January 16th 2013

Experts Legal Opinion

In relation with the Petition filed by Residents of Villages in Firing Zone 918 against the Intention to Transfer them from their Homes

We the undersigned have been requested by the Association of Civil Rights in Israel (ACRI) to give our experts legal opinion concerning the legality of transferring residents of Palestinian villages out from Firing Zone 918 and concerning the legality of declaring it as a Firing Zone. This opinion is based on the International Law provisions.

a. Background

As a background for our opinion we shall mention the material facts concerning the matter as were provided to us:

This opinion refers to a geographical territory sprawling over about 33,000 dunums nearby the town of Yatta on the southern side of the Hebron Mountain, which is part of a larger territory referred to as Masafer Yatta. In this territory reside 12 historical villages, populated as of today by about 1,300 Palestinian residents. At least one third of the territory is private lands, according to the mapping of the Civil Administration.

On the early 1980' of the past century the Military Commander declared the territory sought-eastern to the town of Yatta on the southern side of the Hebron Mountain as Firing Zone No. 918. The declaration had been renewed on the early 1990' and once again on May 1999. After that last renewal, the Israeli Defense Forces (IDF) issued evacuation orders for Palestinians which were residing in the territory and ordered them to evacuate their premises. Some of the residents were forcibly evacuated by the military forces and a total of about 700 Palestinians were forced out from the territory.

Consequently two petitions were filed at the High Court of justice: one, by counselors of ACRI on behalf of 117 petitioners (HCJ 517/00) and the second by counselor Shlomo Lecker on behalf of 82 petitioners (HCJ 1199/00). The two proceedings were joined together and an interim injunction order was issued by the application of petitioners ordering to retrieve the situation, and to enable residents of villages in the firing zone to return to their homes, work their fields and herd their flocks. The High Court stipulated in the interim injunction that the status qua must be preserved until another resolution on the matter.

On the year 2012, after many years of stagnation, the High Court had renewed its sessions and required that the Ministry of Defense present its position on the matter before the Court. That position was rendered to the High Court on July 2012 and by which the Minister of Defense maintained that there is still a need for most of the firing zone and demanded to evacuate the residents of the villages, about 1,000 in number according to the figures of ACRI. The Military Order Regarding Security

Provisions does not permit evacuation of permanent residents outside from a territory declared of as a closed military zone, but to the argument of the respondents [the State] the residents of the territory are not permanent residents and therefore there is no prevention from evicting them (an argument rejected by the petitioners). Also according to the position of the Minister of Defense, a small part of the Firing Zone containing the minority of residents in the territory, will turn into an inactive Firing Zone, meaning at which no live firing practices will be conducted, and at which permanent residency will be enabled, subject to planning and building laws as applicable in Area C.

According to the State's announcement dated on July 2012, Firing Zone 918 is imperative for maintaining the general qualifications of the IDF, particularly in light of the conclusions drawn-out from the 2006 Lebanon War, and considering the unique landscape of which. The respondents did not indicate a particular military need which is relevant for a territory under belligerent occupation.

Consequentially to the State's announcement the High Court ruled for the petitions removal, while enabling the petitioners to file new petitions against the position of the Minister of Defense as presented in the announcement dated on July 2012.

b. <u>The Legal Aspects</u>

1. The debated territory on the southern side of the Hebron Mountain, which was defined by the military as Firing Zone 918, is a territory under belligerent occupation which is subject to the rules of international law concerning belligerent occupation including the Hague Regulations Concerning the Laws and Customs of War on Land of 1907 (hereinafter – Hague Regulations), the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 1949 (hereinafter Geneva Convention), and the First Additional Protocol of the Geneva Conventions of 1977 (hereinafter – Protocol). Israel is not a party to the Hague Regulations, although they have been acknowledged as customary law and therefore obligate Israel and apply also on the local law. Israel is a party to the Geneva Convention. Articles 49 and 53 of the Geneva Convention and also Articles 46 and 52 of the Hague Regulations have been accepted by States and international jurisprudence as reflecting customary law and therefore apply also on the local Israeli Law. Israel is not a party to the Protocol, but the provisions debated in our opinion are accepted as reflecting customary law and therefore they too apply on Israeli Law.

   For further specification on the consistent approach of the States and the rulings of national as international courts in the relevant context for the subject of petition see:

   International Committee of the Red Cross (ICRC), Practice Relating to Rule 129.

The Act of Displacement

http://www.icrc.org/customary-ihl/eng/docs/v2_rul_rule129

b.1. <u>Forcible Transfer of a Protected Population</u>

2. Section 49(1) of the Geneva Convention states:

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

The subject of discussion is a customary provision as aforesaid obligating the respondents and overriding the orders of the Military Commander in case of contradiction.

3. Not only that the prohibition itself is customary, but the sanction for its violation, which is a punitive sanction, is customary also. A violation of Article 49(1) constitutes as a sever violation of the Geneva Convention by Article 147 therein, and is one of the violations under the authority of the International Criminal Court in the Hague by Article 8(2)(a)(vii) of the ICC Constitution (the Rome Statute of the International Criminal Court, 1998, U.N. Doc. 2187 U.N.T.S. 90, entered into force July 1, 2002) (hereinafter the ICC Statute).

4. Article 49(1) of the Geneva Convention refers to any transfer of a protected population from its whereabouts, whether a transfer within the occupied territory ("Transfer"), or a transfer outside of it ("Deportation"). That specifically ascends from the commentary (Travaux Preparatoire) of the Geneva Convention.

5. See Final Record of the Diplomatic Conference of Geneva of 1949, Vol IIa (1949), p. 827:

> "[T]he Committee have [sic] decided on a wording which prohibits individual or mass forcible removals as well as deportations of protected persons from occupied territory to any other country"

The International Criminal Tribunal of the former Yugoslavia (ICTY), when was compelled dealing with the interpretation of Article 49(1), specifically stated that the Article refers to two prohibited cases: the term "Deportation" refers to deportation of a population outside from the occupied territory borders, whereas the term "Forcible Transfer" refers to a forcible transfer of a population

within the occupied territory. The Court has emphasized that the principle stipulated by the Article is a total prohibition from any type of removal of protected persons out from their residencies and the purpose of which is protecting the population from the severe consequences of evacuation – any evacuation of a person from his home, whether within or outside the State borders. And as stipulated:

> "521. Both deportation and forcible transfer relate to the involuntary and unlawful evacuation of individuals from the territory in which they reside. Yet, the two are not synonymous in customary international law. Deportation presumes transfer beyond State borders, whereas forcible transfer relates to displacement within the State.
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> 522. However, this distinction has no bearing on the condemnation of such practices in international humanitarian law. Article 2(g) of the Statute, Articles 49 and 147 of the Geneva Convention concerning the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), Article 85(4)(a) of Additional Protocol I, Article 18 of the ILC Draft Code and Article 7(1)(d) of the Statute of the International Criminal Court all condemn deportation or forcible transfer of protected persons. Article 17 of Protocol II likewise condemns the "displacement" of civilians.
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> 532. In this regard, the Trial Chamber notes that any forced displacement is by definition a traumatic experience which involves abandoning one's home, losing property and being displaced under duress to another location."

ICTY, Prosecutor v. Radislav Krstic, IT-98-33-T, Trial Chamber, Judgment, (2001) (footnotes omitted).

6. The prohibition is absolute with no exceptions and is not conditioned by a permanent residency of the local residents. The prohibition does not include specific criteria for defining who the residents are under protection by that Article. They surely need not constitute as "Permanent Residents" by the definitions of the Military Commander orders, why if that was the case, the Military Commander could have indirectly – for example, by enacting orders regarding planning and building or any other law classifying the residents as temporary or illegal for any reason whatsoever – allow whatever he is banned doing directly. Furthermore, it may be construed from the wording of Article 49(2), that the Article's referral point is the location that may be considered as

the permanent residency from which the residents are being evacuated, which is the same location that in practice serves them as a "Home". And that is the Article's wording:

> "Persons thus evacuated shall be transferred back to their **homes** as soon as hostilities in the area in question have ceased." (Emphasis added)

7. **Evacuation** of Protected Persons, as opposed to a Transfer, is permitted by Article 49(2) on two cases: the first and most fundamental is one of combats taking place in the said territory, and the safety condition in which constitutes a risk for the residents themselves – therefore, they must be evacuated in order to provide for their safety. The second is a case of another temporary imperative military necessity. Also in case of an imperative military necessity, it must be ensured that the evacuation of the residents constitutes as a temporary means, so that as soon as it lapses, the Protected Persons are returned back to their homes. And so have written Jean S. Pictet, in the Commentary of the International Committee of the Red Cross [ICRC]:

> "The first stipulation is that evacuation may only be ordered in two cases which are defined in great detail, namely when the safety of the population or imperative military reasons so demand. If therefore an area is in danger as a result of military operations or is liable to be subjected to intense bombing, the Occupying Power has the right and, subject to the provisions of Article 5, the duty of evacuating it partially or wholly, by placing the inhabitants in places of refuge. The same applies when the presence of protected persons in an area hampers military operations. Evacuation is only permitted in such cases, however, when overriding military considerations make it imperative; if it is mot imperative, evacuation ceases to be legitimate."

(J.S. Pictet Commentary: IV Geneva Convention – Relative to the Protection of Civilan Persons in Time of War, pp. 281; hereinafter: Pictet or the ICRC Commentary)

See ICRC commentary, available at:

http:// www.icrc.org/ihl.nsf/COM/380-60056?OpenDocument

8. The rational underlying Article 49(2) may be construed by the commentary – that is an exception to the rule, by which only for **urgent temporary military operational** needs, a protected population may be evacuated out from its

residency, and that also is temporary and done whilst ensuring the right of those evacuated for a return immediately upon cease of combat in the territory. That is to say, they may be evacuated only when the presence of residents in the territory frustrates the military activity in the course of engagements.

9. According to the absolute prohibition from forcible transfer in Article 49(1), on cases not constituting as combat in practice, considerations and constraints not regarding safety of the transferred protected civilians, or immediate imperative military needs, cannot serve as a basis for a "balance" against the absolute right of the protected civilians to remain in their place.

The absoluteness of the prohibition is derived from the dark history of World War II, in the course of which deportation phenomena were widespread for various reasons. As Pictet mentions in the ICRC Commentary:

> "These mass transfers took place for the greatest possible variety of reasons, mainly as a consequence of the formation of a forced labour service. The thought of the physical and mental suffering endured by these "displaced persons", among whom there where a great many women, children, old people and sick, can only lead to thankfulness for the prohibition embodied in this paragraph, which is intended to forbid such hateful practices for all time." (Pictet, on page 279)

10. The terms "a forcible transfer or deportation" in Article 49 of the Convention should be interpreted extensively, in order to implement the purpose of the Convention, which is the protection of Protected Persons and due to the capability of the possessor army to misuse deferent reasoning and implement various indirect methods in a manner which compels the Protected Persons to leave their places.

11. Accordingly it has been determined that the transfer is "Forcible" also when it is not accompanied with exercise of direct physical force against those protected in order to induce their departure. Additionally the creation of circumstances which indirectly induce departure of Protected Persons shall be construed as a prohibited transfer.

On that see the consistent ruling of the ICTY:

> "475. "Forced" is not to be interpreted in a restrictive manner, such as being limited to physical force. It may include the "threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such

> person or persons or another person, or by taking advantage of a coercive environment". The essential element is that the displacement be involuntary in nature, where the relevant persons had no real choice."
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> ICTY, PROSECUTOR v. MILORAD KRNOJELAC, Trial Chamber, Judgment, IT-97-25-T (2002) (footnotes omitted).

And also:

> "519. Transfers motivated by an individual's wish to leave, are lawful. In determining whether a transfer is based on an individual's [sic] "own wish" the Chamber is assisted by Article 31 of the Geneva Convention IV. It provides for a general prohibition of physical and moral coercion covering pressure that is direct or indirect, obvious or hidden and further folds that this prohibition "applies in so far as the other holds that this prohibition authorize a resort to coercion". […] The determination as to whether a transferred person had a "real choice" has to be made in the context of all relevant circumstances on a case by case basis. Forcible transfer is the movement of individuals under duress from where they reside to a place that is not of their choosing."
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> ICTY, PROSECUTOR v. Mladen NALETILIC and Vinko MARTINOVIC, IT-98-34-T, Trail Chamber, Judgment (2003) (footnotes omitted).

And also:

> “281. The term ""forced", when used in reference to the crime of deportation, is not to be limited to physical force but includes the threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment.”
>
> ICTY, Prosecutor v. Milomir Stakic, Case No. IT-97-24-T, Appeals Chamber, Judgment, (2006) (footnotes omitted).

On another case the Court mentions operations as firing from work, searching houses and disconnecting which from water, electricity

and telephone as part of a process of creating difficult living conditions for the residents, intended to induce people leaving their homes, that amounts to forcible transfer that is forbidden as aforesaid (See ICTY, Prosecutor v. Momčilo Krajišnik, Case No. IT-00-39-T, Trail Chamber I, Judgment, (2006), para. 729).

12. The ICC Statute also refers as aforesaid to the prohibition from forcible transfer and from deportation of protected persons. By the ICC Statute, for establishing the violation's *mens-rea* there is no need for intention to induce transfer, rather knowledge is sufficient regarding an expected outcome as such. Article 30 in the ICC Statute stipulates:

> 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.
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> 2. For the purpose of this article, a person has intent where:
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> i. In relation to conduct, that person means to engage in the conduct;
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> ii. 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.
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> 3. For the purposes 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.

The ICC Elements of Crime, Article 8 (2)(a)(vii)-1: War crime of unlawful deportation and transfer, para. 3: "The perpetrator was aware of the factual circumstances that established that protected status."

b.2. <u>Use of Occupied Territory's Land Resources for Military Practices</u>

13. The International Law provisions, which set the arrangements relating to requisition of lands in an occupied territory, are a combination of Articles 46 and 52 of the Hague Regulations, and also Article 53 of the Geneva Convention. On HCJ **Beit Shurik** the issue was discussed extensively, and it was determined that for resolving in relation to requisition of lands, a balance should be made as

it implies from these Articles, between human rights and needs of the local population and between security needs as form the Military Commander's point of view (HCJ 2056/04 **Council of Beit Surik Village vs. Government of Israel**, CR 48(5) 807, 835 (2004)).

14. Articles 46 and 52 of the Hague Regulations, and also Article 53 of the Geneva Convention stipulate a line of prohibitions and limitations as to utilization, confiscation and destruction of enemy private or public property. The origins of those prohibitions are in a basic principle which had prevailed until the 19th Century by which *war must support war*. In accordance with that principle, the defeated side in combat must compensate the victor for warfare expenses. That principle comprehensively lost its grasp already by the end of the 19th Century. As of that period, the rules of international law, and specifically the Hague Regulations, have set extremely progressive arrangements with regards to that issue. As written in the scholar Oppenheim's book (edited by Lauterpacht):

> "The Hague Regulations made a progressive settlement of the question by enacting rules which put it on a wholly new basis. That war must support war remains a principle under these Regulations also. But they were widely influenced by the demand that the enemy State as such, and not the private enemy individuals, should be made to support the war, and that only so far as the necessities of war, and that only so far as the necessities of war demanded it, should contributions and requisitions be imposed."
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> Oppenheim, International Law – A Treatise, 7th edition, edited by Hersch Lauterpacht, Vol. II, Disputes, War and Neutrality, London, 1952, p. 409 (hereinafter: "Oppenheim").

Article 52 of the Hague Regulations limited the said principle and implicitly stipulated that use may be made of enemy civilians' property **only on cases in which it is required for military needs of the occupying Army:**

> "Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country.

> Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied.
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> Contributions in kind shall as far is possible be paid for in cash; if not, a receipt shall be given and the payment of the amount due shall be made as soon as possible."

Oppenheim's book, in his commentary to this Section, stresses that military necessities ought to be of the occupying army in the occupied territory and not of the occupying state's military generally:

> "According to Article 52 of the Hague Regulations, requisitions may be made from municipalities as well as from the inhabitants, but so far only as they are really necessary for the army of occupation. They must not be made in order to supply the belligerent's general needs."
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> (**Oppenheim**, p. 410)

15. As derived from Oppenheim commentary, the purpose of the condition relating to the particular military need is enabling the occupying army to satisfy its immediate needs for existence by use of the resources of the occupied territory, in time of war, by which the needs include things as: food, lodging place, clothes, transportation means etc. (**Oppenheim**, p. 410).

16. A similar introduction was given to this Section in the matter of Krupp, in the frame of the Nuremberg Trails:

> "As all authorities are agreed, the requisition and services which are contemplated and which alone are permissible, must refer to the needs of the Army of occupation… All authorities are again in agreement that the requisition in kind and services referred in article 52, concern such matters as billets for the seizing troops and the occupation authorities, garages for their vehicles, stables for their horses, urgently needed equipment and **supplies for the proper functioning of the occupation authorities**, food **for the army of occupation**, and the like."
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> (Krupp trial, 10 Law Reportes of Trials of the War Criminals (LRTWC) 69, 137-8) (emphasis added)

17. That accepted interpretation refers to a **temporary** military need in the course of war whereas the need should be direct, immediate and of the occupying army and it does not enable use of private resources routinely or when the need is of the army yet not relating to the occupation operation.

18. The referral to the military need by Article 52 of the Hague Regulations appears also in the Israeli jurisprudence stating that the military need, referred by the Hague Regulations, does not include general security needs of the occupying State. Thus for example, was ruled in HCJ 390/79 **Dweikat v. the State of Israel**, CR 34(1) 1 (1979):

> "…but the question which returns and stands before this court in this petition, is whether this view justifies requisition of an individual's property in a territory under the control of the military administration… the answer to that depends on the correct interpretation of Article 52 of the Hague Regulations. **I maintain that the military needs aforesaid in the same Article cannot include, by any reasonable interpretation, the national security needs in their wide aspect, as just now aforementioned by me."**
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> (Justice Landau's ruling, in p. 17)

19. The requirement that the military need shall refer to its need in the seized territory only also derives from Article 43 of Hague Regulations that sets the basic principle of the laws of belligerent occupation with regards to the scope of powers of the occupying power. So derives also from the High Court ruling:

> "The Military Commander may not consider the national, fiscal, social interests of his own state… even if the needs of the military are his military needs and do not constitute as national security needs in their wide sense… "
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> (HCJ 393/82 **Jam'iyyat Iscan v. IDF Commander in Judea & Samaria**, CR 37(4) 785, 794 (1983))

20. Except the first condition, by which temporary use of enemy resources must serve the occupying army for immediate operational need and temporarily only, there are four additional and aggregate conditions: the use of resources must be proportional to the occupied territory resources, must not force local residents to take part in the warfare against them, only the Military Commander may allow use of enemy resources, and for which ought to be granted a proper compensation.

21. From the compensation liability, which appears as the last condition of the Article, it can be construed that generally the occupying army is imposed by a prohibition from appropriating private property of protected residents in the occupied territory. Section 46 of the Hague Regulations implicitly stipulates that prohibition, of which wording is:

> "Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected. **Private property cannot be confiscated**." (emphasis added)

22. The absolute prohibition refers as aforesaid only to **confiscation** of private property, for military needs in the course of combat, and not to **requisition** of property. The possibility for requisition of property was meant for cases like use of structures of the enemy State residents and their transformation into hospitals, military bases and likewise (**Oppenheim**, p. 404).

23. Aside to the restrictions on confiscation of enemy property and the use of which by Articles 46 and 52 to the Hague Regulations, Article 53 of the Geneva Convention stipulates an implicit prohibition from destruction of enemy property, whether it is private or public property. The prohibition is inclusive, except for cases on which there is an absolute imperative military need. And that's the law's terminology:

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

24. By the terminology of the exception, it should be interpreted narrowly as Pictet mentions:

> "The Occupying Power must therefore try to interpret the clause in a reasonable manner: whenever it is felt essential to resort to destruction, the occupying authorities must try to keep a sense of proportion in comparing the military advantages to be gained with the damage done."
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> (Pictet, p. 302)

25. It is hereby commented, that the Article refers to destruction of property found within the occupied territory, and preformed by the occupying force, contrary to Article 23(7) of the Hague Regulations that prohibits demolition of any property

placed in the war zone, and not only inside the occupied territory itself (Pictet, p. 301). That is to say, that the protection granted by Article 53 of the Geneva Convention is narrower than that granted by Article 23(7) of the Hague Regulations.

c. <u>Application of the Law in relation with Use of Land on Case Facts</u>

c.1. Application of Provisions of Article 49 of the Geneva Convention on Case Facts

26. Based on the court documentation in HCJ 517/00 on behalf of both the petitioners (residents of villages within firing zone 918) and the responders (Minister of Defense and others), there is no dispute that upon the end of the year 1999 the petitioners, residents of the 12 villages, were issued evacuation orders due to "illegal residency within a firing zone". Consequentially over 700 residents were forcibly transferred, some by an actual physical force, while demolishing houses and water cisterns as well as confiscating property. The implication of the petitioners evacuation out from their villages located in the southern area of Hebron Mountain is "forcible transfer" of Protected Persons as defined by Article 49(1) of the Geneva Convention. There is no dispute that the transfer was performed by operation of direct force.

27. The prohibition from forcible transfer of protected residents, as hereinabove detailed, applies on any transfer within the occupied territory and outside of which. That prohibition is absolute, excluding the exception in Article 49(2) of the Geneva Convention and refers to exceptional incidents only.

28. As hereinabove detailed, the Article stipulates an explicit prohibition on any transfer of protected residents outside from their whereabouts, and that is in light of the severe implications of evacuating a person from his home. The Article does not specify who these protected residents on whom it applies are, nor certainly does it indicate of a requirement for these protected residents to necessarily be "permanent residents" as defined in the Military Order regarding Security Provisions.

29. The residents of villages within Firing Zone 918 testify their home is located within which. Within the said territory reside the villages and community. Within which lays their livelihood – they cultivate their lands and herd their flocks. In other words, that is their home on practice from which they must not be transferred.

30. In reference to the exception in Article 49(2), which allows a temporary evacuation of residents in emergency situations, in the case before us it is obvious that the evacuation is not meant for their protection against combats and their stay does not prevent conducting military operations, as that is not the need for which the respondents request the petitioners evacuation and anyway

no armed confrontation takes place in the West Bank, particularly on the said territory. Therefore, the exception of Article 49(2) does not apply on our matter.

c.2. Application of the Law in relation with Use of Land Resources on Case Facts

31. The territory defined as Firing Zone 918 spreads on over than 30,000 dunums – some of which are private lands, and some survey lands. The limitation of territory use, in force of the declaration of that territory as a firing zone, constitutes a violation of the international law for the herein below specified reason.

32. As hereinabove explained, by Article 52 of the Hague Regulations, use of enemy property is allowed only in condition it is preformed for a military need of the occupying army itself, meaning for a military need relating to the operation of the occupying army within the occupied territory and not for general needs of the occupying state.

33. The State's position, as expressed by the respondents notification dated on 19.7.2012, is that the military needs required for use of that specific fire zone, are for general training, not related to needs of combat within an occupied territory. In the notification it was mentioned that since the year 2006, and consequent to the Second Lebanon War, deficiencies were exposed in the qualification of the land forces. Therefore, the said territory ought to serve for training that relate to the type of combat which was required in the Lebanon War, and that is in contradiction to the type of combat within the occupied territory (Section 12 of the respondents notification).

34. An extensive interpretation of the regulation, by which there is an approval for use of the land resources in the occupied territory, and particularly private land, to perform military trainings for general security needs of the occupying state, is inconceivable due to the reasons hereinabove mentioned, and was even rejected by the court in several occasions, of which we discussed the requisition of lands in an occupied territory, all as hereinabove specified (paragraphs 18-19, chapter B.2.).

35. In addition since these are wide areas of tens of thousands dunums, it is highly doubtful if their use complies with the proportionality condition in respect to the occupied territory resources, and also for this reason the use of territory does not comply with the conditions of Article 52 of the Hague Regulations.

36. Moreover, preventing accessibility and reasonable use of the protected persons' private property might rise up to confiscation of private property, which is categorically prohibited by Article 46 of the Hague Regulations. The respondents offered to enable the residents an access to the territory on

weekends, holidays and two periods of one month long each in favor of working the land. However in such an arrangement firstly the possibility of the residents to reside in their homes ill be absolutely prevented. Secondly the capability of herding the flock routinely would be prevented, and thirdly the possibility would be harmed for cultivating the land flexibly as necessitates from the agricultural nature of the dry land farming in the area.

37. And finally, the use of the territory as a Firing Zone might inflict a lot of damage for lands in the territory, up to their destruction, in contradiction with Article 53 of the Geneva Convention, prohibiting destruction of property, except if it is **absolutely necessary** for military needs. That is, the terminology of the exception in this Article even narrows it even further than that of Article 52 of the Hague Regulations. If the exception of military needs does not occur for Article 52 of the Hague Regulations, than even much more so it does not occur here.

38. **Therefore, as long as it cannot be determined that the closure of the territory for military trainings serves an imperative, immediate and temporary military need of the occupying army in accordance with the required in international law, the use of the territory opposes the provisions of Articles 46 and 52 of the Hague Regulation, and also to Section 53 of the Geneva Convention**.

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