdal Shams, describe what happened Jubata Ez-Zeit village.



A demolished house in the destroyed village of Ain Fit, Occupied Syrian Golan. The ruins of this village have subsequently been used by the Israeli occupying forces for military training

Picture sourced from Jalaamarey achieves

jalaamarey@gmail.com

Hayel Abu Jabal from Majdal Shams, Occupied Syrian Golan

Al-Marsad Affidavit

Extract 1.5

The people from Jubata Ez-Zeit were afraid, some of the people came to Majdal Shams to hide. The Israeli army came to Majdal Shams and found the people from Jubata hiding here. The army then began ordering the people to return to Jubata, those who didn't return and remained in Majdal Shams were eventually transferred from Majdal Shams, out of the Golan, to other parts of Syria. The people who returned to Jubata that were hiding in Majdal Shams were also transferred on their return; they were tricked by the Israeli army into thinking

they could return to their villages. After some days after the conclusion of the war, a week or two weeks, the village of Jubata Ez-Zeit was destroyed by the Israeli army. The Israeli army bombed all the houses. They, the Israelis, didn't let any one remain in Jubata. Jubata was completely destroyed. All the villages in the Occupied Golan were destroyed by the same way. The Israelis needed a land without people.

Hammood Maray from Majdal Shams, Occupied Syrian Golan

Al-Marsad Affidavit

Extract 1.6

Jubata Ez-Zeit was destroyed after the Six Day War. Israel had occupied the village of Jubata directly. The war lasted for six days, during this time Israel managed to occupy all the Golan, Israel had total control in the region at this time. A few people in Jubata had guns but there was little fighting. It was a small few fighting an entire army. There was no major danger to the Israeli army.



The destroyed Syrian village of Jubata Ez-Zeit, Occupied Syrian Golan

Picture sourced from Golan for Development achieves

1.2.3 Transfer of Israeli population into occupied territory

We will not descend from the Golan...we will not partition Jerusalem, we will not return Sharm El-Sheikh, and we will not agree that the distance between Netanya and the border shall be eighteen kilometres.⁴⁷

Israeli settlements have become a means for the Israeli government to establish physical and demographic obstacles to an Israeli withdrawal from occupied territory.⁴⁸ In other words, Israeli settlements create 'facts on the ground'. As early as 1969, Moshe Dayan spoke of his belief in developing Israeli possessions in the Occupied Territories:

Israel should establish Jewish and Israeli possessions in the administered areas throughout, not just the Golan, and not just with the intention of withdrawing there. These should not be tent camps which are set up and taken down. With this in mind, we should establish possession in areas from which we will not withdraw in accord with our view of the map.⁴⁹

It is reported today that there are up to 20,000 Israeli-Jewish settlers in the Occupied Golan, living in approximately 37 illegal settlements.⁵⁰ One of the largest settlements is Katsrin, with a population of 5,000 people. These settlements, and the use and exploitation of Syrian land and resources would appear to amount to what has been described as:

[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.⁵¹

The presence of Israeli settlements and their continued expansion inside occupied territory, including that of the Syrian Golan, represents one of the biggest obstacles to lasting peace in the Middle East. Israeli settlements further represent a clear violation of international humanitarian law and international human rights law.

Taiseer Maray explains about the Israeli settlement programme in the Occupied Golan and in particular the Israeli settlement of Neve Ativ, built on the destroyed Arab village of Jubata Ez-Zeit.

⁴⁷ Golda Meir, Israeli Prime Minister (17 March 1969 – 3 June 1974) as cited in Gilbert, *supra.*, p.462.

⁴⁸ Middle East, *supra.*, 301.

⁴⁹ Moshe Dayan, former Israeli Chief of Staff and later Defense Minister, cited in Gilbert, *supra.*, p. 405.

⁵⁰ United Nations Security Council, *Report of the Secretary-General on the Middle East* (2006) para. 39.

⁵¹ United Nations, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, John Dugard, (2007) UN Doc. A/HRC/4/17, 29 January 2007, para. 60.

Taiseer Maray from Majdal Shams, Occupied Syrian Golan

Al-Marsad Affidavit

Extract 1.7

The settlement of Merom Golan was the first Israeli settlement in the Occupied Syrian Golan. Until 1977 the Israelis had invested more money in the Golan Heights settlement plan than the West Bank and Gaza.... The Israeli Jewish settlements have confiscated all the land of the Arab villages and they now use this land and exploit all the resources such as water. Another thing is that they limit the development of the remaining Arab villages; I'm speaking about physically, because the settler land is very close to my village and we cannot expand or build out because the settler land is blocking us. Another thing, the Israeli government gives them a lot of support in agriculture and now they are competing with us. They produce the same apples like ours, the Israeli government gives them lots of support, financial and scientific support, we are completely left behind...The Neve Ativ settlement, I think, was established in 1970. Now there are about 200 people (Israeli-Jewish settlers) living in the settlement.... Also after the peace process when they began to expand this settlement [Neve Ativ] they built a new tourist area, this tourist area was built on top of the graveyard of the village. In building the tourist area they destroy the entire old Arab graveyard. Unfortunately, some American companies invested money into this tourist area. All the old stones of the old Arab houses were taken and used to build the houses of the settlers. In 1996 I was interviewed by Israeli TV in the settlement and we were speaking how the Israelis destroyed the village and one of the settlers came over to us and started shouting at us, he wanted us to stop the interview. When the cameras were turned off, this guy, who was almost crying, started saying that he knows how they destroyed the Arab village. He claimed that this was not his own responsibility that it was the responsibility of the Israeli government because the Israeli government had encouraged them to live on top of the Arab village.



Israeli settlement of Neve Ativ built on top of the destroyed Syrian village of Jubata Ez-Zeit

Picture sourced from Jalaamarey achieves

jalaamarey@gmail.com



Neve Ativ entrance sign, indicating the year the settlement was established

Picture sourced from Jalaamarey achieves

jalaamarey@gmail.com

2 Legal Analysis

2.1 The legal status of the Syrian Golan under international law

Under the laws of occupation, occupation is considered a temporary condition, and the law of places a legal obligation on the Occupying Power to act in a manner which has been described as 'fiduciary,' that is to say, as administrator of public property and natural resources, and of the existing laws and form of government and penal system in the occupied region.⁵² In keeping with the principle that occupation is intended to be temporary, customary international law prohibits unilateral annexation of territory, particularly where a conflict is continuing, and even where the government of the occupied territory does not participate actively in military operations.⁵³

The relevant question in determining the applicability of the laws of occupation is one of fact. When a situation exists that factually amounts to an occupation, i.e., when territory comes under the effective control of the Occupying Power, the laws of occupation are applicable.⁵⁴ These laws are motivated primarily by humanitarian considerations. The Fourth Geneva Convention provides that persons who are in occupied territory and protected under the Convention's provisions 'may not be deprived, in any case or in any manner whatsoever' of the protections of the Convention, notwithstanding any changes to the government of the territory, any agreement between the authorities of the occupied territory and the occupier, or by annexation.⁵⁵ Thus, independent of the legality of the occupation, The 1907 Hague Regulations and Fourth Geneva Convention are meant to apply and to protect humanitarian principles.

⁵² N.F. Lancaster, 'Occupation Law, Sovereignty, and Political Transformation: Should the Hague Regulations and the Fourth Geneva Convention Still Be Considered Customary International Law?', (2006) 189 *Military Law Review*, p. 51 at 54 and see C. Greenwood, 'The Administration of Occupied Territory in International Law', in E. Playfair (ed.), *International Law and the Administration of the Occupied Territories* (1992), p. 2 41 and K. Cavanaugh, 'The Israeli Military Court System in the West Bank and Gaza, 12(2) *Journal of Conflict and Security Law* (2007), pp. 197-222.

⁵³ A. Roberts, 'Transformative Military Occupation: Applying the Laws of War and Human Rights' (2006) 100 *American Journal of International Law*, p. 580 at 583.

⁵⁴ International Court of Justice, Final Judgment, *Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda*, 19 December 2005, paras. 167-180.

⁵⁵ Geneva Convention Relative to the Protection of Civilian Persons in Time of War (12 August 1949, entered into force 21 October 1950) 75 U.N.T.S.287, Art. 47.

In the case of the Syrian Golan, it is undisputed that the area has been, for the purposes of applying international humanitarian law and the laws of occupation, occupied by Israel since 1967.⁵⁶ Despite the clear factual grounds for application of the laws of occupation in the Syrian Golan, Israel has thwarted these laws in two particular ways: first, by failing to recognize the *de jure* application of the Hague Regulations and Fourth Geneva Convention in the Syrian Golan, and second, by its *de facto* annexation of the Syrian Golan in 1981.⁵⁷

Article 42 of the 1907 Hague Regulations (hereinafter Hague Regulations) provides an authoritative definition of occupation:

Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to territory where such authority has been established and can be exercised.⁵⁸

The jurisprudence of the International Criminal Tribunal for the Former Yugoslavia has outlined the following guidelines to determine whether the authority of the Occupying Power has actually been established:

- The Occupying Power must be in a position to substitute its own authority for that of the occupied authorities, which must have been rendered incapable of functioning publicly.
- The enemy's forces have surrendered, been defeated or withdrawn. In this respect, battle areas may not be considered as occupied territory. However, sporadic local resistance, even successful, does not affect the reality of occupation.
- 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.
- A temporary administration has been established over the territory.
- The Occupying Power has issued and enforced directions to the civilian population.⁵⁹

⁵⁶ See E. Benvenisti, *The International Law of Occupation*, (Princeton University Press, 1993), esp. pp.107-148 and United Nations Security Council Resolution 497(1981), S/Res/497, 17 December, 1981.

⁵⁷ T. Davenport, 'A Study of Israel's Occupation of the Golan Heights,' Irish Centre for Human Rights, (Unpublished), National University of Ireland, Galway, 2008. For analysis of the jurisprudence of the Israeli Supreme Court relating to the Occupied Territories, see D. Kretzmer, *The Occupation of Justice – The Supreme Court of Israel and the Occupied Territories*, State University of New York, 2002.

⁵⁸ Article 42, 1907 Hague Regulations annexed to Convention IV Respecting the Laws and Customs of War on Land, signed at the Hague, 18 October 1907 (hereinafter the 1907 Hague Regulations).

⁵⁹ *Prosecutor v. Naletilic and Martinovic* (Case No. IT-98-34-T), Judgment, 31 March 2003, para. 217.

Applying these guidelines to the situation in the Syrian Golan since 1967, this territory may be considered occupied for the following reasons:

- Israel had effective control over the territory in the Golan it was occupying, Syrian authority was ineffective and Israel was in a position to substitute its authority for that of Syria.
- Syrian forces in the Golan were defeated during the 1967 War and the Israeli army did not encounter any significant military resistance to the occupation until the 1973 so called Yom Kippur War (when Syrian forces were again defeated).⁶⁰
- Israel's substantial military presence in the region (many Israeli training facilities and camps are located in the Occupied Golan) fulfilling the requirement to have troops present or the capacity to send troops within a reasonable time to the Occupied Territory to make the authority of the Occupying Power felt.
- Israel provided its military commanders in the Golan with legislative authority to administer the occupied territory; this regime was subsequently replaced by the Golan Heights Law which purported to annex the territory into the state of Israel.
- Israel began issuing directions to the occupied population in the early days of the occupation by means of Military Orders. Again, these Military Orders were replaced by Israeli civil laws in 1981 when Israel purported to annex the Occupied Golan, thus fulfilling the final point outlined in the jurisprudence of the International Criminal Tribunal for the Former Yugoslavia for establishing whether the authority of the Occupying Power has actually been established.

Israel rejects the notion that the Syrian Golan is still an occupied territory, basing its claims to sovereignty over the region on a 1981 legislative act – the Golan Heights Law - which purported to annex the territory. This law, which has been legally deemed to be an annexation, placed the Occupied Golan under Israeli civilian

⁶⁰ C. Herzog, *supra.*, pp. 285-306.

law, effectively extending Israel's laws and jurisdiction to the Occupied Golan, and allowing the people residing there status as permanent residents of Israel. Israel outlined its position regarding the Syrian Golan to the ILO when it conducted a mission in the occupied Arab territories as follows:

The ILO mission is meant to collect material for the Director-General's Report on the occupied Arab territories. It is the position of the Government of Israel that the Golan, to which Israeli law, jurisdiction and administration have been applied, is not now such an area. In view of this consideration, approval for a visit of the ILO mission to the Golan was given as a gesture of goodwill and without prejudice. The decision to facilitate such an informal visit shall not serve as a precedent and does not contravene the Israeli Government's position.⁶¹

On 17 December 1981, the United Nations Security Council categorically rejected Israel's passage of the Golan Heights Law in UN Resolution 497. In this resolution, the Security Council reaffirmed 'that the acquisition of territory by force is inadmissible, in accordance with the United Nations Charter, the principles of international law, and relevant Security Council resolutions.'⁶² The Security Council went on to declare that:

...the Israeli decision to impose its laws, jurisdiction and administration in the occupied Syrian Golan Heights is null and void and without international legal effect...Israel, the Occupying Power, should rescind forthwith its decision... [and] all the provisions of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949 continue to apply to the Syrian territory occupied by Israel since June 1967.⁶³

Since 1981, the United Nations has continually refused to recognize Israel's claim to the Golan and has issued a series of resolutions to this effect. Most recently, in January 2008, the United Nations General Assembly adopted Resolution 62/85, 'The Syrian Golan.' This resolution reaffirmed the 'fundamental principle of the

⁶¹ International Labour Conference, Report of the Director General, 2008, *supra.*, p.1.

⁶² United Nations Security Council Resolution 497, (1981) *supra.*

⁶³ *Ibid.*

inadmissibility of the acquisition of territory by force' and the applicability of the Fourth Geneva Convention to the Occupied Golan.⁶⁴ The resolution condemned Israel's refusal to withdraw from the Golan in defiance of Security Council and General Assembly resolutions and 'stress[ed] the illegality of the Israeli settlement construction and other activities in the occupied Syrian Golan since 1967.'⁶⁵

The UN General Assembly also declared that 'Israel has failed to comply with Security Council resolution 497' and that Israel's decision to impose its laws on the Syrian Golan 'is null and void and has no validity whatsoever.'⁶⁶ The General Assembly called upon Israel to rescind its 1981 Golan Heights Law, and stated that 'the continued occupation of the Syrian Golan and its *de facto* annexation constitute a stumbling block in the way of achieving a just, comprehensive and lasting peace in the region.'⁶⁷ The General Assembly noted with satisfaction prior attempts at peace negotiations, declared the hope that peace talks would resume, and ultimately demanded 'that Israel withdraw from all the occupied Syrian Golan to the line of 4 June 1967 in implementation of the relevant Security Council resolutions.'⁶⁸

A number of other bodies have also condemned Israel's occupation and annexation of the Syrian Golan. The League of Arab States has on numerous occasions expressed its disapproval at Israel's efforts to change the legal, physical and demographic character of the Occupied Syrian Golan. The League has stated that it sees such efforts as null and void under international law and in contravention of various UN conventions.⁶⁹ In a recent resolution, the United Nations Human Rights Council (formerly know as the United Nations Commission on Human Rights) took a similar position. The Council stated Israel's annexation of the territory was illegal and called on Israel to refrain from 'changing the physical character, demographic composition, institutional structure and legal status of the Occupied Syrian Golan.'⁷⁰

⁶⁴ United Nations General Assembly Resolution 62/85 (2008) A/Res/62/85, 21 Jan 2008.

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ Arab League Resolution, March 2006, as cited in *Syria: Forty Years On, People Displaced From The Golan Remain in Waiting*, (2007), IDMC Internal Displaced Monitoring Centre, *supra.*, p.8.

⁷⁰ United Nations General Assembly, (2007) A/HRC/Res/2/3 – A/HRC/2/9, 22 March 2007.

In another resolution the Council called for all the displaced population of the Golan to be allowed return to their homes and reclaim their properties.⁷¹

Israel's purported annexation of the Syrian Golan is illegal and a violation of Article 2(4) of the United Nations Charter⁷² and the principle of customary international law prohibiting the acquisition of territory by threat or use of force. The customary status of this principle was recently confirmed by the International Court of Justice in its *Advisory Opinion on the Legal Consequences of the construction of a wall in Occupied Palestinian Territory*.⁷³ The commentary of the Fourth Geneva Convention also confirms this line of reasoning and offers the opinion that the occupation of territory during wartime is:

...essentially a temporary de facto situation, which deprives the Occupied Power of neither its statehood nor its sovereignty; it merely interferes with its powers to exercise its rights. That is what distinguishes occupation from annexation, whereby the Occupying Power acquires all or part of the occupied territory and incorporates it in its own territory.⁷⁴

As occupied territory, the Syrian Golan enjoys a specific legal status in international law, governed by the law of belligerent occupation. The relevant provisions are enshrined in the Hague Regulations, the Fourth Geneva Convention and certain provisions of the Protocol 1 of 1977 Additional to the Geneva Conventions of 1949.⁷⁵ Israel has recognized the application of the Hague Regulations to its occupation of some of the territories it occupies, but has never fully acquiesced to their application

⁷¹ *Ibid.*

⁷² Article 2(4) of the UN Charter states: 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 manner inconsistent with the Purposes of the United Nations.

⁷³ International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, ICJ (2004), para. 87, (hereinafter *ICJ Advisory Opinion on the Construction of the Wall in Occupied Territory*).

⁷⁴ International Committee for the Red Cross (ICRC), *Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, (Geneva, 1958, Jean Pictet (ed.) p. 275, (hereinafter *ICRC Commentary to the Fourth Geneva Convention*).

⁷⁵ 1907 Hague Regulations, *supra*; Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War, adopted 12 August 1948, entered into force 21 October 1950, 75 U.N.T.S. 287 (hereinafter, the Fourth Geneva Convention); Protocol 1 Additional to the Geneva Conventions of the 12 August 1949, and Relating to the Victims of International Armed Conflict, adopted 8 June 1977, entered into force 7 December 1978, 1125 U.N.T.S. 3-608 (hereinafter, Additional Protocol 1).

in the Syrian Golan, which it has effectively annexed.⁷⁶ Nor has Israel recognized the application of the Fourth Geneva Convention in the Syrian Golan.⁷⁷ With regard to the Hague Regulations, Israel's primary justification for its position is that the Hague Regulations are part of customary international law. According to the Israeli Supreme Court, if the Hague Regulations are part of customary international law, they apply to the occupied territories, but only insofar as they comport with Israeli law. Israel's position seems to be, then, that it is in compliance with the Hague Regulations as part of customary international law, even though the Hague Regulations do not apply *de jure* in the Syrian Golan, and only when they do not conflict with Israeli law.⁷⁸

Israel has rejected the *de jure* application of the Fourth Geneva Convention in the Syrian Golan. It has, however, indicated that it will abide by the 'humanitarian provisions' of the Convention, and some scholars argue that the Fourth Geneva Convention's formal applicability is of little relevance given Israel's willingness to abide by its 'humanitarian provisions.'⁷⁹ This position is unsatisfactory as without formal application of the Convention or definition of what it considers 'humanitarian provisions', Israel's accountability under the Convention's standards is tenuous at best.

In contrast to Israel's position, there is agreement amongst the international community regarding the applicability of the Fourth Geneva Convention in territory occupied by Israel since 1967. The International Court of Justice in its *Advisory Opinion on the construction of the annexation Wall in the Occupied Palestinian Territory* confirmed that it considered the Convention applicable in any territory occupied in the event of an armed conflict between two or more High Contracting Parties.⁸⁰ Both Syria and Israel were parties to the Convention when the armed

⁷⁶ A. Roberts, 'Prolonged Military Occupation: The Israeli-Occupied Territories Since 1967', (1990) 84 *American Journal of International Law*, p.44 at 53.

⁷⁷ Lancaster, *supra.*, p. 72.

⁷⁸ See *Jama'iat Iscan v Commander of the IDF in Judea and Samaria* 37, (4) PD 785, 792 (1983); *Suleyman Tawfiq Oyyeb and others v The Minister of Defence and others*, High Court of Justice (HCJ) 606, 610/78, 15 March 1979, reprinted in (1985) 2 *Palestine Yearbook of International Law* 134–150, esp. 141–142; *Bassil Abu Aita v The Regional Commander of Judea and Samaria*, HCJ. 69/81, 4 April 1983, at sec. 10 & 11.

⁷⁹ A. Roberts, 'Prolonged Military Occupation: The Israeli-Occupied Territories Since 1967', (1990) 84 *American Journal of International Law*, p.44 at 62.

⁸⁰ ICJ *Advisory Opinion on the Construction of the Wall in Occupied Territory*, *supra*, para. 101.

conflict broke out in 1967 making the Convention applicable in the Syrian territory controlled by Israel in its aftermath. In this way, the Syrian Golan remains an occupied territory to which the Convention applies. Consequently, Israel has certain legal obligations as the Occupying Power that it must uphold and respect, while the peoples occupied (the indigenous Syrian population) are afforded the rights of protected persons according to the provisions enshrined in the Fourth Geneva Convention. This is highlighted in Article 4(1) of the Fourth Geneva Convention, which states that:

Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of conflict or occupation, in the hands of a party to the conflict or Occupying Power of which they are not nationals.⁸¹

Article 27 sets out some of the basic protections afforded to the occupied civilian population:

Protected persons are entitled, in all circumstances, to the respect for their persons, their honour, their family rights, their religious convictions and practices and their manner and customs.....They shall at all times be humanely treated.....⁸²

Article 32 of the Convention goes on to elaborate the protections stipulated in Article 27:

The High Contracting Parties specifically agree that each of them is prohibited from taking any measures of such a character as to cause the physical suffering or extermination of protected persons in their hands. This prohibition applies not only to murder, torture, corporal punishment, mutilation and medical or scientific experiments not necessitated by medical treatment of a protected person, but also to any other measures of brutality whether applied by civilian or military agents.⁸³

⁸¹ See *ICRC Commentary to the Fourth Geneva Convention supra*, p. 46 at <http://www.icrc.org/ihl.nsf/COM/380-600056?OpenDocument>.

⁸² See *ICRC Commentary to the Fourth Geneva Convention supra.*, p. 199.

⁸³ See *ICRC Commentary to the Fourth Geneva Convention supra.*, p. 221 at <http://www.icrc.org/ihl.nsf/COM/380-600056?OpenDocument>.

An obligation to uphold the protections afforded to protected persons is placed on the Occupying Power in Article 29:

The Party to the conflict in whose hands protected persons may be, is responsible for the treatment accorded to them by its agents, irrespective of any individual responsibility which may be incurred.⁸⁴

International human rights law is also applicable to the Occupied Syrian Golan. In principle, international human rights law applies at all times, both during peacetime and in situations of armed conflict. Both international human rights law and international humanitarian law are complementary branches of law. However, some human rights treaties do allow governments to derogate from certain rights in times of extreme public emergency where the perceived life of the nation might be in danger. Such derogation, however, is guided by strict guidelines, which includes that a state must act proportionally to the crisis. The derogation cannot be enforced on a discriminatory basis and it must not contravene other rules of international law. Accordingly, there are a number of principles of international human rights norms that a state may never derogate from, regardless of the situation. These principles include the 'right to life' and the 'prohibition of torture or cruel, inhuman or degrading treatment or punishment,' to name but a few.⁸⁵

2.2 Violations of international law in the Occupied Syrian Golan

2.2.1 Forcible Transfer and Deportation

Following the 1967 war and Israel's capture and subsequent occupation of the Syrian Golan, approximately 130,000 people were forced by the Israeli military, to leave their place of residence and were refused their right to return. It is not surprising that the deportation and transfer prohibitions under international humanitarian law are primarily relevant to occupied territory. These are foremost

⁸⁴ See *ICRC Commentary to the Fourth Geneva Convention supra*, p. 209 at <http://www.icrc.org/ihl.nsf/COM/380-600056?OpenDocument>.

⁸⁵ See M. Sassoli and M. Bouvier, *How Does Law Protect in War* (2nd. Ed.). International Committee of the Red Cross, Geneva, (2006), pp. 341-353.

concerned with prohibiting the forcible movement of protected persons within the territory (transfer) or their forcible expulsion from the territory (deportation).⁸⁶ However, both transfer and deportation are equally prohibited and each entails the same potential criminal responsibility for the perpetrators of such crimes.

The first real codification in international humanitarian law prohibiting the deportation or transfer of civilians was the Lieber Code of 1863. The Lieber Code provided that 'private citizens are no longer [to be] carried off to distant parts'.⁸⁷ Following the mass deportation and forcible transfer of civilians from occupied territory during the Second World War, the drafters of the Geneva Convention set about creating a provision that would help protect civilians from such acts in the future. This provision is contained in Article 49 of the Fourth Geneva Convention. According to David Kretzmer, it is the near universal opinion of experts in international law that Article 49 places an absolute prohibition on deportations of residents of occupied territory.⁸⁸

Article 49 reads:

Individual or mass forcible transfers, as well as deportation, 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.⁸⁹

It is interesting to note that before the Rome Statute of the International Criminal Court (hereinafter the Rome Statute) came into force in 2002, the distinction between deportation (the forced removal of people from one country to another) and forcible transfer of a population (compulsory movement of people from one area to another within the same state)⁹⁰ was not obvious in any of the major international criminal instruments such as the Nuremberg Charter, the Tokyo Charter, and the statutes of

⁸⁶ K. Dörmann in O. Triffterer (ed.), *Commentary on the Rome Statute of the International Criminal Court*, (2nd Ed.) (Baden-Baden: Nomos Verlagsgesellschaft, 2008), p. 316.

⁸⁷ U.S. War Department, General Orders No. 100, 24 April 1863, Article 23.

⁸⁸ Kretzmer, *supra*, pp. 45 and 167.

⁸⁹ See *ICRC Commentary to the Fourth Geneva Convention supra.*, p. 277 at <http://www.icrc.org/ihl.nsf/COM/380-600056?OpenDocument>.

⁹⁰ See M. Cherif Bassiouni, *Crimes Against Humanity in International Law*, (The Hague: Kluwer Law International, 1999), p.312.

the international criminal tribunals for both Rwanda and the former Yugoslavia.⁹¹

The jurisprudence of the International Criminal Tribunal for the Former Yugoslavia makes a clear distinction between deportation and forcible transfer. This was highlighted in the *Prosecutor v. Kmoljac* trial judgment:

Deportation requires the displacement of persons across a national border, to be distinguished from forcible transfer which may take place within national boundaries.⁹²

The Trial Chamber decision in the *Prosecutor v. Stakic* also made a similar clear distinction between the two notions.⁹³

The International Criminal Tribunal for the Former Yugoslavia decided in *Prosecutor v. Kvočka* that the physical act or material element (*actus reus*) for committing a crime is:

That the accused participated, physically or otherwise directly, in the material elements of a crime under the tribunal's statute, through positive acts or omissions, whether individually or jointly with others⁹⁴

Regarding the material element of forcible transfer; the Trial Chamber in *Prosecutor v. Brdanin* was satisfied that the forced displacement of individuals from the area where they are lawfully present to an area within the boundaries of the state constituted the *actus reus* of forcible transfer. The Chamber highlighted the fact that it was essential that the forcible transfer be carried out under coercive measures and that such displacement was unlawful.⁹⁵

Evidently, the material element or *actus reus* of forcible transfer was satisfied in the forced displacement of the people from Jubata Ez-Zeit village by the Israeli occupying forces. First, the Israeli soldiers participated physically in the displacement by

⁹¹ See Roy Lee (ed.), *The International Criminal Court: Elements of Crimes and Rules of Procedure and Evidence* (Ardley, NY: Transnational Publishers, 2001), p.86; M. Cherif Bassiouni and Peter Manikas, *The Law of the International Criminal Tribunal for the Former Yugoslavia* (New York: Transnational Publishers, 1996), pp. 627-28.

⁹² *Prosecutor v. Krnojelac*, Case No. IT-97-25, Trial Chamber 11, Judgment, 15 March 2002, para. 474.

⁹³ *Prosecutor v. Milomir Stakic*, Case No. IT-97-24-T, Trial Chamber 11, Judgment, 31, July 2003, para. 671.

⁹⁴ *Prosecutor v. Kvočka* (Case No. IT-98-30/1), Judgment, 2 November 2001, para. 251.

⁹⁵ *Prosecutor v. Brdanin* (Case No.IT-99-36-T), Judgment, 1 September 2004, paras. 540-544.

shooting at the civilians of Jubata in an effort to frighten them and make them flee.⁹⁶ In this way, the Israeli soldiers directly participated in the forcible transfer. Secondly, the people of Jubata were lawfully present in the area at the time of the displacement; they were also transferred to an area within the boundaries of the state. Thirdly, those responsible for the transfer carried out this action using coercive means and by the use of force i.e. the Israeli military shooting at the civilians of Jubata to frighten them.⁹⁷ Finally, the forcible transfer was unlawful because it was conducted against protected persons under international humanitarian law.

The jurisprudence of the International Criminal Tribunal for the Former Yugoslavia indicates that the term ‘force’, when used in the context of forcible transfer should be interpreted broadly.⁹⁸ The Appeals Chamber in *Prosecutor v. Stakic* highlighted this point stating:

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 persons or persons of another person, or by taking advantage of a coercive environment.⁹⁹

The terms, ‘forcible’ and ‘forced’, should be interpreted to include any form of coercion, which leads to the departure of people from the area where they are located.¹⁰⁰ In the *Simic* case, the International Criminal Tribunal for the Former Yugoslavia Trial Chamber concluded:

The displacement of persons is an illegal act where it is forced, i.e. not voluntary, and ‘when it occurs without grounds permitted under international law’... The essential element is that the displacement be involuntary in nature, that ‘the relevant persons had no real choice’. In other words, a civilian is involuntarily displaced if he is not faced with a genuine choice as to whether to leave or remain in the area.’¹⁰¹

⁹⁶ See Extract 1.3, Hammood Maray, Al-Marsad Affidavit.

⁹⁷ *Ibid.*

⁹⁸ *Prosecutor v. Krnojelc*, *supra.*, para. 475.

⁹⁹ *Prosecutor v. Milomir Stakic*, Case No. IT-97-24-A, Appeals Chamber, Judgment, 22 March 2006, para. 281.

¹⁰⁰ See Christopher K. Hall in O. Triffterer (ed.), *Commentary on the Rome Statute of the International Criminal Court*, *supra.*, p.199.

¹⁰¹ *Prosecutor v. Simic*, Case No IT-95-9-T, Judgment, Trial Chamber, 17 October 2003, para. 125.

One of the coercive measures used by the Israeli army against the people of Jubata Ez-Zeit was to fire shots over their heads, frightening them, and making them flee in terror. This interpretation is consistent with that of the International Criminal Tribunal for the Former Yugoslavia in relation to ‘forced’ deportations and within the coercive measures referred to in the commentary to the Rome Statute.

However, Article 49(2) of the Convention does provide for two exceptions to the prohibition on forcible transfer of protected persons. Article 49(2) states that:

The Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand.¹⁰²

Evacuation should be distinguished from forcible transfer or deportation. It is a provisional or temporary measure taken in the interests of those being evacuated. The International Committee of the Red Cross (ICRC) commentary to the Convention indicates that if either of the exceptions is invoked to evacuate a protected person, the evacuation must be carried out under strict criteria. First, those evacuated would have to be placed in a ‘place of refuge’.¹⁰³ Secondly, the ‘evacuation must not involve movement of protected persons to places outside the occupied territory, unless physically impossible to do otherwise’.¹⁰⁴ Thirdly, ‘protected persons who have been evacuated are to be brought back to their home as soon as the hostilities in the area have ended’.¹⁰⁵

Israel, as the Occupying Power, met none of the above criteria. At the time of the forcible transfer of the inhabitants of Jubata Ez-Zeit, the Israeli military were in effective control of the region, there was no military operation or intense bombing that was placing the occupying force or the people of Jubata Ez-Zeit at risk. The protected people were driven from their homes at gunpoint,¹⁰⁶ and not placed in a place of refuge.

¹⁰² See *ICRC Commentary to the Fourth Geneva Convention supra.*, p. 280 at <http://www.icrc.org/iHL.nsf/COM/380-600056?OpenDocument>

¹⁰³ See *ICRC Commentary to the Fourth Geneva Convention supra.*, p. 280 at <http://www.icrc.org/iHL.nsf/COM/380-600056?OpenDocument>

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*

¹⁰⁶ See Extract 1.3, Hammood Maray, Al-Marsad Affidavit.

The issue revolves around the question of whether the persons concerned exercised a genuine choice to go.¹⁰⁷ The evidence demonstrates that those deported or transferred had no option. In summary, according to Knut Dörmann, for there to be a war crime, it has to be determined that:

- a. the deportation has been carried out unlawfully in violation of international conventions; or
- b. generally recognised standards of decency and humanity have been disregarded (the provisions of the Convention can be an indication in this respect).¹⁰⁸

Israeli policy has violated both of these conditions. The unlawfulness of the Israeli action is of paramount importance. The protected persons were driven out of the occupied territory into Syria proper when a more suitable area of refuge inside the occupied territory may have been possible to find.¹⁰⁹ Furthermore, the people of Jubata were not permitted to return to their village after the perceived danger had passed, instead, the Israel military razed Jubata village to the ground.¹¹⁰ Israel's forcible transfer of the people from Jubata Ez-Zeit village was a clear violation of Article 49 of the Fourth Convention. The nature of the crime is so serious that it also constitutes a 'grave breach' of Article 147 of the Convention.¹¹¹

The jurisprudence of the International Criminal Tribunal for the Former Yugoslavia in *Prosecutor v. Brdanin* indicates that the mental intention or *mens rea*¹¹² to constitute the war crime of forcible transfer is that the:

¹⁰⁷ *Prosecutor v. Krstic*, (IT-98-33-T), Judgment para. 530.

¹⁰⁸ K. Dörmann, *Elements of War Crimes under the Rome Statute of the International Criminal Court*, Cambridge University Press/International Committee of the Red Cross, (2002), p. 111.

¹⁰⁹ See Extract 1.1, Taiseer Maray, Al-Marsad Affidavit.

¹¹⁰ See Extract 1.5, Hayel Abu Jabal, Al-Marsad Affidavit.

¹¹¹ Article 147, *ICRC Commentary to the Fourth Geneva Convention, supra.*, p. 599.

¹¹² *Mens rea* (mental element) is used to refer to the mental element of the crime. According to Article 30 of the Rome Statute of the International Criminal Court, the *mens rea* or mental element for committing a crime is:

1. Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge.
2. For the purposes of this article, a person has intent where:
 - (a) In relation to conduct, that the person means to engage in the conduct
 - (b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events

For the purpose of this article, 'knowledge' means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. 'Know' and 'knowingly' shall be construed accordingly.

¹¹³ *The Prosecutor v. Brdanin* (case No.IT-99-36-T), Judgment, 1 September 2004, para. 545.

Accused acted with the intent that the removal of person or persons be permanent.¹¹³

The evidence demonstrates that there was clear intent on behalf of the Israeli military to have the people of Jubata Ez-Zeit village transferred from their place of residence and to make the transfer permanent. The Israelis 'needed a land without people'.¹¹⁴

Initially, the Israeli forces informed the people from Jubata that had taken refuge in nearby villages, such as Majdal Shams, that it was safe to return to their own village. However, this information was misleading. On their return to Jubata the Israeli forces began to shoot over their heads to frighten them. The people were too frightened to enter Jubata and were unable to return to the villages where they had sought refuge. They were then forced to flee from the Occupied Golan into other parts of Syria, most taking refuge around Damascus.¹¹⁵ Once all people had been removed, the village became a closed military zone. This ensured that no one could return hence making the displacement a permanent feature.¹¹⁶

2.2.2 Destruction of property

Following Israel's occupation of the Syrian Golan, the Israeli military forces began a widespread campaign of destruction, destroying numerous villages and farms. A Syrian official during the 53rd session of the United Nations Commission on Human Rights, made the claim that during its settlement occupation of the Golan, Israel had destroyed 244 villages and farms, and today, only five Arab villages remain.¹¹⁷ From this statement it is logical to conclude that most of these were destroyed during the occupation and not during actual fighting. Furthermore, the testimonies above give first hand accounts of the village Jubata Ez-Zeit being destroyed after the cessation

¹¹⁴ See Extract 1.5, Hayel Abu Jabal, Al-Marsad Affidavit.

¹¹⁵ See Extract 1.1, Taiseer Maray, Al-Marsad Affidavit and Extract 1.5, Hayel Abu Jabal, Al-Marsad Affidavit.

¹¹⁶ See Extract 1.3, Hammood Maray, Al-Marsad Affidavit.

¹¹⁷ Mission of the Syrian Arab Republic to the United Nations in Geneva, 11 March 1997, Statement by Mr. Taher Al-Hussami, Permanent Representative a.i. of the Syrian Arab Republic, at the 53rd session of UNCHR under agenda item (4) as cited in International Displacement Monitoring Centre, Little hope for the displaced to recover property in the Golan Heights (2000-2002) at [http://www.internal-displacement.org/8025708F004CE90B/\(httpEnvelopes\)/48B59EF9DF0AA79802570B8005AA9B4?OpenDocument](http://www.internal-displacement.org/8025708F004CE90B/(httpEnvelopes)/48B59EF9DF0AA79802570B8005AA9B4?OpenDocument).

of hostilities.¹¹⁸ The largest of the centres of population was Qunaytra, which had a population of approximately 53,000,¹¹⁹ and was partly regained by Syria following the 1974 armistice agreement. A large part of Qunaytra was destroyed during the 1967 War; however, Syria claims that the Israeli occupying forces completely destroyed the remainder by dynamiting it as they withdrew in 1974.¹²⁰

The protection of property has been a concern of international humanitarian law for some time and this is reflected in provisions of the Hague Regulations and the Fourth Geneva Convention. There are a number of references to the protection of property in the Hague Regulations, most notably Article 23(g) which states that it is forbidden:

To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war.¹²¹

The Hague Regulations go further and in Article 56 provide 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 seizure of, destruction or wilful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings.¹²²

The Geneva Conventions further reinforce the protection of property under international humanitarian law. Various articles of the Geneva Conventions establish different degrees of protection for distinct categories of property.¹²³ However, the property in question must be 'protected property' under one of more of the Geneva Conventions. According to Article 53 of the Fourth Convention:

¹¹⁸ See Extract 1.5, Hayel Abu Jabel, AL-Marsad Affidavit and Extract 1.6, Hammood Maray, AL-Marsad Affidavit.

¹¹⁹ Jo Marie Fecci, "A View from Damascus: Internal Refugees from the Golan's 244 Destroyed Villages", *Washington Report on Middle East Affairs*, June 2000 at <http://web.archive.org/web/20011112045101/www.washington-report.org/backissues/062000/0006010.html>.

¹²⁰ Syria talks of rebuilding city crushed by war, Neil Macfaquhar, *International Herald Tribune*, Africa and Middle East, 23 October, 2004 at <http://www.iht.com/articles/2004/10/22/news/syria.php>.

¹²¹ Article 23(g), 1907 Hague Regulations, *supra*.

¹²² Article 56, 1907 Hague Regulations, *supra*.

¹²³ *ICRC Commentary to the Fourth Geneva Convention, supra*, p. 601 at <http://www.icrc.org/iHL.nsf/COM/380-600007?OpenDocument>.

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 organisations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.¹²⁴

The recent authoritative report by the International Committee of the Red Cross (ICRC) on customary international humanitarian law also states that ‘Private property must be respected and not be confiscated’.¹²⁵ However, international humanitarian law provides an exception to the prohibition on the destruction or confiscation of property, that is, if such destruction is justified by absolute military necessity. The jurisprudence of the International Criminal Tribunal for the former Yugoslavia has consistently interpreted this exception in a restrictive manner. In the Trial Chamber in judgment *Prosecutor v. Tihomir Blaskic*, the Chamber held that the destruction of moveable and non-moveable property was prohibited unless military operations made the destruction absolutely necessary.¹²⁶ This followed a similar line of reasoning in the post-Second World War *Hostage Trial* which established that ‘[t]he destruction of property to be lawful must be imperatively demanded by the necessities of war’.¹²⁷

Again taking the example of Jubata Ez-Zeit village, the Israeli forces had total control/effective control in the region;¹²⁸ there was little or no fighting taking place, and the village did not pose a security threat to the Israeli occupying forces.¹²⁹ There were also no major military operations taking place that could have made the destruction of Jubata an absolute military necessity.¹³⁰

Israel’s action in destroying the village of Jubata Ez-Zeit while under its effective control, without any justification on the basis of absolute military necessity,

¹²⁴ ICRC *Commentary to the Fourth Geneva Convention, supra.*, p. 300.

¹²⁵ See Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law- Volume 1: Rules*, (Cambridge, Cambridge University Press, 2005), p. 178.

¹²⁶ See *The Prosecutor v. Tihomir Blaskic*, Case No. IT-95-14-T, Judgment, Trial Chamber 1, 3 March 2000, para. 157.

¹²⁷ *Trial of Wilhelm List and Others*, United Nations War Crime Commission. Law Reports of Trials of War Criminals, Volume V111, 1949 at 66.

¹²⁸ See Extract 1.6, Hammood Maray, Al-Marsad Affidavit.

¹²⁹ *Ibid.*

¹³⁰ See Extract 1.5, Hayel Abu Jabal, and Extract 1.6, Hammood Maray, Occupied Syrian Golan, Al-Marsad Affidavits.

violated Article 23(g) of the Hague Regulations and Article 53 of the Fourth Geneva Convention. The ‘extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly’ was also a violation of Article 147 and a ‘grave breach’ of the Fourth Convention.¹³¹

The jurisprudence in *Prosecutor v. Naletilic and Martinovic* indicates that the physical acts or material elements (*actus reus*) of destruction of property must meet the following criteria; the destruction of property must be extensive, the destruction must be carried out against protected property, and there must be no absolute military necessity to destroy the property.¹³²

The material element of destruction of property was satisfied in the destruction of Jubata Ez-Zeit. First, the Israeli occupying forces instigated and directly participated in the destruction of Jubata village by extensively bombing the houses to destroy them.¹³³ Secondly, the complete destruction of the entire village that was home to between 1,500 and 2,000 people demonstrates that this action was extensive in nature; all the houses of Jubata were destroyed.¹³⁴ Thirdly, the property destroyed by the Israeli military was protected under international humanitarian law. Fourthly, there was no absolute military necessity to destroy the village of Jubata Ez-Zeit thus making its destruction unlawful.

The Trial Chamber judgment in *Prosecutor v. Brdanin* also outlined the mental element (*mens rea*) or intent required for the destruction of property as follows:

The perpetrator must have acted with the intent to destroy the protected property or in reckless disregard of the likelihood of its destruction.¹³⁵

The way the destruction of Jubata was carried out indicted that the perpetrators acted with a premeditated intent to destroy the village, and they had the knowledge or were aware of the likelihood that the village would be destroyed when they began bombing it.¹³⁶ It must also be noted that all the residential areas that were destroyed

¹³¹ ICRC Commentary to the Fourth Geneva Convention, *supra.*, p. 596.

¹³² *Prosecutor v. Naletilic and Martinovic* (Case No. IT-98-34-T), Judgment, 31 March 2003, para. 577

¹³³ See Extract 1.5, Hayel Abu Jabal, Extract 1.6, Hammood Maray, Al-Marsad Affidavits.

¹³⁴ *Ibid.*

¹³⁵ *Prosecutor v. Brdanin* (case No.IT-99-36-T), Judgment, 1 September 2004, para. 589.

¹³⁶ See Extract 1.5, Hayel Abu Jabal, Al-Marsad Affidavit.

in the Occupied Golan followed the same pattern.¹³⁷ Residents were displaced from their homes and the residential area became a closed military zone before being destroyed by the Israeli military. Such a systematic pattern indicates that Israeli officials had a premeditated plan in place for the Occupied Golan including the forcible transfer of its citizens and the destruction of their villages and farms.

2.2.3 Transfer of Israeli population into occupied territory

Almost immediately after the conclusion of the 1967 Middle East war and the beginning of Israel's occupation of Arab territory, Israeli settlers began arriving in the Occupied Golan. Merom Golan was the first Israeli settlement established there. Today, according to various reports, the number of Israeli settlers in the Occupied Golan is anything between 17,000 and 20,000¹³⁸ and the number of illegal settlements is approximately 37.¹³⁹

Article 55 of the Hague Regulations points out that an Occupying Power has an obligation not to make permanent changes in occupied territory:

The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forest and agriculture estates belonging to the hostile State and situated in the occupied country. It must safeguard the capital of these properties and administer them in accordance with the rules of usufruct.¹⁴⁰

While Article 49(6) of the Fourth Geneva Convention states that:

The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.¹⁴¹

Israeli settlements such as Neve Ativ, built on the destroyed village of Jubata Ez-Zeit, constitute a violation of both of these provisions of international humanitarian law. Israel has expropriated large quantities of land in the Occupied Golan and transferred its own population into the occupied territory. The transferred population has since

¹³⁷ *Ibid.*

¹³⁸ See International Labour Organization, *supra*, para 19; See United Nations Security Council, 2006, *supra*, para. 39 and 'Facts About Golan Heights, Disputed Between Israel and Syria' *International Herald Tribune* (21 May 2008) at <http://www.iht.com/articles/ap/2008/05/21/africa/ME-GEN-Israel-Syria-Glance.php> >.

¹³⁹ See United Nations Security Council, *Report of the Secretary-General on the Middle East (2006)* *supra.*, para. 39.

¹⁴⁰ Article 55, 1907 Hague Regulations, *supra.*

¹⁴¹ *ICRC Commentary to the Fourth Geneva Convention, supra.*, p. 283.

established large settlements and communities inconsistent with the intended temporary nature of occupation under international law.

Unlike the crimes highlighted above (forcible transfer and the destruction of property), there is no exception that would give legitimacy to Israel transferring parts of its own population into the territory of the Occupied Golan. An argument put forward by Israel for the legitimacy of settlements in occupied territory resides around the terminology of Article 49(6) of the Fourth Geneva Convention. Israel claims that Article 49(6) only prohibits the forcible transfer of the population of the Occupying Power into the occupied territory and hence is not concerned with the voluntary movement of people into occupied territory.¹⁴² This argument is flawed in that the provision simply does not restrict itself to forced population movement. The provision specifically uses the term 'transfer', and hence the transfer of population can thus be carried out forcibly or voluntarily.

In a binding resolution, the United Nations Security Council condemned Israel's settlement policy in occupied Arab territory, highlighting that Israeli settlements were a flagrant violation of the Fourth Geneva Convention and an obstacle to a lasting peace in the Middle East.¹⁴³

2.3 Forcible transfer and destruction of protected property as Grave Breaches under international humanitarian law

Such is the brutality of the crimes of forcible transfer and the destruction of protected property that the drafters of the Convention felt it necessary to include both in Article 147 governing grave breaches of the Fourth Geneva Convention. Article 147 includes the 'unlawful deportation or transfer' and 'extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly'. However, Article 147 must be read in union with Article 49 that deals with 'Deportations, transfers and evacuations' and Article 53 that deals with 'Prohibited destruction'. Both Articles 49 and 53 provide exceptions whereby certain action

¹⁴² Israeli Ministry of Foreign Affairs, *Israel's Settlements - Conformity with International Law*, 1 December 1996 at <http://www.mfa.gov.il/MFA/Government/Law/Legal+Issues+and+Rulings>.

¹⁴³ United Nations Security Council Resolution 465 (1980), 1 March 1980.

otherwise unlawful may be deemed legitimate. However, Israel's action in forcibly transferring the people of Jubata Ez-Zeit village before destroying their homes met neither of the exceptions set out in Articles 49 or 53. 'Grave breaches' of the Fourth Convention are considered the most heinous category of war crimes and invoke a special legal regime.

In order to make the perpetrators of the 'grave breach' of forcible transfer and destruction of protected property criminally responsible, it is necessary to establish that the crimes were committed in a certain context.

The jurisprudence of the International Criminal Tribunal for the former Yugoslavia and the Elements of Crimes document¹⁴⁴ (adopted by the Assembly of States Parties to the Rome Statute) have identified a number of conditions that must be satisfied for the commission of a 'grave breach'. They are:

- An armed conflict must exist and be international in scope and there must be a link or nexus between this conflict and the crimes alleged;
- The persons or property subject to 'grave breaches' must be defined as 'protected' under the Geneva Conventions.¹⁴⁵

2.3.1 Need for link or nexus between alleged crimes and an International Armed Conflict

In order to establish that a war crime has been committed, it must first be demonstrated that an armed conflict exists. This can often be a vexed question for international lawyers to deal with, but in the case of the Syrian Golan the issue is relatively straightforward. It is indisputable that an armed conflict is international if it takes place between two or more states. A distinction must also be made between international and non-international armed conflicts in international humanitarian law. However, in the case of the Syrian Golan, international armed conflict is the relevant category.

¹⁴⁴ Assembly of States Parties to the Rome Statute of the International Criminal Court 'Elements of Crimes' in *First Session, New York, 2002*, ICC-ASP/1/3, 3-10 September 2002, p.108-155.

¹⁴⁵ *Prosecutor v. Naletilic and Martinovic* (Case No. IT-98-34-T), Judgment, 31 March 2003, para. 176.

The term 'international armed conflict' is defined under Common Article 2 of the Geneva Conventions as follows:

...all cases of declared war or any other armed conflict which may arise between two or more of the High Contracting Parties, even if a state of war is not recognised by one of them.

... all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no resistance.¹⁴⁶

In *Prosecutor v. Tadic* the International Criminal Tribunal for the former Yugoslavia defined a conflict as existing whenever:

There is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State. International humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached; or, in the case of internal conflicts, a peaceful settlement is achieved.¹⁴⁷

The term, armed conflict, also incorporates into its definition 'military occupation'¹⁴⁸. It is evident from the extracts above that both the forcible transfers of the residents of Jubata village and the subsequent destruction of the village took place during Israel's military occupation of the Syrian Golan.¹⁴⁹

Israel's occupation of the Syrian Golan constitutes an armed conflict that is international in character because it involved the intervention of Israeli armed forces into the territory of the Syrian Golan. In this way the crimes were committed in the context of an international armed conflict. To constitute a war crime, there must be a sufficient link between the criminal act and the armed conflict.¹⁵⁰ The existence of a link or nexus to an armed conflict is established if the alleged crimes

¹⁴⁶ ICRC *Commentary to the Fourth Geneva Convention, supra.*, p. 17.

¹⁴⁷ *Prosecutor v. Tadic*, (Case No. IT-94-1), Decision, 2 October, 1995, para 70.

¹⁴⁸ Assembly of States Parties to the Rome Statute of the International Criminal Court, 2002, *supra.*, p.126.

¹⁴⁹ See Extract 1.3, Hammood Maray, Al-Marsad Affidavit and Extract 1.5, Hayel Abu Jabal, Al-Marsad Affidavit.

¹⁵⁰ K. Dörmann, *Elements of War Crimes under the Rome Statute of the International Criminal Court- Sources and Commentary*, Cambridge University Press/International Committee of the Red Cross, (2002), p. 27.

were closely related to the hostilities.¹⁵¹ In this case there is a direct link between the violations outlined and the Israeli occupation.

2.3.2 Persons or property must be defined as ‘protected’ under the Fourth Geneva Convention

Article 4 of the Fourth Convention is, in a sense, the key to the Convention. It defines protected persons i.e. the persons to whom the Convention refers as ‘those who, at a given moment and in any manner whatsoever, find themselves, in case of conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals’.¹⁵² The meaning of protected person is not self evident on first reading. Consequently, the Commentary to the Fourth Convention further elaborates on the protection principle set out in Article 4, highlighting that there are two main classes of protected person: (1) enemy nationals within the national territory of each of the Parties to the conflict; and, (2) the whole population of occupied territories (excluding nationals of the Occupying Power).¹⁵³

The people of Jubata Ez-Zeit village qualified as protected persons according to the guidelines set out in both Article 4 of the Fourth Convention and its authoritative commentary. They were nationals of Syria and under the occupation of Israel, which was engaged in armed conflict with Syria. As such they were not nationals of the Occupying Power; hence, the people of Jubata had protected status under international humanitarian law. It is also clear from the definition laid out in Article 53¹⁵⁴ of the Fourth Convention that the property destroyed by Israel in Jubata Ez-Zeit village had also gained protected status under international humanitarian law once Israel became the Occupying Power of the territory.

¹⁵¹ *Prosecutor v. Naletilic and Martinovic* (Case No. IT-98-34-T), Judgment, 31 March 2003, para. 177 citing the *Tadic*, Jurisdiction Decision, para. 70, as authority. See also *The Prosecutor v. Blaskic*, Case No. IT-95-14-T, Judgment, Trial Chamber 1, 3 March 2000, para. 69.

¹⁵² See *ICRC Commentary to the Fourth Geneva Convention*, *supra.*, p. 46

¹⁵³ *Ibid.*

¹⁵⁴ *Ibid.*, p. 300.

2.4 Obligations of High Contracting Parties to the Geneva Convention regarding grave breaches

Article 146 of the Fourth Geneva Convention, which precedes the article that lists grave breaches, places a number of obligations on the High Contracting parties regarding the enforcement of penal sanctions on persons liable for committing, or ordering to be committed 'grave breaches'. Under this regime, High Contracting Parties to the Convention have a responsibility to search for persons responsible for committing grave breaches. The High Contracting Party is obliged to search for the suspect on its own territory and the territory of other High Contracting Parties. If the suspect is at large on the territory of another High Contracting Party, the seeking state may exercise extradition proceedings by regular procedure.

Article 146 also places a legal obligation on the High Contracting Parties to provide adequate penal sanctions in their judicial systems for perpetrators of grave breaches, which reflects the rules of international humanitarian law, outlined in Article 147. Article 146 states the following:

The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.

Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, providing such High Contracting Party has made out a prima facie case.

Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present convention other than the grave breaches defined in the following Article.

In all circumstances, the accused persons shall benefit by safeguards of proper trial and defence, which shall not be less favourable than those provided by Article 105 and those following of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949.¹⁵⁵

Grave breaches can be considered as war crimes entailing mandatory universal jurisdiction. Under the principles of universal jurisdiction, a state may exercise jurisdiction over persons who have committed serious crimes under international law such as war crimes, including crimes against humanity and genocide, regardless of whether that state had a link to the crime or not.¹⁵⁶

2.5 Transfer of Israeli population into occupied territory as a war crime under international law

The transfer by the Occupying Power of parts of its own population into the territories it occupies is an illegal act. This principle has been enshrined in Article 49(6) of the Fourth Geneva Convention.¹⁵⁷

The authoritative commentary to the Convention provides valuable guidance on the provision set out in Article 49, which state:

It 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 colonize those territories. Such transfers worsened the economic situation of the native population and endangered their separate existence as a race.

The paragraph provides protected persons with a valuable safeguard. It should be noted, however, that in this paragraph the meaning of the words 'transfer' and 'deport' is rather different from that in which they are used in the other paragraphs of Article 49, since they do not refer to the movement of protected persons but to that of nationals of the occupying Power.¹⁵⁸

¹⁵⁵ *Ibid.*, p.589.

¹⁵⁶ See generally Human Rights Watch Report, *Universal Jurisdiction in Europe: The State of Art, 2006*, at <http://www.hrw.org/reports/2006/ij0606/>.

¹⁵⁷ See *ICRC Commentary to the Fourth Geneva Convention, supra*, p. 283 at <http://www.icrc.org/ihl.nsf/COM/380-600056?OpenDocument>.

¹⁵⁸ *Ibid.*, p. 277.

The International Court of Justice in its *Advisory Opinion on the Construction of the Wall in Occupied Palestinian Territory* also provided further guidance regarding paragraph 6 of Article 49:

That provision prohibits not only deportations or forced transfers of population such as those carried out during the Second World War, but also any measures taken by an Occupying Power in order to organise or encourage transfers of parts of its own population into the occupied territory.¹⁵⁹

Such action is not listed as a grave breach of the Geneva Convention; however, it does constitute a war crime for which the authors of the crime are criminally responsible.

In what appears to be a clear reference to Israeli settlements in occupied territory, the Rome Statute classified the transfer of the population of an Occupying Power into territory it occupies as a war crime. Article 8(2)(b)(viii) prohibits:

The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory.¹⁶⁰

The construction of Israeli settlements such as Neve Ativ in the Occupied Syrian Golan, built on the destroyed village of Jubata Ez-Zeit, constitutes a war crime under Article 8 of the Rome Statute.

¹⁵⁹ ICJ *Advisory Opinion on the Construction of the Wall in Occupied Territory*, *supra.*, para. 120.

¹⁶⁰ K. Dörmann, (2002), *supra.*, p. 208.

Conclusion

The Israeli settlement policy and its consequences remain major obstacles to finding a just and sustainable resolution to the conflict in the Middle East. An Israeli expert in international law has described the settlement policy thus:

According to the international law of belligerent occupation, the political status quo of the occupied territories must be maintained so that their ultimate fate can be determined by political negotiation. In contrast, the political aim of settlements is to create facts that will predetermine the outcome of any negotiations by making Israeli withdrawal from settled part of the Territories politically unfeasible. Furthermore, the existence in the Territories of a large number of settlers, who enjoy the full democratic right of Israeli citizens and for whose benefit scarce land and resources have been harnessed, has made the regime there much closer to a colonial regime than one of belligerent occupation.¹⁶¹

Common Article 1 of the Geneva Conventions places a broad obligation on every High Contracting Party to respect and ensure respect for the Convention.

The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.¹⁶²

Common Article 1 can be viewed as one of the principle legal imperatives in the Fourth Convention for the protection of the civilian population. The authoritative International Committee of the Red Cross (ICRC) commentary on the Convention reaffirms this point by declaring that a state must not only be concerned about its own performance regarding the application of the provisions of the Convention, but also urges the High Contracting Parties to ensure compliance by other states.¹⁶³

In light of Israel's failure to recognise the applicability of the Convention in the Occupied Syrian Golan, there is an added dimension to the responsibility of the

¹⁶¹ Kretzmer, *supra.*, p. 75.

¹⁶² ICRC *Commentary to the Fourth Geneva Convention, supra.*, p. 15.

¹⁶³ *Ibid.*, p. 288.

other High Contracting Parties, who are obliged to act, in accordance with the United Nations Charter and international law, to ensure Israel complies with its obligations and that the protected persons under Israel's occupation receive the rights afforded to them by the Convention.

The International Court of Justice in its *Advisory Opinion on the Legal Consequences of the Construction of a Wall in Occupied Palestinian Territory* has also confirmed that High Contracting parties to the Convention have an obligation to ensure Israel implements and respects the provisions of the Convention in the occupied territory, including that of the Occupied Syrian Golan.

Every State Party to the Convention, whether or not it is a specific conflict, is under the obligation to ensure that the requirements of the instruments in question are complied with.¹⁶⁴

Despite Israel's purported annexation of the Syrian Golan in 1981 with the introduction of the Golan Heights Law, it remains occupied territory to which the laws of belligerent occupation apply. In the course of its period as an Occupying Power, Israel has committed numerous war crimes, notably the forcible transfer of much of the the Syrian population from the Occupied Golan, the destruction of protected property and the transfer of Israeli-Jewish settlers into the occupied territory. The most obvious consequence of these crimes is the change in the physical and demographic landscape of the Occupied Golan.

While all of these acts constitute war crimes, two have attained the magnitude of grave breaches of the Fourth Geneva Convention, namely, the forcible transfer of the population and destruction of property. Grave breaches are considered the most serious of crimes that invoke their own special legal regime. As a High Contracting Party to the Convention, Israel is obligated to investigate and prosecute those responsible for grave breaches; however, such proceedings are rare and very unlikely to happen. Hence, the responsibly must shift to other High Contracting Parties to the

¹⁶⁴ ICJ *Advisory Opinion on the Construction of the Wall in Occupied Territory*, para. 158.

Convention. It is the responsibility of other High Contracting Parties, in accordance with Article 146 of the Fourth Geneva Convention, to search for individuals alleged to have committed or to have ordered to be committed, grave breaches of the Convention, and initiate extradition proceedings to bring these suspects before a court of law. Regarding other war crimes committed by Israel such as the transfer of Israeli-Jewish settlers into the Occupied Golan, the High Contracting Parties to the Convention must also act with more authority to end this continuing violation of the Convention and disregard for the rule of law. This is the minimum responsibility of High Contracting Parties to the Convention. Under customary international law, states have a duty not to recognise and not to assist a situation arising from or giving rise to violations of international law.¹⁶⁵ Pressure must be brought to bear on Israel to ensure it respects its obligation as a State Party to the Convention and end settlement building in all occupied territory, including that of the Occupied Syrian Golan. There are no circumstances where the acquisition of territory by force can be recognised or accepted. Such action poses an ongoing serious threat to regional and international peace and security.

¹⁶⁵ See also UN Security Council Resolution 465 of 1 March 1980, para. 7, which '*[c]alls upon* all states not to provide Israel with any assistance to be used specifically in connection with settlements in the occupied territories'. The resolution was adopted unanimously at the 2203rd. meeting of the Security Council. This was reaffirmed in UN Security Council Resolution 471 of 5 June 1980.

Appendices

Appendix 1: Military Order 39, August 27 1967 (Unofficial English translation)

Israeli Defence Forces

Order no. 39

An order regarding the closure of abandoned villages (the Golan Heights)

With the power invested in me as the IDF commander in the region, I hereby order the following:

1. (a) Each one of the one hundred and one villages, the borders of which are marked in black ink and [the names of which] are numbered from 1 to 101 on the map drawn on the scale of 1:50000 and signed by me, be declared as closed areas; the order and the boundaries of the closed area as indicated on the attached map were made known to the inhabitants and were published; the map has been deposited with the commander of the military administration in the Golan Heights and is available for review by the public.
- (b) The lists of abandoned villages included in the appendix are an inseparable part of this order.
2. (a) No person is allowed to enter any of the closed areas mentioned in item 1 as long as this order remains valid, except with a permit issued by me or on my behalf.
- (b) Permits can be private or general.

3. By this I issue a general permit for travel in the roads crossing the following closed areas indicated in the first appendix mentioned in item 1 (b):

Serial no. 15 al-Qala` village
Serial no. 22 al-Mansura village
Serial no. 24 Wasit village
Serial no. 25 Jwayza al-Shamaliya village
Serial no. 32 Mughr Muwaysa village
Serial no. 44 Jwayza village
Serial no. 53 Sanbar village
Serial no. 55 Khushniya village
Serial no. 59 Sluqiya village
Serial no. 70 Mashfa` village
Serial no. 71 al-Mahjar village
Serial no. 84 al-`Al village
Serial no. 87 Skufiya village
Serial no. 90 Fiq village

4. To clear any possible doubt, this permit does not under any circumstances grant rights to enter any of the closed areas, with the exception of what has been specified in item 3 above, except by a permit issued by me or on my behalf.
5. A person violating this order will be punished either with five years imprisonment or a fine of five thousand Israeli Liras, or both punishments together.
6. This order is valid beginning on 21 Av 5727 (the 27th August 1967).
7. This order will be called "Order regarding the closure of abandoned villages (the Golan Heights) (No. 39) for the year 5727 – 1967".

Appendix

A list of the abandoned villages in the Golan Heights area, which have been declared as closed areas by Order no. 39¹⁶⁶

1. 'Abbasiya	عباسية
2. Nukhaila	نخيلة
3. Mughr Shib`a	مغار شبعة [الصواب: مُغر شبعة]
4. Jubatha Ez-Zeit	جباتا الزيت
5. `Ain Fit	عين فيت
6. Z`oura	زعورة
7. Ein Addisa	عين اديسة
8. `Azaziyat	عززيات
9. Seyar Idyab	سير ادياب
10. Jbab al-Mis	جيب الميس
11. Skaik	سكيك
12. `Uyun al-Hajal	عيون الحجل
13. Qirz al-Taweel	قرز الطويل [الصواب: قرز الطويل]
14. Khirbat al-Baydha	خربة البيضة
15. Qila`	قلم [الصواب: القلم]
16. Samaqa	سماقة [السماقة]
17. al-Hamidiya	الحميدية
18. Ein Hor	عين حور
19. Z`arta	زعرتا
20. al-Fern	الفرن
21. Bab al-Hawa	باب الهوى
22. Mansura	منصورة
23. Qunna`ba	قنابة [الصواب: القنعية]
24. Waset	واسط

¹⁶⁶ The Arabic names were edited by al-Marsad's staff; the English transliteration follows the corrected version.

٢٥. Juwayza al-Shamaliya	جوزية الشمالية [الصواب: جوزية واسط]
26. Rawiya	راوية
27. Qarahata	قرحتا
28. Mudiriya	مديرية
29. Saraman	صرمان
30. Ein Ziwan	عين زيوان
31. Hafar	حفر
32. Mghar Muwaysa	مغار مويصة
33. Dalwa	دلوة
34. Qafira	قفيرة
35. Mumy	ممسية
36. Kafr Naffakh	كفر نفاخ
37. `Illayqa	عليقة
38. `Ayshiyya	عيسية [الصواب: العيشية]
39. Dabboura	دبورة
40. Sindiya	سنديانا
41. Deir Sras	دير سراس
42. Jlaybina	جلبينة [جلبينة]
43. Qadriya	قدرية
44. Jwayza	جوزية
45. `Ain al-Qura	عين القرى
46. Na`ran	نعران
47. `Ain al-Sumsum	عين سمسم
48. Razzaniya	رزانية
49. Ramthaniya	رمسانية [الرمثانية]
50. Dbayya	دبية
51. al-`Amoudiya	عمودية
52. Mamwayra [?]	مموية [ربما من معمورة؟]
53. Sanabir	سنابر

54. al-Slouqiya al-Sharqiya	السلوقية الشرقية
55. Khishniya	خشنية
56. Abu Foula	أبو فولة
57. Qisrin	قصرين
58. al-Beira	البيرة
59. al-Slouqiya al-Gharbiya	السلوقية الغربية
60. Seyar al-Khurfan	سير الخرفان
61. al-`Eshsha	العشة
62. Fahham	فحم [الأصح: الفحام]
63. al-Faraj	الفرج
64. Shabba	شبة
65. al-Bitmiyya	البطمية
66. Umm al-Dananir	أم الدنانير
67. al-Yahoudiya	اليهودية
68. Qara`na	قراعتة
69. Derdara	دردارة
70. Mashfa`	مشفع
71. al-Mihjar	المحجار
72. Husayniyat al-Shaikh `Ali	حسينية الشيخ علي
73. Shaikh `Ali	شيخ علي
74. al-Qisbiya	القصبية
75. al-Razzaniya	الرزنية [الصواب: الرزانية]
76. Kifr `Aqab	كفر عقاب [الصواب: كفر عقاب]
77. Dair `Aziz	دير عزيز
78. al-Bajouriya	البيجورية
79. Mishrfawy	مشرفاوي
80. Khisfin	خسفين
81. al-Ghadhiya	الغظية
82. al-Kursi	الكرسي

83. al-Naqib	التقيب
84. al-`Al	العال
85. Kifr Alma	كفر العا
86. Bir al-Shquq	بير الشقوق
87. Skoufiya	سكوفية
88. Hatteel	ختل [الصواب: حتيل]
89. Jibbin	جيبين
90. Fiq	فيق
91. Rijm al-Yaqousa	رجب الياقوصة [الصواب: رجم الياقوصة]
92. al-Yaqousa	الياقوصة
93. Kifr Hareb	كفر حرب [الصواب: كفر حارب]
94. Dabbousiya	دبوسية
95. Saffoura	صفورة
96. `Ain Sa`d	عين سعد
97. al-Rafeed	الرفيد
98. Jaraba	جربا [الصواب: جرابة]
99. Khokha	خوخة
100. Jirniyya	جرنية
101. al-Jawkhadar	الجحدر [الصواب: الجوخدر]





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