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**INTERNATIONAL COURT OF JUSTICE**

**LEGAL CONSEQUENCES OF THE CONSTRUCTION  
OF A WALL IN THE OCCUPIED PALESTINIAN  
TERRITORY**

**(REQUEST FOR AN ADVISORY OPINION)**

**WRITTEN STATEMENT**

**SUBMITTED BY**

**PALESTINE**

**30 JANUARY 2004**

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**PART A. INTRODUCTION AND COMPETENCE**

**Chapter 1. INTRODUCTION**

1. This Written Statement is filed in accordance with the Order of the Court dated 19 December 2003 in response to the United Nations General Assembly's request for an advisory opinion on the legal consequences of the construction of a Wall in the Occupied Palestinian Territory. This introductory chapter examines the terms of the Request, discusses its scope and outlines the structure of this Written Statement.

**(1) The Terms of the Request**

2. The request was made by the United Nations General Assembly in Resolution A/ES-10/14 of 8 December 2003. In that resolution, the General Assembly decided, pursuant to Article 96, paragraph 1, of the United Nations Charter, to request the International Court of Justice to give an urgent advisory opinion on the following question:

“What are the legal consequences arising from the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, as described in the report of the Secretary-General, considering the rules and principles of international law, including the Fourth Geneva Convention of 1949, and relevant Security Council and General Assembly resolutions?”

3. The Request was transmitted to the Court by the United Nations Secretary-General in a letter dated 8 December 2003.<sup>1</sup>



4. By an Order dated 19 December 2003, the Court fixed 30 January 2004 as the time limit within which written statements relating to the question may be submitted to the Court. Referring to both General Assembly Resolution A/ES-10/14 and the report of the UN Secretary-General transmitted to the Court with the request, and noting “the fact that the General Assembly has granted Palestine a special status of observer and that the latter is co-sponsor of the draft resolution requesting the advisory opinion”, the Court decided that “Palestine may also submit to the Court a written statement on the question within” the time limit of 30 January 2004.

5. Palestine welcomes the opportunity to take part in the written and oral phases of this advisory proceeding and to furnish information on all aspects raised by the Request.

6. It is evident that Palestine is directly concerned with the subject-matter of the Request and has a special interest in the advisory opinion of the Court.<sup>2</sup> By deciding to invite Palestine to participate in this advisory proceeding, the Court acknowledged that Palestine has such a special interest. As the Court’s Order of 19 December 2003 recalls, Palestine was a co-sponsor of Resolution A/ES-10/14 along with 26 Member States of the United Nations. Palestine spoke in support of Resolution A/ES-10/14 in the General Assembly.<sup>3</sup> Palestine also spoke in support of Resolution A/ES-10/13 of 21 October 2003, which was co-sponsored by the European Union. In this resolution, the General Assembly demanded “that Israel stop and reverse the construction of the

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<sup>1</sup> See ICJ Communiqué 2003/42 (10 Dec. 2003).

<sup>2</sup> In connection with the Court’s advisory jurisdiction, commentators have referred to “States and other entities directly concerned.” Shabtai Rosenne, *The Law and Practice of the International Court, 1920-1996*, Vol. II (3<sup>rd</sup> ed., 1997), p. 993.

wall in the Occupied Palestinian Territory, including in and around East Jerusalem, which is in departure of the Armistice Line of 1949 and is in contradiction to the relevant provisions of international law.”<sup>4</sup>

7. The preamble to Resolution A/ES-10/14 refers to “the confiscation and destruction of Palestinian land and resources, the disruption of the lives of thousands of protected civilians and the de facto annexation of large areas of territory” in connection with Israel’s construction of the Wall in Occupied Palestinian Territory. The resolution also points to “the even more devastating impact of the projected parts of the wall on the Palestinian civilian population and on the prospects for solving the Palestinian-Israeli conflict and establishing peace in the region.”

## **(2) Scope of the Present Request**

8. The terms of the Request establish the scope of the advisory opinion requested from the Court. It is important at the outset to be clear what this case is about and what it is not about.

9. The Court is asked to advise the General Assembly on the legal consequences arising from the construction of the Wall in the Occupied Palestinian Territory, including in and around East Jerusalem. The existing and proposed route of the Wall, and its associated regime of restrictions, will be described in more detail in

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<sup>3</sup> See General Assembly Press Release GA/10216 of 8 December 2003, text from <[www.un.org/News/Press/docs/2003/ga10216.doc.htm](http://www.un.org/News/Press/docs/2003/ga10216.doc.htm)>.

<sup>4</sup> See General Assembly Press Release GA/10177 of 20 October 2003, text from <[www.un.org/News/Press/docs/2003/ga10177.doc.htm](http://www.un.org/News/Press/docs/2003/ga10177.doc.htm)>.

Chapter 6. The route of the Wall is shown on the fold-out map which is attached to this Written Statement.

10. The Court is not asked to determine the territorial boundaries of the Occupied Palestinian Territory. It is not necessary for the Court to determine the precise boundaries of the Occupied Palestinian Territory, including East Jerusalem, in order to answer the question posed by the General Assembly. It is sufficient on any view that a significant length of the Wall runs through Occupied Palestinian Territory, and that it has major impacts on that territory, both currently and for the future.

11. Two basic issues *are* implicit in the question presented to the Court for its Opinion. The first is the notion of Occupied Palestinian Territory, the territory of the Palestinian people, a people entitled to self-determination under international law, as has been repeatedly reaffirmed by the General Assembly and the Security Council. The second is that the Wall itself and its legal consequences involve not only its construction but also its operation. For the Wall is not just a fence; it is a regime, a regime of isolation, discrimination and the denial of rights which does not tally with its ostensible motive, security. Except for short distances, the Wall has not been and will not be built along the Green Line, the well-known line separating Israel from the Occupied Palestinian Territory. Nor is it operated in any way which would be consistent with its avowed motive of securing Israel from attacks. Rather it is an attempt unilaterally to change the status of the Occupied Palestinian Territory including the *de facto* annexation of large areas, and a precursor of an imposed unilateral settlement by Israel in lieu of a settlement endorsed by the international community—an attempt to impose a “solution” in defiance of international law.

12. In this Written Statement Palestine will focus on the legal issues presented by the existing and proposed construction and operation of the Wall. To give an opinion on these legal issues requires some background to Palestine and its legal status, and this is provided in Chapter 3. But it does not require the Court to resolve all issues that historically have divided, and that presently divide, Palestine from Israel. For the point is that the Wall is a new, and most serious, cause of further division—of division to the point of entire exclusion—of permanent separation not of Palestine from Israel but of one major part of the Occupied Palestinian Territory from the residue of that territory.

13. Thus, in this Written Statement, Palestine focuses on the specific question asked—on the Wall, its effects and its legality. Palestine reserves its position in respect of all questions and issues other than those specifically addressed in this Written Statement.

### (3) Terminology

14. The following phrases and terms are frequently used in this Written Statement, and are defined as follows:

**Additional Protocols:** Protocol I Additional to the Geneva Conventions and relating to the Protection of Victims of International Armed Conflicts, and Protocol II Additional to the Geneva Conventions and relating to the Protection of Victims of Non-International Armed Conflicts adopted 8 June 1977, entry into force 7 December 1978, text published in 1125 U.N.T.S. 3 (1979). Protocol I is included as Dossier no. 61 accompanying the UN Secretary-General's submission.

- Additional Protocol I:** Protocol I Additional to the Geneva Conventions and relating to the Protection of Victims of International Armed Conflicts, adopted 8 June 1977, entry into force 7 December 1978. Protocol I is included as Dossier no. 61 accompanying the UN Secretary-General's submission.
- Bertini Report:** Mission Report by Ms. Catherine Bertini, Personal Humanitarian Envoy of the Secretary-General, of 19 August 2002 included as **Annex 14** in Annex Volume 2 accompanying this Written Statement.
- B'Tselem 2002 Report:** the May 2002 report of B'Tselem (the Israeli Information Center for Human Rights in the Occupied Territories) entitled "*Land Grab: Israel's Settlement Policy in the West Bank*" included as **Annex 12** in Annex Volume 2 accompanying this Written Statement.
- B'Tselem 2003 Report:** the April 2003 report of B'Tselem entitled "*Behind the Barrier: Human Rights Violations as a result of Israel's Separation Barrier*" included as **Annex 13** in Annex Volume 2 accompanying this Written Statement.
- Closed Zone:** the zone, sometimes also referred to as "buffer zone," "seam zone" or "security zone," constituted by the area between the Green Line and the Wall.
- Declaration of Principles:** the Declaration of Principles on Interim Self-Government Arrangements concluded between Israel and the Palestine Liberation Organisation in Washington, D.C. on 13 September 1993 as part of the Oslo Peace Process, text published in *Palestine Year Book of International Law*, vol. 7 (1992-1994), p. 230; included as Dossier no. 65 accompanying the UN Secretary-General's submission.
- Dugard Report (2003):** the Report of the Special Rapporteur of the Commission on Human Rights, John Dugard, on the situation of human rights in the Palestinian territories occupied by Israel since 1967, submitted in accordance with Commission Resolution 1993/2 A, UN Doc. E/CN.4/2004/6 (8 September 2003); included as **Annex 6** in Annex Volume 2 accompanying this Written Statement.
- Fourth Geneva Convention:** Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War, done at Geneva on 12 August 1949, 75 U.N.T.S. 287 (1950); included as Dossier no. 60 accompanying the UN Secretary-General's submission.

- Geneva Conventions:** collectively, the Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, the Geneva Convention II for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, the Geneva Convention III relative to the Treatment of Prisoners of War, and the Geneva Convention IV relative to the Protection of Civilian Persons of War, adopted 12 August 1949, 75 U.N.T.S. (1950).
- Green Line:** for purposes only of this Written Statement, the line defined in the Armistice Agreement concluded in 1949 between Israel and Jordan.
- ICCPR:** the International Covenant on Civil and Political Rights, 999 U.N.T.S. 172 (1983); included as Dossier no. 62 accompanying the UN Secretary-General's submission.
- ICESCR:** the International Covenant on Economic, Social and Cultural Rights, 993 U.N.T.S. 3 (1983); included as Dossier no. 63 accompanying the UN Secretary-General's submission.
- ICRC:** the International Committee of the Red Cross.
- IDF:** Israel Defense Forces.
- ILC:** the International Law Commission of the United Nations.
- ILC Articles:** the Articles on Responsibility of States for Internationally Wrongful Acts adopted by the ILC on 9 August 2001.
- Hague Regulations:** the Annex to the 1907 Hague Convention IV Respecting the Laws and Customs of War on Land, 18 October 1907, 36 Stat. 2277, T.S. No. 539; included as Dossier no. 57 accompanying the UN Secretary-General's submission.
- Occupied Palestinian Territory or OPT:** the Palestinian territory of the West Bank, including East Jerusalem, and the Gaza Strip occupied by Israel since 1967, as further explained in Chapter 7 of this Written Statement. This term is sometimes referred to in this Written Statement as the "**Occupied Palestinian Territory, including East Jerusalem**".

- Oslo Accords:** the agreements and protocols concluded between Israel and the Palestine Liberation Organisation as part of the Oslo Peace Process between 1993 and 1999 and detailed in Chapter 3 of this Written Statement.
- Oslo Peace Process:** the 1990s Israeli-Palestinian peace process leading to the Oslo Accords.
- Quartet:** the collective of the United States, the Russian Federation, the European Union and the United Nations responsible for current peace initiatives, including the Road Map.
- Road Map:** the Performance Based Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict, UN Doc. S/2003/259 (2003), endorsed by the United Nations Security Council in its Resolution 1515 adopted on 19 November 2003, UN Doc. S/RES/1515 (2003); included as Dossier no. 70 accompanying the UN Secretary-General's submission.
- Wall:** the integrated system of concrete walls, fences (including electric fences), barriers, barbed wire zones, ditches, trenches, trace paths, patrol roads, and fortified guard towers being built by Israel in the Occupied Palestinian Territory, as shown on the maps listed in Annex Volume 1 accompanying this Written Statement, including the regime (regulations, measures, policies, actions and practices) pertaining thereto and further described in Chapter 6 of this Written Statement.
- UNRWA:** the United Nations Relief and Works Agency for Palestine Refugees in the Near East created by United Nations General Assembly Resolution 302 (IV) of 8 December 1949.
- UNSCOP:** the United Nations Special Committee on Palestine established by the United Nations General Assembly on 15 May 1947.
- Ziegler Report:** the report of the Special Rapporteur of the Commission on Human Rights, Jean Ziegler, on the right to food in the Occupied Palestinian Territories occupied by Israel since 1967, UN Doc. E/CN.4/2004/10/Add.2 of 31 October 2003; included as Dossier no. 56 accompanying the UN Secretary-General's submission.

**(4) Structure of this Written Statement**

15. This Written Statement is divided into four Parts. Chapter 2, which completes this **Part A**, argues that the Request is admissible and that, in accordance with its constant jurisprudence, the Court should respond to it.

16. **Part B** addresses the Factual Background to the Request. It consists of three Chapters. Chapter 3 outlines a chronology of the main developments concerning Palestine, so far as they are relevant to the Request. Chapter 4 explains how Israel's history of attempts unilaterally to change the legal status of the Occupied Palestinian Territory threatens to culminate in the Wall and its consequences. Chapter 5 discusses Israel's practices as Occupying Power, explaining the current security situation as this relates to and is exacerbated by the Wall. **Part C** (Chapter 6) examines the route and regime of the Wall.

17. **Part D** examines the legal considerations raised by the Request. The first two Chapters (Chapters 7 and 8) are concerned with the applicable law. Chapter 7 establishes that Israel is in occupation of Palestinian Territory, which is affected by the regime of the Wall. Chapter 8 outlines the applicable international law in the Occupied Palestinian Territory. Chapter 9 outlines the principal violations of the applicable law by Israel through the construction and maintenance of the regime of the Wall. Chapter 10 examines the consequences of these violations in terms of denial of self-determination to the people of Palestine. The legal consequences for Israel and the international community are examined in Chapter 11.



18. The Written Statement ends with a summary of conclusions. Attached to the Written Statement are three appendices.

19. Annexed to this Written Statement is a volume of maps and graphics (Volume 1), and 14 documentary annexes, mostly consisting of published reports on the Wall from third parties, which are reproduced for the convenience of the Court (Volume 2).

**Chapter 2. THE COURT IS COMPETENT TO GIVE THE ADVISORY OPINION REQUESTED, AND THERE ARE NO COMPELLING REASONS PREVENTING THE COURT FROM GIVING ITS OPINION**

**(1) The Court is competent to give the requested advisory opinion**

20. Article 96, paragraph 1, of the United Nations Charter provides:

“The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.”

21. Article 65, paragraph 1, of the Court’s Statute stipulates:

“The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request.”

22. These two provisions suffice to establish the competence of the General Assembly to request an advisory opinion from the Court and the competence of the Court to give the requested opinion.<sup>5</sup>

(a) Jurisdiction *ratione personae*: the request was made by a duly authorized organ

23. As the Court explained in its reply to the General Assembly’s most recent request for an advisory opinion:

“For the Court to be competent to give an advisory opinion, it is thus necessary at the outset for the body requesting the opinion to be ‘authorized by or in accordance with the Charter of the United Nations to make such a request. The Charter provides in Article 96, paragraph 1, that: ‘The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.’”<sup>6</sup>

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<sup>5</sup> As the Court reiterated in its most recent Opinion, “the advisory nature of the Court’s function ... is governed by the terms of the Charter and of the Statute.” *Difference relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, I.C.J. Reports 1999*, p. 62, para. 26.

<sup>6</sup> *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226, at 232, para. 11.

24. Referring to Articles 10-13 of the Charter, the Court concluded that “in the present case, the General Assembly has competence in any event to seise the Court.”<sup>7</sup>

25. In making the request the General Assembly is also acting in the spirit of the recommendation set forth in its Resolution 171A (II) of 14 November 1947 on the “Need for greater use by the United Nations and its organs of the International Court of Justice,”<sup>8</sup> and in the context of the call by former UN Secretary-General Boutros-Ghali in his “Agenda for Peace” that “United Nations organs turn to the Court more frequently for advisory opinions.”<sup>9</sup> Consecutive Presidents of the Court have made appeals before the General Assembly for greater recourse to the advisory function of the Court.<sup>10</sup>

(b) The Resolution was validly adopted from the procedural point of view

26. The Court’s jurisprudence affirms the presumption of validity of a resolution of a properly constituted organ of the United Nations. In reply to South Africa’s argument that the resolution of the Security Council which requested an advisory opinion of the Court in the *Namibia* Case was invalid, the Court stated:

“A resolution of a properly constituted organ of the United Nations which is passed in accordance with that organ’s rules of procedure, and is declared by its President to have been so passed, must be presumed to have been validly adopted.”<sup>11</sup>

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<sup>7</sup> *Ibid.* at 233, para. 11.

<sup>8</sup> A/RES/171A (II), United Nations, *Repertory of the United Nations Organs*, vol. V, Articles 92-111 of the Charter. See also the Assembly’s fresh appeal contained in resolution 3232 (XXIX), “Review of the role of the International Court of Justice.”

<sup>9</sup> Boutros Boutros-Ghali, *Agenda for Peace*, 1992, p. 22.

<sup>10</sup> See, e.g., *I.C.J. Yearbook 1991-1992*, p. 205, at 210-211; *I.C.J. Yearbook 1992-1993*, p. 249, at 252; *I.C.J. Yearbook 1994-1995*, p. 207, at 213; *I.C.J. Yearbook 1995-1996*, p. 270, at 281; *I.C.J. Yearbook 1997-1998*, p. 288, at 292.

<sup>11</sup> *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion*, *I.C.J. Reports*

27. Resolution A/ES-10/14 of 8 December 2003 was adopted by a recorded vote of 90 in favour to eight against. The resolution was properly adopted by the constitutionally required majority of the members of the United Nations which voted on the matter. It must be considered as the expression of the legally valid will of the General Assembly.

28. The number of abstentions and absences from the vote has no effect on the validity and procedural regularity of the resolution adopting the request. Rule 86 of the Assembly's Rules of Procedure<sup>12</sup> defines the terms "members present and voting," which appear in paragraphs 2 and 3 of Article 18 of the United Nations Charter to mean members casting an affirmative or negative vote and so as to exclude those that abstain or are absent from the vote. A long practice of the General Assembly has supported and applied this Rule.

29. In any event, as the Court stated in the Opinion it gave in 1996 concerning the *Legality of the Threat or Use of Nuclear Weapons*:

"Once the Assembly has asked, by adopting a resolution, for an advisory opinion on a legal question, the Court ... will not have regard ... to the distribution of votes in respect of the adopted resolution."<sup>13</sup>

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1971, p. 16, at 22, para. 20; see also *Legality of the Use by a State of Nuclear Weapons in Armed Conflict, Advisory Opinion, I.C.J. Reports 1996*, p. 66, at 82, para. 29.

<sup>12</sup> See UN Doc. A/520/Rev.15.

<sup>13</sup> *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226, at 237, para. 16. The fact that the resolution embodying the request in that instance had been "adopted with substantial numbers of negative votes and abstentions (i.e., 78 votes in favour, to 43 against, with 38 abstentions) obviously did not prevent the Court from rendering its advisory opinion. *Ibid.* at 255, para. 71.

(c) The Resolution adopting the request was *intra vires* the Assembly

30. Pursuant to Article 96, paragraph 1, of the United Nations Charter, the General Assembly “may request” an advisory opinion from the Court. Having decided to make the request, the presumption must be that the General Assembly has validly exercised its power in this particular case. To place a restrictive interpretation on the power of the General Assembly to initiate advisory proceedings on a legal question would run contrary to the clear intention of Article 96 of the Charter.

31. Unlike “[o]ther organs of the United Nations and specialized agencies,” whose power to request advisory opinions is restricted to legal questions “arising within the scope of their activities,” the Assembly’s power is not so restricted under Article 96 of the Charter. The Court has affirmed the Assembly’s broad authorization under the Charter.<sup>14</sup>

32. The powers of the General Assembly are broadly stated in Chapter IV of the United Nations Charter and include the power to “discuss any questions or any matter within the scope of the present Charter ... .” (Article 10). The question falls squarely within the ambit of the Assembly’s extensive mandate under the Charter, which embraces a broad scope of activities. This mandate includes questions of human rights, self-determination and decolonization. In addition, Article 11 of the Charter authorizes the General Assembly to (a) consider general principles of co-operation in the maintenance of international peace and security (Article 11, paragraph 1), and (b) discuss any questions relating to the maintenance of international peace and security

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<sup>14</sup> See *ibid.*, at 233, para. 11. That the drafters of the Charter intended to provide the General Assembly with a *general access* to the advisory system was underscored by a former President of the

brought before it by any member of the United Nations or, in certain circumstances, a State which is not a member of the United Nations (Article 11, paragraph 2).

33. Thus, issues pertaining to the situation of human rights, self-determination, the use of force *et al.* in the Palestinian territory occupied by Israel since 1967, including the legal consequences of the construction and operation of the Wall in the Occupied Palestinian Territory, fall squarely within the General Assembly's express powers and activities as provided by its constituent instrument.

34. As the practice of the General Assembly confirms, the subject-matter of the request is one the Assembly has regularly addressed in the course of its activities. Its long-standing interest and engagement in Palestine and in the right to self-determination, and the maintenance of other human rights, of the Palestinian people is well-known. It has been manifested in the annual debates of several of the Assembly's main committees relating *inter alia* to self-determination and decolonization in general and the question of Palestine in particular; in the regular meetings of the Assembly's Committee on the Exercise of the Inalienable Rights of the Palestinian People since 1975; in plenary debates concerning the question of Palestine, and the many Assembly resolutions on that question; in the holding of the tenth emergency special session on "Illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory," (dating back to 1997, when Israel began construction of a new settlement south of East Jerusalem);<sup>15</sup> and also in the

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Court in a statement before the Sixth Committee of the General Assembly in 1994. See *I.C.J. Yearbook 1994-1995*, p. 215, at 219.

<sup>15</sup> Thus, resolution A/ES-10/13 of 21 October 2003, adopted by a vote of 144 in favour to four against, demanded "that Israel stop and reverse the construction of the Wall in the Occupied Palestinian Territory, including in and around East Jerusalem, which is in departure of the Armistice Line of 1949

commissioning of numerous studies on the situation of human rights in the Palestinian territories occupied by Israel since 1967, including the section regarding the Wall.<sup>16</sup> Thus, the practice of the General Assembly confirms both its competence in this case and its present active involvement in the issue. The Assembly clearly has an interest in knowing the legal effects of Israel's occupation of the Palestinian territories occupied since 1967, and more particularly in the legal consequences of the construction of the Wall being built by Israel in the Occupied Palestinian Territory, including in and around East Jerusalem.<sup>17</sup>

35. The question submitted relates to a matter of direct concern to the United Nations. Violations of the United Nations Charter are of such concern. The report of 8 September 2003 of the Special Rapporteur of the Commission on Human Rights on the situation in the Palestinian territories occupied by Israel since 1967, which is referenced in Resolution A/ES-10/14, characterized the construction of the Wall as "conquest in international law, ... prohibited by the Charter of the United Nations ...".<sup>18</sup> The United Nations at large has an interest in assuring strict compliance by its Member States with the purposes and provisions of the Charter, including with respect to the resolutions adopted under the Charter by its main bodies. Israel has a long record of non-compliance with the pertinent resolutions of the

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and is in contradiction to relevant provisions of international law." The resolution embodying the request for an advisory opinion was adopted as part of the Assembly's tenth emergency special session.

<sup>16</sup> See, e.g., the report of the UN Secretary-General of 28 November 2003, UN Doc. A/ES-10/248. The Secretary-General's report was submitted pursuant to paragraph 3 of General Assembly resolution A/ES-10/13. Cf. *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226, at 233, para. 12. Other recent examples are the reports of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories (UN Doc. A/58/311) and of the Special Political and Decolonization Committee (Fourth Committee) (UN Doc. A/58/473 and Corr.1) referenced in General Assembly resolution A/RES/58/99 of 9 December 2003 and resolution A/RES/58/97 of 9 December 2003.

Security Council and the General Assembly, including most recently Resolution A/ES-10/13 of 21 October 2003, as confirmed by the Secretary-General of the United Nations in his report dated 28 November 2003. This led to the Assembly's request for an advisory opinion embodied in Resolution A/ES-10/14.

(d) Jurisdiction *ratione materiae*: the Court is asked to give an opinion on a legal question

36. Both Article 96, paragraph 1, of the United Nations Charter and Article 65, paragraph 1, of the Court's Statute require that the question forming the subject-matter of the request should be a "legal question." As explained below, the advisory opinion requested in the present case relates to a "legal question" within the meaning of those provisions.

37. It should be recalled that it is for the requesting organ –and not for a Member State– to formulate the terms of a question that it wishes to ask.<sup>19</sup> The objective of the question is clear: to determine the legal consequences of the construction of the Wall being built by Israel in the Occupied Palestinian Territory in light of the applicable international legal framework.<sup>20</sup>

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<sup>17</sup> Cf. *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951*, p. 19.

<sup>18</sup> See Dugard Report (2003), at 2, 8, para. 14.

<sup>19</sup> See *Difference relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, I.C.J. Reports 1999*, p. 62, para. 36.

<sup>20</sup> Cf. *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226, at 238, para. 20.



38. The question put by the General Assembly in this case is similar to the one which led the Court to give the Opinion in 1971 concerning the *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*.<sup>21</sup>

39. As the Court stated in the Opinion it gave in 1975 in *Western Sahara*, questions:

“framed in terms of law and rais[ing] problems of international law ... are by their very nature susceptible of a reply based on law ... [and] appear ... to be questions of a legal character.”<sup>22</sup>

40. The Court can give a legal answer to the question posed in this case. The advisory opinion requested by the General Assembly relates to “the legal consequences” of the construction of the Wall in the Occupied Palestinian Territory “considering the rules and principles of international law, including the Fourth Geneva Convention of 1949, and relevant Security Council and General Assembly resolutions.” This language makes it clear that the Request concerns the *international legal aspects* of the construction of the Wall, and only such aspects. To rule on the legal consequences of the construction of the Wall in the Occupied Palestinian Territory, the Court must identify the existing “rules and principles of international law,” interpret them and apply them to the construction and operation of the Wall, thus offering a reply to the question posed based on international law.<sup>23</sup>

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<sup>21</sup> *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, I.C.J. Reports 1971, p. 16, at 17, para. 1 (“What are the legal consequences for States of the continued presence of South Africa in Namibia, notwithstanding Security Council resolution 276 (1970)?”).

<sup>22</sup> *Western Sahara*, Advisory Opinion, I.C.J. Reports 1975, p. 18, para. 15. See also *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996, p. 226, at 234, para. 13.

<sup>23</sup> Cf. *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996, p. 226, at 234, para. 13. The question of the applicability of a treaty, of which the Fourth Geneva

41. The question posed in this case is not an abstract question, but is directly related to a specific instance, or concrete situation, namely, Israel's construction and operation of the Wall in the Occupied Palestinian Territory, including in and around East Jerusalem.<sup>24</sup> The Request arose from circumstances of practical necessity and urgency. (Indeed, since the Request was made there seems to have been a further increase in the rate of construction of the Wall.) The question posed does not require the Court to make speculative statements.

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Convention referred to in the request constitutes an example, to a given situation has been dealt with by the Court under its advisory jurisdiction. See, e.g., *Interpretation of Peace Treaties with Bulgaria, Hungary and Rumania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 71; *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947, Advisory Opinion, I.C.J. Reports 1988*, p. 12, at 26, para. 33; *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations, Advisory Opinion, I.C.J. Reports 1989*, p. 177, at 187, para. 28 (“The question which is the subject of the request, involving as it does the interpretation of an international convention in order to determine its applicability, is a legal question.”); *Difference relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, I.C.J. Reports 1999*, p. 62, at 187, para. 26. Moreover, the Court has consistently affirmed that the interpretation of treaty provisions constitutes “an essentially judicial task” (*Certain Expenses of the United Nations, Advisory Opinion, I.C.J. Reports 1962*, p. 155; *Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter), Advisory Opinion, I.C.J. Reports 1947-1948*, p. 61 (“[t]o determine the meaning of a treaty provision ... is a problem of interpretation and consequently a legal question”); *Competence of the General Assembly for the Admission of a State to the United Nations, Advisory Opinion, I.C.J. Reports 1950*, pp. 6-7; *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, I.C.J. Reports 1980*, p. 87, para. 33. In its most recent Opinion, the Court concluded that the condition of a legal question was satisfied based on the fact that the opinion requested related to the interpretation of a treaty that was mentioned in the request. See *Difference relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, I.C.J. Reports 1999*, p. 62, para. 26. The terms of the request in that case did not specifically invite the Court to engage in an interpretation of the treaty referred to in the request. While the request in this case specifically mentions the Fourth Geneva Convention, the wording of the request (“considering the rules and principles of international law, including”) indicates that its scope is not limited to that or any other treaty.

<sup>24</sup> Regarding the nature of the legal question, the Court has declared: “According to Article 96 of the Charter and Article 65 of the Statute, the Court may give an opinion on any legal question, abstract or otherwise.” *Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter), Advisory Opinion, 1948, I.C.J. Reports 1947-1948*, p. 57, at 61. See also *Effect of Awards of Compensation made by the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1954*, p. 47, 51; *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 16, at 27, para. 40; *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226, at 236, para. 14.

42. Most, at least, of the significant facts in this case are uncontroversial. The establishment of certain facts in this case is clearly within the scope of the Court's judicial function and cannot transform the question into a non-legal one.<sup>25</sup>

43. The facts upon which the Court can rely in responding to the Request are well-documented. They are before the Court in the documents accompanying the Request, in particular the report of the Secretary-General referenced in the resolution embodying the Request,<sup>26</sup> and the report of the Special Rapporteur of the United Nations Commission of Human Rights on the situation of human rights in the Palestinian territories occupied by Israel since 1967.<sup>27</sup> The Secretary-General's report informed the United Nations membership in clear and unambiguous terms that construction of the Wall was ongoing. It also described the construction and other activity in relation to the route of the Wall and its humanitarian and socio-economic impact on the Palestinian people. It is undisputed, and is amply supported by those reports and by the documents annexed to this Written Statement, that Israel is

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<sup>25</sup> As the Court has explained on a previous occasion: "The Government of South Africa has also expressed doubts as to whether the Court is competent to, or should, give an opinion, if, in order to do so, it should have to make findings as to extensive factual issues. In the view of the Court, the contingency that there may be factual issues underlying the question posed does not alter its character as a 'legal question' as envisaged in Article 96 of the Charter. The reference in this provision to legal questions cannot be interpreted as opposing legal to factual issues. Normally, to enable a court to pronounce on legal questions, it must also be acquainted with, take into account and, if necessary, make findings as to the relevant factual issues. The limitation of the powers of the Court contended for by the Government of South Africa has no basis in the Charter or the Statute." *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 16, at 27, para. 40. Moreover, "a mixed question of law and fact is none the less a legal question within the meaning of Article 96, paragraph 1, of the Charter and Article 65, paragraph 1, of the Statute." *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 12, at 19, para. 17.

<sup>26</sup> See UN Doc. A/ES-10/248. The Secretary-General's report was based in large part on information from United Nations offices on the ground in the Occupied Palestinian Territory (including field monitoring), World Bank reports, a World Food Programme Survey, Israeli Ministry of Defense documents (including an official map of the route of the Wall, Israeli Cabinet Decisions, and military Orders), and other materials available to the United Nations, including those in the public domain. See *id.* at paras. 2-3, 6, 9, 23 and 25. The Secretary-General's report also notes that Israel and Palestine were consulted in the preparation of the report and includes a summary of their legal positions in Annex I and II. See *id.* at para. 2.

constructing and maintaining a Wall in the Occupied Palestinian Territory, and what the existing and projected course, location and impact of the Wall is.

44. The Assembly's request seeks the Court's advice on the legal consequences of the construction of the Wall in the Occupied Palestinian Territory "as described in the report of the Secretary-General." Despite the different context, the views expressed by the Court in its most recent Opinion are apposite for purposes of the present case. In that instance, the request from the requesting body included the words "taking into account the circumstances set out in paragraphs 1 to 15 of the note of the Secretary-General ... ." The Court reached the following conclusion based on these words:

"It is clear that the reference in the request to the note of the Secretary-General was made in order to provide the Court with the basic facts to which to refer in making its decision."<sup>28</sup>

45. Similarly, the Report of the Secretary-General was included in the request embodied in Resolution A/ES-10/14 in order to provide the Court with the basic facts to which to refer in making its decision in the present case. The Court can render its advisory opinion based on these basic facts, and as necessary on other facts of public record.

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<sup>27</sup> See Dugard Report (2003).

<sup>28</sup> *Difference relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, I.C.J. Reports 1999*, p. 62, para. 39. Similarly, the Court's predecessor once decided that "it must accept the findings of the Committee [appointed by the League of Nations to investigate the matter to which the request for advisory opinion related] on issues of fact unless in the records submitted to the Court there is evidence to refute them." *Jurisdiction of the European Commission on the Danube, Advisory Opinion, 1927, P.C.I.J., Series B, No. 14*, p. 46.

**(2) There are no compelling reasons preventing the Court from giving the requested advisory opinion**

46. Notwithstanding the permissive language of Article 65, paragraph 1, of the Court's Statute, and the affirmation by the Court, since the *Eastern Carelia* Case in 1923 (which shall be discussed at length later), that the exercise of its consultative function is "discretionary," the present Court has never declined to give a requested advisory opinion through an exercise of discretion. Indeed, no admissible request for an advisory opinion from any organ has ever been refused.

47. Already in 1950, this Court declared:

"The reply of the Court, itself an 'organ of the United Nations', represents its participation in the activities of the Organization, and, in principle, should not be refused."<sup>29</sup>

48. Still more emphatically, in 1956, the Court said that only "compelling reasons" would lead it to refuse giving a requested opinion.<sup>30</sup> On a more recent occasion, the Court summarized its practice in the granting of advisory opinions as follows:

"The Court has constantly been mindful of its responsibilities as 'the principal judicial organ of the United Nations' (Charter, Art. 92). When considering each request, it is mindful that it should not, in principle, refuse to give an advisory opinion. In accordance with the jurisprudence of the Court, only 'compelling reasons' could lead it to such a refusal ... There has been no refusal, based on the discretionary power of the Court, to act upon a request for advisory opinion in the history of the present Court."<sup>31</sup>

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<sup>29</sup> *Interpretation of Peace Treaties with Bulgaria, Hungary and Rumania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 65, at 71.

<sup>30</sup> *Judgments of the Administrative Tribunal of the ILO upon Complaints Made against UNESCO, Advisory Opinion, I.C.J. Reports 1956*, p. 86.

<sup>31</sup> *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226, 235, para. 14 (including references to earlier jurisprudence).

- (a) The question put to the Court is both urgent and relevant, and is likely to have a practical and contemporary effect

49. The Court has declared that:

“[t]he function of the Court is to give an opinion based on law, once it has come to the conclusion that the questions put to it are relevant and have a practical and contemporary effect, and consequently, are not devoid of object and purpose.”<sup>32</sup>

50. By Resolution A/ES-10/14, the General Assembly requested the Court “urgently to render its advisory opinion” on the question submitted. The urgency and relevance of the question are underscored by the events which have taken place since the Request was received by the Registry of the Court. Thus, on 18 December 2003, only eight days after the Court received the Assembly’s request, Israel’s Prime Minister gave a keynote address at the “Herzliya Conference” in which he laid out a “Disengagement Plan” according to which Israel would soon take unilateral measures affecting Israel’s borders with Palestine. The Prime Minister said specifically: “Israel will greatly accelerate the construction of the security fence.” The speech leaves no doubt about plans to impose a unilateral settlement on the Palestinian territory occupied by Israel by severing them along the line of the Wall.

51. It is evident that an advisory opinion on the request made by the General Assembly will be of great practical value and of real importance for the Assembly in its consideration of the situation. Resolution A/ES-10/13 of 21 October 2003, constituting the Assembly’s first pronouncement on the Wall, referred in paragraph 3 to “further actions [which] should be considered, if necessary, within the United

Nations system.” In this context, it does not matter that legal aspects relating to the Wall are being considered in other fora, including Israel’s highest court.<sup>33</sup> Consequently, the question put to the Court is not devoid of object or purpose.<sup>34</sup>

52. The request by the General Assembly in this case gives the Court an opportunity to clarify important questions of international law of direct and practical relevance to an item which has been on the agenda of the General Assembly for many years, and as to which the General Assembly has been a major actor.<sup>35</sup> Answering the request by the Court would enlighten the Assembly on the legal aspects involved and the legal context for its continuing involvement in the future of Palestine.<sup>36</sup>

53. An advisory opinion on the specific question put to the Court would not adversely affect the ongoing efforts to solve the larger Israeli-Palestinian question. On the contrary, a statement by the Court on the legal consequences of the construction of the Wall in the Occupied Palestinian Territory under international law can facilitate such efforts by authoritatively establishing the present legal situation. An independent and impartial pronouncement by the Court on the legal consequences of Israel’s construction of the Wall is in no way incompatible with the pursuit of negotiations, now or in the future.

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<sup>32</sup> *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 12, at 37, para. 73.

<sup>33</sup> See *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226, at 233, para. 12.

<sup>34</sup> Cf. *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 12, at 37, para. 73.

<sup>35</sup> Cf. *id.* at 37, para. 72 (“In general, an opinion given by the Court in the present proceedings will furnish the General Assembly with elements of a legal character relevant to its further treatment of the decolonization of Western Sahara.”).

<sup>36</sup> See *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations, Advisory Opinion, I.C.J. Reports 1989*, p. 177, at 188-189, para. 31 (“The jurisdiction of the Court under Article 96 of the Charter and Article 65 of the Statute, to give advisory opinions on legal questions, enables United Nations entities to seek guidance from the Court in order to conduct their activities in accordance with law.”).

54. Rather, it is actions such as Israel's decision to continue and accelerate its construction of the Wall in the Occupied Palestinian Territory, especially in and around East Jerusalem, notwithstanding the resolutions of the United Nations which are far more likely to be detrimental to on-going efforts, in the United Nations and elsewhere, to solve the larger Israeli-Palestinian question. Palestine maintains its hope that Israel will cease its construction activities in the face of these advisory proceedings. Continued construction and operation of the Wall can only destroy the potential for any negotiated settlement of the Israeli-Palestinian conflict.

(b) The Eastern Carelia Case is distinguishable from the present case

55. The precedent of the *Eastern Carelia* Case as dealt with by the Permanent Court of International Justice is of no relevance to the present case.<sup>37</sup> In that case, the Council of the League of Nations had asked the Permanent Court if the Treaty between Finland and Russia of 14 October 1920 and its Annex relating to the recognition of the autonomy of Eastern Carelia, a Russian region, was binding on the Soviet Federative Republic of Russia. The Council had adopted its resolution after Finland, a Member State of the League of Nations, brought a contentious dispute between itself and Soviet Russia, a non-Member State, before the Council notwithstanding the fact that Soviet Russia rejected the invitation to submit the question of Eastern Carelia to the examination of the Council on the basis of Article 17 of the Covenant of the League.

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<sup>37</sup> *Status of Eastern Carelia, Advisory Opinion, 1923, P.C.I.J. Series B, No. 5.*



56. The main ground of the decision of the Permanent Court to refuse to give its opinion was that the League Council was not competent, absent the consent of Soviet Russia, to handle the issue under the Covenant and was, therefore, incompetent to request an advisory opinion.

57. According to the Permanent Court, there were other “cogent reasons” justifying its refusal to give an advisory opinion, especially that the Court could not ascertain controverted questions of fact in the absence of a party. The Permanent Court pointed out that the request encompassed a dispute between Finland and Soviet Russia, that the latter was not a member of the League of Nations, that it had not consented to the competence of the Court, and that it refused to participate in the Court’s proceedings.<sup>38</sup>

58. Despite frequent requests by States, since 1949, that it should not on a particular matter give an advisory opinion for reasons of judicial propriety, the present Court has never acted upon the exception applied by the Permanent Court in the *Eastern Carelia* Case and has never exercised its discretion not to give an advisory opinion requested from it.

59. There are strong reasons for this record and why the sole precedent of the Permanent Court is not governing in this case.

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<sup>38</sup> The Permanent Court’s refusal was mainly based, *not* as it is sometimes alleged, on the absence of Soviet Russia’s consent to the advisory procedure itself. In fact, the Court said that it was “unnecessary” *in casu* to deal with the issue “whether questions for advisory opinion, if they relate to matters which form the subject of a pending dispute between nations, should be put to the Court without the consent of the parties.” *Ibid.* at 27. That was not the issue. The Court found its main ground for refusal upstream, namely, in the incompetence of the Council to deal with the question.

60. First, it should be noted that no organic relation existed between the Permanent Court of International Justice and the League of Nations. At the time (1923), the Statute of the Permanent Court did not include any provisions specifically dealing with advisory proceedings, which may explain the cautious attitude displayed by the Permanent Court in the *Eastern Carelia* Case.

61. In contrast, the International Court of Justice is the principal judicial organ of United Nations pursuant to Article 92 of the United Nations Charter and Article 1 of the Statute, which forms an integral part of the Charter. This fact, in combination with the wording of Article 96 of the Charter and Article 65 of the Statute, has important ramifications for the Court's approach to its advisory jurisdiction, as was demonstrated above.<sup>39</sup>

62. Second, a major reason for the dismissal in the *Eastern Carelia* Case was that the Permanent Court regarded the central issue before it as one of fact which it could not resolve without the participation of both disputing States.<sup>40</sup> On this point, in the words of the Court in the *Namibia* Case, the *Eastern Carelia* Case "is not relevant, as it differs from the present one."<sup>41</sup> In the present case, the Court is not confronted with a question involving extensive factual issues which could not be

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<sup>39</sup> Referring to the impact of the status of the Court as the "principal judicial organ" of the United Nations on the *Eastern Carelia* Case, no lesser authority than Sir Hersch Lauterpacht concluded that the *Eastern Carelia* Case "can no longer be regarded as a precedent of authority." Sir Hersch Lauterpacht, *The Development of International Law by the International Court* (2<sup>nd</sup> ed., 1958), p. 248. See also Shabtai Rosenne, *The Law and Practice of the International Court, 1920-1996*, Vol. II (3<sup>rd</sup> ed., 1997), p. 1061 ("the comparison is between two unlikes.").

<sup>40</sup> *Status of Eastern Carelia, Advisory Opinion, 1923, P.C.I.J. Series B, No. 5*, p. 29 ("The question put to the Court ... can only be decided by an investigation into the facts underlying the case." (emphasis added)).

<sup>41</sup> *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 16, at 23, para. 31.

elucidated without hearing both Israel and Palestine or which it could not establish on its own failing such participation. Soviet Russia, the State that refused to cooperate with the Council and the Permanent Court, was not at the time a Member State of the League of Nations. Israel is a Member State of the United Nations.<sup>42</sup> Palestine for its part is a permanent observer fully participating in this proceeding. The Request concerns territory which has always been within the remit of the United Nations from its earliest days.

63. Whether or not Israel participates in this proceeding is irrelevant. As was demonstrated above in connection with the requirement of a “legal question,” the establishment of relatively simple facts is within the scope of the Court’s judicial function. As the Court has stated, “the issue is whether the Court has before it sufficient information and evidence to enable it to arrive at a judicial conclusion upon any disputed questions of fact the determination of which is necessary for it to give an opinion in conditions compatible with its judicial character.”<sup>43</sup> The Court can rely on United Nations documents in the record in establishing the facts in this case and on publicly available information setting forth in detail the position of Israel with regard to the Wall being built by it in the Occupied Palestinian Territory.

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<sup>42</sup> The Web site of BBC News included the following report on 9 December 2003, the day following the adoption of the Assembly’s request for an advisory opinion: “Israel reaffirmed its determination to defend itself at the court in The Hague. ‘We aren’t running away’, said Raanan Gissin, a senior adviser to Israeli Prime Minister Ariel Sharon. ‘We will fight our battle at The Hague .. We’ll present our case ....” BBC News report, text at <[www.bbc.co.uk/2/hi/middle\\_east/3302637.stm](http://www.bbc.co.uk/2/hi/middle_east/3302637.stm)>.

64. It is recalled that the Permanent Court emphasized in the *Eastern Carelia* Case that:

“the Court does not say that there is an absolute rule that the request for an advisory opinion may not involve some enquiry as to fact ... .”<sup>44</sup>

There are independent sources of information regarding the construction of the Wall and the regime it represents. This includes the United Nations documents submitted to the Court.<sup>45</sup>

65. Third, the fact that the matter to which the present request for an opinion relates is in dispute between Israel and Palestine is not in itself a ground for refusing to comply with the request. As the Court has stated:

“the existence, in the background, of a dispute the parties to which may be affected as a consequence of the Court’s opinion, does not change the advisory nature of the Court’s task, which is to answer the questions put to it ... .”<sup>46</sup>

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<sup>43</sup> *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 12, at 28-29, para. 46.

<sup>44</sup> *Status of Eastern Carelia, Advisory Opinion, 1923, P.C.I.J. Series B*, No. 5, p. 28. As the Court has explained, “it was the actual lack of ‘materials sufficient to enable it to arrive at any judicial conclusion upon the question of fact’ (*P.C.I.J., Series B, No. 5*, p.28) which was considered by the Permanent Court, for reasons of judicial propriety, to prevent it from giving an opinion.” *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 12, at 28, para. 46. See also Manley O. Hudson, *The Permanent Court of International Justice, 1920-1942, A Treatise* (1943), p. 498 (“In the *Danube Commission Case*, the Court stated that since the facts had been investigated by the League of Nations it was not ‘proper to make new investigations and enquiries’; the Rumanian Government had refused to accept the facts found by a League committee, but the Court thought that it should ‘accept the findings of the Committee on issues of fact unless in the records submitted to the Court there is evidence to refute them.’” *Jurisdiction of the European Commission of the Danube, Advisory Opinion, 1927, P.C.I.J., Series B*, No. 14).

<sup>45</sup> It also includes official United Nations Web sites. For example, the Humanitarian Information Centre in the Occupied Palestinian Territory of the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) maintains a Web site which includes maps pertaining to the Wall in the Occupied Palestinian Territory and United Nations translations of military orders of the Israel Defense Forces declaring the “seam zone” a closed area. See <[www.reliefweb.int/hic-opt/top.htm](http://www.reliefweb.int/hic-opt/top.htm)>.

<sup>46</sup> *Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1973*, p. 166, at 171, para. 14. For a summary of the Court’s earlier jurisprudence on this point, see Sir Gerald Fitzmaurice, *The Law and Procedure of the International Court of Justice*, Vol. Two (repr. 1995), pp. 566-567.

66. While in the present case the question asked by the General Assembly does relate to an important controversy between Israel and the majority of the Member States of the United Nations, as is clear from General Assembly Resolutions A/ES-10/13 and A/RES/A/ES-10/14, the Court itself has recognized that underlying each request for an advisory opinion it is probable that there will be a controversy which has led the organization to make the request:

“Differences of view amongst States on legal issues have existed in practically every advisory proceeding; if all were agreed, the need to resort to the Court for advice would not arise.”<sup>47</sup>

67. Moreover, as the Court stated in the Opinion it gave in 1973 concerning the *Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal*:

“[t]he existence, in the background, of a dispute the parties to which may be affected as a consequence of the Court’s opinion, does not change the advisory nature of the Court’s task, which is to answer the questions put to it ... .”<sup>48</sup>

(c) The giving of an advisory opinion does not depend on the consent of any particular State or group of States, and no State can prevent the giving of an opinion

68. The fact that Israel has voted against the resolution adopting the request does not constitute a compelling reason preventing the Court from giving an advisory

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<sup>47</sup> *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971, p. 16, at 25.*

<sup>48</sup> *I.C.J. Reports 1973, p. 171, para. 14 (cited with approval in Difference relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, I.C.J. Reports 1999, p. 62, para. 25).*

opinion. The Court has repeatedly affirmed that “[t]he Court’s Opinion is given not to the States, but to the organ which is entitled to request it ... .”<sup>49</sup>

69. The Court has made it clear that:

“[n]o State ... can prevent the giving of an Advisory Opinion which the United Nations considers to be desirable in order to obtain enlightenment as to the course of action it should take.”<sup>50</sup>

70. The Court has indicated that by becoming a party to the Charter and the Statute, a State has given its consent to the exercise of the Court’s advisory jurisdiction.<sup>51</sup> Indeed, it has pointed out that a State “*could not validly object to the General Assembly’s exercise of its powers ... to seek an opinion on questions relevant to the exercise of those powers.*”<sup>52</sup> Similar to the situation in *Western Sahara*, the present case:

“arose during the proceedings of the General Assembly and in relation to matters with which it was dealing. It did not arise independently in bilateral relations.”<sup>53</sup>

71. In sum, the Court is entitled “to act independently of any formal expression of consent on the part of States individually”<sup>54</sup> and the giving of the opinion does not

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<sup>49</sup> *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 71. See also *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226, at 235, para. 14.

<sup>50</sup> *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 71; see also *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations, Advisory Opinion, I.C.J. Reports 1989*, pp. 188-189.

<sup>51</sup> *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 16, at 23, para. 31.

<sup>52</sup> *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 12, at 24, para. 30 (emphasis added).

<sup>53</sup> *Ibid.* at 25, para. 34.

<sup>54</sup> Shabtai Rosenne, *The Law and Practice of the International Court, 1920-1996*, Vol. II (3<sup>rd</sup> ed., 1997), p. 989.

depend on the consent of any particular State or group of States. It is not for any State or organ to decide in lieu of the General Assembly on the “desirability” or the “opportunity” of the request or to overrule it, when the Assembly has already considered it desirable.

72. The Court has even gone as far as to say:

“It is not for the Court itself to purport to decide whether or not an advisory opinion is needed by the Assembly for the performance of its functions. The General Assembly has the right to decide for itself on the usefulness of an opinion in the light of its own needs.”<sup>55</sup>

(d) The mere fact that the question may have been politically motivated cannot prevent the Court from rendering its advisory opinion

73. The Court has stated that, as a rule, it will not question the propriety of the requesting organ’s action.<sup>56</sup>

74. The Court has consistently affirmed that it “cannot attribute a political character to a request which invites it to undertake an essentially judicial task.”<sup>57</sup> Where the Court has been asked to characterize a particular form of behaviour with respect to the provisions of treaty and customary international law, the Court is performing a task which is essentially legal. The concrete legal question on which the Court’s opinion has been requested relates to the compatibility of the construction of the Wall in the Occupied Palestinian Territory with international law. In asking the

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<sup>55</sup> *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226, at 235, para. 16.

<sup>56</sup> *Ibid.*

<sup>57</sup> *Certain Expenses of the United Nations, Advisory Opinion, I.C.J. Reports 1962*, p. 155; *Condition of Admission, Advisory Opinion, I.C.J. Reports 1947-1948*, p. 61; *Competence of the General Assembly for the Admission of a State to the United Nations, Advisory Opinion, I.C.J. Reports*

Court to characterize the behaviour (i.e., the construction of the Wall in the Occupied Palestinian Territory) in the context of rules of positive law, the General Assembly is inviting the Court, in effect, to carry out a task which falls within the normal exercise of its judicial powers.

75. In connection with the Assembly's previous request for an advisory opinion, the Court neatly summarized its jurisprudence on "political" aspects.<sup>58</sup>

76. It is thus clear from the Court's jurisprudence that it is not for the Court to delve into the motivation which leads a duly authorized organ to request an advisory opinion on a legal question obviously falling within the jurisdiction of that organ, even when that question relates to an issue which has other important political facets. In the request before the Court, the legal questions are clear and the Court can answer them without enquiring into any apparent or hidden political motives or other political facets of the issue.<sup>59</sup>

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1950, pp. 6-7; *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion*, I.C.J. Reports 1980, p. 87, para. 33.

<sup>58</sup> *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996, p. 226, at 234, para. 13. The Court's earlier jurisprudence has affirmed that it is not concerned with the motives which prompted the decision to make the request and that it will have no regard for the circumstances which led to the making of the request. See, e.g., *Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter), Advisory Opinion, 1948*, I.C.J. Reports 1947-1948, p. 57, 61; *Competence of the General Assembly for the Admission of a State to the United Nations, Advisory Opinion*, I.C.J. Reports 1950, p. 6.

<sup>59</sup> On a previous occasion, the Court clearly indicated that the existence of a political controversy at the background of the question put to the Court is no reason for it to decline to give the advisory opinion requested. See *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, *Advisory Opinion*, I.C.J. Reports 1971, p. 16, at 27, para. 27.



**(3) Conclusion**

77. For the reasons set out above, the Court is competent to give an advisory opinion in this case on the basis that the General Assembly is competent to request an advisory opinion from the Court on the subject-matter of the request, and there are no compelling reasons preventing the Court from giving its opinion on the question submitted.

**PART B. FACTUAL BACKGROUND**

**Chapter 3. A CHRONOLOGY OF THE MAIN EVENTS CONCERNING PALESTINE**

**(1) The Territory of Palestine**

78. Historically, Palestine is the territorial unit that was ultimately demarcated and defined by the League of Nations soon after the close of the First World War. It was made subject to the mandate regime (Class 'A') established by Article 22 of the League's Covenant and Britain was designated the Mandatory Power in 1922. The mandate over Palestine became operative when the Council of the League of Nations approved it on 29 September 1923.

79. The mandate regime over Palestine incorporated what was known as the Balfour Declaration, which was issued by Britain on 2 November 1917. The Declaration, in its final text, provided for the establishment in Palestine of a Jewish national home:

“it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country.”

These two safeguard clauses were introduced into the Balfour Declaration upon the insistence of the British government.

80. In the period between 1917, when Britain was able to oust the Ottoman forces from Palestine, and 1948, Britain was, first, the occupying power, and from

1923, became the mandatory power in Palestine. In both capacities, Britain exerted efforts to facilitate the creation of the 'Jewish national home'. It relaxed the immigration procedures and removed restrictions on the sale and/or acquisition of land to Jewish immigrants. However, this policy created the conditions for rising tensions and disturbances in Palestine between Jewish immigrants and Palestinian inhabitants.

81. With the increase of tension in Palestine between Palestinian inhabitants and Jewish immigrants and the demise of the League of Nations, Britain formally requested, on 12 April 1947, the UN Secretary-General to convene a special session of the General Assembly for the creation of a special committee to prepare for the discussion of the question of Palestine.<sup>60</sup>

82. On 15 May 1947, the UN General Assembly adopted a resolution authorizing an eleven-country Special Committee on Palestine ('UNSCOP') to study and make recommendations relevant to the question of Palestine.

83. The UNSCOP report, made public in September 1947, contained two proposals for Palestine. The majority of the UNSCOP members proposed the partition of Palestine into (1) an Arab State, that was allocated 42.88% of the territory of historical Palestine; (2) a Jewish State that was allocated 56.47% of that territory; and (3) an independent Jerusalem in 0.65% of Palestine to be under a UN Trusteeship

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<sup>60</sup> As the Court decided in 1950 with regard to South West Africa (Namibia), the winding up of the League of Nations in 1946 did not put an end to the international status of mandated territories. The General Assembly assumed the exercise of supervisory authority over all mandated territories which had not become independent by 1946, and did so whether or not those territories were transferred to the

system. The plan also proposed an economic union between the Arab and Jewish States. On 29 November 1947, the General Assembly, favouring the UNSCOP partition plan, adopted the two-State plan in Resolution 181 (II) by a vote of 32 in favour to 13 against with 10 abstentions.

84. On 15 May 1948, British troops and administration withdrew from Palestine. On or about that day, the 'Jewish Agency for Palestine' unilaterally declared a sovereign State of Israel on the "strength" of General Assembly Resolution 181 (II).

85. In the period between December 1947 and January 1949, war broke out. In the first six months, the fighting was local in nature, fought between Jewish paramilitary groups and Palestinian inhabitants. After that, the war was fought between Arab and Israeli armies. As a result of that war, the Israeli army occupied about one-half of the land that was allotted to the Arab State in Resolution 181 (II). Mandated Palestine was effectively dissected into three territorial parts. The largest part came under Israeli control. The second largest part, now known as the West Bank including East Jerusalem, came under Jordanian control, and was subsequently merged with the Hashemite Kingdom of Jordan on 24 April 1950.<sup>61</sup> The third part, now called the Gaza Strip, came under Egyptian control and later was put under the administration of the Egyptian Government with the approval of the League of Arab States on 13 April 1950.

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Trusteeship System. The exercise of this authority was consistently upheld by this Court in a series of advisory opinions.

<sup>61</sup> In July 1988, Jordan announced that it was cutting its legal and administrative ties with the West Bank, thereby rescinding the 1950 Act of Union.

86. The war ended with the Armistice Agreements concluded between Israel and Egypt in February 1949, Lebanon in March 1949, Jordan in April 1949, and Syria in July 1949. The area of the West Bank, including East Jerusalem, was demarcated in the Jordanian-Israeli Armistice Agreement and the Armistice Line came to be widely known as the “Green Line.” The area of the Gaza Strip was demarcated in the Egyptian-Israeli Armistice Agreement.

87. On 11 May 1949, Israel was admitted as a member of the United Nations following the recommendation made to the General Assembly by the Security Council in Resolution 69 of 4 March 1949. In admitting Israel, the General Assembly, in Resolution 273 (III), specifically referred to Israel’s undertakings to implement Resolution 181 (II) and Resolution 194 (III) of 11 December 1948 as well as to the declarations and explanations made by the representative of Israel before the *ad hoc* Political Committee in respect of the implementation of those resolutions.

88. On 5 June 1967, the Six Day War erupted. Israel was able to occupy the whole of the Gaza Strip and the whole of the West Bank (including East Jerusalem), in addition to other territories in Egypt and Syria.

89. On 22 November 1967, the UN Security Council unanimously adopted Resolution 242 (1967), which has become the basic platform for a peaceful settlement in the Middle East. This resolution upholds, *inter alia*, the principle of the non-admissibility of the acquisition of territory by force and demands that Israel’s armed forces should withdraw from territories “occupied in the recent conflict”. The reference in the resolution to the recently occupied territories obviously meant those

territories situated beyond the Armistice Lines (this of course included Egyptian and Syrian territories occupied by Israel in June 1967). In particular, and for the purpose of this case, these territories are the West Bank, including East Jerusalem, and the Gaza Strip which are the subject of reference in the ensuing analysis. (Henceforth, the West Bank and the Gaza Strip are called the Occupied Palestinian Territory (“OPT”).)

90. The Israeli Government began its functions in the Occupied Palestinian Territory as an Occupying Power. Since 1967, Israel has been governing the Occupied Palestinian Territory by virtue of Military Orders that the army commanders in the West Bank and the Gaza Strip issue from time to time. The conclusion of the Oslo Accords did not lead to a change in that practice in spite of the fact that the Declaration of Principles<sup>62</sup> and the Interim Agreement<sup>63</sup> provided for the withdrawal of the Israeli Military Government from the Occupied Palestinian Territory. Israel’s occupation of the Occupied Palestinian Territory is discussed in detail in later chapters of this Written Statement.

## **(2) Jerusalem**

91. Under the Partition Resolution 181(II), Jerusalem was designated as a *corpus separatum* under an international regime to be administrated by the UN. However, when the 1947/48 war broke out, the Israeli forces occupied West Jerusalem and the Jordanian army remained in East Jerusalem. The *de facto* division of the City of Jerusalem was formalized in the Jordan-Israel Armistice Agreement of 1949.

92. On 23 January 1950, Israel declared that Jerusalem was its capital. No other State recognized this declaration. However, after the Six Day War in June 1967, Israel initially utilized local legislation to change the legal status of the entire area of Jerusalem. On 27 June 1967, the Israeli Parliament (the Knesset) passed three laws as a result of which the Israeli government incorporated the whole of Jerusalem area into the municipal and administrative spheres of its government. (See Chapter 4 for more details in this regard.)

93. On 30 July 1980, Israel's Knesset adopted the Basic Law: Jerusalem, Capital of Israel.<sup>64</sup> Article 1 reads: "Jerusalem, complete and united, is capital of Israel". Article 2 provides that "Jerusalem is the seat of the President of the State, the Knesset, the Government and the Supreme Court".

94. The UN General Assembly responded to this Israeli action by adopting Resolution 35/169E on 15 December 1980, in which the Assembly affirmed in operative paragraph (2):

"that the enactment of the 'Basic Law' by Israel constitutes a violation of international law and does not affect the continued application of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, in the Palestinian and other Arab territories occupied since June 1967, including Jerusalem;..."

The Assembly's position has been consistently upheld in subsequent resolutions.<sup>65</sup>

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<sup>62</sup> Articles XIII and XV. See note 71 *infra*.

<sup>63</sup> Article X, Annex I, Art. 1.5. See note 75 *infra*.

<sup>64</sup> Laws of the State of Israel, Vol. 34 (1979/80), p. 209.

<sup>65</sup> For example, 42/209 B, C & D; 44/42 of December 8, 1989.

95. The Security Council has, likewise, consistently rejected any attempt by Israel to change the legal status of Jerusalem. In its Resolution. 252 (1968) of 21 May 1968, the Council:

*“Consider[ed] that all legislative and administrative measures and actions taken by Israel, including expropriation of land and properties thereon, which tend to change the legal status of Jerusalem are invalid and cannot change that status;”*

96. This resolution was followed by Resolution 267 (1969) of 3 July 1969. Further, in Resolution No. 271 of 15 September 1969, the Council called upon Israel, in operative paragraph 4, to adhere to the Fourth Geneva Convention and international law “governing military occupation”. In its Resolution 298 (1971) of 25 September 1971, the Council:

*”Urgently call[ed] upon Israel to rescind all previous measures and actions and to take no further steps in the occupied section of Jerusalem which may purport to change the status of the City.....”*

97. The Security Council reacted to the Basic Law and adopted Resolution 478 (1980) of 20 August 1980 by 14 votes in favour to none against, with one abstention, and expressed its deep concern over the enactment of the Basic Law by Israel. The Council:

*“Affirm[ed] that the enactment of the ‘basic law’ by Israel constitutes a violation of international law and does not affect the continued application of the [Fourth] Geneva Convention [...] in the Palestinian and other Arab territories occupied since June 1967, including Jerusalem”*

and determined to consider all actions taken by Israel, in particular the ‘basic law’, as null and void. The Council called on those states having established diplomatic missions at Jerusalem to withdraw such missions from the Holy City.



98. The Council has been consistent in treating Jerusalem as an occupied territory and in calling on Israel to adhere to the Fourth Geneva Convention.<sup>66</sup>

### **(3) The Palestinian People**

99. On 31 December 1931, the British Government conducted a census in Palestine, the results of which were published in the *Census of Palestine*.<sup>67</sup> The results showed that there were slightly more than one million people living in Palestine, of whom about 84% were Palestinian Arabs and about 16% Jews. Most of the Jewish population consisted of recent immigrants. The last officially released statistics for the Palestinian population were published in December 1947, showed that there were about 1.3 million Palestinians and about 590,000 Jewish residents at that time. This fact demonstrates that, even after the influx of Jewish immigration, the majority of the population consisted of Palestinian Muslims and Christians.

100. The Partition Plan of 1947, as mentioned above, allocated less than 43% of the territory for about 70% of the population, and about 56% of the territory for about 30% of the population. As such, the Palestinian people rejected the plan.

101. As a result of the events in the years between 1947 and 1949, the Palestinian people suffered ultimate defeat, resulting in the loss of 78% of the Palestinian territory and the subversion of their right to self-determination, and the creation of a severe

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<sup>66</sup> For example, Resolution 694 of 24 May 1991; and Resolution 1073 of 28 September 1996.

<sup>67</sup> E. Mills (ed. 1932) *Census of Palestine 1931 – Population of Villages, Towns and Administrative Area*.

refugee problem, with at least half of the Palestinians uprooted from their homes and land.

102. On 11 December 1948, the General Assembly adopted Resolution 194 (III), paragraph 11 of which resolved that:

“the refugees wishing to return to their homes and live in peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for the loss or damage to property which, under the principles of international law or in equity, should be made good by the Governments or authorities responsible”.

This resolution has been repeatedly upheld, virtually every year, by the UN General Assembly.

103. On 8 December 1949, the General Assembly passed Resolution 302 (IV), which established the UN Relief and Works Agency for Palestine Refugees (‘UNRWA’). The number of refugees that were registered with UNRWA had reached 940,000 by that time.<sup>68</sup>

104. This tragedy was augmented when the June War of 1967 gave birth to a new class of refugees, now called ‘displaced persons’. Their number reached 325,000 persons. The Security Council, in Resolution 237 (1967) of 14 June 1967 called upon Israel “to facilitate the return of those inhabitants who have fled the areas since the outbreak of hostilities”.

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<sup>68</sup> Annual Report of the Secretary-General on the Work of the Organization, July 1, 1948 to June 30, 1949, p. 102.

105. In spite of the fact that the number of refugees and displaced persons has doubled several times, their problem remains unresolved.

106. The Palestinian people, however, were able to re-gain recognition of their right of self-determination on the international level. In Resolution 2649 (XXV) of 30 November 1970, the General Assembly expressed concern that, because of alien domination, many peoples were being denied the right of self-determination. The Assembly condemned those governments which denying the right to peoples "recognized as being entitled to it, especially the peoples of southern Africa and Palestine". In Resolution 2672 C of 8 December 1970, the General Assembly stated that it:

"1. *Recognizes* that the people of Palestine are entitled to equal rights and self-determination in accordance with the Charter of the United Nations;  
*Declares* that full respect for the inalienable rights of the people of Palestine is an indispensable element in the establishment of a just and lasting peace in the Middle East."

107. This recognition has been continuously affirmed by the General Assembly and by other organs of the United Nations. As a matter of record, the world community at large now recognizes the right of the Palestinian people to an independent and viable State.

#### **(4) The Palestinian Representative Entity**

108. After the demise of the Ottoman Empire on the heels of the First World War, and the British occupation of Palestine, an Arab congress, consisting of representatives of various Palestinian cities and towns, convened in Haifa in 1920.

That Congress elected the Arab Executive Committee ('AEC') which functioned until 1936. In that year, the AEC was succeeded by the Arab Higher Committee ('AHC'), which exhibited a considerable degree of effectiveness within the Palestinian community. Both the AEC and the AHC gained recognition at various political levels, including with the Mandatory Government. The AHC appeared before the British Royal Commission in 1937 as the representative of the Palestinian people. The British Government also invited the AHC to participate in the first and second London Conferences of 1939 and 1946.

109. When UNSCOP visited Palestine in its search for a solution, it invited the AHC to participate and present the views of the Palestinian people. The AHC also participated as a recognized body in the deliberations of the UN General Assembly's First Committee in May 1947. On 1 April 1948, the Security Council in Resolution 43 (1948) called upon

“the Jewish Agency for Palestine and the Arab Higher Committee to make representatives available to the Security Council for the purpose of arranging a truce between the Arab and Jewish communities of Palestine;”

110. When the UNSCOP Partition Plan was made public, the AHC declared itself the Government of All Palestine.<sup>69</sup> The new government was recognized by five Arab States and Afghanistan. It joined the Arab League where it participated with full voting rights on all issues concerning Palestine. It continued to entertain that status until it was succeeded in 1964 by the Palestine Liberation Organisation.

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<sup>69</sup> Text in the Palestine Yearbook of International Law ('Palestine YBIL'), Vol. 4 (1987/88) p. 294.

111. On 20 May 1964, the Palestine National Council ('PNC') convened in Jerusalem and declared the creation of the Palestine Liberation Organisation (the 'PLO'). The PNC participants were Palestinians representing their respective communities. The PNC elected the PLO's executive branch which was called the Executive Committee which, in turn, elected the Chairman of the Committee. The PNC subsequently decided to elect a Central Council to act on its behalf between regular PNC sessions.

112. The PLO asserted that it was the sole and legitimate representative of the Palestinian people. After the June war of 1967, the PLO gained status and recognition. It became a full member of the League of Arab States, and in 1973, the Arab Summit held in Algiers, recognized the PLO as the "sole representative of the Palestinian people."

113. Outside the Arab region, the PLO received international recognition which enhanced its status. In addition to diplomatic recognition by over 100 States, the UN General Assembly adopted Resolution 3236 of 22 November 1974, in which it recognized that the PLO was the "representative of the Palestinian people [...]". On that same date, the Assembly adopted Resolution 3237, granting observer status to the PLO and inviting it to participate in the sessions and the work of the Assembly in that capacity.

114. At its 1859<sup>th</sup> meeting on 4 December 1975, the UN Security Council likewise decided to invite the PLO to participate in its discussion concerning the Israeli raids against Palestinian refugee camps in Lebanon. That invitation was extended to the

PLO with the same rights of participation accorded under rule 37 and not on the basis of rule 39 of the Council's provisional rules of procedures. Rule 37 applies to "[a]ny Member of the United Nations which is not a member of the Security Council..."; rule 39 applies to 'persons'. The Council now routinely invites Palestine to participate when the Council discusses the situation in the Middle East, including the Palestinian question.

115. On 20 December 1988, the UN General Assembly adopted Resolution 43/177, according to which the Assembly expressed its awareness of the proclamation of the State of Palestine by the Palestine National Council in line with General Assembly Resolution 181 (II) and in exercise of the inalienable rights of the Palestinian people. The Resolution acknowledged the proclamation of the State of Palestine by the PNC on 15 November 1988 and,

*"[d]ecide[d] that, effective as of 15 December 1988, the designation of 'Palestine' should be used in place of the designation 'Palestine Liberation Organisation' in the United Nations system ..."*

116. On 7 July 1998, the General Assembly overwhelmingly adopted Resolution 52/250, conferring upon Palestine additional rights and privileges of participation, which are reserved for Member States, including the sponsorship of draft resolutions related to the question of Palestine.

117. With such a representative capacity and status, the PLO signed with Israel all agreements and correspondences that have been produced under the so-called Oslo peace process. On 9 September 1993, Yasser Arafat, the Chairman of the PLO Executive Committee, exchanged with Mr. Yitzhak Rabin, then Israeli Prime

Minister, letters of Mutual Recognition by the PLO and Israel.<sup>70</sup> The Declaration of Principles on Interim Self-Government Agreements of 13 September 1993,<sup>71</sup> Agreement on the Gaza Strip and the Jericho Area of 4 May 1994,<sup>72</sup> Agreement on Preparatory Transfer of Powers and Responsibilities of 29 August 1994,<sup>73</sup> Protocol on Further Transfer of Powers and Responsibilities of 27 August 1995,<sup>74</sup> the Israeli – Palestinian Interim Agreement on the West Bank and the Gaza Strip of 28 September 1995,<sup>75</sup> Protocol Concerning the Redeployment in Hebron of 17 January 1997,<sup>76</sup> Sharm El-Sheikh Memorandum of 4 September 1999,<sup>77</sup> Protocol Concerning Safe Passage between the West Bank and the Gaza Strip of 5 October 1999<sup>78</sup>, and subsequent arrangements, were all signed and executed by the State of Israel and the PLO.

#### **(5) The Palestinian Authority**

118. Following the signing of the Declaration of Principles, the Palestine Central Council, acting on behalf of the PNC, convened in Tunis on 10-11 October 1993. In that meeting, the Council endorsed the Oslo Agreement and resolved to establish the Palestinian Authority ('PA'), nominated Yasser Arafat to be the president of the PA and authorized him to select its members. The PA was made accountable to the PLO Executive Committee.

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<sup>70</sup> The Palestine YBIL., Vol. 7 (1992/1994), p. 230.

<sup>71</sup> *Ibid.*, p. 232.

<sup>72</sup> *Ibid.*, p. 243.

<sup>73</sup> The Palestine YBIL., Vol. 8 (1994/1995), p. 315.

<sup>74</sup> *Ibid.*, p. 341.

<sup>75</sup> *Ibid.*, p. 353.

<sup>76</sup> The Palestine YBIL., Vol. 9 (1996/1997), p. 437.

<sup>77</sup> The Palestine YBIL., Vol. 11 (2000/2001), p. 339.

119. The PA was structured like any council of ministers, with each member to carry one portfolio. The Palestinian security forces that were established were kept under the command of Mr. Arafat. The PA remains responsible for the negotiations with the State of Israel, but its ultimate authority is the PLO.

120. On 20 January 1996, a general election was held and the Palestinians in the OPT elected, Mr. Yasser Arafat as the president, and elected their first legislative body, the Palestinian Legislative Council (the 'PLC').<sup>79</sup> Palestinians living in East Jerusalem participated in these elections and elected seven members to the Council.<sup>80</sup> The PLC consists of 88 representatives. This body is still functioning in the Occupied Palestinian Territory despite the expiration of its term on 4 May 1999. Under the prevailing coercive situation in the Occupied Palestinian Territory, further elections have not yet been possible.

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<sup>78</sup> *Ibid.*, p. 343.

<sup>79</sup> This arrangement was expressed in article IV of the Interim Agreement of 1995.

<sup>80</sup> *Ibid.*, Article II (3).





## **Chapter 4. ISRAEL'S ATTEMPTS TO CHANGE THE LEGAL STATUS OF THE OCCUPIED PALESTINIAN TERRITORY, INCLUDING EAST JERUSALEM**

### **(1) Settlement Policy and Practice: An Overview**

121. With the exception of East Jerusalem, Israel never formally annexed the Palestinian territory that it occupied in 1967. This does not mean that Israel preserved the legal status of the Occupied Palestinian Territory. Successive Israeli Governments have been pursuing since 1968 the illegal policy of colonizing the Occupied Palestinian Territory, including East Jerusalem, through the transfer of parts of Israel's own civilian population to the territory.<sup>81</sup> Carrying this out has entailed a host of physical, legal and administrative changes within the territory, which have resulted in the seizure of over 41.9 per cent<sup>82</sup> of this territory by Israel.

#### **(a) Phases of settlement activities<sup>83</sup>**

122. It is possible to distinguish three phases of settlement activities.

##### *(i) The First Phase: the Allon Settlement Plan*

123. First conceived in 1967, the Allon Plan, named after then Defense Minister, Mr. Yigal Allon, was submitted to several Israeli cabinets from 1968 to 1970.

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<sup>81</sup> *Question of the Violation of Human Rights in the Occupied Arab, Including Palestine*, Report of the Human Rights Inquiry Commission established pursuant to Commission Resolution S-51 of 19 October 2000.18

<sup>82</sup> B'Tselem 2003 Report, p. 116, Annex 13 in Annex Volume 2 accompanying this Written Statement.

<sup>83</sup> This is adapted from Benvenisti, Meron, *The West Bank Data Project: A Survey of Israel's Policies*, American Enterprise Institute for Public Policy Research, Washington D.C. 1984.

Although it was never officially approved,<sup>84</sup> it served until 1977 as a guideline for the establishment of Israeli settlements in the West Bank. The plan's guiding assumptions were that Israel must have defensible borders which must be based on the Jordan River and the Rift Valley and the Judean desert. Security borders must also be political borders. Only if Israeli settlements existed along its length would the border be political. Defensible borders, Mr Allon argued, therefore require a chain of Jewish settlements which themselves must be under Israeli sovereignty, but without the annexation of a large Palestinian population. The Allon Plan served as a basis for the Alignment (Labor coalition) platforms of 1974, 1977, 1981, 1984 and 1988. (See Annex Volume 1, Map 6, Israeli Settlement Plans in the Occupied Palestinian Territory)

*(ii) The second Phase: 'Gush Emunim' Settlements*

124. Gush Emunim (the Block of the Faithful), a right-wing Israeli movement based on religious ideology, was founded in February 1974 with the objective of settling in all parts of the 'land of Israel'. The adoption of their settlement strategy by the Likud Party, the right wing alliance that opposed the Labor party and which won the 1977 elections marked a historic departure from the Labor policy of territorial compromise. The Gush Emunim settlement strategy was articulated by Mattitiahu Drobles in what is known as the Drobles Plan. It was based on the following principles:

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<sup>84</sup> Gazit, Shlomo, *The Carrot and the Stick, Israel's Policy in Judea and Samaria, 1967-68*, B'nai B'rith Books, Washington D.C. 1995. p. 156-7.

- Settlements should not be isolated. 'Near each existing settlement other settlements should be built, so that blocs would be formed.'
- A barrier of settlements should be built to 'give a sense of security to the rift valley settlers – our first defensive wall in the east – and prevent a situation, whereby they would find themselves pressed from East and West by hostile populations.'
- Settlements should fragment the territorial continuity of the Palestinians. To achieve this, settlements must be built between and around Palestinian population centres 'with the objective of reducing to the minimum the possibility for the development of another Arab state in these regions. It would be difficult for the minority population to form a territorial continuity and political unity when it is fragmented by Jewish settlements.'

125. However, because of the apparent shortage of ideologically motivated settlers prepared to leave the metropolitan areas and live in small, remote and isolated settlements, the policy of settling Israeli Jews in the central mountain region of the West Bank was not a success.

*(iii) The Third Phase: Suburbia*

126. During the third phase, a new strategy was developed which emphasized demographic objectives, in addition to security and ideological ones. The Likud government (1977-84) sought to attract average Israelis interested in improving their quality of life. It was hoped that these suburban settlers, in order to protect their economic investment in a higher quality of life, would create a strong lobby that would prevent any political solution based on territorial compromise. The settlements

in the West Bank were being turned into suburbs with easy and quick access to main metropolitan areas in Israel.

127. With the adoption of this strategy, settlement figures began to show a substantial increase. In 1984 there was a 60.5% growth rate bringing the settler population from 27,000 in 1983 to 44,146 in 1984. By 1993, the date of the signing of the Declaration of Principles between Israel and the PLO, there were 120,000 Israeli settlers in the West Bank (excluding Jerusalem) living in 150 settlements, and 160,000 in East Jerusalem living in 9 settlements. At present there are some 395,000 Israeli settlers living in the West Bank, of which 177,000 live in East Jerusalem.<sup>85</sup> (See Volume 1, Pictures 24 - 28)

(b) Methods of appropriating land for Israeli settlements

(i) Declaration of land as State land

128. When the occupation began, the land owned by Jews before 1948 and administered by the Jordanian Custodian of Enemy Property in the West Bank was estimated at 30,000 dunums out of a total area of 5.50 million dunums (a dunum is 1,000 sq.m.). These lands were located mainly in the Jerusalem metropolitan area and the Etzion Bloc, situated south of Jerusalem. By 2003, land appropriated, *inter alia*, for Israeli settlements in the West Bank (including Jerusalem) constituted 2,346,000 dunums i.e. 41.9 percent of the total area of the West Bank.<sup>86</sup> Israel has claimed that

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<sup>85</sup> Israeli Central Bureau of Statistics, 2002.

<sup>86</sup> B'Tselem 2002 Report, Annex 12 in Annex Volume 2 accompanying this Written Statement. The authors calculate the total area of the West Bank at 5608000 dunums which includes the areas annexed to Jerusalem. The calculation does not include the no man's land and the proportionate area of the Dead Sea.

no privately owned land was taken by its military authorities for the use of Israeli settlers – only public land, or the so-called ‘state’ land. The argument regarding the illegality of using the natural resources (including land) in occupied territories for the benefit of the occupier and the transfer of the occupier’s population to the occupied territory, is discussed in Chapter 9, below. The intention here is to respond to the Israeli claim that the settlements were established on ‘state’ land and that no private lands were confiscated from Palestinians in the Occupied Palestinian Territory for the construction of Israeli settlements.

129. According to the World Bank,<sup>87</sup> the total area of state land, namely land registered in the name of the Jordanian Government prior to the beginning of the occupation, is estimated at approximately 13 percent of all West Bank land.

130. Yet, by 1984 Israel was claiming that 40 percent<sup>88</sup> of such land fell in the category of state land and was to be used exclusively for Israel’s own Jewish population. What legal ploy did Israel use to boost the proportion of land falling under this category from 13 to 40 percent?

131. A 1993 World Bank survey of the land law concluded that the Ottoman Land Code had no concept of ‘state’ or ‘public’ land. The argument went as follows: “At the advent of the British Mandate all land in Palestine was divided into two categories: *waqf* (charitable or religious trust land administered by the Islamic Shari’a courts) and *mulk* (being all land not *waqf*). The Land Code considered all *mulk* land as

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<sup>87</sup> World Bank, *Developing the Occupied : An Investment in Peace, Volume 3 Private Sector Development*, World Bank 1993, p. 113.

<sup>88</sup> Land Grab Report: Israel’s Settlement Policy in the West Bank, May 200, op. cit. p.51

being owned in the first instance, by the Sultan. Substantial land was given in perpetuity to residents and taxed accordingly. It was generally residential, urban or village property and a title deed ('taboo') was given to the owner and was easily transferred by changing the title in the local register, maintained, in part, for the tax collector's convenience. Non-urban, non residential land was divided into three categories: *miri*, *matrouk* and *mawat* land. *Miri* land could be considered available for private, exclusive use if cultivated. If the land remained fallow or not used for three years or more, it could be categorized as *mahlul* and made available to another user (and thus be a continuous source of tax revenue). *Matrouk* land was for public use: for example, for roads, parks or pasture. Its ownership remained with the Sultan but its use was recognized as available for a particular group or village or district which was charged with its keeping. *Mawat* land was vacant land not in any person or group's possession or use. It was considered land that lies at such a distance from a town or village that a human voice cannot be heard at the nearest inhabited place. The Ottoman Land Code had no concept of 'state' or 'public' land."<sup>89</sup>

132. The concept of 'state land' was introduced during the British Mandate in the 1922 Order-in-Council.<sup>90</sup> The 1922 Order defined public lands as "all lands in Palestine by virtue of Treaty Convention, Agreement or Succession and all lands which are or shall be acquired for the public service or otherwise." The prior ownership rights of the Sultan were transferred to the British High Commissioner.

133. It is apparent from the definition that public lands were restricted to lands subject to the control of the government and used in the execution of its purposes.

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<sup>89</sup> World Bank. op. cit. p. 113

They did not include land which was not the subject of a grant to the public, and, therefore, did not include *miri*, *mawat*, and *matrouk* lands.

134. Jordanian civilian rule over the West Bank extended from 1951 to 1967. Pursuant to its reform legislation, Jordan organized land settlement in the West Bank and began to survey and formally register all land. By the time of the 1967 war, this process was still incomplete. Only approximately 40 percent of the land in the West Bank had been registered. As noted above, out of this, 13 percent was registered in the name of the Jordanian Government.<sup>91</sup>

135. It was never the practice during this period for the Jordanian Government, nor is it now the practice of the government in Jordan, to consider all lands except land falling in the *waqf* and *mulk* categories as state land. It is, therefore, correct to conclude that in June 1967, out of the area of registered land, state lands comprised only that 13 percent of West Bank land which was already registered in the name of the Jordanian Government.

136. Upon its occupation of the Occupied Palestinian Territory in 1967 Israel moved to assert control, but not outright ownership, over land registered in the name of the Jordanian Government. By virtue of Military Order 59, these lands passed to the Custodian of Government Property.

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<sup>90</sup> "1922 Order-in-Council," cited in *Laws of Palestine*, London (1933), vol. III. P. 2569.

<sup>91</sup> World Bank, *op. cit.* p. 113



137. In 1968, Israel suspended the process of land registration that had begun in Palestine under the British mandate in 1928.<sup>92</sup> That process was complex but had afforded considerable due process to claimants, especially in respect of pasture and cultivable land.

138. In late 1979, the Israeli Office of the Custodian of Absentee Property began a survey of West Bank land to determine the extent of private land (i.e., registered land) and government land. As already mentioned, this survey determined that 40 percent of all land in the West Bank could be declared to be state land.<sup>93</sup> The Israeli official arrived at this inflated figure using the fallacious assumption that land in the West Bank could be deemed to be state land unless it was either registered or under continuous cultivation for a period of over ten years.<sup>94</sup> In both cases, the burden of proof was imposed on the Palestinians claiming to own land to prove that it was not state land.<sup>95</sup>

139. While the Israeli military occupation had suspended the process of land registration for the Palestinians, Israel in effect pursued it for the Israeli settlers through these unilateral declarations by the area commander that large areas land were state land. This led to the registration of the previously unregistered land (which constituted the majority of the land) in the name of Israeli Government and quasi-government agencies for the benefit of Israeli settlers. By 1986 virtually all this land was transferred to the Custodian of Government Land and put under the

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<sup>92</sup> Military Order 291(1968).

<sup>93</sup> World Bank op. cit. p. 114-5.

<sup>94</sup> Shehadeh, Raja, *Occupier's Law, Israel*, Institute for Palestine Studies, Washington, D.C 1985, p. 31. Benvenisti, Meron and Shlomo Khayat, *The West Bank and Gaza Atlas*, The Jerusalem Post, 1988, p. 61

administrative jurisdiction of the Israeli Settlement councils in the Occupied Palestinian Territory.<sup>96</sup>

140. Prior to the Israeli occupation of the West Bank, there was only one Land Register for all the inhabitants of the area, to which the public had free access. After 1967, Israel restricted access to the existing Land Register and created another register. This new Register, created by virtue of an Israeli Military Order,<sup>97</sup> was used exclusively for the purpose of registering land in the name of Israeli owners. This Register was kept not in the West Bank but in Israel. Eventually, it came to be merged with the records in the Israel Lands Administration Authority in Israel, where Israeli state lands are registered.

141. In this way, the Land Registration Department of the West Bank which until 1967 served as the only register for all West Bank land, came to be used as the register only for land left for the use of Palestinians. The Israel Land Administration Authority, on the other hand, became the register of the land controlled by the Israeli Government and reserved for the use of Israeli settlers. In this manner, the seizure of some 41.9 percent of Palestinian land by Israel was achieved. As to the remaining land, it continued to be in Palestinian hands but was subject at any moment to seizure by the Israeli forces, a process that is on going to this day.

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<sup>95</sup> Military Order 364 (1969)

<sup>96</sup> World Bank, *op. cit.* p.115.

<sup>97</sup> Military Order 569, Order Regarding Registration of Transactions in Special Lands, 1974.

(ii) Other methods of land seizure

142. In their quest to take possession of land in the occupied territories, the Israeli authorities have, according to Meron Benvenisti,<sup>98</sup> “been using every legal and quasi-legal means in the book and are inventing new ones to attain their objectives,” These means have included: acquisition of land owned by Palestinians who happened to be outside the West Bank when the occupation began (absentee land is estimated at 430,000 dunums<sup>99</sup>), expropriation for public purposes (which accounted for the acquisition of 150,000 dunums seized or designated for seizure by 1988<sup>100</sup>), requisitioning for military purposes (which accounted for the acquisition of 50,000 dunums of land by 1988<sup>101</sup>), and declaration of land as closed for military purposes which accounted for the acquisition of one million dunums of land by 1988. However, none of these means has brought more land under Israeli control than the method described above of declaring unregistered land as state land and placing it under Israeli control for the exclusive use of Israeli settlers.

143. Despite the territorial aspects of the Oslo Accords, the Declaration of Principles signed between Israel and the PLO in 1993, and the Interim Agreement signed in 1995, the entry into force of these Accords did not enable the Palestinians to alter the illegal policies and practices by which Israel had been acquiring the majority of West Bank land. When, in accordance with the Interim Agreement, Israel transferred jurisdiction to the Palestinians over land registration, Israel was only transferring control over land registered in the West Bank Land Register, not land

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<sup>98</sup> West Bank Data Project, op. cit. p. 30

<sup>99</sup> West Bank Data Project, op. cit. p.30.

<sup>100</sup> West Bank and Gaza Atlas. op. cit, p. 62.

<sup>101</sup> West Bank and Gaza Atlas, op. cit, p. 62.

registered in the Israeli Register. Thus, the majority of the land controlled directly and exclusively by Israel for the use of Israeli settlers remained out of the purview of Palestinian control. The attempt of Palestinian negotiators to alter this by expanding the definition of land registration in Article 22 of Annex III dealing with the transfer of this sphere was in vain.

*(iii) Land use planning as a method for restricting Palestinian use of the land*

144. Land registration was not the only process by which Palestinian land came to be designated for the use of Israeli settlers. Town planning was just as important, both in enforcing the acquisition of Palestinian land for the Israeli settlers and in establishing separate structures for the settlements.

145. Palestinian law in the West Bank defines four types of development plans: regional plans, outline plans, detailed plans and parcellation schemes. Two regional plans were prepared during the time of the British Mandate. The first was the Samaria Regional Plan (referred to as 'S15') which covers the northern part of the West Bank and the Jerusalem Regional Plan (referred to as 'RJ5') which covers most of the West Bank. The purpose of regional plans was to provide a context for preparing outline plans for villages.

146. The Israeli Higher Planning Authority in the West Bank claimed to have discovered these old regional plans in 1980 (in the case of the RJ5) and 1985 (in the case of S15).<sup>102</sup> Amendments were then made to these plans, whereby the locations of

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<sup>102</sup> From Occupation to Interim Accords, p. 83

Israeli settlements were identified and large areas were reserved for their future development. The Palestinian population had increased at least four-fold since these plans were first prepared, yet no modification or amendment took this into account.<sup>103</sup> In their amended form, the plans served a double purpose. They were used to restrict Palestinian development, and also to allow maximum room for the establishment and development of Israeli settlements.<sup>104</sup>

147. One of the amendments to these regional plans was in the form of the regional Partial Outline Plan for roads No. 50. This plan is based on two earlier plans prepared in Israel: Road Plan T/M/A/3 and the 1983-1986 Plan prepared by the World Zionist Organization, which sought to integrate Israeli and West Bank road networks, connect settlements to Israel and by-pass Palestinian centres of population.<sup>105</sup>

148. In 1967, the Palestinian's main transport artery in the West Bank ran north to south. However, beginning in the early 1970's, Israel began to introduce an east-west system of 'by-pass' roads, the purpose of which has been defined by the Israeli Ministry of Defense as being to:

“enable [Israelis] to travel in the Occupied Territories without passing through Palestinian population centres;

permit Israelis to travel across the Green Line by the shortest route;  
maintain 'an internal fabric of life' within the Israeli settlement blocs;  
and

ensure that Palestinian traffic did not pass through the settlements.”<sup>106</sup>

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<sup>103</sup> From Occupation to Interim Accords, op. cit, p.83

<sup>104</sup> From Occupation to Interim Accords, p. 83; West Bank and Gaza Atlas, p. 55-56; B'Tselem 2002 Report, p. 89, Annex 12 in Annex Volume 2 accompanying this Written Statement.

<sup>105</sup> From Occupation to Interim Accords, op. cit. p.83

149. The initial east-west road roads built in the early 1970's by Israel, as the Occupying Power, linked the Jordan Valley settlements with coastal areas in the territory of the state of Israel.<sup>107</sup> The introduction of the Road Plan No. 50 in 1983-84 introduced a comprehensive east-west system, the goal of which was to “integrate the Israeli and West Bank systems and to promote Jewish settlement in all parts of the West Bank.”<sup>108</sup> Creating accessibility to settlement areas would also serve to increase demand in these areas.<sup>109</sup>

150. When Road Plan No. 50 was placed on deposit in 1984, 1600 objections were submitted against it by Palestinians who felt aggrieved because of the extensive damage it was going to cause to their lands.<sup>110</sup> The special committee, composed entirely of Israeli officers, which considered these objections decided in its session on 12 March 1991 to reject them.<sup>111</sup>

151. As with settlement expansion, throughout the Oslo process by-pass road construction continued unabated. Between 1994 and 1997, 159.2 km of by-pass roads were constructed; and in 1999 Israeli planning authorities approved 14 new by-pass roads, entailing the confiscation of some 10, 219 dunums (2,532 acres) of Palestinian

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<sup>106</sup> State Comptroller, Annual Report 48 (in Hebrew) (Jerusalem; 1998), pp. 1032-1033. as cited in B'Tselem (2002) Land Grab: Israel's Settlement Policy in the West Bank, p. 50

<sup>107</sup> Israeli Proposed Road Plan for the West Bank, A question for the International Court of Justice, as annexed in “Letter Dated 5 February 1985 from the Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People addressed to the Secretary-General. A/40/119; S/16943, 7 February 7, 1985.

<sup>108</sup> Benvenisti, Meron, the West Bank and Gaza Atlas, the West Bank Data Base Project, 1988, p. 35

<sup>109</sup> Benvenisti, Meron, the West Bank and Gaza Atlas, the West Bank Data Base Project, 1988, p. 35

<sup>110</sup> Shehadeh, Raja, “From Occupation to Interim Accords: Israel and the Palestinian , Kluwer International, 1997, p. 83

<sup>111</sup> Shehadeh, Raja, “From Occupation to Interim Accords: Israel and the Palestinian , Kluwer International, 1997, p. 83

land.<sup>112</sup> As of 2000, Israel had requisitioned approximately 160,000 dunums, in order to build its by-pass road network of some 400 kilometers.<sup>113</sup>

152. For over three years Palestinian access to these roads, constructed on Palestinian land, has been restricted. Since the start of the second *intifada* in September 2000, some 750 road blocks and barriers have been placed, preventing Palestinians from using the old roads,<sup>114</sup> while their access to the new roads created in according with Road Plan No. 50 continues to be restricted.<sup>115</sup>

153. Likewise, the borders of the Palestinian population centres, both towns and villages, were circumscribed by the statutory zoning plans completed by Israel in the Occupied Palestinian Territory before the Palestinian Authority took over. This was because the areas over which the Palestinian Authority had territorial jurisdiction were determined by the Interim Agreement and could only be increased with Israel's agreement.

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<sup>112</sup> Question of the Violation of Human Rights, supra note 87.

<sup>113</sup> Question of the Violation of Human Rights in the Occupied Arab , including Palestine, Report of the Human Rights Inquiry Commission established pursuant to Commission Resolution S-51 of 19 October 2000, p. 18.

<sup>114</sup> "West Bank Barrier: Humanitarian Access and the Jerusalem Wall, United Nations Officer for the Coordination of Humanitarian Affairs, 3<sup>rd</sup> December 2003, p. 5; See [www.reliefweb.int-hic-opt](http://www.reliefweb.int-hic-opt)

<sup>115</sup> Despite the ostensibly inclusive wording of Article 27 of Annex III of the Interim Agreement of 1995 the Palestinian Authority had no control over most of the road system in the West Bank because it fell in what the Agreement designated as area C which remained under the exclusive territorial jurisdiction of Israel. Article 27(1), Annex III states, "Powers and responsibilities in the sphere of Planning and Zoning in the West Bank and the Gaza Strip shall be transferred from the military government and its Civil Administration to the Palestinian side. This includes initiating, preparing, amending and abrogating Planning Schemes, and other legislation pertaining to issues regulated by Planning Schemes (hereinafter: 'Planning Schemes') issuing building permits and supervising and monitoring building activities."

154. Prior to the signing of the Declaration of Principles in September 1993, outline plans for some 400 Palestinian towns and villages had already been prepared,<sup>116</sup> mainly by the Israeli planning authority in the West Bank. Most of these consisted of plans crudely drawn by felt-tip markers on aerial photographs.<sup>117</sup> The most outstanding feature of these crudely prepared plans was the plan boundary. Rather than define the area for which planning policies are to be prepared, the boundary identified the zone within which all Palestinian urban development was to be confined.<sup>118</sup>

155. One report described the corresponding process for the Israeli settlements in the Occupied Palestinian Territory as follows:

“Meanwhile, outline plans for the settlements were made by the same planning authority, followed by detailed plans which took fully into consideration present and future needs for the development of the Jewish areas. In this way, the future spatial development of Palestinian areas was circumscribed and restricted, Arab settlement blocs were prevented and Jewish settlement blocs were established providing the maximum possible space for their future expansion. Through the implementation of Road Plan number 50, these were connected to each other and to Israeli centers while by-passing Palestinian towns and villages.”<sup>119</sup>

156. All these schemes were given statutory effect and became, in fact, part of the law of the land prior to the signing of the Oslo Accords. It was this highly discriminatory and segregated town planning reality under the cloak of law, which influenced the content of the Accords.

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<sup>116</sup> B’Tselem 2002 Report, p. 87, Annex 12 in Annex Volume 2 accompanying this Written Statement.

<sup>117</sup> From Occupation to Interim Accords, p. 83, 1997.

<sup>118</sup> B’Tselem 2002 Report, p. 87, Annex 12 in Annex Volume 2 accompanying this Written Statement.



**(2) Effects of the presence of Settlements and Settlers in the Occupied Palestinian Territory**

**(a) Economic and Development Effects**

157. Settlements, together with the road network, destroy the territorial integrity of Palestine.<sup>120</sup> The settlements and by-pass roads limit the possibility for urban and economic development, by the seizure of land and by blocking the physical expansion of Palestinian villages and towns.<sup>121</sup> (See Annex Volume 1, Picture 27 - 28) They also further undermine economic development by restricting Palestinian movement and impeding the flow of commerce and workers from one Palestinian area to another.<sup>122</sup> For example, along the main north-south transport artery for the Palestinian population, the Occupying Power is able to control the main transport artery of the Palestinian population by creating and preventing the expansion of Palestinian construction and development toward the road and by preventing the connection of Palestinian communities located on different sides of the road.<sup>123</sup>

**(b) Conditions for Violence**

158. The presence of settlements and settlers contribute to increased rates of violence against Palestinians, including direct violence by settlers. Measures taken to protect Israeli settlements and settlers involve an increase in military presence in inhabited areas and have given rise to violent encounters between the Israeli

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<sup>119</sup> From Occupation to the Interim Accords, p. 83-84.

<sup>120</sup> *Question of the Violation of Human Rights in the Occupied Arab Territories, Including Palestine*, report of the human rights inquiry commission established pursuant to Commission Resolution S-5/1 of 19 October, E/CN.4/2001/121, 16 March 2002, p. 18, Annex 10 in Annex Volume 2 accompanying this Written Statement.

<sup>121</sup> *Ibid.*

<sup>122</sup> *Ibid.*

<sup>123</sup> B'Tselem 2002 Report, p. 81, Annex 12 in Annex Volume 2 accompanying this Written Statement.

occupying forces and the Palestinian population.<sup>124</sup> Moreover, many of the acts of violence that have been carried out by the Israeli occupying forces and settlers that have resulted in Palestinian deaths or injuries have occurred on heavily defended roads leading to settlement or in the proximity of settlements.<sup>125</sup> Furthermore, much of the Palestinian property bulldozed by the occupying forces prior to the construction of the wall was destroyed for the security of settlers, and not in the interests of military security.<sup>126</sup>

159. Notwithstanding UN Security Council Resolution 904 (1994), which “called for measures to be taken to guarantee the safety and protection of the Palestinian civilians throughout the occupied territory” (in the wake of the 1994 massacre by an Israeli settler against Palestinian worshippers in Al-Haram Al-Ibrahimi mosque in Al-Khalil (Hebron)), Palestinians are still routinely subjected to Israeli settler violence. The UN Special Rapporteur of the Commission on Human Rights noted in his March 2002 report, the phenomena of settler violence:

“Protected by the Israeli military, and exempt from the jurisdiction of the courts of the Palestinian Authority, settlers have committed numerous acts of violence against the Palestinians and destroyed Palestinian agricultural land and property”.<sup>127</sup>

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<sup>124</sup> International Committee of the Red Cross *Annual Report*, September 2001 p. 327.

<sup>125</sup> *Question of the Violation of Human Rights in the Occupied Arab Territories , including Palestine*, Report of the Human Rights Inquiry Commission established pursuant to Commission Resolution S-51 of 19 October 2000, para 70, p. 18.

<sup>126</sup> *Question of the Violation of Human Rights in the Occupied Arab Territories , including Palestine*, Report of the Human Rights Inquiry Commission established pursuant to Commission Resolution S-51 of 19 October 2000, para 70, p. 18.

### (3) Financial Incentives for Settling in the Occupied Palestinian Territory

160. Realizing that for its settlement policies to be successful, non-ideological citizens also had to settle in the Occupied Palestinian Territory,<sup>128</sup> successive Israeli governments have used financial subsidies to attract Israeli citizens to settle in the Palestinian territory. Accordingly, the Israeli Government classifies Israeli settlements as “Area of National Priority—A or B”, which entitles them to generous financial benefits. As one report put it:

“The National Priorities Map is an important tool for the implementation of government policy. The map enables channeling of substantial funds to areas that the government wishes to develop. Designation of a locality as having the status of National Priority A gives that locality a formidable incentives package.”<sup>129</sup>

161. These incentives and benefits include, *inter alia*, a 7% income tax break, housing grants, subsidized mortgages, free schooling from the age of three, free school bussing, and grants for businesses in industry, agriculture, and tourism.<sup>130</sup>

162. The Israeli Government ministries that transfer budgetary resources to settlements include the Israeli Ministries of Transportation, Housing and Construction, Trade and Industry, Defense, the Settlement Department of the Agriculture Ministry, and the Israel Lands Authority. Most ministries are institutionally and functionally linked with the settlement enterprise, as most, if not all contribute to their maintenance, expansion, and provision of services.

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<sup>127</sup> *Question of the Violation of Human Rights in the Occupied Arab , including Palestine*, Report of the Human Rights Inquiry Commission established pursuant to Commission Resolution S-51 of 19 October 2000, para 70, p. 18.

<sup>128</sup> “Barak Renews Hi-Priority Status for Settlements”, Press Release, Peace Now, December 30, 2000.

<sup>129</sup> “Barak Renews Hi-Priority Status for Settlements”, Press Release, Peace Now, December 30, 2000; See also B’Tselem Land Grab Report, Chapter 5, “Benefits and Financial Incentives.”

163. Throughout the 1990's, the Israeli Government favoured the local settlement authorities in the Occupied Palestinian Territory as compared to local authorities in Israel. Per Capita transfers in this regard were 150% higher.<sup>131</sup> In fact, the total per capita budget available to the local settlement authorities in the Occupied Palestinian Territory was more than forty percent higher than the national average throughout the 1990s.<sup>132</sup>

#### (4) Extending territorial jurisdiction

164. Israeli governments have sought to avoid the problems that would be caused by *de jure* annexation, particularly in the international arena, choosing instead to pursue policies of *de facto* annexation. The Israeli Government, the Knesset, and the IDF Commanders, with the blessing of the Israeli High Court of Justice, have altered Israeli and military legislation with the objective of enabling *de facto* annexation of settlements to the territory of the State of Israel.<sup>133</sup> Israel began imposing extra-territorial application of Israeli laws to the settlement areas in the Occupied Palestinian Territory and to Israeli Jewish citizens irrespective of their location in the Occupied Palestinian Territory.<sup>134</sup> The jurisdiction of Israeli courts was extended to Israeli civilians for offences committed in the Occupied Palestinian Territory. Civil disputes between Israeli settlers or between a settler and Palestinian also fell under

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<sup>130</sup> See <http://www.ariga.com/peacenowsettlementbudgetreport.htm>

<sup>131</sup> *Land Grab Report: Israel's Settlement Policy in the West Bank*, May 2002, p. 84.

<sup>132</sup> *Ibid*, p. 84.

<sup>133</sup> *Ibid*, p. 65.

<sup>134</sup> Emergency Regulations (Offenses in the Administered – Jurisdiction and Legal Assistance), 5727-1967. In 1977, the name was amended to read “Judea and Samaria, the Gaza Strip, the Golan Heights, Sinai and South Sinai, as reported in B’Tselem 2002 Report, p. 65, Annex 12 in Annex Volume 2 accompanying this Written Statement. Some of these principles were confirmed by Annex IV, Protocol Concerning Legal Matters, of the Interim Agreement between Israel and the PLO, 1995.

Israeli jurisdiction. The effect of these measures was to encourage more Israeli citizens to move to the settlements, thus contributing to the growth of settlements.<sup>135</sup>

**(5) International reaction to Israeli settlements policy and practice**

165. The reaction by the international community to Israel's settlement activities in the Occupied Palestinian Territory, including East Jerusalem, has been firm and consistent in its opposition to such unlawful policies and practices. The UN Security Council, in Resolution 446 (1979) of 22 March 1979 determined "that the policy and practices of Israel in establishing settlements in the Palestinian and other Arab territories occupied since 1967 have no legal validity" and constitute a serious obstruction to achieving peace.<sup>136</sup> In that same resolution, the Council called once more upon Israel to "abide scrupulously by the 1949 Fourth Geneva Convention, to rescind its previous measures and to desist from taking any actions which would result in changing the legal status and geographical nature and materially affecting the demographic composition of the Arab territories occupied since 1967, including Jerusalem, and, in particular, not to transfer parts of its own civilian population into the occupied Arab territories."<sup>137</sup> By way of Resolution 446 (1979), the Council also established a Commission to examine the situation relating to the settlements.<sup>138</sup>

166. In yet another Security Council resolution on the matter, the Council, in Resolution 465 (1980) of 1 March 1980, reiterated its prior determination and

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<sup>135</sup> Rules of Civil Procedure (Furnishing of Documents for the Administered ), 5730-1969, Kovetz Takkanot 2482, p. 458, as reported in B'Tselem 2002 Report, p. 65, Annex 12 in Annex Volume 2 accompanying this Written Statement. Many of these rules and procedures were enshrined in Annex IV, Protocol Concerning Legal Matters, of the Interim Agreement between Israel and the PLO of 1995.

<sup>136</sup> S/RES/446 (1979).

<sup>137</sup> *Ibid.*

condemnations regarding Israel's settlement policies and practices and called upon "all States not to provide Israel with any assistance to be used specifically in connexion with settlements in the occupied territories."<sup>139</sup>

167. The UN General Assembly has also consistently expressed its strong opposition to and condemnation of Israeli settlement policies and practices, including by its tenth emergency special session. An annual resolution of the Assembly addresses specifically "Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan", in which the Assembly, *inter alia*, reaffirms the applicability of the Fourth Geneva Convention to the Occupied Palestinian Territory, including East Jerusalem, and to the occupied Syrian Golan; reaffirms that Israeli settlements are illegal and an obstacle to peace and economic and social development; and reiterates its demand for the complete cessation of all Israeli settlement activities.<sup>140</sup>

**(6) Annexation and the regime in East Jerusalem**

**(a) Legislation and *de jure* annexation**

168. The main developments concerning Jerusalem were noted in Chapter 3, in the general context of Palestine's history. Here those developments are set in the context of Israel's consistent policy of annexation of Palestinian territory. At the end of the 1948 war Israeli military forces held the western sector of Jerusalem and Jordanian forces held the eastern sector. In January 1950 the Israeli Knesset (Parliament) declared Jerusalem to be the capital of Israel.

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<sup>138</sup> See reports of the Commission contained in UN documents S/13450; S/13450/Add.1, S/13450/Corr.1; S/13679; and S/14268.  
60 S/RES/4465 (1980); See also S/RES/452 (1979); S/RES/476 (1979); S/RES/478 (1980).

169. Following the Israeli military conquest of East Jerusalem, the Knesset passed on 27 June 1967, Amendment 11 to the Law and Administrative Ordinance of 1948 which applied jurisdiction to all areas held by the Israeli military forces. The amendment provided that “the law, jurisdiction and administration of the State shall extend to any area of Eretz Israel designated by the government by order.”

170. In conjunction with the Law and Administrative Ordinance, mentioned above, a municipal order was made on 28 June 1967 by virtue of which the Minister of Interior declared that the boundaries of the Jerusalem Municipality would be extended to about 70 km<sup>2</sup> – an area about ten times that of the Jordanian East Jerusalem municipality.<sup>141</sup>

171. Having thus extended the jurisdiction of Israeli law into an expanded East Jerusalem, on 29 June 1967 Israel dissolved the Jordanian East Jerusalem Municipality, thereby asserting sole Israeli administrative control over the occupied eastern sector of the city. The declared aim of these political and administrative steps, according to the Israeli authorities at the time, was to render the integration of East Jerusalem “irreversible and not negotiable.”<sup>142</sup>

172. A number of Israeli institutions were brought into East Jerusalem to consolidate its integration into Israel. Among these were the Ministry of Justice, the District Court, the Labor Court of Appeal, and the National Security Institute.

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<sup>140</sup> See for example resolution A/58/98 of 9 December 2003.

<sup>141</sup> Klein, Menachem, *Jerusalem: The Contested City*, (Hurst, 2001).

173. Companies in East Jerusalem which were registered in Jordan, but listed their main office or place of business in East Jerusalem, were asked to re-register as Israeli companies. Most companies refused, so Israel automatically re-registered them converting them from Jordanian to Israeli companies.<sup>143</sup>

174. Israel extended its law over Al-Haram Al-Sharif and Holy Places through the June 1967 Protection of Holy Places Law.<sup>144</sup> This law gave the Israeli government authority over access and freedom of worship in the Holy Places. This control was reinforced through a 1993 Israeli Supreme Court ruling which stated that Israeli law was applicable in the Al-Haram Al Sharif area.

175. In this manner, Israel gained administrative control over the business life, the holy sites, the land surrounding East Jerusalem and the East Jerusalem Municipal Council.

176. On 30 July 1980 a further step was taken by Israel to consolidate these changes. The “Basic Law: Jerusalem, Capital of Israel” was adopted by the Knesset. This law declared that “ Jerusalem, complete and united, is the capital of Israel.”<sup>145</sup>

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<sup>142</sup> *Report of the Secretary-General under General Assembly Resolution 2254 (ES-V)*, UN Document S/8146 and A/6973, point 35.

<sup>143</sup> Legal and Administrative Matters (Regulation) Law (Consolidated Version) 5730-1970, Laws of the State of Israel, Articles 6 to 14.

<sup>144</sup> Protection of the Holy Places Law, 5727, 1967.

<sup>145</sup> Israel Ministry of Foreign Affairs website: The Law of the Land/Basic Laws/Jerusalem.



(b) Status of Palestinian Jerusalemites

177. The Israeli measures relating to Palestinian Jerusalemites are aimed at restricting their numbers and creating conditions for their enforced displacement.

178. During the Jordanian civilian rule over the city from 1951 to 1967 Jordan issued Palestinian residents of Jerusalem with Jordanian passports. Following the Israeli occupation of East Jerusalem, Israeli law was amended so that these Jordanian citizens residing in East Jerusalem were not given automatic enemy status. This was achieved through Article 4 of the Legal and Administrative Matters (Regulations) Law (Consolidated Version) 5730-1970. As of the date of this law, Palestinian Jerusalemites have been issued with an Israeli identity card that is different from the card issued to Palestinians in the rest of the Occupied Palestinian Territory.

179. In keeping with the status of East Jerusalem as territory to which Israeli law applies, Palestinian Jerusalemites who remained in the city during the June 1967 occupation were granted Israeli residency permits under the Law of Entry into Israel, 1952 and the Entry to Israel Regulations, 1974.

180. The Israeli Minister of Interior is empowered by Israeli laws and regulations to revoke the residency rights of Palestinian Jerusalemites. These rules do not apply to Palestinians from the rest of the West Bank or the Gaza Strip. They also do not apply to Israeli citizens. There are at present 215,400 Palestinian Jerusalem identity

card holders.<sup>146</sup> To retain his or her Jerusalem identity card a Palestinian Jerusalemite must:

- not acquire any other nationality or citizenship<sup>147</sup>
- prove that Jerusalem is their ‘centre of life’ since 1994 - such proof consists of paying municipal tax within Jerusalem
- not live abroad for more than 7 years<sup>148</sup>
- not marry a non-resident spouse – otherwise they must apply for a rarely granted family unification order

181. The absence of a residence permit deprives these families of regular health and social services and prevents their children from attending public Israeli schools. In May 2002 all family unification applications were frozen by the Israeli government. Prior to September 2000, only 5% of those who applied received permits.<sup>149</sup>

182. By limiting the number of Palestinians in the city in every possible manner, Israel continues to attempt to integrate East Jerusalem into the ‘Jewish State.’ Yet ‘unified’ Jerusalem remains as divided as ever, with limited interaction between the inhabitants of the divided city and with the eastern section suffering from severe and readily apparent systematic discrimination in almost every sphere of life.

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<sup>146</sup> *West Bank Barrier: Humanitarian Access and the Jerusalem Wall*, United Nations Office for the Coordination of Humanitarian Affairs, 3<sup>rd</sup> December, 2003, p3.

<sup>147</sup> Article 11 of the Law of Entry into Israel 1952

<sup>148</sup> *Ibid.*

<sup>149</sup> *Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied*, A/58/311, 22<sup>nd</sup> August 2003, pp 40.

**(7) Other Illegal Measures Related to Occupied East Jerusalem**

183. In its 48<sup>th</sup> session, the UN Commission on Human Rights, while addressing the question of the violation of human rights in the Occupied Arab territories, including Palestine, strongly condemned the construction and expansion of the Israeli settlements, including the expropriation of land, and the construction of by-pass roads.<sup>150</sup> The Commission further condemned:

2. “... the expropriation of Palestinian homes in Jerusalem, ... the revocation of identity cards of the citizens of East Jerusalem, the imposition of fabricated and exorbitant taxes with the aim of forcing the Palestinian citizens of Jerusalem, who cannot afford to pay these high taxes, out of their homes and out of their city, preparing in this way the path for the Judaization of Jerusalem...”<sup>151</sup>

184. These statements reflect the two main aspects of Israeli policy in and around Jerusalem. The first is the energetic and extensive building of roads and settlements across and around occupied East Jerusalem with the aim of creating an indivisible infrastructure of roads linking the favoured Israeli settlements encircling the Eastern part of the city to Israel. The second involves the measures taken to limit natural Palestinian demographic growth and force Palestinians out of the city.

(a) Moving the Border around East Jerusalem

185. At present East Jerusalem has a series of checkpoints and temporary barriers that have been constructed around it since 1990, preventing access by West Bank Palestinians into the city. By restricting the right of access of Palestinians to occupied East Jerusalem the Israeli government is further consolidating the city’s integration

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<sup>150</sup> *Commission on Human Rights Resolution 2003/6* of 15 April 2003, para. 6

<sup>151</sup> *Ibid*, para. 7

with Israel. It has also been moving, in a *de facto* manner, the former border (the 'Green Line') from where it fell before the occupation to the external perimeter of the unified city as determined by the series of checkpoints and temporary barriers Israel has placed at the outskirts of East Jerusalem and deep into the West Bank.

(b) House Demolitions

186. When the aim is to limit the demographic growth of a population in a certain area, a limit is placed on the right of the community to develop spatially. This is normally achieved through zoning plans and regulations. Israel has been using these practices against the Palestinian residents of East Jerusalem since the early days of the occupation. Where it is at all possible to obtain a building license the Israeli authorities have inflated the cost of these license to further deter Palestinian expansion. Permits for construction in East Jerusalem cost upwards of \$25,000, compared to \$6,000 to \$10,000 in the West Bank<sup>152</sup>, making 'legal' building in Jerusalem very expensive for most Palestinians.

187. Both the difficulty of obtaining building permits and the high cost of the fees imposed encourage many Palestinians in East Jerusalem to build without a license. When this happens the Israeli authorities take punitive action. In the last three years alone, 4,000 houses have been demolished across the West Bank, Gaza and East Jerusalem.<sup>153</sup> This is part of a systematic policy for acquiring control over Palestinian populated land and manipulating demographics, thus creating the conditions for

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<sup>152</sup> *UN Habitat: Progress Report of the Executive Director, HSP/GC/19/2/Add.3, 13<sup>th</sup> May, 2003*

enforced displacement of people. Currently 28,000 Palestinian dwellings in Jerusalem are under threat of 'administrative destruction'.<sup>154</sup>

(c) Dual Transportation Networks

188. The Israeli government has closed down the Palestinian road network linking East Jerusalem with the West Bank through the use of more than 70 barriers. Vehicles bearing a Palestinian license plate – and often also pedestrians, are physically unable to access these roads. Since 1995, a system of by-pass roads has been constructed linking the Jewish suburbs established in the West Bank and annexed to Jerusalem with the western side of the city. With the exception of those Palestinians who are granted special permits to use these by-pass roads, this road network is essentially an Israeli-only road network

189. Blocking the old road network linking East Jerusalem to the West Bank and constructing an Israeli-only network has had the effect of further isolating East Jerusalem from the West Bank, making it physically harder, if not impossible, for most West Bank Palestinians to have access to East Jerusalem. Because of the central location of East Jerusalem, the denial of access to the city to Palestinians has not only meant denying them the right to have access to the city but has also further divided the West Bank itself into two parts, the northern and southern, with the movement between them made very difficult.

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<sup>153</sup> *Statement by Special Rapporteur on Adequate Housing Regarding House Demolitions in Occupied Palestinian*, 6<sup>th</sup> November, 2003.

<sup>154</sup> *Report of the Special Rapporteur on Adequate Housing as a component of the right to an adequate standard of living. Report of visit to the occupied Palestinian*, 5-10 January 2002: 10 June 2003, E/CN.4/2003/5/Add.1 2002.

190. West Bank Palestinians are prohibited from travelling within the West Bank or to or from Jerusalem on Israeli buses. Israeli buses operating between Jerusalem and the West Bank only stop in settlements. Contrary to the terms of the Interim Agreement, the number of Palestinian buses allowed on the road is restricted by the Israeli authorities. These measures further isolate the West Bank from Jerusalem through preventing free movement.

(d) Settlement Construction

191. Consolidating Israeli military control over East Jerusalem through the creation of facts on the ground has been achieved through settlement activity dating back to almost immediately after the 1967 war. The purpose of settlement construction remains consistent with its original conception, namely to alter the demographics of the city, create infrastructure which blurs the border through Jerusalem, and further limit Palestinian natural growth or contiguity by building in strategic Palestinian areas.

192. Extensive land confiscations have occurred and continue to occur, ostensibly for 'security reasons'. The land is then used for the purpose of settlement construction, or for road networks to link settlements. For the purpose of construction of the Wall, 2680 *dunums* (670 acres) have so far been confiscated in the Jerusalem

area.<sup>155</sup> Since 1967, out of a total area of 36 km<sup>2</sup> in East Jerusalem, 24.5 km<sup>2</sup> have been expropriated for construction of settlements.<sup>156</sup>

193. In 2003 alone the Israeli Government started preparing the ground for two new settlements in East Jerusalem: 'Nof Zahar' and 'Kedimet Zion', both planned initially to comprise 400 housing units. In May – June, the Israeli government also unveiled plans for the construction of 11,806 housing units in the Occupied Palestinian Territory. The majority of these planned units are for settlements around the occupied East Jerusalem area.<sup>157</sup> The necessary authorizations were to be finalized by the end of the year.<sup>158</sup> Further, in August 2003, the Israeli government launched the Eitam plan, which provides funding for purchases of apartment housing in National Priority Areas.<sup>159</sup> Twice the amount of funding is available for housing purchased in the occupied East Jerusalem area as for housing in other areas eligible under the program.<sup>160</sup>

194. The total number of settlements in and around East Jerusalem now stands at over 27, not including the 'illegal outposts'. As of December 2002, the total number of settlers in East Jerusalem came to over 177,000.<sup>161</sup>

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<sup>155</sup> *West Bank Barrier: Humanitarian Access and the Jerusalem Wall*, United Nations Office for the Coordination of Humanitarian Affairs, 3<sup>rd</sup> December, 2003, p3.

<sup>156</sup> Palestinian Academic Society for the Study of International Affairs, *2004 Diary*, p312.

<sup>157</sup> *Ibid.*

<sup>158</sup> *Report of the Committee on the Inalienable Rights of the Palestinian People*, A/58/35, 9<sup>th</sup> October, 2003, pp 21; Report on Israeli Settlement within the Occupied , July – August 2003, vol.13, no.4, p. 8

<sup>159</sup> Elazar Levin, "A four month window of opportunity," *Globes Real Estate Supplement*, August 17, 2003.

<sup>160</sup> *Ibid.*

<sup>161</sup> Jerusalem Central Bureau of Statistics, 2002.

**(8) Conclusions**

195. In sum, for more than three decades, Israel has been engaged in the colonization and attempted annexation of the territory under its occupation since 1967. Israel has done so through the illegal acquisition of territory and the illegal transfer of parts of its civilian population, the institutionalization of a separate structure of life and dual system of law and other measures intended to change the demographic composition of the Occupied Palestinian Territory, including in particular in East Jerusalem.

196. The Wall that is now being built by Israel in the Occupied Palestinian Territory is the culmination of these Israeli policies and practices, leading to the *de facto* annexation of large areas of territory, especially areas in which there is a heavy concentration of settlements. The Wall cannot be understood except in the context of such longstanding, unlawful Israeli policies and practices. It is an attempt to usurp maximum areas of land while containing the Palestinian 'demographic factor' within the Wall, precluding any real prospect for the realization of a viable and independent Palestinian State.





## **Chapter 5. THE POLICIES AND PRACTICES OF ISRAEL, THE OCCUPYING POWER, AND THE SECURITY SITUATION IN THE OCCUPIED PALESTINIAN TERRITORY**

### **(1) Introduction**

197. In addition to the seizure of Palestinian land and the transfer of its nationals to the Occupied Palestinian Territory, including East Jerusalem, as explained in the preceding Chapter, Israel, the Occupying Power, has also, from the outset of its occupation, carried out systematic policies and practices violating the human rights of the Palestinian civilian population and violating fundamental norms of international humanitarian law and international human rights law. For almost three decades, such policies and practices had been imposed on the Palestinian population in the Occupied Palestinian Territory “without any real or perceived security threat to or retaliation against Israel. However, the continuation and intensification of these actions and their cumulative effects ultimately generated, by the mid-1990s, a cycle of violence that characterizes the situation prevailing today. As stated by the UN High Commissioner for Human Rights, Mary Robinson, in her report of 29 November 2000, following her visit to the Occupied Palestinian Territory: “An inescapable conclusion is that much of the present situation has to do with the daily reality of life under occupation, including what the Palestinians see as the numerous daily humiliations imposed upon them.”<sup>162</sup>

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<sup>162</sup> *Report of the United Nations High Commissioner for Human Rights and Follow-Up to the World Conference on Human Rights*, UN Doc. E/CN.4/2001/114 (29 November 2000), para. 23; reprinted as Annex 9 below.

198. Israeli policies and practices have created the conditions underlying the current instability, turmoil and “security issues”, including the suicide bombings, in response to which Israel claims it must build the Wall in the Occupied Palestinian Territory to protect its citizens. Moreover, Israeli actions, including the destruction of the Palestinian security apparatus, have seriously undermined the effectiveness of any Palestinian efforts in the security arena. A brief examination of Israel’s policies and practices is necessary for a more thorough understanding of the current situation on the ground, including as it relates in particular to the matter of the Wall that Israel is building in the Occupied Palestinian Territory, including East Jerusalem.

**(2) Israeli Policies and Practices**

199. Since the start of its occupation of the West Bank, including East Jerusalem, and the Gaza Strip in 1967, Israel has utilized military orders to regulate all facets of Palestinian life and has also done so by invoking the Defence (Emergency) Regulations of 1945, despite the fact that they were revoked by Britain as of 14 May 1948.<sup>163</sup> Since then, Israel has used the regulations to justify, *inter alia*, the use of extrajudicial punishments, such as deportations, home demolitions and administrative detentions, in violation of the human rights of the Palestinian civilian population under occupation.

200. The United Nations General Assembly and Security Council have consistently addressed the issue of the broad human rights abuses and violations committed by Israel in the Occupied Palestinian Territory, repeatedly condemning

Israel's policies and practices in this regard and calling upon it to cease its violations and to comply with the provisions of the Fourth Geneva Convention.<sup>164</sup> Also, in 1968, the General Assembly established the *Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories*,<sup>165</sup> which, despite Israel's refusal to cooperate, has submitted periodic reports on the matter to each Assembly session.<sup>166</sup> In response to the continuing gravity of the situation, in 1993, the UN Commission on Human Rights decided to appoint a Special Rapporteur "to investigate Israel's violations of the principles and bases of international law, international humanitarian law and the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, in the Palestinian territories occupied by Israel since 1967", who has reported regularly to the Commission, with the most recent report submitted on 8 September 2003.<sup>167</sup>

201. In defiance, *inter alia*, of the resolutions of the General Assembly, the UN Security Council and the Commission on Human Rights calling upon Israel to cease its violations and to uphold the UN Charter and comply with international law, Israel

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<sup>163</sup> Raja Shehadeh, *Occupiers' Law: Israel and the West Bank*, (IPS, Washington, D.C., 1988)

<sup>164</sup> S/RES/237 (1967); S/RES/271 (1969); S/RES/446 (1979); S/RES/452 (1979); S/RES/465 (1980); S/RES/468 (1980); S/RES/469 (1980); S/RES/471 (1980); S/RES/476 (1980); S/RES/478 (1980); S/RES/484 (1980); S/RES/592 (1986); S/RES/605 (1987); S/RES/607 (1988); S/RES/608 (1988); S/RES/636 (1989); S/RES/641 (1989); S/RES/672 (1990); S/RES/673 (1990); S/RES/681 (1990); S/RES/694 (1991); S/RES/726 (1992); S/RES/799 (1992); S/RES/904 (1994); S/RES/1322 (2000); S/RES/1435 (2002) The General Assembly began to recall the Fourth Geneva Convention in this regard with its resolution 2546 (XXIV) of 11 December 1969 and has annually reaffirmed its applicability to the OPT. This has included, but is not limited to, an annual resolution specifically on its applicability. (See resolutions A/58/97 of 9 December 2003; A/58/98 of 9 December 2003; A/58/99 of 9 December 2003; A/58/21 of 3 December 2003 and A/58/229 of 23 December 2003)

<sup>165</sup> A/2443 (XXIII) of 9 December 1968. In 1989, the name of the Committee was changed by resolution A/44/48 (A) to *Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories*.

<sup>166</sup> The first report of the Special Committee was submitted on 5 October 1970 (A/8089). The most recent report was submitted on 22 August 2003 (A/58/311)

<sup>167</sup> Resolution E/CN.4/1993/2 (A+B) of 19 February 1993. The first report by the Special Rapporteur was submitted on 13 December 1994 (E/CN.4/1995/19). The most recent report by the Special Rapporteur (Dugard Report (2003)) was submitted on 8 September 2003 (E/CN.4/2004/6).

has persisted in carrying out its unlawful policies and practices *vis-à-vis* the Palestinian people. From the outset of the occupation, Israel imposed various measures severely damaging the social fabric of Palestinian population. For example, it prohibited all forms of civil liberties, banned freedom of expression and assembly, and censored all press and media.<sup>168</sup> Restrictive constraints were also placed on the medical sector and the educational system, including closures of schools and universities for prolonged periods, particularly during the years of the first Palestinian intifada that began in 1987.

202. The Palestinian economy was also harmed by Israel's imposition of a series of restrictive laws and measures in the Occupied Palestinian Territory that stunted the development of the economy and seriously debilitated it.<sup>169</sup> Such policies served to transform the territory into a captive market for Israel and a source of cheap labour.

203. The deportation of Palestinian civilians from the Occupied Palestinian Territory is another unlawful practice that has been carried out by Israel over the decades. Deportations have typically been effected through extrajudicial administrative orders taken by Israeli military commanders. Within just the first decade of the occupation, permanent expulsions by Israel totalled more than 1,522 Palestinians.<sup>170</sup> The UN Security Council has adopted several resolutions condemning this unlawful practice by Israel, beginning with Resolution 468 of 8 May

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<sup>168</sup> Raja Shehadeh, 1988.

<sup>169</sup> *Origins and Evolution of the Palestine Problem, 1971-1988* (UN, New York, 1990); See also reports of the Special Committee to Investigate Israeli Practices.

<sup>170</sup> B'Tselem (The Israeli Information Center for Human Rights in the Occupied Territories), [www.btselem.org/English/Deportation/Statistics](http://www.btselem.org/English/Deportation/Statistics).

1980.<sup>171</sup> Most recently, Israel has begun the practice of deporting Palestinians from the West Bank to the Gaza Strip.

204. Israel has also persisted in the practice of mass round-ups and mass and individual arrests as well as the arbitrary detention and imprisonment of Palestinian civilians, in the Occupied Palestinian Territory and in facilities located within Israel, without charge, without access to legal representation, without trial, and often without contact with their families.<sup>172</sup> Currently, more than 6,000 Palestinian civilians, including women and youths, are being held in Israeli detention centres or prisons.<sup>173</sup> Israel has also subjected Palestinians in custody to abuse and physical ill-treatment, including torture, and to unhygienic and inhumane conditions.<sup>174</sup>

205. Throughout its occupation of the Palestinian territory, Israel has caused extensive physical destruction to Palestinian homes and property, particularly through its practice of home demolitions. Thousands of Palestinian homes, including refugee shelters, have been destroyed during the course of Israel's more than thirty-six-year occupation as a means of collective punishment and also as a severe penalty in relation to the stringent restrictions imposed by Israel with regard to building permits for Palestinians. In addition, the occupying forces have destroyed thousands of dunums of land and extensively abused and exploited the natural resources in the Occupied Palestinian Territory.

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<sup>171</sup> S/RES/468 (1980). See also S/RES/469 (1980); S/RES/484 (1980); S/RES/607 (1988); S/RES/608 (1988); S/RES/636 (1989); S/RES/641 (1989); S/RES/694 (1991); S/RES/726 (1992); S/RES/799 (1992).

<sup>172</sup> See Dugard Report (2003), see also reports of the Special Committee to Investigate Israeli Practices, including A/58/311 (22 August 2003), dossier no. 53 accompanying the Secretary-General's submission.

<sup>173</sup> Dugard Report (2003), para. 29.

<sup>174</sup> *Ibid.*, paras. 30-32.

206. Israel has also engaged in other forms of collective punishment of the Palestinian civilian population, including the imposition of severe restrictions on the freedom of movement of persons and goods within the Occupied Palestinian Territory and between the territory and the outside world. It has imposed such restrictions through the establishment of military checkpoints and roadblocks and a complex system of requirements involving identity cards, residency permits and travel permits. Prolonged curfews, at times lasting for days or weeks, have at times been imposed on entire Palestinian cities, towns, villages and refugee camps. The result has been the immobilization of the Palestinian people in their own land and, during curfews, imprisonment in their homes, prevented from access to their work, schools, medical care and even to food supply and clean water. The impact on the social, economic and health conditions of the Palestinian people has been grave.

207. With the outbreak of the first intifada in December 1987, Israel began a new chapter in the types and magnitude of its oppressive policies and practices in the Occupied Palestinian Territory. The above-mentioned policies and practices intensified in addition to a rise in violence against of the civilian population. The actions of the Israeli occupying forces began to involve, *inter alia*, excessive beatings and the physical harassment of the Palestinian population, as embodied in the “iron fist” policy instituted by Israel to quell the Palestinian resistance.<sup>175</sup> Moreover, the occupying forces increased their use of tear gas in confined areas and the use of rubber-coated as well as live ammunition against the unarmed civilian population, killing and wounding thousands of Palestinian demonstrators.

208. In reaction to the precipitous deterioration of the situation in the Occupied Palestinian Territory, the UN Security Council adopted Resolution 605 (1987) on 22 December 1987. In that resolution, the Council strongly deplored “those policies and practices of Israel, the occupying Power, which violate the human rights of the Palestinian people in the occupied territories, and in particular the opening of fire by the Israeli army, resulting in the killing and wounding of defenceless Palestinian civilians.”<sup>176</sup> The Council also requested the Secretary-General to submit a report “containing his recommendations on ways and means for ensuring the safety and protection of Palestinian civilians under Israeli occupation”.<sup>177</sup> Thereafter, the issue of the provision of protection for the Palestinian civilian population in the Occupied Palestinian Territory became prominent on the agenda of various UN organs. Resolution 605 (1987) was shortly followed by two other Council resolutions on the matter, including Resolutions 607 (1988) of 5 January 1988 and 608 (1988) of 14 January 1988.

209. In the years after the outbreak of the first Palestinian intifada, the Palestinian civilian population suffered extensive loss of life, including massacres. This included the killing of more than 20 Palestinian worshippers at Al-Haram Al-Sharif in Occupied East Jerusalem on 8 October 1990. In response to the increased perpetration of violence against the civilian population by Israel, the UN Security Council adopted Resolution 672 (1990) on 12 October, in which it expressed “alarm at the violence which took place on 8 October at the Al Haram Al Shareef and other

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<sup>175</sup> *Origins and Evolution of the Palestine Problem, 1917-1988* (UN, New York, 1990). See also reports of the Special Committee to Investigate Israeli Practices.

<sup>176</sup> S/RES/605 (1987).

<sup>177</sup> *Ibid*; Report of the UN Secretary-General submitted pursuant to resolution 604 (1987) is contained in document S/19443 of 21 January 1988.



Holy Places of Jerusalem resulting in over twenty Palestinian deaths and to the injury of more than one hundred and fifty people, including Palestinian civilians and innocent worshippers.”<sup>178</sup> Another incident constituting a massacre was the killing of Palestinians civilians by an Israeli settler in Al-Haram Al-Ibrahimi Mosque in Al-Khalil (Hebron) on 25 February 1994. In resolution 904 (1994) of 18 March 1994, the Security Council condemned “the massacre in Hebron and its aftermath which took the lives of more than 50 Palestinian civilians and injured several hundred others” and called for “measures to be taken to guarantee the safety and protection of the Palestinian civilians throughout the occupied territory.”<sup>179</sup> Soon thereafter, on 6 April 1994, the first Palestinian suicide bombing was carried out in Afula, killing 8 Israeli civilians.

210. The situation in the Occupied Palestinian Territory was greatly influenced and altered by political breakthroughs that occurred with the signing by the Government of Israel and the Palestine Liberation Organisation (‘PLO’) of the Declaration of Principles on Interim Self-Government Arrangements on 13 September 1993. Preceded by letters of mutual recognition, the Declaration of Principles envisaged a gradual process for the withdrawal of the Israeli occupying forces from the Occupied Palestinian Territory. The Interim Agreement concluded by the two sides in 1994 detailed the mechanisms for the re-deployment of Israeli occupying forces from Palestinian territory to be carried out in three phases, beginning in October 1996 and ending within 18 months of election of the Palestinian Legislative Council in September 1997.

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<sup>178</sup> S/RES/672 (1990); UN Secretary-General submitted a report pursuant to resolution 672 (1990) contained in document S/21919 of 31 October 1990.

<sup>179</sup> S/RES/904 (1994)

211. The first redeployment took place in 1994 from Gaza City and Jericho, thereby allowing for the deployment for the first time of Palestinian Security Forces ('PSF'). In the absence of established Palestinian governmental and policing institutions however the various branches of the PSF were faced with the challenge of immediately grouping and fulfilling their responsibilities, which involved a wide range of tasks, including *inter alia* the maintenance of public law and order in the areas that were to be under Palestinian control.

212. Despite the progress made in the peace process between the two sides and the establishment of a Palestinian self-governing authority ('Palestinian Authority') in 1994 in addition to the establishment of the PSF, the situation on the ground in the Occupied Palestinian Territory did not markedly improve. With the lapse of the five-year transitional period agreed upon in the Declaration of Principles and the continuation of settlement activities, friction between the two sides began to increase once again. Israel's intransigent pursuit of its settlement campaign in the Occupied Palestinian Territory led to the convening by the UN General Assembly of its Tenth Emergency Special Session in April 1997 to address in particular Israeli actions in Occupied East Jerusalem in connection with its plans to construct new settlements in the area.<sup>180</sup>

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<sup>180</sup> A/ES-10/2 of 25 April 1997. The UN Secretary-General submitted a report pursuant to A/ES-10/2, contained in document A/ES-10/6-S/1997/494 (26 June 1997). This ultimately led to the convening of a Conference of High Contracting Parties to the Fourth Geneva Convention in July 1999 and in December 2001, which adopted a declaration reaffirming the applicability of the Convention to the OPT and calling for respect of the Convention and ensuring its respect in all circumstances. The text of the Declaration of 5 December 2001, dossier no. 67 accompanying the Secretary-General's submission.

213. Despite the mounting tensions and the exacerbation of socioeconomic conditions in the Occupied Palestinian Territory, peace process negotiations continued over the following years in an effort to implement the agreements reached towards negotiations for a final settlement. Yet, the third and largest phase of redeployment, in which the Israeli forces should have redeployed from all of the West Bank, with the exception of areas to be discussed during the permanent status negotiations, including Jerusalem, the settlements and specified military locations in the Occupied Palestinian Territory, was never fulfilled. As such, on 28 September 2000, the day the second Palestinian intifada began, Israel still had exclusive control of 61 per cent of the West Bank (Area C), with overriding security control over an additional 21 per cent (Area B). The Palestinian Authority ('PA') had control only over non-contiguous areas of the territory covering about 18 per cent of the West Bank (Area A). (As of June 2002, Israel had reoccupied all of Area A and, within one week, had assumed full security control over the entire West Bank, which remains the situation today, with the exception of Israeli redeployment from some population centres.)

### **(3) The Current Security Situation**

214. The second *intifada*, triggered by the events of 28 September 2000 in connection with the visit by then Likud leader Ariel Sharon to Al-Haram Al-Sharif in Occupied East Jerusalem, elicited a violent response by the Israeli occupying forces to Palestinian demonstrations.<sup>181</sup> Contrary to accusations of orchestration, the *intifada* erupted following that event in a culmination of the rising tensions caused by the

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<sup>181</sup> See Provisional Verbatim of UN Security Council S/PV.4204 of 3 October 2000, S/PV.4202 (Resumption 1) of 4 October 2000 and S/PV.4204 (Resumption 2) of 5 October 2000. See also UN

political deadlock and the deterioration of socioeconomic conditions resulting from Israeli policies and practices. As noted in the report of the Human Rights Inquiry Commission, “The insistence of the IDF that the Palestinian demonstrators, humiliated by years of military occupation which has become part of their culture and upbringing, have been organized and orchestrated by the Palestinian Authority either shows an ignorance of history or cynical disregard for the overwhelming weight of the evidence.”<sup>182</sup>

215. From the outset of this *intifada*, the Israeli occupying forces used excessive and indiscriminate force, using all forms of military weaponry, against the Palestinian civilian population, resulting in the widespread killing and wounding of civilians and physical destruction throughout the Occupied Palestinian Territory.<sup>183</sup> The UN Security Council responded immediately to the situation by adopting Resolution 1322 (2000) on 7 October, in which the Council deplored “the provocation carried out at Al-Haram Al-Sharif in Jerusalem on 28 September 2000, and the subsequent violence there and at other Holy Places, as well as in other areas throughout the territories occupied by Israel since 1967, resulting in over 80 Palestinian deaths and many other casualties.”<sup>184</sup>

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documents A/55/432-S/2000/921 of 29 September 2000; A/55/437-S/2000/930 of 2 October 2000; and A/55/440-S/2000/936 of 2 October 2000 (Letters to President of the Security Council)

<sup>182</sup> *Report of the human rights inquiry commission established pursuant to Commission resolution S-5/1 of 19 October 2000*, E/CN.4/2001/121 (16 March 2001), para. 48, Annex 10 in Annex Volume 2 accompanying this Written Statement.

<sup>183</sup> See the reports E/CN.4/2001/114, and E/CN.4/2001/121, Annexes 9 and 10 in Annex Volume 2 accompanying this Written Statement.

<sup>184</sup> S/RES/1322 (2000).

216. While the occupying forces continued to use excessive force against the civilian population in the Occupied Palestinian Territory, the period after the outbreak of the second *intifada* also witnessed a rise in suicide bombings by Palestinians against Israeli civilians in Israel. The first Israeli civilians killed by such Palestinian acts since the start of the *intifada* were two people who were killed in a car bombing on 2 November 2000. By that time, 148 Palestinians, including children, had already been killed by the Israeli occupying forces.<sup>185</sup> By the end of the year 2000, at least 322 Palestinians had been killed by the occupying forces and 37 Israelis, including members of the occupying forces, had been killed by Palestinian attacks.

217. It must be emphasized that, from the outset, the Palestinian leadership has been unequivocal in its condemnation of such attacks on Israeli civilians. The leadership has repeatedly condemned, and continues to stand firmly against, the suicide bombings as morally wrong, unjust acts that must cease. A distinction must be made, however, between such unlawful acts of violence against Israeli civilians in Israel and acts of Palestinian resistance to the Israeli occupation and to military attacks by the occupying forces, as a matter of international law and irrespective of the position taken by the Palestinian leadership calling for a cessation of all acts of violence.

218. In the months and years following the onset of the second *intifada*, Israel intensified and escalated its repressive and unlawful policies and practices against the Palestinian civilian population in the Occupied Palestinian Territory on a scope and

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<sup>185</sup> See letters of the Permanent Observer of Palestine to the United Nations to the President of the UN Security Council and the UN Secretary-General (beginning with A/55/432 of 29 September

scale unprecedented since the beginning of its military occupation in 1967. Using all means of heavy weaponry, including tanks, helicopter, gunships, warplanes and bulldozers, the Israeli occupying forces have engaged in the use of excessive and indiscriminate force and launched countless military attacks, endangering the safety and well-being of the Palestinian civilian population. This has included violent raids and incursions into Palestinian population centres, aerial bombardments and missile attacks targeting Palestinian buildings and vehicles, typically located in densely populated civilian areas, as well as sniper attacks. The Israeli occupying forces have also routinely used Palestinian civilians as human shields during military attacks. As a result of such practices, the occupying Power has, since 28 September 2000 and as of 21 January 2004, killed a total of 2,708 Palestinian civilians, including men, women and children, and has wounded more than 40,000 other people, thousands of whom now suffer permanent disabilities.<sup>186</sup> From the start of the intifada and up until 1 January 2004, more than 800 Israelis, including both civilians and members of the occupying forces, have been killed.

219. Among the Palestinians killed by the Israeli occupying forces, many have been killed by extrajudicial execution (assassination), a policy publicly acknowledged to be pursued by the Government of Israel. Israeli assassinations of “militants” have often been carried out during periods of relative calm or even of some advancement in the peace process, typically reigniting the cycle of violence and undermining any peace efforts. In one of many examples, for a month after the declaration of a

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2000, A/ES-10/39-S/2000/1015 of 24 October 2003 to A/ES-10/255-S/2003/1206 of 26 December 2003)

<sup>186</sup> *Ibid.* This figure represents the number of Palestinians directly killed by the occupying forces. It does not include those Palestinians who have died as a result of other Israeli practices in the

unilateral cease-fire by the Palestinian side on 16 December 2001, not a single Israeli civilian was injured or killed by a Palestinian from the Occupied Palestinian Territory. However, on 14 January 2002, Israel assassinated a leader of Al-Aqsa Brigades, Raed Karmi, in Tulkarem. The group retaliated by carrying out an attack on 17 January 2002 and thus the violence flared up again. According to the Special Rapporteur of the UN Commission on Human Rights on the situation of human rights in the Palestinian territories occupied by Israel since 1967, from October 2000 to April 2003, the occupying forces “killed more than 230 Palestinians, including 80 children, women and innocent bystanders, in assassination actions” between October 2000 and April 2003 alone.<sup>187</sup>

220. At the same time, Israel has inflicted vast physical damage and destruction in the Occupied Palestinian Territory since September 2000.<sup>188</sup> Thousands of Palestinian homes, properties and vehicles have been destroyed. The Palestinian infrastructure has been severely damaged due to the destruction of roads and electricity, water and sewage networks by the occupying forces. Thousands of *dunums* of agricultural land have been razed and hundreds of thousands of productive trees have been uprooted.

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Occupied Palestinian Territory, such as those who have died at checkpoints after being prevented from accessing medical care.

<sup>187</sup> Dugard Report (2003), para. 24.

<sup>188</sup> *Ibid.* See also Commission on Human Rights, Report of the High Commissioner, E/CN.4/2001/114, Annex 9 in Annex Volume 2 accompanying this Written Statement; Commission on Human Rights, Report of the Human Rights Inquiry Commission, E/CN.4/2001/121, Annex 10 in Annex Volume 2; A/58/311; Report of the Commissioner-General of UNRWA (A/58/13).

221. Also in collective punishment of the Palestinian population, Israel has dramatically intensified and entrenched its restrictions on the freedom of movement of persons and goods, including medical and humanitarian, in the Occupied Palestinian Territory. Movement is restricted between and within Palestinian cities and villages and to and from the territory by means of hundreds of checkpoints and roadblocks, around every town and major road junction, dividing the territory internally.<sup>189</sup> These restrictions, along with the imposition of broad military closures and prolonged curfews, have disrupted every aspect of Palestinian daily life and have brought the damaged Palestinian economy to a near standstill, with rising and inordinate rates of unemployment and widespread poverty among the population. World Bank estimates that at least 60 percent of the Palestinian population is living below the poverty line and unemployment stands at approximately 53 percent of the workforce.<sup>190</sup> The cumulative socioeconomic consequences have been devastating, amounting to a dire humanitarian crisis. As stated in the Mission Report of the UN Secretary-General's Personal Humanitarian Envoy, Catherine Bertini:

“Palestinians are subject to a variety of closures, curfews, roadblocks and restrictions that have caused a near-collapse of the Palestinian economy, rising unemployment, increased poverty, reduced commercial activities, limited access to essential services (such as water, medical care, education, emergency services) and rising dependency on humanitarian assistance. The restrictions affect almost all activities, rendering most Palestinians unable to carry out any semblance of normal life and subject to daily hardships, deprivations and affronts to human dignity.”<sup>191</sup>

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<sup>189</sup> Dugard Report (2003), para. 17; See also Commission on Human Rights, Report of the Human Rights Inquiry Commission, E/CN.4/2001/121, Annex 10 in Annex Volume 2 and *Mission Report by Ms. Catherine Bertini, Personal Humanitarian Envoy of the Secretary-General*, of 19 August 2002 (hereinafter, *Bertini Report*), Annex 14 in Annex Volume 2 accompanying this Written Statement.

<sup>190</sup> *Two Years of Intifada, Closures and the Palestinian Economic Crisis*, The World Bank, 5 March 2003.

<sup>191</sup> Bertini Report, para. 4, Annex 14 in Annex Volume 2 accompanying this Written Statement.



222. Some of the above-mentioned measures and actions carried out by the Israeli occupying forces in the Occupied Palestinian Territory constitute grave breaches of the Fourth Geneva Convention within the meaning of Article 147 of the Convention, *inter alia*, but not limited to, wilful killings, wilfully causing great suffering or serious injury to body or health, unlawful confinement and the extensive destruction and appropriation of property, as detailed in Chapter 9. For example, some of the acts committed by the Israeli occupying forces during the assault on the Jenin refugee camp and its inhabitants in April 2002 can be considered as such.<sup>192</sup> Another example is the extrajudicial killing of Salah Shehada, on 23 July 2002, in his home in a densely populated area in Gaza by the dropping of a one ton bomb on his home, which resulted in the killing of a total of 15 civilians, including children, the wounding of more than 150 people and vast physical destruction.<sup>193</sup>

223. The Israeli military escalation in the Occupied Palestinian Territory since September 2000 not only targeted the civilian population but targeted the Palestinian Authority as well. The occupying forces carried out numerous direct attacks and bombardments against PA facilities and institutions including, *inter alia*, ministries and security and intelligence installations. The occupying forces even launched attacks against the compound of the President of the PA, Yasser Arafat, in Ramallah, where he has been under siege since December 2001.<sup>194</sup> The impact on the Palestinian security apparatus has been severe, as it has been virtually incapacitated and immobilized, similar to the PA as a whole. Moreover, in January 2003, Israel ended the security and civil cooperation and coordination that had been established

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<sup>192</sup> See report of the UN Secretary-General in A/ES-10/186 of 30 July 2002; Human Rights Watch Report *Jenin: IDF Military Operations* (May 2002, Volume 14, No. 3 (E)).

<sup>193</sup> A/ES-10/185-S/2002/827 of 23 July 2002

with the PA, further detrimentally impacting the work of the Palestinian security services.

224. Numerous efforts have been undertaken at the international level, including through the United Nations, to address the critical situation in the Occupied Palestinian Territory. This has included the establishment of the Fact-Finding Committee, headed by former U.S. Senator George Mitchell, which presented the “Mitchell Report”,<sup>195</sup> as well as the Security Council’s repeated examination of the situation and its adoption of Resolutions 1402 (2002) of 30 March 2002, 1403 (2002) of 4 April 2002, 1405 (2002) of 19 April 2002, and 1435 (2002) of 24 September 2002. Efforts have also been undertaken by other international actors, including initiatives by the U.S. as well as by other members of the Quartet. Regrettably, none of these efforts has been successful in ameliorating the situation and bringing a resumption of the peace process.

#### **(4) Conclusions**

225. The current situation in the Occupied Palestinian Territory is one in which Israeli occupying forces are now present in or around all Palestinian population centres and stringent restrictions on movement continue to be imposed, in the midst of which the Palestinian people continue their efforts to overcome the adverse consequences of the loss of human life and destruction, including that of their institutions, that has been incurred by Israel. The humanitarian crisis being faced by the Palestinian people has been fundamentally aggravated by Israel’s construction of

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<sup>194</sup> S/RES/1435 (2002)

the Wall in the Occupied Palestinian Territory, including East Jerusalem, as the expropriation of land, the obstruction of movement and the isolation of Palestinian cities and villages from one another further exacerbate the dire socioeconomic conditions and deepen the frustration and despair of the population. As stated by the UN Secretary-General's Personal Humanitarian Envoy in her Mission Report, "[i]t must be recognized that the social and economic misery of the Palestinian people is a serious obstacle to achieving lasting peace and security. Sharply declining living conditions help destabilize the political environment and increase the sense of desperation that is so successfully exploited by extremists."<sup>196</sup>

226. It is unquestionable that suicide bombings against civilians in Israel must cease. It is also unquestionable that States have the right and responsibility, within the confines of international law, to protect their citizens. However, the notion that Israel is a peaceful and passive country under attack is baseless. A fundamental change in Israeli policies and practices, consistent with Israel's obligations under international law, is an essential prerequisite for any amelioration of the situation on the ground. Palestine affirms that the way to provide security for the two sides is by the cessation of the above-mentioned unlawful Israeli policies and practices and the termination of the occupation and not by the building of walls, even if built on Israeli territory. Overcoming the current situation, including the security situation, and moving forward towards a peaceful settlement are contingent upon compliance with international law and adherence to the two-State solution and the realization of the inalienable rights of the Palestinian people.

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<sup>195</sup> Report of the Sharm El-Sheikh Fact Finding Committee (Mitchell Report), 30 April 2001.

<sup>196</sup> Bertini Report, para. 12, Annex 14 in Annex Volume 2 accompanying this Written Statement.

## **PART C. THE WALL**

### **Chapter 6. The Wall Being Built by Israel in the Occupied Palestinian Territory, including in and around East Jerusalem**

#### **(1) Introduction**

227. The Wall that is being built by Israel is being constructed almost entirely in the Occupied Palestinian Territory, including in and around East Jerusalem, in departure from the Armistice Line of 1949 (Green Line). It is a whole regime, composed of a complex structure as well as practical, administrative and other measures. It encircles entire communities in walled enclaves and, if completed, will wall-in almost all of the Palestinian population. It has resulted in vast destruction and has entailed the confiscation of thousands of dunums of Palestinian land and has already imprisoned thousands of Palestinians between it and the Green Line. There is a clear correlation between the route of the Wall and the illegal Israeli settlements in the Occupied Palestinian Territory and water resources as well. The Wall is having a devastating socioeconomic impact on the Palestinian people. It clearly aims at the *de facto* annexation of large areas of the Occupied Palestinian Territory and makes the viability of a Palestinian State and the implementation of the two-State solution almost impossible. The purpose of this Chapter is to outline and depict the existing, approved and projected route of the Wall, and to explain the regime of the Wall and accompanying measures and effects and the Wall's social and economic impact on the Palestinian people in the Occupied Palestinian Territory.

228. For the purposes of this Written Statement, construction of the Wall is divided into Phases I, II and III, described below, based on dates of approval by the Israeli Cabinet. In some cases final decisions may not have been taken but reliable projections are possible.<sup>197</sup>

**(2) The Route of the Wall: Existing, Decided and Projected Phases**

**(a) Phase I of the Wall**

229. On 14 April 2002, the Israeli Cabinet decided to establish a ‘permanent barrier’ in the ‘seam area’ between the West Bank and Israel on 14 April 2002. To implement this decision, the “Seam Area Administration”, headed by the Director General of the Ministry of Defense, was established. In early June 2002, the Seam Area Administration completed plans for Phase I of the Wall, to run from the northwest edge of the West Bank, near the village of Salem, to the Israeli settlement of ‘Elqana’ in the central West Bank (See Map 3: The Wall in the West Bank, and Briefing Map). A plan was also devised to build a Wall in the north and south of East Jerusalem (See Map 4: The Wall in East Jerusalem). On 23 June 2002, the Israeli Government approved, in its decision 2077, the plan in principle and, on 14 August 2002, the Cabinet approved the final route of Phase I. Construction of Phase I of the Wall was mostly completed by the end of July 2003.

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<sup>197</sup> ‘Phase I’ corresponds to Israel’s Stage 1 of construction and ‘Phase II’ corresponds to Israel’s Stages, 2, 3 and 4. These are sometimes referred to as Phases or Stages A and B.

230. Israel has asserted that 'operational considerations' were the principal factors affecting the route of Phase I of the Wall. These considerations included three principal components.

- *Topography*: According to Israel:

"The selection of the topographic route of the barrier was derived from security reasons. The barrier must pass through, to the greatest extent possible, areas from which the surrounding territory can be controlled, in order to prevent harm to forces operating along the route, and to enable the forces to operate observation points that overlook both sides of the fence."<sup>198</sup>

- *Security Area*: According to Israel:

"The fear is that the barrier will not prevent every penetration, and that security forces will not be able to arrive in time to thwart the crossing of potential attackers. A geographic security area is necessary to enable the combat forces to chase the terrorists within... [the West Bank] before they are able to cross into Israel and disappear within the population."<sup>199</sup>

- *Leaving as Many Settlements as Possible West of the Barrier*: According to Israel,

"The fear is that erection of the barrier will channel the attacks to these communities, so it was decided to have the fence pass east of these settlements in order to provide protection for them and for the access roads that reach them."<sup>200</sup>

(b) Phase II of the Wall

231. Phase II was approved by the Israeli Cabinet on 1 October 2003. It comprises the following extensions of the Wall.

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<sup>198</sup> Israeli State Response, Sec. 18-19, in *Sa'al 'Awani 'Abd al Hadi et al. v. Commander of IDF Forces in the West Bank*, HCJ 7784/02, as reported in B'Tselem 2003 Report, p. 32.

<sup>199</sup> *Ibid.*

<sup>200</sup> *Ibid.*

232. Initiating the eastern part of the Wall, one section was extended from Salem east to the Jordan River. Another section was extended south from Al Mutilla to Tayasir, which is scheduled for completion in March 2004 (See Map 3: The Wall in the West Bank, and Briefing Map).

233. Further to an Israeli Cabinet decision on 5 September 2003, the constructed segments of the Wall in and around East Jerusalem (except in the area of 'Ma'ale Adumim') were extended (See Map 4: The Wall in East Jerusalem).

234. The Wall was extended southwards from the settlement of 'Elqana' in the direction of Jerusalem, and from the settlement of 'Gilo' to South Mount Hebron (See Map 4: The Wall in the West Bank, and Briefing Map).

235. Phase II was scheduled for completion in 2005. However, on 18 December 2003, Prime Minister Ariel Sharon announced that "Israel will greatly accelerate the construction of the security fence" in anticipation of a unilateral Disengagement Plan.<sup>201</sup> Orders were issued for construction along the entire blueprint of the Wall simultaneously, instead of building it stage after stage.<sup>202</sup>

(c) Projected Phase III of the Wall

236. In March 2003, the Israeli Prime Minister announced plans for the construction of a Wall running along the Jordan Valley. Although the route has not yet been officially approved by the Cabinet, an Israeli Government decision to build

the eastern Wall is reported to have been taken.<sup>203</sup> According to the Dugard Report (2003, para. 11), it is “widely expected that following completion of the Wall separating Israel from the West Bank on the western side, an eastern side will be constructed, along the mountain ridge west of the Jordan Valley, which will separate Palestine from the Jordan Valley.” This section of the Wall is projected to run along the Allon Road (Highway 80) from Tayasir to Al-Ram and continue southward from Abu Dis to Um Diraj, linking with the approved phase of the Wall southeast of Al-Khalil (Hebron).<sup>204</sup> (See Map 3: The Wall in the West Bank, and Briefing Map) A territorial outlet for Palestinian passage to Jordan is projected to run from Ramallah to the border with Jordan via Jericho.

(d) East Jerusalem

237. As indicated above, the route of the Wall weaves in and around Occupied East Jerusalem. As described in the report of the UN Secretary-General, submitted pursuant to General Assembly resolution A/ES-10/14, “The existing barrier and planned route around Jerusalem is beyond the Green Line and, in some cases, the eastern municipal boundary of Jerusalem as annexed by Israel. Completed sections include two parts totalling 19.5 kilometres that flank Jerusalem, and a 1.5-kilometre

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<sup>201</sup> Prime Minister Ariel Sharon’s Speech at the Herzliya Conference, 18 December 2003.

<sup>202</sup> Amir Rapaport, *Ma’ariv*, 24 December 2003.

<sup>203</sup> Ze’ev Schiff, “Something’s afoot along the fence,” *Ha’aretz*, 30 December 2003. Other reports indicating plans for the Jordan Valley Wall include, Geoffrey Aronson, “Sharon Government’s Separation Plan Defines Palestine’s Provisional Borders,” *Report on Israeli Settlement in the Occupied Territories*, Vol. 13, No. 4, July–August 2003, p. 4; Ha’aretz Service, “US Opposes Israel’s Plan for Jordan Valley Fence,” *Ha’aretz*, 21 July 2003; Eyal Weizman, “Ariel Sharon and the Geometry of Occupation, Part 3,” 15 September 2003,

[www.opendemocracy.net/themes/article.isp?id=2&articleID=1476](http://www.opendemocracy.net/themes/article.isp?id=2&articleID=1476); cf., Jonathan Cook, “Thwarting the State,” *Al-Ahram Weekly* on-line, Issue No. 61, 27 March – 2 April 2003.

<sup>204</sup> Estimates of the length and route are based on press reports from military sources detailing both the location and length of the Wall, meetings with Israeli officials involved in planning the route,



concrete wall in the eastern Jerusalem neighbourhood of Abu Dis. The planned route includes a section due east of Jerusalem that links up with the existing Abu Dis wall; levelling of land has started at its southern end.” The report further asserts, “A second section runs through the northern Jerusalem suburb of Al-Ram, which will be cut off from Jerusalem, and links with the existing northern barrier section at the Qalandia checkpoint. A third section will surround five Palestinian communities north-west of Jerusalem, creating a 2,000-acre enclave with 14,500 people. A gap remains in the planned route due east of Jerusalem near the settlement of Maale Adumim.”<sup>205</sup>

(e) Summary: The Wall Depicted by Reference to the Green Line

238. In this section, Palestine provides specific references to the length and location of the Wall at the time of writing this Statement.

- To date 186 km of the Wall have been completed in the northern and central (Jerusalem) West Bank.
- An additional 25 km are currently under construction.
- 381 km of the Wall have also been approved for construction.
- An additional 196 km can be projected based on recommendations by the Israeli military.

According to these figures, the total length of the Wall once completed, based on current information, will be 788 km.

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and calculations based on the total length of the approved routes and the total projected length of the Wall. See Ben Kaspi, *Ma'ariv*, 14 January 2004.

<sup>205</sup> Report of the Secretary-General prepared pursuant to General Assembly resolution ES-10/13, UN Doc A/ES-10/248 of 24 November 2003, dossier n. 52 accompanying the Secretary-General's submission.

*(i) Sections of Phase I and II Completed to Date*

239. Six sections of the Wall have been completed to date. (See Maps 12a-12k:

The Wall in the West Bank, Sections a-l)

Location	Length of Wall
• Salem/Mutilla:	31 km
• Jordan River/Mutilla:	9 km
• Salem/Masha (Salfit):	126 km
• Ramallah/Jerusalem:	9 km
• Bet Sahur/Bethlehem/Jerusalem (South):	10 km
• Abu Dis/Al 'Eizariya:	1 km
Total:	186 km

*(ii) Sections of Phase II Currently Under Construction*

240. Three sections of the Wall are currently under construction. (See Briefing

Map)

Location	Length of Wall
• Abu Dis/Al 'Eizariya:	14 km
• Mutilla/'Mehola' (Jordan River):	6 km
• Rantis:	5 km
Total:	25 km

*(iii) Approved Trajectory of Phase II*

241. Six sections of the Wall have been approved for immediate construction. The internal Jerusalem enclaves have been approved and announced around the suburbs of Jib-Bir Nabala, Al Ram, Anata, Hizma, Shufat Refugee Camp and around Al Walaja.

(See Briefing Map)

Location	Length of Wall
• Masha/'Ariel'/Ramallah:	132 km
• Mutilla/Tayasir (Jordan Valley):	14 km
• 'Gilo' (Bethlehem)/Um Diraj (A-Khalil):	129 km
• Double Walled Areas:	
—Qibya:	25 km
—Bet Ur:	42 km
• Internal Jerusalem Enclaves:	
—Jib:	17 km
—Al Walaja:	5 km
• Al Ram/Anata:	17 km
Total:	381 km

*(iv) Projected Trajectory of Phase III*

242. There are additional projected sections of the Wall recommended by the Israeli military. The Jordan Valley/Hebron Hills trajectory from Tayasir to Um Diraj is approximately 196 km. (See Map Briefing Map)

(f) Correlation of the Wall Route to the Green Line

243. Of the total length of all three phases (788 km), only 6 per cent of the Wall will be located within 100 meters of the Green Line, and that almost entirely on the Occupied Palestinian Territory. Of Phase I of the Wall constructed to date, only 22 per cent is located within 100 meters of the Green Line, and that almost entirely on Occupied Palestinian Territory.

244. Specifically, of the completed sections of Phase I and II built on the Occupied Palestinian Territory:

- 41 km of the Wall are within 100 m of the Green Line.
- 3 km of the Wall are between 100 m and 200 m of the Green Line.
- 17 km of the Wall are between 200 m and 1000 m of the Green Line.
- 124 km of the Wall are between 1000 and 8000 m from the Green Line.

**(3) The Regime of the Wall and Accompanying Measures and Effects**

(a) Physical Structure and Characteristics of the Wall

245. Sections of the Wall in Jerusalem, Abu Dis, Qalqiliya, Tulkarem, Nazlat Issa and Salem are 8 meters high and constructed of concrete (See Photographs 4, 5 and 12). The concrete Wall is lined with watch towers approximately 300 meters apart in areas such as Qalqiliya and Tulkarem. (See Photograph 3) There are 13 watch towers that surround the city of Qalqiliya alone. At the time of this Written Statement, approximately 9 km of the Wall, including 2 km in Jerusalem, is constructed of concrete. However, because of the current pace of construction of the Wall, these figures are increasing every day.

246. The majority of the Wall complex varies in width between 30 and 100 meters. In most cases areas bordering the Wall are considered closed military zones and access is severely restricted (See Photograph 15). The Wall complex includes a number of components. The dimensions of the following components are drawn from a cross-section of the Wall in Qalqiliya, but they are representative of much of the remainder of the Wall. (See Cross-Section of the Wall Complex graphic and Photographs 1 and 2) In the sequence of the cross-section, the components include:

- A stack of coils of barbed and razor wire, 5 meters deep and 3 meters high.
- A trench 3 meters deep and 1.5 meters wide.
- A paved road for Israeli patrols, 6 meters wide.
- A sand trace path to detect footprints, 5 meters wide.
- An electrified fence, with automatic sensors, 2.5 meters high on a 60 cm high concrete base.
- A dirt area 10 meters wide.
- Another trench 3 meters deep and 1.5 meters across.
- Another stack of 6 coils of barbed and razor wire, 5 meters deep and 3 meters high.
- On either side of the Wall complex are buffer zones and ditches.
- Surveillance cameras are installed along the Wall complex.
- The Israeli press has reported that ‘remote control’ automatic machine guns are to be installed in the Gilboa area.<sup>206</sup>

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<sup>206</sup> Felix Frish, “Revelation: The separation wall will shoot at terrorists ‘by itself’”, *Ynet*, 22 September 2003.

247. In addition to these components, there are 37 gates built along Phase I of the Wall. (See Map 13: The Wall and the Closed Zone, and Photographs 13 and 14) Approximately half of these gates are operating, though they have minimal and fluctuating opening times. (See Appendix 2: 'Closed Zone Permit System').

248. Overall, the physical Wall complex is integrated into a larger system of barriers, including natural topographical features, the road network, fixed checkpoints, 'flying' checkpoints, dirt mounds, cement blocks and gates on secondary roads. Altogether, this system of closure and enclosure is farther reaching than the linear features of the Wall itself. (See Map 11: The Wall and West Bank Topography, and Map 5: The Wall and Closure in the West Bank).

(b) Walled Enclaves

249. The Wall, if the three phases are completed, will wall-in almost the whole of the Palestinian population in two large Bantustan-like enclaves in addition to East Jerusalem. Phases I and II have actually created and will be creating several additional small enclaves along the route of the Wall. As such, the Wall creates several kinds of enclosed areas. Qalqiliya is the clearest example, as a city of 41,000 inhabitants that is completely encircled by the Wall and is closed off by a single gate (See Map 12b: The Wall in the West Bank, Section b: Qalqiliya Area). There are also 'double-Walled' areas in which a second wall extends from the principal Wall and encircles and encloses a certain area. For example, a second Wall is under construction west of Baqa Sharqiya. Land confiscation orders have also been issued for a second Wall east of Tulkarem. Land has also been confiscated and levelled for

construction of a second Wall around Qibya, as well as around Bet Ur (See Map 3: The Wall in the West Bank, and Briefing Map). These are distinct from enclaves, which are walled-in communities not connected to the principal Wall, such as Jib and Al Walaja (See Map 4: The Wall in East Jerusalem, and Jerusalem inset on Briefing Map). Enclosed areas will create harsher conditions of isolation because Palestinians will be separated in every way from their land and their surrounding communities.

(c) Property Demolition and Levelling of Land

250. In June 2002, the Israeli Civil Administration began issuing demolition orders for Palestinian houses along and near the route of the Wall, primarily under the pretext of lack of building permits.<sup>207</sup> For construction of Phase I of the Wall at least 280 demolition orders were issued to the communities of Nazlat 'Issa, Baqa a-Gharbiya, Baqa a-Sharqiya, Azzun 'Atma, Umm a-Rihan, and Dhaher al-Malah. Most of the property is residential.<sup>208</sup>

251. In addition to residential dwellings, approximately 21,002 *dunums* (5,251 acres) of land have been razed for construction of Phase I of the Wall. This includes agricultural infrastructure, cropland, greenhouses, a children's playground in Al Tayba, a secondary school in Ras 'Atiya, shops, and animal shelters.<sup>209</sup>

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<sup>207</sup> See Chapter 4 for Israeli planning policy in the West Bank.

<sup>208</sup> B'Tselem 2003 Report, p. 24.

<sup>209</sup> Palestinian Central Bureau of Statistics, *Survey on the Impact of Separation Wall on the Localities Where it Passed Through*, 2003, August 2003, p. 7.

(d) Establishment of a Closed Zone and a Permit System<sup>210</sup>

252. On 2 and 7 October 2003, the Government of Israel issued four military orders (No. 378) declaring the area, in the Occupied Palestinian Territory, between the Wall and the Green Line a 'Closed Zone', and establishing an onerous permit system for residents living in and workers accessing this area. The four orders are:

- Declaration Concerning Closing an Area No. S/2/03 (Seam Zone) –  
2 October 2003 (with attached map)
- General Permit to Enter the Seam Zone and to Stay in it – 2 October 2003
- Regulations Regarding Entry and Stay Permits to the Seam Zone –  
7 October 2003
- Regulations Regarding Permit for Permanent Residents in the Seam Zone –  
7 October 2003

These four military orders were distributed to local village councils on 9 and 10 October 2003.<sup>211</sup>

253. The military orders require Palestinian residents within the Closed Zone to obtain permits to live in their own homes, remain on their land, and to travel. Palestinians not residing in the Closed Zone but whose land, business, or work is situated inside the Closed Zone are also required to obtain permits.

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<sup>210</sup> On the implementation of the permit system in individual villages, see further Appendix: "Closed Zone Permit System," Part A; and generally, Local Aid Coordination Committee, *The Impact of Israel's Separation Barrier on Affected West Bank Communities*, Update No. 3, 30 November 2003 dossier no. 88 accompanying the UN Secretary-General's submission.

<sup>211</sup> For the full text of the four military orders, see the translation by the UN Office for the Coordination of Humanitarian Affairs, [www.reliefweb.int/hic-opt](http://www.reliefweb.int/hic-opt).



254. Although Palestinians are required to obtain permits to remain on their property, the permits do not constitute proof of ownership of land. The procedures detailed in the military orders for acquiring permits are not only complicated, but the criteria by which a permit is granted or denied is not specified. The burden of proof of permanent residency or access is on the Palestinian owner of property.

255. The military orders grant the Heads of the local Israeli District Coordinating Offices ('DCO') or a 'Committee' established by the Head of the Israeli Civil Administration in the Occupied Palestinian Territory full authority to determine Palestinians' ability and legal right to remain in their homes, on their land or to access their property, and for what period of time.

256. There is inconsistent, unpredictable and unreliable application of the permit system throughout the Closed Zone. To date, many Palestinians who are residents of villages situated within the Closed Zone have been denied permits. Moreover, the permits are issued for periods of only one, three or six months, requiring repeated renewal and enabling Israeli authorities to isolate and contain Palestinian communities. For the most part, permanent residency permits in the Closed Zone have not been issued for periods longer than six months, or exceptionally for one year.

257. Initially, significant numbers of Palestinians who depend on their land for their livelihood did not receive permits. Others in the same village who are not able to work the land, such as the elderly and small children, did receive permits. Also, within single families, some members received permits while others did not. In many cases, the principal income earner did not receive a permit, affecting entire families.

258. The Israeli Government has denied Palestinians permanent residency permits on the grounds of 'security', despite the fact that these Palestinians had been living and working in their villages for many years. No details were provided regarding the specific security threat posed by an individual whose application has been rejected. Denial of permits on 'security' grounds is the same justification that has been used by Israel to refuse Palestinians permission to enter the territory of the State of Israel or to travel abroad. By January 2004, most villagers had received permanent residency permits for varying periods of time. Some of those who had initially been denied permits on 'security' grounds were given permits for no longer than three months.

259. By mid-November 2003, as many as seventy-five per cent of residents of some villages had not received access permits.<sup>212</sup> A number of farmers had reduced or given up cultivating their crops due to lack of access. In some cases, villagers objected to the permit system altogether and refused to accept permits issued, for fear that this would legitimise the permit system and the measures associated with it, resulting in harsh punitive closure measures. Both the denial of permits and the required acceptance of permits are features of controlling the Palestinian presence in the Closed Zone.

260. The owners of farmland in the Closed Zone, as in other agricultural businesses, are highly dependent on labourers, generally young men under the age of thirty-five, to work the land. In the majority of cases only the owners of land have received permits, but labourers necessary for cultivating and harvesting crops have not. Consequently, land owners have not been able to cultivate and harvest crops, suffering more economic hardship, while more labourers are threatened with unemployment, exacerbating the already dire humanitarian situation in the Occupied Palestinian Territory. Young Palestinian men of a similar age are categorically denied permits to enter the territory of the State of Israel.

261. Most significantly, possession of a permanent residency or access permit does not assure in any way an individual's freedom of movement into or out of the Closed Zone. Gates along the Wall are closed most of the time, or open only for short fifteen minute periods and at the discretion of soldiers. The opening times fluctuate, and procedures are applied haphazardly.<sup>213</sup> Furthermore, two critical checkpoints near the Green Line have been moved 3 km deeper inside the West Bank, rerouting the movement patterns of villagers.

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<sup>212</sup> For the breakdown of permits by village, see Appendix: "Closed Zone Permit System," Part A.

262. During the month of October 2003 alone, the gates along the Wall were closed for approximately 18 to 22 days straight, primarily because of Israeli Jewish holidays. By closing these gates, Israel is applying the same procedures that it applies to crossing points between the Occupied West Bank and the territory of the State of Israel. This closure has had dire economic effects on the areas within the Closed Zone and those communities dependent on agricultural produce and poultry from these areas. For example, in the village of Falamyia alone, hundreds of citrus trees are dying due to lack of irrigation. In the village of Jayyus, approximately 90 per cent of the guava crop was lost. Also, one of the largest poultry farmers in the West Bank lost his entire stock of 8000 chickens. The same poultry farmer had previously lost 7000 chickens due to sustained gate closures in August 2003.

263. In some areas, gates re-opened around the weekend of 24 to 27 October 2003, but for only five to fifteen minute periods, two to three times a day. These hours are inconsistent with the farmers' working hours and limited vehicle use is permitted, if at all. Donkey-carts and tractors are primarily permitted, but not trucks necessary for transporting produce to market. Consequently, farmers cannot cultivate, harvest and market their crops. Moreover, mainly school children and teachers have been allowed to utilize the gates under the new permit procedures. Inconsistent opening times ensure that students and teachers are frequently late to class. Also, villages reliant on the delivery of water by tankers are being denied water, as tankers cannot complete their deliveries during the limited opening times. Generally, basic supplies—including poultry, bread and vegetables—are delivered by trucks, but because of the lack of permits and closure of gates the goods are moved by a 'back-to-

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<sup>213</sup> On gate closures in Jayyus and Qalqiliya, for instance, see Appendix: "Closed Zone Permit

back' system (unloading from one truck and reloading onto another at checkpoints) which increases transportation costs (See Photograph 23).

264. In other areas, such as the village of Attil (near Zayta) and the city of Qalqiliya, although farmers have been granted permits to access their land, the gates remain closed. For example, the gate for Attil and one of the gates for Zayta have never been opened since they were installed. Other gates have remained closed since 4 October 2003, such as the northern gate in Qalqiliya. In other cases, as a result of the Wall, the distance to farmers' land is great: for example in Daba, where farmers must make a 30 km round trip. Despite Israel's recent announcements of the easing of restrictions, including extended opening times of gates, the opposite is occurring. For example, near the Daba area in the Closed Zone, two smaller gates used for Bedouin school children were sealed shut in early January 2004.

265. Between the issuance and renewal requirements of permits, and the closures of gates and checkpoints, Israeli authorities are able to manage the ebb and flow of Palestinian life in and around the Closed Zone. Israeli measures and procedures are forcing Palestinian residents to reconsider the viability of remaining in areas where freedom of movement does not exist or where permits are not granted to landowners and/or labourers and the ability to pursue a livelihood is thus severely restricted.

266. In some cases, Palestinians have been told explicitly that they cannot live in their home area, leading to the de-population or displacement of parts of the Closed Zone. For example, one farmer in Jayyus living in the Closed Zone was told in early

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System," Parts B and C. Also see Photographs 16-22.

January 2004 by an Israeli officer that he and his family would have to move to the east of the Wall, with the rest of the villagers. In another case, an elderly Zayta farmer living in the Closed Zone received a permit, but his daughter, and principal labourer, did not. In yet another case, the Arab Ramadin (Bedouin) living in the Closed Zone were recently issued with military orders to stop work on six shelters where they are currently living (with demolition orders expected to follow, as happened in the nearby village of Wad Irsha). Israeli Civil Administration officers informed local officials in Qalqiliya that the Arab Ramadin would have to be relocated.

(e) De Facto Annexation and Confiscation of Land

267. The regime of the Wall separates the Palestinian people from the land between the Wall and the Green Line. This, along with the practical, administrative and other measures described above, amounts to *de facto* annexation of this land by Israel. If all 788 km of the Wall are completed, then more than 43.5 per cent of the West Bank will be located outside the Wall.<sup>214</sup> This will leave 56.5 per cent of the West Bank as enclosed Palestinian areas. Of this figure, 2 per cent of the West Bank will be inside walled enclaves. Such a *de facto* annexation is occurring in addition to the direct confiscation of land taking place in relation to the construction of the Wall.

- To date, 95 square km of land, or 1.6 per cent of the West Bank, is outside the completed section of Phase I of the Wall between Salem and Masha (Salfit).
- An additional 661 square km will be outside the approved Phase II of the Wall (including around 'Ariel', 'Adumim' and Al-Khalil (Hebron)). This is almost an additional 11.4 per cent of the West Bank, bringing the total land outside

the already constructed and approved Western sections of the Wall to 13 per cent of the West Bank.

- If the recommended sections of the Eastern Wall in Phase III are completed, then approximately another 1786 square km of land, or 30.5% of the West Bank, will be outside the Wall. This will bring the total area outside the Wall to 2541 square km, or 43.5 per cent of the West Bank, leaving 56.5 per cent as walled-in Palestinian areas.
- In Jerusalem, approximately 336 square km will be outside the Wall over a length of 145 km, which includes the settlement blocs of 'Giv'on', 'Adumim' and 'Etzion West'.

268. The majority of military orders issued for the seizure of land for the construction of Phase I of the Wall are valid until 31 December 2005. However, the indefinite extension of the orders is not prevented by military legislation. These orders state that the basis of land seizure is military necessity, and the orders become effective on the date of signature. Landowners, in general, learn of the confiscation orders only when notices are placed on their land, often just tacked to a tree, despite the obligation to deliver copies of the orders directly to landowners. This method of notification has proven arbitrary at best. While earlier orders detailed the appeals process, subsequent orders failed to explain the right to appeal, although affected parties can still file a petition to the Israeli High Court of Justice.

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<sup>214</sup> 'Outside' the Wall refers to land and communities located west of the Western Wall or east of the projected Eastern Wall. 'Inside' the Wall refers to land and communities to be encircled by the Wall or enclosed within enclaves.

269. The Israeli Military Commander, who is responsible for issuing the military orders for the confiscation of property, has the power to override any recommendations made by the Legal Advisor in appeals by landowners against the confiscation order. Therefore, although the landowner has the right to appeal against the confiscation order, the appeal process is problematic. Additionally, many affected landowners have experienced difficulties in proving ownership, because the land registration system in the West Bank is not updated.<sup>215</sup>

270. Despite the fact that military orders provide that landowners have the right to request compensation for confiscation of land, no process by which this may be done is in place. According to the Israeli Defense Forces, landowners may seek compensation for damage to land and structures as a fixed sum, in addition to a fee for usage of the land. The Israeli Ministry of Defense calculates the rate of compensation, which only covers property that has been confiscated or damaged for construction of the Wall and depth barriers. Property that has been damaged due to the landowner's inability to access the property in order to cultivate it is not included in calculations of compensation. To date, the majority of landowners have not applied for compensation, primarily from fear that agreeing to take the compensation would legitimize the confiscation process.

(f) Displacement and Other Demographic Effects

271. Currently, approximately 13,500 Palestinians are located outside Phase I of the Wall. However, the number will rise to 343,300 if all three phases are completed.

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<sup>215</sup> See Chapter 4.



- There are currently 15 Palestinian villages with approximately 13,500 residents located outside the completed sections of Phase I of the Wall.
- There will be an additional 60 Palestinian villages and towns located outside the sections of the Wall that are under construction or that have been approved in Phase II. The total number of 75 villages and towns constitute 13 per cent of all recognized West Bank Palestinian localities. The total number of inhabitants will be nearly 336,000 Palestinians (some 65 per cent made up of East Jerusalem residents), comprising about 14.5 per cent of the Palestinian population of the West Bank.
- With completion in the Jordan Valley of Phase III of the Wall, there will be a total of 91 Palestinian villages and towns located outside the Wall. This will bring the total number of inhabitants located outside the Wall to 343,300 comprising 14.9 per cent of the Palestinian population of the West Bank.
- In addition, 156 Palestinian towns and villages will be directly affected<sup>216</sup> by the Wall because they will be cut off from their land. The inhabitants of these towns and villages number 522,000, comprising 22.6 per cent of the Palestinian population of the West Bank. Altogether, the number of Palestinians who will be located outside all three Phases of the Wall or who will have lost land to the other side of the Wall will be 865,300, or 37.5 per cent of the Palestinian population of the West Bank.

272. The Wall will isolate Palestinians living in the Occupied Palestinian Territory, including East Jerusalem, intensifying the economic, social, and cultural

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<sup>216</sup> 'Directly affected' communities refers to either those villages located outside the Wall or those villages located inside the Wall, but whose land is located outside the Wall. Directly affected

hardships they already face as a result of a strict closure policy that has been in effect since the beginning of the second Palestinian intifada in September 2000.<sup>217</sup> The Wall disconnects Palestinian populations, concentrating and confining separated parts of the community in different areas, surrounding them with barriers and military personnel and restricting their movement outside of their confined areas in a controlled manner.

273. The implications of the Wall on all aspects of the social fabric of Palestinian life are wide reaching. This has already been evidenced in the creation of pockets of isolated and vulnerable population clusters that have been severed from basic social services and networks, populations that have already suffered greatly over the past three years from a strict Israeli imposed closure policy.<sup>218</sup> (See Map 5: The Wall and Closure in the West Bank)

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communities include: in Phase I, 26 localities with 73,000 individuals; in Phase II, 105 localities with 311,000 individuals; and in Phase III, 25 localities with 138,000 individuals.

<sup>217</sup> Between 11-19 August 2002, Ms. Catherine Bertini, Personal Humanitarian Envoy to the UN Secretary-General, travelled to the region in order to assess the humanitarian situation. In her mission report, Bertini noted, "The situation is a crisis of access and mobility. Palestinians are subject to a variety of closures, curfews, roadblocks and restrictions that have caused a near-collapse of the Palestinian economy, rising unemployment, increased poverty, reduced commercial activities, limited access to essential services (such as water, medical care, education, emergency services) and rising dependency on humanitarian assistance. The restrictions affect almost all activities, rendering most Palestinians unable to carry out any semblance of a normal life and subject to daily hardships, deprivations and affronts to human dignity (...) There is a consensus among all parties, and this report confirms, that the current regime of closures and curfews is having a devastating impact on the Palestinian population, both on their economy and the humanitarian situation." Catherine Bertini, Personal Humanitarian Envoy of the UN Secretary-General, *Mission Report: 11-19 August 2002*, pp. 1 & 4, [www.reliefweb.int/library/documents/2002/un-opt-19aug.pdf](http://www.reliefweb.int/library/documents/2002/un-opt-19aug.pdf). The report appears as Annex 14 to this Written Statement.

<sup>218</sup> The Report of the Mission to the Humanitarian and Emergency Policy Group (HEPG) of the Local Aid Coordination Committee (LACC) *The Impact of Israel's Separation Barrier on Affected West Bank Communities*, (4 May 2003), identified four main areas of concern in the construction of the Wall regarding social effects: 1. The creation of pockets of very isolated and vulnerable population clusters with a highly inadequate social infrastructure, compounded by a thin local distribution of NGO and UNRWA service providers as compared to other areas of the West Bank; 2. Aggravated stress on local public service providers, due to further duplication and dispersal of facilities, staff and resources in order to accommodate mobility restrictions; 3. Additional erosion of educational enrolments and attainment among the affected population and, in particular, in rural communities, adding to the ranks of a 'lost generation' of Palestinian children; 4. Increased vulnerability of the chronically ill and individuals requiring emergency and specialist care. Similarly, increased vulnerability of women and

274. According to a household survey conducted by the Palestinian Central Bureau of Statistics in October 2003, 91% of households surveyed caught between the Wall and the Green Line indicated a negative impact on social activities, while 83.3% of households surveyed indicated a negative impact on cultural activities.<sup>219</sup> Access has become one of the foremost factors in determining sustainability of social services in affected areas. Some of the most frequently reported problems of accessing services occur in relation to education, health, and water resources, in addition to solid waste disposal.<sup>220</sup>

275. Social conditions already are deteriorating near the completed sections of the Wall. As with the economy, this deterioration provides a glimpse of the conditions that would be likely to prevail throughout the West Bank if the Wall were completed. The continued delivery of essential social services in affected communities depends critically on the ability of providers and targeted beneficiaries to circumvent Israeli controls and checkpoints, for example, by using agricultural back roads and open fields. According to officials at the Palestinian Ministries of Health and Education in Qalqiliya and Tulkarem, for example, this has been the case for health staff travelling to carry out regular vaccinations, and teachers and doctors commuting to village

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children. (p.37). The Report is among the dossiers submitted by the Secretary-General, as Dossier no. 85.

<sup>219</sup> Palestinian Central Bureau of Statistics, *Impact of the Separation Wall on the Socioeconomic Conditions of Palestinian Households in the Localities in which the Separation Wall Passes Through, (October 2003)*, December 2003, p. 5.

<sup>220</sup> Follow-Up Report to the Mission to the Humanitarian and Emergency Policy Group (HEPG) of the Local Aid Coordination Committee (LACC), *The Impact of Israel's Separation Barrier on Affected West Bank Communities: Access Issues in "Stage A Localities" – Update Number 3*, 30 November 2003, p. 12. The Report appears in the dossiers submitted by the Secretary-General, as Dossier no. 88.

schools and clinics.<sup>221</sup> Villages located between the Wall and the Green Line are the communities most directly affected by the Wall. The completion of the Wall will have a devastating affect on the Palestinian community, further degrading the Palestinian economy, increasing unemployment and poverty, reducing commercial activities, limiting access to essential services (such as education, medical care, emergency services, water) and increasing dependency on humanitarian assistance.

276. The Wall will have serious implications for Palestinians as regards to residence and migration, primarily the destruction or loss of household structures and displacement from areas most affected by the Wall on both sides. By October 2003, 5.0% of households west of the Wall and 4.9% on the eastern side of the Wall changed or intended to change their place of residence.<sup>222</sup> In the northern West Bank, a total of 402 households were displaced due to the Wall, 113 of which are in the Jenin Governorate, totalling 2,323 individuals.<sup>223</sup> Of particular concern to local inhabitants is the possibility of increased uprooting and displacement as a result of harsher living conditions, including high levels of social and economic marginalization, property demolitions and protracted access restrictions in threatened villages. High-risk communities include 'Azzun 'Atma, Ras at Tira, and Ad Dab'a in

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<sup>221</sup> Report of the Mission to the Humanitarian and Emergency Policy Group (HEPG) of the Local Aid Coordination Committee (LACC), *The Impact of Israel's Separation Barrier on Affected West Bank Communities*, (4 May 2003), p. 38. The Report appears in the dossiers submitted by the Secretary-General, Dossier no. 85.

<sup>222</sup> Palestinian Central Bureau of Statistics, *Impact of the Separation Wall on the Socioeconomic Conditions of Palestinian Households in the Localities in which the Separation Wall Passes Through (October 2003)*, December 2003, p.5.

<sup>223</sup> Palestinian Central Bureau of Statistics, *Survey on the Impact of Separation Wall on the Localities Where it Passed Through, 2003*, Press Conference on Survey Results, (August 2003).

Qalqiliya, and Khirbet ‘Abdallah al Yunis, Dhaher al Malih, and Umm ar Rihan in Jenin, with an estimated total population of approximately 2,700 people.<sup>224</sup>

277. Destruction caused to houses as a result of Wall construction is also a determining factor in population displacement. Housing units amounting to 19.3% of households located west of the Wall and 30.1% of households east of the Wall were totally or partially destroyed. 8.7% of households on the west side of the Wall indicated that their houses were subject to harm totally or partially, while 23.1% in the east indicated the same.<sup>225</sup>

278. Additional possible factors leading to internal displacement as a consequence of the Wall’s construction may include:

- a) Migration of individuals or families from their places of residence due to damage to, or complete destruction of these residences;
- b) Migration of either individuals or families possessing Israeli identification from the West Bank to Israel;
- c) Attempted migration of individuals or families to or from those areas believed to fall in between the Wall and the Green Line;
- d) Movement of traders to those areas in close proximity to planned terminals in the Wall, in order to facilitate the flow of goods between the West Bank and Israel.<sup>226</sup>

279. Population migration as a consequence of Wall construction in the northern West Bank is occurring. Migration to Israel of males with Israeli Identification Cards has been the most common type of population movement, and was generally initiated

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<sup>224</sup> Report of the Mission to the Humanitarian and Emergency Policy Group (HEPG) of the Local Aid Coordination Committee (LACC), *The Impact of Israel’s Separation Barrier on Affected West Bank Communities*, (4 May 2003), p. 46. The Report appears in the dossiers submitted by the Secretary-General, Dossier no. 85.

<sup>225</sup> Palestinian Central Bureau of Statistics, *Impact of the Separation Wall on the Socioeconomic Conditions of Palestinian Households in the Localities in which the Separation Wall Passes Through (October 2003)*, Press Conference on Survey Results, (December 2003).

<sup>226</sup> Follow-Up Report to the Mission to the Humanitarian and Emergency Policy Group (HEPG) of the Local Aid Coordination Committee (LACC), *The Impact of Israel’s Separation Barrier on*

once construction began in earnest.<sup>227</sup> However, increased isolation, lack of social services, property requisitioning and destruction may lead to greater population displacement as construction of the Wall continues.

**(4) Correlation of the Route of the Wall to Settlements, Roads and Water Resources**

**(a) Relationship of the Wall to Settlements and Roads**

280. The Dugard Report (2003) (para. 12) makes the following observation about the relationship of the Wall and settlements:

“The Wall must be seen in the context of settlement activity and the unlawful annexation of East Jerusalem. Settlements in East Jerusalem and the West Bank are the principal beneficiaries of the Wall....”

In the words of an Israeli expert on West Bank topography and planning, the Wall is part of a hermetical logical chain of excessive territorial-based ‘security’ pursued by Israel:

“It started with the making of a line of settlements along the Jordan Valley, then continued with the seeding of strategic settlement points across the depth of the territory, then with an attempt to collect all points within separate and convoluted barrier lines.”<sup>228</sup>

281. The constructed and approved sections of the Wall situate approximately 80 percent of the settler population to the west of the Wall.<sup>229</sup> With the projected eastern Wall along the Jordan Valley, an additional 8 per cent of settlers will be situated outside of the Wall. (See Map 9: The Wall and Israeli Settler Population in the West

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*Affected West Bank Communities: Jenin Governorate – Update Number 1*, (31 July 2003), p. 16. The Report appears in the dossiers submitted by the Secretary-General, Dossier no. 86.

<sup>227</sup> *Ibid.*, p. 21

<sup>228</sup> Eyal Weizman, “Ariel Sharon and the Geometry of Occupation, Part 3,” 15 September 2003, p. 7, [www.opendemocracy.net/themes/article.isp?id=2&articleID=1476](http://www.opendemocracy.net/themes/article.isp?id=2&articleID=1476).

<sup>229</sup> This figure is based on calculations from the 2003 settler population figures drawn from the Israeli Knesset Research Centre. Israeli figures may differ because Israel illegally annexed East Jerusalem and therefore does not consider settlers in East Jerusalem as part of the population of the Occupied Palestinian Territory.

Bank). The completed, approved and projected route of the Wall delineates Israeli-defined geo-strategic areas, and hence, Israel's integrated system of settlements and by-pass roads.<sup>230</sup>

282. The route of the Wall is pushed away from the Green Line, apparently to incorporate the main east-west by-pass roads and north-south linkages for these settlements. For example, the route of the Wall in the 'Alfe-Menashe' settlement area corresponds to the settlement road under construction linking the existing Highway 5 and 'Alfe-Menashe' to the new Highway 55, also under construction. (See Qalqiliya inset on Briefing Map, and Map 12b: The Wall in the West Bank - Section b: Qalqiliya Area). The route of the Wall delineating the 'Ariel finger' of settlements encompasses the existing roads, namely Routes 5, 55 and the current extension of a new road 55 under construction. Similarly, in Phase II, Route 60, which is situated to the west of Bethlehem, serves to link the settlements of 'Har Gilo' and 'Gilo' (South of Jerusalem) with the 'Etzion' bloc, situated south. (See Bethlehem West inset on Briefing Map).

283. The route of the Wall facilitates continued settlement expansion. It serves to consolidate the presence and viability of settlements in areas regarded by Israel as of strategic importance to it. The planned expansion areas and the regional jurisdictional areas of the settlements correspond to the approved and projected routes of the Wall, indicating that the route of the Wall has been determined in order to accommodate

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<sup>230</sup> These areas include a 10-15 km belt running the length of the Jordan Valley, a strip running north of the Jerusalem-Jericho road reaching and including the Latrun salient, the entire Judean desert from Mt. Hebron to the Dead Sea, Jerusalem, and a wedge east of Qalqiliya and Tulkarem running north-south along the ridge to separate the Palestinian population in the Occupied Palestinian Territory from the Palestinians living inside Israel.

continued settlement expansion in 'authorized areas' as well as future settlement development. (See Map 8: The Wall and Israeli Settlement Expansion in the West Bank)

284. For example, the enclosure of Qalqiliya by the Wall into a 'bottle-neck' is apparently caused by the 'Zufin' and 'Alfe Menashe' settlements situated to the north and south of Qalqiliya, respectively, and by the Israeli settlement expansion areas (as shown by blue shades on the inset map of Qalqiliya on the Briefing Map). Palestinian access to and use of land must first be limited and then denied if these settlements are going to be able to expand geographically in accordance with these authorized plans, and settlers are to enjoy movement and access to and from the territory of the State of Israel. For example, the settlements of 'Zufin' and 'Alfe Menashe' are both planned to expand to approximately six and two times, respectively, their current sizes on Palestinian cultivated areas. (See Qalqiliya inset on Briefing Map, where the blue areas represent planned settlement expansion.) Two illustrative examples in Phase II are the settlements of 'Ofarim' and 'Efrat'. The route of the Wall will enable the settlement of 'Ofarim' to fully realize its planned growth to approximately eleven times its current size, and the settlement of 'Efrat' to approximately three and a half times its current size. (See Bethlehem West inset on Briefing Map; see also Map 8: The Wall and Israeli Settlement Expansion). Similarly, in order to build the by-pass roads for use by Israeli settlers, Palestinian access to and use of land must be denied.<sup>231</sup>

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<sup>231</sup> See Chapter 4 on Israeli land seizure policies for construction of by-pass roads and settlements.



285. In East Jerusalem, preparations have begun for two new settlements, 'Nof Zahav' and 'Kedimet Zion', that are situated to the west of the Wall. In the area northwest of Jerusalem, the location and route of the double-Walled enclave areas correspond with the Israeli plans for expanding and linking the settlements of the 'Givon settlement bloc'<sup>232</sup> and facilitate planned northern expansion of the west Jerusalem suburb of Mevaseret Zion across the Green Line on the Palestinian village lands of Beit Iksa and Beit Surik.

286. The settlement areas in which the majority of tenders were issued by the Israeli Ministry of Housing and Israeli Land Authority in 2003 also correspond to the route of the Wall. Of the known 2,127<sup>233</sup> construction tenders issued by these two government agencies, all are for settlements<sup>234</sup> situated to the west of the Wall, with the exception of tenders for the 'Neve Deklim' settlement in Gaza and for 'Ma'ale Adumim' in the West Bank, around which the route of the Wall is not yet determined. Furthermore, publication of the final route of the Wall has reportedly increased housing sales in settlements such as 'Modi'in Ilit,' and 'Beitar Ilit,' which are located to the west of the Wall.<sup>235</sup>

287. The Wall entrenches the pattern of separation created by Israel's settlements in the Occupied Palestinian Territory and the grid of by-pass roads built to link these

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<sup>232</sup> This bloc includes the settlements of 'Bet Horon,' including 'Givon Ha Hasasha,' 'Givat Ze'ev,' 'Har Adar,' and 'Ha Samuel.'

<sup>233</sup> The Israeli Government publishes these tenders in the Israeli press and on the Ministry of Housing and Construction web-site. See Foundation for Middle East Peace, "Snapshots of Settlement Expansion", Report on Israeli Settlement in the Occupied Territories, Vol. 13, No. 6, November – December 2003, p. 12. In addition, 400 tenders for 'Har Homa' were announced in late September 2003.

<sup>234</sup> These settlements are 'Ariel,' 'Beitar Illit,' 'Efrat,' 'Elkana,' 'Har Adar,' 'Givat Ze'ev,' 'Har Homa,' and 'Karne Shomron'.

settlements with each other and to the territory of the State of Israel. For example, the decision to wall Qalqiliya from the east allows the free movement of settlers between the area of the settlements of 'Ariel' and 'Alfe-Menashe' and the Green Line by limiting Palestinian access on the old Route 55 in the Occupied Palestinian Territory.<sup>236</sup>

288. In Phase II, the approved route of the Wall which retains the 'Ariel finger' of settlements will permanently prevent Palestinian access to this area. Currently, access in this area is regularly denied or severely restricted because of the presence of Route 5 and Route 446, Israeli military patrols, and threats of violence by Israeli settlers residing in the 'Brukhin' settlement. (See Briefing Map, 'Ariel Finger'). Similarly, in the southern West Bank, Route 60, which is the main thoroughfare linking Bethlehem to Al-Khalil (Hebron), will be situated to the west of the Wall, permanently restricting Palestinian access to this road.<sup>237</sup>

289. Increasing the trend towards further separation and isolation, the route of the Wall is creating new artificial patterns of movement of Palestinian people and goods. The route of the Wall encloses Qalqiliya from the south and Habla from the north, ensuring that Palestinians are not able to cross or utilize settler by-pass Route 55 in

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<sup>235</sup> Foundation for Middle East Peace, "Settlement Time Line," *Report on Israeli Settlement in the Occupied Territories*, Vol. 14, No. 1, January-February 2004, p. 13.

<sup>236</sup> Since the construction of the Wall, the eastern gate at Qalqiliya has been the only possible point of entry into and exit out of Qalqiliya. Access is controlled by Israeli military presence. The construction of the eastern gate/checkpoint has restricted or denied Palestinians access to Route 55, which is the main road from Qalqiliya leading eastward to Nablus, and sections of which are also used by Israeli settlers. Ze'ev Schiff, "Fence route is moved, scrapping 2 enclaves," *Ha'aretz*, 12 December 2003.

<sup>237</sup> Currently, Palestinians are only allowed to use parts of Route 60 if they have been issued a permit. Route 60 was originally built as the main north-south artery linking Palestinian towns prior to the 1967 occupation.

order to access their lands.<sup>238</sup> Similarly, because of the construction of the Wall in the Occupied Palestinian Territory near the 'Ariel finger', the residents of the Qalqiliya area wishing to reach Nablus will have to detour significantly to do so. Rather than travelling 31 km directly to Nablus, the residents will have to travel around the 'Shomron' settlements and the Wall, travelling east to Azzun, north to Jayyus, up to Kufr Jammal, then eastwards toward Nablus via Funduk or Beit Lid, increasing the distance by a minimum of 46 km, an increase of one-half on the distance of the direct route. Likewise, the distance between Bidya to Salfit via Harris is approximately 11.8 km without the Wall and Settlements. The reroute around 'Ariel' settlement necessitates a detour via Azzun, Kufr Sur, Funduk, Immatin, Huwara and Iskaka to arrive at Salfit after a 61.3 km journey, approximately five times the distance of the direct route. (See Briefing Map)

(b) Relationship of the Wall to Water Resources

290. The West Bank contains three main water aquifers: the Western, the Eastern, and the North-Eastern. The Western and North-Eastern aquifers extend beyond the Green Line and are shared with Israel. (See Map 10: The Wall and Water Resources in the West Bank)

291. The soil of the West Bank is rocky and difficult to drill; well field quality varies greatly from one location to another. The area along the northern and western edge of the West Bank where the Wall is being constructed contains some of the

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<sup>238</sup> Many of the settler by-pass roads serve as functional barriers by their design. Some of the roads do not have access/entry points in Palestinian areas. Other roads have fences or walls that run parallel to the road, in effect, dividing villages from each other and preventing access across the road for the Palestinian populated areas situated near the roads. For example, the Palestinian town of Old Beit Hanina is now severed from Beit Hanina by a fenced-in highway, Highway 1, which links West

Western aquifer's best well fields. Accessing the water is much easier and cheaper in this area of the West Bank than further east.

292. Groundwater is the main source of water in the West Bank. Most of the water supply for Palestinian use in the West Bank is secured from groundwater resources through wells.

293. The construction of the Wall is having a severe impact on water access, use, and allocation, particularly for the communities located close to the Wall's path and for those communities who are now constricted between the Wall and the Green Line.

294. Water access problems have already been caused and are likely to worsen as the construction of the Wall is completed. There are instances where residents' houses lie east of the Wall while their wells and water networks lie entirely west of the Wall. In other instances, residents' wells are east of the Wall while their farm lands are west of the Wall. This has entailed and will continue to entail a considerable reduction in the use of water by West Bank Palestinians. World Bank field examinations have identified several difficulties concerning water access, especially by private and communal owners of wells.<sup>239</sup>

295. As a result of diminishing access to water sources and farm lands, the Palestinian agricultural economy will suffer significantly. Once the western section of

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Jerusalem with Israeli settlements in north-west Jerusalem. Palestinian residents of Old Beit Hanina must make long detours or cross through a tunnel under the Highway to access Beit Hanina.

<sup>239</sup> See *The Impact of Israel's Separation Barrier on Affected West Bank Communities*, Report of the Mission to the Humanitarian and Emergency Policy Group of the Local Aid Coordination Committee, 4 May 2003.

the Wall is completed, it is estimated that the annual value of agricultural production in the West Bank is predicted to decrease by 22.8 percent and by a total of 41.7 percent once the eastern section of the Wall is constructed.<sup>240</sup> This will also lead to the loss of the current status of food security in the West Bank, which might lead to further malnutrition-related diseases among West Bank children.<sup>241</sup>

296. The current course of the Wall along the northern and western portions of the West Bank affects Palestinian allocations of shared water resources. The 2 km to 6 km wide strip along the northern and western West Bank contains critical hydrological well fields, which now fall between the Wall and the Green Line.

297. Projections of the eastern course of the Wall suggest that when the Wall is completed, the West Bank will no longer be a co-riparian to the Jordan River or the Dead Sea. The Jordan Valley is potentially one of the main areas for Palestinian agricultural expansion. If Israel were to construct the eastern section of the Wall, it would obstruct Palestinian access to the water of the Jordan River, and this potential of the valley would be undermined. Furthermore, the territory marked for the Wall in and around East Jerusalem and the Jordan Valley areas commonly includes the eastern slopes that control the headwaters of the eastern aquifer, where Israel has already drilled many wells to supply its settlements in the OPT.

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<sup>240</sup> Applied Research Institute Jerusalem, "Undermining Peace, Israel's Unilateral Segregation Plans in the Palestinian Territories," December 2003.

<sup>241</sup> Preliminary results of the first survey conducted by CARE International in August 2002 indicated an increase in the number of malnourished children with 22.5 percent of children under the age of 5 suffering from acute or chronic malnutrition in the West Bank and Gaza.

(5) **The Social and Economic Effects of the Wall**

(a) Social Effects of the Wall

298. The Wall is having a significant impact on the social fabric of communities in the Occupied Palestinian Territory, such as traditional and kinship ties, marriage, social and religious activities, and restriction on movements for women. Social relations and activities of Palestinian communities living to the west of the Wall have been more affected than those living to the east of the Wall. A Palestinian Central Bureau of Statistics ('PCBS') survey on communities affected by the Wall found that 90.6% of households west of the Wall were not able to visit their relatives, compared to 63.5% living east of the Wall. The ability to conduct social and cultural activities has been negatively impacted for 83.3% of households surveyed to the west of the Wall and 48.4% of households to the east of the Wall. The Wall has become an obstacle for marriage between individuals living on opposite sides of the Wall for 50.4% of those surveyed. Family members have been isolated from one another, with 50.9% of communities living to the west of the Wall already separated from their relatives and 37.3% living east of the Wall separated from their relatives.<sup>242</sup>

299. No permits are given to pursue family relationships. Members of different villages on both sides of the Wall are related through kinship or marriage. They are part of either core families, or larger entities, like an *a'ella'* (extended family) or '*hamula*' (clan). The Wall has separated several communities from their previously close-by relatives.<sup>243</sup>

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<sup>242</sup> Palestinian Central Bureau of Statistics, *Impact of the Separation Wall on the Socioeconomic Conditions of Palestinian Households in the Localities in which the Separation Wall Passes Through (October 2003)*, Press Conference on Survey Results, (December 2003), p. 5.

<sup>243</sup> For example, the majority of the population of Khirbet Jubara stems originally from the village of A Ras. 250 people migrated to their nearby gardens in 1967/1972 to better cultivate their

300. As a result of construction of the Wall, many family members are now isolated from each other, and villages that traditionally inter-married have been unable to do so. People of Nazlat Isla, a village now located west of the Wall, have social relations to all nearby villages as well as to Baqa al-Sharqia on the Green Line. Approximately 70 of the male villagers have married across the Green Line. In accordance with prevailing custom, most of these women moved to the West Bank to live with their husband's family. Yet, now with construction of the Wall, some men have rented places across the Green Line to live there once the Wall is completed. Women from Baqa al-Sharqia who have married in Israel have all moved across the Green Line. For them it becomes difficult now to return and visit their families.<sup>244</sup>

301. Many of the smaller Palestinian villages trace their origin from larger towns in the West Bank. Though their members have migrated at some point in history, they still maintain relationships with the town. Often the inhabitants of far off areas stem from the same '*hamula*'. Religious and ceremonial occasions, especially weddings and funerals, require the attendance of members of the larger family, to pay respect and to contribute money to the event, significant features of these social occasions. Especially in societies with a weak state structure, such social occasions are

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land. In the 1970s Khirbet Jubara became administratively an independent village. However, family ties and marriage relations have remained as close. People from both villages still have an identity as 'one' village. They still share economic resources, and are integral part of a 'social network', in which family members support each other. Only recently, the villages were geographically divided through the Wall. Khirbet Jubara is now located in the Closed Zone. Since the construction of the Wall, people from Khirbet Jubara can access A Ras through the gate that is opened twice a day. From A Ras, only farmers with a permit are allowed to visit their land in the Closed Zone, although these permits are not permanent and may not be continuously renewed. Other villagers are not allowed to cross into Khirbet Jubara and visit their relatives.

<sup>244</sup> Interview with Abu Ashraf, member of village council in Nazlat Isa, 6 November 2003. Follow-Up Report to the Mission to the Humanitarian and Emergency Policy Group (HEPG) of the Local Aid Coordination Committee (LACC), *The Impact of Israel's Separation Barrier on Affected*

extremely important to continuously redefine the social cosmos of a people and emphasize their common identity.<sup>245</sup>

302. A significant portion of the Palestinian community holds close ties to land and activities involving land. With increasing confiscations of land for construction of the Wall, activities related to land use have diminished. For example, harvesting olives has traditionally not only played an integral role in livelihood activity for communities, but has also served to draw communities together during harvest time through the act of harvesting and associated cultural activities. Communities that have lost agricultural land to the Wall can no longer participate in such activities.

303. The construction of the Wall is having a particular impact on women and their mobility, given social norms relating to travel (the widespread unacceptability of travelling alone after dark or staying away from home for the night, for example). Women who have married outside their village are facing increasing difficulty in visiting relatives. A growing tendency to allow women to only marry men on the same side of the Wall is emerging in communities that have become isolated by the Wall, as is a trend to marry girls young as a result of Wall restrictions, so that the father can avoid having to send them to school or university under insecure circumstances.<sup>246</sup>

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*West Bank Communities: Access Issues in "Stage A Localities" – Update Number 3*, (30 November 2003), p. 14.

<sup>245</sup> The population of Ras Tireh and Ras Atyia originally stems from Kaffr Thulth and share the same *hamula*. Now the Wall is separating the villagers in Ras Tireh from nearby close relatives in Ras Atyia and other related villages, such as Kaffr Tulth. People in Ras Tireh state that they feel very isolated. Only a far-located gate allows them access to Ras Atyia, while relatives from Ras Atyia cannot cross into their village.

<sup>246</sup> Follow-Up Report to the Mission to the Humanitarian and Emergency Policy Group (HEPG) of the Local Aid Coordination Committee (LACC), *The Impact of Israel's Separation Barrier on*



304. The Wall is taking a psychological toll as well on Palestinians affected by it, many of whom have expressed a sense of hopelessness with regard to the future of their communities. Initial studies indicate that psychological impacts of the Wall on affected populations include depression, feelings of anxiety and hopelessness, feelings of isolation, thoughts of suicide, and symptoms of Post-Traumatic Stress Disorder. These effects have resulted from a lack of social support systems due to isolation, limited social relations as people are confined to their homes, disintegration of family and social relationships, and an increase in unemployment and poverty.<sup>247</sup>

(b) Economic Effects of the Wall

(i) *Macro Economic Impact*

305. The Wall and its attendant policies deprive Palestinians of their economic resources, and their ability to efficiently utilize them to serve Palestinian development interests. Palestinian economic resources such as land, water, labour and skills are either being confiscated by the construction of the Wall or remain unemployed due to lack of access.

306. Once completed, the Wall will create separate enclaves that are not territorially adjacent to each other. Even if movement between them is allowed, under administered conditions, the Palestinian national market will effectively be cut into a

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*Affected West Bank Communities: The "Jerusalem Envelope" – Update Number 2* (30 September 2003), p. 17. The Report appears in the dossiers submitted by the Secretary-General, Dossier no. 87.

series of disconnected markets. The ability to trade services and goods or to seek jobs in the entire Palestinian market will become unpredictable and expensive due to Israeli denial of unrestricted movement of people and goods.

307. The Wall will impair Palestinian economic development and Palestinian economic planning as its route confiscates and isolates Palestinian economic resources and dissects the Palestinian market. Thousands of Palestinians depend on farming as their main livelihood, particularly in the northern West Bank governorates, where nearly 40 percent of the West Bank's agricultural land is located.<sup>248</sup> The Wall already is depriving Palestinians of a portion of this means of subsistence through the confiscation of thousands of *dunums* of rich agricultural land that have already been destroyed or isolated. Even if the Israeli system of agricultural gates were implemented, the increased travel time and expense involved would drive up transaction costs significantly. The uncertainty about the future status of the land also discourages cultivation and may result in even higher prices for agricultural products.

308. With the inability to produce competitively and to access foreign markets with minimum expenses, the Palestinian market, as in the post 1967 era, will become hostage to the 'competitive' Israeli market. Israeli exports will become more competitive than Palestinian goods; and foreign goods will become easier to import through an Israeli interlocutor. The economic reality that would be created would

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<sup>247</sup> Palestinian Counselling Center, *Mental Health Effects on the Israeli Apartheid Wall on Palestinians in the Qalqiliya District: Pilot Questionnaire* by the Palestinian Counselling Center, October 2003, p. 6.

<sup>248</sup> Report of the Mission to the Humanitarian and Emergency Policy Group (HEPG) of the Local Aid Coordination Committee (LACC), *The Impact of Israel's Separation Barrier on Affected West Bank Communities*, 4 May 2003, p. 43. The Report appears in the dossiers submitted by the Secretary-General, Dossier no. 85.

make opting for disengagement from Israel and diversifying relations in the ‘future’ very difficult.

*(ii) Micro Economic Impact*

309. In the process of constructing Phase I of the Wall in departure from the Green line, Israel has confiscated Palestinian land, destroyed Palestinian economic resources, and impeded Palestinian access of goods, vehicles and people to Palestinian areas.

310. Land Confiscation: Inhabitants of 37 West Bank communities, with a total population of 108,776, lost lands for the construction of the Wall.<sup>249</sup> By August 2003, over 124,323 *dunums* (31,081 acres) of land under private Palestinian ownership, and mostly containing orchards, field crops and greenhouses, were confiscated to erect the Wall.<sup>250</sup>

311. Destruction of Economic Resources: For the construction of the first phase of the Wall, more than 100,000 trees were uprooted (of which 83,000 were olive trees), causing serious damage to more than 2,500 acres of land, and more than 30,000

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<sup>249</sup> Follow-Up Report to the Mission to the Humanitarian and Emergency Policy Group (HEPG) of the Local Aid Coordination Committee (LACC) - “The Impact of Israel’s Separation Barrier on Affected West Bank Communities: Access Issues in “Stage A Localities” – Update Number 3”, 30 November 2003, p. 6. The Report appears in the dossiers submitted by the Secretary-General, Dossier no. 88.

<sup>250</sup> Palestinian Central Bureau of Statistics, *Survey on the Impact of the Separation Wall on Localities Where it Passed Through, 2003*, (August 2003), p. 7. According to the survey, 62,623 *dunums* (15,656 acres) contained olive trees, 18,522 *dunums* (4,631 acres) were cropland, 9,800 *dunums* (2,450 acres) were pastureland and 8,008 *dunums* (2,002 acres) were cultivated with citrus trees. Additionally, 21,002 *dunums* (5,251 acres) of privately owned land were levelled.

meters of irrigation network and water pipelines have been destroyed<sup>251</sup> (See Photographs 6-8). In the process of constructing the first phase of the Wall, commercial facilities located in the route of the Wall or in its vicinity have been destroyed. For example, nearly 200 shops comprising the main commercial centre in Nazlat Isa in the northern West Bank were demolished for construction of the Wall<sup>252</sup> (See Photographs 9-12).

312. Inaccessible Economic Resources Due to Movement Restrictions: Economic resources that have not been demolished or destroyed by the Wall have been diminished due to lack of access. Access of farmers to agricultural land they own or cultivate outside the Wall has been problematic due to permit restrictions and difficulties in obtaining permits for farming vehicles. The Wall also isolates residents from 50 underground water wells that are relied upon for drinking water and agriculture.<sup>253</sup> Additionally, as grazing activities require continual access to the land, restrictions on access to lands have resulted in the death of livestock.

313. Access to Markets: Prior to construction of the Wall, local markets were significantly dependent on Israeli consumers purchasing lower cost goods and services from Occupied Palestinian Territory. The construction of the first phase of the Wall has rendered this impossible. Costly and burdensome 'back-to-back' transportation has been introduced for the transport of goods between areas outside the Wall and areas falling inside the Wall.

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<sup>251</sup> Palestinian Agricultural Relief Committee, *Needs Assessment Study and Proposed Intervention 4*, (2003).

<sup>252</sup> Palestinian Monitoring Group, "Special Report: Land Confiscation and Destruction of Property—Focus: Nazlat Isa, Zayta, and Baqa Sharqiya," 4 September 2003.

<sup>253</sup> *Ibid.*

314. Access to Employment: Palestinians now living outside the Wall face difficulty accessing the employment market. Palestinians face more difficulty accessing the job market that now exists outside the Wall because of the need for permits to enter or leave the closed areas. At least 23.6% of the population living to the west of the Wall with only one employed household member have changed their work totally (activity and place of work), compared with 21.7% of those living east of the Wall.<sup>254</sup>

*(iii) Economic Consequences of Phase I*

315. The construction of the Wall has led to four principal economic consequences: loss of economic assets, loss of potential investment, higher transaction costs of produce, and higher rates of unemployment.

316. Loss of Economic Resources: Permanent confiscations of economic resources, damaging economic resources or the inability to employ economic resources have all resulted in the permanent loss of economic resources.

317. Loss of Potential Investment: Uncertainty concerning the future of areas outside the Wall has led to a decrease in economic investment opportunities. Uncertainty poses particular dilemmas for agricultural producers, including whether to plant at all, the choice of crops to plant, and the level of investment in planting. Loss of potential investment affects areas outside the Wall due to lack of accessibility

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<sup>254</sup> Palestinian Central Bureau of Statistics, *Impact of the Separation Wall on the Socioeconomic Conditions of Palestinian Households in the Localities in which the Separation Wall Passes Through (October 2003)*, Press Conference on Survey Results, (December 2003), p. 5.

and increased risk of destruction, as well as areas remaining inside the Wall as they become segregated enclaves with no potential for economic prosperity. Even if an investor wished to invest in the Closed Zone, Israeli restrictions would make such investments practically impossible.

318. Higher Transaction Costs of Produce: Because of the difficulty, or lack, of access for both people (requiring permits and passage through gates) and goods (requiring back-to-back shipment), transportation and production/cultivation costs have become exponentially higher.

319. Higher Unemployment Rate: Phase I of the construction of the Wall has resulted in increased unemployment rates in Palestinian areas, both outside and inside the Wall.

320. Collectively, the above economic consequences of the Wall and its attendant policies are depriving the Palestinians of their ability to utilize their economic assets and to determine their economic policies, and are causing increasing poverty among the population.

(c) Health Effects of the Wall

321. The Wall has restricted access to health facilities in communities enclosed as a result of its construction, particularly those living between the Wall and the Green Line, and threatens to further imperil health services. This has aggravated the already degraded level of health services as a result of increased restrictions of movement and

the military closures that have been imposed by the Israeli occupying forces since the beginning of the current intifada.

322. After construction of the Wall, 80.1% of residents west of the Wall and 48.3% of residents east of the Wall will need to travel more than 4 km to reach the nearest hospital. Additionally, the Wall will pose an obstacle to access necessary health services for 73.7% of households west of the Wall and 38.6% east of the Wall.<sup>255</sup>

323. Nine of the 15 communities in the Closed Zone west of the Wall lack a medical facility entirely and rely on travelling health care professionals for medical services. The Wall has made such travel and access nearly impossible.<sup>256</sup> Many other affected localities in the north provide basic preventive and primary services, but rely on the three main cities (Qalqiliya, Tulkarem, and Jenin) for specialized and emergency care, and for regular dialysis and chemotherapy treatments.<sup>257</sup>

Construction of the Wall in the south, particularly in the area in and around Occupied East Jerusalem ('Jerusalem Envelope'), has made access to health facilities problematic for Palestinians residing outside of the Wall. This will be the case for the

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<sup>255</sup> Palestinian Central Bureau of Statistics, *Impact of the Separation Wall on the Socioeconomic Conditions of Palestinian Households in the Localities in which the Separation Wall Passes Through (October 2003)*, December 2003, p. 5. Statistics are based on a household survey of 890 households in Palestinian localities where the Wall passes through. 195 households were located west of the separation Wall and 695 east of the separation Wall.

<sup>256</sup> Health workers are unable to reach these areas as often if at all because of increased time travel, costs involved in transportation, and irregular Wall gate opening times. For instance, residents of 'Azun 'Atma, a village of 1,500 east of the Wall, now have less frequent access to traveling health workers and cannot get into Qalqiliya for emergency services. For detailed case studies, see: Report of the Mission to the Humanitarian and Emergency Policy Group (HEPG) of the Local Aid Coordination Committee (LACC), *The Impact of Israel's Separation Barrier on Affected West Bank Communities*, (4 May 2003), p. 41 (which appears in the dossiers submitted by the Secretary-General, as Dossier no. 85), and B'Tselem 2003 Report, p. 17.

entire West Bank if access to East Jerusalem hospitals that provide specialized medical services not available anywhere else in the West Bank is restricted because of the Wall.<sup>258</sup>

324. Regular preventive health services, which have already been undermined by existing mobility restrictions, have been further hindered due to inability of residents to access medical facilities. For example, UNRWA reports a 52% decrease in women attending post-natal care. Prior to the intifada, 95% of women gave birth in hospitals. This has fallen to 50% in some areas, and there are at least 39 documented cases of women giving birth at checkpoints.<sup>259</sup> Additionally, regular vaccination programs have been pushed back, though with great effort some vaccinations have continued.<sup>260</sup>

325. Without access to health facilities, residents are more vulnerable to sanitation problems, water-borne diseases, higher infant mortality, and lack of emergency services. Rapid and effective emergency care has become increasingly inaccessible unless provided by Israeli hospitals. The continued construction of the Wall will only compound these and other problems, delaying mobile clinics, ambulances and the distribution of medical supplies and vaccines. It will also increase the strain on public

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<sup>257</sup> These include Umm a-Rihan, Khirbat 'Abdallah al-Yunis, Khirbat a-Sheikh Sa'ad, Khirbat Dhaher al-Malah, Nazlat Abu Nar, Khirbet Jubara, Ras a-Tira, Khirbet a-Dab'a, and Arab a-Ramadeen al-Janubi. UNOCHA, *Monthly Status Report: The West Bank Wall, July 2003*, p. 4.

<sup>258</sup> For example, Augusta Victoria Hospital is the only hospital in the West Bank providing kidney dialysis. Similarly Mukassad Hospital provides specialized heart care treatment. See: Follow-Up Report to the Mission to the Humanitarian and Emergency Policy Group (HEPG) of the Local Aid Coordination Committee (LACC), *The Impact of Israel's Separation Barrier on Affected West Bank Communities: The "Jerusalem Envelope – Update Number 2*, (30 September 2003), p.4. The Report appears in the dossiers submitted by the Secretary-General, Dossier no. 87.

<sup>259</sup> UNRWA, *Impact of the First Phase of the Security Barrier on the Qalqiliya, Tulkarm and Jenin Districts*, (July 2003), p.6.

<sup>260</sup> Report of the Mission to the Humanitarian and Emergency Policy Group (HEPG) of the Local Aid Coordination Committee (LACC), *The Impact of Israel's Separation Barrier on Affected West Bank Communities*, (4 May 2003), p.42. The Report appears in the dossiers submitted by the Secretary-General, Dossier no. 85.



health providers by further dispersing facilities, staff and resources and adding to the burden and cost to village health centres.

326. Sanitation is also a significant concern for communities bordering the Wall on either side. Many of these communities employ trucking services that periodically remove sewage and garbage from local holding facilities. The Wall has prevented the trucks from accessing some villages and raised the cost of doing so for others, increasing the risk of waste-related disease in these communities. Smaller communities, for example Dhaher al Malih in the Jenin Governorate, have been particularly impacted by access constraints affecting waste management. Since construction of the Wall began, many communities located along its path have been unable to dispose of their garbage because they cannot gain access to disposal sites located outside the municipal limits.<sup>261</sup>

(d) Education Effects of the Wall

327. Construction of the Wall, and the associated isolation and restrictions, has impacted access to education. Across the Tulkarem, Qalqiliya and Jenin Governorates, the Wall has directly affected 7,400 students, while at least 150 teachers in the Tulkarem Governorate now face severe difficulty reaching their schools. Problems in the Qalqiliya Governorate are particularly acute because of the single checkpoint in Qalqiliya city and the winding route of the Wall there. Physical damage to educational facilities has occurred to structures near the route of the Wall;

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<sup>261</sup>

*Ibid.*

and Israeli authorities have prevented other schools from adding space to relieve overcrowding.<sup>262</sup>

328. In the Tulkarem district, with the largest number of communities enclosed by the Wall, Palestinian Ministry of Education officials estimated that at least a month of the 2003/4 school year has already been lost in 2003 alone, due to curfews or movement restrictions imposed because of razing or construction associated with the Wall, and that approximately 650 out of 1964 teachers currently encounter difficulty in reaching their classes.<sup>263</sup> Additionally, increased poverty rates associated with the Wall will impact the ability of students to attend school, as families become increasingly unable to pay school fees.

329. Several villages between the Wall and the Green Line have no primary or secondary school in their community, forcing students to cross the Wall to reach their classes (See Photographs 21 and 22). As a consequence of delays at crossings and gate closures, access to education for these students is now problematic.<sup>264</sup> Additionally, permits are required to cross Wall gates for both students and teachers. The issuing of permits to date has not been systematic; teachers in some villages or districts have received permits to cross Wall gates to reach their schools, which others have not, as has also been the case with schoolchildren.

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<sup>262</sup> *Ibid.* p. 40.

<sup>263</sup> *Ibid.*

<sup>264</sup> In Ar Ras, 44 of 172 students in primary school must come through the Wall every morning from their hometown of Khirbet Jubara. Another 46 students from Khirbet Jubara go to the high school in Kafr Sur. During closures or Israeli holidays, gates are not open, and these students cannot attend classes. On other days, passage through the gates is delayed, sometimes for hours. Follow-Up Report to the Mission to the Humanitarian and Emergency Policy Group (HEPG) of the Local Aid Coordination Committee (LACC), *The Impact of Israel's Separation Barrier on Affected West Bank Communities: Access Issues in "Stage A Localities" – Update Number 3*, (30 November 2003), p. 13. The Report appears in the dossiers submitted by the Secretary-General, Dossier no. 88.

330. The increased difficulties teachers and students are facing in reaching schools and universities because of the Wall have played a significant role in degrading the educational process. According to a recent survey conducted by the Palestinian Central Bureau of Statistics, 13.9% of households east of the Wall with at least one of their members attending school or university faced difficulties reaching their school/university, while 29.4% of such households west of the Wall experienced increased difficulties. School functioning has also been disrupted by the inability of teachers to reach schools, with 45.3% east of the Wall and 74.6% west of the Wall experiencing difficulties reaching schools. Additionally, movement to and from the locality of residence of 86.5% of female students who live to the west of the Wall was restricted, while 77.4% of female students living to the east of the Wall experienced restrictions.<sup>265</sup>

331. The psychological impact on students having to cross Wall gates or attend classes in close proximity to the Wall has not yet been quantified. Given the increased time needed in order to reach classrooms and the, at times, arduous routes taken, and the overcrowding of classrooms due to access restrictions, student's ability to concentrate and learn may be significantly lowered. The daily subjection to the military on the route to school, and the possible safety risks implied, will undoubtedly have a longer-term impact on Palestinian schoolchildren.

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<sup>265</sup> Palestinian Central Bureau of Statistics, *Impact of the Separation Wall on the Socioeconomic Conditions of Palestinian Households in the Localities in which the Separation Wall Passes Through (October 2003)*, Press Conference on the Survey Results, (December 2003), p.6.

332. Students wishing to pursue post-secondary education will face severe restrictions on their ability to attend universities and colleges with the imposition of the permit regime and travel restrictions associated with the Wall. This will also limit the areas of study available to post-secondary students. Subjects such as Law and Medicine, for example, are only available at a small number of universities.

(e) Effects of the Wall on the Cultural Heritage

333. Cultural heritage is a component of the cultural identity of the Palestinian community and an integral part of human heritage. The Wall separates hundreds of archaeological and cultural heritage sites from communities in the Occupied Palestinian Territory, including East Jerusalem. Moreover, few salvage operations were carried out in the process of construction of the Wall, indicating that no proper environmental and archaeological damage assessments were conducted before its construction.

334. During the first phase of the Wall, approximately 230 major archaeological sites were cut in the Closed Zone, in addition to 1,751 minor sites and cultural heritage features, such as caves, tombs, cemeteries, sanctuaries, towers, and wine and grape presses.<sup>266</sup> The Wall has also enclosed some of the most significant natural sites, including the natural forest of Umm er-Rihan, south of Jenin.

335. In the southern part of the West Bank, large areas of archaeological sites will be located to the west of the Wall. In the Ramallah area alone, more than 500 sites

will be situated to the west of the Wall. Additionally, the proposed eastern route along the Jordan Valley will place over 1,000 archaeological sites and features in the eastern part of the West Bank which, except for the Jericho area, is under Israeli control.

336. In the Bethlehem district, a large number of archaeological sites in Al Khader and Housan villages have been demolished or annexed to nearby settlements.<sup>267</sup>

Destruction of a number of archaeological sites has already occurred as a result of construction of the Wall, including a Byzantine archaeological site damaged in October 2003 during construction of the Wall in Occupied East Jerusalem.<sup>268</sup>

337. The continued direct impact of the Wall on the cultural heritage will include: destruction of archaeological sites; destruction of natural heritage; destruction of historical and natural landscape; isolating archaeological sites from their cultural settings; confiscation of archaeological remains; and disruption of the geographic integrity of Palestinian areas.<sup>269</sup>

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<sup>266</sup> Dr. Hamdan Taha, Director General, Department of Antiquities and Cultural Heritage, Palestinian Ministry of Tourism and Antiquities, *The Separation Wall: An Archaeological Atrocity*, 16 January 2004, p. 1.

<sup>267</sup> These include: Kh. Hammouda, Kh. Qedis, Kh. El-Keneiseh, Kh. Deir Baghel and ancient water springs such as Ain el-Kalbeh Ain Qadis, Ain et-Taqa and Ain el-Qaniseh in addition to the Qedis caves and the caves of Daher el-Matarseh. Other archeological sites, including Kh. Ed-Deir, Kh. El-Aid, Kh. Farash, ASin Faris Ain el-Masayeh Ain Abu Zeid, Ain el-Faqeh, and Ain Abu Kleibeh were annexed to the settlement of 'Bitar Aleat.' Other sites in the village El-Jaba'a and Wadi Fukin were also annexed to the nearby settlement. The archaeological sites of Kh. El-Khamasah have been totally damaged. *Ibid.*, p. 2.

<sup>268</sup> Khirbet Salah is located east of the town of Abu Dis in Jerusalem and features the remains of a Byzantine monastery. In construction of the Wall, bulldozers were sent to the area to begin work without coordination with the Israeli Archaeological Authority (IAA). A substantial part of the site was demolished and levelled, causing irreversible damage, before work was halted by the IAA. Not enough time was given for archaeologists to finish work on the site and, after 3 weeks, the site was levelled and the Wall was completed over the site.

<sup>269</sup> *Ibid.* p. 2.

**(6) Conclusions**

338. The Wall is not built on the Green Line. Practically the entire Wall is built in the Occupied Palestinian Territory. The Wall divides and isolates Palestinians from Palestinians and Palestinians from their land. It creates enclaves and fragments the territorial integrity and contiguity of the Occupied Palestinian Territory. In addition to its extensive impact on all aspects of Palestinian life in and even beyond the communities directly affected by the Wall, the Wall regime undermines Palestinian capacity for sustainable livelihood.

339. The Wall is designed to protect and ensure the expansion of Israeli settlements in the Occupied Palestinian Territory, including in and around East Jerusalem. In addition to the approved settlement expansion areas, nearly 80 per cent of the settler population in the West Bank and East Jerusalem will be located outside the Wall.

340. The Wall is designed to ensure Israel's permanent control over natural resources in Occupied Palestinian Territory. The high-quality water sources in the West Bank have been exploited by Israeli since 1967. Most of Israel's yearly extraction of fresh water from West Bank aquifers is consumed by settlements.

341. The Wall regime is part of a wider system of road networks, settlement expansion and infrastructural integration with Israel. The scale and nature of the Wall project entrenches Israel's presence in Occupied Palestinian Territory.

342. The construction of the Wall has already caused permanent damage to the Occupied Palestinian Territory in terms of land levelling, home demolitions and by radically altering Palestinian daily economic and social life.

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### Terminology in Security Council Resolutions since 1967

Resolution	Terminology used
242 (1967)	“territories occupied in the recent conflict”
446 (1979)	“the Arab territories occupied by Israel since 1967, including Jerusalem” “the occupied Arab territories”
452 (1979)	“the Arab territories occupied since 1967, including Jerusalem” “the occupied Arab territories”
465 (1980)	“the Arab territories occupied since 1967, including Jerusalem; “the Arab territories occupied by Israel since 1967, including Jerusalem” “the Palestinian and other Arab territories occupied since 1967” “the occupied territories” “the territories under occupation”
476 (1980)	“Arab territories occupied by Israel since 1967, including Jerusalem”
478 (1980)	“the Palestinian and other Arab territories occupied since June 1967, including Jerusalem”
484 (1980)	“the Arab territories occupied by Israel in 1967”
605 (1987)	“the Palestinian and other Arab territories occupied by Israel since 1967, including Jerusalem; “the occupied territories; “under Israeli occupation”
607 (1988)	“the occupied territories; “Palestinian and other Arab territories occupied by Israel, since 1967, including Jerusalem”
608 (1988)	“the occupied Palestinian territories” “the occupied territories” “the Palestinian and other Arab territories occupied by Israel since 1967, including Jerusalem”
636 (1989)	“the occupied Palestinian territories” “Palestinian territories, occupied by Israel since 1967, including Jerusalem, (and to the other occupied Arab territories)”
641 (1989)	“the occupied Palestinian territories” “the Palestinian territories, occupied by Israel since 1967, including Jerusalem”
672 (1990)	“all the territories occupied by Israel since 1967”
681 (1990)	“under Israeli occupation” “the Palestinian territories occupied by Israel since 1967, including Jerusalem” “the occupied territories” “all the territories occupied by Israel since 1967”
694 (1991)	“the Palestinian territories occupied by Israel since 1967, including Jerusalem”
726 (1992)	“the occupied Palestinian territories” “the Palestinian territories occupied by Israel since 1967, including Jerusalem” “the occupied territories”
799 (1992)	“the territories occupied by Israel since 1967, including Jerusalem” “the Palestinian territories occupied by Israel since 1967, including Jerusalem”
904 (1994)	“the territories occupied by Israel in June 1967, including Jerusalem” “the occupied territory”
1322 (2000)	“the territories occupied by Israel since 1967”
1397 (2002)	“Palestine (two-State vision)”
1402 (2002)	“Palestinian cities”
1435 (2002)	“Palestinian cities”
1515 (2003)	“Palestine (two-State vision)”

## **PART D. LEGAL ANALYSIS**

### **Chapter 7. ISRAEL IS IN OCCUPATION OF PALESTINIAN TERRITORY**

#### **(1) Introduction**

343. The Request for the present Opinion refers to the location of the Wall in “Occupied Palestinian Territory, including in and around East Jerusalem”. The term ‘Occupied Palestinian Territory’ (OPT) is well accepted in the practice of United Nations bodies including the General Assembly and the Security Council. It or similar phrases have been used ever since 1967 both by the Security Council and the General Assembly. This can be seen for example from the Table, opposite, which records the terminology used in Security Council resolutions from 1967 to date.

344. In this Chapter, certain clarifications will be offered as to the meaning and content of the term ‘Occupied Palestinian Territory’, and it will be established that the international law of occupation is applicable to that territory and to Israel as occupier. In Chapter 8, the content of the applicable international law, including both international humanitarian law and international human rights law, will be clarified.

345. That Israel has been, and remains, in occupation of Palestinian territory is internationally uncontroversial. The occupation resulted from the Six Day War between Israel, Jordan, Syria and Egypt in June 1967. All of these States were at the time and remain High Contracting Parties to the Fourth Geneva Convention: see

Article 2, first sentence. There is no doubt that the 1967 War was an international armed conflict within the meaning of the Geneva Conventions. During this armed conflict Israeli armed forces invaded and occupied, *inter alia*, the West Bank and the Gaza Strip, which represented about one-half of the territory that had been allocated to the Arab State under the partition plan in General Assembly Resolution 181(II) of 1947.<sup>270</sup> Reference has already been made to these events in Chapter 3 of this Written Statement.

346. The proper characterization of Israel's current status in respect of this territory remains that of an occupier. Under international law, an Occupying Power does not have sovereignty over the territory subject to its occupation. It merely exercises authority over the territory on a temporary basis.<sup>271</sup> Furthermore, the essential test is one of actual overall control.<sup>272</sup> It does not matter that day-to-day administration may be exercised by local authorities. Territory once occupied remains occupied until a definitive withdrawal from that territory, or a definitive, internationally acceptable settlement. Neither of these events has occurred.

347. All States, whether occupying States or third States, are prohibited from obtaining territory as a result of a threat or use of force. The proposition that title to territory cannot validly be obtained by force is so fundamental and indisputable that elaborate citation of authority is not required before the Court. It follows that the traditional law on occupation of territory, as embodied in the Fourth Geneva Convention of 1949, has been powerfully reinforced by modern international law.

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<sup>270</sup> Already in 1948-9 Israel had occupied about half of the territory allocated to the Arab State.

<sup>271</sup> See in particular Articles 4 and 47 of the Fourth Geneva Convention.

<sup>272</sup> See Article 42 of the 1907 Hague Regulations.

**(2) The regime of occupied territory**

**(a) In general**

348. The law of occupation comprises rules of customary international law embodied in particular in the 1907 Hague Regulations and the Fourth Geneva Convention. It is widely accepted that these instruments reflect customary international law and are not limited to relationships as between States parties only.<sup>273</sup> But even as a treaty, the Fourth Geneva Convention is applicable in its own terms to the situation created in 1967. The Convention is stipulated, in Article 2, to apply to “all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties.” In 1967, as a result of an international armed conflict between parties to the Convention, Israel occupied territory which was not its own. It remains in occupation, and there has been no internationally accepted settlement concerning the territory. The resulting legal situation, opposable *erga omnes* by reason of the customary international law status of the relevant rules, is also opposable to all the States Parties to the Fourth Geneva Convention, consisting of 190 States, the vast majority of the members of the international community. In fact, as demonstrated below, this situation has been expressly recognized by the Conference of the High Contracting Parties to the Fourth Geneva Convention. Correspondingly it is a legal situation of which all United Nations organs can take notice and on the basis of which they should act.

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<sup>273</sup> *Legality of the Threat or Use of Nuclear Weapons. Advisory Opinion, 8 July 1996, I.C.J. Reports 1996, p. 266, at 256 (para. 75), 257 (para. 79), 258 (para. 82).*

349. The definition of occupation in international humanitarian law depends essentially on questions of fact. According to the definition in Article 42 of the 1907

Hague Regulations:

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

350. The litmus test to determine if territory is occupied is whether the territory is under the authority of a hostile power. The underlying assumption is that the hostile power has ‘effective control’ over the territory in question. In other words, whether a hostile power is exercising effective control is a question of fact. Article 42 otherwise makes no statement about the status of occupied territory. In particular, it does not speak about possible legal claims to the territory or about the legality of the foreign power’s presence on the territory (for example, in the context of an asserted right of self-defence). Such questions are irrelevant to the question of whether the territory is occupied.

351. An Occupying Power may not abandon or neglect its obligations towards the civilian population under occupation by choosing not to exercise ‘effective control’ when it is militarily capable of doing so. As the Special Rapporteur of the Commission on Human Rights on the situation in the Palestinian territories occupied by Israel since 1967 has noted:

“... [O]ccupation is concerned with the interests of the population of an occupied territory rather than those of a displaced sovereign... The test for the application of the legal regime of occupation is not whether the occupying power fails to exercise effective control over the territory, but whether it has the ability to exercise such power, a

principle affirmed by the United States Military Tribunal at Nuremberg in *re List and others* and others (*The Hostages Case*) in 1948.”<sup>274</sup>

352. In the *Hostages Case*, the Military Tribunal at Nuremberg took the position that even temporary territorial control by partisans would not necessarily remove the state of occupation:

“While it is true that the partisans were able to control sections of these countries at various times, it is established that the Germans could at any time they desired assume physical control of any part of the country. The control of the resistance forces was temporary only and not such as would deprive the German armed forces of its status of an occupant.”<sup>275</sup>

353. The existence of ‘effective control’ by the Occupying Power is thus measured by its actual ability to assume the responsibilities that attach to an Occupying Power, namely the ability to issue and enforce directives to the inhabitants of the territory, and not by its willingness to do so.

354. The legal status of occupation is not excluded by the persistence of armed resistance by the occupied population. The major military manuals since 1949 provide strong evidence in support of this proposition. For example, the *British Manual of Military Law* provides:

“Occupation does not become invalid because some of the inhabitants are in a state of rebellion, or through occasional successes of guerrilla bands or ‘resistance’ fighters. Even a temporarily successful rebellion is not sufficient to interpret or terminate occupation, provided that the authority of the legitimate government is not effectively re-established and that the Occupant suppresses the rebellion at once.”<sup>276</sup>

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<sup>274</sup> Report of the Special Rapporteur of the Commission on Human Rights on the situation in the Palestinian territories occupied by Israel since 1967, A/56/440, para. 7, Annex 1 in Annex Volume 2 accompanying this Written Statement.

<sup>275</sup> *United States v. Wilhelm List et al*, 11 *Trial of War Criminals Before the Nuremberg Military Tribunals*, 1230, 1243 (1948).

Similarly, the *United States Field Manual* states:

“Occupation, to be effective, must be maintained... Nor does the existence of a rebellion or the activity of guerrilla para-military units of itself cause the occupation to cease, provided the occupant could at any time it desired assume physical control of any part of the territory. If, however, the power of the occupant is effectively displaced for any length of time, its position towards the inhabitants is the same as before occupation.”<sup>277</sup>

355. By the time that the Hague Regulations were adopted, it was already a clearly established principle that military occupation of territory as a result of war did not confer sovereignty upon the Occupying Power.<sup>278</sup> The two key principles governing the regime of belligerent occupation were that occupation was a temporary state of affairs and that no unilateral change in the status of the territory by the occupier was permitted. The International Military Tribunal at Nuremberg held that even where the State whose territory was occupied had been completely overwhelmed, annexation remained unlawful and did not transfer title so long as the Occupying Power remained at war with the allies of the State concerned.<sup>279</sup> Purported annexations of occupied territory were expressly prohibited.

356. These principles remain applicable to the regime of occupation today, with the proviso that the triggering event is occupation in the context of an international armed conflict, whether or not a declared war. A purported annexation of occupied territory by an Occupying Power will be ineffective to alter the status of the territory or its inhabitants, who remain subject to the law of occupation. According to Article 47 of the Fourth Geneva Convention:

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<sup>276</sup> *The Law of War on Land, Part III Manual of Military Law* (The War Office, 1958) §509.  
<sup>277</sup> *The Law of Land Warfare, Field Manual* (U.S. Department of the Army, July 1956) § 360.  
<sup>278</sup> Oppenheim, *International Law* (6<sup>th</sup> ed, London 1944) pp. 432- 4.  
<sup>279</sup> Cmd. 6964, 65.

“Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territory and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory.”

357. The ICRC’s Commentary to Article 47 states:

“occupation as a result of war, while representing actual possession to all appearances, cannot imply any right whatsoever to dispose of territory. As long as hostilities continue the Occupying Power cannot therefore annex the occupied territory, even if it occupies the whole of the territory concerned. A decision on that point can only be reached in the peace treaty. That is a universally recognized rule which is endorsed by jurists and confirmed by numerous rulings of international and national courts.”<sup>280</sup>

358. Moreover, certain conduct usually associated with annexation of territory – in particular the direct or indirect transfer to occupied territory of the occupier’s civilian population, or the transfer of part of the population from occupied territory – constitutes a war crime.<sup>281</sup>

(b) Application of the regime of occupation to Palestine

359. The international law regime of occupation applies *a fortiori* to a mandated territory whose people have not achieved self-determination and which has been occupied by a State as a result of an international armed conflict. Such a conflict does not terminate the mandated status of the territory.<sup>282</sup> It does not put an end to the

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<sup>280</sup> ICRC (ed. Pictet), *Commentary. IV Geneva Convention relative to the Protection of Civilian Persons in Time of War* (Geneva, 1958) 275.

<sup>281</sup> See Additional Protocol I, Art. 85 (4)(a); see also Rome Statute of the International Criminal Court, 17 July 1998, Art. 8(2)(a)(iv), (b)(viii).

<sup>282</sup> This was confirmed by this Court in the series of opinions from *International Status of South-West Africa*, I.C.J. Reports 1950, p. 128 to *Legal Consequences for States of the Continued*



rights of the people concerned.<sup>283</sup> It certainly does not confer sovereignty on the Occupying Power. The regime of occupation under international law is applicable to such a territory until a legitimate settlement is achieved, endorsed by the United Nations, and accepted by the international community.

360. In the *Namibia Opinion*,<sup>284</sup> this Court was asked to advise the Security Council of the legal consequences of South Africa's continued presence in Namibia in violation of Security Council Resolution 276 (1970). The Court affirmed the principle of non-annexation, as one of the two principles of paramount importance underlying the mandates system under Article 22 of the Covenant of the League of Nations. Regarding Article 22, the Court said:

“...the Government of South Africa has dwelt at some length on the negotiations which preceded the adoption of the final version of Article 22 of the League Covenant, and has suggested that they lead to a different reading of its provisions. Be that as it may, the final outcome of the negotiations, however difficult an achievement, was a rejection of the notion of annexation. It cannot tenably be argued that the clear meaning of the mandate institution could be ignored by placing upon the explicit provisions embodying its principles a construction at variance with its object and purpose.”<sup>285</sup>

361. The principle that the territory occupied by Israel in 1967 may not be unilaterally annexed, or its status otherwise unilaterally changed, has been accepted and acted on by the international community as a whole. In particular, in 1967, the Security Council adopted Resolution 242 (1967):

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*Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)*, ICJ Reports 1971, p. 6.

<sup>283</sup> *Ibid.* And see United Nations Charter, Article 80.

<sup>284</sup> *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)*, I.C.J. Reports 1971, p. 6.

<sup>285</sup> *Ibid.*, p.30.

“The Security Council,

*Expressing* its continuing concern with the grave situation in the Middle East,

*Emphasizing* the inadmissibility of the acquisition of territory by war and the need to work for a just and lasting peace in which every State in the area can live in security,

*Emphasizing further* that all Member States in their acceptance of the Charter of the United Nations have undertaken a commitment to act in accordance with Article 2 of the Charter,

1. *Affirms* that the fulfilment of Charter principles requires the establishment of a just and lasting peace in the Middle East which should include the application of both the following principles:

(i) Withdrawal of Israel armed forces from territories occupied in the recent conflict;

(ii) Termination of all claims or states of belligerency and respect for and acknowledgment of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force;

[...]”

362. On 30 July 1980 Israel attempted to annex East Jerusalem by enacting the ‘Basic Law: Jerusalem, Capital of Israel, 30 July 1980’. This act elicited the condemnation of the Security Council in numerous resolutions, commencing with Resolution 476 (1980), in which the Security Council resolved:

*“Having considered* the letter of 28 May 1980 from the representative of Pakistan, the current Chairman of the Organization of the Islamic Conference, as contained in document S/13966 of 28 May 1980,

*Reaffirming* that acquisition of territory by force is inadmissible,

*Bearing in mind* the specific status of Jerusalem and, in particular, the need for protection and preservation of the unique spiritual and religious dimension of the Holy Places in the city,

*Reaffirming* its resolutions relevant to the character and status of the Holy City of Jerusalem, in particular resolutions 252 (1968) of 21 May 1968, 267 (1969) of 3 July 1969, 271 (1969) of 15 September 1969, 298 (1971) of 25 September 1971 and 465 (1980) of 1 March 1980,

*Recalling* the Fourth Geneva Convention of 12 August 1949 relative to the Protection of Civilian Persons in Time of War,

*Deploring* the persistence of Israel, in changing the physical character, demographic composition, institutional structure and the status of the Holy City of Jerusalem,

*Gravely concerned* over the legislative steps initiated in the Israeli Knesset with the aim of changing the character and status of the Holy City of Jerusalem,

1. *Reaffirms* the overriding necessity to end the prolonged occupation of Arab territories occupied by Israel since 1967, including Jerusalem;
2. *Strongly deplotes* the continued refusal of Israel, the occupying Power, to comply with the relevant resolutions of the Security Council and the General Assembly;
3. *Reconfirms* that all legislative and administrative measures and actions taken by Israel, the occupying Power, which purport to alter the character and status of the Holy City of Jerusalem have no legal validity and constitute a flagrant violation of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War and also constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East;
4. *Reiterates* that all such measures which have altered the geographic, demographic and historical character and status of the Holy City of Jerusalem are null and void and must be rescinded in compliance with the relevant resolutions of the Security Council;
5. *Urgently calls* on Israel, the occupying Power, to abide by this and previous Security Council resolutions and to desist forthwith from persisting in the policy and measures affecting the character and status of the Holy city of Jerusalem;
6. *Reaffirms* its determination in the event of non-compliance by Israel with this resolution, to examine practical ways and means in accordance with relevant provisions of the Charter of the United Nations to secure the full implementation of this resolution.”

363. That resolution was followed by Resolution 478 (1980), in the Security Council

*“Reaffirming again* that the acquisition of territory by force is inadmissible,

*Deeply concerned* over the enactment of a "basic law" in the Israeli Knesset proclaiming a change in the character and status of the Holy City of Jerusalem, with its implications for peace and security,

*Noting* that Israel has not complied with resolution 476 (1980),

*Reaffirming* its determination to examine practical ways and means, in accordance with the relevant provisions of the Charter of the United Nations, to secure the full implementation of its resolution 476 (1980), in the event of non-compliance by Israel,

1. *Censures* in the strongest terms the enactment by Israel of the "basic law" on Jerusalem and the refusal to comply with relevant Security Council resolutions;

2. *Affirms* that the enactment of the "basic law" by Israel constitutes a violation of international law and does not affect the continued application of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, in the Palestinian and other Arab territories occupied since June 1967, including Jerusalem;

3. *Determines* that all legislative and administrative measures and actions taken by Israel, the occupying Power, which have altered or purport to alter the character and status of the Holy City of Jerusalem, and in particular the recent "basic law" on Jerusalem, are null and void and must be rescinded forthwith;

4. *Affirms also* that this action constitutes a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East;

5. *Decides* not to recognize the "basic law" and such other actions by Israel that, as a result of this law, seek to alter the character and status of Jerusalem and calls upon:

(a) All Member States to accept this decision;

(b) Those States that have established diplomatic missions at Jerusalem to withdraw such missions from the Holy City."

364. Israel remains in occupation of the West Bank including East Jerusalem, and the Gaza Strip. While there has been a partial transfer of certain powers and responsibilities from Israel to the Palestinian Authority (the precise features of which need not be examined by the Court) in respect of some parts of Palestinian territory, Israel remains in overall control of the Occupied Palestinian Territory, including East Jerusalem. According to the UN Special Rapporteur on the Occupied Palestinian Territory:

"The Oslo Accords leave Israel with the ultimate legal control over all of the OPT and the fact that for political reasons it has generally chosen not to exercise this control over the 'A' zones, when it undoubtedly has the military capacity to do so (as illustrated by the Israeli military incursion into the 'A' zone town of Beit Jala in August 2001), cannot relieve Israel of its responsibilities as an occupying power."<sup>286</sup>

365. Nor does Palestinian resistance against the occupying power remove the legal status of ‘occupation’ in the Occupied Palestinian Territory. As long as Israel maintains its effective control over Palestinian territory, it is under occupation in international law. Important consequences flow in respect of the applicable law, which are discussed in the next Chapter.

**(3) The Request does not require the Court to determine the boundaries of Palestine**

366. The Terms of the Request for the advisory opinion are the following:

“What are the legal consequences arising from the construction of the wall being built by Israel, the occupying power, in the Occupied Palestinian Territory, including in and around East Jerusalem, as described in the report of the Secretary-General, considering the rules and principles of international law, including the Fourth Geneva Convention of 1949 and relevant Security Council and General Assembly resolutions?”

367. In order to answer this question the Court needs only to take account of the fact that a wall is being built by Israel in the Occupied Palestinian Territory, including in and around East Jerusalem. It need not determine where the precise boundaries of the Occupied Palestinian Territory lie. The essential facts, on which the Court can securely rely, are simple: wherever the precise boundaries of Palestine may lie, it is universally accepted (including by Israel) that the greater part of the Wall has been built by Israel well inside Palestinian territory. This position is graphically demonstrated in the attached maps.<sup>287</sup> It cannot admit of any doubt.

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<sup>286</sup> Report of the Special Rapporteur of the Commission on Human Rights on the situation in the Palestinian territories occupied by Israel since 1967, A/56/440, para. 7, Annex 1 in Annex Volume 2 accompanying this Written Statement.

(a) The division of 'Mandated Palestine'

368. The Court has already been provided with a description of the historical background of Palestinian territory in Chapter 3. Only a brief recapitulation is necessary.

369. Palestine was in 1914 an undivided part of the Ottoman Empire without separate status. It was occupied by British troops in 1917 and came to be disposed of as part of the post-war settlement.

370. The Mandate for Palestine was established in the aftermath of the Treaty of Versailles. Article 22 of the Covenant of the League of Nations established the basic parameters of the Mandate system. Under this system Palestine was an "A" class mandate. The League Council approved the terms of the British mandate on 24 July 1922.<sup>287</sup> It came into force on 29 September 1923. The territorial basis of Palestine under the Mandate was subject to an amendment approved in November 1922 which authorised Great Britain to divide the territory into two, excluding what was then referred to as Transjordan (now the Hashemite Kingdom of Jordan). This was effected in 1928, with League of Nations approval. Jordan's full independence was achieved in a Treaty of Alliance with the United Kingdom signed on 22 March 1946, within the territories delineated in 1928. That situation has been recognised by Israel

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<sup>287</sup> See Annex volume 1

<sup>288</sup> *LNOJ* vol.3, No 8 Pt II (August 1922) 798 – 802, 817 – 825.

on numerous occasions, including in 1994.<sup>289</sup> As a result, Mandated Palestine was limited to the territories to the west of the Jordan River.

371. On 18 February 1947, Britain announced that it was referring the question of Palestine to the United Nations and would withdraw its administration of the Mandate by 1 August 1949. On 29 November 1947, the General Assembly adopted Resolution 181 (II). This Resolution incorporated a plan for the partition of Palestine into two states (one Arab and one Jewish), for economic union between them, and for the internationalization of Jerusalem. Boundaries were set out in the Resolution for ‘the Arab State’, ‘the Jewish State’ and Jerusalem.

372. Great Britain withdrew from Palestine at midnight on 14-15 May 1948. Hostilities broke out, leading to Armistice Agreements in 1949. Israel was shortly afterwards admitted to the United Nations.

373. It has never been disputed that Israel in 1949 did not include areas of the West Bank, or East Jerusalem, or the Gaza Strip. That remains the situation. Nothing that has happened since 1949 has given any international recognition to any extension of Israeli territory to cover any of these areas. It results that Israel is in occupation of all the areas beyond the ceasefire line of 1949 (the so-called Green Line).

374. The principle of two States (one Arab and one Jewish) in Palestine has remained in place since Resolution 181 (II). This is evident in the principal agreements concluded between the Palestine Liberation Organisation and Israel since

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<sup>289</sup> Israel-Jordan, Treaty of Peace, 26 October 1994, Art. 3(2): 2042 *United Nations Treaty*

1993 and in resolutions of the General Assembly and Security Council adopted since General Assembly Resolution 181(II).

375. Although certain developments have occurred in the territory first occupied in 1967, the fact is that Israel remains in overall control of this territory and Israeli forces remain in occupation of the West Bank, including East Jerusalem, and the Gaza Strip. These areas are together referred to as the 'Occupied Palestinian Territory', because the territory is not part of the territory of the State of Israel; it is territory of the Palestinian people, destined for a Palestinian State whose right to exist was recognized by Resolution 181(II), and has been widely recognised ever since.

(b) Recognition of the Division of Mandated Palestine: Agreements between Israel and Palestine

376. As noted in Chapter 3, the principal agreements concluded between the Palestine Liberation Organisation and Israel in the Middle East Peace Process since 1993 are as follows:

- Exchange of correspondence (Arafat-Rabin), 9 September 1993;<sup>290</sup>
- Israel-Palestine Liberation Organisation, Declaration of Principles on Interim-Self Government Arrangements, 13 September 1993 (Declaration of Principles);<sup>291</sup>
- Israel-Palestine Liberation Organisation, Agreement on the Gaza Strip and the Jericho Area, 4 May 1994;<sup>292</sup>

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*Series 395.*

<sup>290</sup> Text in (1992-4) 7 *Palestine YBIL* 230.

<sup>291</sup> (1993) 32 *ILM* 1525.



- Israel-Palestine Liberation Organisation, Agreement on Preparatory Powers and Responsibilities, 29 August 1994;<sup>293</sup>
- Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, 28 September 1995;<sup>294</sup>
- Note for the Record (Ross-Netanyahu-Arafat), 17 January 1997;<sup>295</sup>
- Israel-Palestine Liberation Organisation, Protocol concerning the Redeployment in Hebron, 17 January 1997;<sup>296</sup>
- Israel-Palestine Liberation Organisation, Wye River Memorandum, 23 October 1998;<sup>297</sup>
- Israel-Palestine Liberation Organisation, Sharm El-Sheikh Memorandum, 4 September 1999.<sup>298</sup>

377. The 1993 Declaration of Principles commences with Article 1 in the following terms:

“The aim of the Israeli-Palestinian negotiations within the current Middle East peace process is, among other things, to establish a Palestinian Interim Self-Government Authority, the elected Council (the “Council”), for the Palestinian people in the West Bank and the Gaza Strip, for a transitional period not exceeding five years, leading to a permanent settlement based on Security Council Resolutions 242 and 338. It is understood that the interim arrangements are an integral part of the whole peace process and that the negotiations on the permanent status will lead to the implementation of Security Council Resolutions 242 and 338.”<sup>299</sup>

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<sup>292</sup> (1994) 33 ILM 622.  
<sup>293</sup> (1995) 34 ILM 455.  
<sup>294</sup> (1997) 36 ILM 551.  
<sup>295</sup> (1997) 36 ILM 655.  
<sup>296</sup> (1997) 36 ILM 650.  
<sup>297</sup> (1998) 37 ILM 1251.  
<sup>298</sup> (1999) 38 ILM 1465.  
<sup>299</sup> (1993) 32 ILM 1527.

378. The Interim Agreement on the West Bank and the Gaza Strip included a provision on territory in the following terms:

“Article XI  
Land

1. The two sides view the West Bank and the Gaza Strip as a single territorial unit, the integrity and status of which will be preserved during the interim period.”

379. The Wye River Memorandum and the Sharm El-Sheikh Memorandum both outlined further steps to be taken by the parties to implement the Interim Agreement. Both of these Memoranda adopted the categorization of land used in the Interim Agreement, referring to Areas ‘A’, ‘B’, and ‘C’ to describe Palestinian territory, which was explained briefly in preceding chapters of this Written Statement.

380. The most recent text concerning the peace process is the “Performance Based Road Map to a Permanent Two-State Solution to the Israeli-Palestinian Conflict” (the ‘Road Map’).<sup>300</sup> This instrument does not affect the status of territory or change any borders.

381. It is evident from this review that as between Israel and Palestine, it is accepted that Mandated Palestine was divided into Israeli and Palestinian areas.

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<sup>300</sup> A Performance-Based Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict’ UN doc S/2003/529. This instrument was endorsed by the Security Council on 19 November 2003 in Resolution 1515 (2003): UN doc S/RES/1515 (2003).

(c) Recognition of the Division of Mandated Palestine: The Position of the United Nations

382. The notion of two territorial entities emerging from 'Mandated Palestine' is evident in General Assembly and Security Council resolutions on Palestine.

383. The General Assembly has adopted numerous resolutions on Palestine since its adoption of Resolution 181 (II) in 1947. A standard feature of the General Assembly's resolutions is the reference to the Armistice Line of 1949 (the 'Green Line') when referring to events taking place in the Occupied Palestinian Territory.

384. For example, in Resolution A/ES-10/14 of 8 December 2003 the General Assembly resolved that it was:

"Gravely concerned at the commencement and continuation of construction by Israel, the occupying power, of a wall in the Occupied Palestinian Territory, including in and around East Jerusalem, which is in departure from the Armistice Line of 1949 (Green Line) and which has involved the confiscation and destruction of Palestinian land and resources, the disruption of the lives of thousands of protected civilians and the de facto annexation of large areas of territory, and underlining the unanimous opposition by the international community to the construction of that wall."

385. In its earlier resolution, A/ES-10/13 of 21 October 2003, the General Assembly demands that Israel stop and reverse the construction of the Wall in the Occupied Palestinian Territory, including in and around East Jerusalem, of which the General Assembly said:

"[...] is in departure of [*sic.*] the Armistice Line of 1949 and is in contradiction to relevant provisions of international law."<sup>301</sup>

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<sup>301</sup> A/ES-10/13, 21 October 2003.

386. The notion of two territorial entities emerging from ‘Mandated Palestine’ has been affirmed by the Security Council. The Security Council has over a long period of time endorsed a vision of “two States living side by side with recognized borders” (to adopt the language of Resolution 1397 (2002)) in the Mandated Palestine. This vision is seen most recently in Resolution 1515 (2003) in which the Security Council endorsed the Road Map in the following terms:

*“The Security Council,*  
*Recalling* all its previous relevant resolutions, in particular resolutions 242 (1967), 338 (1973), 1397 (2002) plus the Madrid principles,  
*Expressing* its grave concern at the continuation of the tragic and violent events in the Middle East,  
*Reiterating* the demand for an immediate cessation of all acts of violence, including all acts of terrorism, provocation, incitement and destruction,  
*Reaffirming* its vision of a region where two States, Israel and Palestine, live side by side within secure and recognized borders,  
*Emphasizing* the need to achieve a comprehensive, just and lasting peace in the Middle East, including the Israeli-Syrian and Israeli-Lebanese tracks,  
*Welcoming* and *encouraging* the diplomatic efforts of the international Quartet and others,  
1. *Endorses* the Quartet Performance-based Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict (S/2003/529);  
2. *Calls on* the parties to fulfil their obligations under the Roadmap in cooperation with the Quartet and to achieve the vision of two States living side by side in peace and security;  
3. *Decides* to remain seized of the matter.”

(d) International recognition that the Palestinian territory is occupied within the meaning of the Fourth Geneva Convention

387. It can safely be asserted that practically every State in the world – with the exception of Israel – recognises that Palestinian territory is occupied territory within the meaning of the Fourth Geneva Convention.

388. Since the commencement of Israel's occupation of the Occupied Palestinian Territory, the United Nations General Assembly and Security Council have resolved on numerous occasions that the Fourth Geneva Convention is applicable to the OPT.

The following resolutions of the Security Council are to this effect:

- SC Resolution 1322, UN SCOR, 55<sup>th</sup> Sess., UN Doc S/RES/56 (2000)
- SC Resolution 904, UN SCOR, 49<sup>th</sup> Sess., UN Doc S/RES/50 (1994)
- SC Resolution 799, UN SCOR, 47<sup>th</sup> Sess., UN Doc S/RES/ 48 (1992)
- SC Resolution 726, UN SCOR, 47<sup>th</sup> Sess., UN Doc S/RES/48 (1992)
- SC Resolution 694, UN SCOR, 46<sup>th</sup> Sess., UN Doc S/RES/47 (1991)
- SC Resolution 681, UN SCOR, 45<sup>th</sup> Sess., UN Doc S/RES/46 (1990)
- SC Resolution 673, UN SCOR, 45<sup>th</sup> Sess., UN Doc S/RES/ 46 (1990)
- SC Resolution 672, UN SCOR, 45<sup>th</sup> Sess., UN Doc S/RES/46 (1990)
- SC Resolution 641, UN SCOR, 44<sup>th</sup> Sess., UN Doc S/RES/45 (1989)
- SC Resolution 636, UN SCOR, 44<sup>th</sup> Sess., UN Doc S/RES/45 (1989)
- SC Resolution 608, UN SCOR, 43<sup>rd</sup> Sess., UN Doc S/RES/44 (1988)
- SC Resolution 607, UN SCOR, 43<sup>rd</sup> Sess., UN Doc S/RES/44 (1988)
- SC Resolution 605, UN SCOR, 42<sup>nd</sup> Sess., UN Doc S/RES/43 (1987)
- SC Resolution 592, UN SCOR, 42<sup>nd</sup> Sess., UN Doc S/RES/42 (1986)
- SC Resolution 484, UN SCOR, 35<sup>th</sup> Sess., UN Doc S/RES/36 (1980)
- SC Resolution 478, UN SCOR, 35<sup>th</sup> Sess., UN Doc S/RES/36 (1980)
- SC Resolution 476, UN SCOR, 35<sup>th</sup> Sess., UN Doc S/RES/36 (1980)
- SC Resolution 471, UN SCOR, 35<sup>th</sup> Sess., UN Doc S/RES/36 (1980)
- SC Resolution 469, UN SCOR, 35<sup>th</sup> Sess., UN Doc S/RES/36 (1980)
- SC Resolution 468, UN SCOR, 35<sup>th</sup> Sess., UN Doc S/RES/36 (1980)
- SC Resolution 465, UN SCOR, 35<sup>th</sup> Sess., UN Doc S/RES/36 (1980)

- SC Resolution 452, UN SCOR, 34<sup>th</sup> Sess., UN Doc S/RES/35 (1979)
- SC Resolution 446, UN SCOR, 34<sup>th</sup> Sess., UN Doc S/RES/35 (1979)
- SC Resolution 271, UN SCOR, 24<sup>th</sup> Sess., UN Doc S/RES/24/Rev.1 (1969)

389. Numerous resolutions of the General Assembly have likewise affirmed the application of the Fourth Geneva Convention in the Occupied Palestinian Territory and demanded Israel to accept the Convention's *de jure* application in the Occupied Palestinian Territory. For example, the most recent resolution, voted for by an overwhelming majority of States, with only nine States voting against, provides:

*“The General Assembly,*

*Recalling* its relevant resolutions,  
*Bearing in mind* the relevant resolutions of the Security Council,  
*Recalling* the Regulations Annexed to the Hague Convention IV of 1907, the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and relevant provisions of customary law, including those codified in Protocol 1 Additional to the Geneva Conventions,

*Having considered* the reports of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories and the relevant reports of the Secretary-General,

*Considering* that the promotion of respect for the obligations arising from the Charter of the United Nations and other instruments and rules of international law is among the basic purposes and principles of the United Nations,

*Noting* the convening of the meeting of experts of High Contracting Parties to the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, at Geneva from 27 to 29 October 1998, at the initiative of the Government of Switzerland in its capacity as the depositary of the Convention, concerning problems of application of the Convention in general and, in particular, in occupied territories,

*Noting also* the convening for the first time, on 15 July 1999, of a Conference of High Contracting Parties to the Fourth Geneva Convention, as recommended by the General Assembly in its resolution ES-10/6 of 9 February 1999, on measures to enforce the Convention in the Occupied Palestinian Territory, including East Jerusalem, and to ensure respect thereof in accordance with article 1 common to the four Geneva Conventions, and aware of the statement adopted by the Conference,

*Welcoming* the reconvening of the Conference of High Contracting Parties to the Fourth Geneva Convention on 5 December 2001 in Geneva and stressing the importance of the Declaration adopted by the Conference, and underlining the need for the parties to follow up the implementation of the Declaration,

*Welcoming and encouraging* the initiatives by States parties to the Convention, both individually and collectively, according to article 1 common to the four Geneva Conventions, aimed at ensuring respect for the Convention,

*Stressing* that Israel, the occupying Power, should comply strictly with its obligations under international law, including international humanitarian law,

1. *Reaffirms* that the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, is applicable to the Occupied Palestinian Territory, including East Jerusalem, and other Arab territories occupied by Israel since 1967;
2. *Demands* that Israel accept the *de jure* applicability of the Convention in the Occupied Palestinian Territory, including East Jerusalem, and other Arab territories occupied by Israel since 1967, and that it comply scrupulously with the provisions of the Convention;
3. *Calls upon* all High Contracting Parties to the Convention, in accordance with article 1 common to the four Geneva Conventions, to continue to exert all efforts to ensure respect for its provisions by Israel, the occupying Power, in the Occupied Palestinian Territory, including East Jerusalem, and other Arab territories occupied by Israel since 1967;
4. *Reiterates* the need for speedy implementation of the relevant recommendations contained in its resolutions of the tenth emergency special session with regard to ensuring respect by Israel, the occupying Power, for the provisions of the Convention;

5. *Requests* the Secretary-General to report to the General Assembly at its fifty-ninth session on the implementation of the present resolution.”<sup>302</sup>

390. Other United Nations bodies share this view: for instance, the United Nations Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and other Arabs of the Occupied Territories<sup>303</sup> and the Special Rapporteur for the Occupied Territories appointed by the United Nations Commission on Human Rights.<sup>304</sup>

391. Particularly strong evidence of this is provided in the Declaration of High Contracting Parties to the Fourth Geneva Convention of 5 December 2001.<sup>305</sup> The Declaration reflects “the common understanding reached by the participating High Contracting Parties to the reconvened Conference of High Contracting Parties to the Fourth Geneva Convention.” The Declaration, *inter alia*:

- reaffirmed “the applicability of the Fourth Geneva Convention to the Occupied Palestinian Territory, including East Jerusalem” (paras. 1, 3);
- called on “all parties, directly involved in the conflict or not, to respect and to ensure respect for the Geneva Conventions in all circumstances” (para. 4);

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<sup>302</sup> GA Res 58/97, UN GAOR, 58<sup>th</sup> Sess., UN Doc A/RES/58/97 adopted on 9 December 2003. Only six states voted against the resolution: Israel, Marshall Islands, Federated States of Micronesia, Nauru, Palau, United States of America. Additional resolutions of the United Nations General Assembly to this effect include the following: GA Res 57/125, UN GOAR 57<sup>th</sup> Sess., GA Res 56/204, UN GAOR, 56<sup>th</sup> Sess., UN Doc A/56/49 (2001); GA Res ES-10/8, UN GOAR, 56<sup>th</sup> Sess., UN Doc A.ES-10/8 (2001); GA Res 56/60, UN GOAR, 56<sup>th</sup> Sess., UN Doc A 56/49 (2001); GA Res 55/131, UN GOAR, 55<sup>th</sup> Sess., UN Doc A/55/49 (2000); GA Res 54/77, UN GOAR, 54<sup>th</sup> Sess., UN Doc A/54/49 (1999); GA Res 53/54, UN GOAR, 53d Sess., UN Doc A/53/49 (1998); GA Res 52/65, UN GOAR, 52d Sess., UN Doc A/53/49 (1997); GA Res 42/160 C, UN GOAR, 52d Sess., UN Doc A/42/49 (1987); GA Res 32/91, UN GOAR, 32d Sess., UN Doc A/32/45 (1977); GA Res 2252 (ES-V), UN GOAR, UN Doc A/6798 (1967).

<sup>303</sup> The Reports of the Special Committee can be seen in UN Doc A/57/207 and UN Doc A/57/421.

<sup>304</sup> Report of the Special Rapporteur of the Commission on Human Rights on the situation in the Palestinian territories occupied by Israel since 1967, A/56/440, paragraphs 7 and 8, Annex 1 in Annex Volume 2 accompanying this Written Statement.

<sup>305</sup> This is reprinted as Annex 11 to this Written Statement and Secretary-General’s Dossier no. 67.



- stressed that “the Fourth Geneva Convention, which takes fully into account imperative military necessity, has to be respected in all circumstances” (para. 5)
- called on “the Occupying Power [i.e., Israel] to fully and effectively respect the Fourth Geneva Convention in the Occupied Palestinian Territory, including East Jerusalem, and to refrain from perpetrating any violation of the Convention” (para. 12).

392. In accordance with Article 31(3)(b) of the Vienna Convention on the Law of Treaties of 1969, in interpreting a treaty there shall be taken into account:

“any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;”.

The Declaration of 5 December 2001 amounts to an authentic interpretation of the Fourth Geneva Convention, and an authentic and compelling application of the requirements of the Convention to the Occupied Palestinian Territory. It is respectfully submitted that it should be given strong, indeed decisive, weight by this Court. This is particularly so when it is supported and corroborated by the International Committee of the Red Cross, which has repeatedly made it clear that the Fourth Geneva Convention is applicable to the Occupied Palestinian Territory.<sup>306</sup>

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<sup>306</sup> See, e.g., International Committee of the Red Cross, Statement to the Conference of High Contracting Parties to the Fourth Geneva Convention, Geneva, 5 December 2001, *International Review of the Red Cross*, vol. 84, No. 847, September 2002, pp. 692-695; reprinted as Annex 11 in Annex Volume 2.

**(4) Conclusion**

393. To summarize, for the reasons given above, it is universally accepted that the Palestinian territory is occupied territory as a matter of customary international law and within the meaning of the Fourth Geneva Convention. The Court need do no more than identify the legal consequences that arise from such parts of the Wall - by far the largest proportion of it - as have been built by Israel within Palestinian (rather than Israeli) territory.

## **Chapter 8. ISRAEL IS BOUND BY INTERNATIONAL HUMANITARIAN LAW AND INTERNATIONAL HUMAN RIGHTS LAW IN RESPECT OF ITS CONDUCT IN OCCUPIED PALESTINIAN TERRITORY**

### **(1) Introduction**

394. The applicable law governing Israel's rights and duties in the Occupied Palestinian Territory, including East Jerusalem, is both international humanitarian law and international human rights law. Israel has previously disputed the application of each of these aspects of international law to the Occupied Palestinian Territory. The next two sections outline the reasons why these laws are applicable in the Occupied Palestinian Territory.

395. Before turning to these issues, a proviso is necessary. Israel's rights in relation to the construction and operation of the Wall can be no more extensive than those of an Occupying Power. There is, indeed, a question whether Israel can claim even those rights. The Geneva Conventions plainly intended that occupations should be temporary, and the generally-accepted view is that occupations should cease once hostilities have ceased, or very soon thereafter. It was never envisaged that occupation should be a long-term situation or that states should be able to claim the right to remain as Occupying Powers over the long term, a situation which borders on conquest, prohibited by a peremptory norm of contemporary international law. It is, however, now almost 36 years since the outbreak of the armed conflict that gave rise to the occupation of the Occupied Palestinian Territory relevant to these proceedings.

396. Nevertheless, it is not necessary for this question to be addressed in order to respond to the Request for an advisory opinion in this case. It is one of the basic axioms of international humanitarian law that its provisions apply in situations of armed conflict regardless of the legality of the initial resort to armed force. The *jus in bello* applies whenever there is in fact an armed conflict, and for so long as an occupation arising from an international armed conflict subsists in fact. That is the case here.

## **(2) International Humanitarian Law**

397. International humanitarian law is binding upon Israel in respect of its occupation of the Occupied Palestinian Territory, including East Jerusalem. It became binding at the moment Israel occupied territory that was not part of the State of Israel and remains binding while Israel remains in occupation of such territory.

398. International humanitarian law is comprised, in the Court's words, of "a corpus of treaty rules the great majority of which [have] already become customary and which [reflect] the most universally recognized humanitarian principles."<sup>307</sup> It comprises rules governing the actual conduct of armed conflict and belligerent occupation (more recently referred to simply as 'occupation'). These rules are expressed mainly in the Hague and Geneva Conventions and Additional Protocols, and general or customary international humanitarian law.

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<sup>307</sup> *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226, at 258 (para. 82).

399. As an aspect of international humanitarian law, the law of occupation applies to the governance of occupied territories, including the conduct of an occupying power towards protected persons during occupation. These rules of general international law were codified in the 1907 Hague Regulations annexed to Hague Convention IV on the Laws and Customs of War on Land (the Hague Regulations) as well as the 1949 Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War (the Fourth Geneva Convention). There are currently 190 State parties to the Fourth Geneva Convention.

(a) Basic principles of international humanitarian law in the Hague and Geneva Conventions

400. The general framework of international law governing occupation is provided in Articles 42 to 56 of the 1907 Hague Regulations and in Section III of the Fourth Geneva Convention. A convenient starting point is Article 43 of the Hague Regulations, which provides:

“The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore and ensure, as far as possible, public order and safety, *while respecting, unless absolutely prevented, the laws in force in the country.*” (emphasis added).

This provision undoubtedly expresses a rule of general international law.

401. The Occupying Power must thus respect the laws in force in the country, and must not deprive protected persons of their rights by unnecessary and disproportionate changes. The duty is emphasized in Article 47 of the Fourth Geneva Convention which insists that protected persons shall not be deprived of the

Convention's protection "by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory." In the Commentary on Article 47, the ICRC states:

"This provision [Article 43] of the Hague Regulations is not applicable only to the inhabitants of the occupied territory; it also protects the separate existence of the State, its institutions and its laws. This provision does not become in any way less valid because of the existence of the new Convention, which merely amplifies it so far as the question of the protection of civilians is concerned."<sup>308</sup>

402. The protection of the separate existence of the occupied territory is also reflected in the Hague Regulations by the protection they provide not only for private property (Articles 46 and 47), but also to public real property and natural resources, of which the occupying power "shall be regarded only as administrator and usufructuary" and "must safeguard the capital of these properties and administer them in accordance with the rules of usufruct" (Article 55).

403. The Fourth Geneva Convention contains a number of further requirements for the benefit of protected persons. These fall into two categories. The first category of provisions applies to the benefit of all protected persons in an international armed conflict or occupied territory. Foremost amongst this group of provisions is the obligation to provide humane treatment in Article 27. The second category of provisions specifically apply to protected persons who are in occupied territory. These provisions are outlined in Section III of the Fourth Geneva Convention. An

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<sup>308</sup> International Committee of the Red Cross, *Commentary, IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (ICRC, 1958) pp. 273 – 4.

Occupying Power must not transfer or deport protected persons from occupied territory nor deport or transfer parts of its own population into the occupied territory (Article 49), seize or destroy real or personal property “except where rendered absolutely necessary by military operations” (Article 53), or alter the status of public officials in the occupied territory (Article 54). It must ensure food and medical supplies and services of the population to the fullest extent possible (Articles 55 and 56) and respect the laws in force at the commencement of occupation while restoring and maintaining public order and safety (Article 64).

404. Certain violations of the Fourth Geneva Convention are regarded as grave breaches. Under Article 147:

“Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: wilful killing, torture or inhumane treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.”

405. The scope and content of these obligations is further discussed in so far as they are relevant in relation to the Wall being built by Israel in the Occupied Palestinian Territory in Chapter 9.

(b) Israel's obligation to comply with international humanitarian law in the Occupied Palestinian Territory

406. Israel is a party to the four 1949 Geneva Conventions. It is not a party to the Additional Protocols to the Geneva Conventions nor to the 1907 Hague Conventions.

407. It is widely accepted that the Hague Conventions and the annexed Hague Regulations are declaratory of general international law. The Court confirmed this to be so in the *Nuclear Weapons* Advisory Opinion in 1996.<sup>309</sup> Israel's own Supreme Court has also taken this position.<sup>310</sup>

408. Despite this the Government of Israel has made statements which appear to suggest that it is not bound to apply the Hague Regulations or the Geneva Conventions since they are not incorporated into its domestic law.<sup>311</sup> Any such argument must fail. It is well established in international law that reliance on internal law as justification for failure to comply with an international obligation is excluded. The International Law Commission's *Articles on Responsibility of States for Internationally Wrongful Acts*, annexed to General Assembly Resolution 56/83 of 12 December 2001, refer to this basic principle in Articles 3 and 32:

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<sup>309</sup> *Legality of the Threat of Nuclear Weapons, Advisory Opinion, 8 July 1996, I.C.J. Reports 1996*, p. 226 at 258 (para. 80).

<sup>310</sup> *Teachers' Housing Cooperative Society* case, HC 393/82, p. 802. The Court applied Article 43 of the Hague Regulations, which it said engendered a "broad and flexible framework". See also *Ajuri v. IDF Commander in West Bank*, Case N° HCJ 7015/02 [2002] Israel Law Reports 1, Supreme Court of Israel, September 3, 2002, paras. 131-133, 138, 144, especially 155-162. "This court has held that the prohibition on forcible transfer is a rule of international treaty-based law, and thus is not applicable in domestic law unless it is enacted into the domestic law. However, this conception has changed, both in international public law and in the judgments of this court. Now, it is almost undisputed that the Fourth Geneva Convention reflects customary law and binds all states – even those that have not signed it – because it enshrines basic principles accepted by all states."



### “Article 3

The characterization of an act of a State as internationally wrongful is governed by international law. Such characterization is not affected by the characterization of the same act as lawful by internal law.

### Article 32

The responsible State may not rely on the provisions of its internal law as justification for failure to comply with its obligations under this Part [sc. the obligations of cessation and reparation].”

The extensive range of authorities in support of these basic propositions, including many decisions of this Court and its predecessor, is set out in the ILC’s commentaries to these Articles.

409. At one time, Israel accepted that the Fourth Geneva Convention was applicable as a matter of law in the Occupied Palestinian Territory.<sup>312</sup> This acceptance proved to be short-lived and was revoked. Since the revocation, Israel has formally denied the applicability of this Convention whilst declaring that it had decided to act *de facto* in accordance with its humanitarian provision.

410. Any such distinction between *de facto* and *de jure* application of the Convention in the Occupied Palestinian Territory must be rejected. The International Committee of the Red Cross expressed its own reservations at a Meeting of Experts on 27 October 1998 in these terms:

“Certain belligerents have agreed only to *de facto* application of the Fourth Geneva Convention, at times making even that conditional upon reciprocity... However, it would be unacceptable to allow – still less encourage – a set of parallel rules to be established, a sort of sub-

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<sup>311</sup> Report of the Secretary-General prepared pursuant to General Assembly Resolution ES-10/13, A/ES-10/248, 24 November 2003, Annex I.

<sup>312</sup> Military Order No. 3, 7 June 1967, Art. 35: “The Military Court... must apply the provisions of the Geneva Convention dated 12 August 1949 Relative to the Protection of Civilians in Time of War with respect to judicial procedures. In case of conflict between this Order and said Convention, the Convention shall prevail.”. This Article was subsequently deleted by Military Order 144 on 22 October 1967.

category of the law, which might or might not be respected, according to the whims of the party applying it, despite the fact that the States have categorically committed themselves to recognizing legal texts that set out precise rights and obligations. Political conditions should under no circumstances be allowed to weaken the protection to be enjoyed by civilians under hard law.”<sup>313</sup>

411. There is, furthermore, no legal basis for drawing a distinction between those rules of the Fourth Geneva Convention that are humanitarian in nature and those that are not. The entire Fourth Geneva Convention is humanitarian in nature. The Convention is devoted exclusively to the protection of civilians in time of war.

412. As demonstrated in Chapter 7, the Fourth Geneva Convention has *de jure* application in the Occupied Palestinian Territory, both as a multilateral treaty which is applicable in terms to the still unresolved situation following the 1967 War, and because it is in all relevant respects reflective of general international law. As this Court has affirmed of the Hague and Geneva Conventions, “these fundamental rules are to be observed by all States whether or not they have ratified the conventions that contain them, because they constitute intransgressible principles of international customary law”.<sup>314</sup> The International Criminal Tribunal for the Former Yugoslavia<sup>315</sup> and the Eritrea-Ethiopia Claims Commission<sup>316</sup> have endorsed this view in their own work.

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<sup>313</sup> International Committee of the Red Cross, “General Problems in Implementing the Fourth Geneva Convention”, Meeting of Experts, 27 October 1998.

<sup>314</sup> *Legality of the Threat of Nuclear Weapons*, Advisory Opinion, 8 July 1996, ICJ Reports 1996, p. 226 at 257-(para. 79).

<sup>315</sup> See, e.g., *Prosecutor v. Tadić*, judgment of 7 May 1997, 112 ILR 1, 179 ff.

<sup>316</sup> Eritrea-Ethiopia Claims Commission, *Partial Award – Prisoners of War*, 1 July 2003, 42 ILM 1056, paras. 39 – 41.

413. In addition, a number of provisions of Additional Protocol I of 1977 reflect customary international law, especially where they are developments or specifications of standards contained in the 1949 Geneva Conventions.

**(3) International Human Rights Law**

414. The applicable law in the Occupied Palestinian Territory is international humanitarian law and international human rights law. Although important aspects of international human rights law have entered into customary international law, it is sufficient for present purposes to rely on the universal human rights treaties which Israel itself has accepted by becoming a party to them.

415. Israel is a party, in particular, to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Cultural and Social Rights (both of which it ratified on 3 October 1991).<sup>317</sup> In particular Article 2(1) of the International Covenant on Civil and Political Rights provides that each State Party “undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction” the rights recognized in the Covenant. The term “within its territory and subject to its jurisdiction” in Article 2(1) is disjunctive; States Parties are bound to apply the Covenant to territories over which they exercise jurisdiction, including as a belligerent occupant.

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<sup>317</sup> Israel is also a party, *inter alia*, to the Convention on the Prevention and Punishment of the Crime of Genocide (ratified on 9 March 1950), the Convention Relating to the Status of Refugees (ratified on 1 October 1954), the Slavery Convention (signed on 12 September 1955) and the United Nations Convention on the Rights of the Child (ratified on 3 October 1991).

416. Thus the United Nations Human Rights Committee is correct in concluding that the International Covenant on Civil and Political Rights applies to the benefit of the populations in the Occupied Palestinian Territory.<sup>318</sup>

417. Israel maintains that the applicable law in the Occupied Palestinian Territory is international humanitarian law rather than international human rights law. In its view, there is a well established distinction between the two areas of international law and in times of armed conflict, the applicable law is international humanitarian law. The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights are said by Israel to not be applicable during armed conflict, but only during peacetime.<sup>319</sup>

418. Many international human rights treaties explicitly state that they apply in both times of war and peace. For example, Article 2(2) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984 provides:

“2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.”

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<sup>318</sup> The Human Rights Committee has twice examined periodic reports by Israel to the Committee. The Committee has issued observations on both of these occasions affirming that the Covenant applies in the OPT: *Concluding Observations of the Human Rights Committee: Israel*, 21 August 2003, CCPR/CO/78/ISR, para. 11, Annex 8 in Annex Volume 2 accompanying this Written Statement; *Concluding Observations of the Human Rights Committee: Israel*, 18 August 1998, CCPR/C/79/Add.93, para. 10, Annex 7 in Annex Volume 2. Such a view was also taken by the Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel*, E/C.12/1/Add.90, 23/05/2003, paras. 15 and 31; *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel*, E/C.12/1/Add.69, 31/08/2001, paras. 11 and 12.

<sup>319</sup> Israel's position is outlined, for example, in *Report of the Secretary-General prepared pursuant to General Assembly Resolution ES-10/13, A/ES-10/248*, 24 November 2003, Annex I; *Israel's Report to the Human Rights Committee*, CCPR/C/ISR/2001/2, para. 8.

419. The Genocide Convention likewise provides in Article 1:

“The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.”

420. Many international and regional human rights conventions, including the ICCPR, contain provisions permitting States to derogate from certain provisions of the convention during war: see especially Article 4 of the ICCPR. The explicit exception for derogation during war clearly implies that absent derogation, the human rights convention will apply fully during war. Moreover, it sets a limit to the kinds of derogation that will be acceptable even in time of war or national emergency, and it confers a special status upon non-derogable rights—many of which, as will be seen, are violated by Israel’s construction and operation of the Wall in the Occupied Palestinian Territory.

421. The UN Human Rights Committee states, in its most recent draft General Comment on Article 2,

“the Covenant applies also in situations of armed conflict to which the rules of international humanitarian law are applicable. While, in respect of certain Covenant rights, more specific rules of international humanitarian law may be relevant for the purposes of the interpretation of Covenant rights, both spheres of law are complementary, not mutually exclusive.”<sup>320</sup>

422. As this Court pointed out in the *Nuclear Weapons* Advisory Opinion, there is a conceptual distinction between the body of international law comprising international humanitarian law and that of international human rights law. At the

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<sup>320</sup> See Human Rights Committee: Draft General Comment on Article 2: the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/74/CPR.4/Rev.4

same time the Court affirmed the continued application of international human rights law to territories affected by armed conflict, subject to the application of international humanitarian law as a *lex specialis*. The Court was presented with the argument that the ICCPR applied only to the protection of human rights in peacetime. The Court said:

“The Court observes that the protection of the International Covenant of Civil and Political Rights does not cease in time of war, except by operation of Article 4 of the Covenant whereby certain provisions may be derogated from in a time of national emergency. Respect for the right to life is not, however, such a provision. In principle the right not arbitrarily to be deprived of one’s life applies also in hostilities. The test of what is an arbitrary deprivation of life, however, then falls to be determined by the applicable *lex specialis*, namely the law applicable in armed conflict which is designed to regulate the conduct of hostilities. Thus whether a particular loss of life, through the use of a certain weapon in warfare, is to be considered an arbitrary deprivation of life contrary to Article 6 of the Covenant, can only be decided by reference to the law applicable in armed conflict and not deduced from the terms of the Covenant itself.”<sup>321</sup>

The relationship between international humanitarian law and international human rights law is thus not one of exclusion but of coordination. Where international human rights law deals in general terms with some matter (e.g. “arbitrary” deprivation of life) which is regulated in more detail and specificity by international humanitarian law, the latter provides the content to the applicable law, i.e. it determines the scope of the legal standard. Where on the other hand international human rights law excludes certain treatment entirely – e.g. torture – then that treatment remains internationally unlawful at all times and places including during armed conflict or occupation.

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(advance version), para. 11. This General Comment has not yet been adopted as a whole, but para. 11 reproduced in the text is already adopted.

<sup>321</sup> *I.C.J. Reports 1996*, p. 226, at 240, para. 25.

423. Israel is bound by international human rights in both general international law and in treaty. These treaty obligations include not only the international human rights treaties binding upon Israel, but also the Israel–Palestine Liberation Organisation Interim Agreement on the West Bank and the Gaza Strip (the ‘Interim Agreement’). By virtue of the Interim Agreement, both Israel and the Council are obliged to:

“...exercise their powers and responsibilities pursuant to this Agreement with due regard to internationally-accepted norms and principles of human rights and the rule of law.”<sup>322</sup>

This provision requires Israel to have due regard to international human rights as well as international humanitarian law.

424. Israel’s arguments have been rightly rejected at the international level, including by the United Nations Human Rights Committee. The Human Rights Committee has identified Israel’s failure to recognize the application of the Fourth Geneva Convention in the Occupied Palestinian Territory as one of its principal subjects of concern. On two occasions, in commenting on Israel’s periodic reports, it has recommended that Israel re-consider its position and include in future periodic reports information regarding the application of the Fourth Geneva Convention in the Occupied Palestinian Territory. On both occasions, it has squarely rejected Israel’s argument that the application of international humanitarian law during an armed conflict precludes the application of the Covenant, or the accountability of States parties to the Covenant for their actions outside their own territories including

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<sup>322</sup> Article XIX, Israel–Palestine Liberation Organisation: Interim Agreement on the West Bank and the Gaza Strip, 28 September 1995: text in (1997) 36 *ILM* 551.

occupied territories.<sup>323</sup> Similar conclusions have been drawn by the Committee on Economic, Social and Cultural Rights.<sup>324</sup>

#### **(4) Conclusion**

425. Accordingly the applicable law in the Occupied Palestinian Territory, including East Jerusalem, is the international humanitarian law and international human rights law.

426. In the past Israel has attempted to circumvent the application of both international humanitarian law, particularly the Fourth Geneva Convention, and international human rights conventions such as the International Covenant on Civil and Political Rights, in order to be relieved from international responsibility for its policies and practices and events taking place in the Occupied Palestinian Territory. Israel's arguments have been widely rejected in both the practice of the United Nations and other international bodies such as the International Committee of the Red Cross. The correct position is that under international law, Israel's status of occupier binds it to act in compliance with both international humanitarian law and international human rights law.

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<sup>323</sup> See *Concluding Observations of the Human Rights Committee: Israel*, 21 August 2003, CCPR/CO/78/ISR, para. 11, Annex 8 in Annex Volume 2 accompanying this Written Statement; and *Concluding Observations of the Human Rights Committee: Israel* CCPR/C/79/Add.93, 18 August 1998, para. 10, Annex 7 in Annex Volume 2.

<sup>324</sup> Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel*, E/C.12/1/Add.90, 23/05/2003, paras. 15 and 31; *Concluding Observations of the Committee on Economic, Social and Cultural Rights : Israel*, E/C.12/1/Add.69, 31/08/2001, paras. 11 and 12.



## **Chapter 9 ISRAEL'S VIOLATIONS OF THE APPLICABLE LAW THROUGH THE CONSTRUCTION AND MAINTENANCE OF THE REGIME OF THE WALL**

### **Introduction**

#### **(1) The framework of legal analysis**

427. The previous two Chapters have demonstrated that the existing and planned Wall lies in the Occupied Palestinian Territory; that Israel's rights in that territory are those of an Occupying Power.

428. This Chapter presents Palestine's submissions regarding the legal principles applicable to the situation. The explanation of the factual background in Chapters 3–6 indicates that the Wall has consequences that constitute violations of specific provisions of international law. The latter part of this Chapter addresses those violations. But the fundamental legal issue is the legality of the Wall. Its very construction and maintenance violates international law. It is as if one person were to build a wall in a garden belonging to another. The Wall will indeed have serious adverse and unlawful effects; but the fundamental point is that it should not be there at all.

429. Accordingly, after a section (section 2) briefly recalling the applicable rules and principles of international law, the next section (section 3) of this Chapter is concerned with the basic question of the legality of the construction of the Wall. That is followed by section 4, which is concerned with specific violations of the international law governing occupation. Section 4 considers provisions of

international humanitarian law and international human rights law together. Although these are distinct bodies of law whose implementation is subject to distinct procedures, it has been thought helpful to organize section 4 according to the nature of the harm resulting from the Wall.

**(2) The principles of international humanitarian law**

430. As Chapters 7 and 8 explained, Israel's rights in the Occupied Palestinian Territory, including East Jerusalem, are those of an Occupying Power. The rights are derived from international humanitarian law and their exercise is subject to constraints imposed both by international humanitarian law and by international human rights law. The main principles of international humanitarian law that are of fundamental importance in this case were summarized in Chapter 8. They are as follows.

431. First, given the peremptory prohibition of the acquisition of territory by force, there can be no possibility that the rights of the Occupying Power derive from the exercise of its sovereignty over the territories. Such rights as the Occupying Power possesses, it possesses over territory to which, *ex hypothesi*, it has no sovereign title. There can, accordingly, be no presumption in favour of the existence of any rights in favour of the Occupying Power. Rather, the Occupying Power must demonstrate the basis of its entitlement to take any action in the occupied territory.

432. Second, the Occupying Power has an obligation to "take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country": Hague Regulations, Article 43. That provision, which undoubtedly expresses a rule of customary international law, embodies both a right and also duties. The Occupying

Power has the right, and also the duty, to take measures to secure public order and safety; and it also has the duty to do so within the framework of the laws already in force in the country, “unless absolutely prevented”. This reflects the principle that, in the words of one distinguished commentary, “political institutions and public life in general should ... be allowed to continue with as little disturbance as possible.”<sup>325</sup>

433. Third, it is the Occupying Power that has, by virtue of its occupation of the territory, the legal obligation “to the fullest extent of the means available to it” to ensure “the food and medical supplies of the population”, and to ensure and maintain medical and public health services in the occupied territory.<sup>326</sup> This is a particular expression of its responsibilities for the overall welfare and rights of the occupied population, reflected also in the continued applicability of international human rights law in the occupied territory.<sup>327</sup>

434. Fourth, the Occupying Power may requisition goods and services to the extent that they are necessary to satisfy the needs of the occupation army. As it is put in Article 52 of the Hague Regulations:

“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.”

435. Fifth, the right to destroy private property is limited by the criterion of the absolute necessities of military operations. In the words of Article 53 of the Fourth Geneva Convention,

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<sup>325</sup> Dieter Fleck (ed.), *The Handbook of Humanitarian Law in Armed Conflicts*, (OUP, 1995), section 531.

<sup>326</sup> 1949 Fourth Geneva Convention, Articles 55, 56.

“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.”

436. Sixth, the rights to requisition and destroy property in order to meet the needs of the occupying forces are subject to overriding limitations resulting from the principle of proportionality. The principle is not spelled out in this form in either the Hague or the Geneva Conventions; but it is plainly a fundamental principle pervading the entirety of international humanitarian law and implicit in the concept of necessity.

437. In the present context, these principles indicate the limitations upon the actions that Israel, as the Occupying Power, may take in the Occupied Palestinian Territory, including East Jerusalem. Israel has the right to construct and maintain the Wall if, but only if, Israel can demonstrate that it has such rights under the law of occupation. That law recognizes that the Occupying Power has military necessities. It does so by giving the Occupying Power specific rights to take certain actions where military necessity so requires. Those specific rights are the only rights that Occupying Powers possess in relation to occupied territory. There is no *general* right to take action on the ground of military necessity.

438. Israel’s rights must be established in relation to the actual Wall: that is to say, the Wall as it is being constructed, operated and planned by Israel as the Occupying Power, along the actual route that it follows. They must also be demonstrated in relation to the actual necessity that is said to justify the construction and operation of

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<sup>327</sup> See, e.g., the Concluding Observations of the Human Rights Committee: Israel, UN Doc. CCPR/CO/78/ISR, 21 August 2003, paragraph 11, Annex 8 in Annex Volume 2 accompanying this Written Statement.

the Wall. Like other exercises of powers having an international aspect, the propriety of exercises of the claimed rights may be reviewed by an international tribunal.<sup>328</sup>

439. This point should be underscored. There is no doubt that Israel has, in principle, the right to construct a wall on Israeli soil, along the Israeli side of the Green Line. Israel's legal obligations would of course affect the manner in which such a wall would be built and operated. For example, prohibited weapons could not be used in the security systems incorporated in the wall. But Israel plainly has both the legal right to build a security wall on its own territory along the Green Line and the practical possibility and ability to do so.

440. The central issue in this case is, therefore, whether in the light of that possibility Israel has any right to build the Wall *outside* its territory, along the route that it has chosen, and to maintain in respect of that physical barrier to movement the regulatory regime that it has put in place.

**(3) There is no lawful basis for the building of the Wall**

441. The rights of an Occupying Power are of a nature quite different from the rights of a sovereign government. The point was made by Sir Hersch Lauterpacht:

“...the administration of the occupant is in no wise to be compared with ordinary administration, for it is distinctly and precisely military administration. In carrying it out the occupant is totally independent of the constitution and the laws of the territory, since occupation is an aim of warfare, and the maintenance and safety of his forces and the purpose of war, stand in the foreground of his interest, and must be promoted under all circumstances and conditions. But, although as regards the safety of his army and the purpose of war the occupant is vested with an almost absolute power, as he is not the sovereign of the territory he has no right to make changes in the laws, or in administration, other than those which are temporarily necessitated by

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See *Anglo-Norwegian Fisheries, I.C.J. Reports 1951*, p. 116, at 132.

his interest in the maintenance and safety of his army and the realisation of the purpose of war. On the contrary, he has the duty of administering the country according to the existing laws and the existing rules of administration; he must ensure public order and safety, must respect family honour and rights, individual lives, private property, religious convictions and liberty.”<sup>329</sup>

442. Military necessity provides no general, blanket justification for actions in occupied territory, but only a justification *within the specific provisions* of international humanitarian law. Moreover, the specific provisions of international humanitarian law treat military necessity in different ways.

443. Thus, the seizure of property is permissible only “for the needs of the army of occupation.”<sup>330</sup> Seizures or requisitions of property in the broader interests of the Occupying Power, or to satisfy the needs of units other than the army of the Occupying Power, are not permitted. In the present context there is a clear distinction between takings of Palestinian property to meet the needs of the Israeli army and takings to meet the needs of Israeli civilians. The former may be legally justifiable; the latter certainly is not.

444. Destruction of property, in contrast, is permissible only for a more limited purpose. It is permissible only “where such destruction is rendered absolutely necessary by military operations.”<sup>331</sup> There are two limiting criteria in that phrase.

445. First, the necessity must arise from ‘military operations’. That is not the same as ‘military occupation’. In the midst of battle it may be necessary for a tank to move through an orchard or a field, destroying the crops on the way. In the relative

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<sup>329</sup> Hersch Lauterpacht, *Oppenheim's International Law*, vol. II, (7<sup>th</sup> ed. Longmans, 1952), p. 437.

calm of a subsequent occupation, there is neither the need nor the excuse for such destruction. If the Occupying Power wishes to seize and destroy property during the subsequent occupation, it must do so through the formal processes of requisition; and that is permissible only in order to meet the needs of the occupying army. Second, the necessity must be 'absolute'. There is no question of a 'balance of convenience' or 'reasonable necessity': there must be no alternative whatever to the destruction of the property.

446. The concept of necessity is also applied with a precise meaning in the context of the rights and duties of the Occupying Power in relation to the restoration and maintenance of public order. Under the Hague Regulations, that duty must be exercised "while respecting, unless absolutely prevented, the laws in force in the country".<sup>332</sup> Article 64 of the Fourth Geneva Convention prescribes the principle in slightly different terms, entitling the Occupying Power to modify the penal laws of the occupied territory to the extent necessary to protect the security of the Occupying Power, or to the fulfilment of its duties to restore and maintain peace and maintain orderly government.<sup>333</sup> These formulations are somewhat wider than the notion of what is necessary to meet the needs of the occupying army or of military operations; but it is still strictly confined to a necessity that cannot be detached from the military necessity facing an Occupying Power.

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<sup>330</sup> Hague Regulations, Article 52.

<sup>331</sup> Fourth Geneva Convention, Article 53.

<sup>332</sup> Hague Regulations, Article 43.

<sup>333</sup> Article 64 reads as follows: "Art. 64. [1] The penal laws of the occupied territory shall remain in force, with the exception that they may be repealed or suspended by the Occupying Power in cases where they constitute a threat to its security or an obstacle to the application of the present Convention.

..... [2] The Occupying Power may, however, subject the population of the occupied territory to provisions which are essential to enable the Occupying Power to fulfil its obligations under the present Convention, to maintain the orderly government of the territory, and to ensure the security of the

447. In all cases, the military necessity must be related to the needs of the occupation. An Occupying Power may occupy a territory in order to achieve its military objectives: but the military occupation of the territory is not in itself a legitimate military objective. The Fourth Geneva Convention recognises that States will sometimes use armed force, lawfully or unlawfully, to achieve their aims, and it sets out legal obligations that must be observed in the course of using armed force, including obligations relating to military occupation –the *jus in bello*. It emphatically does not and could not make military occupation an independent lawful objective. To do so would contradict the *jus cogens* prohibition on the acquisition of territory by force.

448. Israel, as the Occupying Power, does not have the right to maintain whatever level of military occupation it chooses in the Occupied Palestinian Territory, including East Jerusalem, independently of the aims of the initial armed conflict. The military occupation began in 1967. Israel has since made peace treaties with Egypt and Jordan, although the issue of the occupied territories remains unresolved, as those treaties recognise. The justification for the continuing occupation is unclear, but appears close to a circular argument: that Israel must maintain a military presence in the West Bank in order to protect its facilities in Israel and the West Bank against attacks from those who oppose Israel’s continuing occupation of the Palestinian territory, including East Jerusalem.

449. The Wall is not necessary for security purposes, as will be explained. The legal significance of this point is fundamental. The construction and operation of the

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Occupying Power, of the members and property of the occupying forces or administration, and likewise of the establishments and lines of communication used by them.”



Wall are beyond Israel's rights and violate international law. There being no necessity for the Wall, no further inquiry is needed. In particular, the question of proportionality does not arise, because the requirement that the Wall be a proportionate response to threats facing Israel would arise only if the initial military necessity were demonstrated. In any event, however, the Wall is also a demonstrably disproportionate response to the situation in the Occupied Palestinian Territory.

(a) The Wall lacks any justification as a security measure

450. Palestine faces an immediate problem in presenting its case. A report of a Special Rapporteur to the UN Commission on Human Rights noted that “[t]here is no transparency surrounding the construction of the Wall and its final course seems to be known only to an inner circle of the military and political establishment within Israel.”<sup>334</sup> That has both procedural and substantive implications.

451. Procedurally, while Palestine is able to make precise submissions regarding the Wall as it currently exists and as reflected in plans that have already been published, the lack of transparency makes it difficult for Palestine to present a precise case addressed to the entire planned course of the Wall. Only when the Wall becomes a fact on the ground does its route become clear and specific argument against it become possible. Substantively, the uncertainty concerning the route and the construction of the Wall and any gates that might be left in it, and concerning the timetable for its construction, is itself a cause of great difficulty for those who must try to plan their lives so as to cope with the arrival of the Wall.

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<sup>334</sup>

Dugard Report (2003), para. 11.

452. This section is, accordingly, based upon Palestine's knowledge of works already executed and of plans already published, and upon the best information that Palestine has been able to obtain concerning Israel's plans for the continuation of the Wall project.

453. There is no doubt that a State may, in principle, fortify its boundary so as to prevent unlawful incursions into its territory. The use of defensive walls to protect particular military installations or facilities belonging to an Occupying Power is, in principle, similarly unobjectionable. A wall around a military compound, or a police station or embassy may be a prudent and proportionate measure to avert the risk of attacks upon the facilities contained within the wall. Israel's Wall does not surround vulnerable military facilities. It surrounds Palestinians.

454. As was explained in Chapter 6 of this Written Statement, the Wall, as presently constructed or planned, extends throughout practically the whole of the West Bank and is almost entirely built in the Occupied Palestinian Territory. Furthermore, it is widely reported that the Israeli Government intends that the Wall should encircle the entire West Bank –or, more precisely, that the Wall should encircle a much reduced area of the West Bank well inside the Green Line.<sup>335</sup> No official plan for the eastern Wall has been published; but the report has been given credence by, for instance, the Special Rapporteur to the UN Commission on Human Rights.<sup>336</sup>

455. In those locations where the Wall follows the Green Line, but is wholly or partly constructed on territory on the Palestinian side of the Green Line, the Wall may

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<sup>335</sup> See e.g., B'Tselem 2003 Report, p. 3, Annex 13 in Annex Volume 2 accompanying this Written Statement.

in a general sense be said to 'defend' Israeli territory. It is nonetheless unlawful. Plainly, the Wall could have been built upon Israeli territory. There is no *need* for it to be built on Palestinian territory. The requisitioning or confiscation of the land on which the Wall is constructed is, accordingly, in violation of international law. The question of the legality of the 'requisitioning' or confiscation of the land on which the Wall is constructed is addressed further below.

456. Most of the Wall does not follow the Green Line. Most of it is built well inside the Occupied Palestinian Territory, including East Jerusalem. The Wall is said to be necessary to prevent and obstruct attacks upon Israel from the West Bank. The threats against which the Wall is allegedly intended to guard are not threats of rocket or artillery attack. (And if they were, given the very small size of Palestinian territory, it is unclear what protection the Wall could in fact offer.) The threats are, primarily, threats of suicide or other bombers, presumably travelling in all or most cases by motorized transport and therefore along known roads or tracks, to attack Israeli targets.

457. There is no reason to suppose that a wall built, say, 5 km from the Green Line offers any greater protection to Israeli territory than a wall built on the border itself. As was seen in Chapter 5, Israel says that it needs to have a closed zone into which it can chase potential bombers who elude apprehension at checkpoints in the Wall. This argument is unconvincing. Any such individuals could be chased if the Wall were on the Green Line: they could be chased into Israeli territory. If there are particularly vulnerable sites in Israel near to the Wall, those sites can themselves be protected.

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<sup>336</sup> Dugard Report (2003), para. 11.

458. Moreover, the possibility of potential attackers remaining undetected at checkpoints surely points to a need to improve the efficiency of checkpoints rather than to divert the Wall. This very point was made within the Israeli Government. The Israeli State Comptroller commented in his July 2002 report on the Closed Zone (the ‘seam zone’) that “IDF documents indicate that most of the suicide terrorists and car bombers crossed the seam area into Israel through the checkpoints, where they underwent faulty and even shoddy checks.”<sup>337</sup>

459. Furthermore, the chances of a potential bomber avoiding apprehension and then being identified in sufficient time to be detained in the Closed Zone are so small as to be fanciful, and certainly no rational basis for a decision to re-route the Wall away from the Green Line. That this is not the reason for the route of the Wall is clear from the fact that the width of closed zone between the Wall and the Green Line is far from uniform. It mostly varies from around 5km to around 22km, and in some places (notably in the north) is practically non-existent.

460. What, then, might be the reasoning behind the decision to push the Wall deep into the Occupied Palestinian Territory, leaving an estimated 43% of the West Bank land area outside the Wall? Israel has offered no adequate explanation of the justification for the Wall, beyond bald assertions of its security interest. The explanation is self-evident. There are three main kinds of location where the route of the Wall departs significantly from the Green Line:

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<sup>337</sup> State Comptroller of Israel’s *Seam Zone Investigation Report No. 2 (July 2002)*, as quoted in Dugard Report (2003), para. 8.

- i. there are the locations in which the Wall is pushed inside Palestinian territory in order to leave Israeli civilian settlements or other civilian facilities in the West Bank outside the Wall;
  - ii there is the segment of the Wall around East Jerusalem;
  - iii there is the planned Eastern segment of the Wall, which runs alongside the river Jordan.
- (b) The Wall may not be diverted to protect Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem

461. As the maps in Annex Volume 1 to this Written Statement show, the route of the Wall is very obviously designed to put settlements in the Occupied Palestinian Territory such as 'Ariel', 'Ma'ale Adumim', and 'Etzion', outside the Wall. The question is whether the civilian settlements may be given special protection by means of shifts of the course of the Wall from the Green Line.

462. Occupying Powers have the right, during the period of military occupation, to defend their military facilities in the occupied territory. Israeli army installations inside the Occupied Palestinian Territory may accordingly be defended, by the usual military methods of defensive structures, surveillance, and intelligence-gathering. (Of course, those of them that lie inside the course of the Wall cannot be protected by the Wall; and there is no evidence that the Wall has been constructed to protect any military facilities lying between the Wall and the Green Line).

463. The legal position of the civilian settlements is quite different. International humanitarian law stipulates, in Article 49(6) of the Fourth Geneva Convention, that

“the Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies”. The establishment by the Occupying Power of civilian settlements in occupied territory is not only a violation of international law, it is declared to be a ‘grave breach’, and a war crime, by Article 85 of Additional Protocol I to the Geneva Conventions.

464. The prohibition in Article 49(6) of the Fourth Geneva Convention is not confined to the forcible transfer by an Occupying Power of parts of its population into the occupied territory. In the words of a Legal Adviser to the U.S. State Department,

“It seems clearly to reach such involvements of the occupying power as determining the location of settlements, making land available and financing of settlements, as well as other kinds of assistance and participation in their creation.”<sup>338</sup>

465. There is no doubt that Israel has assisted in the establishment of many of the settlements in the West Bank in the ways described in that passage, and that Israel’s actions in the relevant area constitute a ‘transfer of parts of its own civilian population into the territory it occupies’, in violation of Article 49(6).<sup>339</sup> Israel’s settlement policy, in so far as it affects the Wall, was described in Chapter 4.

466. Just as the transfer of civilian populations into occupied territory is unlawful, so, too, are the settlements accommodating the transferred populations unlawful. This is well established. The illegality of the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, has been clearly, consistently and

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<sup>338</sup> *Digest of US Practice in International Law* [‘DUSPIL’] 1978, p. 1575 at 1577.

<sup>339</sup> *DUSPIL* 1978, 1575-1578; Letter of H.J. Hansell, Legal Adviser, U.S. Department of State, to House Committee on International Relations, (21 April 1978), 17 *ILM* 777 (1978).

repeatedly affirmed by States and international bodies, including the UN Security Council.<sup>340</sup>

467. The settlements being unlawful, there can be no legal right to protect them by diverting the course of the Wall away from the Green Line. The conclusion is inescapable. The same reasoning applies to facilities and infrastructure, such as roads, built in the Occupied Palestinian Territory, including East Jerusalem, in order to support the civilian settlements. As the Wall cannot lawfully be built in order to protect an unlawful civilian settlement so, too, it cannot lawfully be built in order to protect a road constructed in order to serve that settlement, for instance.<sup>341</sup>

(c) The Wall may not be diverted to protect annexed territory in East Jerusalem

468. It is a peremptory principle of international law that territory may not be acquired by the use of force. Israel has nonetheless purported to annex East Jerusalem and extensive areas around it. As was explained in Chapter 7, the Security Council decided not to recognize the purported annexation of East Jerusalem. That determination binds Member States under Article 25 of the United Nations Charter.<sup>342</sup> The diversion of the Wall from the Green Line in this area is a plain attempt, further to long-established Israeli policies and practices, to ignore that binding determination (which sets out the position which is anyway clearly established in international law) and to treat the annexed territory in Jerusalem as if it had sovereignty over it.

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<sup>340</sup> See Chapter 7, above, and Appendix 1.

<sup>341</sup> See the UN Commission on Human Rights, Resolution 2003/7 of 15 April 2003.

<sup>342</sup> *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 16 at 53.

469. The position in relation to that part of the Wall that protects East Jerusalem is, accordingly, similar to that in relation to those parts of the Wall that protect illegal Israeli settlements in the West Bank. As Israel has no proprietary rights in that area of the Occupied Palestinian Territory, it cannot divert the course of the Wall away from the Green Line to protect that area as such.

(d) There is no justification for the construction of the Wall in the eastern part of the West Bank

470. What possible reason could there be for continuing the route of the Wall inside the eastern boundary of the West Bank? The eastern border of the West Bank is Palestine's boundary with Jordan. There can scarcely be a fear of an attack coming from the east: Israel and Jordan concluded a peace treaty in 1994. If there were a threat from the Occupied Palestinian Territory towards the east, it is Jordan, not Israel, which would be threatened. If the fear is that bombers from the West Bank would travel east, and then north or south and into Israel by a roundabout route, and if a wall is a suitable response, the obvious solution is to construct the Wall up to the Israeli border with Jordan in the north and the south. Building the Wall inside the West Bank along the Jordan Valley is patently not justified by any consideration of security.

471. Palestine has in general not speculated here on Israel's motives for its actions; but in this case it is difficult to see that there can be any reason behind the proposed route of the Wall other than a desire to extend Israeli territory along the Jordan Valley. This would be a further *de facto* annexation of territory, which would enclave the West Bank, isolate it both from Gaza and from Jericho, and have a dramatic and very serious detrimental effect upon Palestine's ability to exist as a



viable State and have stable economic, social and political links with its neighbours. Not only would it be lacking in any legal justification; it would also be a move incompatible with Palestine's right to realise its self-determination in independence.<sup>343</sup>

(e) The Wall is an attempt to change the status of the Occupied Palestinian Territory, including East Jerusalem

472. Israel has no need to build the Wall for security reasons in the Occupied Palestinian Territory. The Wall appears to be an attempt to change the legal status of the Occupied Palestinian Territory, including East Jerusalem.

473. The prohibition on changes to the status of occupied territory is a fundamental rule of international humanitarian law and a corollary of the prohibition on the acquisition of territory by force. Its breach is a distinct and serious violation of international law. The rule has been repeatedly and forcefully reaffirmed, specifically in relation to the Occupied Palestinian Territory, including East Jerusalem, by the Security Council. One example is Resolution 446 (1979) which called:

“...once more upon Israel, as the occupying Power, to abide scrupulously by the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to rescind its previous measures and to desist from taking any action which would result in changing the legal status and geographical nature and materially affecting the demographic composition of the Arab territory occupied since 1967, including Jerusalem, and, in particular, not to transfer parts of its own civilian population into the occupied Arab territory.”

474. The concept of a ‘change in the status of a territory’ is not defined in the Geneva Conventions or in any other authoritative international instrument. Its

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See below Chapter 10.

meaning must be arrived at by consideration of the use of the term and the role that it plays in the system of international humanitarian law.

475. The concept of a change in the legal status of a territory is plainly wider than the concept of annexation. It would be absurd if a State could assert all the rights of a territorial sovereign over territory occupied by force and avoid the legal prohibition on the forcible acquisition of territory by the device of avoiding a formal transfer of title and avoiding the language of sovereignty. Likewise, if the Security Council in Resolution 446 had meant to confine its injunction to annexation, it could have said so expressly, and in fewer words than it in fact used.

476. The role of the prohibition within international humanitarian law also underlines its breadth. The 'no change of status' principle is secured in the Fourth Geneva Convention by the duty to respect the existing laws in the territory, reinforced by the prohibition on the acquisition of territory by use of force.<sup>344</sup>

477. The 'status' of territory is constituted by the system of legal rules that are applicable in it and by the factual power to control events within the territory. In a case where areas of territory are designated from which the residents are expelled, in circumstances not permitted by Article 49 of the Fourth Geneva Convention, the status of the territory is changed. So, too, in a case where residents are required to obtain permits to remain in their homes, or to travel between their home and places of work, education and healthcare, or any other parts of their territory, the status of the territory is changed. The same is true when large numbers of citizens of the Occupying Power are implanted in the Occupied Palestinian Territory in areas marked out for them by the Wall.

478. All these changes in the legal regime of the Occupied Palestinian Territory have been, and are being, brought about as a result of the Wall, which renders the changes more intractable and with time irreversible. Israel has stated that the Wall is not intended to change the status of the territory that it cuts through and that the Wall is intended to be temporary:<sup>345</sup> but this is unconvincing. As the Rapporteur to the UN Human Rights Committee noted:

“the settlement structure in Gaza seems removable by negotiations on final status in a manner that at present does not appear likely in relation to the West Bank”<sup>346</sup>

Precisely the same observation may be made about the Wall. The cost –estimated at NIS 10 million per kilometre<sup>347</sup> of the 788 km Wall– suggests something very different from a temporary security measure designed to operate in the short period before the enjoyment of Palestinian statehood is secured through the steps outlined in the June 2003 ‘Road Map’, which envisaged a final and comprehensive settlement of the Israel-Palestinian conflict by 2005.<sup>348</sup>

479. The fears concerning the intended permanence of the Wall are borne out of experience of Israel’s past practice in relation to the Occupied Palestinian Territory. As a report by the Israeli human rights organization, B’Tselem, put it:

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<sup>344</sup> UN Charter, Article 2(4); UNGA Res. 2625 (XXV).

<sup>345</sup> See Annex I to the Report of the Secretary-General, A/ES-10/248, 24 November 2003, included as Dossier no. 52 accompanying the UN Secretary-General’s submission.

<sup>346</sup> UN Doc. E/CN.4/2001/121, 16 March 2001, paragraph 21, Annex 10 in Annex Volume 2 accompanying this Written Statement.

<sup>347</sup> B’Tselem 2003 Report, p. 7, Annex 13 in Annex Volume 2 accompanying this Written Statement.

<sup>348</sup> See Report of the Secretary-General, A/ES-10/248, 24 November 2003, paras. 28 - 31, included as Dossier no. 52 accompanying the UN Secretary-General’s submission.

“In the past, Israel has used “requisition for military needs” orders as a means to take control of Palestinian land to establish settlements. These lands were never returned to their owners. It is now clear that Israel did not intend to seize the land for a temporary period, but to expropriate it permanently.”<sup>349</sup>

480. Furthermore, the legal changes, and the restrictions on residence and movement in the vicinity of the Wall, are already bringing about a clear change in the demographic structure of the Occupied Palestinian Territory, not only in relation to the illegal settler population but also in relation to the Palestinian population. In Qalqiliya, for example, it is reported that around 600 shops and enterprises have closed as a result of the construction of the Wall,<sup>350</sup> and an estimated 6,000 to 8,000 people have already left the area.<sup>351</sup> Faced with a choice of remaining in a walled-off town, perhaps requiring residence permits, perhaps needing permission for daily crossings of the Wall for work or education or medical care, and moving elsewhere, it is unsurprising that there is increasing evidence of widespread displacement of the population of the Occupied Palestinian Territory, including East Jerusalem, from areas outside the Wall.

481. Coupled with the still-increasing number of people moving into the unlawful settlements, the change in the demographic structure of the Occupied Palestinian Territory is dramatic. It is one of the most serious effects of the Wall, unlawfully changing the ‘facts on the ground’ in a way that Palestine is powerless to prevent, and which will be very difficult to reverse. It is a *de facto* annexation of the area outside

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<sup>349</sup> For extensive discussion on this subject, see B’Tselem 2002 Report, Annex 12 in Annex Volume 2 accompanying this Written Statement.

<sup>350</sup> Dugard Report (2003), para. 10.

<sup>351</sup> Ziegler Report, para. 51.

the Wall, coupled with a displacement of the population throughout the Occupied Palestinian Territory.

(f) Conclusion on Israel's right to construct the Wall

482. Palestine submits, accordingly, that Israel, as Occupying Power, has no right to construct the Wall in the Occupied Palestinian Territory, including East Jerusalem. The Wall is an attempt by Israel unilaterally to change the legal status of the Occupied Palestinian Territory through which it cuts. The construction of the Wall violates international law.

**(4) The effects of the Wall violate international law and render it a disproportionate measure**

483. The previous section focused on the absence of any necessity for the Wall, such as is required as a precondition for the limited rights that Israel enjoys as the Occupying Power. Even if a case could be made out that those requirements in the relevant provisions of the law of occupation are met, that would not render Israel's conduct lawful. International humanitarian law requires that measures taken by an Occupying Power that are *prima facie* lawful must nonetheless be proportionate to the circumstances that create the necessity for the measures. The Wall being built in the Occupied Palestinian Territory is a disproportionate response.

484. The effects of the Wall were outlined in Chapter 6 above and are described in more detail in reports to the United Nations, of which some of those most directly

relevant to these proceedings are annexed to this Written Statement.<sup>352</sup> They are summarized in the following paragraphs, which are directed to two distinct legal issues. First, the effects constitute distinct violations of particular rules of international humanitarian law and of international human rights law, both of which are applicable in the Occupied Palestinian Territory, including East Jerusalem.<sup>353</sup> International humanitarian law applies as a *lex specialis*, but does not exclude international human rights law, which continues to apply.<sup>354</sup> In any case, some of these rights are non-derogable, and must be respected in all circumstances; and even the other rights can only be derogated to the extent strictly required by the exigencies of the situation, i.e., subject to a strict condition of proportionality. Second, the hardship caused to the population of the Occupied Palestinian Territory, including East Jerusalem, by these effects renders the Wall a disproportionate measure and therefore incompatible with the law of occupation.

(a) The Wall violates the right to freedom of movement

485. The practical restrictions on freedom of movement arising from the Wall are, in summary, as follows:

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<sup>352</sup> See Annexes 1-11 and 14 in Annex Volume 2 accompanying this Written Statement.

<sup>353</sup> See Chapter 8.

<sup>354</sup> See Chapter 8. See Ziegler Report, para. 25: "United Nations bodies have also repeatedly reaffirmed the applicability of human rights law in the OPT, including the Security Council (resolution 237 (1967)) and the Special Rapporteur of the Commission on Human Rights on the situation of human rights in the OPT, John Dugard (see E/CN.4/2002/32 [*This report is reprinted as Annex 2 in Annex Volume 2 accompanying this Written Statement*]), the Committee on Economic, Social and Cultural Rights and other treaty bodies. This is also reaffirmed in the 1995 Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (art. XIX)." See also the decision of the Inter-American Commission on Human Rights on Precautionary Measures in Guantanamo Bay, Cuba, 12 March 2002, 41 ILM 532 (2002); *Loizidou v. Turkey*, European Court of Human Rights, Series A, No. 310, paragraph 62 (1995)..

- a. Physical prevention of movement within the Occupied Palestinian Territory, including East Jerusalem, by the Wall, in extreme cases by the walling-in of towns in enclaves;
- b. Imposition of unjustifiably lengthy detours and delays on movements within the Occupied Palestinian Territory, including East Jerusalem;
- c. Arbitrary and unpredictable access through gates in the Wall, isolating people, land and property outside the Wall from those inside;
- d. Imposition of restrictions on movement upon Palestinian people in the area around the Wall in a discriminatory and degrading manner.

486. The right to freedom of movement is secured by Article 12 of the International Covenant on Civil and Political Rights. That provision stipulates that:

- “1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.<sup>355</sup>

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<sup>355</sup> The Human Rights Committee has specified, notably in its General Comments Nos. 27 and 29, the conditions under which such restrictions are permissible. The conditions include necessity and proportionality. In paragraph 13 of General Comment No. 27, “Freedom of movement (art.12)”, CCPR/C/21/Rev.1/Add.9 of 02 November 1999, it said “the restrictions must not impair the essence of the right ...; the relation between right and restriction, between norm and exception, must not be reversed. The laws authorizing the application of restrictions should use precise criteria and may not confer unfettered discretion on those charged with their execution”: cf., paragraphs 11 to 18. In General Comment No. 29, “States of Emergency (art. 4)”, CCPR/C/21/Rev.1/Add.11 of 31 August 2001, paragraph 1 it said “The restoration of a state of normalcy where full respect for the Covenant can again be secured must be the predominant objective of a State party derogating from the Covenant”: cf., paragraphs 4, 7 and 9.

4. No one shall be arbitrarily deprived of the right to enter his own country.”<sup>356</sup>

487. Restrictions on the right may be imposed under Article 12(3) only within narrow limits. The UN Human Rights Committee stated that:

“The permissible limitations which may be imposed on the rights protected under article 12 must not nullify the principle of liberty of movement, and are governed by the requirement of necessity provided for in article 12, paragraph 3, and by the need for consistency with the other rights recognized in the Covenant.”<sup>357</sup>

488. Article 12 is subject to derogation in time of public emergency threatening the life of the nation.<sup>358</sup> Israel made, in 1991, a declaration derogating from the Covenant, but only in respect of Article 9 of the Covenant (which concerns arbitrary detention). In any event, the Covenant does not allow an unfettered derogation from obligations. Derogations are only permitted:

“to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin”<sup>359</sup>

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<sup>356</sup> The right to freedom of movement is also asserted in Article 13 of the Universal Declaration of Human Rights.

<sup>357</sup> (Human Rights Committee, General Comment 27: Freedom of movement (Art.12) : UN Doc. CCPR/C/21/Rev.1/Add.9, 02 November 1999, paragraph 2. See also paragraphs 14, 15 and 17 of the General Comment: “(14) Article 12, paragraph 3, clearly indicates that it is not sufficient that the restrictions serve the permissible purposes; they must also be necessary to protect them. Restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve the desired result; and they must be proportionate to the interest to be protected. (15) The principle of proportionality has to be respected not only in the law that frames the restrictions, but also by the administrative and judicial authorities in applying the law. States should ensure that any proceedings relating to the exercise or restriction of these rights are expeditious and that reasons for the application of restrictive measures are provided. ... (17) A major source of concern is the manifold legal and bureaucratic barriers unnecessarily affecting the full enjoyment of the rights of the individuals to move freely, to leave a country, including their own, and to take up residence.”

<sup>358</sup> International Covenant on Civil and Political Rights, Article 4.

<sup>359</sup> International Covenant on Civil and Political Rights, Article 4. Cf., Article 2.1 of the Covenant: “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present



489. The regime of the Wall plainly goes beyond what is “strictly required by the exigencies of the situation.” That is evident from its route, and from the practice of the Israeli authorities in operating controls at the Wall, as described in Chapter 6 above and in the United Nations reports annexed to this Written Statement. The violation of the freedom of movement reaches an extreme form in Palestinian towns such as Qalqiliya, which are completely surrounded by the Wall and Israeli roadblocks. They have become isolated enclaves, cut off from the Occupied Palestinian Territory both inside and outside the Wall.

490. Moreover, as was explained in Chapter 6, the regime of the Wall is explicitly discriminatory, imposing upon Palestinians restraints that are not imposed upon Israeli citizens or those prospectively entitled to Israeli citizenship. This discriminatory aspect of restrictions on movement in the Occupied Palestinian Territory was the subject of criticism by the Committee on Economic, Social and Cultural Rights even before the Wall was begun. The Committee noted “with concern that these restrictions apply only to Palestinian and not to Jewish Israeli citizens.”<sup>360</sup> That is not to say that the restrictions would be lawful if they applied to Palestinians and Israelis alike. The restrictions are unlawful because they are unnecessary and disproportionate. Their discriminatory aspect, which extends across a wide area including rights of residence and acquisition of land, does, however, aggravate the seriousness of the violation of the rights secured by the Covenant.

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Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

<sup>360</sup> UN Doc. E/C.12/1/Add.27, 4 December 1998, paragraph 17.

491. International humanitarian law does not itself prescribe a specific freedom of movement. Rather, it regulates the right of an Occupying Power to impose restrictions upon the population of occupied territory. The first limitation is that any change to the law of the occupied territory must be:

“essential to enable the Occupying Power to fulfil its obligations under [the Fourth Geneva Convention], to maintain the orderly government of the territory, and to ensure the security of the Occupying Power, of the members and property of the occupying forces or administration, and likewise of the establishment and lines of communication used by them.”<sup>361</sup>

492. That obligation is also reflected in Article 43 of the Hague Regulations, which obliges the Occupying Power to fulfil its duties concerning the restoration and maintenance of public order “while respecting, unless absolutely prevented, the laws in force in the country.”

493. In addition to the overriding need to demonstrate the absolute necessity of new restrictions on the population, in adopting and applying measures the Occupying Power must treat the people “without any adverse discrimination based, in particular, on race, religion or political opinion.”<sup>362</sup> It must secure for them as normal conditions of life as possible.

494. Those requirements stipulated by the Fourth Geneva Convention are routinely violated by Israel in the building and operation of the Wall. Again, descriptions of these practices are set out elsewhere and will not be repeated here.

495. The restrictions on movement lead to violations of other fundamental rights protected by international law, notably the rights to earn a livelihood, to access to

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<sup>361</sup> Fourth Geneva Convention, Article 64.2.

<sup>362</sup> Fourth Geneva Convention, Article 27.

food, to access medical care and education, to family life, and the right to self-determination. The sweeping consequences of the limitations on movement were noted by the Special Rapporteur of the UN Commission on Human Rights on the right to food, who reported as follows in October 2003:

“An unprecedented level of restrictions on the movements of Palestinians inside the Occupied Territory is depriving Palestinians not only of their freedom of movement, but also of their right to food. The extensive imposition of curfews, road closures, permit systems, security checkpoints and ‘back-to-back’ truck off-loading systems, which require that most trucks be off-loaded on one side of a checkpoint and reloaded onto another truck on the other side, imposed by the occupying military forces are producing the humanitarian crisis. The USAID-funded study argues that ‘The onset of the Intifada in September 2000 and the subsequent Israeli military incursions, closure and curfews have devastated the Palestinian economy and undermined those systems the Palestinian civilian population relies on for basic needs, including food and health’. The World Bank agrees that ‘the proximate cause of the Palestinian economic crisis is closure’. Restrictions on movement mean that many Palestinians cannot feed themselves: they cannot go to work, go to harvest their fields or go to buy food. For many Palestinians, the inability to feed their families is leading to a loss of human dignity, often heightened by bullying and humiliation at checkpoints.”<sup>363</sup>

496. The rights to earn a livelihood, to access to food, to access medical care and education, and to family life, are addressed in the following paragraphs.

(b) The Wall violates the right to earn a livelihood

497. The impact of the Wall upon the communities in the Occupied Palestinian Territory, and in particular its economic impact, is the subject of a continuing series of studies, commonly known as the ‘World Bank reports’, commissioned by the international donor community (through the Humanitarian and Emergency Policy Group (‘HEPG’), consisting of the European Union Presidency, the European

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<sup>363</sup> UN Doc. E/CN.4/2004/10/Add.2, 31 October 2003, paragraph 11.

Commission, the Government of Norway, the U.S. Government, UNSCO, and the World Bank), plus the International Monetary Fund. Four of the reports, dating from May, July, September and November 2003, are included in the dossier submitted by the UN Secretary-General to the Court.<sup>364</sup> A further report is due to be published by 31 January 2004, but is not yet available. These reports are based upon extensive and detailed studies of the position on the ground.

498. The picture that emerges from those reports is the same as that which emerges from other reports to UN bodies. The Wall separates Palestinian proprietors from the land that they own and farm. Even if proprietors themselves have access to their lands, the tending and harvesting of produce almost always requires that other workers and suppliers also have access to the land; and the Wall is impeding it. In some cases the Wall is preventing water reaching crops or animals. All of these effects undermine the ability of Palestinians to earn a livelihood.

499. Access to crops and access of the crops to markets is not a matter in which time is irrelevant. The harm inflicted by delays may be irremediable. The Special Rapporteur on Food reported as follows:

“Journeys that would have taken a few minutes now take several hours or days ... The movement of goods is controlled by the back-to-back off-loading system. With numerous checkpoints, this dramatically increases the costs of transporting food and agricultural produce. Permission to cross at checkpoints for agricultural produce and other food can be refused for days without explanation. At various checkpoints in the West Bank, the Special Rapporteur saw truckloads of fruit and vegetables rotting under the sun.”

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<sup>364</sup> Secretary-General's Dossier no. 85 to 88.

500. The Palestinian economy is being wrecked by the restrictions on movement in the Occupied Palestinian Territory. Those restrictions are now being made permanent in the Wall that is being built through the Occupied Palestinian Territory. They affect all sectors of the economy. If workers earn no money, they have none to spend in shops which employ other workers, and all of which depend on those in service and other sectors of the economy. But such wide-ranging effects are not simply indirect: *all* the Palestinian people in the Occupied Palestinian Territories directly face the difficulty travelling to and from their place of work, or to find work, unless they stay very close to their homes.

501. Parties to the International Covenant on Economic, Social and Cultural Rights, including Israel, are bound to recognize the right of all individuals to gain a living. Article 6 of the Covenant reads as follows:

“1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.”<sup>365</sup>

502. States Parties to the Covenant are obliged, by Article 2(1), to “take steps ... to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the ... Covenant”, and in Article 2(2) to guarantee that the rights “will be exercised without discrimination”. The UN Committee on Economic, Social and Cultural Rights, explained the nature of the obligations under the Covenant:

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<sup>365</sup> States Parties to the Covenant are permitted to subject Covenant rights to limitations determined by law, but “only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society”: International Covenant on Economic, Social and Cultural Rights, Article 4.

“(1)...while the Covenant provides for progressive realization and acknowledges the constraints due to the limits of available resources, it also imposes various obligations which are of immediate effect. Of these, two are of particular importance in understanding the precise nature of States parties’ obligations. One of these... is the "undertaking to guarantee" that relevant rights "will be exercised without discrimination ...”

(2) The other is the undertaking in article 2 (1) "to take steps", which in itself, is not qualified or limited by other considerations. ...

(9) The principal obligation of result reflected in article 2 (1) is to take steps "with a view to achieving progressively the full realization of the rights recognized" in the Covenant. ...It thus imposes an obligation to move as expeditiously and effectively as possible towards that goal. Moreover, any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.”<sup>366</sup>

503. The Wall has severely limited rights of movement within the Occupied Palestinian Territory. Palestine submits that Israel, as a State Party, is under an obligation not to adopt regressive laws, policies or practices, running contrary to the purposes of the Covenant, which hamper or obstruct the exercise of rights under the Covenant. Where individuals are prevented from earning a livelihood by physical or legal constraints that are not justified as proportionate responses to a threat to public order (or to the rights of another individual), the right to a livelihood is violated.

(c) The Wall violates fundamental rights to welfare

504. There are several rights that may be grouped together under the heading of ‘rights to welfare’, which it is convenient to treat together. These are the rights to

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<sup>366</sup> Committee on Economic, Social and Cultural Rights, General Comment 3, ‘The nature of States parties obligations (Art. 2, para.1 of the Covenant)’ (Fifth session, 1990), Compilation of

food, the right of access to medical care, and the right of access to education. These are addressed in turn in the following paragraphs.

505. The effect of the Wall in preventing agricultural production and trade has been noted. So have restrictions on mobility that make it difficult or impossible to earn money to buy food, and even to travel to neighbouring towns to buy food. The expropriation and confiscation of agricultural land to build the Wall also is threatening the right to food.<sup>367</sup> In various ways, the Wall is having a significant effect upon the ability of the Palestinian people to feed themselves.

506. A report submitted to the UN Commission on Human Rights on 31 October 2003 states that over 22% of Palestinian children under five years of age suffer from malnutrition and around 15.6% of those under 15 suffer from acute anaemia. Food consumption has fallen by 25-30% per capita; and more than half of Palestinian households eat only once per day.<sup>368</sup> The same report states that:

“...approximately 280 rural communities in the OPT ... have no access to wells or running water and are completely dependent on water delivered by municipal and private water tankers that frequently has to be purchased from the Israeli water company, Mekorot. The price of such water has risen by up to 80 per cent since September 2000 as a result of the increase in transport costs due to closures. The quality of most water brought in by tanker no longer meets World Health Organization drinking water quality standards.”<sup>369</sup>

507. Not all of these effects are attributable to the Wall. Some arise from restrictions on movement elsewhere in the Occupied Palestinian Territory. But they

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General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 45 (1994).

<sup>367</sup> Ziegler Report, para. 16.

<sup>368</sup> Ziegler Report, para. 9.

<sup>369</sup> Ziegler Report, para. 14.

demonstrate what the effects of restrictions on movement are; and the Wall is consolidating those restrictions in a structure that divides the Occupied Palestinian Territory into several enclaves in a more absolute and permanent manner than any measures previously taken by the Israeli Government.

508. Israel has a legal duty, as the Occupying Power, to ensure food and water supplies to the population of the Occupied Palestinian Territory, including East Jerusalem, to the fullest extent of the means available to it.<sup>370</sup>

509. The UN Special Rapporteur on the Right to Food concluded that Israel was violating that obligation:

“As the occupying Power, the Government of Israel has obligations to ensure the right to food of the Palestinian people. The Special Rapporteur believes that the actions being taken in the OPT by the occupying forces violate the right to food. ....

The effective ‘imprisonment’ of certain communities, such as Qalqiliya, by the new security fence / apartheid wall must be halted immediately.”<sup>371</sup>

510. The effects of the Wall in preventing students and teachers from attending places of education are noted in Chapter 6 and in many of the reports in the UN Secretary-General’s Dossier.<sup>372</sup> So, too, have the effects of restraints on movement in preventing ambulances and patients from reaching hospitals and medical centres, and preventing medical staff from reaching patients.<sup>373</sup>

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<sup>370</sup> Fourth Geneva Convention, Article 55. Cf., International Covenant on Economic, Social and Cultural Rights, Article 11; Universal Declaration on Human Rights, Article 25.

<sup>371</sup> Ziegler Report, paras. 58, 59.

<sup>372</sup> See Dossier nos. 55, 56 and 85-88 accompanying the UN Secretary-General’s submission.

<sup>373</sup> See the reports reprinted in Annex Volume 2, as Annexes 1-6, 9 and 14, included as Dossier nos. 56 and 85-88 accompanying the UN Secretary-General’s submission.



511. The Wall thus violates rights to food and water, to education, and to medical care. These rights should be enjoyed by all Palestinians; and they are secured with particular rigour for children by the 1989 Convention on the Rights of the Child, to which Israel is a party.<sup>374</sup>

512. These effects are, furthermore, incompatible with Israel's obligations assumed by it under the International Covenant on Economic, Social and Cultural Rights.<sup>375</sup> The welfare rights established in that Covenant are not absolute, in the sense that every State Party to the Covenant is bound to secure them fully for every individual. The rights are, however, progressive; and the UN Commission on Economic, Social and Cultural Rights has explained that every State Party has:

“(10) ...a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, prima facie, failing to discharge its obligations under the Covenant.”<sup>376</sup>

513. Palestine submits that States Parties are under an obligation not to adopt regressive laws, policies or practices, running contrary to the purposes of the Covenant, and that where individuals are prevented from having access to food, education and medical facilities by physical or legal constraints that are not justified as proportionate responses to a threat to public order (or to the rights of another

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<sup>374</sup> See in particular Articles 24, 27, 28.

<sup>375</sup> ICESCR Articles 12, 13. Cf., the Universal Declaration on Human Rights, Article 26.

<sup>376</sup> Committee on Economic, Social and Cultural Rights, General Comment 3, 'The nature of States parties obligations (Art. 2, para.1 of the Covenant)' (Fifth session, 1990), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 45 (1994).

individual), the rights of access to food, education and healthcare are violated. It submits that Israel's conduct also violates these rights.

(d) The Wall violates the right to family life

514. By comparison with the rights to freedom of movement, to earn a livelihood, and to welfare, the right to family may appear less important. That is not so. Violation of the right to family life is capable of destroying communities, at the level of the family, the town or village, and the nation.

515. The right to family life is affirmed in many international instruments. For example, Article 17 of the International Covenant on Civil and Political Rights stipulates:

“1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.”<sup>377</sup>

516. The Wall is making it difficult or impossible for families, which are the primary unit of social care in the Occupied Palestinian Territory, to continue to function. It impedes visits to care for sick or infirm parents or children, or for child-minding for working parents. It impedes social contacts and marriage and family-building. Violation of the right to family life is eroding the basis of Palestinian society in the Occupied Palestinian Territory.

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<sup>377</sup> The right is also secured by and Article 16 of the Convention on the Rights of the Child Cf., Article 23 of the Covenant, which stipulates that “[t]he family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”

(e) The Wall is a form of collective punishment

517. The Wall strikes at Palestinian interests in the most fundamental way. It strikes at the right to dignity of each individual Palestinian.<sup>378</sup> The pervasive and debilitating effect of being deprived of dignity in one's own country, particularly in circumstances where there is overt legal discrimination in favour of unlawful civilian settlements, is one of the hardest to bear of all the indignities and hardships to which the Palestinians are forcibly exposed.

518. These hardships are imposed, not upon those who have committed or who are suspected of planning attacks, but upon the entire non-Israeli population of the Occupied Palestinian Territory. The existence of the Wall renders life in the Occupied Palestinian Territory insecure and unpredictable. It disrupts life, and makes travel over even short distances dependent upon the whims of young, armed soldiers manning the checkpoints.

519. All of the violations summarized above affect the Palestinian population of the Occupied Palestinian Territory at large. The effects are neither confined to, nor even targeted at, identified wrongdoers. They are collective measures of intimidation and punishment of the population. This is incompatible with Article 33 of the Fourth Geneva Convention, which stipulates that “[c]ollective penalties and likewise all

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<sup>378</sup> Article 1 of the Universal Declaration of Human Rights proclaims that: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” The preamble of the Declaration declared that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”

measures of intimidation or of terrorism are prohibited”, and Article 75 of Additional Protocol I, which in this respect at least represents customary international law.<sup>379</sup>

520. The same conclusion was reached in respect of restrictions on movement in the Occupied Palestinian Territory generally by the Special Rapporteur of the Commission on Human Rights, who reported that:

“...checkpoints divide the West Bank into a patchwork of cantons. Since March 2002, permits have been required to travel from one district to another. .... These measures have not prevented the movement of militants between different towns or regions or between Palestine and Israel. They do not protect settlements which are already well protected by the IDF. Instead, internal checkpoints restrict internal trade within the OPT and restrict the entire population from travelling from village to village or town to town. They must therefore be seen as a form of collective punishment.”<sup>380</sup>

(f) The Wall violates property rights of Palestinians

521. The violations of international law discussed so far are all general, in the sense that they affect the entire population of the Occupied Palestinian Territory, including East Jerusalem. There is a further category of violations that affects specific Palestinians: the violations of property rights.

522. Chapter 6 described the taking and destruction of property that the construction of the Wall has entailed and continues to entail. Property is taken, not

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<sup>379</sup> See Dieter Fleck (ed.), *The Handbook of Humanitarian Law in Armed Conflicts*, (OUP, 1995), section 507. Cf., the US Judge Advocate General’s School, US Army, *Operational Law Handbook*, JA 422 at 18-2 (1977): “..the US views [inter alia, Article 75 of Additional Protocol I] as customary international law.”

<sup>380</sup> Dugard Report (2003), para. 19. See also Prof. Dugard’s report dated 29 August 2002 and addendum dated 16 September 2002, and his report dated 17 December 2002, reprinted as Annexes 3, 4 and 5 in Annex Volume 2 accompanying this Written Statement.

just for the Wall itself, but also for the adjacent security zone, and for the siting of supporting facilities.

523. The right to the peaceful enjoyment of property is one of the rights most firmly established in the jurisprudence of international human rights law.<sup>381</sup> It is recognized, for example, in Article 17 of the Universal Declaration on Human Rights.<sup>382</sup> In international humanitarian law, the right is protected in the special circumstances of a military occupation by the provisions on the requisitioning<sup>383</sup> and the destruction of property.<sup>384</sup>

524. In so far as property is simply destroyed by Israel, by the bulldozing of fields and orchards for example, the action is unlawful as wanton destruction not necessitated by military operations, in violation of Article 53 of the Fourth Geneva Convention.

525. Where Palestinian property is seized or requisitioned by Israel, the violation is of a different nature. The illegality flows from two defects in the requisitioning. First, as was shown above, it lacks any justification as action necessary to satisfy the needs of the Israeli army. It is incompatible with Article 52 of the 1907 Hague Regulations. That provision applies the broader principle, itself set out in Article 55 of the Hague Regulations, that the Occupying Power is merely an administrator and usufructuary of occupied territory.

526. Second, it is in many instances also unlawful because it violates basic procedural rights of the owners. Notices of requisition are not necessarily served on

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<sup>381</sup> As reflected in, *inter alia*, Protocol 1 to the European Convention on Human Rights.

<sup>382</sup> “Article 17. (1) Everyone has the right to own property alone as well as in association with others. (2) No one shall be arbitrarily deprived of his property.”

owners: they may be affixed to trees or posts somewhere on the property. The procedure for 'appeals' requires compliance with expensive and burdensome formalities, and it was reported recently that "every appeal against the requisitioning of land (numbering in the hundreds) made to the military Appeals Committee has been rejected. So, too, have all the applications for relief from the Israeli High Court."<sup>385</sup> The process of the takings violates basic procedural rights, firmly established in international law. They are unlawful takings of property, and no *effective* remedies are available to those whose rights are violated.

527. Moreover, as has been noted, the effect of the Wall in preventing the use of property by its owners constitutes a further category of violations of property rights. Examples detailed elsewhere in this statement include the instances of owners being forced to sell agricultural properties because they can no longer visit the property sufficiently frequently to maintain it and keep its produce alive.<sup>386</sup>

(g) The Wall violates the right of the Palestinian people to self-determination

528. The Wall violates the right of the Palestinian people to self-determination, as enshrined in common Article 1 of the two Covenants. This matter is addressed in the following Chapter, but it is appropriate to refer to it here because the UN Committee on Economic, Social and Cultural rights has explicitly tied that matter to the

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<sup>383</sup> Hague Regulations, Article 52.

<sup>384</sup> Fourth Geneva Convention, Article 53.

<sup>385</sup> Details appear in Annex I to *The Impact of Israel's Separation Barrier on Affected West Bank Communities: a follow-up report to the Humanitarian and Emergency Policy Group (HEPG) and the Local Aid Coordination Committee*, September 30, 2003. This report is dossier no. 87 accompanying the UN Secretary-General's submission.

<sup>386</sup> B'Tselem 2003 Report, Annex 13 in Annex Volume 2 accompanying this Written Statement.

Covenant. In its Concluding Observations concerning a report submitted by Israel it said:

“39. The Committee urges the State party to respect the right to self-determination as recognized in article 1 (2) of the Covenant, which provides that ‘in no way may a people be deprived of its own means of subsistence’. Closure restricts the movement of people and goods, cutting off access to external markets and to income derived from employment and livelihood. The Committee also calls upon the Government to give full effect to its obligations under the Covenant and, as a matter of the highest priority, to undertake to ensure safe passage at checkpoints for Palestinian medical staff and people seeking treatment, the unhampered flow of essential foodstuffs and supplies, the safe conduct of students and teachers to and from schools, and the reunification of families separated by closures.”<sup>387</sup>

**(5) The Wall is not justified by self-defence**

529. Finally, turning to the *jus ad bellum*, Israel is reported to rely upon the right of self-defence to justify the Wall. This argument is misconceived.

530. First, the right of self-defence as it has long been understood is not applicable to circumstances such as those prevailing in the Occupied Palestinian Territory, including East Jerusalem. The requirements for a valid exercise of the right of self-defence are well established in international law. There must be an armed attack upon the State, which can be prevented and which can only be prevented by the taking of forcible measures. The measures that may be taken in self-defence are, moreover, strictly limited by the twin criteria of necessity and proportionality. The minimum of force must be used, and even then it may be used only if the forcible measures employed are proportionate to the harm that is to be averted.<sup>388</sup>

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<sup>387</sup> E/C.12/1/Add.27, 4 December 1998, para. 39.

<sup>388</sup> *Oil Platforms*, I.C.J. Reports 2003, paras. 43, 51, 57, 73-75.

531. The construction of the Wall fails to meet these criteria at practically every step. The violence in the Occupied Palestinian Territory is not on a scale or of a nature equivalent to an 'armed attack' against Israel in the sense required for the exercise of a right of self-defence.<sup>389</sup> Self-defence in international law cannot be triggered by individual criminal acts which call for police and prosecutorial action, and not military action.

532. Furthermore, the right of self-defence applies so as to justify forcible measures to ward off an attack that is in the course of being committed –an actual, present attack. Some authorities extend the right to circumstances where an imminent armed attack has been commenced. No authority supports the view that the right of self-defence extends so far as to provide a justification for the taking of measures that, far from being responses to an actual or imminent attack, are prophylactic, preventive measures intended to ensure that no attack can be put into effect. It is not a general right for a State to take forcible measures outside its territory in order to prevent the commission of crimes within the State.

533. The right of self-defence is, moreover, subject to the principle of proportionality. The force used must be proportional to the actual or imminent harm. As has been shown, the Wall is not a proportionate response to terrorist attacks.

534. The argument fails for a second reason. The entitlement of States to use force is accommodated and regulated by the Law of War, the *jus in bello*. The Fourth Geneva Convention permits forcible measures against civilian populations, subject to

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<sup>389</sup>

*Ibid.*



strict limits. That exhausts the legal rights of an Occupying Power. A State may not use all of its powers under the Fourth Geneva Convention and the Laws of War and then decide that those powers are inadequate and invoke the more general right of self-defence, which belongs to the *jus ad bellum*, in order to avoid the constraints of international humanitarian law.

**(6) Concluding remarks**

535. This Chapter has sought to identify the specific violations of international humanitarian law and of international human rights law that result from the construction and operation of the Wall in the Occupied Palestinian Territory, including East Jerusalem. The next Chapter continues the legal analysis by addressing the question of the violation of the Palestinian People's right to self-determination in international law.

## **Chapter 10. VIOLATIONS OF THE RIGHT OF THE PALESTINIAN PEOPLE TO SELF-DETERMINATION**

536. The right of the Palestinian people to self-determination is clearly recognized by the international community and the United Nations, and that right is gravely violated by the construction of the Wall by Israel in the Occupied Palestinian Territory.

### **(1) The right of the Palestinian people to self-determination as recognized by the international community and the United Nations**

537. The existence of the principle of equal rights and self-determination of peoples is no longer a matter of dispute in international law. The matter was clearly ascertained by the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (Resolution 2625(XXV) of 24 October 1970), which stated *inter alia*:

“ By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all people have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter. ”

538. The Court has acknowledged that right *inter alia* in the following statement in its Judgment of 30 June 1995 in the case concerning *East Timor*:

“The principle of self-determination of peoples has been recognized by the United Nations Charter and in the jurisprudence of the Court (see *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, *Advisory Opinion*, I.C.J. Reports 1971,

pp. 31-32, paras. 52-53; *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, pp. 31-33, paras. 54-59); it is one of the essential principles of contemporary international law.”<sup>390</sup>

539. The application of this principle to Palestine is also no longer in dispute. The principle was rooted in UN General Assembly Resolution 181 (II) of 29 November 1947, which set forth a plan partitioning Palestine into two States, one Arab and one Jewish, with an economic union between them and with Jerusalem as a *corpus separatum*. It took some time, however, for the rights of the Palestinian people to be fully established in the United Nations.

540. In its Resolution 2535 B (XXIV) of 10 December 1969, the General Assembly stated that it “1. [r]eaffirms the inalienable rights of the people of Palestine.” In subsequent years, the General Assembly has consistently reaffirmed that the Palestinians are a People and has specified their rights. Thus, in Resolution 2649 (XXV) of 30 November 1970, the Assembly:

“ 2. Recognizes the right of peoples under colonial and alien domination in the legitimate exercise of their right to self-determination to seek and receive all kinds of moral and material assistance, in accordance with the resolutions of the United Nations and the spirit of the Charter of the United Nations;

3. Calls upon all Governments that deny the right to self-determination of peoples under colonial and alien domination to recognize and observe that right in accordance with the relevant international instruments and the principles and spirit of the Charter;

4. Considers that the acquisition and retention of territory in contravention of the right of the people of that territory to self-determination is inadmissible and a gross violation of the Charter;

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<sup>390</sup> *East Timor (Portugal v. Australia), Judgment, I.C.J. Reports 1995*, p. 90, at p. 102, para. 29.

5. Condemns those Governments that deny the right to self-determination of peoples recognized as being entitled to it, especially of the peoples of southern Africa and Palestine. ”

541. The General Assembly in resolution 2672 C (XXV) of 8 December 1970 further “[r]ecognizes that the people of Palestine are entitled to equal rights and self-determination, in accordance with the Charter of the United Nations.” A further step was taken with Resolution 3236 (XXIX) of 22 November 1974, in which the General Assembly:

“ 1. [r]eaffirms the inalienable rights of the Palestinian people in Palestine, including:(a) The right to self-determination without external interference;(b) The right to national independence and sovereignty ”  
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542. General Assembly Resolution ES 7/2 (July 1980) in turn mentions expressly among the inalienable rights of the Palestinian people:

“(b) The right to establish its own independent sovereign State”.

543. Contemporary resolutions of the General Assembly express their full support for the right of the Palestinian people to self-determination. For instance, in Resolution 58/163 of 22 December 2003, which was adopted by a vote of 169 in favour to five against (Israel, Marshall Islands, Micronesia, Palau, and the United States of America), with no abstention, the General Assembly:

“Affirming the right of all States in the region to live in peace within secure and internationally recognized borders,

1. Reaffirms the right of the Palestinian people to self-determination, including the right to their independent State of Palestine”.

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<sup>391</sup> Other resolutions affirming the inalienable rights of the Palestinian people include: A/RES/33/24, 29 November 1978; A/RES/34/44, 23 November 1979; A/RES/37/43, 3 December 1982 ; A/RES/38/17, 22 November 1983.

544. The Security Council moved less quickly than the General Assembly. Thus, Resolution 242 (1967) of 22 November 1967, confirmed by Resolution 338 (1973) of 22 October 1973, affirmed the following principles :

“ (i) Withdrawal of Israel armed forces from territories occupied in the recent conflict;

(ii) [...] respect for and acknowledgment of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force”.

545. In Resolution 1397 (2002) of 12 March 2002, the Council stated more clearly that Palestine is among the States in the region possessing the right to live within secure boundaries:

“ *Affirming* a vision of a region where two States, Israel and Palestine, live side by side within secure and recognized borders.”

546. More recently, Resolution 1515 (2003) of 19 November 2003 quoted that paragraph and added that the Council:

“ 1. Endorses the Quartet Performance Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian conflict (S/2003/529);

2. Calls on the parties to fulfil their obligations under the Roadmap in cooperation with the Quartet and to achieve the vision of two States living side by side in peace and security. ”

547. It is indisputable that when reference is made to the right of the Palestinian people to self-determination, one is concerned with a people in a given territory: i.e., the Occupied Palestinian Territory, including East Jerusalem; in other words, all the Palestinian territories which were occupied by Israel in 1967.

**(2) The construction of the Wall gravely infringes the right of the Palestinian people to self-determination**

548. It is submitted that construction of the Wall gravely infringes the right of the Palestinian people to self-determination. As the above developments demonstrate, the construction of the Wall affects the exercise of the right of the Palestinian people to self-determination in the following ways:

- a) To the extent that the Wall departs from the Green Line and is constructed in the Occupied Palestinian Territory, including in and around East Jerusalem, it severs the territorial sphere over which the Palestinian people are entitled to exercise their right of self-determination. To the same extent the Wall is also a violation of the legal principle prohibiting the acquisition of territory by the use of force;
- b) The route of the Wall is designed to change the demographic composition of the Occupied Palestinian Territory, including East Jerusalem, by reinforcing the colonial Israeli settlements in the Occupied Palestinian Territory and facilitating their extension – in disregard of the fact that these settlements are themselves illegal according to international law;
- c) By the creation of Palestinian enclaves, of discrimination against the Palestinian population vis-à-vis the Israeli settlers, and of unbearable economic conditions, the Wall is having the clear and foreseeable effect of the forced displacement of the Palestinian population into increasingly limited areas regarded as safe and livable for Palestinians. The Wall is intended to reduce and parcel out the territorial sphere over which the Palestinian people

are entitled to exercise their right to self-determination. Such a policy aims at establishing non-contiguous Palestinian areas similar to Bantustans, prohibited by international law;

- d) The Wall violates the right of the Palestinian people to permanent sovereignty over their natural resources in the Occupied Palestinian Territory, including East Jerusalem, and destroys the economic and social basis of the life of the Palestinian people;
- e) The Wall endangers the feasibility of a viable State for the Palestinian people and consequently undermines future negotiations based on the 'two State' principle.

- (a) The Wall severs the territorial sphere over which the Palestinian people are entitled to exercise their right to self-determination and constitutes a violation of the legal principle prohibiting the acquisition of territory by the use of force

549. The link between the right of the Palestinian people to exercise self-determination over the whole of the Occupied Palestinian Territory, including East Jerusalem, and the construction of the Wall is well established by the Special Rapporteur of the Human Rights Commission, Professor John Dugard, in his report to the Commission on the situation of human rights in the Palestinian territories occupied by Israel:

“15. The right to self-determination is closely linked to the notion of territorial sovereignty. A people can only exercise the right of self-determination within a territory. The amputation of Palestinian territory by the Wall seriously interferes with the right of self-determination of the Palestinian people as it substantially reduces the size of the self-determination unit (already small) within which that right is to be exercised.”<sup>392</sup>

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<sup>392</sup> Dugard Report (2003), para. 15.

<sup>394</sup> *Ibid.* para. 14.

550. At the same time, the Wall amounts to an incorporation of a significant part of Palestinian land into the territory of Israel, and consequently a violation of the principle prohibiting the acquisition of territory by the use of force and the acquisition of territory by annexation. Here again, Professor Dugard's report describes the situation accurately:

“ 14. [...] the wall is manifestly intended to create facts on the ground. It may lack an act of annexation, as occurred in the case of East Jerusalem and the Golan Heights. But its effect is the same: annexation. Annexation of this kind goes by another name in international law — conquest. Conquest, or the acquisition of territory by the use of force, has been outlawed by the prohibition on use of force contained in the Kellogg-Briand Pact of 1928 and Article 2, paragraph 4, of the Charter of the United Nations. The prohibition of the acquisition of territory by force applies irrespective of whether the territory is acquired as a result of an act of aggression or in self-defence. The Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV) of 24 October 1970, annex) declares that ‘the territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognized as legal’. This prohibition is confirmed by Security Council resolution 242 (1967) and the Oslo Accords, which provide that the status of the West Bank and Gaza shall not be changed pending the outcome of the permanent status negotiations. The Geneva Convention relative to the Protection of Civilian Persons in Time of War (the Fourth Geneva Convention) provides that protected persons in an occupied territory shall not be deprived of the benefits of the Convention ‘by any annexation ... of the occupied territory’ (art. 47).”<sup>394</sup>

551. This point of view is unquestionably shared by the General Assembly of the United Nations, whose Resolution ES-10/13 of 21 October 2003 reaffirms in its Preamble “the principle of the inadmissibility of the acquisition of territory by force.”



552. Several delegations came to the same conclusions in their speeches before

United Nations organs:

- France:

“The permanent nature of the wall means that the territories between the wall and the Green Line will be de facto incorporated by Israel and under its control. Moreover, the inadmissible nature of the acquisition of territory by force is a fundamental principle of Security Council resolution 242 (1967), on which the peace process is based.”<sup>395</sup>

- Jordan:

“We condemn the construction of the separation wall, which entrenches the Israeli occupation of the Palestinian territories, devours more land and imposes a de facto situation on the future Palestinian State, in the sense that it cuts deeply into the Palestinian territories and does not conform to the Green Line of June 1967. The completion of the wall means the annexation of more than 10 per cent of the land of the West Bank to Israel and the imprisonment of more than 95,000 Palestinian citizens between the wall and the Green Line of June 1967.”<sup>396</sup>

- Malaysia, on behalf of the Organization of the Islamic Conference:

“The construction of the wall itself constitutes a flagrant violation of international law and international humanitarian law, as it seeks to effectively alter the territorial integrity of the West Bank and accomplish the de facto annexation of the occupied Palestinian territory.”<sup>397</sup>

- Islamic Republic of Iran, on behalf of the Organization of the Islamic Conference:

“The Israeli regime's building of a separation wall deep into occupied Palestinian territory, together with the continued construction of Jewish settlements in the same occupied territory, is a further violation of international law and of the basic rights of the Palestinian people. It is

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<sup>395</sup> UN Doc. S/PV.4841, p. 18.

<sup>396</sup> S/PV.4841, p. 31.

<sup>397</sup> S/PV.4841, p. 41.

another means for achieving the Israeli goal of depriving the Palestinians of their inherent national rights and, as such, it is having a serious impact on all aspects of the Palestinian question.”<sup>398</sup>

553. Numerous other States have made declarations asserting a similar position: for example, Cuba,<sup>399</sup> Guinea,<sup>400</sup> Libyan Arab Jamahiriya,<sup>401</sup> Pakistan,<sup>402</sup> Syrian Arab Republic,<sup>403</sup> South Africa,<sup>404</sup> Pakistan,<sup>405</sup> and Zimbabwe.<sup>406</sup>

554. The Quartet of the U.S., Russian Federation, European Union and the United Nations expressed the same opinion in its statement of 26 September 2003:

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<sup>398</sup> General Assembly, Emergency Special Session, 21st meeting, 20 October 2003, A/ES-10/PV.21, p. 14.

<sup>399</sup> “The building of the separation wall, the expansion of settlements and the construction of security routes between the settlements and Israel constitute a clear territorial expansion, to the detriment of the Palestinian people and its inalienable right to enjoy self-determination and to establish its own independent and sovereign State” (S/PV.4841, pp. 29-30).

<sup>400</sup> “Clearly, the separation wall, whose route cuts seriously and deeply into Palestinian territories, is a pernicious way to continue and expand the settlement of occupied territories and to deprive the Palestinian people of a territorial element that is essential to the full exercise of its sovereignty” (S/PV.4841, p. 17).

<sup>401</sup> “The Security Council is meeting today to discuss the problem of the separation wall being built in the occupied Palestinian territories as a security construction but which is in reality a part of Israel’s long-term plan to annex additional territories by force” (S/PV.4841, p. 38).

<sup>402</sup> “It is imperative to recognize that the separation wall is an unlawful annexation of occupied Palestinian territory” (S/PV.4841, p. 22).

<sup>403</sup> “The building of the expansionist wall is nothing but a continuation of Israeli colonialist activities. [...] It is also a violation of the firm principle of international law that prohibits the acquisition of the territories of others by force” (General Assembly, Emergency Special Session, 21st meeting, 20 October 2003, A/ES-10/PV.21, p. 9).

<sup>404</sup> “We believe that Mr. Dugard [the Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Palestinian territories occupied by Israel since 1967] is correct in his assertion that we should avoid political euphemisms and rather state in precise and legally accurate terms that ‘what we are presently witnessing in the West Bank is a visible and clear act of territorial annexation under the guise of security’” (S/PV.4841, pp. 35-36).

<sup>405</sup> “The separation wall is being built in clear violation of international law and Israel’s commitments under bilateral and international agreements. The wall does not follow the so-called ‘Green Line’ and in effect cuts deep into Palestinian lands. As such, it runs contrary to the fundamental principle of international law, which deems illegal the acquisition of territory by the use of force” (General Assembly, Emergency Special Session, 21st meeting, 20 October 2003, A/ES-10/PV.21, p. 17).

<sup>406</sup> “The building of the wall, which ignores the legitimate concerns of the Palestinian people, has resulted in the confiscation of Palestinian land, destruction of their livelihoods and annexation of their land. People have been cut off from their farmlands, work places, schools, health facilities and other social services” (General Assembly, Emergency Special Session, 21st meeting, 20 October 2003, A/ES-10/PV.21, p. 20).

“The Quartet members reaffirm that, in accordance with the road map, settlement activity must stop, and note with great concern the actual and proposed route of Israel's West Bank fence, particularly as it results in the confiscation of Palestinian land, cuts off the movement of people and goods and undermines Palestinians' trust in the road map process, as it appears to prejudge final borders of a future Palestinian State.”<sup>408</sup>

- (b) The route of the Wall is designed to change the demographic composition of the Occupied Palestinian Territory, including East Jerusalem, by reinforcing the Israeli settlements and by facilitating their extension - in disregard of the fact that these settlements are illegal according to international law

555. It has been shown in Chapters 4 and 6, and in the annexed United Nations reports, that the Wall entrenches the Israeli settlements in the Occupied Palestinian Territory. The link between the construction of the Wall and the protection and extension of settlements is again well established by the Special Rapporteur of the Human Rights Commission, Professor John Dugard, in his report to the Commission on the situation of human rights in the Palestinian territories occupied by Israel:

“Like the settlements it seeks to protect, the Wall is manifestly intended to create facts on the ground.”<sup>410</sup>

556. Although said in a veiled way, the speech made by Israeli Prime Minister Ariel Sharon at the “Herzliya Conference” on 18 December 2003, seems to confirm that the Wall is intended to include in Israel a substantial part of the Israeli

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<sup>408</sup> Quartet statement, New York, 26 September 2003, Annex to the Letter dated 6 October 2003 from the Secretary-General addressed to the President of the Security Council, S/2003/951.

<sup>410</sup> Dugard Report (2003), para. 14.

settlements, which lie between the Wall and the Green Line, in accordance with Israel's unilateral "Disengagement Plan" :

"The Disengagement Plan will include the redeployment of IDF forces along new security lines and a change in the deployment of settlements, which will reduce as much as possible the number of Israelis located in the heart of the Palestinian population. We will draw provisional security lines and the IDF will be deployed along them. Security will be provided by IDF deployment, the security fence and other physical obstacles."<sup>411</sup>

557. The fact that the Wall is primarily conceived to reinforce the colonial settlements of Israel in the Occupied Palestinian Territory, including East Jerusalem, is evidenced by the statements of many delegations. For example:<sup>412</sup>

- European Union: Presidency Conclusions, Copenhagen European Council, 12 and 13 December 2002 :

" [...] In this context, the European Council is alarmed at the continuing illegal settlement activities, which threaten to render the two-State solution physically impossible to implement. The expansion

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<sup>411</sup> In P.M. Speeches, text available at <http://www.first.gov.il/first/english/Html/homepage.htm>

<sup>412</sup> See also the statements made by the following delegations :

- Syrian Arab Republic: " Israel plans to enclose within the wall large settlements established in occupied Palestinian territories, containing more than 200,000 settlers. Thus, Israel is not only violating the Fourth Geneva Convention by building those settlements but goes even further by annexing those settlements to Israel. [...] Those actions are, in fact, war crimes under the Fourth Geneva Convention and its Additional Protocol I. Therefore, Israel should be deterred from continuing and no legal or political legitimacy should be granted to its actions " (S/PV.4841, p. 12).
- Libyan Arab Jamahiriya : " The construction of the wall is also an attempt by Israel to reaffirm its annexation of East Jerusalem. Moreover, the Israeli occupying authorities are pursuing the establishment of illegal settlements in occupied Palestinian territories, including East Jerusalem, thus revealing their expansionist intentions and their offhand attitude towards international efforts to achieve a peaceful solution to this problem " (S/PV.4841, p. 38).
- Saudi Arabia : " That plan seeks to erase and completely abolish the Green Line in several areas and to annex the Israeli settlements to Israel, creating narrow alleys between cities and other populated Palestinian areas, which the Israeli Government views as separate cantons that will be controlled by Israel, which will allow the Palestinians to manage their own internal affairs, so that Israel will be spared the burden of a foreign population " (S/PV.4841, p. 36).
- South Africa : " The acceleration of the construction of a separation wall, as well as the expansion of illegal settlements on Palestinian land, is an act of annexation that is inconsistent with Israel's obligations under the internationally accepted road map of the Quartet " (General Assembly, Emergency Special Session, 21st meeting, 20 October 2003, A/ES-10/PV.21, p. 12).

of settlements and related construction, as widely documented including by the European Union's Settlement Watch, violates international law, inflames an already volatile situation, and reinforces the fear of Palestinians that Israel is not genuinely committed to end the occupation. It is an obstacle to peace. The European Council urges the Government of Israel to reverse its settlement policy and as a first step immediately apply a full and effective freeze on all settlement activities. It calls for an end to further land confiscation for the construction of the so-called security fence. [...].”<sup>413</sup>

- France :

“This will be a permanent structure that will permanently change geographic and demographic data. The building of the wall can only encourage the development of settlements and aggravate the already serious problems that these are causing.”<sup>415</sup>

- Russian Federation :

“The unlawful settlement activity on the Palestinian territories and the construction of the so-called separation wall, which has resulted in the seizure of Palestinian lands, must be immediately halted. Such actions run counter to the concept of the establishment of two independent States, Palestine and Israel ”.<sup>416</sup>

- Germany :

“Thus Germany urges the Government of Israel to halt its continuing settlement activities and stop the construction of the so-called security fence. While recognizing Israel’s need for security, we consider the security fence to be detrimental to the implementation of the road map”.<sup>417</sup>

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<sup>413</sup> European Council Declaration on The Middle East, Presidency conclusions, Copenhagen European Council, 12 and 13 December 2002, Annex III, Doc./02/15, p. 13, [http://europa.eu.int/futurum/documents/other/oth121202\\_en.pdf](http://europa.eu.int/futurum/documents/other/oth121202_en.pdf). See also the Declaration by the Presidency, on behalf of the European Union, on the situation in the Middle East, 11 September 2003 : ” [...]The European Union urges the two parties to remain strongly committed to the need of an ongoing dialogue and to the implementation of the road map, and, in this regard, to take the following measures : [...] The Israeli government: [...] freezing all settlement activities and the building of the security wall along a track that jeopardises a political solution to the conflict ” (P/03/108, 12400/03 (Presse 261), [http://www.europa.eu.int/rapid/start/cgi/guesten.ksh?p\\_action.gettxt=gt&doc=PESC/03/108|0|AGED&lg=EN&display](http://www.europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=PESC/03/108|0|AGED&lg=EN&display))).

<sup>415</sup> S/PV.4841, p. 18.

<sup>416</sup> S/PV.4841, p. 15.

<sup>417</sup> S/PV.4841, p. 19.

- China :

“Israel must stop building the separation wall and stop expanding settlements.”<sup>419</sup>

- Islamic Republic of Iran, on behalf of the Organization of the Islamic Conference :

“ The policy of building a wall is supplemental to the policy of expanding illegal Jewish settlements in the occupied territory. The illegal settlements in the West Bank, built against the will of the international community, will benefit first and foremost from the wall. Likewise, illegal Jewish settlements are expanding parallel with the completion of the wall that perpetuates racism.”<sup>420</sup>

558. The specific situation in the zone now between the Green Line and the Wall should not lead one to overlook the fact that the Israeli policy of settlements – wherever they might be located in the Occupied Palestinian Territory – is by itself a violation of international law, as is recognised by numerous sources:

*(i) Security Council resolutions*

559. Numerous Security Council resolutions have declared the illegality of the Israeli policy of settlements. For example:

- Resolution 446 (1979) of 22 March 1979 :

“The Security Council,

1. Determines that the policy and practices of Israel in establishing settlements in the Palestinian and other Arab territories occupied since 1967 have no legal validity and constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East;

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<sup>419</sup> S/PV.4841, p. 20.

<sup>420</sup> General Assembly, Emergency Special Session, 21st meeting, 20 October 2003, A/ES-10/PV.21, p. 14.

[...]

3. Calls once more upon Israel, as the occupying Power, to abide scrupulously by the 1949 Fourth Geneva Convention, to rescind its previous measures and to desist from taking any action which would result in changing the legal status and geographical nature and materially affecting the demographic composition of the Arab territories occupied since 1967, including Jerusalem, and, in particular, not to transfer parts of its own civilian population into the occupied Arab territories.”

- Resolution 465 (1980), of 1 March 1980:

“The Security Council,

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

6. Strongly deplores the continuation and persistence of Israel in pursuing those policies and practices and calls upon the Government and people of Israel to rescind those measures, to dismantle the existing settlements and in particular to cease, on an urgent basis, the establishment, construction and planning of settlements in the Arab territories occupied since 1967, including Jerusalem;

7. Calls upon all States not to provide Israel with any assistance to be used specifically in connexion with settlements in the occupied territories;

*(ii) General Assembly resolutions*

560. Numerous General Assembly resolutions have established the illegality of the Israeli policy of settlements. For instance, Resolution 32/5 of 28 October 1977 states:

“The General Assembly,

Expressing grave anxiety and concern over the present serious situation in the occupied Arab territories as a result of the continued Israeli occupation and the measures and actions taken by the Government of Israel, as the occupying Power, and designed to change the legal status, geographical nature and demographic composition of those territories,

Considering that the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949,<sup>1/</sup> is applicable to all the Arab territories occupied since 5 June 1967,

1. Determines that all such measures and actions taken by Israel in the Palestinian and other Arab territories occupied since 1967 have no legal validity and constitute a serious obstruction of efforts aimed at achieving a just and lasting peace in the Middle East;
2. Strongly deplores the persistence of Israel in carrying out such measures, in particular the establishment of settlements in the occupied Arab territories;
3. Calls upon Israel to comply strictly with its international obligations in accordance with the principles of international law and the provisions of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949;
4. Calls once more upon the Government of Israel, as the occupying Power, to desist forthwith from taking any action which would result in changing the legal status, geographical nature or demographic composition of the Arab territories occupied since 1967, including Jerusalem.”

561. Particularly relevant is the latest General Assembly resolution on this matter, Resolution A/58/98 of 9 December 2003, which emphasizes the linkage between settlement activities and the annexation of territory and the prohibition of that activity in all of the Occupied Palestinian Territory, including East Jerusalem, on both sides of the Wall :

**“Israeli Settlements in the Occupied Palestinian Territory, including Jerusalem, and the Occupied Syrian Golan**

The General Assembly,



[...]

Reaffirming the applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, 1 to the Occupied Palestinian Territory, including East Jerusalem, and to the occupied Syrian Golan,

[...]

Welcoming the presentation by the Quartet to the parties of the road map to a permanent two-State solution to the Israeli-Palestinian conflict, and noting its call for a freeze on all settlement activity,

Aware that Israeli settlement activities have involved, inter alia, the transfer of nationals of the occupying Power into the occupied territories, the confiscation of land, the exploitation of natural resources and other illegal actions against the Palestinian civilian population,

Bearing in mind the detrimental impact of Israeli settlement policies, decisions and activities on efforts to achieve peace in the Middle East,

Expressing grave concern about the continuation by Israel of settlement activities in violation of international humanitarian law, relevant United Nations resolutions and the agreements reached between the parties, including the construction and expansion of the settlements in Jabal Abu-Ghneim and Ras Al-Amud in and around Occupied East Jerusalem,

Expressing grave concern also about the construction by Israel of a wall inside the Occupied Palestinian Territory, including in and around East Jerusalem, and expressing its concern in particular about the route of the wall in departure from the Armistice Line of 1949, which could prejudice future negotiations and make the two-State solution physically impossible to implement and would cause the Palestinian people further humanitarian hardship.

Reiterating its opposition to settlement activities in the Occupied Palestinian Territory, including East Jerusalem, and to any activities involving the confiscation of land, the disruption of the livelihood of protected persons and the de facto annexation of land [...].

1. Reaffirms that Israeli settlements in the Palestinian territory, including East Jerusalem, and in the occupied Syrian Golan are illegal and an obstacle to peace and economic and social development;
2. Calls upon Israel to accept the de jure applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of

War, of 12 August 1949, 1 to the Occupied Palestinian Territory, including East Jerusalem, and to the occupied Syrian Golan and to abide scrupulously by the provisions of the Convention, in particular article 49;

3. Reiterates its demand for the complete cessation of all Israeli settlement activities in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan;

4. Demands that Israel stop and reverse the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem, which is in departure from the Armistice Line of 1949 and is in contradiction to relevant provisions of international law; [...]

5. Urges all States parties to the Geneva Convention relative to the Protection of Civilian Persons in Time of War to ensure respect for and compliance with its provisions in all the Arab territories occupied by Israel since 1967, including Jerusalem ”.

This Resolution was adopted by an overwhelming majority of 156 votes in favour to 6 votes against (Israel, Nauru, Palau, Marshall Islands, Micronesia, and the United States of America), with 13 abstentions.

*(iii) The Declaration of the High Contracting Parties to the Fourth Geneva Convention*

562. In the Declaration of High Contracting Parties to the Fourth Geneva Convention, issued on 5 December 2001, the Parties:

“reaffirm the illegality of the settlements in the said territories [*sc.*, Occupied Palestinian Territory, including East Jerusalem] and of the extension thereof.”<sup>421</sup>

563. This position is based on Article 49 of the Fourth Geneva Convention which states categorically: “[...] The occupying Power shall not deport or transfer parts of its

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<sup>421</sup> Para 12, Secretary-General’s Dossier no. 67.

own civilian population into the territory it occupies.” The Rome Statute of the International Criminal Court, in force since 1 July 2002, includes among the war crimes within the jurisdiction of the International Criminal Court the “ transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies ” (Article 8 (2) (b) (vii)).

- (c) By the creation of Palestinian enclaves, discrimination against and humiliation of the Palestinian population, and the creation of unbearable economic conditions, the Wall is having the clear and foreseeable effect of the forced displacement of the Palestinian population into increasingly limited areas regarded as safe and livable for Palestinians. The Wall is part of a policy of reducing and parcelling out the territorial sphere over which the Palestinian people are entitled to exercise their right to self-determination, establishing non-contiguous Palestinian areas similar to Bantustans.

564. In the previous Chapters, in particular Chapters 4 and 6, it has been described how the construction of the Wall is having several grievous effects:

- The Wall creates walled enclaves which artificially divide the Palestinian population from their own environment, encircles them with hostile Israeli settlements and prohibited roads reserved for Israeli settlers, and establishes non-contiguous areas similar to the Bantu homelands of the former apartheid regime of South Africa. Although the term Bantustans may appear improper, as one of its features was a fictitious grant of ‘sovereignty’ to each homeland, the rationale is the same. Progressively a process is under way limiting any ‘Palestinian State’ to Palestinian cities and villages comprised of a number of separate enclaves without sovereignty and with no resources for self-sustenance and no possibility of free circulation for the population, and surrounded by Israeli sovereignty in the interstices between the enclaves.

- it discriminates against the Palestinian population and in the interest of the illegal Israeli settlers, by *inter alia*:
  - the denial of the right to liberty, infringement of their freedom or dignity;
  - arbitrary arrest and illegal imprisonment;
  - the imposition of living conditions calculated to cause the displacement of the Palestinian population;
  - the imposition of measures preventing the Palestinian population from participation in the political social, economic and cultural life, impeding their right to work and access to education and health facilities, limiting the right to move freely within or outside their country and their the right to freedom of residence;
  - the expropriation of their land and property, destruction of their houses, orchards, and other property.

565. Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination of 7 March 1966, to which Israel is a Party, defines “racial discrimination” as:

“any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”

566. In the case concerning the *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, the Court defined *apartheid* in the following way:

“130. The application of this policy [apartheid] has required, as has been conceded by South Africa, restrictive measures of control officially adopted and enforced in the Territory by the coercive power

of the former Mandatory. These measures establish limitations, exclusions or restrictions for the members of the indigenous population groups in respect of their participation in certain type of activities, fields of study or of training, labour, employment and also submit them to restrictions or exclusions of residence and movement in large parts of the Territory.

131. Under the Charter of United Nations, the former Mandatory had pledged itself to observe and respect, in a territory having an international status, human rights and fundamental freedoms for all without distinction as to race. To establish instead, and to enforce, distinctions, exclusions, restrictions and limitations exclusively based on grounds of race, colour, descent or national or ethnic origin which constitute a denial of fundamental human rights is a flagrant violation of the purposes and principles of the Charter.”<sup>423</sup>

567. The similarity with the situations in the Occupied Palestinian Territory is blatant. The Ziegler Report to the UN Commission on Human Rights characterizes Israel’s policy as follows:

“3. The strategy of “Bantustanization”

18. For many Israeli and Palestinian commentators, the policy of land confiscation is inspired by an underlying strategy of gradually isolating Palestinian communities into separate territorial areas or “Bantustans”. Michael Warschawski has pointed to a conscious policy of “Bantustanization” of the OPT. A senior Israeli commentator, Akiva Eldar, has written about the explicit use of the Bantustan concept by Israeli Prime Minister Sharon, who once “explained at length that the Bantustan model was the most appropriate solution to the conflict”. The term “Bantustan” historically refers to the separate territorial areas designated as homelands under the South African apartheid State. Creating such “Bantustans” would deprive a future Palestinian State of any coherent land base and international borders, and prevent the building of a Palestinian nation with the capacity to realize the right to food for its people.

19. The building of the security fence/apartheid wall is seen as a concrete manifestation of this “Bantustanization”, as is the extension and building of new settlements and settler roads, which are cutting up

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<sup>423</sup> *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971, p. 16, at p. 57, paras. 130-131.*

the West Bank and the Gaza Strip into barely contiguous territorial units. Looking at detailed maps of the actual and future direction of the security fence/apartheid wall and settlements, which the Israeli and Palestinian authorities, as well as NGOs, provided to the Special Rapporteur, it seems that this strategy is in the process of being realized. According to Jeff Halper, Coordinator of the Israeli Committee against House Demolitions, the road map offers hope, explicitly referring to the “end of the Occupation”, yet it comes at a time “when Israel is putting the finishing touches on its 35-year campaign to render the Occupation irreversible.”<sup>424</sup>

568. As was explained in Chapter 6, the Wall in various ways causes displacement of the Palestinian population, especially from the Closed Zone, and encircles the Palestinian population in a series of enclaves. The effect is the disruption of the demographic unity and the territorial integrity of the Occupied Palestinian Territory, including East Jerusalem, the partitioning of the territory, and the perpetuation and increase of the colonization of the territory by Israel. As was noted in Chapter 9, these effects constitute grave breaches of international law.

*(i) Enclaves*

569. Many delegations to the United Nations have denounced the wrongfulness of the Israeli policy<sup>425</sup> of creating enclaves. For example:

- France:

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<sup>424</sup> Ziegler Report, para. 18-19. Footnotes omitted, Secretary-General’s Dossier no. 56.

<sup>425</sup> See also the declarations made by the following delegations :

- Pakistan : “ A viable Palestinian State, as envisaged in the Quartet’s road map, cannot be established in the bantustans that will be created by the separation wall. The peace which Israel seeks will not result from the continuing illegal occupation and suppression of a Palestinian population in these lands which is hostile and aggrieved ” (S/PV.4841, p. 22).

- Syrian Arab Republic : “ First, the route traced by the wall is far removed from the borders of the territories occupied since 1967, penetrating deep into Palestinian territories. This reveals the Israeli Government’s real intention: to create facts on the ground allowing them to set borders as they wish, thus placing the Palestinian people in large bantustans and isolating them ” (S/PV.4841, p. 12).

- Guinea : “ In addition, [the Wall] is the expression of a policy known as “bantustanization”, whose objective is to create enclaves that are not viable, denying any freedom of movement to the Palestinian people and reserving the most fertile and most productive lands for the occupier ” (S/PV.4841, p. 17).

“The route [of the Wall] also seriously damages the viability of a future Palestinian State, which would be likely to find itself reduced to a collection of isolated enclaves.”<sup>426</sup>

- Afghanistan, as Vice-Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People:

“Last August, the Israeli authorities published expropriation warrants to erect the wall referred to as the ‘Jerusalem envelope’. Some 50,000 Palestinians could thus be relegated to enclaves situated on the Israeli side. True, the wall separates Israelis from Palestinians, but — and this is the real tragedy — it also separates Palestinians from Palestinians.”<sup>427</sup>

*(ii) Segregation amounting to bantustanization*

570. Some delegations to the UN have expressly described Israel's policy in terms of the creation of Bantustans. For example:

- Organization of the Islamic Conference:

“ The wall furthers the ‘bantustanization’ of the West Bank into hundreds of small, dependent entities that cannot sustain themselves and that are more akin to small, disconnected open-air prisons surrounded by Israeli military checkpoints and settlements.”<sup>428</sup>

- Cuba:

“Building new physical divisions in the occupied Palestinian territory makes the opportunities for a lasting and just settlement to the conflict to become even more distant. ‘Bantustanization’ of the occupied Palestinian territories creates new changes in the field, which further complicate any future negotiations on permanent status and make it impossible to establish a Palestinian State in which all its territory is contiguous.”<sup>429</sup>

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<sup>426</sup> S/PV.4181, p. 18.

<sup>427</sup> General Assembly, Emergency Special Session, 21st meeting, 20 October 2003, A/ES-10/PV.21, p. 10.

<sup>428</sup> S/PV.4841, p. 41.

<sup>429</sup> S/PV.4841, p. 30.

*(iii) Discrimination*

571. Again, numerous delegations have criticised the discriminatory aspect of the Israeli policy in relation to the construction of the Wall in the Occupied Palestinian Territory, including East Jerusalem. For example:

- United Kingdom:

“We are particularly alarmed by Israel’s issuing of a military order declaring the land between the fence and the Green Line a closed zone, where Palestinian residents must apply for permits to remain in their own villages.”<sup>431</sup>

- Saudi Arabia:

“It is thus clear that the purpose of this racist wall is not to ensure security, as insolently claimed by Israel, but to confiscate more land, and to humiliate and oppress the Palestinian people creating conditions making it difficult or impossible for them to live within their own country and on their own land.”<sup>432</sup>

*(iv) Displacement of population*

572. Several delegations have emphasized that Israel's construction of the Wall implies illegal displacement of population. For example:

- Malaysia, on behalf of the Non-Aligned Movement :

“ The wall gravely violates the Fourth Geneva Convention in that it involves the illegal de facto annexation of massive areas of Palestinian land and resources, the transfer of a large number of Palestinian

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<sup>431</sup> S/PV.4841, p. 13.

<sup>432</sup> S/PV.4841, p. 36.



civilians and further denial of human rights among the Palestinians, resulting in increased dire humanitarian consequences among an already deprived people.”<sup>433</sup>

- (d) The Wall violates the right of the Palestinian people to permanent sovereignty over their natural resources in the Occupied Palestinian Territory, including East Jerusalem, and destroys the economic and social basis of the life of the Palestinian people

573. In the previous Chapters, in particular Chapters 4 and 6, it has been explained that the construction of the Wall has deleterious effects on the environment, deprives the Palestinian population of their land and their work, and closes off their access to and impedes the management of their water resources. It destroys the roots of the local Palestinian economy. As described *inter alia* in the Secretary-General’s October 2003 report submitted to the Court, the socio-economic impact of the Wall is intense.

574. Apart from the wrongfulness of this conduct with regard to the provisions of humanitarian law and fundamental human rights, as explained in Chapter 9, it is appropriate to underline the fact that these Israeli policies also hamper the permanent sovereignty of the Palestinian people over their natural resources.

575. Since 1973 the General Assembly has drawn attention to this general problem in the Occupied Palestinian Territory. Thus, Resolution 3175 (XXVII)

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<sup>433</sup> General Assembly, Emergency Special Session, 21st meeting, 20 October 2003, A/ES-10/PV.21, p. 11. See also the declaration made before the General Assembly on the 8 December, A/ES-10/PV.23, p. 11.

<sup>435</sup> Declaration of the European Union, Fourth Meeting of the Association Council EU – Israel, Brussels, 17 – 18 November 2003, 14796/03 (Presse 328), <http://ue.eu.int/pressData/en/er/77932.pdf>.

"Permanent sovereignty over natural resources in the occupied Arab territories" of 17

December 1973, stated *inter alia*:

“The General Assembly,

Bearing in mind the relevant principles of international law and the provisions of the international conventions and regulations, especially the Fourth Geneva Convention concerning the obligations and responsibilities of the occupying Power,

Recalling its previous resolutions on permanent sovereignty over natural resources, including resolution 1803 (XVII) of 18 December 1962, in which it declared the right of peoples and nations to permanent sovereignty over their natural wealth and resources, [...]

Recalling also its resolution 3005 (XXXVII) of 15 December 1972, in which it affirmed the principle of the sovereignty of the population of the occupied territories over their national wealth and resources and called upon all States, international organizations and specialized agencies not to recognize or co-operate with, or assist in any manner in, any measures undertaken by the occupied Power to exploit the resources of the occupied territories or to effect any changes in the demographic composition or geographic character of institutional structure of those territories,

1. Affirms the right of the Arab States and peoples whose territories are under foreign occupation to permanent sovereignty over all their natural resources;
2. Reaffirms that all measures undertaken by Israel to exploit the human and natural resources of the occupied Arab territories are illegal and calls upon Israel to halt such measures forthwith;
3. Affirms the right of the Arab States and peoples whose territories are under Israeli occupation to the restitution of and full compensation for the exploitation and looting of, and damages to, the natural resources, as well as the exploitation and manipulation of the human resources, of the occupied territories;
4. Declares that the above principles apply to all States, territories and peoples under foreign occupation, colonial rule or apartheid.”

576. More recently, the General Assembly, in Resolution A/57/269 of 20 December 2002 concerning “Permanent sovereignty of the Palestinian people in the

Occupied Palestinian Territory, including Jerusalem, and of the Arab population in the occupied Syrian Golan over their natural resources”, reaffirmed:

“ the inalienable rights of the Palestinian people and the population of the occupied Syrian Golan over their natural resources, including land and water;“.

577. The recent Resolution A/58/493 of 18 December 2003, with the same title, addressed both the general situation created by Israel in the Occupied Palestinian Territory, including East Jerusalem, and the special regime created by the construction of the Wall. It provides as follows:

“The General Assembly,

[...] Reaffirming the principle of the permanent sovereignty of peoples under foreign occupation over their natural resources,

Guided by the principles of the Charter of the United Nations, affirming the inadmissibility of the acquisition of territory by force, and recalling relevant Security Council resolutions, including resolutions 242 (1967) of 22 November 1967, 465 (1980) of 1 March 1980 and 497 (1981) of 17 December 1981,

Reaffirming the applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, 2/ to the Occupied Palestinian Territory, including East Jerusalem, and other Arab territories occupied by Israel since 1967,

Expressing its concern at the exploitation by Israel, the occupying Power, of the natural resources of the Occupied Palestinian Territory, including East Jerusalem, and other Arab territories occupied by Israel since 1967,

Expressing its concern also at the extensive destruction by Israel, the occupying Power, of agricultural land and orchards in the Occupied Palestinian Territory during the recent period, including the uprooting of a vast number of olive trees,

Aware of the detrimental impact of the Israeli settlements on Palestinian and other Arab natural resources, especially the confiscation of land and the forced diversion of water resources, and of the dire economic and social consequences in this regard,

Aware also of the detrimental impact on Palestinian natural resources of the wall being constructed by Israel inside the Occupied Palestinian Territory, including in and around East Jerusalem, and of its grave effect on the economic and social conditions of the Palestinian people,

1. Reaffirms the inalienable rights of the Palestinian people and the population of the occupied Syrian Golan over their natural resources, including land and water;

2. Calls upon Israel, the occupying Power, not to exploit, cause loss or depletion of or endanger the natural resources in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan;

3. Recognizes the right of the Palestinian people to claim restitution as a result of any exploitation, loss or depletion of, or danger to, their natural resources, and expresses the hope that this issue will be dealt with in the framework of the final status negotiations between the Palestinian and Israeli sides. [...]”

578. Here again various delegations have emphasized the importance of the encroachments on this inalienable sovereign right of the Palestinian people. For example:

- Declaration of the European Union, Fourth Meeting of the Association Council EU – Israel, Brussels, 17 – 18 November 2003:

“[...] The EU is particularly concerned by the route marked out for the so-called security fence in the Occupied West Bank and East Jerusalem. The envisaged departure of the route from the ‘green line’ could prejudice future negotiations and make the two-State solution physically impossible to implement. It would cause further humanitarian and economic hardship to the Palestinians. Thousands of Palestinians west of the fence are being cut off from essential services in the West Bank, Palestinians east of the fence will lose access to land and water resources.”<sup>435</sup>

- League of Arab States:

“ The economic repercussions of the construction of the wall include the almost total destruction of the Palestinian economy; the isolation of the Palestinian people in encircled islands...”<sup>436</sup>

- Afghanistan, as Vice-Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People:

“The part of the wall that has already been built led to the illegal confiscation of some 1,100 hectares of Palestinian land that had been a significant source of income. Some Palestinian farmers are now facing the possibility of yet another electronic steel fence, which would prevent them from gaining access to the olive trees that their families have been growing for generations.”<sup>437</sup>

- South Africa:

“As Commissioner of the European Union Chris Patten recently noted, satellite photographs of the West Bank show that 45 per cent of Palestinian water resources, 40 per cent of Palestinian farmland and 30 per cent of the Palestinian people themselves will ultimately end up on the Israeli side of the separation wall.”<sup>438</sup>

- Committee on the Exercise of the Inalienable Rights of the Palestinian People.<sup>440</sup>

“The route of the wall would limit Palestinian access to water wells, some of the best in the West Bank. Because of its position atop the western groundwater basin, the wall would have a severe impact on water access, use and allocation. Phase 1 of the wall has already affected at least 50 communal wells, meaning that they are either isolated west of the wall or in the "buffer zone" east of the wall. It has also led to the destruction of some 35 kilometres of water pipes.”<sup>441</sup>

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<sup>436</sup> S/PV.4841, p. 24.

<sup>437</sup> General Assembly, Emergency Special Session, 21st meeting, 20 October 2003, A/ES-10/PV.21, p. 10.

<sup>438</sup> General Assembly, Emergency Special Session, 21st meeting, 20 October 2003, A/ES-10/PV.21, pp. 12-13.

<sup>440</sup> The Committee is composed of the following Member States: Afghanistan, Belarus, Cuba, Cyprus, Guinea, Guyana, Hungary, India, Indonesia, the Lao People's Democratic Republic, Madagascar, Malaysia, Mali, Malta, Namibia, Nigeria, Pakistan, Romania, Senegal, Sierra Leone, South Africa, Tunisia, Turkey and Ukraine.

<sup>441</sup> Report of the Committee on the Exercise of the Inalienable Rights of the Palestinian People, Official Records, Fifty-eighth Session, Supplement No. 35 (A/58/35), 9 October 2003, par 26, <http://domino.un.org/unispal.nsf/9a798adb322aff38525617b006d88d7/618f78e6c6dce8ac85256de3005376b8!OpenDocument.para.26>.

579. Numerous other States have made declarations expressing a similar position: for example, Malaysia,<sup>442</sup> United Arab Emirates,<sup>443</sup> Pakistan,<sup>444</sup> Syrian Arab Republic,<sup>445</sup> and Qatar.<sup>446</sup>

(e) The Wall endangers the feasibility of a viable State of Palestine and consequently undermines the future of negotiations based on the ‘two State’ principle

580. As a result of all the consequences mentioned in the preceding paragraphs, the Wall makes the existence of a viable Palestinian State impossible. It would be a State composed of enclaves, surrounded by Israeli by-pass roads and settlements, and cut in several pieces by walls – and it should not be forgotten that among the Israeli plans is the prolongation of the Wall along the Jordan Valley (the Eastern Wall): — Under these conditions, where would the boundaries of the Palestinian State lie, completely encircled and sliced up as every part of it is, with the Israeli occupying

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<sup>442</sup> “Large portions of the wall are being constructed deep into occupied Palestinian territory, separating Palestinians from their agricultural land and water resources. The wall is designed to engulf settlements. Besides the massive confiscation of fertile Palestinian land, valuable subterranean water reservoirs have also been annexed” (S/PV.4841, p. 26).

<sup>443</sup> “The separation wall, which is built deep inside Palestinian villages and cities — 6 kilometres deep in some areas — will result in the de facto annexation of thousands of acres of private and public Palestinian lands, which contain water and other natural resources [...]” (S/PV.4841, p. 31).

<sup>444</sup> “There is little doubt that the wall separates the Palestinians from their own cities and resources. It isolates, fragments and in some cases impoverishes those affected by its construction ” (S/PV.4841, p. 22).

<sup>445</sup> “The most dangerous aspect of the construction of the wall is its creation of a de facto situation on the ground and that it isolates the Palestinians on both sides of the wall, prevents them from communicating with each other and from benefiting from their own natural resources and produces new environmental situations that will lead to more poverty, displacement and deprivation among the Palestinians ” (General Assembly, Emergency Special Session, 21st meeting, 20 October 2003, A/ES-10/PV.21, p. 9).

<sup>446</sup> “The situation has continued to deteriorate, particularly since Israel’s decision to build the separation wall, which has been condemned by the international community — even including a portion of Israeli society — given its negative effects on the economic and social life of the Palestinian people, on the movement of citizens and on free trade. The wall has annexed the lands of 25 Palestinian towns, completely destroying their economies and cutting them off from one another ” (S/PV.4841, p. 34).

forces stationed at every checkpoint? If the Wall is completed, the concept of a Palestinian State becomes meaningless in the absence of an international border.

581. Consequently, the Wall cannot but deprive of all meaning the expected outcome of the negotiations between Palestine and Israel, which envisaged a 'two State' solution and not the acquisition by Israel of territory by force.

582. The so-called "security line" promoted by Israel aims clearly at prejudging the future negotiations. Nobody believes in its temporary character. The majority of States view this Wall as a *de facto* annexation of large areas of the territory where the principal Israeli settlements are situated, and as yet another impediment to a viable Palestinian State.

583. Once again, the recent speech by Israeli Prime Minister Ariel Sharon at the "Herzliya Conference" on 18 December 2003 leaves little doubt about Israel's real aims:

"This security line will not constitute the permanent border of the State of Israel, however, as long as implementation of the Roadmap is not resumed, the IDF will be deployed along that line. Settlements which will be relocated are those, which will not be included in the territory of the State of Israel in the framework of any possible future permanent agreement. At the same time, in the framework of the Disengagement Plan, Israel will strengthen its control over those same areas in the Land of Israel which will constitute an inseparable part of the State of Israel in any future agreement."<sup>447</sup> (emphasis added)

584. The Israeli policy of *fait accompli* has been clearly condemned by the General Assembly in Resolution ES-10/13 of 21 October 2003 :

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<sup>447</sup> In P.M. Speeches, text available at <http://www.first.gov.il/first/english/Html/homepage.htm>.

“ Particularly concerned that the route marked out for the wall under construction by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, could prejudice future negotiations and make the two-State solution physically impossible to implement and would cause further humanitarian hardship to the Palestinians. ”

585. This Israeli policy cannot be viewed otherwise than as a violation of the Security Council resolutions adopted in this regard, starting with Resolution 242 (1967) of 22 November 1967, and including Resolution 1397 (2002) of 12 March 2002 and Resolution 1515 (2003) of 19 November 2003.

586. Numerous delegations have emphasized the incompatibility of the Wall with the ‘two State’ solution. For example:

- European Union (declaration of the Italian Presidency, speaking also on behalf of the acceding countries, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia, the associated countries, Bulgaria, Romania and Turkey, and the European Free Trade Association countries, Iceland and Liechtenstein, members of the European Economic Area) :

“[The Wall] undermines Palestinian trust in the road map and appears to prejudice the final borders of a future Palestinian State. The current and planned path of the security fence is unacceptable.”<sup>448</sup>

- Malaysia, on behalf of the Non-Aligned Movement:

“ With regard to the separation wall, we believe that its construction is severely jeopardizing the creation of a viable contiguous Palestinian State and the realization of the two-State solution. The Israeli Government says that the wall is necessary to protect Israel from terrorists. But the plans for the wall, and the actual construction itself, indicate that it is more than just a security wall. It appears to be a

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<sup>448</sup>

S/PV.4841, p. 42.



devious way to create new facts on the ground and impose a unilateral solution which would prejudge the outcome of future negotiations on the boundaries of the two States, Israel and Palestine.”<sup>449</sup>

- France:

“The planned route, if indeed followed, prejudices the borders of the future Palestinian State. The continued building of a wall of separation following a route that departs from the Green Line would de facto indicate that Israel no longer recognizes resolution 242 (1967) as an essential basis for negotiations with the Palestinians.”<sup>450</sup>

- United Kingdom :

“But more important is the impact of the wall. The separation wall undermines the trust between the parties that is necessary for negotiations. It has a negative impact on the daily lives of Palestinians and it calls into question the two-State solution.”<sup>451</sup>

- United States :

“It is extremely important, if [the fence] is going to be built, that it not intrude on the lives of Palestinians and, most importantly, that it not look as if it is trying to prejudice the outcome of a peace agreement.”<sup>452</sup>

- Jordan :

“We also condemn the separation wall, which consolidates Israeli occupation of Palestinian territories, devours further Palestinian land, aggravates the suffering of the Palestinian population and anticipates as a fait accompli, the future shape of the Palestinian State. While we demand that Israel cease forthwith the construction of the wall, we stress the need to respect the status of the 4 June 1967 line.”<sup>453</sup>

- Japan:

“These separation fences, although it is claimed that they are intended to prevent the intrusion of terrorists, not only negatively affect the lives of Palestinians but also prejudice the final status of the negotiations, as the fence is to be extended inside the Green Line.”<sup>454</sup>

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449 S/PV.4841, pp. 25-26.  
450 S/PV.4841, p. 18.  
451 S/PV.4841, p. 13.  
452 S/PV.4841, p. 23.  
453 A/58/PV. 16, p. 27.  
454 S/PV.4841, p. 32.

- Senegal, as Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People:

“This Barrier is a means of unilaterally setting the borders of the future Palestinian State – whatever our Israeli friends may say – and this Barrier is likely, without any doubt, to compromise negotiations on final status once the parties reach that stage.”<sup>455</sup>

- Committee on the Exercise of the Inalienable Rights of the Palestinian People:

“The construction also endangers international efforts aimed at resolving the conflict and realizing the vision of a region where two States, Israel and Palestine, would live side by side in peace and security, as outlined in the Road Map. With these concerns in mind, the Committee calls upon the international community, most notably the Security Council and the General Assembly, to attach the necessary importance to this issue, with a view to stopping the de facto annexation of Palestinian land and the construction of the wall by the occupying Power.”<sup>456</sup>

587. Other delegations have expressed the same opinion in their statements, including South Africa,<sup>457</sup> Syrian Arab Republic,<sup>458</sup> Guinea,<sup>459</sup> Switzerland,<sup>460</sup> and India.<sup>461</sup> Likewise, the Secretary-General of the United Nations stated that he “views

<sup>455</sup> General Assembly, Tenth Emergency Special Session, 21st meeting, 8 December 2003, A/ES-10/PV.23, p. 13.

<sup>456</sup> Report of the Committee on the Exercise of the Inalienable Rights of the Palestinian People, Official Records, Fifty-eighth Session, Supplement No. 35 (A/58/35), 9 October 2003, para. 73.

<sup>457</sup> “The building of a separation wall is a pretext to occupy more land and makes a negotiated settlement even harder to achieve” (S/PV.4841, p. 35).

<sup>458</sup> “[The route traced by the Wall] would make it impossible to achieve the objective of the peace process with the Palestinians which is: to establish a Palestinian State in the territories occupied since 1967, with East Jerusalem as its capital” (S/PV.4841, p. 12).

<sup>459</sup> “It runs counter to the vision of two States, Palestinian and Israeli, living side by side within safe and internationally recognized borders. It is one of the most eloquent manifestations of the denial to the Palestinian people of the exercise of their right to full sovereignty within the framework of an independent, free and viable State” (S/PV.4841, p. 17).

<sup>460</sup> “Switzerland is firmly opposed to the construction of the separation wall undertaken by Israel. The wall, which is illegal under international law and contrary to the road map, is a clear obstacle to the peace process and the realization of the vision of two States” (General Assembly, Tenth Emergency Special Session, 21st meeting, 8 December 2003, A/ES-10/PV.23, p. 22).

<sup>461</sup> “More importantly, Israel’s insistence on continuing with the construction of a security wall would be widely interpreted as an attempt to predetermine the outcome of any final status negotiations between Israel and the Palestinian Authority on the basis of the principle of land for peace, as called for

both the security wall and settlements in the West Bank built on Palestinian land as serious obstacles to the achievement of a two-State solution.”<sup>462</sup>

588. In conclusion, the Wall is completely incompatible with the right of the Palestinian people to self-determination.

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by the relevant Security Council resolutions” (General Assembly, Emergency Special Session, 21st meeting, 20 October 2003, A/ES-10/PV.21, p. 19).

<sup>462</sup> “ Secretary-General Disturbed by Israel's Decisions on Separation Wall, New Settlements ”, Press Release, SG/SM/8913, 2 October 2003.

## Chapter 11. LEGAL CONSEQUENCES OF ISRAEL'S BREACHES

589. It follows from the previous chapters that Israel, through its construction and operation of the Wall in the Occupied Palestinian Territory, including East Jerusalem, has violated, and continues to violate, a number of distinct international obligations applicable to it. Thus:

A. Israel has no right to construct and operate the Wall in the Occupied Palestinian Territory, including in and around East Jerusalem.

B. The construction and operation of the Wall violates international humanitarian law, in particular for the following reasons:

1. The Wall is largely built in the Occupied Palestinian Territory;
2. The Wall is part of a continuing attempt by Israel to change the legal status of the Occupied Palestinian Territory, including East Jerusalem, and to effect a *de facto* annexation of Palestinian territory;
3. The construction of the Wall and the surrounding zone has entailed the destruction of Palestinian property contrary to Article 53 of the Fourth Geneva Convention;
4. The construction of the Wall and the surrounding zone has entailed the requisitioning of Palestinian property contrary to Article 52 of the Hague Regulations;
5. Contrary to Article 64 of the Hague Regulations, the construction and operation of the Wall fails to respect the laws in force in the country;

6. The construction and operation of the Wall is incompatible with Israel's duties under Article 55 of the Fourth Geneva Convention in respect of ensuring food and medical supplies to the population of the Occupied Palestinian Territory;
7. The construction and operation of the Wall is a form of collective punishment contrary to Article 33 of the Fourth Geneva Convention, and Article 75 of Additional Protocol I which in this respect represents customary international law;
8. The construction and operation of the Wall is a disproportionate response to any threat that might be considered to face Israel.

C. The construction and operation of the Wall violates international human rights law, in particular for the following reasons:

1. The construction and operation of the Wall violates the right to freedom of movement, as established in particular in Article 12 of the International Covenant on Civil and Political Rights and Article 13 of the Universal Declaration of Human Rights;
2. The construction and operation of the Wall violates Israel's obligations under Article 6 of the International Covenant on Economic, Social and Cultural Rights in relation to the right to earn a living;
3. The construction and operation of the Wall violates Israel's obligations under Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights and Article 25 of the Universal Declaration on Human Rights, and under Articles 24 and 27 of the Convention on the

Rights of the Child, in respect of the provision of adequate food and living conditions and medical care and social services;

4. The construction and operation of the Wall violates Israel's obligation under Article 13 of the International Covenant on Economic, Social and Cultural Rights and Article 26 of the Universal Declaration on Human Rights, and under Article 28 of the Convention on the Rights of the Child, in respect of the right to education;
5. The construction and operation of the Wall violates the rights of Palestinians in the Occupied Palestinian Territory to family and cultural life, as established *inter alia* in Article 17 of the International Covenant on Civil and Political Rights and Article 16 of the Convention on the Rights of the Child;
6. The construction of the Wall has entailed takings of property without legal justification and without proper legal process, contrary to customary international law as reflected in, *inter alia*, Protocol 1 to the European Convention on Human Rights;
7. The seriousness of the violations listed in the preceding paragraphs is aggravated by the fact that the operation of the Wall explicitly discriminates against Palestinians and is applied to Palestinians in a manner that degrades and humiliates them.

D. The construction and operation of the Wall violates the right of the Palestinian people to self-determination, in particular in the following respects:

1. To the extent that the Wall departs from the Green Line and is built in the Occupied Palestinian Territory, including East Jerusalem, it severs the

territorial sphere over which the Palestinian people are entitled to exercise their right to self-determination. To the same extent the Wall is also a violation of the legal principle prohibiting acquisition or annexation of territory by the use of force;

2. The route of the Wall is designed to change the demographic composition of the Occupied Palestinian Territory, including East Jerusalem, by reinforcing the Israeli settlements and by facilitating their extension, in disregard of the fact that these settlements are illegal according to international law;
3. By the creation of Palestinian enclaves, discrimination against and humiliation of the Palestinian population, and the creation of unbearable economic conditions, the Wall is having the clear and foreseeable effect of the forced displacement of the Palestinian population into increasingly limited areas regarded as safe and livable for Palestinians;
4. The Wall is part of a policy of reducing and parcelling out the territorial sphere over which the Palestinian people are entitled to exercise their right to self-determination, establishing non-contiguous Palestinian areas similar to Bantustans;
5. The construction and operation of the Wall violates the right of the Palestinian people to permanent sovereignty over their natural resources in the Occupied Palestinian Territory, including East Jerusalem, and destroys the economic and social basis of the life of the Palestinian people;
6. The construction and operation of the Wall endangers the feasibility of a viable State of Palestine and consequently undermines future negotiations based on the 'two State' principle.

590. The legal consequences of such breaches must be considered separately (1) for Israel and (2) for States other than Israel.

**(1) Legal Consequences for Israel**

591. The breaches of international law previously enumerated constitute internationally wrongful acts within the meaning of the Articles on State Responsibility, as adopted by the ILC in 2001 and of which the United Nations General Assembly took note in resolution A/RES/56/83 of 12 December 2001.

592. The wrongful acts arising from or relating to Israel's construction and operation of the Wall are attributable to Israel and entail its responsibility under international law. As Article 1 of the ILC Articles confirms:

“Every internationally wrongful act of a State entails the international responsibility of that State.”

593. The ILC Articles comprise, in Part Two, various provisions relating to the legal consequences of an internationally wrongful act. These consequences, whose customary character cannot be disputed, include the following:

- *Continued duty of performance* (Article 29);
- *Cessation and non-repetition* (Article 30) ; and
- *Reparation* (Article 31), taking the form of *restitution* (Article 35) and *compensation* (Article 36).



These various consequences and their application to Israel in the present case will be addressed below.

(a) Continued duty to perform the obligation breached

594. Article 29 of the ILC Articles provides:

“The legal consequences of an internationally wrongful act under this Part do not affect the continued duty of the responsible State to perform the obligation breached.”

595. In accordance with this provision, Israel’s international obligations remain unaffected by the breaches committed by it in connection with its construction and operation of the Wall. The facts accomplished on the ground effect no change in the application of the legal norms. The applicable norms retain their legal value in their entirety according to the maxim *ex injuria jus non oritur* and Israel must respect them in the Occupied Palestinian Territory, including East Jerusalem.

596. Israel has received repeated warnings concerning its apparent policy of creating *faits accomplis* with the intent of reinforcing illegal settlements or implementing creeping annexation through the construction of the Wall in the Occupied Palestinian Territory, including East Jerusalem. For example,<sup>463</sup> as was mentioned above, the Quartet responsible for the Road Map has stated:

“The Quartet members reaffirm that, in accordance with the road map, settlement activity must stop, and note with great concern the actual and proposed route of Israel's West Bank fence, particularly as it results in the confiscation of Palestinian land, cuts off the movement of

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<sup>463</sup> See also the numerous declarations quoted in chapter 10, *passim*.

people and goods and undermines Palestinians' trust in the road map process, as it appears to prejudge final borders of a future Palestinian State.”<sup>464</sup>

597. Moreover, Paragraph 13 of the Declaration of the Conference of High Contracting Parties to the Fourth Geneva Convention, adopted in Geneva on 5 December 2001, declared:

“The participating High Contracting Parties recall that according to article 148 no High Contracting Party shall be allowed to absolve itself of any liability incurred by itself in respect of grave breaches.”<sup>465</sup>

598. In conclusion, Israel has the continued duty to perform and observe all the applicable international obligations breached by it in connection with the construction and operation of the Wall in the Occupied Palestinian Territory, including East Jerusalem. In particular, Israel is obliged to recognize and accept all the obligations mentioned in Chapters 7, 8, 9 and 10, above.

(b) Cessation of the wrongful act

(i) *The principle*

599. Under the obligation of cessation, a State that is responsible for an internationally wrongful act has the obligation to put an end to it. Article 30 of the ILC Articles describes this legal consequence in the following terms:

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<sup>464</sup> Quartet statement, New York, 26 September 2003, Annex to the Letter dated 6 October 2003 from the UN Secretary-General addressed to the President of the Security Council, UN Doc. S/2003/951.

<sup>465</sup> The Declaration appears as Dossier no. 67 attached to the Secretary-General's submission in this case.. The grave breaches are listed in Article 147 of the Convention and Article 85 of Additional Protocol I.

*“Cessation and non-repetition*

The State responsible for the internationally wrongful act is under an obligation:

(a) To cease that act, if it is continuing; [...]”.

600. This is a classic norm. The Court referred to it in its Judgment of 27 June 1986:

“The Court (...) *decides* that the United States of America is under a duty immediately to cease and to refrain from all such acts as may constitute breaches of the foregoing legal obligations.”<sup>466</sup>

601. Orders whereby the Court indicates provisional measures frequently provide for the immediate cessation of certain conduct pending the Court’s decision on the merits. Thus, the Court’s Order of 3 March 1999 in the *LaGrand Case* provided that:

“[t]he United States of America should take all measures at its disposal to ensure that Walter LaGrand is not executed pending the final decision in these proceedings, and should inform the Court of all the measures which it has taken in implementation of this Order.”<sup>467</sup>

602. An obligation of this kind is also frequently reiterated by the United Nations General Assembly (see below for an example relating to the Wall) and by the Security Council in cases of grave breaches of international law. As the ILC Commentary emphasises:

“The function of cessation is to put an end to a violation of international law and to safeguard the continuing validity and effectiveness of the underlying primary rule. The responsible State’s obligation of cessation thus protects both the interests of the injured

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<sup>466</sup> *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, I.C.J. Reports 1986, p. 149.

<sup>467</sup> *LaGrand Case (Germany v. United States of America)*, Order, Provisional Measures, I.C.J. Reports 1999, para. 29(a).

State or States and the interests of the international community as a whole in the preservation of, and reliance on, the rule of law.”<sup>468</sup>

*(ii) Application to the present case*

603. Numerous States and international organisations have called on Israel to cease its construction of the Wall. The following statements constitute representative examples:

- European Union:

- Presidency Conclusions, Thessaloniki European Council, 19 and 20 June 2003:

“86. The European Council calls on Israel to reverse the settlement policy and activity and end land confiscations and the construction of the so-called security fence, all of which threaten to render the two-State solution physically impossible to implement.”<sup>469</sup>

It is recalled that the European Union, with support from the candidates for accession to the Union in May 2004, introduced draft Resolution A/ES-10/L.15 in the General Assembly. This draft was overwhelmingly adopted by the Assembly on 21 October 2003 as Resolution A/ES-10/13.

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<sup>468</sup> Commentaries to the draft articles on Responsibility of States for internationally wrongful acts adopted by the International Law Commission at its fifty-third session (2001), *Report of the International Law Commission on the work of its Fifty-third session*, Official Records of the General Assembly, Fifty-sixth session, Supplement No. 10 (A/56/10), p. 218.

<sup>469</sup> Presidency Conclusions, Thessaloniki European Council, 19 and 20 June 2003, [http://www.europa.eu.int/european\\_council/conclusions/index\\_en.htm](http://www.europa.eu.int/european_council/conclusions/index_en.htm). See also the Declaration of the European Union, Fourth Meeting of the Association Council EU – Israel, Brussels, 17 – 18 November 2003, 14796/03 (Presse 328), <http://ue.eu.int/pressData/en/er/77932.pdf>.

- Organisation of the Islamic Conference:

According to Resolution n° 1/10-Pal (Is) on Palestine Affairs, adopted at the Tenth Session of the Islamic Summit Conference (Session of Knowledge and Morality for the Progress of Ummah) Putrajaya – Malaysia, 20 - 21 Sha’aban 1424 H., 16-17 October 2003:

La Conférence :

“ 8. *Demande* au comité des quatre (Etats Unis, Fédération de Russie, Union européenne et Nations Unies) d’œuvrer de nouveau à l’instauration d’une paix juste et globale au Moyen- orient conformément aux résolutions pertinentes de la légalité internationale, aux termes de référence de Madrid et à l’initiative arabe de paix, à l’application de la feuille de route telle quelle, au déploiement de forces internationales pour garantir le calme et la stabilité dans la région et de contraindre Israël à :

[...]

- stopper la construction du ‘mur raciste’ qui dévore les terres palestiniennes, crée des faits accomplis iniques au détriment des frontières internationales de l’Etat palestinien et contribue au pourrissement de la situation dans la région ”<sup>470</sup>.

- *The draft Security Council resolution tabled on 14 October 2003*

604. On 14 October 2003, Guinea, Malaysia, Pakistan and the Syrian Arab Republic introduced a draft resolution in the UN Security Council containing unequivocal language regarding the conclusions to be drawn from the breaches stemming from Israel’s construction of the Wall. The text proposed that the Security Council:

“Decide[...] that the construction by Israel, the occupying power, of a wall in the Occupied Territories departing from the armistice line of

<sup>470</sup>

Text available at <http://www.oic-oci.org/french/is/10/10%20is-main-f.htm>.

1949 is illegal under relevant provisions of international law and must be ceased and reversed.”<sup>471</sup>

605. As is well known, this text was not adopted, following the veto of one permanent member of the Council.<sup>472</sup> Nevertheless, the draft received 10 votes in favour from the following States: Angola, Chile, China, France, Guinea, Mexico, Pakistan, Russian Federation, Spain, and the Syrian Arab Republic.

606. Furthermore, during the debate on the draft resolution a large number of States insisted in their interventions on the pressing need for the immediate cessation of the construction of the Wall. For example:

- Russian Federation:

“We are convinced that an important component for the exit strategy from the confrontation is the cessation of unilateral steps by the leadership of Israel. The unlawful settlement activity on the Palestinian territories and the construction of the so-called separation wall, which has resulted in the seizure of Palestinian lands, must be immediately halted.”<sup>473</sup>

- Jordan:

“We call on Israel to stop the construction of the wall immediately and emphasize the need to respect the lines of 4 June 1967.”<sup>474</sup>

- Japan:

“With respect to the latest Israeli decision to extend the fence, which is truly regrettable, Japan strongly requested the Israeli Government, on 1 October — the day of Cabinet approval — to refrain from implementing that decision. Today, I would like to take this opportunity to request the Israeli Government once again not to implement that decision.”<sup>475</sup>

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<sup>471</sup> UN Doc. S/2003/980 (emphasis added).

<sup>472</sup> UN Doc. S/PV.4842, 14 October 2003. There were four abstentions: Bulgaria, Cameroon, Germany and United Kingdom.

<sup>473</sup> UN Doc. S/PV.4841, p. 15.

<sup>474</sup> UN Doc. S/PV.4841, p. 31.

<sup>475</sup> UN Doc. S/PV.4841, p. 32.

- European Union (declaration of the Italian presidency, speaking also on behalf of the acceding countries, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia, the associated countries Bulgaria, Romania and Turkey, and the European Free Trade Association countries Iceland and Liechtenstein, members of the European Economic Area):

“The European Union is strongly opposed to the construction by Israel of a separation wall in the West Bank, and urges the Government of Israel to stop its construction in the Palestinian territories, including in and around Jerusalem, and other illegal activities, such as the confiscation of land and the demolition of houses, that it entails.”<sup>476</sup>

607. Mexico,<sup>477</sup> Pakistan,<sup>478</sup> Yemen,<sup>479</sup> Egypt,<sup>480</sup> and Argentina<sup>481</sup> made statements along the same lines.

- *General Assembly Resolution A/ES-10/13* adopted on 21 October 2003

608. General Assembly Resolution A/ES-10/13 is particularly significant. Its text, which was introduced by the Member States of the European Union together with the

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<sup>476</sup> UN Doc. S/PV.4841, p. 42.

<sup>477</sup> “We therefore believe that the State of Israel must halt construction of this wall and avoid any action in Palestinian territory that cannot be justified on the basis of their legitimate right to secure borders or to prevent any terrorist acts on their own territory” (UN Doc. S/PV.4841, p. 16).

<sup>478</sup> “[The separation wall] must be declared illegal by the Security Council, and the Government of Israel must be asked to cease, and reverse, its construction” (UN Doc. S/PV.4841, p. 22).

<sup>479</sup> “[...] the Security Council must adopt a resolution to be implemented to force Israel to immediately halt the construction of the wall on occupied Palestinian territory and far from the Green Line, and to strictly respect its commitments, in keeping with international law and norms and with the Fourth Geneva Convention” (UN Doc. S/PV.4841, p. 28).

<sup>480</sup> “What is demanded of the Security Council today is to express international consensus on the firm demand that Israel stop the construction of the wall of separation deep inside Palestinian territory, set aside its settlement policy and assume its responsibilities as an occupying Power, in accordance with the 1949 Fourth Geneva Convention” (UN Doc. S/PV.4841, p. 29).

<sup>481</sup> “Israel’s construction of a wall on occupied territory is one more reason for concern. It is also a violation of international law. We therefore call for an end to the ongoing construction of the wall, especially along areas that do not follow the Green Line” (UN Doc. S/PV.4841, p. 37).

acceding countries (Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia), states that the Assembly:

“1. *Demands* that Israel stop and reverse the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem, which is in departure of the Armistice Line of 1949 and is in contradiction to relevant provisions of international law.”

This resolution was adopted by 144 votes in favour<sup>482</sup> to four against,<sup>483</sup> with 12 abstentions.<sup>484</sup>

609. In conclusion, Israel is under an obligation immediately to cease all internationally wrongful acts arising from or in connection with the construction and operation of the Wall in the Occupied Palestinian Territory, including East Jerusalem. Consequently, Israel has *inter alia* a duty immediately to cease the construction, planning and operation of the Wall within the Occupied Palestinian Territory, including East Jerusalem, and to conform to its obligations under Security Council resolutions. Israel has the further duty to desist from taking any further action, altering, or purporting to alter, the legal status, institutional structure, geographical and historical character and demographic composition of the Closed

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<sup>482</sup> Albania, Algeria, Andorra, Angola, Antigua and Barbuda, Argentina, Armenia, Austria, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Bosnia and Herzegovina, Botswana, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Cambodia, Cameroon, Canada, Cape Verde, Chile, China, Colombia, Comoros, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Democratic People's Republic of Korea, Denmark, Djibouti, Dominica, Egypt, Eritrea, Estonia, Ethiopia, Finland, France, Gabon, Gambia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Hungary, Iceland, India, Indonesia, Iran, Ireland, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, , Kyrgyzstan, Lao People's Democratic Republic, Latvia, Lebanon, Lesotho, Libya, Liechtenstein, Lithuania, Luxembourg, Malaysia, Maldives, Mali, Malta, Mauritania, Mauritius, Mexico, Monaco, Mongolia, Morocco, Mozambique, Myanmar, Namibia, Nepal, Netherlands, New Zealand, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Romania, Russian Federation, Saint Lucia, San Marino, Saudi Arabia, Senegal, Serbia and Montenegro, Sierra Leone, Singapore, Slovakia, Slovenia, Somalia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Switzerland, Syria, Thailand, The former Yugoslav Republic of Macedonia, Togo, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, United Republic of Tanzania, Venezuela, Viet Nam, Yemen, Zambia, Zimbabwe.

<sup>483</sup> Federated States of Micronesia, Israel, Marshall Islands, United States.



Zone or any part thereof, within the Occupied Palestinian Territory, including East Jerusalem, or which would prejudice the rights of the Palestinian inhabitants of the relevant area or the right of the Palestinian people to self-determination. Accordingly, Israel is under a duty to desist from transferring parts of its civilian population into the Occupied Palestinian Territory, and from causing the displacement of the Palestinian population in the relevant area.

(c) Reparation

610. Under the law of State responsibility for internationally wrongful acts, reparation constitutes, in case of injury, the classical legal consequence of responsibility. As stated by the Permanent Court of International Justice, reparation “must, so far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed.”<sup>485</sup> According to the Permanent Court:

“It is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form. Reparation therefore is the indispensable complement of a failure (...).”<sup>486</sup>

611. Article 31(1) of the ILC Articles states the principle as follows:

“The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act.”

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<sup>484</sup> Australia, Burundi, Dominican Republic, Ecuador, Honduras, Malawi, Nauru, Nicaragua, Papua New Guinea, Rwanda, Tuvalu, Uruguay.

<sup>485</sup> *Factory at Chorzów, Merits, 1928, P.C.I.J., Series A, No. 17, p. 47.*

<sup>486</sup> *Factory at Chorzów, Jurisdiction, 1927, P.C.I.J., Series A, No. 9, p. 21.* The present Court most recently referred to this statement in the *LaGrand Case (Germany v. United States of America), Merits*, Judgment of 27 June 2001, para. 45.

612. This principle has been affirmed in the Court's jurisprudence.<sup>487</sup> Thus, Israel is under an obligation to make reparation for all injury caused to Palestine and the Palestinian people by the construction of the Wall and by the breaches of international law outlined in the previous chapters of this Written Statement.

*(i) Reparation in the form of restitution*

1. The principle

613. As described above, reparation may take various forms, including restitution (so-called *restitutio in integrum*) and compensation. According to Article 34 of the ILC Articles:

*"Forms of reparation*

Full reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination [...]."

614. Restitution is a form of reparation for injury which is aimed at the re-establishment of the situation which existed before the breach, by reverting to the *status quo ante*. Article 35 of the ILC Articles provides:

*"Restitution*

A State responsible for an internationally wrongful act is under an obligation to make restitution, that is, to re-establish the situation which existed before the wrongful act was committed, provided and to the extent that restitution:

(a) is not materially impossible;

(b) does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation."

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<sup>487</sup> See, e.g., *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, I.C.J. Reports 1986, p. 149 sub (13) and (14).

615. As the Permanent Court of International Justice stated:

“The essential principle contained in the actual notion of an illegal act - a principle which seems to be established by international practice and in particular by the decisions of arbitral tribunals - is that reparation must, so far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed. Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it - such are the principles which should serve to determine the amount of compensation due for an act contrary to international law.”<sup>488</sup>

616. This principle was recently applied by the present Court in the case concerning the *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*.<sup>489</sup> Referring to the above-mentioned *dictum*, the Court stated: “In the present case, ‘the situation which would, in all probability, have existed if [the illegal act] had not been committed’ cannot be re-established merely by a finding by the Court that the arrest warrant was unlawful under international law.”<sup>490</sup> Consequently, it decided that “Belgium must, by means of its own choosing, cancel the warrant in question and so inform the authorities to whom it was circulated.”

## 2. Application in the present case

617. Restitution may take various forms: material restoration of territory, persons or property, or annulment of legal acts. In the present instance, the established

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<sup>488</sup> *Factory at Chorzów, Merits, 1928, P.C.I.J., Series A, No. 17, p. 47.*

<sup>489</sup> *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, Judgment of 14 February 2002. See also *Gabčíkovo-Nagymaros Project (Hungary v. Slovakia)*, Judgment, *I.C.J. Reports 1997*, p. 7, at 81, paras. 149-150.

breaches require the annulment of legislative acts, or decrees, or administrative acts or orders in connexion with the construction of the Wall, as well as the physical dismantlement of the Wall and the restitution of confiscated land and property. Where Israel's wrongful acts affect any portion of the Occupied Palestinian Territory to the east of the Green line, one is faced with a situation similar to that confronting the Permanent Court in the case concerning the *Free Zones of Upper Savoy and the District of Gex*, in which it decided that France "must withdraw its customs line in accordance with the provisions of the said treaties and instruments [...]."<sup>491</sup>

618. Restitution assumes particular significance, as here, when the breaches have a continuous character and where the norms infringed constitute peremptory norms of international law: the prohibition against the use of force, the prohibition against annexation, the right to self-determination, fundamental norms of international humanitarian law and of human rights law.

619. Indeed, in some cases, restitution is impossible (e.g., villages may have been erased, orchards destroyed, etc); and when reconstruction or replanting is no longer feasible, full compensation must be made.

620. In the present instance, numerous States and international organisations have called on Israel not only to cease its practices and measures connected with the Wall, but to dismantle the Wall entirely. The following examples may be given:

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<sup>490</sup> *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, Judgment of February 2002, para. 76.

<sup>491</sup> *P.C.I.J., Series A/B, No. 46*, p. 96, at p. 172.

- *European Union:*

- Declaration of the European Union, Fourth Meeting of the Association Council EU

- Israel, Brussels, 17 – 18 November 2003 :

“In this context the EU is alarmed by the designation of land between the fence and the “green line” as a closed military zone. This is a de facto change in the legal status of Palestinians living in this area which makes life for them even harder. Hence, the EU calls on Israel to stop and reverse the construction of the so-called security fence inside the occupied Palestinian territories, including in and around East Jerusalem, which is in departure of the armistice line of 1949 and is in contradiction to the relevant provisions of international law.”<sup>492</sup>

- *Organisation of the Islamic Conference:*

- According to Resolution no. 1/10-Pal (Is) on Palestine Affairs, adopted at the Tenth Session of the Islamic Summit Conference (Session of Knowledge and Morality for the Progress of Ummah) Putrajaya – Malaysia, 20 - 21 Sha’aban 1424 H., 16-17 October 2003:

La Conférence:

“ 17. *Condamne* la politique colonialiste et expansionniste d’Israël et *Réaffirme* la nécessité d’œuvrer à la cessation de toutes les opérations de colonisation, de toutes les pratiques et de tous les agissements israéliens contraires à la légalité internationale et aux accords conclus entre les deux parties; *Demande au Conseil de sécurité de faire abroger ces mesures, d’exiger le démantèlement des implantations et le mur de la honte en application de sa résolution n°465 et de relancer le Comité international de Contrôle et de Surveillance pour empêcher la colonisation d’Al-Qods et des territoires arabes occupés, conformément à la résolution n°446 du Conseil de sécurité [...]*”<sup>493</sup>.

621. This was also impliedly the position of all the States members of the Security Council that voted in favour of the draft sponsored by Guinea, Malaysia, Pakistan and

the Syrian Arab Republic and discussed in plenary session on 14 October 2003. The draft proposed that the Security Council resolve that it:

“Decides that the construction by Israel, the occupying power, of a wall in the Occupied Territories departing from the armistice line of 1949 is illegal under relevant provisions of international law and must be ceased and reversed.”<sup>494</sup>

622. The ten States voting in favour of the draft resolution were: Angola, Chile, China, France, Guinea, Mexico, Pakistan, Russian Federation, Spain and the Syrian Arab Republic. Furthermore, during the sessions devoted to the question of the Wall in the Security Council and the General Assembly, numerous States expressed themselves along the same lines. For instance:

- Malaysia, on behalf of the Non-Aligned Movement:

“The NAM reaffirms its position on the Israeli expansionist wall, as clearly expressed during the debate in the Security Council on 14 October. In brief, we reiterate that the Israeli expansionist wall constructed in occupied Palestinian territory is illegal, must be dismantled and its further construction immediately discontinued [...]”<sup>495</sup>

- Islamic Republic of Iran, on behalf of the Organization of the Islamic Conference:

“The fact that Israel explicitly ignored the decision of this Assembly and insisted, in its contempt for the will of the international community, on continuing the construction of the expansionist wall, brought the Secretary-General to conclude, in his report contained in document A/ES-10/248, that ‘ Israel is not in compliance with the Assembly's demand’.”<sup>496</sup>

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<sup>492</sup> Declaration of the European Union, Fourth Meeting of the Association Council EU – Israel, Brussels, 17 – 18 November 2003, 14796/03 (Presse 328), <http://ue.eu.int/pressData/en/er/77932.pdf>.

<sup>493</sup> Text available at <http://www.oic-oci.org/french/is/10/10%20is-main-f.htm>.

<sup>494</sup> UN Doc. S/2003/980 (emphasis added).

<sup>495</sup> General Assembly, Tenth Emergency Special Session, 21st meeting, 20 October 2003, UN Doc. A/ES-10/PV.21, p. 11. See also the declaration made by the Malaysian delegation on behalf of the Non-Aligned Movement before the Security Council, UN Doc. S/PV.4841, p. 26.

623. Numerous other States adopted the same position, including Malta,<sup>497</sup> Lebanon,<sup>498</sup> Indonesia,<sup>499</sup> Bahrain,<sup>500</sup> United Arab Emirates,<sup>501</sup> and Chile.<sup>502</sup>

624. Here again it is appropriate to recall that General Assembly Resolution A/ES-10/13, which received 144 votes in favour, stated that the Assembly:

“1. Demands that Israel stop and reverse the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem, which is in departure of the Armistice Line of 1949 and is in contradiction to relevant provisions of international law.”

625. In conclusion, Israel is under obligation to provide reparation in the form of restitution by reversing the construction of the Wall and the regime associated with it, in the Occupied Palestinian Territory, including East Jerusalem. Israel is under obligation *inter alia* to rescind all legislative and administrative measures, policies, actions and practices taken by it in relation to the Wall, including the expropriation of

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<sup>496</sup> General Assembly, Tenth Emergency Special Session, 21st meeting, 8 December 2003, UN Doc. A/ES-10/PV.23, p. 14.

<sup>497</sup> “Israel needs to clearly recognize the illegality of its presence in the occupied territories. This implies the reversal of the measures that are accompanying this occupation — in particular the building and maintenance of settlements and the construction of the partition wall on Palestinian territory” (UN Doc. A/58/PV.11, p. 26).

<sup>498</sup> “Therefore Lebanon appeals to the Security Council to adopt the draft resolution, submitted by the Arab group, which considers the construction by Israel, the occupying Power, of this wall in the occupied Palestinian territories as a violation of the 1949 armistice line. The draft resolution also states that this construction is illegal on the basis of international law and requires the end of construction on the wall, the demolition of those portions that have already been built and the restoration of the status quo ante” (UN Doc. S/PV.4841, p. 50).

<sup>499</sup> “Israel must cease its ill (*sic.*) practices, including construction of the wall, as they contradict and jeopardize the road map. In addition, the completed portions of the wall must be demolished” (General Assembly, Tenth Emergency Special Session, 21st meeting, 20 October 2003, UN Doc. A/ES-10/PV.21, p. 14).

<sup>500</sup> “The Kingdom of Bahrain calls on the Security Council, the Quartet and those countries that are sponsoring the peace process to exert pressure on the Israeli Government immediately to halt construction of the separation wall, to tear it down and to cease building settlements” (UN Doc. S/PV.4841, p. 33).

<sup>501</sup> “We also urge the Security Council to issue an effective resolution that categorically condemns the separation wall and demands that Israel fully and unconditionally remove the wall, in accordance with the United Nations Charter, international humanitarian law and the relevant United Nations resolutions” (UN Doc. S/PV.4841, p. 32).

land and properties within the Occupied Palestinian Territory, and must rescind all previous actions, including by the lifting of any restrictions imposed on the movement of persons and goods and on the operations of humanitarian organizations in the relevant area. Moreover, Israel has a duty to cause the immediate removal and repatriation of its civilian population transferred to the section of the Wall within the Occupied Palestinian Territory since the commencement of the construction of the Wall, to dismantle any existing settlements in the relevant area, to ensure and facilitate the safe and immediate return of any and all displaced Palestinian civilians to the relevant area, and to release any person or persons detained as a result of Israel's construction and maintenance of the regime of the Wall.

*(ii) Reparation in the form of compensation*

626. It is a well established principle of international law that an injured party is entitled to compensation from the party which has committed an internationally wrongful act for the damage caused by that act.

627. Compensation may take the form of the payment of a sum of money. This legal consequence is contemplated by Article 36 of the ILC Articles:

*“Compensation*

1. The State responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution.

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<sup>502</sup> “The Chilean delegation considers that the Security Council must express its views on the situation and make a strong appeal, through a resolution, for the cessation of the building of the separation wall and the dismantling of what has been built thus far” (UN Doc. S/PV.4841, p. 16).



2. The compensation shall cover any financially assessable damage including loss of profits insofar as it is established.”

628. The Permanent Court of International Justice, in the *Chorzów Factory Case*, declared that it is “a principle of international law that the reparation of a wrong may consist in an indemnity.”<sup>503</sup> In the case concerning the *Gabcikovo-Nagymaros Project*, the present Court affirmed this principle:

“It is a well-established rule of international law that an injured State is entitled to obtain compensation from the State which has committed an internationally wrongful act for the damage caused by it.”<sup>504</sup>

629. As has been seen shown in the preceding chapters, the damage caused to Palestine and the Palestinian people by the above-mentioned breaches of international law by Israel includes all the damages that will not be compensated by restitution. For instance, even if their land is restored to the farmers, the orchards replanted, and their houses rebuilt, they will still need to be compensated for the loss of income and profits during the years when they were deprived of their properties.

## **(2) Consequences of a penal character**

630. In conformity with its obligations under international humanitarian law, Israel is bound to search for and bring before its courts persons alleged to have committed, or to have ordered to be committed, grave breaches of international humanitarian law, and to take measures necessary to suppress any other breaches of

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<sup>503</sup> *Factory at Chorzów, Merits, 1928, P.C.I.J., Series A, No. 17, p. 27*

<sup>504</sup> *Gabcikovo-Nagymaros Project (Hungary v. Slovakia), Judgment, I.C.J. Reports 1997, p. 7, at 81, para. 152.*

international humanitarian law arising from the construction, operation and/or planning of the Wall.

**(3) Legal Consequences for States other than Israel**

(a) Principles

631. In the event that an internationally wrongful act involves a grave breach of an obligation arising from a peremptory norm of international law all States are obligated to cooperate in order to bring an end to such a breach, to withhold recognition of a situation created by such a breach, and to refrain from rendering aid or assistance in maintaining that situation brought about by the breach.<sup>505</sup>

632. It will be recalled that the Court in the case concerning the *Barcelona Traction, Light and Power Company, Limited* pointed to the following distinction:

“In particular, an essential distinction should be drawn between the obligations of a State towards the international community as a whole, and those arising vis-à-vis another State in the field of diplomatic protection. By their very nature the former are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection ; they are obligations *erga omnes*.”<sup>506</sup>

633. As examples of obligations *erga omnes* the Court referred to obligations which “derive, for example, in the contemporary international law, from outlawing of

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<sup>505</sup> See commentaries on article 38, Commentaries to the draft articles on Responsibility of States for internationally wrongful acts adopted by the International Law Commission at its fifty-third session (2001), *Report of the International Law Commission on the work of its Fifty-third session*, Official Records of the General Assembly, Fifty-sixth session, Supplement No. 10 (A/56/10), page 230.

<sup>506</sup> *Barcelona Traction, Light and power Company, Limited, Judgment, I.C.J. Reports 1970*, p. 3, at 32, para. 33.

acts of aggression, and of genocide, as also from the principles and rules concerning the basic rights of protection from slavery and racial discrimination.”<sup>507</sup> In its Judgment of 30 June 1995 in the case concerning *East Timor*, the Court considered that “Portugal’s assertion that the right of peoples to self determination, as it evolved from the Charter and from United Nations practice, has an *erga omnes* character, is irreproachable.”<sup>508</sup> As the Court stated in the Opinion it gave in 1996 concerning the *Legality of the Threat or Use of Nuclear Weapons*, fundamental rules of humanitarian law applicable in armed conflict have an “ intransgressible ” character.<sup>509</sup>

634. It follows from the above that among the violations of international law entailed by the construction and operation of the Wall in the Occupied Palestinian Territory, including East Jerusalem, Israel has committed, and is still committing, grave breaches of peremptory norms of international law imposing *erga omnes* obligations, in relation to:

- The right of people to self-determination as it has developed under the United Nations Charter and in international legal practice;
- The principle of non-acquisition of territory by force;
- The fundamental rights of the human being;
- Fundamental rules of international humanitarian law applicable in armed conflict.

635. Articles 40 and 41 of the ILC Articles are particularly relevant in the present case. They state as follows:

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<sup>507</sup> *Id.*, at para. 34.

<sup>508</sup> *East Timor (Portugal v. Australia), Judgement, I.C.J. Reports 1995*, p. 90, at 102, para. 29.

<sup>509</sup> *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226, at 257, para. 79.

## **“Article 40**

### *Application of this chapter*

1. This chapter applies to the international responsibility which is entailed by a serious breach by a State of an obligation arising under a peremptory norm of general international law.
2. A breach of such an obligation is serious if it involves a gross or systematic failure by the responsible State to fulfil the obligation.

## **Article 41**

### *Particular consequences of a serious breach of an obligation under this chapter*

1. States shall cooperate to bring to an end through lawful means any serious breach within the meaning of article 40.
2. No State shall recognize as lawful a situation created by a serious breach within the meaning of article 40, nor render aid or assistance in maintaining that situation [...].”

636. It is particularly appropriate to recall these Articles in the context of the possible attempt by States to accept and recognize the Wall as a *fait accompli*, provided some of its excesses stemming from Israel’s fundamental violations of international humanitarian law and human rights are mitigated by Israel. According to these Articles, certain obligations are incumbent on third States, including especially (i) the obligation to cooperate with a view to putting an end to any violations, (ii) the obligation not to recognize any wrongful situation, and (iii) the obligation not to render aid or assistance in maintaining such a situation.

*(i) The obligation to cooperate with a view to putting an end to any violations*

637. Faced with Israel's grave breaches detailed above, a concerted and coordinated effort of all States is necessary to put an end to these breaches and their effects. It is recalled that numerous calls to this effect have been made during the past months.<sup>510</sup> For example:

- Declaration by the Presidency on behalf of the European Union on the situation in the Middle East, 11 September 2003:

"In order for these measures [a.o., freezing all settlement activities and the building of the security wall] to be effectively implemented, the EU reaffirms its commitment and the need for a determined and co-ordinated action by the International Community."<sup>511</sup>

- Final Communiqué of the Tenth Session of the Islamic Summit Conference (Session of Knowledge and Morality for the Progress of Ummah) Putrajaya – Malaysia, 20-21 Sha'aban 1424 H., 16-17 October 2003:

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<sup>510</sup> See also the declarations made by the following delegations :

- Pakistan: "The international community has an obligation to prevent the unlawful annexation of Palestinian land. There is little doubt that the separation wall, if completed, would negate the possibility of a contiguous, viable Palestinian State. The Government of Israel must, therefore, be persuaded to cease, and reverse, the construction of the wall, which we deplore" (General Assembly, Tenth Emergency Special Session, 21st meeting, 20 October 2003, UN Doc. A/ES-10/PV.21, p. 18) ;

- United Arab Emirates: "We call on the international community to compel Israel immediately to stop the killing and aggression, to end the practice of closure and siege and to remove the separation wall, which will lead to a humanitarian and economic disaster in the West Bank. We also demand that Israel allow international humanitarian organizations to deliver emergency assistance to the Palestinian people, in accordance with international humanitarian law, especially the Fourth Geneva Convention" (UN Doc. A/58/PV.38, pp. 2-3);

- Kuwait: "We condemn those Israeli practices and policies [a. o. the construction of the wall], which have aggravated the suffering of the Palestinian people, and we call upon the international community to fulfil its obligations and compel Israel to respect international legality and cease forthwith pursuing those policies that will undoubtedly lead to further deterioration of the security situation and to increase instability in the region" (General Assembly, Tenth Emergency Special Session, 21st meeting, 8 December 2003, UN Doc. A/ES-10/PV.23, p. 2).

<sup>511</sup> Declaration by the Presidency on behalf of the European Union on the situation in the Middle East, 11 September 2003, P/03/108, 12400/03 (Presse 261),

“[...]14. The Conference requested the international community to compel Israel to end the construction of - and remove - the apartheid wall which encroaches upon the Palestinian land, turns it into Bantustans, imposes unjust political realities and further deteriorates conditions in the region [...].”<sup>512</sup>

- Malaysia, on behalf of the Non-Aligned Movement:

“Pressure must be brought to bear on Israel to comply with the demands of the international community in respect of this wall.”<sup>513</sup>

- Senegal, Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People:

“My delegation appeals for a mobilization of the international community, including the United Nations — particularly the Security Council — and the Quartet of mediators, to make the Israeli Government listen to reason by demanding an immediate halt to the building of this wall of discord and the complete destruction of its initial segments.”<sup>514</sup>

- Report of the UN Committee on the Exercise of the Inalienable Rights of the Palestinian People:

“73. The Committee stresses its strong opposition to the illegal construction by the occupying Power of the wall in the Occupied West Bank and in areas close to East Jerusalem. The Committee reminds the Government of Israel that this construction has devastating immediate and longer-term implications for the livelihood of the Palestinian people. The construction also endangers international efforts aimed at resolving the conflict and realizing the vision of a region where two States, Israel and Palestine, would live side by side in peace and security, as outlined in the Road Map. With these concerns in mind, the Committee calls upon the international community, most notably the Security Council and the General Assembly, to attach the necessary importance to this issue, with a view to stopping the de facto

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[http://www.europa.eu.int/rapid/start/cgi/guesten.ksh?p\\_action.gettxt=gt&doc=PESC/03/1080|AGED&lg=EN&display](http://www.europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=PESC/03/1080|AGED&lg=EN&display).

<sup>512</sup> Text available at <http://www.oic-oci.org/english/is/10/10is-fc-en.htm>.

<sup>513</sup> UN Doc. S/PV.4841, p. 26.

<sup>514</sup> General Assembly, Tenth Emergency Special Session, 21st meeting, 20 October 2003, UN Doc. A/ES-10/PV.21, p. 16. See also the declaration made before the Security Council, UN Doc. S/PV.4841, p. 53.

annexation of Palestinian land and the construction of the wall by the occupying Power.”<sup>515</sup>

638. In conclusion, all States are under an obligation to co-operate with each other to ensure respect by Israel for its obligations under international law. In particular, the High Contracting Parties to the Fourth Geneva Convention are under obligation to recognize the *de jure* applicability of the Fourth Geneva Convention to the Occupied Palestinian Territory, including the Closed Zone. Moreover, under Article 1 of the Convention all third States have the duty “to respect and to ensure respect for the present Convention in all circumstances.” Consonant with their obligations under that Convention to prosecute grave breaches of humanitarian law, each third State should insure that any person involved with the above-mentioned crimes be duly submitted to its penal jurisdiction.

639. States are also under an obligation to co-operate with the responsible United Nations and other bodies, including the United Nations Secretary-General, the Special Rapporteur of the United Nations Commission on Human Rights on the situation of human rights in the Palestinian territories occupied by Israel since 1967, the United Nations Relief and Works Agency for Palestine Refugees in the Near East, and the International Committee of the Red Cross, in the discharge of their established functions and responsibilities in the Occupied Palestinian Territory, including East Jerusalem, and to refrain from any conduct that may hinder such bodies from doing so.

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<sup>515</sup> Official Records, Fifty-eighth Session, Supplement No. 35 (A/58/35), 9 October 2003, <http://domino.un.org/unispal.nsf/9a798adb322aff38525617b006d88d7/618f78e6c6dce8ac85256de3005376b8!OpenDocument>.

(ii) *Obligation not to recognize wrongful situations*

640. The ILC has referred to the obligation of the international community as a whole not to recognize as lawful those situations which have been created by a serious breach within the meaning of Article 40 of the ILC Articles:

“The obligation applies to ‘situations’ created by these breaches, such as, for example, attempted acquisition of sovereignty over territory through the denial of the right of self-determination of peoples. It not only refers to the formal recognition of these situations, but also prohibits acts which would imply such recognition.”<sup>516</sup>

641. The Court expressed the pertinent principle in the Advisory Opinion it gave in 1971 in the *Namibia Case*:

“the termination of the Mandate and the declaration of the illegality of South Africa’s presence in Namibia are opposable to all States in the sense of barring *erga omnes* the legality of a situation which is maintained in violation of international law.”<sup>517</sup>

642. Subsequently, the Court’s Judgment of 27 June 1986 in the *Nicaragua Case* referred to the obligation not to recognize any territorial acquisition obtained by force.<sup>518</sup>

643. Consequently, all States are under an obligation not to recognize any Israeli sovereignty over the Occupied Palestinian Territory, including East Jerusalem, or any changes in the legal status of the Closed Zone as a result of Israel’s construction and operation of the Wall. In particular, they are under an obligation to recognize the

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<sup>516</sup> Commentaries to the draft articles on Responsibility of States for internationally wrongful acts adopted by the International Law Commission at its fifty-third session (2001), *Report of the International Law Commission on the work of its Fifty-third session*, Official Records of the General Assembly, Fifty-sixth session, Supplement No. 10 (A/56/10), p. 287, para. 5.

<sup>517</sup> *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, I.C.J. Reports 1971, p. 16, at p. 56, para. 126.



invalidity of all legislative and administrative measures, policies, actions and practices taken by Israel in relation to the Wall. The well-established principle of the non-recognition of unlawful annexations in particular dictates this legal consequence for third States.

644. Furthermore – and without prejudice to the fact that the Security Council and the General Assembly have declared that any settlements in the Occupied Palestinian Territory, including East Jerusalem, (which necessarily includes settlements within the Closed Zone), are unlawful under international law – all States are under an obligation to recognize the illegality of any Israeli settlements established in the Closed Zone within the Occupied Palestinian Territory, including East Jerusalem, and to refrain from any acts and in particular any dealings with the Government of Israel implying recognition of the legality of such settlements..

*(iii) The obligation not to render aid or assistance to maintain an unlawful situation*

645. Recent State practice shows that third States are perfectly conscious of their obligations in this regard.

646. Notwithstanding the fact that they apply primarily to States, the above obligations may be considered to apply by analogy to intergovernmental organisations. In this regard, the United Nations General Assembly and the UN Secretary-General, in taking certain positions that are in the record before the Court,

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<sup>518</sup> *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, I.C.J. Reports 1986, para. 188.

have shown that they represent the clear will of the international community in relation to the matter of the Wall.

647. Many States have tried to obtain the same involvement from the United Nations Security Council. Some delegations have spoken openly on the subject. For example:

- Iran:

“Thus, given the enormity of what is at stake and the international consensus on the need to stop the unlawful construction of the wall in the West Bank, it is incumbent upon the Security Council to live up to the expectations of the international community and take the necessary action with a view to upholding international law. In particular, the time has come for the Security Council to demand that the separation wall be stopped and reversed.”<sup>519</sup>

- Saudi Arabia:

“Given both the permanent international responsibility of the United Nations for the Palestinian question until such a time as it is resolved in all its aspects as well as the provisions of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, the Kingdom of Saudi Arabia calls upon the Security Council to fully assume its responsibilities and discharge its obligations by asserting the illegitimacy of erecting such a wall and by calling for Israel to halt its construction immediately.”<sup>520</sup>

648. It is regrettable that because of the use of a veto by one permanent Member, the Security Council, on which the Members States have conferred “primary responsibility for the maintenance of international peace and security” and which is supposed to act on their behalf “ in carrying out its duties under this responsibility ”

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<sup>519</sup> UN Doc. S/PV.4841, p. 27.

<sup>520</sup> UN Doc. S/PV.4841, pp. 36-37.

(United Nations Charter, Article 24), was unable to respond to the call of the international community as a whole on this crucial matter.

649. Consequently, all States are under obligation to refrain from any acts and in particular any dealings with the Government of Israel lending support or assistance to be used in connection with the construction, operation and/or planning of the Wall and any Israeli settlements within the Closed Zone in the Occupied Palestinian Territory, including East Jerusalem.

#### **(4) General Conclusion**

650. As a consequence of the grave breaches of international law mentioned in Chapters 7, 8, 9 and 10, Israel is bound:

- in conformity with its obligation of cessation, to cease forthwith the construction and operation of the Wall, and abide by the Security Council's resolutions concerning the settlements illegally established in the Closed Zone;
- in conformity with its obligation of restoring the status quo ante, to dismantle forthwith all parts of the wall that step across the Green Line into the Occupied Palestinian Territory;
- in conformity with its obligation of compensating for the damage caused, to indemnify the injured for all their material and personal losses arising from Israel's violations of its international obligations;
- in conformity with its obligations under international humanitarian law, to search for and bring before its courts persons alleged to have committed grave

breaches of international humanitarian law arising from the construction, operation and/or planning of the Wall.

651. As a consequence of the grave breaches of international law mentioned in Chapters 7, 8, 9 and 10, other States have:

- the obligation to cooperate with each other and with the responsible international bodies, with a view to putting an end to Israel's violations;
- the obligation not to recognize these wrongful situations; and
- the obligation not to give aid or assistance to maintain such situations.

## Chapter 12. CONCLUSIONS

652. For the reasons set out in this Written Statement, Palestine respectfully submits the following conclusions to the Court:

I. The Court is competent to give the advisory opinion requested by the General Assembly in its Resolution A/ES-10/14 of 8 December 2003, and there are no compelling reasons preventing the Court from giving its opinion.

II. The Court should reply in the following manner to the question put by the General Assembly:

A. Israel's rights and obligations in the Occupied Palestinian Territory, including in and around East Jerusalem, are those of an Occupying Power, governed by the provisions of international humanitarian law, including in particular the Hague Regulations, the Fourth Geneva Convention and customary international humanitarian law, and by the provisions of international human rights law, including in particular the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and customary international human rights law.

B. Israel has no right to construct and operate the Wall in the Occupied Palestinian Territory, including in and around East Jerusalem.

C. The construction and operation of the Wall violates international humanitarian law, in particular for the following reasons:

1. The Wall is largely built in the Occupied Palestinian Territory;
2. The Wall is part of a continuing attempt by Israel to change the legal status of the Occupied Palestinian Territory, including East Jerusalem, and to effect the *de facto* annexation of Palestinian territory;
3. The construction of the Wall and the surrounding areas has entailed the destruction of Palestinian property contrary to Article 53 of the Fourth Geneva Convention;
4. The construction of the Wall and the surrounding areas has entailed the requisitioning of Palestinian property contrary to Article 52 of the Hague Regulations;
5. Contrary to Article 64 of the Hague Regulations, the construction and operation of the Wall fails to respect the laws in force in the occupied country;
6. The construction and operation of the Wall is incompatible with Israel's duties under Article 55 of the Fourth Geneva Convention in respect of ensuring food and medical supplies to the population of the Occupied Palestinian Territory;
7. The construction and operation of the Wall is a form of collective punishment contrary to Article 33 of the Fourth Geneva Convention, and Article 75 of Additional Protocol I which in this respect represents customary international law;
8. The construction and operation of the Wall is a disproportionate response to any threat that might be considered to face Israel.

D. The construction and operation of the Wall violates international human rights law, in particular for the following reasons:

1. The construction and operation of the Wall violates the right to freedom of movement, as established in particular in Article 12 of the International Covenant on Civil and Political Rights and Article 13 of the Universal Declaration of Human Rights;

2. The Wall violates Israel's obligations under Article 6 of the International Covenant on Economic, Social and Cultural Rights in relation to the right to earn a living;

3. The construction and operation of the Wall violates Israel's obligations under Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights and Article 25 of the Universal Declaration on Human Rights, and under Articles 24 and 27 of the Convention on the Rights of the Child, in respect of the provision of adequate food and living conditions and medical care and social services;

4. The construction and operation of the Wall violates Israel's obligations under Article 13 of the International Covenant on Economic, Social and Cultural Rights and Article 26 of the Universal Declaration on Human Rights, and under Article 28 of the Convention on the Rights of the Child, in respect of the right to education;

5. The construction and operation of the Wall violates the rights of Palestinians in the Occupied Palestinian Territory to family and cultural life, as established *inter alia* in Article 17 of the International Covenant on Civil and Political Rights and Article 16 of the Convention on the rights of the Child;

6. The construction of the Wall has entailed the confiscation of property without legal justification and without proper legal process, contrary to customary international law as reflected in, *inter alia*, Protocol 1 to the European Convention on Human Rights;

7. The seriousness of the violations listed in the preceding paragraphs is aggravated by the fact that the operation of the Wall explicitly discriminates against Palestinians and is applied to Palestinians in a manner that degrades and humiliates them.

E. The construction and operation of the Wall violates the right of the Palestinian people to self-determination, in particular in the following respects:

1. To the extent that the Wall departs from the Green Line and is built in the Occupied Palestinian Territory, including East Jerusalem, it severs the territorial sphere over which the Palestinian people are entitled to exercise their right to self-determination. To the same extent the Wall is also a violation of the legal principle prohibiting the acquisition or annexation of territory by the use of force;

2. The route of the Wall is designed to change the demographic composition of the Occupied Palestinian Territory, including East Jerusalem, by reinforcing the Israeli settlements and by facilitating their extension, in disregard of the fact that these settlements are illegal according to international law;

3. By the creation of Palestinian enclaves, discrimination against and humiliation of the Palestinian population, and the creation of unbearable economic conditions, the Wall is having the clear and foreseeable effect of the



forced displacement of the Palestinian population into increasingly limited areas regarded as safe and livable for Palestinians;

4. The Wall is part of a policy of reducing and parcelling out the territorial sphere over which the Palestinian people are entitled to exercise their right to self-determination, establishing non-contiguous Palestinian areas similar to Bantustans;

5. The construction and operation of the Wall violates the right of the Palestinian people to permanent sovereignty over their natural resources in the Occupied Palestinian Territory, including East Jerusalem, and destroys the economic and social basis of the life of the Palestinian people;

6. The construction and operation of the Wall endangers the feasibility of a viable State of Palestine and consequently renders the 'two State' solution of Israel and Palestine physically impossible.

F. As a consequences of these grave breaches of international law, Israel is bound:

1. In conformity with its obligation of cessation, to cease forthwith the construction and operation of the Wall;

2. In conformity with its obligation of restoring the *status quo ante*, to dismantle forthwith all parts of the Wall in the Occupied Palestinian Territory stepping across the Green Line, to facilitate the safe and immediate return of Palestinians displaced as a result of the construction and operation of the Wall, and to restore to its owners all property seized or requisitioned in connection with the construction, operation and/or planning of the Wall;

3. In conformity with its obligation to compensate for the damage caused, to indemnify the injured for all their material and personal losses arising from Israel's violations of its international obligations;

4. In conformity with its obligations under international humanitarian law, to respect and ensure respect for the Fourth Geneva Convention, to search for and bring before its courts persons alleged to have committed or to have ordered to be committed grave breaches of international humanitarian law, and to take measures necessary to suppress any other breaches of international humanitarian law arising from the construction, operation and/or planning of the Wall;

5. To conform itself to the relevant Security Council resolutions, and heed the will of the international community.

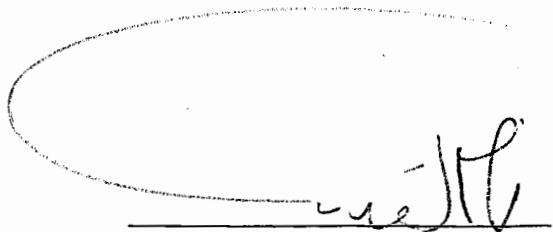
G. As a consequence of these grave breaches of international law, other States have:

1. The obligation to cooperate, with each other and with the United Nations and other competent international bodies, with a view to putting an end to Israel's violations of international law;

2. The obligation not to recognize these wrongful situations; and

3. The obligation not to give aid or assistance to maintain such situations.

I have the honour to submit this Written Statement to the Court on behalf of Palestine.

A handwritten signature in black ink, consisting of a large, sweeping oval shape followed by a series of loops and a vertical stroke, all resting on a horizontal line.

Dr. Nasser Al-Kidwa

Ambassador and Permanent Observer of Palestine  
to the United Nations

New York, 29 January 2004



## APPENDICES

1. TABLES OF UN SECURITY COUNCIL RESOLUTIONS RESPECTING PALESTINE
  
2. CLOSED ZONE PERMIT SYSTEM
  
3. SUMMARY OF RECENT ISRAELI ACTIVITY IN CONSTRUCTION OF THE WALL



# Annex 1

APPENDIX 1 TABLES OF UN SECURITY COUNCIL RESOLUTIONS  
RESPECTING PALESTINE

This Appendix consists of tables of pertinent UN Security Council resolutions respecting Palestine in general (section I), the applicability of the Fourth Geneva Convention to the Occupied Palestinian Territory (section II), Jerusalem (section III), and Israeli settlements in the Occupied Palestinian Territory (section IV).

This Appendix was prepared by the Permanent Observer Mission of Palestine to the United Nations for purposes only of this advisory proceeding. This document does not purport to be complete.

**I. Table listing pertinent Security Council resolutions respecting Palestine (General)**

Resolution Number	Date Adopted	Recorded Vote
49	22 May 1948	8-0-3  (3 abstentions were Syria, Ukrainian S.S.R., U.S.S.R.)
50	29 May 1948	Draft was voted on in parts, no vote taken on text as a whole
54	15 July 1948	7-1-3 ( 1 against was Syria, 3 abstentions were Argentina, Ukrainian S.S.R., and U.S.S.R.)
60	29 October 1948	Adopted without a vote
127	22 January 1958	Unanimous
162	11 April 1961	8-0-3  (3 abstentions were Ceylon, U.S.S.R., United Arab Republic)
237	14 June 1967	Unanimous
250	27 April 1968	Unanimous
251	2 May 1968	Unanimous
252	21 May 1968	13-0-2  (2 abstentions were Canada, USA)



259	27 September 1968	12-0-3 (3 abstentions were Canada, Denmark, USA)
267	3 July 1969	Unanimous
271	15 September 1969	11-0-4 (4 abstentions were Colombia, Finland, Paraguay, USA)
298	25 September 1971	14-0-1 (1 abstention was Syria)
446	22 March 1979	12-0-3 (3 abstentions were Norway, U.K., USA)
452	20 July 1979	14-0-1 (1 abstention was USA)
465	1 March 1980	Unanimous
468	8 May 1980	14-0-1 (1 abstention was USA)
469	20 May 1980	14-0-1 (1 abstention was USA)
471	5 June 1980	14-0-1 (1 abstention was USA)
476	30 June 1980	14-0-1 (1 abstention was USA)
478	20 August 1980	14-0-1 (1 abstention was USA)
484	19 December 1980	Unanimous
592	8 December 1986	14-0-1 (1 abstention was USA)

605	22 December 1987	14-0-1 (1 abstention was USA)
607	5 January 1988	Unanimous
608	14 January 1988	14-0-1 (1 abstention was USA)
636	6 July 1989	14-0-1 (1 abstention was USA)
641	30 August 1989	14-0-1 (1 abstention was USA)
672	12 October 1990	Unanimous
673	24 October 1990	Unanimous
681	20 December 1990	Unanimous
694	24 May 1991	Unanimous
726	6 January 1992	Unanimous
799	18 December 1992	Unanimous
904	18 March 1994	Draft was voted on in parts, USA abstained on two preambular paragraphs. No vote was taken on the text as a whole
1073	28 September 1996	14-0-1 (1 abstention was USA)
1322	7 October 2000	14-0-1 (1 abstention was USA)
1397	12 March 2002	14-0-1 (1 abstention was Syria)
1402	30 March 2002	14-0-0 (Syria did not take part in the vote)

1403	4 April 2002	Unanimous
1405	19 April 2002	Unanimous
1435	24 September 2002	14-0-1 (1 abstention was USA)
1515	19 November 2003	Unanimous

**II. Table listing Security Council resolutions respecting the applicability of the Fourth Geneva Convention to the Occupied Palestinian Territory, including East Jerusalem**

<b>Resolution Number</b>	<b>Date Adopted</b>	<b>Recorded Vote</b>
237	14 June 1967	Unanimous
271	15 September 1969	11-0-4 (4 abstentions were Colombia, Finland, Paraguay, USA)
446	22 March 1979	12-0-3 (3 abstentions were Norway, U.K., USA)
452	20 July 1979	14-0-1 (1 abstention was USA)
465	1 March 1980	Unanimous
468	8 May 1980	14-0-1 (1 abstention was USA)
469	20 May 1980	14-0-1 (1 abstention was USA)
471	5 June 1980	14-0-1 (1 abstention was USA)
476	30 June 1980	14-0-1 (1 abstention was USA)
478	20 August 1980	14-0-1 (1 abstention was USA)
484	19 December 1980	Unanimous
592	8 December 1986	14-0-1 (1 abstention was USA)

605	22 December 1987	14-0-1 (1 abstention was USA)
607	5 January 1988	Unanimous
608	14 January 1988	14-0-1 (1 abstention was USA)
636	6 July 1989	14-0-1 (1 abstention was USA)
641	30 August 1989	14-0-1 (1 abstention was USA)
672	12 October 1990	Unanimous
673	24 October 1990	Unanimous
681	20 December 1990	Unanimous
694	24 May 1991	Unanimous
726	6 January 1992	Unanimous
799	18 December 1992	Unanimous
904	18 March 1994	Draft was voted on in parts, USA abstained on two preambular paragraphs. No vote was taken on the text as a whole
1322	7 October 2000	14-0-1 (1 abstention was USA)
1435	24 September 2002	14-0-1 (1 abstention was USA)

### III. Table listing Security Council resolutions respecting Jerusalem

Resolution Number	Date Adopted	Recorded Vote
49	22 May 1948	8-0-3 (3 abstentions were Syria, Ukrainian S.S.R., U.S.S.R.)
50	29 May 1948	Draft was voted on in parts, no vote taken on text as a whole
54	15 July 1948	7-1-3 ( 1 against was Syria, 3 abstentions were Argentina, Ukrainian S.S.R., U.S.S.R.)
60	29 October 1948	Adopted without a vote
127	22 January 1958	Unanimous
162	11 April 1961	8-0-3 (3 abstentions were Ceylon, U.S.S.R., United Arab Republic)
250	27 April 1968	Unanimous
251	2 May 1968	Unanimous
252	21 May 1968	13-0-2 (2 abstentions were USA, Canada)
267	3 July 1969	Unanimous
271	15 September 1969	11-0-4 (4 abstentions were Colombia, Finland, Paraguay, USA)
298	25 September 1971	14-0-1 (1 abstention was Syria)
465	1 March 1980	Unanimous

476	30 June 1980	14-0-1 (1 abstention was USA)
478	20 August 1980	14-0-1 (1 abstention was USA)
672	12 October 1990	Unanimous
1073	28 September 1996	14-0-1 (1 abstention was USA)

**IV. Table listing Security Council resolutions respecting “settlements” in the Occupied Palestinian Territory**

<b>Resolution Number</b>	<b>Date Approved</b>	<b>Recorded Vote</b>
252	21 May 1968	13-0-2 (2 abstentions were Canada, USA)
267	3 July 1969	Unanimous
271	15 September 1969	11-0-4 (4 abstentions were Colombia, Finland, Paraguay, USA)
298	25 September 1971	14-0-1 (1 abstention was Syria)
446	22 March 1979	12-0-3 (3 abstentions were Norway, U.K., USA)
452	20 July 1979	14-0-1 (1 abstention was USA)
465	1 March 1980	Unanimous
476	30 June 1980	14-0-1 (1 abstention was USA)
478	20 August 1980	14-0-1 (1 abstention was USA)





## Annex 2

*[These examples are given for illustrative purposes only. They do not constitute a comprehensive account of the situation.]*

## **PART A**

### **IMPLEMENTATION OF CLOSED ZONE PERMIT SYSTEM**

*Prepared from field visits conducted between October 2003 and January 2004 by the Palestinian Monitoring Group, Negotiations Affairs Department, Palestine Liberation Organization.*

#### **1. Village of Ras Tira (Governorate of Qalqilya)**

Population: 400

Location: Ras Tira is located on the western side of the Wall.

Permits for Permanent Residence in the Closed Zone: In October, 112 men, women and elderly individuals were refused permanent residence permits. After the head of the village council complained to Israeli Civil Administration, the area commander issued an additional 28 permits on 28 October.

Within a single family, some members received permits while others did not. For example, in one case a man received a permit, but his wife and his mother did not. In some cases, children have received permits but their parents have not.

Even if farmers are issued permits, they may still be unable to work their land because they depend on young male labourers and tractors and trucks for harvesting crops. To date, Israeli authorities have not granted permits to workers who do not own land. Consequently, a large number of labourers are threatened with unemployment. Many farmers who own land are elderly or hold other jobs and are therefore unable to work their land and harvest their crops without hiring labourers.

As of January 2004, all of the current residents of Ras Tira had been granted permanent residence permits. However, the residents who had not received them in October were unable to leave the Closed Zone and visit or work in the neighbouring villages of Ras 'Atiya and Habla or the city of Qalqilya during November and December. Additionally, those residents who are studying abroad or living in other villages outside Ras Tira still have not received their residence permits. This is problematic. For example, if a Ras Tira resident marries and moves to another West Bank village or city, they will not be permitted to enter the Closed Zone unless they obtain a permit from Israeli Civil Administration.

Permits to Access Land in the Closed Zone: Residents who live east of the Wall have been unable to obtain permits to access their land located west of the Wall.

Closure of Gates: From 4 to 24 October, gates along the Wall were closed. On 25 October, the Israeli army opened the gates twice for fifteen minutes—between 7:15-7:30 am and between 1:15-1:30 pm—but allowed only students to pass through.

The Israeli Civil Administration informed villagers in the third week of October that if they refused to obtain permits, the gates would be closed to them. For this reason, on 24 October, the main gate of Ras 'Atiya was closed for 24 hours.

Movement of Checkpoint: Since 5 November, the Jarjouliya checkpoint has been moved approximately 3 kilometres deeper into the West Bank to the location where the Wall will cut through the Route 55 by-pass road. Residents of Ras Tira travelling to Qalqilya or any other West Bank village east of the Wall must pass through this checkpoint, and those without permits are not permitted to cross it. Those without permits are also forbidden from crossing the Ras 'Atiya gate to the nearby villages of Habla and Ras 'Atiya, where approximately 8000 Palestinians live and where most of Ras Tira's basic services, including doctors, schools and shops, are located. Consequently, residents without permits are imprisoned in their own village. More than one family has complained that they have been unable to take a sick child to a doctor in Habla.

## **2. Village of Daba (Governorate of Qalqilya)**

Population: 250

Location: Daba is situated to the west of the Wall, but its land is situated to the east of the Wall.

Permits for Permanent Residence in the Closed Zone: In October, approximately 70 to 80 individuals did not receive permanent residence permits. On 10 November, the last 13 residents of Daba were granted residence permits. An earlier list of a number of applicants who had not received permits was forwarded to the Israeli DCO. Many of these applicants, instead of being granted permanent residence permits, were issued only access permits. By December, all residents above 12 years old had received permanent residence permits valid for 6 months, until April 2004.

Permits to Access Land in the Closed Zone: In October and November, 100 permits were granted out of about 145 applied for by the municipality. Approximately 40 permits had not been received by residents who live east of the Wall and whose land is on the western side of the Wall. Also, businessmen had not received permits. Until 9 November, 11 teachers (5 from Qalqilya and 6 from neighbouring villages) had not been granted permits to enter the Closed Zone to teach. On 10 November, 8 of the teachers were granted permits, while 3 from neighbouring villages still had not received permits. Also, approximately 53 of 75 permits requested for relatives on the other side of the Wall to visit villagers during the Eid holiday were granted.

Since the movement of the Jarjouliya checkpoint on 5 November, villagers without permits cannot reach Qalqilya or pass through the Ras 'Atiya gate. They are confined to the Closed Zone.

From lack of access to land on the other side of the Wall, several families have abandoned their land, including 3 families that have no other source of income. Two other families are visiting their land by donkey and carts, travelling a distance of 20

kilometres. Farmers who can no longer afford to work their land are sowing wheat seeds or other low cost seeds to indicate usage and prevent the land being declared "abandoned" and confiscated by Israel. The village has an unemployment rate of 35 per cent. Of this figure, 27 per cent are farmers unable to afford to work their land.

Permits for Vehicles in the Closed Zone: In October, no permits for cars were granted. The procedures are onerous. When the villagers tried to apply for car permits according to one set of procedures, the individual responsible for issuing permits at Israeli Civil Administration changed the procedures. In November, only 5 out of the 11 cars in Daba had been granted permits.

Closure of Gates: The gates in Daba are identified as numbers 33, 34 and 36 and the DCO entrance. Residents are assigned gates they can cross, as designated on their permits, and they are not permitted through the other gates.

The opening times of the gates along the Wall are changed at the whim of Israeli soldiers who do so without informing local villagers or heads of the village councils. All the gates were closed on 24 October, and they were closed prior to that for approximately 20 days during the Jewish holidays. On 25 and 26 October, the gates were open only 3 times each day for fifteen minutes at a time—between 7:15-7:30 am, between 1:15-1:30 pm and between 6:15-6:30 pm. During the week of 2 to 8 November, the afternoon openings changed from 6:15-6:30 pm to 5:00-5:15 pm without consulting villagers. Villagers complain that often the soldiers close the gates after five or ten minutes, not allowing enough time for all those waiting to cross.

Often the Israeli army arrives late to unlock the gates, preventing children from reaching their schools—for many in neighbouring villages of Habla and Ras Attiya—on time. Also, students are afraid to be alone with the Israeli army when the gates are opened, and so an adult must leave work to wait with the children and escort them through.

Moreover, Daba is dependent to a high degree on services provided by neighbouring villages or from other outside sources. For example, Daba relies on Qalqilya for health care services. Services like garbage pick-up and resources such as solar fuel for heating all come from outside Daba. Access to these needed services has been severely hampered, and this is particularly the case with water. Water for Daba is delivered by a UN tanker truck that comes from Kufr Thult at a cost of 65 NIS per tank. However, the tanker truck is unable to reach the gate in time to pass through during the three limited periods when it is open. The tanker truck also has other deliveries to make. The Israeli response to Daba villagers is that they must find another tanker to provide water. However, other tankers are expensive and the fifteen minutes during which the gate is open is not enough time for any tanker to make its delivery in the village.

The closure of gates has also had an impact on harvesting olive crops this last season. During the day, workers picked the olives, and in the evening the olives had to be taken to Kufr Thult for processing. However, because of the limited opening times of the gates, workers were stuck outside Daba and had to sleep in neighbouring villages. The Israeli response was to question why individuals were outside the village so late. On the evening of 5 November, for example, one Daba villager was forced to sleep at the Ras 'Atiya gate because he did not have a residence permit and was prevented from returning home. When the Head of the Village Council tried to intervene on his behalf by pleading with the Israeli soldiers, they threatened to arrest him. The villager was only allowed

back into Daba the following morning. This kind of problem occurred in a number of villages.

In December 2003, a doctor was not allowed to pass through the Ras 'Atiya gate in order to care for a sick child in Daba, so the parents were forced to bring the sick child to the gate in order to receive an injection from the doctor.

The experience of villagers at the Ras 'Atiya gate has been that at times when foreign nationals are present, Israeli soldiers keep the gate open for the required period or even longer. Consequently, some feel that the presence of international monitors at gates along the Wall might alter the behaviour of the soldiers.

Currently, the opening times for the Daba gate is 7:00-8:15 am, 12:30-1:45 pm and 4:00-5:15 pm. According to villagers these times can vary, and if the Israeli army reports any problems in the area, all gates close, as they did on 11 January 2004.

Rising Local Tension: The level of tension within local communities has risen significantly in the weeks following implementation of the Closed Zone military orders. There have been heated disagreements in the village between those with and those without permits. This level of frustration will likely increase as those without permits continue to be unable to reach their places of work or harvest their crops on the other side of the Wall.

In January 2004, the mayor of Daba received a phone call from an Israeli officer from Civil Administration warning him that if any person, including children, came too close to the Wall, they would be shot. He was responding to allegations that two school children dug a hole and crawled under the Wall in December.

Settlement Road Construction: On 27 November 2003, the Israeli military announced a series of measures that would "ease conditions" in the Qalqilya area. One of these measures included the re-routing of the Alfe Menashe settlement traffic to a new feeder road that will be constructed connecting Alfe Menashe to the new by-pass road (connecting the Shomron settlement bloc to the Nirit settlement). This new by-pass road, 22 meters wide, will cross through the village of Daba.

### **3. Village of 'Azzun 'Atma (Governorate of Qalqilya)**

Population: 1500

Location: 'Azzun 'Atma will be entirely enclosed within an enclave by the Wall on three sides. It will be completely separated and isolated from the neighbouring villages of Beit Amin and Sannirya. All three villages are closely linked. Many families from each of the villages are related to one another. Farmers own greenhouses and children attend schools in the neighbouring villages. 'Azzun 'Atma yields the highest export per *dunum* (1/4 acre) in the West Bank.

Permits for Permanent Residence in the Closed Zone: No permanent residence permits have been granted as yet.

Permits to Access the Closed Zone: No access permits have been granted as yet. At present, 'Azzun 'Atma farmers are unable to reach approximately 15 per cent of the

village greenhouses that are located in neighbouring villages on the other side of the Wall. In the nearby village of Beit Amin, 150 villagers received permits to reach their land in 'Azzun 'Atma.

Closure of Gates: Since 30 October 2003, the gate at the entrance to the village has been operating. At the beginning the gates were opened three times per day. Then on the morning of 8 November, more than one hundred villagers assembled at the gate and managed to keep it open for over 3 hours and then again for 3 hours that same afternoon. Today, the gate is opened at 6:00 am and closes at 7:00 pm and soldiers are stationed at the gate.

Trucks carrying bread, poultry and other basic supplies are not permitted to enter through the gate so all supplies must enter the village via the “back-to-back” system. This means that goods have to be off-loaded then loaded onto another truck on the other side of the gate, substantially increasing transportation costs. Additionally taxis are not permitted to cross the gate so passengers must walk the 1 or 2 kilometres from the gate to the village or to their farms. There has also been both physical and verbal assaults by the Israeli soldiers stationed at the gate.

Movement of Checkpoint: On 8 November, the checkpoint located near the village on the adjacent by-pass road was moved approximately another 2 kilometres further into the West Bank, just east of the village of Mas Ha. Residents of Sannirya, Beit Amin as well as 'Azzun 'Atma will have to enter and exit their villages through this checkpoint at specific times, and on condition that they hold permits.

#### **4. Village of Wad Irsha (Governorate of Qalqilya)**

Population: 180

Location: Wad Irsha is situated on the western side of the Wall.

Permits for Permanent Residence in the Closed Zone: All Wad Irsha residents have been issued permanent residence permits.

However, homes are being destroyed. In April 2003, 5 Wad Irsha homes received demolition orders. The date that these orders will be implemented is still unknown as the case is still pending in the Israeli courts. Earlier in 2003, the Israeli army destroyed a similar shelter with a corrugated roof in Wad Irsha. The reasons given for the orders were that the homes were without licenses and built in “Area C.”

On 11 January 2004, an Israeli officer from the Civil Administration visited the mayor of the Arab Ramadin Bedouin (a village of approximately 280 people living in the Closed Zone about 100 metres from the village of Wad Irsha) and delivered a military order to stop work on 6 shelters that the Bedouin are currently living in, affecting roughly 40 people. It has been reported that the area where the Bedouin live will be used to expand the settlement of Alfe Menashe. Israeli Civil Administration officers informed local officials in Qalqilya that the Arab Ramadin would have to be relocated.

Closure of Gates: Already, the daily lives of the 46 schoolchildren from the Arab Ramadin village have been severely disrupted. Up until the beginning of January, the Bedouin school children were permitted to use two small Israeli army controlled gates

along the Wall. In order to pass through these gates, they would all form a group and would then be escorted along the Wall by the Israeli army and be permitted to exit and re-enter two times per day. At the beginning of January, both of these gates were sealed shut by the Israeli army. Now, with the gates sealed the children have to travel a much longer distance, roughly 7 km round-trip daily, in order to reach their schools. Additionally, as there are no service taxis in the Closed Zone, and since residents cannot afford the expense of a private taxi every day, children must walk down to the main road and to the Ras 'Atiya gate, then to their schools in Hable.

## **5. Village of Jayyus (Governorate of Qalqilya)**

Population: 3000

Location: Jayyus is situated to the east of the Wall but approximately two thirds of its land is situated to the west of the Wall.

Permits to Access Land in the Closed Zone: In October, out of 300 farmers from Jayyus over 150 did not receive permits. The Israeli Civil Administration issued 630 permits overall, but only 100 were for principal income-earners of families dependent on agriculture. Permits were issued to children, the elderly and to residents of Jayyus who live and work in Ramallah or who live abroad. The 150 farmers who were denied permits needed to access their land for their livelihood. Israel cited "security" reasons for the permit denials, including prior jail terms or politically active relatives.

Farmers were not permitted access to their lands to irrigate their crops, which consequently perished. The olive crop could not be harvested. Approximately one half of the olive farmers were unable to access their land. Traders and distributors who needed to pick up the crops to transport and sell them could not physically get to the crops. For those that were able to access the land, they were not permitted to bring in a car or truck to transport the crops.

Throughout November, over 150 farmers still had not been granted permits to access their greenhouses and land located west of the Wall. Overall, twenty five per cent of the permits issued had still only been granted to children, the elderly, individuals living abroad or the already deceased. In one case, a 43 year-old farmer was denied a permit, but his father and uncle who had been dead for six years received permits. All permits have been issued for only 3 months.

During the week of 2 to 8 November, the Israeli army conducted several "round-ups" of Jayyus farmers without permits, and forcibly removed them from their fields and sent them back to the village.

By mid-December, 135 farmers had not been issued permits to access their land. Of the 300 farmers in the village, 15 households (including 7 of the 135 farmers without permits) rely on sheep farming for their livelihood. On 18 October, the Israeli army rounded up the shepherds and their sheep and forced them to leave the Closed Zone and return to Jayyus, situated east of the Wall. Since then, even shepherds with permits have not been permitted to enter the Closed Zone with their sheep. The Israeli army has refused the shepherds entry and informed them that they need to get permits for their sheep or permits to stay overnight—adding new random obstacles to accessing the Closed Zone. For about a month, approximately 2000 sheep have been unable to graze



in the Closed Zone. Also, because of the nature of grazing, the shepherds and their flock would need to travel 5 kilometres to reach grazing land. It is not possible to make the return journey on a daily basis as the sheep would have to travel 10 kilometres per day. Consequently, the shepherds have had to purchase feed for the sheep at a cost of 1000 NIS per ton (1 ton can feed approximately 150 sheep for 10 days). The shepherds have been spending some 10,000 NIS every 10 days in order to feed the sheep, and since they cannot afford this cost, the sheep are being fed only every 5 days.

Permits for Vehicles in the Closed Zone: In October, no vehicle permits were granted. This is critical because the traders and distributors are unable to reach their land or transport crops. Throughout November, only 2 out of 3 smaller trucks used for agricultural purposes had been granted permits. Villagers used to rely on 5 larger trucks per day from outside (from Hebron and Ramallah) to transport purchased produce, but these trucks no longer have access to Jayyus. Furthermore, villagers have been informed that they need to obtain permits for tractors. However, in order for permits to be granted, ownership and insurance papers have to be submitted and many villagers do not have these.

Closure of Gates: The gates are opened twice daily—at 8:30 am and again at 7:00 pm. People often have to wait for the gates to be unlocked. Jayyus farmers report that often the soldiers change the opening times of the gates without notifying the residents. For instance, during one week in December, gates were opened at 8:00 am then the following week it was changed to 7:30 am causing farmers to miss the gate opening.

Prior to 25 October, the gates were closed for approximately 20 days due to the Jewish holidays. Consequently, hundreds of trees in Falamyia died because farmers could not access their lands to irrigate them. Other trees in Jayyus, Attil, Qalqilya and Habla similarly died. The closure of gates also destroyed approximately 90 per cent of the Guava crop and had a severe impact on other crops.

De-Populating the Closed Zone: Ali Abu Shareb, his wife and 7 children are the only Jayyus family living on the western side of the Wall. Their home was separated from the rest of the village as a result of the building of the Wall. In early January 2004, they were visited by an Israeli officer from the Civil Administration who informed them that they would have to move to the eastern side of the Wall. Until now, the family has been permitted to use the southern agricultural gate, only twice daily, in order for the children to attend school inside the village. The southern gate has been closed for over a month for the rest of the Jayyus villagers, forcing the farmers to travel several more kilometres daily in order to use the other agricultural gate in Jayyus.

## **6. City of Qalqilya (Governorate of Qalqilya)**

Population: 41,500-43,000

Location: Qalqilya is enclosed on all sides by the Wall.

Permits to Access Land in the Closed Zone: Since 25 October 2003, roughly 400 out of 1300 (about one quarter) farmers have been issued permits to access their land. (These figures do not account for the thousands of labourers who need access to this area of the Closed Zone to work on the land located within it.) Of the permits issued, approximately 20 per cent have been granted to Palestinians who are either dead or living abroad. In

November/December, the mayor of Qalqilya requested more than 100 access permits, but only 20 new permits were issued. Also, about 300 residents in Qalqilya have permits to enter Israel, but no new permits were issued throughout November. The Israeli Civil Administration informed the mayor that they were reviewing the procedures.

At the beginning of the Closed Zone permit system in October, the Qalqilya municipality followed-up regularly on permits initially delivered to them by the Israeli Civil Administration, and applied for permits for the farmers. Since then, Israeli officers have been encouraging Palestinians to apply individually to the Civil Administration for permits. Civil Administration officers visit farmers on their farms and give them their mobile numbers and encourage them to apply directly. This is creating tension within the community, as those who apply for permits individually are looked upon with suspicion from others. Israeli authorities are encouraging these "one-on-one" relations reminiscent of the "pre-DCO period". Those in possession of permits sometimes do not admit to having them, so actual numbers now will be more difficult to determine but to date, approximately 40 per cent of those in need of permits have received them.

Permits for Vehicles in the Closed Zone: Only 3 out of at least 20 trucks used for agricultural purposes have been granted permits and one of these permits was not renewed.

Closure of Gates/Checkpoints: Of the 2 existing agricultural gates in the northern and southern areas of Qalqilya, the northern gate has not been opened since 4 October. Because of the closure of this gate, in October Jallal Zeid, one of the largest poultry farmers in the West Bank, lost his stock of 8000 chickens as he was unable to reach them to give them water and food. He had previously lost 7000 chickens due to the extended closure between 19 and 27 August. Additionally, the maintenance costs of the greenhouses coupled with the difficulty in accessing markets in the area have resulted in farmers dismantling their greenhouses and selling them or using them as pens for sheep, as access to grazing land is also limited, forcing shepherds to feed sheep grain at high costs.

On 27 November, the Israeli Civil Administration announced to the mayor a series of measures to ease closure restrictions.

The first measure was for the main DCO checkpoint to be opened to taxis and other vehicles on a 24-hour basis. This was carried out and as of 1 January 2004 there are no longer Israeli soldiers stationed at the checkpoint (although the Israeli army still frequently enters Qalqilya). This, however, provides little relief on movement restrictions. After passing the DCO checkpoint, if Palestinians want to travel towards the west then they will immediately face a checkpoint on the by-pass road (a distance of approximately 200 meters) from the DCO checkpoint. This checkpoint, the Jarjouliya checkpoint, was moved an additional 3 km further into the West Bank on 5 November 2003. At the Jarjouliya checkpoint, Palestinians are asked for permits to enter Israel and without one, they do not pass. If, for instance, individuals own land in this area, they will not reach it (as Closed Zone access permits are not honoured at this checkpoint, only those Closed Zone residence permits for Daba, Ras Tira, and Wad Irsha). Although cars are permitted through this checkpoint, trucks have not been permitted to access agricultural land. Consequently, the trucks cannot transport produce from farms in the southern area to the markets. There have been reports that farmers have been chased out of these areas, as well as in the north, by Israeli army jeeps.

In the future, the Jarjouliya checkpoint will be permanently sealed by the Wall and settlers will use a new by-pass road that will run through the village of Daba. Also, another permanent checkpoint will soon be established near Immatin, east on the by-pass road. As a result, movement of people and goods between Nablus and Qalqilya will be controlled and possibly re-routed to the north in order to by-pass the Shomron and Kedumim settlements. Therefore, instead of Israeli soldiers controlling the DCO checkpoint, there is a permanent checkpoint just to the West where the road will be eventually sealed by the Wall, and soon there will be a permanent checkpoint to the East (now there are 'flying checkpoints' set up to the east to control movement towards Nablus).

Furthermore, although cars are now permitted through the Azzun gate, which has been closed for 2 years and blocked with dirt barricades, the residents of Habla, Ras Tira, Jallud and the smaller hamlets must travel at least 15 kilometres one-way to reach Qalqilya. Their route passes through Kufr Thult on a secondary road to the Azzun gate and then another few kilometres down the by-pass road to the Qalqilya DCO. Habla and Ras Tira used to be minutes, literally a few hundred meters, away from Qalqilya. Now those going to work or school must travel 30 kilometres a day because of the winding maze of walls and gates in the area. Also, those travelling from the Azzun gate westwards will reach the new Jarjouliya checkpoint within a few kilometres, where Israeli soldiers are variously demanding permits to enter the Closed Zone or actually to Israel, depending on their mood.

The second measure is a tunnel to be constructed between the village of Habla and the city of Qalqilya, under the Qalqilya-Kedumim road. However, as with the gates installed in the Wall, Israeli forces will control passage through the tunnel. Construction of the tunnel began on 11 January 2004 and is expected to be completed within 3 months.

The third measure is that more agricultural gates are supposed to be installed along the Wall. However, unless the gates are open, more gates will not make a difference. Although more opening times of gates have been announced, this has not been implemented.

## **7. Village of Azzun (Governorate of Qalqilya)**

Population: 7000

Location: Azzun is situated to the east of the Wall but its land is situated to the west of the Wall.

Permits to Access Land in the Closed Zone: Regardless of whether permits are issued or not, there is no gate installed in the Wall. In order to reach their land, residents must travel a long distance: approximately 4 kilometres to a gate near Isla to the west, and 9 kilometres to another gate near Nabi Ilyas, where other land belonging to the village is located. In order to reach some land in the north, residents have to travel to Jayyus. Since Palestinians are often not permitted to use main roads, reserved for the Israeli army and settlers, they are forced to take even longer routes, often on foot, and are not permitted to bring trucks for the harvesting of crops.

## **8. Village of Kufr Thult (Governorate of Qalqilya)**

Population: 4000

Location: Kufr Thult is situated to the east of the Wall but its land is situated in the Closed Zone.

Permits to Access Land in the Closed Zone: Regardless of whether permits are issued or not, the gate at Kufr Thult is almost always closed.

## **9. Village of Qaffin (Governorate of Tulkarem)**

Population: 9000

Location: Qaffin is situated to the east of the Wall but approximately two-thirds of its land (6000 *dunums*—1500 acres) is to the west of the Wall, mostly olive trees.

Permits to Access Land in the Closed Zone: There is an agricultural gate separating Qaffin from its land in the Closed Zone and the villages of Baqa Sharqiya , Nazlat Issa and Abu Nar, so residents of Qaffin must apply for permits to access their land. In early November, 300 individuals received permits to access their land in the Closed Zone. A few weeks later, another 300 farmers received permits. Approximately 700 Qaffin families have either lost land or their land is isolated as a result of the Wall, so nearly 2000 people are in need of permits. Qaffin has an unemployment rate of over 80 per cent. As with many West Bank villages, prior to the intifada, the majority of the residents worked inside Israel.

The Qaffin farmers received Closed Zone permits for one month. Their permits were not renewed by the Israelis and the reason given was that there are mostly olive trees in the Closed Zone and since the olive season is in October and November, the season is over.

## **10. Village of Zayta (Governorate of Tulkarem)**

Population: 3000

Location: Zayta is situated to the east of the Wall, but more than 80 per cent of its land is situated to the west of the Wall. Zayta's land to the north is enclosed by two Walls and to the south by one. The majority of the residents rely on their land for their livelihood.

Permits to Access Land in the Closed Zone: In October, 350 individuals were denied permits. On 22 October, only 30 farmers of the 380 names submitted were granted permits. The permits were provided at a gate. However, not all of the 30 farmers with permits were permitted access to their land. Others that reached their land remained there and slept on the ground for fear of being cut off entirely from further access.

Israeli claims it is refusing permits on security grounds. There are cases in which some family members have been issued permits while others in the same family have not. For example, in one case, a father was refused a permit, but his wife and daughters were granted permits. Consequently, the principal income earner could not reach his land, and without the father being granted a permit, the daughter would not go to work on the land either. According to the mayor of Zayta, in one family of 12 in Shweika (Tulkarem

area), only the three females were granted permits while the nine males were not. Israel cited "security" for its decision. Being olive farmers, this family was unable to harvest their olive crop.

By December, out of roughly 380 farmers, only 100 had been issued one month permits to access the Closed Zone. Some of the permits are being renewed and some of them are not, but no new permits are being granted. Owners of greenhouses are generally not being issued permits. Consequently, only 30 *dunums* (7.5 acres) of land are currently housing greenhouses, out of 600 *dunums* (150 acres) of land once dense with greenhouses. Farmers have dismantled their greenhouses and moved them to the nearby village of Illar, east of Zayta, because they can more easily access this area. Four greenhouse owners have been denied permits for "security" reasons, including 70 year-old Ahmad Abu Jaser, who owns 13 *dunums* (3.25 acres) of greenhouses. Landowners are renting their land to farmers with permits, sometimes for no charge, in order to maintain usage of the land and prevent it from being declared "abandoned". Overall, smaller vegetable plots are replacing the many greenhouses that once covered this area, reversing the level of development.

One Zayta farmer and his family were separated from the rest of the village as a result of the building of the Wall. In August 2003, 75 year-old Zikrallah Aqad was forced to move his 3 children into the village to live with relatives on the eastern side of the Wall, in order for them to attend school. As farming is the sole source of income for Zikrallah and his family, he and his eldest daughter have remained on his 7 *dunum* (1.75 acres) farm, but as of January 2003, only Zikrallah had been granted a Closed Zone permit and his daughter Najah had not. In September 2003, Zikrallah's electricity was cut as a result of construction of the Wall and he remained without it for more than 20 days. During that time, the mayor of Zayta made several pleas to the Israeli Civil Administration for the electricity to be repaired. Finally, the Palestinian Electricity Company was permitted to enter the area and repair the wires.

Life is becoming increasingly difficult for Zikrallah, as he now must travel several kilometres in order to reach his own village and the road that he uses will eventually be cut as a result of the building of the second Wall in the area. Despite several pleas by the mayor of Zayta and Zikrallah to the Israeli Civil Administration to install a gate for Zikrallah, so that his family can remain together, no improvements have been made. Instead, Zikrallah was visited by an Israeli officer in September 2003 who told him that no gate or special facilities would be made for him.

Permits for Vehicles in the Closed Zone: No permits for cars/trucks have been issued.

Closure of Gates: The area around Zayta has 3 gates, 2 in the village for agricultural purposes and the Baqa Sharqiya gate through which vehicles can pass. The southern gate has been closed permanently since it was installed approximately one year ago. The north-western gate opens in the direction of Israel and therefore farmers have not been able to enter Israel and re-enter the West Bank to reach their land south of Zayta. This gate is supposed to be open at 06:30, 12:30 and 16:00 for 15 minutes at a time. However, the opening times have never been consistent. Sometimes the gates are only open twice a day or they are opened earlier or later than the designated times. In October, the gates of Zayta were closed for 20 days straight during the Jewish holidays. They were opened on 25 and 26 October, but only two to three times each day for five minutes at a time—at 6:00 am, 12:00 noon and 6:00 pm.

Farmers attempting to drive through the Baqa Sharqiya gate have been denied passage, as have teachers and doctors with permits. For instance, on 3 December, teachers and doctors were denied passage through the Baqa Sharqiya gate without reason. Border police used to control the gates, but they have now been replaced by the Israeli army. This has led to fewer beatings and harassment, but less flexibility in passage through the gates.

Of the 380 farmers in Zayta, 65 are olive farmers and none of these were able to access their land to pick olives this last season.

Movement of Checkpoint: On 24 November, the Nazlat Issa checkpoint was moved a further 2 kilometres into the West Bank, past Baqa Sharqiya to near the Qaffin gate. Since then moving goods from Israel to the West Bank has become more difficult. Merchants have been told to use the Taybe checkpoint (the main Tulkarem checkpoint) and they are often turned back from the Qaffin checkpoint—enabling Israel, therefore, to control the movement of Palestinian goods as well as people. Furthermore, an "Abu Dis"-style concrete Wall has been erected between Baqa Sharqiya and Baqa Gharbiya.

Israeli media reported that conditions in the area would be eased and the area would be opened to all of the neighbouring village residents. It was reported that the Wall currently under construction closer to the Green line, separating Baqa Sharqiya from Baqa Gharbiya, would be used instead of the Wall constructed 3 km deeper into the West Bank. However, there have been no changes on the ground, nor any easing of passage at gates. On the contrary, villagers report an increased use of tear gas and both physical and verbal harassment by the Israeli army at the gates.

## **11. Village of Khirbet Jabara (Governorate of Tulkarem)**

Population: 310

Location: Khirbet Jabara, south of Tulkarem, is situated on the western side of the Wall. It is almost completely dependent on Tulkarem for basic and other services, including schools and health care.

Permits for Permanent Residence in the Closed Zone: In October, 12 to 15 permanent residence permits were refused, affecting approximately 50 people (12 to 15 individuals and their family members). The reasons for refusal included "security" issues and computer problems. As a result of the rejection of these permit applications, and on principle rejecting the system altogether, the remainder of the villagers (all but approximately 20 to 40 out of 310) refused to obtain permits or accept permits that were unilaterally issued by Israeli authorities.

In the second week of November, however, after punitive denial of movement, 30 individuals succumbed and accepted permanent residence permits. Then again on 20 December 2004, the remainder of those refusing to obtain permits were detained at the Tulkarem checkpoint until they agreed to accept them. Additionally, those who were rejected permits for "security reasons" were granted residence permits, but valid for only three months, while the other villagers received residence permits valid for one year.

Villagers do not see any benefits to the notion of permits. Rather, they say that the permit system and procedures are only intended to make people's lives difficult. Under the permit system, a 12 year-old boy or girl, for instance, will have to go to the Israeli DCO in order to renew their permits once they expire. Villagers questioned whether the permits will actually be renewed.

Many of the farmers were unable to harvest their crops or market their products this last season. About 30 to 40 farmers with land east of the Wall have either stopped or significantly reduced their farming activities, on open land, in greenhouses as well as raising chickens. Maintaining greenhouses is costly and if the farmers cannot trade their produce then keeping them is no longer worth the expense. It is also expensive to repair greenhouses (villagers spent some 30,000 NIS for the plastic for the greenhouses). Early in October, one farmer repaired his greenhouse—located within 500 meters east of the Wall—only to have it destroyed the same month by the Israeli army when a flare landed on it and burnt the plastic.

Residents of the nearby villages of Ar Ras, Kafr Sur, Kafr Jammal, Kafr 'Abbush, Far'un and the city of Tulkarem are unable to access the land they own in Khirbet Jabara. Of those who have applied, many have been refused permits, some for "security" reasons. One 60 year-old man from Ar Ras has applied 3 times, to access his land and visit his daughter in Khirbet Jabara, but he keeps being refused a permit without any stated reason. Most of the residents of Ar Ras were unable to visit their relatives in Khirbet Jabara during the Eid holiday. Even those owners of land in Khirbet Jabara who have been granted permits have been unable to harvest their olive crops because either workers or capable family members have not been granted permits. A proportionally greater number of small children and the elderly have been granted permits.

Permits for Vehicles in the Closed Zone: No permits for vehicles have been issued.

Closure of Gates: In October, the gates were closed for approximately 26 days, except for 2 days when they were open for pedestrians only. After the villagers refused to obtain permits, the gates were open only for students and teachers in order to get to school. However, children and teachers are often late to school because the gates are opened late. Furthermore, for more than ten days, the villagers, not holding permits, were refused passage through the checkpoint to Tulkarem.

Throughout November, still only students (and later some farmers) were permitted to cross the one eastern gate. Ever since the construction of the Wall approximately one year ago, the Israeli army has placed a cement block in front of the gate, so no vehicles, including buses and cars can enter or exit through it. The school bus, which used to come from the village of Ar Ras, is not able to reach the village to pick up the students of Khirbet Jabara. Instead, children have to get to the gate by themselves, on foot or by car, wait for the Israeli soldiers to open it, and then walk approximately 500 meters to catch the bus from Ar Ras. On 9 November, children got wet having to walk and wait in the rain for the soldiers to open the gate. On 10 November, in particularly heavy rain on a cold day, children were kept at the gate from 12:00 noon until 1:45 pm waiting for the soldiers to open it.

On 7 and 8 November, the Israeli army opened the gates from 7:00 am until 2:00 pm, in the villagers' opinion because of the media attention they have been receiving, including a visit by BBC. By 9 November, the Israeli army reverted to keeping the gate closed and

opening it at 7:00 am for only fifteen minutes and again at 1:45 pm for a few minutes for the students to cross.

In December, in addition to the Ar Ras and main gate, a third gate was added to the Wall inside the village near the entrance. Now school children have to pass through three instead of two gates before making the journey to Ar Ras to catch the school bus. They have to pass through one gate, walk 20-30 meters to the main gate, and then after passing through walk another 20-30 meters to the third gate. Cars are not allowed through the gates. Many children have to walk 2 kilometres to the first gate and have been getting wet from the rain and sick from the cold weather. The gates are controlled by the army and are only open in the morning and afternoon for school children.

Closure of Checkpoint: The main checkpoint for entry to and exit from the village is located at the intersection of the by-pass road and the road that connects Khirbet Jabara to Tulkarem. Before 7 November, Israeli soldiers were preventing residents from leaving the village without permits. However, thereafter, the army reverted to the previous system in place, by which villagers could only pass the checkpoint if their name and identification number were listed at the checkpoint. On 8 November, villagers were able to pass through on foot, but farmers were not permitted to bring their produce or poultry through the checkpoint.

Most villagers can pass through the main checkpoint because their names have been placed on a list at the checkpoint. Residents whose names are on the list are able to drive small private cars through. However, other cars and trucks with Palestinian license plates, even if the individual has a permit, cannot pass through. Passage through the checkpoint, generally, also depends on the decision of the particular Israeli soldier manning the checkpoint at the time. Furthermore, for 4 to 5 months, the garbage trucks from Kafr Majlis have not been permitted through the checkpoint, so residents have been burning their refuse.

Only trucks from Israel are allowed into the village, but farmers are unable to afford Israeli truck costs because of the increased distance. Previously, the 4 kilometres distance between Khirbet Jabara and Tulkarem used to cost 50 to 100 NIS to transport goods or supplies. To bring in trucks from Israel, the same distance costs 300 NIS. If the gate between Khirbet Jabara and Kafr Sur was open for trucks, then trucks from Israel would not be needed. The perception articulated by farmers regarding why only Israeli trucks are permitted access is that Israeli authorities intend to separate the villagers from Tulkarem and the surrounding area to force the population to leave the village and move elsewhere.

Most of the farmers are no longer maintaining their greenhouses or raising chickens because they cannot get their produce out of the village or needed supplies, such as feed for the chickens, into the village in the absence of affordable and viable means of transportation. Farmers used to raise 150,000 chickens in the village. Approximately 80 per cent of 55 farmers have stopped commercial farming because they are uncertain of their future. The other 20 per cent continue to struggle for their livelihood in small ways.



## **12. Village of Baqa Sharqiya (Governorate of Tulkarem)**

Population: 4000

Location: Baqa Sharqiya will be enclosed on all sides by the Wall.

Permits to Access the Closed Zone: Palestinians possessing permits to visit Israel were not allowed to pass through the Baqa Sharqiya gates into the Closed Zone. They were told by the Israeli soldiers that they must obtain Closed Zone permits.

The Israeli military moved the checkpoint separating the villages of Nazlat Issa and Baqa Sharqiya from Baqa Gharbiya (inside the Green Line) a further 2 km into the West Bank towards the Qaffin gate. The second Wall which will enclose Nazlat Issa, Baka Sharqiya and Abu Nar is near completion. In some cases the Wall is within meters of homes.

## **13. Village of Mutilla (Governorate of Jenin)**

Population: 300

Location: Mutilla is an isolated and vulnerable community situated to the west of the north-eastern section of the Wall, near the Jordan Valley. Mutilla is also near where the press has reported automatic machine guns may be installed.

Closure of Gates: Along an approximately 20 to 30 kilometres stretch of the Wall passing near Mutilla, gates have not been installed on grounds that the Wall is on the Green Line. However, a number of villages are separated from their olive trees. The Israeli army has warned villagers over loudspeakers not to enter their land. This has been enforced through intimidation and harassment of villagers by private security guards (mandated to protect the Wall construction workers) presenting themselves as the army and police. When several hundred olive trees were uprooted in early December, the farmers were not permitted to collect the trees for re-planting. A band of 300 meters from the area of construction of the Wall is considered a closed military zone, preventing villagers from tending their olive trees.

## **PART B**

### **GATE CLOSURE IN QALQILYA**

*Source: Qalqilya Municipality, Ministry of Local Government, Palestinian Authority.*

#### **Monitoring of Southern and Northern Agricultural Gates and DCO Checkpoint from 1 September 2003 until 17 January 2004**

Date	Southern Gate	Northern Gate	DCO Checkpoint	Comments for DCO Checkpoint
1-9-2003	Open	Open	Open	
2-9-2003	Open	Open	Open	
3-9-2003	Open	Open	Open	
4-9-2003	Open	Open	Open	
5-9-2003	Closed	Open	Open	
6-9-2003	Closed	Open	Open	
7-9-2003	Closed	Open	Closed	
8-9-2003	Closed	Open	Closed	
9-9-2003	Open	Open	Open	
10-9-2003	Open	Partially open 1-8 pm	Open	Only for pedestrians until 1 pm
11-9-2003	Open	Closed	Open	Only for pedestrians
12-9-2003	Open	Open	Open	
13-9-2003	Open	Open	Open	
14-9-2003	Open	Open	Open	Open at 12 pm
15-9-2003	Open	Open	Open	
16-9-2003	Open	Open	Open	
17-9-2003	Open	Open	Open	
18-9-2003	Open	Open	Open	
19-9-2003	Open	Closed	Open	
20-9-2003	Open	Closed	Open	
21-9-2003	Open	Closed	Open	
22-9-2003	Open	Closed	Open	
23-9-2003	Open	Closed	Open	
24-9-2003	Open	Closed	Open	
25-9-2003	Closed	Closed	Open	
26-9-2003	Closed	Closed	Closed	
27-9-2003	Closed	Closed	Open	Pedestrians only
28-9-2003	Closed	Closed	Open	Pedestrians only
29-9-2003	Closed	Closed	Open	
30-9-2003	Closed	Closed	Open	
31-9-2003	Closed	Closed	Open	
1-10-2003	Closed	Closed	Open	
2-10-2003	Closed	Closed	Open	
3-10-2003	Closed	Closed	Open	
4-10-2003	Closed	Closed	Open	

5-10-2003	Closed	Closed	Partially Open	
6-10-2003	Closed	Closed	Closed	
7-10-2003	Closed	Closed	Open	Employees only
8-10-2003	Closed	Closed	Open	Employees only
9-10-2003	Closed	Closed	Open	Open for employees depending on the mood of the soldiers.
10-10-2003	Closed	Closed	Closed	Closed also for pedestrians.
11-10-2003	Closed	Closed	Closed	Closed also for Pedestrians.
12-10-2003	Closed	Closed	Closed	Closed also for Pedestrians.
13-10-2003	Closed	Closed	Closed	
14-10-2003	Closed	Closed	Closed	
15-10-2003	Closed	Closed	Closed	
16-10-2003	Closed	Closed	Closed	
17-10-2003	Closed	Closed	Closed	
18-10-2003	Closed	Closed	Closed	
19-10-2003	Closed	Closed	Closed	DCO: open only for teachers/doctors with prior co-ordination with Israeli Army
20-10-2003	Closed	Closed	Closed	
21-10-2003	Closed	Closed	Closed	
22-10-2003	Closed	Closed	Closed	
23-10-2003	Closed	Closed	Closed	
24-10-2003	Closed	Closed	Closed	
25-10-2003	Closed	Closed	Closed	
26-10-2003	Closed	Closed	Closed	
27-10-2003	Closed	Closed	Closed	
28-10-2003	Closed	Closed	Closed	
29-10-2003	Closed	Closed	Closed	
30-10-2003	Closed	Closed	Closed	
31-10-2003	Closed	Closed	Closed	
1-11-2003	Closed	Closed	Closed	
2-11-2003	Closed	Closed	Closed	
3-11-2003	Closed	Closed	Closed	
4-11-2003	Closed	Closed	Closed	
5-11-2003	Closed	Closed	Closed	
6-11-2003	Closed	Closed	Open	
7-11-2003	Closed	Closed	Open	
8-11-2003	Closed	Closed	Open	
9-11-2003	Closed	Closed	Open	
10-11-2003	Closed	Closed	Open	
11-11-2003	Closed	Closed	Open	
12-11-2003	Closed	Closed	Open	
13-11-2003	Closed	Closed	Open	

14-11-2003	Closed	Closed	Open	
15-11-2003	Closed	Closed	Open	
16-11-2003	Closed	Closed	Open	
17-11-2003	Closed	Closed	Open	
18-11-2003	Closed	Closed	Open	
19-11-2003	Closed	Closed	Open	
20-11-2003	Closed	Closed	Open	
21-11-2003	Closed	Closed	Open	
22-11-2003	Closed	Closed	Open	
23-11-2003	Closed	Closed	Open	
24-11-2003	Closed	Closed	Open	
25-11-2003	Closed	Closed	Open	
26-11-2003	Closed	Closed	Open	
27-11-2003	Closed	Closed	Open	
28-11-2003	Closed	Closed	Open	
29-11-2003	Closed	Closed	Open	
30-11-2003	Closed	Closed	Open	
31-11-2003	Closed	Closed	Open	
1-12-2003	Closed	Closed	Open	
2-12-2003	Closed	Closed	Open	
3-12-2003	Closed	Closed	Open	
4-12-2003	Closed	Closed	Open	
5-12-2003	Closed	Closed	Open	
6-12-2003	Closed	Closed	Open	
7-12-2003	Closed	Closed	Open	
8-12-2003	Closed	Closed	Open	
9-12-2003	Closed	Closed	Open	
10-12-2003	Closed	Closed	Open	
11-12-2003	Closed	Closed	Open	
12-12-2003	Closed	Closed	Open	
13-12-2003	Closed	Closed	Closed	Until 11:00 am
14-12-2003	Closed	Closed	Closed	
15-12-2003	Closed	Closed	Open	DCO: only open for those with permits outside of Qalqilya.
16-12-2003	Closed	Closed	Open	
17-12-2003	Closed	Closed	Open	
18-12-2003	Closed	Closed	Open	
19-12-2003	Closed	Closed	Open	
20-12-2003	Closed	Closed	Open	
21-12-2003	Closed	Closed	Open	
22-12-2003	Closed	Closed	Open	
23-12-2003	Closed	Closed	Open	
24-12-2003	Closed	Closed	Open	
25-12-2003	Closed	Closed	Open	
26-12-2003	Closed	Closed	Open	
27-12-2003	Closed	Closed	Open	
28-12-2003	Closed	Closed	Open	

29-12-2003	Closed	Closed	Open	
30-12-2003	Closed	Closed	Open	
31-12-2003	Closed	Closed	Open	
1-1-2004	Closed	Closed	Open	
2-1-2004	Closed	Closed	Open	
3-1-2004	Closed	Closed	Open	
4-1-2004	Closed	Closed	Open	
5-1-2004	Closed	Closed	Open	
6-1-2004	Closed	Closed	Open	
7-1-2004	Closed	Closed	Open	
8-1-2004	Closed	Closed	Open	
9-1-2004	Closed	Closed	Open	
10-1-2004	Closed	Closed	Open	
11-1-2004	Closed	Closed	Open	
12-1-2004	Closed	Closed	Open	
13-1-2004	Closed	Closed	Open	
14-1-2004	Closed	Closed	Open	
15-1-2004	Closed	Closed	Open	
16-1-2004	Closed	Closed	Open	
17-1-2004	Closed	Closed	Open	

## **PART C**

### **GATE CLOSURE IN JAYYUS**

#### **Results of Analyses of Gate Monitoring Program**

The World Council of Churches, and at the invitation of local Christian Churches, launched a program called “Ecumenical accompaniment for Palestine and Israel” (EAPPI). Since October 2002, and in cooperation with the Palestinian Hydrology Group, the Ecumenical Accompaniers based in Jayyus conducted the Monitoring Program and data acquisition that deals with Wall issues.

The Gate Monitoring Program started in November 2003. This program aims to gather information on the times of opening of the Wall gates, duration of opening and the number of farmers crossing the gates. In addition, it writes down notices during checking farmers and letting them in or out of their farms.

The Accompaniers monitor both gates at Jayyus. One called the North Gate, which is the main Gate, and the other one called the south Gate. The Mayor of Jayyus received from the Israeli Civil Administration “verbally” a schedule of the opening times of the gate. According to that schedule, the gate opens all week at three times a day. The first time is in the morning between 6:45 and 7:10. The second time is between 12:30 and 12:45. The third time is between 16:10 and 16:35.

During the period between 14 November 2003 and 6 January 2004, the EAPPI reported data for 41 mornings and 28 evenings.

In general, there are too many irregularities in the opening times. Therefore, the farmers have to wait several hours in many cases, or they cannot reach the gate while it is open. In many cases farmers are turned back because soldiers claim they are late, while the gate is still open. Also, the gates were completely closed on 17 December. Missing data means that EAPPI team members are out of Jayyus or not monitoring at that time.

#### **The Results of Analyses at Morning Time over 41 days**

Average Delay Every Day:	<b>44 Minutes</b>
Maximum Delay:	<b>2 Hours and 15 Minutes</b>
Standard Deviation in the Time of Delay:	<b>31 Minutes</b>
Average No. of Farmers Allowed to Cross:	<b>41 Farmers</b>
Total Hours Delay in Respect of Number of Farmers Crossed:	<b>1209 Hours</b>
Average Checking Time per Farmer:	<b>34 Seconds</b>

#### **The Results of Analyses at Evening Time over 28 days**

Average Delay Every Day:	<b>35 Minutes</b>
Maximum Delay:	<b>1 Hour and 5 Minutes</b>
Standard Deviation in the Time of Delay:	<b>25 Minutes</b>
Average No. Of Farmers Allowed Crossing:	<b>34 Farmer</b>
Total Hours Delay in Respect of Number of Farmers Crossed:	<b>524 Hours</b>
Average Checking Time per Farmer:	<b>37 Seconds</b>

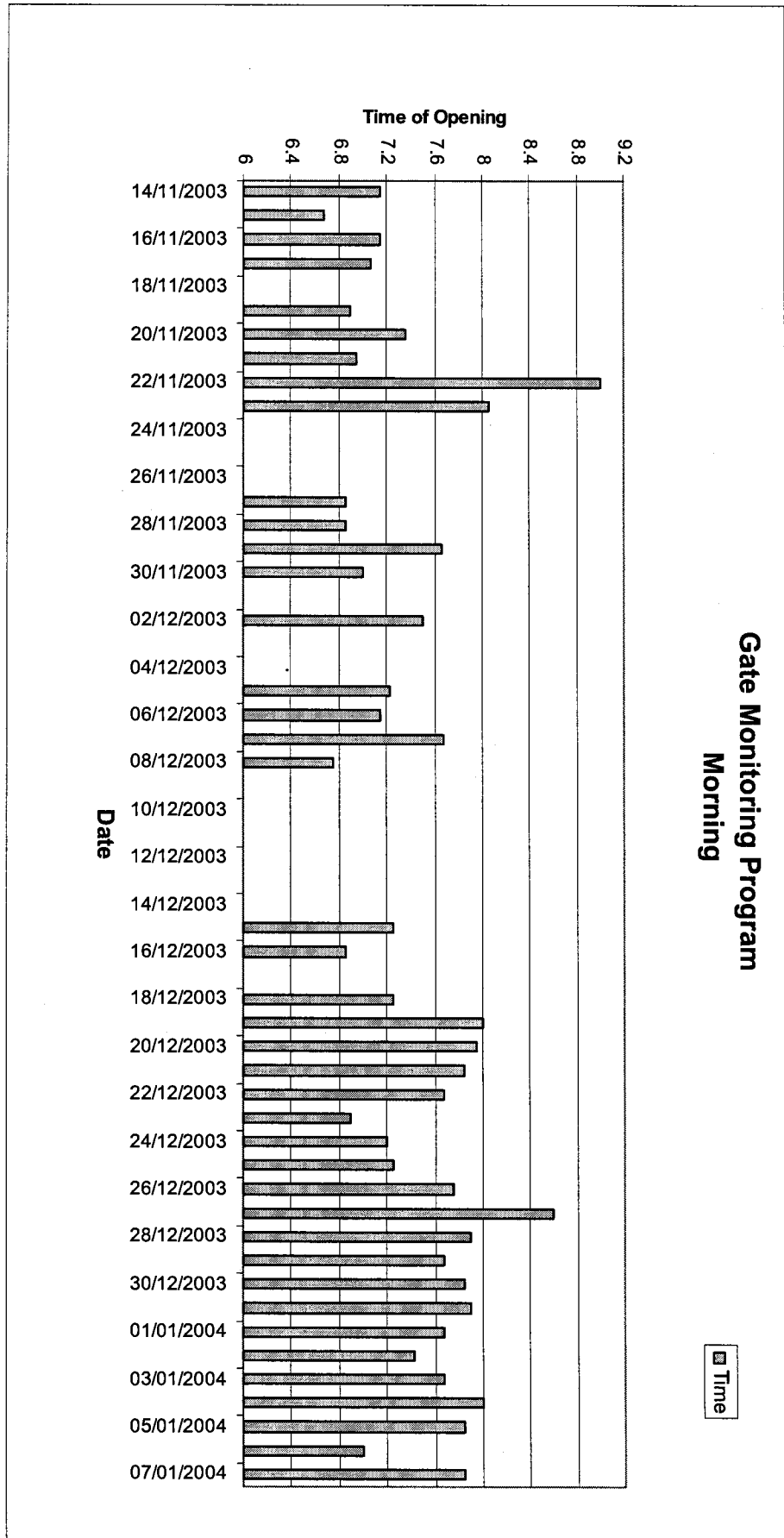
**Remarks on the graphs:**

- 1- The duration graph: each column shows the number of minutes the gate is open.
  - a. The no. of farmers graph: each column shows the number of farmers coming in or out is recorded.
  - b. The time graph: on this graph the top of the column represents the time the gate opened.

Done By:

**EAPPI: Maurice Hopper**

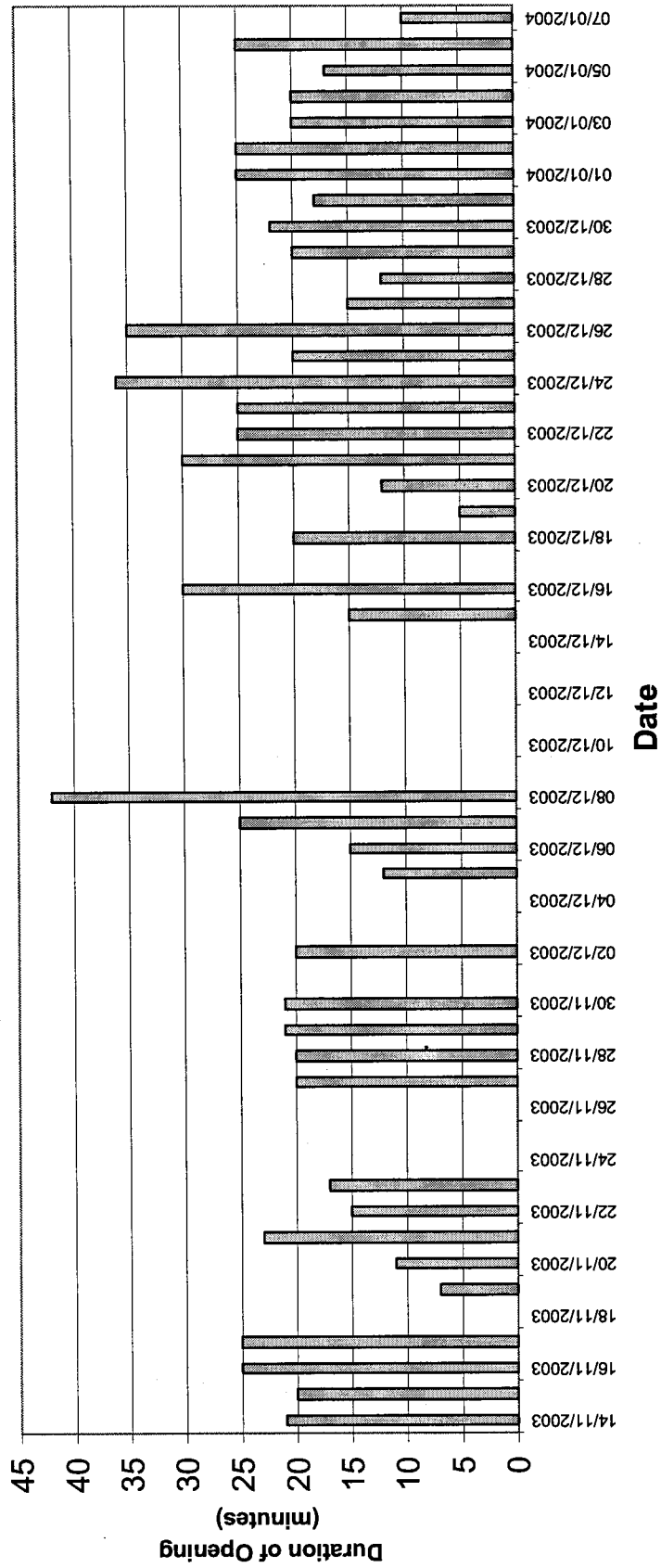
**Palestinian Hydrology Group: Abdul-Latif Khaled**



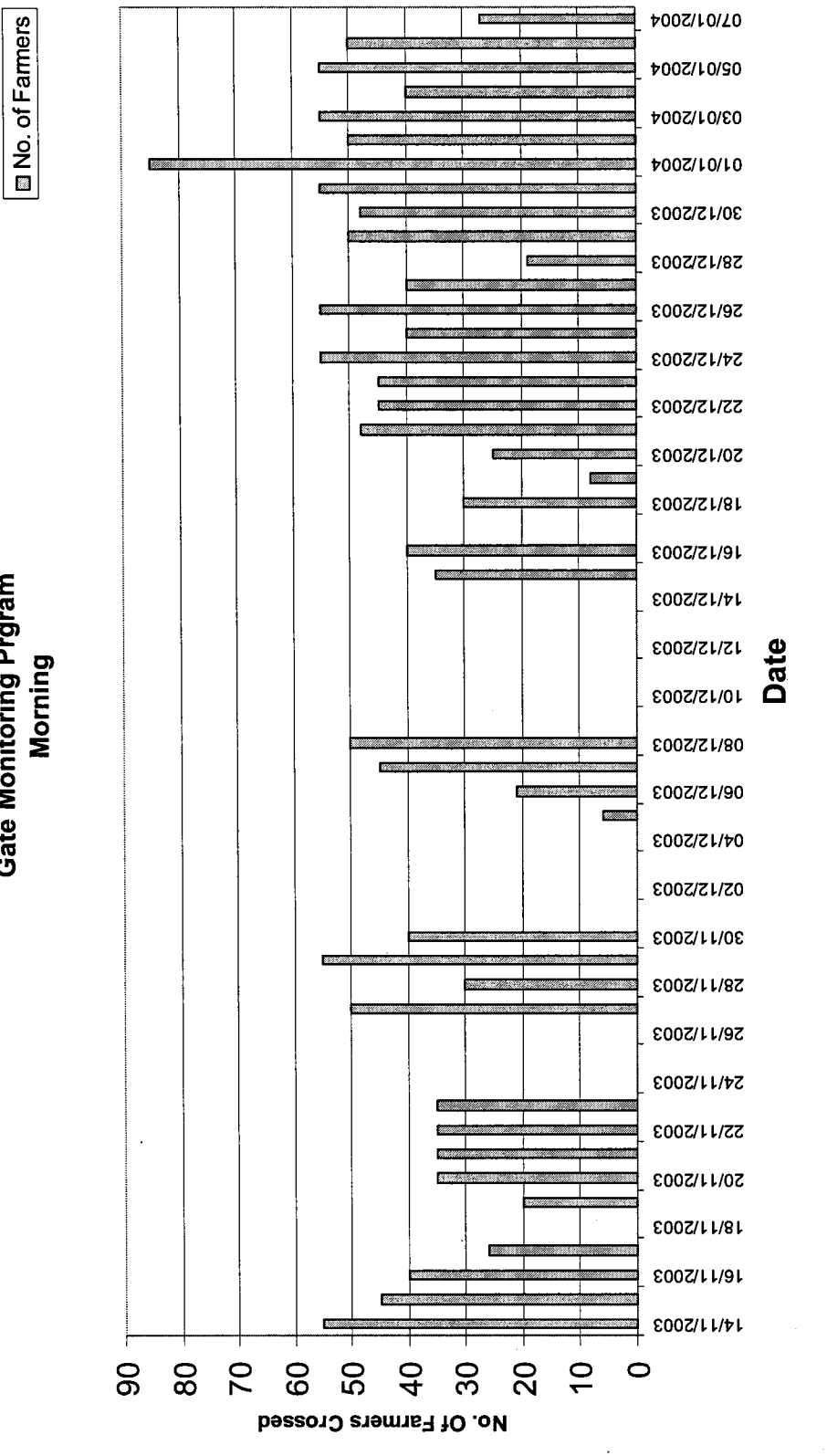


**Gate Monitoring Program  
Morning**

■ Duration

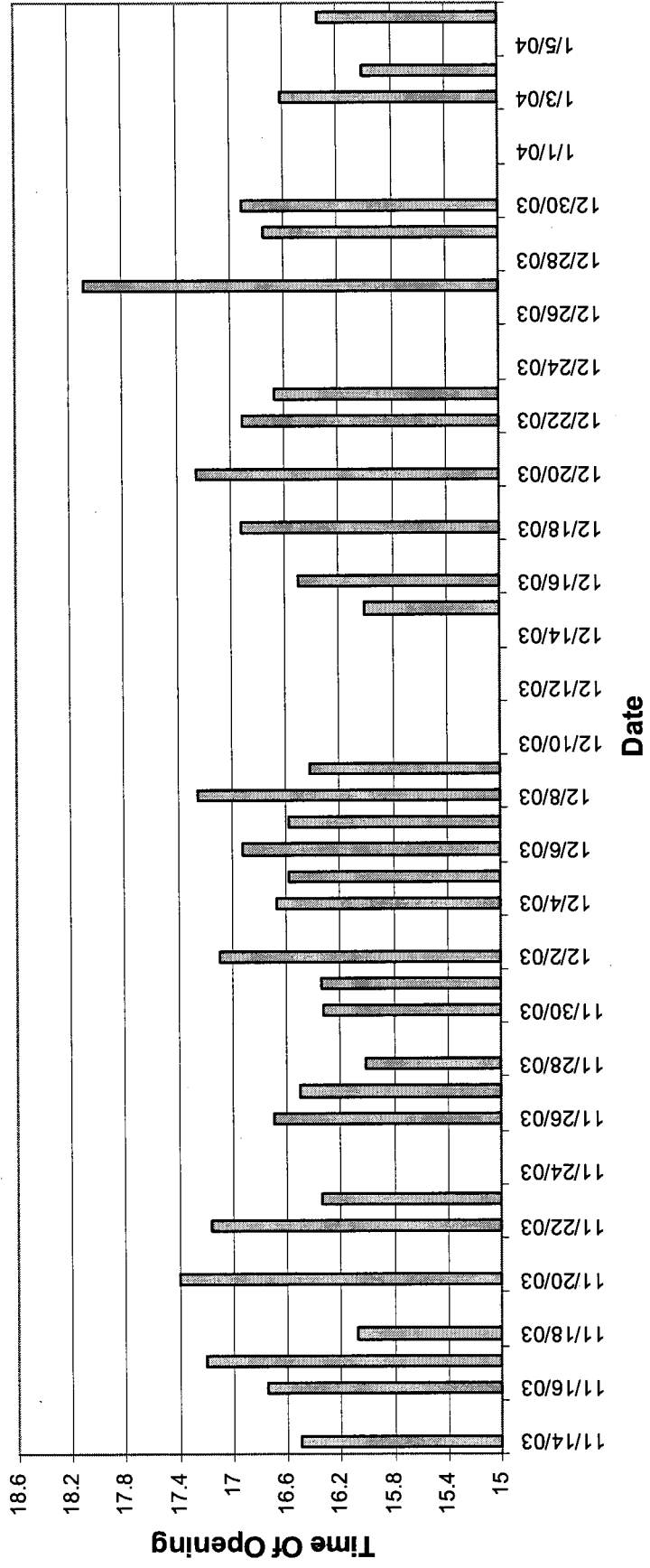


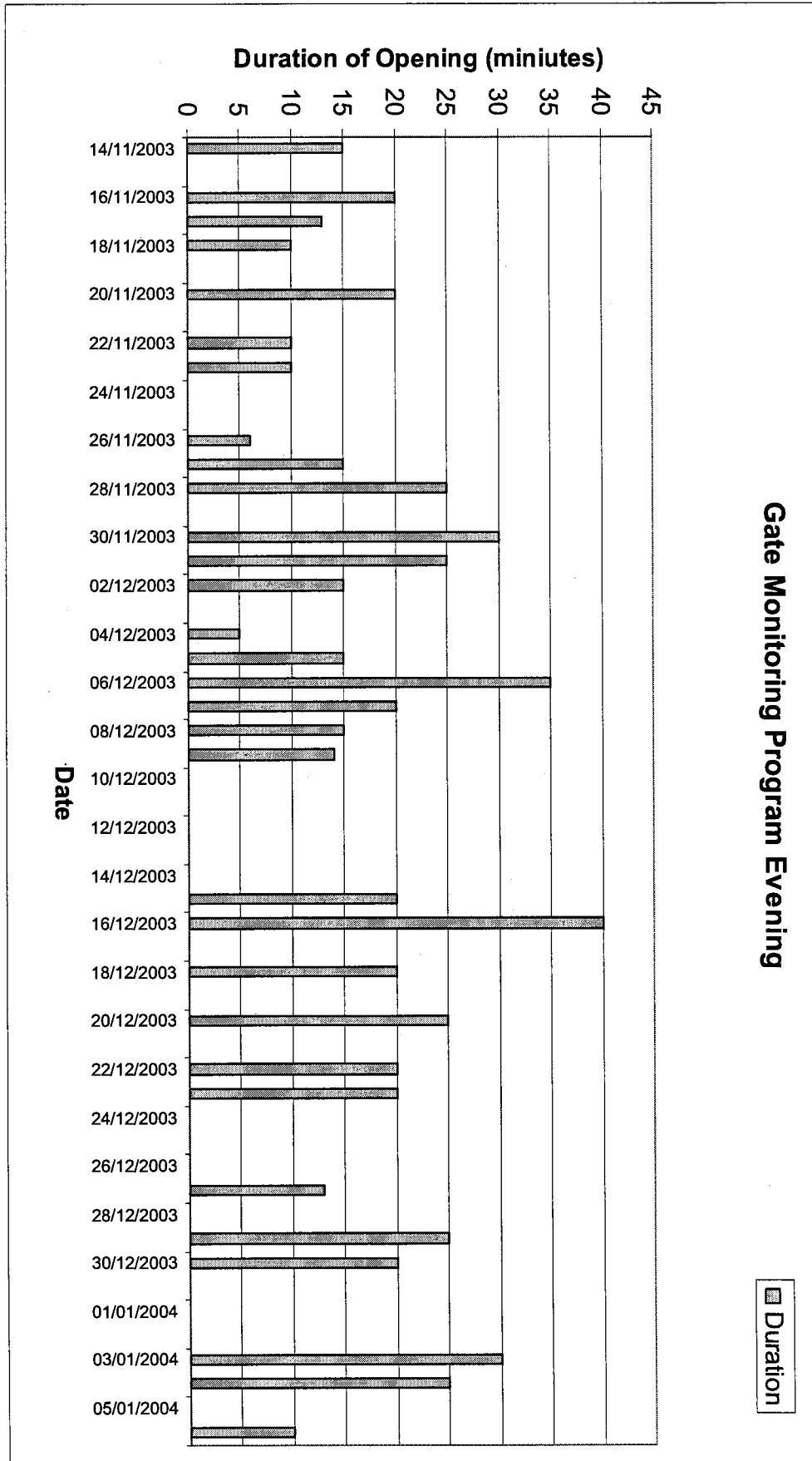
**Gate Monitoring Program  
Morning**



# Gate Monitoring Program Evening

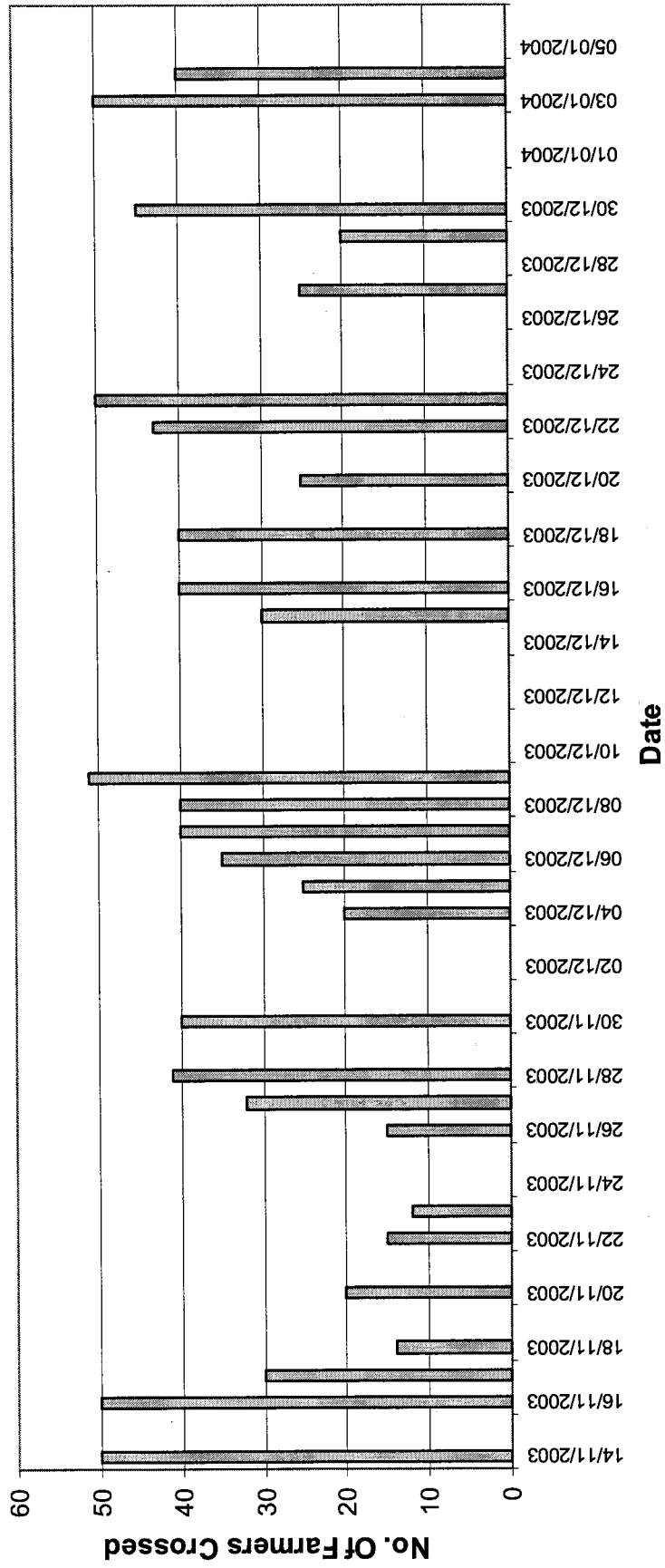
■ Time





### Gate Monitoring Program Evening

■ No. of Farmers



**PART D**

**IDF MILITARY ORDER: "DECLARATION CONCERNING  
CLOSING AN AREA NO. S/2/03 (SEAM ZONE)", 2 OCTOBER  
2003.**

*Translation by United Nations Office of the Coordination of  
Humanitarian Affairs*

**I s r a e l D e f e n s e F o r c e**  
**Order Regarding Security Regulations (Judea and Samaria) (No. 378),  
5730-1970**  
**Declaration Concerning Closing an Area no. S/2/03 (Seam Zone)**

In the power vested in me as the commander of the IDF forces in the Judea and Samaria area, and according to articles 88 and 90 to the Order regarding Security Regulations (Judea and Samaria) (No. 378), 5730-1970 (here after- "the order") and my other authorities based on every law and security regulations, and facing the special security circumstances in the area and the need to take necessary steps in order to prevent terrorist attacks and the exit of attackers from the areas of Judea and Samaria to the state of Israel, I hereby declare as follows:

**Definitions** 1. In this order:

"The Map" – A map with the scale of 1:150,000, named "Declaration concerning closing an area no. S/2/03 (Seam Zone)" signed by me and forms an inseparable part of this declaration.

"Israeli" – Each of the following:

- a. Citizen of the state of Israel.
- b. Resident of the state of Israel registered in the Population Registry in Israel, according to the Law of Population Registry, 5725 – 1965, according to its validity in Israel, from time to time.
- c. Whoever is entitled to immigrate to Israel according to the Law of Return, 7510-1950, according to its validity in Israel, from time to time.

"Barrier" – Fences, walls and patrol roads, destined to prevent terrorist attacks and exit of attackers from the areas of Judea and Samaria to the state of Israel, constructed according to seizure orders detailed in section A to the appendix to this declaration, according to their validity, from time to time.

“Seam Zone” – Each area delimited by the barrier, marked on the map in red line, towards the direction of the state of Israel.

- Closing an area** 2. I hereby declare that the seam zone is a closed area, according to its meaning in this order.
- Prohibition On Entry and Stay in the area** 3. a. No person will enter the seam zone or stay in it.  
b. A person that stays in the seam zone is obliged to exit it immediately.
- Reservation of Applicability** 4. a. Article 3 of this declaration will not apply to:  
1. An Israeli.  
2. Whoever was given a permit by me or on my behalf to enter the seam zone and stay in it, according to the conditions set in the permit. A permit based on this article can be general, for a specific type, personal or special.  
b. Despite the above mentioned section (a), a military commander is allowed to order that article 3 of this declaration will apply to a person or to every kind of people entering the seam zone or staying in it.
- Permanent Residents** 5. a. A person who has reached the age of 16 years old, whose permanent place of residency, on the day this declaration becomes valid, is within the seam zone, is allowed to enter to the seam zone and stay in it, as long as he has a written permit, given to him by me or on my behalf, testifying that his permanent place of residency is within the seam zone, all according to the conditions set in the permit.  
b. 1. A person, who has not reached the age of 16 years old, whose permanent place of residency is within the seam zone, will be allowed to stay in the seam zone, without a written permit, according to the above mentioned section (a).  
2. A person, who has not reached the age of 16 years old, whose permanent place of residency is within the seam zone, will be allowed to enter the seam zone in one of the following ways:





the day the notification of this declaration would be publicized.

- c. The head of the civil administration is allowed to set additional means for publication, beyond the detailed in sections (a) and (b).

**Upholding  
Laws**

- 9. Nothing in this declaration will impair the applicability of declarations concerning closing areas or other orders applicable in the seam zone.

**Entry into  
force**

- 10. This declaration will enter into force starting the day of its signature.

**Name**

- 11. This declaration will be entitled: "Declaration of closing an area no. S/2/03 (Seam Zone)".

## Appendix

### Section A- Seizure Orders

1. Order regarding Land Seizure no. T/35/95 (Judea and Samaria), 5755 - 1995.
2. Order regarding Land Seizure no. T/12/02 (Judea and Samaria), 5762 - 2002.
3. Order regarding Land Seizure no. T/17/02 (Judea and Samaria), 5762 - 2002.
4. Order regarding Land Seizure no. T/18/02 (Judea and Samaria), 5762 - 2002.
5. Order regarding Land Seizure no. T/19/02 (Judea and Samaria), 5762 - 2002.
6. Order regarding Land Seizure no. T/20/02 (Judea and Samaria), 5762 - 2002.
7. Order regarding Land Seizure no. T/21/02 (Judea and Samaria), 5762 - 2002.
8. Order regarding Land Seizure no. T/22/02 (Judea and Samaria), 5762 - 2002.
9. Order regarding Land Seizure no. T/23/02 (Judea and Samaria), 5762 - 2002.
10. Order regarding Land Seizure no. T/24/02 (Judea and Samaria), 5762 - 2002.
11. Order regarding Land Seizure no. T/25/02 (Judea and Samaria), 5762 - 2002.
12. Order regarding Land Seizure no. T/26/02 (Judea and Samaria), 5762 - 2002.
13. Order regarding Land Seizure no. T/31/02 (Judea and Samaria), 5762 - 2002.
14. Order regarding Land Seizure no. T/33/02 (Judea and Samaria), 5762 - 2002.
15. Order regarding Land Seizure no. T/34/02 (Judea and Samaria), 5762 - 2002.
16. Order regarding Land Seizure no. T/35/02 (Judea and Samaria), 5762 - 2002.
17. Order regarding Land Seizure no. T/37/02 (Judea and Samaria), 5762 - 2002.
18. Order regarding Land Seizure no. T/39/02 (Judea and Samaria), 5762 - 2002.
19. Order regarding Land Seizure no. T/402/02 (Judea and Samaria), 5762 - 2002.
20. Order regarding Land Seizure no. T/41/02 (Judea and Samaria), 5762 - 2002.
21. Order regarding Land Seizure no. T/43/02 (Judea and Samaria), 5762 - 2002.
22. Order regarding Land Seizure no. T/46/02 (Judea and Samaria), 5762 - 2002.
23. Order regarding Land Seizure no. T/7/03 (Judea and Samaria), 5763 - 2002.
24. Order regarding Land Seizure no. T/21/03 (Judea and Samaria), 5763 - 2002.
25. Order regarding Land Seizure no. T/25/03 (Judea and Samaria), 5763 - 2003.
26. Order regarding Land Seizure no. T/36/03 (Judea and Samaria), 5763 - 2003.
27. Order regarding Land Seizure no. T/57/03 (Judea and Samaria), 5763 - 2003.

## Section B- Passages

1. Salem passage.
2. Khirbet A-Taybe – north passage.
3. Khirbet A-Taybe – west passage.
4. ‘Anin passage.
5. Hinanit east passage.
6. Hinanit south-east passage.
7. Al ‘Araqa passage.
8. Khirbeat A Tura passage.
9. Raihan Checkpoint.
10. Barta’a south passage.
11. Baka Al Sharkiya north passage.
12. Baka Al Sharkiya south passage.
13. Zeita south passage.
14. ‘Atil west passage.
15. Dir Al ‘Azzun west passage.
16. Shweikha north-east passage.
17. Shweikha north passage.
18. Tulkarem south passage.
19. Far’un west passage.
20. Shufa checkpoint.
21. Khirbet Jubara east passage.
22. Sal’it south passage.
23. Falamyia west passage.
24. Falamyia south passage.
25. Jayyus west passage.
26. Jayyus south passage.
27. Tzufin south passage.
28. Qalqiliya north-east passage.
29. Qalqiliya south-west passage.
30. Qalqiliya south passage.
31. Qalqiliya checkpoint (109).
32. Nabi Elias south passage.
33. Alfey Menashe east passage.
34. Khirbet A-Ras A-Tira east passage.
35. Wadi Rasha west passage.
36. Khirbet Ras ‘Atiya east passage.
37. Habla north-east passage.
38. Habla north passage.
39. Khirbet Ras ‘Atiya south passage.
40. Khirbet Abu Saleman north passage.
41. Khirbet Abu Salman south passage.
42. Azzun- ‘Atma north-west passage.
43. Azzun-‘Atma south-west passage.
44. Azzun- ‘Atma north passage.
45. Beit Amin south passage.
46. Mas’ha north passage.
47. Mas-ha west passage.

**Date:** 6 Tishrey, 5774

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2/10/2003

Moshe Kaplinsky,  
General Commander of IDF Forces  
Judea and Samaria Area

**PART E**

**IDF MILITARY ORDER: "GENERAL PERMIT TO ENTER THE SEAM ZONE AND TO STAY IN IT", 2 OCTOBER 2003.**

*Translation by United Nations Office of the Coordination of Humanitarian Affairs*

**Israel Defense Force  
Order Regarding Security Regulations (Judea and Samaria) (No. 378),  
5730-1970**

**General Permit to Enter the Seam Zone and to Stay in it**

In the power vested in me as the commander of the IDF forces in the Judea and Samaria area, and according to article 4(a)(2) of the Declaration Concerning closing an area no. S/2/03 (Seam Zone) (Judea and Samaria), 5764-2003 (here after- "the declaration"), I hereby order as follows:

- |   |  |   |   |  |  |   |    |  |
|---|--|---|---|--|--|---|----|--|
| <b>General permit to enter the seam zone and stay in it</b> | 1.   | An entry permit to the seam zone, as defined in the declaration, and to stay in it is hereby given to every person belonging to the type of persons detailed in the appendix of this permit, according to the conditions specified in the appendix.   |   |  |  |   |    |  |
| <b>Conditions</b>   | 2.   | <table border="0"><tr><td style="vertical-align: top;">a.</td><td style="vertical-align: top;">A person entering the seam zone and staying in it, based on this permit, will carry with him a document testifying that he belongs to one of the types of persons detailed in the appendix; in addition to an ID card.</td></tr><tr><td style="vertical-align: top;">b.</td><td style="vertical-align: top;">The head of the civil administration may change or add to the conditions specified in section (a), regarding a specific person or types of persons.</td></tr></table> | a.  | A person entering the seam zone and staying in it, based on this permit, will carry with him a document testifying that he belongs to one of the types of persons detailed in the appendix; in addition to an ID card.   | b.   | The head of the civil administration may change or add to the conditions specified in section (a), regarding a specific person or types of persons. |    |  |
| a.  | A person entering the seam zone and staying in it, based on this permit, will carry with him a document testifying that he belongs to one of the types of persons detailed in the appendix; in addition to an ID card.   |   |   |  |  |   |    |  |
| b.  | The head of the civil administration may change or add to the conditions specified in section (a), regarding a specific person or types of persons.  |   |   |  |  |   |    |  |
| <b>Reservation of Applicability</b>                         | 3.   | Despite what is said in article 1, the military commander may order, that this permit will not apply to a person or types of persons entering the seam zone.  |   |  |  |   |    |  |
| <b>Publication</b>  | 4.   | <table border="0"><tr><td style="vertical-align: top;">a.</td><td style="vertical-align: top;">Copies of this permit will be deposited for review for those interested during working hours at the following offices:<table border="0"><tr><td style="vertical-align: top;">1.</td><td style="vertical-align: top;">Regional District Coordinating Offices (DCO).</td></tr><tr><td style="vertical-align: top;">2.</td><td style="vertical-align: top;">Police stations in Judea and Samaria area.</td></tr></table></td></tr></table>  | a.  | Copies of this permit will be deposited for review for those interested during working hours at the following offices: <table border="0"><tr><td style="vertical-align: top;">1.</td><td style="vertical-align: top;">Regional District Coordinating Offices (DCO).</td></tr><tr><td style="vertical-align: top;">2.</td><td style="vertical-align: top;">Police stations in Judea and Samaria area.</td></tr></table> | 1.   | Regional District Coordinating Offices (DCO).   | 2. | Police stations in Judea and Samaria area. |
| a.  | Copies of this permit will be deposited for review for those interested during working hours at the following offices: <table border="0"><tr><td style="vertical-align: top;">1.</td><td style="vertical-align: top;">Regional District Coordinating Offices (DCO).</td></tr><tr><td style="vertical-align: top;">2.</td><td style="vertical-align: top;">Police stations in Judea and Samaria area.</td></tr></table> | 1.  | Regional District Coordinating Offices (DCO). | 2.   | Police stations in Judea and Samaria area. |   |    |  |
| 1.  | Regional District Coordinating Offices (DCO).  |   |   |  |  |   |    |  |
| 2.  | Police stations in Judea and Samaria area.   |   |   |  |  |   |    |  |

3. Office of the Legal Adviser for the Judea and Samaria area.
  4. Offices of the Head of the infrastructure Section in the Civil Administration of the Judea and Samaria area.
- d. Copies of the permit would be hung on the notice boards in the Regional D.C.O offices, as mentioned in section (a)(1), for a period of 3 months from the day the notification of this declaration would be publicized.
  - e. The head of the civil administration is allowed to set additional means of publication, beyond the detailed in sections (a) and (b).

**Entry into force** 5. This permit will enter into force starting the day of its signature.

**Name** 6. This permit will be entitled: "General permit to enter the Seam Zone and to stay in it (Judea and Samaria), 5764-2003".

Appendix

Types of persons	Conditions
Whoever is not a resident of the area [West Bank- N.A.], and obtains a valid foreign passport and a valid permit to stay in Israel	Entry to the seam zone and staying in it for all purposes
Whoever obtains a valid working permit in an Israeli settlement located within the seam zone, according to the order regarding Employment of Workers in Certain Areas (Judea and Samaria) (No. 967), 5742-1982	Entry to the seam zone and staying in it for the purpose of employment in a settlement mentioned in the working permit, under the conditions set in the working permit
Whoever obtains a valid exit permit from the area (West Bank-N.A.) to Israel	Passing through the seam zone in order to exit the area (West Bank-N.A.) to Israel

**Date:** 6 Tishrey, 5774

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2/10/2003

Moshe Kaplinsky,  
General Commander of IDF Forces  
Judea and Samaria Area





to the above mentioned section (a), for the purpose to which the permit was issued, or by any other way set by me or on my behalf.

**Examining  
the Request**

- 4..
  - a. When a request for a permit is submitted the certified authority will decide one of the following:
    1. Authorizing the request or denying it, based on the request.
    2. Transferring the request for review of the committee.
  - b. If the certified authority denied the request for permit for the purposes mentioned in articles 1-6 in section A to the appendix, the requestant would be given another opportunity to bring his claims before the committee.
  - c. In order to consider the request for a permit the committee could conduct every needed examination, including inviting the requestant and every other person related to the request to appear before it, and giving instructions regarding submission of every document necessary for examination of the request.
  - d. A certified authority may, for the duration of completing its consideration of the request for a permit, issue the requestant a temporary permit for entry and stay in the seam zone, for a period and on the conditions set by it.

**Permit  
Renewal**

5.
  - a. A certified authority may renew the permit for a period set by it, according to procedures yet to be set.
  - b. When the certified authority denies a request for permit renewal, the permit owner will have the opportunity to bring his claims before the committee; sections (3) and (4) to article 4 of this order will apply to the committee's action.

**Upholding  
Laws**

6. Nothing in these regulations will impair the applicability of any permit given to a person in the seam zone, not according to these regulations.

- Publication** 8. a. Copies of these regulations will be deposited for review of all persons during regular working hours at the following offices:
1. Regional District Coordinating Offices (DCO).
  2. Police stations in Judea and Samaria area.
  3. Office of the Legal Adviser of the Judea and Samaria area.
  4. Offices of the Head of the Infrastructure Section in the Civil Administration of the Judea and Samaria area.
- b. Copies of these regulations would be hung on the notice boards in the Regional DCO offices, as mentioned in section (a)(1), for a period of 3 months from the day the regulations enter into force, or would be published in any other way set by me.
- Entry into force** 10. These regulations will enter into force from the date of its signature.
- Name** 11. These regulations will be entitled: "Regulations Regarding Entry and Stay Permits in the Seam Zone (Judea and Samaria), 5764- 2003".

Appendix

Section A

Purposes for entry and stay in the seam zone	Application form
1. Business owner in the seam zone	As detailed in section B to the appendix
2. Merchant in the seam zone	As detailed in section C to the appendix
3. Employee in the seam zone	As detailed in section D to the appendix
4. Farmer in the seam zone	As detailed in section E to the appendix
5. Teacher in the seam zone	As detailed in section F to the appendix
6. Student in the seam zone	As detailed in section G to the appendix
7. Palestinian Authority employee	As detailed in section H to the appendix
8. Visitor in the seam zone	As detailed in section I to the appendix
9. International organization employee	As detailed in section J to the appendix
10. Local municipality/Infrastructure Company employee	As detailed in section K to the appendix
11. Member of medical staff	As detailed in section L to the appendix
12. Any other purpose	As detailed in section M to the appendix

Section B – Form Regarding Permit Request For Business Owner In The Seam Zone

**Request Regarding Entry And Stay Permit To The Seam Zone For Business Owner In The Seam Zone**

picture

**Details Of The Requestant (Business Owner In The Seam Zone)**

Full name	ID number	Date of birth	Address of residence

**Details Of The Business:**

Name of business	Address of business	Type of business	Date of establishment

License's number	Issue date	Telephone no.

Request to pass through check point: \_\_\_\_\_.  
Reason: \_\_\_\_\_.

**Request To Overnight In The Seam Zone (Optional)**

Name of person of which at his place you stay	ID no.	Address of overnight stay	Date	Signature of the person of which at his place you stay

Reason: \_\_\_\_\_.

Date	Requestant signature

**Attached To The Request The Following Documents:**

- ✓ Copy of the ID + appendix of : 1. The Requestant. 2. The name of person of which at his place you stay. (optional)
- ✓ Copy of the business license/ document testifying the requestant is a business owner.
- ✓ Copy of documents testifying the requestant rights in the business.
- \* The copy will be verified with the original.

**(Internal – For Use Of Certified Authority)**

1. Comment of head of Economics Branch, reference - \_\_\_\_\_.
  2. Decision of the certified authority: \_\_\_\_\_.
- Entry through passage road: \_\_\_\_\_ date: \_\_\_ / \_\_\_ / \_\_\_\_ . Signature: \_\_\_\_\_.

**Section C – Form Regarding Permit Request For Merchant In The Seam Zone**

**Request Regarding Entry And Stay Permit To The Seam Zone For Merchant In The Seam Zone**  
**Details Of The Requestant (Merchant In The Seam Zone)**

picture

Full name	ID number	Date of birth	Address of residence

**Details Of The Business:**

Type of business	Business license	Issued by	Date of Issuance

Business address	Business license	Valid from	Telephone no.

Request to pass through check point: \_\_\_\_\_.  
 Reason: \_\_\_\_\_.

**Request To Overnight In The Seam Zone (Optional)**

Name of person of which at his place you stay	ID no.	Address of overnight stay	Date	Signature of the person of which at his place you stay

Reason: \_\_\_\_\_.

Date	Requestant signature

**Attached To The Request The Following Documents:**

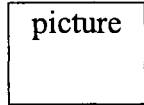
- ✓ Copy of the ID + appendix of : 1. The Requestant. 2. The name of person of which at his place you stay (optional)
  - ✓ Copy of the business license/ document testifying the requestant is a business owner.
  - ✓ Copy of merchant's license.
- \* The copy will be verified with the original.

**(Internal – For Use Of Certified Authority)**

1. Comment of head of Economics Branch, reference - \_\_\_\_\_.
  2. Decision of the certified authority: \_\_\_\_\_.
- Entry through passage road: \_\_\_\_\_ date: \_\_\_/\_\_\_/\_\_\_ . Signature: \_\_\_\_\_.

**Section D – Form Regarding Permit Request For Employee In The Seam Zone**

**Request Regarding Entry And Stay Permit To The Seam Zone For Employee In The Seam Zone**

picture  


**Details Of The Requestant (Merchant In The Seam Zone)**

Full name	ID number	Date of birth	Address of residence

**Details of the Land (For agricultural Employer in the Seam Zone)**

Land of Village	No. of Plot	No. of Block	Type of crops

**Details Of The Business (for Business Employer in the Seam Zone)**

Name of Business	Address of Business	Type of Business

Business license	Valid from	Telephone no.	Remarks

**Details of the Employee:**

Full Name	ID no.	Address of residence	Date of Birth

Request to pass through check point / Agricultural Gate no.: \_\_\_\_\_.

Reason: \_\_\_\_\_.

**Request To Overnight In The Seam Zone (Optional)**

Name of person of which at his place you stay	ID no.	Address of overnight stay	Date	Signature of the person of which at his place you stay

Reason: \_\_\_\_\_

Date	Requestant signature

Date	Employee signature

**Attached To The Request The Following Documents:**

- ✓ Copy of the ID + appendix of : 1. The Requestant. 2. The Employee. 3. The name of person of which at his place you stay. (optional)

\* The copy will be verified with the original.

**(Internal – For Use Of Certified Authority)**

1. Comment of head of Economics Branch, reference - \_\_\_\_\_.

2. Decision of the certified authority: \_\_\_\_\_.

Entry through passage road: \_\_\_\_\_ date: / / . Signature: \_\_\_\_\_.

**Section E – Form Regarding Permit Request For Farmer In The Seam Zone**

**Request Regarding Entry And Stay Permit To The Seam Zone For Employee In The Seam Zone**

picture

**Details Of The Requestant (Merchant In The Seam Zone)**

Full name	ID number	Date of birth	Address of residence

**Details of the Land (For agricultural Employer in the Seam Zone)**

Land of Village	No. of Plot	No. of Block	Type of crops

Request to pass through check point / Agricultural Gate no.: \_\_\_\_\_  
Reason: \_\_\_\_\_,

**Request To Overnight In The Seam Zone (Optional)**

Name of person of which at his place you stay	ID no.	Address of overnight stay	Date	Signature of the person of which at his place you stay

Reason: \_\_\_\_\_.

Date	Requestant signature

**Attached To The Request The Following Documents:**

- ✓ Copy of the ID + appendix of : 1. The Requestant. 2. The Employee. 3. The name of person of which at his place you stay. (optional)
- ✓ Documents testifying the rights of the Requestant in the land.
- \* The copy will be verified with the original.

**(Internal – For Use Of Certified Authority)**

1. Comment of head of Economics Branch, reference - \_\_\_\_\_.
  2. Comment of relevant officer, reference - \_\_\_\_\_.
- Decision of the certified authority: \_\_\_\_\_.
- Entry through passage road: \_\_\_\_\_ date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_ . Signature: \_\_\_\_\_.

**Section F – Form Regarding Permit Request For Education In The Seam Zone**

picture

**Request Regarding Entry And Stay Permit To The Seam Zone For Teaching  
Details Of The Requestant (Head of Education Institution In The Seam Zone)**

Full name	ID number	Job	From date

Name of Education Institution	Address of Education Institution	Teaching Class of the Teacher	
		Age/ Grade	Major

**Details of the Teacher:**

Full Name	Address of residence	ID no.	Date of Birth

Teaching Certificate no.	Authorized by	Issued in	From date

Request to pass through check point / Agricultural Gate no.: \_\_\_\_\_  
Reason: \_\_\_\_\_,

**Request To Overnight In The Seam Zone (Optional)**

Name of person of which at his place you stay	ID no.	Address of overnight stay	Date	Signature of the person of which at his place you stay

Reason: \_\_\_\_\_

Date	Requestant signature

Date	Teacher signature

**Attached To The Request The Following Documents:**

- ✓ Copy of the ID + appendix of : 1. The Requestant. 2. The teacher. 3. The name of person of which at his place you stay. (optional)
- ✓ Copy of teaching license of the teacher.
- \* The copy will be verified with the original.

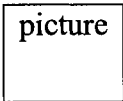
**(Internal – For Use Of Certified Authority)**

1. Comment of head of Education Branch, reference - \_\_\_\_\_.
  2. Decision of the certified authority: \_\_\_\_\_.
- Entry through passage road: \_\_\_\_\_ date: / / . Signature: \_\_\_\_\_



**Section G-- Form Regarding Permit Request For Student In The Seam Zone**

**Request Regarding Entry And Stay Permit To The Seam Zone For The Purpose Of Study**  
**Details Of The Requestant (Head of Education Institution In The Seam Zone)**

picture  


Full name	ID number	Job	From date

Name of Education Institution	Address of Education Institution	Teaching Class of the Teacher	
		Age/ Grade	Major

**Details of the Student (who turned 12 years old):**

Full Name	ID no. (if no ID – name and ID no. of father)	Date of Birth	Address of residence

Request to pass through check point / Agricultural Gate no.: \_\_\_\_\_  
 Reason: \_\_\_\_\_

**Request To Overnight In The Seam Zone (Optional)**

Name of person of which at his place you stay	ID no.	Address of overnight stay	Date	Signature of the person of which at his place you stay

Reason: \_\_\_\_\_

Date	Requestant signature

Date	Student signature

**Attached To The Request The Following Documents:**

- ✓ Copy of the ID + appendix of : 1. The Requestant. 2. The student (if no ID- ID of father). 3. The name of person of which at his place you stay. (optional)
- \* The copy will be verified with the original.

**(Internal – For Use Of Certified Authority)**

1. Comment of head of Education Branch, reference - \_\_\_\_\_.
  2. Decision of the certified authority: \_\_\_\_\_.
- Entry through passage road: \_\_\_\_\_ date: / / . Signature: \_\_\_\_\_

**Section H – Form Regarding Permit Request For Palestinian Authority Employee**

**Request Regarding Entry And Stay Permit To The Seam Zone For Palestinian Authority Employee**

picture

**Details Of The Requestant (Palestinian Authority Employee In The Seam Zone)**

Full name	ID number	Date of birth	Address of residence

Job	Serves in the village of	No. of work certificate

Request to pass through check point: \_\_\_\_\_.  
Reason: \_\_\_\_\_.

**Request To Overnight In The Seam Zone (Optional)**

Name of person of which at his place you stay	ID no.	Address of overnight stay	Date	Signature of the person of which at his place you stay

Reason: \_\_\_\_\_.

Date	Requestant signature

**Attached To The Request The Following Documents:**

- ✓ Copy of the ID + appendix of : 1. The Requestant. 2. The name of person of which at his place you stay. (optional)
- ✓ Copy of the Palestinian Authority Employee Certificate.
- \* The copy will be verified with the original.

**(Internal – For Use Of Certified Authority)**

1. Comment of relevant officer, reference - \_\_\_\_\_.
2. Decision of the certified authority: \_\_\_\_\_.  
Entry through passage road: \_\_\_\_\_ date: \_\_\_/\_\_\_/\_\_\_\_. Signature: \_\_\_\_\_.

**Section I – Form Regarding Permit Request For Visiting The Seam Zone**

**Request Regarding Entry And Stay Permit To The Seam Zone For Visitor In The Seam Zone**

picture

**Details Of The Requestant (Inviter – Permanent Resident In The Seam Zone)**

Full name	ID number	Address of residence	Relation to the visitor

**Details of the Visitor:**

Full name	ID no.	Address of residence	Date of Birth

Length of visit		Reason of the visit
From date-	Until -	

**Details of Accompanied Persons (under the age of 12)**

Full name	ID no.	Date of Birth	Relation to the requestant

Request to pass through check point: \_\_\_\_\_.  
Reason: \_\_\_\_\_;

**Request To Overnight In The Seam Zone (Optional)**

Name of person of which at his place you stay	ID no.	Address of overnight stay	Date	Signature of the person of which at his place you stay

Reason: \_\_\_\_\_.

Date	Requestant signature

Date	Visitor signature

**Attached To The Request The Following Documents:**

- ✓ Copy of the ID + appendix of : 1. The Requestant. 2. The visitor. 3. The name of person of which at his place you stay. (optional)
- ✓ Documents testifying the rights of the Requestant in the land.
- \* The copy will be verified with the original.

**(Internal – For Use Of Certified Authority)**

Decision of the certified authority: \_\_\_\_\_.

Allowed to visit in \_\_\_\_\_ from date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_ until \_\_\_\_ / \_\_\_\_ / \_\_\_\_.

Entry through passage road: \_\_\_\_\_ date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_ . Signature: \_\_\_\_\_.

Section J- Form Regarding Permit Request For Employee of International Organization

**Request Regarding Entry And Stay Permit To The Seam Zone For Employee of International Organization**  
**Details Of The Requestant (Employee of International Organization)**

picture  


Full name	ID number	Date of Birth	Address of residence

Name of Organization	Works from date	No. of work Certificate	Job	Positioned in village/ district

Request to pass through check point: \_\_\_\_\_.  
 Reason: \_\_\_\_\_.

**Request To Overnight In The Seam Zone (Optional)**

Name of person of which at his place you stay	ID no.	Address of overnight stay	Date	Signature of the person of which at his place you stay

Reason: \_\_\_\_\_.

Date	Requestant signature

Date	Visitor signature

**Attached To The Request The Following Documents:**

- ✓ Copy of the ID + appendix of : 1. The Requestant. 2. The name of person of which at his place you stay. (optional)
- ✓ Copy of work certificate in an international organization.
- \* The copy will be verified with the original.

**(Internal – For Use Of Certified Authority)**

1. Comment of head of International Organizations, reference: \_\_\_\_\_.
2. Decision of the certified authority: \_\_\_\_\_.

Entry through passage road: \_\_\_\_\_ date: \_\_\_/\_\_\_/\_\_\_\_. Signature: \_\_\_\_\_.

**Section K – Form Regarding Permit Request For Employee of Local Municipality  
/Construction Company**

**Request Regarding Entry And Stay Permit To The Seam Zone For Employee of Local Municipality/Infrastructure Company**  
**Details Of The Requestant (Employee of Local Municipality/Infrastructure Company)**

picture

Full name	ID number	Date of Birth	Address of residence

Job	Positioned in the village	No. of work certificate

Request to pass through check point: \_\_\_\_\_.  
Reason: \_\_\_\_\_.

**Request To Overnight In The Seam Zone (Optional)**

Name of person of which at his place you stay	ID no.	Address of overnight stay	Date	Signature of the person of which at his place you stay

Reason: \_\_\_\_\_.

Date	Requestant signature

Date	Visitor signature

**Attached To The Request The Following Documents:**

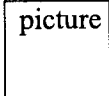
- ✓ Copy of the ID + appendix of : 1. The Requestant. 2. The name of person of which at his place you stay. (optional)
- ✓ Copy of work certificate of Employee of local municipality/Infrastructure company.
- \* The copy will be verified with the original.

**(Internal – For Use Of Certified Authority)**

1. Comment by the relevant officer, reference - \_\_\_\_\_.
2. Decision of the certified authority: \_\_\_\_\_.  
 Allowed to visit in \_\_\_\_\_ from date: \_\_\_/\_\_\_/\_\_\_ until \_\_\_/\_\_\_/\_\_\_.  
 Entry through passage road: \_\_\_\_\_ date: \_\_\_/\_\_\_/\_\_\_ . Signature: \_\_\_\_\_.

**Section L – Form Regarding Permit Request For Member of Medical Staff**

**Request Regarding Entry And Stay Permit To The Seam Zone For Member of Medical Staff**

picture  


**Details Of The Requestant:**

Full name	ID number	Date of Birth	Address of residence

Medical Institution Employer	Job	Positioned in the village / district	No. of work certificate

**Authorization of Head of Medical Institution Employer**

Full name	ID no.	Address of Institution	Date	Signature

Request to pass through check point: \_\_\_\_\_.  
 Reason: \_\_\_\_\_.

**Request To Overnight In The Seam Zone (Optional)**

Name of person of which at his place you stay	ID no.	Address of overnight stay	Date	Signature of the person of which at his place you stay

Reason: \_\_\_\_\_.

Date	Requestant signature

Date	Visitor signature

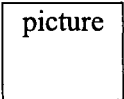
**Attached To The Request The Following Documents:**

- ✓ Copy of the ID + appendix of : 1. The Requestant. 2. The name of person of which at his place you stay. (optional)
- ✓ Copy of work certificate of Employee of local municipality/Infrastructure company.
- \* The copy will be verified with the original.

**(Internal – For Use Of Certified Authority)**

1. Comment by the Head of Education Branch, reference - \_\_\_\_\_.
2. Decision of the certified authority: \_\_\_\_\_.  
 Entry through passage road: \_\_\_\_\_ date: \_\_\_ / \_\_\_ / \_\_\_\_ . Signature: \_\_\_\_\_

**Section M – Form regarding Exceptional permit to the Seam Zone**

picture  


**Request Regarding Exceptional permit for Entry And Stay in the Seam Zone**  
**Details Of The Requestant:**

Full name	ID number	Date of Birth	Address of residence

Destiny of entry (village/district)	Purpose of entry

Request to pass through check point: \_\_\_\_\_.  
 Reason: \_\_\_\_\_.

**Request To Overnight In The Seam Zone (Optional)**

Name of person of which at his place you stay	ID no.	Address of overnight stay	Date	Signature of the person of which at his place you stay

Reason: \_\_\_\_\_.

Date	Requestant signature

**Attached To The Request The Following Documents:**

- ✓ Copy of the ID + appendix of : 1. The Requestant. 2. The name of person of which at his place you stay (optional)
- \* The copy will be verified with the original.

**(Internal – For Use Of Certified Authority)**

Decision of the certified authority: \_\_\_\_\_.  
 Entry through passage road: \_\_\_\_\_ date: \_\_/\_\_/\_\_. Signature:  
 \_\_\_\_\_.

**Date:** 11 Tishrey, 5774

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7/10/2003

Ilan Paz,  
Major General  
Head of the Civil Administration  
Judea and Samaria Area



## PART G

### **IDF MILITARY ORDER: "REGULATIONS REGARDING PERMIT FOR PERMANENT RESIDENTS IN THE SEAM ZONE", 7 OCTOBER 2003**

*Translation by United Nations Office of the Coordination of Humanitarian Affairs*

#### **I s r a e l D e f e n s e F o r c e**

#### **Order Regarding Security Regulations (Judea and Samaria) (No. 378), 5730-1970**

#### **Regulations Regarding Permit to Permanent Resident in the Seam Zone**

In the power vested in me as the Head of the Civil Administration and according to articles 4(a)(2) and 7 to the Declaration Concerning closing an area no. S/2/03 (Seam Zone) (Judea and Samaria), 5764-2003 (here after- "the declaration"), I hereby order as follows:

#### **Definitions**

1. In this order:

**"The Seam Zone"** – As defined in the declaration

**"The Certified Authority"** – Heads of the Israeli civil District Coordinating Offices.

**"Permanent Resident Permit"**- A written permit, issued by the certified authority, testifying that the permanent place of residence of its carrier is within the seam zone.

**"The Committee"** – A committee established by me in order to examine request for permanent resident permits.

#### **Issuing a Permanent Resident Permit**

2. a. A permanent resident permit will be issued by the certified authority:
1. To a person legally staying in the area [West Bank] whose age turned 12 years old on the date the declaration entered into force, when proven to the satisfaction of the certified authority that s/he is a permanent resident in the seam zone on the date the declaration entered into force, and on the condition s/he filed a request for a permit within a year from the entry into force of these regulations or before reaching the age of 16 years old, according to the latest date of the two.
  2. To a person legally staying in the area [West Bank] who obtains a new

resident permit in the seam zone, as stated in article 6 of these regulations, when proven to the satisfaction of the certified authority that s/he lived permanently in the seam zone for a period of more than 2 years.

3. To a person legally staying in the area [West Bank], whose age turned 12 years old after the date the declaration entered into force, and who was registered as accompanied person in the permanent resident permit issued based on sections (1) and (2) as long as s/he submitted a request for permit before s/he turned the age of 16 years old.
- c. A permanent resident permit will be issued for a period set by the certified authority, according to procedures yet to be set.

**Request  
for permanent  
Resident Permit**

3. A request for a permanent resident permit will be submitted on a form "Request for Permanent Resident Permit in the Seam Zone", according to Section A of the appendix.

**Examining  
the Request**

4.
  - a. When a request for a permanent resident permit is submitted the certified authority Will decide one of the following:
    1. Authorizing issuance of the permanent resident permit, based on the request.
    2. Transferring the request for review of the committee.
  - b.
    1. In order to consider the request for a permanent resident permit the committee could conduct every needed examination, including inviting the requestant and every other person related to the request to appear before it, and giving instructions regarding submission of every document necessary for examination of the request.
    2. The committee will not deny a request for a permanent resident permit unless the requestant was given an opportunity to bring his/her claims before it.
    3. After a decision was made by the committee to authorize a request for permanent resident permit the certified authority will issue a permanent resident permit to the requestant.

- c A certified authority may, for the duration of completing its consideration of the request for a permit, issue the requestant a temporary permit for entry and stay in the seam zone, for a period and on the conditions set by it.
- Permit Renewal** 5. a. A certified authority will renew a permanent resident to a person, after proven to its satisfaction that s/he is a permanent resident of the seam zone on the day the permit is renewed.
- b. If not proven to the satisfaction of the certified authority that the requestant is a permanent resident in the seam zone on the day the permit is renewed, it should pass on the request to the examination of the committee; sections (2) and (3) to article 4 of this order will apply to the committee's action, under the necessary changes.
- New Resident In the Seam Zone** 6. a. A person, who is not a permanent resident in the seam zone, wishing to be a resident a in the seam zone, will submit request for a new resident permit in the seam zone to the certified authority, on a form titled: "Request For A New Permanent Resident In The Seam Zone", according to section B of the appendix.
- b. The request will be examined by the committee according to article 4(2).
- c. After the committee authorizes the request, the certified authority will issue a new resident permit in the seam zone for a period of a year; article 5 will apply to a request to renew a new resident permit, under the necessary changes.
- d. A new resident living permanently at least 2 years in the seam zone may submit a request to receive a permanent resident permit, according to articles 3 and 4, under the necessary changes.
- e. A certified authority may, for the duration of completing its consideration of the request for a permit, issue the requestant a temporary permit for entry and stay in the seam zone, for a period and on the conditions set by it.



Appendix

Section A – Form Regarding Request for Permanent Resident Permit In The Seam Zone

**Request Regarding Permanent Resident Permit in The Seam Zone**

**Details Of The Requestant**

picture

Full name	ID number ((if no ID – name and ID no. of father)		
	ID number	Date of Issuance	Issued in District

Request to pass through check point/agricultural gate: \_\_\_\_\_.

Reason: \_\_\_\_\_,

Date	Requestant signature

**Attached To The Request The Following Documents:**

- ✓ Copy of the ID + appendix of : 1. The Requestant (when requestant has ID). 2. Requestant's parents (when requestant does not have ID)
  - ✓ Copy of documents testifying the requestant is a permanent resident in the seam zone.
- \* The copy will be verified with the original.

**(Internal – For Use Of Certified Authority)**

3. Date when request was received in the DCO: \_\_\_/\_\_\_/\_\_\_.
4. Comment of head of Population Registry in the Civil Administration- \_\_\_\_\_ reference \_\_\_\_\_.
5. Comment of the relevant officer- \_\_\_\_\_, reference: \_\_\_\_\_.
6. Decision of the committee: \_\_\_\_\_ (include copy).
7. Decision of the certified authority: \_\_\_\_\_.  
date: \_\_\_/\_\_\_/\_\_\_ . Signature: \_\_\_\_\_.

**Requestant which is not registered on the day the request was submitted, as a seam zone resident in the Israeli Population Registry**

Attached to the Request (after changing the address of the requestant to the seam zone in the ID)

- ✓ A copy of the updated ID of the requestant/the requestant's parents.

**(Internal – for use of the certified authority)**

Authorization of the head of the Population Registry in the Civil Administration regarding change of address in the Israeli Population Registry, reference - \_\_\_\_\_.

**Section B – Form Regarding Request for New Resident Permit In The Seam Zone**

**Request Regarding New Resident Permit in The Seam Zone**

**Details Of The Requestant**

picture

	ID number		
Full name	ID number	Date of Issuance	Issued in District

Address of Residence			
Address registered in the ID	From date	In fact	From date

**Details of the Relative (Permanent Resident in the Seam Zone)**

Full name	ID		
	ID number	Date of Issuance	Issued in District

Address of Residence			
Address registered in the ID	From date	In fact	From date

Request to pass through check point/agricultural gate: \_\_\_\_\_.  
Reason: \_\_\_\_\_,

**Commitment**

We here by Commit that the requestant will move his/her permanent place of residence to the seam zone, to the address \_\_\_\_\_, within 6 months from the day the permit is received.

Date	Requestant signature

Date	Relative signature

**Attached To The Request The Following Documents:**

- ✓ Copy of the ID + appendix of : 1. The Requestant. 2. The relative.
- ✓ Copy of marriage documents / documents testifying family relations.
- \* The copy will be verified with the original.

**(Internal – For Use Of Certified Authority)**

1. Comment of head of Population Registry in the Civil Administration, reference - \_\_\_\_\_ .
2. ERASED ON ORIGINAL FORM
3. Comment of the Israeli police, reference: \_\_\_\_\_ .
4. Issuance of temporary permit by the certified authority – from date: \_\_\_/\_\_\_/\_\_\_ . until: \_\_\_/\_\_\_/\_\_\_ .
5. Passage through check point: \_\_\_\_\_ . signature: \_\_\_\_\_ .
6. Report to the ? Civil Administration on date: \_\_\_/\_\_\_/\_\_\_ . Reporting body: \_\_\_\_\_ .

**Date:** 11 Tishrey, 5774

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7/10/2003

Ilan Paz,  
Major General  
Head of the Civil Administration  
Judea and Samaria Area





## Annex 3

The following is a survey of Israeli activity in construction of the Wall from 8 December 2003, the date on which the UN General Assembly adopted its request for an Advisory Opinion, until 19 January 2004. This survey is compiled from Daily Situation Reports of the Palestinian Monitoring Group, Negotiations Affairs Department, Palestine Liberation Organization. The reporting cycle of the Daily Situation Reports is 08:00 from the previous day to 08:00 of the date of the report.

## GENERAL

<b>10 December</b>	<b>Allocation of Funds:</b> 380 million NIS were approved by the Parliament's Defense Budget Committee for infrastructure work, construction and procurement for the Wall and other surveillance equipment.
<b>18 December</b>	<b>Acceleration of Wall Construction:</b> At the Herziliya Conference, Israeli Prime Minister Ariel Sharon announced a "Disengagement Plan" and acceleration of construction of the Wall.

## JERUSALEM

<b>8 December</b>	<b>Wall Construction:</b> Israeli authorities continue construction of the Wall in Abu Dis, Al Sawahira, Al Eizariya, Al Tur and Al Shayyah.
<b>9 December</b>	<b>Wall Construction:</b> Israeli authorities continue construction of the Wall in Abu Dis, Al Sawahira, Al Eizariya, Al Tur and Al Shayyah.
<b>10 December</b>	<b>Wall Construction:</b> Israeli authorities continue construction of the Wall in Abu Dis, Al Sawahira, Al Eizariya, Al Tur and Al Shayyah.
<b>11 December</b>	<b>Wall Construction:</b> Israeli authorities continue construction of the Wall in Abu Dis, Al Sawahira, Al Eizariya, Al Tur and Al Shayyah.
<b>12 December</b>	<b>Wall Construction:</b> Israeli authorities continue construction of the Wall in Abu Dis, Al Sawahira, Al Eizariya, Al Tur and Al Shayyah.
<b>14 December</b>	<b>Wall Construction:</b> Israeli authorities continue construction of the Wall in Abu Dis, Al Sawahira, Al Eizariya, Al Tur and Al Shayyah.
<b>15 December</b>	<b>Wall Construction:</b> Israeli authorities continue construction of the Wall in Abu Dis, Al Sawahira, Al Eizariya, Al Tur and Al Shayyah.
<b>16 December</b>	<b>Wall Construction:</b> Israeli authorities continue construction of the Wall in Abu Dis, Al Sawahira, Al Eizariya, Al Tur and Al Shayyah.
<b>17 December</b>	<b>Wall Construction:</b> (i) Israeli authorities continue construction of the Wall in Abu Dis, Al Sawahira, Al Tur and Al Shayyah. (ii) Israeli authorities halted construction of the Wall in the Al Adyirah area (near Deir Faji) following the discovery of archeological remains. (iii) Israeli authorities have completed construction of 1 section of the Wall in Al 'Eizariya neighbourhood.

18 December	<b>Wall Construction:</b> (i) Israeli authorities continue construction of the Wall in Abu Dis, Al Sawahira, Al Tur and Al Shayyah. (ii) Israeli authorities resumed construction of the Wall in the Al Adyarah area (near Deir Faji).
19 December	<b>Land Confiscation:</b> Israeli authorities issued confiscation orders for 8,000 <i>dunums</i> (2000 acres) from Beit 'Anan, an estimated 2/3 of the village lands.
21 December	<b>Wall Construction:</b> (i) Israeli authorities continue construction of the Wall in Abu Dis, Al Sawahira, Al Tur and Al Shayyah. (ii) Israeli authorities resumed construction of the Wall in the Al Adyarah area (near Deir Faji). <b>Land Confiscation:</b> (i) Israeli authorities issued land confiscation orders to several residents of Beit Surik, Beit Iksa and Al Qubeiba. (ii) Several residents of the villages of Liqya, Beit Anan, Qatanna and Biddu received land confiscation orders and 20 house demolition orders for the construction of the Wall.
22 December	<b>Wall Construction:</b> (i) Israeli authorities continue construction of the Wall in Abu Dis, Al Sawahira, and Al Eizariya. (ii) Israeli authorities delivered verbal notices of eviction and demolition to residents of the area south east of 'Anata village. 20 sheep pens will be demolished in preparation for construction of the Wall. (iii) Israeli authorities sent heavy machinery and equipment (including bulldozers and trucks) to the area between Ma'ale Adummim and Az Za'ayyem village in preparation for construction of the Wall.
23 December	<b>Wall Construction:</b> Israeli authorities continue construction of the Wall in Abu Dis, Al Sawahira, and Al Eizariya. <b>Settlement Activity:</b> The Israeli army has begun enclosing Ma'ale Adummim settlement with barbed wire.
24 December	<b>Wall Construction:</b> Israeli authorities continue construction of the Wall in Abu Dis, Al Sawahira, and Al Eizariya.
25 December	<b>Wall Construction:</b> Israeli authorities continue construction of the Wall in Al Shayyah, Abu Dis, Al Sawahira, and Al Eizariya.
26 December	<b>Wall Construction:</b> Israeli authorities continue construction of the Wall in Al Tur, Al Shayyah, Abu Dis, Al Sawahira, and Al Eizariya.
27 December	<b>Wall Construction:</b> Construction of the Wall in Al Tur, Al Shayyah, Abu Dis, Al Sawahira, and Al Eizariya was suspended for the weekend.
29 December	<b>Wall Construction:</b> Construction of the Wall continues in Al Shayyah, Abu Dis, and Al Sawahira.
30 December	<b>Wall Construction:</b> Construction of the Wall continues in Al Shayyah, Abu Dis, and Al Sawahira.
31 December	<b>Wall Construction:</b> Construction of the Wall continues in Al Shayyah, Abu Dis, and Al Sawahira.
1 January	<b>Wall Construction:</b> Construction of the Wall continues in Al Shayyah, Abu Dis, and Al Sawahira.
2 January	<b>Wall Construction:</b> Construction of the Wall continues in Al Shayyah, Abu Dis, and Al Sawahira.
3 January	<b>Wall Construction:</b> Construction of the Wall was suspended for the weekend in Al Shayyah, Abu Dis, and Al Sawahira.
4 January	<b>Wall Construction:</b> Construction of the Wall was resumed in Al Shayyah, Abu Dis, Al Eizariya and Al Sawahira.

5 January	<p><b>Wall Construction:</b> (i) Construction of the Wall continues in Al Shayyah, Abu Dis, Al Eizariya and Al Sawahira. (ii) Construction of the Wall in the Al Adyarah area (near Faji Monastery) has been completed.</p> <p><b>Land Confiscation:</b> Palestinian residents of Beit Ikxa, Biddu and Qibya received land confiscation orders.</p>
6 January	<p><b>Wall Construction:</b> Construction of the Wall continues in Al Shayyah, Abu Dis, Al Eizariya and Al Sawahira.</p> <p><b>Land Confiscation:</b> Palestinian residents of Beit Surik and Beit 'Anan received land confiscation orders for 2,500 <i>dunums</i> (625 acres) and 400 <i>dunums</i> (100 acres), respectively.</p>
7 January	<p><b>Wall Construction:</b> Construction of the Wall continues in Al Shayyah, Abu Dis, Al Eizariya and Al Sawahira.</p>
8 January	<p><b>Wall Construction:</b> Construction of the Wall continues in Al Shayyah, Abu Dis, Al Eizariya and Al Sawahira.</p>
9 January	<p><b>Wall Construction:</b> Construction of the Wall continues in Al Shayyah, Abu Dis, Al Eizariya and Al Sawahira.</p>
10 January	<p><b>Wall Construction:</b> Construction of the Wall in Al Shayyah, Abu Dis, Al Eizariya and Al Sawahira was suspended for the weekend.</p>
11 January	<p><b>Wall Construction:</b> Construction of the Wall continues in Abu Dis, Al Eizariya and Al Sawahira.</p>
12 January	<p><b>Wall Construction:</b> Construction of the Wall continues in Abu Dis, Al Eizariya and Al Sawahira. (ii) The Israeli army closed the area adjacent to the Wall in Ras Al Amud, Dahiyat Al Eizariya and Abu Dis for 15 days in order to make adjustments on sections of the Wall.</p>
13 January	<p><b>Wall Construction:</b> Construction of the Wall continues in Abu Dis, Al Eizariya and Al Sawahira.</p>
14 January	<p><b>Wall Construction:</b> Construction of the Wall continues in Abu Dis, Al Eizariya and Al Sawahira.</p>
15 January	<p><b>Wall Construction:</b> Construction of the Wall continues in Al Eizariya and Al Sawahira and has been suspended in Abu Dis. <b>Land Confiscation:</b> The Israeli authorities issued confiscation orders for 107 <i>dunums</i> (26.75 acres) of land from Shu'fat refugee camp and the town of Anata for construction of the Wall.</p>
16 January	<p><b>Wall Construction:</b> Construction of the Wall continues in Al Eizariya and Al Sawahira.</p>
17 January	<p><b>Wall Construction:</b> Construction of the Wall in Al Eizariya and Al Sawahira was suspended for the weekend.</p>
18 January	<p><b>Wall Construction:</b> Construction of the Wall in Al Eizariya, Abu Dis and Al Sawahira was resumed.</p>
19 January	<p><b>Wall Construction:</b> Construction of the Wall continues in Al Eizariya, Abu Dis and Al Sawahira.</p>

## RAMALLAH & EL BIREH

<b>10 December</b>	<b>Closure:</b> The Israeli army closed the iron gate near the junction of An Nabi Salih, isolating the area of Bani Zeid (which includes the towns of Beit Rima, Deir Ghassana, Kafr 'Ein, An Nabi Salih and Qarawat Bani Zeid) from the city of Ramallah and other villages and towns.
<b>11 December</b>	<b>Closure:</b> For the 4 <sup>th</sup> consecutive day, the Israeli army continues to close the iron gate of An Nabi Salih, isolating the area of Bani Zeid (which includes the towns of Beit Rima, Deir Ghassana, Kafr 'Ein, An Nabi Salih and Qarawat Bani Zeid) from the city of Ramallah and other villages and towns.
<b>14 December</b>	<b>Wall/Settlement Land Levelling:</b> (i) Israeli authorities continue to level land in the villages of Rantis, Qibya and Budrus for construction of the Wall. (ii) Israeli authorities began levelling land near the village of Shuqba in preparation for building a by-pass road leading to the settlement of Ariel.
<b>15 December</b>	<b>Wall Construction:</b> (i) Israeli bulldozers continue to level land belonging to the villages of Rantis, Shuqba and Qibya. Land levelling activities have reached the entrance of the village of Budrus, where trees have been marked for uprooting. (ii) The Israeli Land Department placed signs warning against farmers in Al-Midya village from entering and working on their agricultural lands, as they are being prepared for leveling.
<b>16 December</b>	<b>Wall House Demolitions:</b> At 18:35, the Israeli army, including 3 jeeps, entered the village of Beit Liqya, west of Ramallah, and notified house owners located south of the village to vacate their houses the next day, as they will be demolished at 11:00 for the construction of the Wall. <b>Wall Land Confiscation:</b> Israeli officials issued confiscation orders with maps to the Ramallah department of the Civil Affairs Ministry. The orders confiscate the lands from Beit Sira to Beit Nuba for the construction of the Wall.
<b>17 December</b>	<b>Closure:</b> The Israeli army closed the iron gate near An Nabi Salih village, isolating the northern and north-western villages from the city of Ramallah. <b>Land Confiscation:</b> The Israeli army raided the village of Beit Liqya and posted orders announcing the confiscation of 2100 <i>dunums</i> (525 acres) of land for construction of the Wall.
<b>18 December</b>	<b>Closure:</b> The iron gate near An Nabi Salih village remains closed, isolating the northern and north-western villages from the city of Ramallah.
<b>19 December</b>	<b>Closure:</b> The iron gate near An Nabi Salih village remains closed, isolating the northern and north-western villages from the city of Ramallah.
<b>20 December</b>	<b>Closure:</b> The iron gate near An Nabi Salih village remains closed, isolating the northern and north-western villages from the city of Ramallah.
<b>21 December</b>	<b>Closure:</b> The iron gate near An Nabi Salih village remains completely closed, even to ambulances, isolating the north-western villages from the city of Ramallah.

<b>22 December</b>	<p><b>Closure:</b> The iron gate near An Nabi Salih village remains completely closed, isolating the north-western villages from the city of Ramallah.</p> <p><b>Settlement Activities:</b> (i) For the past 3 days, Israeli settlers have placed caravans at the Shevut Rahel outpost and occupied and enclosed 1750 m<sup>2</sup> of land adjacent to the settlement with barbed wire.</p> <p>(ii) Israeli settlers began construction of a road connecting Shillo settlement with Shevut Rahel settlement and erected electricity poles on the side of the road, cutting off the northern districts of the West Bank from the central districts.</p>
<b>23 December</b>	<p><b>Closure:</b> The iron gate near An Nabi Salih village remains completely closed, isolating the north-western villages from the city of Ramallah.</p>
<b>24 December</b>	<p><b>Settlement Activity:</b> The Israeli army enclosed land belonging to the village of Deir Nidham with barbed wire for the expansion of Hallamish settlement.</p>
<b>25 December</b>	<p><b>Closure:</b> (i) The iron gate near An Nabi Salih village remains completely closed, isolating north-western villages from the city of Ramallah.</p> <p>(ii) The Israeli army declared Bani Zeid village a closed military area.</p>
<b>26 December</b>	<p><b>Destruction of Property:</b> At 10:50, the Israeli army destroyed 4 live stock farms belonging to a civilian from the town of Silwad, claiming that the farms were too close to the settlement of Ofra.</p>
<b>30 December</b>	<p><b>Settlement Activity:</b> The Israeli authorities continue to fence the parameters of the settlement of Hallamish. The fence cuts into land belonging to residents of the neighbouring village of Deir Nidham.</p>
<b>31 December</b>	<p><b>Wall Construction:</b> The Israeli army declared the area between Ni'lin and Budrus a closed military zone, imposed curfew over villages near the village of Raba, and levelled land and uprooted trees in the area in preparation for construction of the western portion of the Wall.</p> <p><b>Settlement Activity:</b> The Israeli authorities continue to fence the parameters of the settlement of Hallamish. The fence cuts into land belonging to residents of the neighbouring village of Deir Nidham.</p>
<b>1 January</b>	<p><b>Wall Construction:</b> The area located between Ni'lin and Budrus remains a closed military zone. The Israeli army continues to impose curfew over villages in the area and Israeli bulldozers continue to uproot olive trees for construction of the Wall.</p> <p><b>Settlement Activity:</b> The Israeli authorities continue to fence the parameters of the settlement of Hallamish. The fence cuts into land belonging to residents of the neighbouring village of Deir Nidham.</p>
<b>2 January</b>	<p><b>Wall Construction:</b> The area located between Ni'lin and Budrus remains a closed military zone. The Israeli army continues to impose curfew over villages in the area and Israeli bulldozers continue to uproot olive trees for construction of the Wall.</p> <p><b>Settlement Activity:</b> The Israeli authorities continue to fence the parameters of the settlement of Hallamish. The fence cuts into land belonging to residents of the neighbouring village of Deir Nidham.</p>
<b>3 January</b>	<p><b>Wall Construction:</b> Construction activities in the area of Budrus were suspended for the weekend.</p>
<b>5 January</b>	<p><b>Land Confiscation:</b> Palestinian residents of the villages of Beit Liqya, Beit Ur and Al Tira received land confiscation orders for construction of the Wall.</p>

<b>8 January</b>	<p><b><u>Wall Construction:</u></b> Construction of the western portion of the Wall continues in the areas of Budrus and Rantis.</p> <p><b><u>Land Confiscation:</u></b> The Israeli authorities confiscated 1,500 <i>dunums</i> (375 acres) of land from Betunia, south of Ramallah, for construction of the Wall.</p>
<b>9 January</b>	<p><b><u>Wall Construction:</u></b> Construction of the western portion of the Wall continues in Budrus and Rantis.</p>
<b>10 January</b>	<p><b><u>Wall Construction:</u></b> Construction of the western portion of the Wall in Budrus and Rantis was suspended for the weekend.</p>
<b>11 January</b>	<p><b><u>Wall Construction:</u></b> Construction of the western portion of the Wall continues in Budrus and Rantis.</p>
<b>12 January</b>	<p><b><u>Wall Construction:</u></b> Construction of the western portion of the Wall continues in Budrus and Rantis.</p>
<b>13 January</b>	<p><b><u>Wall Construction:</u></b> Construction of the western portion of the Wall continues in Budrus and Rantis.</p>
<b>14 January</b>	<p><b><u>Wall Construction:</u></b> Construction of the western portion of the Wall continues in Budrus and Rantis.</p>
<b>15 January</b>	<p><b><u>Wall Construction:</u></b> Construction of the western portion of the Wall continues in Budrus and Rantis.</p> <p><b><u>Land Confiscation:</u></b> The Israeli authorities issued confiscation orders for 41 <i>dunums</i> (10.25 acres) of land from Beit Ur al Foqa for construction of the Wall. The confiscation of land will:</p> <ul style="list-style-type: none"> <li>(i) Deny 400 students access to their schools in nearby towns;</li> <li>(ii) Isolate 8 families from the village;</li> <li>(iii) Lead to the demolition of many poultry and live stock farms and the uprooting of trees.</li> </ul>
<b>16 January</b>	<p><b><u>Wall Construction:</u></b> Construction of the western portion of the Wall continues in Budrus and Rantis.</p>
<b>17 January</b>	<p><b><u>Wall Construction:</u></b> Construction of the western portion of the Wall in Budrus and Rantis was suspended for the weekend.</p>
<b>18 January</b>	<p><b><u>Wall Construction:</u></b> Construction of the western portion of the Wall in Budrus and Rantis was resumed.</p> <p><b><u>Land Confiscation:</u></b> The Israeli authorities notified villagers of Rantis of their intention to confiscate 500 <i>dunums</i> (125 acres) of land for construction of the Wall.</p>
<b>January 19</b>	<p><b><u>Wall Construction:</u></b> Construction of the western portion of the Wall in Budrus and Rantis continues.</p> <p><b><u>Settlement Activity:</u></b> Israeli settlers erected a new settlement outpost near the settlement of Hallamish.</p>

## JENIN

Passage through the Wall gates in the Jenin district is restricted to civilians granted special Israeli permits which are based on no specific criteria. This Israeli closure continues to harm the education process since teachers, amongst others, are not granted access through the gates, particularly in areas located behind the Wall.

<b>20 December</b>	<b>Wall Land Levelling:</b> The Israeli army started levelling land in the Bardala area for construction of the eastern portions of the Wall.
<b>23 December</b>	<b>House Demolitions:</b> Between 09:00 and 11:00, the Israeli army demolished 2 houses in Al 'Aqaba village. The 2 houses were included in demolition orders for a total of 12 buildings, including houses, a mosque and day care center, issued on 22 October 2003. Israeli soldiers informed civilians in the area that they would return in 5 days to demolish the remaining 10 houses.
<b>26 December</b>	<b>Wall Gates:</b> (i) The Israeli army prevented a cargo of wheat and animal feed from passing through the Wall gate of Barta'a ash Sharqiya. (ii) The Israeli army prevented female civilians from crossing the Barta'a ash Sharqiya Wall gate to return to their villages between 13:00 and 16:00, claiming that there was no Israeli female soldier to search females during that period of time.
<b>27 December</b>	<b>Wall Gates:</b> The village of Barta'a, located behind the Wall, is under strict closure. Doctors, basic food supplies and milk have not been allowed into the village. Schools are closed because teachers have been unable to reach the village.
<b>28 December</b>	<b>Wall Gates:</b> The village of Barta'a, located behind the Wall, remains under strict closure. Doctors, basic food supplies and milk have not been allowed into the village. Schools are closed because teachers have been unable to reach the village. <b>Land Levelling/Eastern Wall Construction:</b> Israeli bulldozers are levelling land east of the village of Al Mutilla in preparation for construction of the Wall.
<b>30 December</b>	<b>Wall Construction:</b> The Israeli army continues levelling land north of the village of Bardala in preparation for construction of the eastern section of the Wall.
<b>31 December</b>	<b>Wall Construction:</b> (i) The Israeli army continues to level land north of the village of Bardala in preparation for construction of the eastern portion of the Wall. (ii) The Israeli army sealed off pasturelands near the village of Raba, levelled land and destroyed water cisterns.
<b>1 January</b>	<b>Wall Construction:</b> (i) The Israeli army continues to level land north of the village of Bardala in preparation for construction of the eastern portion of the Wall. (ii) The Israeli army continues to level land and destroy water cisterns near the village of Raba.
<b>2 January</b>	<b>Wall Construction:</b> (i) The Israeli army continues to level land north of the village of Bardala in preparation for construction of the eastern portion of the Wall. (ii) The Israeli army continues to level land near the village of Raba for construction of the eastern portion of the Wall.



3 January	<p><b>Wall Construction:</b> (i) Israeli activities in the village of Bardala in preparation for construction of the eastern portion of the Wall were suspended for the weekend.</p> <p>(ii) Israeli activities near the village of Raba for construction of the eastern portion of the Wall were suspended for the weekend. Shepherds were prohibited from taking their livestock to graze in pasturelands in the area of Raba.</p>
4 January	<p><b>Wall Gates/Detentions:</b> Israeli soldiers at the gate of Barta'a (located behind the Wall) detained over 200 women from the village, preventing them from returning to their homes between 11:00 and 15:00. The Israeli army assaulted Ghassan Kabha, head of the Barta'a village council, and detained him for several hours for protesting against the detention of the 200 women. The Israeli army prevented the civilians from crossing the gate with their food supplies, including bread.</p>
9 January	<p><b>Wall Construction/Land Levelling:</b> (i) The Israeli army levelled agricultural land belonging to the village of Bardala for construction of the Wall. The village was surrounded and enclosed by the Israeli army through the construction of military watchtowers and the dispatching of jeeps and police dogs in the area.</p> <p>(ii) The Israeli army continues to dig a ditch along the Jordan River to the village of 'Ein Al Beida. The Israeli army destroyed 6 vendor stands in the process of digging.</p>
11 January	<p><b>Wall Construction/Land Levelling:</b> (i) Israeli authorities continue to level land north of the village of Bardala, east of the village of 'Ein al Beida and near the villages of Al Mutilla and Raba on the Nablus mountain range for construction of the Wall.</p> <p>(ii) Construction on the Wall has begun on Al Buqe'a plateau east of the town of Tubas.</p> <p>(iii) The Israeli authorities confiscated 5 water containers in the area of Al Malih belonging to shepherds herding livestock in the area in preparation for construction the Wall.</p>
12 January	<p><b>Wall Construction/Land Levelling:</b> Israeli authorities continue to level land north of the village of Bardala, east of the village of 'Ein al Beida, near the villages of Al Mutilla and Raba on the Nablus mountain range, and on Al Buqe'a plateau east of Tubas for construction of the Wall.</p>
13 January	<p><b>Wall Construction/Land Levelling:</b> Israeli authorities continue to level land north of the village of Bardala, east of the village of 'Ein al Beida, near the villages of Al Mutilla and Raba on the Nablus mountain range, and on Al Buqe'a plateau east of Tubas for construction of the Wall.</p>
14 January	<p><b>Wall Construction/Land Levelling:</b> Israeli authorities continue to level land north of the village of Bardala, east of the village of 'Ein al Beida, near the villages of Al Mutilla and Raba on the Nablus mountain range, and on Al Buqe'a plateau east of Tubas for construction of the Wall.</p>
15 January	<p><b>Wall Construction/Land Levelling:</b> Israeli authorities continue to level land north of the village of Bardala, east of the village of 'Ein al Beida, near the villages of Al Mutilla and Raba on the Nablus mountain range, and on Al Buqe'a plateau east of Tubas for construction of the Wall.</p>

<b>16 January</b>	<b>Wall Construction/Land Levelling:</b> Israeli authorities continue to level land north of the village of Bardala, east of the village of 'Ein al Beida, near the villages of Al Mutilla and Raba on the Nablus mountain range, and on Al Buqe'a plateau east of Tubas for construction of the Wall.
<b>17 January</b>	<b>Wall Construction:</b> Land Levelling north of the village of Bardala, east of the village of 'Ein al Beida, near the villages of Al Mutilla and Raba on the Nablus mountain range, and on Al Buqe'a plateau east of Tubas for construction of the wall was suspended for the weekend.
<b>18 January</b>	<b>Wall Construction / Land Levelling:</b> Land levelling in the northern valleys (Bardala, and 'Ein al Beida) and east of Tubas (Al Mutilla, Al Mughayyir, Raba, and Al Buqe'i plateau) continues.
<b>19 January</b>	<b>Wall Construction / Land Levelling:</b> Land levelling in the northern valleys (Bardala, and 'Ein al Beida) and east of Tubas (Al Mutilla, Al Mughayyir, Raba, and Al Buqe'i plateau) continues.

## JERICHO

<b>10 December</b>	<b>Destruction of Property:</b> The Israeli army destroyed Bedouin tents and barracks belonging to the family of Abu-Dahouk located in the area of Nabi Mousa.
<b>24 December</b>	<b>Destruction of Property:</b> The Israeli army tore down tents belonging to a civilian from the village of Al 'Ojai.

## BETHLEHEM

<b>18 December</b>	<b>Uprooting of Trees:</b> The Israeli army uprooted 400 olive trees from the Wadi Fukin area and issued a verbal warning to Mahmoud Mustafa al-Horoub that his house would be demolished.
<b>21 December</b>	<b>Land Confiscation:</b> Fayez Mohammad Al Sa'afen from Husan village received land confiscation orders for 5 <i>dunums</i> (1.25 acres) of his land from the Israeli authorities for the construction of a power station that will supply electricity to surrounding Israeli settlements.
<b>22 December</b>	<b>Closure:</b> The Israeli army closed Khirbet el Thebe east of Bethlehem, prevented civilians from accessing their agricultural lands and grazing areas and verbally informed residents that these lands will be confiscated. <b>Land Levelling:</b> At 08:00, the Israeli army, including 2 bulldozers, levelled lands owned by the Greek Orthodox church near checkpoint 300, separating Jerusalem and Bethlehem.
<b>24 December</b>	<b>Destruction of Property:</b> Israeli bulldozers levelled land located between the town of Nahhalin and the village of Husan.
<b>4 January</b>	<b>Land Levelling:</b> Israeli bulldozers levelled dozens of <i>dunums</i> of agricultural land located near the town of Al Khadr.
<b>14 January</b>	<b>Wall Construction/Destruction of Property:</b> The Israeli army destroyed a privately owned live stock ranch measuring 400 <i>dunums</i> (100 acres) for construction of the Wall.

17 January	<b>Settler Violence:</b> Israeli settlers from the settlement of Kfar Ezyon uprooted approximately 80 olive trees belonging to Palestinians from land near the settlement.
19 January	<b>Settler Violence / Destruction of Property:</b> Settlers destroyed land belonging to the village of Khirbet Sakariya, destroyed water pipes, cut down 100 grape vines and broke the windows of a public vehicle.

## TULKAREM

Passage through the Wall gates in the Tulkarem district is restricted to civilians granted special Israeli permits which are based on no specific criteria. This Israeli closure continues to harm the education process since teachers, amongst others, are not granted access through the gates, particularly in areas located behind the Wall.

14 December	<b>Wall Gates:</b> (i) The entrances leading to the agricultural lands of the village of Qaffin have been closed, preventing farmers, even those with permits, teachers and ambulances from crossing through the gates. (ii) The Israeli army has prevented teachers from entering the villages of Nazlat Isa and Al Baqa al Sharqiya (located behind the Wall), disregarding previous agreements for basic services that permit their entrance,
16 December	<b>Closures:</b> (i) Al-Kafriyat gate remains closed, closing off Tulkarem from Qalqilya. (ii) The Israeli army prevented teachers from entering the town of Baqa al Sharqiya.
17 December	<b>Closure:</b> Al Kafriyat gate remains closed, closing off Tulkarem from Qalqilya.
18 December	<b>Closure:</b> Al-Kafriyat gate remains closed, cutting off Tulkarem from Qalqilya. <b>Wall Gates:</b> (i) The Israeli army prevented vehicles carrying gas supplies from entering al Baqa el Sharqiya area located behind the Wall. (ii) The Israeli army closed the gate leading to Jubara village located behind the Wall, preventing residents, employees and students from leaving the village. (iii) Israeli authorities have not renewed permits granted to residents of Qaffin village, located behind the Wall, which expired on 12 December 2003. (iv) Israeli authorities have not granted permits to farmers of the town of Deir al Ghusun to access agricultural lands. <b>Land Levelling:</b> The Israeli army, including bulldozers, began levelling an estimated area of 100 <i>dunums</i> (25 acres) of land in Far'un village.
19 December	<b>Closure:</b> Al-Kafriyat gate remains closed, cutting off Tulkarem from Qalqilya.
25 December	<b>Wall Gates:</b> Israeli troops stationed at the Wall gates prevented farmers from returning to the village of Deir al Ghusun, forcing farmers to sleep outside on their land. Israeli soldiers prohibited the farmers from lighting fires to keep warm.
26 December	<b>Wall Gates:</b> At 09:30, the Israeli army closed Al Kafriyat gates, isolating the district of Qalqiliya from Tulkarem, and the Enav gate, isolating the district of Tulkarem from Nablus.

<b>27 December</b>	<b>Wall Gates:</b> Al Kafriyat gate remains closed, isolating the district of Qalqiliya from Tulkarem.
<b>28 December</b>	<b>Wall Gates:</b> (i) Al Kafriyat gate remains closed, isolating the district of Qalqiliya from Tulkarem. (ii) At 08:20, the Israeli army closed the Enav gate, separating the Tulkarem district from Nablus.
<b>30 December</b>	<b>Closure:</b> The Israeli army closed the Enav iron gate and Al Kafriyat Wall gate, isolating Tulkarem from the districts of Qalqiliya and Nablus.
<b>31 December</b>	<b>School Disruption:</b> The strict closure imposed by the Israeli army has prevented students from reaching their schools and is negatively impacting the living conditions and education process of communities located behind the Wall.
<b>1 January</b>	<b>Closure:</b> The Israeli army closed the Enav iron gate and Al Kafriyat Wall gate, which separate Tulkarem from the districts of Qalqiliya and Nablus. <b>Wall Gates:</b> The Israeli army prevented medical teams from crossing the Wall gates and reaching their clinics in the town of Baqa ash Sharqiya and the village of Nazlat Isa, located behind the Wall, and prevented ambulances and Ministry of Health vehicles transporting medicine from entering the area.
<b>2 January</b>	<b>Closure:</b> The Israeli army continues to close the Enav iron gate and Al Kafriyat Wall gate, separating Tulkarem from the districts of Qalqiliya and Nablus.
<b>3 January</b>	<b>Closure:</b> The Israeli army continues to close the Enav iron gate and Al Kafriyat Wall gate, separating Tulkarem from the districts of Qalqiliya and Nablus.
<b>4 January</b>	<b>Closure:</b> The Israeli army continues to close the Enav iron gate and Al Kafriyat Wall gate, separating Tulkarem from the districts of Qalqiliya and Nablus.
<b>12 January</b>	<b>Wall Construction:</b> The Israeli army completed levelling approximately 500 <i>dunums</i> (125 acres) of land located between the village of Irtah and Far'un, south of the city, for construction of the Wall.
<b>15 January</b>	<b>Wall Construction/Land Levelling:</b> The Israeli army continues to level land south of the village of Far'un for construction of the Wall. <b>Land Confiscation:</b> Israeli surveyors, working under military protection, began surveying and marking land for settlement expansion on land belonging to the villages of Al Ras and Kafr Sur near Sal'it settlement.

## NABLUS

<b>8 December</b>	<b>Land Confiscation:</b> The Israeli army confiscated 2 sections of land, near the village of Sad, covering an area over 2 <i>dunums</i> (0.5 acres), on which the Israeli army set up a new military position. The land belongs to residents from the villages of Jit and Sarra.
<b>22 December</b>	<b>Uprooting of Trees:</b> The Israeli army uprooted dozens of trees on the main road through the town of Huwwara (south).
<b>24 December</b>	<b>House Demolitions:</b> (i) At 13:00, the Israeli army demolished a house and storehouses belonging to 25-year-old Khalid Asida in the village of Sebastia. (ii) The Israeli army, including bulldozers, raided the town of Deir Sharaf, west of Nablus city, demolished 2 houses belonging to Nidal Badawi and Kheiri Nofal, and demolished 2 storehouses belonging to Abdul Jabbar Kayid and Awad Abu Safad.

## HEBRON

<b>10 December</b>	<b>Land Confiscation/Settler Violence:</b> Israeli settlers from the settlement of Haggai took over dozens of <i>dunums</i> of land, preventing their original owners from entering it, and severely beat a civilian, Musa Al Najjar. Meanwhile, the Israeli army held 3 other civilians and threatened to arrest them if they approached their land.
<b>11 December</b>	<b>Land Levelling:</b> (i) The Israeli army levelled around 40 <i>dunums</i> (10 acres) of land between the settlement of Kiryat Arba and Al Kharisina, and another 20 <i>dunums</i> (5 acres) around the settlement of Harisina, for the construction of the Wall and settlement roads. (ii) The Israeli army levelled around 40 <i>dunums</i> (10 acres) of land from the town of Beit Ummar for construction and expansion of settlement roads.
<b>14 December</b>	<b>Closure:</b> (i) Israeli authorities closed the entrances to the town of Sa'ir. (ii) An iron gate was constructed at the northern part of the city. A military surveillance tower was also erected.
<b>17 December</b>	<b>Land Levelling:</b> The Israeli army, including bulldozers, levelled 10 <i>dunums</i> (2.5 acres) of land in the village of Yatta for expansion of the settler road 60. Land levelling activities continue. <b>Uprooting of Trees:</b> Israeli authorities informed the Palestinian Civil Coordination of its intention to uproot trees from Tarqumiya village near Telem settlement.
<b>18 December</b>	<b>Uprooting of Trees:</b> Israeli authorities issued an order to uproot thousands of trees in the Tarqumiya area due to its proximity to Telem settlement.
<b>23 December</b>	<b>Destruction of Property:</b> The Israeli army, including 1 bulldozer, demolished a gas station belonging to Ibrahim Al Bratha'i in the town of Halhul, detained 15 civilians and confiscated their identification cards.
<b>24 December</b>	<b>Destruction of Property:</b> The Israeli army levelled 10 <i>dunums</i> (2.5 acres) of agricultural land for construction of a wall surrounding the settlement of Kiryat Arba and a settlement road.

26 December	<p><b>Land Levelling:</b> Israeli bulldozers continue to level agricultural land belonging to Palestinian civilians located between the settlements of Kiryat Arba and Harsina for construction of a wall enclosing the two settlements and a settler bypass road.</p> <p><b>Uprooting of Trees:</b> The Israeli authorities issued military orders to uproot hundreds of trees near the junction of Idhna/Tarqumiya.</p>
28 December	<p><b>Settlement Activity:</b> (i) Israeli settlers rebuilt the settlement outpost of Have Ma'on, located south of Ma'on settlement. Israeli authorities had previously announced that the outpost had been evacuated.</p> <p>(ii) Israeli settlers added 3 caravans to the settlement outpost of Evangel, south east of Yatta.</p>
30 December	<p><b>Land Levelling:</b> Israeli bulldozers continue to level land belonging to Palestinian civilians near the settlements of Kiryat Arba and Harsina in order to expand and build a wall around the two settlements.</p>
31 December	<p><b>Land Levelling:</b> Israeli bulldozers continue to level land belonging to Palestinian civilians near the settlements of Kiryat Arba and Harsina in order to expand and build a wall around the two settlements.</p>
1 January	<p><b>Land Levelling:</b> Israeli bulldozers continue to level land belonging to Palestinian civilians near the settlements of Kiryat Arba and Harsina in order to expand and build a wall around the two settlements.</p>
2 January	<p><b>Land Levelling:</b> Israeli bulldozers continue to level agricultural land belonging to Palestinian civilians near the settlements of Kiryat Arba and Harsina in order to expand and build a wall around the two settlements.</p>
5 January	<p><b>Land Levelling:</b> Israeli bulldozers continue to level agricultural land near the settlement of Kiryat Arba.</p>
6 January	<p><b>Land Levelling:</b> Israeli bulldozers continue to level agricultural land north and east of the settlements of Kiryat Arba and Harsina.</p> <p><b>Settlement Activity:</b> The Israeli authorities began construction of 144 housing units on Palestinian land for the expansion of Harsina settlement.</p>
7 January	<p><b>Land Levelling:</b> (i) Israeli bulldozers continue to level agricultural land north and east of the settlements of Kiryat Arba and Harsina.</p> <p>(ii) Israeli bulldozers levelled agricultural land and demolished fences in Al 'Arrub refugee camp, adjacent to the Hebron/Jerusalem road.</p> <p><b>Land Confiscation:</b> The Israeli authorities issued orders confiscating land south of the city of Hebron in order to expand the settlement of Haggai.</p>
13 January	<p><b>Land Levelling:</b> The Israeli army leveled 15 <i>dunums</i> (3.75 acres) of agricultural land located south west of the settlement of Kiryat Arba for expansion and construction of a wall enclosing the settlement.</p>
16 January	<p><b>Chemical Destruction:</b> 3 Israeli helicopters sprayed an unidentified chemical substance over 1000 <i>dunums</i> (250 acres) of agricultural land east of the town of Yatta. All crops were destroyed.</p>
18 January	<p><b>Livestock Slaughter/Fine:</b> The Israeli army killed 250 sheep that were grazing in the Wall closed zone in the town of Yatta. The Israeli army then demanded the owner of the livestock, Othman Jubariya, pay a fine of 64,500 NIS (14,660 USD).</p>

## QALQILYA

Passage through the Wall gates in the Qalqilya district is restricted to civilians granted special Israeli permits which are based on no specific criteria. This Israeli closure continues to harm the education process since teachers, amongst others, are not granted access through the gates, particularly in areas located behind the Wall.

<b>14 December</b>	<b>Wall Gates:</b> The gates leading to the agricultural lands of the town of Jayyus and the village of Falamyia were closed, preventing farmers, even those with permits, from accessing their lands.
<b>15 December</b>	<b>Wall Gates:</b> (i) The Israeli army prevented vehicles and water supply tankers from crossing through the Wall gates, while detaining civilians at the gate of Ras Al Tira village, located behind the Wall, until 19:00. Students studying outside the village were delayed until 16:30. (ii) The Israeli army prevented vehicles carrying food supplies from entering the villages of al-Tira, ad- Dab'a and Wadi al-Rasha located behind the Wall. (iii) The Israeli army prevented a doctor from crossing the gate of Ras Al Tira village to attend Nibal Tawfik Mara'ba, an 11 year-old patient suffering from a high fever. Nibal and her father were prevented from leaving the village to receive medical care.
<b>16 December</b>	<b>Wall Gates:</b> (i) The villages of Ad Dab'a, Ras al-Tira, 'Arab ar Ramadin, 'Arab Abu Farda and Wadi Rasha, located behind the Wall, remain closed for the 4 <sup>th</sup> consecutive day. The Israeli army has prevented employees, students, medical units and ambulances from passing through the Wall gates. (ii) Entrance through the remaining western gates is only open to civilians with special permits from the Israeli Civil Administration.
<b>25 December</b>	<b>Closure:</b> At 01:55, the Israeli army raided the village of 'Azzun (located behind the Wall), searched several civilian houses, and sealed off the area of 'Azzun 'Atma, preventing civilians from leaving the village. <b>Wall Gates:</b> The Israeli army arrested 3 children under the age of 12, including 2 brothers, on the ground that they were too close to one of the Wall gates in Qalqiliya city.
<b>26 December</b>	<b>Demolition Orders:</b> The Israeli army warned several civilians in the village of 'Azzun 'Atma (located behind the Wall) that 10 houses and storehouses would be demolished soon.
<b>12 January</b>	<b>Settlement Activity:</b> The Israeli Minister of Defense set a budget of 92 million NIS (approx. \$20 million USD) for the construction of a bypass road connecting the settlement of Alfe Menashe and Karnei Shomeron. This implies the confiscation of thousands of <i>dunums</i> of Palestinian land.

**SALFIT**

<b>8 December</b>	<b><u>Tree Uprooting:</u></b> At 21:45, an Israeli bulldozer uprooted olive trees in the town of Kafr 'Ein.
<b>23 December</b>	<b><u>Closure:</u></b> The Israeli army closed the iron gate at the entrance of the town of Deir Ballut. <b><u>Medical Obstruction/Death:</u></b> The Israeli army prevented an ambulance carrying Lamis Taysser who was in labor, from crossing the iron gate. The medical team in the ambulance delivered the twin babies at the checkpoint. One of the twins died during birth.
<b>24 December</b>	<b><u>Wall Property Demolitions:</u></b> The Israeli army informed the owners of several stores located on the main road that their stores would be demolished for construction of the Wall. <b><u>Death:</u></b> The second twin of Lamis Ibrahim, 26 years old, who gave birth to twin babies at the entrance of Deir Ballut after the Israeli army prevented the ambulance carrying her to pass, died today. The first baby died shortly after birth. Lamis Ibrahim is currently being treated for shock resulting from the death of her twins. <b><u>Settler Violence:</u></b> At 20:00, settlers from the settlement of Kfar Tapu'ach demolished a room housing power generators that provide electricity to the village of Yasuf.
<b>3 January</b>	<b><u>Settlement Activity:</u></b> The Israeli authorities allocated \$225,000 USD for construction of a settler bypass road connecting the settlement of Ariel and the outpost of Tappuah Mari in order to annex the outpost to Ariel settlement.
<b>18 January</b>	<b><u>Wall Construction:</u></b> The Israeli army served eviction orders to residents located west of Salfit to evacuate the area by 15 February 2004 for construction of the Wall.





INTERNATIONAL COURT OF JUSTICE

Cour internationale de Justice  
Enregistré au Greffe le :  
International Court of Justice  
Filed in the Registry on :

29 JAN. 2004 / 8.(2)

LEGAL CONSEQUENCES OF THE CONSTRUCTION  
OF A WALL IN THE OCCUPIED PALESTINIAN  
TERRITORY  
(REQUEST FOR AN ADVISORY OPINION)

VOLUME 1

MAPS AND GRAPHICS

SUBMITTED BY

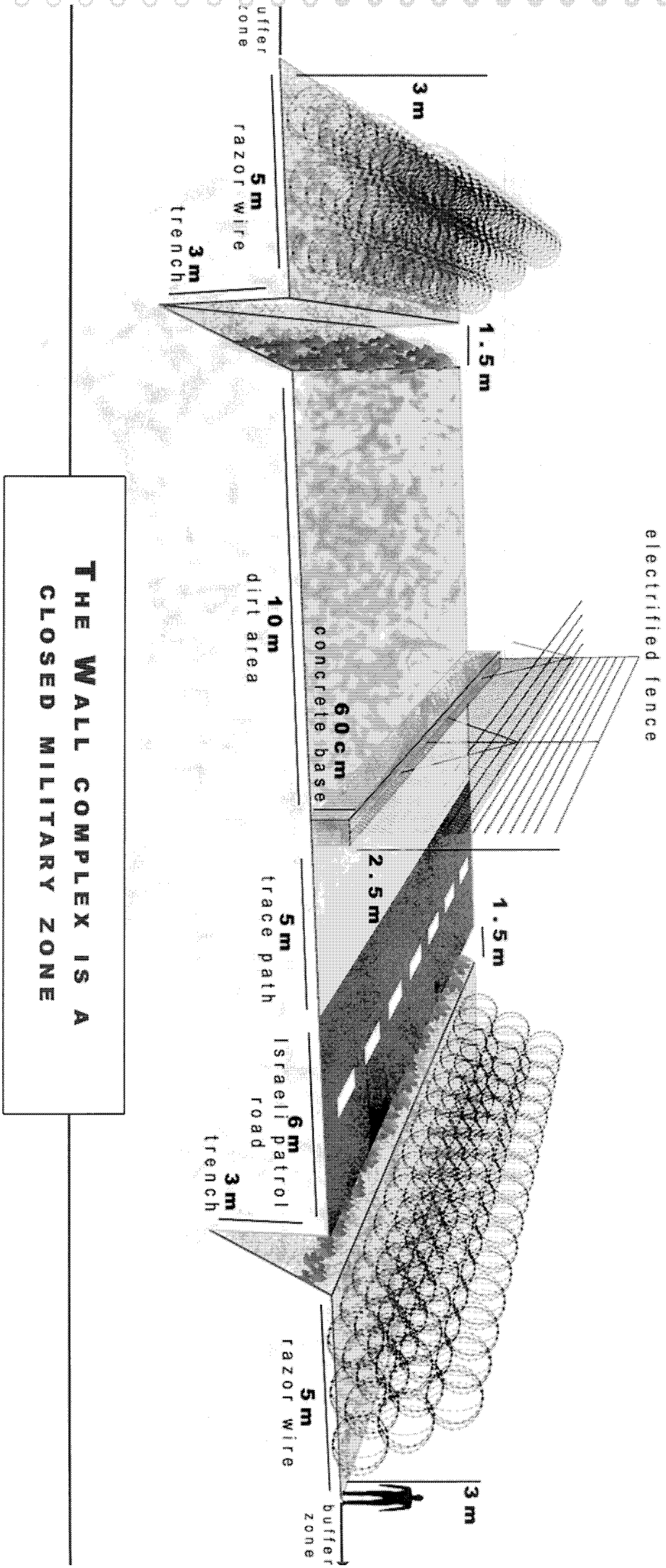
PALESTINE

30 JANUARY 2004

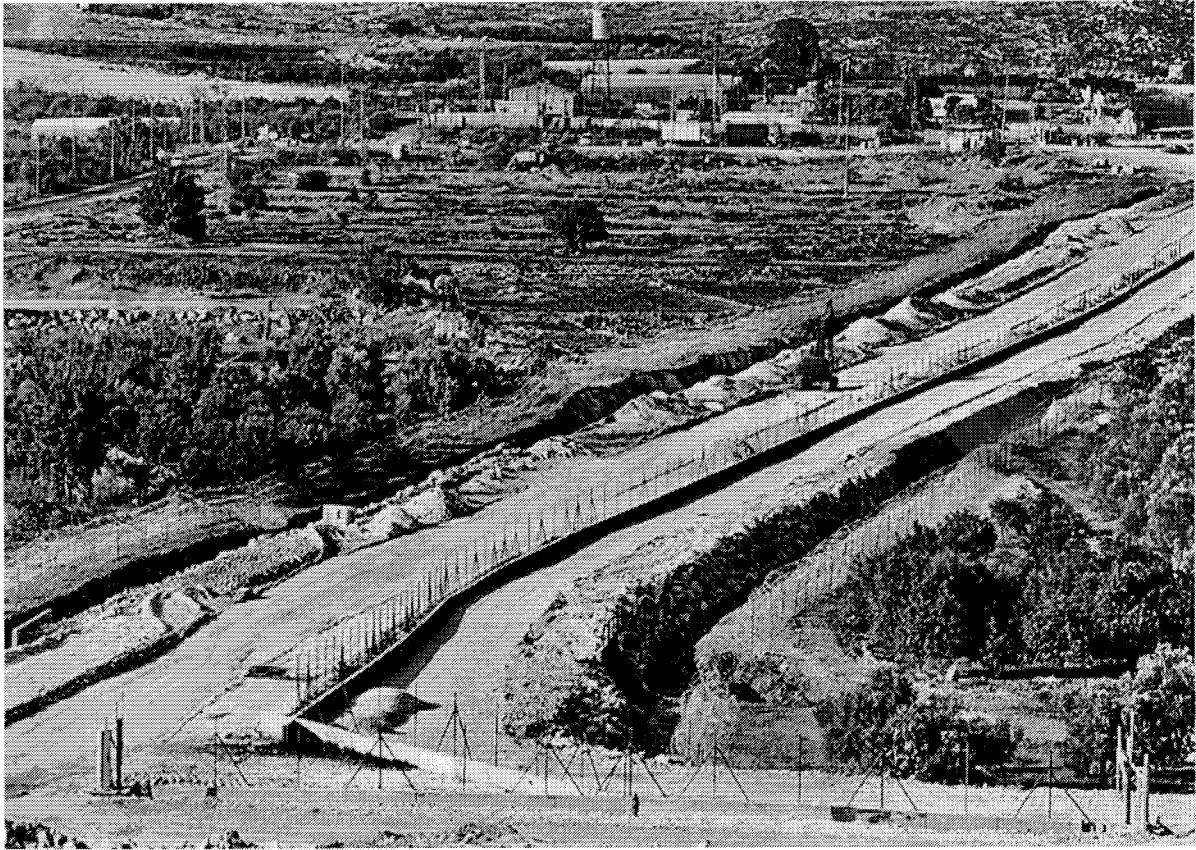
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# CROSS SECTION OF THE WALL COMPLEX



The dimensions of this particular Wall section are derived from the Qalqilya area. The components illustrated are also found in other areas of the Occupied Palestinian Territory. For concrete sections of the Wall, see photograph section.



**Photograph 1:** Qalqilya (August 2003): Section of the Wall Complex surrounding Qalqilya.



**Photograph 2:** Qalqilya (July 2003): Qalqilya northern area greenhouses isolated on the western side of the Wall. On 4 October 2003, the Israeli Army closed the agricultural gate allowing farmers access to this area. The gate was never re-opened. Palestinian farmers have started dismantling and selling their greenhouses after suffering financial losses due to the repeated closures.



**Photograph 3:** Qalqilya (September 2003): One of 13 Israeli Army watchtowers surrounding Qalqilya.



**Photograph 4 :** Abu Dis, Occupied East Jerusalem (January 2004): Example of how the Wall divides Palestinian neighborhoods.





**Photograph 5:** Abu Dis, Occupied East Jerusalem (January 2004): Israeli soldiers near the Wall in Abu Dis.



**Photograph 6:** Daba, Qalqilya Governorate (March 2003): Israeli bulldozers uprooting Palestinian olive groves in the Palestinian village of Daba.



**Photograph 7:** Daba, Qalqilya Governorate (March 2003): Israeli bulldozers uprooting Palestinian olive groves in the Palestinian village of Daba.



**Photograph 8:** Al-Daba, Qalqilya Governorate (March 2003): Elderly Palestinian farmers from the Palestinian village of Daba watch as their olive crops are uprooted by Israeli bulldozers.





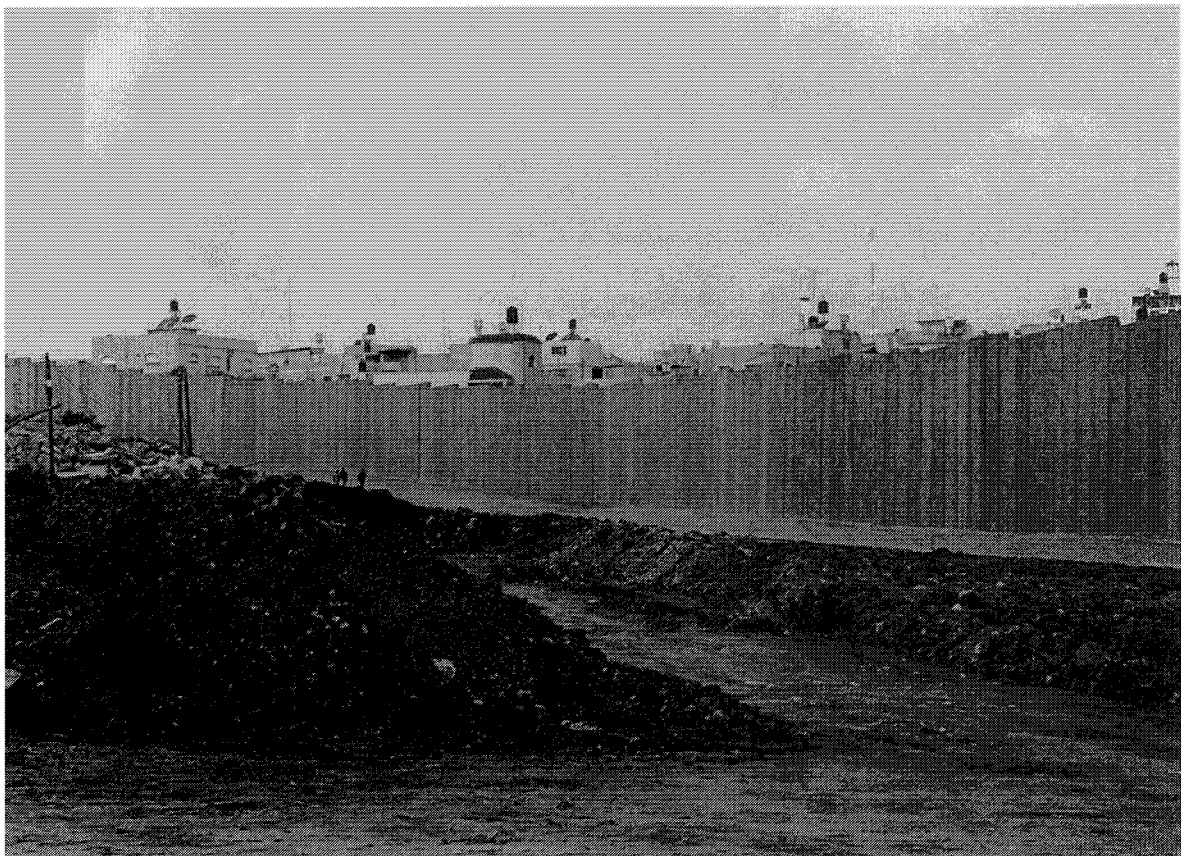
**Photograph 9:** Nazlat Issa, Tulkarem Governorate (21 August, 2003): In August 2003, the Israeli Army destroyed 124 market stalls and 7 homes in what was once one of the largest open-air markets in the Occupied Palestinian Territory. On 21 January 2003, 62 stalls were destroyed. On 24 August 2003 Israeli military order 03/57/C was issued confiscating the market area land, stating that it was "out of necessity to protect Israeli settlements in the area." The nearest settlement, 'Hormesh,' is 4 kilometers away.



**Photograph 10:** Nazlat Issa, Tulkarem Governorate (October 2003): Palestinian merchants amidst the rubble of the destroyed market area.

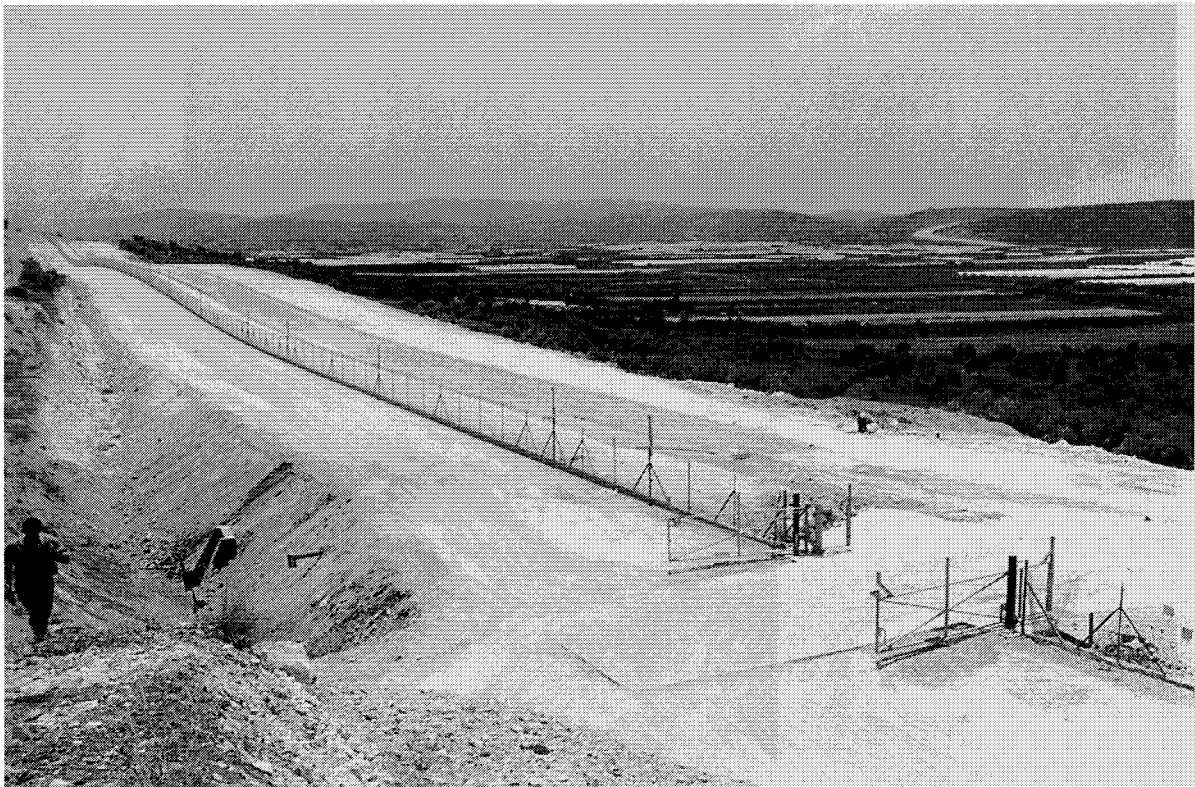


**Photograph 11:** Nazlat Issa, Tulkarem Governorate (24 November 2003): After the destruction of the market in August 2003, the rubble was cleared and Israelis prepare to erect the 8 - meter high concrete Wall encircling the Palestinian towns of Baka Sharqiya, Nazlat Issa and Abu Nar, in effect destroying the economic viability of this once thriving market hub.

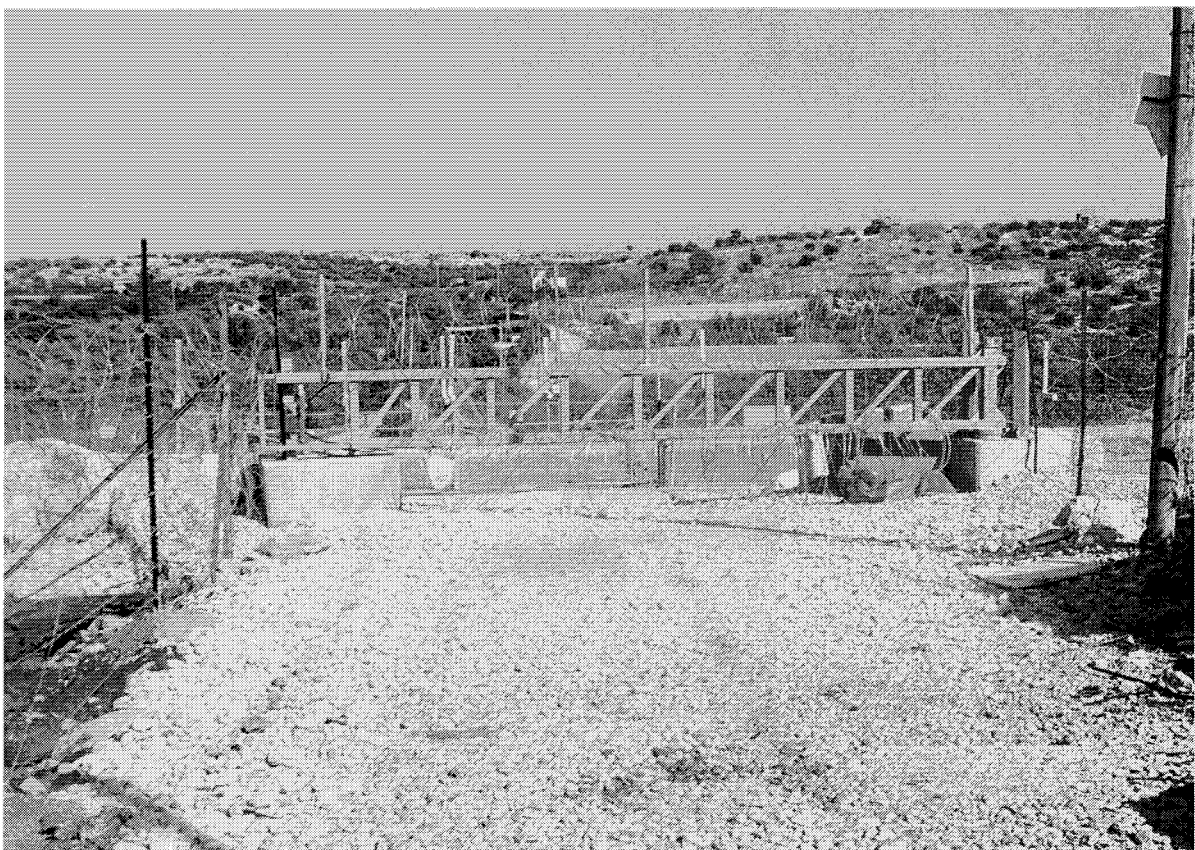


**Photograph 12:** Nazlat Issa, Tulkarem Governorate (5 January 2004): The completed 8 - meter high concrete Wall.





**Photograph 13:** Zayta, Tulkarem Governorate (July 2003): Palestinian owned greenhouses “isolated” on the western side of the wall. Palestinian farmers must obtain permits from the Israeli military in order to access their land in the Closed Zone.



**Photograph 14:** Qalqilya (November 2003): Qalqilya northern area gate closed since 4 October 2003. It has never re-opened. Over 280 Qalqilya farmers depend on this gate to access their farms and greenhouses.



**Photograph 15:** Qalqilya (29 September 2003): Sign posted near the Wall in Qalqilya with Israeli army watchtower in the background.



**Photograph: 16** Jayyus, Qalqilya Governorate (15 October 2003): Farmers line-up to attempt to cross the agricultural gates in order to access their farmland. Two-thirds of Jayyus's agricultural land is situated on the western side of the Wall in the Closed Zone. During the month of October, the Israeli army closed the agricultural gates from 4 – 24 October. As a result, Jayyus lost 90% of its guava crop





**Photograph 17:** Jayyus, Qalqilya Governorate (19 October 2003): Jayyus farmers waiting for the gate to open. Only 7 tractors and 2 trucks from Jayyus out of 300 farmer households have vehicular permits to access the Closed Zone to transport produce back to the village.



**Photograph 18:** Jayyus, Qalqilya Governorate (November 2003): Palestinian farmer with Israeli military issued Closed Zone access permit is checked by Israeli soldiers before crossing to his land on the western side of the Wall.

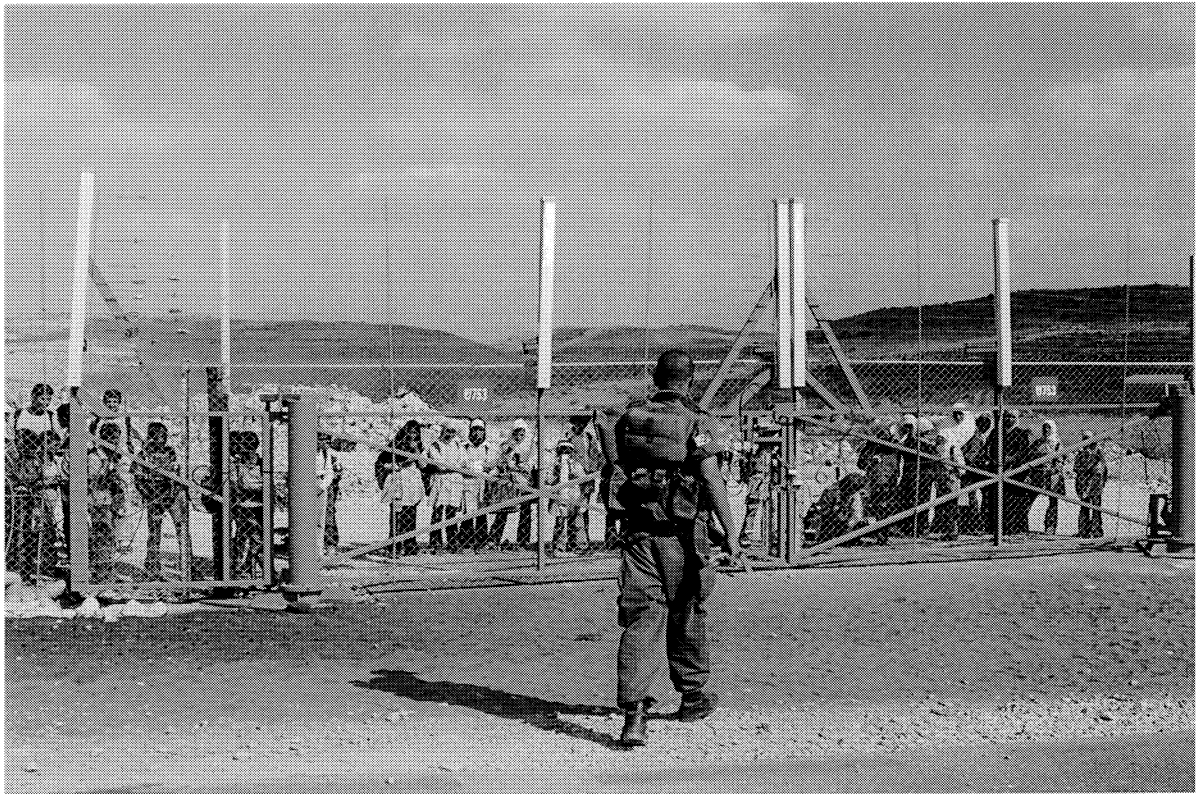


**Photograph 19:** Jayyus, Qalqilya Governorate (November 2003): Palestinian woman dependent on working in the Closed Zone waits with other farmers and shows her access permit to Israeli soldiers at the Jayyus agricultural gate.



**Photograph 20:** Qalqilya (August 2003): Palestinian women and children are checked by Israeli soldiers outside the West Bank town of Qalqilya.





**Photograph 21:** Khirbet Jabara, Tulkarem Governorate (October 2003): Palestinian schoolchildren from the village of Khirbet Jabara waiting for Israeli soldiers to open the gate so that they may return to their homes after school in the nearby village of Kufr Sur. Khirbet Jabara is situated in the Closed Zone and consequently, all residents must obtain permission from Israeli authorities to live in their homes.



**Photograph 22:** Khirbet Jabara, Tulkarem Governorate (October 2003).



**Photograph 23** : Qalqilya Checkpoint (July 2003): “Back to Back” system. Goods entering and leaving Palestinian towns and some villages must be off-loaded then on-loaded onto awaiting vehicles increasing transportation costs by up to 400%.



**Photograph 24**: The Israeli ‘Kfar Tapuah’ settlement linked with one of its outposts situated on a hilltop south of the Palestinian city of Nablus in the Occupied Palestinian Territory. Erecting of ‘outposts’ is used by Israel as a tool for extending and expanding settlements.

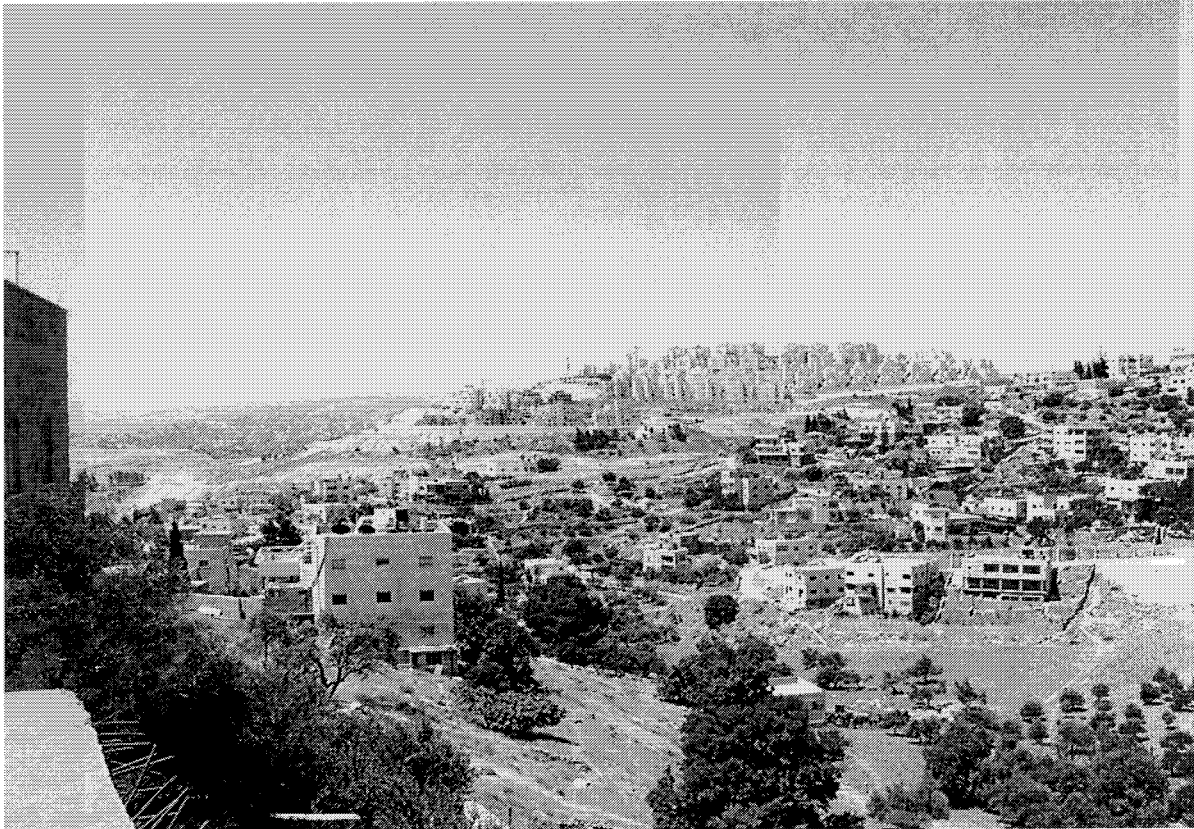




**Photograph 25:** The Israeli settlement outpost 'Ahiya' situated east of the Palestinian town of Salfit in the Occupied Palestinian Territory (2003). Many outposts are built on hilltops as strategic locations for controlling the neighbouring land.



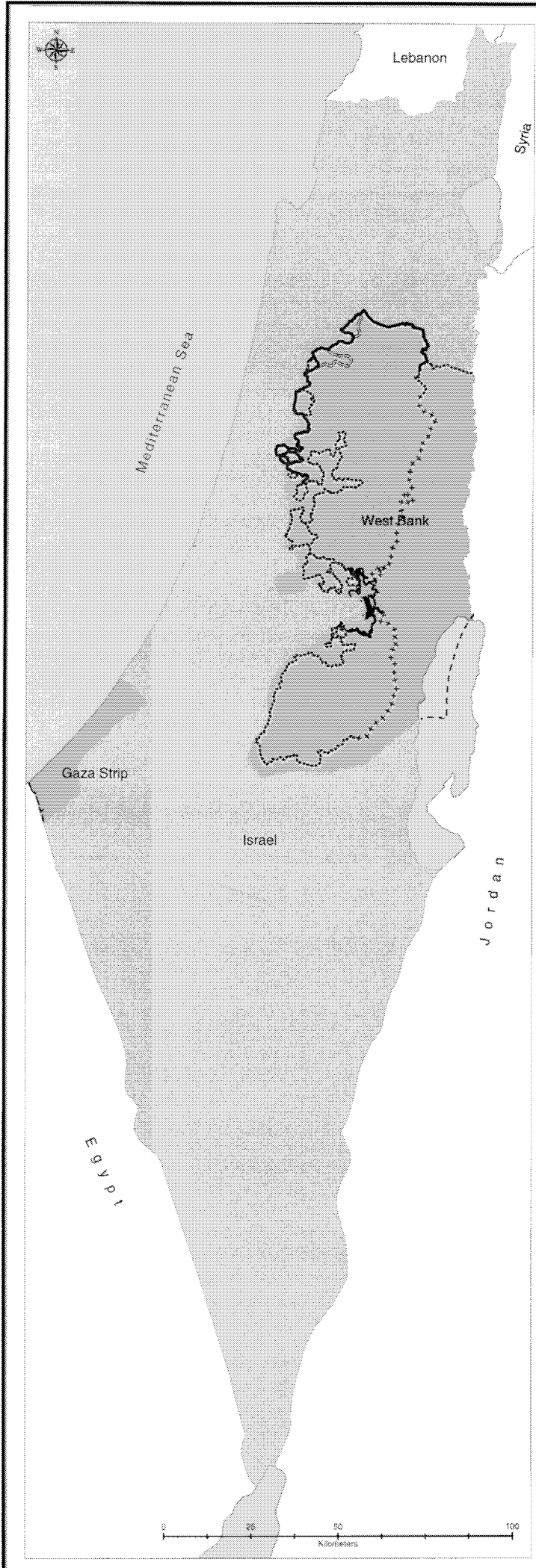
**Photograph 26:** The Israeli settlement outpost of 'Migron', situated east of the Palestinian city of Ramallah in the Occupied Palestinian Territory (2003). Many settlements are started by erecting caravans, which are subsequently replaced by permanent housing and infrastructure.



**Photograph 27:** In the distance, the Israeli settlement of 'Har Homa' situated south of Jerusalem and encroaching on the land of Sur Baher, a Palestinian village (2003). This settlement closes off to Palestinians southern access into Jerusalem and isolates East Jerusalem from neighboring Palestinian areas. This settlement is planned to accommodate 100,000 settlers.










**Photograph 28:** The Israeli settlement of 'Psagot', shown by the cluster of red roof tops, blocks the physical expansion eastward of the Palestinian town of Ramallah shown in the foreground.



**THE WALL  
IN  
OCCUPIED PALESTINIAN TERRITORY  
INCLUDING EAST JERUSALEM**

**Legend**

-  Green Line (Armistice Line 1949)
-  Phase I: Constructed Part of the Wall
-  Phase II: Wall Trajectory Approved/Under Construction
-  Phase III: Projected Eastern Wall
-  Projected Wall Extensions
-  East Jerusalem Municipality Boundary
-  Israeli Illegally Expanded Municipality of East Jerusalem (after 1967)

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January 2004

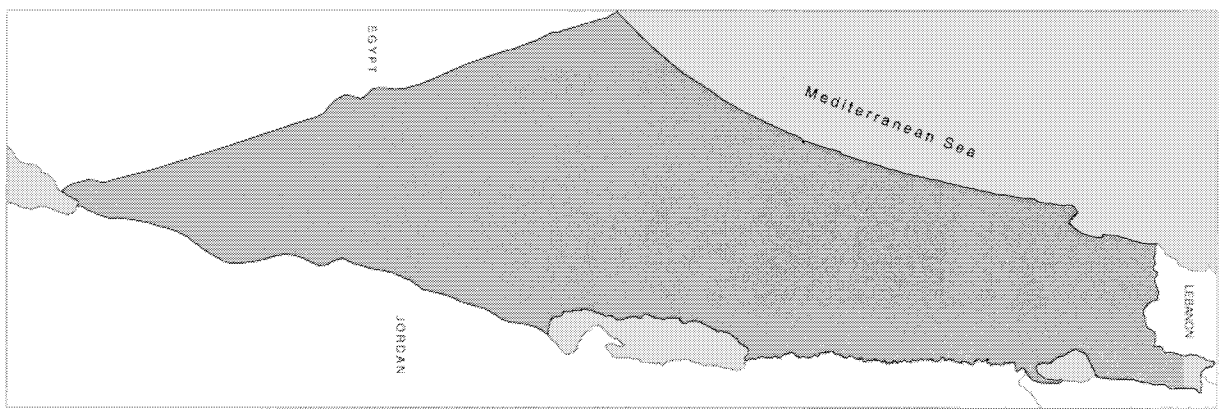




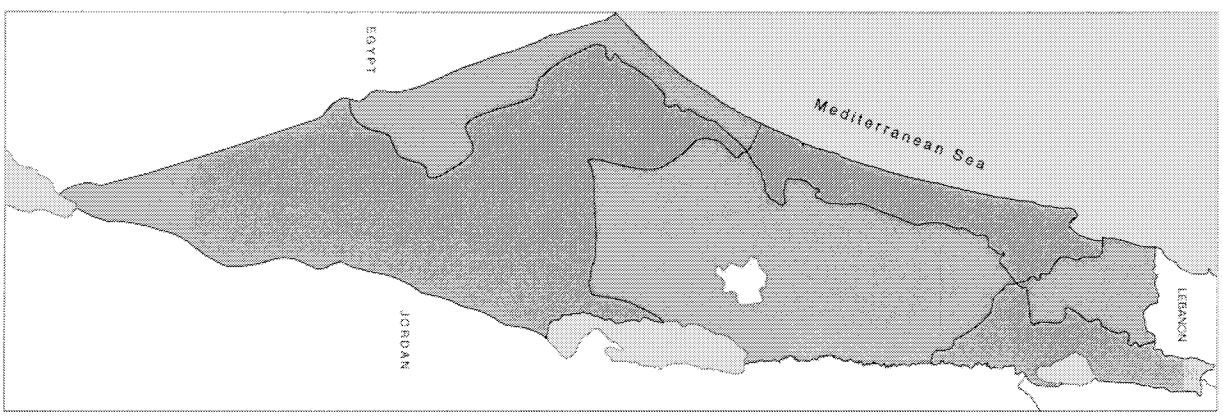
# MAP 2

## HISTORICAL DIVISION OF PALESTINE

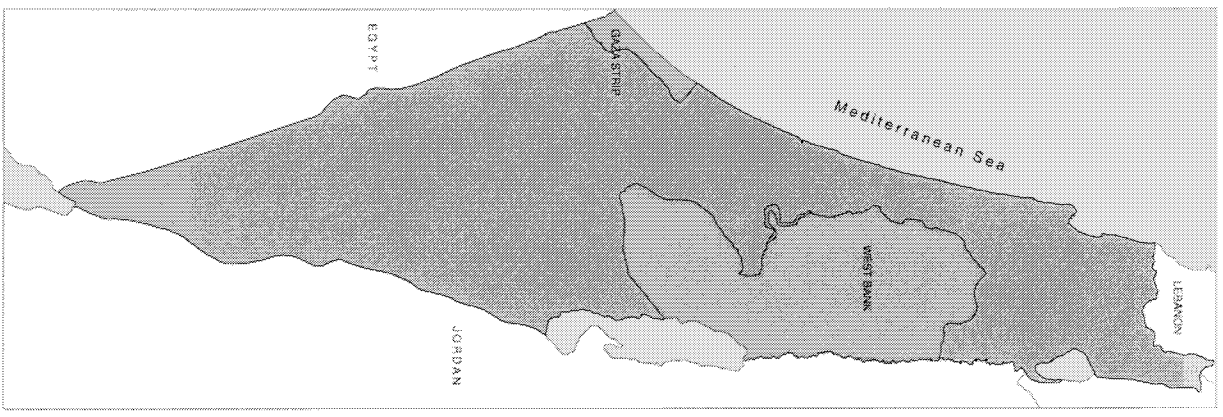
MAP a  
Mandated Palestine



MAP b  
UN Partition Plan 1947



MAP c  
Armistice Lines 1949



**Legend of Map a:**

- Mandated Palestine

**Legend of Map b:**

UNITED NATIONS RESOLUTION 181:  
According to the UN GA partition proposal of 1947, the total land area of Palestine was to be divided into:

- A Jewish state on approximately 56.47% of Palestine, although Jewish land ownership in this territory did not exceed 9.38%.
- An Arab state on approximately 42.89%.
- A Corpus Separatum of Jerusalem on approximately 0.65%.

**Legend of Map c:**

Following the war of 1948-1949, Israel controlled 77.94% of Mandated Palestine.

- State of Israel
- Occupied Palestinian Territory

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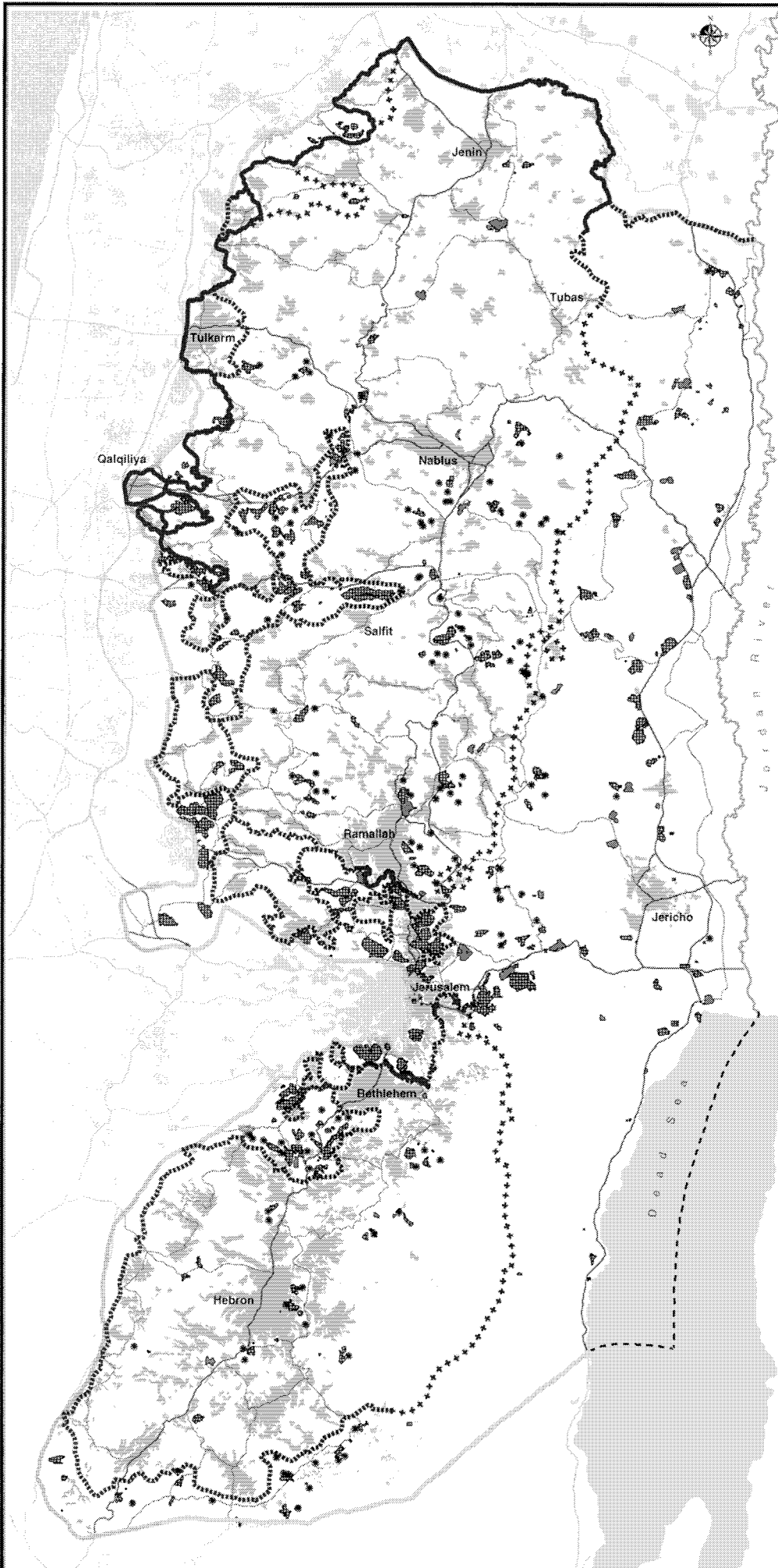
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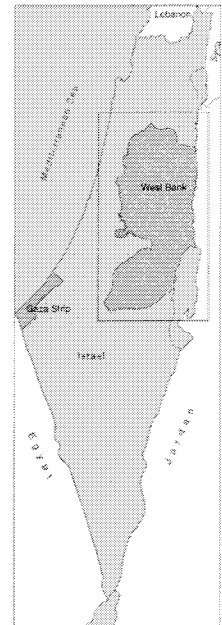
**THE WALL  
IN THE WEST BANK**

**Legend**

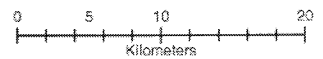
-  Green Line (Armistice Line 1949)
-  Constructed Part of the Wall
-  Wall Trajectory Approved/Under Construction
-  Projected Wall
-  Palestinian Built Up Area
-  Israeli Military Base
-  Israeli Settlement
-  Israeli Settlement Outpost
-  Highway
-  Main Road
-  Regional Road



Occupied Palestinian Territory

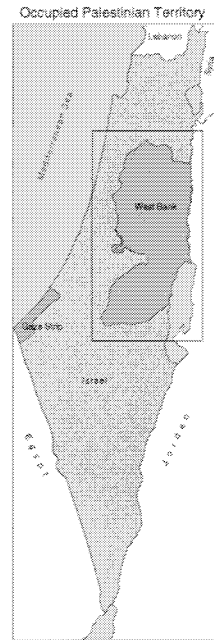
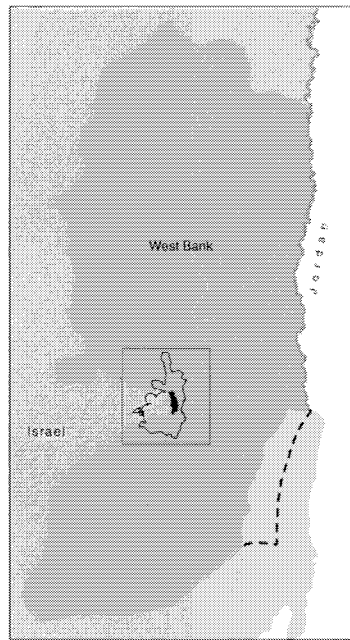
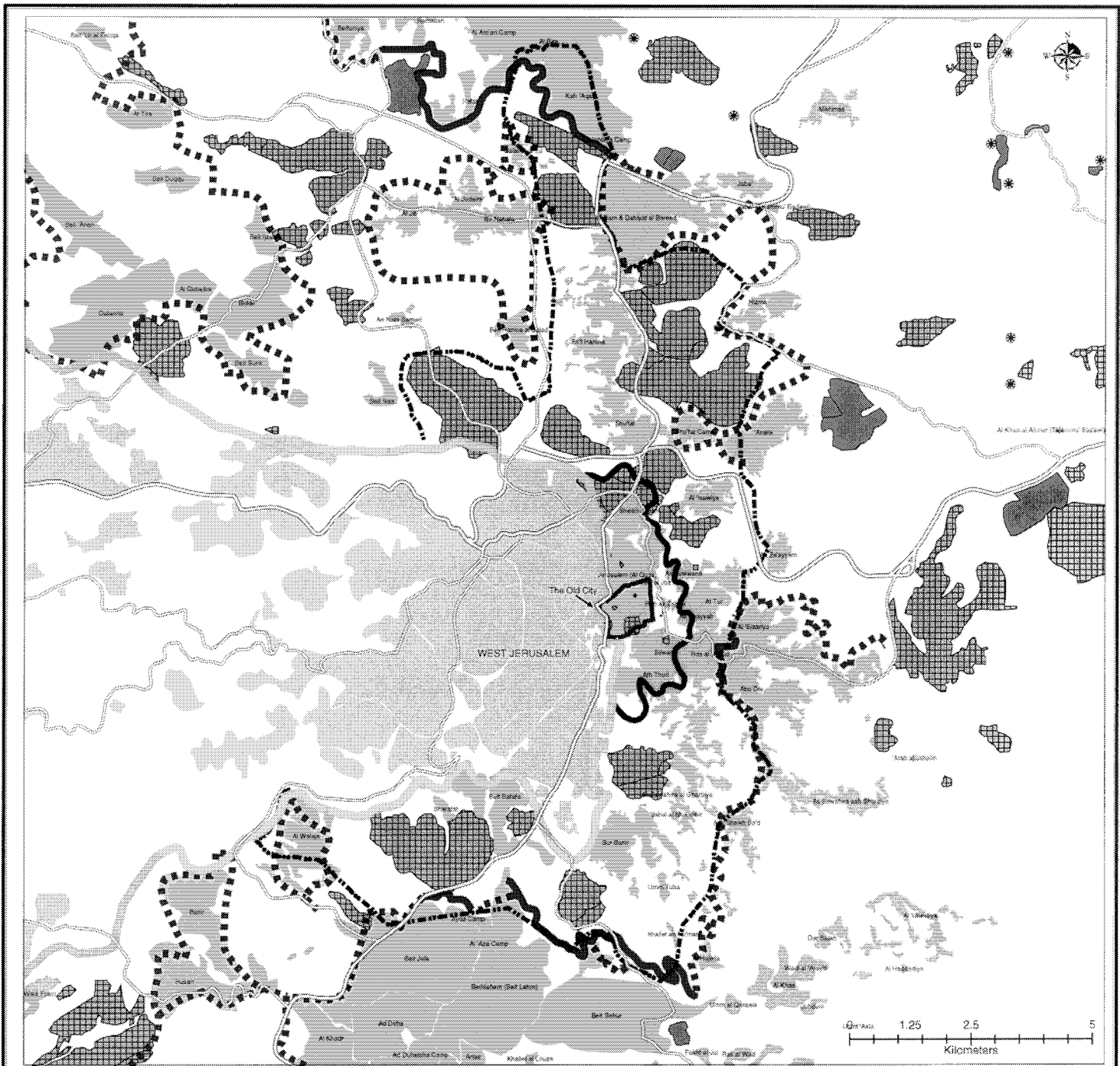


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January 2004





**MAP 4**  
**THE WALL**  
**IN**  
**EAST**  
**JERUSALEM**

**Legend**

- Green Line (Armistice Line 1949)
- Constructed Part of the Wall
- Wall Trajectory Approved/Under Construction
- Israeli Illegally Expanded Municipality of East Jerusalem (after 1967)
- Main Road
- Regional Road
- East Jerusalem Municipality Boundary
- Palestinian Built Up Area
- Israeli Military Base
- Israeli Settlement
- Israeli Settlement Outpost

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January 2004



THE WALL AND CLOSURE  
IN THE WEST BANK

Legend

Closure Elements:

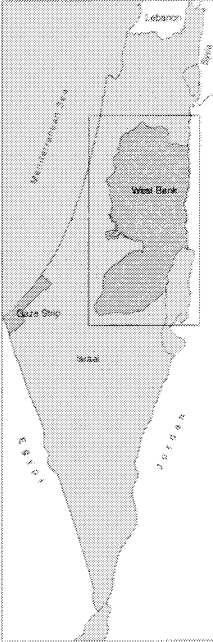
- ◆ Checkpoint
- Obstacle (Cement Block or Earthmound)
- Road or Wall Gate
- Ditch
- Green Line (Armistice Line 1949)
- Highway
- Main Road
- Regional Road
- Constructed Part of the Wall
- Wall Trajectory Approved/Under Construction
- \*—\* Projected Wall
- ▨ Palestinian Built Up Area
- Israeli Military Base
- Israeli Settlement

Breakdown of Closure Elements:

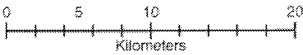
Source: Field survey conducted by United Nations OCHA oPt-HIC in December 2003.

Checkpoints (Israeli soldiers present):	73
Cement Blocks:	96
Earthmounds:	454
Road Gates:	36
Wall Gates:	37
TOTAL	696

Occupied Palestinian Territory



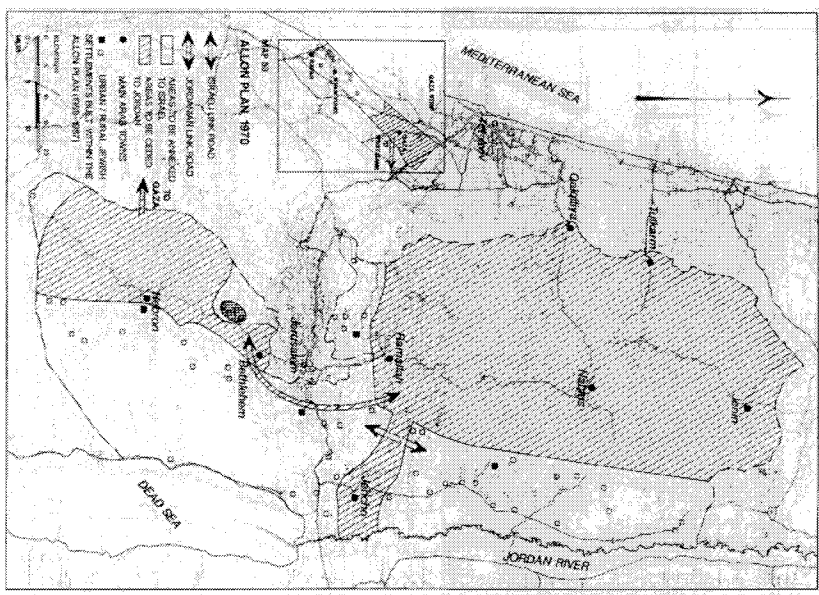
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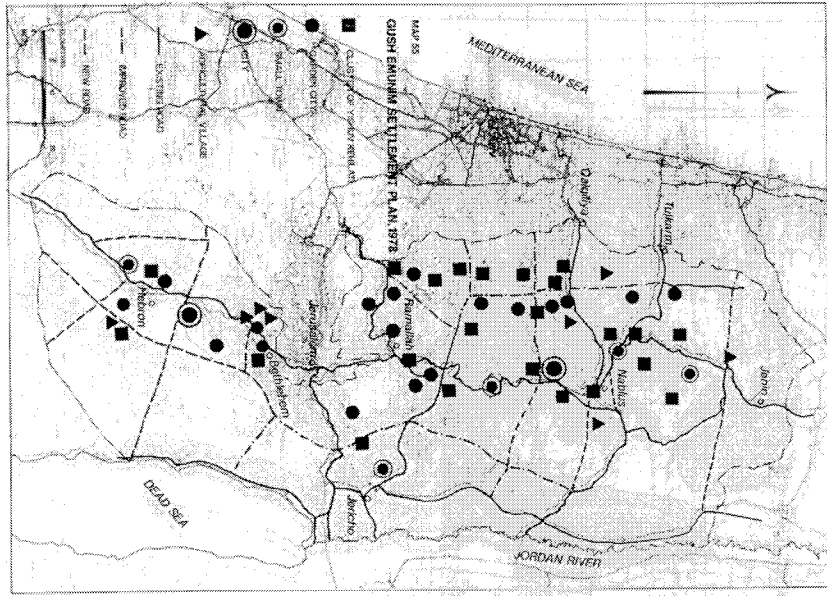
**ISRAELI SETTLEMENT PLANS  
IN OCCUPIED PALESTINIAN TERRITORY  
INCLUDING EAST JERUSALEM**

Allon Plan



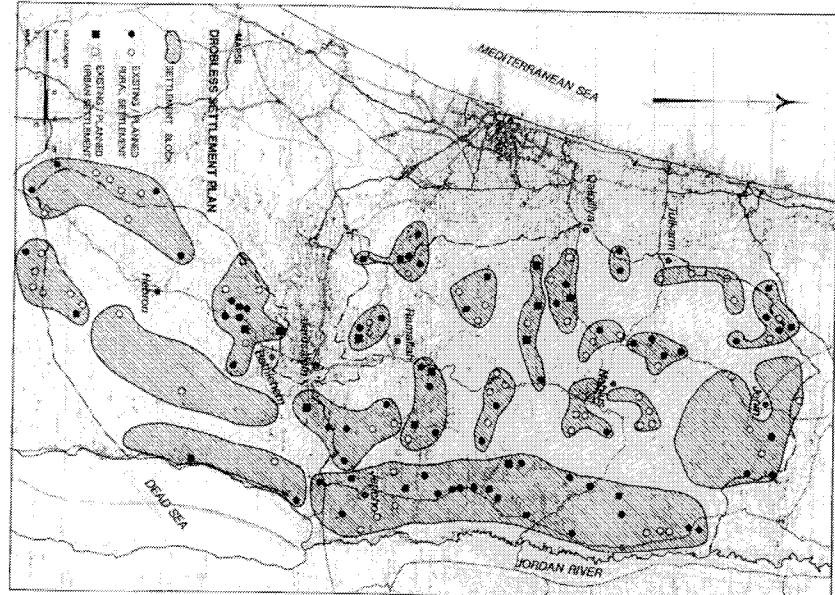
The Allon Plan called for creating defensive and political borders by establishing civilian settlements along the Jordan Valley, in a band across Jerusalem and in the west Bethlehem Area.

Gush Emunim Plan



Gush Emunim, an Israeli settler movement founded in 1974, called for establishing settlements in all parts of the 'land of Israel'. Their plan was the basis of the Drobless Plan.

Drobless Plan



The Drobless Plan called for Israeli settlements to fragment the territorial continuity of Palestinians and for settlements to be grouped in blocs.

Source: The West Bank and Gaza Atlas, 1986. The West Bank Database Project.

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January 2004





**ISRAELI AND PALESTINIAN-CONTROLLED AREAS IN THE WEST BANK MARCH 2000**

**Legend**

- Green Line (Armistice Line 1949)
- Highway
- Main Road
- Regional Road

- Israeli Military Base
- Israeli Settlement
- Israeli Settlement Outpost

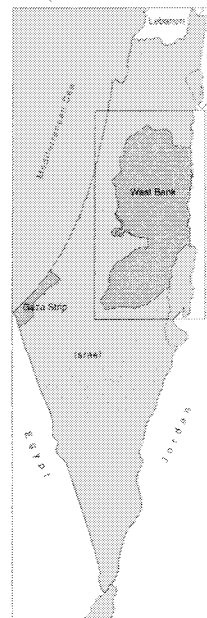
*Interim Agreement (Oslo Accords) Areas:*

- Area A (Palestinian-Controlled)
- Area B (Mixed Control)\*
- Area C (Israeli-Controlled)
- Nature Reserve
- Area H2 Hebron (Israeli-Controlled)\*\*

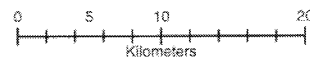
As of March 2000, Area A constitutes 17.71%, Area B constitutes 21.29% and Area C constitutes 61% of the West Bank.

\* Palestinian responsibility over civil affairs and public order and Israeli overriding security responsibility.  
 \*\* H1 Area under Palestinian Control.

Occupied Palestinian Territory



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# MAP 8

## THE WALL AND ISRAELI SETTLEMENT EXPANSION IN THE WEST BANK

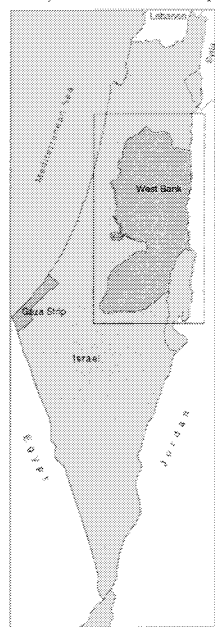
### Legend

- Green Line (Armistice Line 1949)
- Constructed Part of the Wall
- Wall Trajectory Approved/Under Construction
- Projected Wall
- Highway
- Main Road
- Regional Road
- Palestinian Built Up Area
- Israeli Military Base
- Israeli Settlement
- Approved Settlement Expansion Area
- Settlement Jurisdiction Area \*
- Israeli Settlement Outpost

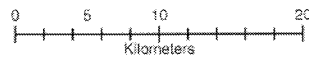
\* Denotes areas of jurisdiction of settlement regional councils that lie beyond the expansion areas. These jurisdictional areas are reserved for future settlement expansion or other related settlement development activities. The total area of existing built-up settlements, approved expansion and regional council jurisdiction constitutes approximately 42% of the West Bank.

Sources: Israeli settlement municipality and regional council planning maps, and B'Tselem.

### Occupied Palestinian Territory



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January 2004



**THE WALL AND  
ISRAELI SETTLER  
POPULATION  
IN THE WEST BANK**

**Legend**

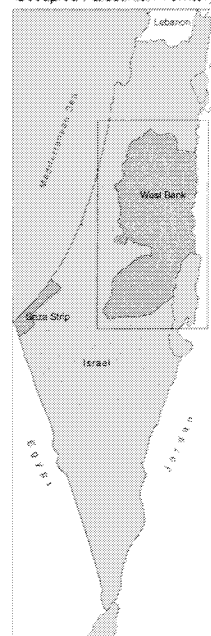
- Green Line (Armistice Line 1949)
- Constructed Part of the Wall
- Wall Trajectory Approved/Under Construction
- Projected Wall
- Highway
- Main Road
- Regional Road
- Palestinian Built Up Area

*Israeli Settler Population 2003*

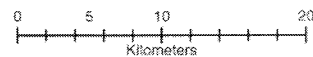
- 0 - 500
- 501 - 2500
- 2501 - 5000
- 5001 - 10000
- 10001 - 20000
- 20001 - 40000

Total number of Israeli Settlers in the West Bank is 402,137 according to the Israeli Knesset Research Department. This figure excludes Israeli population in 122 settlement outposts.

*Occupied Palestinian Territory*



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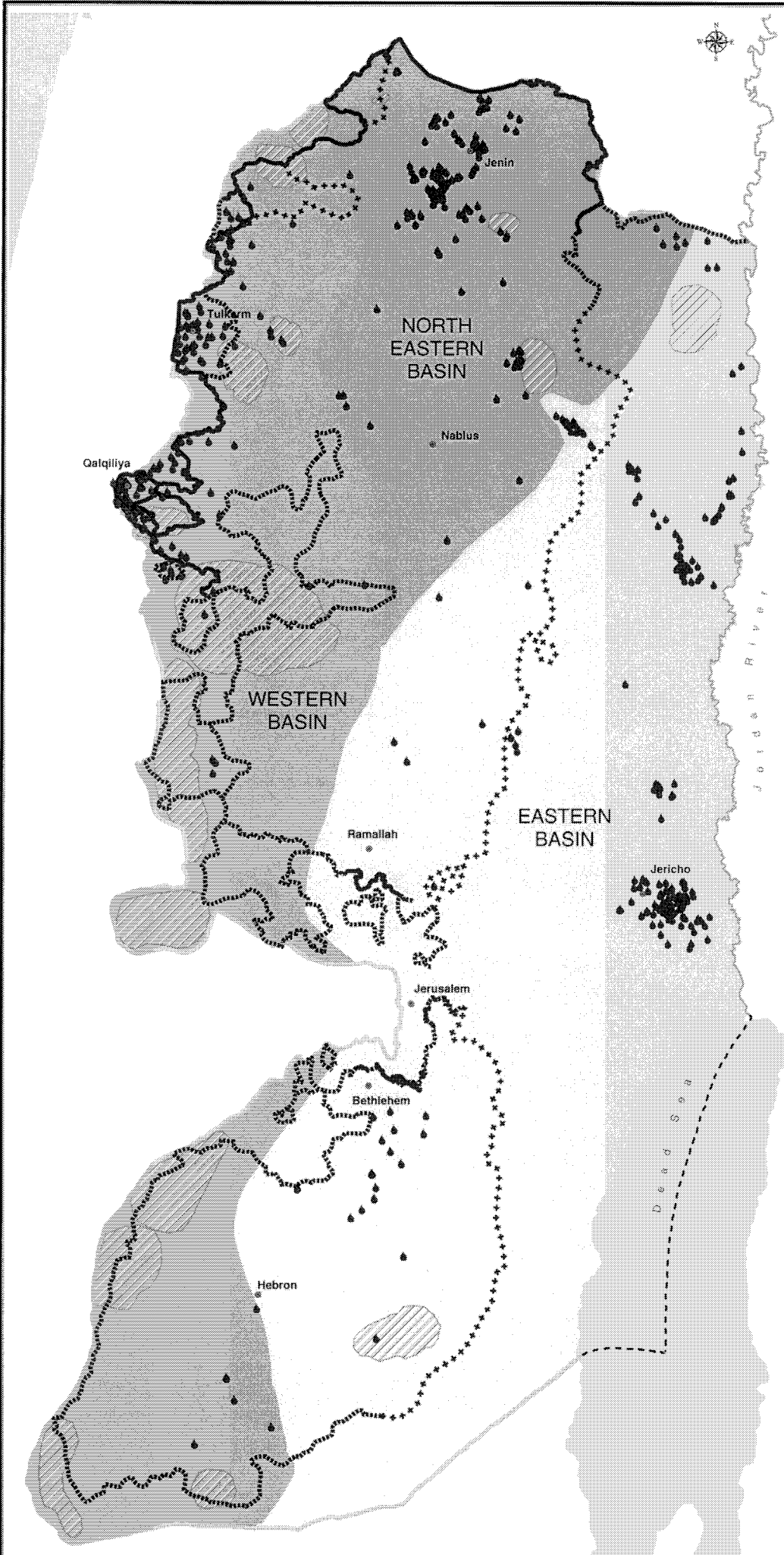


**THE WALL AND WATER RESOURCES IN THE WEST BANK**

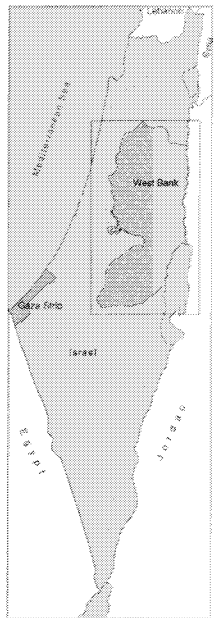
**Legend**

-  Green Line (Armistice Line 1949)
-  Constructed Part of the Wall
-  Wall Trajectory Approved/Under Construction
-  Projected Wall
-  Palestinian Well
-  Water Well Field

102 Palestinian wells are affected by Phase I of the Wall. Some wells have been destroyed by the construction of the Wall, 53 wells, that yield almost half the water in the area of Phase I, are isolated outside the Wall.

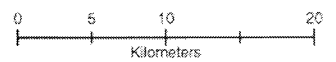


Occupied Palestinian Territory



Sources: Palestinian Economic Council for Development and Reconstruction (PECDAR) and the Palestinian Water Authority (PWA)

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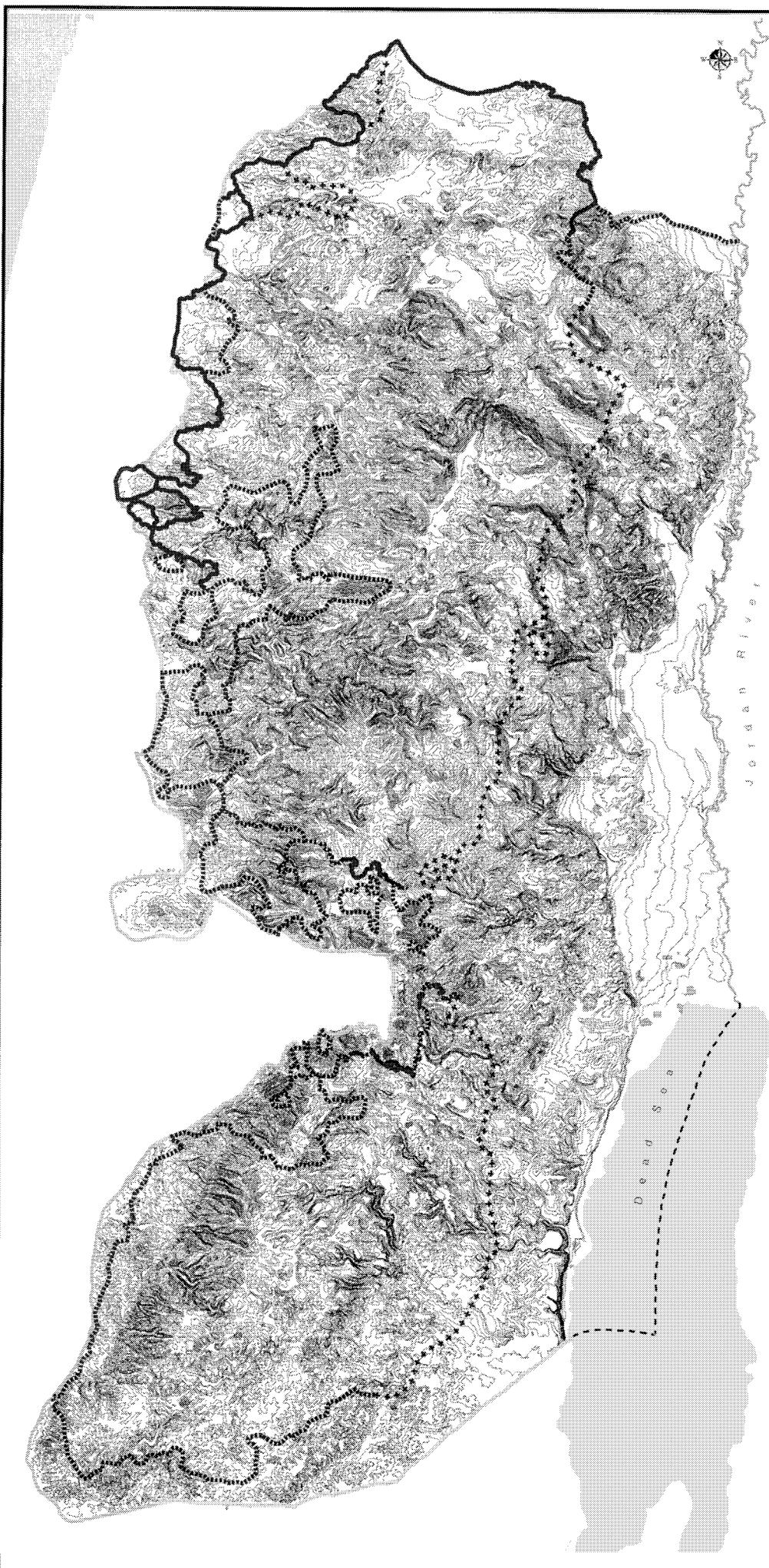
Palestinian Ministry of Planning  
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January 2004



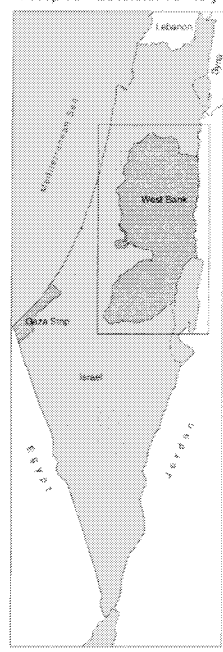
### THE WALL AND WEST BANK TOPOGRAPHY

**Legend**

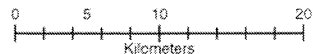
-  Green Line (Armistice Line 1949)
-  Constructed Part of the Wall
-  Wall Trajectory Approved/Under Construction
-  Projected Wall
-  Contour Lines with 25-meter interval
-  Israeli Settlement



Occupied Palestinian Territory

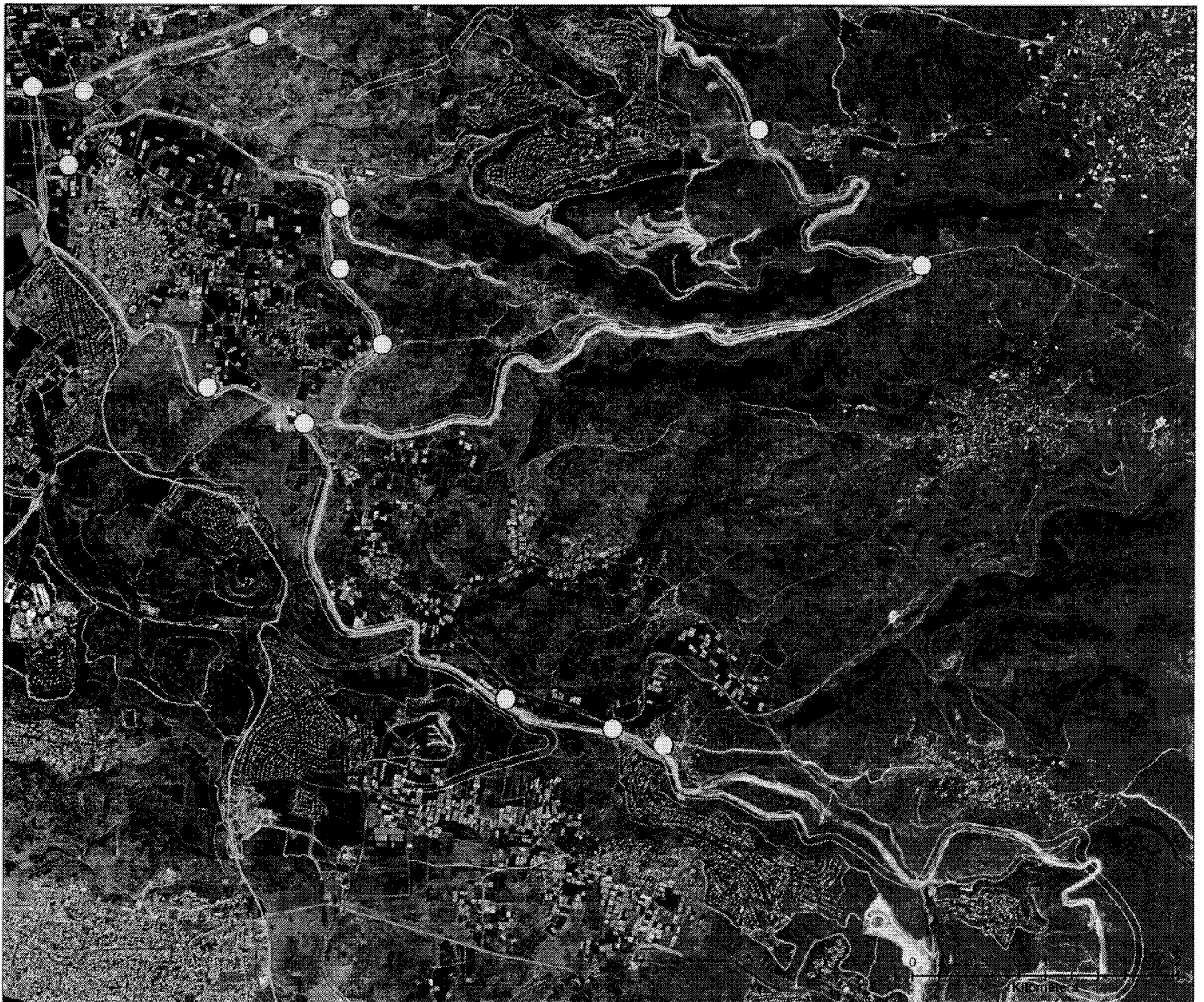


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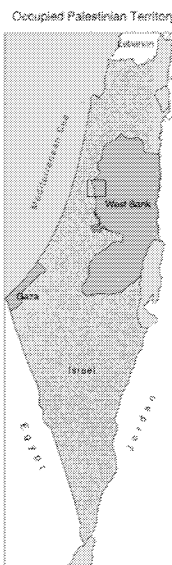
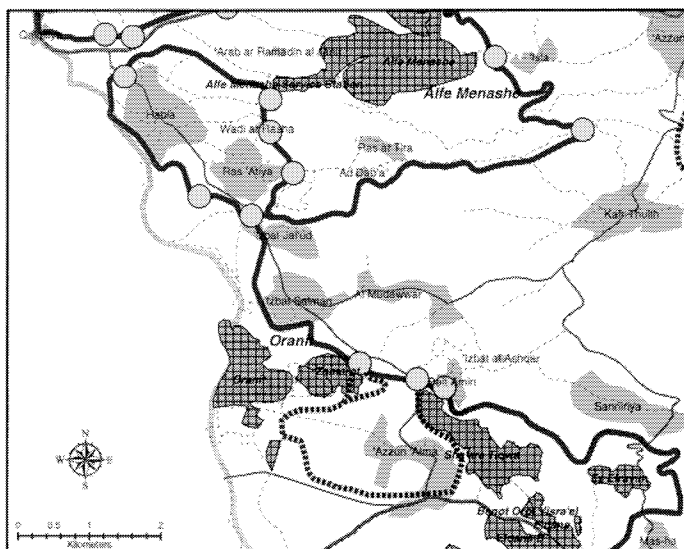
Palestinian Ministry of Planning  
 Specialized Technical Support Unit  
 January 2004





Background: Satellite Image, September 2003

**THE WALL  
IN THE WEST BANK**  
Section a: South of Qalqilya Area



**Legend**

- Green Line (Armistice Line 1949)
- Constructed Part of the Wall
- Wall Trajectory approved/under construction
- Projected Wall
- Main Road
- Regional Road
- Local Road
- Palestinian Built Up Area
- Israeli Settlement
- Confiscated Land (2002-2004)
- Wall Gate

Source of Land confiscation data: available Israeli Military Orders

Section a: South of Qalqilya Area

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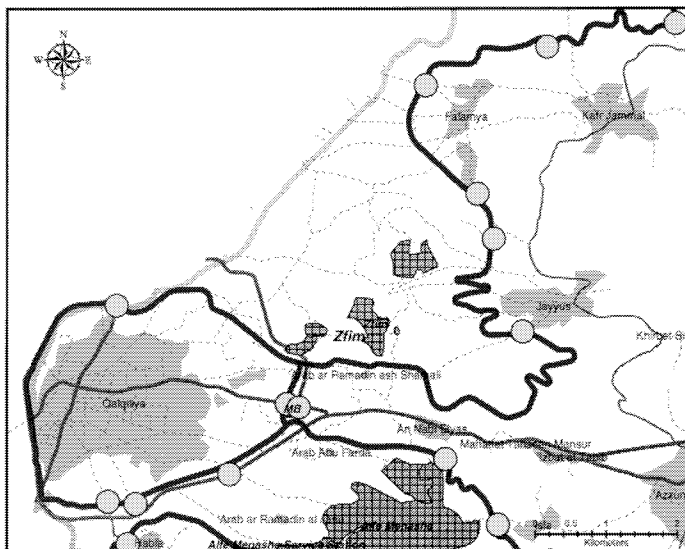




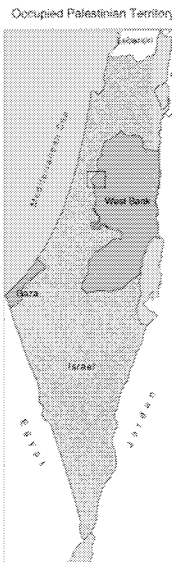


Background: Satellite Image, September 2003

**THE WALL  
IN THE WEST BANK  
Section b: Qalqilya Area**



Section b: Qalqilya Area



**Legend**

- Green Line (Armistice Line 1949)
- Constructed Part of the Wall
- Wall Trajectory approved/under construction
- Projected Wall
- Main Road
- Regional Road
- Local Road
- Palestinian Built Up Area
- Israeli Settlement
- Confiscated Land (2002-2004)
- Wall Gate

Source of Land confiscation data: available Israeli Military Orders

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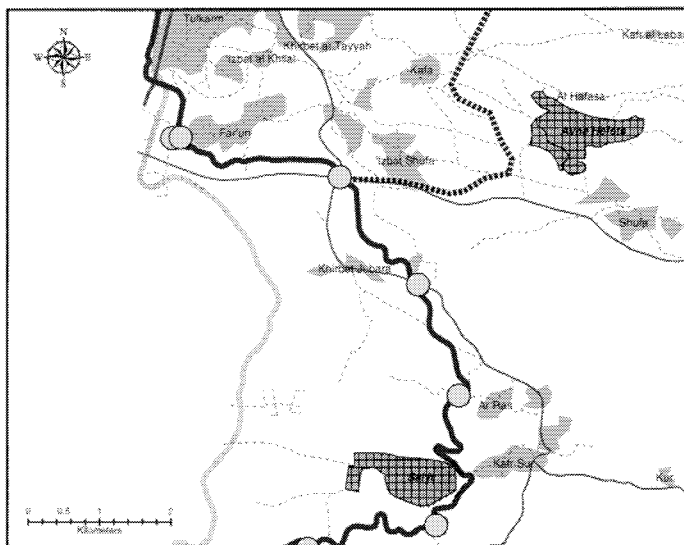
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Specialized Technical Support Unit  
January 2004





Background: Satellite image, September 2003

**THE WALL  
IN THE WEST BANK**  
Section c: South of Tulkarm Area



Section c: South of Tulkarm Area

Occupied Palestinian Territory



**Legend**

- Green Line (Armistice Line 1949)
- Constructed Part of the Wall
- Wall Trajectory approved/under construction
- Projected Wall
- Main Road
- Regional Road
- Local Road
- Palestinian Built Up Area
- Israeli Settlement
- Confiscated Land (2002-2004)
- Wall Gate

Source of Land confiscation data: available Israeli Military Orders

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Specialized Technical Support Unit  
January 2004

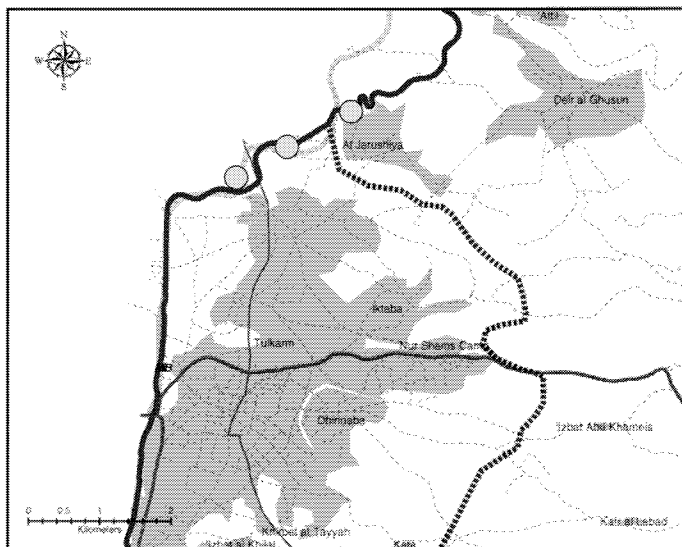




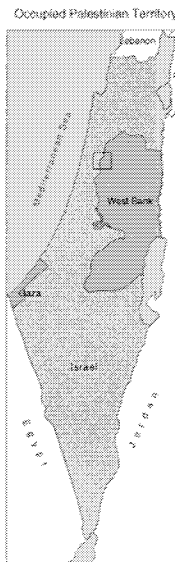


Background: Satellite Image, September 2003

**THE WALL  
IN THE WEST BANK**  
Section d: Tulkarm Area



Section d: Tulkarm Area



**Legend**

- Green Line (Armistice Line 1949)
- Constructed Part of the Wall
- Wall Trajectory approved/under construction
- Projected Wall
- Main Road
- Regional Road
- Local Road
- Palestinian Built Up Area
- Israeli Settlement
- Confiscated Land (2002-2004)
- Wall Gate

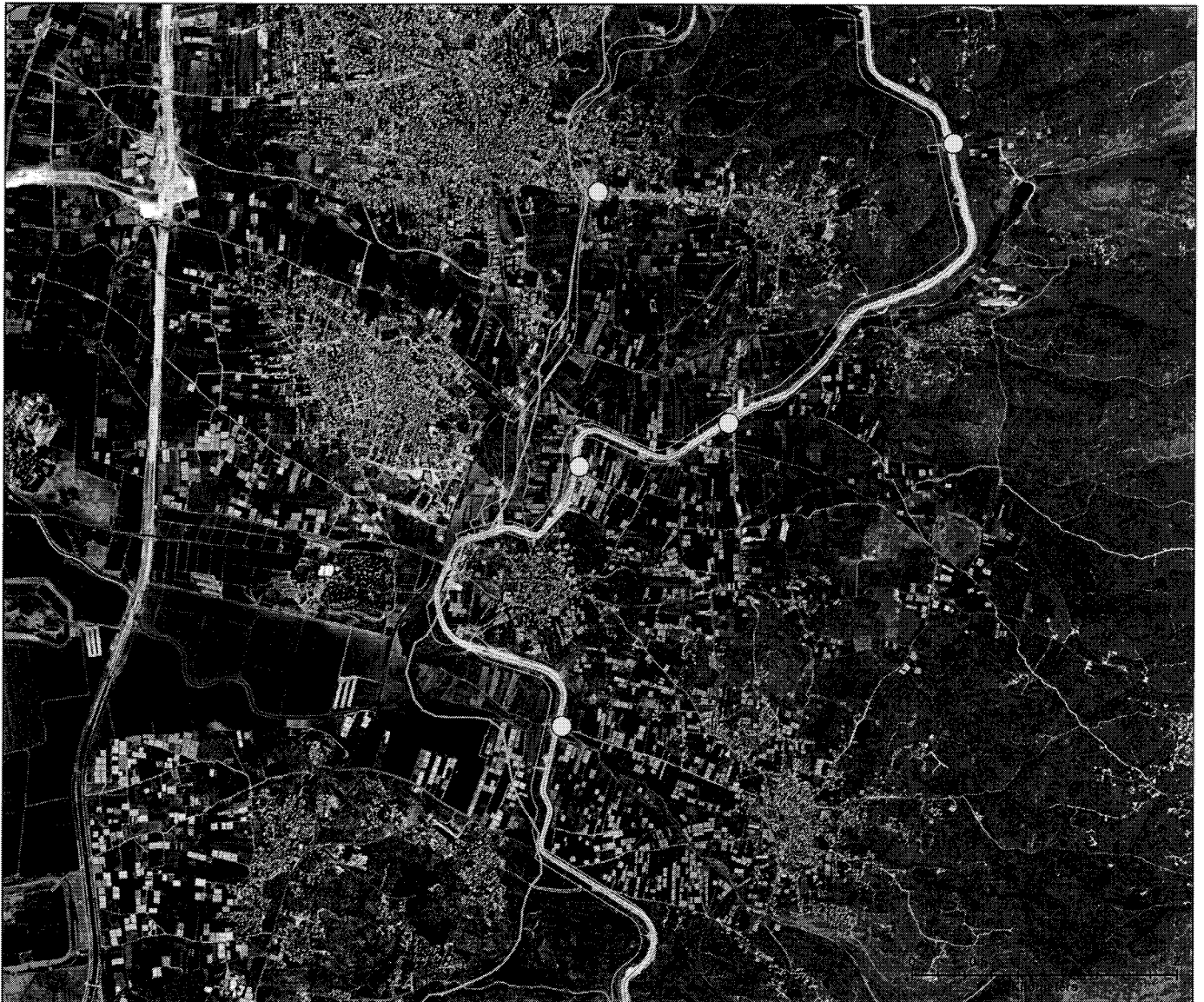
Source of Land confiscation data: available Israeli Military Orders

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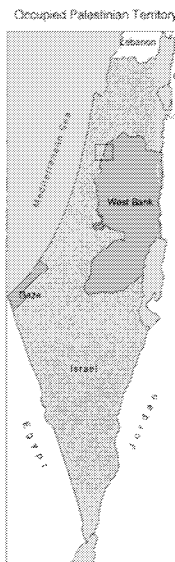
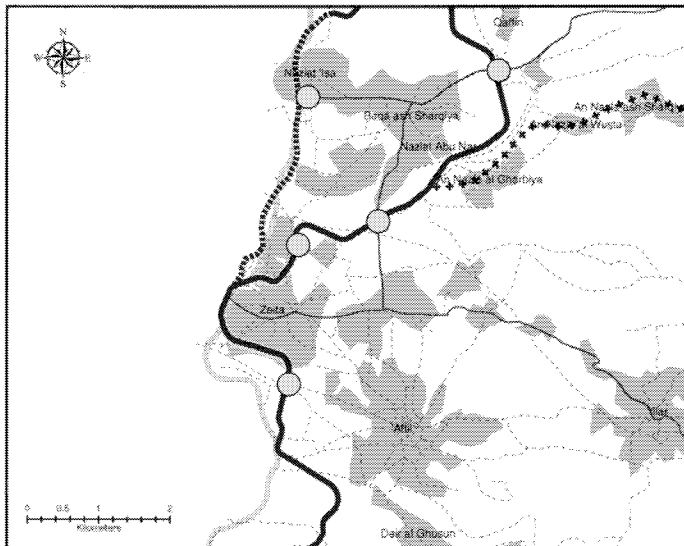
Palestinian Ministry of Planning  
© Specialized Technical Support Unit  
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Background: Satellite Image, September 2003

**THE WALL  
IN THE WEST BANK**  
Section e: North of Tulkarm Area



**Legend**

- Green Line (Armistice Line 1949)
- Constructed Part of the Wall
- Wall Trajectory approved/under construction
- Projected Wall
- Main Road
- Regional Road
- Local Road
- Palestinian Built Up Area
- Israeli Settlement
- Confiscated Land (2002-2004)
- Wall Gate

Source of Land confiscation data: available Israeli Military Orders

Section e: North of Tulkarm Area

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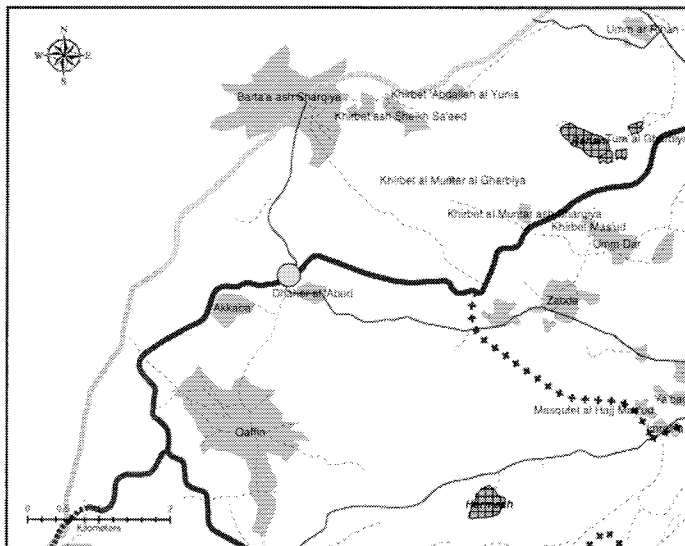
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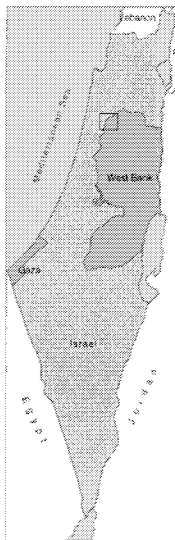


Background: Satellite Image, September 2003

**THE WALL  
IN THE WEST BANK**  
Section f: Qaffin Area



Occupied Palestinian Territory



**Legend**

- Green Line (Armistice Line 1949)
- Constructed Part of the Wall
- Wall Trajectory approved/under construction
- Projected Wall
- Main Road
- Regional Road
- Local Road
- Palestinian Built Up Area
- Israeli Settlement
- Confiscated Land (2002-2004)
- Wall Gate

Source of Land confiscation data: available Israeli Military Orders

Section f: Qaffin Area

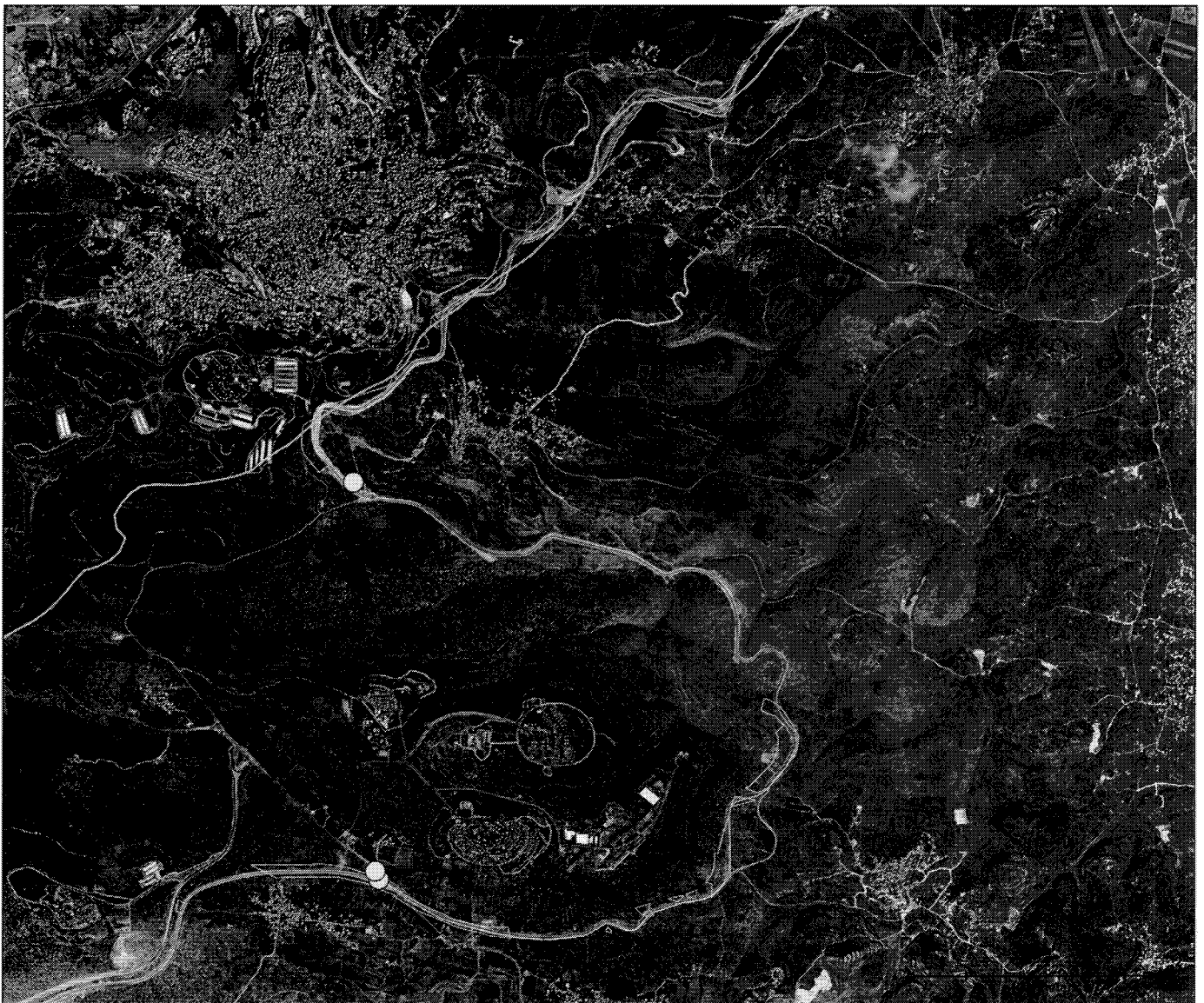
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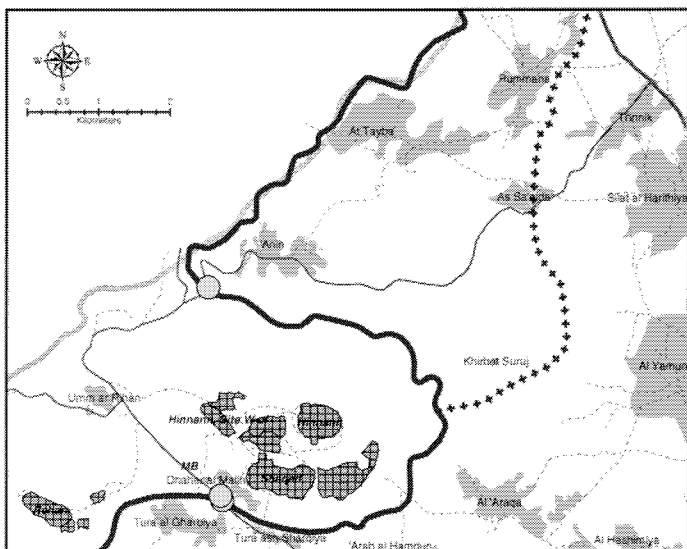




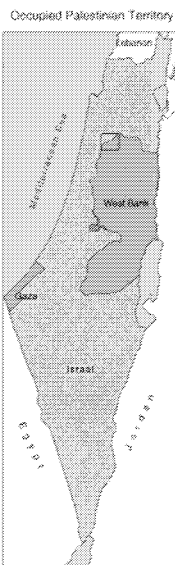


Background: Satellite Image, September 2003

**THE WALL  
IN THE WEST BANK**  
Section g: Umm ar-Rihan Area



Section g: Umm ar-Rihan Area



**Legend**

- Green Line (Armistice Line 1949)
- Constructed Part of the Wall
- Wall Trajectory approved/under construction
- Projected Wall
- Main Road
- Regional Road
- Local Road
- Palestinian Built Up Area
- Israeli Settlement
- Confiscated Land (2002-2004)
- Wall Gate

Source of Land confiscation data: available Israeli Military Orders

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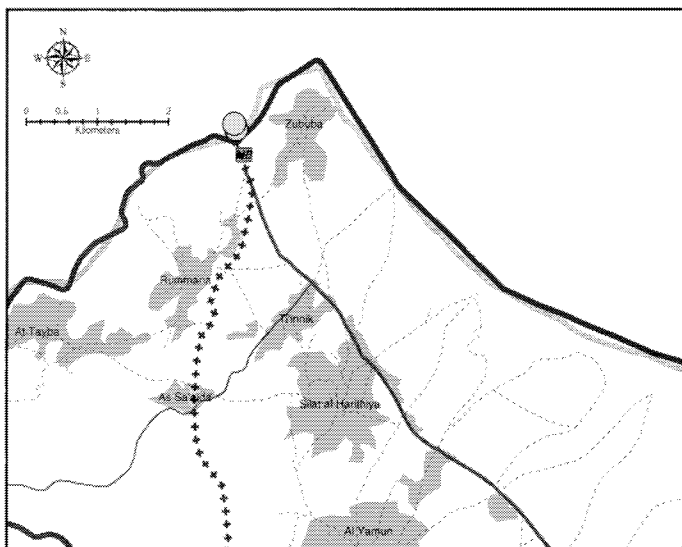
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January 2004





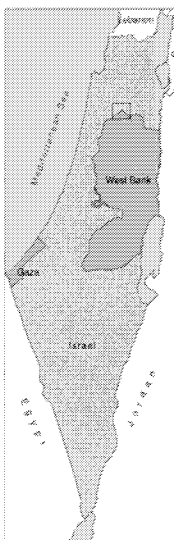
Background: Satellite image, September 2003

**THE WALL  
IN THE WEST BANK**  
Section h: Zububa Area



Section h: Zububa Area

Occupied Palestinian Territory



**Legend**

- Green Line (Armistice Line 1949)
- Constructed Part of the Wall
- Wall Trajectory approved/under construction
- Projected Wall
- Main Road
- Regional Road
- Local Road
- Palestinian Built Up Area
- Israeli Settlement
- Israeli Military Base
- Confiscated Land (2002-2004)
- Wall Gate

Source of Land confiscation data: available Israeli Military Orders

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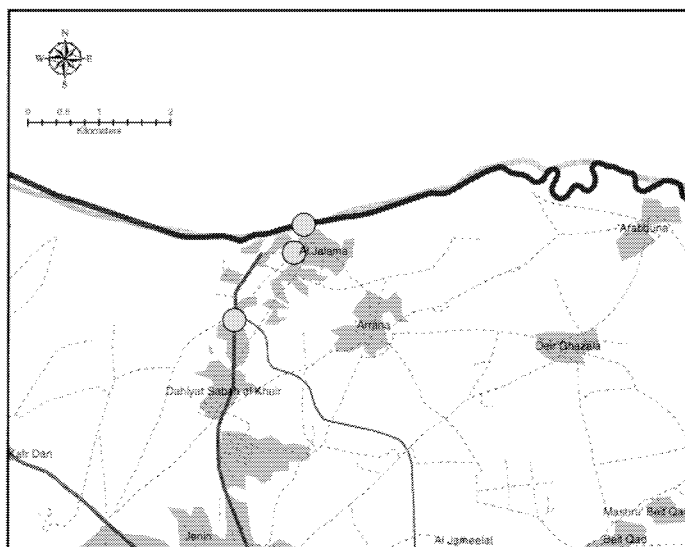
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Specialized Technical Support Unit  
January 2004





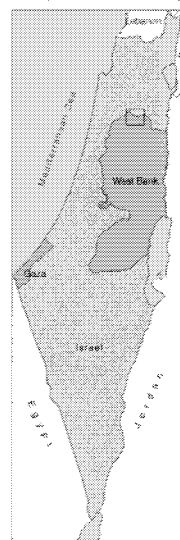
Background: Satellite image, September 2003

**THE WALL  
IN THE WEST BANK**  
Section i: East of Zububa Area



Section i: East of Zububa Area

Occupied Palestinian Territory



**Legend**

- Green Line (Armistice Line 1949)
- Constructed Part of the Wall
- Wall Trajectory approved/under construction
- Projected Wall
- Main Road
- Regional Road
- Local Road
- Palestinian Built Up Area
- Israeli Settlement
- Confiscated Land (2002-2004)
- Wall Gate

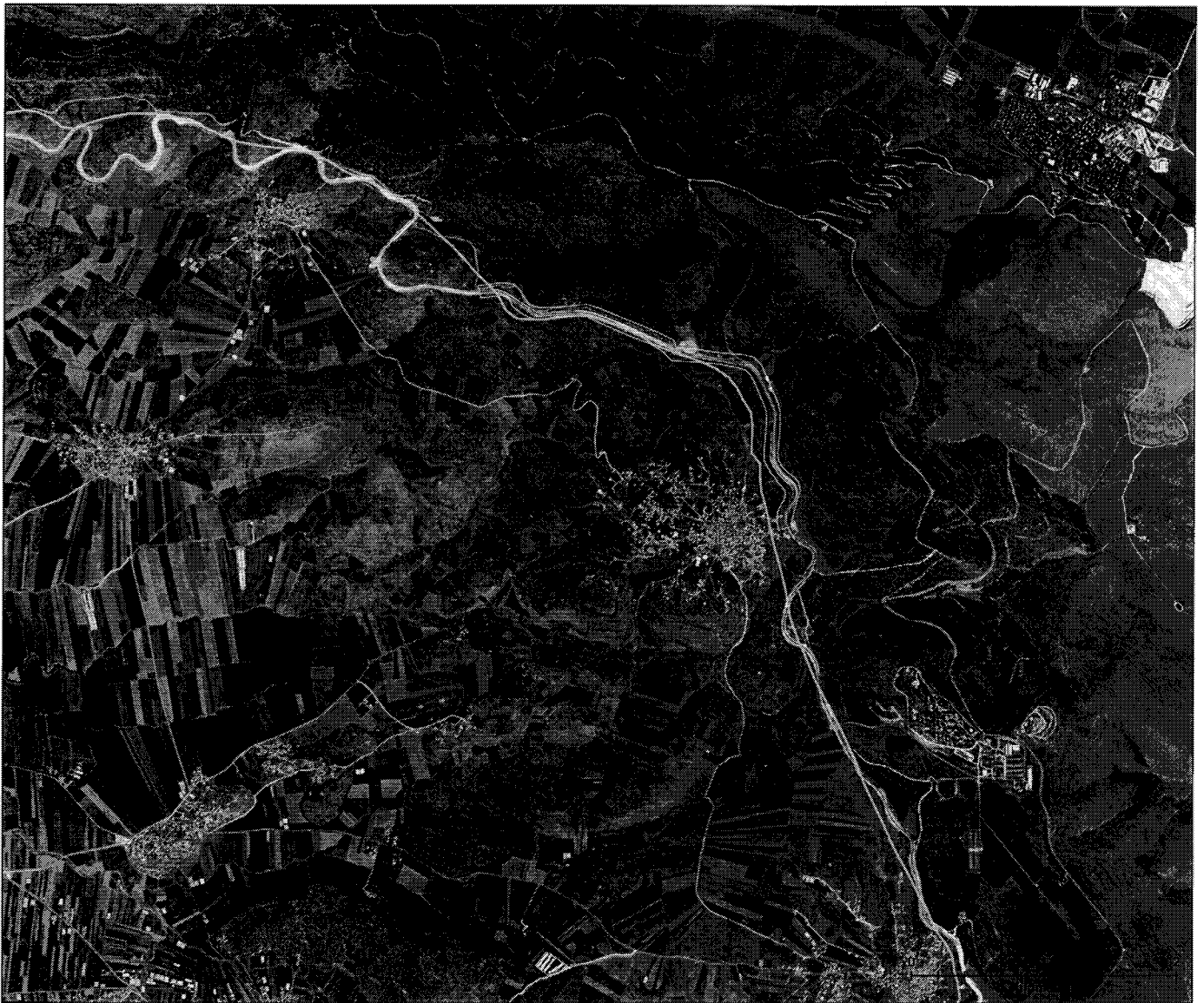
Source of Land confiscation data: available Israeli Military Orders

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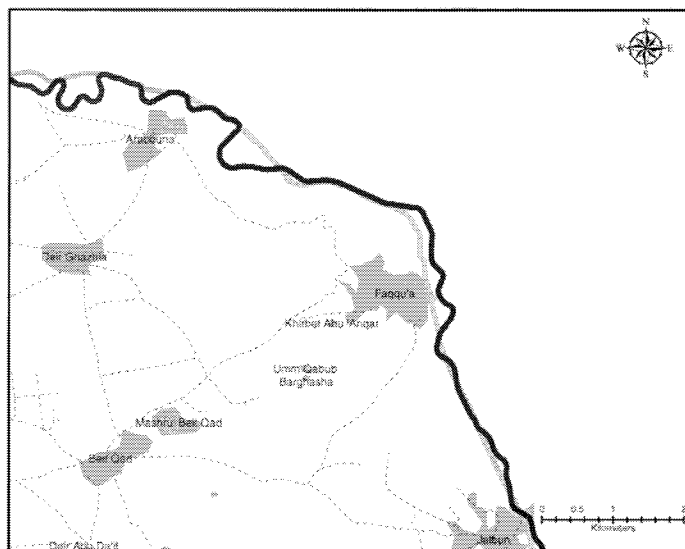
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January 2004



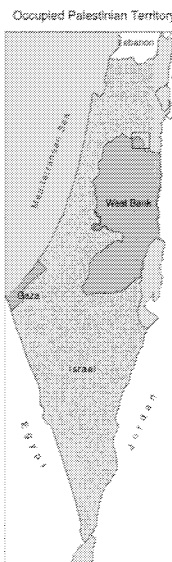


Background: Satellite Image, September 2003

**THE WALL  
IN THE WEST BANK**  
Section j: Faqu'a Area



Section j: Faqu'a Area



**Legend**

- Green Line (Armistice Line 1949)
- Constructed Part of the Wall
- Wall Trajectory approved/under construction
- Projected Wall
- Main Road
- Regional Road
- Local Road
- Palestinian Built Up Area
- Israeli Settlement
- Confiscated Land (2002-2004)
- Wall Gate

Source of Land confiscation data: available Israeli Military Orders

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January 2004

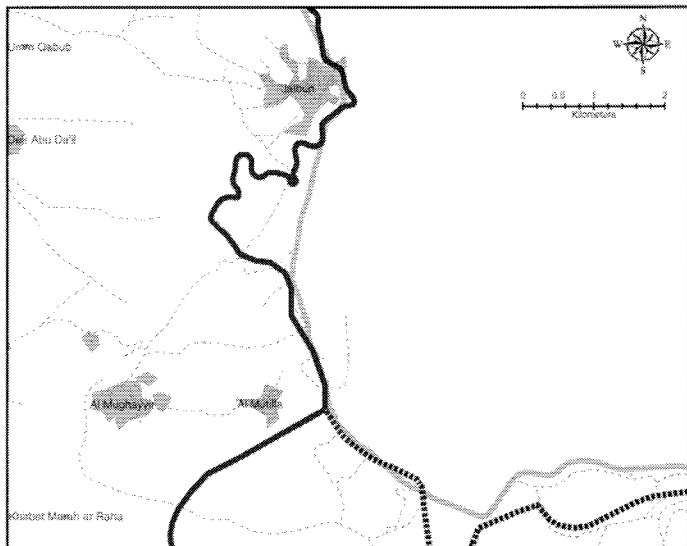




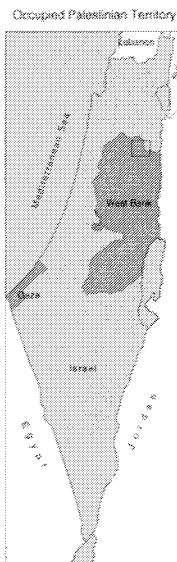


Background: Satellite Image, September 2003

**THE WALL  
IN THE WEST BANK**  
Section k: Jalbun Area



Section k: Jalbun Area



**Legend**

- Green Line (Armistice Line 1949)
- Constructed Part of the Wall
- Wall Trajectory approved/under construction
- Projected Wall
- Main Road
- Regional Road
- Local Road
- Palestinian Built Up Area
- Israeli Settlement
- Confiscated Land (2002-2004)
- Wall Gate

Source of Land confiscation data: available Israeli Military Orders



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Specialized Technical Support Unit  
January 2004



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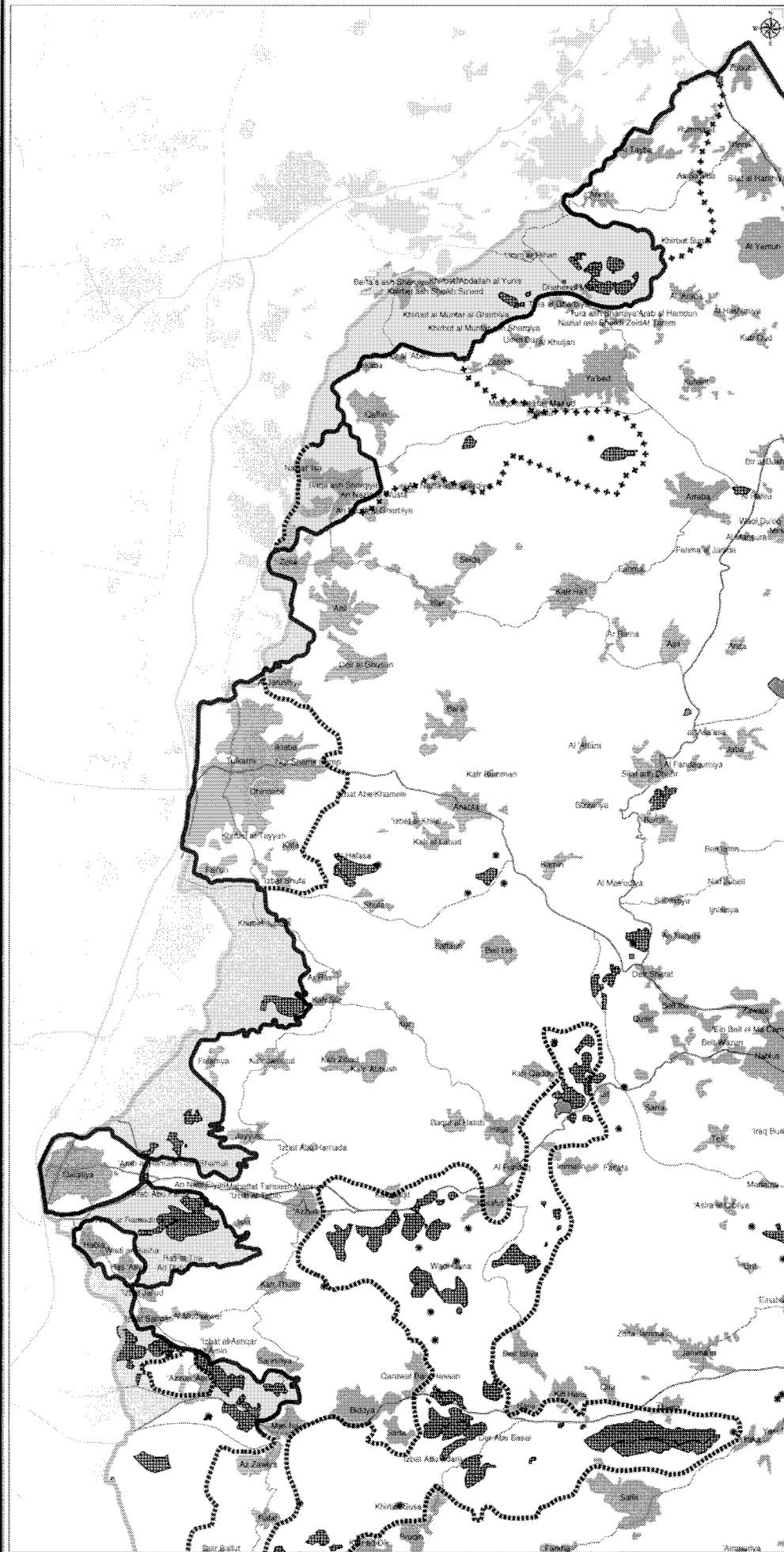
THE WALL AND THE CLOSED ZONE

Legend

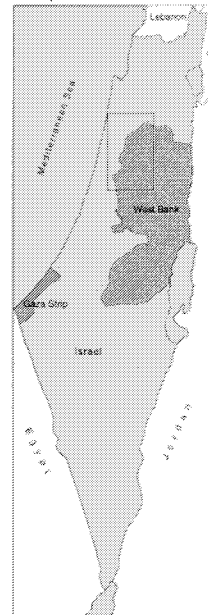
- Green Line (Armistice Line 1949)
- Constructed Part of the Wall
- Wall Trajectory Approved/Under Construction
- Projected Wall
- Highway
- Main Road
- Regional Road
- Palestinian Built Up Area
- Israeli Military Base
- Israeli Settlement
- Israeli Settlement Outpost
- Closed Zone Area

The Closed Zone established in October 2003 requires Palestinians to obtain permanent residency and access permits. There are about 13,500 Palestinian residents of and 73,000 Palestinians owning land in the Closed Zone. Individuals with or eligible for Israeli citizenship are exempt from the permit system.

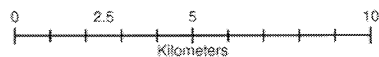
Note: Currently, entry to the Baqa' ash Sharqiya area requires access permits but not permanent residency permits.



Occupied Palestinian Territory



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Palestinian Ministry of Planning  
 Specialized Technical Support Unit  
 January 2004



Cour internationale de Justice

Enregistré au Greffe le :

International Court of Justice

Filed in the Registry on :

29 JAN. 2004 / 8.(3)

**INTERNATIONAL COURT OF JUSTICE**

**LEGAL CONSEQUENCES OF THE CONSTRUCTION  
OF A WALL IN THE OCCUPIED PALESTINIAN  
TERRITORY**

**(REQUEST FOR AN ADVISORY OPINION)**

**VOLUME 2**

**DOCUMENTARY ANNEX**

**SUBMITTED BY**

**PALESTINE**

**30 JANUARY 2004**

# ANNEX 1

Report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Palestinian territories occupied by Israel since 1967,  
4 October 2001, A/56/440



## General Assembly

Distr.: General  
4 October 2001

Original: English

---

**Fifty-sixth session**

Agenda item 119 (c)

**Human rights questions: human rights situations and reports of special rapporteurs and representatives**

### **Question of the violation of human rights in the occupied Arab territories, including Palestine**

#### **Note by the Secretary-General\***

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report on violations of international humanitarian law and human rights in the Palestinian territories occupied since 1967, submitted by John Dugard, Special Rapporteur, pursuant to Commission on Human Rights resolutions 1993/2, section A, and 2001/7 and Economic and Social Council decision 2001/246.

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\* In accordance with General Assembly resolution 55/222, part III, paragraph 10, the present report is being submitted on 4 October 2001 so as to include as much updated information as possible.





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**Report of the Special Rapporteur of the Commission on  
Human Rights on the situation of human rights in the  
Palestinian territories occupied by Israel since 1967**

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## I. Introduction

1. The current Special Rapporteur, John Dugard (South Africa), was appointed in July 2001. In August 2001, the Special Rapporteur undertook a mission to the Occupied Palestinian Territories and Israel. Meetings were held with Palestinian and Israeli non-governmental organizations, international agencies in the region and members of the Palestinian Authority. Unfortunately, the Special Rapporteur was not able to meet with Israeli authorities as the Government of Israel made it clear at the outset of his appointment that it would not cooperate because of objections it has to the terms of his mandate. (This matter is discussed below.) On this mission, the Special Rapporteur met with interlocutors in the Gaza Strip, Jerusalem and the West Bank. The Special Rapporteur also visited Rafah, Beit Jala and Shu'afat to see the destruction of houses and property, and Jericho, to examine the manner in which the city had been closed by means of trenches cutting off access roads.

2. In February 2001, the Special Rapporteur visited the area as the chairperson of the Human Rights Inquiry Commission established pursuant to Commission on Human Rights resolution S-5/1 of 19 October 2000. That Inquiry Commission spent more time in the area, consulted more widely with informed persons and prepared a more comprehensive report (E/CN.4/2001/121) than the present report. The Human Rights Inquiry Commission criticized the excessive use of force employed by the Israeli Defense Force, the assassination of prominent Palestinians, the presence and expansion of settlements in the West Bank and Gaza, the activities of settlers and the closure of Palestinian areas, which has resulted in the widespread violation of economic and social rights. The Commission made a number of recommendations designed to bring an end to the military occupation of the Occupied Palestinian Territories and to establish a dispensation that meets the legitimate expectations of the Palestinian people concerning the realization of their right to self-determination and the genuine security concerns of the people of Israel.

3. The present report is based on the two visits made to the area in 2001, consultation and discussion with persons outside the area, the study of materials on the situation in the Occupied Palestinian Territories and wide media coverage.

## II. The mandate of the Special Rapporteur

4. The mandate of the Special Rapporteur is to be found in two instruments. In resolution 1993/2, section A, the Commission on Human Rights decided to appoint a Special Rapporteur with the following mandate:

“(a) To investigate Israel’s violations of the principles and bases of international law, international humanitarian law and the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, in the Palestinian territories occupied by Israel since 1967;

(b) To receive communications, to hear witnesses, and to use such modalities of procedure as he may deem necessary for his mandate;

(c) To report, with his conclusions and recommendations, to the Commission on Human Rights at its future sessions, until the end of the Israeli occupation of those territories.”



In resolution 2001/7, the Commission on Human Rights welcomed the recommendations contained in the reports of the High Commissioner for Human Rights (E/CN.4/2001/114) and the Human Rights Inquiry Commission (E/CN.4/2001/121), urged the Government of Israel to implement them and requested "the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, acting as a monitoring mechanism, to follow up on the implementation of those recommendations and to submit reports thereon to the General Assembly at its fifty-sixth session and the Commission at its fifty-eighth session".

5. The mandate of the Special Rapporteur has been criticized by a number of States, particularly Israel, on the ground that it singles out Israel for special attention as a violator of human rights despite the fact that, since the implementation of the Oslo Accords (A/51/889-S/1997/357), and related agreements the control of the lives of over 90 per cent Palestinians has passed to the Palestinian Authority, which now has full control over the so-called "A" zones which include most Palestinian cities and towns. There would be substance in this criticism if the mandate of the Special Rapporteur were to investigate and report on Israel's violations of human rights in the Occupied Palestinian Territories without regard to the military occupation of those territories. This would be unfair as the Palestinian Authority does, for instance, have full jurisdiction over the administration of justice in the "A" zones and in most societies it is in this field that most violations of human rights occur. The mandate of the Special Rapporteur is not, however, to investigate human rights violations in the Occupied Palestinian Territories outside the context of military occupation. Resolution 1993/2, section A makes it clear that the Special Rapporteur is required to investigate violations of international humanitarian law committed by the occupying authority — *Israel* — until the end of the Israeli occupation of the Occupied Palestinian Territories. There is a close connection between international humanitarian law and human rights — a connection reaffirmed by the General Assembly in its resolution 2675 (XXV). It is therefore impossible to examine violations of international humanitarian law or general international law without reference to human rights norms, particularly in a situation of prolonged occupation of the kind that continues to prevail in the Occupied Palestinian Territories. The mandate therefore includes the investigation of human rights violations committed by Israel in the Occupied Palestinian Territories, but only in the context of military occupation. It is the prolonged military occupation of the Occupied Palestinian Territories which makes the mandate of the Special Rapporteur unusual and which distinguishes it from other special rapporteurships established by the Commission on Human Rights.

### **III. The occupation as the root cause of the conflict**

6. In 1967, Israel occupied the West Bank and Gaza Strip. This occupation continues some 34 years later. Israel has invoked a number of arguments to support its legal claim that the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 1949 is not applicable to the Palestinian territories occupied by Israel since 1987, including East Jerusalem. First, it argues that as the sovereignty of Jordan over the West Bank was questionable and Egypt never asserted sovereignty over Gaza, there was no sovereign Power at whose expense Israel occupied these territories. Consequently, although Israel is a party to

the Fourth Geneva Convention of 1949, it maintains that it is not bound by law to treat the territories as occupied territories within the meaning of the Fourth Geneva Convention. Secondly, it now argues that, even if the above argument is incorrect, that Israel can no longer be viewed as an occupying Power in respect of the "A" areas, accommodating the majority of the Palestinian population, because effective control in those areas has been handed over to the Palestinian Authority.

7. Neither of those arguments is tenable in law. The first, premised on a strained interpretation of article 2 of the Geneva Convention, fails to take account of the fact that the law of occupation is concerned with the interests of the population of an occupied territory rather than those of a displaced sovereign. The second, that Israel is no longer an occupying Power because it lacks effective control over "A" areas of the Occupied Palestinian Territories, is likewise unacceptable. The test for the application of the legal regime of occupation is not whether the occupying Power fails to exercise effective control over the territory, but whether it has the ability to exercise such power, a principle affirmed by the United States Military Tribunal at Nürnberg *In re List and others (The Hostages Case)* in 1948. The Oslo Accords leave Israel with ultimate legal control over all of the Occupied Palestinian Territories and the fact that for political reasons it has generally chosen not to exercise this control over the "A" zones, when it undoubtedly has the military capacity to do so (as illustrated by the Israeli military incursion into the "A" zone town of Beit Jala in August 2001), cannot relieve Israel of its responsibilities as an occupying Power.

8. The international community therefore rejects the argument that the Fourth Geneva Convention is inapplicable to the Occupied Palestinian Territories. Repeated resolutions of the Security Council and the General Assembly call upon Israel to comply with the prescriptions of the Convention and reject the purported annexation of East Jerusalem by Israel. For the international community, the Fourth Geneva Convention is the governing law.

9. Violence in the Occupied Palestinian Territories and Israel during the past several months has tended to obscure the fact that the root cause of the present conflict in the region is military occupation. Media reports are so concerned with the killing of Palestinian leaders by carefully directed missiles and with suicide bombings within Israel that the fact of occupation is overlooked. At times, the conflict is portrayed as if it were an international conflict between two States, employing different instruments of war, over "disputed territories". At other times, it is portrayed as an internal conflict with the rebels employing terror as a military strategy. The United States-brokered "Tenet ceasefire plan" (*Ha'aretz*, June 14, 2001), while a laudable attempt to end the violence in the region, nowhere mentions the military occupation in its concern for security and crisis management. It should not, however, be forgotten that Israel occupied the West Bank (including East Jerusalem) and the Gaza Strip by force in 1967; that this occupation should be brought to an end, as by its very nature military occupation is a temporary phenomenon pending an acceptable peace settlement; and that until the occupation is terminated, Israel, as the occupying Power, is obliged to comply with the Fourth Geneva Convention.

10. The present report focuses on military occupation as the root cause of the present conflict in the Occupied Palestinian Territories and Israel, as the cause of the violation of human rights and humanitarian law in the region. It aims to restore

occupation to centre stage. The violence in the region, whether caused by Israeli rocket-ships or Palestinian suicide bombers, is to be deplored and condemned. It is the immediate cause of the loss of life, of the violation of the right to life, that features pre-eminently in all human rights conventions. However, it is not the ultimate explanation for the violation of basic human rights in the region. This must be found in the military occupation of a people by an occupying power.

#### **IV. Violence and loss of life**

11. Since the start of the second intifada, in September 2000, over 530 Palestinians have been killed and over 15,000 injured. More than 150 Israelis have been killed. Most of those killed and injured have been civilians.

12. The first few months of the second intifada were characterized by violent clashes between Palestinian protesters, whose weapons were stones and molotov cocktails, and the Israel Defense Force. Most deaths and injuries were the result of gunfire from the Israel Defense Forces. In its report, the Human Rights Inquiry Commission found that the Israel Defense Forces had responded in a disproportionate manner to protesters and was guilty of the excessive use of force (E/CN.4/2001/121, paras. 44-52). Since then, the situation has changed radically as the Palestinians have moved from protest to armed force and the Israelis have responded by using heavier weaponry. Today, most Palestinian deaths have resulted from missile attacks directed at selected individuals suspected of terrorism, but which, inevitably, have also killed innocent bystanders, and from shootings carried out by soldiers and settlers, often after an exchange of gunfire. Israeli deaths have largely been caused by terrorist bombs in Israel itself and by gunfire directed at settlers on bypass roads or in the proximity of settlements.

13. In February 2001, the Human Rights Inquiry Commission had difficulty in categorizing the situation as a non-international armed conflict, defined by the Appeals Chambers of the International Criminal Tribunal for the Former Yugoslavia in the *Tadic* case as "protracted armed violence between governmental authorities and organized armed groups". Today, as a result of the frequent exchanges of gunfire between the Israel Defense Forces and Palestinian gunmen, it is probable that this threshold has been met, albeit on an irregular and sporadic basis. However, while the Israel Defense Forces are now engaged in both law enforcement and action in armed conflict, and may therefore be entitled to greater latitude in the exercise of its powers as an occupying force, it is not freed from all restraints under international humanitarian law and human rights law. It is still obliged to observe the principle of distinction requiring that civilians not be made the object of attack "unless and for such time as they take a direct part in hostilities" (a principle reaffirmed in article 51(3) of Additional Protocol 1 to the Geneva Conventions). In addition, the Israel Defense Forces are obliged to comply with the principle of proportionality, which requires that injury to non-combatants or damage to civilian objects not be disproportionate to the military advantages derived from an operation. Above all, the Israel Defense Forces are subject to article 27 of the Fourth Geneva Convention, which stipulates that "protected persons are entitled in all circumstances, to respect for their persons and shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof ...".

14. Both Israelis and Palestinians have violated important norms of humanitarian law and international law as the confrontation has changed its character. Israel's freely acknowledged practice of selected assassination or targeted killings of Palestinian activists cannot be reconciled with provisions of the Fourth Geneva Convention, such as articles 27 and 32, which seek to protect the lives of protected persons not taking a direct part in hostilities. They also violate human rights norms that affirm the right to life and the prohibition on execution of civilians without trial and a fair judicial process. There is no basis for killing protected persons on the basis of suspicion that they have engaged or will engage in terroristic activities. In addition, many civilians not suspected of any unlawful activity have been killed in these targeted killings, in the bombing of villages or in gunfire exchanges, in circumstances indicating an indiscriminate and disproportionate use of force.

15. The force employed by Palestinians is also contrary to the norms of international law. The shooting of settlers cannot be justified. Despite the fact that the settlements violate article 49(6) of the Fourth Geneva Convention, and the fact that the settlers' presence in the Occupied Palestinian Territories is illegal, settlers remain civilians and cannot be treated as combatants, unless, of course, they are engaged as soldiers in the Israel Defense Forces. The planting of bombs in public places in Israel, resulting in loss of life of innocent civilians, is contrary to emerging norms of international law, now codified in the 1998 International Convention for the Suppression of Terrorist Bombings (General Assembly resolution 52/164), article 2 of which criminalizes such conduct. The extent to which these actions are subject to the control of the Palestinian Authority is uncertain. No doubt it could do more to prevent the shooting of settlers and the culture of violence that produces suicide bombers. On the other hand, despite Israeli claims to the contrary, it seems unlikely that Palestinian violence is subject to any centralized control. In this respect, it differs from the Israeli use of force.

16. The failure of attempts to end the violence, either by calls for a ceasefire from the parties to the conflict, or from third States (notably the United States), or by security arrangements brokered from outside (such as the Tenet plan), suggests that the time has come for some international presence in the region to monitor and reduce the use of violence. This obvious conclusion was affirmed by the G8 Foreign Ministers in their meeting in Rome on 18 and 19 July 2001. Despite this, attempts to persuade the Security Council to approve such a plan have failed. The Special Rapporteur finds it difficult to understand why no serious attempt has been made by the international community to persuade Israel to accept such a presence (the Palestinian Authority having already agreed to an international presence). International monitors or peacekeepers have been employed in many less threatening situations in the world and there is no reason why the Occupied Palestinian Territories should be treated differently.

## **V. Occupation and the second intifada**

17. The principal cause of the second intifada and of the escalating violence, in the view of the Special Rapporteur, is the continuing occupation — an occupation which has continued for over 34 years in the face of condemnation by the United Nations; an occupation whose substance (albeit not form) remained unaltered throughout the period of negotiations resulting from the Oslo Accords; an occupation that continues to frustrate and humiliate Palestinians. In the opinion of the Special Rapporteur,

peace will not be restored to the region until there is clear evidence of an intention on the part of the occupying Power to put an end to the occupation. At present, however, there is little evidence of such an intention. On the contrary, the signs of occupation have intensified since the start of the second intifada. Expanding settlements, demolition of houses and the destruction of property, restrictions on freedom of movement and the economic blockade are a constant reminder to Palestinians of the occupation.

#### **A. Settlements**

18. The international community is united in its categorization of Jewish settlements in the West Bank and Gaza as contrary to article 49(6) of the Fourth Geneva Convention, which prohibits an occupying power from transferring parts of its own civilian population into the territory it occupies. Numerous resolutions of the Security Council and the General Assembly have condemned the settlements as illegal.

19. Today, there are some 190 settlements in the West Bank and Gaza, inhabited by approximately 380,000 settlers, of whom some 180,000 live in the East Jerusalem area. Settlements are linked to each other and Israel by a vast system of bypass roads (from which Palestinian vehicles are excluded), which have a 50 to 75-metre buffer zone on each side of the road in which no building is permitted. These settlements and roads, which separate Palestinian communities and deprive Palestinians of agricultural land have fragmented both land and people. In effect, they foreclose the possibility of a Palestinian State as they destroy the territorial integrity of the Palestinian territory.

20. The relationship between settlers and Palestinians is an unhappy one and each side views the other with hostility, anger and suspicion. Protected by the Israel military, and exempt from the jurisdiction of the courts of the Palestinian Authority, settlers have committed numerous acts of violence against Palestinians and destroyed Palestinian agricultural land and property. Since the beginning of the second intifada, incidents of settler violence have dramatically increased. Palestinian hostility towards settlers has grown alarmingly since the start of this intifada and most of the Israelis killed in the present conflict have been settlers or soldiers charged with the task of protecting settlements and roads leading to settlements.

21. That peace is impossible without a complete freeze on all settlement activity was emphasized by the "Mitchell report" of 20 May 2001 (report of the Sharm Al Sheikh Fact-finding Committee). The response of the Government of Israel to that recommendation was far from satisfactory. It declared that "it is already part of the policy of the Government of Israel not to establish new settlements. At the same time, the current and everyday needs of the development of such communities must be taken into account". In other words, the "natural growth" of the settlements will continue.

22. The evidence of the continued expansion of settlement activity is all too clear. During his visit, the Special Rapporteur saw evidence of this in the form of construction activity in the settlements of Har Homa and Pisgat Ze'ev and in the extension of the buffer zones adjacent to bypass/settler roads in the Gaza Strip. He also received evidence of the growth in the number of housing units, the expansion of the territorial limits of settlements by means of caravan outposts established

adjacent to settlements, and of an increase in the settler population in the West Bank and Gaza from 203,067 in December 2000 to 205,015 in June 2001. Generous tax breaks and cheap housing in the settlements ensure that their growth will continue.

## **B. Demolition of houses and destruction of property**

23. The demolition of houses in Palestinian territory, either for security purposes (as in Rafah) or for administrative reasons (as in the refugee camp of Shu'afat) continue. Since September 2000, over 300 homes have been completely demolished (compared with 93 in 1999). The Special Rapporteur saw evidence of the demolition of houses in Rafah and Shu'afat by bulldozer and of the destruction of houses in Beit Jala by missiles. This action, on the part of the Israeli authorities, is difficult to reconcile with article 53 of the Fourth Geneva Convention, which prohibits the destruction of property except where rendered "*absolutely necessary* by military operations". While Israel sees this action as justified on grounds of military necessity, Palestinians see it as part of a larger design to restrict Palestinian growth, encourage Palestinian emigration and humiliate the people.

24. The creation of buffer zones for bypass roads and settlements has resulted in the "sweeping" of large areas of agricultural land by bulldozers. A total of 385,808 fruit and olive trees have been uprooted, and wells and agricultural constructions destroyed.

## **C. Closure and checkpoints: restrictions on freedom of movement**

25. Since 29 September 2000, Israel has imposed severe restrictions on freedom of movement in the occupied territories. International borders with Egypt and Jordan have been closed, the Gaza Strip has been sealed off from the rest of the Palestinian territory and over a hundred checkpoints have been placed on roads in the West Bank. The Israel Defense Forces have placed checkpoints at the entrances to villages and entry and exit are often possible only via dirt roads, entailing enormous hardships. Trips that once took 15 minutes now take several hours. In some of the villages, mostly in areas near settlements and bypass roads, the dirt roads have also been blocked with large concrete blocks and piles of dirt, and residents are imprisoned in their villages. The Special Rapporteur visited the city of Jericho, which has been encircled by a deep trench to deny vehicles access to the city except through an Israel Defense Forces checkpoint.

26. The cumulative effect of these restrictions on the freedom of movement of people and goods is understandably perceived by the Palestinians affected as a siege. It has resulted in severe socio-economic hardships in the Palestinian territory. The internal closures have effectively sealed Palestinian population centres and restricted movement from one locality to another. The restriction on the entry of Palestinians into Israel has meant denial of access to their places of work in Israel to an estimated 115,000 Palestinians. The economic results have been devastating: the families of these workers are now suffering from a complete lack of income, threatening them with destitution. Over 50 per cent of the Palestinian workforce is now unemployed. Health and education have also suffered. Ambulances are prevented from transporting the sick to hospitals and some schools have been unable to operate owing to curfews and closures.

27. Road checkpoints have become a regular feature of Palestinian life. Palestinians are obliged to wait for lengthy periods while Israeli soldiers check vehicles and inspect identity documents. In order to avoid these delays Palestinians often abandon their cars or leave their taxi and cross the checkpoint on foot to catch a taxi on the other side of the checkpoint. This practice indicates the purpose of the exercise. It is not to prevent would-be suicide bombers from crossing checkpoints that lead to Israel, as any such person may walk around the checkpoint carrying heavy baggage. Rather, it is to humiliate Palestinians and to put pressure on them to cease resistance to Israeli occupation. In this sense, it is a collective punishment of the kind prohibited by article 33 of the Fourth Geneva Convention.

#### **D. Orient House**

28. On 10 August 2001, Israeli security forces seized and occupied Orient House, the political headquarters of the Palestinian people in East Jerusalem, in retaliation for a suicide bomb attack in West Jerusalem. This action, which may be seen as further evidence of a determination on the part of the Government of Israel to assert its authority as an occupying Power, has exacerbated an already tense situation and placed another obstacle in the path of peace.

### **VI. Concluding remarks**

29. It is clearly necessary to bring the present violence in the Occupied Palestinian Territories and Israel to an end. Targeted killings of selected Palestinians by guided missiles, terrorist bombings in Israel and the indiscriminate killing of civilians by both sides must cease. That this is difficult to achieve is confirmed by the failures of numerous proclaimed ceasefires in recent months — failures for which both Israelis and Palestinians must accept responsibility. In these circumstances, there is a clear need for some international presence, either in the form of monitors or peacekeepers, to ensure that the ceasefire holds — or at least does better than at present. It is recommended that both Israel and the Palestinian Authority should agree to such an international presence. It is incumbent on the international community to ensure that such an agreement is forthcoming.

30. Israel's continued refusal to accept the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War as the governing law makes it imperative that the High Contracting Parties to the Convention convene as soon as possible to consider the applicability of the Convention and the violation of the Convention.

31. International humanitarian law and human rights norms have been seriously violated in the present conflict. Both Israelis and Palestinians should make every endeavour to promote respect for the rule of law. Israel's violation of the freedom of movement in the Occupied Palestinian Territories requires particular attention.

32. Settlements are an ever visible and aggravating sign of occupation and of Israel's illegal conduct as an occupying Power. It is not enough to merely impose a freeze on settlements. Steps must now start to dismantle settlements.

33. There is a need to rebuild confidence on both sides as a prelude to the resumption of negotiations leading to a permanent settlement. The Palestinians

could undoubtedly help to restore confidence by taking firmer measures to prevent terrorism in Israel. More is needed from Israel. Until Israel takes some action that indicates a willingness to contemplate the termination of the occupation, it is unlikely that the Palestinians will accept its good faith in negotiations aimed at a permanent settlement. Such action might take the form of a start in the dismantling of settlements: for example, the withdrawal of all settlements from the Gaza Strip. The Special Rapporteur appeals to the Government of Israel to take some action of this kind to restore confidence in the peace process.

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## ANNEX 2

Report of the Special Rapporteur of the Commission on Human Rights, Mr. John Dugard, on the situation of human rights in the Palestinian territories occupied by Israel since 1967,  
6 March 2002, E/CN.4/2002/32



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Item 8 of the provisional agenda

**QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE  
OCCUPIED ARAB TERRITORIES, INCLUDING PALESTINE**

**Report of the Special Rapporteur of the Commission on Human Rights,  
Mr. John Dugard, on the situation of human rights in the Palestinian  
territories occupied by Israel since 1967**



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### Executive summary

The Special Rapporteur's interpretation of his mandate, as being to investigate violations of international humanitarian law and human rights in the context of military occupation, has been challenged by the Government of Israel in document E/CN.4/2002/129. The Special Rapporteur requests the Commission to give a ruling on this matter.

There are different perceptions of the cause of the violence in the Palestinian Territory. Palestinians see the military occupation of their territory as the principal cause of the present crisis. Israelis, on the other hand, see terrorism as the cause of the crisis. Terrorism is a scourge that threatens Israelis and Palestinians alike and every effort should be made to bring terrorism to an end, whether it is perpetrated by instruments of the State, by organized non-State groups or by individuals. At the same time, it is important to stress that the main explanation for the acts of terrorism committed by Palestinians against Israelis is the military occupation. It is this occupation that is responsible for most of the violations of humanitarian law and human rights in the region.

Since the start of the second intifada, in September 2000, nearly 1,000 Palestinians have been killed and about 17,300 injured. More than 260 Israelis have been killed and about 2,400 injured. Most of those killed and injured have been civilians, many of them children. Violence is escalating rapidly in the region as both parties to the conflict employ more dangerous weaponry and show more determination in causing harm to life and property. In this situation, initiatives for a ceasefire or a cessation of violence as a precondition for the resumption of talks between Israelis and Palestinians seem doomed to fail. Only an effective international presence in the region with the power to monitor and reduce the use of violence can achieve this goal. The Special Rapporteur therefore believes that there is a need for an international peacekeeping mission, structured and composed to meet the circumstances of the region.

Settlements are an ever-visible and aggravating sign of occupation and of Israel's illegal conduct as an Occupying Power. Although Israel has undertaken not to establish new settlements, the existing settlements are expanding both in terms of land and settlers.

The demolition of houses in the Palestinian Territory continues unabated. In the Gaza Strip alone, over 400 houses have been completely destroyed and 200 seriously damaged, leaving over 5,000 persons homeless. Moreover, the creation of buffer zones for bypass roads and settlements has resulted in the "sweeping" of large areas of agricultural land by bulldozers.

Israel's restrictions on freedom of movement, resulting from checkpoints, have caused great personal, social and economic hardships to civilians in no way involved in the conflict. They constitute collective punishment of the kind prohibited by article 33 of the Fourth Geneva Convention.

Children have suffered greatly in the present crisis. Every effort should be made by the Israeli military authorities to ensure that the safety and welfare of schools and schoolchildren are respected. It is further recommended that an investigation be conducted into allegations of inhuman treatment of children under the military justice system and that immediate steps be taken to remedy this situation.

## I. INTRODUCTION

1. The current Special Rapporteur, John Dugard (South Africa), was appointed in July 2001. In August 2001 and in February 2002 the Special Rapporteur undertook missions to the Occupied Palestinian Territory and Israel. Meetings were held with Palestinian and Israeli non-governmental organizations, Palestinian and Israeli interlocutors, international agencies in the region and members of the Palestinian Authority, including the President of the Palestinian Authority, Yasser Arafat. Unfortunately, the Special Rapporteur was not able to meet with Israeli authorities as the Government of Israel made it clear at the outset when he was appointed that it would not cooperate because of objections it has to the terms of his mandate. (This matter is discussed below.) On these missions, the Special Rapporteur met with interlocutors in the Gaza Strip, Jerusalem and the West Bank. In August 2001 the Special Rapporteur visited Rafah, Beit Jala and Shu'afat to see the destruction caused to houses and property, and Jericho to examine the manner in which the city had been closed by means of trenches cutting off access roads. In February 2002, he again visited Rafah to see the house demolitions carried out by the Israel Defense Forces (IDF) in January 2002.
2. In February 2002 the Special Rapporteur made a special study of the impact of the present crisis on children. Meetings were accordingly held with education officials of the Ministry of Education of the Palestinian Authority, school principals and teachers, university authorities and non-governmental organizations concerned with the treatment of child prisoners. The Special Rapporteur visited the University of Bir Zeit and the Al-Khader school in the district of Bethlehem and interviewed juveniles who testified about ill-treatment they had been subjected to when they had been arrested and detained by the Israeli authorities.
3. While the Special Rapporteur was in Gaza on 10 and 11 February 2002, Gaza City was subjected to heavy bombing, which caused extensive damage to offices of the United Nations Special Coordinator (UNSCO) in Gaza. The Special Rapporteur was thus able to experience at first hand the military assaults to which the Palestinian people are regularly subjected.
4. In February 2001, the Special Rapporteur visited the area as the chairperson of the Human Rights Inquiry Commission established pursuant to Commission on Human Rights resolution S-5/1 of 19 October 2000. The report of this Commission is contained in document E/CN.4/2001/121.
5. The present report is based on the visits made to the area in August 2001 and February 2002, consultation and discussion with persons in and outside the area, the study of materials on the situation in the Occupied Palestinian Territory and wide media coverage.
6. In October 2001 the Special Rapporteur submitted a report, based on his visit to the region in August 2001, to the Third Committee of the General Assembly. The report, contained in document A/56/440, was duly considered by the Third Committee in November 2001. On 7 December 2001 the Government of Israel submitted a response to this report: see document E/CN.4/2002/129. The criticisms contained in this response and the Special Rapporteur's reply to these criticisms are dealt with in the present report.



## II. THE MANDATE OF THE SPECIAL RAPPORTEUR

7. The mandate of the Special Rapporteur is to be found in two resolutions of the Commission on Human Rights. In resolution 1993/2, section A, the Commission decided to appoint a special rapporteur with the following mandate:

(a) To investigate Israel's violations of the principles and bases of international law, international humanitarian law and the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, in the Palestinian territories occupied by Israel since 1967;

(b) To receive communications, to hear witnesses, and to use such modalities of procedure as he may deem necessary for his mandate;

(c) To report, with his conclusions and recommendations, to the Commission on Human Rights at its future sessions, until the end of the Israeli occupation of those territories.

In resolution 2001/7, the Commission welcomed the recommendations contained in the reports of the High Commissioner for Human Rights (E/CN.4/2001/114) and the Human Rights Inquiry Commission (E/CN.4/2001/121), urged the Government of Israel to implement them and requested the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, acting as a monitoring mechanism, to follow up on the implementation of those recommendations and to submit reports thereon to the General Assembly at its fifty-sixth session and the Commission at its fifty-eighth session.

8. In his report of October 2001 (A/56/440), the Special Rapporteur stated that his mandate required him to investigate human rights violations in the Occupied Palestinian Territory within the context of military occupation. In support of this interpretation of the mandate, he reasoned as follows:

“Resolution 1993/2, section A makes it clear that the Special Rapporteur is required to investigate violations of international humanitarian law committed by the occupying authority - *Israel* - until the end of the Israeli occupation of the Occupied Palestinian Territories. There is a close connection between international humanitarian law and human rights - a connection reaffirmed by the General Assembly in its resolution 2675 (XXV). It is therefore impossible to examine violations of international humanitarian law or general international law without reference to human rights norms, particularly in a situation of prolonged occupation of the kind that continues to prevail in the Occupied Palestinian Territories. The mandate therefore includes the investigation of human rights violations committed by Israel in the Occupied Palestinian Territories, but only in the context of military occupation. It is the prolonged military occupation of the Occupied Palestinian Territories which makes the mandate of the Special Rapporteur unusual and which distinguishes it from other special rapporteurships established by the Commission on Human Rights”(para. 5).

9. The Government of Israel has raised a number of objections to this reasoning, which it claims has resulted in an unprecedented expansive interpretation of the mandate. These objections and the responses thereto appear below:

(a) *Objection:* it is inaccurate to describe the situation in the Palestinian Territory as one of *military* occupation on the ground that since the implementation of the Oslo Accords (A/51/889-S/1997/357, annex) and related agreements the control of the lives of over 98 per cent of the Palestinians has passed to the Palestinian Authority, which now has full control over the so-called A areas which include most Palestinian cities and towns.

*Response:* While it is true that many powers have been transferred by Israel to the Palestinian Authority - including the important area of the administration of justice, in which most violations of human rights occur - the reality is that Israel not only has the power to intervene in the occupied territories, including those designated as A areas, on grounds of security, but that it has *in fact* done so in recent months. The denial that Israel is in military occupation of the territories is impossible to reconcile with recent military incursions into Ramallah, Bethlehem, Gaza, Beit Jala, Beit Rima and Tulkarem, the presence of Israeli tanks outside President Arafat's headquarters in Ramallah and over 150 military checkpoints in the occupied territories that have seriously disrupted the lives of Palestinians living in the A areas. Moreover, it takes no account of article 47 of the Fourth Geneva Convention, which provides that protected persons in an occupied territory shall not be deprived "in any case or in any manner whatsoever" of the benefits of the Convention by any change to the government of the territory resulting from an agreement concluded between the authorities of the occupied territories and the Occupying Power.

(b) *Objection:* International humanitarian law and human rights law are "subject to separate international regimes". The close connection between the two "does not imply that the area of humanitarian law cannot be investigated without extending the mandate of the Special Rapporteur to cover human rights law".

*Response:* The purpose of the principal international instrument concerned with the protection of civilians under military occupation, the Fourth Geneva Convention of 1949, is to ensure respect for the human rights of protected persons. This is made clear by article 27 of the Convention, which provides that the Occupying Power is to respect the fundamental rights of protected persons. According to the Commentary of the International Committee of the Red Cross on this provision: "The right to respect for the person must be understood in its widest sense: it covers all the rights of the individual, that is, the rights and qualities which are inseparable from the human being by the very fact of his existence and his mental and physical powers; it includes, in particular, the right to physical, moral and intellectual integrity - an essential attribute of the human person" (p. 201). The "rights of the individual" have been proclaimed, described and interpreted in international human rights instruments, particularly the international covenants on civil and political rights, and economic, social and cultural rights of 1966, and in the jurisprudence of their monitoring bodies. These human rights instruments therefore complement the Fourth Geneva Convention by defining and giving content to the rights

protected in article 27. This is borne out by repeated resolutions of the General Assembly (for example, resolution 2675 (XXV)) and by the Vienna Declaration adopted by the World Conference on Human Rights in 1993, which declared that:

“Effective international measures to guarantee and monitor the implementation of human rights standards should be taken in respect of people under foreign occupation, and effective legal protection against the violation of their human rights should be provided, in accordance with human rights norms and international law, particularly the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 14 August 1949, and other applicable norms of humanitarian law.”

(c) *Objection:* In the case of a prolonged occupation, such as that of the Palestinian territories, the law of occupation envisages that “the Occupying Power will not become more bound, but less bound by the legal regime”. In support of this contention, the Government of Israel cites the commentary of the International Committee of the Red Cross on article 6 of the Fourth Geneva Convention to the effect that if the occupation continues for a prolonged period after the general cessation of hostilities, “a time would doubtless come when the application of the Convention was no longer justified, especially if most of the governmental and administrative duties carried out at one time by the Occupying Power had been handed over to the authorities of the occupied territory”(p. 62).

*Response:* Unfortunately the time has not come in the Occupied Palestinian Territory when the application of the Convention is no longer or less justified. The transfer of governmental and administrative powers to the Palestinian Authority in A areas has not diminished the need for the protection of the people of the territories from the Occupying Power for the reasons set out in the present report. This was made clear in the Declaration adopted on 5 December 2001 by the High Contracting Parties to the Fourth Geneva Convention, which reaffirms the applicability of the Convention to the Occupied Palestinian Territory and reiterates “the need for the full respect for the provision of the said Convention in that Territory” (para. 3).

10. The Government of Israel has raised a number of serious objections to the Special Rapporteur’s interpretation of his mandate which call for attention. The Special Rapporteur requests that the Commission consider this matter at its session in 2002 and issue a directive on the subject so that the scope of the present mandate is not in dispute.

### III. OCCUPATION AND TERRORISM

11. There are different perceptions of the cause of the violence in the region. Palestinians see the military occupation of their territory as the principal cause of the present crisis. Every Palestinian is today personally and directly affected by the occupation: freedom of movement is seriously impeded by Israeli military roadblocks (checkpoints) that have transformed short journeys into major excursions; the standard of living has been drastically lowered by the closure/blockade of cities and towns and the livelihood of many is threatened; education has been seriously disrupted and health care undermined; homes have been demolished and agricultural land “swept” by bulldozers; militants (and innocent bystanders) are killed by rockets

from the skies; tanks parade through cities under the administrative control of the Palestinian Authority; fighter jets and helicopters patrol the skies and terrorize the people with their shelling; and Israeli settlers drive along special roads, accompanied by military convoys, to settlements that seem to grow and grow. It is small wonder, therefore, that Palestinians see the military occupation as the denial of their dignity, as an obstacle in the way of Palestinian statehood and as the source of violence in the region.

12. The Israeli perception is very different. Israelis see terrorism as the cause of the crisis. Suicide bombers who enter Israeli shopping districts, suburbs and settlements, snipers who shoot at passing traffic, and gangs who stab pedestrians in the parks have instilled a sense of fear into all Israelis. There is no guarantee of safety on the streets or roads, in shopping malls, restaurants or nightclubs. Palestinian violence is not seen as a response to Israeli military occupation of the Palestinian Territory but as terror directed at the very existence of the State of Israel.

13. Since 11 September, international support for the belief that terrorism is the main problem to be confronted in the region has inevitably grown. That terrorism is a threat to the present world order cannot, and should not, be denied. That terrorism is a scourge that threatens Israelis and Palestinians alike cannot and should not be denied. Every effort should be made to end violence intended or calculated to create a state of terror in the minds of particular persons or the general public, whether it is perpetrated by instruments of the State, by organized non-State groups or by individuals.<sup>1</sup> At the same time, it is important not to ignore the main explanation for the acts of terrorism committed by Palestinians against Israelis - the military occupation. It is the occupation of the Palestinian Territory that gives rise to savage acts of violence, highlighted by suicide bombings. The occupation also has other, less obvious, consequences for the occupier. As Mr. Avraham Burg, the Israeli parliamentary speaker, stated in the Knesset on 28 January 2002:

“An occupying people, even if it was led into being an occupier against its will, ends up being harmed by the occupation and its stains, which change and disfigure it. We should not forget that the jailer and his prisoner remain locked up for most of the day behind the same walls and without hope. To put it in other, more stark terms, respected members, the occupation corrupts.”

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<sup>1</sup> In document E/CN.4/2002/129 the Government of Israel criticizes the Special Rapporteur for referring to “*emerging* norms of international law” prohibiting terrorism. Exception is apparently taken to the word “*emerging*”. In response the Special Rapporteur wishes to point out that while the international community has succeeded in criminalizing by treaty species of terrorism such as hijacking, aerial sabotage, hostage-taking, offences against diplomats, seizure of aircraft and terrorist bombing, it has not yet agreed on a comprehensive definition of terrorism. Indeed this issue is currently before the Sixth (legal) Committee of the General Assembly, where the debate over the response to State terror continues to create definitional difficulties.

This reminder of the consequences of occupation for the occupier was echoed in a statement by 60 Israeli army reservists, half of them officers and all of them combat veterans, when they announced that they would refuse to continue serving in the Palestinian Territory:

“We will no longer fight beyond the Green Line for the purpose of occupying, deporting, destroying, blockading, killing, starving and humiliating an entire people” (*International Herald Tribune*, 29 January 2002).

Support for this position is growing daily (*International Herald Tribune*, 20 February 2002).

14. It is against this background that it is necessary to reiterate that it is the military occupation of the Palestinian Territory that is responsible for most of the violations of humanitarian law and human rights described in this report. Similarly it is necessary to recall the applicability of the Fourth Geneva Convention as the governing law. On 5 December 2001, the High Contracting Parties to the Fourth Geneva Convention reaffirmed the applicability of this Convention to the Occupied Palestinian Territory, reiterated the need for full respect for the provision of the Convention and recalled the obligations under the Convention of the parties to the conflict and of the State of Israel as the Occupying Power.

15. The Israeli argument that it is no longer the Occupying Power in respect of the A areas of the Palestinian Territory, accounting for 98 per cent of the population, is not supported by the facts on the ground. The harsh realities of occupation - shelling, tanks and roadblocks - are evident in the A areas, as well as in other areas of the Palestinian Territory. The Palestinian Authority may have powers of administration and local government but ultimately Israel has effective control over the lives of Palestinians throughout the Territory. According to article 42 of the Hague Regulation of 1907, occupation extends only to the territory where the authority of the hostile army “has been established and can be exercised”. It cannot seriously be suggested that this threshold has not in recent months been reached in the Palestinian Territory.

#### IV. VIOLENCE AND LOSS OF LIFE

16. Since the start of the second intifada, in September 2000, nearly 1,000 Palestinians have been killed and about 17,300 injured. More than 260 Israelis have been killed and about 2,400 injured. Most of those killed and injured have been civilians, many of them children.

17. The first few months of the second intifada were characterized by violent clashes between Palestinian protesters, whose weapons were stones and molotov cocktails, and the IDF. Most deaths and injuries were the result of gunfire from the IDF. In its report, the Human Rights Inquiry Commission found that the Israel Defense Forces had responded in a disproportionate manner to protesters and were guilty of excessive use of force (E/CN.4/2001/121, paras. 44-52). Since then, the situation has changed radically as the Palestinians have moved from protest to armed force and the Israelis have responded by using heavier weaponry. Today, most Palestinian deaths have resulted from missile attacks directed at selected individuals suspected of

terrorism (but which, inevitably, have also killed innocent bystanders), shelling and shootings carried out by soldiers and settlers, often after an exchange of gunfire. Israeli deaths have largely been caused by terrorist bombs in Israel itself and by gunfire directed at settlers on bypass roads or in the proximity of settlements.

18. It is difficult to categorize the present conflict. At times it assumes the character of a law enforcement action by the IDF. But at others it probably qualifies as an armed conflict as a result of the protracted armed violence between the IDF and Palestinian militia (in the language of the *Prosecutor v. Tadić*, International Criminal Tribunal for the Former Yugoslavia, reported in (1996) 35 *International Legal Materials*, at p. 54). In the case of such a conflict both parties are obliged to respect the rules of international humanitarian law. Hence the call by High Contracting Parties to the Fourth Geneva Convention on 5 December 2001 to both parties to the conflict to:

“ensure respect for and protection of the civilian population and civilian objects and to distinguish at all times between the civilian population and combatants and between civilian objects and military objectives. They also call upon the parties to abstain from any measures of brutality and violence against the civilian population whether applied by civilian or military agents and to abstain from exposing the civilian population to military operations”.

19. Both Israelis and Palestinians have violated important norms of humanitarian law and international law as the confrontation has changed its character. Israel's freely acknowledged practice of selected assassination or targeted killings of Palestinian activists, which has resulted in the killing of some 60 persons, cannot be reconciled with provisions of the Fourth Geneva Convention, such as articles 27 and 32, which seek to protect the lives of protected persons not taking a direct part in hostilities. They also violate human rights norms that affirm the right to life and the prohibition on execution of civilians without trial and a fair judicial process. There is no basis for killing protected persons on the basis of suspicion that they have engaged or will engage in terroristic activities. In addition, many civilians not suspected of any unlawful activity have been killed in these targeted killings, in the bombing of towns and villages or in gunfire exchanges, in circumstances indicating an indiscriminate and disproportionate use of force.

20. The force employed by Palestinians is also contrary to the norms of international law. The shooting of settlers cannot be justified. Despite the fact that the settlements violate article 49 (6) of the Fourth Geneva Convention, and the fact that the settlers' presence in the Occupied Palestinian Territories is illegal, settlers remain civilians and cannot be treated as combatants, unless, of course, they are engaged as soldiers in the Israel Defense Forces or in vigilante-type military operations. (The growing militarization of settlements and settlers is to be deplored as it encourages the belief that force may be used against settlers.) Indiscriminate attacks against civilians, including bomb attacks carried out by suicide bombers, intended to create a state of terror among the civilian population, violate norms of humanitarian law and general international law. The extent to which these actions are subject to the control of the Palestinian Authority is uncertain. There is, however, no doubt that it could do more to prevent the shooting of settlers and the culture of violence that produces suicide bombers.

21. An unfortunate feature of the present situation is the failure of both parties to the conflict to investigate atrocities and to prosecute and punish those responsible. Israel regularly, and with justification, castigates the Palestinian Authority for its failure to arrest those responsible for the murder of Israelis or to detain those suspected of being responsible for acts of terrorism in Israel. This complaint, which features prominently in the Western media, is used as a justification for refusing to resume negotiations with the Palestinians. Yet Israel is itself at fault in this respect as it too, with its sophisticated police apparatus, has failed to apprehend settler vigilantes responsible for killing Palestinian civilians or to prosecute members of the armed forces guilty of the indiscriminate use of force. In the wake of the killing of a Palestinian family at Idna in July 2001, an Israeli columnist, Gideon Levy, wrote in *Ha'aretz* on the subject of the Israeli restraint in taking action against those responsible for atrocities against Palestinians:

“In a time of increasing Palestinian terror, no day passes without pogroms by settlers, and the police, the Israel Defense Forces and the other security forces stand there, sometimes closing their eyes and sometimes winking ... The restraint over actions by the extreme right includes all governmental authorities: the police, the IDF, the Shin Bet, the courts and the authorities that grant pardons. It is a dangerous restraint, whose putrid fruits led to the most recent murder at Idna: the persons who carried it out believed that their chances of getting caught were infinitesimal ... The restraint ... undermines Israeli arguments regarding the PA's inability to fight terror: it is a little hard to complain about the 'revolving door', the lack of arrests and failure to prevent terror at a time that Israel, a sovereign State rich in security apparatuses, does the same thing when it comes to its own, home grown terror.” (22 July 2001)

22. Violence is escalating rapidly in the region. Israel, with its arsenal of sophisticated weaponry, is taking tougher measures against Palestinians and Palestinian targets. F 16 fighter aircraft and Apache helicopters patrol the skies; heavier bombs pound Palestinian targets; bulldozers plough through more buildings; tanks parade through A area towns; and the military presence at roadblocks intensifies. The Palestinian response is equally tough: while suicide bombers have created terror in the Israeli heartland, militarized groups armed with rifles, mortars and Kassam-2 rockets confront the IDF with new determination, daring and success. In this situation, calls for a ceasefire or a cessation of violence as a precondition for the resumption of talks between Israelis and Palestinians are doomed to fail. Only an effective international presence in the region with the power to monitor and reduce the use of violence can achieve this goal. The Special Rapporteur is aware of Israel's objections to such a proposal: memories of the withdrawal of the United Nations Emergency Force (UNEF) from the Egyptian border facing Israel in 1967; the fear that a United Nations force will be able to curb Israeli conventional violence, but not Palestinian suicide bombers and snipers; and, above all, the argument that this will “internationalize” the conflict. United Nations peacekeeping operations have not met with success on all occasions. This no one can deny. On the other hand, they have served to reduce tensions in many conflicts and, ultimately, to restore peace. The present conflict is already international in the sense that it is one between a State and a nascent State, with many of the characteristics of statehood. The danger is that it will draw in other States in the region. If this is to be avoided and the level of violence brought under control, it seems that there is no alternative to an international peacekeeping mission, structured and composed to meet the special circumstances of the region.

## V. SETTLEMENTS

23. The international community is united in its categorization of Jewish settlements in the West Bank and Gaza as contrary to article 49 (6) of the Fourth Geneva Convention, which prohibits an Occupying Power from transferring parts of its own civilian population into the territory it occupies. In numerous resolutions the Security Council and the General Assembly have condemned the settlements as illegal and in their Declaration of 5 December 2002, the High Contracting Parties to the Fourth Geneva Convention reaffirmed this position.

24. Today, there are some 190 settlements in the West Bank and Gaza, inhabited by approximately 390,000 settlers, of whom some 180,000 live in the East Jerusalem area. Settlements are linked to each other and Israel by a vast system of bypass roads (from which Palestinian vehicles are excluded), which have a 50- to 75-metre buffer zone on each side of the road in which no building is permitted. These settlements and roads, which separate Palestinian communities and deprive Palestinians of agricultural land have fragmented both land and people. In effect, they foreclose the possibility of a Palestinian State as they destroy the territorial integrity of the Palestinian Territory.

25. The relationship between settlers and Palestinians is an unhappy one and each side views the other with hostility, anger and suspicion. Protected by the Israeli military, and exempt from the jurisdiction of the courts of the Palestinian Authority, settlers have committed numerous acts of violence against Palestinians and destroyed Palestinian agricultural land and property. Since the beginning of the second intifada, incidents of settler violence have dramatically increased. Palestinian hostility towards settlers has grown alarmingly since the start of this intifada and most of the Israelis killed in the present conflict have been settlers or soldiers charged with the task of protecting settlements and roads leading to settlements.

26. That peace is impossible without a complete freeze on all settlement activity was emphasized by the "Mitchell report" of 20 May 2001 (report of the Sharm El Sheikh Fact-finding Committee). The response of the Government of Israel to that recommendation was far from satisfactory. It declared that "it is already part of the policy of the Government of Israel not to establish new settlements. At the same time, the current and everyday needs of the development of such communities must be taken into account". In other words, the "natural growth" of the settlements will continue.

27. The evidence of the continued expansion of settlement activity is all too clear. During his visits, the Special Rapporteur saw evidence of this in the form of construction activity in the settlements of Har Homa and Pisgat Ze'ev and in the extension of the buffer zones adjacent to bypass/settler roads in the Gaza Strip. He also received evidence of the growth in the number of housing units, the expansion of the territorial limits of settlements by means of caravan outposts established adjacent to settlements, and of an increase in the settler population in the West Bank and Gaza from 203,067 in December 2000 to 205,015 in June 2001. Generous tax breaks and cheap housing in the settlements ensure that their growth will continue.



## VI. BUFFER ZONES

28. A new form of Israeli territorial expansion in the Occupied Palestinian Territory is the security buffer zone along the green line in the northern West Bank near to Jenin. This zone, ranging in width from a few metres to several kilometres, is closed to non-residents. It is likely that the IDF will make greater use of such zones in future. This was promised by Prime Minister Sharon in an address to the Israeli nation on 21 February 2002.

## VII. DEMOLITION OF HOUSES AND DESTRUCTION OF PROPERTY

29. The demolition of houses in the Palestinian Territory, either for security purposes (as in Rafah) or for administrative reasons (as in Shu'afat) continues unabated. In the Gaza Strip alone, over 400 houses have been completely destroyed, while a further 200 have been seriously damaged, leaving over 5,000 persons homeless. On 10 January 2002, 60 houses were completely demolished in the refugee camp of Rafah, rendering 614 persons homeless. The Special Rapporteur visited the site of the demolished houses in Rafah in both August 2001 and February 2002. He also visited demolished houses in Shu'afat and saw the damage caused to homes by Israeli shelling in Beit Jala.

30. The demolition of houses generally takes place in the middle of the night, without warning being given to residents. The following account of a house demolition given by a resident of Rafah captures the horror of such an event:

“On Thursday [10 January], I was woken at about 2 a.m. by the sound of tanks and bulldozers that had come from the direction of the Israeli army post. I got out of bed and saw that my sons had also woken up. The bulldozers were approaching the house and we decided to leave immediately. We woke up the others and got out. We managed to proceed a few metres when three bulldozers reached the house. Immediately, one of them started to demolish the house. I stood in the rain for a few moments, unable to believe that I wouldn't ever see my house again. The children were screaming and one of them asked me to run away because he was afraid I would get hurt. We fled to the adjacent street. I stood there with my wife, children, grandchildren and others in my family and watched for 10 minutes as the bulldozer destroyed our house.” (*B'Tselem*, “Israel's policy of house demolitions and destruction of agricultural land in the Gaza Strip”, February 2002).

It must be recalled that most persons affected by such demolitions are refugees from the 1948 war. For them it represents the elimination of yet another home. No compensation is paid by Israel.

31. The practice of house demolitions has serious legal consequences. First, it may, according to the Committee against Torture, in certain instances amount to cruel, inhuman or degrading treatment or punishment in breach of article 16 of the Convention against Torture and Other Cruel, Inhuman, Degrading Treatment or Punishment, which Israel ratified in 1991 (Conclusions and recommendations of the Committee against Torture of November 2001 on the third periodic report of Israel). Secondly, it may, in terms of article 147 of the Fourth Geneva

Convention, constitute a grave breach of the Convention, involving penal consequences where it constitutes "an extensive destruction ... of property, not justified by military necessity and carried out unlawfully and wantonly". While there are doubtless instances in which houses have been demolished for genuine security reasons, the extent of the damage and the evidence of witnesses suggests that the destruction of houses in many instances is not "rendered absolutely necessary by military operations" (as required by article 53 of the Fourth Geneva Convention) and instead constitutes collective punishment (prohibited by article 33 of the Convention). Violation of these norms carries with it not only a criminal sanction but also a duty to compensate the victim.

32. The creation of buffer zones for bypass roads and settlements has resulted in the "sweeping" of large areas of agricultural land by bulldozers. A total of 285,808 fruit and olive trees have been uprooted, and wells and agricultural constructions have been destroyed. Lasting harm has been done to the environment by these acts of destruction, designed to secure the comfort and security of illegal settlements.

### **VIII. RESTRICTIONS ON FREEDOM OF MOVEMENT**

33. Since 29 September 2000, Israel has imposed severe restrictions on freedom of movement in the occupied territories. International borders with Egypt and Jordan have been frequently closed; the Gaza Strip has been sealed off from the rest of the Palestinian Territory; Gaza Airport has been closed and damaged; travel within Gaza is frequently obstructed by the closure of the road between north and south; and over a hundred checkpoints have been placed on roads in the West Bank. In the West Bank, the Israel Defense Forces have placed checkpoints at the entrances to villages and entry and exit are often possible only via dirt roads, entailing enormous hardships. Trips that once took 15 minutes now take several hours. In some of the villages, mostly in areas near settlements and bypass roads, the dirt roads have also been blocked with large concrete blocks and piles of dirt, and residents are imprisoned in their villages. In August 2001, the Special Rapporteur visited the city of Jericho, which has been encircled by a deep trench to deny vehicles access to the city except through an IDF checkpoint.

34. Road checkpoints have become a regular feature of Palestinian life. Palestinians are obliged to wait for lengthy periods while Israeli soldiers check vehicles and inspect identity documents. In order to avoid these delays Palestinians often abandon their cars or leave their taxi and cross the checkpoint on foot to catch a taxi on the other side of the checkpoint. This practice suggests that the purpose of this exercise is not to prevent security risks from crossing checkpoints that lead to Israel, as any such person may walk around the checkpoint carrying heavy baggage. Rather, it is to humiliate Palestinians and to put pressure on them to cease resistance to Israeli occupation. In this sense, it is a collective punishment of the kind prohibited by article 33 of the Fourth Geneva Convention.

### **IX. ECONOMIC AND SOCIAL DISTRESS**

35. The cumulative effect of the restrictions on the freedom of movement of people and goods is understandably perceived by the Palestinians affected as a siege. It has resulted in severe socio-economic hardships in the Palestinian Territory. The internal closures have

effectively sealed Palestinian population centres and restricted movement from one locality to another. The restriction on the entry of Palestinians into Israel has meant denial of access to their places of work in Israel to an estimated 115,000 Palestinians. The economic results have been devastating: the families of these workers are now suffering from a complete lack of income, threatening them with destitution. Thirty-six per cent of the Palestinian workforce is now unemployed, compared with 20 per cent before the start of the intifada. Fifty per cent of Palestinians live below the poverty line of US\$ 2 per day, more than double the poverty rate before the intifada. There has been a decrease in the per capita income of 47 per cent; and 45,000 households are classified as special hardship cases requiring emergency assistance registered with the Palestinian Authority's Ministry of Social Affairs. UNSCO estimates that the total income losses to the Palestinian economy during the period 1 October 2000 to 31 December 2001 range between US\$ 3.1 and 4.0 billion, which translates into total income losses ranging between US\$ 6.8 and 8.8 million per day.

36. Access to food and water has been severely obstructed by the closure. Food trucks face difficulties in entering Gaza in particular, while food prices have increased as a result of higher transport costs resulting from the closure. Water resources have been reduced owing to obstacles placed in the way of water trucks, the destruction of wells, rooftop water tanks and rain collection pools by shelling, the damaging of water sources by settlers and soldiers and the high consumption of water by settlers.

37. Health care and education have also suffered. Ambulances and private vehicles transporting the sick to hospitals in emergency situations are held up at checkpoints, sometimes with fatal consequences. Access to regular health care at hospitals and clinics has also been made difficult by checkpoints and the use of medical services has declined substantially. Special attention is paid below to the effect of the crisis on children and education.

38. The closure violates a number of provisions of the International Covenant on Economic, Social and Cultural Rights, notably article 11 (which recognizes "the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions") and article 12 (which recognizes "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health"). It is also impossible to reconcile the closure with articles 23, 55 and 56 of the Fourth Geneva Convention, which require the free passage of consignments of medical and hospital stores and the free passage of foodstuffs, clothing and medicines intended for certain vulnerable categories of persons and impose a duty to ensure food and medical supplies to the population and to ensure and maintain medical and hospital establishments and services, public health and hygiene in occupied territories.

## X. REFUGEES

39. It is not within the mandate of the Special Rapporteur to pronounce on the implementation of the right of return of Palestinian refugees recognized in General Assembly resolution 194 (III) of 1948 or on the institutional arrangements for the protection of refugees. No report on the violation of humanitarian law and human rights in the Palestinian Territory

would, however, be complete without special mention of the impact of the present crisis on refugees. Comprising over 50 per cent of the Palestinian population, refugees are particularly vulnerable to Israel's military assaults and economic blockade, on account of the location of many refugee camps near to settlements, settlement roads and the Egyptian border, and the disadvantaged position of most refugees in the labour market. More than half of the Palestinians killed since September 2000 have been refugees. The number of houses demolished or severely damaged in refugee camps is at least twice the number outside refugee camps. According to the United Nations Relief and Works Organization for Palestine Refugees in the Middle East (UNRWA) 320 of the 401 houses demolished in the Gaza Strip were homes to refugees. Unemployment is higher among refugees than non-refugees as is the number of households below the poverty line. Palestinian refugees are particularly vulnerable to higher rates of poverty as a result of negative changes in the economy. This is due to a relative lack of accumulated savings and thus no safety net to protect them from a high dependency on wage labour, the lack of access to land-based forms of subsistence, i.e., agriculture or property, and the large number of dependants per family prevalent in camp populations, which limits the ability of refugee families to absorb drastic and lengthy decreases in income.

## XI. CHILDREN

40. Children have suffered severely from the present crisis in terms of personal safety, family life, physical and mental health, education and justice. Although Israeli Military Order No. 132 defines a child as someone under the age of 16, the present report accepts the international standard of 18 (article 1 of the Convention on the Rights of the Child, 1989), which is also the position under Israeli law. By this standard, over half the population of Palestine are children.

41. Over 200 of the Palestinians killed since the start of the second intifada in September 2000 have been children, while over 7,000 children have been injured. Of those injured, 500 will experience long-term disabilities. In the early months of the present intifada many children were killed or wounded by the IDF for participating in demonstrations involving the throwing of stones and molotov cocktails. Live ammunition, rubber-coated steel bullets and tear gas were used to disperse demonstrators in a display of excessive and disproportionate use of force (see report of the Human Rights Inquiry Commission of 16 March 2001, E/CN.4/2001/121, paras. 44-52, 116). In the past year, most of the children killed or injured by the IDF were not engaged in confrontational demonstrations, but were victims of shelling by tanks and helicopter gunships, while they were engaged in normal peaceful pursuits. Particularly disturbing are the deaths of five young boys in Khan Yunis on 22 November 2001, caused by a suspicious explosive device, and of three youths crossing a field near Beit Lahia on 30 December 2001, caused by heavy artillery fire. Calls for a full investigation into these deaths have, as yet, not met with a positive response.

42. Inevitably the economic hardships inflicted on the Palestinian community by the "closure" of the Palestinian Territory has had a serious impact on the lives of children. The majority of children in the West Bank and Gaza now live below the poverty line and families are compelled to reduce food consumption. Domestic violence is on the increase and children are becoming increasingly aggressive themselves. Access to hospitals and clinics is obstructed by military checkpoints. And the constant shelling, gunfire and presence of a hostile occupying army has had serious psychological consequences on all, but particularly on children.

43. Education is a top priority in Palestine. There are about 865,500 children enrolled in primary and secondary schools, administered mainly by the Palestinian Authority and UNRWA. Since 1994, many new schools have opened and student numbers have increased substantially. The Palestinian Authority devotes 13 per cent of its budget to education, while more than half of the UNRWA budget goes to education. Education, at all levels, however, has suffered seriously since 29 September 2000, particularly in the 275 schools, with some 118,600 students, within a 500-metre radius of an Israeli military presence.

44. Some schools have been commandeered by the IDF for use as military outposts; others have been bombed; over a hundred have come under fire, both in the daytime when the schools are in session and at night. On 20 February 2001 the National School for the Blind in the West Bank town of Al-Bireh came under fire for three hours, causing extensive damage and traumatizing the disabled children. On some occasions, the IDF has fired tear gas into schools and ordered children to evacuate. Sometimes schools have been closed by the IDF for alleged security reasons or by the school authorities for the safety of the children. The Al-Khader secondary school in the Bethlehem district, which the Special Rapporteur visited, was closed for 45 days by military order, affecting some 2,500 students. This school has been seriously damaged by the IDF, which has on occasion entered the school premises during teaching hours, assaulted students and used tear gas to disperse students. Schools are also hampered by checkpoints, which prevent both students and teachers from reaching school on time, and by military curfews (particularly in Hebron).

45. The effect of the above actions on education has been severe. Schools have lost considerable teaching time as a result of interruption and closures; absenteeism is rife as schools no longer provide a secure environment; and academic performance has deteriorated. Children are afraid and unable to concentrate. It is impossible to assess the long-term psychological harm caused to children by these assaults on their schools, the killing and wounding of their friends and the growing poverty they experience at home. Many have simply lost their childhood.

46. University education has also been adversely affected by the crisis. The University of Bir Zeit, for instance, has lost several weeks of classes as a result of the closure of access roads to the university, while the military checkpoints leading to the university interfere with the normal life of the institution and provide a daily opportunity for harassment of staff and students by the military. The arrest of students has also had a serious impact on university life and cast a shadow on the free exchange of ideas.

47. The right to education is reaffirmed in the International Covenant on Economic, Social and Cultural Rights (art. 13) and the Convention on the Rights of the Child (arts. 28-29). Moreover, article 50 of the Fourth Geneva Convention provides that the

“Occupying Power shall, with the cooperation of the national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children.”

It is impossible to reconcile Israel's actions against schools and children with these provisions.

## XII. CHILDREN AND THE ADMINISTRATION OF JUSTICE

48. Israel is proud of its judicial system and administration of justice. As a nation, Israel is committed to the rule of law and to due process of law in criminal proceedings. There are, however, serious doubts as to whether this commitment extends to the Palestinian Territory, and particularly to the treatment of Palestinian children in the justice system. Consultations with the principal Palestinian, Israeli and international non-governmental organizations working in this field, the study of their carefully prepared reports, backed in some instances by affidavits from their victims, and interviews with several children who were detained, interrogated and imprisoned, reveals an alarming pattern of inhuman treatment of children under the military justice system in the Palestinian Territory. The Special Rapporteur would have preferred to discuss this matter with the Israeli authorities before reporting on it. Unfortunately, the Government of Israel has elected not to cooperate with the Special Rapporteur. In these circumstances, the Special Rapporteur has no alternative but to raise the issue as a prima facie case of inhuman treatment to which the Government of Israel should respond.

49. According to the evidence, about 1,000 children under the age of 18 have been arrested and detained since September 2000 in connection with crimes relating to the Palestinian uprising. Most - over 90 per cent - have been arrested on suspicion of throwing stones at Israeli soldiers, which carries a maximum penalty of 6 months' imprisonment for a child between 12 and 14, and 12 months' imprisonment for a child between 14 and 16. Children are tried in Israeli military courts. There are no military courts or judges designated especially for children, no officers trained specifically for the interrogation of children, no probation officers and no social workers to accompany them. At present about 150 children are in detention or prison.

50. The evidence indicates the following pattern of arrest, interrogation, detention, sentencing and imprisonment. Arrests occur late at night with the maximum disturbance to the family, and children are often assaulted in the process of arrest and on the way to detention centres. Interrogation in order to secure a confession continues for several days and is accompanied by beating, shaking, threats, sleep deprivation, isolation, blindfolding and handcuffing. Detainees are forced to sit or crouch in painful positions ("shabeh"), doused with cold water in winter, and shot at with toy pistols with plastic pellets from close range. Their heads are placed in the toilet and the toilet flushed. Detainees are not permitted to see their lawyers at this stage. Interrogation accompanied by treatment of this kind may continue for several days until a confession is obtained. The Israeli Supreme Court, in its 1999 decision outlawing physical methods of interrogation, accepted that inhuman methods of interrogation qualifying as torture might be employed in a case of "necessity" - where it is imperative to obtain information urgently about the "ticking bomb". This alleged exception to the prohibition on torture is clearly inapplicable where the aim of the interrogation is not to extract information about a ticking bomb but about stone-throwing by children.

51. Following interrogation, children are often detained for several months awaiting trial. When tried they are sentenced to several months in prison: usually between 7 and 12 months in the case of children over 14. In addition, they are usually fined about US\$ 250. They are imprisoned in Israel itself, which makes visits by family and Palestinian lawyers extremely difficult as special permission must be obtained to enter Israel. (Visits arranged by the

International Committee of the Red Cross were suspended for several months but have recently been resumed.) These child "political prisoners" are imprisoned with common criminals and complain of assaults perpetrated by both prison guards and common-law prisoners.

52. Complaints about inhuman treatment to medical doctors (both in detention centres and in prison) and to the trial judges in the military courts are generally not investigated or taken seriously.

53. The inhuman treatment of juvenile offenders described above falls short of international standards contained in the Convention on the Rights of the Child (art. 37), the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (arts. 1, 16), the Standard Minimum Rules on the Treatment of Prisoners of 1957 and the Fourth Geneva Convention (arts. 27, 31, 32, 76). These are serious allegations which require a serious response from the Israeli authorities. The Special Rapporteur recommends that the Israeli authorities conduct a thorough investigation into these allegations (detailed more fully in reports of non-governmental organizations) carried out by an independent body outside the military, police and prison services. At the same time, immediate steps should be taken to transfer those imprisoned in Israel to prison facilities in the occupied territory (as required by article 76 of the Fourth Geneva Convention) that comply with international standards relating to the imprisonment of children. It is also recommended that the military authorities appoint an Israeli judge or other independent Israeli criminal justice expert outside the military to visit detention centres to monitor interrogations and the treatment of juveniles in detention centres before they are brought to trial.

### XIII. CONCLUSIONS AND RECOMMENDATIONS

54. The parties to the conflict are themselves either incapable of or unwilling to bring the violence in the Occupied Palestinian Territory and Israel to an end. In these circumstances, the need for an international presence, either in the form of monitors or peacekeepers, is surely imperative to reduce violence, restore respect for human rights and create conditions in which negotiations can be resumed. (See further, paragraph 22 above.)

55. International humanitarian law and human rights norms have been seriously violated in the present conflict by both parties. Both Israelis and Palestinians should make every endeavour to respect the rule of law, human rights and humanitarian law. Targeted killings of selected Palestinians by guided missiles, terrorist bombings in Israel, the demolition of homes in the Palestinian Territory and the indiscriminate killing of civilians by both sides must cease.

56. Israel's restrictions on freedom of movement, resulting from checkpoints, have caused great personal, social and economic hardships to civilians in no way involved in the conflict. They constitute collective punishment of the kind prohibited by article 33 of the Fourth Geneva Convention. Moreover, sufficient doubts have been cast on both the purpose and the effectiveness of checkpoints as a means of promoting security to warrant a serious reconsideration of their retention by the Government of Israel.

57. Settlements are an ever-visible and aggravating sign of occupation and of Israel's illegal conduct as an Occupying Power. It is not enough merely to impose a freeze on settlements. Steps must now start to dismantle settlements.

58. Children have suffered greatly in the present crisis. Every effort should be made by the Israeli military authorities to ensure that the safety and welfare of schools and schoolchildren are respected. It is further recommended that an investigation be conducted into allegations of inhuman treatment of children under the military justice system and that immediate steps be taken to remedy this situation. (See the recommendations contained in paragraph 53 on this subject.)

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# ANNEX 3

Report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Palestinian territories occupied by Israel since 1967,  
29 August 2002, A/57/366



## General Assembly

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**Fifty-seventh session**

Item 111 (c) of the provisional agenda\*

**Human rights questions: human rights situations and reports of special rapporteurs and representatives**

### **Question of the violation of human rights in the occupied Arab territories, including Palestine**

**Report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Palestinian territories occupied by Israel since 1967**

#### **Note by the Secretary-General\*\***

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report on violations of international humanitarian law and human rights in the Palestinian territories occupied since 1967, submitted by John Dugard, Special Rapporteur, pursuant to Commission on Human Rights resolutions 1993/2, section A, and 2002/8 and Economic and Social Council decision 2002/243.

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\* A/57/150.

\*\* In accordance with General Assembly resolution 55/222, part III, para. 10, the present report is being submitted beyond the 2 July deadline so as to include as much updated information as possible and the decision of the Economic and Social Council.

*Executive summary*

In the past several months, violence has escalated in both the Occupied Palestinian Territory and Israel. Israel has effectively reoccupied the Occupied Palestinian Territory and the peace process has completely stalled. Human rights and international humanitarian law have suffered drastically in the process.

Civilians are the main casualties of the conflict. Both Israel and Palestine have ignored the basic principles of distinction and proportionality in their actions against or involving civilians. Palestinian groups have been responsible for an increased number of suicide bombings in Israel and for the killing of settlers. The Israel Defense Forces (IDF) have been responsible for a heavy loss of life in their military incursions, particularly in Nablus and Jenin, and rocket attacks on militants. Many of those killed in both Israel and Palestine have been children.

IDF incursions in the West Bank have resulted in large-scale arrests and detentions. Detainees have been treated in an inhuman and degrading manner, sometimes constituting torture. These incursions have been characterized by a massive destruction of property, estimated by the World Bank at \$361 million.

Closures, checkpoints and curfews have destroyed freedom of movement for Palestinians, with disastrous consequences for human freedom, health, welfare and education.

Illegal settlements have continued to grow. Moreover, there is now a plan to build a fence or zone between Israel and the Occupied Palestinian Territory, which will result in a further annexation of Palestinian territory.

Fundamental norms of human rights law and international humanitarian law have been violated on a large scale. The destruction and disruption of the civil administration in the West Bank have serious implications for both the Palestinian people and the rule of law. Under the law, Israel, as the occupant, is obliged either to assume responsibility for civil administration itself or to permit the Palestinian Authority to carry out its functions properly. In terms of the Fourth Geneva Convention, all State Parties are required to ensure that this happens.

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## **I. Introduction**

1. On 26 March 2002, the Special Rapporteur reported to the Commission on Human Rights at its fifty-eighth session on the situation of human rights in the Palestinian territories occupied by Israel since 1967. That report was based largely on a visit to the region in February 2002. Much has happened since then. Violence has escalated in both the Palestinian Territory and Israel, Israel has effectively reoccupied the Palestinian Territory and the peace process has completely stalled. Both the Security Council and the General Assembly have adopted resolutions, but to little avail.<sup>1</sup> The present report makes no attempt to give a full account of the events of the past few months or of the failed attempts to restore peace in the region, which are matters of public record that have received wide coverage in the media (see also A/ES-10/186). Instead, it focuses on the principal violations of human rights and international humanitarian law. Inevitably, much will happen in the Occupied Palestinian Territory between the writing of the present report and its presentation. An addendum will therefore be submitted later, based on a visit to the region planned for late August.

## **II. Human rights and terrorism**

2. Since 11 September 2001, the response to terrorism has dominated the world's agenda and the protection of human rights has been reduced in importance. This is unfortunate as it is clear that the promotion and protection of human rights is the most effective method of combating terrorism. The relationship between terrorism and human rights is nowhere more evident than in the Middle East, where the violation of human rights in the Occupied Palestinian Territory has produced acts of terrorism in Israel, violating the most basic right to life, and this in turn has led to acts of military terror in the Occupied Palestinian Territory, with the inevitable suppression of basic human rights. In this situation, it serves little purpose to apportion immediate blame. It is far wiser to acknowledge that violations of human rights are a necessary consequence of military occupation and to address ways of ending this situation so that the cycle of violence is replaced by the increasingly difficult, but increasingly necessary, quest for peace and security.

## **III. Civilians: victims of the conflict**

3. Civilians inevitably are the main casualties of armed conflict and civil strife. International humanitarian law seeks to limit harm to civilians by requiring that all parties to a conflict respect the principles of distinction and proportionality. The principle of distinction, codified in article 48 of the First Additional Protocol to the Geneva Conventions of 1977, requires that parties to the conflict shall "at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives". Acts or threats of violence, the primary purpose of which is to spread terror among the civilian population, are prohibited (article 51 (2)). The principle of proportionality codified in article 51 (5) (b) prohibits an attack on a military target which may be expected to cause incidental loss of civilian life, injury to civilians and damage to civilian objects which would be excessive in relation to the concrete and direct military advantage anticipated. That these

principles apply to both Israelis and Palestinians was confirmed by the High Contracting Parties to the Fourth Geneva Convention when, in a statement issued on 5 December 2001, they called on both parties to the conflict to:

*“ensure respect for and protection of the civilian population and civilian objects and to distinguish at all times between the civilian population and combatants and between civilian objects and military objectives. They also call upon the parties to abstain from any measures of brutality and violence against the civilian population whether applied by civilian or military agents and to abstain from exposing the civilian population to military operations”.*

Sadly, neither party to the conflict in the region has paid proper respect to these principles as the death toll has continued to rise. Since the start of the second intifada in September 2000, a total of 1,700 Palestinians and 600 Israelis have been killed. Most have been civilians.

4. Within Israel, most deaths have been caused by suicide bombers who have carried their lethal weapons of destruction on to buses and into busy shopping centres. Despite condemnation from the Palestinian Authority and prominent Palestinian community leaders — and the international community — this instrument of terror, which shows no regard for either the principle of distinction or that of proportionality, continues to be used by paramilitary Palestinian groups.

5. The Israel Defense Forces (IDF), presumably well educated in the rules of international humanitarian law, have likewise shown little regard for the principles of distinction or proportionality. Recent military incursions into the West Bank and the reoccupation of Palestinian towns and cities have resulted in heavy loss of civilian life. That was nowhere more apparent than in Operation Defensive Shield, in March and April 2002, in which the refugee camp of Jenin and the city of Nablus were subjected to heavy bombardment from air and land before IDF troops entered, employing bulldozers to facilitate their movement and allegedly using Palestinian civilians as human shields against snipers. Of the 80 persons killed in Nablus, 50 were civilians, and of the 52 killed in Jenin, 22 were civilians. Since November 2000, the IDF has targeted and killed a number of selected militants in precision bombings. These assassinations have often been carried out, however, with no regard for civilians in the vicinity. Of the 165 persons killed in such actions, at least one third have been civilians. A recent incident starkly illustrates the manner in which such attacks have sometimes been made. On 22 July, the IDF carried out a late night air strike, aimed at Hamas military leader Salah Shehada while he was in a densely populated residential area of Gaza City, which killed 15 persons (including 9 children) and injured over 150 others.

6. Many of the civilians killed have been children. In 2002, over 100 children have been killed, not in crossfire between Palestinian and Israeli forces, as is usually believed, but mainly when the IDF has randomly opened fire or shelled civilian neighbourhoods. Over 20 children have been killed “collaterally” in the course of the assassination of militants.

#### **IV. Detentions, inhuman treatment and children**

7. The assaults on Palestinian towns in March and April in Operation Defensive Shield and subsequent military operations in the West Bank have resulted in massive

arrests and detentions. In the period between 29 March and 5 May alone, some 7,000 Palestinians were arrested, of whom 5,400 had been released by that date.<sup>2</sup> In many towns and refugee camps, all males between the ages of 16 and 45 were arrested. Most were held for several days only. Arrests of this kind constitute a form of collective punishment as in most instances there has been no regard for the personal responsibility of those arrested. In many cases, arrested persons have been subjected to humiliating and inhuman treatment. They have been stripped to their underpants, blindfolded, handcuffed, paraded before television cameras, insulted, kicked, beaten and detained in unhygienic conditions. Those not released are held without trial or access to a lawyer. Some are held in administrative detention; others are held in terms of Military Order 1500, issued on 5 April to permit lengthy detention of those arrested since 29 March. Military Order 1500 authorizes incommunicado detention for up to 18 days — which may be renewed for up to 90 days. There are widespread allegations of torture, consisting of sleep deprivation, severe beating, heavy shaking, painful shackling to a small chair, subjection to loud noise and threats of action against family members.

8. In my report of 6 March to the Commission on Human Rights (E/CN.4/2002/32), I drew attention to serious allegations of inhuman treatment and torture, of the kind described in the preceding paragraph, of juveniles detained and imprisoned for political offences, particularly throwing stones at members of the IDF. I stressed that such treatment violated important norms of international law contained in the Convention on the Rights of the Child (art. 37), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (arts. 1, 6) and the Fourth Geneva Convention (arts. 27, 31, 32, 76). I accordingly called upon the Israeli authorities to conduct a thorough investigation into those allegations (detailed fully in the reports of non-governmental organizations) carried out by an independent body outside the military, police and prison services. Sadly, no such action has been taken. On the contrary, the position of children has deteriorated still further. It is estimated that between 10 and 15 of the thousands recently detained are children.<sup>3</sup> Moreover, there is evidence that many have been subjected to the same humiliating and inhuman treatment (sometimes amounting to torture) as adults, described above.

## **V. Curfews, checkpoints and the reoccupation of Palestine**

9. Since the start of the second intifada, in September 2000, Israel has imposed a stranglehold on the lives of Palestinians by means of restraints on freedom of movement. First came the closure of international borders and the sealing off of Gaza from the rest of the Palestinian Territory. Second came the erection of 120 checkpoints on roads in the West Bank. Third, in 2002, came the curfew, not of a town or neighbourhood, but of a substantial portion of the nation. It is these measures, vigorously enforced by the IDF, which constitute the reoccupation of the Palestinian Territory.

10. The IDF operation “Determined Path”, commenced in mid-June, has resulted in the reoccupation of seven of the eight major West Bank urban centres and adjoining refugee camps and villages. Between 18 and 25 June, curfews were imposed on Jenin, Qalqiliya, Bethlehem, Nablus, Tulkarem, Ramallah and Hebron. That has subjected over 700,000 persons to a regime similar to house arrest which confines them to their homes, except every third or fourth day when the curfew is

lifted for several hours to allow residents to obtain essential supplies. The curfew is strictly enforced by the IDF and there have been many incidents of shooting of civilians who had failed to observe the curfew.

11. That reoccupation by closure and curfew has affected every feature of Palestinian life. There have been shortages of basic foodstuffs; interference with medical services by the denial of access to doctors and hospitals; interruption of family contacts; and stoppages of education (at a particularly important time — that of end-of-year examinations). Municipal services, including water, electricity, telephones, and sewage removal have been terminated or interrupted; and the IDF has denied permission to repair damaged municipal service supply units. There has also been a near complete cessation of productive activity in manufacturing, construction and commerce as well as private and public services, which has had serious consequences for the livelihood of most of the population. Inevitably, the incidence of poverty has increased dramatically. In May, the World Food Programme estimated that food aid was a priority need for 620,000 Palestinians in the West Bank and Gaza.

12. No one is exempt from the curfew. Chairman Arafat himself has been confined to his compound in Ramallah and his supplies of electricity and water have been intermittently cut off.

## **VI. Destruction of property**

13. The assaults on cities in the West Bank in Operation Defensive Shield, from 29 March to 7 May, left devastation in their wake. In Jenin, 800 dwellings were destroyed and many more damaged, leaving over 4,000 people homeless. Losses were estimated by the World Bank at \$83 million. In Nablus, there was extensive damage to the old city, including religious and historic sites. Repair costs have been estimated by the World Bank at \$114 million. Refugees were the hardest hit. In the military offensives of 27 February to 17 March and 29 March to 7 May, over 2,800 refugee housing units were damaged and 878 homes destroyed or demolished, leaving 17,000 persons homeless or in need of shelter rehabilitation. The World Bank estimates that Operation Defensive Shield caused physical damage amounting to \$361 million in the West Bank as a whole, compared with the \$305 million caused by damage in the first 15 months of the intifada.<sup>4</sup> Private businesses suffered the most (\$97 million), followed by housing (\$66 million), roads (\$64 million) and cultural heritage sites (\$48 million).

14. In the past, there has often been a disciplined, retributive approach to the destruction of property. For instance, the houses of suspected militants have been demolished in a clinical display of collective punishment — a practice that continues to this day. The destruction of property in Operation Defensive Shield, however, had a wanton character that surprised even the harshest critics of the IDF. In many houses entered by the IDF, soldiers broke holes into the walls in order to reach neighbouring houses. Sometimes, holes were made from one apartment to another where it was possible for soldiers to have entered from a veranda or window. Worse still, there were reports of systematic trashing of homes, of wanton destruction of televisions and computers in homes, schools and office buildings and of looting.<sup>5</sup>



## VII. Territorial integrity of the Occupied Palestinian Territory

### A. Settlements

15. The international community is united in its categorization of Jewish settlements in the West Bank and Gaza as contrary to article 49 (6) of the Fourth Geneva Convention, which prohibits an occupying power from transferring parts of its own civilian population into the territory it occupies. In numerous resolutions, the Security Council and the General Assembly have condemned the settlements as illegal and, in their Declaration of 5 December 2001, the High Contracting Parties to the Fourth Geneva Convention reaffirmed that position.

16. Today, there are some 190 settlements in the West Bank and Gaza, inhabited by approximately 390,000 settlers, of whom some 180,000 live in the East Jerusalem area. Settlements are linked to each other and to Israel by a vast system of bypass roads that have a 50- to 75-metre buffer zone on each side in which no building is permitted. These settlements and roads, which separate Palestinian communities and deprive Palestinians of agricultural land, have fragmented both land and people. In effect, they foreclose the possibility of a Palestinian State as they destroy the territorial integrity of the Palestinian Territory.

17. The relationship between settlers and Palestinians is an unhappy one and each side views the other with hostility, anger and suspicion. Protected by the Israeli military, and exempt from the jurisdiction of the courts of the Palestinian Authority, settlers have committed numerous acts of violence against Palestinians and destroyed Palestinian agricultural land and property. Since the beginning of the second intifada, incidents of settler violence have dramatically increased. Palestinian hostility towards settlers has grown alarmingly since the start of this intifada and many of the Israelis killed in the current conflict have been settlers or soldiers charged with the task of protecting settlements and roads leading to settlements. In the past few months, acts of terrorism against settlers have escalated as Palestinian militants have attacked settlements or buses en route to settlements.

18. Despite threats to the life and security of settlers, the Government of Israel has made no attempts to reduce the number of settlers. Indeed, it has refused to provide them with assistance in returning to Israel and has encouraged them to stay on settlements by continuing to offer cheap housing, discounted loans and tax incentives.<sup>6</sup>

19. Assurances by the Government of Israel that it will limit the growth of settlements cannot be reconciled with the facts. Settlements have continued to increase, mainly by means of informal "outposts" established in the proximity of existing settlements, officially tolerated if not officially authorized; and by means of the construction of new housing units in existing settlements. Since February 2001, a total of 44 "outposts" have been constructed, according to Peace Now, the Israeli peace and human rights movement. In July 2002, steps were taken to destroy some of the smallest, unpopulated outposts, a step castigated by YESHA, the settlers' association, as an encouragement of terrorism. Politically, settlers wield considerable power within the Israeli body politic and this enables them virtually to dictate policy to the Government.

## **B. Fences and buffer zones**

20. The failure to prevent Palestinian suicide bombers from reaching their targets in Israel has led to a new strategy on the part of the Government of Israel. This is the construction of a 360-kilometre security fence or zone comprising ditches, barricades, walls, monitored electrified fences and patrol roads to separate Israel from Palestine. The exact course and breadth of the fence/zone is uncertain but it is clear that it will not carefully follow the existing Green Line marking the pre-1967 borders between Israel and Jordan. Instead, it will encroach further on Palestinian territory by establishing a buffer zone several kilometres wide within Palestine and by incorporating settlements near to the Green Line. Moreover, it will incorporate East Jerusalem and neighbouring settlements, such as Ma'ale Adumim into Israel. This unilateral redrawing of the border in the name of security is simply a pretext for the illegal annexation of Palestinian territory.

## **VIII. The occupation from the perspective of international human rights and international humanitarian law**

21. Speaking to the Security Council on 12 March 2002, the Secretary-General, Kofi Annan, called upon Israel to end its "illegal occupation" of the Palestinian Territory. Asked to explain why he used the term *illegal* to describe the occupation of the Palestinian Territory, he replied that "the Security Council and the General Assembly have both at various occasions declared aspects of Israeli occupation as illegal". He noted, in particular, the building of settlements, the annexation of East Jerusalem and recent events in the region. The comments of the Secretary-General underscore the fact that it is by the law of occupation that Israel's conduct must be judged and that many of its practices violate basic principles of that governing law.

22. The governing body of law is to be found in the Hague Regulations of 1907, the Fourth Geneva Convention of 1949, and international human rights conventions on civil and political rights, social, economic and cultural rights and the treatment of children, as supplemented by customary international law. That international human rights law forms part of the law of occupation is clear from article 27 of the Fourth Geneva Convention, which provides that the occupying power is to respect the fundamental rights of protected persons. According to the commentary of the International Committee of the Red Cross on this provision: "The right to respect for the person must be understood in its widest sense: it covers all the rights of the individual, that is, the rights and qualities which are inseparable from the human being by the very fact of his existence and his mental and physical powers; it includes, in particular, the right to physical, moral and intellectual integrity — an essential attribute of the human person" (p. 201). The "rights of the individual" have been proclaimed, described and interpreted in international human rights instruments, particularly the international covenants on civil and political rights, and economic, social and cultural rights of 1966, and in the jurisprudence of their monitoring bodies. These human rights instruments therefore complement the Fourth Geneva Convention by defining and giving content to the rights protected in article 27. This is borne out by the Vienna Declaration adopted by the World Conference on Human Rights in 1993, which states that:

*“Effective international measures to guarantee and monitor the implementation of human rights standards should be taken in respect of people under foreign occupation, and effective legal protection against the violation of their human rights should be provided, in accordance with human rights norms and international law, particularly the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 14 August 1949, and other applicable norms of humanitarian law.”*

#### **A. Violations of human rights**

23. The most basic and fundamental rights have been violated in the course of the conflict in both the Occupied Palestinian Territory and Israel itself. The right to life, upon which all rights depend, has suffered dramatically as a result of terrorist suicide bombings in Israel, attacks on settlers in the Occupied Palestinian Territory and violence against Palestinians by the IDF, including acts of terrorism, assassination, military incursion and the shooting of civilians. The right to human dignity, freedom from torture and arbitrary arrest and the right to a fair trial have been violated on a large scale by Israeli military interventions in the West Bank. Freedom of movement has been completely destroyed for Palestinians by closures, checkpoints and curfews; and the right to property has been dramatically undermined by military offensives. Economic, social and cultural rights have likewise suffered. Curfews, checkpoints and the destruction of housing have violated articles 11 to 13 of the 1966 International Covenant on Economic, Social and Cultural Rights, which together recognize the right of everyone to an adequate standard of living, including adequate food, clothing and housing, to the enjoyment of the highest attainable standard of physical and mental health, and to education. Sadly, many of the provisions of the Convention on the Rights of the Child have been violated. These include the right to life, to health care, to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development, to education, to freedom from torture, inhuman treatment and arbitrary arrest, and to a fair trial as well as the obligation on States to “ensure to the maximum extent possible the survival and development of the child” (article 6 (2)). That Convention, moreover, requires States, in accordance with their obligations under international humanitarian law, “to ensure protection and care of children who are affected by an armed conflict” (article 38 (4)).

#### **B. Violations of international humanitarian law**

24. Many of the most basic principles of international humanitarian law have also been violated. As shown in paragraphs 3 to 6 above, neither party to the conflict has shown respect for the principles of distinction and proportionality in their actions against or affecting civilians. The prohibition on collective punishment “and likewise all measures of intimidation or of terrorism” contained in article 33 of the Fourth Geneva Convention has been violated in many ways by the IDF, including by the destruction of property, curfews, and the arrest of all men between the ages of 16 and 45. The wanton destruction of property carried out as part of Operation Defensive Shield, particularly in Nablus and Jenin, cannot be reconciled with article 53 of the Convention, which prohibits the destruction of property “except where such destruction is rendered absolutely necessary by military operations”.

### C. Civil administration in a state of occupation

25. The law governing occupation, reflected in international custom, the Hague Regulations of 1907 and the Fourth Geneva Convention, is designed to ensure that, notwithstanding the security needs of the occupying power, the day-to-day lives of civilians in an occupied territory will continue normally. In today's world, this means that civilians must have adequate food, shelter, electricity and water; that municipal services such as garbage and sewage removal will continue; that the sick will have access to proper medical care; and that education will not be obstructed.

26. There is no single rule of international law that specifically states that a belligerent occupant is responsible for the civil administration of an occupied territory. There are, however, two sources of law that create such a responsibility: first, article 43 of the Hague Regulations and, second, provisions of the Fourth Geneva Convention. Article 43 is brief and fails to detail the obligations of the occupying power. It simply provides that:

“The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.”

The reason for the failure to spell out the duties of the occupant is that in 1907 “the establishment of a system of administration by the occupant was widely accepted in practice ... as mandatory”.<sup>7</sup>

27. The Fourth Geneva Convention complements this provision by imposing obligations on the occupant to ensure “the food and medical supplies of the population” and to “bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate” (article 55); to ensure and maintain “the medical and hospital establishments and services, public health and hygiene in the occupied territory” (article 56); and to facilitate “the proper working of all institutions devoted to the care and education of children” (article 50). Obligations to provide postal services, telecommunications and transport and to maintain public welfare institutions may also be inferred from the Fourth Geneva Convention and the Hague Regulations.<sup>8</sup> Together, these provisions amount to an obligation on the occupant to establish an adequate civil administration in an occupied territory.

28. In terms of the Oslo Accords, the responsibility for civil administration in the West Bank and Gaza was transferred to the Palestinian Authority. Today, however, the identity of the authority responsible for the civil administration of the West Bank and Gaza is not so clear. The military operations of 2002 have effectively destroyed much of the infrastructure of the Palestinian Authority. Electricity and water supplies have been cut, municipal services terminated, access to food denied, health care obstructed and education seriously interrupted. Does this mean that Israel is now obliged to assume responsibility for the civil administration of the Occupied Palestinian Territory?

29. Although Israel has announced that it anticipates a prolonged occupation of the Palestinian Territory, it clearly does not intend resuming responsibility for the civil administration of the territory.<sup>9</sup> Rather than do this, it is considering handing over some of the \$600 million due to the Palestinian Authority for customs' duties and

tax it has blocked since September 2000.<sup>10</sup> Similarly, the Palestinian Authority, despite complaints that Israel has de facto scrapped the Oslo Accords, is understandably unwilling to contemplate surrendering the power of civil administration to Israel.

30. The current situation is untenable. Israel cannot, in terms of international humanitarian law, deny the Palestinian Authority the capacity to provide an adequate and functioning civil administration, and at the same time refuse to accept any responsibility for such an administration itself. In law, it is obliged either to assume this responsibility or to permit the Palestinian Authority to provide the services that comprise an adequate civil administration. There is a heavy burden on all parties to the Fourth Geneva Convention to take measures to ensure the restoration of a proper civil administration in the Palestinian Territory in accordance with their obligation under article 1 of the Convention "to ensure respect" for the Convention "in all circumstances".

## IX. Concluding remarks

**31. The Occupied Palestinian Territory is a testing ground for human rights and humanitarian law. The great advances in these two bodies of law are undermined by a situation in which human rights and humanitarian law are denied and disregarded with no meaningful response from the international community. The rule of law is one casualty of the conflict in the Occupied Palestinian Territory, but the main casualties are the people of Palestine and of Israel.**

### Notes

- <sup>1</sup> See Security Council resolutions 1397 (2002), 1402 (2002) and 1405 (2002) as well as General Assembly resolution ES-10/10.
- <sup>2</sup> Statement by the State Attorney's Office to the Israeli Supreme Court: H CJ 3239/02 *Iyyad Ishaq Mahmud Mar'ab et al v. Commander of IDF Forces in the Judea and Samaria Area*. Response by the Respondent, 5 May 2002, para. 14.
- <sup>3</sup> See the report on Israeli Practice towards Palestinian Children submitted by Defense for Children International, Palestine Section, to the Committee against Torture, May 2002.
- <sup>4</sup> *International Herald Tribune*, 16 May 2002.
- <sup>5</sup> Amnesty International, *Israel and the Occupied Territories: The Heavy Price of Israeli incursions*, 12 April 2002.
- <sup>6</sup> See further, B'Tselem, *Land Grab: Israeli Settlement Policy in the West Bank*, 2002.
- <sup>7</sup> E. Benvenisti, *The International Law of Occupation* (1993), pp. 4-5.
- <sup>8</sup> M. Greenspan, *The Modern Law of Land Warfare* (1959), pp. 230-235.
- <sup>9</sup> See the statements by Mr. Ben-Eliezer, Minister of Defence, and Major General Amos Gilad reported in the *International Herald Tribune*, 24 June.
- <sup>10</sup> *International Herald Tribune*, 23 July.

# ANNEX 4

Report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Palestinian territories occupied by Israel since 1967, Addendum, 16 September 2002, A/57/366/Add.1

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Human rights questions: human rights situations and  
reports of special rapporteurs and representatives

Question of the violation of human rights in the occupied Arab territories, including Palestine

Report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in the  
Palestinian territories occupied by Israel since 1967

Addendum

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on his visit to the Occupied Palestinian Territory and Israel, from 25 to 30 August 2002.

Summary

1. As indicated in his main report to the General Assembly (A/57/366), the Special Rapporteur relates herewith his visit to the Occupied Palestinian Territory at the end of August 2002.
2. The Special Rapporteur visited the Occupied Palestinian Territory and Israel from 25 to 30 August. During that period, he paid field visits to Nablus and Jenin, where he inspected the damage caused by Operation Defensive Shield, and to Qalquiliya, where he saw the start of the great Wall of Separation between Israel and Palestine. He also visited Ramallah, Bethlehem and Jericho. The Special Rapporteur met with a wide range of people: Chairman Yasser Arafat and Mr. Sa'eb Erekat, Minister of Local Government of the Palestinian Authority; the governor of Nablus and the acting Governor of Jenin; the Mayor of Jenin; representatives of Palestinian, Israeli and international non-governmental organizations; and members of international humanitarian agencies. The visit served to confirm the accuracy of the account of the situation described in the main report. However, the Special Rapporteur believes that the seriousness of the situation was understated in that report. The personal encounter with curfews, the devastated Jenin refugee camp, the badly damaged old city of Nablus, checkpoints where Palestinians are daily humiliated, Chairman Arafat's largely destroyed compound and interlocutors who told of their own suffering and those of others, transformed an intellectual appreciation of a humanitarian crisis into an emotional awareness of the human tragedy that is unfolding in Palestine.
3. The present addendum will not add to all the topics raised in the main report. Instead, it will focus on curfews and closures and their consequences; detentions; collective punishment; children; settlements; and the funding of the humanitarian crisis.

### Security and human rights

4. Before turning to these issues it is necessary to say something about Israel's security needs and interests. There can be no doubt that Israel has legitimate security concerns. Waves of Palestinian suicide bombers have inflicted deep wounds on Israeli society. Israel has both a right and an obligation to protect its people from further attacks. At the same time, it is necessary to ask whether the measures resorted to by Israel, particularly curfews and closures, always serve a security need. Often they appear so disproportionate, so remote from the interests of security, that one is led to ask whether they are not in part designed to punish, humiliate and subjugate the Palestinian people. Israel's legitimate security needs must be balanced against the legitimate humanitarian needs of the Palestinian people. To the Special Rapporteur it appears that there is no such balance. Human rights have been sacrificed to security. This in turn produces a greater threat to Israeli security: the hopelessness of despair which leads inexorably to suicide bombings and other acts of violence against Israelis.

### Curfews, closures and their consequences

5. It is difficult to describe curfews of the kind experienced in Nablus and Ramallah. Previously crowded, bustling cities, full of noise, movement and colour, transformed into ghost towns, with the silence of the city broken only by the rumbling of tanks and the sporadic gunfire of soldiers. Whole cities imprisoned behind walls. An imprisonment arbitrary in its application as none can predict when it will be lifted or when it might be reimposed; and brutal in its implementation as many have been shot and killed for failing to observe the rules of the curfew. It is less difficult to describe a military checkpoint. A group of young soldiers, with the arrogance of adolescence or its immediate aftermath, in dusty uniforms with ominous rifles over their shoulders, entrusted with arbitrary power over the movement of the people of Palestine. Long lines of vehicles or people presenting papers to soldiers behind concrete blocks, all aware that their movement is completely in the hands of these young foreign soldiers. The arrogance of the occupier and the humiliation of the occupied.

6. It is easier to describe the consequences of curfews and closures as they are backed by hard statistics. The subjection of over 700,000 persons in the main cities to curfews, and the denial of access by the villagers to the cities, has resulted in unemployment, poverty, malnutrition and illness. Over 50 per cent of the population of the Palestinian Territory is unemployed. Poverty, based on two dollars or less consumption per day, is at 70 per cent in Gaza and 55 per cent in the West Bank. A total of 1.8 million Palestinians receive food aid or other forms of emergency humanitarian support from a variety of sources, notably the United Nations Relief and Works Agency for Palestine Refugees in the Near East, the World Food Programme and the International Committee of the Red Cross. Twenty-two per cent of children under the age of five suffer from acute or chronic malnutrition, while 20 per cent suffer from iron-deficiency anaemia. Mental health problems have increased alarmingly among children. Health care has suffered drastically as a result of the unavailability of medication and the inability to reach health centres. As usual, the situation in the refugee camps is particularly bleak, as was evident when the Special Rapporteur visited the Balata refugee camp near Nablus.

### Detentions

7. The number of people subjected to administrative detention, that is lengthy detention without trial, has increased from less than 100 to 1,860. Of the 7,000 detainees, some 300 are children and 50 are women (including eight girls).

### Collective punishment

8. The demolition of the homes of families as punishment for crimes committed against Israel by a family member has long been an Israeli practice. In August, the Israeli High Court denied judicial review in such cases, as had previously been the position, thereby giving military commanders complete discretion to order the demolition of houses. This clearly violates article 33 of the Fourth Geneva Convention which prohibits collective punishment.

9. On 3 September, the Israeli High Court issued a ruling allowing the forcible deportation of two Palestinians from their home town of Nablus to the Gaza Strip on the ground that they had allegedly assisted their brother (extrajudicially



executed by Israeli forces on 6 August) to commit attacks against Israelis. Although the Court limited such deportations to "extreme cases", it must be stressed that the decision to deport was not preceded by a trial to determine the deportee's complicity. The right to a fair trial and the prohibitions on collective punishment (article 33 of the Fourth Geneva Convention) and forcible transfers (article 49 of the Convention) are violated by these measures.

### Children

10. Children have suffered greatly as a result of military incursions into Palestinian territory and curfews and closures. Many have been killed or injured; some 300 have been arrested and detained; over 2,000 have been rendered homeless; two thirds live below the poverty line; 22 per cent of children under the age of five suffer from malnutrition; at least 330,000 have been confined to their homes by curfew; over 600,000 have been prevented from attending schools in the West Bank; and most have been seriously traumatized. During Operation Defensive Shield, 11 schools were destroyed, 9 vandalized, 15 employed as military outposts, 15 used as detention centres and 112 damaged. Teachers, like pupils, have often been unable to gain access to their schools as a result of closures. Palestinian leaders expressed great concern to the Special Rapporteur about the fate of schools, which opened on 31 August, in the face of curfews. Treatment of this kind leaves both physical and mental scars. Worse still, it breeds hatred for the occupier, which augurs ill for the future.

### Settlements

11. The main report contains facts about settlements. On this visit, the Special Rapporteur had the opportunity to see the settlements in the Nablus and Jenin districts. Such a visit provides a clear explanation for many of the closures that obstruct Palestinian freedom of movement and strangle Palestinian society. Small mountain-top settlements, with populations of several hundred, are linked to each other and to Israel itself by settlers-only roads. Palestinian roads that cross these roads are sealed off, with the result that villagers are often compelled to make lengthy detours to reach markets, shops, workplaces, schools and hospitals in other villages or towns. Outside Jenin, for instance, the two settlements of Gannim (pop. 158) and Kaddim (pop. 148) are linked by a settlers-only road. The main road from Jenin to eight villages with a combined population of some 20,000 that previously crossed this road has been closed by bulldozers. Villagers who previously were only a 10-minute drive from Jenin must now use circuitous village roads, taking hours to reach Jenin. The basic freedoms of Palestinians to movement and to a decent livelihood are therefore sacrificed in the interest of the security and comfort of the alien settler community. The anger and humiliation this engenders among Palestinians is impossible to assess.

### The paradox of humanitarian assistance

12. The gravity of the situation is indisputable. So is the need for humanitarian assistance on a massive scale. If this is not forthcoming, the Palestinian people will suffer irremediable harm. The Special Rapporteur therefore endorses, and adds his own voice to, calls for humanitarian assistance from the international community.

13. At the same time, it must be made clear that, by providing aid of this kind, the international donor community relieves Israel of the burden of providing such assistance itself and in this way might be seen to be contributing to the funding of the occupation. As is shown in paragraphs 26 and 27 of the main report, Israel itself is obliged, in terms of articles 50, 55 and 56 of the Fourth Geneva Convention, to ensure that the Palestinian people have food and medical supplies, to maintain medical services and to facilitate the working of educational institutions.

\* A/57/150.

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# ANNEX 5

Report of the Special Rapporteur of the Commission on Human Rights , Mr. John Dugard, on the situation of human rights in the Palestinian territories occupied by Israel since 1967, submitted in accordance with Commission resolutions 193/2A and 2002/8, 17 December 2002, E/CN.4/2003/30



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COMMISSION ON HUMAN RIGHTS  
Fifty-ninth session  
Item 8 of the provisional agenda

**QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE  
OCCUPIED ARAB TERRITORIES, INCLUDING PALESTINE**

**Report of the Special Rapporteur of the Commission on Human Rights,  
Mr. John Dugard, on the situation of human rights in the Palestinian  
territories occupied by Israel since 1967, submitted in accordance with  
Commission resolutions 1993/2 A and 2002/8**

### **Executive Summary**

In the past year the situation in the occupied Palestinian territory (OPT) has deteriorated substantially from the perspective of human rights. In large measure this is the result of repeated military operations carried out by the Israel Defence Forces (IDF) in the West Bank and Gaza.

The IDF has justified its actions as self-defence and anti-terrorism measures. That Israel has legitimate security concerns cannot be denied. That it is entitled to take strong action to prevent suicide bombings and other acts of terror is not disputed. On the other hand, there must be some limits on the extent to which human rights may be violated in the name of anti-terrorism. A balance must be struck between respect for basic human rights and the interests of security. The principal balancing factor - proportionality - is the main focus of this report.

Neither party to the conflict in the region has paid proper respect to civilian life and the death toll has continued to rise. Since the start of the second intifada in September 2000, over 2,000 Palestinians and over 700 Israelis have been killed. Most have been civilians.

The IDF military incursion of March to May, code-named Operation Defensive Shield, caused material devastation in many cities - particularly Jenin and Nablus. This was followed by Operation Determined Path in June which resulted in the reoccupation of seven of the eight major cities in the West Bank. Curfews imposed on Jenin, Qalquiliya, Bethlehem, Nablus, Tulkarem, Ramallah and Hebron have subjected over 700,000 persons to a regime similar to house arrest. The curfews are complemented by a system of roadblocks and checkpoints which have effectively divided the West Bank into some 50 separate "cantons", between which movement is difficult and dangerous. The reoccupation has affected every feature of Palestinian life. There have been shortages of basic foodstuffs; interference with medical services by the denial of access to doctors and hospitals; interruption of family contacts; and stoppages of education. Unemployment has now reached over 50 per cent and 70 per cent of the population live in poverty. In this situation there is a desperate need for humanitarian assistance. It has, however, been suggested that such assistance in effect means that the international donor community funds the military occupation.

Military operations have led to widespread arrests and detentions.

Children have probably suffered most from the present conflict. Both Palestinian and Israeli children have been exposed to threats to personal safety, while Palestinian children have, in addition, felt the breakdown of family life, health care and education.

Israeli territorial expansion has accelerated in the past year as a result of seizure of Palestinian land to build a security wall and for the continued growth of settlements.

The report concludes that it is difficult to characterize the Israeli response to Palestinian violence as proportional when it results in an excessive use of force that disregards the distinction between civilians and combatants, a humanitarian crisis that threatens the livelihood of a whole people, the killing and inhuman treatment of children, the widespread destruction of property and territorial expansion.

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## **I. Introduction**

1. The Special Rapporteur visited the occupied Palestinian territory (OPT) and Israel twice in 2002. The first visit, in February, laid the foundation for the report to the Commission on Human Rights at its fifty-eighth session (E/CN.4/2002/32), while the second, in late August, provided the basis for the report to the General Assembly (A/57/366 and Add.1). The present report, written four months before its presentation in order to comply with administrative requirements relating to the submission of reports, will be supplemented by an addendum written after a further visit to the region in February 2002.

2. In 2002 the situation in the region deteriorated substantially from the perspective of human rights. Repeated Israeli military operations in the West Bank and Gaza have left physical, economic and social devastation in their wake. This devastation, coupled with the curfews imposed in the major Palestinian cities and the intensification of checkpoints that obstruct mobility between towns and villages have brought about a humanitarian crisis which has added poverty to the woes of the Palestinians. The serious violation of economic, social and cultural rights has been accompanied by the continued violation of civil rights and international humanitarian law. The death toll in both Palestine and Israel has risen sharply, largely as a result of indiscriminate suicide bombings in Israel and the excessive use of force against civilians by the Israel Defence Forces (IDF) in Palestine. Detentions, inhuman treatment and the destruction of property have also multiplied. Meanwhile, Jewish settlements in the West Bank and Gaza continue to grow despite unanimous international condemnation and assurances from the Government of Israel that restrictions have been placed on such growth.

3. Much will happen in the region between the writing of this report and its presentation in March 2003. Elections in Israel and, possibly, Palestine are anticipated early in 2003, and the threat of war in Iraq remains a reality. The effect of events of this kind, and the consequences of the ongoing violence, are impossible to predict with accuracy. One prediction, however, seems sure: the situation will deteriorate further unless, miraculously, serious negotiations between Israelis and Palestinians resume.

## **I. HUMAN RIGHTS AND TERRORISM**

4. Many of the rights contained in the Universal Declaration of Human Rights and the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights have been violated by IDF in their actions against the Palestinian people. Many of the obligations of international humanitarian law have likewise been violated. That this is so is not seriously contested by Israel. Loss of life, inhuman and degrading treatment, arbitrary arrest and detention without trial, restrictions on freedom of movement, the arbitrary destruction of property, the denial of the most basic economic, social and educational rights, interference with access to health care, the excessive use of force against civilians and collective punishment are instead justified as self-defence and legitimate anti-terrorism action. That Israel has legitimate security concerns cannot be denied. That it is entitled to take strong action to prevent suicide bombings and other acts of terror is not disputed. On the other hand, there must be some limits on the extent to which human rights may be violated in the name of anti-terrorism action. Even

in the present international environment, in which anti-terrorism measures challenge old liberties and freedoms, it is not denied that a balance must be struck between respect for basic human rights and the interests of security.

5. In searching for this balance many factors must be considered, including the causes of the terrorism, the possibility of achieving a peaceful end to terrorism by addressing its causes, and the proportionality of the response taken to the acts of terrorism. The Special Rapporteur remains convinced that Israel's military occupation of the Palestinian territory is a major cause of terrorism and that the ending of the occupation is politically achievable. The Government of Israel has previously condemned these assessments as political judgements falling outside the mandate of the Special Rapporteur. Consequently, the principal balancing factor - proportionality - will be the main focus of this report. The violation of human rights and international humanitarian law will be described and the question asked whether the measures taken by Israel to defend itself can legitimately be said to fall within the bounds of proportionality. It is not possible to adopt an armchair attitude in making this assessment. Israel is entitled to a wide margin of appreciation in its response. But, even allowing for this, it may be that Israel's response to terror is so disproportionate, so remote from the interests of security, that it assumes the character of reprisal, punishment and humiliation.

## II. LOSS OF LIFE AND THE KILLING OF CIVILIANS

6. For both human rights law and international humanitarian law the protection of human life is the primary goal. Article 6, paragraph 1, of the International Covenant on Civil and Political Rights states that "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life." While accepting that combatants engaged in an armed conflict will be exposed to life-threatening situations, international humanitarian law seeks to limit harm to civilians by requiring that all parties to a conflict respect the principles of distinction and proportionality. The principle of distinction, codified in article 48 of the Additional Protocol I to the Geneva Conventions of 1949, requires that "the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives." Acts or threats of violence, the primary purpose of which is to spread terror among the civilian population, are prohibited (art. 51, para. 2). The principle of proportionality codified in article 51, paragraph 5 (b) prohibits an attack on a military target which may be expected to cause incidental loss of civilian life, injury to civilians and damage to civilian objects which would be excessive in relation to the concrete and direct military advantage anticipated. That these principles apply to both Israelis and Palestinians was confirmed by the High Contracting Parties to the Fourth Geneva Convention when, in a declaration issued on 5 December 2001, they called on both parties to the conflict to:

"... ensure respect for and protection of the civilian population and civilian objects and to distinguish at all times between the civilian population and combatants and between civilian objects and military objectives. They also call upon the parties to abstain from any measures of brutality and violence against the civilian population whether applied by civilian or military agents and to abstain from exposing the civilian population to military operations.<sup>1</sup>



7. Sadly, neither party to the conflict in the region has paid proper respect to these principles as the death toll has continued to rise. Since the start of the second intifada in September 2000, over 2,000 Palestinians and over 700 Israelis have been killed and 25,000 Palestinians and 4,700 Israelis have been injured. Most have been civilians.

8. Within Israel, most deaths have been caused by suicide bombers who have carried their lethal weapons of destruction onto buses and into busy shopping centres. Israel has been subjected to more than 1,100 terrorist attacks since September 2000. Between March and June 2002, when there was a spate of suicide bombings in Israel, more than 250 Israelis were killed, of whom 164 were civilians and 32 children.<sup>2</sup> Despite condemnation from the Palestinian Authority and prominent Palestinian community leaders - and the international community - this instrument of terror, which shows no regard for either the principle of distinction or that of proportionality, continues to be used by paramilitary Palestinian groups.<sup>3</sup>

9. IDF, well educated in the rules of international humanitarian law, have likewise shown little regard for the principles of distinction or proportionality. Military incursions into the West Bank and the reoccupation of Palestinian towns and cities in 2002 resulted in heavy loss of civilian life. According to Amnesty International, in the four months between 27 February and the end of June 2002 - the period of the two major IDF offensives and the reoccupation of the West Bank - IDF killed nearly 500 Palestinians. Although many Palestinians died during armed confrontations many of these killings by IDF appeared to be unlawful and at least 16 per cent of the victims - more than 70 - were children.<sup>4</sup>

10. Disregard for civilian life was evident in Operation Defensive Shield, in March and April 2002, in which the refugee camp of Jenin and the city of Nablus were subjected to heavy bombardment from air and land before IDF troops entered, employing bulldozers to facilitate their movement and allegedly using Palestinian civilians as human shields against snipers. Of the 80 persons killed in Nablus, 50 were civilians, and of the 52 killed in Jenin, 22 were civilians. Since November 2000, IDF has targeted and killed a number of selected militants in precision bombings. These assassinations have often been carried out, however, with no regard for civilians in the vicinity. Of the 179 persons killed in such actions, at least one third have been civilians. The following incident starkly illustrates the manner in which such attacks have sometimes been made. On 22 July, IDF carried out a late-night air strike aimed at Hamas military leader Salah Shehada while he was in a densely populated residential area of Gaza City; the raid killed 15 persons (including 9 children) and injured over 150 others.

11. No attempt is made to seek an equivalence between civilian deaths caused by suicide bombings carried out by non-State actors, where civilians are deliberately targeted, and civilian deaths that result from "collateral damage" in military action carried out by a State actor with reckless disregard for human life. Terror bombings and military offensives in civilian areas conducted without adequate regard for the safety of civilians serve completely different purposes. But the result is the same: loss of innocent civilian lives. From a moral perspective both are reprehensible: the former, because they deliberately disregard the lives of innocent civilians; the latter because they recklessly disregard human life.

### III. THE HUMANITARIAN CRISIS CAUSED BY MILITARY OCCUPATION

12. In the past year Palestinian society has been subjected to a military occupation that has damaged, possibly beyond repair, political institutions, commercial enterprises, public services, hospitals, schools, families and lives. The IDF military incursion of March to May, code-named Operation Defensive Shield, caused material devastation in many cities - particularly Jenin and Nablus. This was followed by Operation Determined Path in June which resulted in the reoccupation of seven of the eight major cities in the West Bank and adjoining refugee camps and villages. Curfews imposed on Jenin, Qalquiliya, Bethlehem, Nablus, Tulkarem, Ramallah and Hebron have subjected over 700,000 persons to a regime similar to house arrest which confines them to their homes, except every third or fourth day when the curfew is lifted for several hours to allow residents to obtain essential supplies. The curfew is strictly enforced by IDF and there have been many incidents of shooting of civilians who failed to observe the curfew. By October 2002 15 civilians, mainly children, had been shot dead by IDF soldiers enforcing curfews. Curfews have been lifted and reimposed according to the security situation. In September 2002, 688,000 Palestinians in 39 towns, villages and refugee camps in the West Bank were confined to their homes under curfew for varying numbers of days.

13. Military action and curfews are not the only instruments of repression. Military checkpoints and roadblocks complement these instruments. There are some 300 roadblocks of which 120 are manned. According to the ex-Minister of Defence, Benjamin Ben-Eliezer, "The directive of the Military Command is to freeze all traffic on West Bank roads, including taxis, buses, private vehicles and others according to security needs."<sup>5</sup> The "freezing" of traffic on the West Bank has resulted in the strangulation of Palestinian society as the West Bank is now effectively divided into some 50 separate "cantons" and movement between them is both difficult and dangerous. Checkpoints are largely manned by young soldiers who are given arbitrary power to allow or refuse vehicles and pedestrians permission to continue their journeys.

14. Humanitarian considerations are often not taken into account by those manning checkpoints. Vehicles carrying humanitarian aid are stopped and searched, with resulting delays. Still worse, ambulances are sometimes denied access to hospitals or delayed unnecessarily, with resulting loss life. In November, IDF first shot United Nations Relief and Works Agency for Palestine Refugees in the Near East official John Hook and then allowed him to bleed to death by denying the ambulance carrying him access to a hospital in time.

15. Equitable access to scarce water resources is a central feature of the Palestine-Israel conflict. According to the Humanitarian Plan of Action 2003 for the Occupied Palestinian Territory compiled by the United Nations Technical Assessment Mission of October 2002:

"In the West Bank alone, more than 200,000 people who depend on supplies brought in by water tankers are left without adequate water supply for long periods because of curfews and closures. In addition to problems caused by access, a number of water systems (water pipes, pumps and wells) were destroyed by the IDF during 'Operation Defensive Shield' and the ongoing reoccupation of the Palestinian self-rule Areas.

Furthermore, a sizeable number of wells and reservoirs in rural areas have been damaged, destroyed or made inaccessible because of violence. A number of the West Bank villages adjacent to Israeli settlements have been and are currently suffering from recurrent closures of main valves on their water networks.”<sup>6</sup>

16. The reoccupation has affected every feature of Palestinian life. There have been shortages of basic foodstuffs, interference with medical services by the denial of access to doctors and hospitals, interruption of family contacts and stoppages of education. Municipal services, including water, electricity, telephones and sewage removal, have been terminated or interrupted, and IDF has denied permission to repair damaged municipal service supply units. There has also been a near complete cessation of productive activity in manufacturing, construction and commerce as well as private and public services, which has had serious consequences for the livelihood of most of the population.

17. Unemployment, which stood at 9 per cent in September 2002, has now reached 50 per cent, 60 per cent or 80 per cent in different areas. Poverty, defined as living on less than US\$ 2 per day per capita, is at 70 per cent. A total of 1.8 million Palestinians receive food aid or other forms of emergency humanitarian support from a variety of sources, notably UNRWA, the World Food Programme and the International Committee of the Red Cross. (And, sadly, to add to the woes of the Palestinians, settlers have stolen their olive crops in some areas.) Twenty-two per cent of children under the age of five suffer from acute or chronic malnutrition, while 20 per cent suffer from iron-deficiency anaemia. Mental health problems have increased alarmingly among children. Health care has suffered drastically as a result of the unavailability of medication and the inability to reach health centres. As usual, the situation in the refugee camps is particularly bleak, as was evident when the Special Rapporteur visited the Balata refugee camp near Nablus in August.

18. Many provisions of the International Covenant on Civil and Political Rights have been violated by the reoccupation, notably articles 6 (right to life), 7 (freedom from inhuman and degrading treatment), 9 (freedom from arbitrary arrest), 12 (freedom of movement) and 17 and 23 (right to family life). But it is the economic, social and cultural rights of Palestinians that have suffered most as a result of the reoccupation. The right to work and to earn a living (International Covenant on Economic, Social and Cultural Rights, arts. 6 and 7), to adequate food, clothing and housing (art. 11), to physical and mental health (art. 12), and to education (art. 13) are meaningless in a society subject to curfew and closure. How action that causes so much suffering to so many can ever be seen as a proportional response to terrorism is beyond comprehension.

#### **IV. THE DILEMMA OF HUMANITARIAN ASSISTANCE**

19. The law governing occupation, reflected in international custom, the Hague Regulations Respecting the Laws and Customs of War on Land of 1907 and the Fourth Geneva Convention, is designed to ensure that, notwithstanding the security needs of the occupying Power, the day-to-day lives of civilians in an occupied territory will continue normally. In today's world, this means that civilians must have adequate food, shelter, electricity and water; that municipal services such as garbage and sewage removal will continue; that the sick will have access to proper medical care; and that education will not be obstructed.

20. The Fourth Geneva Convention elaborates on the responsibility of the occupying Power to ensure that the basic needs of the inhabitants of an occupied territory are provided. It imposes obligations on the occupant to ensure “the food and medical supplies of the population” and to “bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate” (art. 55); to ensure and maintain “the medical and hospital establishments and services, public health and hygiene in the occupied territory” (art. 56); and to facilitate “the proper working of all institutions devoted to the care and education of children” (art. 50). Moreover, article 60 provides that “[r]elief consignments shall in no way relieve the Occupying Power of its responsibilities under Articles 55 [and] 56”. Obligations to provide postal services, telecommunications and transport and to maintain public welfare institutions may also be inferred from the Fourth Geneva Convention and the Hague Regulations.<sup>7</sup> Together, these provisions amount to an obligation on the occupant to establish an adequate civil administration in an occupied territory.

21. In terms of the Oslo Accords, the responsibility for civil administration in the West Bank and Gaza was transferred to the Palestinian Authority. Today, however, the identity of the authority responsible for the civil administration of the West Bank and Gaza is not so clear. The military operations of 2002 have effectively destroyed much of the infrastructure of the Palestinian Authority. Electricity and water supplies have been cut, municipal services terminated, access to food denied, health care obstructed and education seriously interrupted. Consequently, responsibility for the civil administration of OPT would seem to have shifted to Israel. Israel has, however, made it clear that, although it anticipates a prolonged occupation, it does not intend resuming responsibility for the civil administration of the territory.<sup>8</sup>

22. The current situation is untenable. Israel cannot, in terms of international humanitarian law, deny the Palestinian Authority the capacity to provide an adequate and functioning civil administration, and at the same time refuse to accept any responsibility for such an administration itself. In law, it is obliged either to assume this responsibility or to permit the Palestinian Authority to provide the services that comprise an adequate civil administration. There is a heavy burden on all parties to the Fourth Geneva Convention to take measures to ensure the restoration of a proper civil administration in the Palestinian territory in accordance with their obligation under article 1 of the Convention “to ensure respect” for the Convention “in all circumstances”.

23. The international community’s response has been to provide humanitarian aid itself, rather than insist on Israel’s duty to provide such relief. Undoubtedly this is the only possible response in the present crisis. If the international community does not respond generously by providing humanitarian assistance, the Palestinian people will suffer irremediable harm. The Special Rapporteur therefore endorses, and adds his own voice to, calls for humanitarian assistance from the international community.

24. At the same time, it must be made clear that, by providing aid of this kind, the international donor community relieves Israel of the burden of providing such assistance itself and in this way might be seen to be contributing to the funding of the occupation. This dilemma was considered by the United Nations Technical Assessment Mission in October 2002 which in the *Humanitarian Plan of Action 2003 for the Occupied Palestinian Territory* stated:

“In presenting its plans, the mission was acutely aware of the central dilemmas before it. At its most fundamental, this is whether to respond to growing needs of the civilian population at all. Many of the Palestinians and donors the mission spoke with argued that, by meeting these needs, the international community would be ‘financing the occupation’ and enable Israel to continue its current policies. It would de facto relieve Israel of its own responsibilities, as the Occupying Power, to ensure adequate supplies of food, medicines and other basic needs for the population under its occupation. At the same time, not to meet urgent needs of the population when the international community has some capacity to do so, and when Israel is unwilling to do so, would doubly punish the civilian population - and fly in the face of the humanitarian imperative to save lives and protect the victims of conflict. Absent political decisions to address the causes of this humanitarian emergency, the international aid community thus has no choice but to help relieve suffering as the crisis continues to deepen.”<sup>9</sup>

## V. DESTRUCTION OF PROPERTY

25. It is the Israeli policy and practice of destroying property - residential homes, commercial buildings, Palestinian Authority offices, olive trees and agricultural property - that raise the most serious questions about Israel’s willingness to respond proportionately to Palestinian violence.

26. For the first 18 months of the second intifada the Gaza Strip was the main target of Israel’s policy of destruction. Hundreds of homes in the refugee camps of Khan Yunis and Rafah were reduced to rubble, buildings in Gaza City were bombed and fertile agricultural land “swept” by bulldozers to create wasteland buffer zones for roads specially reserved for settlers. Commenting on this action B’Tselem (The Israeli Information Center for Human Rights in the Occupied Territories) comments:

“Examination of the circumstances in which Israel implemented its policy - the extreme magnitude of the house demolitions, the uprooting of trees, the destruction of agricultural fields, the manner in which Israel chose to implement its policy - clearly and unequivocally indicate that these contentions [that the damage caused by IDF was proportional and justified by military necessity] are baseless. The injury to the civilian population was excessive in proportion to the military advantage that Israel ostensibly sought to achieve by implementing this policy. ...

“A policy that harms thousands of innocent people and whose consequences are so horrendous and long lasting constitutes collective punishment, which is forbidden by international humanitarian law”.<sup>10</sup>

27. In 2002 it was the turn of the cities in the West Bank for destruction of property as IDF launched offensives against Jenin, Nablus and Ramallah following a spate of suicide bombings in Israel. Statistics, reports of non-governmental organizations (NGOs) and the Special Rapporteur’s own observations in August strongly suggest that retribution and punishment guided IDF action rather than military necessity and regard for the principle of proportionality.

28. During Operation Defensive Shield, from 29 March to 7 May, 800 dwellings were destroyed in Jenin leaving 4,000 people homeless. Losses were estimated by the World Bank at US\$ 83 million. According to Amnesty International much of the destruction of the Jenin refugee camp occurred after 11 April, after the last group of Palestinian fighters had surrendered. In the opinion of its delegate, Major David Holley:

“There were events post 11 April that were neither militarily justifiable nor had any military necessity: the IDF levelled the final battlefield completely after the cessation of hostilities. It is surmised that the complete destruction of the ruins of battle, therefore, is punishment for its inhabitants.”<sup>11</sup>

29. In Nablus 64 buildings in the Old City, including 22 residential buildings, were completely destroyed or badly damaged, and a further 221 buildings partially damaged. Repair costs were estimated by the World Bank at US\$ 114 million. According to Amnesty International:

“A number of religious or historical sites were partially destroyed or severely damaged in what frequently appeared to be wanton destruction without military necessity.”<sup>12</sup>

30. Refugees were the hardest hit in the military offensives of 27 February to 17 March and 29 March to 7 May. Over 2,800 refugee housing units were damaged and 878 homes destroyed or demolished, leaving 17,000 persons homeless or in need of shelter rehabilitation. The World Bank estimates that Operation Defensive Shield caused physical damage amounting to US\$ 361 million in the West Bank as a whole, compared with the US\$ 305 million caused by damage in the first 15 months of the second intifada.<sup>13</sup> Private businesses suffered the most (US\$ 97 million), followed by housing (US\$ 66 million), roads (US\$ 64 million) and cultural heritage sites (US\$ 48 million).

31. In the past, there has often been a disciplined, retributive approach to the destruction of property. The destruction of property in Operation Defensive Shield, however, had a wanton character that surprised even the harshest critics of IDF. In many houses entered by IDF, soldiers broke holes through the walls in order to reach neighbouring houses. Sometimes, holes were made from one apartment to another where it was possible for soldiers to have entered from a veranda or window. Worse still, there were reports of vandalism, of wanton destruction of televisions and computers in homes, schools and office buildings and of looting.<sup>14</sup>

32. The demolition of the homes of families as punishment for crimes committed against Israel by a family member has long been an Israeli practice. In August, the Israeli High Court denied judicial review in such cases, as had previously been the position, thereby giving military commanders complete discretion to order the demolition of houses. Since then the demolition of the homes of suicide bombers and Palestinian militants has accelerated. In many instances the families of militants had been unaware of their activities, but they were punished nonetheless. Between July and November 61 homes were demolished, leaving more than 500 persons homeless, more than 220 of them children.

33. Collective punishment is a serious violation of international humanitarian law. Article 50 of the Hague Regulations of 1907 contains a prohibition on such conduct as does article 33 of the Fourth Geneva Convention, which provides that "No protected person may be punished for an offence he or she has not personally committed". Moreover, article 147 of the Fourth Geneva Convention criminalizes, as constituting grave breaches under international law, the "extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly".

## VI. DETENTIONS

34. The assaults on Palestinian towns in March and April in Operation Defensive Shield and subsequent military operations in the West Bank resulted in widespread arrests and detentions. In the period between 29 March and 5 May alone, some 7,000 Palestinians were arrested. In many towns and refugee camps, all males between the ages of 16 and 45 were arrested. Most were held for several days only. Arrests of this kind constitute a form of collective punishment as in most instances there is no regard for the personal responsibility of those arrested. In many cases, arrested persons were subjected to humiliating and inhuman treatment. They were stripped to their underpants, blindfolded, handcuffed, paraded before television cameras, insulted, kicked, beaten and detained in unhygienic conditions. Those not released have been held without trial or access to a lawyer. Some are held in administrative detention; others are held under the terms of Military Order 1500, issued on 5 April to permit lengthy detention of those arrested since 29 March. There have been widespread allegations of torture, consisting of sleep deprivation, severe beating, heavy shaking, painful shackling to a small chair, subjection to loud noise and threats of action against family members.

## VII. DEPORTATION/ASSIGNED RESIDENCE

35. On 3 September, the Israeli High Court of Justice issued a ruling allowing the deportation of two Palestinians from their home town of Nablus to the Gaza Strip on the ground that they had allegedly assisted their brother (extrajudicially executed by Israeli forces on 6 August) to commit attacks against Israelis. The Court held that, although every person has a basic right to retain his place of residence, article 78 of the Fourth Geneva Convention recognizes that there are circumstances in which this right may be overridden. Article 78 of the Fourth Geneva Convention provides:

"If the Occupying Power considers it necessary, for imperative reasons of security, to take safety measures concerning protected persons, it may, at the most, subject them to assigned residence or to internment."

The Court further held that in the circumstances of the case, the preconditions set out in article 78 were fulfilled. The West Bank and the Gaza Strip were to be regarded as one territory subject to a belligerent occupation, and therefore the case did not involve the transfer of a person outside the area subject to the belligerent occupation. For this reason the Court held that article 49 of the Fourth Geneva Convention prohibiting deportation to the territory of the occupying Power or to that of another country was not applicable.

### VIII. CHILDREN IN THE CONFLICT

36. Children have probably suffered most from the present conflict. Both Palestinian and Israeli children have been exposed to threats to personal safety; while Palestinian children have, in addition, felt the breakdown of family life, health care and education. In his report to the Commission in March 2002 (E/CN.4/2002/32, paras. 40-53), the Special Rapporteur drew attention to the plight of Palestinian children, particularly those arrested and detained, and appealed to the Israeli authorities to investigate allegations of inhuman treatment. Sadly, there has been no response to this appeal. Since then UNICEF and NGOs such as Defence for Children International<sup>15</sup> and Amnesty International<sup>16</sup> have likewise addressed the suffering of children and appealed to all groups involved in the conflict to protect children. On 15 November 2002 the Third Committee of the General Assembly adopted a draft resolution in which the Committee, concerned that Palestinian children under Israeli occupation remain deprived of many basic rights under the Convention on the Rights of the Child, stressed the urgent need for Palestinian children “to live a normal life free from foreign occupation, destruction and fear, in their own State” and called upon the international community “to provide urgently needed assistance in an effort to alleviate the dire humanitarian crisis being faced by Palestinian children and their families”.

37. Over 400 Palestinian and 100 Israeli children have been killed since September 2000 and thousands seriously injured. Israeli children have mainly been killed in suicide bombings and attacks on settlements. Palestinian children have often been shot and killed in stone-throwing assaults on IDF but in most cases, particularly in the past year, Palestinian children have been killed when IDF randomly opened fire, shelled or bombarded residential neighbourhoods at times when there was no exchange of fire and in circumstances in which the lives of IDF soldiers were not at risk. Others have been killed in the course of the assassination of Palestinian militants, when vehicles or houses have been subjected to missile attack. The loss of children’s lives is often simply dismissed as “collateral damage”. The evidence seems to indicate that neither IDF nor Palestinian militant groups have shown concern for children’s lives.

38. Over 1,500 Palestinian children under the age of 18 have been arrested and detained since September 2000 in connection with crimes relating to the uprising. Most have been arrested on suspicion of throwing stones at Israeli soldiers. On 28 August, Defence For Children International reported that 350 children were detained by the Israeli authorities, 15 being held in administrative detention. During the period March to May some 700 children were arrested and detained, albeit for short periods. As stated in the report to the Commission (paras. 48-53), there are serious reports of torture and inhuman treatment of juveniles while they await trial or after they have been imprisoned. Whether torture is justified in the case of the “ticking bomb” scenario remains a question of debate within Israel. This debate is, however, irrelevant to the treatment of children arrested for stone-throwing. There can be no justification, legally or morally, for the torture or inhuman treatment of children.

39. Military offensives and curfews severely disrupted the education of Palestinian children during the spring and summer of 2002. After the start of the new school year in September the situation remained serious, although most children had either returned to school or were receiving alternative schooling. UNICEF reported in October that more than 226,000 children and over 9,300 teachers were unable to reach their regular classrooms owing to IDF-imposed



restrictions on movement. Moreover, over 580 schools had been closed because of military curfews and closures. This has resulted in the creation of a substitute schooling system in which children are taught at homes or in mosques. Many parents are unable to send their children to school. According to UNICEF some 317,000 Palestinian schoolchildren are in desperate need of financial assistance.

40. The humanitarian crisis resulting from repeated military incursions, house demolitions, curfews and closures has left its mark on Palestinian children. Thousands have been rendered homeless; two thirds live below the poverty line; 22 per cent under the age of 5 suffer from malnutrition; and most have been psychologically traumatized. Children, who comprise 53 per cent of the Palestinian population, live in a hostile environment resulting from Israel's military occupation in which they are continuously exposed to life-threatening attacks, deprived of a proper family life, adequate nutrition and health care, denied a normal education and, frequently, confined to their homes in time of curfew. Such treatment inevitably engenders hatred of the military occupant which augurs ill for the future.

## **IX. TERRITORIAL EXPANSION: THE WALL AND SETTLEMENTS**

41. The prohibition on the acquisition of territory by the use of force, even where force has been used in self-defence, is an accepted principle of international law (see the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations, General Assembly resolution 2625 (XXV)). This explains why the international community has consistently refused to recognize Israel's annexation of East Jerusalem (Security Council resolution 478 (1980)) and the Golan Heights (Security Council resolution 497 (1981)). When territorial expansion occurs openly, as in the case of the purported annexation of East Jerusalem and the Golan Heights, the response of the international community, speaking through the United Nations, has been clear and firm. The response to Israel's present annexation by stealth has not, however, received the same strong condemnation.

### **The wall**

42. The erection of a security wall between Israel and OPT is widely portrayed as a security measure. Had the wall strictly followed the Green Line marking the 1967 borders between Israel and OPT, it might have been possible to confine the debate over the wall to the question whether a security wall of that kind would achieve its purpose. But when it is intended that the wall encroach deeply upon Palestinian territory, enclosing an estimated 7 per cent of Palestinian land, including fertile agricultural land, water resources and villages, it is difficult to resist the conclusion that it is a case of de facto annexation in which the security situation is employed as a pretext for territorial expansion.

### **Settlements**

43. Settlements may be seen as another part of this strategy. The international community has made it clear that the settling of members of Israel's own civilian population in OPT violates article 49, sixth paragraph, of the Fourth Geneva Convention and has repeatedly called on Israel to "freeze" settlement growth pending a peace settlement which will result in the dismantling of

all settlements. Israel's response that it will limit the expansion of settlements to "natural growth" is now widely seen to be untrue. Indeed, it is the continued growth in the number of settlers (5.6 per cent since January 2001), the expansion of settlements (by the devious method of redrawing the boundaries of existing settlements by establishing outposts on these settlements) and the financial incentives to settle in OPT that brought about the collapse of the Government coalition between Likud and Labour. It is now clear that the Government of Israel is unwilling to dismantle illegal settlements and is determined to encourage new settlers and settlements. In November, following a gun battle between Palestinians and Israelis in Hebron, which left 12 Israeli security officers dead, the Government announced that it would allow the construction of a new settlement to link Kiryat Arba, a settlement near Hebron with a population of about 7,000 residents, with the Jewish enclave in Hebron, accommodating 450 settlers.

44. It will no doubt be argued that comment on territorial expansion by means of the "Great Wall", settlements, and the wide security roads that link settlements with each other and Israel does not fall within the Special Rapporteur's "human rights mandate". This is not so. Territorial expansion is of concern to international humanitarian law and human rights law for three reasons: first, because the settlements violate the Fourth Geneva Convention; second, because Israeli territorial expansion and the territorial fragmentation of OPT by settlements interferes with the right of the Palestinian people to self-determination; third, because actions of this kind raise serious questions about the genuineness of Israel's claim that it conducts a proportional response to Palestinian violence. Territorial expansion, accompanied by the influx of new settlers, can hardly be seen as a proportional response to terror.

#### **X. CONCLUSION: PROPORTIONALITY REVISITED**

45. It is not the function of the Special Rapporteur to pronounce judgement on the proportionality of measures taken by Israel in response to Palestine violence. This is a matter for the Commission on Human Rights or the Security Council to decide. The task of the Special Rapporteur is simply to raise the issues that should be considered on this subject.

46. As has already been said, Israel has legitimate security concerns. Its right to respond to terror attacks and to prevent further attacks cannot be disputed. When this response takes the form of life-threatening military action against militants and their bases, few will question the military necessity of such action or the link between attack and response. But when this action results in an excessive use of force that disregards the distinction between civilians and combatants, a humanitarian crisis that threatens the livelihood of a whole people, the killing and inhuman treatment of children, the widespread destruction of property and territorial expansion, serious questions must be asked about the proportionality of Israel's response and the boundaries of military necessity.

Notes

<sup>1</sup> Declaration issued by the participating High Contracting Parties to the reconvened Conference of High Contracting Parties to the Fourth Geneva Convention, 5 December 2001, paragraph 8.

<sup>2</sup> Amnesty International, *Israel and the Occupied Territories and the Palestinian Authority: Without Distinction: Attacks on Civilians by Palestinian Armed Groups* (AI Index: MDE 02/003/2002), July 2002.

<sup>3</sup> See Human Rights Watch, *Erased in a Moment: Suicide Bombing. Attacks against Israeli Citizens* (October 2002), for a full account of the impact of suicide bombings on Israeli society.

<sup>4</sup> Amnesty International, *Israel and the Occupied Territories: Shielded from Scrutiny: IDF Violations in Jenin and Nablus* (AI Index: MDE 15/143/2002), November 2002.

<sup>5</sup> Reported in *Ha'aretz*, 4 November 2002 (Danny Rubinstein, "A Land of Roadblocks and Barriers").

<sup>6</sup> *Humanitarian Plan of Action 2003 for the Occupied Palestinian Territory*, United Nations, New York and Geneva, November 2002, p. 30.

<sup>7</sup> M. Greenspan, *The Modern Law of Land Warfare*, Berkeley, CA, University of California Press, 1959, pp. 230-235. See, too, E. Benvenisti, *The International Law of Occupation*, Princeton, NJ, Princeton University Press, 1993.

<sup>8</sup> See the statements by Mr. Ben-Eliezer, Minister of Defence, and Major General Amos Gilad reported in the *International Herald Tribune*, 24 June 2002.

<sup>9</sup> *Op. cit.*, p. 2.

<sup>10</sup> *Policy of Destruction. House Demolitions and Destruction of Agricultural Land in the Gaza Strip*, February 2002, pp. 32, 35.

<sup>11</sup> Amnesty International, *op. cit.* at note 4, p. 41.

<sup>12</sup> *Ibid.*, p. 57.

<sup>13</sup> *International Herald Tribune*, 16 May 2002.

<sup>14</sup> Amnesty International, *Israel and the Occupied Territories: The Heavy Price of Israeli Incursions*, 12 April 2002.

<sup>15</sup> *Violations of Children's Rights Stemming from the Israeli Occupation* (August 2002).

<sup>16</sup> *Israel and the Occupied Territories and the Palestinian Authority: Killing the Future. Children in Line of Fire*, MDE 02/005/2002 (October 2002).

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# ANNEX 6

Report of the Special Rapporteur of the Commission on Human Rights, John Dugard, on the situation of human rights in the Palestinian territories occupied by Israel since 1967, submitted in accordance with Commission resolution 193/2A, 8 September 2003, E/CN.4/2004/6



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**QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE  
OCCUPIED ARAB TERRITORIES, INCLUDING PALESTINE**

**Report of the Special Rapporteur of the Commission on Human  
Rights, John Dugard, on the situation of human rights in the  
Palestinian territories occupied by Israel since 1967, submitted  
in accordance with Commission resolution 1993/2 A**

### Summary

The situation in the Occupied Palestinian Territory (OPT) continues to be a matter of grave concern. Although the road map promoted by the Quartet offers some prospect of peace in the region, it is important to record that the past six months have seen continued violations of human rights and international humanitarian law.

The Government of Israel has justified its actions in the OPT on the grounds of self-defence and portrayed them as anti-terrorism measures. That Israel has legitimate security concerns cannot be denied. On the other hand, some limit must be placed on the violation of human rights in the name of counter-terrorism. A balance must be struck between respect for human rights and the interests of security.

During the past few months the construction of the Wall, separating Israel from the West Bank, has been frenetically pursued. The Wall does not follow the Green Line, which marks the de facto boundary between Israel and Palestine. Instead, it incorporates substantial areas of the West Bank into Israel. Over 210,000 Palestinians will be seriously affected by the Wall. Palestinians living between the Wall and the Green Line will be effectively cut off from their farmlands and workplaces, schools, health clinics and other social services. This is likely to lead to a new generation of refugees or internally displaced persons.

The Wall has all the features of a permanent structure. The fact that it will incorporate half of the settler population in the West Bank and East Jerusalem suggests that it is designed to further entrench the position of the settlers. The evidence strongly suggests that Israel is determined to create facts on the ground amounting to de facto annexation. Annexation of this kind, known as conquest in international law, is prohibited by the Charter of the United Nations and the Fourth Geneva Convention. The Special Rapporteur submits that the time has come to condemn the Wall as an unlawful act of annexation in the same way that Israel's annexation of East Jerusalem and the Golan Heights has been condemned as unlawful. Similarly, no recognition should be given by the international community to Israel's control over Palestinian territory enclosed by the Wall.

The restrictions on freedom of movement continue to create a humanitarian crisis in the OPT. Although curfews have not affected as many people in 2003 as in the previous year, they still disrupt Palestinian life on a broad scale. The number of checkpoints has increased during the past six months. These restraints on the movement of goods and persons give rise to unemployment, poverty, poor health care and interrupted education and, in addition, they result in the humiliation of the Palestinian people.

The death toll in the conflict continues to rise as a result of suicide bombings and military incursions. The Israeli practice of assassinating suspected terrorists has inflicted death and injury not only on those targeted but on a substantial number of innocent civilians in the vicinity of such actions. The legality of such measures is highly questionable.

There are some 6,000 Palestinians in Israeli prisons and detention centres. Although Israel has agreed to release 540 of them, its refusal to release more prisoners constitutes a major obstacle in the way of peace in the region. Sadly, allegations of torture and inhuman and degrading treatment continue to be made. The Special Rapporteur therefore calls for an independent inquiry into such allegations.

The destruction of property in the OPT continues unabated. During the past eight months, Gaza has been particularly affected by military action that has caused large-scale devastation to houses and agricultural land.

Israel's undertaking to curb the growth of settlements has not been implemented. On the contrary, settlements have continued to grow at an unacceptable pace. This phenomenon, together with the construction of the Wall, suggests that territorial expansion remains an essential feature of Israel's policies and practices in the OPT.

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## I. INTRODUCTION

1. The Special Rapporteur visited the Occupied Palestinian Territory (OPT) and Israel from 22 to 29 June 2003. In the course of this mission he visited Gaza, Ramallah, Nablus, Bethlehem, Jericho and Jerusalem. He met with President Arafat, ministers of the Palestinian Authority (PA), members of the Palestinian Legislative Council (PLC) and the Governor of Nablus, who briefed him fully on the situation. He also met with prominent Palestinian and Israeli interlocutors and Palestinian and Israeli non-governmental organizations (NGOs) who informed him about the human rights situation in the OPT. Accompanied by the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), Peter Hansen, he visited Beit Hanoun in the Gaza Strip, the scene of massive destruction of homes and agricultural lands. In Ramallah he visited the Surda and Kalandiya checkpoints, where he observed the restrictions on freedom of movement imposed on Palestinians. The Wall/Fence/Barrier (hereinafter "the Wall") separating Israel from the West Bank featured prominently in the Special Rapporteur's mission. He observed the construction of the Wall near Jayyous village and Bethlehem.
2. Unfortunately, the Government of Israel continues to withhold its cooperation from the Special Rapporteur. In part, the Special Rapporteur's failure to hear the Government's response to the issues described in this report was overcome by attendance at the presentation of Israel's second periodic report (CCPR/C/ISR/2001/2) on its compliance with the International Covenant on Civil and Political Rights (ICCPR) before the Human Rights Committee on 24 and 25 July 2003. This two-day dialogue between representatives of the Government and the Human Rights Committee covered many of the issues considered in the present report and provided the Special Rapporteur with a clear understanding of the Israeli position. In the course of its presentation, the Government reiterated its argument that its actions in the OPT are to be measured against the rules of international humanitarian law and not those of international human rights law, contained in ICCPR. The Human Rights Committee confirmed that it was unable to accept this argument and reaffirmed its determination to judge Israel's actions in terms of both these legal regimes. This remains the approach of the Special Rapporteur.
3. The Special Rapporteur left the region shortly before the declaration of a ceasefire by militant groups in the OPT. At the time of writing this report there is relative calm and there is some ground for hoping that the road map, leading to peace between Palestine and Israel and the ultimate creation of a Palestinian State, will succeed. Serious obstacles remain, however, in the way of the successful implementation of the road map. Most of these obstacles have a human rights dimension and are discussed in this report. Peace in the region cannot succeed without a return to the rule of law and respect for human rights and international humanitarian law. It is unfortunate that the road map, like the Oslo Accords, fails to give sufficient weight to this factor.
4. Previous reports have followed an all-too-familiar pattern, describing deaths, detentions, the humanitarian crisis, destruction of property, the suffering of children and settlements. This report will follow a different sequence. After the necessary disclaimer of sympathy for terrorism, the report will focus on two issues that, in the opinion of the Special Rapporteur, most seriously demand the attention of the international community - the unlawful annexation of Palestinian territory and the restrictions on freedom of movement. Thereafter, the report will turn to deaths, detentions, the demolition of property and settlements which, unhappily, continue to characterize the situation.

## II. HUMAN RIGHTS AND TERRORISM

5. At the outset, it is necessary for the Special Rapporteur to reaffirm his opposition to terrorism and his commitment to human rights. Many of the rights contained in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights have been violated by the Israel Defence Forces (IDF) in their actions against the Palestinian people. Many of the obligations of international humanitarian law have likewise been violated. These violations are, however, justified by Israel as action taken in self-defence and legitimate anti-terrorism action. That Israel has legitimate security concerns cannot be denied. That it is entitled to take strong action to prevent suicide bombings and other acts of terror is not disputed. On the other hand, there must be some limit to the extent to which human rights may be violated in the name of counter-terrorism. Even in the present international environment, in which anti-terrorism measures challenge old liberties and freedoms, it is not denied that a balance must be struck between respect for basic human rights and the interests of security. Here the principle of proportionality recognized by international humanitarian law has a key role to play. It is not possible to adopt an armchair attitude in assessing Israel's response to suicide bombings and Palestinian violence. Israel is entitled to a wide margin of appreciation in its response. But, even allowing for this, it is suggested, on the basis of the evidence provided in this report, that Israel's response to terror is disproportionate. On occasion, Israel's action in the OPT is so remote from the interests of security that it assumes the character of punishment, humiliation and conquest.

## III. ANNEXATION AND THE WALL

6. Language is a powerful instrument. This explains why words that accurately describe a particular situation are often avoided out of fear that they will too vividly portray the situation which they seek to depict. In politics euphemism is often preferred to accuracy in language. So it is with the Wall that Israel is presently constructing within the territory of the West Bank. It goes by the name of "Seam Zone", "Security Fence" or "Separation Wall"<sup>1</sup>. The word "annexation" is avoided as it is too accurate a description and too unconcerned about the need to obfuscate the truth in the interests of anti-terrorism measures. However, the fact must be faced that what we are presently witnessing in the West Bank is a visible and clear act of territorial annexation under the guise of security. There may have been no official act of annexation of the Palestinian territory in effect transferred to Israel by the construction of the Wall, but it is impossible to avoid the conclusion that we are here faced with annexation of Palestinian territory.

7. Israel is presently building a wall between Israel and the West Bank that, when completed, will be some 450 (possibly 650) kilometres in length. At the time of writing some 150 kilometres have already been completed and building constructors are working frenetically to finish it as soon as possible. At times this barrier takes the form of an eight-metre-high wall (near Qalqiliya). Mostly it takes the form of a barrier some 60 to 100 metres wide, which includes buffer zones with trenches and barbed wire, trace paths to register footprints, an electric fence with sensors to warn of any incursion, a two-lane patrol road and fortified guard towers at regular intervals. No-go areas of over 100 metres wide on each side of the barrier will be policed by IDF. Israel has undertaken to install some 27 agricultural crossings and 5 general crossings for traffic and persons through the barrier but as yet little progress has been made on these crossings.

8. Possibly, the Wall will assist in the achievement of the Government's publicly declared goal - to prevent suicide bombers from reaching Israeli territory. Even this, however, is doubted by some who point to the fact that most suicide bombers have passed through checkpoints and that the Wall will not deter persons determined to cross into Israel to commit acts of terrorism. That this is a valid complaint is borne out by the comment of the Israeli State Comptroller in his report of July 2002 that "IDF documents indicate that most of the suicide terrorists and car bombs crossed the seam area into Israel through the checkpoints, where they underwent faulty and even shoddy checks".<sup>2</sup>

9. The Wall does not follow the Green Line, that is the 1967 boundary between Israel and Palestine which is generally accepted as the border between the two entities. Instead, it follows a route that incorporates substantial parts of Palestine within Israel. At present the Wall intrudes six to seven kilometres within Palestine, but there are proposals to penetrate still deeper into Palestinian territory in order to include the settlements of Ariel, Immanuel and Kedumim. In some places the winding route creates a barrier that completely encircles Palestinian villages while at many points it separates Palestinian villages from the rest of the West Bank and converts them into isolated enclaves. Qalqiliya, a city with a population of 40,000, is completely surrounded by the Wall and residents can only enter or leave through a single military checkpoint open from 7 a.m. to 7 p.m. Palestinians between the Wall and the Green Line will effectively be cut off from their land and workplaces, schools, health clinics and other social services. Much of the Palestinian land on the Israeli side of the Wall consists of fertile agricultural land and some of the most important water wells in the region. The Wall is constructed on Palestinian lands expropriated by Israeli military order, justified on grounds of military necessity. Many fruit and olive trees had been destroyed in the course of building the barrier. B'Tselem, a leading Israeli human rights NGO, estimates that the barrier will cause direct harm to at least 210,000 Palestinians living in 67 villages, towns and cities.

10. Palestinians, unconvinced by Israel's assurances that they will be allowed to pass through the crossings to be erected in the Wall, are moving from their homes in the affected areas to the security of what remains of Palestine. It is reported that already some 600 shops and enterprises have closed in Qalqiliya as a result of the construction of the Wall. The Wall will therefore create a new generation of refugees or internally displaced persons.

11. It is impossible to give complete facts about the Wall as its final trajectory is still surrounded in secrecy and uncertainty. The path of the Wall changes regularly in response to demands from settlers and other political interest groups within Israel. There is no transparency surrounding the construction of the Wall and its final course seems to be known only to an inner circle of the military and political establishment within Israel. It is, however, widely expected that, following the completion of the Wall separating Israel from the West Bank on the western side, an eastern wall will be constructed, along the mountain ridge west of the Jordan Valley, which will separate Palestine from the Jordan Valley.

12. The Wall must be seen in the context of settlement activity (discussed later) and the unlawful annexation of East Jerusalem. Settlements in East Jerusalem and the West Bank are the principal beneficiaries of the Wall and it is estimated that approximately half of the 400,000 settler population will be incorporated on the Israeli side of the Wall. Needless to say, it is extraordinary that such action should be taken to incorporate illegal settlements that form the

subject of negotiations between Israel and Palestine. The Wall will be built at great cost to Israel: it is projected that US\$ 1.4 billion will be spent on its construction. This simply confirms the permanent nature of the Wall.

13. The Wall has serious implications for human rights. It further restricts the freedom of movement of Palestinians, restricts access to health and education facilities and results in the unlawful taking of Palestinian property. However, the Wall has more serious implications as it violates two of the most fundamental principles of contemporary international law: the prohibition on the forcible acquisition of territory and the right to self-determination.

14. Like the settlements it seeks to protect, the Wall is manifestly intended to create facts on the ground. It may lack an act of annexation, as occurred in the case of East Jerusalem and the Golan Heights. But its effect is the same: annexation. Annexation of this kind goes by another name in international law - conquest. Conquest, or the acquisition of territory by the use of force, has been outlawed by the prohibition on the use of force contained in the Kellogg-Briand Pact of 1928 and Article 2, paragraph 4, of the Charter of the United Nations. The prohibition on the acquisition of territory by force applies irrespective of whether the territory is acquired as a result of an act of aggression or in self-defence. The Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV) of 24 October 1970, annex) declares that "the territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognized as legal". This prohibition is confirmed by Security Council resolution 242 (1967) and the Oslo Accords, which provide that the status of the West Bank and Gaza shall not be changed pending the outcome of the permanent status negotiations.<sup>3</sup> The Geneva Convention relative to the Protection of Civilian Persons in Time of War (the Fourth Geneva Convention) provides that protected persons in an occupied territory shall not be deprived of the benefits of the Convention "by any annexation ... of the occupied territory" (art. 47).

15. The right to self-determination is closely linked to the notion of territorial sovereignty. A people can only exercise the right of self-determination within a territory. The amputation of Palestinian territory by the Wall seriously interferes with the right of self-determination of the Palestinian people as it substantially reduces the size of the self-determination unit (already small) within which that right is to be exercised.

16. The Special Rapporteur submits that the time has come to condemn the Wall as an act of unlawful annexation in the language of Security Council resolutions 478 (1980) and 497 (1981) which declare that Israel's actions aimed at the annexation of East Jerusalem and the Golan Heights are "null and void" and should not be recognized by States. Israel's claim that the Wall is designed entirely as a security measure with no intention to alter political boundaries is simply not supported by the facts.

#### IV. RESTRICTIONS ON FREEDOM OF MOVEMENT AND THE HUMANITARIAN CRISIS

17. Previous reports have described the serious restrictions on freedom of movement imposed on the Palestinian people by the Occupying Power. Checkpoints, closures and curfews are words that fail to capture the full enormity of what is happening today in the West Bank and Gaza. A checkpoint is not simply a military outpost on a highway that checks the documents of pedestrians and traffic that seek to proceed along the road. Every day thousands of Palestinians must pass through these checkpoints in order to travel from home to work, to reach schools and hospitals and to visit friends and family. Every day Palestinians are compelled to waste hours passing through these checkpoints. Frequently, Palestinians are obliged to leave their vehicles at one checkpoint and to walk along dusty roads to another checkpoint to take a taxi to their destination. Accounts of rudeness, humiliation and brutality at the checkpoints are legion. Ambulances are often delayed and women give birth to children at checkpoints. Checkpoints are not so much a security measure for ensuring that would-be suicide bombers do not enter Israel, but rather the institutionalization of the humiliation of the Palestinian people. Similarly, a curfew is not simply a restriction on leaving one's home. It is the imprisonment of the people within their own homes. Unable to go to work, to buy food, to go to school, to visit hospitals or to bury their dead, they are confined within the walls of their own homes while the IDF patrols their streets. Statistics of checkpoints and curfews cannot accurately portray the obscenity of the situation. Unfortunately, Israelis are protected from seeing what their army is doing to their subjugated neighbour by laws that restrict Israelis from seeing what is happening. The acclaimed Palestinian author, Raja Shehadeh, described the situation in his recent book *When the Bulbul Stops Singing: A Diary of Ramallah Under Siege*:<sup>4</sup> "During the first intifada, the movement of both people into the land of the other continued to be possible. ... All sorts of relations developed between the people on the two sides of the divide. None of this has been possible this time. With the exception of a few determined Israeli journalists, it was left to the army to present to the Israeli people the reality of the Occupied Territories. The prohibition against travel by both sides to each other's territories meant that the demonization could continue unchallenged."

18. The task of the Special Rapporteur is to report on facts. Curfews continue, but without the severity of 2002. From November 2002 to April 2003, an average of 390,000 civilians were under curfew compared with 520,000 in the second half of 2002. However, people under curfew in Hebron, Jenin and parts of Gaza were frequently under tighter and more continuous curfew in 2003.

19. There are some 300 checkpoints or roadblocks, including about 140 checkpoints manned by the military. However, in late July 2003 a number of roadblocks were removed within the context of the implementation of the road map. Checkpoints vary in nature and include permanent checkpoints, mobile checkpoints, unmanned roadblocks, dirt walls, earth mounds, concrete blocks, iron gates and trenches dug around villages and towns. Sometimes tanks or military vehicles are used as roadblocks. These checkpoints or roadblocks, around every town and major road junction, divide the OPT internally. Eight commercial checkpoints divide the West Bank into the separate cantons of Hebron, Bethlehem, Jericho, Ramallah, Nablus, Tulkarem, Qalqiliya and Jenin. Each district has one official commercial entrance. Commercial goods must be unloaded and transferred to another vehicle on the other side of the checkpoint ("back-to-back transport"). Checkpoints for ordinary people likewise sometimes

require back-to-back transfer. These checkpoints divide the West Bank into a patchwork of cantons. Since March 2002, permits have been required to travel from one district to another. Gaza is totally isolated from the rest of Palestine. It too, however, is partitioned into three separate cantons by checkpoints. These measures have not prevented the movement of militants between different towns or regions or between Palestine and Israel. They do not protect settlements which are already well protected by the IDF. Instead, internal checkpoints restrict internal trade within the OPT and restrict the entire population from travelling from village to village or town to town. They must therefore be seen as a form of collective punishment. Writing in *Ha'aretz* on 27 July 2003, the columnist Gideon Levy wrote that the purpose of checkpoints is "to make the lives of the local residents as miserable as possible". Unfortunately, the Israeli representatives appearing before the Human Rights Committee on 24 and 25 July 2003 made no serious attempt to address the issue of checkpoints. Indeed, there seemed to be no appreciation on their part of the hardships and humiliation caused by checkpoints.

20. Checkpoints, closures and curfews have had a major impact on the Palestinian economy. According to a World Bank report of May 2003, "The bulk of Palestinian economic losses stem from closure and curfew."<sup>5</sup> This has resulted in unemployment (which now stands at 40 per cent in the West Bank and Gaza) and poverty (60 per cent of the people live on less than US\$ 2 per day; 2 million live in poverty, dependent on food from international donor agencies). Checkpoints and curfews have also led to a drop in health standards resulting from inability to access hospitals and clinics, the impossibility of carrying out health-care programmes (for example, vaccinations) and the psychological trauma arising from the physical, economic and social consequences of occupation. Checkpoints have also resulted in the failure to acquire nutritious food and sufficient clean water. The obstruction of ambulances at checkpoints remains a serious problem. In the past year, about 60 ambulances per month were held up at checkpoints of which a quarter were denied passage. In March 2003, 15 ambulances were fired upon. Children have suffered dramatically. Schools are closed by curfew and checkpoints make it difficult for both teachers and children to reach schools. Twenty-two per cent of children under the age of 5 suffer from acute or chronic malnutrition while the breakdown of family life has had a severe impact on children.

21. There is a humanitarian crisis in the West Bank and Gaza. It is not the result of a natural disaster. Instead, it is a crisis imposed by a powerful State on its neighbour.

## V. LOSS OF LIFE AND THE KILLING OF CIVILIANS

22. For both human rights law and international humanitarian law the protection of human life is a primary goal. Article 6 (1) of the International Covenant on Civil and Political Rights states that "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life." While accepting that combatants engaged in armed conflict would be exposed to life-threatening situations, international humanitarian law seeks to limit harm to civilians by requiring that all parties to a conflict respect the principles of distinction and proportionality. The principle of distinction, codified in article 48 of Protocol I Additional to the Geneva Conventions of 12 August 1949, requires that "the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives". Acts or threats of violence the primary purpose of which is

to spread terror among the civilian population, are prohibited (art. 51 (2)). The principle of proportionality, codified in article 51 (5) (b), prohibits an attack on a military target "which may be expected to cause incidental loss of civilian life, injury to civilians, [or] damage to civilian objects ... which would be excessive in relation to the concrete and direct military advantage anticipated". That these principles apply to both Israelis and Palestinians was confirmed by the High Contracting Parties to the Fourth Geneva Convention when, in a declaration issued on 5 December 2001, they called upon both parties to the conflict to:

"... ensure respect for and protection of the civilian population and civilian objects and to distinguish at all times between the civilian population and combatants and between civilian objects and military objectives."

23. Sadly, neither party to the conflict in the region has paid proper respect to these principles as the death toll has continued to rise. Since the start of the second intifada in September 2000, over 2,755 Palestinians and over 830 Israelis have been killed and 28,000 Palestinians and 5,600 Israelis have been injured. Most have been civilians. Five hundred and fifty children have been killed, of whom 460 were Palestinians and 90 Israelis. The number of Palestinian children killed, mainly in air and ground attacks, has increased in 2003. Within Israel, most deaths have been caused by suicide bombers.

24. The assassination of Palestinian militants has intensified. From October 2000 to April 2003, the IDF has killed more than 230 Palestinians, including 80 children, women and innocent bystanders, in assassination actions. Over 300 persons have been injured in these actions. In the period 10-14 June 2003, the IDF killed 27 Palestinians and wounded dozens of others in a series of extrajudicial killings carried out by helicopter gunships in the Gaza Strip. These attacks included an unsuccessful assassination attempt on Dr. Abdel Aziz Al-Rantisi, a senior political leader of Hamas. Four people were killed and 35 injured while 29 nearby apartments were damaged. On 12 June 2003, IDF helicopters bombarded the car of Yasser Taha. He was immediately killed, together with his wife and young daughter. In addition, five other civilians were killed in the attack and 36 were wounded, including 10 children.

25. In June 2003, a number of NGOs commenced legal proceedings to stop assassinations. This matter is still before the Israeli High Court of Justice, which has refused a request for a temporary injunction against further assassinations. Judge Antonio Cassese, former President of the International Criminal Tribunal for the Former Yugoslavia, has submitted an expert opinion to the Court in which he asserts that assassinations of this kind could be considered as war crimes. In his opinion, he maintains that the killing of civilians suspected of terror activity, when no direct belligerent operation in which they are involved is taking place, substantively infringes the basic principle that armed forces must distinguish between combatants and civilians. He further argues that suspects should be arrested and tried, which is often possible in the light of Israel's control of the OPT.

26. Israel justifies its policy and practice of assassinations on grounds of self-defence and claims that it is not possible to arrest and try suspects, particularly where they are in areas controlled by the Palestinian Authority. The evidence on this point is inconclusive as there are certainly some instances in which arrests could have been made in the light of Israel's capacity

to exercise its jurisdictional power within the areas controlled in theory by the Palestinian Authority. The failure to attempt such arrests inevitably gives rise to suspicions that Israel lacks evidence to place such persons on trial and therefore prefers to dispose of them arbitrarily.

27. The indiscriminate use of violence is further illustrated by the use of flechette shells in Gaza. The use of such anti-personnel weapons in such a densely populated area as Gaza exposes civilians to great risk and fails to take account of the need to distinguish between civilians and military objectives. On 27 April 2003, the Israeli High Court of Justice refused to intervene in the army's choice of weapons because flechettes are not banned outright under international law.

28. The failure of the IDF to investigate crimes committed by its members in the OPT has long been criticized. In June 2003, this criticism was confirmed when the Judge Advocate General stated that a mere 55 investigations into shooting incidents had been opened since the beginning of the second intifada, resulting in only six indictments.<sup>6</sup>

## VI. PRISONERS

29. At the time of writing this report, there are some 6,000 Palestinians in Israeli prisons and detention centres. Some have been tried, some have not. The number of those detained includes 175 juveniles and 70 women. Approximately 800 persons are held in administrative detention, that is detention by administrative order rather than judicial procedure. The issue of prisoners has become a major obstacle in the implementation of the road map. Israel is reluctant to release more than 540 prisoners while the Palestinian Authority demands that all prisoners be released.

30. There are serious complaints about the treatment of prisoners that are supported in varying degrees by respectable non-governmental organizations such as the Public Committee Against Torture in Israel (PCATI), the World Organization against Torture (OMCT), the Defence for Children International - Palestine Section, LAW - The Palestinian Society for the Protection of Human Rights and the Environment, Al-Haq and the Mandela Institute For Human Rights. These complaints cover all prisons and detention centres and include men, women and children held in imprisonment as well as administrative detainees. On the one hand, these complaints cover allegations of overcrowding, disgusting prison conditions and lack of proper medical care. On the other hand, they include serious allegations of inhuman and degrading treatment, sometimes amounting to torture.

31. In 1999 the Israeli High Court of Justice ruled that various methods of torture employed by the General Security Service (GSS), such as violent shaking, covering the head with a sack, tying to a small tilted chair or position abuse (*shabeh*), sleep deprivation and painful shackling were, when applied cumulatively, illegal. Despite this, there is considerable evidence that these methods are still employed during the interrogation of adults and juveniles. In a publication entitled *Back to a Routine of Torture* covering the period September 2001 to April 2003, PCATI estimated that for the first half of 2003, "each month, hundreds of Palestinians have been subjected to one degree or another of torture or other cruel, inhuman or degrading treatment, at the hands of the GSS and bodies working on its behalf. ... The bodies which are supposed to keep the GSS under scrutiny and ensure that interrogations are conducted lawfully act, instead,



as rubber stamps for decisions by the GSS". These allegations are difficult to reconcile with the assurance given by the representatives of the Israeli Government before the Human Rights Committee on 24 and 25 July 2003 that allegations of this kind had been properly investigated and proved to be unfounded or justified on grounds of necessity.

32. The Special Rapporteur finds himself in an awkward situation when it comes to assessing evidence of this kind. Allegations of torture and inhuman treatment are supported in varying degrees by highly respected NGOs that have taken statements from former prisoners and consulted with lawyers working within the system. Moreover, there are serious doubts about the impartiality of the investigations of these complaints carried out by the Israeli authorities. The Special Rapporteur is denied access to Israeli prisons and detention centres and to government officials who might assist in the task of assessing the validity of allegations on this subject. The Special Rapporteur therefore urgently calls upon the Israeli authorities either to permit an independent international committee to investigate such complaints or to conduct a full-scale independent judicial inquiry into such allegations itself. It has often been said that the degree of civilization of a State can be measured by the way in which it treats prisoners. At present Israel, which prides itself on a high standard of criminal justice within its own borders, runs the risk of forfeiting this reputation by its consistent refusal to respond to criticisms of treatment of prisoners from the OPT.

## VII. DESTRUCTION OF PROPERTY

33. The destruction of property in the OPT continues unabated. Three principal reasons are advanced by Israel for the destruction of homes and agricultural property. First, the interests of security or military necessity may require houses to be destroyed and agricultural land to be cleared ("shaved" or "swept") to prevent such houses or trees from being used to provide cover for militants bent on attacking settlements or IDF positions. This has resulted in the creation of wide buffer zones adjacent to settlements and roads used by settlers. Secondly, the homes of those who have committed crimes against Israel are destroyed by way of punishment (although the Israeli Government prefers to describe this as a form of deterrence). Thirdly, houses built without administrative permission, in a system in which permits are seldom granted, are destroyed to assert respect for Israel's administrative regime. These three reasons have been invoked by the Israeli authorities to destroy thousands of homes and to lay bare vast areas of fertile agricultural land.

34. The situation is particularly acute in Gaza. According to the Commissioner-General of UNRWA, "At the end of May 2003, a total of 1,134 homes [had] been demolished by the Israeli military in the Gaza Strip, making almost 10,000 individuals homeless. Unfortunately, this is not a policy on the wane. During the first two years of the intifada, the average number of homes demolished in Gaza - a statistical category both depressing and surreal - was 32 per month. Since the start of 2003, the average has risen to 72. Disturbingly, the publication of the road map to peace has so far had no impact."<sup>7</sup> The Special Rapporteur had the opportunity to observe the devastation caused in Beit Hanoun at first hand when he visited on 24 June 2003. Parts of this town had been reduced to a wasteland as a result of the destruction of homes and orchards. It appears that this act of large-scale devastation was in part a punitive measure taken against homes and orchards in the neighbourhood of a roadside bomb aimed at an Israeli military vehicle.

35. The collective punishment of Palestinians in the form of destruction of property has had serious consequences for the Palestinian people and the environment of Palestine. According to Jeff Halper, the Director of the Israeli Committee against House Demolitions, "The bulldozer has become as much a symbol of Israeli occupation as the rifle and the tank".

### VIII. SETTLEMENTS

36. The international community is united in its opposition to Israeli settlements in the OPT. It has repeatedly described them as being in violation of the sixth paragraph of article 49 of the Fourth Geneva Convention which prohibits the Occupying Power from transferring parts of its own civilian population into the territory it occupies. The road map makes it clear that the dismantling of settlements is an important issue in the resolution of the Israeli-Palestinian conflict.

37. There are at present some 200 settlements in the OPT containing a total population of over 400,000. In the West Bank there are more than 120 settlements with over 230,000 settlers, while in the Gaza Strip there are 16 settlements with some 7,000 settlers. About 180,000 settlers live in the neighbourhoods of East Jerusalem. Settlements often comprise fully developed towns and villages. For instance, Ma'aleh Adumim has a population 28,000 settlers. Roads constructed to link settlements with each other and to allow access to Israel have also resulted in the taking of Palestinian land.

38. Israel has given an equivocal undertaking to restrict the growth of settlements to "natural growth" and to dismantle "unauthorized settlements", that is outposts and extensions to existing settlements not authorized under Israeli law. Despite this, new settlements are being built, as the Special Rapporteur saw on several occasions, and existing settlements continue to grow. The population growth in the settlements is three times that of Israel itself. In 2002, the population in the Israeli settlements in the West Bank grew by 5.7 per cent compared with 1.9 per cent in Israel.<sup>8</sup> The Israeli Government continues to offer financial inducements to Israelis to settle in the OPT and in 2003 Israel budgeted 1.9 billion new Israeli shekels for settlements. Further evidence of the determination of the Israeli Government to entrench the settlements is provided by the erection of the Wall (discussed in chap. III above), the continued clearing of Palestinian land within the proximity of settlements for security purposes and the allocation of heavy military resources to protect settlements. (For example, the 532 settlers who live in the centre of Hebron are protected by some 100 Israeli soldiers.)

39. Settlements fragment Palestinian territory and seriously undermine the prospects for Palestinian self-determination within a viable territorial unit. A recent study carried out by B'Tselem estimates that 41.9 per cent of the total land area of the West Bank is effectively under the control of settlements, including developed areas, non-developed municipal areas and land reserves.

40. The harsh truth is that there is no "freeze" on the construction or growth of settlements. Moreover, the Israeli Government is taking no steps to reverse this pattern of growth. A poll conducted by the Israeli group "Peace Now" in July 2003 has shown that 74 per cent of the settlers in the OPT would leave their homes in return for compensation. If the Israeli

Government were serious about its undertaking to halt the growth of settlements, it might give serious attention to budgeting funds for the repatriation of settlers and their compensation rather than allocating such substantial funding to the settlements and to the building of the Wall.

## IX. CONCLUSION

41. The occupation of the OPT continues to result in widespread violations of human rights, affecting both civil and socio-economic rights, and of international humanitarian law. Israel's justification for these actions is that they are necessary in the interests of its own national security. As indicated at the beginning of this report, the lawfulness of Israel's response is to be measured in accordance with the principle of proportionality. The Special Rapporteur finds it difficult to accept that the excessive use of force that disregards the distinction between civilians and combatants, the creation of a humanitarian crisis by restrictions on the mobility of goods and people, the killing and inhuman treatment of children, the widespread destruction of property and, now, territorial expansion can be justified as a proportionate response to the violence and threats of violence to which Israel is subjected. As stressed in this report, the construction of the Wall within the West Bank and the continued expansion of settlements, which, on the face of it, have more to do with territorial expansion, de facto annexation or conquest, raise serious doubts about the good faith of Israel's justifications in the name of security.

### Notes

<sup>1</sup> In Palestine, the term "Apartheid Wall" is frequently used to describe the Wall. Strictly speaking, this historical metaphor is inaccurate as no wall of this kind was erected between Black and White in apartheid South Africa.

<sup>2</sup> State Comptroller, *Audit Report on the Seam Area*, p. 35.

<sup>3</sup> Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, 28 September 1995, chap. 5, art. XXXI, para. 7.

<sup>4</sup> Also published as *When the Birds Stopped Singing: Life in Ramallah Under Siege*.

<sup>5</sup> *Twenty-Seven Months - Intifada, Closures and Palestinian Economic Crisis: An Assessment*, The World Bank West Bank and Gaza Office, Jerusalem, chap. 2, para. 2.5.

<sup>6</sup> *B'Tselem Newspaper*, 29 June 2003.

<sup>7</sup> *International Herald Tribune*, 23 June 2003.

<sup>8</sup> *The Jerusalem Post*, 28 July 2003.

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# ANNEX 7

International Covenant on civil and political Rights, Concluding  
Observations of the Human Rights Committee:  
Israel, 18 August 1998, CCPR/C/79/Add.93

**UNITED  
NATIONS**

**CCPR**



**International Covenant  
on Civil and  
Political Rights**

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Convention Abbreviation: CCPR  
HUMAN RIGHTS COMMITTEE  
Sixty-third session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

Israel

1. The Committee considered the initial report of Israel (CCPR/C/81/Add.13) at its 1675th, 1676th and 1677th meetings (see CCPR/C/SR.1675-1677), held on 15 and 16 July 1998, and adopted the following concluding observations at its 1694th meeting (CCPR/C/SR.1694), held on 28 July 1998.

A. Introduction

2. The Committee welcomes the initial report submitted by the Government of Israel, and notes with satisfaction that it was largely prepared in accordance with the Committee's guidelines concerning the form and contents of initial reports. The Committee, however, regrets the considerable delay in the submission of the report, which was received five years after the date on which it was due.

3. The Committee notes that the report, while providing extensive information on prevailing legislation in the field of human rights in Israel, lacks sufficient information on the implementation of the Covenant in practice and on the factors and difficulties impeding its effective implementation. This was partly rectified by the oral information provided by the delegation during the examination of the report, which enabled the Committee to embark on a frank and constructive dialogue with the State party. The Committee expresses satisfaction that the Government had widely disseminated the report among non-governmental organizations prior to its consideration by the Committee.

B. Factors and difficulties affecting the implementation of the Covenant

4. The Committee notes the security concerns in the State party, the frequent attacks on the civilian population, the problems linked to its occupation of territories and the fact that the State party is officially at war with a number of neighbouring States. However, the Committee draws attention to article 4 of the Covenant, which permits no derogation from certain basic rights even in times of public emergency.

C. Positive factors

5. The Committee notes with satisfaction that Israeli society is a democratic one in which sensitive issues are openly debated and that an active non-governmental community has taken firm root. It expresses appreciation for the wide dissemination of the initial report of Israel among professionals in the justice system who work directly in matters relating to the promotion and protection of human rights and among non-governmental organizations. It welcomes indications that the inter-ministerial network of persons that have worked together on the drafting of the present report may soon be institutionalized.
6. The Committee welcomes the fact that the report includes many references to decisions of the Supreme Court upholding rights protected under the Covenant.
7. The Committee welcomes the recent establishment of the Public Defender's Office. It also welcomes efforts to implement the recommendations of the Kremnitzer Committee, which address questions of police violence, and of the Goldberg Committee regarding rules of evidence. It welcomes the progressive steps which have led to the amendment of the Criminal Code and to the establishment of the Department for Investigation of Police Misconduct within the Ministry of Justice to review complaints of maltreatment by members of the police and security forces. The Committee takes note that the State Comptroller's Office is responsible for acting as Ombudsman, and would welcome further information on its activities, particularly as regards measures to combat discrimination.
8. The Committee notes with satisfaction the establishment of bodies in various ministries to address questions relating to the status of women, and particularly welcomes the activities of the Knesset Committee for the Advancement of the Status of Women. It also notes with satisfaction: the establishment of a national authority on the advancement of women with a wide range of responsibilities; the amendment of the Equal Employment Opportunities Law placing the burden of proof upon the employer in civil sexual harassment suits; and the enactment of the Equal Pay (Male and Female Employees) Law.

D. Principal subjects of concern and recommendations

9. The Committee notes with regret that, although some rights provided for in the Covenant are legally protected and promoted through the Basic Laws, municipal laws, and the jurisprudence of the courts, the Covenant has not been incorporated in Israeli law and cannot be directly invoked in the courts. It recommends early action in respect of recent legislative initiatives aimed at enhancing the enjoyment of a number of the rights provided for in the Covenant, including proposals for new draft Basic Laws on due process rights and on freedom of expression and association. It also recommends that consideration be given to enacting further laws to give effect to any rights not already covered by Basic Laws.
10. The Committee is deeply concerned that Israel continues to deny its responsibility to fully apply the Covenant in the occupied territories. In this regard, the Committee points to the long-standing presence of Israel in these territories, Israel's ambiguous attitude towards their future status, as well as the exercise of effective jurisdiction by Israeli security forces therein. In response to the arguments presented by the delegation, the Committee emphasizes that the applicability of rules of humanitarian law does not by itself impede the application of the Covenant or the accountability of the State under article 2, paragraph 1, for the actions of its authorities. The Committee is therefore of the view that, under the circumstances, the Covenant must be held applicable to the occupied territories and those areas of southern Lebanon and West Bekaa where Israel exercises effective control. The Committee requests the State party to include in its second periodic report all information relevant to the application of the Covenant in territories which it occupies.
11. The Committee expresses its deep concern at the continued state of emergency prevailing in Israel, which has been in effect since independence. It recommends that the Government review the necessity for the continued renewal of the state of emergency with a view to limiting as far as possible its scope and territorial applicability and the associated derogation of rights. In this regard, the Committee draws attention to article 4 of the Covenant, which permits no derogation from articles 6, 7, 8 (paras. 1 and 2), 11, 15, 16 and 18, and requires that permitted derogations be limited to the extent strictly required by the exigencies of the situation.
12. The Committee expresses serious concern over deeply imbedded discriminatory social attitudes, practices and laws against Arab Israelis that have resulted in a lower standard of living compared with Jewish Israelis, as is evident in their significantly lower levels of education, access to health care, access to housing, land and employment. It notes with concern that most Arab Israelis, because they do not join the army, do not enjoy the financial benefits available to Israelis who have served in the army, including scholarships and housing loans. The Committee also expresses concern that the Arabic language, though official, has not been accorded equal status in practice, and that discrimination against members of the Arab minority appears to be extensive in the private sector. In this regard, the Committee urges the State party to take steps without delay to ensure equality to Arabs and to proceed as soon as possible with the planned formulation of a

draft law on discrimination in the private sector and to adopt it at an early date.

13. The Committee is concerned that Palestinians in the occupied territories who remain under the control of Israeli security forces do not enjoy the same rights and freedoms as Jewish settlers in those territories, in particular in regard to planning and building permits and access to land and water. The Committee is also concerned at the policies of confiscation of lands and settlement in the occupied territories. The Committee recommends that coordinated and targeted efforts be made to establish basic standards that are applicable equally to all persons under the jurisdiction of Israel.

14. The Committee is also concerned at the discrimination faced by Bedouins, many of whom have expressed a desire to continue to live in settlements in the Negev which are not recognized by the Israeli Government and which are not provided with basic infrastructure and essential services. The Committee recommends that members of Bedouin communities should be given equality of treatment with Jewish settlements in the same region, many of which are also dispersed and populated by small numbers of people.

15. The Committee expresses concern over the situation of women who, despite the advances noted in paragraph 8, continue to face discrimination in many aspects of life, including in military service and in religious institutions, and that they are underrepresented in the conduct of public affairs. The Committee notes that no clear plan of action exists which addresses the situation of the most disadvantaged group of women, namely those belonging to the Arab minority. The Committee recommends that targeted measures be considered to accelerate progress towards equality, in particular for Arab women.

16. The Committee regrets that women brought to Israel for purposes of prostitution, many under false pretences or through coercion, are not protected as victims of trafficking but are likely to be penalized for their illegal presence in Israel by deportation. Such an approach to this problem effectively prevents these women from pursuing a remedy for the violation of their rights under article 8 of the Covenant. The Committee recommends that serious efforts be made to seek out and punish the traffickers, to institute rehabilitation programmes for the victims and to ensure that they are able to pursue legal remedies against the perpetrators.

17. With respect to article 6 of the Covenant, the Committee is concerned about the number of Palestinians who have been killed by the security forces, as well as all persons who have been the victims of terrorist attacks. The Committee expresses concern over the use of rubber-coated metal bullets by the security forces in the occupied territories in dispersing demonstrations. This type of rubber bullet is reported to have killed many Palestinians, including children. The Committee urges the State party to enforce rigorously the strict limitations on the operational rules as to the use of firearms and the use of rubber bullets against unarmed civilians. It requests that the next periodic report include precise information on the number of deaths, including those caused by rubber bullets, the number of complaints arising from their use and the number of defence and security personnel that have been punished or disciplined as a result.

18. The Committee regrets the introduction by the Government of a draft law which would deny victims compensation for excesses committed by members of the security forces against Palestinian residents of the occupied territories. It requests that detailed information on these matters be included in the next periodic report of the State party.

19. The Committee is deeply concerned that under the guidelines for the conduct of interrogation of suspected terrorists authority may be given to the security service to use "moderate physical pressure" to obtain information considered crucial to the "protection of life". The Committee notes that the part of the report of the Landau Commission that lists and describes authorized methods of applying pressure remains classified. The Committee notes also the admission by the State party delegation that the methods of handcuffing, hooding, shaking and sleep deprivation have been and continue to be used as interrogation techniques, either alone or in combination. The Committee is of the view that the guidelines can give rise to abuse and that the use of these methods constitutes a violation of article 7 of the Covenant in any circumstances. The Committee stresses that article 7 of the Covenant is a non-derogable prohibition of torture and all forms of cruel, inhuman or degrading treatment or punishment. The Committee urges the State party to cease using the methods referred to above. If legislation is to be enacted for the purpose of authorizing interrogation techniques, such a law should explicitly prohibit all forms of treatment prohibited by article 7.

20. Further in relation to article 7 of the Covenant, the Committee notes that prisoners may be segregated in Israel as a preventive measure for the protection of security, the maintenance of order or to guarantee the safety of the prisoner. Noting that segregation involves substantial isolation and may be extended over long periods of time, the Committee recalls its General Comment 20 (44) in which it noted that prolonged solitary confinement of a detained or imprisoned person may violate article 7. The Committee recommends that efforts be made to avoid prolonged isolation of segregated prisoners.

21. The Committee remains concerned that despite the reduction in the number of persons held in administrative detention on security grounds, persons may still be held for long and apparently indefinite periods of time in custody



without trial. It is also concerned that Palestinians detained by Israeli military order in the occupied territories do not have the same rights to judicial review as persons detained in Israel under ordinary law. A specific concern of the Committee is that at least some of the persons kept in administrative detention for reasons of State security (and in particular some Lebanese) do not personally threaten State security but are kept as "bargaining chips" in order to promote negotiations with other parties on releasing detained Israeli soldiers or the bodies of deceased soldiers. The Committee considers the present application of administrative detention to be incompatible with articles 7 and 16 of the Covenant, neither of which allows for derogation in times of public emergency. The Committee takes due note that Israel has derogated from article 9 of the Covenant. The Committee stresses, however, that a State party may not depart from the requirement of effective judicial review of detention. The Committee recommends that the application of detention be brought within the strict requirements of the Covenant and that effective judicial review be made mandatory.

22. While acknowledging the security concerns that have led to restrictions on movement, the Committee notes with regret the continued impediments imposed on movement, which affect mostly Palestinians travelling in and between East Jerusalem, the Gaza Strip and the West Bank, and which have grave consequences affecting nearly all areas of Palestinian life. The Committee considers this to raise serious issues under article 12. In regard to persons in these areas, the Committee urges Israel to respect the right to freedom of movement provided for under article 12, including the right to return to one's country.

23. In regard to Palestinians who are resident in East Jerusalem, the Committee is concerned that the increasingly restrictive conditions for maintaining the right to permanent residence, the denial of requests for family reunification and the difficulty experienced by non-Jews in obtaining building permits and accommodation have resulted in increasing numbers being forced to move to the occupied territories. The Committee expresses its profound concern at the effect of the unpublished directive of the Ministry of the Interior, under which Palestinians may lose their right to live in the city if they cannot prove that East Jerusalem has been their "centre of life" for the past seven years. The Committee notes that this policy is being applied retroactively to both Palestinians who live abroad and to those who live in the West Bank or in nearby Jerusalem suburbs, but not to Israeli Jews or to foreign Jews who are permanent residents of East Jerusalem. The Committee recommends that the rules and procedures relating to permanent residency status be applied without discrimination.

24. The Committee deplores the demolition of Arab homes as a means of punishment. It also deplores the practice of demolitions, in part or in whole, of "illegally" constructed Arab homes. The Committee notes with regret the difficulties imposed on Palestinian families seeking to obtain legitimate construction permits. The Committee considers the demolition of homes to conflict directly with the obligation of the State party to ensure without discrimination the right not to be subjected to arbitrary interference with one's home (art. 17), the freedom to choose one's residence (art. 12) and equality of all persons before the law and equal protection of the law (art. 26).

25. The Committee is also concerned that the Israel Lands Administration (ILA), responsible for the management of 93 per cent of land in Israel, includes no Arab members and that while the ILA has leased or transferred land for the development of Jewish towns and settlements, few Arab localities have been established in this way until recent years. The Committee recommends that urgent steps be taken to overcome the considerable inequality and discrimination which remain in regard to land and housing.

26. The Committee regrets that the authorities appear to be placing obstacles in the way of family reunion in the case of marriages between an Israeli citizen and a non-citizen who is not Jewish (and therefore not entitled to enter under the Law of Return). These obstacles, which include long waiting periods for entry permits, a "probation" period of over five years' residence to establish that the marriage is genuine and a further waiting period for citizenship, are applied even more rigorously in the case of Arab citizens, particularly those who marry persons resident in the occupied territories. The Committee considers such obstacles to be incompatible with articles 17 and 23. It is recommended that the Government reconsider its policies with a view to facilitating family reunion of all citizens and permanent residents.

27. The Committee is concerned that Arab women citizens of Israel have in some cases been required to relinquish their citizenship should they marry a Palestinian and apply for residence in the occupied territories. It welcomes the Israeli Government's response that this policy no longer applies and recommends that those already affected be made fully aware of the relevant legal provisions and that their status be restored.

28. The Committee is concerned at the preference given to the Jewish religion in the allocation of funding for religious bodies, to the detriment of Muslims, Christians, Druze and other religious groups. The Committee recommends that regulations and criteria for funding be published and applied to all religious groups on an equal basis.

29. The Committee is concerned that the application of religious law to determine matters of personal status, including marriage and divorce, and the absence of provision for civil marriage effectively deny some persons the right to marry in Israel, and result in inequality between men and women. It is also concerned that the minimum age of marriage for girls, fixed by law at 17, may be reduced by the religious courts, and that no minimum age is fixed for men. The lack of

provision for civil burial is also a matter of concern. The Committee urges early implementation of measures currently under consideration to facilitate civil marriages and civil burial for those who do not belong to a religion. It recommends that the State party take into account international standards for the age of majority in its current review of the minimum marriageable age for men and women.

30. The Committee recommends that the Government consider ratifying the Optional Protocol to the Covenant.

31. The Committee requests that the Government of Israel submit its second periodic report, which is due by June 2000. It also requests that the next report include information on the implementation of the Covenant in all lands over which Israel exercises effective control during the period covered by the report.

32. The Committee recommends the publication and distribution of the concluding observations of the Committee to public bodies, media agencies, and non-governmental organizations working in the area of human rights.



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Office of the United Nations High Commissioner for Human Rights  
Geneva, Switzerland



# ANNEX 8

International Covenant on civil and political Rights, Concluding  
Observations of the Human Rights Committee:  
Israel, 21 August 2003, CCPR/CO/78/ISR

**UNITED  
NATIONS**

**CCPR**



**International Covenant  
on Civil and  
Political Rights**

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CCPR/CO/78/ISR. (Concluding Observations/Comments)**

Convention Abbreviation: CCPR  
HUMAN RIGHTS COMMITTEE  
Seventy-eighth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

Israel

1. The Committee considered the second periodic report of Israel (CCPR/C/ISR/2001/2) at its 2116th, 2117th and 2118th meetings (see CCPR/C/SR.2116-2118), held on 24 and 25 July 2003, and adopted the following concluding observations at its 2128th - 2130th meetings (CCPR/C/SR.2128-2130), held on 4 and 5 August 2003.

A. Introduction

2. The Committee welcomes the second periodic report submitted by Israel and expresses its appreciation for the frank and constructive dialogue with a competent delegation. It welcomes the detailed answers, both oral and written, that were provided to its written questions.

B. Factors and difficulties affecting the implementation of the Covenant

3. The Committee has noted and recognizes the serious security concerns of Israel in the context of the present conflict, as well as the difficult human rights issues relating to the resurgence of suicide bombings which have targeted Israel's civilian population since the beginning of the second intifada in September 2000.

C. Positive factors

4. The Committee welcomes the positive measures and legislation adopted by the State party to improve the status of women in Israeli society, with a view to promoting gender equality. In this context, it welcomes in particular the amendment to the Equal Rights for Women Law (2000), the Employment of Women Law (Amendment 19), the adoption of the Sexual Harassment Law (1998), the Prevention of Stalking Law (2001), the Rights of Victims of an Offence Law (2001), and other legislative measures designed to combat domestic violence. It also welcomes the establishment of the Authority for the Advancement of the Status of Women but would appreciate further, up-to-date information on its responsibilities and functioning in practice.

5. The Committee welcomes the measures taken by the State party to combat trafficking in women for the purpose of prostitution, in particular the Prohibition on Trafficking Law enacted in July 2000 and the prosecution of traffickers since that date.

6. The Committee notes the efforts to increase the level of education for the Arab, Druze and Bedouin communities in

Israel. In particular, it notes the implementation of the Special Education Law and the Compulsory Education Law Amendment (2000).

7. The Committee also notes the State party's information about the significant measures taken for the development of the Arab sector, in particular through the 2001-2004 Development Plan.

8. The Committee welcomes legislation adopted by the State party in respect of persons with disabilities, in particular the enactment of the Equal Rights for People with Disabilities Law (1998). It expresses the hope that those areas where the rights of disabled people, acknowledged by the delegation as not being respected and requiring further improvements, will be addressed as soon as possible.

9. The Committee notes the efforts by the State party to provide better conditions for migrant workers. It welcomes the amendment to the Foreign Workers Law and the increase in penalties imposed on employers for non-compliance with the law. It also welcomes free access to labour courts for migrant workers and the provision of information to them about their rights in several foreign languages.

10. The Committee welcomes the Supreme Court's judgement of September 1999 which invalidated the former governmental guidelines governing the use of "moderate physical pressure" during interrogations and held that the Israeli Security Agency (ISA) has no authority under Israeli law to use physical force during interrogations.

#### D. Principal subjects of concern and recommendations

11. The Committee has noted the State party's position that the Covenant does not apply beyond its own territory, notably in the West Bank and in Gaza, especially as long as there is a situation of armed conflict in these areas. The Committee reiterates the view, previously spelled out in paragraph 10 of its concluding observations on Israel's initial report (CCPR/C/79/Add.93 of 18 August 1998), that the applicability of the regime of international humanitarian law during an armed conflict does not preclude the application of the Covenant, including article 4 which covers situations of public emergency which threaten the life of the nation. Nor does the applicability of the regime of international humanitarian law preclude accountability of States parties under article 2, paragraph 1, of the Covenant for the actions of their authorities outside their own territories, including in occupied territories. The Committee therefore reiterates that, in the current circumstances, the provisions of the Covenant apply to the benefit of the population of the Occupied Territories, for all conduct by the State party's authorities or agents in those territories that affect the enjoyment of rights enshrined in the Covenant and fall within the ambit of State responsibility of Israel under the principles of public international law.

The State party should reconsider its position and to include in its third periodic report all relevant information regarding the application of the Covenant in the Occupied Territories resulting from its activities therein.

12. While welcoming the State party's decision to review the need to maintain the declared state of emergency and to prolong it on a yearly rather than an indefinite basis, the Committee remains concerned about the sweeping nature of measures during the state of emergency, that appear to derogate from Covenant provisions other than article 9, derogation from which was notified by the State party upon ratification. In the Committee's opinion, these derogations extend beyond what would be permissible under those provisions of the Covenant which allow for the limitation of rights (e.g. articles 12, paragraph 3; 19, paragraph 3 and; 21, paragraph 3). As to measures derogating from article 9 itself, the Committee is concerned about the frequent use of various forms of administrative detention, particularly for Palestinians from the Occupied Territories, entailing restrictions on access to counsel and to the disclosure of full reasons of the detention. These features limit the effectiveness of judicial review, thus endangering the protection against torture and other inhuman treatment prohibited under article 7 and derogating from article 9 more extensively than what in the Committee's view is permissible pursuant to article 4. In this regard, the Committee refers to its earlier concluding observations on Israel and to its general comment No. 29.

The State party should complete as soon as possible the review initiated by the Ministry of Justice of legislation governing states of emergency. In this regard, and pending the adoption of appropriate legislation, the State party should review the modalities governing the renewal of the state of emergency and specify the provisions of the Covenant it seeks to derogate from, to the extent strictly required by the exigencies of the situation (art. 4).

13. The Committee is concerned that the use of prolonged detention without any access to a lawyer or other persons of the outside world violates articles of the Covenant (arts. 7, 9, 10 and 14, para. 3 (b)).

The State party should ensure that no one is held for more than 48 hours without access to a lawyer.

14. The Committee is concerned about the vagueness of definitions in Israeli counter-terrorism legislation and regulations which, although their application is subject to judicial review, appear to run counter to the principle of legality in several aspects owing to the ambiguous wording of the provisions and the use of several evidentiary

presumptions to the detriment of the defendant. This has adverse consequences on the rights protected under article 15 of the Covenant, which is non-derogable under article 4, paragraph 2, of the Covenant.

The State party should ensure that measures designed to counter acts of terrorism, whether adopted in connection with Security Council resolution 1373 (2001) or in the context of the ongoing armed conflict, are in full conformity with the Covenant.

15. The Committee is concerned by what the State party calls "targeted killings" of those identified by the State party as suspected terrorists in the Occupied Territories. This practice would appear to be used at least in part as a deterrent or punishment, thus raising issues under article 6. While noting the delegation's observations about respect for the principle of proportionality in any response to terrorist activities against civilians and its affirmation that only persons taking direct part in hostilities have been targeted, the Committee remains concerned about the nature and extent of the responses by the Israeli Defence Force (IDF) to Palestinian terrorist attacks.

The State party should not use "targeted killings" as a deterrent or punishment. The State party should ensure that the utmost consideration is given to the principle of proportionality in all its responses to terrorist threats and activities. State policy in this respect should be spelled out clearly in guidelines to regional military commanders, and complaints about disproportionate use of force should be investigated promptly by an independent body. Before resorting to the use of deadly force, all measures to arrest a person suspected of being in the process of committing acts of terror must be exhausted.

16. While fully acknowledging the threat posed by terrorist activities in the Occupied Territories, the Committee deplores what it considers to be the partly punitive nature of the demolition of property and homes in the Occupied Territories. In the Committee's opinion the demolition of property and houses of families some of whose members were or are suspected of involvement in terrorist activities or suicide bombings contravenes the obligation of the State party to ensure without discrimination the right not to be subjected to arbitrary interference with one's home (art. 17), freedom to choose one's residence (art. 12), equality of all persons before the law and equal protection of the law (art. 26), and not to be subject to torture or cruel and inhuman treatment (art 7).

The State party should cease forthwith the above practice.

17. The Committee is concerned about the IDF practice in the Occupied Territories of using local residents as "volunteers" or shields during military operations, especially in order to search houses and to help secure the surrender of those identified by the State party as terrorist suspects.

The State party should discontinue this practice, which often results in the arbitrary deprivation of life (art. 6).

18. The Committee is concerned that interrogation techniques incompatible with article 7 of the Covenant are still reported frequently to be resorted to and the "necessity defence" argument, which is not recognized under the Covenant, is often invoked and retained as a justification for ISA actions in the course of investigations.

The State party should review its recourse to the "necessity defence" argument and provide detailed information to the Committee in its next periodic report, including detailed statistics covering the period since the examination of the initial report. It should ensure that alleged instances of ill-treatment and torture are vigorously investigated by genuinely independent mechanisms, and that those responsible for such actions are prosecuted. The State party should provide statistics from 2000 to the present day on how many complaints have been made to the Attorney-General, how many have been turned down as unsubstantiated, how many have been turned down because the defence of necessity has been applied and how many have been upheld, and with what consequences for the perpetrators.

19. While again acknowledging the seriousness of the State party's security concerns that have prompted recent restrictions on the right to freedom of movement, for example through imposition of curfews or establishment of an inordinate number of roadblocks, the Committee is concerned that the construction of the "Seam Zone", by means of a fence and, in part, of a wall, beyond the Green Line, imposes additional and unjustifiably severe restrictions on the right to freedom of movement of, in particular, Palestinians within the Occupied Territories. The "Seam Zone" has adverse repercussions on nearly all walks of Palestinian life; in particular, the wide-ranging restrictions on freedom of movement disrupt access to health care, including emergency medical services, and access to water. The Committee considers that these restrictions are incompatible with article 12 of the Covenant.

The State party should respect the right to freedom of movement guaranteed under article 12. The construction of a "Seam Zone" within the Occupied Territories should be stopped

20 The Committee is concerned by public pronouncements made by several prominent Israeli personalities in relation to Arabs, which may constitute advocacy of racial and religious hatred that constitutes incitement to discrimination, hostility and violence.

The State party should take necessary action to investigate, prosecute and punish such acts in order to ensure respect for article 20, paragraph 2, of the Covenant.

21. The Committee is concerned about Israel's temporary suspension order of May 2002, enacted into law as the Nationality and Entry into Israel Law (Temporary Order) on 31 July 2003, which suspends, for a renewable one-year period, the possibility of family reunification, subject to limited and subjective exceptions especially in the cases of marriages between an Israeli citizen and a person residing in the West Bank and in Gaza. The Committee notes with concern that the suspension order of May 2002 has already adversely affected thousands of families and marriages.

The State party should revoke the Nationality and Entry into Israel Law (Temporary Order) of 31 July 2003, which raises serious issues under articles 17, 23 and 26 of the Covenant. The State party should reconsider its policy with a view to facilitating family reunification of all citizens and permanent residents. It should provide detailed statistics on this issue, covering the period since the examination of the initial report.

22. The Committee is concerned about the criteria in the 1952 Law on Citizenship enabling the revocation of Israeli citizenship, especially its application to Arab Israelis. The Committee is concerned about the compatibility with the Covenant, in particular article 24 of the Covenant, of the revocation of citizenship of Israeli citizens.

The State party should ensure that any changes to citizenship legislation are in conformity with article 24 of the Covenant.

23. Notwithstanding the observations in paragraphs 4 and 7 above, the Committee notes with concern that the percentage of Arab Israelis in the civil service and public sector remains very low and that progress towards improving their participation, especially of Arab Israeli women, has been slow (arts. 3, 25 and 26).

The State party should adopt targeted measures with a view to improving the participation of Arab Israeli women in the public sector and accelerating progress towards equality.

24. While noting the Supreme Court's judgement of 30 December 2002 in the case of eight IDF reservists (judgement HC 7622/02), the Committee remains concerned about the law and criteria applied and generally adverse determinations in practice by military judicial officers in individual cases of conscientious objection (art. 18).

The State party should review the law, criteria and practice governing the determination of conscientious objection, in order to ensure compliance with article 18 of the Covenant.

25. The State party is invited to disseminate widely the text of its second periodic report, the replies provided to the Committee's list of issues and the present concluding observations.

26. In accordance with article 70, paragraph 5, of the Committee's rules of procedure, the State party is invited to provide, within one year, relevant information on the implementation of the Committee's recommendations in paragraphs 13, 15, 16, 18 and 21 above. The State party's third periodic report should be submitted by 1 August 2007.



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Office of the United Nations High Commissioner for Human Rights  
Geneva, Switzerland



# ANNEX 9

Commission on Human Rights, Question of the Violation of Human Rights in the Occupied Arab Territories, including Palestine, Report of the High Commissioner on her visit to the occupied Palestinian territories, Israel, Egypt and Jordan (8-16 November 2000), E/CN.4/2001/114, 29 November 2000



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COMMISSION ON HUMAN RIGHTS  
Fifty-seventh session  
Items 4 and 8 of the provisional agenda

REPORT OF THE UNITED NATIONS HIGH COMMISSIONER  
FOR HUMAN RIGHTS AND FOLLOW-UP TO THE WORLD  
CONFERENCE ON HUMAN RIGHTS

QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE  
OCCUPIED ARAB TERRITORIES, INCLUDING PALESTINE

Report of the High Commissioner on her visit to the occupied Palestinian  
territories, Israel, Egypt and Jordan (8-16 November 2000)

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## I. INTRODUCTION

1. The General Assembly and the Commission on Human Rights have been seized of the situation of human rights in the occupied Palestinian territories for many years. Since late September, however, there has been a dramatic deterioration of the human rights situation in the occupied territories.
2. By a letter dated 3 October 2000, addressed to the United Nations High Commissioner for Human Rights, the Permanent Representative of Algeria to the United Nations Office at Geneva, on behalf of the Council of Arab Permanent Representatives of Members of the League of Arab States, requested that a special session of the Commission be convened "to discuss the grave and massive violations of the human rights of the Palestinian people by the Israeli occupying power".
3. In the light of the agreement of a majority of its members, the Commission on Human Rights convened in its fifth special session from 17 October to 19 October 2000.
4. On 19 October 2000, the Commission on Human Rights at its fifth special session, adopted resolution S-5/1 (E/2000/112-E/CN.4/S-5/5, chap. II), in which it decided *inter alia* to request the United Nations High Commissioner for Human Rights to undertake an urgent visit to the occupied Palestinian territories to take stock of the violations of the human rights of the Palestinian people by the Israeli occupying Power, to facilitate the activities of the mechanisms of the Commission in implementation of the resolution, to keep it informed of developments and to report to the Commission at its fifty-seventh session and, on an interim basis, to the General Assembly at its fifty-fifth session. On 22 November 2000, the Economic and Social Council, in its decision 2000/311, endorsed the resolution adopted by the Commission at its fifth special session.
5. The mandate of the High Commissioner for Human Rights requires her to promote and protect the effective enjoyment by all of all civil, cultural, economic, political and social rights; to enhance international cooperation for the promotion and protection of all human rights; to engage in a dialogue with all Governments with a view to securing respect for all human rights; and to carry out the tasks assigned to her by the competent bodies of the United Nations system in the field of human rights. The High Commissioner is also mandated to report on her activities to the Commission on Human Rights, the Economic and Social Council and to the General Assembly.
6. Mindful of these aspects of her mandate, the High Commissioner for Human Rights undertook a visit to the Middle East from 8 to 16 November 2000. During her mission, she visited the occupied Palestinian territories, Israel, Egypt and Jordan. This report to the Commission on Human Rights summarizes the outcome of her mission.
7. The High Commissioner's visit to the occupied Palestinian territories took place at the urgent request of the Commission on Human Rights and because of the seriousness of the human rights situation there at the present time.

8. With regard to her visit to Israel, the High Commissioner, in cooperation with the Israeli authorities, undertook a visit that had been scheduled at an earlier stage but that had been postponed. The visit to Israel focused on general cooperation on human rights issues as well as on the situation in the occupied Palestinian territories. During her visit to Israel, the Israeli authorities expressly accepted, in a meeting between the High Commissioner and senior Foreign Ministry officials on 15 November 2000, that the High Commissioner's report on her visit to the region would also deal with the visit to Israel.

9. The visits to Egypt and Jordan were undertaken primarily in view of the situation in the occupied Palestinian territories. From that perspective, the discussions with leaders in those countries are reflected in this report.

10. In submitting this report, the High Commissioner for Human Rights is conscious of the evolving situation in the area, attentive to the efforts of the Secretary-General of the United Nations and others to promote peace, and to the importance of the quest for peace with justice and respect for human rights, and mindful of the duty of conscience regarding the situation of human rights prevailing in the occupied Palestinian territories. It is in this spirit of conscience that this report is submitted.

## II. OUTLINE OF THE HIGH COMMISSIONER'S VISIT TO THE REGION

11. The programme of the High Commissioner's visit to the region, including lists of those with whom she met, is annexed to the present report. The following is a brief summary.

12. In Gaza, the High Commissioner met with the President of the Palestinian Authority and Chairman of the Executive Committee of the Palestine Liberation Army (PLO), Mr. Yasser Arafat, senior representatives of the Palestinian Authority (PA), representatives of the NGO community, the Chairman of the Palestinian Independent Commission for Citizen's Rights and with representatives of United Nations programmes, funds and agencies, including the Commissioner General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and the United Nations Special Coordinator. The High Commissioner visited the largest hospital in Gaza, Shifa Hospital, and met with 45 patients, including children, injured over recent weeks, as well as medical staff and family members. She travelled to the Rafah refugee camp near the Egyptian border, visited sites affected by the recent violence, including several UNWRA schools; visited a health care centre, and viewed settlements and military installations.

13. In East Jerusalem, the High Commissioner met with representatives of the Muslim and Christian communities as well as of NGOs, Palestinian officials and a delegation of expatriate volunteers. She visited Hebron, Ramallah and El-Bireh, where she met with the Speaker and other members of the Palestinian Legislative Council as well as with Ministers of the PA. In Ramallah, the High Commissioner visited a refugee camp, including a school, and, in El-Bireh, met with representatives of NGOs, and a delegation of schoolchildren.

14. In Israel, the High Commissioner discussed the recent human rights developments in Israel and the occupied Palestinian territories with the President of Israel, Mr. Moshe Katzav, the President of the Supreme Court, Chief Justice Aharon Barak, the Minister of Justice,

Dr. Yossi Beilin, the Director General of the Ministry of Foreign Affairs, Dr. Alon Leal and other senior officials, senior officials of the Ministry of Defence, representatives of the Israeli Defense Forces (IDF), the Israeli member of the United Nations Human Rights Committee, representatives of NGOs, academics and Israeli settlers from Gilo, and international and local staff of United Nations agencies.

15. In Cairo, the High Commissioner met with the Minister for Foreign Affairs of Egypt, Mr. Amr Musa, with senior officials of the Ministry of Foreign Affairs and with representatives of NGOs. She also met with the Secretary General of the League of Arab States, Dr. Ismat Abdel-Maguid.

16. In Amman, the High Commissioner was received by His Royal Majesty King Abdullah II of Jordan and met with the Deputy Prime Minister, Mr. Ahmed Khleifat, and the Secretary General of the Ministry of Foreign Affairs, Mr. Shaher Bak.

17. In all, the High Commissioner heard the views of several hundred people, many of whom spoke from personal experience of the present human rights situation. The High Commissioner also received several dozen written submissions and briefs, which have been considered in the preparation of this report. The High Commissioner wishes to record her appreciation and thanks to all those with whom she met and to the Governments, authorities and United Nations representatives which received her and facilitated her mission.

18. It was a difficult mission, addressing a highly politicized and complex situation with serious human rights implications. At each meeting in both the occupied Palestinian territories and Israel the High Commissioner emphasized the integrity of her mandate, the objectivity of her approach, and that her focus would be on the human rights implications of what she saw and heard and of what was represented to her by the various parties she met.

### III. GENERAL OBSERVATIONS

19. The human rights situation in the occupied Palestinian territories is bleak. The civilian population feels besieged by a stronger power prepared to use its superior force against demonstrations and stonethrowing by adolescents. During the course of the visit the violence escalated, with more shooting - including so-called drive-by shootings - on the Palestinian side and the use of rockets and heavy machine-gun fire on the Israeli side. At each meeting in the occupied Palestinian territories pleas for international protection or for some form of international monitoring presence were voiced.

20. In the occupied Palestinian territories, discussions concerning the present crisis and its impact on human rights were linked to the reality of the occupation itself. That reality was described by Palestinians as one of grinding, petty humiliations, discrimination and inequalities which were ultimately dehumanizing. It was explained that the anger and frustration of the present Intifada stemmed from lack of implementation of the key United Nations resolutions, especially General Assembly resolutions 181 (II) and 194 (III) and Security Council resolution 242 (1967), the continuing encroachment on land for settlements, and what was perceived as a peace process which had not addressed the Palestinian claims of a State with East Jerusalem as its capital and some recognition of the right of return of refugees.

21. Perhaps the strongest and most troubling impression taken away by the High Commissioner from her visit to Israel and the occupied Palestinian territories was that of two peoples who are linked by history and geography, but are currently separated by a wide and growing gap in their perceptions of each other. The violence of recent months has resulted in a hardening of positions, with little willingness on either side to understand or accept the narrative of the other.

22. Amongst Israelis there is a preoccupation with security, born of a strong sense of isolation and of being set upon from all sides. This can easily be understood in terms of Israeli and Jewish history. However, it is not appreciated or allowed for by a Palestinian people who see only Israel's overwhelming military superiority and experience its readiness to use it. Israelis with whom the High Commissioner met, including many who deeply believe in the peace process, said they felt shell-shocked by the recent breakdown of negotiations at a time when, to them, a comprehensive settlement had seemed so close. Amongst Palestinians, on the other hand, the predominant sentiment was that the process of the past seven years had delivered little or nothing to them. Whilst Israelis point to the building of economic links as a positive sign, Palestinians see the same process as increasing the dependence of the occupied territories and their vulnerability to exploitation by Israel during periods of crisis.

23. The High Commissioner was offered different views about the origins of the present cycle of violence, including on the significance of the visit of Mr. Ariel Sharon to the Temple Mount/Haram Al-Sharif, and on whether the current intifada is a spontaneous popular uprising or an orchestrated strategy. The High Commissioner referred repeatedly to her mandate, which addresses the underlying human rights causes of the conflict. Such an approach acknowledges the long-standing and unresolved grievances of the Palestinian people, many of whom are now third-generation refugees. It must also be understood, as it is by many Israelis, that Palestinians, including Arabs who have Israeli citizenship, have suffered and continue to suffer from serious discrimination. An inescapable conclusion is that much of the present situation has to do with the daily reality of life under the occupation, including what Palestinians see as the numerous daily humiliations imposed upon them, often deliberately, but sometimes through bureaucratic indifference towards people who lack political power. However, in discussing root causes, it must also be acknowledged that over an extended period the right of Israelis to "security of person" (Universal Declaration of Human Rights, article 3) has been threatened. This persistent insecurity has given rise to many of the problems which now lie at the heart of the human rights situation in the occupied Palestinian territories and Israel.

24. A related problem is that of hate speech and incitement. Numerous examples were cited to the High Commissioner during her visit and evidence was clearly visible on the walls of Palestinian houses and Israeli settlements. The High Commissioner was struck, for example, by the deep hurt caused by the accusation that Palestinian parents were forcing their children into the line of fire to achieve martyrdom. Similarly, she was shocked by calls broadcast on Palestinian television and radio urging the killing of all Jews. At this very difficult time it is incumbent upon leaders on both sides to avoid inciting racial and religious animosities and to condemn such incitement when it does occur within their communities. The High Commissioner believes that the forthcoming World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance will provide an opportunity for reflection and reconciliation, which political leaders and members of civil society alike should begin to prepare for.

#### IV. HUMAN RIGHTS SITUATION IN THE OCCUPIED PALESTINIAN TERRITORIES

25. While in the occupied Palestinian territories, the High Commissioner received information from numerous sources alleging serious violations of human rights, both in relation to recent events and more long-term systematic abuses originating from the occupation itself. Also alleged was a failure on the part of Israel to adhere to international humanitarian law, in particular the 1949 Fourth Geneva Convention relative to the protection of civilians in time of war, whose applicability to the occupied territories has been repeatedly reaffirmed by United Nations bodies, including the Security Council, the General Assembly and the Commission on Human Rights. Particular areas of concern with regard to recent developments included: excessive and disproportionate use of force, including alleged attacks on medical personnel; the arbitrary destruction of property; the effects on Palestinian residents of Israeli settlement activity, including restrictions on freedom of movement; the serious economic impact on the residents of the occupied territories; the violations of the human rights of children; and restrictions on access to humanitarian assistance.

##### Excessive use of force

26. The most persistent allegation brought to the attention of the High Commissioner was that Israeli security forces have engaged in excessive force, disproportionate to the threat faced by their soldiers. A wide range of observers, including United Nations representatives, expressed the strong view that the very high number of casualties, combined with the nature of the injuries being sustained, including by young people, could only be consistent with a military response which was both excessive and inappropriate. With only minor regional variations, this pattern was, said the observers, repeated in different locations throughout the affected areas.

27. The High Commissioner had requested a meeting with the Israeli Defense Forces (IDF). The meeting was facilitated by Israel and took place at Ben Gurion Airport on 13 November prior to her flight to Cairo. It is described in some detail in paragraphs 66 to 71 below but, as it offered an opportunity to hear the Israeli perspective on the allegations of excessive use of force, the relevant comments or a reference to the relevant paragraphs are inserted in the present section of the report.

28. In an attempt to disperse the demonstrations, the Israeli military authorities have used live ammunition, rubber coated steel bullets and tear gas, all of which have resulted in deaths and injuries amongst the Palestinians. Heavier weapons have also been used, including rockets fired by infantry and from helicopters, armoured vehicles which have been deployed throughout the Gaza Strip and the West Bank, and heavy machine guns. The use of heavy weapons has raised the incidence of death and injury amongst non-combatants and, indeed, several such deaths occurred during the period of the High Commissioner's visit.

29. A high percentage of the injuries sustained by Palestinians have been to the upper part of their body, including a large number of eye injuries, some caused by the firing of "rubber" bullets at close range. The result is often the loss of an eye, but can also be severe brain damage or death. In subsequent discussions senior IDF representatives accepted the potential lethality of "rubber" bullets, and also that of tear gas, if used in a confined area, as has been alleged.



30. When asked about the reported injuries, senior IDF officers told the High Commissioner (see paras. 69-70 below) that the methods and weapons employed by the IDF in dealing with the present crisis are carefully calibrated according to the nature of the threat being faced and, in particular, that live fire, whether from small arms or heavier weapons, has only been directed at those who have used firearms or petrol bombs in attacks against Israeli forces.

31. While in the Gaza Strip, the High Commissioner visited Shifa Hospital, the largest hospital in Gaza with 650 beds and 8 operating theatres. The High Commissioner met with 45 patients, including boys and girls under 18 and their relatives. A 15-year-old, now a paraplegic, informed the High Commissioner that he was shot by Israeli soldiers while he was demonstrating and throwing stones in the industrial zone close to Erez checkpoint. He had joined other teenagers after school to express his anger following the death of one of his schoolmates the previous day. A 14-year-old wounded in the arm and leg explained that he had gone to throw stones in revenge after a classmate had been shot and blinded in both eyes, and the doctor accompanying the High Commissioner confirmed he had treated this other boy. The High Commissioner heard numerous anecdotal accounts of shootings involving Palestinians who, it was said, could not have been involved in any form of protest activity, for example, an elderly man who was shot twice near the door of his house and a pregnant woman who was shot whilst on the roof of her house. See paragraphs 69 and 70 below for the IDF response on rules of engagement and child casualties.

32. The Minister of Health of the Palestinian Authority, Dr. Riadh Al-Zaanoun, told the High Commissioner that by his estimates some 6,958 persons (3,366 in the West Bank and 3,592 in the Gaza Strip) had been wounded during the period 29 September-9 November 2000 and that 1,016 Palestinians had been injured in Israel. Of those injured, he said, 40 per cent were under the age of 18. According to the Minister, the types of ammunition responsible for injuries were as follows: rubber bullets (41 per cent); live bullets (27 per cent); tear gas (27 per cent); and others, including rockets (11 per cent).

33. The Palestinian Red Crescent Society estimates that 236 Palestinians were killed and 9,353 injured during the period 29 September-23 November. During the period 27 September-23 November, Israeli official sources estimate that 30 Israelis were killed and 375 were injured. Estimates are disputed by the parties.

#### Impact on children

34. According to the Red Cross/Red Crescent, as of 20 November, 86 children (aged 18 and under) had been killed and over 3,000 injured, two to three hundred of whom, it is estimated, will have permanent disabilities. According to the same source, hundreds of Palestinian children have been obliged to abandon their homes in order to escape the violence. The destruction of family dwellings has left more than a thousand children without homes, often in situations of food shortage and without access to medical care.

35. The current situation in the West Bank and Gaza Strip has had a serious impact on the Palestinian education system. The High Commissioner visited two schools in the Gaza Strip and one school in Ramallah where she was briefed by teachers on the consequences of the current situation for Palestinian pupils. She was told that since the beginning of October more

than 40 schools have been closed or are unable to operate owing to curfews or closures. Other schools, such as one visited by the High Commissioner in the Gaza Strip, have been damaged by gunfire and the premises abandoned, requiring that several thousand children be fitted into other schools if possible.

36. In discussions with directors of preparatory schools and educators, as well as delegations of children in Gaza and Ramallah, the High Commissioner was told that many children suffer from psychological and social problems as a direct consequence of the current situation. Children themselves explained to the High Commissioner their fear of leaving their homes or, in some cases, of going back to their homes, and of difficulties sleeping. According to UNICEF, only about 1 per cent of adolescents in Gaza have actually engaged in demonstrations or attacks against Israeli military positions. However, teachers have reported that the rest of the students who have remained at their studies have nevertheless been mentally distracted or emotionally affected by the events in the street, with the result that their educational performance has deteriorated.

#### Medical personnel

37. An aspect of particular concern is the allegation that the medical condition of many of the victims has suffered, with some deaths, as a consequence of their being denied access to timely medical assistance. Reportedly, Palestinian ambulances and medical personnel have been prevented from discharging their normal responsibilities. During the High Commissioner's visit to Gaza, her vehicle was unable to proceed along the main north-south road because of an exchange of gunfire on the road ahead which had left two Israeli soldiers at a checkpoint seriously wounded and two Palestinians dead in their vehicle. The High Commissioner witnessed the fact that two ambulances were not permitted to attend to the Palestinian casualties.

38. Very serious allegations were made of attacks by Israeli security forces on medical personnel and ambulances. The High Commissioner was informed about the case of a Palestinian Red Crescent Society ambulance driver, Bassam Al-Balbisi, who had been killed while trying to approach 12-year-old Mohammad Al-Dura and his father in order to move them into an ambulance. According to Palestinian officials, 45 ambulances had been attacked by Israeli forces in Jerusalem and the West Bank and 23 in the Gaza Strip. The High Commissioner was told that nine ambulances had been put out of service owing to damage between 29 September and 9 November.

#### Destruction of property

39. In the Gaza Strip, the High Commissioner visited Rafah refugee camp and surrounding areas where she was able to inspect a number of private houses and apartments that had been heavily damaged by gunfire and/or rocket attack, particularly at night. The owner of one house in Rafah told the High Commissioner that she had been obliged to leave her house, within a few minutes, when she realized that an Israeli tank had already started to destroy part of the house. A farm owner told the High Commissioner that Israeli soldiers had destroyed his greenhouses and his family residence during the night of 29 October. Water wells have reportedly also been destroyed in actions carried out by settlers or Israeli forces. The High Commissioner saw that a

number of fields of fruit-bearing trees, particularly olive trees, had been cleared in the occupied regions. The High Commissioner was told that, in many cases, these orchards and fields represented the entire livelihood of dozens of families.

40. According to the IDF (see sect. V below), the clearances and demolitions were carried out as matter of military necessity because these structures or plantations had been used as cover by Palestinian gunmen. The IDF told the High Commissioner that the doctrine of military necessity meant that compensation was not payable in these circumstances. Israeli officials told the High Commissioner that military action carried out in the Palestinian areas often took place at night, because this was the time when Palestinian gunfire most often occurred.

### Settlements

41. At the best of times relations between Israeli settlers and Palestinians are extremely sensitive and tense. At times of crisis the settlements can become a catalyst for violence. Amongst the main concerns raised by the Palestinian interlocutors were the privileged position settlements enjoy with respect to land and water for domestic and agricultural use, the negative impact on surrounding Palestinian communities, the fact that settlers are heavily armed and live in barrier-enclosed areas protected by the IDF and that separate roads have been created for settlers alone which are prohibited to Palestinians. The concerns raised with the High Commissioner by three Israeli families living in Gilo whom she met at Ben Gurion Airport on 15 November are set out at paragraph 71 below.

42. In Gaza, Israeli installations to protect settlements there are located on the main road through Gaza and have become the focus for stone throwing and shooting by Palestinians, with severe retaliation by the Israeli military. It was strongly represented to the High Commissioner that if these military installations and heavy armoury were to move off the highway and closer to the settlements being protected this could ease tension. The IDF analysis was that the protection role could only be discharged from the present positions (see paras. 69-70 below).

43. Following her visit to the refugee camp at Rafah the High Commissioner was driven along a settlement road and was surprised to be shown further expansions of settlements taking place.

44. The High Commissioner visited the city of Hebron, one of the biggest administrative units in the occupied Palestinian territories in terms of area and population, and went into the Israeli controlled part of Hebron known as H2 in the company of officials of the Temporary International Presence in Hebron (TIPH). Since the first week of October, the IDF has imposed a curfew on 30,000 Palestinians living in the H2 zone, which has had an enormous impact on the enjoyment by Palestinian residents of their basic human rights. As a result of the curfew, thousands of families and their children live under virtual house arrest, confined to their homes for all but a few hours per week. During the hours when the curfew is not imposed the use of motor vehicles by Palestinian residents is forbidden, requiring residents to walk considerable distances to purchase food supplies, as shops in the Hebron H2 zone are also affected by the curfew.

45. Workers from the Hebron H2 zone have been prevented from reaching their places of work, whether in Israel or in the occupied territories. Restrictions on freedom of movement make it increasingly difficult for the Palestinians in the H2 zone to meet their most basic needs, such as food supplies and medical care, and Palestinian children cannot attend school. In this regard, the High Commissioner was informed that 32 schools had been closed since the beginning of the events, preventing some 15,000 pupils from exercising their right to education.

46. The curfew does not apply to the 300 to 400 Israeli settlers living in the H2 zone of the city and the settler school remains open. To ensure the safety of those settlers, the IDF maintains a large presence in that part of Hebron (700 soldiers according to the IDF; 2,000 according to another source). Three schools and several Palestinian houses in the H2 zone have been taken over by the IDF and turned into military posts.

47. At a meeting with the Mayor of Hebron, the Minister for Transport and other officials in the H1 zone of Hebron (under the Palestinian Authority), the High Commissioner was told that, since October, 20 Palestinians had been killed in Hebron, of whom 5 were under 18 years of age, and that many houses, stores and facilities had been damaged, without compensation. Allegations were made that settlers were involved in violence against and harassment of Palestinian residents, with the tacit consent of the IDF.

48. IDF representatives told the High Commissioner that their presence was necessary to secure the safety of the settler community, which had been subjected to regular fire from Palestinian gunmen.

#### Freedom of movement

49. An effective closure of the occupied territories has been applied since the beginning of October and the movement of the population there continues to be heavily restricted. The High Commissioner's own travel between Israel and the occupied territories, and within the occupied territories, afforded an opportunity to assess the immediate impact of these restrictions. It was noted that, while road closures impact heavily on Palestinians, there exists a parallel road network, established by the Government of Israel, known as the by-pass roads, exclusively for the use of Israeli settlers and the authorities, enabling them to travel freely.

50. In discussions with senior IDF representatives, the High Commissioner called for a lifting or easing of the closures. The response from the senior officer responsible for IDF operations in the occupied territories was that the closures were a necessary security measure. An explicit linkage was drawn between the closures and the release in October, by the Palestinian Authority, of some 80 prisoners who had been held in Palestinian custody and who are considered by the Israeli authorities to pose a major security threat to Israel. The High Commissioner was told that if the Palestinian Authority were to re-incarcerate these 80 prisoners then the closures would be lifted the same day.

Freedom of religion

51. The High Commissioner met Muslim and Christian leaders representing the Palestinian and Armenian communities in East Jerusalem. They told the High Commissioner that the Israeli authorities continued to deny Palestinians full access to holy sites, including the Al-Aqsa Mosque and the Church of the Holy Sepulchre.

52. Since the beginning of October, access to the Al-Aqsa Mosque has been denied to Muslims, even religious leaders, under the age of 45 years. As a result, only one tenth of the usual number of worshippers currently have access to Al-Aqsa. Representatives of both communities expressed the wish to have full responsibility for their own holy places, which is currently denied by the Israeli authorities. They complained also of disrespectful behaviour by Israeli troops stationed at the holy sites. In discussing the need for religious tolerance, they explained to the High Commissioner their shared vision of Jerusalem as encompassing "one city, two peoples and three religions" and stressed the universal character of the city and the necessity to maintain its spiritual soul.

53. The High Commissioner relayed these views to the Israeli authorities in her subsequent discussions with them. In particular, she expressed her concern that restrictions on access to the holy sites could result in increased tension during the coming month of Ramadhan. The Israeli authorities told the High Commissioner that the restrictions were necessary to prevent armed extremists from occupying the holy sites, which would necessitate an Israeli military response. They argued that the degree of control over holy sites currently given to Palestinians was greater than that which had been accorded to Jewish communities prior to the creation of the State of Israel. In some cases where Palestinians had been entrusted with the protection of holy sites, such as Joseph's Tomb, these sites had subsequently been desecrated.

Economic impact

54. The United Nations development and humanitarian agencies operating in Jerusalem and Gaza provided comprehensive briefings to the High Commissioner on the impact that the current situation, particularly the closures, is having on the enjoyment by Palestinians of their economic rights and their right to development. They explained that the seriousness of the economic situation required that they put development programmes on hold and concentrate on emergency response and relief.

55. Approximately 128,000 Palestinian workers, normally employed in Israel, are currently barred from travelling to their workplaces. The movement of Palestinians within the occupied territories is severely restricted under the strict internal closure imposed, for instance, on the various parts of the West Bank.

56. According to the Israeli Ministry of Defence figures, the restrictions affect 20 per cent of the Palestinian workforce and some 35 per cent of total salary income. According to the Office of the United Nations Special Coordinator, unemployment had tripled since the beginning of October, which translates into a loss of household income of some 10 to 11 million dollars

per day. While most reports indicated that there were adequate supplies of food within the occupied territories, the means with which to purchase food, medicines and other basic necessities are rapidly becoming exhausted as affected families use the last of their savings.

57. United Nations studies also report a 50 per cent reduction in normal economic activity within the territories themselves. Restrictions on the movement of Palestinians within the West Bank have had economic consequences. Another serious factor has been the restriction on the import of raw materials, particularly cement. The ban on the movement of cement has effectively brought construction, normally the single largest industry in the occupied territories, to a standstill.

58. According to a Ministry of Defence briefing provided to the High Commissioner, loss of confidence among Israelis has also had a major effect on economic conditions in the occupied territories. In 1999, some 100,000 Israelis travelled to the territories for commercial reasons, generating income of \$500 million. Cooperative projects in industrial zones along the "green line" between Israel and the territories had resulted in the completion of 25 factories but since the start of the intifada, three of these factories have been burned and an industrial estate attacked, with the result that investor confidence has plummeted. The Ministry representatives also stated that the effects of the closures have been exacerbated in some cases by the reluctance of Palestinian Authority officials to cooperate with Israeli security processes at border checkpoints.

59. According to an International Monetary Fund (IMF) briefing provided to the High Commissioner, a factor which has aggravated the economic impact of the closures and other restrictions has been the failure of the Israeli authorities to make available to the Palestinian Authority in a timely manner certain tax revenues owed to it under existing agreements, which has affected the capacity of the Palestinian Authority to pay salaries to its employees.

60. Although the adverse economic consequences of the current situation are being felt most acutely in the occupied Palestinian territories, they have also had a negative impact on the Israeli economy.

#### Humanitarian access

61. Access is a major preoccupation for all humanitarian organizations operating in the occupied territories. Of particular concern are the restrictions imposed on the movement of United Nations local Palestinian staff, who make up the vast majority of United Nations employees in the occupied territories.

62. The High Commissioner was informed that because of the closures, emergency evacuation of seriously injured civilians for treatment abroad is difficult. Restrictions on access also affect the import of donations of humanitarian goods and equipment from abroad. Imports into Gaza involve unloading of the cargo of every truck originating from Israel at the Gaza/West Bank entry checkpoints and reloading onto other trucks for onward delivery. United Nations agencies have reported difficulties in obtaining clearance for emergency health kits.

63. The Ministry of Defence indicated that it was doing everything possible to facilitate humanitarian access to the occupied territories. During October alone, the Ministry representatives said, requests from some 80 countries had been processed in relation to medical supplies, blankets and sophisticated hospital equipment. A special coordination centre had been set up in order to bypass the usual bureaucratic channels and close liaison had been established with the Palestinian Authority.

64. The High Commissioner, in her subsequent discussions with senior IDF representatives, raised the specific issue of UNRWA medical supplies that had been blocked in Jerusalem. The IDF representatives indicated that this type of cargo should not be the subject of any restriction and they undertook to facilitate its delivery.

## V. VISIT TO ISRAEL

65. The High Commissioner's visit to Israel allowed her to address general human rights issues and hear the views of a wide range of Israeli citizens and organizations, both Jewish and Arab. However, given the current situation, most discussions focused on the human rights situation in the occupied territories. The following paragraphs reflect the Israeli perspective on the situation.

### Excessive use of force

66. On 13 November, following her visits to Gaza, Hebron and Ramallah, the High Commissioner discussed, with the Israeli authorities, the use of force by the IDF and other security forces. The High Commissioner expresses her appreciation for the very frank and informative meeting with the senior IDF officers responsible for security, intelligence, legal issues, weapons development and public affairs, which the government facilitated.

67. The IDF officers outlined their view of the genesis of the present situation - a view which was shared by other Israeli government officials. In brief, the view was put that the current intifada had been launched as a deliberate strategy of the Palestinian leadership. On offer at Camp David had been a Palestinian State, with reference made to both a right of return and a negotiated division of Jerusalem. According to the IDF, the Palestinian leadership, unwilling to make the difficult political compromises required, had ignited what it hoped would be a "CNN war" in which Palestinian losses would rally the support of the Muslim world and sway public opinion in the West. The aim was to increase international pressure on Israel to make further concessions. The ultimate goal was a Kosovo-style intervention force to protect "Palestinian territory", rather than "Palestinian people", thereby achieving a resolution without having to go to the negotiating table.

68. In terms of the pattern of the violence, the IDF officers described as typical a situation which commenced with stone throwing but which quickly escalated into armed attacks. Whereas the previous intifada had almost exclusively featured stone throwers, who were dealt with using riot control techniques, the Palestinians were now armed and many incidents featured a lethal mix of stone throwers and shooters. It was stated that out of 5,085 attacks on Israeli settlements, some 1,400 had involved live fire, including machine gun fire or the use of firebombs.

69. The IDF officers said that, according to their rules of engagement, attackers who use live ammunition could be shot by soldiers and sharpshooters deployed for that purpose. Nevertheless, they said, the IDF was only using 2 per cent of its military force. The High Commissioner was told that most of those killed over recent weeks had been armed attackers, shot after opening fire on Israeli positions. Some, however, had been killed in the crossfire, by one side or the other. Asked about the number of child casualties, the IDF officers responded that they were unable to indicate ages and numbers as the IDF generally had no access to the dead and wounded on the Palestinian side. However, they felt that the numbers reported were exaggerated and told the High Commissioner that the Tanzeem militia recruited and armed children.

70. Asked why the IDF reportedly often resorts to the use of live ammunition instead of non-lethal weapons, the IDF officers indicated that the military tactics being employed against them influenced the types of weapons the IDF could employ. They explained to the High Commissioner that Israel was concerned to reduce the number of casualties. So-called less-than-lethal weapons (which can still kill at short ranges or high concentrations) such as plastic coated bullets, tear gas and water cannons are only effective at a range of 50-100 metres. But at this range troops are vulnerable to live fire. The IDF have over the last few months field-tested dozens of weapons but have concluded that less-than-lethal weapons effective to a range of 200 metres do not currently exist. As a consequence, new weapons systems are being developed which, the IDF hope, will soon be deployed to control crowds effectively at longer ranges with little or no risk of serious injury.

71. Before leaving Israel on 15 November, the High Commissioner met at Ben Gurion Airport with three families from Gilo, a Jewish settlement on the outskirts of Jerusalem, who described nightly gunfire directed at their homes from a neighbouring Palestinian area. They also expressed concern that this resulted in heavy retaliation by the Israeli side, causing an intolerable situation for all civilians. They had had good relations with their Arab neighbours and were appalled at how the situation had deteriorated. Their families had lived in Gilo for upwards of 20 years and they did not see themselves as settlers. They urged the need to stop the violence and return to political dialogue.

#### Investigations; compensation for damage

72. Matters which the High Commissioner pursued with IDF representatives were the issue of how the use of lethal force was investigated by the IDF, what punishments were available for improper or excessive use of such force, and how many investigations had been conducted to date and with what result.

73. She was told that, unlike the situation during the previous intifada, when the Israeli army was in full control of the occupied Palestinian territories, there was currently no policy of routine investigation into the use of lethal force. Investigations could, however, be carried out internally if there was a particular reason to suspect that improper conduct had taken place. It was explained that that decision had arisen from the IDF evaluating that the current situation could be described as a state of "active warfare". In that situation the rules of war applied and soldiers were not required to account for each shot fired. In any case, the IDF representatives said, the number of shots being fired made such a policy impractical. Reference was also made to the



practical difficulties of investigating incidents in areas under Palestinian Authority control. Another consequence of the IDF decision about the state of "active warfare" was that compensation would no longer be made for the military use of private property, as it had been in the past. Asked about the destruction of houses and orchards in the occupied Palestinian territories, the IDF representatives advised the High Commissioner that there was no question of compensation as, under the rules of war, those areas had been cleared as a matter of military necessity because they had been used as cover by Palestinian gunmen.

74. The IDF representatives added that the new assessment of their current legal situation would normally also affect their own rules of engagement. In the present case, however, a decision had been taken to maintain the same rules of engagement as applied in previous intifada, in order not to increase the number of casualties. The IDF representatives made the point that double standards were being applied in relation to the Palestinian side which was not under international scrutiny about its rules of engagement or its policy on investigating shootings and violations of human rights. The IDF representatives referred to the lynching of two Israeli soldiers in Ramallah.

#### Situation of Arab Israelis

75. The situation of Arab Israeli citizens was raised at a meeting between representatives of Israeli NGOs and the High Commissioner as a specific human rights problem, albeit one which could not be entirely separated from the general situation in the occupied territories. Representatives of a number of Israeli NGOs indicated that Israeli Arabs, who represent 20 per cent of the State's population, had faced decades of neglect and discrimination on the part of the Israeli authorities.

76. Representatives of the Ministry of Foreign Affairs told the High Commissioner that the Government of Israel was taking measures to promote the integration of Israeli Arabs into Israeli society and to guarantee their rights as full citizens. Most Israeli interlocutors, including officials, acknowledged, however, that Israeli Arabs had suffered disadvantage and discrimination and that there was still some way to go in achieving full equality for that community. The President of the Supreme Court, Chief Justice Aharon Barak, briefed the High Commissioner on judicial action taken by the Supreme Court with respect to issues of equality, including decisions granting Arabs the right to purchase land in Israel. He also outlined the liberal approach adopted by his court concerning issues such as standing and jurisdiction in civil cases, which enabled NGOs to bring suits on behalf of aggrieved persons.

77. Most of the Arab Israelis whom the High Commissioner met described their situation as one of exclusion, prejudice, official hostility and routine humiliation. Since 28 September, however, the threat of violence which has engulfed many of their communities has become the primary concern of Arab Israelis. There was a sense of frustration that their problems were perhaps less well recognized than those of Palestinians living in the occupied territories.

78. Arab Israeli NGO representatives told the High Commissioner that, following the street demonstrations that took place in Arab cities and villages in Israel at the end of September and beginning of October, the security forces had responded with brutality and excessive force, using live ammunition, tear gas and plastic coated bullets, in contrast to the more moderate tactics

employed against Jewish protesters. This had led to the deaths of 13 Arab Israeli citizens. Many more had been injured and more than 1,000 arrested. A particular concern was the manner in which detention policy was being implemented. Many arrests, including of minors, were being carried out during night-time raids on homes. Once arrested, Arab detainees, including minors, were, according to these sources, far more likely to be held in custody without bail until the conclusion of their trials. It was asserted that this pattern was the result of a deliberate policy of discrimination against Arab Israelis on the part of the Attorney General's Office and the State Prosecutor's Office. It was further asserted that this policy extended to appealing every decision to release Palestinian detainees, which did not apply where Jewish detainees were concerned. Concern was expressed that the courts had largely acquiesced to these policies, with the result that large numbers of young Arab Israelis remained in detention. This issue was raised by the High Commissioner with the State Attorney General who indicated that she would look into the situation of young detainees.

#### Israeli Commission of Inquiry

79. On 11 November, the Government of Israel decided to establish a State commission of inquiry to inquire into the clashes, since 29 September, between the security forces and Israeli citizens in which 13 Arabs were killed and hundreds of people injured. The Commission, composed of three members, will be chaired by a justice of the Supreme Court. The Judicial Commission of Inquiry Law gives this Commission full power to subpoena and obtain information from anyone it deems may be able to assist in its inquiry. Witnesses who testify before it enjoy full immunity. Its mandate is to investigate how the events developed, determine the facts and draw conclusions. The Commission of Inquiry will decide for itself whether to publish its findings. It will not address cases which occurred in the occupied Palestinian territories or cases involving non-Israeli citizens.

80. Some Arab Israeli NGOs have welcomed the establishment of the Commission of Inquiry, while regretting that time was lost by the Government in establishing initially a more limited "examining committee". Others have expressed scepticism as to whether it will adequately address the issues.

#### National human rights commission

81. Recent events in Israel have underlined the need to strengthen national mechanisms for the protection and promotion of human rights, especially in the area of non-discrimination. In this context, the High Commissioner noted the positive steps being taken towards the establishment of an independent national human rights commission.

82. During the High Commissioner's meeting with the Minister of Justice and representatives of civil society such as human rights lawyers, academics and experts, the Minister reiterated his commitment to establish a human rights commission. He mentioned that the Minerva Center for Human Rights at the Hebrew University of Jerusalem had undertaken to carry out research on national human rights institutions and to recommend a model for an Israeli institution. In the first stage of the project, the research team examined international guidelines and the legislative

and administrative structure, function and modes of operation of human rights institutions in other countries. The NGO community had also been consulted when the proposal was being drawn up and their concerns, ideas and suggestions had been discussed with the research team.

83. Following these consultations the research team will prepare a draft report which will be distributed for comments among government officials, academic institutions and the NGO community. The final proposal, which will incorporate the responses on the draft report, will be presented to the Minister of Justice by March 2001. The High Commissioner was advised that the proposal will include recommendations on the relationship between the human rights commission and the Parliament and the Government, as well as existing executive bodies, such as the State Comptroller, the Ombudsman and the recently established Commission for Equal Rights for People with Disabilities. The final report will present the amendments needed to current legislation and recommend draft implementing legislation.

84. The High Commissioner offered the services of her Special Adviser on National Human Rights Institutions to assist the Government in its efforts towards the establishment of a national commission. On 17 November, the High Commissioner wrote to the Minister of Justice reiterating this offer.

## VI. VISIT TO EGYPT

85. The High Commissioner visited Egypt to discuss with senior officials and the Secretary General of the League of Arab States the human rights situation in the occupied Palestinian territories and the follow-up to the fifth special session of the Commission on Human Rights.

86. In Cairo, the High Commissioner met with the Minister for Foreign Affairs, Mr. Amr. Musa, together with senior officials of the Ministry of Foreign Affairs. The Minister briefed the High Commissioner on steps taken by Egypt at the political level to assist in resolving the present conflict, including implementation of the agreement reached at Sharm El Sheikh. He expressed his Government's deep concern at the continuing deterioration of the situation in the occupied Palestinian territories and the impact it was having on the Palestinians. In this regard he raised the question of Israel's compliance with the Fourth Geneva Convention and referred to the necessity to implement the decisions taken during the fifth special session. The High Commissioner briefed the Minister on her visit and, in response to the concerns expressed with regard to access for humanitarian aid, the High Commissioner informed the Minister that she had made representations to the Israeli authorities concerning access for humanitarian relief supplies destined for the occupied territories.

87. During the High Commissioner's meeting with the Secretary General of the League of Arab States, Dr. Ismat Abdel-Maguid, the latter referred to the concerns expressed in Arab countries with regard to the situation of the Palestinians and steps taken by the members of the League of Arab States following their meeting in Cairo on 19 October. He expressed his appreciation of the High Commissioner's decision to visit Israel and the occupied Palestinian territories at a very difficult time. He also declared the readiness of Arab countries to support the resolution adopted at the fifth special session and indicated that he was looking forward to its implementation.

## VII. VISIT TO JORDAN

88. In Jordan, the High Commissioner was received by His Royal Majesty King Abdullah II. He expressed deep concern about recent developments in Israel and the occupied territories and mentioned that Jordan was sparing no efforts to assist both parties in the implementation of the decisions agreed upon in Sharm el Sheikh. In terms of humanitarian assistance, King Abdullah described the extensive relief programme put in place by Jordan, including a hospital in the West Bank.

89. In a separate meeting with the Deputy Prime Minister and with senior officials from the Ministry of Foreign Affairs, the High Commissioner was made aware of Jordan's concern about current events, particularly given the strong ties between the Jordanian and Palestinian peoples.

## VIII. CONCLUSIONS AND RECOMMENDATIONS

90. The High Commissioner came away from her visit deeply concerned about the serious deterioration of the human rights situation in the occupied territories and Israel and at the terrible cost in terms of human lives. It is vital that both parties renew efforts to halt the current dangerous escalation.

91. Mindful of the urgent and widespread calls for international protection made to her during her visit to the occupied territories, the High Commissioner believes that every effort should be made to explore the feasibility of establishing an international monitoring presence.

92. The only path to lasting peace and stability is through peaceful negotiation, which calls for courage and responsibility on the part of the leadership of both sides. When she met with Chairman Arafat in Gaza on 15 November, the High Commissioner asked him if he would publicly call for an end to the shooting by Palestinians. Later the same day he called on Palestinians to stop firing on Israeli targets from zone "A" of the occupied territories. In discussions with senior IDF officers, the High Commissioner also urged a withdrawal of Israeli military forces from some of their forward positions and a lowering of the military profile in the occupied territories. She continues to believe that some specific steps in that direction by the IDF could help to break the present cycle of violence.

93. The High Commissioner believes that a peaceful and stable future in the region can only be achieved on the basis of a framework conforming to the requirements of international human rights and humanitarian law. Full application of the international human rights standards set out in the Universal Declaration of Human Rights and the two Human Rights Covenants is essential.

94. The High Commissioner recalls that the General Assembly and the Commission on Human Rights have repeatedly reaffirmed the de jure applicability of the 1949 Fourth Geneva Convention relative to the Protection of Civilians in Time of War to the occupied Palestinian territories. Article 1 of the Convention places a duty on all the High Contracting Parties "to respect and to ensure respect" of the provisions of the Convention "in all circumstances". It would be appropriate for the High Contracting Parties to assume their responsibility under the Convention.

95. Another way in which the international community can assist is through the work of the task force established under the terms of the Sharm El Sheikh Agreement.

96. The High Commissioner would urge that the following specific steps be taken in order to stop the escalation of violence:

The security forces of both sides should act in full conformity with the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Whenever force is used the principle of proportionality has to be applied and all necessary measures have to be taken to avoid loss of life or injury to civilians or damage to civilian property.

The construction of new settlements should cease and those located in heavily populated Palestinian areas should be removed. As well as protecting settlers, the Israeli security forces should also protect Palestinians from violence perpetrated by Israeli settlers.

All cases of the use of lethal force on both sides should be investigated and subjected to the processes of justice in order to avoid impunity.

Compensation should be provided to the victims of unlawful use of force, including for the loss of property.

Curfews should be imposed only in extreme circumstances and as a last resort. In no case should curfews be used as a punitive measure. In cases where a curfew is imposed, it should be done in consultation with the local communities with a view to limiting the adverse impact on the human rights of those affected.

The enjoyment of economic rights within the occupied Palestinian territories, including the right to development, should be protected.

All holy sites and access to them by all faiths should be respected.

The Israeli authorities should ensure freedom of movement of international and national staff of United Nations agencies and facilitate access by them to those in need of assistance.

Cooperation with the United Nations agencies is vital to ensure effective humanitarian assistance in the occupied Palestinian territories.

97. The High Commissioner will:

Continue, through her office in the occupied Palestinian territories, to assist the Palestinian Authority to build up its institutional capacity in the area of the rule of law;

Offer the services of her Special Adviser on National Human Rights Institutions to assist the Government of Israel in its efforts towards the establishment of a national human rights commission;

Provide the necessary secretariat support for actions undertaken by the Commission on Human Rights, and its mechanisms, in the implementation of the resolution adopted at its fifth special session;

Stand ready to facilitate dialogue between the human rights bodies of Israel and the Palestinian Authority, Palestinian and Israeli NGOs, and other representatives of civil society in order to enhance mutual understanding;

Urge the international community to support the work of United Nations agencies in the occupied Palestinian territories and, in this context, contribute generously to the different resource mobilization initiatives currently under way including those of the World Food Programme, UNICEF, the World Health Organization and UNRWA.

Annex\*

PROGRAMME OF THE VISIT IN THE OCCUPIED  
PALESTINIAN TERRITORIES AND ISRAEL

A. Visit to the occupied Palestinian territories

1. Meeting with members of the Palestinian Authority

Mr. Yasser Arafat, President  
Mr. Tayeb Abdel Rahim, Minister of Presidential Affairs  
Mr. Freih Abu Middain, Minister of Justice  
Mr. Zouhdi Nashashibi, Minister of Finance  
Mrs. Intissar Al Wazir, Minister of Social Affairs  
Dr. Riyadh Al-Zaanoun, Minister of Health  
Mr. Youssef Abu Safia, Minister of Environment  
Mr. Abdul Rahman Hamad, Minister of Housing  
Mr. Ziyad Abu Zayyad, Minister of Jerusalem Affairs  
Mr. Rafeeq Natshah, Minister of Labour  
Mr. Ali Al Qwasma, Minister of Transportation  
Mr. Talal Sadr, Minister without portfolio  
Mr. Ahmad Said Tamimi, Acting Minister of the Interior  
Mr. Ibrahim abu Dhaga, Presidential Adviser for Human Rights  
Mr. Ahmed Soboh, Assistant to the Minister of Planning and International Cooperation (MOPIC)  
Ms. Samia Bamia, Director, United Nations and International Organizations, Ministry of Planning and International Cooperation

2. Meeting with members of the Palestinian Legislative Council

Mr. Ahmed Qurai, Chairman  
Mr. Qadurah Faris, Head of the Oversight and Human Rights Committee  
Mr. Ghasi Hanania, Deputy Speaker  
Mr. Jamal Al Showbaki, Member  
Mr. Suleyman Abu Snaina, Member  
Mr. Abdul Jawad Saleh, Member  
Mr. Azmi Shouaibi, Member

3. Meeting with members of the Palestinian Independent Commission for Citizen's Rights

Dr. Hayder Abed-Elshafi, Commissioner General  
Dr. Said Zeydani, General Director in Ramallah

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4. Meetings with other Palestinian officials, academics and representatives of civil society

Mr. Mustafa Abdel Nabi Al-Natshah, Mayor of Hebron  
Dr. Fathi Arafat, Chairman of the Palestinian Red Crescent Society  
Dr. Sari Nusseibeh, President of Al-Quds University in Jerusalem  
Dr. Ali Jirbawi, Head, Political Science Department, Birzeit University and  
Project Coordinator for Human Rights Issues, Education Department, UNRWA  
Dr. Hanan Ashrawi, Member of the Palestinian Legislative Council and  
Secretary-General of Global Dialogue and Democracy ("Miftah")  
Mr. Sulaiman Al Najjab, Member of the Executive Committee of PLO

In addition, the High Commissioner met with rallies of children in Gaza and in El Bireh (Ramallah), a delegation of expatriate volunteers in East Jerusalem at the UNDP office, as well as other Palestinian civilians (refugees, displaced persons, farmers, educators, doctors and schoolteachers).

5. Meeting with Palestinian NGOs at the office of the United Nations Coordinator in the Occupied Territories (UNSCO), Gaza (11 November 2000)

Democracy and Workers Rights  
Centre for Economic and Social Rights  
Al Mizan Centre for Human Rights  
Palestinian Centre for Human Rights  
Palestinian Society for Human Rights  
The Palestinian Association for Legal Sciences  
Addameer  
Gaza Centre for Rights and Law  
Mashriqqyat  
Cultural and Free Thought Centre  
Tamer Institute for Community Education  
Red Crescent Society  
Gaza Community Mental Health  
National Rehabilitation Society for Handicapped  
Women Affairs Technical Committee  
General Union of Palestinian Women  
Women Affairs Centre  
Palestinian Hydrologist Group  
Palestinian Bar Association  
Union of Palestinian Medical Relief Committees



6. Meeting with Palestinian NGOs in East Jerusalem at the UNDP office  
(12 November 2000)

Rawdat-E-Zuher  
St. John Eye Hospital  
Jerusalem Centre for Economic and Social Rights  
Gender Planning Development  
Palestinian Counselling Centre  
Union of Health Work Committees  
Palestinian Prisoner Society  
Makassed Society in Jerusalem  
ECRC-PNGO  
Jerusalem Centre for Women  
Arab Thought Forum  
Palestinian Society for the Protection of Human Rights and Environment (LAW)  
Adameer Association  
Land Research Centre  
Palestinian Human Rights Monitoring Group  
Palestinian Academic Society for the Study of International Affairs (PASSIA)  
Palestinian Agriculture Relief (PARC)  
Medical Relief Committees/Jerusalem  
Al-Haq  
Early Childhood Resource Centre

7. Meeting with Palestinian NGOs, El-Bireh, Ramallah (13 November 2000)

Birzeit Law Institute  
Bisan Centre for Research and Development  
Association of Women for Social Work  
Women Union Centre  
Union of Women Centres - Palestine  
Palestinian Bar Association  
Jerusalem Legal Aid Centre  
Jerusalem Centre for Women  
PNGO Network  
Association of Palestinian Local Authorities  
Women's Studies Centre  
Women's Centre for Legal Aid and Counseling  
Al-Haq  
Law Society  
Arab Thought Forum/Citizen Rights Centre  
Defence for Children International/Palestinian Section  
Palestinian Happy Child Centre – PHCC  
Adameer

Guidance and Training Centre for the Child and Family  
Palestinian Mother and Child Care Society  
General Union of Disabled Palestinians  
Palestinian Working Women Society  
Freedoms Defence Centre  
Democracy and Workers' Rights Centre  
Resource Centre for Palestinian Residency and Refugee Rights (BADIL)  
Treatment and Rehabilitation Centre for Victims of Torture  
Mandela Institute for Political Prisoners

8. Meeting with representatives of the Muslim, Christian and Armenian communities,  
East Jerusalem (12 November 2000)

Mr. Ramzi Zananiri, Executive Director  
Near East Christian Council Committee for Refugee Work, Jerusalem/West Bank

Mr. Harry Hagopian  
Executive Director, Middle East Council of Churches  
Convenor, Jerusalem Inter-Church Committee  
Legal Consultant, London, United Kingdom

Fr. Raed Abusahlia  
Chancellor of the Latin Patriarchate  
Secretary of Patriarch Michel Sabbah

Bishop Aris Shirvanjan  
Director for Ecumenical and Foreign Relations of  
the Armenian Patriarchate, Jerusalem

Dr. Mustafa Abu Sway  
Director  
Islamic Research Centre  
Al-Quds University  
Jerusalem

Sheikh Ikrama Said Sabri  
General Mufti of Jerusalem and Palestinian territories  
Preacher of Al-Aqsa Mosque

Sheikh Yaakoub Karrach  
Director of Islam Fiqh Centre  
and member of the Palestinian National Council

9. Locations visited by the High Commissioner in the occupied Palestinian territories

A. Gaza Strip

Erez checkpoint  
Shifa Hospital  
Netzarim junction  
Al-Mazra'a school in Deir El-Balah, opposite Kfar Darom settlement  
Affected houses near the border fence in Rafah  
Rafah Health Centre  
Rafah preparatory girls school  
Uprooted farms near Moraje settlement in Rafah

B. West Bank

East Jerusalem  
Ramallah  
El Bireh  
Hebron with the Temporary International Presence in Hebron (TIPH)  
Jalazon refugee camp  
Jalazon preparatory boys school

10. Meeting with United Nations officials

Mr. Terje R. Larsen, United Nations Special Coordinator for the Middle East peace process and Personal Representative of the Secretary-General to the PLO and the PA  
Mr. Peter Hansen, Commissioner General of UNRWA  
Mr. Timothy Rothermel, UNDP, Special Representative of the Administrator

In addition, the High Commissioner met with representatives of the following United Nations bodies and agencies in Gaza:

Office for the Coordination of Humanitarian Affairs  
International Monetary Fund  
United Nations Children's Fund  
United Nations Development Fund for Women  
United Nations Development Programme  
World Food Programme  
World Health Organization

11. Meeting with staff of the Office of the High Commissioner for Human Rights in the occupied Palestinian territories (Gaza and the West Bank)

Mr. Amin Medani, Director, Chief Technical Adviser  
Mr. Saber Nairab, Human Rights Officer (Gaza)  
Mr. Ammar al Dwaik, Human Rights Officer (West Bank)  
Ms. Wijdan Jaber, Administrative Assistant  
Ms. Eman Fathi, Secretary  
Mr. Fawzi Al Akra'a, Logistics Officer

B. Visit to Israel

H.E. Mr. Moshe Katzav, President of the State of Israel  
The Hon. Aharon Barak, President of the Supreme Court  
Mr. Yossi Beilin, Minister of Justice, together with the following guests at a lunch hosted by him:

Mr. Shlomo Gur, Director General, Ministry of Justice  
Mrs. Edna Arbel, State Attorney  
Mrs. Osnat Mandel, Acting Director, High Court of Justice Division, State Attorney's Office  
Ms. Tamar Gaulan, Director, Foreign Relations and International Organizations, Ministry of Justice  
Mr. Daniel Levy, Senior Advisor to the Minister of Justice  
Mr. Amir Avramovitch, Media Advisor to the Minister of Justice  
Ms. Rachel Harris, legal intern  
Ms. Colette Avital, Member of the Knesset  
Mrs. Zehava Gal'on, Member of the Knesset, Head of the Meretz parliamentary faction  
Mrs. Pnina Herzog, President, International Counsel of Women  
Prof. David Kretzmer, member of the United Nations Human Rights Committee  
Prof. Mordechai Kremnitzer, Israel Democracy Institute  
Prof. Ruth Gavison, Faculty of Law, Hebrew University  
Dr. Daphna Sharfman, Chair, Political Science Department, Western Galilee College  
Dr. Eddy Kaufman, Board Member, Human Rights Watch, Middle East  
Mrs. Orna Rabinovitch Pundak, former Chairperson, Amnesty International, Israeli Section  
Mr. Moshe Negbi, political commentator  
Mr. David Peleg, former Permanent Representative, Permanent Mission of Israel to the United Nations at Geneva  
Mr. Mordechai Yedid, Deputy Director General, International Organizations, Ministry of Foreign Affairs  
Mr. Yaakov Paran, Director, Human Rights Department, Ministry of Foreign Affairs  
Mr. Zeev Lurie, Deputy Director, Human Rights Department, Ministry of Foreign Affairs

Dr. Alon Leal, Director General of the Ministry for Foreign Affairs and other senior officials of the Ministry  
Major General Eiland and senior officers of the Israeli Defense Forces (IDF)  
General Ya'acov Or, IDF Coordinator for the Territories, and other IDF officials  
Families from Gilo community  
Ms. Naomi Chazan, Member of the Knesset

In addition, the High Commissioner met with representatives of civil society (academics and human rights defenders), Members of the Knesset and other Israeli officials, including the State Prosecutor.

Meeting with Israeli and Arab NGOs in Jerusalem (9 November 2000)

Btselem Israeli Information Centre for Human Rights in the Occupied Territories  
HaMoKed Centre for the Defence of the Individual  
Public Committee against Torture in Israel  
Defence for Children International (Israel Section)  
Ittijah Union of Arab Community Based Association  
Physicians for Human Rights  
Association for Civil Rights in Israel (ACRI)  
Rabbis for Human Rights  
Adalah Legal Centre for Arab Minority Rights in Israel  
Mossawa Centre  
Ms. Tamar Pelleg, human rights lawyer

Visit to the "Yad Vashem" Martyr's and Heroes' Memorial of the Holocaust

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# ANNEX 10

Commission on Human Rights, Question of the Violation of Human Rights in the Occupied Arab Territories, including Palestine, Report of the human rights inquiry commission established pursuant to Commission resolution S-5/1 of 19 October 2000, E/CN.4/2001/121, 16 March 2001



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COMMISSION ON HUMAN RIGHTS  
Fifty-seventh session  
Item 8 of the provisional agenda

**QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE OCCUPIED  
ARAB TERRITORIES, INCLUDING PALESTINE**

**Report of the human rights inquiry commission established pursuant  
to Commission resolution S-5/1 of 19 October 2000**

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## I. INTRODUCTION

1. On 19 October 2000, the Commission on Human Rights adopted resolution S-5/1 establishing a commission of inquiry to investigate violations of human rights and humanitarian law in the occupied Palestinian territories after 28 September 2000 and to provide the Commission on Human Rights with its conclusions and recommendations (see annex I). In pursuance of this resolution, a human rights inquiry commission was established on 2 January 2001, comprising Professor John Dugard, (South Africa), Dr. Kamal Hossain (Bangladesh) and Professor Richard Falk (United States of America). Initially Professor Dugard and Dr. Hossain acted as Co-Chairpersons but, during the course of the visit to the occupied Palestinian territories (OPT), Professor Dugard was appointed as Chairman.
2. The Human Rights Inquiry Commission ("the Commission") held its first meeting in Geneva from 14 to 16 January 2001 to discuss its mandate, methodology and programme of action. It then visited the occupied Palestinian territories (OPT) and Israel from 10 to 18 February 2001. The full programme of the Commission appears in annex II.
3. On the evening of its arrival in Gaza on 10 February 2001, the Commission met with the Palestinian Authority President, Yasser Arafat, who gave the Commission an account of the situation from the perspective of the Palestinian Authority. From the programme contained in annex II, it will be seen that, while in Gaza, the Commission held meetings and discussions with members of the Palestinian Authority, non-governmental (NGOs), the Palestinian Red Crescent, the International Committee of the Red Cross (ICRC), international agencies (notably the Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations Special Coordinator in the Occupied Territories (UNSCO) and the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA)), journalists, lawyers and members of the Palestinian Legislative Council. It also interviewed several young men who had been seriously wounded during demonstrations by gunfire from the Israeli Defence Force (IDF) and visited a hospital in Khan Yunis where it saw persons hospitalized as a result of gas inhalation. En route to Khan Yunis, the Commission visited the Qarara area, near the Kusufim road leading to settlements, where it saw agricultural land that had been bulldozed and houses that had been demolished by the IDF and it spoke with the occupants of these houses, who are now living in tents. At Khan Yunis the Commission visited the Tufar checkpoint adjacent to the Neve Dekalim Jewish settlement. While the Commission members were speaking to journalists at this point, two shots were fired from a nearby building at the settlement. This evoked a heavy response from the IDF base attached to the settlement, resulting in three casualties, two of which were serious. Thereafter, the Commission interviewed persons who had suffered as a result of gunfire or the destruction of property.
4. The Commission spent Wednesday, 14 February interviewing Israeli NGOs and Israeli interlocutors who provided the Commission with a broader understanding of the context of the conflict and the legal position adopted by the Government of Israel. On 15 and 16 February the Commission visited Ramallah, where it met with members of the Palestinian Authority, the Palestinian Legislative Council, the Palestinian Peace Negotiation Affairs Department, and Palestinian NGOs, lawyers and academicians. On the morning of 16 February, before leaving for Ramallah, the Commission met with the representatives of member States of the

European Union, whose views confirmed many of the opinions expressed by other interlocutors interviewed by the Commission. Later in the morning of 16 February the Commission spoke with Christian and Muslim leaders (including those responsible for the management of the Al Aqsa mosque) and met with Mr. Faisal El-Husseini at Orient House. On Saturday, 17 February the Commission travelled to Hebron, where it met with the Temporary International Presence in Hebron (TIPH) and the Mayor of Hebron. Owing to the tense security situation arising from the funeral of a person killed by IDF gunfire on the previous night, it was unable to visit "H2", the area of Hebron under Israeli military control. After leaving Hebron, it visited the Aida Refugee Camp near Bethlehem and inspected an UNRWA school and houses which had been heavily damaged by IDF shelling. Thereafter, it met with a wide range of interlocutors and journalists in Jerusalem.

5. While in Jerusalem, the Commission held evening meetings with widely respected Israeli academic and intellectual figures, who were able to inform the Commission about the legal context of the conflict and the Jewish settlements in the West Bank and Gaza and provide Israeli perspectives of the intifada. On the afternoon of 16 February, the Commission visited the East Jerusalem neighbourhood of Gilo, which had come under gunfire from the Palestinian town of Beit Jala. On the last day of its visit, the Commission met with an Israeli political scientist and a former Israeli IDF General.

6. At the request of the Commission, the staff of the United Nations Secretariat accompanying the Commission conducted a number of confidential interviews with victims in Gaza, Ramallah, Hebron and Jerusalem. The texts of these interviews were shared with members of the Commission.

7. The Government of Israel made it clear from the outset that it would not cooperate with the Commission. Two letters were addressed to the Government of Israel before the departure of the Commission for Israel requesting meetings with the Government; a final letter containing a similar request was sent while the Commission was visiting the area. Despite these efforts, the Government of Israel consistently maintained its policy of non-cooperation with the Commission. The Commission is, however, pleased to report that the Government did not in any way obstruct the work of the Commission and indeed facilitated its visit to Israel and the occupied territories by granting Dr. Hossain an entry visa. (The other two Commissioners did not require visas for their visit.)

8. Jewish settlements in the West Bank and Gaza feature prominently in this report. For this reason, the Commission approached the Council of Jewish Settlements of Judea, Samaria and Gaza (Yesha) in order to obtain their views at first hand. After consideration and consultation with the Government of Israel, the Council decided not to cooperate with the Commission.

9. The Commission made a concerted effort to obtain information and opinions about human rights violations and violations of international humanitarian law from both the Palestinian and the Israeli perspectives. The Commission regrets the refusal of the Government of Israel to cooperate with it. This meant that it could not obtain specific responses to allegations of human rights violations and violations of international humanitarian law or benefit from

interaction on the concerns of the Commission. The Commission believes, however, that it was adequately informed as to the official Israeli position through its study of the Israeli submissions to the Mitchell Commission and the Government's response to the report of the High Commissioner for Human Rights and by speaking to informed Israeli interlocutors. It also had the benefit of a discussion with former General Shlomo Gazit, the Chief Military Coordinator of West Bank and Gaza Policy in the period 1967-1974 and a keen student of military affairs and security doctrine.

## II. METHODOLOGY

10. The Commission has studied numerous reports on matters affecting human rights and humanitarian law in the occupied Palestinian territories since the start of the second intifada on 28 September 2000. During its visit to Israel and the occupied territories, it heard a considerable amount of evidence on such matters. In addition, it experienced violence at first hand, spoke to victims and inspected destroyed properties and the sites of some of the worst confrontations between demonstrators and the IDF. The impressions and interpolations of the Commission and the testimony received by the Commission confirm the views expressed by the most respected and reliable NGOs in the region. The Commission has, therefore, relied to varying degrees on the findings of respected NGOs where they were supported by reliable eyewitness accounts and where they coincide with other evidence received by the Commission. In other words, the Commission is guided in its report by the best available evidence. Most of this evidence is not disputed by either the Palestinian Authority (PA) or the Government of Israel, although they tend to place an interpretation different from that of the Commission upon it.

11. In its report the Commission refers to facts and figures that show the magnitude of the violations of human rights and international humanitarian law in the OPT. These facts and figures have been taken from a wide variety of sources. Every attempt has been made to confirm their accuracy by reference to reports on the same incidents from other sources. Where there is any doubt about the accuracy of a particular factual situation, no statistics are given about it.

12. The present report will show that the IDF, assisted by settlers on occasion, has been responsible for most of the human rights violations and violations of international humanitarian law in the OPT. This is not to overlook the fact that human rights violations have been committed by Palestinians, either under the authority of the PA or by individual Palestinians acting seemingly without authority. Where necessary, the present report draws attention to these violations.

13. The mandate of the Commission is to report on violations of human rights and international humanitarian law in the OPT. Both the Government of Israel and the PA allege that the other party has violated the Oslo Accords in fundamental respects during the present intifada. The Commission makes no attempt to pronounce on these allegations, except where they impinge upon matters falling within its mandate.

14. In the course of its investigation, the Commission met leaders of civil society in both Israel and the OPT. We were impressed with their understanding and vision. Leaders of this kind offer the best prospect for the future of Palestine and the normalization of relations between Jews and Arabs.

15. The Commission hopes that its report will serve to advance the peace process. The attitude of the Commission is that, while there can be no human rights without peace, a durable peace is not likely to be attained if it is not founded on respect for human rights and the rule of law.

### **III. CLARIFYING THE CONTEXT: ILLUSION AND REALITY**

16. It was evident in all phases of our inquiry into the patterns of violations of human rights and international humanitarian law during the second intifada that an appreciation of the behaviour of the parties involved depended on having an understanding of the surrounding context. Each side has felt justified in taking the action that has accompanied recent moves, although each side gives its own self-serving interpretation of its legal, moral and political character. It is important to comprehend these differences in the process of seeking an objective assessment of the various allegations of violative conduct. It is just as important to avoid equating adversary positions as equally persuasive. In the setting of the Israeli-Palestinian relationship it is of pervasive significance that the Palestinian people are struggling to realize their right of self-determination, which by virtue of international law and morality provides the foundation for the exercise of other rights. Of comparable significance is the appreciation of the extent to which Israel's continued occupation of Palestinian territories has remained the most formidable obstacle to Palestinian self-determination.

17. The Commission came away from this inquiry with two overriding assessments that are at once discouraging and illuminating.

18. The first involves perceptions, and focuses on the extent to which the two sides perceive the central reality of their respective positions from diametrically opposed constructions of the meaning of recent events. In essence, the Government of Israel and most Israelis conceive of the breakdown of the Oslo process as creating for them a severe and novel security crisis. Most Israelis view the second intifada as an indication that Palestinians are unwilling to resolve their conflict by peaceful means, having rejected what is regarded as a generous offer by the Government of Israel at the Camp David II and Taba stages of the Final Status negotiations. The nature of this crisis is such that, according to this dominant Israeli perspective, the encounter with the Palestinians has moved from a relationship between an occupying Power and an occupied people to one between conflicting parties in a state of belligerency or war, implying a virtual absence of legal and moral constraints, at least on the Israeli side, provided only that a self-serving argument of military necessity is set forth.

19. In the starkest possible contrast, the Palestinian Authority and most Palestinians perceive the current phase of their relationship with Israel as brought about by a combination of the distortions associated with the implementation of the Oslo principles, the failure to implement a series of authoritative United Nations resolutions, most particularly Security Council resolutions 242 (1968) and 338 (1973), and grave breaches by Israel of the Fourth Geneva Convention. These aspects of the situation are further seen as responsible for the full harshness of Israeli occupation as it affects adversely the daily lives of the Palestinians. Such circumstances are regarded as profoundly aggravated by the continued expansion of Israeli settlements throughout the period of the Oslo process and by the IDF role in their protection.

The combination of these elements is regarded by most Palestinians as the proximate cause of the escalating spiral of violence set off by the provocative events at Harem al-Sharif/ Temple Mount on 28 September 2000. In this regard, the second intifada is viewed as a spontaneous series of moderate and proportional responses to an occupation that has been maintained and perpetuated in defiance of the authority of the United Nations since it was established in 1967. From this perspective, the Palestinians contend that they continue to seek a negotiated end to the conflict to attain a peaceful settlement that is fair to both sides and upholds the security of both peoples on the basis of mutuality.

20. Our second closely related conclusion is associated with the somewhat disguised link between the modality of Israeli occupation as a result of changes brought about by the Oslo process and the subsequent intifada, with its escalating spiral of violence. It is of critical importance to appreciate the interaction between the redeployment of the IDF since 1994 and the implementation of the Oslo Accords. In effect, the IDF withdrew by stages from most of the areas on the West Bank and Gaza inhabited by the bulk of the Palestinian population, and yet sustained, and even intensified, its control over the borders between the Palestinian territories and Israel and among the various districts internal to the OPT. Even more significantly, owing to the retention of the settlements situated throughout the Palestinian territories, as the accompanying map makes clear (annex IV), the West Bank and Gaza were divided into "A", "B", and "C" areas, with the Palestinian Authority exercising full administrative control over A, while Israel exercises security control over B and retains exclusive control over C. In effect, a series of internal boundaries were established by agreements implementing the Oslo Accords, so as to enable Israel to provide protection to the settlements while withdrawing from areas densely populated by Palestinians. The effect of such a redistricting of the Palestinian territories was to produce a situation of extreme fragmentation, making travel very burdensome for Palestinians who went, for work or otherwise, from one part of the territories to another: checkpoints were maintained where detailed searches were carried out that resulted in long waits and frequent humiliation, greatly burdening Palestinian rights of movement even under normal circumstances. In the course of the second intifada, this already difficult situation has been severely aggravated by frequent closures and blockades that have prevented the movement of goods and persons across both internal and external borders. Most Palestinians described the situation of recent months as living under "a state of siege".

21. Such a pattern of control and security can only be understood in relation to the settlements and their need for safe access to and from Israel. The main IDF function in the occupied Palestinian territories is to guard the settlements and the access and bypass roads. The relationship is such that the settlers are given unconditional priority whenever their presence impinges upon that of the Palestinian indigenous population. For instance, all Palestinian traffic is stopped while a single settler vehicle passes on an access road, causing long delays and much resentment. While travelling, particularly in Gaza, the Commission had its own direct experience of this situation. When a violent incident occurs, Israeli closures further inhibit travel, often preventing or greatly detaining even emergency traffic, such as ambulances. The Commission verified several accounts of deaths due to an inability of Palestinians to receive timely medical attention. Israel has invested heavily in an elaborate system of bypass roads in the West Bank designed to provide most settlements and the IDF with the means to travel to and from Israel, and between settlements, without passing through Palestinian-controlled areas. Palestinians view these roads with alarm, both because of their substantial and symbolic

encroachment upon the heart of a future Palestinian State and, more so, because the magnitude of the investment and effort involved in such a development seems to impart an Israeli view that most of the settlements on the West Bank will never be removed. This situation contrasts with Gaza, where access roads cut through Palestinian territory and have not been specially constructed. In this regard, the settlement structure in Gaza seems removable by negotiations on final status in a manner that at present does not appear likely in relation to the West Bank.

22. Part of the perceptual gap is associated with the effects and nature of the violence. Israelis appear to connect most of their casualties with the stone-throwing demonstrations, interspersed at times with Palestinian gunfire. The Palestinians associate casualties on their side mainly with what they view as Israeli/IDF overreaction to these demonstrations. It was the clear judgement of the Commission that Palestinian casualties were indeed mainly associated with these direct encounters, but that, to the best of our knowledge, the IDF, operating behind fortifications with superior weaponry, endured not a single serious casualty as a result of Palestinian demonstrations and, further, their soldiers seemed to be in no life-threatening danger during the course of these events. It was the definite view of the Commission that the majority of Israeli casualties resulted from incidents on settlement roads and at relatively isolated checkpoints at the interface between A, B, and C areas, that is, as a consequence of the settlements, and irritations resulting indirectly therefrom. In this regard, account must be taken of settler violence against Palestinian civilians in areas adjoining settlements, and of IDF complicity in such violence. A pervasive feature of the tensions associated with the second intifada is the clear affinity between the IDF and Jewish settlement communities, and the equally evident hostility between these communities and the surrounding Palestinian population.

23. The language associated with the second intifada is also relevant to an assessment of human rights violations and violations of international humanitarian law. Both sides tend to view the violence of the other side as comprising "terrorism". The Israelis view attacks by Palestinians, especially beyond "the Green Line" (pre-1967 Israel), as terrorism even if directed against official targets such as IDF soldiers or government officials. Palestinians regard the IDF tactics involving shooting unarmed civilian demonstrators (especially children) or relying on tanks and helicopters against demonstrators, in retaliation for shots fired from refugee camps, and assassinations of targeted individuals as State terrorism. The legal status of these patterns of violence is difficult to establish authoritatively. Part of the current complexity relates to the Israeli contention that a condition of armed conflict has replaced that of belligerent occupancy as a result of IDF withdrawals from A zones, and the transfer of governing authority in those areas to the PA. Another part of the complexity arises from the Palestinians' contention that they enjoy a right of resistance to an illegal occupation.

24. There is another fundamental discrepancy of perception. Israel believes that its security measures, including border and road closures, represent reasonable, even restrained, measures of response to Palestinian unrest and opposition. To the extent that Israel relies on the superiority of its weaponry or inflicts most of the casualties, such behaviour is rationalized as necessary to demoralize a numerically superior enemy, nipping its resistance in the bud. Such lines of explanation were set forth by Israeli witnesses to explain and justify even the use of live ammunition by the IDF against unarmed Palestinian demonstrators during the opening days of the second intifada. During these crucial days there was no evidence of Palestinian gunfire.

25. The Palestinians view this link between Palestinian acts of resistance and Israeli responses from an entirely different angle of interpretation. To Palestinians, the Israeli use of force from day one of the second intifada, and indeed before Ariel Sharon's visit on 28 September to the Al Aqsa mosque, was intended to crush any Palestinian impulse to oppose openly the continued Israeli domination and occupation of the West Bank and Gaza. For most Palestinians, the closures of roads and borders, destruction of homes and property, and accompanying measures of curfews and restrictions are regarded as clear expressions of an Israeli policy of inflicting collective punishment upon all Palestinian inhabitants. Palestinians also rejected the view that the Palestinian Authority, and its police, had the capacity to prevent hostile demonstrations or to ensure the absence of violent incidents involving targets within Israel. When Israel responded to such events by punishing the territories as a whole it was viewed by Palestinians as vindictive, unjust and illegal because such a response lacked any discernible connection to either the perpetrator or to prospects for deterrence of future violence.

26. Closely related to such perceptions are differences of viewpoint as to the nature of the second intifada. Israelis tended to contrast the first with second intifadas. The first intifada was seen in retrospect by Israelis as having been a largely spontaneous, bottom-up and non-violent expression of opposition to Israeli occupation. It was, in such circumstances, not reasonable to hold the Palestinian leadership responsible for the disorder. According to Israelis, the second intifada was instigated from above so as to mount a timely challenge to the Israeli leadership at a delicate moment in the peace negotiations. It was a calculated plan to improve upon an exceedingly weak Palestinian bargaining position and it also represented a serious failure by the Palestinian Authority to carry out its obligations under the Interim Agreements flowing from Oslo to maintain security for Israel in areas subject to its authority.

27. The Palestinians see the second intifada from an entirely different perspective, essentially from the outlook of an occupied people. They regard the demonstrations as spontaneous eruptions of pent-up hostile sentiment arising from years of frustration, disappointment and humiliation. Palestinians interpret the Israeli responses as consistent with the basic structure of the occupation of their territories, as one-sided, lacking in empathy for the Palestinian civilian population, and designed to punish and crush any signs of resistance.

28. From this perspective, the Palestinians see the greater reliance by Israel on heavy weapons and deadly fire in the second intifada, as compared to the first, as seeking to discourage Palestinians from either raising the level of their resistance or resisting altogether. This reliance on the tactics of war is also perceived as providing Israel with a pretext for avoiding the restraints associated with the exercise of police responsibilities or relating to the application of standards of human rights.

29. In addition to these basic structural issues, it is of great importance to appreciate the added vulnerability of Palestinian refugees who comprise about 50 per cent of the population in the Palestinian territories and whose number is increasing at a rate of more than 3 per cent per annum. While the Israelis tend to perceive Palestinians resident in the territories as a single reality, without according any special attention to the refugees, the Palestinians are far more conscious of the acute suffering that Israeli security measures have brought to the refugee communities during this second intifada.

30. These refugees have been particularly victimized during the second intifada, often being trapped within their crowded confines by closure and curfew measures, which has made it impossible for many refugees to keep their jobs. Unemployment is high, savings almost non-existent, with great suffering resulting. Also, for historical reasons, the Palestinian refugees, alone among refugee communities in the world, fall outside the protective regime of the Office of the United Nations High Commissioner for Refugees (UNHCR). UNRWA provides relief and humanitarian aid, but is not constitutionally or politically empowered to provide needed protection, a conclusion supported for us by discussions with leading United Nations officials and NGO experts.

31. A further fundamental question of human rights relates to the extreme differences between the parties on matters pertaining to the core dispute, the wider refugee issue and its relationship to a successful peace process. The Israeli consensus regards the assertion of any serious demand to implement a Palestinian right of return in relation to Palestinians expelled from 530 villages in 1948 as a decisive complication in the search for "peace". The Palestinian approach is more varied and tentative. Some Palestinians do insist that the right of return be fully implemented in accordance with international law, which accords priority to repatriation to the extent desired. More frequently, Palestinians seem more flexible on this matter, seeking mainly a symbolic acknowledgement by Israel of the hardships associated with the expulsions, some provision for compensation and some possibilities for Palestinian family unification. This Palestinian view suggests that if there is Israeli good will on other outstanding issues, such as Jerusalem and the settlements, then controversy over the right of return can be addressed in a manner that takes account of practical realities that have developed in the course of the more than 50 years since the critical events.

32. Overall, the Government of Israel and Israeli public opinion tend to regard all Israeli uses of force as reasonable measures of security, given the altered connection between the two societies as a result of the IDF redeployment associated with the Oslo process. Such security measures need to be stringent and intrusive so as to afford protection to the settlements, and to settler movement to and from Israel. Israeli security is a catch-all justification for all policies directed coercively at the people of Palestine. Such a major premise enables the Israeli outlook to view any Palestinian recourse to force as tantamount to "terrorism". The perceptual gap is greatest on this issue of violence and its interpretation, as Palestinians view their acts of opposition as reasonable responses to an illegal occupation of their homeland, treating their violence as produced by consistent Israeli overreaction to non-violent resistance. Additionally, Palestinians universally reject Israel's wider security rationale and view restrictions on movement, closures, property destruction, political assassinations, sniper shootings and the like as punitive and vindictive practices inconsistent with their fundamental human rights, as well as with the minimum restraints embodied in international humanitarian law.

33. There is one comprehensive observation bearing on the perception of United Nations authority by the two sides. Israelis tend to view the United Nations and most of the international community as completely unsympathetic to their quest for security, as well as biased in favour of Palestinian claims and grievances. On their side, the Palestinians feel disillusioned about the effectiveness of United Nations support and abandoned in their hour of need for elemental



protection. Palestinians refer to the myriad United Nations resolutions supporting their cause, but never implemented. In this sense, both sides are currently suspicious about the role of the United Nations, its outlook, capacity and commitment.

34. Three conclusions follow from this consideration of Israeli-Palestinian perceptual gaps:

(a) The importance of encouraging better contact between persons of good will on both sides so that communication between the parties is more open and takes greater account of the views of the other side. This observation applies particularly to journalists, currently by and large confined within their respective societies, who tend to provide readers with partisan accounts of the interaction of Israelis and Palestinians that are uncritical of their respective official positions and to employ language that reinforces “enemy” stereotypes of “the other”;

(b) The challenge to the organs of the United Nations to rehabilitate their reputation in relation to both Israel and the Palestinian Authority, and the two populations, by seeking to achieve objectivity in apportioning legal and political responsibility, in calling for certain conduct in the name of international law, and in fashioning proposals for peace and reconciliation. As important, or more so, is the need to take steps to ensure that United Nations directives, whether in the form of resolutions or otherwise, are implemented to the extent possible, and that non-compliance is addressed by follow-up action;

(c) An appreciation that a commitment to objectivity does not imply a posture of “neutrality” with respect to addressing the merits of controversies concerning alleged violations of human rights and international humanitarian law. Judgements can and must be made. It is useful to recall in this connection the statement of the Israeli Minister for Foreign Affairs, Shlomo Ben-Ami, on 28 November 2000 in the course of a Cabinet discussion, opposing the release of supposed Palestinian transgressors during the early stages of the second intifada: “Accusations made by a well-established society about how a people it is oppressing is breaking the rules to attain its rights do not have much credence” (article by Akiva Elder in Ha’aretz, 28 November 2000). Such a perspective underlies the entire undertaking of our report. We have attempted to the extent possible to reflect the facts and law fairly and accurately in relation to both sides, but we have evaluated the relative weight of facts and contending arguments about their legal significance. This process alone enables us to draw firm conclusions about the existence of violations of international legal standards of human rights and of international humanitarian law.

#### IV. THE LEGAL STATUS OF THE CONFLICT

35. The legal status of the West Bank and Gaza and the legal regime governing relations between Israel and the people of Palestine have been in dispute ever since Israel first occupied the West Bank and Gaza in 1967. As the sovereignty of Jordan over the West Bank was questionable and Egypt never asserted sovereignty over Gaza, the Government of Israel took the view that there was no sovereign Power at whose expense it occupied these territories. Consequently, although Israel is a party to the Fourth Geneva Convention of 1949, it maintained that it was not bound in law to treat the territories as occupied territories within the meaning of

the Fourth Geneva Convention. Despite this, Israel agreed to apply certain of the humanitarian provisions contained in the Fourth Geneva Convention to the occupied territories on a de facto basis.

36. The peace agreements between Israel and the Palestinian Authority, hereafter referred to as the Oslo Accords, have superimposed an additional level of complexity on an already disputed legal situation. It is now argued by Israel that, despite the prohibitions contained in article 47 of the Fourth Geneva Convention on interfering with the rights of protected persons in an occupied territory by agreement between the authorities of the occupied territory and the occupying Power, the Oslo Accords have substantially altered the situation. In particular, it is argued by Israel that it can no longer be viewed as an occupying Power in respect of the "A" areas, accommodating the majority of the Palestinian population, because effective control in these areas has been handed over to the Palestinian Authority.

37. The status of the West Bank and Gaza raises serious questions, not only for the above reasons, but also because of the impact of human rights and self-determination on the territory. A prolonged occupation, lasting for more than 30 years, was not envisaged by the drafters of the Fourth Geneva Convention (see art. 6). Commentators have therefore suggested that in the case of the prolonged occupation, the occupying Power is subject to the restraints imposed by international human rights law, as well as the rules of international humanitarian law. The right to self-determination, which features prominently in both customary international law and international human rights instruments, is of particular importance in any assessment of the status of the West Bank and Gaza. The right of the Palestinian people to self-determination has repeatedly been recognized by the General Assembly of the United Nations and there can be little doubt that the ultimate goal of the Oslo peace process is to establish an independent Palestinian State. Indeed over 100 States already have relations with the Palestinian entity, not unlike relations with an independent State, while the Palestinian Authority has observer status in many international organizations. The Palestinian question is, therefore, seen by many as a colonial issue and the recognition of Palestinian statehood as the last step in the decolonization process initiated by the General Assembly in its resolution 1514 (XV).

38. Uncertainty about the status of Palestine in international law has complicated the conflict between Israel and the Palestinian people since 29 September 2000. The Government of Israel argues that it can no longer be seen as an occupying Power in respect of the A areas because it has ceded control over these territories to the Palestinian Authority. Moreover, it argues that, unlike the first intifada, in which the weapons of the Palestinian uprising were mainly stones, the weapons of the new intifada include guns and heavier weaponry, with the result that there is now an armed conflict between Israel and the Palestinian people led by the Palestinian Authority. This argument seeks to justify the use of force resorted to by the IDF in the present conflict. In essence, Israel argues that it cannot be seen as an occupying police power required to act in accordance with police law enforcement codes, but that it is engaged in an armed conflict in which it is entitled to use military means, including the use of lethal weapons, to suppress political demonstrations, to kill Palestinian leaders and to destroy homes and property in the interest of military necessity.

39. Clearly, there is no international armed conflict in the region, as Palestine, despite widespread recognition, still falls short of the accepted criteria of statehood. The question then

arises as to whether there is a non-international armed conflict, defined by the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia in the Tadic case, as “protracted armed violence between governmental authorities and organized armed groups”. The Israeli argument that the threshold for an armed conflict has been met is based on the fact that there have been some 3,000 incidents allegedly involving exchanges of gunfire and that Palestinian violence is organized and orchestrated by the Palestinian Authority. A contrary view advanced by the Palestinians is that the present intifada is to be categorized as an uprising of large elements of a civilian population against an occupying Power’s unlawful abuses of its control over that population and its environment; that the uprising has been instigated by loosely organized elements of the population opposed to Israeli occupation of Palestine and the failure of the Palestinian Authority to improve the lot of the Palestinian people; and that there are no properly organized armed groups, let alone armed groups coordinated or organized by the Palestinian Authority.

40. It is difficult for the Commission to make a final judgement on this matter. However, it inclines to the view that sporadic demonstrations/confrontations often provoked by the killing of demonstrators and not resulting in loss of life on the part of Israeli soldiers, undisciplined lynchings (as in the tragic killing of Israeli reservists on 12 October 2000 in Ramallah), acts of terrorism in Israel itself and the shooting of soldiers and settlers on roads leading to settlements by largely unorganized gunmen cannot amount to protracted armed violence on the part of an organized armed group. This assessment is confirmed by the peace that prevails in those areas of the West Bank and Gaza visited by the Commission. The Commission realizes that this assessment, based on a brief visit to the region and the views of witnesses and NGOs generally unsympathetic to the IDF, may not be fully accurate. However, there is enough doubt in the minds of the members of the Commission as to the prevailing situation to place in question the assessment of the situation as an armed conflict by the IDF justifying its resort to military rather than police measures.

41. In the opinion of the Commission, the conflict remains subject to the rules of the Fourth Geneva Convention. It does not accept the Israeli argument that the Fourth Geneva Convention is inapplicable by reason of the absence of a residual sovereign Power in the OPT. This argument, premised on a strained interpretation of article 2 of the Convention, fails to take account of the fact that the law of occupation is concerned with the interests of the population of an occupied territory rather than those of a displaced sovereign. The argument that Israel is no longer an occupying Power because it lacks effective control over A areas of the OPT carries more weight, but is likewise untenable. The test for the application of the legal regime of occupation is not whether the occupying Power fails to exercise effective control over the territory, but whether it has the ability to exercise such power, a principle affirmed by the United States Military Tribunal at Nürnberg in In re List and others (The Hostages Case) in 1948. The Oslo Accords leave Israel with the ultimate legal control over the OPT and the fact that for political reasons it has chosen not to exercise this control, when it undoubtedly has the military capacity to do so, cannot relieve Israel of its responsibilities as an occupying Power.

42. While an occupying Power or party to a conflict may be given a margin of interpretation in its assessment of the nature of the conflict, it cannot be allowed unilaterally to categorize a situation in such a way that the restraints of international humanitarian law and human rights law are abandoned. For this reason, the Commission suggests that the High Contracting Parties to

the Geneva Convention should seriously address the nature of the conflict and Israel's obligations as a party to the Fourth Geneva Convention. The Commission is mindful of the Israeli objection to the "politicization" of the Geneva Conventions, but it sees no alternative to the exercise of the supervisory powers of the High Contracting Parties under article 1 of the Fourth Geneva Convention. Israel's objection that article 1 does not oblige a High Contracting Party to "ensure" respect for the Convention on the part of other States parties runs counter to the views of the ICRC and to the general obligation on the part of States to ensure respect for humanitarian law.

43. Even if the conflict is categorized as an armed conflict, entitling the IDF to greater latitude in the exercise of its powers, the IDF is certainly not freed from all restraints under international humanitarian law and human rights law. It is still obliged to observe the principle of distinction requiring that civilians may not be made the object of attack, "unless and for such time as they take a direct part in hostilities" (a principle reaffirmed in article 51 (3) of Additional Protocol I to the Geneva Conventions). Stone throwing by youths at heavily protected military posts hardly seems to involve participation in hostilities. Moreover, there is considerable evidence of indiscriminate firing at civilians in the proximity of demonstrations and elsewhere. In addition, the IDF is subject to the principle of proportionality which requires that injury to non-combatants or damage to civilian objects may not be disproportionate to the military advantages derived from an operation. The use of lethal weapons against demonstrators and the widespread destruction of homes and property along settlement roads cannot, in the opinion of the Commission, be seen as proportionate in the circumstances. Human rights norms also provide a yardstick for measuring conduct in the OPT, as there is general agreement that such norms are to be applied in the case of prolonged occupation. The 1979 Code of Conduct for Law Enforcement Officials and the 1990 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials reflect the human rights norms applicable in the case of law enforcement and crowd control. It is against this background that allegations of human rights violations and violations of international humanitarian law will be considered in the following section.

## V. EXCESSIVE USE OF FORCE

44. Casualties have been high in the present intifada. According to conservative estimates, as at 21 February 2001, 311 Palestinians (civilians and security forces) have been killed by Israeli security forces and civilians in the OPT; 47 Israelis (civilians and security forces) have been killed by Palestinian civilians and security forces; 11,575 Palestinians and 466 Israelis have been injured; 84 Palestinian children under the age of 17 years have been killed and some 5,000 injured; 1 Israeli child has been killed and 15 injured; 271 Palestinian civilians and 40 members of the security forces have been killed; while 27 Israeli civilians and 20 members of the security forces have been killed.

45. Most of the Palestinian deaths and injuries have been caused by live ammunition (deaths: 93 per cent; injuries: 20 per cent), rubber-coated bullets (deaths: 1 per cent; injuries: 37 per cent), and tear gas (deaths: 1 per cent; injuries: 32 per cent). Most of these deaths and injuries have occurred in confrontations/demonstrations held on the perimeters of A areas, roads to settlements or junctions on the road to settlements. There is no evidence that members of the IDF responsible for such killings or the infliction of such injuries were killed or seriously injured. On the contrary, the evidence suggests that members of the IDF, behind concrete

bunkers, were in most cases not exposed to life-threatening attacks by stone - or Molotov-cocktail throwers, or even by sporadic gunfire from gunmen in or around the demonstrations. This assessment is vigorously disputed by the IDF, which maintains that rubber-coated bullets and live ammunition have only been used in life-threatening situations.<sup>1</sup> However, statistics, reflected in the number of Palestinian deaths at demonstrations and the absence of IDF deaths or serious injuries at such confrontations, the evidence of eyewitnesses who testified before the Commission and the reports of NGOs and international bodies place the IDF assessment in serious question. It is difficult to resist the conclusion that most of these demonstrations could have been dealt with by methods normally used to suppress violent demonstrations, such as water cannons, tear gas and soft rubber bullets (of the kind used in Northern Ireland). Also, it is unclear why the IDF has not used riot shields to protect itself against stone-throwers. By and large the evidence suggests that the IDF is either not trained or equipped to deal adequately with violent demonstrations (despite its long experience in coping with such demonstrations) or that it has deliberately chosen not to employ such methods. For this reason the Commission shares the view expressed by many NGOs that the IDF is to be censured for failing to comply with the methods for law enforcement laid down in the law enforcement codes of 1979 and 1990 referred to above. The Commission likewise shares the concerns of NGOs about the failure of the IDF to comply with its own open-fire regulations relating to the use of live ammunition in situations of this kind.

46. Even if the above assessment is incorrect and the confrontations in question were manifestations of an armed conflict between the IDF and an organized Palestinian force, the Commission is of the view that the response of the IDF fails to meet the requirement of proportionality and shows a serious disregard for civilians in the proximity of the demonstrations.

47. The Commission received disturbing evidence about both the rubber-coated bullets and the live ammunition employed by the IDF. The former are, apparently, designed to target particular individuals and not to disperse crowds. Moreover, it is misleading to refer to them as "rubber bullets" as they are metal bullets with a thin rubber coating. The live ammunition employed includes high-velocity bullets which splinter on impact and cause the maximum harm. Equally disturbing is the evidence that many of the deaths and injuries inflicted were the result of head wounds and wounds to the upper body, which suggests an intention to cause serious bodily injury rather than to restrain demonstrations/confrontations.

48. International law obliges the military to be particularly careful in its treatment of children. Of the Palestinians killed, 27 per cent have been children below the age of 18 years and approximately 50 per cent of those injured have been below the age of 18 years. These children have been armed with stones or, in some cases, Molotov cocktails. The Israeli position is that the participation of children in demonstrations against the IDF has been organized, encouraged and orchestrated by the Palestinian Authority after thorough indoctrination against Israelis. While the Commission is prepared to accept that some children are likely to have been exposed to anti-Israeli propaganda in school or special training camps, it cannot disregard the fact that demonstrations are substantially the result of the humiliation and frustration felt by children and their families from years of occupation. The Commission heard evidence from parents and NGOs about the unsuccessful attempts of many parents to prevent their children participating in demonstrations and the grief caused them by the death and suffering of their

children. In this respect, Palestinian parents are no different from Israeli parents. It is likely that the Palestinian Authority could have done more to restrain children from participation in stone-throwing demonstrations. The evidence suggests that, on occasion, the Palestinian police made attempts to prevent demonstrations, but these attempts were often unsuccessful. This can be ascribed to the incompetence of the Palestinian police, the fact that the Palestinian police were themselves targeted by stone-throwers when they attempted to curtail demonstrations, and an understandable identification of the Palestinian police with the goals and spirit of the demonstrators. History is replete with instances of cases in which young people, prompted by idealism, despair, humiliation and the desire for excitement, have participated in demonstrations that have confronted an oppressive regime. In recent times children have behaved in a similar way in Northern Ireland, South Africa, Indonesia and elsewhere. The insistence of the IDF that the Palestinian demonstrators, humiliated by years of military occupation which has become part of their culture and upbringing, have been organized and orchestrated by the Palestinian Authority either shows an ignorance of history or cynical disregard for the overwhelming weight of the evidence.

49. The excessive use of force on the part of the IDF and the failure to comply with international humanitarian law is further demonstrated by the failure of the IDF to respect the vehicles of the Red Crescent and other medical vehicles. Statistics show that vehicles of the Red Crescent have been attacked on 101 occasions. The IDF has also prevented ambulances and private vehicles from travelling to hospitals. In this respect, it should be stressed that the Palestinians have likewise shown a lack of respect for medical vehicles and there have been 57 incidents in which Palestinians have attacked personnel and vehicles of the Magen David Adom.

50. In the present intifada, the IDF apparently on grounds of military necessity, has destroyed homes and laid to waste a significant amount of agricultural land, especially in Gaza, which is already land starved. Statistics show that 94 homes have been demolished and 7,024 dunums of agricultural land bulldozed in Gaza. Damage to private houses is put at US\$ 9.5 million and damage to agricultural land at about US\$ 27 million. Most of this action has occurred on roads leading to settlements, ostensibly in the interest of the protection of settlement vehicles. The Commission inspected some of the devastation caused by the IDF along settlement roads. On the Kusufim road, in the Qarara district, it inspected land that had been bulldozed for a distance of some 700 metres from the road. Houses situated on this land had been destroyed and families compelled to live in tents. Water wells in the vicinity had also been completely destroyed. The Commission found it difficult to believe that such destruction, generally carried out in the middle of the night and without advance warning, was justified on grounds of military necessity. To the Commission it seemed that such destruction of property had been carried out in an intimidatory manner unrelated to security, disrespectful of civilian well-being and going well beyond the needs of military necessity. The evidence suggests that destruction of property and demolition of houses have been replicated elsewhere in the West Bank and Gaza. Palestinians, like other people, are deeply attached to their homes and agricultural land. The demolition of homes and the destruction of olive and citrus trees, nurtured by farmers over many years, has caused untold human suffering to persons unconnected with the present violence. Even if a low-intensity armed conflict exists in the West Bank and Gaza, it seems evident to us that such measures are disproportionate, in the sense that the damage to civilian property outweighs military gain.

Here it should be stressed that the Fourth Geneva Convention prohibits the destruction of private property by the occupying Power "except where such destruction is rendered absolutely necessary by military operations" (art. 53).

51. The Commission concludes that the IDF has engaged in the excessive use of force at the expense of life and property in Palestine. At the same time the Commission wishes to express its horror at the lynchings of Israeli military reservists in Ramallah on 12 October 2000, the killing of Israelis at a bus stop in Tel Aviv by a Palestinian bus driver on 14 February 2001 and similar incidents that have done much to inflame Israeli public opinion against the Palestinian uprising.

52. There is no evidence that the IDF has taken serious steps to investigate the killing or wounding of Palestinians, except in a handful of cases, even where the circumstances strongly suggest that soldiers had behaved in an undisciplined or illegal manner. The excuse that no investigations are required on account of the characterization of the conflict as armed conflict is not convincing and shows a disregard for the provision of the Fourth Geneva Convention which requires the occupying Power to prosecute those guilty of committing grave breaches and other infractions of the Convention (art. 146). Equally unconvincing are the reasons given by the Palestinian Authority for its failure to investigate and prosecute the killings of Israelis, particularly those responsible for the Ramallah lynchings.

## VI. EXTRAJUDICIAL EXECUTIONS/POLITICAL ASSASSINATIONS

53. Extrajudicial executions or targeted political assassinations carried out by the IDF have resulted in only a small number of deaths and cannot compare in magnitude with the more widespread suffering caused to the Palestinian population. The Commission has, however, decided to pay special attention to these killings, because they have been officially acknowledged, promoted and condoned.

54. Israel has long been accused of being responsible for the assassination of targeted Palestinian individuals, but it is only during the second intifada that such a practice has been officially acknowledged and defended at the highest levels of the Government of Israel. In early January 2001, the Israeli Deputy Minister of Defence, Ephraim Sneh, justified the policy in the following language: "I can tell you unequivocally what the policy is. If anyone has committed or is planning to carry out terrorist attacks, he has to be hit ... It is effective, precise and just." At a meeting of the Foreign Affairs and Defence Committee, Prime Minister Ehud Barak put the claim more broadly: "If people are shooting at us and killing us, our only choice is to strike back. A country under terrorist threat must fight back." And more directly, while visiting a military command on the West Bank, Mr. Barak was quoted as saying, "The IDF is free to take action against those who seek to harm us".

55. There is further official confirmation of the Israeli claim of right with respect to extrajudicial killings. When the IDF West Bank military commander, Brigadier-General Beni Gantz, was asked whether Israel was pursuing a "liquidation" policy with respect to the Palestinians, he responded as follows: "You said liquidation, not me. We will initiate action as necessary. We will not stop such action as long as there is a threat." Israel's Chief of Staff, Shaul Mofaz, invoked the legal opinion issued by the Military Advocate-General, Menachem Finkelstein, that it was permissible in exceptional cases to kill Palestinian terrorists,

expressed in the following guarded language: "This is not routine, but an exceptional method whose goal is to save human lives in the absence of any other alternative ... It is used against people [who have] definitely [been] identified as having worked, and are working, to commit attacks against Israel." It should be noted that the Military Advocate-General uses more circumscribed language than do the political and military leaders, but his guidelines are self-applied, depending upon the accuracy of Israeli intelligence and upon good faith in limiting such tactics to circumstances of an exceptional character.

56. One prominent instance of a political assassination involved the sniper shooting of Dr. Thabat Ahmad Thabat in Tulkarem, West Bank, as he was driving his car from his house in the morning of 9 December 2000. Dr. Thabat, a dentist, 50 years of age, father of three, held official positions in the Palestinian Health Ministry and was a lecturer on public health at Al Quds Open University. He was the Fatah secretary in Tulkarem and was in regular contact with Israeli NGOs working in the area of health and human rights. Several Israeli witnesses appearing before the Commission expressed dismay about the killing of Dr. Thabat, describing him as their "friend" and "partner" in the search for peace. Such expressions do not preclude the possibility that Dr. Thabat may have had a double identity, but Israel has produced no evidence of his complicity in violence against Israeli targets, beyond the vague allegation of his involvement in "terrorist activities". Press reports indicated that Israeli Special Forces undertook this action against Dr. Thabat as part of a military operation that consisted of "cleansing" Fatah security capacities in view of the demonstrations inside the Palestinian territories, and specifically at Tulkarem. Ms. Siham Thabat, the widow of Dr. Thabat, submitted a petition to the Supreme Court of Israel asking for an end to Israel's "cleansing policy", described as imposing "capital punishment without trial". The petition was dismissed. As far as is known, the prosecution submitted no further evidence specifically implicating Dr. Thabat.

57. While the Commission was present in the Palestinian territories, another prominent instance of extrajudicial killing occurred. It involved the use of a Cobra helicopter gunship to attack Massoud Iyyad with three rockets on 14 February 2001 while he was driving his car in Gaza near the Jabalya refugee camp. Mr. Iyyad was a lieutenant colonel and high-ranking member of Force 17, an elite security unit specifically assigned the task of protecting Yasser Arafat. Israeli security forces claimed credit for the assassination, contending that Mr. Iyyad was a leader of a Hezbollah cell in Gaza that was intending to transform the second intifada into a Lebanon-style war of attrition of the sort successfully waged by Hezbollah in the 1990s. Aside from the legality of such tactics, the allegations were never substantiated by the release of documentary or other evidence.

58. Such extrajudicial executions during the second intifada number at least 11, but the figure is probably much higher. Palestinian and independent sources put the figure at somewhere between 25 and 35. On at least one occasion, the killing of Hussein Ábayat on 9 November 2000 by anti-tank missiles fired at his car from helicopters, two women bystanders were also killed and three other Palestinians were seriously injured.

59. In a disturbing escalation of language associated with such violence, a designated spokesperson of the settler movement, Yehoshua Mor-Yosef, has been quoted as saying "Arafat is an enemy, he was never a partner. After seven years of war and him sending his own people to kill, we need to assassinate him". (International Herald Tribune, 27 February 2001, p. 8).



60. There have been several important political condemnations of extrajudicial killings. The Government of the United States has expressed a critical attitude towards extrajudicial killing in a detailed exposition of the practice contained in the "Occupied Territories" section of the Country Reports on Human Rights Practices-2000 issued by the Department of State. On behalf of the European Union, its Presidency issued a declaration on extrajudicial killings, calling them "unacceptable and contrary to the rule of law", and urging Israel "to cease this practice and thus respect international law". (Brussels, 13 February 2001, 5928/01 (Presse 47)). This declaration was formally submitted by the Council of the European Union to the Secretary-General of the United Nations with a request that it be circulated as a document of the General Assembly.

61. It is the view of the Commission that, whatever the truth of various allegations directed against specific individuals, the practice of political assassination is a fundamental violation of international human rights standards, as well as a grave breach of the Fourth Geneva Convention. Several human rights instruments, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, affirm the right to life and specifically prohibit executions of civilians without trial and a fair judicial process.

62. Because the law of occupation also applies, provisions of this *lex specialis* take precedence over human rights. (For clarification of this conclusion, see the discussion on the legal status of the conflict in section IV above.) Thus, whether a particular loss of life is to be considered an arbitrary loss of life contrary to article 6 of the International Covenant on Civil and Political Rights can only be decided by reference to the law of occupation in the Fourth Geneva Convention. Article 4 of the Fourth Geneva Convention defines persons protected by the Convention as "those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals". The phrase "in the hands of" simply means that the person is on territory that is under the control of the State in question and implies control that is more than mere physical control. Civilians lose the protection under the Fourth Geneva Convention when they become combatants by taking a direct part in hostilities (art. 51 (3) of Additional Protocol I). Israel contends that the victims of targeted political assassinations were combatants. This is unconvincing for two related reasons: they were not participating in the hostilities at the time they were killed; and no evidence was provided by Israel to back up its contention of a combat role despite their civilian appearance.

63. There is no legal foundation for killing protected persons on the basis of suspicion or even on the basis of evidence of their supposedly menacing activities or possible future undertakings. On the contrary, article 27 of the Fourth Geneva Convention provides for the respect of protected persons, article 32 explicitly prohibits their killing under such conditions, and article 68 places restrictions on the application of the death penalty and, in any event, requires a prior judicial trial.

64. As the evidence indicates, Dr. Thabat and several others who were targets of political assassinations could have been arrested when, as was the case in this instance, he made almost daily trips to points under Israeli security control. The Commission concludes that the practice of targeted political assassination, which is fully acknowledged by the Government of Israel at its highest levels, violates a number of provisions of the Fourth Geneva Convention. It also

represents a grave breach of the Convention, which in article 147 refers to “wilful killing” in this connection. Further, article 146 calls upon High Contracting Parties to enforce this prohibition in relation to those responsible for its violation.

## VII. SETTLEMENTS

65. Jewish settlements in the West Bank (including East Jerusalem) and Gaza feature prominently in the present conflict between Israel and the Palestinian people. This report focuses on the implications of the settlements for human rights and international humanitarian law during the second intifada.

66. Israel argues that the issue of Jewish settlements is a political one to be resolved in negotiations between Israel and the Palestinians over the political future of the OPT. Palestinians, on the other hand, see the settlement issue as a major impediment to the peace process and a question governed by international law. They argue that settlements are unlawful as they violate article 49 (6) of the Fourth Geneva Convention, which prohibits an occupying Power from transferring parts of its own civilian population into the territory it occupies. The international community has given its overwhelming support to the Palestinian position. Repeated resolutions of both the Security Council and the General Assembly condemn Jewish settlements in the West Bank and Gaza as a violation of the Fourth Geneva Convention. The same attitude is adopted by the International Committee of the Red Cross.

67. The Commission is itself of the opinion that Jewish settlements in the West Bank and Gaza violate article 49 (6) of the Fourth Geneva Convention and place a serious obstacle in the way of durable peace.

68. Since 1967, Israel has been responsible for establishing, financing and protecting Jewish settlements in the West Bank and Gaza. Initially this programme of creeping annexation pursued by means of the requisitioning and occupation of Palestinian land was justified by Israel on security grounds. This pretext has long been abandoned. Indeed, Yitshak Rabin, while he was Prime Minister and Minister of Defence, acknowledged that most of the settlements added nothing to security and in fact were a burden on the army. Most settlements are today inhabited by civilian settlers motivated either by the ideology of Zionist expansion or by the comforts of a suburban way of life, subsidized by the Government of Israel. From the perspective of the Government, settlements create factual situations on the ground that serve to establish political control over the occupied Palestinian territories.

69. Today there are some 190 settlements in the West Bank and Gaza, inhabited by approximately 380,000 settlers, of whom some 180,000 live in the East Jerusalem area. Settlements have expanded considerably since the start of the Oslo peace process and accelerated under the Prime Ministership of Mr. Barak. Settlements have continued to expand since the start of the second intifada. The map in annex III gives an indication of the extent to which settlements are scattered throughout the territories, and the population of the different settlements. Settlements differ considerably in size and location. Some number over 10,000 inhabitants, while others have less than 100 inhabitants. Some are situated at a considerable distance from Palestinian towns, whereas others are situated within a Palestinian city, as, most prominently, in the case of the Jewish settlement in Hebron, or on the doorstep of a

Palestinian village or refugee camp. The settlement of Neve Dekalim, for instance, is situated adjacent to the crowded refugee camp of Khan Yunis. It was here that the Commission came under gunfire from the IDF.

70. In Gaza, settlement roads run through Palestinian territory and cross roads used by Palestinians, causing great traffic congestion for Palestinians whose vehicles are required to halt every time a settler or military vehicle approaches a crossroad. In the West Bank, on the other hand, Israel has built a vast road system, running for some 400 km, which bypasses Palestinian population centres and enables settlers and military forces protecting them to move speedily and safely through the West Bank. To achieve this, 160,000 dunums of land were requisitioned, much of it under cultivation by Palestinian farmers. Moreover, in some instances, Palestinian homes were demolished without compensation for the purpose of constructing this network of bypass roads. These roads prevent the expansion of Palestinian villages and undermine the economic development of Palestinians by restricting Palestinian movement and impeding the flow of commerce and workers from one Palestinian area to another. The scale of the investment in this road network raises troubling questions about Israel's long-term intentions for the West Bank.

71. The relationship between settlers and Palestinians is an unhappy one and each side views the other with hostility, anger and suspicion. Protected by the Israeli military, and exempt from the jurisdiction of the courts of the Palestinian Authority, settlers have committed numerous acts of violence against the Palestinians and destroyed Palestinian agricultural land and property. Israeli justice has often either turned a blind eye to such acts or treated them with leniency bordering on exoneration. Inevitably, this has fuelled the resentment of Palestinians, who regard Israeli justice as biased in favour of settlers. Since the beginning of the intifada on 29 September 2000, incidents of settler violence have dramatically increased. Palestinian hostility to settlers has grown alarmingly since the start of this intifada and most of the Israelis killed in the present conflict have been settlers or soldiers charged with the task of protecting settlements and roads leading to settlements.

72. Settlements are a major obstacle in the way of peace between Israelis and Palestinians. First, they virtually foreclose the possibility of a viable Palestinian State as they, together with the road system connecting them, destroy the territorial integrity of Palestine. In this sense, they act as a major impediment to the exercise of the right to self-determination within the internationally recognized self-determination unit of Palestine, i.e. the territory occupied by Israel after the 1967 war. Secondly, settlements provide daily evidence of the violation of international law and the failure of the international community, acting through the United Nations and the High Contracting Parties to the Geneva Conventions, to remedy such a situation. The despair and cynicism in the Palestinian community about the willingness of the international community to enforce the rule of law is in large measure due to its failure to halt the growth of the settler population and to persuade the Government of Israel to reverse this practice.

73. The link between settlements and violence in the present intifada is clear. Many of the acts of violence carried out by the IDF and settlers that have resulted in Palestinian deaths and injuries have occurred on the heavily defended roads leading to settlements or in the proximity of settlements. Settlements provide a visible and proximate target for the anger fuelled by years of

Israeli occupation. The IDF convoys and bases in the proximity of settlements aimed at the protection of such settlements have been the focal point of Palestinian demonstrations, violence and sharpshooting. Likewise, much of the Palestinian property bulldozed by the IDF has been destroyed not in the interests of military security, but the security of settlers. Homes, fruit and olive trees and crops have been destroyed by the IDF in order to make settlers feel more secure and to facilitate their access to their settlements by means of protected roads.

74. Settlers, too, have suffered from their proximity to the Palestinian people. As the most visible symbols of occupation, they are obvious targets for Palestinian gunmen.

75. Without settlements or settlers, there can be no doubt that the number of deaths and injuries in the present intifada would have been but a small fraction of their current number and, quite possibly, the present intifada might not have occurred. Both Israelis and Palestinians are therefore paying a high price in terms of life, bodily integrity and property for a programme that violates a cardinal principle of international humanitarian law.

76. Settlements act as a perpetual reminder to the Palestinian people of the humiliation of military occupation. This sense of humiliation is aggravated by the apparently comfortable way of life of the settlers, whose standard of living contrasts sharply with the poverty of their Palestinian neighbours. Refugees in crowded camps, with poor sanitation and limited water resources, inevitably view with envy and anger settlements with swimming pools and well-watered lawns.

77. Palestinian witnesses before the Commission, from all sections of the community, despite being of different political persuasions and from different income groups, spoke with equal anger and resentment about the presence of settlements and settlers in their territory. Many claimed settlements were a prime cause of the present intifada, a view shared by international organizations working in the West Bank and Gaza.

78. The Commission reaffirms that settlements in the West Bank and Gaza constitute a major violation of international humanitarian law and identify the presence of settlements and settlers as a primary cause of many violations of human rights in the OPT.

#### **VIII. DEPRIVATION OF THE ENJOYMENT OF ECONOMIC AND SOCIAL RIGHTS: EFFECTS OF CLOSURES, CURFEWS, RESTRICTIONS ON MOVEMENT AND DESTRUCTION OF PROPERTY**

##### **Introductory note**

79. It needs to be kept in mind that the Palestinian population in the occupied territories is, even under normal conditions, very poor, particularly the 50 per cent of the Palestinians living in refugee camps. To impose additional burdens on such a population is inevitably to create patterns of severe material, social and psychological hardships. These hardships entail denials of basic human needs, as protected by international human rights standards, which raises important issues of international law. To claim a security justification for policies that inflict such pronounced harm imposes a heavy burden of persuasion on the claimant, in this case the Government of Israel. The internal closures seem to have a mainly punitive character quite

unrelated to security and are more likely to have the opposite effect of inflaming Palestinian resistance. Even external closures, especially for the import of building materials and the export of agricultural products, would seem to be unrelated to the maintenance of security. The condensed presentation of the effects of closure and related policies in this section of the report must be read with such considerations in mind.

### **Restrictions on movement**

80. Since 29 September 2000, Israel has imposed severe restrictions on freedom of movement in the occupied territories. During the 123-day period from 1 October 2000 to 31 January 2001, the Israeli-Palestinian border was closed for labour and trade flows for 93 days, or 75.6 per cent of the time. Internal movement restrictions and internal closures - partial or severe - were in place for 100 per cent of the time in the West Bank and for 89 per cent of the time in Gaza. The Dahania Airport in the Gaza Strip, the only Palestinian airport, was closed for over half of this period. During this 123-day period, the international border crossings to Jordan from the West Bank and to Egypt from Gaza were closed for more than 20 per cent and 40 per cent of the time, respectively. The safe passage connecting the Gaza Strip and the West Bank was closed from 6 October, greatly obstructing travel for Palestinians and diminishing the governmental effectiveness of the PA.

81. The cumulative effect of these restrictions on the freedom of movement of people and goods is understandably perceived by the Palestinians affected as a siege. It has resulted in severe socio-economic hardships in the Palestinian territory. The internal closures have effectively sealed Palestinian population centres and restricted movement from one locality to another. The restriction on the entry of Palestinians into Israel has meant denial of access to their places of work in Israel to an estimated 100,000 Palestinians. The economic results have been devastating: the families of these workers are now suffering from a complete lack of income, threatening them with destitution. The World Bank's projection that the impact of closure will raise unemployment to 50 per cent and the poverty rate to 43.7 per cent in 2001 has almost been realized.

### **Internal closure**

82. The internal closure has disrupted life within the territories. Workers are unable to reach their places of work. Produce from farms cannot reach markets. Shops and commercial offices are unable to open. From 8 October, numerous limitations were placed on passage between the north and the south of the Gaza Strip and movement between Gaza City and the cities of Khan Yunis and Rafah was prevented almost entirely. Movement within the West Bank has become nearly impossible. Hundreds of IDF checkpoints have been erected throughout the West Bank and entry to and exit from cities requires passing through them. The IDF has placed checkpoints at the entrances to all villages and entry and exit are possible only via dirt roads, entailing enormous hardships. Trips that once took 15 minutes now take several hours. In some of the villages, mostly in areas near settlements and bypass roads, the dirt roads have also been blocked with large concrete blocks and piles of dirt, and residents are imprisoned in their villages. The Commission itself observed such IDF checkpoints and concrete blocks and piles of dirt obstructing access.

### **External closure**

83. The closure of the international border crossings with Jordan and Egypt, as well as the restrictions on movement of goods from Israel to the territories, has had a direct negative effect on all sectors of the economy. The near total interruption of the supply of basic construction materials has closed factories and plants dependent on these materials for their production activities. The construction and building sector in the Palestinian territories has been practically suspended owing to imports of basic construction materials such as cement, steel and timber being denied entry by the IDF through their control of border checkpoints. This, in turn, has resulted in the unemployment of tens of thousands of workers and employees in the construction and building sector. The overall disruption of the economy and unemployment, together with mobility restrictions and border closures, have resulted in an average unemployment rate of 38 per cent (more than 250,000 persons) as compared to 11 per cent (71,000 persons) in the first nine months of 2000. According to one estimate, unemployment now directly affects the income of about 910,000 people or 30 per cent of the population.

### **Curfews**

84. Curfews have been imposed in certain areas of the occupied territories, which in effect imprisons an entire population in their homes. For example, Palestinians in the H2 area of Hebron have been under curfew almost continuously since October 2000. The curfews appear to be imposed for the convenience of settlers in the area as they do not apply to settlers. The character and timing of Israel's restrictions on the freedom of movement challenge the contention that these restrictions are dictated purely by security considerations: Israel has imposed a sweeping closure, curfew and siege on millions of people, rather than on individuals who pose a security threat. In addition, the policy of restrictions of movement discriminates between the two populations living in the occupied territories, namely Palestinians and non-Palestinians, since the restrictions are imposed exclusively on the Palestinian population. In many cases, the explicit aim of the restrictions is to ensure freedom of movement for the settler population at the expense of the local population.

### **Negative economic impacts**

85. In the absence of border closures, per capita income was projected to be about US\$ 2,000 in the Palestinian territories in the year 2000. As a result of border closures and internal movement restrictions, this is estimated to be reduced to US\$ 1,680, a decline of 16 per cent. The gravity of this negative impact is measured, however, by the disproportionately high impact on people living below the poverty line (estimated by the World Bank at US\$ 2.10 per person per day in consumption expenditures). The number of poor is estimated to have increased from about 650,000 persons to 1 million persons, an increase of over 50 per cent. Given the continuing closures and restrictions of movement of people and goods and the resultant unemployment and total deprivation of income to increasing numbers of the population, poverty and near destitution are mounting. Humanitarian assistance has dramatically increased.

### **Economic losses**

86. The direct economic losses arising from movement restrictions are estimated at 50 per cent of gross domestic product (GDP) for the four-month period of the second intifada and 75 per cent of wage income earned by Palestinian workers in Israel. The GDP loss is estimated at US\$ 907.3 million, while the loss of labour income from employment in Israel is estimated at US\$ 243.4 million. The total loss is estimated at US\$ 1,150.7 million. The loss is about US\$ 11 million per working day or US\$ 3 per person per working day during the period 1 October 2000-31 January 2001. Significant decreases in earnings in the transportation sector have been reported as a result of the internal siege. The tourism sector has also reported significant decline.

### **Public sector revenue losses: revenue losses and increased social spending**

87. There have been significant losses to the public sector in the form of lost revenues. Domestic income and value added tax (VAT) revenues have been reduced as a result of lower levels of domestic income caused by disruptions in production and reduced labour flows into Israel. External revenues, mainly customs and VAT revenues associated with imports from Israel and abroad, have been reduced by lower commodity flows caused by movement restrictions and reduced consumer demand. In 1999, 63 per cent of all Palestinian Authority revenues were in the form of transfers of receipts collected by the authorities under the terms of the Paris Protocol on Economic Relations of 1994. VAT, customs, income tax, health fees and other taxes collected by Israel on behalf of the PA are estimated at US\$ 53 million monthly. These revenues have been withheld from the PA since October 2000. As a result of the eroded revenue base, the PA has been unable to pay salaries to its employees.

### **Destruction of property**

88. There has been continued destruction of property, in particular in the vicinity of settlements or bypass and access roads to settlements, allegedly on grounds of military necessity or security considerations. On 7 October 2000, Israeli tanks and bulldozers invaded the Netzarim Junction and destroyed two residential buildings comprising 32 apartments near the Israeli military outpost. On 8 October, the IDF destroyed an iron-processing factory in the Netzarim area, while in the same area bulldozers swept the agricultural land on the south-eastern and south-western sides of the junction. On 16 October, bulldozers swept land to the north of Neve Dekalim settlement. On 19 October, the IDF swept land leading to the Gush Katif settlement bloc. The Commission visited this area and observed the destruction of the farms, the sweeping of the land and the destruction of citrus and olive trees. This process of destruction of farms, cutting down of fruit trees and demolition of greenhouses planted with vegetables continues. The Commission received evidence from victims whose homes and greenhouses had been destroyed, citrus and olive trees uprooted and farmlands swept by bulldozers.

89. According to one estimate, the Israeli authorities demolished 223 Palestinian-owned buildings during 2000: 68 in the West Bank (including East Jerusalem) and 155 in the Gaza Strip.

### **Effect of closures and movement restrictions on health care**

90. The Commission received evidence of the restrictions obstructing access by the sick and the wounded as well as pregnant women to hospitals. There have also been instances where the prolonged closure of outside borders, including the airport in Gaza, impeded the transfer of wounded Palestinians to other countries for treatment. An example of the effect of denial of access to hospitals is provided by statistical data from St. Luke's Hospital in Nablus, which reported a 38 per cent decline in the admission rate, a 29 per cent decline in the occupancy rate, a 53 per cent decline in the number of surgical operations performed, a 20 per cent decline in the number of babies delivered, a 48 per cent decline in the number of patients in the intensive care unit, a 49 per cent decline in the number of general practice patients, a 73 per cent decline in the number of visits to specialty services and a 30 per cent decline in the number of physiotherapy cases in the period October-November 2000 as compared to the same period in 1999.

### **Effect of closures and movement restrictions on education**

91. Since the beginning of October 2000, more than 40 schools are reported to have been closed or unable to operate owing to curfews or closures. In the centre of Hebron, 34 schools have been closed, resulting in unemployment for more than 460 teachers, and 13,000 students were reported to be without educational facilities. Four Palestinian schools in Hebron have been closed by the IDF and turned into military bases: the M'aref School, Usama bin Munkez School, the Johar School and the Al Ukhwa School. Several thousand children are reported also to have had to be permanently moved from school premises as a result of damage to the school structure.

92. Schools near flashpoints - 173 in the West Bank and 23 in the Gaza Strip - were the worst hit. They were subjected to several kinds of assault, including bombing by the Israeli army and shooting by settlers.

### **Violations of internationally recognized human rights norms and international humanitarian law**

93. The measures of closure, curfew or destruction of property described above constitute violations of the Fourth Geneva Convention and human rights obligations binding upon Israel. Destruction of property is prohibited by article 53 of the Fourth Geneva Convention, unless such destruction is rendered absolutely necessary for military operations, which does not appear to be the case for much of the destruction carried out. Other obligations under the Fourth Geneva Convention affected by closures are those under articles 23, 55 and 56. These require the free passage of consignments of medical and hospital stores and the free passage of foodstuffs, clothing and medicines intended for certain vulnerable categories of persons and impose a duty to ensure food and medical supplies to the population and to ensure and maintain medical and hospital establishments and services and public health and hygiene in an occupied territory.

94. Human rights norms are also apposite in the context of the closures because, in the Interim Agreement, Israel and the Palestinian Council accepted that they should exercise their powers and responsibilities pursuant to that Agreement with due regard to internationally accepted norms and principles of human rights and the rule of law.<sup>2</sup> Human rights violated by



the closures include the right to work, internationally recognized in article 6 of the International Covenant on Economic, Social and Cultural Rights. The severe socio-economic hardships caused by the restrictions on movement constitute a violation of the right to an adequate standard of living recognized in article 11 of that Covenant. Destruction of houses that leaves the occupants homeless also violates this right, since it specifically includes the right to adequate housing. The closures and movement restrictions interfere with the right of everyone to education. Children and students are prevented from attending classes, despite the duty of States to make secondary and higher education accessible to all by every appropriate means. In addition, restrictions on movement are also placed on journalists. This affects their reporting of events and constitutes a violation of their freedom of expression and, indirectly, of the population's right to seek and receive information, recognized in article 19 of the Covenant. This right may be subjected to certain restrictions, but only in certain circumstances and not as a general rule. The Palestinian Authority has also restricted the freedom of movement of journalists.

95. Finally, attention is drawn to article 33 of the Fourth Geneva Convention, which prohibits collective punishment. Israel has invoked security considerations to justify closures and other measures described above. From the Commission's own observations, it would appear that while in some instances security considerations may justify temporary closures, the comprehensive and protracted closures, as well as the scale and nature of the destruction of property of Palestinian civilians, is best regarded as collective punishment.

#### **IX. PALESTINIAN REFUGEES AND THE SECOND INTIFADA**

96. The Commission seeks to draw attention to the distinctive vulnerability of Palestinian refugees as a special case of hardship during the course of the second intifada, particularly as a result of the Israeli policies of closure and blockade. It needs to be appreciated that, according to UNRWA figures for 2000, there are 1,407,621 registered Palestinian refugees living in the West Bank and Gaza, comprising over 50 per cent of the Palestinian population in these territories. That figure represents only 38 per cent of the total Palestinian refugee population, the remainder being spread out mainly in Jordan, Lebanon and the Syrian Arab Republic. There are two sets of issues relevant to our inquiry: first, the vulnerability of Palestinian refugees living in refugee camps on the West Bank and Gaza, and second, the so-called "right of return" issue.

97. There is, first of all, the anomalous status of Palestinian refugees due to their exclusion from the protective mechanisms and responsibility of UNHCR. No other refugee community in the world is so excluded. UNRWA was established in 1949 to address the specific concerns of Palestinian refugees and became operational in 1950. This special regime acknowledging the importance of the refugee dimension of the Israel-Palestine relationship was reinforced over the years by critical United Nations resolutions dealing with the conflict. UNRWA was given responsibility for humanitarian aspects of the international effort to alleviate the material suffering of Palestinian refugees, but it was not entrusted with any protective functions. These functions were assigned to a parallel entity called the United Nations Conciliation Commission for Palestine (UNCCP), which, ironically, was established in response to General Assembly resolution 194 (111) calling for the protection of Palestinian refugees. Unlike UNRWA, UNCCP has been incapable of carrying out its functions, encountering political and financial

obstacles from its inception. Although UNCCP continues to exist on paper, it lacks a budget and personnel, and is effectively defunct. Yet, this organizational structure continues to define the legal status of Palestinian refugees.

98. In accordance with the 1951 Convention relating to the Status of Refugees, protection is accorded to all refugees under the authority of UNHCR except for the Palestinians. They are excluded because of article 1D of the 1951 Refugee Convention, which provides:

“This convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.”

Despite the failure of UNCCP to supply the anticipated protection, Palestinian refugees remain in limbo and have never in the more than half a century of their existence been incorporated within the UNHCR regime.

99. Such a result is particularly disturbing as article 1D explicitly recognizes the possibility that alternative forms of protection may fail for one reason or another. The language of the second paragraph of 1D is clear beyond reasonable dispute on this matter:

“When such protection or assistance has ceased for any reason, without the persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall *ipso facto* be entitled to the benefits of this Convention.”

There is no discernible reason to refrain from implementing this inclusionary provision, which should have been implemented decades ago.

100. The issue is not trivial. For one thing, the Commission was repeatedly told by a variety of witnesses, supplemented by documentary materials, that the refugees in the camps in the occupied territories were enduring hardships that exceeded those being experienced by the general Palestinian population, and that UNWRA officials felt unable to raise questions of a protective nature, regarding them as outside their humanitarian mandate and of a “political” character.

101. These protective concerns are directly associated with the distinctive pressures exerted by Israeli responses to the second intifada. The refugee camps are often prominent flashpoints in relations with the IDF and the settlements, prompting retaliatory “security” measures, especially prolonged closures, including blockages of access roads. Refugees are trapped in these overcrowded camps, prevented from going to places of employment and often denied access to educational and medical facilities. The incidence of destitution resulting from the impact of the second intifada is significantly higher for refugees than for non-refugees, and is felt more keenly, as refugees lack land for subsistence agriculture or within which to move about. Our visits to several Palestinian refugee camps revealed to us the special sense of material and psychological hardship associated with the confinement and curfews of this period of intifada. Under such conditions, it is hardly surprising that much of the support for Palestinian militancy and armed struggle is generated within the refugee camps.

102. The second, wider question, which is associated with the right of return, concerns the future of refugees outside the territories as well as those within, and is mostly beyond the scope of the Commission's central mandate. Its relevance arises from the degree to which Israelis insist that accepting such a right would be an act of suicide on the part of Israel and that no State can be expected to destroy itself. Such an apocalyptic approach to the refugee issue obstructs overall moves towards a just peace.

103. In conclusion, the Palestinian refugees within the territories seem worse off than the Palestinian refugee diaspora in neighbouring countries. Further, the deterioration of their circumstances throughout the West Bank and Gaza has been accentuated by the heightened tensions and violence of recent months. These refugees require a variety of emergency protections that can only be provided by a concerted effort on an urgent basis at the international level. UNRWA, with its resources already strained and its operating conditions subject to interference, is not capable of providing the necessary protection.

## **X. CONCLUSIONS AND RECOMMENDATIONS**

104. The commission of inquiry has been deeply mindful of its responsibility to exercise every care to be objective and impartial in gathering information and evaluating the evidence upon which it would base its conclusions and recommendations with the aim of calling attention to violations of human rights and international humanitarian law since 29 September 2000, and encouraging future compliance with international obligations to the extent possible.

105. In making its recommendations, the Commission from the outset emphasizes the need to understand the context and circumstances in which violations of human rights and breaches of international humanitarian law have occurred and the situation which has given rise to an ascending spiral of violence since the end of September 2000, resulting in a serious deterioration of the human rights situation.

106. The historical context is one of conflict and successive wars (over 50 years), prolonged occupation (over 30 years) and a protracted peace process (over 7 years). The peoples affected continue to suffer from a legacy of distrust, humiliation and frustration, only occasionally relieved by glimmerings of hope, which has all but disappeared of late.

107. The most worrying aspect of the recent escalation of violence leading to the loss of lives, disabling injuries caused to thousands, and the destruction of property and livelihoods is that the hopes and expectations created by the peace process are for the moment being smothered by mutual perceptions ascribing the worst of motives to each other, thus generating intense distrust and negative and destructive emotions.

108. It is important to emphasize that both the Palestinian people and the people of Israel have a yearning for peace and security, and that a precondition for achieving a just and durable peace is for every effort to be made on all sides to ease tensions, calm passions and promote a culture of peace. This could be helped if the process through which negotiations for peace are pursued is transparent, so that both Palestinian and Israeli public opinion can be built up in support of the process and of its eventual outcome. In this way, the mutual confidence upon which a durable peace must rest could be nurtured.

109. The Commission was encouraged by the extent to which its own assessments of the main issues addressed in the report substantially coincided with the most trustworthy third party views, including those of diplomatic representatives of the European Union and senior international civil servants with years of experience in the region. Thus, an informed and impartial consensus reinforces the conclusions and recommendations set forth here.

110. It is with an understanding of the tragic history of the peoples involved, and its psychological legacy, that our recommendations, aimed at discouraging the persistence of recent violations of human rights, are set out in three parts. The first part seeks to address the root causes that need to be resolutely addressed and resolved. The second part lists safeguards and procedures that need to be observed while negotiations aimed at a comprehensive, just and durable peace are pursued in good faith. The third part presents a series of measures which can be taken immediately to deter further violence and to end the destruction of lives, property and livelihoods. The fourth part is more ambitious, recommending steps for establishing a climate conducive to the emergence over time of a just and durable peace for the peoples of Israel and Palestine.

### **1. Conditions for a just and durable peace**

111. A comprehensive, just and durable peace is to be sought through negotiations in good faith that would end the occupation and establish a dispensation that meets the legitimate expectations of the Palestinian people concerning the realization of their right to self-determination and the genuine security concerns of the people of Israel.

112. While noting that it is the Israeli position that occupation has in effect ended in much of the occupied territories following the agreements reached leading to the establishment of the Palestinian Authority, as well as the fact that the ultimate disposition of the settlements in those territories is a matter for negotiation between the parties, it needs to be recognized that, from the Palestinian perspective, so long as the settlements remain as a substantial presence in the occupied territories, and Israeli military forces are deployed to protect those settlements, no meaningful end to occupation can be said to have taken place.

### **2. Human rights and humanitarian law imperatives**

113. The framework for a final peaceful settlement and the process through which it is pursued should be guided at all stages by respect for human rights and humanitarian law and the full application of international human rights standards set out in the Universal Declaration of Human Rights and in applicable human rights instruments, in particular those relating to women, children and refugees.

114. An adequate and effective international presence needs to be established to monitor and regularly report on compliance by all parties with human rights and humanitarian law standards in order to ensure full protection of the human rights of the people of the occupied territories. Such an international mechanism should be established immediately and constituted in such a manner as to reflect a sense of urgency about protecting the human rights of the Palestinian people.

115. Protection needs to be accorded to the people of the occupied territories in strict compliance with the 1949 Geneva Convention Relative to the Protection of Civilians in Time of War (Fourth Geneva Convention). The High Contracting Parties, individually and collectively, need urgently to take appropriate and effective action to respond to an emergency situation calling for measures to alleviate the daily suffering of the Palestinian people flowing from the severe breaches of the Fourth Geneva Convention. Article One of the Convention places a duty on the High Contracting Parties "to respect and ensure respect" of the provisions of the Convention "in all circumstances". The Commission recalls that the Conference of the High Contracting Parties to the Fourth Geneva Convention, convened in Geneva on 15 July 1999, in its concluding statement reaffirmed the applicability of the Fourth Geneva Convention to the occupied Palestinian territory, including East Jerusalem, and reiterated the need for full respect for the provisions of the Convention in that Territory, and further recorded the following decision:

Taking into consideration the improved atmosphere in the Middle East as a whole, the Conference was adjourned on the understanding that it will convene again in the light of consultations on the development of the humanitarian situation in the field.

In view of the serious deterioration of the humanitarian situation in the Territory, the Commission recommends that the High Contracting Parties should act with urgency to reconvene the Conference. Such a Conference should establish an effective international mechanism for taking the urgent measures needed.

### **3. Urgent measures for the protection of human rights**

116. It seems incontestable that the Israeli Security Forces (i.e. the IDF and the Israeli Police Force) have used excessive and disproportionate force from the outset of the second intifada, whether their conduct is measured by the standards of international humanitarian law applicable to armed conflict, the codes of conduct applicable to policing in situations not amounting to armed conflict or by the open-fire regulations binding upon members of the Israeli Security Forces. In these circumstances there is an urgent need for the Israeli Security Forces to ensure that, even in life-threatening situations, great care is taken not to inflict injury on civilians not directly involved in hostile activities and not to cause disproportionate harm and injury. In non-life threatening situations, particularly demonstrations, the security forces should comply fully with the policing codes of 1979 and 1990, as well as their own open-fire regulations. Every effort should be made by the Government of Israel to ensure that its security forces observe these rules, that such rules are made effectively known to members of the security forces, that the rules are not arbitrarily and summarily altered and that it is made clear to the security forces that violations will result in meaningful disciplinary action being taken against them.

117. The Israeli Security Forces should not resort to the use of rubber-coated bullets and live ammunition, except as a last resort. Even in life-threatening situations minimum force should be used against civilians. The Israeli Security Forces should be amply equipped and trained in non-lethal means of response, particularly for dealing with violent demonstrations. Every effort should be made to use well-established methods of crowd control.

118. The use of force by the IDF in the exercise of its role of providing security to settlers is also subject to international humanitarian law standards, including the Fourth Geneva Convention, and cannot be used for pre-emptive shooting of unarmed civilians in areas near settlements or on access and bypass roads leading to settlements or for the destruction of Palestinian property, including the demolition of homes, the cutting down of trees and the destruction of farms, and appropriate instructions to that effect should be issued to all concerned.

119. Targeted shooting of individuals by the IDF or by settlers or by sharpshooters of either side amounts to extrajudicial execution, which is a gross violation of the right to life, constitutes a breach of international humanitarian law and would attract international criminal responsibility. Instructions should be urgently issued and disseminated by all the concerned authorities immediately to end such targeted killing.

120. Complaints regarding the use of lethal force or the excessive use of force which has caused death or serious injury should be investigated and persons found responsible should be held accountable and should not enjoy impunity.

121. Immediate and effective measures need to be taken to end closures, curfews and other restrictions on the movement of people and goods in the occupied territories so that the right to livelihood and normal economic activities are restored, as also the right of access to education and health.

122. Immediate and effective measures need to be taken to prevent the destruction of property in the occupied territories, including the demolition of houses, the cutting down of fruit and other trees, and the destruction of farms and standing crops by the use of bulldozers and other means.

123. Prohibitions and restrictions derogating from the rights of the Palestinian people, including economic and social rights, imposed by invoking security considerations must be specifically justified and are in all cases subject to compliance with international humanitarian law standards.

124. All concerned authorities must refrain from measures that amount to collective punishment. This would include withholding transfer to the Palestinian Authority of taxes and duties collected by the Government of Israel, the imposition of restrictions on movement, or violent acts of reprisal by either side.

125. Instructions need to be issued immediately by all concerned authorities to security forces strictly to refrain from using force against or impeding the provision of medical relief and treatment by those working for the Red Cross, the Red Crescent and Magen David Adom, and in hospitals, and to ensure protection to ambulances and hospitals. These instructions should require all concerned to ensure unimpeded access for the sick, the injured and pregnant women to hospitals.

126. Compensation should be provided to victims of unlawful use of force where this has caused death, disablement, destruction of property or economic loss.

127. All impediments to the flow of humanitarian assistance, now even more urgently needed, should be removed as a matter of urgency and every effort should be made to facilitate the work of the United Nations and other bodies involved in providing humanitarian assistance and medical relief.

128. The life and safety of children and their access to education and health care should be especially protected. Special instructions should be urgently issued prohibiting shooting at unarmed children and pointing out that such acts would engage international and national criminal responsibility. Every care should be taken to ensure that children are not involved in situations where they expose themselves to risk of becoming victims of acts of violence.

129. Steps should be taken to apply article 1D of the 1951 Convention relating to the Status of Refugees to ensure that a regime of protection under the authority of the United Nations High Commissioner for Refugees is extended to Palestinian refugees, especially those currently residing in West Bank and Gaza camps. These refugees have been particularly victimized during the second intifada, are not now protected by the application of the UNRWA framework and urgently require international protection on a priority basis.

130. A mutually acceptable comprehensive settlement must deal equitably with the issue of Palestinian refugees and their rightful claims, including those refugees living outside of the Palestinian Territories. Such arrangements should be negotiated in a manner that is sensitive to legitimate Israeli concerns.

131. All restrictions on access to places of worship and all holy sites should be removed and access to them by all faiths should be respected.

#### **4. Transforming the climate of hostility**

132. The Euro-Mediterranean Agreement between the European Communities and their Member States and the State of Israel declares in article 2 that their relationship is to be based on respect for human rights and democratic principles which guide their internal and international policy; this could provide the basis for an initiative by the former to play a more pro-active role in promoting acceptance and implementation of these recommendations and in supporting the holding of consultations and dialogue at all levels between the Palestinian people and the Israeli people.

133. To improve prospects for durable peace, especially given the fundamental gaps in perception that currently separate the two sides, it is strongly recommended that the Commission on Human Rights take concrete steps to facilitate dialogue between representative Israelis and Palestinians at all levels of social interaction, formally and informally. In this regard, the Commission on Human Rights is urged to convene a consultation between leaders of Israeli and Palestinian civil society on a people-to-people basis in Geneva at the earliest possible time. In a similar spirit, to engage Europe more directly in the realities of the crisis the Commission on Human Rights is urged to convene a round table of representatives of European civil society and government to discuss steps that can be taken to alleviate the suffering of the Palestinian people and to ensure greater respect on both sides for human rights standards and for international humanitarian law.

134. In view of the comprehensive denial of human rights and the continuing pattern of behaviour violative of international humanitarian law, this Commission recommends to the Commission on Human Rights that it establish a high profile periodic monitoring and reporting undertaking to consider the degree to which the recommendations of this report to the parties are being implemented.

#### Notes

<sup>1</sup> The resort to shooting by the Israeli police at Harem-al-Sharif/Temple Mount on 29 September 2000 that started the second intifada was, by reliable accounts, not a response to Palestinian gunfire. This raises a serious question about the insistence on the part of the Government of Israel that lethal weapons have only been used in response to Palestinian gunfire.

<sup>2</sup> Interim Agreement of 28 December 1995, article XIX. Without this Agreement, Israel would still be bound to ensure civil and political rights that are non-derogable to the population of the occupied territories. Article 1 of the International Covenant on Civil and Political Rights requires that it protect the rights of all individuals subject to its jurisdiction, that is individuals under its effective control. The International Covenant on Economic, Social and Cultural Rights does not refer to individuals under the State's jurisdiction, which makes its application to the population of the occupied territories more doubtful. Israel became a party to the two International Covenants in 1991.



**Annex I**

**EXTRACT FROM RESOLUTION S-5/1 ADOPTED BY THE  
FIFTH SPECIAL SESSION OF THE COMMISSION ON  
HUMAN RIGHTS ON 19 OCTOBER 2000**

6. Decides

(a) To establish, on an urgent basis, a human rights inquiry commission, whose membership should be based on the principles of independence and objectivity, to gather and compile information on violations of human rights and acts which constitute grave breaches of international humanitarian law by the Israeli occupying Power in the occupied Palestinian territories and to provide the Commission with its conclusions and recommendation, with the aim of preventing the repetition of the recent human rights violations.

**Annex II**

**HUMAN RIGHTS INQUIRY COMMISSION (HRIC)  
PROGRAMME OF VISIT TO THE OCCUPIED PALESTINIAN  
TERRITORIES AND ISRAEL**

**11-18 FEBRUARY 2001**

**Professor John Dugard, Dr. Kamal Hossain, Professor Richard Falk**

The Commissioners were accompanied throughout the mission by a Coordinator, a Security Adviser, three professional officers, an interpreter and two secretaries. Additional logistical support and interpretation assistance was provided by the local OHCHR offices, UNRWA and UNSCO. The Security Adviser was in the area continuously from 7 to 20 February.

**Saturday, 10 February (Gaza Strip)**

**2.45 p.m.** Arrival at Ben Gurion Airport, Tel Aviv  
Drive to Gaza City, Gaza Beach Hotel

**Palestinian Authority Headquarters**

**6-7 p.m.** Meeting with the President of the Palestine National Authority  
Mr. Yasser Arafat

**Gaza Beach Hotel**

**Sunday, 11 February (Gaza Strip)**

**Palestinian Authority**

**9.30-10.15 a.m.** Palestinian National Security - General Abdel-Raziq El-Majayda

**10.30-11.30 a.m.** Ministry of Planning and International Cooperation -  
Dr. Ali Sha'ath

**11.45 a.m.-12.45 p.m.** Ministry of Justice - Mr. Freih Abu Middain (Minister of Justice)

**1-2 p.m.** Lunch with Minister of Justice

**2.45-4 p.m.** Consultations at OHCHR Gaza office

**4.30-5.15 p.m.** Ministry of Social Affairs - Mr. Mahmoud M. Matair  
(General Director)

- 5.30-6.15 p.m. The Palestinian Red Crescent Society - Dr. Fathi Arafat  
(Former Director)
- 6.30-8.45 p.m. Ministry of Health - Dr. Riyad El-Zanoun (Minister of Health)

**Monday, 12 February (Gaza Strip)**

**Gaza Beach Hotel - Meetings with NGOs**

- 9-9.45 a.m. Palestinian Center for Human Rights - Raji Sourani (Director)
- 9.45-10.30 a.m. Al-Mezan Center For Human Rights - Issam Younis (Director)
- 10.30-11.15 a.m. Gaza Community Mental Health Programme - Dr. Eyad El Sarraj  
(Director)

**Palestinian Authority**

- 11.15 a.m.-12.30 p.m. Ministry of Housing - Abdel Rahman Hammad and  
Abde Kareen Abdeen  
(Professor Dugard)
- 11.30 a.m.-12 noon Palestinian Agricultural Relief Committees -  
Abed El Kareem Ashour  
(Professor Falk and Dr. Hossain)
- 12 noon-12.45 p.m. Palestinian Medical Relief Committees - Abdel Hadi Abu Khosa  
Union of Palestinian Medical Committees - Dr. Rabah Mohana  
National Palestinian Society for Handicapped - Mohammed Zein  
El-Dein  
(Professor Falk and Dr. Hossain)

**United Nations Special Coordinator's Office (UNSCO) Headquarters - Collective meeting  
with United Nations agencies**

- 1.15-2 p.m. UNSCO - Francis Okello (Deputy Special Coordinator)  
World Food Programme (WFP) - Mushtaq Qureshi  
UNICEF - Bertrand Bainzel  
World Health Organization (WHO) - Dr. Giuseppe Masala  
UNESCO - Veronique Dauge  
Office of the Coordinator for Humanitarian Affairs - Nick Harvey

**UNSCO Headquarters – Meetings with Palestinian resource persons**

- 3.15-3.50 p.m. Hayder Abdel-Shafi, Commissioner, Palestinian  
Independent Commission for Citizens' Rights

**3.55-4.30 p.m.** Ziad Abu Ammer, member of the PLC, academic expert

**4.35-5.10 p.m.** Abdel-Rahman Abu El-Nasr  
(President of Bar Association)

**6.30-7.30 p.m.** International Committee of the Red Cross (ICRC)  
Stephane Jacquier

**Al-Deera Hotel Dinner**

**8.30 p.m.** Hosted by Deputy South Africa Representative, Susan Heher  
Also present: Peter Hansen, Francis Okello and Stephane Jacquier

**Tuesday, 13 February (Gaza Strip and Jerusalem)**

**UNRWA (United Nations Relief and Works Agency) Headquarters, Gaza**

**9-10 a.m.** Peter Hansen (Commissioner General),  
Karen Koning Abu Ziad (Deputy Commissioner-General),  
Mian Qadrud-Din (Chef de Cabinet),  
Lionel Brisson (Director of Operations)  
(list not exhaustive)

**Visits to the sites affected by bombing**

**10.30 a.m.** Stop at Netzarim Junction

**11 a.m.** Stop at Qarara area, at 640 metres from the Kusufim road,  
bulldozed land, demolition of houses and wells, uprooting of trees.  
The Commission interviewed Jomad Mossallam Ali Someiri, head  
of a household of 23 members. Demolition began at night, during  
the period of Ramadan.

**11.30 a.m.** Khan Yunis Camp - visit to Tufah checkpoint where on the  
previous day a number of Palestinians had been injured during  
clashes with Israelis. The Commission was caught in an outburst  
of crossfire initiated by the Palestinian side, which continued while  
the Commission was in the area. During this time, a child of  
14 years was shot in the stomach causing extensive liver damage.  
The x-ray and the bullet (live .556 round) were recovered by the  
Commission. One youth of 20 years was shot in the testes.

**12 noon** Visit to local UNRWA office - interviews

**1 p.m.** Visit to Khan Yunis hospital - briefing by the Director, Dr Agha.  
Visit to patients recovering from exposure to tear gas

**2 p.m.** Stop on the other side of the Kusufim road in Qarara. Meeting with a family whose house was demolished on 22 November 2000 by the IDF. They only had 10 minutes' notice and could not salvage any movable property. Three bulldozers worked for three days to clear the area. Altogether some 33 families were affected by demolition.

**3.45 p.m.** Lunch hosted by UNRWA at United Nations Reporting and Evacuation Centre, Gaza

#### **UNSCO Headquarters**

**5-6.45 p.m.** Meeting with victims and their families, (organized by Ministry of Social Affairs, General Workers' Union, Union of Medical Relief Committees and Gaza Community Mental Health Programme) (Dr. Hossain)

**5-6.15 p.m.** Collective meeting with the press  
Suod Abu Ramadan (Journalists Association)  
Fayed Abu Shammalah (journalist, BBC)  
Rasmalli (Daily newsletter)  
(Professors Dugard and Falk)

**6.15-6.45 p.m.** Meeting with Minister of Environment (Yousif Abu Safya) and colleagues  
(Professor Falk)

#### **Departure for the West Bank - American Colony Hotel, Jerusalem**

#### **Wednesday, 14 February (Jerusalem)**

#### **UNDP office, Jerusalem**

**8-9 a.m.** United Nations Development Programme (UNDP)  
Timothy Rothermel, Special Representative

#### **American Colony Hotel, Jerusalem**

**10 a.m.-12.30 p.m.** Meeting with Israeli NGOs  
B'Tselem - Yael Stein (Research Director)  
The Alternative Information Center (AIC) - Sergio Yahni (Director)  
The Association for Civil Rights in Israel - Risa Zoll (Attorney and International Relations)  
Hamoked, Center for the Defence of the Individual -  
Dalia Kerstein (Director)

I'lam Center, Media Center for the Palestinian Society in Israel -  
Maria de Pina (Public Relations Coordinator) and Falastin Ismail  
(Director)  
Mosawa Center for Arab Rights in Israel - Sana Hammond (Policy  
Advocate)  
Public Committee against Torture in Israel - Hanna Friedman  
(Executive Director)  
Arab Association for Human Rights - Mohammed Zeidan  
(Director)  
Rabbis for Human Rights - Rabbi Jeremy Milgrom and  
Rabbi Arik Ascherman  
Physicians for Human Rights - Dr. Hedva Radovanitz  
(Executive Director)  
Ihijaha Union of Arab Community-Based Associations -  
Monica Terazi, Ameer Makhoul ADALAH, The Legal Center for  
Arab Minority Rights - Anna Massagee, Jamil Dakwar

- 12.30-2 p.m. Jonathan Krensky (journalist, Jerusalem Post)
- 2-3.30 p.m. Lunch break
- 3.30-4.30 p.m. Avishai Margalit (philosopher)
- 4.30-5.30 p.m. Mordechai Baron (historian)
- 5.30-6.30 p.m. Ruth Gavison (law professor)

**Thursday, 15 February (Ramallah and Jerusalem)**

**Grand Park Hotel, Ramallah**

- 10.15-11.15 a.m. H.E. Mr. Rafiq Al-Natsheh (Minister of Labour)
- 11.30 a.m.-12.15 p.m. Dr. Mustafa Al-Barghouti (political analyst)
- 12.15-1.15 p.m. Luncheon with Palestine Legislative Council (PLC)  
Ahmed Qu'rar - PLC Speaker  
Ghazi Hananya - PLC Speaker's Deputy  
Rawhi Fattouh - PLC Secretary  
Aazmi Shun'aybi - PLC Member  
Qadoura Fares - Chair of Human Rights Committee  
Mahmoud Labadi - PLC Director General
- 1.30-2.15 p.m. Ghassan Faramand (Director, Law Institute, Birzeit  
University (BZU))  
Abdul-Karim Barghouti, (Dean of Student Affairs, BZU)

Mudor Kassis, Chairperson, (Department of Philosophy and Cultural Studies and Coordinator of MA program-Democracy and Human Rights, BZU)

- 2.30-3 p.m. Jonathan Kuttab (Al-Quds University) and Mr. Raja Shehadeh (lawyer)
- 3-3.40 p.m. Eileen Kuttab (Institute of Women's Studies, Birzeit University)
- 3.45-4.25 p.m. Charles Shamas (expert in international humanitarian law, Centre for Human Rights Enforcement)
- 4.45-5.25 p.m. Omar Dajani and Stifany Khouri (Negotiations Affairs Department)
- 5.30-6.10 p.m. Nader Saed (Development Studies Programme, BZU)
- 6.15-6.55 p.m. Ali-Jerbawi (Professor of Political Science, Birzeit University)

**YMCA House, Jerusalem**

- 9 p.m. Dinner with:  
Amiram Goldblum (Settlement Watch, Peace Now Movement)  
Mossi Raz (Peace Now Movement)  
Eitan Felner (Director of B'tselem)

**Friday, 16 February (Jerusalem and Ramallah)**

**Meetings at the American Colony Hotel - Jerusalem**

- 8-9 a.m. Breakfast meeting with members of the European Union:  
Nadim Karkutli and Sylvie Fouet (European Commission)  
Lars Adam Rehof and Kim Vinthen (Office of the Representative of Denmark)  
Emelie Träff and Elinor Hammarskjöld (Swedish Consulate General)  
Aurélié Duhamel and Eric Tison (French Consulate General)  
Michael Ohrmacht (German Rep. Office)  
Eija Rotinen (Office of the Representative of Finland)  
Petros Panayotopoulos (Greek Consulate General)  
Leo D'Aes (Belgium Consulate General)  
Manuel Salazar (Spanish Consul General)  
Gianni Ghisi (Italian Consul General)  
Birgitta Tazelaar (Office of the Representative of the Netherlands)  
Isolde Moylan-McNally (Representative of Ireland)

**9-9.45 a.m.** Meeting with Christian and Muslim religious leaders  
Adnan Husseini, Head of the Islamic Trust  
Sheik Mohamed Hussain, Mufti of Al Aqsa Mosque  
Bishop of the Armenian Orthodox Community  
Father Theophilos, Greek Orthodox Patriarchate

**Meeting at Orient House**

**10-10.45 a.m.** Mr. Faisal Al Husseini (Orient House - Portfolio - PNA)

**Grand Park Hotel, Ramallah - Meetings with Palestinian NGOs**

**12 noon-1 p.m.** LAW (Palestinian Society for the Protection of Human Rights and the Environment) - Khader Shkirat (Director), Issa Shawki and Dianne Luping

**1.15-2 p.m.** Defense for Children International, Palestine - George Abu-Zolof (Director) with Adam Hanieh, Khaled Kuzmar, Simon Awad and Ibrahim Al Masri; Badil Resource Center - Ingrid Jaradat (Director)

**2-2.30 p.m.** Lunch break - Grand Park Hotel

**2.30-5 p.m.** Al-Haq - Mohamed Abu-Harthieh (Director)  
General Union For Disabled Persons - Ziad Amro (Director)  
Jerusalem Center for Human Rights, Jerusalem Legal Aid Center - Ibad Abu Ghosh (Director) and Haifa Alyssa  
Democracy and Workers' Rights Center - Mazen Barghouty (Director)  
Al-Dameer for Political Prisoners - Khalida Jarrar (Director)  
Women's Center for Legal Aid and Counseling - Maha Abu Dayya (Director)  
Women's Studies Centre  
Mandela Institute for Political Prisoners - Ahmed Al-Sayyad (Director)

During the afternoon, two meetings were held simultaneously, with one Commissioner attending one meeting and two Commissioners the second meeting.

**Saturday, 17 February (Hebron/Bethlehem/Beit Jala/Jerusalem)**

**8-9 a.m.** Travel to Hebron

**9-11 a.m.** Briefing by members of Temporary International Presence (TIP) in Hebron  
Director of TIPH



Henrik Lunden (Senior Press and Information Officer)  
Velérie Petignat Wright (Head Staff Director)  
Angélique Eijpe (Legal Adviser)

- 11-11.30 a.m.** Meeting with Mr. Mustafa Al Natsha, Mayor of Hebron
- 11.30 a.m.-12.15 p.m.** Travel to Bethlehem
- 12.15-2 p.m.** Visit to Aida Refugee Camp in Bethlehem  
Aida Basic Girls' School (UNRWA) and two shelled houses
- Richard Cook (Director UNRWA Operations, West Bank)  
Brett Lodge (Operations Officer, UNRWA)  
Husni Shahwan (Area Officer for Hebron, UNRWA)  
Yahia Daage (UNRWA teacher)  
Makarem Awad (Relief and Social Service Department, UNRWA)
- 2-3.30 p.m.** Return to Jerusalem, brief lunch
- American Colony Hotel**
- 3.30-4.15 p.m.** Said Zedani (Director of Palestinian Independent Commission for Citizens' Rights)
- 4.15-5.30 p.m.** Collective meeting with journalists  
Sam'man Khoury (Palestinian Media Center)  
Nabeel Khateeb (Journalist, Director of Media Institute, Birzeit University) with the participation of Dr. Said Zedani  
*Nabhan Krisha (Palestinian Medical Center) and Akram Haney (Editor-in-Chief, Al Ayyam Daily) were unable to participate as they were stopped at checkpoints.*
- 6 p.m.** Old City of Jerusalem  
Consultations at hotel

**Sunday, 18 February (Jerusalem and Tel Aviv)**

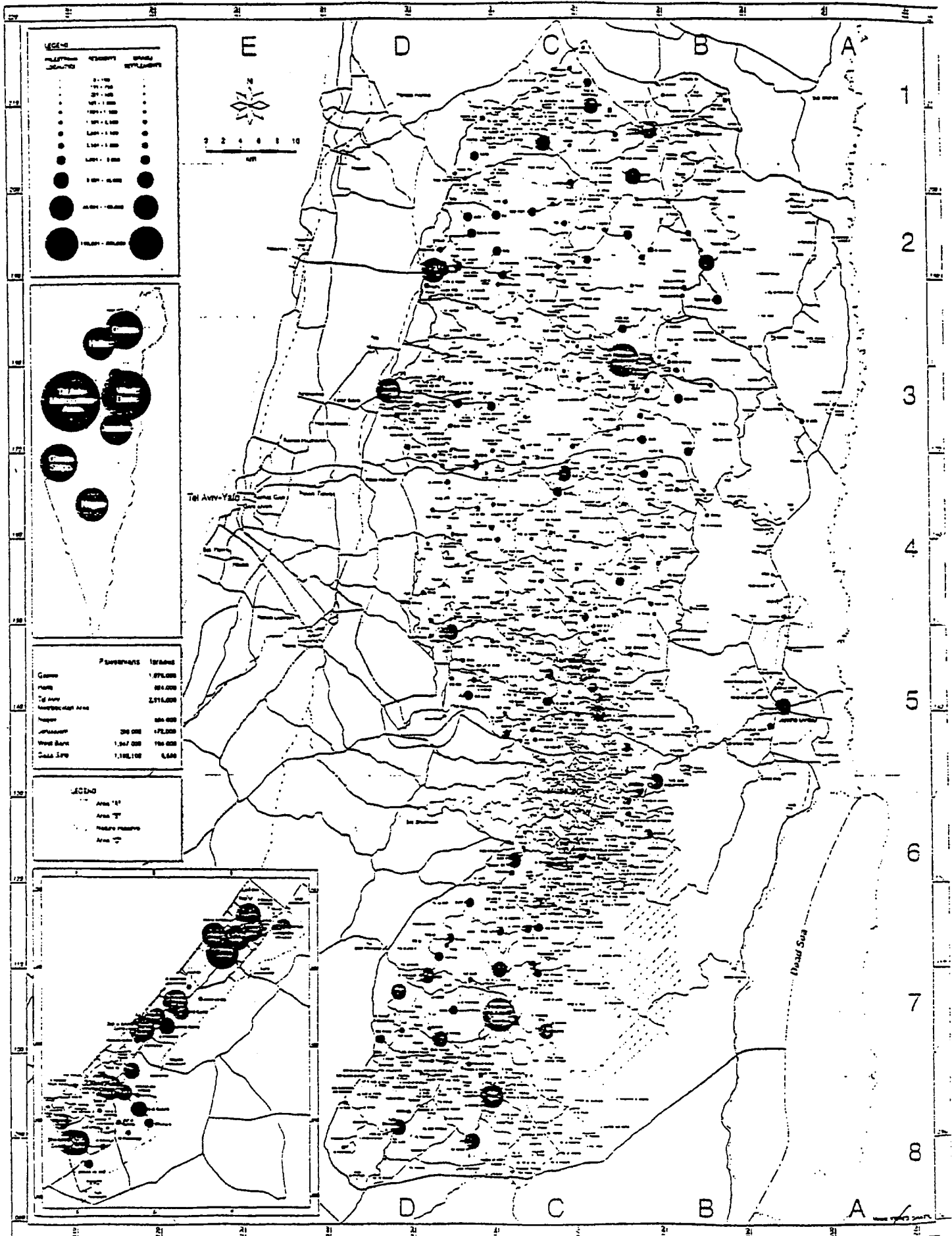
**American Colony Hotel, Jerusalem**

- 9-10 a.m.** Mr. Ilan Pappé (Historian)

**Avia Hotel, Tel Aviv**

- 12 noon-1 p.m.** General (Ret.) Shlomo Gazit
- 1.30 p.m.** Check-in at Ben Gurion Airport for 16:15 departure

Annex III  
POPULATION MAP OF THE WEST BANK AND THE GAZA STRIP  
November 2000



Source: PEACE NOW: The Settlements Watch Team, Israel.  
The boundaries shown do not imply official endorsement or acceptance by the United Nations.

# ANNEX 11

International Committee of the Red Cross, Statement to the Conference of High Contracting Parties to the Fourth Geneva Convention, Geneva, 5 December 2001, *International Review of the Red Cross*, vol. 84, No. 847, September 2002, pp. 692-695

Annex 2

## Conference of High Contracting Parties to the Fourth Geneva Convention

Geneva, 5 December 2001

### Statement by the International Committee of the Red Cross

1. Pursuant to the relevant provisions of international humanitarian law and to the mandate conferred on it by the States party to the 1949 Geneva Conventions, the International Committee of the Red Cross (ICRC) established a permanent presence in Israel, the neighbouring Arab countries and the occupied territories in 1967 with a view to carrying out its humanitarian tasks in the region and to working for the faithful application of international humanitarian law.
2. In accordance with a number of resolutions adopted by the United Nations General Assembly and Security Council and by the International Conference of the Red Cross and Red Crescent, which reflect the view of the international community, the ICRC has always affirmed the *de jure* applicability of the Fourth Geneva Convention to the territories occupied since 1967 by the State of Israel, including East Jerusalem. This Convention, ratified by Israel in 1951, remains fully applicable and relevant in the current context of violence. As an Occupying Power, Israel is also bound by other customary rules relating to occupation, expressed in the Regulations annexed to the Hague Convention respecting the Laws and Customs of War on Land of 18 October 1907.
3. In general terms, the Fourth Geneva Convention protects the civilian population of occupied territories against abuses on the part of an Occupying Power, in particular by ensuring that it is not discriminated against, that it is protected against all forms of violence, and that despite occupation and that it is allowed to live as normal a life as possible, in accordance with its laws, culture and traditions. While humanitarian law confers certain rights on the Occupying Power, it also imposes limits on the scope of its powers. Being only a temporary administrator of occupied territory, the Occupying Power must not interfere with its original economic and social structure, organization, legal system or demography. It must ensure the protection of the security and welfare of the population living under occupation. This implies allowing the normal development of the territory, if the occupation lasts for a prolonged period of time.

4. More precisely, the Fourth Geneva Convention sets out rules aimed at safeguarding the dignity and physical integrity of persons living under occupation, including detainees. It prohibits all forms of physical and mental ill-treatment and coercion, collective punishment, and reprisals against protected persons or property. It also prohibits the transfer of parts of the Occupying Power's civilian population into the occupied territory, forcible transfer or deportation of protected persons from the occupied territory, and destruction of real or personal property, except when such destruction is rendered absolutely necessary by military operations.

5. In the course of its activities in the territories occupied by Israel, the ICRC has repeatedly noted breaches of various provisions of international humanitarian law, such as the transfer by Israel of parts of its population into the occupied territories, the destruction of houses, failure to respect medical activities, and detention of protected persons outside the occupied territories. Certain practices which contravene the Fourth Geneva Convention have been incorporated into laws and administrative guidelines and have been sanctioned by the highest judicial authorities. While acknowledging the facilities it has been granted for the conduct of its humanitarian tasks, the ICRC has regularly drawn the attention of the Israeli authorities to the suffering and the heavy burden borne by the Palestinian population owing to the occupation policy and, in line with its standard practice, has increasingly expressed its concern through bilateral and multilateral representations and in public appeals. In particular, the ICRC has expressed growing concern about the consequences in humanitarian terms of the establishment of Israeli settlements in the occupied territories, in violation of the Fourth Geneva Convention. The settlement policy has often meant the destruction of Palestinian homes, the confiscation of land and water resources and the parcelling out of the territories. Measures taken to extend the settlements and to protect the settlers, entailing the destruction of houses, land requisitions, the sealing-off of areas, roadblocks and the imposition of long curfews, have also seriously hindered the daily life of the Palestinian population. However, the fact that settlements have been established in violation of the provisions of the Fourth Geneva Convention does not mean that civilians residing in these settlements can be the object of attack. They are protected by international humanitarian law as civilians as long as they do not take an active part in hostilities.

6. The ICRC has also drawn the attention of the Israeli authorities to the effects of prolonged curfews and the sealing-off of certain areas by the Israel Defense Forces. The resulting restrictions on movements have disastrous consequences for the entire Palestinian population. They hamper the activities of emergency medical services as well as access to health care, workplaces, schools and places of worship, and have a devastating effect on the economy. They also prevent, for months on end, Palestinian families from visiting relatives detained in Israel. The concern caused by these practices has grown considerably during the past 14 months as measures taken to contain the upsurge of violence have led to a further deterioration in the living conditions of the population under occupation.

7. The ICRC has reminded all those taking part in the violence that whenever armed force is used the choice of means and methods employed is not unlimited. Today, in view of the sharp increase in armed confrontations, the ICRC has to stress that Palestinian armed groups operating within or outside the occupied territories are also bound by the principles of international humanitarian law. Apart from the Fourth Geneva Convention, which relates to the protection of the civilian population, there are other universally accepted rules and principles of international humanitarian law that deal with the conduct of military operations. They stipulate in particular that only military objectives may be attacked. Thus indiscriminate attacks, such as bomb attacks by Palestinian individuals or armed groups against Israeli civilians, and acts intended to spread terror among the civilian population are absolutely and unconditionally prohibited. The same applies to targeted attacks on and the killing of Palestinian individuals by the Israeli authorities while those individuals are not directly taking part in the hostilities or immediately endangering human life. Reprisals against civilians and their property are also prohibited. When a military objective is targeted, all feasible precautions must be taken to minimize civilian casualties and damage to civilian property. To avoid endangering the civilian population, those bearing weapons and those taking part in armed violence must distinguish themselves from civilians.

8. Demonstrations against the occupying forces by the civilian population under occupation or stand-offs between them are not acts of war. They should therefore not be dealt with by military methods and means. When faced with the civilian population, Israeli forces must exercise restraint: any use of force must be proportionate, all necessary precautions must be taken to avoid casualties, and the lethal use of firearms must be strictly limited to what is unavoidable as an immediate measure to protect life.

9. Access to emergency medical services for all those in need is also of paramount importance in the current situation. Such access must not be unduly delayed or denied. Ambulances and medical personnel must be allowed to move about unharmed and must not be prevented from discharging their medical duties. All those taking part in the violence must respect and assist the medical services, whether deployed by the armed forces, civilian organizations, the Palestine Red Crescent Society, the Magen David Adom, the ICRC, the International Federation of Red Cross and Red Crescent Societies or other humanitarian organizations.

10. Article 1 common to the four Geneva Conventions stipulates that the "High Contracting Parties undertake to respect and ensure respect for the present Convention in all circumstances". This conference is to be viewed within that context. The ICRC has always welcomed all individual and joint efforts made by States party to the Geneva Conventions to fulfil this obligation and ensure respect for international humanitarian law. These efforts are all the more vital as violations of humanitarian law are far too common around the globe.

11. The means used to meet these legal and political responsibilities are naturally a matter to be decided upon by States. Whatever the means chosen, however, the ICRC wishes to emphasize that any action States may decide to take at international level must be aimed at achieving practical results and at ensuring application of and compliance with international humanitarian law, in the interests of the protected population.

12. Beyond all legal considerations and in view of the current humanitarian situation, the ICRC again calls upon all parties concerned to make every possible effort to spare civilian lives and preserve a measure of humanity.

13. For its part, the ICRC will continue to do its utmost to assist and protect all victims in accordance with its mandate and with the principles of neutrality, impartiality and independence which govern its humanitarian work. It counts on the full support of the parties concerned in promoting compliance with the humanitarian rules and facilitating humanitarian activities, which may also help pave the way towards the establishment of peace between all peoples and nations in the region.

14. The steady deterioration of the humanitarian situation over the last few months and, in particular, the tragic events of the past few days have highlighted the need to break the spiral of violence and restore respect for international humanitarian law.

# ANNEX 12

B'Tselem (The Israeli Information Centre for Human Rights in the Occupied Territories), Land Grab. Israel's Settlement Policy in the West Bank, May 2002



# LAND GRAB

Israel's Settlement Policy  
in the West Bank



May 2002

ב'תסס"ב  
B'TSELEM  
بتسيلم



# **LAND GRAB**

## **Israel's Settlement Policy in the West Bank**

May 2002

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# Introduction

In December 2001, a long article appeared in *Ha'aretz* under the headline "Five Minutes from Kfar Saba – A Look at the Ari'el Region."<sup>1</sup> The article reviewed the real estate situation in a number of settlements adjacent to the Trans-Samaria Highway in the vicinity of Ari'el. The article included the information that most of the land on which these "communities"<sup>2</sup> were established are "state-owned land," and that "despite the security problems and the depressed state of the real estate market, the situation in these locales is not as bad as might be expected."

The perspective from which this article is written (the real estate market) and the terminology it employs largely reflect the process of the assimilation of the settlements into the State of Israel. As a result of this process, these settlements have become just another region of the State of Israel, where houses and apartments are constructed and offered to the general public according to free-market principles of supply and demand.

This deliberate and systematic process of assimilation obscures a number of fundamental truths about the settlements. The fundamental truth is that the "communities" mentioned in the article are not part of the State of Israel, but are settlements established in the West Bank – an area that, since 1967, has been occupied territory under a military regime and in violation of the Fourth Geneva Convention. The fundamental truth is that the "state-owned land" mentioned in the article was seized from Palestinian residents by illegal and unfair proceedings. The fundamental truth is that the settlements have been a continuing source of violations of the human rights of the Palestinians, among them the right to freedom of movement, property, improvement in their standard of living, and self-determination. The fundamental truth is that the growth of these settlements is fueled not only by neutral forces of supply and demand, but primarily by a sophisticated governmental system designed to encourage Israeli citizens to live in the settlements. In essence, the process of assimilation blurs the fact that the settlement enterprise in the Occupied Territories has created a system of legally sanctioned separation based on discrimination that has, perhaps, no parallel anywhere in the world since the apartheid regime in South Africa.

As part of the mechanism used to obscure these fundamental truths, the State of Israel makes a determined effort to conceal information relating to the settlements. In order to prepare this report, B'Tselem was obliged to engage in a protracted and exhaustive struggle with the Civil Administration to obtain maps marking the municipal boundaries of the settlements. This information, which is readily available in the case of local authorities within Israel, was eventually partially provided almost one year after the initial request, and only after B'Tselem threatened legal action.

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1. Shlomi Sheffer, "Five Minutes from Kfar Saba – A Look at the Ari'el Region," *Ha'aretz Real Estate Supplement*, 13 December 2001.

2. In this report, "community" is used for the Hebrew term *yishuv*, which is a general term blurring the fact that the settlement is in the Occupied Territories, while "settlement" is used to translate the Hebrew term *hitnatchlut*, which maintains this distinction (*trans.*).

The peace process between Israel and the Palestinians did not lead to the dismantling of even one settlement, and the settlements even grew substantially in area and population during this period. While at the end of 1993 (at the time of the signing of the Declaration of Principles) the population of the settlements in the West Bank (including settlements in East Jerusalem) totaled some 247,000, by the end of 2001 this figure had risen to 375,000.

The agreements signed between Israel and the Palestinian Authority entailed the transfer of certain powers to the PA; these powers apply in dozens of disconnected enclaves containing the majority of the Palestinian population. Since 2000, these enclaves, referred to as Areas A and B, have accounted for approximately forty percent of the area of the West Bank. Control of the remaining areas, including the roads providing transit between the enclaves, as well as points of departure from the West Bank, remains with Israel.

This report, which is the continuation of several reports published by B'Tselem in recent years,<sup>3</sup> examines a number of aspects relating to Israeli policy toward the settlements in the West Bank and to the results of this policy in terms of human rights and international law. The report also relates to settlements in East Jerusalem that Israel established and officially annexed into Israel. Under international law, these areas are occupied territory whose status is the same as the rest of the West Bank.

This report does not relate to the settlements in the Gaza Strip. Though similar in many ways to their counterparts in the West Bank, the Gaza Strip settlements differ in several respects. For example, the legal framework in the Gaza Strip differs from that applying in the West Bank in various fields, including land laws; these differences are due to the different laws that were in effect in these areas prior to 1967.

This report comprises eight chapters:

- Chapter One presents a number of basic concepts on the principal plans implemented by the Israeli governments, the bureaucratic process of establishing new settlements, and the types of settlements.
- Chapter Two examines the status of the settlements and settlers according to international law and briefly surveys the violations of Palestinian human rights resulting from the establishment of the settlements.
- Chapter Three discusses the bureaucratic and legal apparatus used by Israel to seize control of land in the West Bank for the establishment and expansion of settlements. The chief component of this apparatus, and the main focus of the chapter, is the process of declaring and registering land as "state land."

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3. B'Tselem, *A Policy of Discrimination: Land Expropriation, Planning and Building in East Jerusalem* (May 1995); *Impossible Coexistence: Human Rights in Hebron since the Massacre at the Cave of the Patriarchs* (Information Sheet, September 1995); *Israeli Settlement in the Occupied Territories as a Violation of Human Rights* (March 1997); *Demolishing Peace: Israel's Policy of Mass Demolition of Palestinian Houses in the West Bank* (Information Sheet, September 1997); *On the Way to Annexation: Human Rights Violations Resulting from the Establishment and Expansion of the Ma'ale Adummim Settlement* (Information Sheet, June 1999).

- Chapter Four reviews the changes in Israeli law that were adopted to annex the settlements into the State of Israel by turning them into civilian enclaves within the occupied territory. This chapter also examines the structure of local government in the settlements in the context of municipal boundaries.
- Chapter Five examines the economic incentives Israel provides to settlers and settlements to encourage Israelis to move to the West Bank and to encourage those already living in the region to remain there.
- Chapter Six analyzes the planning mechanism in the West Bank applied by the Civil Administration, which is responsible for issuing building permits both in the settlements and in Palestinian communities. This mechanism plays a decisive role in the establishment and expansion of the settlements, and in limiting the development of Palestinian communities.
- Chapter Seven analyzes the map of the West Bank attached to this report. This analysis examines the layout of the settlements by area, noting some of the negative ramifications the settlements have on the human rights of the Palestinian population.
- Chapter Eight focuses in depth on the Ari'el settlement and the ramifications of its establishment on the adjacent Palestinian communities. This chapter also discusses the expected consequences of Ari'el's expansion according to the current outline plan.



## Chapter One

# Policy, Processes, and Institutions: Basic Concepts

This chapter presents a number of basic concepts that must be understood to continue the discussion of our subject. The first part of this chapter briefly reviews a number of key approaches and plans delineating the activities of Israeli governments with regard to the settlements in the West Bank. The second part discusses the principal institutions and processes involved in the establishment of a settlement. The last part of this chapter presents a typology of settlements according to various forms of settlement (kibbutz, communal settlement, urban settlement, etc.) Throughout the chapter, a number of statistics will also be presented that relate to the settlements and settlers.

### A. Settlement Policy

Israeli policy toward the settlements in the West Bank has undergone various changes over the years, reflecting the divergent political views of decision makers, the relative weight of various interest groups active in this field, and developments in the international arena. While these divergent approaches have been manifested, inter alia, in changes in the scope of resources allocated to this issue, and in the areas in which it was decided to establish settlements, all Israeli governments have contributed to the strengthening, development and expansion of the settlement enterprise.

The national unity government headed by Levi Eshkol was established shortly before the outbreak of war in June 1967. During the months immediately following the war, this government did not have any clear policy regarding Israeli settlement in the West Bank. The initial inclination of most of the members of the government was to hold the territory as a bargaining chip for future negotiations. Accordingly, they opposed plans to establish civilian settlements in this area. However, these inclinations were rapidly eroded, due both to the pressures exerted by various interest groups and as the result of initiatives from within the government. As early as September 1967, Kfar Ezyon became the first settlement to be established in the West Bank. It was established because of the pressure of a group of settlers, some of whom were relatives of the residents of the original community of Kfar Ezyon, which was abandoned and destroyed during the 1948 war.<sup>4</sup>

The unity government's policy on "East Jerusalem" was different. Immediately after the war, the government applied Israeli law to extensive areas to the north, east and south of West Jerusalem, which were annexed to the Municipality of Jerusalem. The government began a rapid process to build settlements in these areas. Its goal was to prevent any challenge to Israel's sovereignty over them and to impede initiatives leading to an Israeli withdrawal from these areas.<sup>5</sup>

4. Shlomo Gazit, *Fools in a Trap – Thirty Years of Israeli Policy in the Territories* (in Hebrew) (Tel-Aviv: Zemora-Beitan, 1999), p. 228.

5. As detailed in Chapters Three and Seven below, the areas annexed to Jerusalem in 1967 extended far beyond the city limits of the time, as defined under Jordanian rule. For the sake of convenience, this area will be referred to below as East Jerusalem.

In addition, Israel also annexed to its territory a strip of land parallel to the Green Line along a few kilometers north and south of the Latrun area (see the map attached to this report). This strip of land had been known as "no man's land," because in 1948-1967 it was not subject to the control of either the Israeli or the Jordanian side. Over the years, Israel established four communities in this area (Shilat, Lapid, Kefar Ruth and Maccabim). We shall not relate to these settlements in this report, since under international law this area is not considered occupied territory.

## **The Ma'arach Governments: The Alon Plan**

As early as the end of 1967, Yigal Alon – who served at the time as the head of the Ministerial Committee on Settlements – began to prepare a strategic plan for the establishment of settlements in certain parts of the West Bank. This plan was reformulated several times over the coming years. Although never formally approved by the Israeli government, the plan provided the basis for the layout of the settlements established in the West Bank on the initiative of the governments led by the Ma'arach (the precursor of the modern Labor Party) through 1977, and as the foundation for the "territorial compromise" advocated by the Ma'arach in its platform through the 1988 elections.

The initial objective of the Alon Plan was to redraw the borders of the State of Israel to include the Jordan Valley and the Judean Desert within the territory of the state, which the plan's proponents argued was necessary to ensure state security. Within these areas, the plan advocated the establishment of a string of Israeli settlements ensuring a "Jewish presence" and constituting a preliminary step leading to formal annexation. The Alon Plan also recommended that, as far as possible, the annexation of areas densely populated by Palestinians should be avoided.<sup>6</sup>

Despite this recommendation, the last draft of the plan from 1970 proposes to annex to Israel areas that far exceed those required by the original approach. These areas include: a strip along the Jordan River with a width of approximately twenty kilometers (extending to the starting point of the dense Palestinian communities); various areas around Greater Jerusalem; the Ezyon bloc; most of the Judean Desert; and a strip of territory in the south of the Hebron mountains. Together, these areas comprise approximately half the area of the West Bank. According to the Alon Plan, the remaining half of the West Bank, comprising two unconnected areas to the north and south, was supposed to become part of a Jordanian-Palestinian state.<sup>7</sup>

By the time the Likud came to power in 1977, almost thirty settlements inhabited by some 4,500 Israelis had been established in the West Bank (excluding East Jerusalem) at the government's initiative.<sup>8</sup> Most of these settlements were established in areas earmarked for annexation to Israel according to the Alon Plan, while a minority were established by Gush Emunim (see below) outside these areas. In addition, by 1977 some 50,000 Israelis lived in settlements established in East Jerusalem.<sup>9</sup> The Alon Plan was abandoned during the period of Likud-led governments (1977-1984), when efforts were concentrated in other parts of the West Bank. Under the national unity government headed by Shimon Peres and Yitzhak Shamir (1984-1988), the Alon Plan once again formed part of official policy, leading to the flow of

6. Meron Benvenisti and Shlomo Khayat, *The West Bank and Gaza Atlas*. West Bank Data Project (Jerusalem: The Jerusalem Post, 1987), pp. 63-64.

7. *Ibid.*

8. For full data on the growth in the population and the number of settlements, see the tables and graphs in this chapter.

9. Geoffrey Aronson, *Settlements and the Israel-Palestinian Negotiations* (Washington: Institute of Palestinian Studies, 1996), p. 5.

resources to settlements established within the areas covered by the plan in the 1970s (see the Hundred Thousand Plan, below).

## The Influence of Gush Emunim

Among certain religious right-wing circles, Israel's victory in the 1967 war was interpreted in theological terms, constituting the "beginning of Redemption" and offering an opportunity "to realize the vision of the Whole Land of Israel." In 1974, these circles formed the basis for the establishment of Gush Emunim [Bloc of the Faithful], under the spiritual leadership of Rabbi Zvi Yehuda Kook.<sup>10</sup> The immediate goal of the movement was to force the Ma'arach government to establish as many settlements as possible throughout the "Land of Israel." Gush Emunim aimed to disperse the settlements it established over as wide an area as possible: "Our control of a region is a function not only of the size of the population resident there, but also of the size of the area in which this population exercises its impression and influence."<sup>11</sup>

Since the Jordan Valley, Gush Ezyon and areas of the Hebron mountains region formed part of the Labor government's settlement strategy, Gush Emunim prioritized settlement activities in the central mountain range of the West Bank – the area containing most of the Palestinian population.<sup>12</sup> The principal method adopted by the movement was to settle a given site without government permission – and sometimes contrary to its policy – in an effort to force the government later to recognize the settlement as an accomplished fact. Between July 1974 and December 1975, members of Gush Emunim made seven unsuccessful attempts to establish a settlement at various sites in the Nablus area without government permission. The eighth attempt led to a compromise between the activists and then Minister of Defense Shimon Peres. The settlers were allowed to stay at an IDF base called Qadum to the west of Nablus; two years later, the base was officially transformed into the settlement of Qedumim.<sup>13</sup>

In other cases, the Gush Emunim settlers group received permission from the authorities to establish a settlement site on false pretenses. In one instance, members of Gush Emunim secured permission to establish a "work camp" close to the village of 'Ein Yabrud. The "camp" later became the settlement Ofra. In another case, the settlement of Shilo was established under the guise of an archeological excavation.<sup>14</sup>

The clashes between Gush Emunim and the government continued during most of the period of the first Likud government headed by Menachem Begin, but ended shortly before the 1981 elections, after the Democratic Movement for Change resigned from the government. At this point, the government began to work to realize all the settlement plans of Gush Emunim, providing extensive financial assistance for its activities.<sup>15</sup>

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10. For an analysis of the ideological platform of Gush Emunim, see Gidon Eran, *From Religious Zionism to Zionist Religion – The Roots and Culture of Gush Emunim* (in Hebrew) (thesis toward a D.Phil. degree at the Hebrew University of Jerusalem, 1987).

11. Gush Emunim, *Master Plan for Settlement in Judea and Samaria* (in Hebrew) (1980), p. 15.

12. For a detailed geographical description of the West Bank, and for a description of the layout of settlements in the area, see Chapter Seven below.

13. David Newman, *Jewish Settlement in the West Bank: The Role of Gush Emunim* (Durham, England: Centre for Middle Eastern and Islamic Studies, 1982), pp. 40-43.

14. A similar tactic, employed in 1968 by a group of settlers in Hebron headed by Rabbi Levinger, led to the establishment of the settlement Qiryat Arba. Gazit, *Fools in a Trap*, p. 231.

15. Meron Benvenisti, *Lexicon of Judea and Samaria: Settlements Administration and Society* (in Hebrew) (Jerusalem: Cana, 1987), p. 155.

## Likud Policy: The Drobless Plan and the Sharon Plan

After the Likud came to power in 1977, Matityahu Drobless, head of the World Zionist Organization's Settlement Division, prepared a comprehensive plan for the establishment of settlements throughout the West Bank.<sup>16</sup> This plan, which was published in 1978 and updated several times in the following years, was also known as the Drobless Plan and constituted a guiding document for government and WZO policy regarding the settlements. According to the plan:

The civilian presence of Jewish communities is vital for the security of the state... There must not be the slightest doubt regarding our intention to hold the areas of Judea and Samaria for ever... The best and most effective way to remove any shred of doubt regarding our intention to hold Judea and Samaria forever is a rapid settlement drive in these areas.<sup>17</sup>

The Drobless Plan was completely in line with the plans of Gush Emunim, providing the foundation for close cooperation between the two bodies. This cooperation led to the establishment of dozens of "community settlements" (see below), most of which were situated on the central mountain ridge close to Palestinian population centers.

Another key figure who made a significant contribution to promoting the settlements enterprise was the Minister of Agriculture in the first Likud government (1977-1981), Ariel Sharon. Sharon prepared a plan bearing his name that included a map delineating areas he believed were vital for Israel's security, and should therefore be annexed. According to Sharon's map, only a small number of enclaves densely populated by Palestinians were not to come under Israeli sovereignty in the future.<sup>18</sup> Like Alon and Drobless, Sharon recommended the establishment of settlements in these areas as a means of promoting annexation. While this plan was not officially adopted by the government, it provided the basis for the activities of the Ministry of Agriculture. The ministry's power over the establishment of settlements resulted from its control of the Israel Lands Administration, which was responsible for the management of "state land" (see Chapter Three) and for financing the activities of the WZO Settlement Division (see below).

Following the preparation of this plan, the Ministry of Agriculture and the Ministry of Construction and Housing concentrated their efforts on establishing settlements on the western slopes of the central mountain ridge in the West Bank, north of Jerusalem (western Samaria). These efforts reflected Sharon's belief that it was important to prevent the creation of a contiguous area populated by Arabs on either side of the Green Line, leading to the connection of the area west of Jenin and Nablus, and north of Ramallah, to the Palestinian communities within Israel adjacent to the Green Line, such as Umm el-Fahm and Kafr Qasem.<sup>19</sup> While the settlements initiated by the WZO in the central mountain ridge area were populated mainly by members and supporters of Gush Emunim, the above-mentioned government ministries made great efforts to attract the general, non-ideological public to the settlements in western Samaria by guaranteeing an improved standard of living within a short distance from the urban centers on the coastal plain.<sup>20</sup>

16. Regarding the role of the World Zionist Congress in initiating and establishing new settlements, see below.

17. Matityahu Drobless, *The Settlement in Judea and Samaria – Strategy, Policy and Program* (in Hebrew) (Jerusalem: World Zionist Organization, September 1980), p. 3.

18. Benvenisti and Khayat, *The West Bank and Gaza Atlas*, p. 65.

19. Geoffrey Aronson, *Creating Facts: Israel, Palestinians and the West Bank* (Washington: Institute for Palestinian Studies, 1987), p. 71.

20. *Ibid.*, pp. 72-74.



At the beginning of 1983, the Ministry of Agriculture and the WZO published a "master plan" for settlements in the West Bank through the year 2010, including an operative development plan for the period 1983-1986.<sup>21</sup> This plan was also known as The Hundred Thousand Plan, due to its aspiration to attract 80,000 new Israeli citizens by 1986, so that the Jewish population (excluding East Jerusalem) would number 100,000. According to the plan, twenty-three new communal and rural communities were to be established, as well as twenty NAHAL army settlement sites. In addition, 300-450 kilometers of new roads were to be paved.<sup>22</sup> While the original emphasis of the plan called for settlements in the central mountain ridge and on the western slopes of the ridge, the establishment of the national unity government in 1984 meant that a considerable part of the resources was actually diverted to promote settlements in the Jordan Valley, constituting a compromise between supporters of the Drobless-Sharon approach and exponents of the Alon Plan.<sup>23</sup> During the period of the plan, the government achieved the objective in terms of the number of new settlements, but failed to meet the population forecast; the actual population by the end of 1986 was just 51,000.

Settlement activities continued at full pace under the newly elected Likud government (1988-1992). The emphasis of the government was on expanding existing settlements. The population of the settlements increased by sixty percent during this period. Ten new settlements were established, a small number compared to previous governments. The tremendous scale of construction in the territories by this government led to an open confrontation with the United States government, which decided to freeze guarantees it had promised to provide Israel as part of the United States assistance to help absorb the wave of immigrants from the Soviet Union.<sup>24</sup>

## **The Oslo Process and Continued Expansion**

The establishment in July 1992 of a new government headed by Yitzhak Rabin seemed to offer the possibility of a real change in Israel's settlement policy. The Labor Party had fought the election on a promise to "change national priorities," including a substantial reduction in the allocation of resources for the settlements. The signing of the Declaration of Principles between Israel and the PLO in September 1993 also indicated the government's intention to change its policy, although the Declaration did not explicitly prohibit the establishment of new settlements. It was only in the Oslo 2 accords, which were signed two years later, that the parties stated: "Neither side shall initiate or take any step that will change the status of the West Bank and the Gaza Strip pending the outcome of the permanent status negotiations."<sup>25</sup>

However, within a short period time, it became clear that the change in policy was insignificant and that the new government intended to continue the development of settlements.

The government made a promise to the United States that it would not establish new settlements and would halt the expansion of the existing settlements, with the exception of construction to meet the

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21. Ministry of Agriculture and the Settlement Division of the World Zionist Organization, *Master Plan for Settlement for Judea and Samaria, Development Plan for the Region for 1983-1986* (Jerusalem, April 1983).

22. *Ibid.*, p. 9.

23. Benvenisti, *Lexicon of Judea and Samaria*, p. 152.

24. Aronson, *Settlements and the Israel-Palestinian Negotiations*, pp. 48-49.

25. Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, 28 September 1995 (Oslo 2), Chapter 5, Article 31(7).

"natural growth" of the local population.<sup>26</sup> This commitment was also included in the government's basic guidelines, with two significant exceptions that were remnants of the approach embodied in the Alon Plan: "No new settlements will be established and existing settlements will not be expanded, with the exception of those situated within the Greater Jerusalem area and in the Jordan Valley."

The exceptions in the government's guidelines effectively became the main tool permitting the continued building of settlements and growth of the Israeli population in the settlements. According to the basic guidelines, "Greater Jerusalem area" included not only those areas annexed in 1967 and included in the municipal boundaries of the city, but also considerable areas beyond these limits (see the discussion of the Jerusalem Metropolis in Chapter Seven). In addition, during the period of office of the Rabin government, 9,850 new housing units were completed throughout the West Bank (not only in the government's priority areas). Construction of these units had begun under the previous government, though no mention is made in the government's basic guidelines.<sup>27</sup>

Moreover, the term "natural growth" was never precisely defined, and the vague nature of the term has allowed Israel to continue to expand the settlements while avoiding direct confrontation with the United States Administration. Since the signing of the Declaration of Principles, in 1993, all Israeli governments have interpreted this phrase as including not only the natural growth of the existing population (i.e., birth rates), but also the growth of the population by migration. At the same time, the governments themselves have strongly encouraged migration from Israel to the settlements by offering generous financial benefits and incentives (see Chapter Four below).

Under the banner of "natural growth," Israel has established new settlements under the guise of "new neighborhoods" of existing settlements. To this end, these new settlements have been included in the area of jurisdiction of the adjacent settlement, even in cases of no territorial contiguity between the two settlements.<sup>28</sup> Exceptions to this approach included the settlements Modi'in Illit (Qiryat Sefer) and Menorah, recognized as new settlements in 1996 and 1998, respectively.

Another method employed in order to expand the settlements was the seizure of a new location by a group of settlers who erected a number of caravans on the site (see Photos 9 and 10). While this method was the settlers' initiative, without approval from the relevant authorities, the government generally refrained from evicting the settlers or demolishing the buildings they erected without permits. Some received retroactive approval.<sup>29</sup>

Overall, contrary to the expectations raised by the Oslo Process, the Israeli governments have implemented a policy leading to the dramatic growth of the settlements. Between September 1993, on the signing of the Declaration of Principles, and September 2001 (the time of the outbreak of the al-Aqsa intifada), the number of housing units in the settlements in the West Bank (excluding East Jerusalem) and Gaza Strip rose from 20,400 to 31,400 – an increase of approximately fifty-four percent in just seven years. The sharpest increase during this period was recorded in 2000, under the government headed by

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26. Aronson, *Settlements and the Israel-Palestinian Negotiations*, pp. 50-51.

27. *Ibid.*, p. 11.

28. The State Comptroller offered a detailed criticism of certain aspects of this method in the specific case of the establishment of the Tel Zion settlement, in 1998, under the guise of a "neighborhood" of the settlement Kochav Ya'akov. See State Comptroller, *Annual Report 51B* (in Hebrew) (Jerusalem, April 2001), pp. 398-405.

29. For a list of outposts erected since the beginning of the current intifada, see the Peace Now Website: [www.peacenow.org.il](http://www.peacenow.org.il).

Ehud Barak, when the construction of almost 4,800 new housing units was commenced. At the end of 1993, the population of the West Bank settlements (excluding East Jerusalem) totaled 100,500. By the end of 2000, this figure increased to 191,600, representing a growth rate of some ninety percent. By contrast, the growth rate in the settlements in East Jerusalem was much slower: the population of these settlements totaled 146,800 in 1993 and 176,900 in 2001 – an increase of just twenty percent.

**Table 1**  
**Population of Settlements in East Jerusalem (in thousands)**

Year	Number of Residents
1992	141
1993	146.8
1994	152.7
1995	155
1996	160.4
1997	158.8
1998	162.9
1999	170.4
2000*	173.4
2001*	176.9

\* This is an estimation based on percentage of growth of population throughout Jerusalem (Central Statistics Bureau).

Source: Jerusalem Institute for Israel Studies, *On Your Statistics, Jerusalem* (various years).

**Table 2**  
**Settlements and Settlers in the West Bank\***

<b>Year</b>	<b>Number of Settlements**</b>	<b>Population (in thousands)</b>
1967	1	Unknown
1968	3	Unknown
1969	8	Unknown
1970	10	Unknown
1971	12	Unknown
1972	14	Unknown
1973	14	Unknown
1974	14	Unknown
1975	19	Unknown
1976	20	3.2
1977	31	4.4
1978	39	7.4
1979	43	10
1980	53	12.5
1981	68	16.2
1982	73	21
1983	76	22.8
1984	102	35.3
1985	105	44.2
1986	110	51.1
1987	110	57.9
1988	110	63.6
1989	115	69.8
1990	118	78.6
1991	119	90.3
1992	120	100.5
1993	120	110.9
1994	120	122.7
1995	120	127.9
1996	121	141.5
1997	122	154.4
1998	123	166.1
1999	123	177.5
2000	123	191.6
2001***	123	198

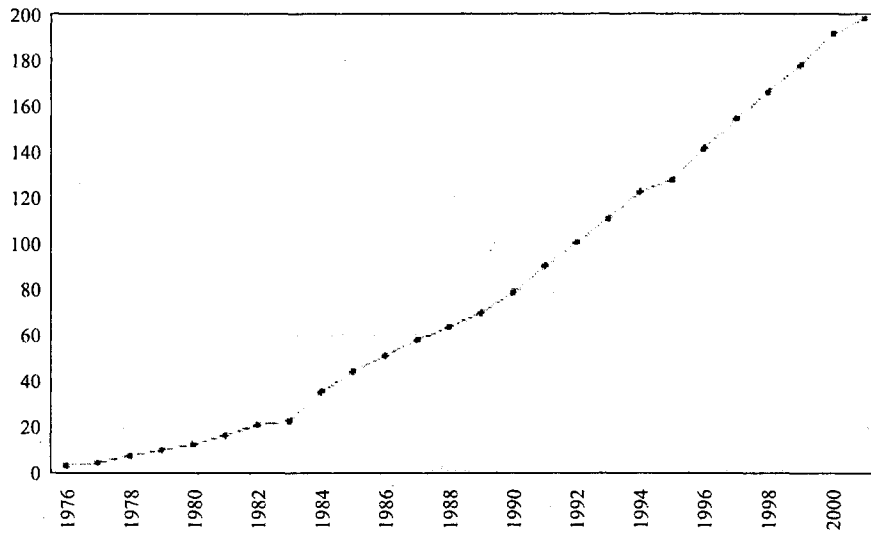
\* Not including East Jerusalem.

\*\* These figures relate to the number of settlements recognized by the Ministry of the Interior.

\*\*\* As of 31 September 2001 (provisional data).

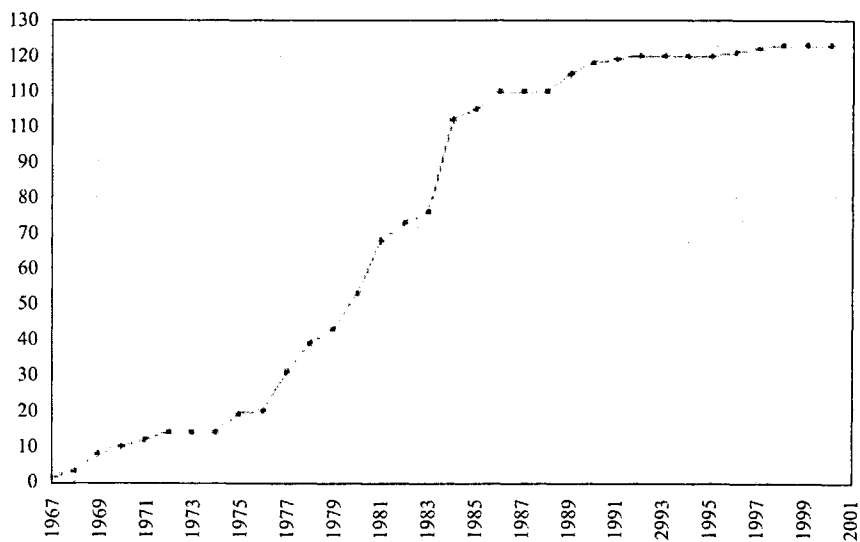
Source: Central Bureau of Statistics *Israel Statistical Yearbook* (various years), not including a "number of settlements" for the years 1967-1981, based on Benvenisti and Khayat, *The West Bank and Gaza Atlas*, pp. 138-140.

**Diagram 1**  
**Settlers in the West Bank\* (in thousands)**



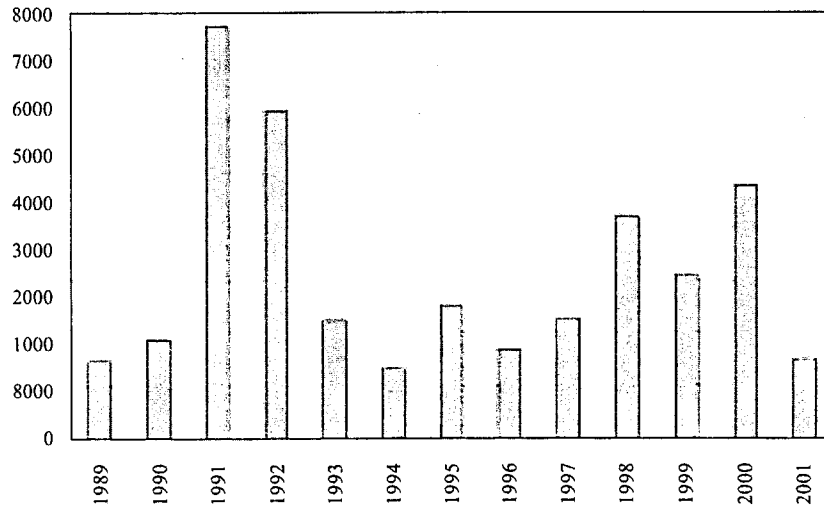
\* Not including East Jerusalem.

**Diagram 2**  
**Settlements in the West Bank\***



\* Not including East Jerusalem.

**Diagram 3**  
**Building Starts of Housing Units in the West Bank\* and Gaza Strip**



\* Not including East Jerusalem.

## **B. Establishing a Settlement: The Bureaucratic Procedure**

The establishment of a new settlement involves numerous stages and entails the involvement of a variety of institutions and bodies. The first formal step is to secure the authorization of the Joint Settlement Committee of the Israeli Government and the World Zionist Organization (hereafter: the Ministerial Committee for Settlement), which was established in 1970 and is empowered to decide on the establishment of a new settlement. The Ministerial Committee for Settlement is composed of an equal number of ministers from the relevant government ministries and members of the WZO Executive.<sup>30</sup>

While the mandate of this committee included the establishment of communities within the State of Israel, its activities since its establishment centered mainly on the establishment of settlements in the territories occupied in 1967 (the West Bank, Gaza Strip, Golan Heights and northern Sinai). In addition to granting formal approval, the committee is responsible for deciding on the location of the settlement and the form of settlement (see below), as well as its intended size in geographical terms and in population, the official body to be responsible for establishment, and so on. In several cases, the committee has provided retroactive approval after the establishment of a settlement by Gush Emunim. In August 1996, given the political sensitivity of this issue in the context of U.S. - Israel relations, the government determined that any decision by the Ministerial Committee for Settlement relating to the establishment of a new settlement in the territories would be brought to the government for discussion and approval.<sup>31</sup>

30. Avshalom Rokach, *Rural Settlement in Israel* (Jerusalem: The Jewish Agency for Israel and the World Zionist Organization, 1978), p. 63.

31. State Comptroller, *Annual Report 51B*, p. 399.

The role of the World Zionist Organization as part of this governmental mechanism deserves further explanation because the WZO is a non-governmental body, representing not the citizens of Israel but world Jewry. One of Israel's traditional methods to direct national resources exclusively to the state's Jewish population, without this automatically being defined as discrimination, is delegating responsibilities to the Jewish Agency, which is not a governmental body. For example, the Settlement Department of the Jewish Agency was given responsibility for the establishment of new communities that were intended for Jews only. In the case of the establishment of settlements in the Occupied Territories, however, the Jewish Agency encountered problems: it was unable to secure tax exemption in the United States for donations raised in the United States for this purpose, because the settlements were said to oppose U.S. policy.<sup>32</sup> Accordingly, in 1971 the Settlement Division was established within the World Zionist Organization; this body performed the function of the Jewish Agency's Settlement Department in all matters relating to the establishment of settlements in the Occupied Territories.

The funding of the Settlement Division comes from the state budget, through the Ministry of Agriculture. Through 1992, however, a significant portion of its operations were executed by the staff and apparatus of the Jewish Agency Settlement Department, from the budget of the Settlement Division.<sup>33</sup> Since the beginning of 1993, the Settlement Division has operated separately from the Settlement Department.<sup>34</sup>

The two principal bodies involved in establishing the physical and economic infrastructure of the settlements are the Ministry of Construction and Housing and the Settlement Division of the World Zionist Organization. The decision as to which of these two bodies will be responsible for any given settlement is made by the committee on an *ad hoc* basis; the main considerations are the expected pace of implementation, the availability of budgets and the planned type of settlement.<sup>35</sup>

The first step to be taken by the body selected by the Ministerial Committee for Settlement to implement the settlement is to receive "permission" from the Custodian for Governmental and Abandoned Property in Judea and Samaria to plan and build on the specific land on which the settlement is to be established.<sup>36</sup> The vast majority of settlements are established on land seized by Israel by various means; the management of these lands rests with the Custodian. In organizational terms, the Custodian functions as an arm of the Civil Administration, though professionally he is accountable to the Israel Lands Administration.<sup>37</sup> Since 1996, any new permission granted by the Custodian for Governmental Property requires the approval of the Minister of Defense.<sup>38</sup>

After a permission contract is signed with the Custodian, the Ministry of Construction and Housing or the Settlement Division is entitled to sign contracts with any cooperative association (see below) or with a particular construction company, which then receives the status of an "authorized body." At the same time, the Ministry of Construction or Housing or the Settlement Division is expected to work to secure approval for an outline plan for the settlement from the Supreme Planning Committee of the Civil

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32. Benvenisti, *Lexicon of Judea and Samaria*, p. 50.

33. Rokach, *Rural Settlement in Israel*, p. 71.

34. For details of this issue, see State Comptroller, *Report on Audit Regarding Governmental Assistance for the Development of the New Settlement in the Judea, Samaria, Gaza and Golan Areas* (in Hebrew) (Jerusalem, May 1999).

35. Meir Hamoy, "Processes in the Planning of Settlement in Judea, Samaria and the Gaza Strip" (in Hebrew), in *Judea and Samaria Studies*, Protocol of the Second Conference, 1992, p. 369.

36. An exception to this rule is when land was purchased privately by Israeli civilians. For discussion of the methods used to seize control of land, and of the office of the Custodian for Governmental Property, see Chapter Three below.

37. State Comptroller, *Annual Report 51B*, p. 399.

38. *Ibid.*

Administration, and to issue building permits on the basis of this plan.<sup>39</sup> After all contracts have been signed and all permits received, the authorized body is entitled to build.

The Settlement Division has specialized in establishing small settlements in the form of a "community settlement" or one of the models for cooperative settlements, although it has also established regular rural communities (see below). As settlers begin to move into the settlement, routine management is transferred to a cooperative association responsible, among other things, for accepting (or rejecting) new members in the settlement.<sup>40</sup> In certain cases, the involvement of the cooperative association begins during the construction phase, and the association reaches agreements directly with a contractor to execute the development and construction. The cooperative associations generally operate under the auspices of one of the "settling movements" – Amana, the settlement wing of Gush Emunim (numerically the most important movement), the Agricultural Union, Betar, the Union of Moshavim of Po'alei Agudat Yisrael, the Union of Moshavim of Hapo'el Hamizrachi, etc.<sup>41</sup>

The Ministry of Construction and Housing processes the planning and development of the settlements through two units within the ministry: the Rural Construction Authority and the urban construction departments in each of the ministry's districts. The Rural Construction Authority was established in 1968. It is usually charged with responsibility for communities defined as "non-urban," both inside Israel and in the territories occupied in 1967.<sup>42</sup> The Ministry of Construction and Housing's urban construction departments process the larger settlements, which have generally been granted independent municipal status (see Chapter Four). Unlike the settlements established by the Settlement Division, the management of settlements established by the Ministry of Construction and Housing is not transferred to a specific "settling movement," but rests with an establishing team under the auspices of the Ministry of Construction and Housing pending the organization of a local committee. Houses in these settlements are ostensibly sold on the free market to any buyer, though in fact they are sold exclusively to Jews.<sup>43</sup>

Although the complex process described above is required in accordance with governmental decisions and military legislation, in many cases the authorities skip over one or another of the stages, or acts retroactively to secure the authorizations and sign the appropriate contracts.<sup>44</sup> The most prominent examples of this approach are the outposts established in recent years throughout the West Bank, where none of the stages described above was implemented. In some cases, the Israeli authorities have gradually begun to meet the relevant requirements retroactively and in stages.

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39. For discussion of the physical planning apparatus, see Chapter Six below.

40. Harnoy, *Judea and Samaria Studies*, pp. 370-371.

41. For the organizational affiliation of each settlement, see Central Bureau of Statistics, *List of Localities, Their Populations and Codes* (various years).

42. For discussion of the functions of the Authority, and criticism on the need for it (based on grounds of efficiency), see State Comptroller, *Annual Report 47* (in Hebrew) (Jerusalem, April 1997), pp. 166-173.

43. Harnoy, *Judea and Samaria Studies*, p. 371.

44. For examples of this phenomenon, see the reports of the State Comptroller (all in Hebrew): *Annual Report 37* (Jerusalem, 1987), p. 1205; *Annual Report 43* (Jerusalem, April 1993), pp. 911-914; *Annual Report 51B* (Jerusalem, April 2001), pp. 398-405.

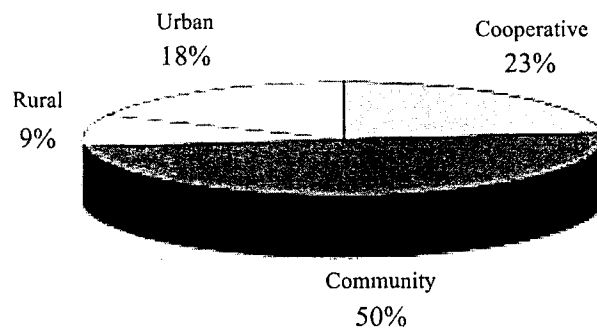


## C. Types of Settlements

The settlements established in the West Bank vary in several respects, one being their social structure, or "type of settlement" – regular urban and rural settlements, community settlements and cooperative settlements.

*Cooperative settlements* are subdivided into three clear models – kibbutz, moshav and cooperative moshav – that vary in terms of the level of equality and extent of cooperation in ownership of property, in general, and of means of production, in particular. However, these distinctions have become blurred since the 1990s, due to the economic crisis affecting the kibbutz and moshav movements and due to changes in the prevailing values of Israeli society. These forms of settlement are the classic models cherished by the Labor movement, and accordingly most of the kibbutzim and moshavim in the West Bank were founded during the 1970s under the Ma'arach governments and situated in areas within the Alon Plan. The common feature of all three types of settlement, at least during the early phases, is their agricultural character, although since the 1980s many of these settlements have branched out into industry and tourism, while some of their members have begun to work as salaried employees in the adjacent urban centers. There are currently nine kibbutzim, thirteen moshavim and nine cooperative moshavim in the West Bank.<sup>45</sup>

**Diagram 4**  
Settlements in the West Bank, by Type



Unlike cooperative settlements, *community settlements* began as a form of settlement unique to the Occupied Territories, and as an initiative of Gush Emunim and its settlement wing (Amana).<sup>46</sup> The legal framework is a cooperative association registered with the Registrar of Associations, managed by its general meeting and usually comprising some 100-200 families. Like the kibbutz and the cooperative moshav, the community settlement absorbs new members by a clearly defined process at the end of which the general meeting decides whether to accept the candidates. Most of the members of the community settlements are middle-class settlers employed in white-collar positions in nearby cities

45. The number of settlements in each category is based on the definition of the "type of settlement" adopted by the Central Bureau of Statistics.

46. At a later stage, community settlements also began to be established within Israel, particularly in the Galilee.

within Israel.<sup>47</sup> Sixty-six settlements throughout the West Bank, particularly in the Mountain Strip and the Jerusalem Metropolis, are defined as community settlements.

The remaining settlements are *regular urban* or *rural settlements* managed by local committees or councils elected by the residents. These settlements do not carry out any special procedures for membership or any cooperative financial frameworks. However, the smaller the settlement the greater the homogeneity among its members (in terms of religious/secular identity, economic status, origin, etc.) The exceptions to this rule are the ultra-Orthodox settlements of Betar Illit (15,800 residents) and Modi'in Illit (16,400 residents); though among the largest of all the settlements, these are almost completely homogenous in demographic terms. The Central Bureau of Statistics defines a settlement as "urban" if its population is 2,000 or more, while rural settlements are those with fewer than 2,000 inhabitants. There are currently twelve settlements defined as rural and thirteen defined as urban; to the latter figure, one should add twelve settlements established in East Jerusalem that operate under the auspices of the Municipality of Jerusalem.

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47. For more detailed discussion on the characteristics of this form of settlement and the processes that led to its creation, see David Newman, *The Role of Gush Emunim and the Yishuv Kehilati*, Ph.D. dissertation, University of Durham, 1981, Chapter 5.

Photo 1 Hinanit (top) and Shaqed (bottom): municipal boundaries

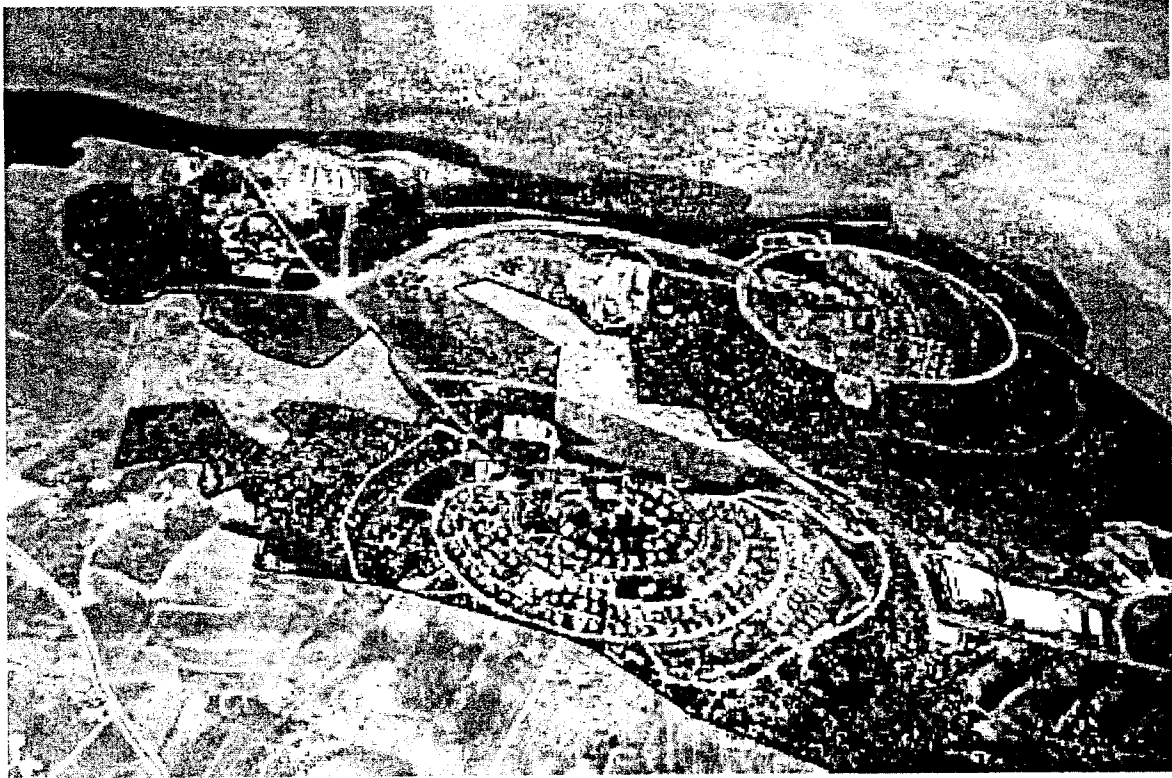


Photo 2 Tapuah: municipal boundaries



Photo 3 Rimmonim: municipal boundaries

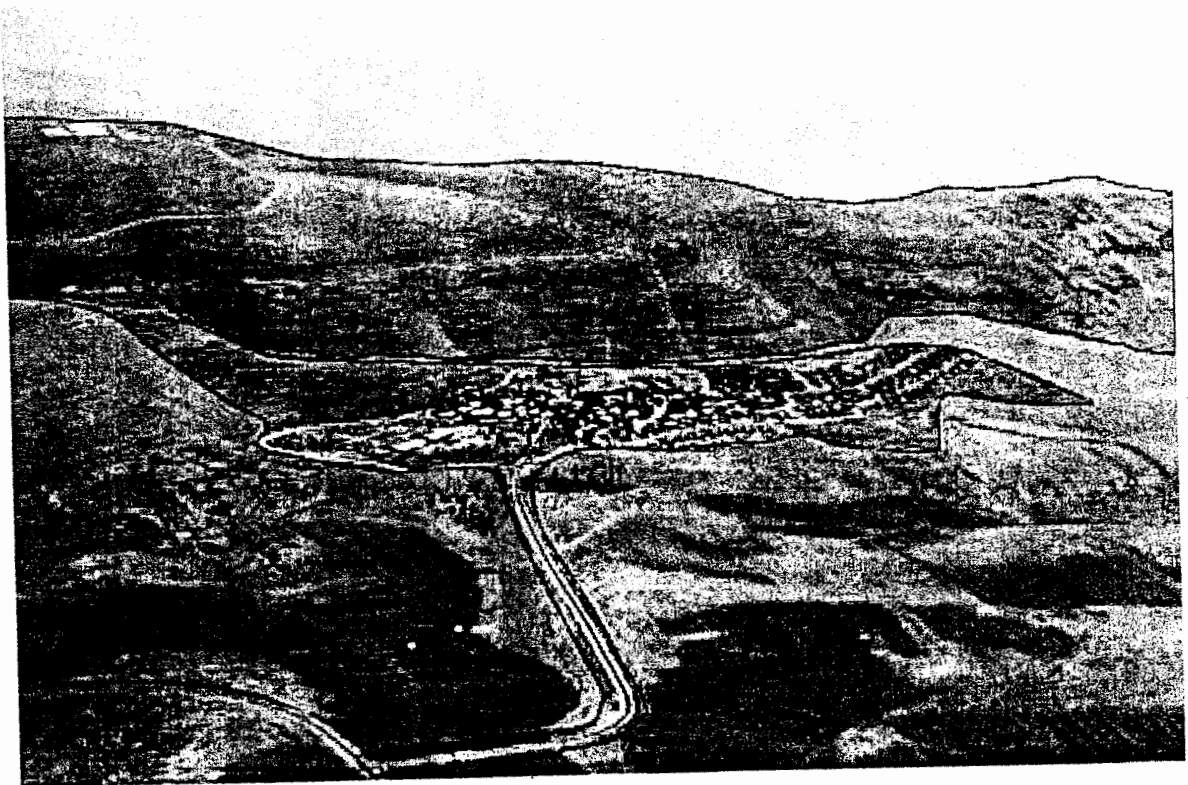


Photo 4 Ez Efrayim: municipal boundaries



Photo 5 Pesagot (on the right), Ramallah and al-Bira (on the left)



Photo 6 Ma'ale Addumim: built-up area and land reserves





Photo 7 Har Homa: construction stage



Photo 8 Har Adar: built-up area and expansion area

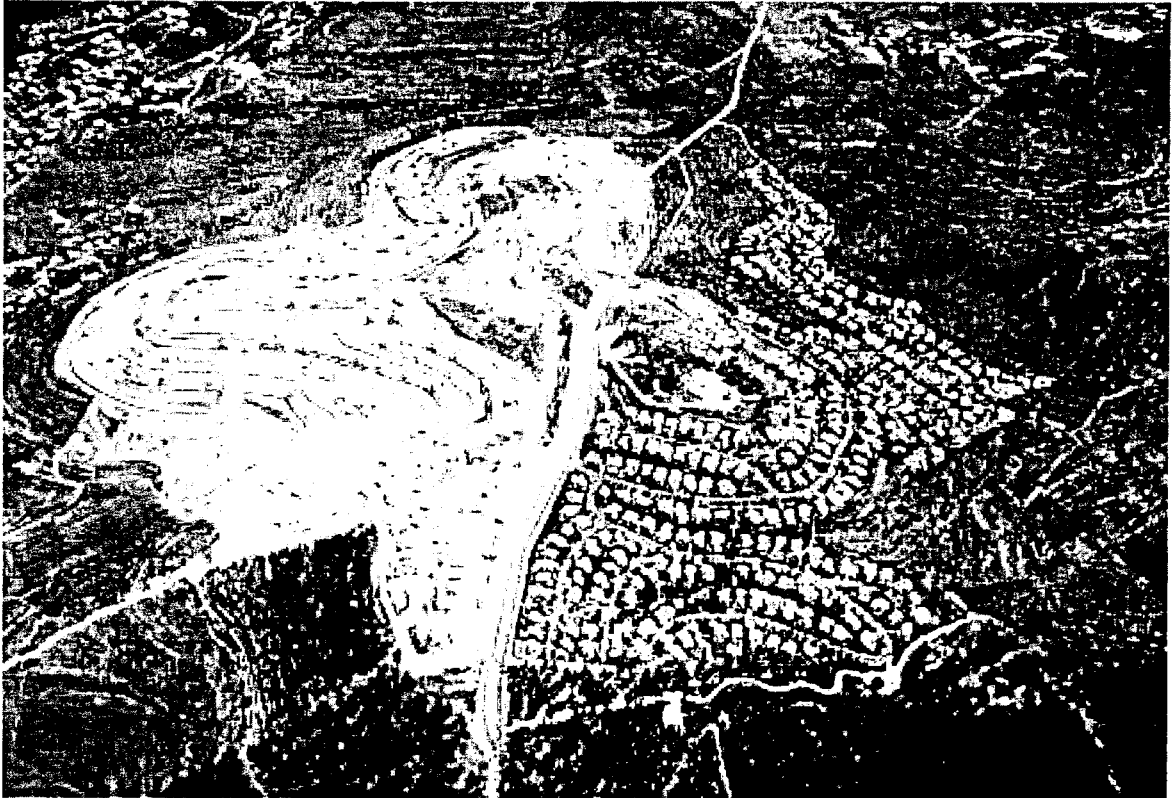


Photo 9 Alone Shilo Farm (bottom) outpost with Qarne Shomeron and Kafit Laqif in the background

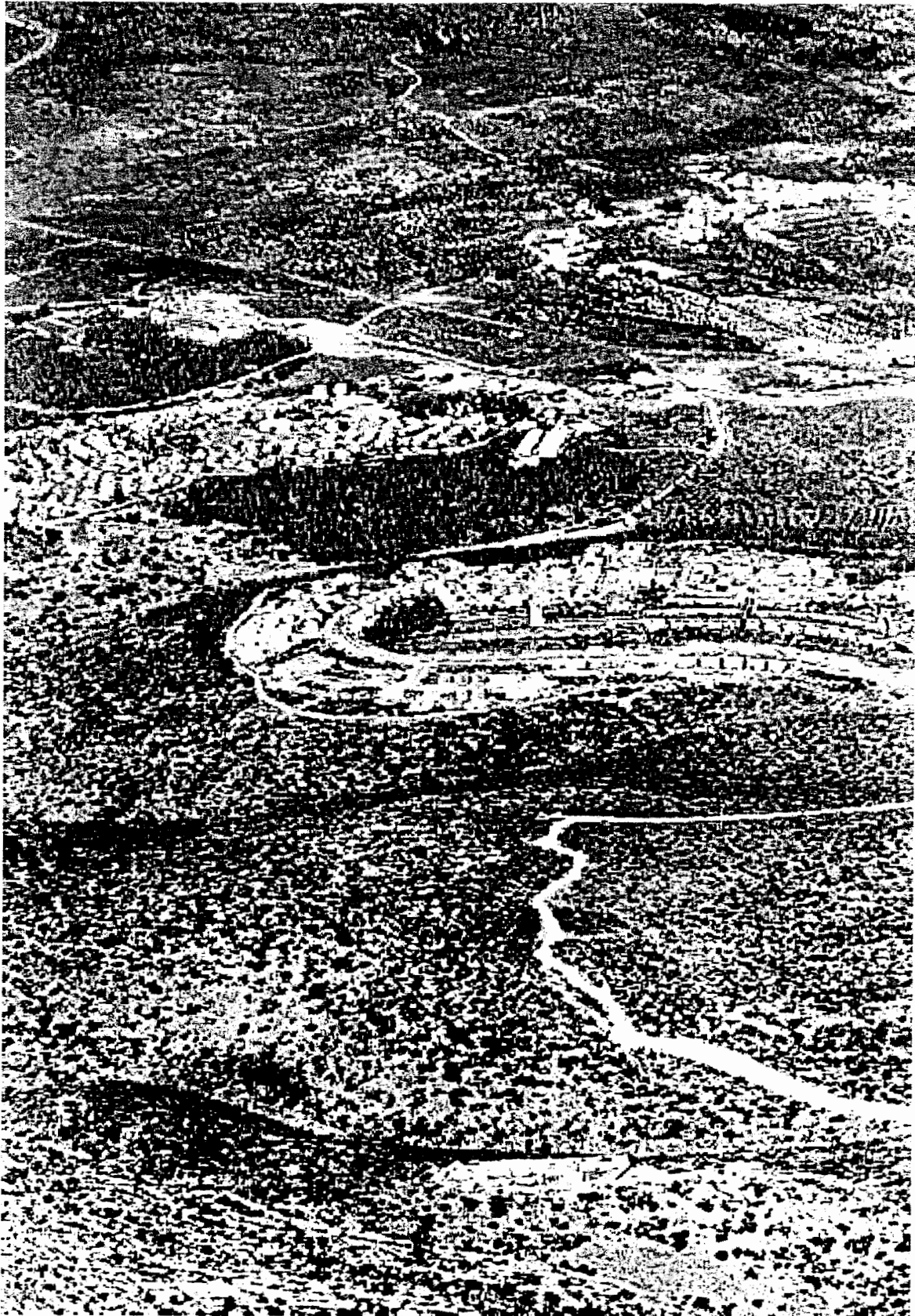


Photo credit: Milotin Levodowitz (Peace Now)

Photo 10 Mizpe Keramim outpost, near Kokhav Hashahar

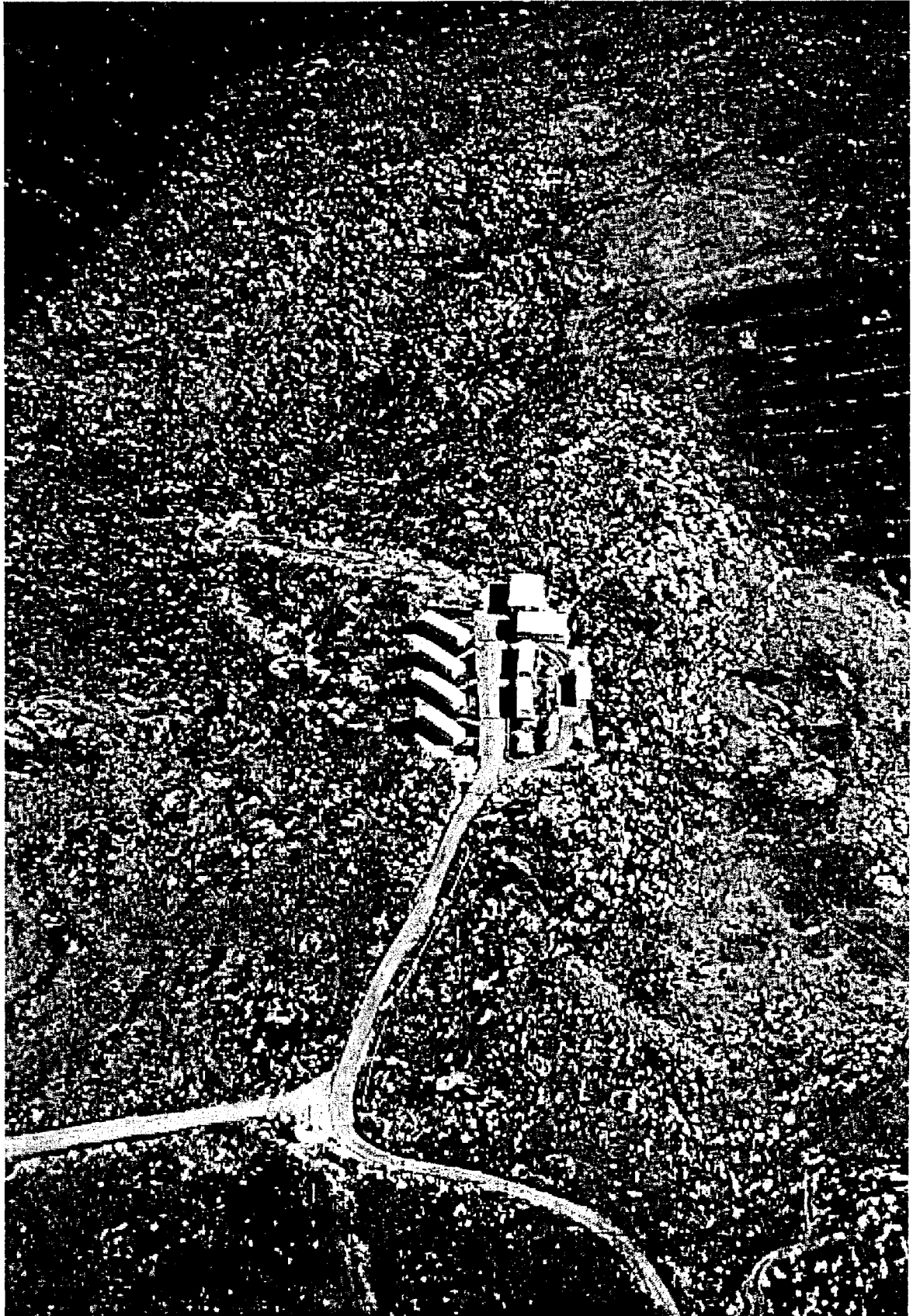


Photo credit: Milotin Levodowitz (Peace Now)



Photo 11 Nili

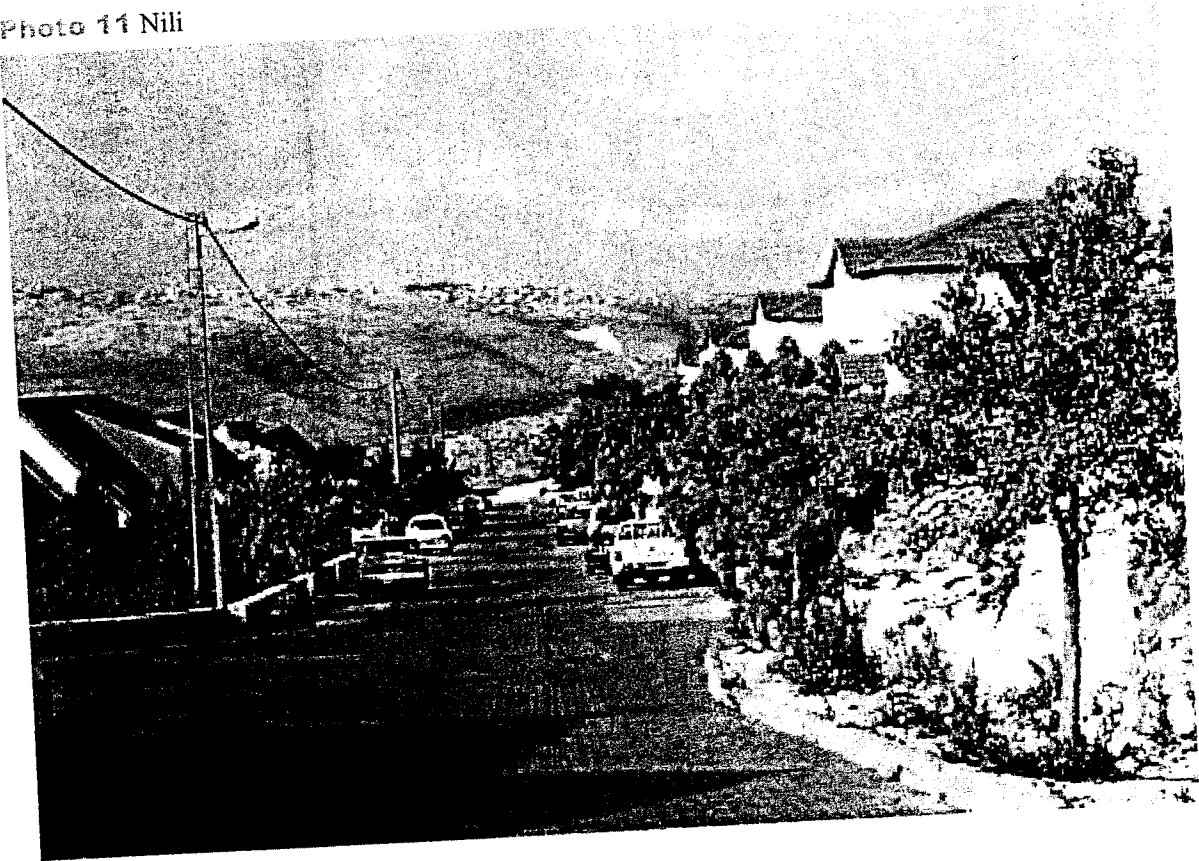


Photo 12 Qedar

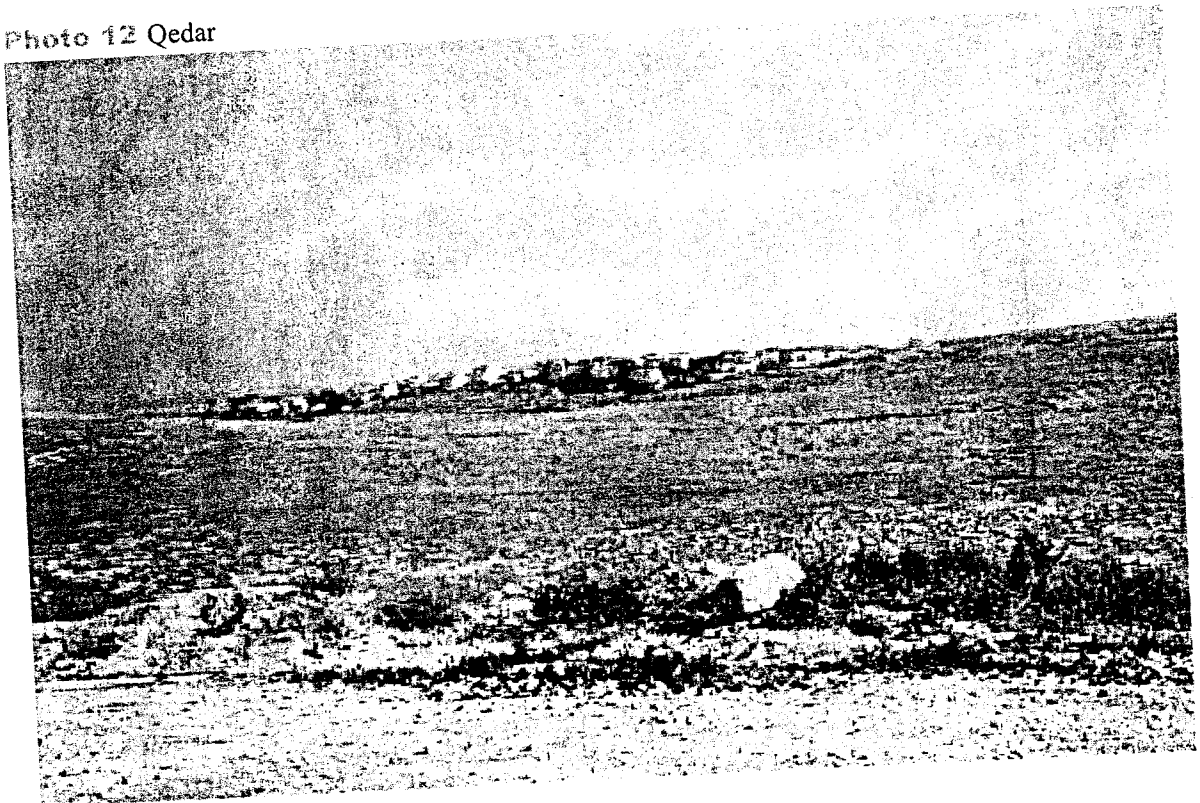


Photo 13 The Tunnels Road

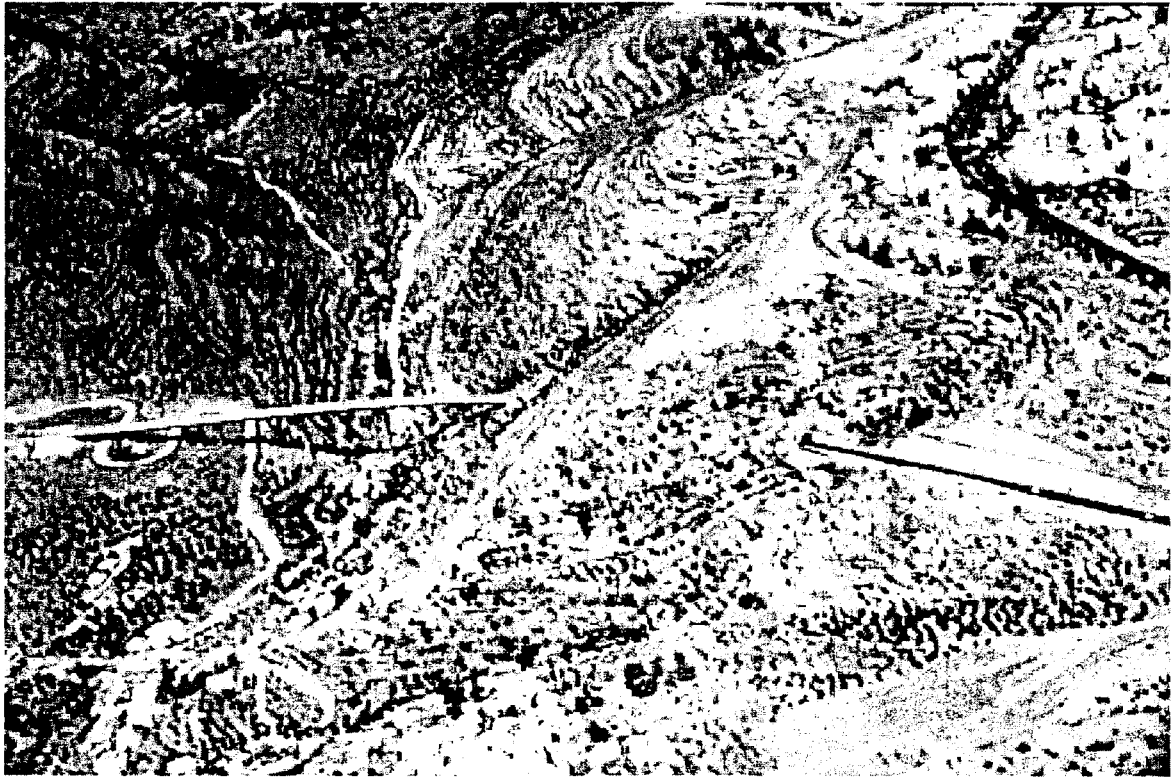


Photo 14 IDF soldiers during Operation Defensive Shield, the Itamar settlement in the background

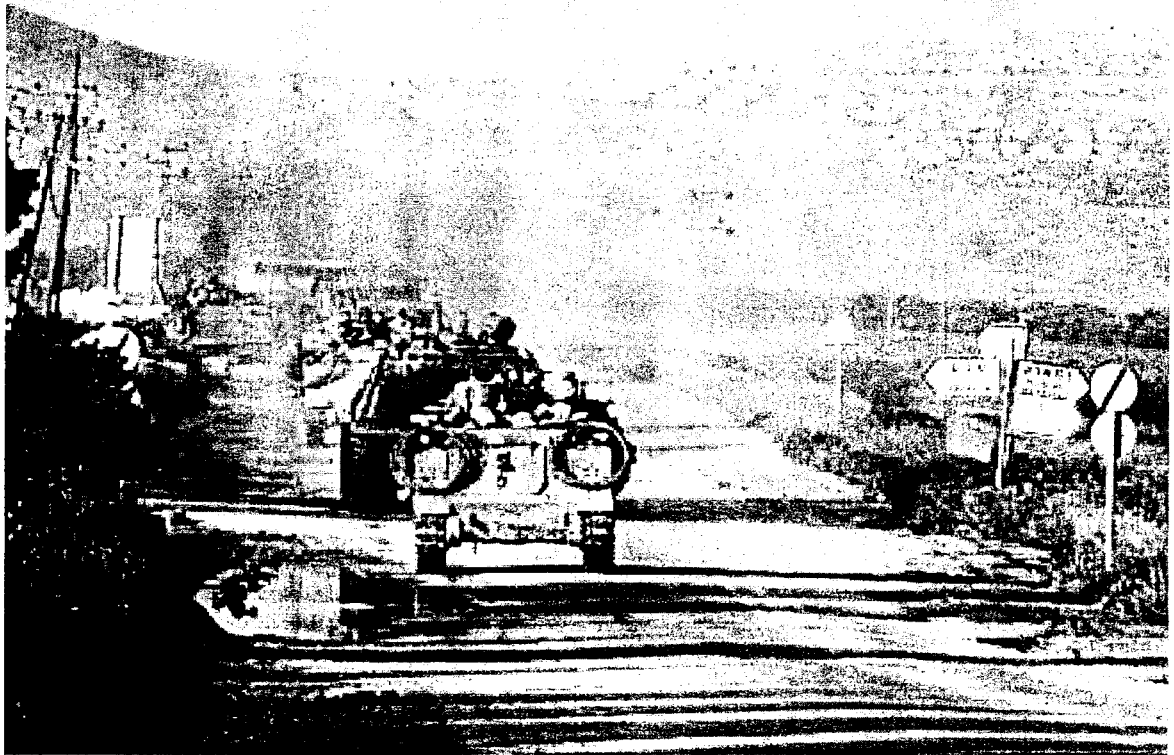
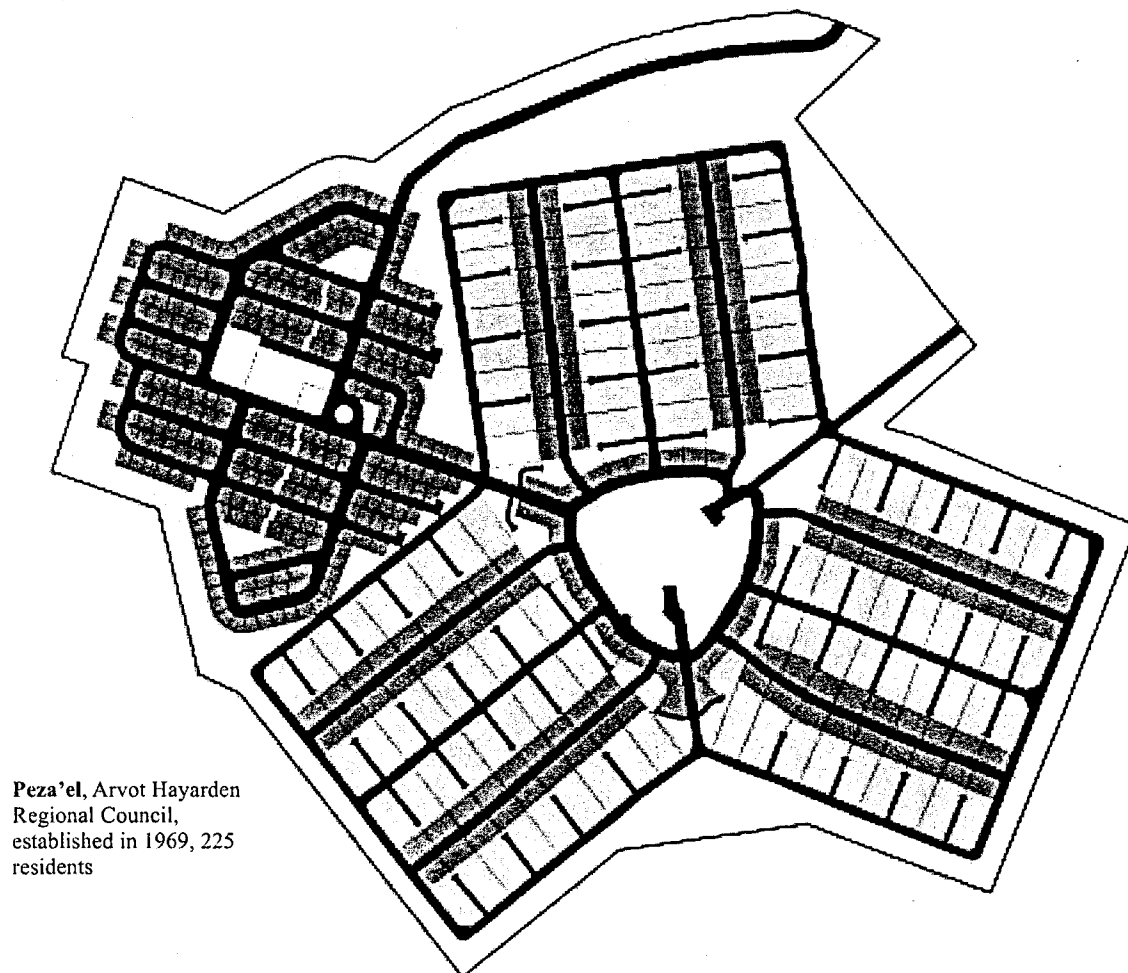


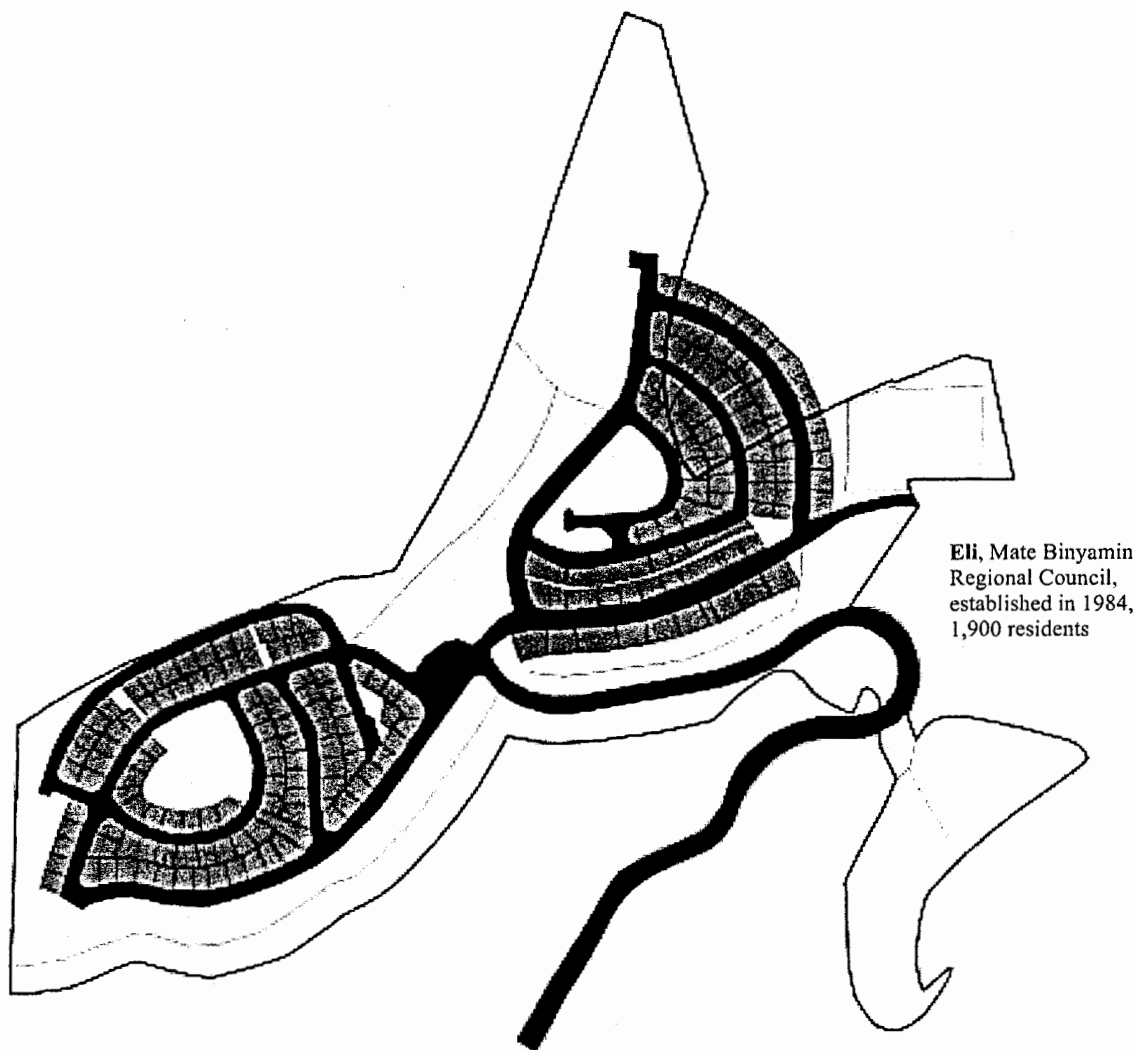
Photo credit: Anonymous

## Types of Settlements: Planning Structure



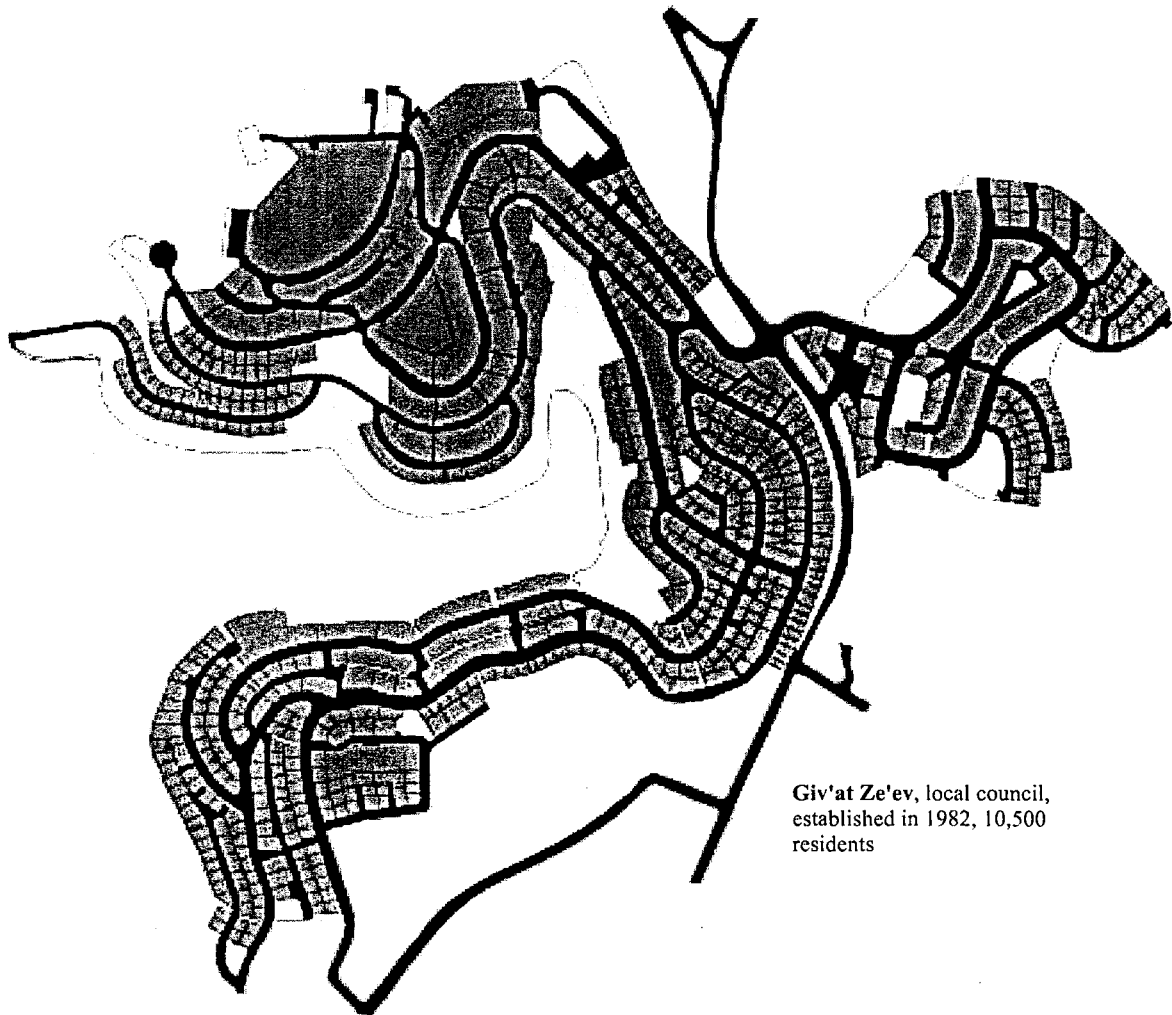
### Cooperative Settlement

Most of the settlements in the Jordan Valley are similar in form to the cooperative settlements within Israel. Unlike the other kinds of settlements, the planning of cooperative settlements is affected primarily by its social organization and less by topography or the restrictions associated with land ownership (state land, contiguity). The geometric form of the settlement reflects an egalitarian division of the land among the members of the settlement (moshav), in which each plot lies adjacent to the owner's house. Peza'el was initially divided into three sections built around the social and administrative center of the moshav. At a later stage, the moshav constructed a new residential area intended for the next generation (the children and their families) of settlers.



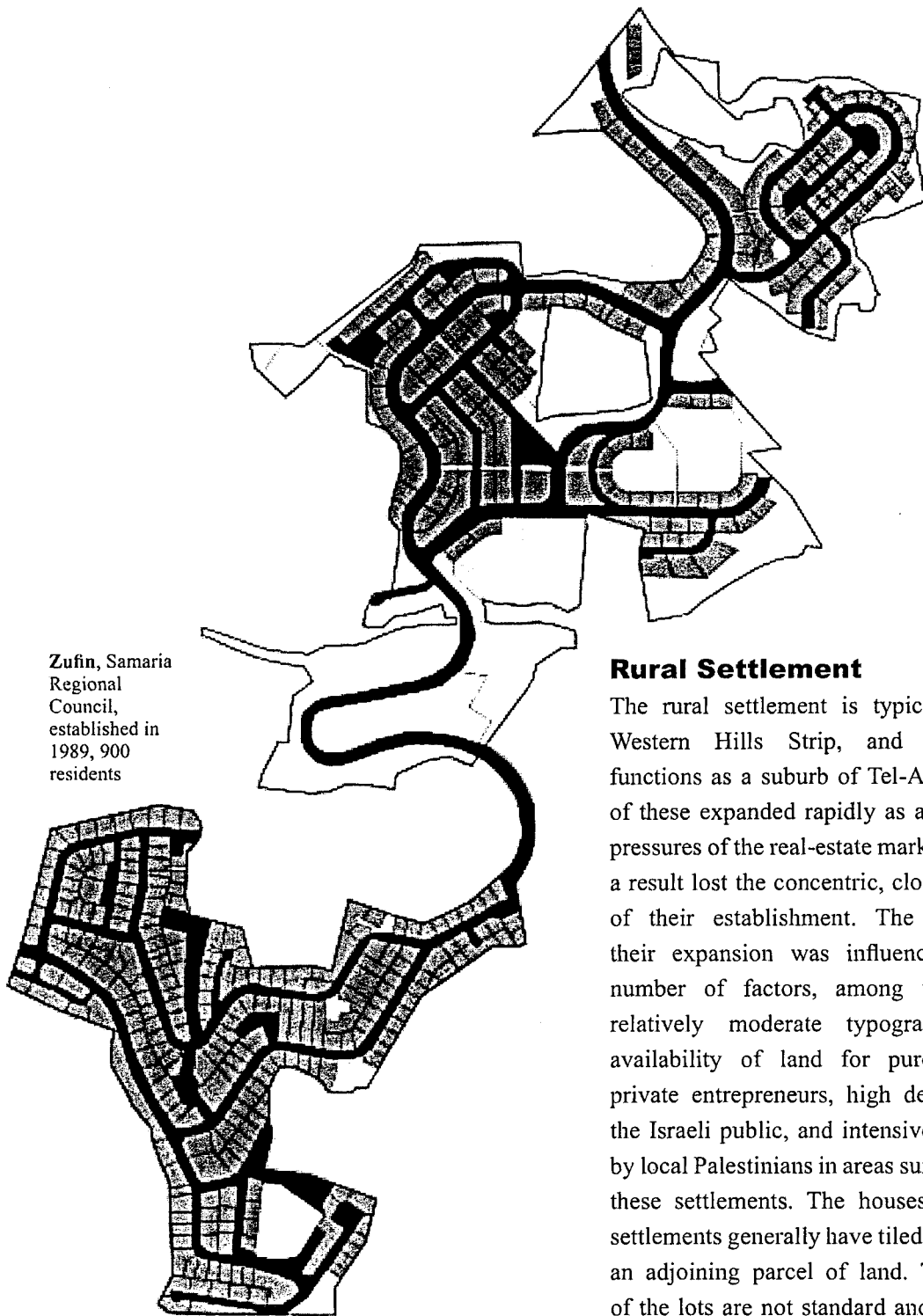
### **Community Settlement**

Most of the community settlements were established on mountainous terrain and their shape was primarily determined by topographical constraints. A typical layout of such settlement is concentric circles along the contour line around the perimeter of the summit. The houses are mostly single-family homes of one or two stories with tiled roofs, constructed perpendicular to the contour lines and with a view of the landscape. The lots allocated to each house are identical - approximately half a dunam [1/8 of an acre]. The social and administrative center of the settlement is usually located in the inner circle, at the highest point. The settlement Eli, which lies on Road No. 60 halfway between Ramallah and Nablus, is a typical community settlement. It spreads out over two adjacent mountain peaks.



### **Urban Settlement**

The urban settlements are located mostly in the Jerusalem Metropolis or adjacent to it (most of them within the Jerusalem Municipality). However, urban settlements are also found elsewhere in the West Bank. These settlements were planned to create rapid demographic change in areas intended for annexation into Israel, or as a large regional service center for clusters of smaller settlements. The settlements include joint-terrace housing or cooperative multi-story buildings. As a result, the housing density is high in comparison with more rural settlements. The form of the urban settlements was also influenced by topography and the constraints of land ownership. The winding shape of the Giv'at Ze'ev settlement, located northwest of Jerusalem, illustrates the effect of these constraints.



Zufin, Samaria  
Regional  
Council,  
established in  
1989, 900  
residents

### Rural Settlement

The rural settlement is typical in the Western Hills Strip, and generally functions as a suburb of Tel-Aviv. Most of these expanded rapidly as a result of pressures of the real-estate market, and as a result lost the concentric, closed shape of their establishment. The form of their expansion was influenced by a number of factors, among them the relatively moderate topography, the availability of land for purchase by private entrepreneurs, high demand by the Israeli public, and intensive farming by local Palestinians in areas surrounding these settlements. The houses in rural settlements generally have tiled roofs and an adjoining parcel of land. The sizes of the lots are not standard and reflect a speculative private-market attitude. The settlement Zufin, northeast of Qalqiliya, was built entirely by private developers. Within the built-up area of the settlement lie two Palestinian enclaves under private ownership.

## Chapter Two

# The Settlements in International Law

The settlements established throughout the West Bank violate various provisions of international law that are binding on Israel. International humanitarian law prohibits the establishment of the settlements. Breach of this prohibition leads to the infringement of numerous human rights of Palestinians that are set forth in international human rights law. This chapter will describe these principles of international law and then will discuss the prohibition on Palestinian attacks against settlers.

### A. International Humanitarian Law

International humanitarian law sets forth the rules applying to states during times of war and occupation. The settlements in the Occupied Territories breach two primary instruments of this branch of law: the Hague Convention on the Laws and Customs of War on Land, and its attached Regulations, of 1907 (hereafter: the Hague Regulations), and the Fourth Geneva Convention Relative to Civilian Persons in Time of War, of 1949 (hereafter: the Fourth Geneva Convention).

Israel's official position is that international humanitarian law is not fully binding on its actions in the Occupied Territories. Its position was established in 1971 by then Attorney General Meir Shamgar.<sup>48</sup> According to Shamgar, humanitarian law does not apply to the West Bank and the Gaza Strip because their annexation by Jordan and Egypt never received international recognition. Thus, the land occupied was not "the territory of a High Contracting Party," a requirement for application of the Geneva Convention. Therefore, Israel argued, it was not obliged to comply with the Fourth Geneva Convention. However, Israel undertook to comply with what it referred to as the "humanitarian provisions" of the Fourth Geneva Convention, although it never specified what constituted the convention's "humanitarian provisions."<sup>49</sup> It is interesting to note that, unlike Shamgar's original position, Israeli officials generally refrain from questioning the application of the Hague Regulations to the Occupied Territories, although the identical problem of application exists.<sup>50</sup>

Israel's position has never gained any support in the international arena and even is rejected by Israelis to a significant degree. The International Red Cross, the UN, and the vast majority of states and international law experts have often stated that the Fourth Geneva Convention is binding on Israel in its activity in the Occupied Territories.

Israel's Supreme Court has ruled that application of the laws of occupation depends on effective military control from outside the borders of the state, and not on prior sovereignty over the territory by a specific state.<sup>51</sup> This test is preferable to the "sovereignty test" because in many cases, "border disputes are legal

48. Meir Shamgar. "The Observance of International Law in the Administered Territories," 1 *Israel Yearbook of Human Rights* (1971) 262. csp. pp. 262-266.

49. Yahav *et al.*, *Israel, the "Intifada" and the Rule of Law* (Tel-Aviv, 1993), p. 22.

50. Eyal Zamir and Eyal Benvenisti, "Jewish Lands" in *Judea, Samaria, the Gaza Strip, and East Jerusalem* (in Hebrew) (Jerusalem: Jerusalem Institute of Israel Studies, 1993), p. 62.

51. H.C.J. 785/87, *Afo v. Commander of IDF Forces in the West Bank*, *Piskei Din* 42(2) 4.

disputes over the status of the occupied territory. In this situation, subordinating the laws of belligerent seizure to a legal test would neutralize their application," in that it would be interpreted as a waiver of rights in the occupied territory.<sup>52</sup>

## Fourth Geneva Convention

Article 49 of the Fourth Geneva Convention explicitly states that, "The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies." The most accepted interpretation of this convention is the commentary prepared by the International Red Cross. According to the commentary on this section, "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."<sup>53</sup>

Israel rejects the contention that the settlements in the West Bank are prohibited by Article 49. In the words of the Israeli Ministry of Foreign Affairs:

- The provisions of the Geneva Convention regarding forced population transfer to occupied sovereign territory cannot be viewed as prohibiting the voluntary return of individuals to the towns and villages from which they, or their ancestors, had been ousted....
- It should be emphasized that the movement of individuals to the territory is entirely voluntary, while the settlements themselves are not intended to displace Arab inhabitants, nor do they do so in practice.<sup>54</sup>

The Ministry's comments contain several legal and factual errors and distortions.

Firstly, according to the Fourth Geneva Convention, the absence of the element of force in the transfer of Israelis into the occupied territory does not legitimize the transfer. Unlike the prohibition on deporting local residents from the occupied territory, which is found at the beginning of Article 49 and forbids the "forcible transfer" of protected persons, the end of the article states that the occupying state "shall not deport *or transfer* parts of its own civilian population into the territory it occupies" (our emphasis). The word "forcible" is absent from this latter prohibition. The prohibition on transferring a civilian population from the occupying state into the occupied territory is thus broader, and also includes non-forcible transfers.<sup>55</sup>

Secondly, the contention that the transfer of settlers into the occupied territory was not intended to expel local residents and that such expulsion did not in practice take place does not legitimize the settlements. The objective of the last clause of Article 49 is to protect the local residents against another population settling on their land, with all the harm that is derived from such settlement – extraction of natural resources, harm to economic development, restriction of urban development, and the like – and not only to protect them from expulsion.

52. Zamir and Benvenisti, "Jewish Lands," p. 63.

53. Jean S. Pictet (ed.), *Commentary: Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Geneva: International Committee of the Red Cross, 1958), p. 283.

54. Israel Ministry of Foreign Affairs, *Israeli Settlements and International Law*, May 2001, [www.israel-mfa.gov.il](http://www.israel-mfa.gov.il).

55. B'Tselem, *Israeli Settlement in the Occupied Territories as a Violation of Human Rights: Legal and Conceptual Aspects* (March 1997), p. 18.



Thirdly, the term "voluntary transfer" is deceiving. Even if the transfer is not forced or does not constitute deportation, the willingness of the civilians to move to the Occupied Territories could not have been implemented without the state's massive intervention in establishing and expanding the settlements. As this report shows, a number of state authorities initiated, approved, and seized land, and planned and financed the vast majority of the settlements. Although in some cases the initial initiative was made by entities unrelated to the state, such as Gush Emunim, and faced governmental opposition, the government ultimately approved the settlement retroactively and provided organizational and financial support. Furthermore, as will be shown in Chapter Five, the government has always offered diverse financial incentives to encourage Israelis to move to the Occupied Territories.

Fourthly, the historic or religious ties of the Jewish people to the West Bank, mentioned in the Ministry of Foreign Affairs document, cannot legitimize a flagrant breach of Israel's duties under international humanitarian law. The vast majority of the settlements was not intended as a "return to towns and villages" (in the Ministry's language) or even as a return to sites populated by Jews prior to 1948, but were entirely new settlements. This "return" was not done by weaving settlers into the existing pattern of life in the area. Rather, it was done by creating a separate and discriminatory (physical and legal) system between the settlers and the Palestinians.

It should be noted that the Jews who fled or were expelled from certain places in the West Bank during the 1948 war, and who lost their property as a result, may, in the context of a peace arrangement or any other arrangement, demand restitution of their property or compensation. However, this right is completely unrelated to Israel's settlement policy.

## **Hague Regulations**

A fundamental principle of humanitarian law, and of the Hague Regulations in particular, is the temporary nature of military occupation. It is the temporary nature of occupation that dictates the limitations on the occupier in creating permanent facts in the occupied territory.<sup>56</sup>

The Supreme Court held that, because the occupying state is not the sovereign in the territory under occupation and its administration there is temporary, it may take into account only two factors: security needs and the welfare of the local population.<sup>57</sup> In the words of Justice Aharon Barak:

The Hague Regulations revolve about two main pivots: one – ensuring the legitimate security interest of those holding the land by belligerent occupation; and the other – ensuring the needs of the civilian population in the territory subject to belligerent population... the military commander may not weigh national, economic, or social interests of his country insofar as they have no ramifications on his security interest in the area, or on the interest of the local population. Even military needs are his [i.e., the military commander's] needs and not national security needs in their broad sense.<sup>58</sup>

Indeed, it is hard to imagine a more profound or more permanent change than turning an open landscape (agricultural land, grazing land, or virgin hills) into a populated civilian community. The permanence of

56. Yoram Dinstein, *Laws of War* (in Hebrew) (Tel-Aviv: Schocken and Tel-Aviv University, 1983), pp. 209-220.

57. HCJ 393/82. *Jam'iyyat Iskan al-Mu'aliman al-Mahddudat al-Mas'uliyah v. Commander of IDF Forces*, *Piskei Din* 37(4) 785.

58. *Ibid.*, p. 794.

such change results not only from the enormous investment in buildings, infrastructure, and roads, but also from the ties of the lives of entire families to a particular place.

To sidestep the prohibitions mentioned above, Israel argued that the settlements were not permanent changes in the occupied territory. Even the Supreme Court has sanctioned this claim. For example, in a decision regarding the requisition of privately-owned land to establish the Bet El settlement, Justice Miriam Ben-Porat noted that the term "permanent community" is a "purely relative concept."<sup>59</sup> She made this comment although the building of permanent civilian communities and civilian neighborhoods is one of the most obvious examples of permanent change. This interpretation of the prohibition on creating permanent facts renders meaningless the relevant provisions of international law.

Because it is clear that the settlements were not intended to benefit the Palestinians, Israel's main justification prior to 1979 for the expropriation of privately-owned land was that it was intended to meet "pressing security needs."

There has been constant debate in the army as to whether the settlements contribute to Israel's security. In any event, it is clear that even if some military benefit arose from certain settlements, meeting security needs was not the reason for the establishment of the vast majority of them. As shown in the previous chapter, Israel's settlement policy was formed on the basis of political, strategic, and ideological reasons completely unrelated to security needs within the narrow meaning of the term. According to Major General (res.) Shlomo Gazit, who was the first coordinator of government operations in the Occupied Territories:

It was clear that the Israeli settlements in the territories, and especially in the densely-populated areas, have far-reaching political consequences. These settlements are intended to establish new facts to affect the future political solution. It was clear that establishment of the Israeli civilian settlements is a kind of statement of policy, whose weight is not much less than the Knesset's decision in 1967 to annex East Jerusalem: this settlement was established on land from which Israel does not intend to withdraw.<sup>60</sup>

In this context, it should be noted that one of the functions of the IDF's NAHAL brigades is to establish military settlement posts. Even though these posts may exist for many years and the soldiers based there are not involved in military actions, they are not permanent encampments. The soldiers remain there only during their army service and do not establish their home on the site. This kind of settlement does not violate international law.<sup>61</sup> However, most of these NAHAL encampments were in practice a preliminary stage in the establishment of permanent civilian settlements on the sites.

In establishing settlements since 1979 (the Elon Moreh case), Israel has not used land that was expropriated on grounds of security needs. Rather, it has used land defined as state land (see Chapter Three). Even if these lands indeed belonged to the government of Jordan – which is doubtful in many instances – their use for settlements violates the Hague Regulations.

Article 55 of the Hague Regulations states the rules relating to the permitted use of government property under the control of the occupier:

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59. HCJ 258/79, *Ayyub et al v. Minister of Defense et al.*, *Piskei Din* 33(2) 113 (hereafter: *Bet El*).

60. Gazit, *Fools in a Trap*, p. 217.

61. Dinstein, *Laws of War*, p. 226.

The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural 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.

The terms "administrator" and "usufructuary" indicate the right of the occupying state to manage the properties of the state it occupies and use them to meet its needs subject to certain limitations. These limitations are derived from the temporary nature of the occupation and the lack of sovereignty of the occupying state. Therefore, the occupying state is forbidden, *inter alia*, to change the character and nature of the governmental properties (in the context of the settlements, state land), except for security needs or for the benefit of the local population.<sup>62</sup>

As noted above, the settlements permanently and significantly change the character of the state lands on which they are built. Because the settlements do not meet either of the two exceptions, their establishment constitutes a flagrant violation of Article 55 of the Hague Regulations.

## **B. International Human Rights Law**

The fundamental breach of international law described above has repercussions that also constitute human rights violations. This part of the report briefly sketches the provisions of international law that Israel violates by allowing the presence of the settlements and settlers, and refers to the chapters of the report that examine each of the violations in detail.

The fundamental human rights, as they appear in the Universal Declaration of Human Rights, were drafted in two international conventions that the UN adopted in 1966: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Israel signed and ratified both of these covenants. The two UN committees responsible for interpreting the covenants and monitoring their implementation have unequivocally stated that these covenants apply to all persons over whom the signatory states have control, regardless of sovereignty. Furthermore, the two committees expressly stated that they also apply to Israel in regards to its actions in the West Bank.<sup>63</sup>

### **Right to Self-Determination**

The first article, which is common to both covenants, states:

1. All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth... In no case may a people be deprived of its own means of subsistence.

62. Yuval Ginbar, "The Belligerent Occupant as a Usufructuary and Israeli Settlements on 'State Lands' in the West Bank and Gaza Strip," unpublished paper submitted to the University of Essex, England, March 1996.

63. See the concluding comments that the two committees issued after their hearings on reports that Israel submitted: Committee on Economic, Social and Cultural Rights, 19<sup>th</sup> Session, E/C.12/1/Add.27; Committee on Human Rights, 63<sup>rd</sup> session, 1998, CCPR/C/79/Add93.

In recent years, the Israeli government, the Palestinian Authority, and most of the international community have agreed that the proper framework for realizing the right to self-determination of the Palestinian people is the establishment – alongside the State of Israel – of an independent Palestinian state in the West Bank and Gaza Strip.

Chapter Seven of this report presents a map of the West Bank that delineates the areas currently held by settlements and their jurisdictional areas that are closed to Palestinians. The map shows that many settlements block the territorial continuity of dozens of Palestinian enclaves, which are currently defined as Areas A and B. This lack of contiguity prevents the establishment of a viable Palestinian state, and therefore prevents realization of the right to self-determination.

Also, as is shown in Chapter Seven, the settlements deny the Palestinian people a substantial portion of two resources that are vital to urban and economic growth – land and water. This phenomenon is conspicuous in the Jordan Valley, which contains significant land and water reserves that are extensively used by the settlements in that area.

## **Right to Equality**

The right to equality is one of the pillars of human rights. It is set forth in the second article of the two covenants, and in the second article of the Universal Declaration of Human Rights, as follows:

1. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

This report, particularly Chapter Four, demonstrates how Israel has used laws, regulations, and military orders to carry out an undeclared annexation of the settlements into the State of Israel. The annexation's direct effect is the application of different legal systems, and different protections, to the Jewish and Palestinian populations living in the same territory. Whereas the settlers benefit from their status as citizens of a democratic state and enjoy all the rights that accompany citizenship, the Palestinians live under a military occupation that denies them these rights.

The transfer of certain powers to the Palestinian Authority in the context of the Oslo Accords changed matters only slightly. Most Palestinians are still exposed to the bureaucratic controls of the Israeli occupation, and the IDF is still able to impose, for example, broad restrictions on movement, to restrict entry and exit from the Occupied Territories, and to detain Palestinians. The settlers, on the other hand, remain subject to total civilian control, just like Israeli citizens living within the Green Lines, and are not subject to the Palestinian Authority in any matter. This situation, in which an individual's rights are determined according to his or her national identity, constitutes a flagrant breach of the right to equality.

## **Right to Property**

The right to property is vested in Article 17 of the Universal Declaration of Human Rights, which provides:

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

Protection of private property is well grounded in international humanitarian law, and is found, *inter alia*, in the Hague Regulations (Article 46) and in the Fourth Geneva Convention (Article 53). Israeli law recognizes this right in Section 3 of the Basic Law: Human Dignity and Liberty, which provides: "There shall be no violation of the property of a person."

Chapter Three discusses the legal-bureaucratic system that Israel created to control the land intended for the establishment and expansion of settlements. Because some of these lands were privately or collectively owned by Palestinians, and the settlements were illegal from their inception, a significant proportion of the seizures of land infringed the Palestinians' right to property. Furthermore, the procedures Israel used in taking over the land entailed flagrant, arbitrary breaches of due process.

## **Right to an Adequate Standard of Living**

Article 11 of the International Covenant on Economic, Social and Cultural Rights states:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

Chapter Seven discusses a common phenomenon in various areas of the West Bank: the location of settlements very close to Palestinian towns and villages, thus limiting their urban development, at least in one direction of possible expansion. In some cases, the settlement is purposely situated on the side of the Palestinian community that is the natural direction of expansion for the particular community. This phenomenon is analyzed in Chapter Eight, which examines the effect of the Ari'el settlement on Palestinian residents in the area.

Another phenomenon that affects the urban-development options available to the Palestinians is the discriminatory use of physical planning, which is discussed in Chapter Six. Israel has used military legislation to change the planning mechanism that was previously in effect. This change was intended primarily to serve the interests of the Israeli administration and the settlers, while almost totally ignoring the needs of the Palestinian population.

In some areas, the blocking of Palestinian urban development has created housing shortages and an increase in population density. These hardships resulted in part from Israel's settlement policy and discriminatory planning system, and consequently infringed the Palestinian's right to adequate housing and continuous improvement of living conditions.

As emphasized in Chapter Eight, the seizure of land used for farming or grazing often severely affected the primary source of income of entire families. This harm undoubtedly led to a significant deterioration in the standard of living – a violation under Article 11 of the International Covenant on Economic, Social

and Cultural Rights, quoted above – and of Article 6 of the same covenant, which recognizes the right of everyone to work and to make a living through work that he or she freely chooses.

## **Freedom of Movement**

Article 12 of the International Covenant on Civil and Political Rights provides that everyone shall have the right to freedom of movement, without restrictions, in his country. The right to move from place to place is important because movement is necessary to live normally and to exercise many other rights delineated in international law, such as the right to work, health, education, and to maintain family life.

Chapter Seven will show that a substantial proportion of the settlements that were established along the central hill region were set up near Road No. 60, which is the main north-south traffic artery in the West Bank. To ensure the security and freedom of movement of settlers in this area, the IDF set up checkpoints along the road, and from time to time has imposed harsh restrictions on Palestinian movement along certain parts of this road. Since the beginning of the al-Aqsa intifada and the increase in Palestinian attacks on Israeli cars on the roads, the IDF has tightened the restrictions to the point of almost totally preventing Palestinians from traveling on roads used by settlers.

## **C. Injury to Settlers**

Since the beginning of the occupation, the settler population has been a frequent target of attacks by Palestinian residents. The gravity of the attacks varies from stones thrown at cars, which only cause property damage, to shootings and the laying of explosives, which have killed Israeli civilians. The number of attacks increased during the first intifada (1987-1993), and since the beginning of the al-Aqsa intifada, the Palestinian attacks on settlers have been common and increasingly severe.

Palestinian Authority officials and non-governmental organizations have hinted, some even stating openly, that the illegality of the settlements justifies the use of any means to fight them. For example, the Palestinian Authority's Minister for Prisoner Affairs, Heysham 'Abd al-Raze1, justified an attack on a bus transporting school children from the Kfar Darom settlement in the Gaza Strip, which killed two civilians and wounded nine, with five children among the wounded, saying:

The perpetrator of this attack was one of the Palestinian people. We committed it against people who occupy our land. From our point of view, any action against the occupation is legal.<sup>64</sup>

In another case, a number of Palestinian NGOs published a statement in the press saying that the right to oppose the occupation legitimates Palestinian attacks on settlers. The NGOs further stated that the settlements serve a military function and the settlers, therefore, are not entitled to civilian status.<sup>65</sup> Another argument that Palestinians sometimes raise in this context is that settlers take part in violent attacks against Palestinians, and the Israeli authorities do not intervene and enforce the law.<sup>66</sup>

64. Keith B. Richburg, "Missile Attacks Stoke Palestinian Defiance," *International Herald Tribune*, 22 November 2000.

65. *Al-Quds*, 3 July 2001. The statement was published in condemnation of a B'Tselem press release that condemned attacks on the settlers.

66. For details on settler violence and the failure to enforce the law against them, see B'Tselem, *Law Enforcement vis-a-vis Israeli Civilians in the Occupied Territories*, March 1994; B'Tselem, *Tacit Consent: Israeli Law Enforcement on Settlers in the Occupied Territories*, March 2001; B'Tselem, *Free Rein: Vigilante Settlers and Israel's Non-Enforcement of the Law*, October 2001.

Arguments of these kinds undermine the fundamental principles of international human rights law and international humanitarian law. These principles are part of international customary law, which binds all persons and all groups, and not only the states that are party to the relevant conventions. The right to combat the occupation in general and the settlements in particular does not justify disregard for these fundamental principles.

The infliction of extensive injuries on settlers is a flagrant breach of the right to life and security of person, which is vested in Article 3 of the Universal Declaration of Human Rights and in Article 6 of the International Covenant on Civil and Political Rights. Also, one of the fundamental principles of international humanitarian law is the duty to distinguish between combatants and civilians who do not take part in the combat. As a collective, the settler population, which includes children, clearly comprises a civilian population. As such, it is not part of the IDF forces. Particular settlers belong to the security forces, but this fact does not affect the civilian status of the other settlers, who are not legitimate targets of attack.

The Palestinian NGOs' argument that the settlements and settlers all serve Israel's military needs is imprecise. As Chapter Three will show, Israel made the same argument to justify the legality of the requisition of privately-owned Palestinian property to establish settlements. However, in 1979, the High Court rejected this argument (see the discussion on *Elon Moreh* below); since then, Israel has not used this argument. Paradoxically, if the Palestinians' argument (and Israel's argument until 1979) that the settlements were established to meet military needs is correct, the settlements would not breach international law.

Independent attacks on Palestinians by settlers do not affect the civilian status of the attackers, and certainly not that of their families and neighbors in the settlements. That status does not affect, of course, the right of Palestinians under attack to use the force necessary to defend themselves against the attackers.





## Chapter Three

# The Land-seizure Mechanisms

Since the beginning of the occupation, Israel has taken control of hundreds of thousands of dunam [four dunam = 1 acre] throughout the West Bank, with the primary objective of establishing settlements and providing reserves of land for their expansion. It has done this by means of a complex legal-bureaucratic mechanism whose central element is the declaration and registration of land as "state land." In addition, Israel uses three complementary methods to seize control of land: requisition for military needs, declaration of land as abandoned property and the expropriation of land for public needs. In addition, Israel has also helped its Jewish citizens to purchase land on the free market for the purpose of establishing new settlements.<sup>67</sup> Using these methods, Israel has seized control of some fifty percent of the West Bank, excluding East Jerusalem (see the map).

Despite the diverse methods used, they have all been perceived, and continue to be perceived, by all the relevant bodies – viz., the Israeli government, the settlers and the Palestinians – as a single mechanism serving a single purpose: the establishment of civilian settlements in the Occupied Territories. This reality is clearly illustrated in those cases where the land on which certain settlements are constructed is composed of a patchwork quilt of plots that Israel seized by several different methods. Thus, for example, the area of the settlement of Shilo (as of 1985) comprised some 740 dunam seized for military needs, approximately 850 dunam were declared state land, and 41 dunam were expropriated for public needs.<sup>68</sup>

The establishment of civilian settlements in the Occupied Territories is prohibited by the Fourth Geneva Convention and the Hague Regulations. Because this was precisely the purpose behind the mechanism used to seize control of land in the West Bank, the seizure itself also constitutes a violation of international humanitarian law. In taking control of the land, Israel also flagrantly breaches fundamental principles of natural justice that are enshrined in numerous rulings of the High Court.

Exclusively using the seized lands to benefit the settlements, while prohibiting the Palestinian public from using them in any way, is forbidden and illegal in itself. This would be the case even if the process by which the lands were seized were done fairly and in accordance with international and Jordanian law. This exclusive use of the lands has severely limited Palestinian potential for urban and agricultural development (see Chapter Seven). As the occupying force in the Occupied Territories, Israel is not entitled to determine the designated use of public land in a manner that ignores the needs of an entire population.

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67. Many of the technical terms in this chapter might well be placed in inverted commas, given the distance between their apparent meaning and the actual use that has been made of them in the field. We have refrained from doing so since our main aim in this chapter is precisely to illustrate the use of legal mechanisms for purposes other than those for which they were intended.

68. Usamah Halabi, Aron Turner and Meron Benvenisti, *Land Alienation in the West Bank: a Legal and Spatial Analysis* (Jerusalem: The West Bank Data Project, 1985), p. 85.

As a general rule, the High Court has cooperated with the mechanism used to seize control of land, and has played an important role in creating an illusion of legality. Initially, the Court accepted the state's argument that the settlements met urgent military needs, so that the state was allowed to seize private land to establish them. When the process of declaring land as state land began, the High Court refused to intervene and prevent the new process.

Each of these methods rests on a different legal foundation, combining in different ways and degrees the legislation existing prior to the Israeli occupation, including remnants of Ottoman and British Mandate law absorbed into the Jordanian legal system, and orders issued by Israeli military commanders. This chapter will discuss the legal background of each of the methods of seizure and outline the modalities in which Israel implemented them.

## A. Seizure for Military Needs

Humanitarian customary law obliges the occupying power to protect the property of residents of the occupied area and prohibits it from expropriating it.<sup>69</sup> However, an occupying power may take temporary possession of privately-owned land and buildings belonging to the residents of the occupied area in order to house its military forces and administrative units. Such seizure is by definition temporary; accordingly, the occupying power does not acquire property rights in the requisitioned land and buildings, and is not entitled to sell them to others. Moreover, the occupying power is obliged to pay compensation to the owners for the use of their property.<sup>70</sup>

On the basis of this exception, Israeli military commanders issued dozens of orders between 1968-1979 for the requisition of private land in the West Bank, claiming that it "is required for essential and urgent military needs."<sup>71</sup> During the above-mentioned period, almost 47,000 dunam of private land were requisitioned, most of which were intended for the establishment of settlements. The following settlements were among those established on this land: Matitiyahu, Neve Zuf, Rimonim, Bet El, Kokhav Hashahar, Alon Shvut, El'azar, Efrat, Har Gilo, Migdal Oz, Gittit, Yitav and Qiryat Arba.<sup>72</sup>

In several cases, Palestinian residents petitioned the High Court of Justice against the seizure of their land, claiming that the use of this land for the purpose of establishing settlements is contrary to the requirements of international humanitarian law.<sup>73</sup> Until the judgment regarding Elon Moreh (see below), the High Court rejected all these petitions and accepted the state's argument that the land seizure was legal because the settlements performed key defense and military functions. According to Justice Vitkon:

In terms of the purely security-based consideration, there can be no questioning that the presence in the administered territory of settlements – even "civilian" – of the citizens of the administering power makes a significant contribution to the security situation in that territory, and facilitates the

69. See, *inter alia*, Article 46 of the Regulations Attached to the Hague Convention (IV) Respecting the Laws and Customs of War on Land, of 1907, and Article 53 of the Fourth Geneva Convention.

70. This norm is not stated explicitly, but may be deduced from the accepted interpretation of the Hague Regulations. See Yoram Dinstein, *Laws of War*, p. 234.

71. This is the standard formula that appears in the orders. For example, see *Bet El*, *supra*, footnote 59.

72. Halabi *et al.*, *Land Alienation in the West Bank*, p. 83.

73. The best known petitions are *Bet El*; HCJ 834/78, *Salama et al. v. Minister of Defense et al.*, *Piskei Din* 33(1) 971; HCJ 258/79, *Amira et al. v. Minister of Defense et al.*, *Piskei Din* 34(1) 90.

army's performance of its function. One need not be an expert in military and defense matters to appreciate that terrorist elements operate more easily in territory occupied exclusively by a population that is indifferent or sympathetic to the enemy than in a territory in which there are also persons liable to monitor them and inform the authorities of any suspicious movement. With such people the terrorists will find no shelter, assistance and equipment. These are simple matters and there is no need to elaborate.<sup>74</sup>

The justices in this case also found no contradiction between the requirement embodied in humanitarian law that the seizure of private land be temporary and not injure the property rights of its owner, and the fact that permanent settlements, including extensive and diverse physical infrastructure, were established on the seized land.<sup>75</sup>

The argument that the settlements serve military needs could be comfortably adopted under the Ma'arach governments, which acted in accordance with the Alon Plan. Among right-wing circles such as Gush Emunim, however, this argument was perceived as unacceptable. They viewed the settlements in the context of a religious vision; thus, they were not to be justified on security grounds or defined – even for declarative purposes only – as temporary communities. After the rise to power of the Likud in 1977, this approach gained a more central status. Neither Gush Emunim nor certain sections of the Likud-led government were willing to excuse the establishment of the settlements on security grounds, with the concomitant – albeit declarative – definition of these settlements as temporary. This approach, which was supported by some of the ministers in the Likud government that was formed in 1977, eventually led to the ruling in *Elon Moreh*. Following the Court's decision in *Elon Moreh*, the policy of seizing privately-owned land to establish settlements stopped.

The petition in *Elon Moreh* was submitted to the High Court in June 1979 by several residents of the village of Rujeib, southeast of Nablus. The petition asked the court to nullify an order issued by the IDF commander in the region for the requisition of some 5,000 dunam.<sup>76</sup> The land affected by the seizure order was slated for the establishment of a settlement, named *Elon Moreh*. Work on laying the infrastructure for the settlement began on the same day the order was issued. The state's response, as customary until this case, was that the settlement was planned for military reasons, and accordingly the requisition orders were lawful. In contrast to previous cases, however, settlers who intended to live in *Elon Moreh* joined as respondents to the petition. In an affidavit submitted to the Court, one of the leaders of Gush Emunim, Menachem Felix, explained his perspective regarding the goals of the seizure:

Basing the requisition orders on security grounds in their narrow, technical meaning rather than their basic and comprehensive meaning as explained above can be construed only in one way: the settlement is temporary and replaceable. We reject this frightening conclusion outright. It is also inconsistent with the government's decision on our settling on this site. In all our contacts and from the many promises we received from government ministers, and most importantly from the prime minister himself – and the said seizure order was issued in accordance with the personal intervention of the prime minister – all see *Elon Moreh* to be a permanent Jewish settlement no less than *Deganya* or *Netanya*.<sup>77</sup>

74. *Bet El*, p. 119.

75. See in particular Justice Ben Porat's decision in *Bet El*.

76. HCJ 390/79, *Dweikat et al. v. Government of Israel et al.*, *Piskei Din* 34(1) 1 (hereafter: *Elon Moreh*).

77. *Elon Moreh*, pp. 21-22. *Deganya* and *Netanya* are a kibbutz and a town located within the Green Line.

Chaim Bar Lev, a former army chief of staff, also challenged the argument of military need to establish Elon Moreh. In an affidavit on behalf of the petitioners that was submitted to the Court, Bar Lev stated that, "Elon Moreh, to the best of my professional evaluation, does not contribute to Israel's security."<sup>78</sup>

Against the background of these two affidavits, which undermined the argument of military necessity, and based on the extensive evidence brought before the court regarding the pressure that Gush Emunim applied on the government to approve the settlement, the High Court ordered the IDF to dismantle the settlement and return the seized land to its owners. The immediate result of this ruling was the finding of an alternative site for the establishment of the settlement of Elon Moreh. Beyond this, however, the ruling was a watershed in terms of the legal tools that would henceforth be used by Israel in establishing and expanding settlements.

Since *Elon Moreh*, military seizure orders have not been used for the purpose of the establishment and expansion of settlements. However, this tool has been reintroduced and widely used since 1994 to build bypass roads. This occurred as part of the plans for preparing for the redeployment of IDF forces in the Occupied Territories following the signing of the Oslo Accords between Israel and the Palestinian Authority.

One of the main components of this plan was the construction of an extensive system of bypass roads intended to meet four key needs defined by the Ministry of Defense to facilitate Israeli civilian travel in the Occupied Territories: to enable them to travel in the Occupied Territories without passing through Palestinian population centers; to permit Israelis to travel across the Green Line by the shortest route; to maintain "an internal fabric of life" within the Israeli settlement blocs; and to ensure that Palestinian traffic did not pass through the settlements.<sup>79</sup> According to an examination undertaken by the State Comptroller, between August 1994 and September 1996, the army issued requisition orders in the framework of this plan for 4,386 dunam of private land, for the purpose of constructing seventeen bypass roads.<sup>80</sup>

In one case, Palestinian residents petitioned the High Court against requisition orders issued for their land. They claimed, *inter alia*, that the construction of bypass roads for the settlements could not be considered a military need. The court rejected the petition, accepting the state's argument that the construction of the roads was needed for "absolute security needs."<sup>81</sup>

After the outbreak of the al-Aqsa intifada, toward the end of 2000, a new wave of land requisition through military orders began. Private lands were seized to construct new bypass roads to replace old roads or bypass roads that were no longer safe.<sup>82</sup> The new roads were intended to meet the needs of the settlers who, since the beginning of the new intifada, had suffered repeated attacks from Palestinians while traveling on the roads. According to one press report, eight new bypass roads are currently in various phases of construction, at a total cost of NIS 228 million.<sup>83</sup>

78. *Elon Moreh*, p. 24.

79. State Comptroller, *Annual Report 48* (in Hebrew) (Jerusalem, 1998), pp. 1032-1033.

80. State Comptroller, *Annual Report 48*, p. 1036. Other bypass roads included in this plan were constructed on land seized through orders of expropriation for public purposes, a method discussed below.

81. HCJ 2717/96, *Wafa et al. v. Minister of Defense et al.*, *Piskei Din* 50(2) 848.

82. For example, see a report on the requisition of some three hundred dunam of land in the vicinity of al-Khadr on 5 September 2001 (ARIJ, *A New Military Order to Seize 300 Dunam of al-Khader Village*, September 2001, [www.poica.org](http://www.poica.org)).

83. Ze'ev Schiff, "The Foolish March of the Bypass Roads," *Ha'aretz*, 15 February 2002. The roads being paved are the Teqoa-Noqedim road (Za'tara bypass), the road leading to the northern entrance of Efrat, the road joining Eli-Zahav and the Trans-Samaria Highway, the Ari'el-Yatma road, the bypass road near Negohot, the 'Auja bypass road, the road bypassing Ya'bad from the west, the Qedar-Ma'ale Adummim road.

## B. Declaration of Land as State Land

The need to cope with the increasing number of High Court of Justice petitions, combined with the potential – actualized in the Elon Moreh case – that the court might thwart the establishment of a settlement, led to pressure on the government from the settlers and right-wing parties to find another way to seize land in the West Bank. The solution was found through the manipulative use of the Ottoman Land Law of 1858 (hereafter: the Land Law).<sup>84</sup> By this method, approximately forty percent of the area of the West Bank was declared state land. According to Pliya Albeck, former head of the Civil Department in the State Attorney's Office, approximately ninety percent of the settlements were established on land declared state land.<sup>85</sup>

The legal foundation used by Israel to undertake this procedure is based on two key articles from the 1907 Hague Regulations. The first, Article 43, requires the occupying power to respect the laws applying in the occupied territory. The essential elements of the Land Law were adopted first by British Mandate legislation, and later by Jordanian legislation, and accordingly continued to apply at the time of the Israeli occupation in 1967. The second foundation is Article 55, which permits an occupying power to manage the properties of the occupied country (in the occupied territory) and to derive profits therefrom, while at the same time maintaining the value and integrity of those properties.<sup>86</sup> On the basis of this clause, Israel has argued that the establishment of the settlements is a lawful act of deriving profits which, in addition, contributes to maintaining the properties of the Jordanian government.<sup>87</sup>

The use of state land for the establishment and expansion of settlements, unlike the use of private lands seized under the pretext of military needs, has enabled the High Court to avoid the issue. Petitions filed by Palestinians against the process of declaring land as state land and against the existence of the appeals committee (see below) were rejected by the High Court, which affirmed the legality of mechanisms.<sup>88</sup> After recognizing the state's right to these lands, the High Court refused to acknowledge the Palestinians' right to object to their use, claiming they could not prove that they personally were injured. As no petitions have ever been filed to the High Court challenging the legality of the settlements under the Hague Regulations, the High Court has never had to state its position on this issue.

### The Ottoman Land Law

The Ottoman Land Law defines five types of possession or ownership of land.<sup>89</sup>

*Mulk* refers to completely privately-owned land. The proportion of land in the West Bank that is defined as *mulk* is negligible, and found mainly within the built-up area of towns.<sup>90</sup> *Waqf* lands include two sub-types: land intended for religious or cultural activities and land used for all other purposes, which

84. This law was valid within Israel until its replacement in 1970 by a different law passed by the Knesset, The Lands Law, 5729-1969.

85. Pliya Albeck, *Lands in Judea and Samaria* (in Hebrew) (lecture at Bet Hapraklit on 28 May 1985, Israel Bar Association), p. 5.

86. For discussion of the detailed provisions incumbent on the occupying power regarding government property in an occupied territory, see Dinstein, *Laws of War*, pp. 230-231.

87. Albeck, *Lands in Judea and Samaria*, pp. 8-9; Eyal Zamir, *State Lands in Judea and Samaria – a Legal Review*, No. 12 (in Hebrew) (Jerusalem: Jerusalem Institute for Israel Studies, 1985), p. 42.

88. See, for example, see HJC 81/285. *Fadil Muhammad a-Nazar et al v. Commander of Judea and Samaria et al.*, *Piskei Din* 36 (1) 701.

89. *Planning, Building and Land Laws in Judea and Samaria*, ed. Maj. Aharon Mishnayot (Judge Advocate's Office and Civil Administration of Judea and Samaria) (in Hebrew), p. 425.

90. Kenneth Stein. *The Land Question in Palestine, 1917-1939* (Chapel Hill: University of North Carolina Press, 1984), p. 11.

are protected against confiscation according to the laws of Islam.<sup>91</sup> In general, Israel has refrained from taking control of both these types of land.

Miri lands are those situated close to places of settlement and suitable for agricultural use. A person may secure ownership of such land by holding and working the land for ten consecutive years.<sup>92</sup> If a landowner of this type fails completely to farm the land for three consecutive years for reasons other than those recognized by the law (e.g., the landowner is drafted into the army, or the land lays fallow for agricultural reasons), the land is then known as *makhlul*. In such a circumstance, the sovereign may take possession of the land or transfer the rights therein to another person. The rationale behind this provision in the Land Law was to create an incentive ensuring that as much land as possible was farmed, yielding agricultural produce which could then be taxed.<sup>93</sup>

*Mawat* ("dead") land is land that is half an hour walking distance from a place of settlement, or land where "the loudest noise made by a person in the closest place of settlement will not be heard."<sup>94</sup> According to the legal definition, this land should be empty and not used by any person. In this case, the sovereign is responsible for ensuring that no unlawful activities take place in such areas.<sup>95</sup> *Matruka* land is land intended for public use, where "public" may mean the residents of a particular village, as in the case of grazing land or cemeteries, or all the residents of the state, as in the case of roads.<sup>96</sup>

An additional method of ownership, known as *musha'a*, exists alongside the above-mentioned types in many parts of the West Bank. According to this method, land is owned collectively by the residents of each village. Each family is responsible for farming a particular section of land during a fixed period, at the end of which the plots of land are rotated.<sup>97</sup> Although this method was not recognized in the Land Law, or in the British and Jordanian legislation that absorbed the law, it continued to exist.

## The Policy

The declaration of land in the West Bank as state land was based on the Order Regarding Government Property (Judea and Samaria) (No. 59), 5727-1967, which authorized the person delegated by the Commander of IDF Forces in the Region to take possession of properties belonging to an "enemy state" and to manage these at his discretion.<sup>98</sup> This order, issued shortly after the occupation began, was used through 1979 to seize control of land registered in the name of the Jordanian government. Initial examinations revealed a total of approximately 527,000 dunam of such land.<sup>99</sup> Additional examination of Turkish and British ownership certificates during the first five years of the occupation revealed that an additional 160,000 dunam were eligible for the status of registered state land. Accordingly, through

91. Raja Shehade, *The Law of the Land – Settlement and Land Issues Under Israeli Military Occupation* (Jerusalem: PASSIA, 1993), pp. 15-16.

92. Section 78, *Ottoman Land Law* in *Planning, Building and Land Laws*, p. 528.

93. Shehade, *The Law of the Land*, pp. 22-23.

94. Section 6, *Ottoman Land Law*, in *Planning, Building and Land Laws*, p. 427.

95. Zamir, *State Land in Judea and Samaria*, p. 18.

96. *Ibid.*, p. 16.

97. Stein, *The Land Question in Palestine*, pp. 14-15.

98. Order Regarding Government Property (Judea and Samaria) (No. 59), 5727-1967, in *Planning, Building and Land Laws*, pp. 520-523.

99. Meron Benvenisti and Shlomo Khayat, *The West Bank and Gaza Atlas*, p. 60.

1979, the Custodian for Government Property (hereafter: the Custodian) considered an area of 687,000 dunam, constituting some thirteen percent of the total area of the West Bank, to constitute state land.<sup>100</sup> The Labor-led governments through 1977 used some of this land to establish settlements within the borders defined in the Alon Plan.

This area included land purchased by Jews (individuals or the "national institutions") prior to 1948. After the 1948 war, this land was held and managed by the Jordanian Custodian of Enemy Property in accordance with the rules established in a Mandatory order from 1939.<sup>101</sup> One estimate puts the total area of such land at approximately 25,000 dunam. In quantitative terms, the main concentrations of this land are in Gush Ezyon, to the south of Ramallah, and around Tulkarm. Smaller areas of land in Jerusalem and Hebron also exist.<sup>102</sup>

In December 1979, following *Elon Moreh*, the Custodian began, with the guidance of the Civil Department of the State Attorney's Office, to prepare a detailed survey of all the ownership records currently available at the regional offices of the Jordanian Land Registrar. In addition, the Civil Administration initiated a project to map systematically all areas under cultivation, using aerial photographs taken periodically. This double investigation led to the location and marking of lands that the sovereign was entitled to seize under the Ottoman Land Law and the Jordanian laws that absorbed this law:<sup>103</sup>

- *Miri* land that was not farmed for at least three consecutive years, and thus became *makhlul*;
- *Miri* land that had been farmed for less than ten years (the period of limitation), so that the farmer had not yet secured ownership;
- Land defined as *mawat* due to its distance from the nearest village.

In these investigations, the Custodian located approximately one and a half million dunam,<sup>104</sup> or some twenty-six percent of the area of the West Bank, considered to belong to one of these categories. The stage of locating the land was followed by the process of declaring the land state land, which was composed of several stages. In the first stage, the relevant decisions and documents relating to land earmarked for registration as state land were forwarded to the State Attorney's Office for examination, and for a decision as to whether the land was eligible for such status. If the decision was positive, the Custodian began to act, forwarding the file to the district office responsible for the area in which the land was situated. The Custodian's representative in this office summoned the *mukhtars* from the villages adjacent to the land declared state land, took them for a tour of the intended site and showed them the borders of the area that the Custodian believed was government property.<sup>105</sup> Thus, the Custodian transferred to the *mukhtars* the responsibility for informing those liable to be injured by the Custodian's

100. *Ibid.*, p. 61.

101. For detailed discussion of the legal status of this land, see Zamir and Benvenisti, "*Jewish Lands*."

102. *Ibid.*, p. 27.

103. The Ottoman Land Law was absorbed in Jordanian legislation in a number of laws enacted over the years. However, the law determining which land is to be defined as state land is Law No. 14 of 1961 – The Protection of State Land and Property Law, in *Planning, Building and Land Laws*, pp. 501-502.

104. Benvenisti and Khayat, *The West Bank and Gaza Atlas*, p. 61.

105. Zamir, *State Lands in Judea and Samaria*, p. 33.

decision to seize possession of a particular area. Once the declaration was made, those liable to be injured by the registration had forty-five days to submit an appeal to a military appeals committee.<sup>106</sup>

Approximately 800,000 dunam of land were declared and registered during the period 1980-1984.<sup>107</sup> Thereafter, the pace of declaration decelerated, both due to the changes in the composition of the government following the elections (see Chapter One) but mainly because, by this stage, the settlements had already been assured enormous reserves of land for the foreseeable future. Several times B'Tselem requested information from the Israel Lands Administration regarding the scope of lands currently registered as state land, but has not received a reply.

The declaration of hundreds of thousands of dunam in the Occupied Territories as state land was made possible mainly because much land was not registered in *Tabu* [the land registration office]. Although the Ottoman Land Law required the registration of every plot of land, many residents during the period of Turkish rule did not observe this provision. The reasons for this included a desire to preserve the collective ownership system (*musha'a*); a desire to evade tax liability, and an effort to avoid being drafted into the Turkish army.<sup>108</sup> The records that survived from this period are vague, and do not easily permit the identification of a specific plot of land. Only in 1928, during the British Mandate period, was a systematic process introduced to survey all state land and register ownership on the basis of plot identification numbers. The process of regulation continued at an extremely slow pace during the period of Jordanian control of the West Bank. By the time Israel occupied the West Bank, regulation proceedings had been completed for approximately one-third of the area, particularly in the Jenin area and the Jordan Valley.<sup>109</sup> In areas where registration had not been completed, ownership continued to be managed over the years on the basis of the possession of land, and the mutual recognition of the connection of each person to a given plot of land.

At the beginning of the Israeli occupation of the West Bank, a military order was issued halting the process of regulation and registration of the rights of residents of the West Bank to their land.<sup>110</sup> Israel justified this delay by arguing that it was necessary to prevent injury to the rights of people who left the area during the war, and were therefore unable to oppose the registration of their land under another person's name.<sup>111</sup> However, to enable Israel to continue the process of registering land as state land, it was determined that the order would not apply to the registration of state land in the Custodian's name, and the declaration process continued at an accelerated pace on the basis of a Jordanian law of 1964.<sup>112</sup> In addition, another military order was issued establishing a Special Land Registry for the registry of transactions in land held by the Custodian. This was done to enable the transfer of the rights of use in land declared state land to one of the settling bodies, i.e., the Ministry of Housing or the World Zionist Organization.<sup>113</sup>

106. Order Regarding Appeals Committees (Judea and Samaria) (No. 172), 5727-1967, in *Planning, Building and Land Laws*, pp. 536-541.

107. Benvenisti and Khayat, *The West Bank and Gaza Atlas*, p. 61.

108. Stein, *The Land Question in Palestine*, p. 21.

109. Zamir, *State Land in Judea and Samaria*, p. 27.

110. Order Regarding the Regulation of Land and Water (Judea and Samaria) (No. 291), 5729-1968, in *Planning, Building and Land Laws*, pp. 542-543.

111. Zamir, *State Land in Judea and Samaria*, p. 27. Regarding the measure of sincerity of this justification, see Section C. on absentee property, in the present chapter.

112. Registration of Previously Unregistered Immovable Property Law, No. 6 for 1964, in *Planning, Building and Land Laws*, p. 503.

113. Order Regarding the Registration of Transactions in Certain Lands (Judea and Samaria) (No. 569), 5735-1974, in *Legislation in Judea and Samaria*, ed. Zvi Preisler (in Hebrew) (Jerusalem: Ketubim, 1987), p. 105.



## The Appeals Committee

The military appeals committee is composed of three persons appointed by the commander, one of whom must have legal training.<sup>114</sup> The central principle guiding the committee in hearing appeals by Palestinian residents against the Custodian's ruling is that the burden of proof always rests with the person claiming that particular land is *not* state land: "If the Custodian has confirmed, in a written certificate bearing his signature, that any property is government property, that property shall be considered government property until proven otherwise."<sup>115</sup> If the committee decides to reject an appeal, or if an appeal was not filed on time, the process is completed and the land is registered in the Custodian's name.

The chances that the appeals committee will nullify the process of declaring and registering a Palestinian's land as state land are extremely low. In most cases, the committee merely rubberstamps the military administration's decisions. Since the appeals committee is the only body before which the decisions of the Custodian may be challenged, its existence allowed the Israeli authorities to continue the process of declaring lands as state land on one hand, while claiming that this process was under judicial review on the other hand.

The first obstacle facing Palestinian efforts to prevent the registration of their land as state land was their lack of knowledge of the procedure. The information provided by the *mukhtars* regarding the declared area was often vague because the *mukhtars* themselves received partial information from the Custodian. Another reason for the lack of clarity was that the *mukhtars*, having been appointed by the military, had problematic relations with the residents and often preferred not to act as spokesmen for Israeli decisions. As a result, it was only when the work building the settlement began that the residents were first informed that their land had been declared state land.<sup>116</sup> Since actual construction usually began months and even years after the date of declaration, the owners of the land could not turn to the appeals committee because the forty-five day period for filing an appeal had long since passed.

The case of the Makhamara *hamula* [clan] illustrates this problem. Four families from the Makhamara *hamula* jointly held some 280 dunam of land near Yatta (Hebron District), southwest of the Ma'on settlement. The families had farmed the land consistently throughout the years. At the end of 1997, a settler from the settlement of Suseya arrived on the plot of land and erected a caravan. He proceeded to threaten, with firearms, members of the *hamula*, preventing them from reaching the field to farm their land. After the family filed a complaint at the Hebron police station claiming that the settler was trespassing on their land, a clerk representing the Custodian informed them that the area in which the settler from Suseya was living had been declared state land in 1982. For its part, the Mt. Hebron Regional Council added that the land in question belonged to the council, on the basis of a permission contract it had signed with the World Zionist Organization in December 1983.

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114. Section 2 of the Order Regarding Appeals Committees (Judea and Samaria) (No. 172), 5728-1967.

115. Section 2C of the Order Regarding Government Property, in *Planning, Building and Land Laws*, p. 522.

116. Since 1983, the *mukhtars* have been the sole source of information for the residents because the Custodian ceased attaching a map to the declaration order defining the borders of the area to which the order relates. See Raja Shchade, *Occupier's Law, Israel and the West Bank* (Washington: Institute for Palestine Studies, 1988), p. 30.

The Makhamara *hamula*, represented by the Association for Civil Rights in Israel, filed a protest with the appeals committee.<sup>117</sup> In his response to the appeal, the Custodian claimed that "according to the aerial photographs held by the Respondent [i.e., the Custodian], the preparatory and farming work took place a few years ago in a completely rocky area, in a manner that does not grant rights to the Appellants."<sup>118</sup> The Custodian further claimed that the area in which the settler from Suseya erected his caravan "has been transferred to the World Zionist Organization in an allocation agreement, and in connection therewith the Respondent shall claim that the Appellants missed the date for submission of an appeal."<sup>119</sup> The case is pending before the appeals committee.<sup>120</sup>

Palestinian residents who do receive word of the declaration in time to appeal encounter yet another obstacle impeding them from turning to the appeals committee. Preparing an appeal entails enormous expense, including payment of a fee upon submission of the appeal,<sup>121</sup> precise mapping by a qualified surveyor of the land of which the appellant claims ownership,<sup>122</sup> and retaining an attorney to prepare an affidavit and represent the appellant before the committee.<sup>123</sup>

Those who overcome these obstacles and appeal the decision of the Custodian to the committee in time will have great difficulty proving their rights to lands declared state lands. Since the declarations generally take place in areas where the British or Jordanians did not register the land, the appeals-committee hearings inevitably center on possession and farming as the basis for the right to the land. The appellant is required to prove to the committee that the land in question had been held and farmed for ten consecutive years to substantiate his ownership of the land. For the appeal to succeed, the evidence brought by Palestinians has to contradict the periodic aerial photographs taken by the Custodian that indicated the cessation of farming at any stage.<sup>124</sup> Receipts for payment of land tax, whether from the Jordanian authorities or the Civil Administration, may constitute *prima facie* evidence in disputes between two individuals, but "do not constitute evidence against the state and do not impair the state's rights."<sup>125</sup>

Many Palestinians have indeed discontinued or reduced their involvement in agriculture, due in part to the policies introduced by Israel in two key spheres: water and the labor market. One of the main components of Israel's policy concerning water is to reject all applications submitted by Palestinians to receive permits to drill agricultural wells, which prevented development in that sphere.<sup>126</sup> As for the

117. Appeal 13/2000, *Isma'il 'Alyan et al. v. Custodian for Government Property in Judea and Samaria*.

118. Paragraph 2 of the Custodian's response, *ibid.*

119. Paragraph 2 of the Custodian's amended response, *ibid.*

120. Settlers from Suseya recently also seized control of additional land to the west of their settlement, claiming that this was state land. Palestinians live on this land, mainly in shacks and caves, and grow various crops and graze their flocks. In September 2001, the Palestinians appealed to the High Court, asking that the settlers be evicted from their land and they be allowed to continue to farm the land without hindrance. The state has not yet responded to the petition (HCJ 7530/01, *'Ali Khalil Musalem Sharitih et al. v. Civil Administration for Judea and Samaria et al.*).

121. Section 3(D) of the Provisions Regarding Legal Arrangements in the Appeals Committees (Judea and Samaria), 5747-1987, in *Planning, Building and Land Laws*, p. 567.

122. *Ibid.*, Section 7.

123. *Ibid.*, Section 3(C).

124. Regarding the question as to the test for "reasonable agricultural farming" in the light of the land investigator and the High Court rulings, see Abraham Sochovolsky, Eliyahu Cohen and Avi Ehrlich, *Judea and Samaria – Land Rights and Law in Israel* (in Hebrew) (Tel-Aviv: Bursi, 1986), pp. 29-35.

125. *Ibid.*, p. 37.

126. B'Tselem, *Thirsty for a Solution – Resolving the Water Crisis in the West Bank in the Occupied Territories and its Resolution in the Final-Status Agreement* (Position Paper, July 2000), p. 42.

labor market, Israel encouraged the integration of Palestinians in its own labor market. This became a highly attractive proposition because of the high salaries relative to those in the West Bank, and many Palestinians have been inclined therefore to abandon agriculture.<sup>127</sup>

Even if a Palestinian appellant meets the demanding burden of proof required by the committee and convinces its members that he indeed owns the land in question, the committee may still deny the appeal. The reason for this is that the hearing before the committee sometimes take place after the Custodian has already signed permission contracts with one of the settling bodies, and after preparatory work has begun toward the establishment of a settlement. Accordingly, in order to prevent the reversal of an existing situation, Section 5 of Order Regarding Government Property (No. 59) includes the following provision:

No transaction undertaken in good faith by the Custodian and another person in any property which the Custodian believed, at the time of the transaction, to be government property shall be nullified, and it shall continue to be valid even if it is proved that the property was not at that time government property.<sup>128</sup>

Since the decisions of the appeals committee are not published and are not accessible for public review, B'Tselem was unable to undertake a systematic review to ascertain how many times this provision has been used regarding land that was declared state land.

However, the good-faith argument has been used by Israel to approve new construction in the settlements, even in cases where the land-registration process has not been completed. For example, since 1984, the construction on three new neighborhoods in the settlement of Giv'at Ze'ev (Moreshet Binyamin A, B and C) began before all the land on which these neighborhoods were established had been declared state land, and without the signing of permission contracts with the Custodian.<sup>129</sup> Despite this fact, and despite the fact that the Civil Administration did not approve the outline plan for these neighborhoods, the planning board of Mate Binyamin Regional Council granted permits for development work and for private construction on all three sites. When this situation became apparent at an early stage, the head of the Civil Department in the Ministry of Justice, Pliya Albeck, prepared a legal opinion in which she stated: "Notwithstanding the defects, questions and doubts, it would seem desirable to enable the continued construction of phase A of Moreshet Binyamin, both since the houses were built in good faith by residents who received building permits, and because the absence of objections provides a foundation for believing that the land was acquired lawfully."<sup>130</sup>

Additional problems regarding the military appeals committee have to do with its place in the military hierarchy and its mode of operation. Firstly, the appeals committee is completely dependent on the body on whom it is supposed to provide quasi-judicial review, i.e., the military administration or the Commander of IDF Forces in the Region. Thus, the same body that issues land-seizure orders is also the primary legislative body that established the committee, and the only body entitled to appoint or dismiss

127. B'Tselem, *Builders of Zion – Human Rights Violations of Palestinians from the Occupied Territories Working in Israel and the Settlements* (September 1999), Chapter 1.

128. Section 5 of the Order Regarding Government Property, in *Planning, Building and Land Laws*, p. 522.

129. State Comptroller, *Annual Report 43* (in Hebrew) (Jerusalem, April 1993), pp. 911-914. For another example of the establishment of a settlement in the Jordan Valley prior to the registration of the land in the Custodian's name, see State Comptroller, *Annual Report 37* (in Hebrew) (Jerusalem, 1987), p. 1205.

130. *Ibid.*, p. 911.

its members.<sup>131</sup> Moreover, the Order Regarding Appeals Committees stipulates that the committee's decisions are merely "recommendations," while the final decision rests with the commander in the region, who is entitled to accept or reject these recommendations at his discretion, without any public criteria being established for his decision.<sup>132</sup> This relationship between the judiciary and the body it reviews constitutes a gross violation of the independence of the appeals committee.

Secondly, the appeals committee is not subject to the rules of judicial proceedings or the usual rules of evidence pertaining in Israel or in any other legal system. According to one of the sections in the order, "the appeals committee shall not be bound by the laws of evidence and judicial proceedings, except for those established in this Order, and shall determine its procedures."<sup>133</sup> These provisions seriously impair the principle of transparency and fairness in the judicial process.

These problems in the functioning of the committee are particularly grave as the existence of a quasi-judicial body such as the appeals committee prevents the submission of petitions to the High Court. One of the conditions for intervention by the High Court is the absence of alternative relief. The presence of alternative relief does not completely bar such intervention, but it significantly lessens the willingness of the High Court to intervene.<sup>134</sup>

### **C. Absentee Property**

According to the Order Regarding Abandoned Property,<sup>135</sup> any property whose owner and holder left the West Bank before, during or after the 1967 war is defined as an abandoned property and attributed to the Custodian for Abandoned Property on behalf of the IDF commander in the region. The Custodian is entitled to take possession of the property and to manage it as he sees fit.<sup>136</sup> According to the order, the Custodian, on behalf of the Commander of IDF Forces in the Region, may classify property as "abandoned property" in instances in which the owner or possessor of a property is unknown.<sup>137</sup> A further order published by Israel in this matter expanded the definition of the term "abandoned property" to include property belonging to a person who is a resident of an enemy country, or a corporation controlled by residents of an enemy country.<sup>138</sup>

In legal terms, the Custodian for Abandoned Property becomes the trustee on behalf of the owner of the property who left the West Bank. The Custodian is responsible for protecting the property pending the owner's return. Moreover, on the return of the owner of the property defined as abandoned, the Custodian must reconstitute not only the property itself, but also the profits he derived therefrom.<sup>139</sup> As a general rule, however, Israel has forbidden the return of refugees to the West Bank, and therefore has not

131. Sections 1 and 2 of the Order Regarding Appeals Committees (Judea and Samaria) (No. 172), 5728-1967, in *Planning, Building and Land Laws*, p. 536.

132. *Ibid.*, Section 6.

133. *Ibid.*, Section 8(A).

134. Hofnung, *State Security versus the Rule of Law*, p. 308.

135. Order Regarding Abandoned Property (Private Property) (Judea and Samaria) (No. 58), 5727-1967, in *Planning, Building and Land Laws*, pp. 515-519.

136. *Ibid.*, Section 8, p. 516.

137. *Ibid.*, Section 4(C), p. 516.

138. Order Regarding Abandoned Property (Private Property) (Additional Provisions) (Judea and Samaria) (No. 150), 5727-1967, in *Planning, Building and Land Laws*, pp. 534-535.

139. *Ibid.*, Sections 7 and 8, at p. 516.

had to face massive claims for the restitution of abandoned property. The exceptions to this rule occurred when Palestinians returned to their homes pursuant to permits for family unification and demanded their property from the Custodian. An examination undertaken by the State Comptroller shows that, at least through 1985, the Custodian customarily returned money accumulated in favor of the absentees (in cases where their eligibility was proven), but at nominal value and without linkage or interest, despite the high inflation rates in Israel during the first half of the 1980s.<sup>140</sup>

The Israeli administration has combined the function of the Custodian for Abandoned Property with that of the Custodian for Government Property, forming a single body called the Custodian for Government and Abandoned Property in Judea and Samaria. Just as the Custodian for Government Property is also the Custodian for Abandoned Property, so too are the basic rules applying to the procedures for seizure and management similar in both cases. Accordingly, a person who claims that property belonging to him was unjustly recorded as abandoned property may turn to the military appeals committee. The burden of proof rests with the person claiming that a particular piece of land is not an abandoned property.<sup>141</sup>

As in the process of declaring land state land, if the Custodian has made a transaction in an abandoned property, and it subsequently emerges that the property was not eligible for status as abandoned property, the transaction shall not be nullified if it is proved that the Custodian made the transaction in good faith.<sup>142</sup> An illustration of the use of this provision is the case in which the Custodian signed a permission agreement with the World Zionist Organization in relation to seventy dunam earmarked for the establishment of the settlement of Bet Horon. The owner of the land, who was resident in the West Bank at the time, filed an objection with the appeals committee, arguing that he was the owner of the land on which the settlement was constructed. In its ruling, the appeals committee stated that while there was no doubt that the land indeed belonged to the Palestinian appellant, and that he had not left his home, the transaction was legitimate since it was made "in good faith."<sup>143</sup>

This practice, which has caused injury to the property of Palestinian residents who were defined as absentees although they did not leave the area, is additional to Israel's general policy preventing the return of refugees who left their homes due to the war. Given this reality, Israel's claim that all the land-arrangement procedures were suspended "with the goal of preventing injury to the property of absentees" cannot be seen as anything other than a cynical justification intended to facilitate the process of seizing control of land.

A report by the State Comptroller shows that during the first few years of the occupation, the Civil Administration registered approximately 430,000 dunam of land and some 11,000 buildings as abandoned properties.<sup>144</sup> Since a significant proportion of this land was not farmed, it was later declared state land. The remaining areas continue to be defined as abandoned properties, and have been leased by the Custodian – both to relatives of the absentees and to settling bodies to establish settlements.<sup>145</sup>

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140. State Comptroller, *Annual Report 37*, p. 1189.

141. Section 10(D) of the Order Regarding Abandoned Property, in *Planning, Building and Land Laws*, p. 517.

142. *Ibid.*, Section 10(A).

143. Appeal 16/84, *Albina v. Custodian for Government Property in Judea and Samaria*.

144. State Comptroller, *Annual Report 37*.

145. Benvenisti, *Judea and Samaria Lexicon*, p. 52.

## D. Expropriation for Public Needs

Land expropriation in the West Bank (excluding East Jerusalem) is effected under the provisions of a Jordanian law that delineates the phases required for the expropriation of land and the reviewing bodies.<sup>146</sup> According to the law, a public body (local authority, development agency, etc.) interested in expropriating private land must publish its intention in the official gazette. If no appeal is filed to the court by the owner of the land within fifteen days, the application is discussed by the Ministerial Council, which examines whether the purpose declared by the initiating body is indeed in the public interest and decides whether to purchase the land or acquire rights of use for a defined period. The decision must be approved by the king, and is published in the official gazette. The Land Registration Office is subsequently responsible for forwarding copies of the decision to the owners of the land, and the initiating body must enter into negotiations with the owners regarding the level of compensation.<sup>147</sup> According to Section 12 of the law, the notification and negotiation phases may be omitted in urgent cases if the Ministerial Council "was convinced that there are reasons requiring the establisher [namely, the initiator] to hold the land immediately."

Israel has amended this law to suit its needs twice, by means of military orders.<sup>148</sup> The first amendment, in 1969, transferred the authorities of the Ministerial Council and the king to the "empowered authority" on behalf of the commander of the region, which later became the deputy head of the Civil Administration.<sup>149</sup> In addition, the order abolished the requirement in the Jordanian law to publish the decisions in the official gazette and deliver them to the owner of the land. The legal authority for discussing appeals against expropriations was changed by the order from the local court, as established in the Jordanian law, to the military appeals committee. Possession and management of the expropriated land were transferred to the Custodian for Government and Abandoned Property in Judea and Samaria.

Through 1981, i.e., for some twelve years following the first amendment, no alternative procedures were established allowing for the publication of expropriation decisions or for notification of those injured by these decisions. In 1981, a second amendment was introduced following a petition to the High Court filed by Palestinian residents, who claimed that they had only learned of an expropriation decision after tractors began to work on the land.<sup>150</sup> According to this amendment, the "empowered authority" must publish its decisions in the Compilation of Proclamations and must inform the owner of the land personally or through the *mukhtar* of the village in which he is resident.

In practice, most of the notifications given to landowners – both before and after the second amendment – are forwarded via the *mukhtars*. As noted above, the status of the *mukhtars* among the Palestinian population is problematic, and they often preferred to refrain from giving out that information.<sup>151</sup> Israel, on its part, chose to undertake most expropriations on the basis of Section 12 of the Jordanian Law,

146. The Land Law – Acquisition for Public Needs, Law No. 2 for 1953, in *Planning, Building and Land Laws*, pp. 439-446.

147. This procedure is detailed in Sections 5-9 of The Land Law – Acquisition for Public Needs.

148. Order Regarding the Lands Law (Acquisition for Public Needs) (No. 321 and No. 949), 5729-1969 and 5743-1981, in *Planning, Building and Land Laws*, pp. 545-547.

149. Zamir, *State Land in Judea and Samaria*, p. 33.

150. HCJ 202/81, *Tabib et al. v. Minister of Defense*. *Piskei Din* 36(2) 622 (hereafter: *Tabib*).

151. Halabi et al., *Land Alienation in the West Bank*, p. 33.

which was intended solely for urgent cases. This section exempts the authorities from certain obligations regarding the injured landowners and also prevents High Court intervention.<sup>152</sup>

The Jordanian law specifically states that the expropriation of land is permitted only when it is for a public purpose, so Israel has not used this law extensively to confiscate land intended for the establishment of settlements. An exception to this generalization is the case of Ma'ale Adummim, established in 1975 on an area of some 30,000 dunam expropriated from Palestinians.<sup>153</sup>

Israel has, however, used this law extensively as a tool for seizing control of land for the purpose of constructing an extensive network of roads serving the settlements, connecting one settlement to another and connecting the settlements to Israel, and in most cases deliberately circumventing the Palestinian communities. These expropriations were upheld by the High Court, which accepted the state's argument that the roads under review also met the transportation needs of the Palestinian population. In one ruling relating to the expropriation of land for the construction of a road connecting a new neighborhood in the settlement of Qarne Shomeron with Israel, while circumventing the city of Qalqiliya, Justice Shilo determined that in effect "a road is a neutral installation." He added:

It is true that part of the route that is the subject of this petition passes not far from Ras, which is the edge of the area intended for the establishment of a Jewish community by the name of Zavta (Qarne Shomeron C), and that same section – insofar as it forms part of the regional road continuing to the east – is intended to create access from the west to the community of Zavta. However, it shortens and improves the road to the village of Habla and to several smaller villages in the vicinity.<sup>154</sup>

In most cases, the argument that the bypass roads were intended to serve all the local residents, including Palestinians, proved to be completely spurious. Nevertheless, Israel continued to use this argument in all the High Court petitions that Palestinians filed against the expropriation of their land, and in most cases the Court accepted the argument.<sup>155</sup>

B'Tselem does not have any estimate of the scope of land over which the IDF has seized control by means of the Jordanian expropriation law. According to the State Comptroller, IDF actions in the West Bank in preparation for the implementation of the Oslo B Accords (see below) entailed the expropriation of private land under this law for the construction of twelve bypass roads.<sup>156</sup> Chapter Eight of this report offers a detailed account of the recent land expropriation to construct roads in the vicinity of the Ari'el settlement.

## **Land Expropriation in East Jerusalem**<sup>157</sup>

The legal tool used by Israel to seize control of land in East Jerusalem for the purpose of establishing settlements was a Mandatory order from 1943 absorbed into Israeli legislation.<sup>158</sup> This order is similar,

152. *Ibid.*, p. 34.

153. Paragraph 3 of the response of the state in H CJ 3125/98, *'Abd Al-'Aziz Muhammed 'Ayad et al. v. Commander of IDF Forces in Judea and Samaria* (hereafter: *Ma'ale Adummim*).

154. *Tabib*, p. 627.

155. For example, see H CJ 393/82, *Jan'ayat Iskan Al-Mu'almin v. Commander of IDF Forces*, *Piskei Din* 37(4) 785, and H CJ 6592/94, *Municipality of Hebron et al. v. Minister of Defense et al.*, *Piskei Din* 50(2) 617.

156. State Comptroller, *Annual Report* 48, p. 1036.

157. For further discussion of this aspect, see B'Tselem, *A Policy of Discrimination*.

158. The Lands Order (Acquisition for Public Purposes) 1943.

though not identical, to the Jordanian law for acquisition of land for public needs as implemented in the remainder of the West Bank. The Mandatory order empowers the Minister of Finance to issue expropriation orders for privately-owned land in cases when this is justified by a public need. Unlike the Jordanian law, this order grants the Minister of Finance complete discretion in determining what constitutes a public purpose ("any need authorized by the Minister of Finance as a public purpose.") As in Jordanian law, the landowners are entitled to compensation at market value.

Since 1968, Israel has expropriated approximately 24,500 dunam of land – over one-third of the land annexed to Jerusalem.<sup>159</sup> While it is difficult to calculate a precise figure, most of the expropriated land was undoubtedly privately owned by Palestinians,<sup>160</sup> and only a small proportion was state land, *waqf* land, or land owned by Jews prior to 1948.<sup>161</sup> The vast majority of the expropriated land was used to establish twelve Jewish settlements, termed "neighborhoods" in domestic Israeli discourse.

Although the expropriated land is intended for the Jewish population only, Israeli government and Ministry of Jerusalem officials have claimed on several occasions – along the lines of the similar declarations regarding expropriations in the remainder of the West Bank – that the land expropriations are implemented for the benefit of all the residents of the city, "Jews and Arabs alike."<sup>162</sup> These claims are contradicted by numerous official and semi-official decisions and statements reflecting Israel's desire to "Judaify" East Jerusalem, with the goal of preventing any future compromise over this land.<sup>163</sup> One petition, filed in the High Court in 1994 against the expropriation of land in the south of Jerusalem to establish the Har Homa settlement, claimed that the plan discriminated against the city's Palestinians. The High Court rejected the petition on the grounds that "the question of populating the area is not currently germane."<sup>164</sup>

## **E. Acquisition of Land on the Free Market**

The Ma'arach-led governments preferred to limit the taking of control of land in the Occupied Territories to governmental institutions. A military order was published in 1967 imposing a sweeping restriction on the implementation of land transactions in the West Bank without the written authorization of the commander of the region.<sup>165</sup> Accordingly, until the late 1970s the only body involved in the purchase of land from Palestinian residents for the purpose of establishing the settlements was the Jewish National Fund through *Himanuta*, a company established for this purpose.<sup>166</sup>

After the Likud came to power, this policy was reversed: the acquisition of land in the West Bank was now encouraged. In formal terms, this change was reflected in a decision of the Ministerial Committee for Settlement in April 1982 providing approval in principle for the establishment of settlements as a "private initiative."<sup>167</sup> This authorization embodied the commitment of the government to enable Jews

159. Ir Shalem, *East Jerusalem – Planning Situation* (in Hebrew) (Jerusalem, November 1999), p. 4.

160. B'Tselem, *A Policy of Discrimination*, p. 57.

161. Jewish-owned land was situated mainly in the Jewish Quarter of the Old City; as noted above, this was considered state land, since it was held and managed by the Jordanian Custodian of Enemy Property (Zamir and Benvenisti, *Jewish Lands*, pp. 87-98).

162. For examples of such statements, see B'Tselem, *A Policy of Discrimination*, pp. 60-61.

163. *Ibid.*, pp. 44-55.

164. H CJ 5601/94, 'Odeh A'ida Abu Tier et al. v. Prime Minister et al., *Takdin Elyon* 94 (4 ) 246.

165. Order Regarding Land Transactions (Judca and Samaria) (No. 25), 5727-1967, in *Planning, Building and Land Laws*, pp. 513-514.

166. Gazit, *Fools in a Trap*, pp. 244-245.

167. *Ibid.*



to purchase land and settle throughout the West Bank, including areas where land could not be declared state land because it was registered in the owner's name and held according to the provisions of the Ottoman Land Law.<sup>168</sup> The Deputy Minister of Agriculture in the second Likud government, Michael Dekel, was given responsibility for the subject of "private settlement." He worked under the close though informal supervision of the then Minister of Defense, Ariel Sharon.<sup>169</sup>

Through the enactment of several military orders, Israel amended the Jordanian land legislation in order to adapt it to the needs of Israeli entrepreneurs. For example, the powers of local judicial committees under Jordanian law to register land transactions were transferred to the Custodian on behalf of the military commander.<sup>170</sup> Because Palestinians have always considered the sale of land to Israelis an act of treason, an order was issued extending the validity of irrevocable powers of attorney from five years, as provided by Jordanian law, to fifteen years.<sup>171</sup> This amendment enabled land transactions to be executed while postponing registration for an extended period, thereby not endangering the life of the Palestinian seller by exposing his identity.<sup>172</sup>

The involvement of private entrepreneurs in the transfer of land to Jewish hands was accompanied by fraud, forgery and various criminal offenses involving both Israelis and Palestinians.<sup>173</sup> These offenses were possible, *inter alia*, because of the relatively vague nature of the registration of land ownership in most of the West Bank.<sup>174</sup> Moreover, the government's decision to enable the establishment of settlements as a private initiative led to increased demand for land in the West Bank, particularly in areas adjacent to the Green Line (popularly known in Israel as "five minutes from Kfar Saba"). Land prices in these areas rose sharply, creating a strong incentive for various Israeli intermediaries to purchase Palestinian land.<sup>175</sup>

As a result of these fraudulent acts, in many cases Palestinians only learned that their land had been sold to Israelis by Palestinians when tractors moved in to prepare the ground to build a settlement. Conversely, many Israelis were enticed into purchasing plots of land in the West Bank from Israeli intermediaries, only to find out later that they had paid for a worthless scrap of paper. This phenomenon was halted in 1985, when the police began to investigate hundreds of cases of fraudulent land transactions. Several of those involved were indicted, including senior government officials.<sup>176</sup>

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168. Hofnung, *State Security Versus the Rule of Law*, p. 311.

169. *Ibid.*

170. Order Regarding Land Laws (Judea and Samaria) (No. 450), 5732-1971.

171. Order Regarding the Law to Amend Provisions Relating to Real Estate (Judea and Samaria) (No. 811), 5740-1979, in *Planning, Building and Land Laws*, p. 554.

172. Shehade, *Occupier's Law*, p. 40.

173. Albeck, *Lands in Judea and Samaria*, pp. 12-16.

174. See Section B of this chapter for further discussion.

175. Benvenisti, *Lexicon of Judea and Samaria*, p. 139.

176. Hofnung, *State Security Versus the Rule of Law*, pp. 312-313.



## Chapter Four

# The Annexation Policy and Local Government

### A. The Annexation Policy

The government, the Knesset and the IDF commanders, with the blessing of the High Court of Justice, altered Israeli and military legislation with the objective of enabling the *de facto* annexation of the settlements to the State of Israel, while avoiding the problems that would be caused by *de jure* annexation, particularly in the international arena.<sup>177</sup> This annexation created a distinct separation between the Jewish settlers and the Palestinian residents, who continued to live under military rule. Eradicating the significance of the Green Line in the everyday life of Jewish residents of the West Bank made a crucial contribution to the success of Israel's policy to transfer population from Israel to the settlements.

The result was the creation of two types of enclaves of Israeli civilian law in the Occupied Territories – personal and territorial. The significance of the personal enclaves is that any Israeli citizen, and indeed any Jew (see below), in the Occupied Territories are subject, wherever they may be, to the authority of Israeli civilian law for almost all purposes, and not to the authority of the military law applying in these territories. This situation was perpetuated in the Oslo Accords in a manner that denied the Palestinian Authority any power over Israelis in the Occupied Territories, including Israelis entering its own territory.<sup>178</sup>

Creation of the enclaves began at the beginning of the occupation. The Israeli government and the Knesset imposed Israeli law on the settlers in particular, and on Israeli citizens in the Occupied Territories in general. Initially, this was implemented through emergency regulations enacted in July 1967 by the Minister of Defense.<sup>179</sup> According to these regulations, Israeli citizens who commit offenses in the territories are tried in Israeli civilian courts. Although they did not prohibit Israelis from being tried in courts in the Occupied Territories, these regulations effectively limited the power of the military commander and the local courts, for the first time granting Israeli citizens extra-territorial status there.

In 1969, the Minister of Justice enacted regulations empowering Israeli civilian courts to hear any civil matter between settlers (and Israelis in general) and Palestinians, or among settlers themselves.<sup>180</sup> These courts naturally operate in accordance with Israeli law, rather than the local law that supposedly applies in the Occupied Territories. Local courts were effectively – though not formally – denied the power to judge settlers.

177. Extensive sections of this chapter are based on the B'Tselem report, *On the Way to Annexation: Human Rights Violations Resulting from the Establishment and Expansion of the Ma'ale Adumim Settlement* (Information Sheet, June 1999), pp. 15-20. For a comprehensive study of this issue prepared in the late 1980s, see Eyal Benvenisti, *Legal Dualism: The Absorption of the Occupied Territories into Israel* (Jerusalem: West Bank Data Base Project, 1989).

178. Agreement on the Gaza Strip and the Jericho Area (Oslo 1), 4 May 1994, Article 1(26); Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (Oslo 2), 28 September 1995, Annex IV.

179. Emergency Regulations (Offenses in the Administered Territories – Jurisdiction and Legal Assistance), 5727-1967. In 1977, the name was amended to read "Judea and Samaria, the Gaza Strip, the Golan Heights, Sinai and South Sinai."

180. Rules of Civil Procedure (Furnishing of Documents for the Administered Territories), 5730-1969, *Kovetz Takkanot* 2482, p. 458. A similar ordinance was issued regarding the labor courts (*Kovetz Takkanot* 2482, p. 460).

The Knesset has periodically extended by statute the emergency regulations mentioned above.<sup>181</sup> In 1984, the Knesset imposed additional laws on Israeli settlers, including laws relating to military service, the Income Tax Ordinance, the Population Registry, National Insurance, etc. The law also empowered the Minister of Justice to add other laws to this list, with the approval of the Knesset's Constitution, Law and Justice Committee.<sup>182</sup>

Israeli law is imposed not only on Israelis resident in the Occupied Territories, but also on Jews who move to the settlements, even if they do not have Israeli citizenship:

For the purpose of the acts of legislation listed in the Addendum, the expression "Israeli resident" or any other expression regarding residency, residence or presence in Israel as stated therein, shall be considered also to include a person whose place of residence is in the region and who is an Israeli citizen, or who is eligible to immigrate to Israel in accordance with the Law of Return, 5710-1950, and who would fall under the said term were his place of residence in Israel.<sup>183</sup>

The territorial enclaves were created by the imposition of Israeli civilian law on the Jewish local authorities established in the West Bank. In 1988, the Knesset empowered the government to impose the Development Towns and Areas Law on "local authorities and Israeli citizens" in the Occupied Territories.<sup>184</sup> This was the first time the Knesset had imposed one of its laws on the settlements in territorial terms, rather than merely on the settlers as individuals, as had been the case previously. In recent years, the Knesset has adopted several laws – relating to local authorities and elections for these authorities – that apply directly to the settlements.<sup>185</sup>

Military legislation, in the form of the collection of military orders published by the Commander of IDF Forces in the West Bank, provides an extremely effective tool for realizing Israel's policy of imposing its own law on the settlements and the settlers, while separating them from Palestinian residents and their communities. In some cases, these orders have constituted a waiver by the military commander of his powers in the settlements in favor of Israeli civilian authorities, whether in the settlements or in Israel. Most of the orders were phrased in such a manner that it is not directly evident that they are intended to apply solely to the settlements and not to Palestinian communities or residents. The *de facto* enactment was effected by means of an appendix or addendum to the order detailing those communities in which it applies, sometimes only as a matter of policy in practice. A significant portion of this military legislation, as discussed in the last part of this chapter, relates to the settlements as local authorities, and makes an important contribution to the process by which these settlements have been converted into territorial enclaves governed by Israeli law (see below).

The complex fabric of laws, regulations and orders combine to form a rather straightforward picture of annexation. For almost all purposes, the lives of settlers proceed as do the lives of Israeli citizens living within Israel, even though the area in which they live is subject to military rule. Settlers elect their local or regional council, participate in Knesset elections, pay taxes, National Insurance and health insurance,

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181. Amendment and Extension of the Validity of the Emergency Regulations (Judea and Samaria, the Gaza Strip, Sinai and South Sinai – Jurisdiction and Legal Assistance) Law, 5744-1984. Section 6.

182. *Ibid.*, Section 6B(B).

183. *Ibid.*, Section 6B(A).

184. Development Towns and Areas Law, 5748-1988, Section 3(E).

185. Regional Councils (Date of General Elections) (Amendment) Law, 5757-1997; Amendment of Local Authorities Ordinance (No. 21) Law, 5757-1997; Local Authorities (Special Elections) (Legislative Amendments) Law, 5758-1998.

and enjoy all the social rights granted by Israel to its citizens. If suspected of an offense under the law, they are arrested by the civilian police and tried in civilian courts in accordance with the law applying in Israel.

## **B. The Structure of Local Government**

Israeli law recognizes three types of municipal entities through which local government operates: municipalities, local councils and regional councils. Local government plays a central role in the daily life of Israeli citizens, both within the Green Line and in the Occupied Territories, because it is responsible for providing a wide range of vital services in education, health, welfare, culture, urban planning, water and sewage, public parks, cleaning, and so on. During the 1990s, the local government expenditures accounted for approximately thirty percent of all public expenditure in Israel.<sup>186</sup>

The two key military orders granting the Jewish local authorities the status of territorial enclaves of Israeli law were issued in 1979: the Order Regarding the Management of Regional Councils (No. 783), and the Order Regarding the Management of Local Councils (No. 892). With a few exceptions, these orders replicate Israeli law regarding the local authorities in matters such as elections, composition of the councils, budgets, planning and building, education, and courts for local matters. The addendum to these orders specifies the names of the local authorities in which they apply, i.e., the names of settlements. The list of names is updated each time a new settlement is established, and each time a particular settlement changes its status (from a community within a regional council to a separate local council, or from a local council to a municipality).

Because the terms "local councils" and "regional councils" did not exist in the Jordanian law regulating the status of Palestinian communities, their use in the context of the settlements did not raise any legal difficulties. The problem arose when it was decided to grant the municipality status to the largest settlements (the first such case was Ma'ale Adummim). In theory, the military commander should have taken this action in accordance with the Jordanian Municipalities Law (No. 29) of 1955.<sup>187</sup> Had the commander done so, the settlements would have been required to operate in accordance with Jordanian law, and the Israeli administration would have been required to treat them according to the same standards that applied in Palestinian municipalities (prior to their transfer to the Palestinian Authority), for example in the allocation of resources, the level of services, declaration as a development area, mortgages for eligible residents, elections for the municipal council, and so on.

To prevent this situation, which Israel considered undesirable, the Commander of IDF Forces in the West Bank issued an order amending the Order Regarding the Management of Local Councils (No. 892). According to this amendment, the settlements defined as municipalities would continue to act on the basis of the Order Regarding Local Councils, and not on the basis of Jordanian municipal law: "The Commander of IDF Forces in the Region is entitled, on the recommendation of the Supervisor, to declare by order that a given local council shall be called a 'municipality.'"<sup>188</sup>

186. State Comptroller, *Annual Report 49* (in Hebrew) (Jerusalem, April 1999), p. 343.

187. The reason for this is that, as noted, the law applying in the West Bank, unless amended by military order, is the Jordanian law in force until 1967. See B'Tselem, *On the Way to Annexation*, pp. 18-19.

188. Order Concerning the Management of Local Councils (Judea and Samaria) (No. 892), 5741-1981; By-Laws of the Local Councils (Amendment No. 68), 14 July 1991, Section 140C.

In certain matters, the local authorities in Israel are subject to the Ministry of the Interior, which is responsible for supervising their proper functioning. Each local authority belongs to a particular district, for which a unit in the Ministry of the Interior is responsible. Supervision of the local authorities in the West Bank (including Palestinian local authorities) is handled by the Internal Affairs Officer of the Civil Administration; for many years, a Supervisor of the Israeli Communities operated within this framework, and was responsible solely for the settlements. At the beginning of 1996, presumably as part of the process of *de facto* annexation, the unit of the Supervisor of the Israeli Communities was transferred from the Civil Administration to the direct authority of the Ministry of the Interior, acquiring a status similar to that of the units responsible for the various districts inside Israel.<sup>189</sup>

The local councils and municipalities are independent municipal mechanisms managing the affairs of what are defined by the law as single communities, while the regional councils include a number of communities in the context of a two-tier system of government. The upper tier is the council, while the lower tier includes the communities within the area or jurisdiction of the council, which are managed in certain matters by a local committee. The division of responsibility between the regional council and the local committees is not clearly or unequivocally defined in the law, and hence varies from one community or regional council to another. However, the local committees may not adopt decisions contrary to those of the council; in a few areas, such as the approval of budgets, the local committee must obtain the authorization of the regional council.<sup>190</sup>

Until recently, the sphere of activity of the regional council was usually confined to mediation between the communities and central government, while most municipal services were provided by the local committees. In the early 1990s, however, as the cooperative frameworks weakened, the regional council became stronger and came to be perceived as bearing direct responsibility for managing the affairs of the community, similar to the municipality or the local council.<sup>191</sup>

On the recommendation of the official in charge of the relevant district, the Minister of the Interior is empowered to change the status of communities and local authorities (transforming a group of communities into a distinct regional council, removing a given community from a regional council and making it a local council, or changing the status of a local council to a municipality). Changing a community to a local council entitles it to obtain direct funding from the Ministry of the Interior. Moreover, the local council receives significant powers, such as the authority to establish a local planning committee entitled to issue building permits. The transition from the status of local council to that of municipality is generally reflected in the level of funding received from the Ministry of the Interior.

In the case of the settlements in the West Bank, the recommendation to establish any type of local authority is made to the Minister of the Interior by the Supervisor of Israeli Communities, while the minister's decision is formally implemented by means of a military ordinance signed by the Commander of IDF Forces in the West Bank.

189. For a criticism of the activities of the Supervisor of the Israeli Communities in Judea and Samaria, see State Comptroller, *Annual Report 52A* (in Hebrew) (Jerusalem, 2001), pp. 163-180.

190. Audit of Local Authorities Division, Ministry of the Interior, *Special Audit Report on the Regional Councils 1998* (in Hebrew) (Jerusalem, August 1998), pp. 9-11.

191. *Ibid.*

According to a law enacted in 1992, the minister is not permitted to award the status of a local council to communities with a population of fewer than 3,000 residents, nor to award the status of a municipality to communities with a population of fewer than 20,000. However, the law grants the minister discretion to act otherwise "if special conditions and circumstances exist."<sup>192</sup> As of the end of 2001, four of the fourteen local councils in the West Bank had a population of fewer than 3,000 residents, and two of the three municipalities had a population of fewer than 20,000 (see Table 3 below).

The number of local authorities currently existing and serving as frameworks for the management of settlements in the West Bank is as follows: three municipalities, fourteen local councils and six regional councils, containing 106 small settlements. In addition, twelve settlements were established in areas annexed to Israel in 1967, and are included within the area of jurisdiction of the Jerusalem Municipality.

**Table 3**  
**Local Authorities in the West Bank**

Name of Local Authority	Municipal Status*	Number of Residents**
Oranit	Local Council	5,100
Alfe Menashe	Local Council	4,600
Elqana	Local Council	3,000
Efrat	Local Council	6,400
Ari'el	Municipality	15,600
Bet El	Local Council	4,100
Bet Arye	Local Council	2,400
Betar Illit	Municipality	15,800
Arvot Hayarden	Regional Council (18)	3,000
Giv'at Ze'ev	Local Council	10,300
Gush Ezyon	Regional Council (14)	9,600
Har Adar	Local Council	1,400
Mt. Hebron	Regional Council (12)	4,100
Megillot	Regional Council (5)	900
Modi'in Illit	Local Council	16,400
Mate Binyamin	Regional Council (27)	27,200
Ma'ale Adummim	Municipality	24,900
Ma'ale Efrayim	Local Council	1,500
Immanu'el	Local Council	3,000
Qedumim	Local Council	2,700
Qiryat Arba	Local Council	6,400
Qarne Shomeron	Local Council	5,900
Shomeron	Regional Council (30)	17,400

\* The numbers in parentheses relate to the number of settlements (according to the number of local committees recognized by the Ministry of the Interior) included within each regional council.

\*\* Figures of the Central Bureau of Statistics for the end of 2000.

192. Arrangements in the State Economy (Amendments of Legislation to Secure the Budgetary Objectives) Law, 5793-1992, Section 18.

## **C. The Significance of the Municipal Boundaries**

The municipal boundaries of the local authorities, i.e., their area of jurisdiction, are marked on a map signed by the Commander of IDF Forces in the West Bank and attached to the Order Regarding Local Councils (No. 892) or the Order Regarding Regional Councils (No. 783), as the case may be. The borders of the settlements composing the regional councils, too, are set forth on maps signed by the Commander of IDF Forces in the West Bank. In this case, the map defines not the area or jurisdiction, but the "area of the community" (see Photos 1-4).

The areas constituting these areas of jurisdiction or areas of the community include all the land of which Israel has seized control over the years by the methods discussed above in Chapter Three. Accordingly, the borders of most of the Jewish local authorities in the West Bank are tortuous, and include non-contiguous areas of land (see the map attached to this report, as well as Chapter Seven below).

Palestinians are forbidden to enter the areas of jurisdiction or the areas of community of the settlements unless they received special authorization. In an order issued in 1996, the Commander of IDF Forces in the West Bank declared all the areas of the settlements to be a "closed military area," claiming that "... this is necessary for reasons of security and given the special circumstances currently pertaining, and the need to take immediate emergency measures..."<sup>193</sup> The order notes that "the provisions of this declaration do not apply to Israelis."

The definition of "Israeli" in the order offers a revealing illustration of the system of separation created by Israel in the West Bank:

"Israeli:" A resident of Israel, a person whose place of residence is in the region and who is an Israeli citizen or was eligible to immigrate to Israel in accordance with the Law of Return, 5710-1950, as in effect in Israel, as well as a person who is not a resident of the region and who holds a valid entry visa to Israel.

This definition given in the order to the term "Israeli" creates a situation in which entrance to an area "closed for military reasons" is permitted to Israeli citizens, Jews from anywhere in the world, and any person who enters Israel as a tourist (with a "valid entry visa"). The result is that only local Palestinian residents require special authorization from the commander of the region to enter the area of the settlements.

The areas of jurisdiction of the regional councils in the West Bank include enormous empty areas (approximately thirty-five percent of the area of the West Bank) that are not attached to the area of any specific settlement. These areas constitute the reserves of land for future expansion of the settlements, or for the establishment of industrial zones (see Chapter Seven). Various areas within the regional councils' areas of jurisdiction in the West Bank are defined as "firing zones" and are used by the IDF for military exercises. Other areas are now defined as "nature reserves," where any form of development is prohibited.

193. Order Regarding Security (Judea and Samaria) (No. 378), 5730-1970, Declaration of the Closure of an Area (Israeli Communities).



The extent to which the settlers and the Civil Administration exercise control over these areas is not uniform, and Palestinians still use some of them for agriculture or grazing. This situation is the result of Israel's policy of declaring broad tracts of land as state land, without always informing the residents living on or using these lands. Consequently, the expansion of a settlement within the area of jurisdiction of the regional council to which it belongs sometimes entails the eviction of Palestinians from their land.<sup>194</sup>

Arvot Hayarden Regional Council (almost 900,000 dunam), for example, exercises maximum control of these areas, a result of the combined effect of the sparse Palestinian population in the area and the farming of some of this area by settlers. A counter example is Mt. Hebron Regional Council, which maintains almost no supervision over these areas. Thus, during attempts by settlers in recent years to expand the settlements in this regional council, it emerged that areas defined as part of the council's area of jurisdiction were used by Palestinians for residence, agriculture or grazing.

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<sup>194</sup>. For example, see the outposts established near the settlement of Suseya in the south of the Hebron mountains, as discussed in the section on state land in Chapter Three above.



## Chapter Five

# Benefits and Financial Incentives

One of the claims made by Israel to justify the settlements, although they are prohibited by the Fourth Geneva Convention, is that the state does not transfer its citizens to the occupied territory. Israel argues that each citizen decides privately, of his own free will, to move to the settlement.

In reality, however, all Israeli governments have implemented a vigorous and systematic policy to encourage Israeli citizens to move from Israel to the West Bank. As shown in this chapter, one of the main tools used to realize this policy is the provision of significant financial benefits and incentives. For the purpose of this discussion, a distinction will be made between two types of benefits and incentives granted by the government: support granted directly to citizens by defining settlements as "national priority areas," and support granted to local authorities in the West Bank, i.e., to the settlements, in a manner that favors these settlements in comparison to local authorities inside Israel.

The purpose of the discussion in this chapter is not to examine the "burden" that the settlements place on the national budget, nor to estimate the total sum invested in the Occupied Territories by the government. Rather, the report will describe those components of government policy that influence the *standard of living* of individual citizens, and may therefore constitute an incentive to migrate to the West Bank. Accordingly, the report will not discuss other forms of financial investments, such as security, other military expenses or the construction of roads, because these investments constitute, to a certain extent, a pre-condition for the very existence of the settlements, rather than a component in improving the standard of living.<sup>195</sup> Moreover, given the unique reality in which the settlements exist (violence by Palestinians, construction of roads following redeployment, etc.), it is difficult to compare these investments with those inside Israel.

### A. The Settlements as National Priority Areas

One of the main tools used to channel resources to the residents of the settlements is the definition of most of the settlements in the West Bank as "development areas" (according to the term applying through 1992) or as "national priority areas." This definition has been applied not only to settlements (in the West Bank and in the Gaza Strip), but also to various communities inside Israel, particularly in the Galilee and the Negev. The current map of national priority areas and the relevant incentives and benefits were established in 1998 by a committee of directors-general headed by the then director-general of the Prime Minister's Office, Avigdor Lieberman, and was approved by the government headed by Binyamin Netanyahu.<sup>196</sup> This map, which replaced the previous map, which was established in 1992 under the

195. For comparative data on the construction of new roads for settlements in the West Bank and Gaza Strip in the 1990s, see Adva Center, *Government Funding of the Israeli Settlement in Judea, Samaria, Gaza and the Golan Heights in the 1990s: Local Authorities, Residential Construction and the Construction of Roads* (in Hebrew) (January 2002), pp. 58-62; for data for the years 2001-2002, see Ze'ev Schiff, "The March of Stupidity on the Bypass Roads," *Ha'aretz*, 15 February 2002.

196. Prime Minister's Office, Coordination, Monitoring and Control Division, *National Priority Areas* (in Hebrew) (Jerusalem, 26 April 1998).

government of Yitzhak Rabin,<sup>197</sup> continued to apply under the government of Ehud Barak (1999-2001) and under the present government headed by Ariel Sharon.

The purpose of the map of national priority areas, as defined by the committee of directors-general from 1998, is "to encourage the generation remaining in these areas, to encourage initial settling by new immigrants, and to encourage the migration of veterans to the priority areas." According to the committee, "the map of national priority areas is based principally on geographical criteria," assuming that "the scope of opportunities of citizens residing in the peripheral areas is in many respects limited by comparison to that in the center."<sup>198</sup>

While the geographical consideration might explain the inclusion in the priority map of the Negev and Galilee areas, it cannot explain the inclusion of most of the settlements in the West Bank, a substantial number of which are adjacent or relatively close to Jerusalem and the cities of the Tel-Aviv metropolitan area, where many of the residents of the settlements are employed (with the possible exception of the Jordan Valley settlements).<sup>199</sup> Accordingly, it would seem that the factor determining the inclusion of most of the settlements on the map is not the "limited opportunities" available to the settlers due to the distance from the center of Israel, but rather the desire to encourage Israeli citizens to move to the West Bank for political reasons. The committee was certainly right to emphasize that the map of national priority areas is based "principally" – i.e., not only – on geographical considerations.

The benefits and incentives provided for the priority areas are granted by six government ministries: Housing and Construction; National Infrastructure (through the Israel Lands Administration); Education; Trade and Industry; Labor and Social Affairs; and Finance (through income tax).<sup>200</sup> The level of incentives varies according to the classification of each settlement as a Class A or B priority area. This classification is given separately for each benefit, so some settlements are simultaneously categorized as Class A, Class B, or no priority, depending on the government ministry and the benefit involved.

*The Ministry of Construction and Housing* provides generous assistance for those who purchase a new apartment or build their own home in national priority areas. In areas defined as Class A priority areas, the ministry provides a loan of NIS 60,000, half of which is converted into a grant after fifteen years. In Class B priority areas, the loan is NIS 50,000, of which NIS 20,000 is converted into a grant after the same period of time. It should be noted that the rules established by the committee of directors-general state that the grant component is not supposed to be provided in affluent, established communities included in the map;<sup>201</sup> however, this component is provided in all the settlements in the West Bank, including those that are affluent. The ministry also contributes to development costs by means of a grant covering up to fifty percent of expenses, according to the classification of the community and the type of expense. It is important to note that these benefits are provided in addition to the "eligibility loans" provided by the ministry throughout Israel on the basis of personal criteria.

197. Prime Minister's Office, *National Priority Areas* (in Hebrew) (Jerusalem, 30 November 1992).

198. *National Priority Areas*, 1998, p. 4. "Veterans" in apposition to "new immigrants" (*trans.*).

199. For a detailed analysis of the geographical dispersion of the settlements, see Chapter Seven below.

200. Data on the benefits included in this part of the chapter are based on *National Priority Areas*, 1998, unless otherwise stated.

201. According to the committee, prosperous communities are those that belong in the 7-10 grade cluster in the socioeconomic ranking of the Central Bureau of Statistics.

*The Israel Lands Administration*, which is accountable to the Ministry of National Infrastructure, provides discounts of sixty-nine percent and forty-nine percent (for Class A and B priority areas, respectively) from the value of the land in the payment of lease fees for residential construction, and a discount of sixty-nine percent on leasehold fees for industrial and tourism purposes.

*The Ministry of Education* provides a range of incentives for teachers who work in Class A priority areas, including promotion and the addition of four years' seniority, partial exemption from payment of the employee's contribution to the in-service training fund, participation in rental costs and travel expenses, and reimbursement of seventy-five percent of tuition fees paid by teachers at institutions of higher education.<sup>202</sup> Class B areas do not appear in the Ministry's map of benefits. For parents in Class A areas, the Ministry of Education provides a discount of ninety percent for tuition fees in pre-compulsory kindergartens. This discount is also provided in settlements included on the map and defined as affluent (see above), contrary to the policy regarding communities inside Israel with the same profile. In addition, the Ministry of Education covers all transportation costs for students to schools in the settlements, regardless of whether a given settlement is included in the map of priority areas.

*The Ministry of Industry and Trade* provides "approved enterprises" pursuant to the Capital Investments Encouragement Law, i.e., those defined as entitled to government support, with grants of thirty percent in Class A priority areas (twenty percent according to the law, and a ten percent administrative grant), and twenty-three percent in Class B priority areas (ten percent according to the law and a thirteen percent administrative grant).<sup>203</sup> Any enterprise approved in accordance with the law enjoys income tax benefits in all areas, both in terms of corporate tax and in terms of individual taxation on income from the enterprise. In addition, industries situated in Class A priority areas are entitled to increased grants for research and development, which can cover as much as sixty percent of the costs of each project. The Ministry of Industry and Trade also covers a significant portion of costs for the establishment of new industrial zones and the maintenance of existing zones, including significant discounts on land prices. It should be noted that during the 1990s, the ministry established ten new industrial zones in the West Bank, mostly within the area of the six regional councils, at an average cost of approximately NIS 20 million per zone.<sup>204</sup> The enterprises established in these industrial zones are under Israeli ownership, and some employ Palestinians.<sup>205</sup>

*The Ministry of Labor and Social Affairs* provides social workers it employs in Class A priority areas with a package of benefits that is almost identical to that provided to teachers by the Ministry of Education (i.e., promotion and seniority, funding of tuition fees for higher education, etc.) Regarding Class B priority areas, the ministry provides social workers with three years' seniority, seventy-five percent reimbursement of travel expenses, and financing of seventy-five percent of the employee's contribution to the in-service-training fund.

202. For a comparison of the benefits provided for settlements in the field of education with those provided for Arab communities and development towns, see Adva Center, *National Priority Status in the Field of Education – Arab Communities. Development Towns and Settlements* (in Hebrew) (February 1999).

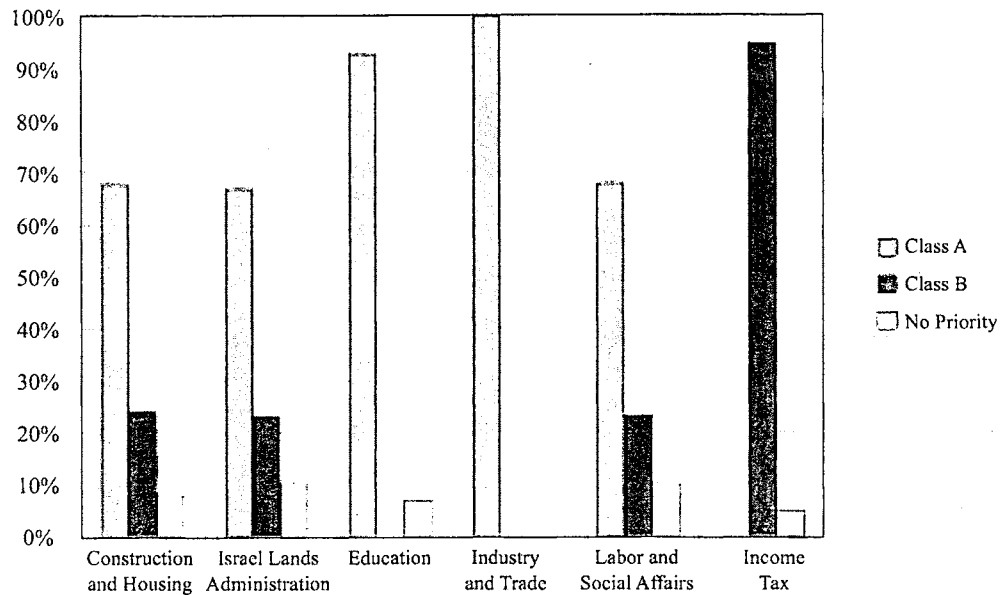
203. Capital Investment Encouragement Law, 5719-1959. This law was amended in 1990. In 1980, the Capital Investment in Agriculture Encouragement Law, 5741-1980, was added.

204. "Sha'ar Binyamin" between Pesagot and Ofra; "Emek Shilo" near Shilo; "Baron" near Qedumim; Gush Ezyon Industrial Park near Efrat; Mishor Adummim Industrial Park; Ma'ale Efrayim Industrial Park; Immanu'el Industrial Park; Qiryat Arba Industrial Park; Barkan Industrial Park near Ari'el; and Shim'a Industrial Park in the south of the Hebron Mountains.

205. For more on this aspect, see Shlomo Tzezana, "White Elephants in Judea, Samaria and Gaza," *Ma'ariv*, 30 November 2001.

The Ministry of Finance, through the Income Tax Commission, provides the residents of certain locales in Israel with reductions in the payment of income tax at rates varying from five to twenty percent. This benefit is not tied to the map of national priority areas as established by the committee of directors-general. The Minister of Finance decides on the discounts independently, through ordinances he enacts stating the communities to receive benefits and the level of the reduction. Most of the settlements enjoy a seven percent income-tax reduction.<sup>206</sup>

**Diagram 5**  
Settlements in the West Bank,\* by Level of Priority

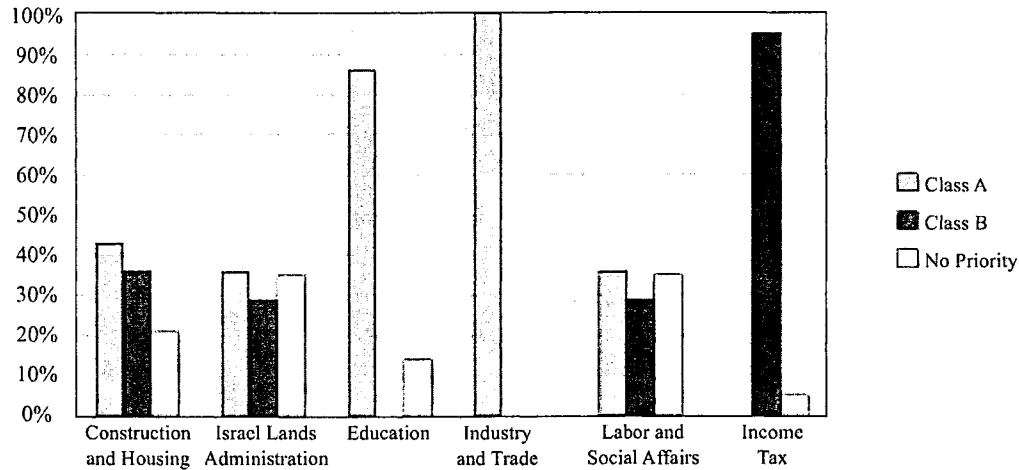


\* Does not include East Jerusalem.

\*\* The "no priority" category does not relate to transportation to school, which is entirely funded by the settlements.

206. In the diagrams below, this benefit is included under Class B priority areas.

**Diagram 6**  
**Settlers in the West Bank,\* by Level of Priority**



\* Does not include East Jerusalem.

\*\* The "no priority" category does not relate to transportation to school, which is funded entirely by the settlements.

## **B. Incentives for the Local Authorities**

A significant proportion of the services received from the state by Israeli citizens is provided through the local authorities, i.e., the municipalities, local councils and regional councils. These services extend across diverse and varied fields. Some services are provided by the local authority on an independent basis, while others are provided in cooperation with various government ministries. The former category includes, for example, the maintenance of the water and sewage systems, the provision of cleaning services, sanitation and veterinary supervision, the preparation of local outline plans and the granting of building permits, the maintenance of public buildings, roads and public parks, and the collection of municipal taxes. Services provided in cooperation with government ministries include the maintenance of school buildings, the operation of pre-school kindergartens, cultural activities, the maintenance of museums, libraries and sports facilities, the operation of family health clinics, therapy and support for distressed youth and families, support for the religious councils, and the like.

The sources of funding for these services may be divided into two categories.<sup>207</sup> The first includes the local authority's self-generated income: municipal taxes, levies, duties, payments from local committees (in the case of regional councils), payments for services provided to residents (engineering services, veterinary supervision, use of libraries, medical services, etc.), school tuition fees, contribution by residents to the costs of development works, and the like.

207. For comprehensive discussion of the funding of local government, see Aryeh Hecht, *The Usurping of the Financing Systems of the Local Authorities* (in Hebrew) (Jerusalem: Floreshheimer Policy Research Institute, 1997).

The second source of financing is the government, which transfers money to the local authorities by two methods. The first is participation in the direct financing of specific services, particularly by the Ministry of Education and the Ministry of Labor and Social Affairs (hereafter: earmarked contributions). The second form is the provision of general grants by the Ministry of the Interior for the routine operations of the local authority. The Ministry of the Interior also provides certain local authorities with additional *ad hoc* grants enabling them to meet "special needs" (immigrant absorption, encouraging settlement by young people, flood control, reducing deficits, etc.) Although various criteria exist for the allocation of these grants, the Ministry of the Interior enjoys extensive discretion in this field.

One of the mechanisms used by the government to favor local authorities in the West Bank, in comparison to those inside Israel, is the channeling of money through the Settlement Division of the World Zionist Organization (hereafter: the Division). As described above, the sole purpose of the Division is to establish settlements in the territories occupied in 1967 and to support the continued development of these settlements. Most of the support funds granted by the Division are transferred to the settlers via the local authorities, both within the framework of the regular budget and in the special budget. The unique aspect of the Division is that on the one hand, the budget is drawn entirely from the state budget, while on the other, the rules, procedures and laws applying to government ministries – above all, the Basic Law: The Budget – do not apply because the Division is not a government body. The Division's budget, which is transferred via the Ministry of Agriculture,<sup>208</sup> ranged from NIS 153 million to NIS 194 million per annum during the period 1992-1998.<sup>209</sup>

In 1999, the State Comptroller published a special report on the functioning of the Division. According to this report, since the beginning of 1997, the Division had expanded its areas of support for the settlements beyond housing and agriculture, following a similar move by the Jewish Agency regarding the communities it supported within Israel. The new spheres included social, educational and communal activities, assistance for establishing public buildings, the provision of grants for entrepreneurs, assistance for Jewish religious institutions, financing of transportation, the organization of exhibitions, and the like. According to the State Comptroller's report, this expansion served as a vehicle to favor the settlements relative to communities inside Israel:

The Division has expanded its activities and liabilities on the basis of the principle of equality in assistance for communities on both sides of the Green Line. At the same time, however, the Division interpreted the principle of equality in a flexible manner; in some cases, it extended its activities to spheres beyond those in which the Jewish Agency is active, and in some cases it increased its assistance beyond the assistance standards established by the Jewish Agency for communities it assists within the Green Line. Thus, the Division created the favoring – which had not been decided by the government – of the settlements in Judea, Samaria, Gaza and the Golan relative to other communities.<sup>210</sup>

208. Until 1998, money transferred to the Division was recorded within the budget of the Ministry of Agriculture under the title "The Division," without explaining what division this was or for what purposes this money was devoted (Aryeh Caspi, *Ha'aretz*, 25 June 1999). This is a further example of the general lack of transparency that is typical of many other aspects relating to the settlements (see the Introduction to this report).

209. State Comptroller, *Report of an Audit Regarding Government Assistance for the Development of the New Settlement in the Judea, Samaria, Gaza and Golan Areas* (in Hebrew) (Jerusalem, May 1999).

210. *Ibid.*, p. 20.



Another reason for this preferential treatment, according to the State Comptroller's report, is that, "since both government ministries and the Division are active in assisting settlers in the same areas, and sometimes for the same purposes, 'double support' is sometimes provided to the settlers."<sup>211</sup>

The Ministry of the Interior's Local Authorities Audit Division publishes an annual report presenting the summary of financial data for all the local authorities in Israel and the settlements. We shall present below data based on the information included in the most recent report, for the year 2000.<sup>212</sup> These data provide a breakdown of the source of income of (Israeli) local authorities in the West Bank in that year, and compare these with the parallel data for local authorities inside Israel. It should be emphasized that the al-Aqsa intifada did not increase the level of government funding for local authorities in the West Bank in 2000 – the budgets for these authorities were approved in 1999, before these events erupted.

Before examining the data, it is worth clarifying a number of methodological issues. Firstly, since the size of the population varies from place to place, which has a crucial impact on the level of budgets, the data below are presented on a per capita basis, and not in terms of the total allocation for the authority. Secondly, the data presented here relate to the routine budget of the authorities (the "regular budget" in accounting terms), and *do not* include income in the "special budget" earmarked for one-time investments (usually physical infrastructure), because there is no way to compare this income for different local authorities for any given year. Thirdly, the analysis below does not relate to the financial data for the municipalities, because there are only two local authorities in the West Bank with this status (Ma'ale Adummim and Ari'el),<sup>213</sup> so that a comparison with national averages could be unrepresentative.

A review of Tables 4 and 5, and of the accompanying diagrams, shows that the per capita financial transfers of the government to local authorities in the West Bank are significantly higher than the average for local authorities inside Israel. The discrepancy between the two is particularly evident in the case of general grants, which are particularly important from the perspective of the local authorities; unlike earmarked contributions, the authorities are free to use the grant moneys at their discretion, although the entire budget is subject to the approval of the local authority's council and the Ministry of the Interior.

The level of general grants provided by the government for local councils in the West Bank in 2000 averaged NIS 2,224 per resident, compared with an average of NIS 1,336 per resident for local councils in Israel, i.e., sixty-five percent more. Only in four of the fifteen local councils in the West Bank was the level of grants per resident lower than the Israeli average, while in five of the councils the level was over one hundred percent more than the average. The discrepancy in favor of the local councils in the West Bank may also be seen in the context of earmarked contributions by government ministries. While the average for such investment in local councils in Israel is NIS 1,100 per resident, the investment in the local councils in the West Bank was almost NIS 1,500 per resident, i.e., thirty-six percent more.

It is worth noting that the preferential status enjoyed by the local councils in the West Bank in terms of the transfer of government funds was not reflected in any decrease in the residents' participation

211. *Ibid.*, p. 17.

212. Ministry of the Interior, Local Authorities Audit Division, *Report of Controlled Financial Data for the Local Authorities 2000*, Report No. 6 (in Hebrew) (Jerusalem, September 2001).

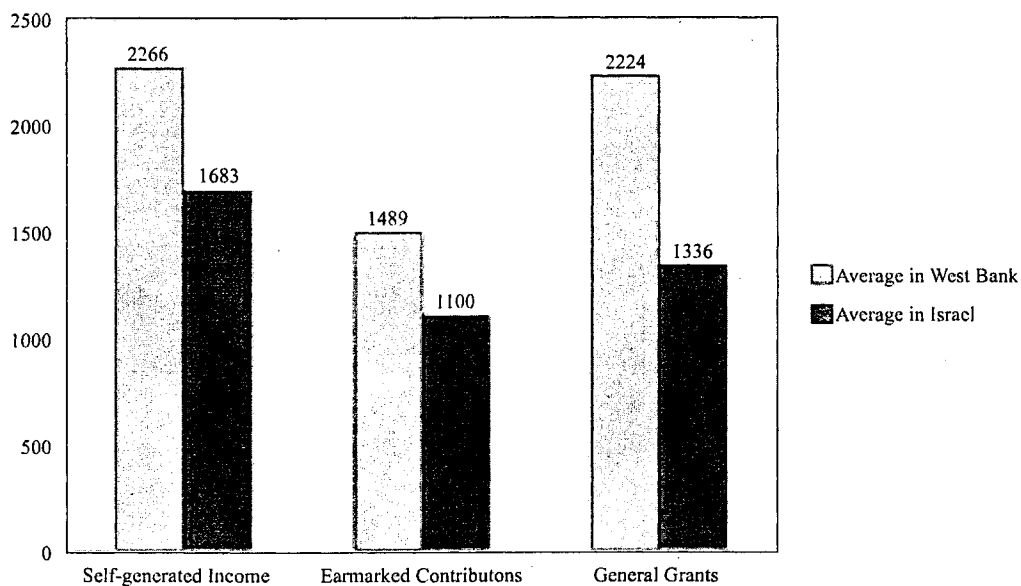
213. At the end of 2001, the settlement of Betar Illit also received the status of a municipality.

in the council's income relative to the average in Israel. One of the reasons for this is the high economic capability that is characteristic, on average, of the local councils in the West Bank relative to those in Israel. Thus, average self-generated income for the local authorities in the West Bank totals approximately NIS 2,300 per resident, while the average figure inside Israel is approximately NIS 1,700 per resident. The combination of the preferential treatment by the government and the higher rate of participation by residents yields a total income basket that is forty-five percent higher in the West Bank than inside Israel.

**Table 4**  
**Per-capita Income in West Bank Local Councils (in NIS)**

<b>Name of Council</b>	<b>Self-generated Income</b>	<b>Earmarked Contributions</b>	<b>General Grants</b>	<b>Total Per Capita Income</b>
Oranit	3,010	983	1,224	5,217
Alfe Menashe	2,977	1,184	1,712	5,874
Elqana	2,717	1,767	1,860	6,325
Efrat	1,971	1,508	1,743	5,221
Bet El	2,301	1,547	2,840	6,688
Bet Arye	2,761	1,344	2,198	6,304
Betar Illit	1,073	389	1,283	2,744
Giv'at Ze'ev	1,656	1,147	1,232	4,049
Har Adar	3,806	664	2,015	6,486
Modi'in Illit	1,334	735	1,063	3,133
Ma'ale Efrayim	2,497	3,157	4,658	10,312
Immanu'el	1,174	1,467	3,379	6,020
Qedumim	2,739	1,538	3,325	7,851
Qiryat Arba	1,888	2,872	3,085	7,846
Qarne Shomeron	2,081	2,029	1,745	5,855
<b>Average Income in West Bank Local Councils</b>	<b>2,266</b>	<b>1,489</b>	<b>2,224</b>	<b>5,995</b>
<b>Average Income in Local Councils in Israel</b>	<b>1,683</b>	<b>1,100</b>	<b>1,336</b>	<b>4,119</b>

**Diagram 7**  
**Per-capita Income in Local Councils (in NIS)**



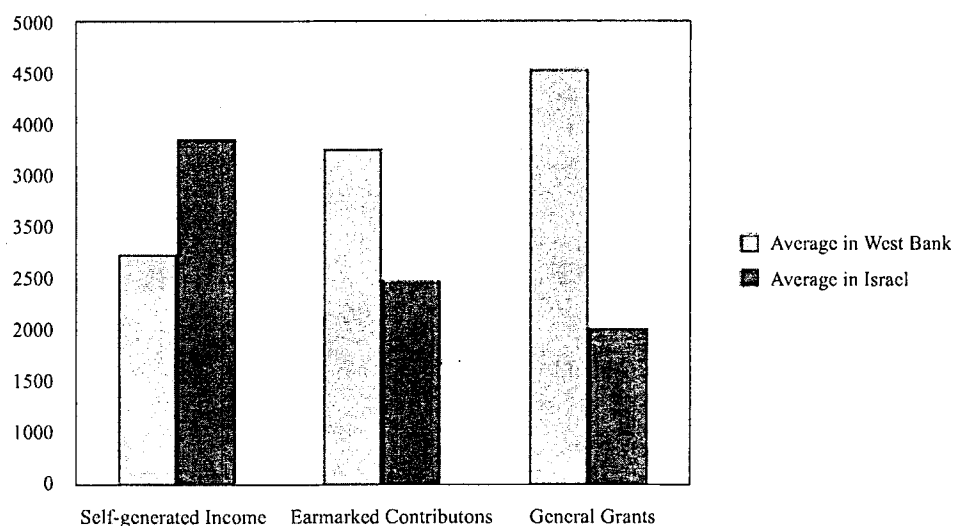
The situation regarding the regional councils is similar, though not identical, to that of the local councils. In the case of regional councils, the discrepancy in general grants is even more pronounced than in the case of the local councils. While the average for regional councils inside Israel is approximately NIS 1,500 per resident, the average for the West Bank is approximately NIS 4,000 – approximately 165 percent more. In all six regional councils in the West Bank, the level of grants is higher than the Israeli average; the highest level is for Megillot Regional Council, where grants amount to approximately NIS 7,500 per resident. In terms of earmarked contributions from government ministries, the discrepancy is approximately sixty-five percent in favor of the regional councils in the West Bank.

Regarding self-generated income, the situation in the regional councils differs somewhat from that in the local councils. The contribution of residents of regional councils in Israel to the income of the council is approximately fifty percent higher on average than that of the residents of regional councils in the West Bank. Nevertheless, the enormous discrepancy in government transfers in favor of the councils in the West Bank means that the total basket of income per resident is still approximately forty percent higher on average in these councils than in the regional councils inside Israel.

**Table 5**  
**Per-capita Income in the West Bank Regional Councils (in NIS)**

Name of the Council	Self-generated Income	Earmarked Contributions	General Grants	Per Capita Income
Arvot Hayarden	2,618	4,078	4,474	11,171
Gush Ezyon	1,733	2,203	2,807	6,785
Megillot	3,840	4,839	7,511	16,190
Mate Binyamin	1,397	2,447	1,936	5,780
Mt. Hebron	1,768	3,354	4,884	10,007
Shomeron	1,887	2,471	2,421	6,780
<b>Average Income in West Bank Regional Councils</b>	<b>2,207</b>	<b>3,232</b>	<b>4,006</b>	<b>9,452</b>
<b>Average Income in Regional Councils in Israel</b>	<b>3,333</b>	<b>1,952</b>	<b>1,498</b>	<b>6,783</b>

**Diagram 8**  
**Per-capita Income in Regional Councils (in NIS)**



The extent of the discrepancies in the scope of moneys transferred to local authorities by the government may be examined by comparing transfers to specific local authorities on either side of the Green Line. To ensure that such a comparison is fair and indicative, care was taken to compare local authorities with similar profiles in terms of population size, distance from the center of the country, and socioeconomic status of the residents.<sup>214</sup> The results of this comparison are presented in Table 6 below.

**Table 6**  
**Comparison between Local Authorities in the West Bank and in Israel (in NIS)**

Name of Local Authority	Number of Residents	Socio-economic Level	Govt. Grant per Resident*	Name of Local Authority	Number of Residents	Socio-economic Level	Govt. Grant per Resident*
R.C.** Arvot Hayarden	4,400	6	8,550	R.C. Ramat Hanegev	4,900	7	1,710
R.C. Mt. Hebron	4,300	5	8,240	R.C. Yoav	4,300	5	4,740
R.C. Mate Binyamin	26,300	5	4,380	R.C. Mate Yehuda	29,300	5	2,790
L.C.** Qedumim	2,700	6	4,860	L.C. Yavni'el	2,700	6	3,620
L.C. Efrat	6,300	7	3,250	L.C. Bnei Ayish	6,400	6	2,110
L.C. Qiryat Arba	5,700	4	5,960	L.C. Mizpe Ramon	5,300	3	4,180
L.C. Alfe Menashe	4,600	9	2,900	L.C. Ramat Yeshai	4,600	9	1,570

\* These figures include both the earmarked contributions and general grants.

\*\* R.C. = Regional Council; L.C. = Local Council

A study undertaken by the Adva Center offers an extensive picture of the system used for financing the activities of Jewish local authorities in the West Bank, Gaza Strip and Golan Heights (as a single unit) during the 1990s (1990-1999).<sup>215</sup> The study compares data for this group both as regards average figures for Israel and for special groups of authorities, such as development towns. Although this study includes additional authorities beyond those included in that presented above, its conclusions are essentially similar.<sup>216</sup>

214. This variable is reflected in the ranking of the economic capability of the residents of each authority (on a rising scale from 1 to 10) as calculated by the Central Bureau of Statistics, combining various data such as income, size of housing units, number of vehicles per family, etc.

215. Adva Center, *Government Funding of the Israeli Settlement in Judea, Samaria, Gaza and the Golan Heights in the 1990s*.

216. The additional authorities are Hof'Azza Regional Council, Ramat Hagolan Regional Council, and Katzrin Local Council.

**Table 7**  
**Multi-year Average of Municipal Income, 1990-1999 (in NIS)\***

	Total Budget	Self-generated Income	Government Funding***
<b>West Bank, Gaza and Golan</b>	5,428	1,732	3,679
<b>Development Towns**</b>	4,176	1,925	2,308
<b>Israel</b>	3,807	2,348	1,458

\* These figures relate to the three types of local councils, and are updated based on the price index for the year 2000.

\*\* This group is composed of twenty-five communities defined as "developing settlements" by the Central Bureau of Statistics.

\*\*\* These figures include both earmarked contributions and general grants.

The research shows that throughout the 1990s, the Israeli government favored the local authorities in the Occupied Territories and in the Golan Heights in comparison to local authorities in Israel. Per capita financial transfers were 150 percent higher. This table shows that these transfers were approximately sixty percent higher than those to the development towns, which ostensibly form part of the areas to which the government seeks to attract residents (see discussion of the national priority areas map above). As a result of the considerable government contribution, the residents of local authorities in the Occupied Territories were required to independently fund (through self-generated income) twenty-five percent less than the national average, and ten percent less than the average for development towns. In total, the per capita budget available to the local authorities in the Occupied Territories was more than forty percent higher than the national average throughout the 1990s, and approximately thirty percent higher than the average for the development towns.

## Chapter Six

# The Planning System

The planning system in the West Bank, which is implemented by the Civil Administration, has decisive effect over the map of the West Bank. Like other mechanisms established in the Occupied Territories, the planning system operates along two separate tracks – one for Jews and the other for Palestinians. While the system works vigorously to establish and expand settlements, it also acts diligently to prevent the expansion of Palestinian towns and villages.

The inherent importance of any planning system is this: it is charged with determining the use of the land available to a given public in accordance with the needs, perceptions and interests of that public as a whole, and of the individuals that compose that public. The document detailing the decisions made by this system in any given locale is the outline plan, which determines the size, location and zoning of each unit of land (housing, industry, commerce, public institutions, road, open public area, and the like). The Israeli planning system in the West Bank utilized its power to advance the political interests of the Israeli government in power rather than to benefit the local population.

In legal terms, the planning system in the West Bank operates on the basis of the Jordanian legislation applying in the area at the time of occupation, principally the City, Village and Building Planning Law, No. 79, adopted in 1966.<sup>217</sup> This law defines three types of outline plan, each subject to the next in a hierarchical form and with an ascending level of detail: a regional outline plan, a general-local outline plan, and a detailed plan. These plans are supposed to be prepared and approved by an institutional system reflecting each level: the Supreme Planning Council, the district planning committees and the local planning committees, respectively.<sup>218</sup> For the purposes of the law, the village councils and municipalities function as local planning boards, as is also customary in Israel.<sup>219</sup> The law also establishes various provisions relating to the process of consultation with all the relevant bodies when preparing the outline plans, the publication of these plans and deposition for public review, the hearing of objections, and the like.

The Jordanian planning law was changed by Israel by means of Military Order No. 418, issued in 1971 and amended several times over the years.<sup>220</sup> This order introduced far-reaching changes in the planning system in the West Bank. These changes reflected almost exclusively the interests of the Israeli administration and the settlers, while minimizing Palestinian representation on the planning committees and Palestinian influence in planning matters.

With the signing of the interim accords in 1995, and following the redeployment of the IDF in the years that followed, planning powers in Areas A and B were transferred to the Palestinian Authority. The

217. *Planning, Building and Land Laws*, pp. 43-158.

218. In the case of towns or small villages, the law permits the unification of the two latter stages, in the form of a "general-detailed outline plan" (City, Village and Building Planning Law, No. 79, Section 22).

219. For a comparison of the laws and institutional structure of the planning system inside Israel, see Dennis Goldman, *Introduction to Planning and Building Laws* (in Hebrew) (Jerusalem: Hebrew University of Jerusalem, 2000).

220. Order Concerning the City, Village and Building Planning Law (Judea and Samaria) (No. 418), 5731-1971, in *Planning, Building and Land Laws*, pp. 239-250.

planning powers relating to Area C, which since 2000 accounts for some sixty percent of the West Bank, were not affected. Although at present a very small percentage of the Palestinian population in the West Bank lives in Area C, the military planning system continues to exert a direct influence on the lives of tens of thousands of Palestinians, mainly in Area B, and indirectly on all the Palestinian residents of the West Bank.

## **A. Restriction of Construction in Palestinian Communities**

One of the principal changes that Israel made in the Jordanian law was the transfer of all the powers granted in the Jordanian law to the Minister of the Interior to the Commander of IDF Forces in the Region.<sup>221</sup> Accordingly, most of the Jordanian and Palestinian officials were replaced by Israelis, most of whom were IDF officials or representatives of the settlers. The Supreme Planning Council became a unit of the Civil Administration under the direct responsibility of the Officer for Internal Affairs.

In addition, Israel eliminated the district planning committees (which were responsible for preparing the local-general outline plans) and the planning authorities of the village councils (in the context of detailed planning). These authorities were transferred to the Central Planning Bureau, which is a technical and professional body operating alongside the Supreme Planning Council. Accordingly, the only powers continuing to rest with Palestinians were the planning authorities of the municipal councils (for the purpose of detailed plans); even these powers were curtailed by various means.<sup>222</sup>

Over the years, the main tool used by Israel to restrict building by the Palestinian population outside the borders of the municipalities was simply to refrain from planning. Like its Jordanian predecessor, the Israeli administration has refrained from preparing updated regional outline plans for the West Bank. As a result, until the transfer of authority to the Palestinian Authority (and to this day, in Area C), two regional plans prepared in the 1940s by the British Mandate continue to apply – one in the north of the West Bank and the other in the south.<sup>223</sup>

The Mandatory outline plans were already a completely unreasonable basis for urban planning in the initial years of the occupation, and they are even more so today.<sup>224</sup> One of the principal reasons for this is the discrepancy, which has widened over the years, between the size of the population on which the Mandatory plans were based and the actual size of the population. Areas in which these plans permitted building, generally around existing built-up areas, were quickly exploited, while most of the area of the West Bank continued to be zoned as "agricultural areas" or "nature reserves," where building is prohibited.

The British outline plans also do not meet the planning needs of the Palestinian population because the plans are divided into just four land uses: agriculture, development, nature reserve and coastal reserve. This division ignores numerous land uses that are included, for example, in the district outline plans

221. *Ibid.*, Section 2(1).

222. *Ibid.*, Section 2(2)(3).

223. Jerusalem District Outline Regional Planning Scheme RJ/5, approved in 1942, and *Samaria Regional Planning Scheme S15*, deposited in 1945 but which never received final approval.

224. For greater detail on this matter, see a planning opinion prepared by Bimkom, *Villages in Area C Without Outline Plans* (in Hebrew), Planning Opinion, June 2001 (unpublished).



applying inside Israel (industrial zone, tourism area, quarry area, etc.) Moreover, these plans determine that the minimum area for construction of a single housing unit is 1,000 square meters, without any possibility to subdivide this area into smaller units (parcellation).

In the early 1990s, the Central Planning Bureau of the Civil Administration prepared Special Partial Outline Plans for some four hundred villages in the West Bank. These plans were supposed to fill the role of the detailed plans required by Jordanian law. However, instead of permitting the development of the villages, these plans effectively constituted demarcation plans. In preparing the plans, aerial photographs were taken of each village, and a schematic line was then added around the settled area. Construction was prohibited on land outside this line. According to the perception reflected in these demarcation plans, construction in Palestinian villages is supposed to take place by the "infill" method, i.e., the filling of vacant areas within the demarcated area through high-rise construction and a gradual increase in the population density.<sup>225</sup>

Applications filed in the past by Palestinian residents to the Civil Administration (and still filed, in the case of Area C) for building on private land outside the area of these plans are almost always rejected. The reasons for the rejections are based both on the demarcation plans (the land is outside the plan area) and on the Mandatory outline plans (the area is zoned for agriculture or a nature reserve). For example, between 1996 and 1999, the Civil Administration issued just seventy-nine building permits.<sup>226</sup> The Civil Administration issues demolition orders against houses built without a permit.<sup>227</sup>

In some parts of the West Bank, particularly along the Western Hills Strip, the borders of Areas A or B are almost identical to the border of built-up area of Palestinian communities, i.e., the border of the demarcation plans (see the map attached to this report, as well as Chapter Seven below). Although most of the residents in these areas live in Areas A and B, most of the available land for building on the edges of the villages lies within Area C. Accordingly, although planning and building powers in Areas A and B has ostensibly been transferred to the Palestinian Authority, the transfer of power is meaningless in a large proportion of the cases.

The use of the outline plans as a tool for restricting Palestinian building, and for promoting the building of the settlements, is also very widespread in East Jerusalem, despite the differences in the legal and institutional mechanism imposed on this area in comparison with the remainder of the West Bank. Immediately after the annexation of East Jerusalem, in 1967, and contrary to the remainder of the West Bank, all the Jordanian outline plans applying in the area were nullified, and a planning vacuum was created that has only gradually been filled. During the first decade following the annexation, *ad hoc* building permits were issued in extremely restricted areas of the city.<sup>228</sup>

In the early 1980s, the Jerusalem Municipality decided to prepare an outline plan for all the Palestinian neighborhoods of East Jerusalem. Most of the plans have now been completed; a minority are still in the process of preparation and approval. The most striking feature of these outline plans is the extraordinary

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225. B'Tselem, *Demolishing Peace*, p. 11.

226. Amnesty International, *Demolition and Dispossession: The Destruction of Palestinians' Homes*, MDE 15/059/1999 (December 1999).

227. For details of the number of houses demolished in this context, see B'Tselem, *Demolishing Peace*; Amnesty International, *Demolition and Dispossession*.

228. Ir Shalem, *East Jerusalem – Planning Situation*, p. 5.

amount of land (approximately forty percent) defined as "open landscape," in which any form of development is prohibited. The plans approved through the end of 1999 show that only eleven percent of the area of East Jerusalem *excluding the expropriated land* is available to the Palestinian population for building. As was the case in the remainder of the West Bank in the context of the demarcation plans, this construction is allowed mainly within existing built-up areas.<sup>229</sup>

## **B. The Planning System for the Settlements**

The same legal and institutional system responsible for planning in Palestinian areas is also responsible for planning in the settlements. However, the criteria applied in these two cases are diametrically opposed. In institutional terms, the outline plans for the settlements are discussed and approved by the Sub-Committee for Settlement, which is one of several subcommittees operating under the auspices of the Supreme Planning Council.

The order that changed the Jordanian law empowered the Commander of IDF Forces in the Region to issue orders appointing "special planning committees" for defined areas "which shall possess the powers of the local planning committee... [and] also the powers of the district planning committee."<sup>230</sup> This provision was used by the Israeli administration to define the Jewish local authorities in the West Bank as special planning committees, empowered to prepare and submit (to the Supreme Planning Council) detailed outline plans and local-general outline plans, and to grant building permits to residents on the basis of these plans. Not a single Palestinian village council has ever been defined as a special planning committee for the purpose of this law.

The municipal boundaries, i.e., area of jurisdiction, of each Jewish local authority, as determined in the orders issued by the commander of IDF forces, function as the "planning area" for each special planning committee, and the committee's authority encompasses this area. In the case of the regional councils, the planning area is confined to the "areas of the communities" included in these councils, i.e., it does not include the reserves of land within the area of the council that have not been attached to any specific settlement (for further discussion, see Chapter Seven below).

The Jewish local authorities, in their function as the local and district planning committees for the settlements, operate in coordination and cooperation with the various institutions of the military and governmental system, in a constant process of expansion and growth. The first condition for submission of outline plans for approval by the Supreme Planning Council is that the planned area lies within the area of jurisdiction of the local authority. If this is not the case, the Civil Administration acts to rearrange the administrative borders of the local authorities in order to adapt these to the new outline plan. For example, the State Attorney's Office described the manner in which the latest local outline plan for the settlement of Ma'ale Adummim (against which a petition was filed in the High Court) was brought for approval:

At the beginning of 1990, the head of Ma'ale Adummim Council contacted the Civil Administration and asked to expand the area of jurisdiction of the community by some 18,000 additional dunam...

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229. *Ibid.*

230. Section 2A of the Order Regarding the City, Village and Building Planning Law.

The areas Ma'ale Adummim asked to attach to its area of jurisdiction were at this time included in the area of jurisdiction of Mate Binyamin Regional Council and Gush Ezyon Regional Council... On 16 October 1991, after work undertaken by the headquarters on this matter, Respondent No. 1 [the Commander of IDF Forces in the West Bank] signed regulations regarding the local councils (replacement of map)... in accordance with which the area of jurisdiction of the community was expanded by some 13,500 dunam.<sup>231</sup>

A further difficulty results from the establishment of the settlements in areas defined as agricultural areas or nature reserves in the Mandatory regional outline plans. This difficulty is overcome by ensuring that almost all the general local outline plans for the settlements are filed with the Supreme Planning Council as an "amendment to Regional Outline Plan S-15 or RJ-5." This allows the military planning system to authorize the establishment of new settlements and the expansion of existing ones, on the one hand, without waiving the Mandatory outline plans, which are effectively used to restrict the expansion of Palestinian communities, on the other hand.

There is nothing improper *per se* about the flexibility shown by the planning system, both in terms of amending the areas of jurisdiction of the Jewish local authorities and in terms of changing the zoning of land in the settlements as established in the Mandatory outline plans. What is improper, however, is the contrast between this flexibility and Israel's strict enforcement of the letter of the law regarding planning and development in Palestinian communities, where Israel does not hesitate to misuse the planning system to serve its purposes.

The Jewish local authorities prepare their outline plans in cooperation with the settling body responsible for establishing the settlements – the Ministry of Housing and Construction or the Settlement Division of the World Zionist Organization; these bodies continue to accompany the settlement after establishment. One of these two bodies appears in each plan under the title "submitter of the plan" as the body empowered by the Custodian for Government Property to plan the land, and/or under the title "implementer."

Once the plan has been submitted to the Sub-Committee for Settlement in the Supreme Planning Council, and once this body provides preliminary approval, notification thereof appears in the press (including the Arabic-language press in the Occupied Territories), and the plans are deposited for public review for a period of several weeks. Persons who believe that they are injured by decisions taken in the plan, including Palestinian residents, are entitled to submit objections to the objections committee of the Supreme Planning Council.

In practice, the ability of Palestinian residents to object *effectively* to the outline plans for the settlements is extremely limited. The main reason for this is that most of the grounds that might lead the objections committee to accept an objection to the outline plan for a settlement are already resolved before the plan is deposited for public review. The question of land ownership, for example, is settled during the process of seizure of land. Even if a Palestinian resident first learns that his land is intended for the expansion of a settlement when the outline plan is published, he will almost certainly have missed the date for submission of an appeal to the appeals committee against this decision (as far as the land is concerned).

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231. Paragraph 9 of the response of the Attorney General in HCI 3125/98, *'Abd Al-'Aziz Muhammed Iyad et al. v. Commander of IDF Forces in Judea and Samaria et al.*

Similarly, any potential conflict between the outline plan for the settlement and the development needs and aspirations of the Palestinian communities is "resolved" by the military planning system through the demarcation plans approved by Israel in the 1990s, as well as by the restrictive land-zoning provisions established in the Mandatory outline plans. The ability of Palestinian residents to object effectively to the outline plans for the settlements is also influenced by technical considerations, such as the difficulties they encounter in reaching the Civil Administration offices to review the outline plans, difficulties in accessing the land covered by the plan in order to prepare an objection, the high costs involved in filing an objection, difficulties in participating effectively in a hearing that takes place in Hebrew, and so on.

## Chapter Seven

# An Analysis of the Map of the West Bank

The attached map of the West Bank reflects the radical transformation of the area that has resulted from thirty-five years of Israeli occupation:<sup>232</sup> the establishment of dozens of settlements that extend over enormous areas and are connected to each other, and to Israel, by means of an extensive network of roads. The character of the settlements as Israeli enclaves, separated from and closed to the Palestinian population, are an important source of the infringement of the Palestinians' human rights.

To analyze the geographical dispersion of the settlements and their impact on Palestinian residents, the report divides the West Bank into four areas (see Map 2). It should be emphasized that this division is purely to facilitate the discussion, and does not have any legal or bureaucratic manifestation. Each area includes settlements that share certain similarities in terms of topography, proximity to Palestinian communities and main roads, economic infrastructure, the composition of the population, distance from the Green Line, and the like. These characteristics in turn influence the manner and degree in which the human rights of the Palestinian population are violated.<sup>233</sup>

Three of the four areas are longitudinal strips of land stretching from north to south across the West Bank, while excluding the Jerusalem area, which constitutes a separate group:

- *The Eastern Strip* – includes the Jordan Valley and the northern shores of the Dead Sea (outside the Green Line), as well as the eastern slopes of the mountain range that run along the entire West Bank from north to south.
- *The Mountain Strip* – the area on or adjacent to the peaks of the mountain range. This area is also known as the watershed line or the mountain-range area.
- *The Western Hills Strip* – includes the western slopes of the mountain range, and extends to the Green Line to the west.
- *The Jerusalem Metropolis* – this area extends across a wide radius around West Jerusalem. Although in purely geographical terms this area lies mainly in the Mountain Strip, it has unique characteristics that demand separate attention.

### Areas Marked on the Map and Sources of Information

**Built-up area:** The built-up areas in the settlements and Palestinian communities (see Map 1) include all areas in which any development has been carried out, including residential construction, commerce, industry and agricultural buildings (hereafter: developed areas), but excluding open agricultural areas. The main source of information presented in this section of the map is a map at a scale of 1:150,000 produced by the U.S. State Department following the implementation of the Sharm el-Sheikh agreement, based on

232. B'Tselem, *Settlements in the West Bank – Built-up Areas and Land Reserves* (May 2002).

233. Moreover, since any analytical classification is by definition based on the principle of generalization, it should not be inferred that every settlement included in a given category necessarily shares all the characteristics of that group; in certain respects, a particular settlement in one group may share the characteristics of a different group.

a satellite photograph of the West Bank from November 2000. Another source of information comes from the Peace Now data regarding outposts established over the past two years, as well as information from ARIJ (Applied Research Institute Jerusalem) concerning expansion undertaken through April 2001.<sup>234</sup>

**Municipal boundaries:** The municipal boundary of each settlement is the area of authority of the local committee or council, according to the status of each settlement (see Chapter Four). This area also constitutes the planning zone of the special planning committees – in other words, this is the area within which the (Jewish) local authorities are permitted to submit an outline plan for the approval of the Supreme Planning Council, and to issue building permits for the expansion of the settlement (see Chapter Six).

In most cases, this information is based on the map of the area of jurisdiction/area of community of each settlement accompanying the military order signed by the Commander of IDF Forces in the West Bank declaring the establishment of the settlement or the revision of its boundaries (see Map 3). For some settlements, the municipal boundaries shown are based on the boundaries appearing in the outline plans for each settlement. The outline plans generally relate to the entire municipal area of each settlement. There may, however, be cases in which the municipal boundaries include areas for which no planning has yet been carried out, and which extend beyond the boundary shown on this map.

One of the reasons for the lack of uniformity in the sources of information relates to the difficulties B'Tselem experienced in obtaining the relevant maps from the Civil Administration (see the discussion in the Introduction). A further reason is that, for some settlements, no map has yet been drawn demarcating the revised area of settlement, so that the only existing boundary is that included in the outline plan of the settlement. Regarding four settlements, B'Tselem has been unable to obtain information relating to the municipal boundaries.<sup>235</sup>

**Regional councils:** The area of the regional councils include the areas of jurisdiction of the regional councils that lie beyond the municipal boundaries of a specific settlement (see Map 3). These areas include all the land Israel has seized control of during the years of occupation (with the exception of land included in Areas A and B), according to the methods described in Chapter Three. This land is intended to serve as reserves for the future expansion of the settlements or to establish new industrial zones along the lines of those established in recent years. As noted in Chapter Four, although this land has been declared state land, parts of it are currently used by Palestinians for farming or grazing.

As in the case of the municipal boundaries of each settlement, the source of information regarding these boundaries is the maps accompanying the military orders declaring the establishment of each regional council. The maps showing the area of jurisdiction of the regional councils as forwarded to B'Tselem by the Civil Administration are the original maps issued on the declaration of the establishment of each council. According to the Civil Administration, "the Civil Administration does not currently have updated maps for the regional authorities in Judea and Samaria."<sup>236</sup> To represent the updated situation, as far as possible, we deleted from the map shown in this report areas that appear in the original maps within the area of jurisdiction of the regional councils but which have been transferred to the Palestinian Authority in the framework of the Oslo Accords.

234. See the Website of Peace Now ([www.peacenow.org.il](http://www.peacenow.org.il)) and the Website of ARIJ ([www.arij.org](http://www.arij.org)).

235. These settlements are Telem, Adura, Pene Hever and Har Adar.

236. Letter of 31 December 2001 from Civil Administration Spokesperson Captain Peter Lerner to Attorney Sharon Tal of the Israel Religious Action Center, which provided legal counsel to B'Tselem.

**Areas A, B, C:** The map also marks the division of powers between Israel and the Palestinian Authority following the implementation of the Oslo Accords signed between 1993 and 2000: Area A, in which the Palestinian Authority is responsible for most internal affairs, including security and building; Area B, where the IDF holds security control and is entitled to enter freely, while the Palestinian Authority holds control in civilian matters; Area C, where Israel controls both security matters and planning and construction (see Map 5). Table 8 below summarizes the division of the West Bank into these three areas, as determined following the second redeployment, in March 2000, following the Sharm el-Sheikh Agreement.

**Table 8**  
**West Bank Regions according to the Oslo Accords\***

Region	Thousands of Dunam	Area of the West Bank (by percentage) **
Area A	1,008	18.2
Area B	1,207	21.8
Area C	3,323	60
<b>Total</b>	<b>5,538</b>	<b>100</b>

\* After the second redeployment (March 2000) following the Sharm el-Sheikh agreement.

\*\* The area of the West Bank referred to here does not include East Jerusalem, no man's land and the proportionate area of the Dead Sea (based on the Sharm el-Sheikh agreement).

Source: ARIJ, www.arij.org

## **A. The Eastern Strip**

The Eastern Strip includes the Jordan Valley and the northern Dead Sea coast, as well as the eastern slopes of the mountain ridge and part of the Judean Desert. This area is bordered by Jordan to the east, the Green Line in the vicinity of Bet She'an to the north, and the Green Line north of 'Ein Gedi to the south. The western boundary of this area is less sharply defined than the above, but may be characterized as the point where the arid climate typical of this strip gives way to the semi-arid climate, at or around the four-hundred-meter altitude level.<sup>237</sup>

The geographical conditions in this area are extreme, characterized by high temperatures, sparse precipitation (100-300 mm per annum) and, in the western part of the area, extremely steep topography. Due to these conditions, only a limited number of Palestinian communities developed in this area. The Palestinian population is relatively sparse, and lives in three areas: the city of Jericho and the Auja area north of Jericho, which were transferred to the control of the Palestinian Authority (Area A) in 1994; the villages in the Jiftlik area (Marj An-Na'aja, Zubeidat, Qarawa Al-Foqa); and a number of villages in the north of the Jordan Valley, including Bardala and 'Ein el-Beida. There are no permanent Palestinian communities in the Judean Desert and Dead Sea areas.

237. Elisha Efrat, *Judea and Samaria: Outline for Physical-Regional Planning* (in Hebrew) (Jerusalem: Ministry of the Interior, 1970), p. 27.

The Jordan Valley was the first area in which settlements were established, on the basis of the outline sketched by the Alon Plan (see Chapter One), because this plan recommended avoiding settlement in areas densely populated by Palestinians. An additional reason was that a significant proportion of land in this area was already registered as state land under the Jordanian administration, so that the process of seizure was relatively simple and straightforward (see Chapter Three). The limited scope of Palestinian farming – confined to the above-mentioned areas – also facilitated Israel's declaration of additional land as state land since 1979, both in the Jordan Valley and on the shores of the Dead Sea and the eastern slopes of the mountain range.

As a result, most of the land reserves held by Israel in the West Bank and registered in the name of the Custodian for Government and Abandoned Property is situated in this strip and included in the area of jurisdiction of two regional councils – Arvot Hayarden and Megillot. In the case of Arvot Hayarden, a certain proportion of the land is exploited for agricultural purposes by settlers, whereas in Megillot the land is unused. Both these regional councils differ from the other regional councils in the West Bank in that their areas or jurisdiction are contiguous, with regular and unconvoluted boundaries consonant with the boundaries of the Eastern Strip. Control of these land reserves has enabled Israel to establish settlements in the Jordan Valley and Dead Sea areas according to the cooperative settlement model (kibbutzim, moshavim and cooperative moshavim, as well as a number of NAHAL outposts). In economic terms, these settlements depend mainly on agriculture, with the exception of Ma'ale Efrayim, an urban settlement.

Most of the settlements in the Eastern Strip were established to the north of Jericho, within the area of jurisdiction of Arvot Hayarden Regional Council. In terms of geographical distribution, these settlements may be divided into two parallel strings extending along the north-south axis – one along Road No. 90, which is also known as the "Jordan Valley Road," and the other further to the west, along Road No. 508 and Road No. 578, adjacent to the sea-level elevation contour. The former string of settlements includes Mehola, Shademot Mehola, Hemdat, Argaman, Mesu'a, Yafit, Peza'el, Tomer, Gilgal, Netiv Hagedud, Niran, Yitav, No'omi, and two NAHAL outposts – Zuri and Elisha. The latter string includes the settlements of Ro'i, Beqa'ot, Hamra, Mehora, Gittit and Ma'ale Efrayim, as well as the NAHAL outposts Maskiyyot and Rotem. To the south of Jericho and along the Dead Sea coast, within the area of jurisdiction of Megillot Regional Council, lie the settlements of Vered Yeriho, Bet Ha'arava, Almog, Qalya and Mizpe Shalem, and the NAHAL outposts 'Ein Hogla and Avenat.

The areas of jurisdiction of most of the settlements in this strip extend across extensive areas, from two to seven times the built-up area of the settlement. The borders of Peza'el, Yafit, Tomer, Gilgal and Netiv Hagedud (total 1,000) are contiguous, creating a unified block with an area of over 16,000 dunam in the heart of the Eastern Strip – an area ten times the current built-up area of these settlements.<sup>238</sup> However, and in contrast to other areas, the outline plans for the settlements in this strip define most of these areas as agricultural land; only a small portion is zoned for construction. Ma'ale Efrayim (1,500) constitutes an exception in this respect: according to its outline plan, the settlement is planned to occupy a built-up area eight times that currently existing.<sup>239</sup> Large areas of land farmed by the settlers extend beyond the municipal boundaries of any settlement, and are situated in areas of Arvot Hayarden Regional Council that have yet to be attached to any specific settlement.

238. The numbers that appear in parentheses in this analysis refer to the estimated number of residents in each settlement as of the end of 2001, unless otherwise stated.

239. Ma'ale Efrayim Local Outline Plan, No. 310.



In this strip, the main infringement of Palestinian human rights relates to the restriction of opportunities for economic development and for agriculture, in particular. To a lesser extent, opportunities for urban development are also reduced.

On the declaration of the establishment of Arvot Hayarden Regional Council, the then Commander of IDF Forces in the West Bank, Binyamin Ben-Eliezer, signed the map showing the area of jurisdiction of this council, which is allocated the entire Jordan Valley, except for the Palestinian communities mentioned above.<sup>240</sup> The immediate ramification of this declaration was to block Palestinians from using these lands or expanding their agricultural activities.

As proved by the settlements located along the Jordan Valley, and despite the harsh climatic conditions, the land in this area permits the development of diverse branches of agriculture through the use of irrigation technology. The fact that Palestinian agriculture did not develop in this area prior to 1967 on a more significant scale is due to the lack of know-how and resources that would enable exploitation of the underground water basins. During the 1960s, the Jordanian administration initiated a large-scale project to move water via channels from the Yarmuk River to the entire West Bank. This project was discontinued after the Israeli occupation.<sup>241</sup> Additional evidence may be found in a publication of the Ministry of the Interior's Planning Division dated 1970, prior to the commencement of the settlement drive, which analyzes the geography of the West Bank and recommends the development of Palestinian settlement in the Jordan Valley, "to be accompanied by regional development projects, particularly in the field of irrigation and land preparation."<sup>242</sup>

The reliance of the Jordan Valley settlements on agriculture, which is, as noted, dependent on intensive irrigation, denies Palestinian residents the opportunity to enjoy a large proportion of the water resources in the region. Several underground water basins exist along the entire Eastern Strip, constituting part of the larger system known as the "mountain aquifer."<sup>243</sup> According to the interim agreement between Israel and the Palestinian Authority, Israel is permitted to pump forty million cubic liters per annum from these basins for the use of the settlements in the area, constituting some forty percent of the annual renewable water in these basins, i.e., natural recharge.<sup>244</sup> The water consumption of the population of the Jewish settlements in the Jordan Valley – a population of less than 5,000 – is equivalent to seventy-five percent of the water consumption of the entire Palestinian population of the West Bank (approximately two million people) for domestic and urban use. This discrepancy is particularly disturbing in the context of the severe water shortage facing the Palestinian population in general, and the rural population in particular.<sup>245</sup>

240. Order Concerning the Management of Regional Councils (Amendment No. 2) (Judea and Samaria) (No. 806), 5740-1979, Map of the Area of Biq'at Hayarden Regional Council, 30 September 1979.

241. This plan was known as the Western Ghor Channel. For details of the project, see Micha Bar, *Cooperation and Regimes in International Drainage Basins – The Function of Norms* (in Hebrew) (thesis toward a Ph.D. in Philosophy at the Hebrew University of Jerusalem, 1998).

242. Elisha Efrat, *Judea and Samaria*, p. 71.

243. For details of the characteristics of the aquifer, see B'Tselem, *Thirsty for a Solution*.

244. Interim Israeli-Palestinian Agreement Regarding the West Bank and Gaza Strip, Washington, September 28, 1995, Protocol Concerning Civil Affairs, Article 40, Schedule 10. This agreement establishes that the natural recharge of the basins is 172 million cubic liters per annum – a figure that is contrary to the estimate of most experts, who put the natural recharge at approximately 100 million cubic liters per annum. See *Thirsty for a Solution*, p. 30.

245. For details of the water shortage, see B'Tselem, *Not Even a Drop – The Water Crisis in Palestinian Villages Without a Water Network* (Information Sheet, July 2001).

Just as the inclusion of most of the Jordan Valley in the area of jurisdiction of Arvot Hayarden Regional Council denies the Palestinian population the possibility for agricultural development, the inclusion of the Dead Sea shore and Judean Desert in the area of jurisdiction of Megillot Regional Council denies valuable possibilities for industrial and tourism development. In this context, it is important to emphasize that the Dead Sea is a unique natural phenomenon. Israel exploits this resource intensively, particularly in the section to the south, within the Green Line, both for its chemical industry (the Dead Sea Works) and for tourism. These two economic activities create numerous jobs and significant foreign currency earnings.

The enclave handed over to the control of the Palestinian Authority in 1994 includes the city of Jericho (17,000) and the Auja area (3,400). The two sections are linked by a narrow corridor surrounded on all sides by settlements, NAHAL outposts and IDF bases, preventing any possibility for significant urban sprawl beyond the boundaries of the enclave. The Auja region is blocked to the north by the settlement of Niran (60), and to the west by the settlement of Yitav (110) and the adjacent military base. The corridor connecting the Auja region to the city of Jericho is blocked to the east by the settlement of No'omi (130) and the NAHAL outpost Zuri, and to the west by two IDF bases. The city of Jericho itself is blocked to the west by the edge of the area of jurisdiction of Merhav Adummim (within the Jerusalem Metropolis – see below), while area A to the south of the city is blocked by the settlement of Bet Ha'arava (55) and the NAHAL outpost 'Ein Hogla. Aqbat Jaber refugee camp (5,400), on the southwest edge of Jericho, is blocked almost entirely by the settlement of Vered Yeriho (160).

In total, the municipal boundaries of the settlements in the Eastern Strip encompass approximately 76,000 dunam, of which approximately 15,000 are developed areas inhabited by some 5,400 residents. As noted, unlike the other three areas, most of the undeveloped areas within the borders of the settlements are used for agriculture or earmarked for such use in the future. The areas of the regional councils outside the municipal boundaries encompass some 1,203,000 dunam; in the case of Arvot Hayarden Regional Council, part of this area is farmed by settlers.

## **B. The Mountain Strip**

The second strip extends along the entire length of the West Bank in the peaks of the mountain range along the watershed line. The northern and southern borders of the strip are the Green Line. The eastern and western borders are not clear. In the east, the border is set at the four-hundred-meter elevation contour, which is the western border of the Eastern Strip, while the western border is at around the 400-500 meter elevation. In climactic terms, this is a relatively cool area with relatively heavy precipitation. However, topographical conditions severely restrict the possibilities for farming.

This strip includes the six largest and most populous Palestinian cities in the West Bank: Jenin, Nablus, Ramallah, East Jerusalem, Bethlehem and Hebron, which are surrounded by dozens of towns and small and medium-sized villages. Accordingly, and in keeping with the principles of the Alon Plan, the Ma'arach governments (1969-1977) generally refrained from establishing settlements in this area. The wave of settlement in this area thus began after the rise to power of the Likud, and particularly after 1979, when the procedure for declaring land as state land began. Most of these settlements were established by the Settlement Division of the World Zionist Organization, and were transferred to the

management of Gush Emunim (or one of the other settling movements), which was responsible for populating them with settlers. The result is that the community settlement is by far the most common form of settlement in the Mountain Strip.

Unlike the cooperative and urban settlements, community settlements generally lack any local economic base. Most of the settlements do not farm the land, and most of the residents work in urban centers inside Israel. This is due to the topographical conditions and to the dense Palestinian population in this area, which prevented Israel from seizing control of extensive patches of land and allocating them for agriculture. Also, the emphasis on agricultural labor is less pronounced in the ideology of Gush Emunim than in the kibbutz and moshav movements.

In administrative terms, the Israeli-controlled land in this area is divided among four regional councils (Shomeron, Mate Binyamin, Gush Ezyon and Mt. Hebron). The areas of jurisdiction of these councils extend west into the Western Hills and the Jerusalem area. Other lands that Israel has taken control of in this strip are included in the areas of jurisdiction of a number of local councils.

The distribution of settlements in the Mountain Strip is similar to that in the Eastern Strip, i.e., the settlements are arranged in two parallel strings. The first and central string extends across the length of the West Bank, alongside or adjacent to Road No. 60, which is the main road connecting the six main Palestinian cities in the West Bank. From north to south (and excluding the Jerusalem Metropolis), this strip included the settlements of Gannim, Kaddim, Sa-Nur, Homesh, Shave Shomeron, Qedumim, Yizhar, Tapuah (see Photo 2), Rehelim, Eli, Ma'ale Levona, Shilo, Ofra, Bet El, Pesagot, Karme Zur, Qiryat Arba, Bet Haggai, Otni'el and Shim'a. To this one should add Elon Moreh, Har Brakha and Itamar, which lie adjacent to Road No. 57, the main branch of Road No. 60 circumventing the city of Nablus to the east.

The second string of settlements in this strip is situated to the east of Road No. 60 and the watershed. To the north of the Jerusalem Metropolis, this string runs along Road No. 458 (also known as the Alon Road); this includes Migdalim, Kohav Hashahar, Rimonim (see Photo 3) and Ma'ale Mikhmas; to the south of the metropolis, the string extends along Road No. 356, from the southeast corner of Bethlehem through to the Green Line; this area includes Teqoa, Noqedim, Ma'ale Amos, Me zad, Pene Hever, Carmel, Ma'on, Suseya, Shani and Me zadot Yehuda.

The dispersion of settlements along Road No. 60 reflects Israel's objective to control the main transport artery of the Palestinian population by creating blockages preventing the expansion of Palestinian construction toward the road, and to prevent the growing together of Palestinian communities located on different sides of the road. This objective, which has been partially realized, is stated explicitly in the Hundred Thousand Plan, as follows:

The majority of the Arab population is concentrated in this strip, in urban and rural communities. The mountain ridge road [Road No. 60] is essentially a local Arab traffic artery. Jewish settlement along this road will create a mental obstacle in considering the mountain ridge, and may also limit the uncontrolled expansion of the Arab settlement.<sup>246</sup>

246. Ministry of Agriculture and the Settlement Division of the World Zionist Organization. *Master Plan for Settlement for Samaria and Judea, Development Plan for the Area for 1983-1986*, p. 22.

In most cases, these settlements are isolated and occupy relatively short stretches of the road. In several places, however, Israel has managed to create a block of settlements controlling a more significant section of Road No. 60. One example of this is the Shilo – Eli – Ma'ale Levona block (total 3,900), whose municipal boundaries extend over some 7,700 dunam around the road (see Map 9). Another example is the settlement of Shim'a (300), situated by the road in the southern extremity of the West Bank. Although this settlement has only a relatively limited built-up area (265 dunam, including an outpost to the south), its borders include no less than 10,600 dunam, which is forty times the built-up area (see map 10).<sup>247</sup>

Because of the location of these settlements on or adjacent to Road No. 60, the Oslo Accords stated that most of this road would continue to be under direct Israeli control, i.e., it was defined as Area C. The presence of Israeli citizens at various points of dispersion along a long stretch passing through densely-populated Palestinian areas has led to a significant military presence to protect these citizens.

During periods of rising violence against settlers, Israel has responded by imposing harsh restrictions on the freedom of movement of the Palestinian population along this key artery. These restrictions disrupt all aspects of everyday life for some two million Palestinians and severely infringe the right to health, employment, family life and education.<sup>248</sup>

Shortly after the outbreak of the al-Aqsa intifada, Israel blocked the access roads from Palestinian communities in the mountain area to Road No. 60, either by means of physical roadblocks (dirt piles, concrete blocks or trenches) or by establishing checkpoints staffed by IDF soldiers that prevent the passage of Palestinian vehicles. According to official Israeli sources, the blockage of these roads is *also* intended to prevent acts of terror within Israel, but these sources do not deny that one of the main goals of this policy is to ensure the safety of the settlers.<sup>249</sup> The connection between the presence of settlers and restrictions on freedom of movement is even more apparent in places where Road No. 60 passes *within* the built-up area of Palestinian communities, such as in the towns of Hawara (5,100) and Silat Adh-Dhahr (5,500), in the districts of Nablus and Jenin, respectively. Since the beginning of the al-Aqsa intifada, the IDF has responded by imposing curfews on these towns for protracted periods, in order to ensure the freedom of movement of the settlers who live in the adjacent settlements.<sup>250</sup>

Moreover, some of the settlements along Road No. 60 block the urban development of the six main Palestinian cities, at least in some directions. Bethlehem and East Jerusalem are affected mainly by the settlements in the Jerusalem Metropolis, to which the report will relate below.

The city of Hebron (140,000) is blocked to the east by the settlement of Qiryat Arba (6,400), and to the south by the settlement of Bet Haggai (400) and the NAHAL outpost Aner. Within the heart of Hebron, there are a number of scattered Jewish settlements with a total population of approximately four hundred. In the Oslo Accords, the presence of these settlements has led to the remainder of an entire strip on the east of the city under Israeli control (area H2). The settlements in the heart of Hebron severely damage not only the urban development of the city, but also the ability of the residents to live a normal life. The main reason for this is the systematic violence exerted against the residents by the settlers who

247. Another prominent example of this phenomenon is Gush Ezyon in the Jerusalem Metropolis, as discussed below in this chapter.

248. For details of the human ramifications of restrictions on the freedom of movement, see B'Tselem, *Civilians under Siege*, pp. 9-10.

249. For example, see the response of the IDF Spokesperson to the B'Tselem report *Civilians under Siege*.

250. B'Tselem, *Civilians under Siege*, pp. 9-10.

live in these areas.<sup>251</sup> Since the beginning of the current intifada, and less frequently in earlier periods, the IDF has imposed curfews for extended periods on the 30,000 Palestinians who live in area H2, with the goal of enabling the settlers in the city to continue their regular life as much as possible.

The development of Ramallah and al-Bira (53,800) to the northeast is completely blocked by the settlement of Bet El (4,100) and the large IDF base to the south of the settlement, which houses the headquarters of the Civil Administration. This Israeli presence also breaks the territorial contiguity of Ramallah and the villages of 'Ein Yabrud and Beitin (total 5,400). The settlement of Pesagot (1,100) begins close to the last houses of Ramallah on the eastern side. Pesagot effectively functions as an enclave within the city, which it controls topographically, and blocks the expansion of Ramallah in this direction (see Photo 5).<sup>252</sup>

The urban area of the city of Nablus, which includes eight villages and two refugee camps that are completely contiguous with the city (total 158,000) is surrounded on almost all sides by settlements blocking the area's development (see Map 7). The settlements of Har Brakha and subsequently Yizhar (total 1,100) lie to the south of the city itself. To the west are the settlements of Qedumim and Shave Shomeron (total 3,300). To the east, adjacent to the refugee camps of Askar and Balata (total 26,600), are the settlements of Elon Moreh and Itamar (total 1,600). The municipal boundaries of the Itamar settlement (540) extend in a south-east diagonal over an area of some 7,000 dunam – fourteen times the current built-up area, which also includes a number of new outposts.<sup>253</sup> This large area completely blocks the development of the town of Beit Furiq (9,100) to the south. In addition, over the years, settlers from these settlements have exerted violence against local Palestinians; the Israeli authorities have been delinquent in enforcing the law on the offenders.<sup>254</sup>

Two settlements, Gannim and Kaddim (total 300), surround Jenin (41,900). These settlements overlook the city from the east (in topographical terms) and cut up the largest area of contiguous territory handed over to Palestinian control (Area A). According to the outline plan, these settlements are expected to grow to up to five times their present size, and to extend from the southern suburbs of Jenin to the village of Umm At-Tut to the east of the city.<sup>255</sup>

The impact of the settlements along the second chain of the Mountain Strip on the Palestinian population is less immediate than in the case of the settlements along Road No. 60, because the former lie to the east of the Palestinian population centers. As in the case of the Eastern Strip, the main impact lies in the seizure of land which, were it not for the settlements, could have been used for the development of the Palestinian economy and the urban development to the east of the population centers on the mountain ridge. Some of these settlements have significant land reserves included in their municipal boundaries. The seizure by Israel of extensive land in this area exploits the sparse Palestinian communities and topographic conditions that have made it difficult for Palestinians to engage in significant agricultural activities in these areas.

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251. See, for example, B'Tselem, *Impossible Coexistence: Human Rights in Hebron since the Massacre at the Cave of the Patriarchs* (Information Sheet, September 1995).

252. See the comments on the urban development of Ramallah in the discussion on the Jerusalem Metropolis, below.

253. Outline Plan No. 163/3, Itamar.

254. See footnote 66.

255. Outline Plan 168/1, Merhav Kaddim, and Outline Plan 138/2, Merhav Gannim.

The municipal boundaries of the settlements in the Mountain Strip area include a total of approximately 62,000 dunam, populated by some 34,000 settlers. Of this area, approximately 17,000 dunam are developed land. Accordingly, the current potential for the expansion of the settlements in these areas is approximately 45,600 dunam, or some 270 percent. In addition, some 409,000 dunam are included in the areas of jurisdiction of the four above-mentioned regional councils but have not been attached to any settlement. These constitute reserves for the future.

## **C. The Western Hills**

This strip lies along the north-south axis, between the western border of the Mountain Strip (the 400-500 meter elevation contour) and the Green Line, its width varying from ten to twenty kilometers. In topographic terms, this area is characterized by slopes descending gently toward the coastal plain. The incline of the slopes in this area is more moderate than on the eastern side of the mountain ridge, i.e., in the Eastern Strip.

The two Palestinian cities in this strip, Tulkarm and Qalqiliya, are both situated in the north of the strip. However, the entire strip includes medium-sized towns such as Ya'bad, Anabta, Azzun, Biddya and Salfit in the north, and Surif, Tarqumiya, Dura and Dahariya in the south, as well as dozens of smaller villages. This strip includes the most fertile land in the West Bank, and accordingly it has been the site of the development of Palestinian agriculture in diverse fields (olives, orchards, hothouses and field crops).

As in the Mountain Strip, most of the settlements in the Western Hills were established in the 1980s, particularly as the result of the Sharon Plan. In municipal terms, the areas of settlements in this strip are divided among three regional councils (Shomeron, Mate Binyamin and Mt. Hebron), as well as several local councils and one municipality (Ari'el).

The main characteristic of the Western Hills area north of the Jerusalem Metropolis that attracts Israelis and has led to a relatively rapid growth rate is its proximity to the main urban centers on Israel's coastal plain. In the development plan for 1983-1986 (the Hundred Thousand Plan), this strip was defined as the "high demand area" because of the short travel times (twenty to thirty minutes) to employment centers inside Israel.<sup>256</sup> In the area south of the Jerusalem Metropolis, only isolated settlements have been established. The main forms of settlement in this strip are urban and regular rural settlements. The population is mostly middle class, some of whom are secular Jews without any particular political affiliation. The population also includes ultra-Orthodox Jews, who generally come from a low socioeconomic class.

While the prevailing form of dispersion of the settlements in the first two strips is the string formation alongside the main north-south roads, the main form of dispersion in the Western Hills runs from east to west, along latitudinal roads that mainly connect to Road No. 60, and most of which were constructed or upgraded by Israel. A further characteristic in several parts of this strip is the creation of contiguous borders of the settlements, forming contiguous or almost contiguous urban areas (or "blocs") controlled by the settlements.

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256. *Master Plan for Settlement for Samaria and Judea*, p. 19.

To the north of this strip, along Road No. 596, lie the settlements of Hinanit, Tel Menashe (Hinanit B), Shaqed and Rehan (total 1,100). The first three of these settlements include several built-up sites (including one industrial zone), and their outline plans reflect an intention to expand these settlements, creating a compact and contiguous bloc extending over some 9,900 dunam – nine times the present built-up area (see Photo 1).<sup>257</sup> Further south, adjacent to Road No. 585, are the settlements of Hermesh and Mevo Dotan (total 600). Mevo Dotan is planned for expansion over an area of approximately 3,000 dunam – ten times the present built-up area.<sup>258</sup> Along Road No. 57 (the Tulkarem-Nablus road) lie Enav and Avne Hefez (total 1,300). Not far to the south, close to the Green Line, is the settlement of Sal'it (410).

The area between Road No. 55 (the Qalqiliya-Nablus road) and the Trans-Samaria Highway (Road No. 5, which extends from Rosh Ha'ayin to the Jordan Valley) is the area of the Western Hills in highest demand, since it lies parallel, and only a few miles away, from the Tel-Aviv – Herzliya region. In the northeast corner of this area, close to Road No. 55, lie the settlements of Qarne Shomeron, Ma'ale Shomeron, Immanu'el, Yaqir and Nofim (total 10,700). The municipal boundaries of these five settlements create an almost completely contiguous urban area extending over some 13,000 dunam – almost four times the built-up area.

In the same area lies a large group of settlements in a funnel-shaped bloc, from Tapuah on Road No. 60 (at the narrow end of the funnel) to the Green Line (the broad end). This group includes Ari'el, Revava, Netifim, Barqan, Ez Efrayim (see Photo 4), Elqana, Sha'are Tiqva, Oranit, Alfe Menashe, Zufin, Ale Zahav and Padu'el (total 35,900). On the whole, the areas of jurisdiction of these settlements are not contiguous, and are interrupted by Palestinian communities defined as Area B, as well as agricultural land defined as Area C (see Map 8). At the center of the funnel lies the settlement of Ari'el, which is discussed in Chapter Eight.

To the south of the Trans-Samaria Highway, alongside Road No. 465, lie (from east to west) the settlement of Ateret, Halamish, Ofarim and Bet Arye (total 4,300). In terms of size, Ofarim (690) is exceptional, with municipal boundaries extending over an area in excess of 6,000 dunam – fourteen times the current built-up area. Between Road No. 465 and the northern border of the Jerusalem Metropolis lie Nahli'el, Talmon and Dolev (total 2,400) to the east, whose borders create an additional bloc extending from north to south over an area of some 7,700 dunam, almost seven times the existing built-up area. Parallel to this bloc and to the west, adjacent to the Green Line, lies another bloc of settlements composed of Na'aleh, Nili (see Photo 11), Hashmona'im, Modi'in Illit, Menora, and Mevo Horon (total 21,500).

To the south of the Jerusalem Metropolis, alongside Road No. 35 (the Trans-Judea Highway), within the area of jurisdiction of Mt. Hebron Regional Council, lie the settlements of Telem and Adora (total 370); further south are the NAHAL outpost Negohot and the settlements of Eshkolot and Tenne (total 730). The municipal boundaries of the latter two settlements cover an area of some 15,300 dunam – more than thirty times their current built-up area (see Map 10).

257. Detailed Plan Hinanit, No. 101, 101/2, 101/3 and Detailed Plan Shaqed, No. 103, 103/2, 103/4.

258. Outline Plan No. 104, Mevo Dotan.

Apart from limiting the possibilities for urban and economic development through the seizure of land, the main impact on the Palestinians of the settlements in this strip is the disruption of the territorial contiguity of the Palestinian communities situated along the strip. This disruption is seen most clearly in the high-demand areas. Following the transfer of powers to the Palestinian Authority under the Oslo Accords, this situation has resulted in the creation of over fifty enclaves of Area B, and a smaller number of enclaves defined as Area A, all of which are surrounded by Area C, which continues to be under full Israeli control. In most cases, the boundaries of Area A and B are almost identical to the edge of the built-up area of the Palestinian community (for example, in the villages of Azzun, Bidya, Az-Zawiya, Mas-ha, Deir Balut, Rantis, Abud, and Qibya). As explained in Chapter Six, the ramification of this situation is that although powers in the field of planning and construction in areas A and B were ostensibly transferred to the Palestinian Authority, Israel continues to restrict Palestinian construction to the best of its ability in the non-built-up areas belonging to these communities and their residents.

This phenomenon is less pronounced to the south of the Jerusalem Metropolis, due to the smaller number of settlements in this area, but it is still evident. For example, the location of the settlements of Telem and Adora breaks a territorial contiguity that might otherwise have been created between the Area B bloc containing the towns of Beit Surif and Tarqumiya and the Area B territory to the south of Road No. 35, including the town of Idna, and Area A, which contains the town of Dura. In addition, the two settlements prevent contiguity with Area A, in which Hebron is located.

A further ramification resulting from the location of some of the settlements in this strip literally on the Green Line is the blurring of this line as a recognized border between the sovereign territory of the State of Israel and the West Bank. In certain areas, the Green Line runs within an urban area extending to either side. Thus, for example, the bloc of settlements Hashmona'im – Modi'in Illit – Matityahu borders on the Green Line, creating a contiguous urban bloc with the communities of Hevel Modi'in Regional Council (Shilat, Lapid and Kefar Ruth), which were established within the area that, until 1967, separated Israel and Jordan and was later annexed to the State of Israel (see Chapter One). In the case of the Oranit and Shani (Mountain Strip) settlements, the Green Line passes through the built-up area. This phenomenon is even more pronounced in the Jerusalem area, as will be discussed below.

The municipal borders of the settlements in the Western Hills Strip include a total of some 109,800 dunam, and are inhabited by approximately 85,000 settlers. Less than thirty percent of this land (30,900 dunam) is developed. Accordingly, the potential area for the expansion of these settlements is currently approximately 80,000 dunam, representing a growth rate of approximately 260 percent. In addition, the area of jurisdiction of the three regional councils mentioned above totals some 264,000 dunam, which have not been attached to any settlement and constitute land reserves for the future.

## **D. The Jerusalem Metropolis**

Since the 1967 war, Israel has acted vigorously to establish new physical facts (settlements and roads) within an extended circle with West Jerusalem at its center. The result of these activities has been the creation of a large metropolis extending along three geographical strips: from the outskirts of Ramallah to the north to the bloc of settlements to the southwest of Bethlehem in the south; and from the edge of Ma'ale Adummim to the east to Bet Shemesh, which is within Israel proper, to the west.



The concept of a "metropolis" refers to a situation in which a given geographical area constitutes, in urban and functional terms, a single unit comprised of coordinated sub-units. The Jerusalem Metropolis was established with the declared purpose of serving its Israeli-Jewish residents while causing harm to its Palestinian residents. The idea of planning the Jerusalem area as a metropolis was embodied in 1994 in a master plan prepared for the government by the Jerusalem Institute for Israel Studies. The master plan proposes guidelines for development for the area through the year 2010.<sup>259</sup> Although the plan has no legal force, it has, according to the State Attorney's Office, served as a basis for planning the expansion of Ma'ale Adummim to the west.<sup>260</sup>

Some of the settlements that Israel erected in this area were established within the area of jurisdiction of the Municipality of Jerusalem (hereafter: Municipal Jerusalem), while others were established outside its area of jurisdiction (hereafter: Greater Jerusalem).

Municipal Jerusalem includes approximately 70,000 dunam of the West Bank, which were annexed to the Municipality of Jerusalem pursuant to a decision of the Knesset in 1967, and in which Israeli law was imposed on an official and explicit basis, rather than merely *de facto*. Approximately nine percent of this area (some 6,000 dunam) formed part of Jordanian East Jerusalem, while the remaining ninety-one percent belonged to twenty-eight villages in the area.<sup>261</sup> Settlements in this area are perceived by most of the Jewish public in Israel, and by the government, as constituting an integral part of the State of Israel, and their development has continued on an intensive level since the beginning of the occupation. These settlements currently have a population of approximately 175,000 – slightly less than all the other settlements combined.

Over one-third of the area annexed to Jerusalem in 1967 was expropriated during the years that followed, and was used to establish twelve settlements: Neve Ya'aqov, Pisgat Ze'ev, French Hill, Ramat Eshkol, Ma'alot Dafna, Ramot Alon, Ramat Shlomo (Rekhes Shu'afat), the Jewish Quarter (in the Old City), East Talpiot,<sup>262</sup> Giv'at Hamatos, Har Homa (see Photo 7) and Gilo. To these, one should add the industrial zone and airfield at Atarot. Several of these settlements (Ramat Eshkol, Ma'alot Dafna, Ramot and East Talpiot) create full territorial contiguity with West Jerusalem, while the remainder are interspersed with Palestinian areas. Municipal Jerusalem is a prominent example of the elimination of any signs of the Green Line through contiguous urban development.

The main harm to the Palestinian population inherent in the establishment of the settlements in municipal Jerusalem is the massive expropriation of land, most of which constituted private Palestinian property, as described in Chapter Three. As with most of the settlements in the three geographical strips, these settlements significantly restrict the capacity for urban development in the Palestinian neighborhoods and villages annexed to Jerusalem. The outline plans approved for the Palestinian neighborhoods in the annexed area through the end of 1999 show that approximately eleven percent of the area remaining after the expropriation is available for Palestinian construction. Approximately forty percent of the planned areas within these neighborhoods are defined as "open landscape areas," where construction of any kind is prohibited.<sup>263</sup>

259. Jerusalem Institute for Israel Studies, *The Jerusalem Metropolis – A Master Plan and Development Plan* (in Hebrew) (Jerusalem, 1994).

260. Paragraphs 83-85 of the response of the state in *Ma'ale Adummim* (see footnote 153, *supra*).

261. B'Tselem, *A Policy of Discrimination*, p. 17.

262. In this context, East Talpiot is an exception because it is located on both sides of the border that separated, from 1949 to 1967, the demilitarized area controlled by Israel and the demilitarized area controlled by Jordan.

263. Ir Shalem, *East Jerusalem – Planning Situation*, p. 5.

In some cases, the settlements in Municipal Jerusalem create divisions between Palestinian areas and prevent their natural expansion and the creation of territorial contiguity. For example, French Hill prevents the connection of Sheikh Jarrah and Wadi Joz on the one side, and Isawiya and Shu'afat on the other. Similarly, Giv'at Hamatos and Har Homa disrupt the territorial contiguity between Beit Safafa and the south of Sur Baher.

An additional problem is the physical severance of the Palestinian areas of Municipal Jerusalem from the remainder of the West Bank, a result of the general closure imposed by Israel in the West Bank in 1993. Since then, Palestinians without a special permit have been prohibited from entering Jerusalem.<sup>264</sup> This measure has severely impaired the right of freedom of movement and other associated rights because it disrupts travel between the southern and northern portions of the West Bank, the main route for which passes through Jerusalem. This step has led to the diversion of all traffic to the Wadi An-Nar road to the east of the city, prolonging journey times considerably.

Greater Jerusalem includes four blocs of settlements that are thoroughly connected to municipal Jerusalem and to the west of the city.<sup>265</sup> The main component, and an essential condition for the existence of the metropolis, is the presence of a complex and sophisticated network of roads enabling rapid travel between all parts of the metropolis and the center. This network enables the western portion of the city to function as an employment base and a center for various services (health, education, entertainment, etc.) for the Jewish residents of the entire metropolis. Conversely, the settlements in Greater Jerusalem offer cheap housing solutions for the residents of municipal Jerusalem. Moreover, a trend is emerging whereby settlements in Greater Jerusalem provide various services for the residents of municipal Jerusalem.

One of the settlement blocs is situated to the northwest of the area of jurisdiction of Jerusalem, including the settlements of Giv'on, Giv'on Hahadasha and Bet Horon (total 2,000), which form part of Mate Binyamin Regional Council, and Giv'at Ze'ev (10,300) which is a local council. The borders of these settlements interconnect, creating a long finger that connects to the settlement of Ramot within municipal Jerusalem, with almost complete territorial contiguity. A little further south lies the local council of Har Adar (1,400) (see Photo 8), which forms part of the same system. This bloc of settlements currently relies on Road No. 443, and in the future will rely on Road No. 45, which is now under construction. These roads connect the area to Modi'in and the Jerusalem - Tel-Aviv Highway, as well as to the city of Jerusalem.

A second bloc of settlements lies to the northeast of the borders of Jerusalem, including Kokhav Ya'akov, Tel Zion, Geva Binyamin (Adam) and Sha'ar Binyamin Industrial Area, all within the area of Mate Binyamin Regional Council (total 2,700). A few kilometers north of Kokhav Ya'akov are the settlements of Pesagot and Bet El, which belong to the Mountain Strip in terms of the composition of their population and the type of settlement, but in terms of distance could also be considered part of the Jerusalem Metropolis. The boundaries of these settlements form a long chain connecting the area to the settlement of Pisgat Ze'ev within the borders of Jerusalem.

264. For more on this aspect, see B'Tselem, *Divide and Rule: Prohibition on Passage between the Gaza Strip and the West Bank* (Information Sheet, May 1998), pp. 5-6.

265. This report does not relate to the western parts of the metropolis, since these areas are in sovereign Israeli territory, and are therefore outside the purview of the report.



Map 2. Settlements (Divided into Regions\*)



\*The boundaries shown on this map are for informational purposes only and do not constitute an official position of the Government.



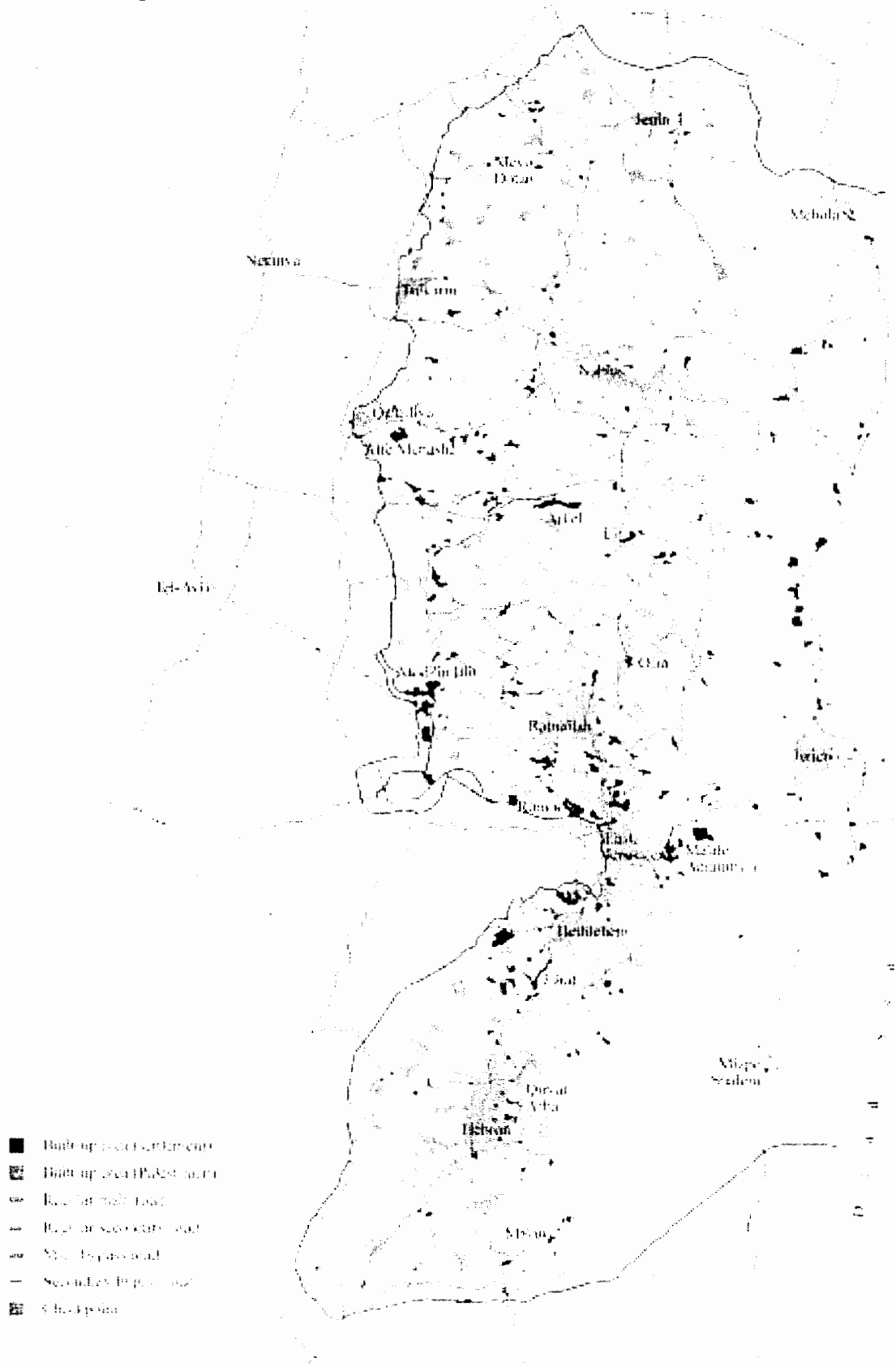
Map 4 Area of Jurisdiction of Settlements' Regional Councils



Map 5 Division of Powers pursuant to Oslo Accords

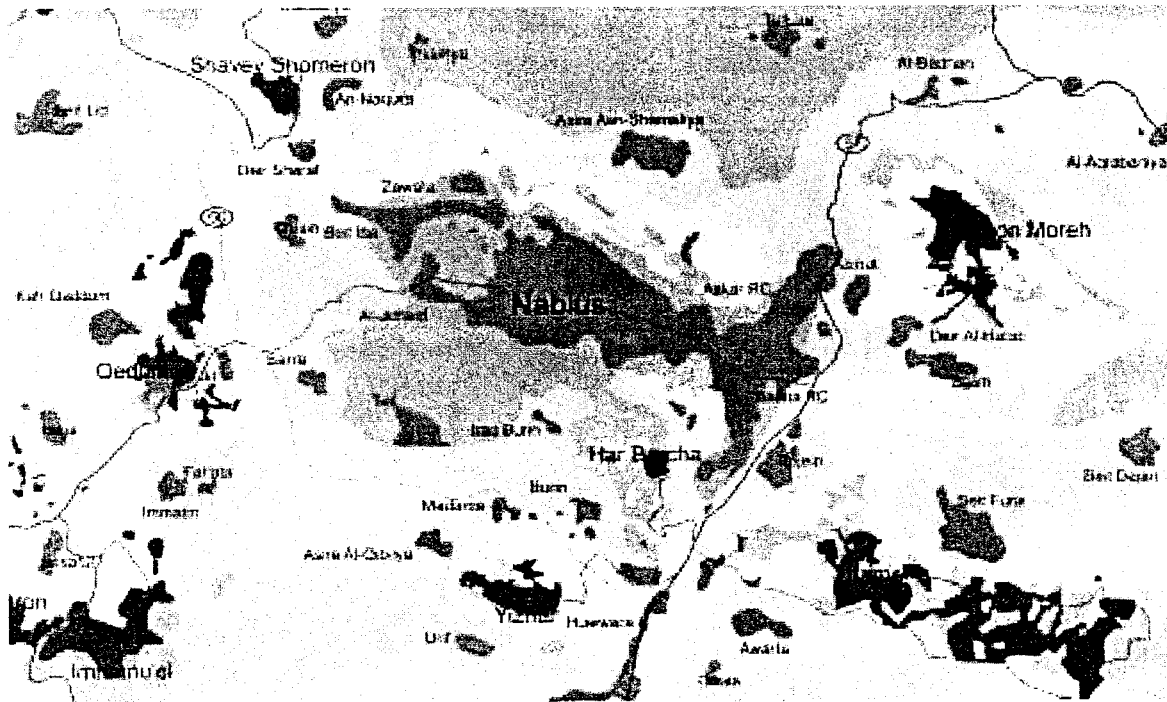


Map 6 Existing Road Network

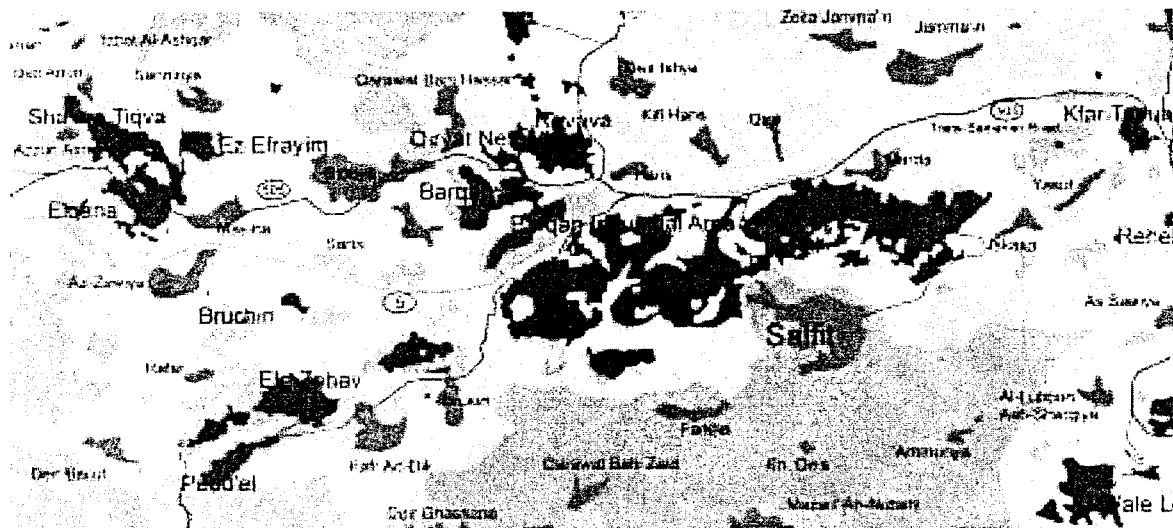




Map 7 Settlements surrounding Nablus

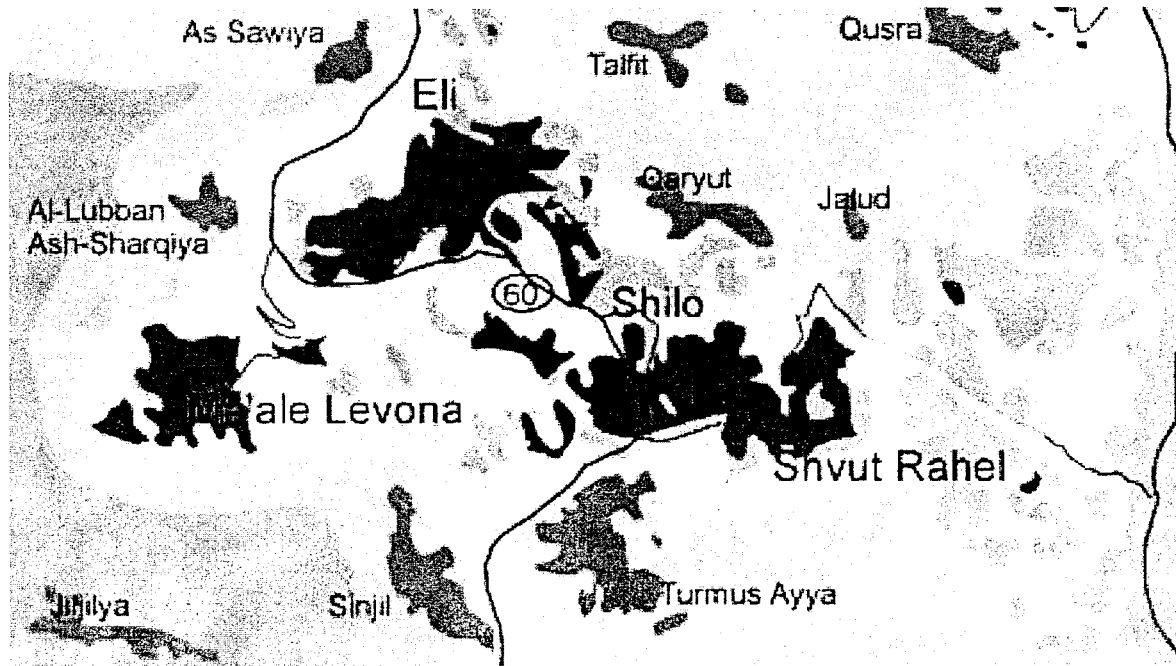


Map 8 Settlements in the Western Hills Strip

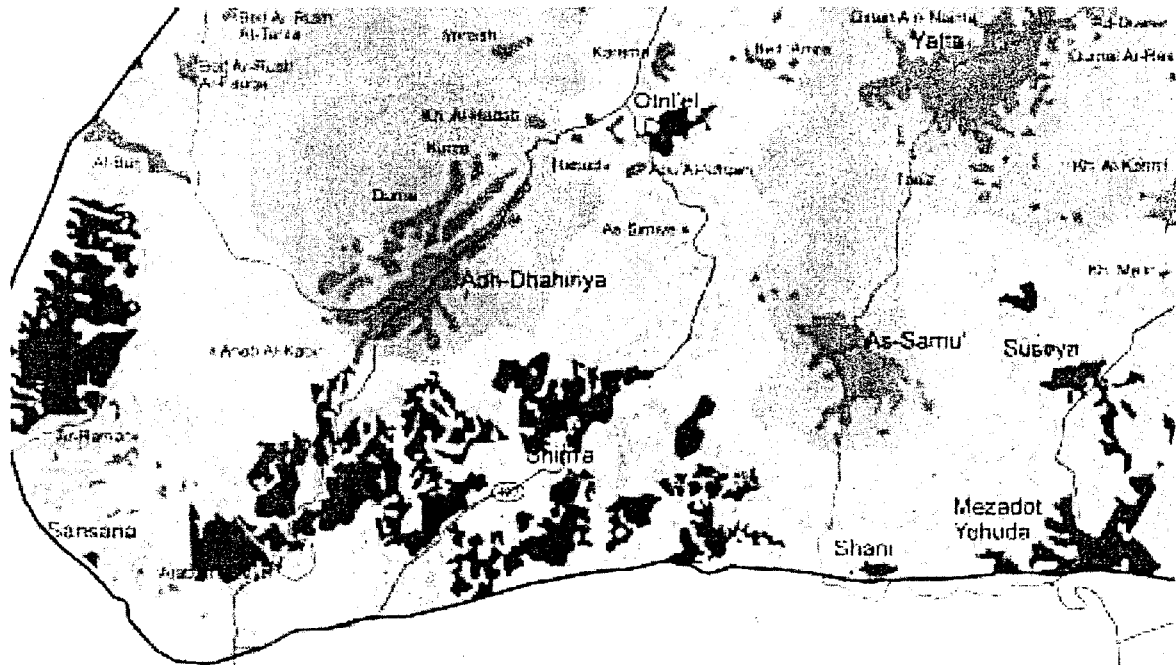


- |   |                                    |
|---|------------------------------------|
| Built-up Area (Settlement)                        | Area B                             |
| Area with Municipal Boundary (Settlement)         | Area C                             |
| Regional Council Jurisdictional Area (Settlement) | Regular road                       |
| Military base                                     | By-pass road                       |
| Built-up Area (Palestinian)                       | 1949 Armistice Line ("Green Line") |
| Area A  | Road number                        |

Map 9 Settlements Bloc along Road 60



Map 10 Settlements' Land Control in South Mount Hebron Area



- |   |                                      |
|---|--------------------------------------|
| ■ Built-up area (Settlement)                        | — Area B                             |
| ■ Area within Municipal Boundary (Settlement)       | — Area C                             |
| □ Regional Council Jurisdictional Area (Settlement) | — Regular road                       |
| ▨ Military base                                     | — Bypass road                        |
| ▨ Built-up area (Palestinian)                       | — 1949 Armistice Line ('Green Line') |
| □ Area A  | — Road number                        |

The principal influence of these two blocs in the north of the metropolis is to create a barrier severing the surrounding Palestinian villages. The principal villages in the area are Al-Qibiya, Al-Judeira, Beit Iksa and Beit Duqqu to the west (total 5,600), and A-Ram, Hizma, Jab'a and Mikhmas to the east (total 30,100), as well as villages and neighborhoods included in municipal Jerusalem (principally Kafr Aqab, Beit Hanina, Isawiya and the Shu'afat refugee camp). Moreover, Kokhav Ya'akov and the military base adjacent to Giv'at Ze'ev (Ofer base) prevent the expansion of Ramallah to the southeast and southwest, respectively.

The third bloc of settlements is situated to the east of the eastern border of Jerusalem. Its principal component is the settlement of Ma'ale Adummim (24,900), the largest settlement in the West Bank (outside municipal Jerusalem), which includes Mishor Adummim Industrial Area (see Photo 6). As part of this bloc, to the north of the road from Jerusalem to the Dead Sea, lie a group of community settlements that belong to Mate Binyamin Regional Council: Mizpe Yeriho, Kefar Adummim (which includes Alon and Nofe Perat) and Almon (total 3,600), as well as two large army bases. To the southeast of Ma'ale Adummim lies the settlement of Qedar (450), which belongs to Gush Ezyon Regional Council (see Photo 12). The borders of Ma'ale Adummim connect with those of this group of settlements, thus creating in the center of the West Bank a contiguous bloc extending over some 69,500 dunam, from the municipal border of Jerusalem to the western outskirts of Jericho. This area is almost fifteen times larger than the current built-up area in these settlements.

This bloc of settlements severs the territorial connection between the south of the West Bank and the north. The most concrete danger in this respect is that if Ma'ale Adummim is expanded to the west in accordance with its outline plan, the main road remaining for Palestinians to travel from Bethlehem to Ramallah, the Wadi An-Nar road, will be blocked. As mentioned above, Palestinians have already been prohibited to enter Jerusalem.

Establishment of the Ma'ale Adummim settlement entailed extensive infringement of the human rights of the Palestinian population. The initial area included in the area of jurisdiction of Ma'ale Adummim, some 30,000 dunam, was composed of land that even Israel acknowledges was private Palestinian property, and was therefore requisitioned by means of expropriation orders.<sup>266</sup> In 1998, following the amendment to the Ma'ale Adummim outline plan calling for the expansion of Ma'ale Adummim to the west,<sup>267</sup> the Bedouin population (Jahalin tribe) living in the area was expelled.<sup>268</sup> The expansion of Ma'ale Adummim to the west significantly limits the possibilities for the development of the neighboring villages – Abu Dis, Anata, Az-Za'im and Al-Azariya (total 27,700).

The fourth bloc is situated in the southern part of the metropolis, to the west and south of Bethlehem. This bloc includes the municipality of Betar Illit (15,800), Efrat Local Council (6,400), and a number of smaller settlements belonging to Gush Ezyon Regional Council: Har Gilo, Alon Shevut, El'azar, Neve Daniel, Rosh Zurim, Kfar Ezyon, Bat Ayin, and the NAHAL outpost of Geva'ot (total 6,100). This bloc is further removed from municipal Jerusalem, from which it is cut off by Bethlehem and the surrounding Palestinian villages. However, this bloc functions as part of the metropolis thanks to

266. *Ma'ale Adummim*, Paragraph 3. The use of expropriation for public needs to establish a settlement is apparently unusual; in most cases, Israel has preferred to declare land state land.

267. Local Outline Plan, Ma'ale Adummim, No. 420/4.

268. For further details on this subject, see B'Tslem, *On the Way to Annexation*, pp. 23-35.

the Tunnels Road (a portion of Road No. 60), which permits rapid travel to and from Jerusalem while avoiding Palestinian-populated areas (see Photo 13).

This bloc contains many of the characteristics mentioned in the discussion on the types of settlements and the settler population. Most types of settlements were established in this bloc: Gush Ezyon is included in the outline of the Alon Plan, and kibbutzim were established there that engage, *inter alia*, in agriculture (El'azar and Neve Daniel). This area also includes one of the largest ultra-Orthodox settlements (Betar Illit). Because of its relative proximity both to Jerusalem and to the Green Line and the Jerusalem - Tel-Aviv Highway, Gush Ezyon is a high demand area that has also attracted middle-class settlers seeking to improve their standard of living.

In terms of the ramifications of the bloc of settlements on the Palestinian population, this bloc also includes several of the main phenomena identified in other areas, from the blockage of urban development to the restriction of freedom of movement. The area of jurisdiction of the settlement of Efrat extends in a diagonal to the northeast over an area of approximately 6,500 dunam. The tip of this area touches the southern border of Area A in the vicinity of Bethlehem (Al-Khader and Ad-Duheisha refugee camp – total 16,000), continuing along almost all of this border and completely restricting urban development in this direction. The town of Nahalin (5,500) has effectively become a Palestinian enclave surrounded by settlements preventing any possibility for urban development.<sup>269</sup> As in the case of the settlements in the Western Hills, the settlements in this bloc also create an obstacle separating the villages and towns of the Bethlehem area from the city of Hebron and its environs. As in the case of the settlements in the Mountain Strip, some of the settlements in this area also lie along Road No. 60, creating a bloc that controls a broad stretch of the road. As a result, the IDF extensively restricts the freedom of movement of Palestinians along the road, as it does in the areas of the settlements in the Mountain Strip.

In total, the municipal boundaries of the settlements in the Jerusalem Metropolis include some 129,700 dunam, and the population of these settlements is approximately 247,600. Of this land, approximately 34,600 dunam is developed. Accordingly, the potential for the expansion of the settlements in this strip is approximately 95,000 dunam, representing a growth rate of approximately 275 percent. Contrary to the other areas, most of the land of which Israel has seized control over the years in the Jerusalem Metropolis has been attached to one of the settlements, thus reducing the areas included in the two regional councils in this area to some 90,000 dunam.

## Conclusions

During the discussions on the final-status agreement, a discourse developed among the Israel public surrounding the question of "percentages of land" – percentages handed over, or due to be handed over, to the Palestinians, and percentages remaining, or that will remain, in Israeli hands.

As we have attempted to show in this chapter and in the map accompanying this report, the location of each area controlled by the settlements – and not merely its size is a crucial variable in terms of the infringement of human rights in general, and the chances for realizing the right to self-determination

269. These settlements are Betar Illit to the north, Neve Daniel to the east, Rosh Zurim to the south and Geva'ot to the west.

in particular. The value of two percent of the area of the West Bank located in the Judean Desert, for example, cannot be compared with the importance of a quarter of one percent of land included within the area of jurisdiction of the Ari'el settlement. The continued Israeli presence in Ari'el obliges Israel to control a long corridor (the Trans-Samaria Highway) leading to the settlement. This corridor extends from the Green Line almost to Road No. 60, severing the contiguity of Palestinian territory in the north of the West Bank, which is a densely populated area. Similarly, the area of jurisdiction of Ma'ale Adummim occupies just 0.8 percent of the area of the West Bank. Nevertheless, Israel's continued control of this area cuts the West Bank into two almost completely separate parts.

As this chapter shows, in addition to the breach of international humanitarian law resulting from the existence of the settlements, the dispersion of the settlements has been the source of numerous human rights violations under international law:

- The manner of dispersion of the settlements, including the areas of jurisdiction attached thereto, over most of the areas of the West Bank creates obstacles preventing the maintenance of meaningful territorial contiguity between the Palestinian communities. This phenomenon prevents the possibility of establishing an independent and viable Palestinian state, which is the framework agreed by all the relevant parties for realizing the Palestinian people's right to self-determination.
- Entry into the vast areas over which Israel has seized control over the years, which were added to the areas of jurisdiction of the regional councils, is denied to the Palestinian residents after a military order is issued declaring the land a closed military area. This prohibition drastically restricts the possibilities available to Palestinians for economic development in general, and for agriculture in particular. In the Eastern Strip, the settlements deny Palestinian residents the use of a significant part of the area's water resources. These ramifications constitute an infringement of the right given to all peoples to enjoy their natural resources freely.
- The location of some of the settlements around Palestinian cities and towns, and sometimes adjacent thereto, restricts the possibilities for the urban development of the Palestinian communities, and in some cases prevents such possibilities almost completely. This phenomenon has a negative impact, in a degree and manner that vary in each individual case, on the right to a continuous improvement in standard of living in general, and in the right to housing in particular.
- The location of some of the settlements along key roads which, prior to the establishment of the settlements, served the Palestinian population has led to the imposition by Israel of strict restrictions on the freedom of movement of this population, with the goal of ensuring the security and freedom of movement of the settlers. These restrictions have a negative impact on a variety of rights, including the right to work and make a living, the right to health and the right to education.

Table No. 9 summarizes the data mentioned throughout this chapter regarding the scope of areas under the control of the settlements. One of the main findings apparent in the table is the tremendous scope of land – almost two million dunam – included in the areas of jurisdiction of the six regional councils, and which is not included in the municipal boundaries of the settlements that compose the regional councils.

It is likely that developments in the political arena will dictate the future of these areas. As of now, no operative plans are known to exist with regard to these areas. If the pace of construction and expansion

of the settlements typical of the 1990s continues in years to come, these areas may be used as reserves of land for the establishment of new settlements and industrial zones, and/or for the expansion of existing settlements. In the event that Israel agrees to the redeployment of its forces, including the transfer of additional areas to the control of the Palestinian Authority, it will be easier to transfer these areas in the regional councils than to transfer areas included within the municipal boundaries of a specific settlement.

**Table 9**  
**Area of the Settlements, by Region (in thousands of dunam)**

Region	Developed Area	Non-developed Municipal Areas	Land Reserves*	Total Area under Control of the Settlements
Eastern Strip	14.8	61.1	1,203	1,279
Mountain Strip	16.9	45.3	409.4	472
Western Hills Strip	30.9	78.9	265.2	375
Jerusalem Metropolis**	34.3	95.1	90.6	220
<b>Total</b>	<b>96.9</b>	<b>280.8</b>	<b>1,968.2</b>	<b>2,346</b>
<b>Total as a percentage of the area of the West Bank***</b>	<b>1.7%</b>	<b>5.1%</b>	<b>35.1%</b>	<b>41.9%</b>

\* Within the jurisdiction of the regional councils.

\*\* Including both Greater Jerusalem and Municipal Jerusalem. The "area of jurisdiction" of the settlements in municipal Jerusalem is calculated according to the area attributed by the Central Bureau of Statistics for each "neighborhood" as a statistical locale (Jerusalem Institute for Israel Studies, *Jerusalem Statistical Yearbook*, Table 4/A).

\*\*\* A total of some 5,608,000 dunam, which includes the areas annexed to Jerusalem. The calculation does not include no-man's land, and the proportionate area of the Dead Sea.

## Chapter Eight

# The Ari'el Settlement - A Case Study

Ari'el is one of the largest settlements established by Israel in the West Bank, both in population and area. In geographical terms, Ari'el is situated in the heart of the West Bank. The eastern edge of the settlement is only a few kilometers from Road No. 60 which, as noted above, forms the backbone of the mountain ridge. However, Ari'el is a secular and urban settlement attracting settlers from the center of the country (veteran Israelis and new immigrants from the former Soviet Union). In general, the settlers who come to Ari'el hope to find inexpensive housing and an improvement in their standard of living.

Due to the above-mentioned characteristics, Ari'el is perceived by significant sections of the Jewish public in Israel as "just another Israeli city," blurring the fact that Ari'el is actually a settlement situated in the Occupied Territories. This perception seems to have influenced Israel's position concerning its future borders during the negotiations with the Palestinian Authority. Media reports suggest that all the proposals raised by Israel during the Camp David conference of July 2000 and the Taba conference of January 2001 included the annexation of Ari'el to the State of Israel, despite the fact that, as mentioned, Ari'el is situated a considerable distance from the Green Line.<sup>270</sup>

The purpose of this chapter is to examine in depth the impact and ramifications of the settlement of Ari'el on the surrounding Palestinian communities and their residents.

### A. Historical Background

The idea of establishing a large urban settlement in the "heart of Samaria" was first raised in 1973 by a group of future settlers comprised of employees of the aircraft industry. The proposal was presented to then Minister of Defense Moshe Dayan. Although Dayan was in principle in favor of the idea, it proved impossible to realize the plans because the location proposed by the group was incompatible with the Alon Plan, which was informally adopted by the Ma'arach government.<sup>271</sup>

After the Likud came to power in 1977, a change occurred in government policy, and initiatives were introduced to establish settlements throughout the West Bank. The Drobless Plan, which guided the activities of the government and the World Zionist Organization, proposed the establishment of a large settlement on the Trans-Samaria Highway (see Road No. 505 on the map), in part for strategic and military reasons.<sup>272</sup> Given the sympathetic approach of the government, the group of would-be settlers that had contacted Dayan, calling themselves the Tel-Aviv Group, once again met and renewed their initiative. In October 1977, the Ministerial Committee for Settlement approved the establishment of a settlement by the name of Heres (the name was later changed to Ari'el) on a site to the south of Haris Village. The members of the group subsequently received permission to settle in this location.<sup>273</sup>

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270. For example, see an interview with Foreign Minister (at the time of the negotiations) Shlomo Ben-Ami: Ari Shavit, "The Day Peace Died," *Ha'aretz Supplement*, 14 September 2001.

271. Esther Levine, *Ari'el - Capital of Samaria* (in Hebrew) (Philadelphia, 1990), p. 14.

272. Matityahu Drobless, *The Settlement in Judea and Samaria*.

273. Esther Levine, *Ari'el - Capital of Samaria*, p. 44.

The first forty settlers arrived on the approved site on 17 August 1978. At the instructions of then Minister of Agriculture Ariel Sharon, the site was defined as a military base, and initially included some one hundred temporary buildings. Shortly thereafter, the Rural Construction Authority of the Ministry of Construction and Housing began to build permanent accommodation.<sup>274</sup> In addition to implementing construction and infrastructure, the Ministry of Construction and Housing team also worked in cooperation with the Tel Aviv Group in all matters relating to the administration and organization of the new settlement. In 1981, Ari'el was declared a local council and began to function in an autonomous manner.

Thanks to generous assistance from the government, the settlement developed rapidly. During the 1980s and 1990s, numerous official institutions opened in Ari'el, including elementary and high schools, an academic college, a religious council, a municipal court, a police station and so on. In 1996, with the support of the Ministry of Industry and Trade, an additional industrial zone was established in Ari'el alongside Barqan Industrial Zone.<sup>275</sup>

Following the commencement of the wave of immigration from the former Soviet Union in the early 1990s, thousands of immigrants were directed to Ari'el, considerably increasing the population of the settlement. In June 1998, as a result of this growth, then OC Central Command Uzi Dayan signed an order changing the status of Ari'el from a local council to a municipality. As of September 2001, the Central Bureau of Statistics estimates the population of Ari'el at 15,900 residents, approximately forty percent of whom are immigrants from the former Soviet Union. In addition, some 6,000 students attend Ari'el College, some of whom live in the settlement on a temporary basis.

## **B. The Geographical Context**

As noted, Ari'el is situated in the center of Samaria, half way between Nablus and Ramallah, and to the west of the watershed line (the peaks of the mountain range crossing the West Bank). In terms of the road network, Ari'el lies adjacent to an important intersection between Road No. 5 (the Trans-Samaria Highway), which extends from west to east, and Road No. 60, which crosses the length of the West Bank from north to south.

Ari'el is surrounded on all sides by Palestinian towns and villages. To the south lies the town of Salfit (9,000),<sup>276</sup> which functions as the governmental, administrative and commercial center for all the Palestinian villages in the vicinity. To the north of Ari'el, and in close proximity, are four villages – Haris (2,600), Kifl Haris (2,700), Qira (900) and Marda (1,900); a little further to the north lie Jamma'in (5,100), Zeita-Jamma'in (1,700) and Deir Istiya (3,300). To the east of Ari'el lie the villages of Iskaka (900) and then Yasuf (1,500), and on the western edge of the area of jurisdiction of Ari'el lie the villages of Brukin (3,100) and Kafr Ad-Dik (4,400).

To the east and west of Ari'el, and interspersed among the above-mentioned Palestinian villages, there are a number of settlements. To the east, on Road No. 60, lie Tapuah (350) and Rehelim (no population

274. Letter from Ariel Sharon to the Ministry of Construction and Housing dated July 21, 1978, as well as the minutes of a meeting from September 2, 1979 (in *Ari'el – Capital of Samaria*, pp. 140, 157).

275. For details of the institutions and the dates of opening, see the Website of the Municipality of Ari'el, [www.ariel.muni.il](http://www.ariel.muni.il).

276. Unless otherwise stated, the figures in parentheses are the estimated number of residents as of the end of 2001.



data available), which form part of the Mountain Strip. To the west of Ari'el lie numerous settlements arranged in a funnel shape (see Chapter Seven) that constitute the high demand area of the Western Hills. The closest settlements to Ari'el are Barqan (1,300), Revava (550) and Qiryat Netafim (300).

### **C. Seizing Control of Land**

Research undertaken by B'Tselem shows that most of the land included in the area of jurisdiction of Ari'el was declared and registered as state land over the years (see Chapter Three).<sup>277</sup> Although it is not possible to reconstruct precisely the situation prior to the establishment of the settlement, the research shows that a substantial part of this land, and particularly the area on which Ari'el is actually constructed, was formerly uncultivated, rocky land used by the villagers to graze their flocks. As shown by the testimonies collected during the course of the research, however, Israel also expropriated land that was farmed by Palestinians, claiming it to be state land, and this land was included within the area of jurisdiction of Ari'el.

In other cases, Israel seized control of cultivated land – which it acknowledged to be private Palestinian property – for the purpose of expanding the network of roads connecting Ari'el with Israel and with the adjacent settlements (see below, in the discussion of the new Trans-Samaria Highway and Road No. 447). In these instances, the military commanders signed expropriation orders.

The agricultural produce yielded by crops on this farmed land was used by the owners of the land, both for their own consumption and for commercial marketing. The seizure of control of this land deprived these families of an important source of livelihood – in some cases, their only source – and severely impaired their standard of living.

### **D. Municipal Boundaries**

The municipal boundaries of Ari'el have been revised several times since its establishment. The most recent revision was undertaken in June 1999 by means of an order signed by the then commanding officer of the Central Command, Moshe Ya'alon, accompanied by a map including a total area of some 13,800 dunam in the area of the settlement. Of this area, approximately 3,000 dunam are built-up, or are in the process of construction, i.e., twenty-two percent of the total area of jurisdiction. Ari'el's area of jurisdiction extends over some eleven kilometers from east to west, with a maximum width of 2.5 kilometers. The length of this area is exceptional even by comparison with major Israeli cities of comparable population.

The municipal boundaries of Ari'el are convoluted and jagged. Land cultivated by Palestinians (mostly olive groves) exists within the settlement. The reason for this is that Israel was unable to declare them state land. This situation also created "islands" or "peninsulas" of Palestinian ownership within the area of jurisdiction of Ari'el, which surrounds the Palestinian lands on three sides. The reverse is also true:

277. This research was based on the testimonies of residents of the Palestinian villages adjacent to Ari'el, and on information provided by the Municipality of Salfit. B'Tselem asked the Israel Lands Administration and the Municipality of Ari'el to provide information clarifying the status of the land forming the area of jurisdiction of Ari'el, but did not receive any response.

there are cases in which parts of the jurisdictional area of Ari'el are surrounded by Palestinian farmland. These phenomena also exist elsewhere in the West Bank.<sup>278</sup>

These Palestinian-owned islands within the non-built-up part of the area of jurisdiction will apparently be eliminated and effectively annexed to Ari'el, as the area around the island becomes built-up and populated. An example may already be noted of such annexation, relating to a large Palestinian island situated to the south of the main built-up area of Ari'el (see coordinate D-6 in Photo 20). While the map of the area of jurisdiction of Ari'el attached to the military order shows this area as private Palestinian land, the Municipality of Ari'el has constructed a security road surrounding this area, effectively annexing it to the settlement. Moreover, the municipality's outline plans – as distinct from the map of the area of jurisdiction attached to the military order – completely eliminate this island. The area appears as an integral part of Ari'el.

## **E. Urban Sprawl**

Diagram 9 offers a graphic depiction of the urban development of Ari'el in chronological terms, as reflected in the outline plans of the settlement. A review of this diagram shows a clear intention on the part of the planners to maximize the dispersion along the east-west axis, by means of extending "wedges" to either extreme of the area of jurisdiction, and then gradually filling the open spaces remaining within these boundaries. Accordingly, after the consolidation of the initial settling group, approximately in the center of the present area of jurisdiction, the area now occupied by Ari'el College at the east end of the area of jurisdiction was developed. Only during the years that followed was the space between the central core and the eastern edge gradually filled. Similarly, in the mid-1990s, work began to build a new industrial zone on the western edge of Ari'el. The next residential neighborhood planned for construction (see the last picture in the diagram) is situated between this new industrial compound and the western edge of the current built-up area.

The length of the current built-up area is approximately five kilometers (from the college to the entrance road to Ari'el), while its width is only some seven hundred meters. In urban planning terms, this dispersion is completely unreasonable and illogical. Modern planning approaches favor the most compact urban dispersion attainable, enabling residents to reach as many parts of the community as possible on foot.

The unreasonable nature of this dispersion in urban terms is even more pronounced because the area of jurisdiction of Ari'el includes extensive areas adjacent to the original site of the settlement (mainly to the south) that could have been used for expansion. The conclusion to be drawn from this situation is that the Israeli planning system was based not on urban planning considerations, but on extraneous considerations, as discussed below. One of these considerations was to create as long a barrier as possible separating the Palestinian communities on either side of the Trans-Samaria Highway and disrupting the territorial contiguity of this area.

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278. For discussion of this phenomenon in the case of Ma'ale Adummim, see B'Tselem, *On the Way to Annexation*, pp. 33-34.

Photo 15 Ariel: view from the southeast

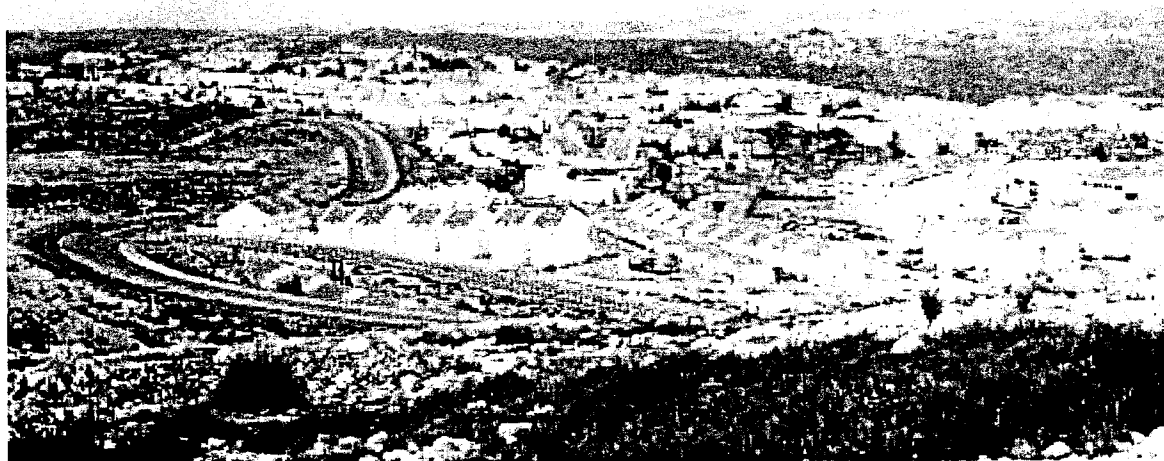


Photo 16 Caravans in the area east of Ariel with Jamma'in in the background



Photo 17 Physical roadblock at entrance to Yasuf



Photo 18 Sewage from Ariel flowing toward Salfit's pumping station

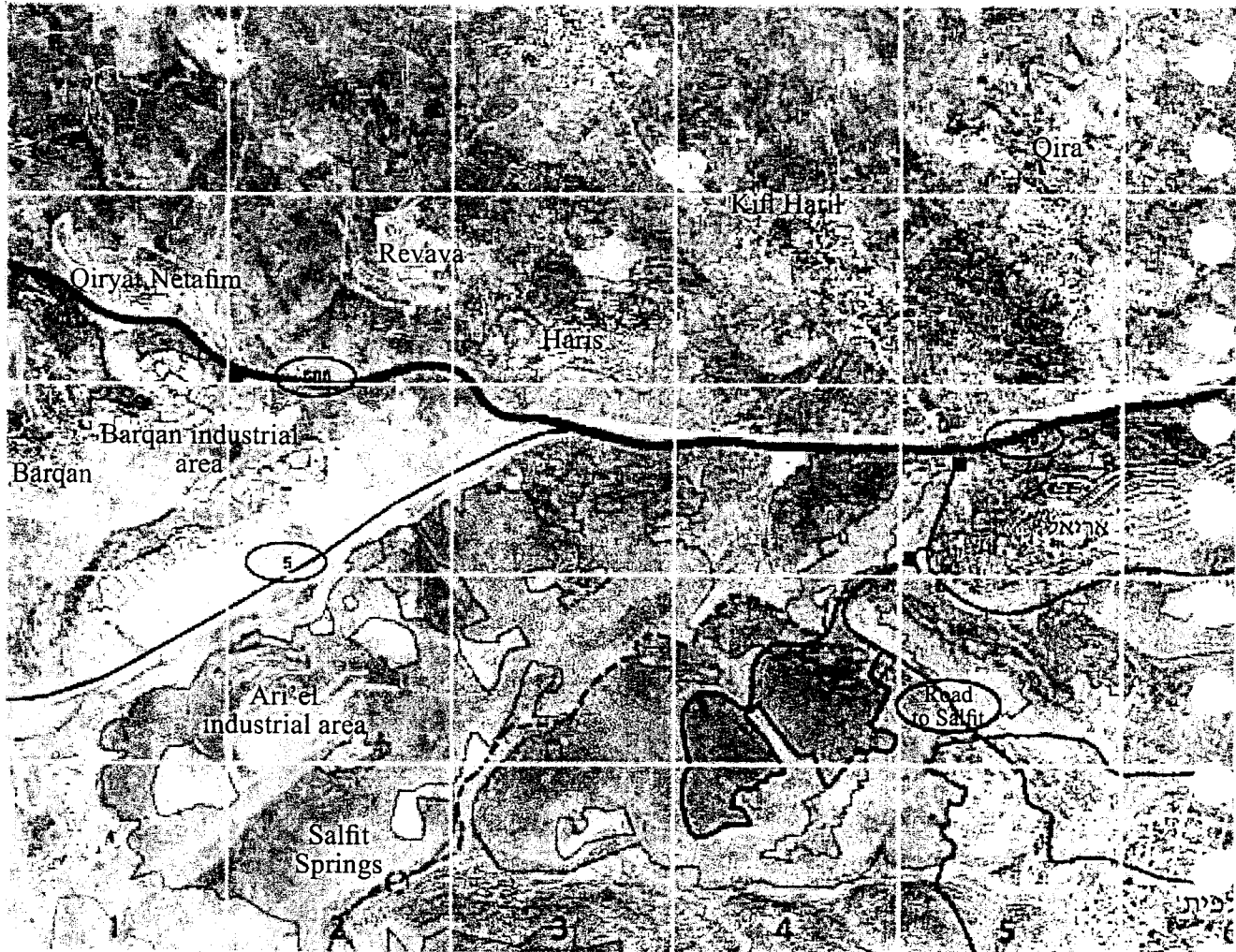









Photo 19 Ari'el and Salfit



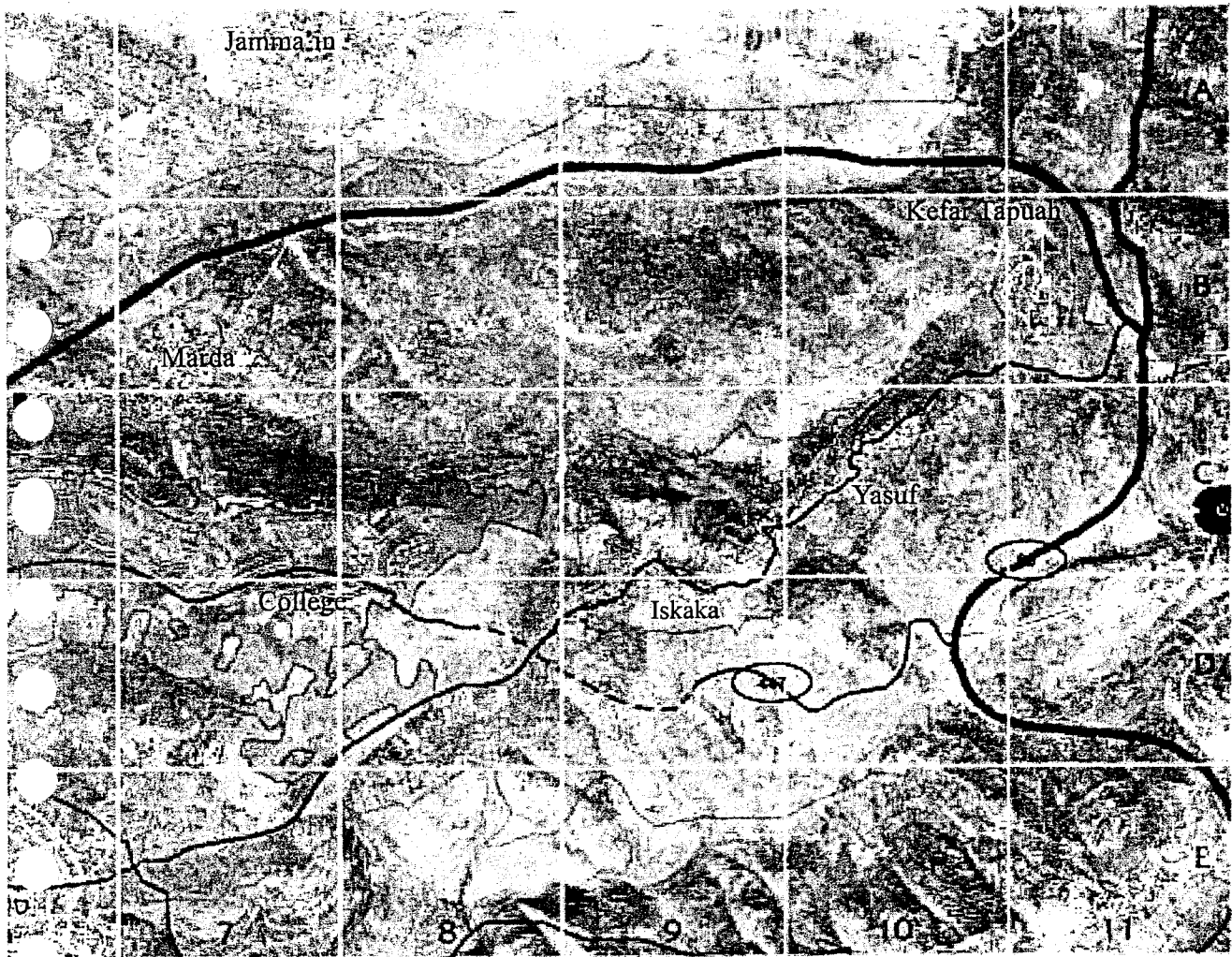
Photo credit: Israel Mapping Center

Photo 20 Ariel and surrounding areas



-  Area of jurisdiction of Ari'el
-  Planned neighborhood – Ari'el
-  Road
-  Road number
-  Area A boundary
-  Area B boundary
-  River bed





Background photo: Israel Mapping Center

Photo 21 On the bridge: Road No. 447 / Under the bridge: the Iskaka-Salfit road



Photo 22 Area planned for expansion of Ari'el





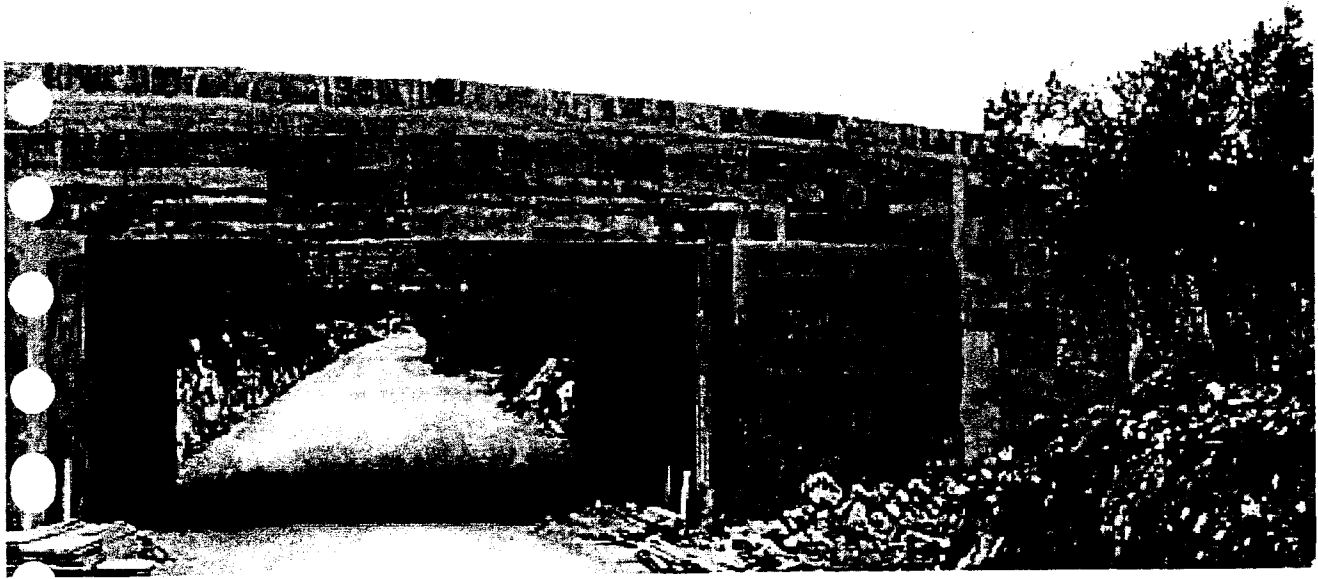


Photo 23 Houses in Ariel: view from the settlement's ring road



Photo 24 Houses in Ariel: view from the settlement's ring road



## **F. Harm to the Development of Salfit**

The location of Ari'el prevents the creation of a contiguous urban space that could otherwise have developed through the expansion of Salfit to the north and northeast, connecting to Haris, Kifl Haris, Qira, Marda and Iskaka. As a result of Israel's policy, the borders of Ari'el constitute a kind of physical barrier stopping such a process and almost totally block the urban development of Salfit. The current population of Salfit is approximately 9,000, and the annual growth rate is approximately 3.5 percent. According to the municipal engineer, Samir Masri, the lack of available land suitable for construction is worsening each year, and is already reflected in a housing shortage and in the decision of many young residents to leave the town.<sup>279</sup>

Because of the topographic and hydrologic characteristics of the Salfit area, the only reasonable direction of expansion is to the north. The areas to the south, southeast and southwest of Salfit are mountainous and extremely steep. Preparing such areas for construction would require enormous financial and technical resources, and would cause irreparable damage to the landscape. The area to the west of Salfit is rich in underground water reserves providing a considerable part of the residents' water needs (see below), and is also exploited by Israel. Construction in this area would damage these reserves as well as the crops currently grown in this area. While the area to the east of Salfit is suitable for construction in terms of the topographic conditions, it is currently intensively farmed by residents of the town, who grow thousands of olive trees that provide their most important source of income. Approximately fifteen percent of the area of jurisdiction of Salfit (the northern edge of which is shown by the border of Area A) is currently free for construction, but about half of this area is owned by a small number of residents of Salfit and is therefore not available for construction.<sup>280</sup>

The negative influence of Ari'el on the residents of Salfit is not confined solely to the question of land and the housing shortage, but also includes such aspects as the pollution of the underground water sources serving Salfit. Most of the sewage created by Ari'el flows into a riverbed at the western entrance to the settlement, and then continues to flow to the southwest (see Photo 20). This sewage channel, which seeps into the soil and mixes with the spring water stored in the aquifer, passes just a few meters from a pumping station supplying most of the water used for domestic consumption by the residents of Salfit (see Photo 18). According to the water engineer of Salfit, Salah Afani, this sewage channel pollutes the water, and he must occasionally order the municipality to stop pumping after routine inspections reveal particularly high levels of pollution.

## **G. The Regional Road Network**

As noted above, the town of Salfit functions as an administrative and commercial center for the villages in the area, and particularly for the villages situated to the north: Haris, Kifl Haris, Qira, Marda, Jamma'in, Zeita-Jamma'in and Deir Istiya. The presence of Ari'el significantly restricts access routes to and from Salfit.

279. This information was given to B'Tselem during a tour of Salfit held by the organization on 31 December 2001.

280. This information was provided to B'Tselem by the Municipality of Salfit.

Until the outbreak of the al-Aqsa intifada, the main access road to Salfit was the road that forks from the entrance road to Ari'el, veers to the west and then leads south to Salfit (see Photo 20). Since the beginning of the intifada, the IDF has blocked access to this road by means of concrete blocks and dirt piles. If the planned expansion of Ari'el to the west (see Diagram 9) is realized, this road will pass through the built-up area of Ari'el and Palestinian traffic along this artery will be completely banned.

The restricted volume of traffic that currently passes between Salfit and the villages to the north takes place to the east, along a dirt road beginning on Road No. 60 to the south of the settlement of Tapuah, and leading west through the villages of Yasuf and Iskaka. Although the entrance to this road has also been blocked since the outbreak of the intifada, Palestinian residents reach the point of the blockage (to the east of Yasuf), go round this point on foot, and then continue toward Salfit (see Photo 17). Even without the current blockages, this road is long and unsuitable as a principal traffic artery between Salfit and the villages to the north. However, as noted, this is the situation that will presumably emerge if Ari'el is expanded to the west as planned.

For example, the length of the road from the southern exit of Kifl Haris to the western entrance of Salfit, which the residents of these communities used until the outbreak of the intifada, is some 3,500 meters. The alternate road, on the other hand, requires the residents of Kifl Haris to go to Route No. 60 and cross through the villages of Yasuf and Iskaka, a distance of some twenty kilometers.

The many restrictions on Palestinian movement and the minimal road network available to them is particularly striking in view of the enormous resources invested by Israel in order to meet the transportation needs of the settlers in general, and the residents of Ari'el in particular. This is clearly illustrated by two roads recently constructed in the vicinity of Ari'el that have severely harmed the Palestinian population.

The first example is the new alignment of the Trans-Samaria Highway, which connects Ari'el and the adjacent settlements to Tel-Aviv and the Tel-Aviv Metropolis. The old Trans-Samaria Highway (Road No. 505) crosses the villages of Mas-ha and Bidhya, and Israel therefore decided to build a new road a few hundred meters to the south in order to circumvent these villages, and to upgrade the road to a four-lane highway. For the purpose of constructing the road, Israel expropriated extensive land from Palestinian residents in the area, and caused considerable environmental damage by bisecting all the hills situated along the course of the road. Since the beginning of the intifada, as part of Israel's policy of "clearing" territory, the IDF has uprooted numerous olive trees along the sides of this road in order to reduce the dangers facing settlers using the road (see coordinates C-3, C-4, C-5, B-6 in Photo 20).<sup>281</sup>

An additional example is Road No. 447, which is due to be completed shortly. This road connects the eastern edge of Ari'el to Road No. 60 close to the settlement of Revava (see Photo 21). For the purpose of its construction, some seventy-five dunam belonging to the residents of Iskaka and Salfit were expropriated, and over one thousand olive trees were uprooted, most of them extremely old and highly productive. This road is supposed to serve the bloc of settlements consisting of Eli, Shilo (including Shevut Rahel) and Ma'ale Levona, and will shorten the journey to Ari'el by a few minutes. The Palestinians whose land was expropriated petitioned the High Court of Justice, seeking to prevent

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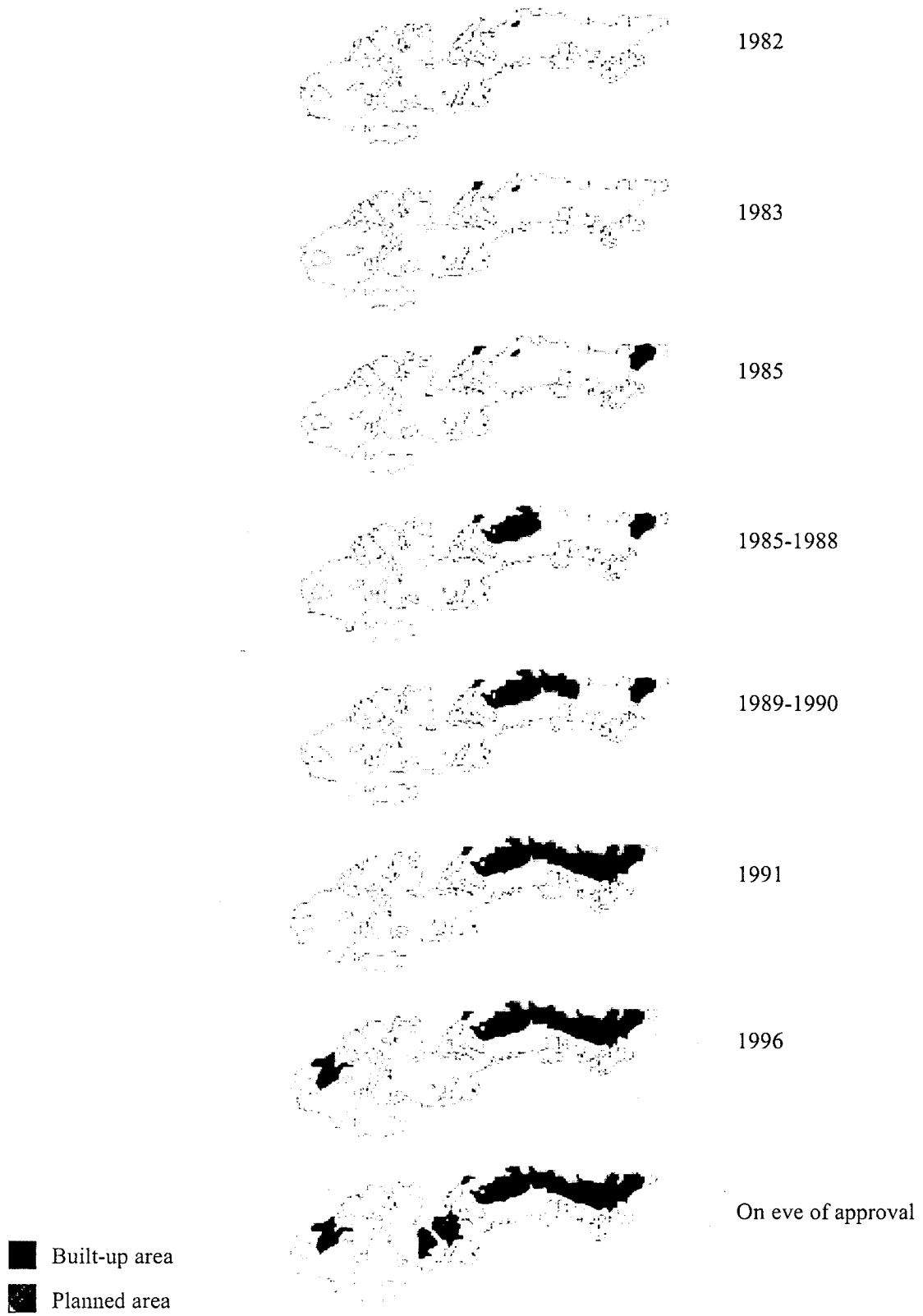
281. For details of this policy as implemented in the Gaza Strip, see B'Tselem, *A Policy of Destruction: House Demolitions and Destruction of Agricultural Land in the Gaza Strip* (Information Sheet, February 2002).

construction of the road. The Court rejected the petition, without detailing its reasons. The laconic ruling of Justice Matza simply states: "Regarding this matter, we have formed the conclusion that there is no room for the Court to intervene in the decision of the Respondents."<sup>282</sup>

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282. HCJ 00/1451, *Talab 'Abd Al-Hadi et al. v. Supreme Planning Council and Commander of IDF Forces in Judea and Samaria*

**Diagram 9**  
**Incremental Growth of Ari'el: Dates of Outline Plan**



## Conclusions

Israel has created in the Occupied Territories a regime of separation based on discrimination, applying two separate systems of law in the same area and basing the rights of individuals on their nationality. This regime is the only one of its kind in the world, and is reminiscent of distasteful regimes from the past, such as the apartheid regime in South Africa.

The discrimination against Palestinians is apparent in almost all fields of activity of the occupation authorities, starting from the methods used by Israel to seize control of the land on which the settlements are established, to the separate planning institutions for Palestinians and for Israelis, to the application of Israeli law to the settlers and settlements while the Palestinian population remains subject to the military legislation.

Under this regime, Israel has stolen hundreds of thousands of dunam of land from the Palestinians. Israel has used this land to establish dozens of settlements in the West Bank and to populate them with hundreds of thousands of Israeli citizens. The manner of dispersion of settlements over extensive areas of the West Bank inherently creates numerous violations of the Palestinians' legal rights. As the report has demonstrated, the drastic change that Israel has made in the map of the West Bank prevents any real possibility for the establishment of an independent, viable Palestinian state as part of the Palestinians' right to self-determination.

The settlers, on the contrary, benefit from all the rights available to Israeli citizens living within the Green Line, and in some cases are even granted additional rights. The great effort that Israel has invested in the settlement enterprise – in financial, legal and bureaucratic terms – has turned the settlements into civilian enclaves in an area under military rule, with the settlers being given preferential status. To perpetuate this situation, which is *a priori* illegal, Israel has continuously breached the rights of the Palestinians.

Particularly evident is Israel's manipulative use of legal tools in order to give the settlement enterprise an impression of legality. When Jordanian legislation served Israel's goals, Israel adhered to this legislation, arguing that international law obliges it to respect the legislation in effect prior to the occupation; in practice, this legislation was used in a cynical and biased manner. On the other hand, when Jordanian legislation interfered with Israel's plans, it was changed in a cavalier manner through military legislation, and Israel established new rules to serve its interests. In so doing, Israel trampled on numerous restrictions and prohibitions established in the international conventions to which it is party, and which were intended to limit infringement of human rights and protect populations under occupation.

The responsibility for the infringement of human rights created by the existence of the settlements rests, first and foremost, with all the Israeli governments since the occupation began. It is the government that initiated the establishment of the settlements, provided political, organizational and economic support, and encouraged their continual expansion. The justices of the Israeli Supreme Court are senior partners in this responsibility: in their rulings, they provided the settlement enterprise with a legal stamp of approval by approving improper acts by the government and the IDF in certain cases, and by refusing to intervene in others to prevent harm to the Palestinian residents.

Since the outbreak of the al-Aqsa intifada, the settlers have been continuous targets for attacks by Palestinians. As a result, some settlers have wanted to return to live inside Israel and have asked the government to provide assistance to help them relocate. Despite the authorities' responsibility resulting from their long-standing policies regarding the settlements, the state has refused to provide any assistance for settlers to return to Israel as long as their relocation is not part of a political settlement.<sup>283</sup> This refusal makes those settlers who wish to leave hostages of the illegal policy pursued by the State of Israel.

*Because the settlements were illegal from the outset, and given the infringement of human rights caused by their presence, B'Tselem demands that the Israeli government act to dismantle all the settlements. The dismantling must take place in a manner that respects the human rights of the settlers, including the payment of compensation.*

Evacuation of all the settlements is clearly a complex task that will require time. However, there are interim steps that can be taken immediately to reduce to a minimum the infringement of human rights and the violation of international law. The Israeli government must take, *inter alia*, the following steps:

- Cease all new construction in the settlements, either to build new settlements or to expand existing settlements;
- Freeze the planning and construction of new bypass roads, and cease expropriation and seizure of land for this purpose;
- Return to the Palestinian communities all the non-built-up areas within the municipal boundaries of the settlements and the regional councils;
- Abolish the special planning committees in the settlements, and hence the powers of the local authorities to prepare outline plans and issue building permits;
- Cease the policy of providing incentives that encourage Israeli citizens to move to the settlements, and direct these resources to encourage settlers to relocate to areas within the borders of the State of Israel.

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283. MK Anat Maor submitted a proposed law before the Knesset that provides for compensation for settlers who decide to leave the settlements. The Knesset voted to reject the bill (Proposed Bill: Compensation for Evacuated Residents from Judea, Samaria, the Gaza Strip and the Golan Heights Law, 5760-1999, 4 July 2001).



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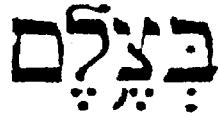
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# ANNEX 13

B'Tselem (The Israeli Information Centre for Human Rights in the Occupied Territories), Behind the Barrier: Human Rights Violations as a result of Israel's Separation Barrier, April 2003, [www.btselem.org/Download/2003\\_Behind\\_The\\_Barrier\\_Eng.doc](http://www.btselem.org/Download/2003_Behind_The_Barrier_Eng.doc)



מרכז המידע הישראלי לזכויות האדם בשטחים (ע.ר.)  
B'Tselem – The Israeli Information Center for Human Rights in the Occupied Territories

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## **Behind The Barrier**

**Human Rights Violations As a Result of Israel's Separation Barrier**

**Position Paper**

April 2003

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## Introduction

In June 2002, the government of Israel decided to erect a separation barrier near the Green Line, to prevent the uncontrolled entry of Palestinians from the West Bank into Israel. The decision was made following the unprecedented increase in the number of Palestinian attacks against Israelis since the outbreak of the al-Aqsa intifada, particularly during the first half of 2002. The government decided that the barrier will be built around the entire West Bank. To date, however, the government has directed the construction of only some 190 kilometers. According to the Ministry of Defense, the first 145 kilometers (Stage 1) are to be operational by July 2003.

Most of the barrier's route does not run along the Green Line, but passes through the West Bank. In the sections that run along the Green Line, Israel plans on building a secondary barrier a few kilometers east of the main barrier. In several areas, the winding route creates a loop that surrounds Palestinian villages on all sides. The barrier will separate many Palestinian villages and turn some of them into isolated enclaves. In numerous locations, the barrier will separate villages from farmland belonging to their residents. B'Tselem estimates that the barrier will likely cause *direct* harm to at least 210,000 Palestinians residing in sixty-seven villages, towns, and cities.

This position paper analyzes the repercussions of the proposed barrier on the Palestinian population and the human cost entailed in erecting it along the planned route. We shall also examine the legality of the barrier, as currently planned, in terms of international law. The goal of this paper is to warn of the violations of human rights and of international law inherent in setting the barrier's route inside the West Bank. As construction of the first section of the barrier has not yet been completed, and work on the other sections has not yet begun, it is still possible to prevent these violations.

## **Factual Background**

### **Formulating the barrier plan**

The idea of erecting a barrier to physically separate the West Bank from Israel in order to limit unmonitored entry of Palestinians into Israel has been around in various forms for years. The barrier was supposed to be erected in what is referred to as the “seam area,” a strip of land extending along the two sides of the Green Line.

In March 1996, the government decided to establish checkpoints along the seam area (similar to the Erez checkpoint, in the Gaza Strip), through which Palestinians would enter Israel. Alternative access routes were to be blocked. Following this decision, the Ministry of Public Security decided, in 1997, to assign special Border Police units to operate along the seam area. The task of these units was to prevent the infiltration of Palestinians into Israel. These decisions were only partially implemented.<sup>1</sup> Following the outbreak of the al-Aqsa Intifada, in late September 2000, the government made a number of decisions that ultimately led to the current separation-barrier plan.

In November 2000, the then prime minister, Ehud Barak, approved a plan to establish a “barrier to prevent the passage of motor vehicles” from the northwest end of the West Bank to the Latrun area. Many months passed before implementation of the plan began. In June 2001, Prime Minister Ariel Sharon established a steering committee, headed by National Security Council director Uzi Dayan, to formulate a set of measures to prevent Palestinians from infiltrating into Israel across the seam area. On 18 July 2001, the Ministerial Committee for Security Matters (hereafter: the Cabinet) approved the steering committee’s recommendations.

According to the Cabinet’s decision, the IDF is responsible for protecting the eastern side of the seam area through a “task command” that will coordinate the activity, while the Border Police is responsible for the western side. The two bodies are to coordinate their efforts fully and the number of forces in the seam area is to be significantly increased. The Cabinet also decided to implement the November 2000 decision regarding the barrier against motor vehicles and to erect a barrier to prevent the passage of people on foot in selected sections that are deemed high-risk areas.<sup>2</sup>

Erection of the barrier to prevent the passage of motor vehicles began following the decision of June 2001. To date, the Department of Public Works and the Construction Department of the Defense Ministry have completed a metal security railing along the selected section,

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<sup>1</sup> State Comptroller, *Audit Report on the Seam Area* (in Hebrew), Report No. 2 (Jerusalem, July 2002), pp. 10-12.

<sup>2</sup> *Ibid.*, pp. 13-18.

which runs from the northwest edge of the West Bank to the Latrun area. As of April 2002, some nine months after the Cabinet's decision, the government has taken almost no action to implement its decision on the barrier to prevent pedestrians from entering Israel.

On 14 April 2002, the Cabinet again discussed the matter. This time, it decided to establish a permanent barrier in the seam area to "improve and reinforce the readiness and operational capability in coping with terrorism." The decision further directed that a ministerial committee headed by the prime minister monitor implementation of the decision. The Cabinet also decided to begin immediate construction of a temporary barrier in three sectors: east of Umm el-Fahm, around Tulkarm, and in Jerusalem.<sup>3</sup> To implement this decision, the Seam Area Administration, headed by the director general of the Ministry of Defense, was established.

A few days later, the IDF took control of Palestinian-owned land in several locations in the northwest West Bank for the purpose of erecting the temporary barrier, and began to uproot trees and level the earth along the planned route. However, the decision to erect the temporary barrier was not implemented. In the sector south of Tulkarm, work stopped after the land was leveled and the trees uprooted, and some of the expropriation orders were nullified. Within a few weeks after that, the IDF took control of other land and began work on erecting the permanent barrier along a different route.<sup>4</sup>

In early June 2002, the Seam Area Administration finished formulating the plan to build the first section of the permanent barrier, which was to run from the northwest edge of the West Bank, near the Israeli village of Sallem, to the Israeli settlement of Elqana in the south. In addition, a plan was devised to build a barrier around Jerusalem (hereafter: the Jerusalem envelope). The plan included a concrete proposal to construct sections north and south of the city.

On 23 June 2002, the government approved the plan in principle. The decision stated that, "The precise and final route will be determined by the prime minister and the minister of defense." The government also stated that, in the event of a dispute over the route, the Cabinet would resolve the matter.<sup>5</sup>

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<sup>3</sup> Decision 64/B, section E.

<sup>4</sup> Residents of the villages that were harmed by the temporary fence south of Tulkarm petitioned the High Court of Justice. The Court rejected the petition. HCJ 3771/02, *Kafir a-Ras et al. v. Commander of IDF Forces in Judea and Samaria et al.*

<sup>5</sup> Government Decision 2077.

The Cabinet convened on 14 August 2002 to discuss the route proposed by the Seam Area Administration. At the meeting, the Cabinet approved the final route for Stage 1 of the barrier, which would span 116 kilometers, including ninety-six kilometers from Sallem to Elqana and twenty kilometers for the Jerusalem envelope (in the northern and southern sections only). The length of the route in Stage 1 has increased since the Cabinet's decision, for various reasons (see Part 3), and is now approximately 145 kilometers.<sup>6</sup>

Infrastructure and construction work along most of the approved route has begun, but only a ten-kilometer stretch of the barrier near Umm el-Fahm has been completed.<sup>7</sup> The Ministry of Defense estimates that Stage 1 of the barrier will be completed by July 2003.<sup>8</sup> In January 2003, the Ministry of Defense began infrastructure work along an additional forty-five kilometer stretch of the barrier, from Sallem eastward to Faqu'a, that was not included in the Cabinet's decision of August 2002.<sup>9</sup>

### **Components of the barrier**

The main component of the barrier is an electronic fence that will give warning of every attempt to cross it. Along the east side of the fence is a "service road" bordered by a barbed-wire fence. East of the service road is a "trench or other means intended to prevent motor vehicles from crashing into and through the fence."<sup>10</sup> The plan calls for three paths to the west of the fence: "a trace road, intended to reveal the footprints of a person who crossed the fence, a patrol road, and an armored vehicles road." Another barbed-wire fence will be constructed along this path.

The average width of the barrier complex is sixty meters. Due to topographic constraints, a narrower barrier will be erected in some areas and will not include all of the elements that support the electronic fence. However, as the state indicated to the High Court of Justice, "in certain cases, the barrier will reach a width of one hundred meters due to the topographic conditions."

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<sup>6</sup> This figure is based on a digital measurement made by B'Tselem.

<sup>7</sup> Felix Frisch, "Israel Plans: Tax to be imposed on Palestinians who enter Israel," Y-net, 4 March 2003.

<sup>8</sup> Letter of 12 February 2003 from the Defense Ministry's spokesperson to B'Tselem.

<sup>9</sup> Amos Harel, "Construction of the Separation Fence Begins between Gilboa Villages and the West Bank," *Ha'aretz*, 28 January 2003.

<sup>10</sup> The information on the barrier's components is based on the state's response in H CJ 7784/02, Sa'al 'Awani 'Abd al Hadi et al. v. Commander of IDF Forces in the West Bank (hereafter: *al-Hadi*), sec. 23.

In the sections that run along the Green Line, and in a few other areas, the plan calls for an additional barrier to the east, referred to as the “depth barrier.” According to the state’s response to the High Court of Justice, “it is a barrier without a fence, intended to direct movement in these areas to a number of security control points.” The primary component of the depth barrier is a deep trench with a barbed-wire fence alongside it.

In some areas, the main barrier will be joined by a wall to protect against gunfire or another kind of impeding wall. A few years ago, the IDF erected gunfire-protection walls between two communities within Israel, Bat Hefer and Matan, and the Palestinian villages that are near them, Shweikeh and Habla respectively. The company that is paving Highway No. 6 (“Trans-Israel Highway”) placed a gunfire-protection wall along the section of the highway near Qalqiliya and plans to erect a similar wall near Tulkarm. In the Jerusalem envelope area, two walls have already been erected: one alongside Road 45 (the Begin-North Road) along the section near Beit Hanina el-Balad, and Bir Nabala, and another near Abu Dis on the eastern side of Jerusalem’s border. Another wall is planned near Rachel’s tomb, in the southern portion of the Jerusalem envelope.

The plan for the barrier calls for several gates to enable passage of people and goods. One of the maps that the state submitted to the High Court of Justice contains five main gates along the barrier route in Stage 1 (not including the Jerusalem envelope). The map also includes twenty-six “agricultural gates” (see below), five of which are placed along the depth barrier.

According to estimates made in June 2002 by the Seam Area Administration, the total cost for Stage 1 of the barrier, which stretches, according to the original route, 116 kilometers, is NIS 942 million, i.e., NIS 8.1 million a kilometer.<sup>11</sup> However, the director general of the Ministry of Defense, Amos Yaron, recently estimated the per-kilometer cost of the barrier at about NIS 10 million.<sup>12</sup>

### **The barrier’s route and placement vis-a-vis towns and villages in the area**

B’Tselem asked the Ministry of Defense for a copy of the map of the route of the separation barrier. The request was rejected. The spokesperson of the Ministry of Defense responded that

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<sup>11</sup> State Comptroller, *Audit Report on Seam Area*, p. 30.

<sup>12</sup> Frisch, “Israel Plans.”

that, "Publication of the map has not been authorized."<sup>13</sup> In his reply to B'Tselem, the Defense Ministry official in charge of implementation of the Freedom of Information Act stated that, "Information cannot be provided other than what has appeared in the media."<sup>14</sup> The lack of transparency regarding the path of the route flagrantly violates the rules of proper administration and hampers informed public debate on a project of long-term, far-reaching significance at a cost of hundreds of millions of shekels. The refusal of the state to provide the map is especially surprising because the infrastructure and construction work along most of the approved sections of the route have already begun, and once construction work begins, the barrier's location becomes evident immediately.

Because the state has refused to provide the map, the barrier's route marked on the attached map is based on the land-seizure orders given to Palestinians, maps that the State Attorney's Office submitted to the High Court of Justice, and physical observations made in the areas in which the barrier is under construction.

The map does not include the route of the Jerusalem envelope because, other than two relatively small sections near Kafr 'Aqeb north of the city and near Rachel's tomb to the south, land-seizure orders have not been issued to Palestinians. Regarding the barrier's route in the eastern and northwestern part of the Jerusalem envelope, it is unclear whether a decision has been reached. The implications of the route along the Jerusalem envelope are liable to be far reaching, both because of the size of the Palestinian population in the area and its great dependence on East Jerusalem, from which it will be severed after the barrier is erected.

The map also does not include the route of the northern section, which spans forty-five kilometers from Sallem to Faqu'a, because the government has refused to provide any information about it. Physical observations made by B'Tselem of the work in this area indicate that the route passes very close to the Green Line. As a result, it appears that the barrier in that area will not leave many Palestinians, or much of their farmland, north of the barrier.

The barrier's route passes within the West Bank, in some areas to a depth of six to seven kilometers. The size of the area between the main barrier and the Green Line along the route between Sallem and Elqana is 96,500 dunam, of which 7,200 dunam are the built-up area of ten settlements. The area of the five enclaves situated east of the barrier (see below) contains another 65,200 dunam. The barrier will affect 161,700 dunam, which is 2.9 percent of the land area of the West Bank.

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<sup>13</sup> Letter of 2 January 2003 from Defense Ministry Spokesperson Rachel Nidak-Ashkenazi.

<sup>14</sup> Letter of 17 February 2003 from A. Barak, senior assistant for public complaints.

The barrier's winding route, together with the depth barrier, creates enclaves of Palestinian communities in some areas, and in other areas severs Palestinian residents from their lands. B'Tselem estimates that the barrier will directly harm at least 210,000 Palestinians who live in sixty-seven villages, towns, and cities.

#### **Palestinian enclaves west of the barrier<sup>15</sup>**

The barrier's route creates five enclaves of Palestinian communities that lie between the main barrier and the Green Line. These enclaves, presented here from north to south, will be separated from the rest of the West Bank and from each other. Thirteen communities, home to 11,700 people, are included in this category.

The first enclave, located west of Jenin, includes Barta'a a-Sharqiya (3,200), Umm a-Rihan (400), Khirbat 'Abdallah al-Yunis (100), Khirbat a-Sheikh Sa'ad (200), and Khirbat Dhaher al-Malah (200), a total of 4,100 residents.<sup>16</sup>

The second enclave, east of the Arab-Israeli village Baqa al-Gharbiya, includes Nazlat 'Issa (2,300), Baqa a-Sharqiya (3,700), and Nazlat Abu Nar (200), 6,200 residents in all.

Khirbet Jubara, south of Tulkarm, which is , home to 300 people, constitutes the third enclave.

The fourth enclave, near the settlement Alfe Menashe, south of Qalqiliya, includes Ras a-Tira (300), Khirbet a-Dab'a (200), and Arab a-Ramadeen al-Janubi (200), a total of 700 residents.

The fifth enclave contains the northern neighborhood of Bethlehem (400), near Rachel's tomb.

#### **Palestinian enclaves east of the barrier**

The winding route of the separation barrier, together with the closure of areas as a result of the depth barrier, will create five enclaves to the east of the main barrier. Like the case of enclaves to the west of the barrier, the barrier will separate these enclaves from the rest of the West Bank and from each other. There are nineteen communities in this category, in which 128,500 residents live.

Two enclaves will be created between the main barrier and the trenches of the depth barrier. The first, in Jenin District, includes Rummana (3,000), A-Tayba (2,100), and 'Anin (3,300), comprising a total of 8,400 residents.

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<sup>15</sup> Although some towns and villages are located north or south of the barrier, for the sake of simplicity, we refer to the communities located between the barrier and the Green Line as "communities west of the barrier."

<sup>16</sup> The numbers in parentheses are population estimates of the Palestinian Central Bureau of Statistics as of the end of 2002, and are based on the 1997 census.



The second and more significant enclave in terms of size includes Shweikeh and Tulkarm (41,000), the Tulkarm refugee camp (12,100), Iktaba (1,800), Dennabeh (7,600), Nur Shams refugee camp (7,000), Khirbet a-Tayyah (300), Kafa (300), 'Izbat Shufa (900), and Far'un (2,900), a total of 73,900 residents.

The third enclave will be created by hermetically closing Qalqiliya (38,200).

The fourth enclave, south of Qalqiliya, will be surrounded by the main barrier on three sides. This enclave includes Habla (5,300), Ras 'Atiya (1,400), and 'Izbat Jalud (100), and has a total of 6,800 people.

The fifth enclave, a few kilometers further south, includes 'Azzun 'Atma (1,500) (see the discussion on this village below).

### **Communities separated from their farmland**

Residents of dozens of Palestinian communities east of the main barrier or the depth barrier will be separated from a substantial portion of their farmland, which will remain to the west of the barrier. This separation will harm these residents, who have already lost land that was seized on which the barrier itself will be erected. The number of residents who will be directly affected by being separated from their land due to the placement of the barrier depends of the number of Palestinians who own land on the other side of the barrier.<sup>17</sup> This category contains thirty-six communities, in which 72,200 people reside.

In Jenin District, the communities are Zabda (800), 'Araqa (2,000), al-Khuljan (400), Nazlat a-Sheik Saa'eed (700), Tura a-Gharbiya ((1000), Tura a-Sharqiya (200), Khirbet Mas'ud ((5), Khirbet Mentar (50), Umm Dar (500), and Dhaher al-'Abed (300), comprising a total of 6,000 residents.

The communities in Tulkarm District are 'Akkaba (200), Qaffin (8,000), Nazlat al-Wusta (400), Nazlat a-Sharqiya (1,500), Nazlat al-Gharbiya (800), Zeita (2,800), 'Attil (9,400), Deir al-Ghusun (8,500), al-Jarushiya (800), al-Maskoofi (200), Shufa (1,100), a-Ras (500), Kafr Sur (1,100), and Kafr Jammal (2,300), a total of 37,600 residents.

In Qalqiliya District, the communities are Falamiya (600), Jayyus (2,800), Nabi Elyas (1,000), 'Isla (600), al-Mudawwar (200), 'Izbat al-Ashqar (400), Beit Amin (12,000), Sanniriya (2,600), 'Izbat Salman (600), and Mas-ha (1,800), a total of 11,600 residents.

In Jerusalem District, at this stage, we are able to identify two communities that clearly fall within this category: Rafat (1,800), and Kafr 'Aqeb (15,000) (see the discussion below), a total of 16,800 residents.

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<sup>17</sup> This category does not include communities in the previously mentioned enclaves, although some of them have residents who will be separated from their farmland that remains east of the enclave.

### **Israeli settlements**

Ten settlements, containing a total of 19,000 residents, will be located on the western side of the barrier. These settlements are, from north to south, Shaqed (500), Hinnanit (600), Rehan (100), Sal'it (400), Zufin (900), Alfe Menashe (5,000), Oranit (5,200), Sha'are Tiqwa (3,500), Ez Efrayim (600), and Elqana (3,000).<sup>18</sup>

In East Jerusalem, a total of thirteen settlements in which 173,000 people reside will be included within the Jerusalem envelope: Neve Yaakov (20,300), Pisgat Ze'ev (36,500), French Hill (8,200), Ramat Eshkol (5,800), Ma'alot Dafna (3,600), Sanhedria Murchevet (5,000), Ramot Alon (38,000), Shuafat Ridge (11,300), the Jewish Quarter in the Old City (2,300), East Talpiot (12,800), Givat Hamatos (800), Har Homa (figures not available), and Gilo (27,600).<sup>19</sup>

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<sup>18</sup> Central Bureau of Statistics, List of Settlements, their Populations, and Markings – 12 December 2001.

<sup>19</sup> The figures relate to the end of 2000. *Jerusalem Statistical Yearbook 2002*, Table C/13.

## **Infringement of human rights**

Erection of the barrier within the West Bank is liable to infringe a range of human rights of hundreds of thousands of Palestinians, from the right to property to the right to receive medical treatment.

Most of the infringements are derived from the anticipated impact on the residents' right to freedom of movement. Therefore, the severity of the infringements depends on the crossing arrangements that Israel will employ between the two sides of the barrier. An infringement that is not derived from the restrictions on freedom of movement has already occurred, or is liable to occur soon: the violation of the property rights of the owners of land along which the barrier is to run.

## **Infringement of the right to freedom of movement**

*Everyone has the right to freedom of movement and residence within the borders of each State.*

Universal Declaration of Human Rights, Art. 13 (1)

*Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.*

International Covenant on Civil and Political Rights, Art. 12 (1)

The strip of land between the barrier and the Green Line, and apparently between the barrier and the municipal boundaries of Jerusalem as well, will be declared a Closed Military Area. According to the state's response to the High Court of Justice, this declaration will not apply to the local residents.<sup>20</sup> Based on this statement, residents of the enclaves west of the barrier will not be required to obtain a special permit to cross the barrier. However, Civil Administration officials have announced on several occasions that permanent crossing permits will be issued to residents of the enclaves. Other residents of the West Bank will generally not be allowed to enter these enclaves for any purpose, unless they obtain a special permit.

The state indicated that Palestinians who live east of the barrier and own land to the west of it will pass through "farmers gates" upon showing the "special permits" that will be issued to them.<sup>21</sup> The state promised that, "reasonable crossing arrangements will be made, taking into account the need to enable laborers and suitable equipment to cross, and to enable the produce grown on the farmland to cross to land east of the barrier."<sup>22</sup> However, except for this general commitment, the state has not provided other details regarding arrangements .

<sup>20</sup> Response of the state in *al-Hadi*, sec. 22.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*, sec. 35.

The state has not yet discussed the arrangements that will apply to the movement of residents of the enclaves east of the main barrier or of West Bank residents who want to visit these enclaves. It is, therefore, unclear if they will need special movement permits. It is clear that movement from the enclaves to other areas of the West Bank, and back again, will be allowed only through the specially established crossing points and checkpoints.

The state indicated to the High Court that, in erecting Stage 1 of the barrier, not including the Jerusalem envelope, it will erect five main crossings and twenty-six agricultural crossings. Stage 1 is scheduled for completion by July 2003. According to the head of the Seam Area Administration, Nezach Mashiach, the 2003 budget does not allocate sufficient funds to erect the five main crossings.<sup>23</sup>

Whatever the crossing arrangements will be, it is clear that hundreds of thousands of Palestinians will be dependent on Israel's security system when they want to cross the barrier from either side. This dependence will increase the existing difficulties Palestinians face in going from one place to another in the West Bank.

Since the beginning of the al-Aqsa intifada, IDF restrictions have brought Palestinian movement to almost a complete halt. In some places, the army has set up checkpoints, concrete blocks, dirt piles, and trenches that block most of the roads in the West Bank, and Palestinians are not allowed to drive on many roads. In addition, the army imposes curfew on hundreds of thousands of residents. These restrictions, which affect all aspects of life of the Palestinian population, lead to numerous human rights violations, including the right to earn a living, the right to an education, and the right to obtain medical treatment.<sup>24</sup>

Past experience indicates that the restriction on movement of Palestinians is an integral part of Israeli policy in the Occupied Territories. These restrictions are not only imposed for security reasons. They are also used to accomplish objectives that are forbidden by international law and are based on extraneous considerations. For instance, Israel has often imposed collective restrictions on movement to punish the population in a particular location for an attack against Israeli civilians or soldiers that is attributed to a resident or residents of that community. Israel also routinely restricts the movement of Palestinians, in part because it is the easiest and cheapest means available at times such as Israeli holidays and election day.<sup>25</sup> This experience

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<sup>23</sup> Akiva Eldar, "The Great Failure of the Separation Fence," *Ha'aretz*, 31 October 2002.

<sup>24</sup> On this subject, see B'Tselem reports *No Way Out – Medical Implications of Israel's Siege Policy* (June 2001); *Civilians Under Siege – Restrictions on Freedom of Movement as Collective Punishment* (January 2001). For other examples, see B'Tselem's Website Newsletter ([www.btselem.org](http://www.btselem.org)).

<sup>25</sup> *Ibid.* See, also, B'Tselem reports *Builders of Zion: Human Rights Violations of Palestinians from the Occupied Territories Working in Israel and the Settlements* (September 1999); *Divide and Rule – Prohibition on Passage between the Gaza Strip and the West Bank* (May 1998); *Without Limits: Human Rights Violations under Closure* (April 1996).

raises the fear that the crossing points along the barrier will be closed for prolonged periods and the passage of Palestinians may be completely prohibited.

Establishing checkpoints along the barrier is liable to raise problems. Currently, crossing checkpoints depends on the goodwill of the soldiers, who do not operate according to clear rules known to the Palestinians. Soldiers have forced Palestinians to wait many hours before allowing them to cross, confiscated identity cards, car keys, and even vehicles. In many cases, soldiers degrade the Palestinians and have, at times, beaten them.

Some, and maybe all, of the Palestinian residents of these areas will need to obtain a “special permit” from the Israeli authorities to enable them to cross the barrier. In the past, Israel has taken advantage of the requirement that Palestinians obtain permits, and conditioned granting of entry permits or permits to go abroad on collaboration with the General Security Service. The process for obtaining permits entails repeated harassment of the residents and is based on arbitrary criteria. Palestinians have often been refused permits without being given a reason for the denial. More than once, Palestinians received a permit after intervention by human rights organizations or other entities, indicating the arbitrary manner in which Israel denies the requests.<sup>26</sup>

It is clear, therefore, that the state’s promise to build crossing points and “agricultural gates” along the barrier is insufficient to prevent harm to the Palestinians. Israel’s policy on the movement of Palestinians makes it very uncertain whether Palestinians will indeed be allowed to cross the barrier.

The barrier will create a situation for the residents of the enclaves rather similar to that of residents of al-Mawasi, Gaza Strip.<sup>27</sup> Al-Mawasi is a Palestinian enclave containing 5,000 residents situated west of the Gush Qatif settlements. Since the beginning of the al-Aqsa intifada, the IDF has placed severe restriction on the residents, making their lives unbearable. Most of the movement to and from other areas of the Gaza Strip is through the Tufakh checkpoint, near Khan Yunis. Generally, entry into al-Mawasi is forbidden to non-residents of the community, unless they have a special IDF permit. The checkpoint is open only eight hours a day, and only individuals who received a number and magnetic card from the army may pass through. Males under forty years old are absolutely forbidden to enter the area. Individuals wanting to cross have to wait in long lines and undergo strict checks by the soldiers. At times, the checkpoint is closed for prolonged periods without warning. In such

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<sup>26</sup> See B’Tselem reports *Bureaucratic Harassment; Abuse and Maltreatment During Operational Activities in the West Bank in the First Year of the Declaration of Principles* (September 1994); *Collaborators in the Occupied Territories during the Intifada – Human Rights Abuses and Violations* (January 1994).

<sup>27</sup> See B’Tselem *Al-Mawasi, Gaza Strip: Impossible Life in an Isolated Enclave* (March 2003).

cases, residents who left homes in the morning are unable to return home and must stay in Khan Yunis and rely of the kindness of others until the checkpoint is reopened.

### **Infringement of the right to work and to an adequate standard of living**

*The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.*

International Covenant on Economic, Social and Cultural Rights, Article 6 (1)

*The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.*

International Covenant on Economic, Social and Cultural Rights, Article 11 (1)

The planned barrier is expected to separate tens of thousands of Palestinians from their workplace. Even if the barrier does not create total isolation, it will clearly reduce the ability of many residents to work and earn sufficient income to ensure a minimum standard of living.

The farmland of residents of the enclaves created west of the barrier will remain for the most part also west of the barrier. Although the barrier is not expected to harm their access to these lands, the ability of these farmers to market their produce elsewhere in the West Bank will be affected. Even assuming that the agricultural crossings will be operational, the crossing process will likely increase transportation costs and reduce profits (see the discussion on 'Azzun 'Atma below). Farm production will likely be harmed due to the irregular supply of inputs and materials (such as, seeds, fertilizer, machines, and spare parts), because Palestinians from other areas of the West Bank will generally not be allowed to enter these enclaves.

Thousands of Palestinians living east of the barrier will be separated from their land on the western side. For example, residents of Qaffin, which lies north of Tulkarm, will be separated from 6,000 dunam of land [1,500 acres], which constitute sixty percent of their farmland. The land contains thousands of productive olive trees. Residents of a-Ras and Kafr Sur, south of Tulkarm, will be separated from seventy-five percent and fifty percent of their farmland respectively, on which olive trees and field crops are planted.

Farming is a major source of income in the communities that will be affected by the barrier. The areas involved are among the most productive in the West Bank and have a bountiful supply of fresh water. Harm to the farming sector in this area will have grave consequence on the local population. The Palestinian Central Bureau of Statistics does not publish data on individual communities, so it is difficult to quantify the importance of farming on the livelihoods of the residents of these communities. However, an indication of its importance

can be attained by comparing the data relating to the three districts in which these communities lie – Jenin, Tulkarm, and Qalqiliya – with the rest of the West Bank.

The percentage of land used for agriculture in these districts is the highest in the West Bank: fifty-nine percent in Tulkarm, fifty percent in Jenin, and forty-six percent in Qalqiliya, compared to an average of 24.5% in the West Bank. The amount of farmland under cultivation in the three districts is 950 square meters per person, compared with 625 square meters per person in the whole of the West Bank. Regarding productivity, the farmland in the three districts averages \$442 a dunam a year, compared with \$350 per dunam in the West Bank.<sup>28</sup>

Regarding employment, an average of twenty-five percent of the workforce in these three districts was employed in farming in 2001, compared with twelve percent in the West Bank as a whole. Although the three districts comprise twenty-five percent of the population of the West Bank, they supply forty-three percent of jobs in the agricultural sector.<sup>29</sup> If the Gaza Strip is included, the three districts comprise fifteen percent of the population of the Occupied Territories, but contributed twenty-eight percent of the value of the agricultural production in the Occupied Territories during the period 2000-2001.<sup>30</sup>

The restrictions on movement are also expected to harm people who work in sectors other than farming, whose workplace lies outside their community. The barrier will turn Tulkarm and Qalqiliya into enclaves that are detached from nearby villages that relied on these centers for services on a daily basis. Most of those affected will be residents who work for the Palestinian Authority in the district offices and live in outlying villages, or, conversely, live in Tulkarm or Qalqiliya and work in one of the villages. Even if the Palestinian Authority takes their situation into account and continues to pay their salaries, as it has done in such cases since the beginning of the al-Aqsa intifada, their right to work, as distinct from their right to an adequate standard of living, is liable to be severely impaired.

This problem is especially grave in villages near the Jerusalem envelope (if a contiguous barrier is indeed constructed) because, unlike in the north, most of the residents are not engaged in farming and are dependent, directly or indirectly, on work in East Jerusalem.

The harm to the ability of tens of thousands of Palestinians to work and earn a living is especially grave in light of the increased economic hardship suffered by Palestinians since the beginning of the al-Aqsa intifada. In the first half of 2002, real unemployment (which includes individuals who have given up looking for work) in the West Bank reached fifty

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<sup>28</sup> These figures relate to 2000 and are taken from the Palestinian Central Bureau of Statistics, *Land Use Statistics in the Palestinian Territories* ([www.pcbs.org](http://www.pcbs.org)).

<sup>29</sup> PCBS, *Labor Force Survey Annual Report for 2001*.

<sup>30</sup> PCBS, *Agricultural Statistics, 2000/2001*.

percent of the workforce. In recent years, unemployment in the three northern districts (Jenin, Tulkarm, Qalqiliya) has been significantly higher than the average in the entire West Bank. The percentage of people living in poverty (defined as per capita consumption of less than two dollars a day) – reached fifty-five percent.<sup>31</sup> Reduction of sources of employment and income following erection of the barrier is liable to force additional thousands of Palestinian families into poverty.

### **Other detrimental effects on living conditions**

*The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.*

International Covenant on Economic, Social and Cultural Rights, Article 12 (1)

*The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms.*

International Covenant on Economic, Social and Cultural Rights, Article 13 (1)

The separation barrier is liable to harm, to one degree or another, the living conditions of residents in nearby communities. The residents most likely to be affected are those living in enclaves west of the barrier. However, many residents of villages on the eastern side who depend on services from one of the three main cities (Tulkarm, Qalqiliya, and East Jerusalem), which will be isolated from the rest of the West Bank, will also be affected.

Particularly problematic is the anticipated decline in the level of health services provided to the residents. Nine of the villages that will become enclaves west of the barrier do not have a medical clinic (Umm a-Rihan, Khirbat ‘Abdallah al-Yunis, Khirbat a-Sheikh Sa’ad, Khirbat Dhaher al-Malah, Nazlat Abu Nar, Khirbat Jubara, Ras a-Tira, Khirbat a-Dab’a, and Arab a-Ramadeen al-Janubi). Other communities provide basic and preventive medical care, but rely on the medical services available in hospitals in the three cities.<sup>32</sup>

The barrier will also have a detrimental effect on education. Many teachers who live in Tulkarm and Qalqiliya teach in schools in neighboring villages and are liable to face problems in reaching their schools. Since the second year of the al-Aqsa intifada, the Palestinian Ministry of Education has assigned teachers to work in schools according to their place of residence, and the ministry may do the same after the barrier is erected. In addition, the restrictions on movement affect the students at the colleges and universities in East Jerusalem, Qalqiliya, and Tulkarm, which serve the entire region.

<sup>31</sup> UNSCO, *The Impact of Closure and Other Mobility Restriction on Palestinian Productive Activities*, 1 January – 30 June 2002.

<sup>32</sup> The information is based on the “Map of Health Services” of the Palestinian Ministry of Health ([www.healthinform.org](http://www.healthinform.org)).



The difficulties in moving from one place to another that will result from the barrier are also expected to impair the social and family life of hundreds of thousands of residents. In an attempt to justify the creation of one of the enclaves west of the barrier, the state argued before the High Court of Justice that it is prevented from setting the route along the Green Line between Nazlat 'Issa, which lies in the West Bank, and Baqa al-Gharbiya, which is situated within the Green Line, because it would "break the social fabric" between the two communities.<sup>33</sup> Without going into the specific details of the case before the court, the state's declaration indicates that it is well aware of the harm that the barrier will cause to the relations between the residents living on opposite sides of the barrier.

### **Infringement of the right to property**

*Everyone has the right to own property alone as well as in association with others.*

Universal Declaration of Human Rights, Article 17

*Private property cannot be confiscated.*

Regulations Attached to the Hague Convention Respecting the  
Laws and Customs of War on Land of 1907, Article 46, Paragraph 2

To erect the barrier, Israel took control of extensive areas along the planned route. Insofar as the average width of the barrier is sixty meters, the IDF took control of 11,400 dunam to erect the first 190 kilometers of the barrier. Most of this land is under private Palestinian ownership and contains orchards, field crops, and greenhouses.

The legal tool chosen in order to take control of the land is through "requisition for military needs" orders. Most of these orders are in effect until the end of 2005, but they may legally be extended indefinitely.<sup>34</sup> Residents who claim ownership of seized land can demand compensation from the IDF for the use of their property. Most of the landowners whose land has been taken have refused to accept any compensation, at the recommendation of the Palestinian Authority, so as not to legitimize Israel's actions in any way.

After receiving the seizure order, the residents may appeal to the legal advisor for Judea and Samaria. If the appeal is rejected, the landowner may petition the High Court of Justice. To date, Palestinians have filed dozens of such appeals and petitions to the High Court of Justice. All of them have been rejected.

By law, the seizure orders do not transfer ownership of the land to Israel. However, the indefinite duration of the requisition, and the vast amount of resources being invested by

<sup>33</sup> Response of the state in *al-Hadi*, sec. 31.

<sup>34</sup> Regarding land within the jurisdiction of Jerusalem, the control is obtained by the Emergency Requisition of Land Law, 5710 – 1949. Although there are several differences between the procedures within the area of Jerusalem and the procedures applying to the rest of the West Bank, the differences are not meaningful.

Israel in erecting the barrier, leads to the conclusion that the action is a disguised expropriation of property. In the past, Israel has used “requisition for military needs” orders as a means to take control of Palestinian land to establish settlements. These lands were never returned to their owners. It is now clear that Israel did not intend to seize the land for a temporary period, but to expropriate it permanently.<sup>35</sup>

In addition to the absolute violation of the property rights of the landowners along whose property the barrier will be erected, the property rights of owners of tens of thousands of dunam located west of the barrier will be harmed to some degree, depending on the severity of the restrictions on their movement. Because of the difficulty in reaching their land, owners may cease or reduce cultivation of the land. In such instances, the infringement of their right to property would become absolute for the following reason: since the beginning of the 1980s, Israel has declared land in the West Bank “state land” if it is not registered in the lands registry and is not cultivated for three consecutive years; in such an instance, Israel can take the land from its owner.<sup>36</sup> The fact that most of the land lying west of the barrier is not registered increases the concern that Israel will take control of the land at some time in the future.

The infringement of the right to property committed by Israel is not restricted to denying the owners possession of the land. After taking control, the contractors level the land by uprooting the crops, including field crops, greenhouses, and, primarily, olive trees. The State Attorney’s Office informed the High Court that, “Regarding trees, the contractor [doing the infrastructure work] is directed to move objects from one place to another where feasible (this is routinely done with olive trees). This requires preparation work, such as pruning the tree before moving it. The tree is then moved to a location that is agreed-upon – to the extent possible – with the landowner.”<sup>37</sup> In reality, however, the matter is often handled very differently.

B’Tselem took testimonies from several Palestinian residents of Qaffin and Far’un whose land containing olive groves was taken to erect the barrier.<sup>38</sup> According to the testimonies, the contractors have not contacted the residents and the soldiers guarding the work site have not allowed the residents access to take away the trees that were cut down. In some cases, Palestinians went onto their land after the soldiers and laborers left and found that their cut-down olive trees had been stolen.

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<sup>35</sup> For extensive discussion on this subject, see B’Tselem: *Land Grab: Israel’s Settlement Policy in the West Bank*, May 2002.

<sup>36</sup> See *Land Grab*, pp. 51-58.

<sup>37</sup> Response of the state in *al-Hadi*, sec. 27.

<sup>38</sup> The testimonies were given to Najib Abu Rokaya during February 2003.

The theft of olive trees by the contractors doing the infrastructure work was also documented by *Yediot Aharonot*.<sup>39</sup> In researching the article, the journalists contacted one of the contractors and said they were interested in buying trees that had been cut down. The company's CEO offered the journalists "as many trees as they wanted" at "around NIS 1,000 a tree."

The journalists met with the work supervisor and agreed on purchase of the trees. The article also indicated that the relevant Civil Administration official is aware of, and cooperates in, the sale of the trees. The official provided the journalists with the permit needed to bring the trees into Israel.

In response to B'Tselem's query on the Ministry of Defense's policy on the theft of olive trees, the ministry's spokesperson replied on 2 January 2003, that the "Ministry of Defense is investigating the matter, but the investigation has not yet been completed."

#### **Case study: 'Azzun 'Atma**

'Azzun 'Atma is a Palestinian village situated ten kilometers southeast of Qalqiliya.<sup>40</sup> The village has 1,500 residents. Adjacent to the village to the east lies the settlement Sha'are-Tiqwa, which stretches for a distance of 2.5 kilometers and severs the territorial contiguity between 'Azzun 'Atma and two neighboring villages, Beit Amin and Sanniriya. With the decision to place Sha'are Tiqwa west of the barrier, 'Azzun 'Atma will be surrounded by the barrier on all sides and become an enclave. Furthermore, some of the houses in the village, in which seventy people reside, are situated south of Road No. 505 (the old Trans-Israel road). Because the defense establishment does not want to impair the main traffic artery to Israel used by settlers in Sha'are Tiqwa, the barrier will pass north of the road, thereby severing those residents from the other residents of the village.

Some of the residents of 'Azzun 'Atma previously worked in Israel, but following the outbreak of the current intifada, most of the residents make a living from farming. 'Azzun 'Atma is known as one of the largest vegetable producers in the West Bank. Ten trucks of produce leave the village daily for market, one to Israel and nine to markets in the West Bank.

West of the village lie more than 4,000 dunam of farmland owned by residents of 'Azzun 'Atma, Beit Amin and Sanniriya. A few hundred dunam of this land (south of Road No. 505) will remain west of the barrier. Villagers from 'Azzun 'Atma own about 1,000 dunam of land east of the village that will be located east of the barrier. Most of these lands contain greenhouses in which the residents grow vegetables (including tomatoes, cucumbers,

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<sup>39</sup> Dani Abbaba, Meron Rappoport, and Oron Meiri, "Olive Booty," *Yediot Aharonot*, *Seven Days* [Weekend Supplement], 22 November 2002.

<sup>40</sup> The information in this section was gathered during a visit to the village and nearby villages on 3 February 2003.

cabbage, cauliflower, eggplant, and beans). The separation barrier is liable to severely hamper the ability of the residents of these three villages to work their land and market their produce in the West Bank.

The village's two schools will also likely be harmed as a result of the barrier. In the elementary school, which has 325 pupils, only two of the eighteen teachers are residents of the village. The other teachers reside in nearby villages and in Qalqiliya. In the other school, which is a middle and high school, there are 250 pupils, half of whom are from Beit Amin. These pupils will have to cross the barrier daily to reach school. Of the sixteen teachers in the school, only three live in the village. The others live in villages in the area.<sup>41</sup>

'Azzun 'Atma has a medical clinic operated by the Palestinian Authority that provides basic medical treatment.<sup>42</sup> The clinic's staff is comprised of a nurse who comes from Qalqiliya three times a week, and a physician who comes from Habla once a week. The clinic also serves residents of Beit Amin, 'Izbat Salman, al Mudawwar, and 'Izbat Jalud, villages in which no medical treatment is available and which will remain on the other side of the barrier. For medical services other than the few provided by the clinic, residents of 'Azzun 'Atma rely on the hospital in Qalqiliya. Since the outbreak of the intifada, access to Qalqiliya has been problematic, so residents also use hospitals in Nablus.

Once the barrier is erected, Qalqiliya will become an enclave, which will make movement between 'Azzun 'Atma and Qalqiliya particularly difficult. Palestinians wanting to travel from 'Azzun 'Atma to Qalqiliya and vice versa will have to cross the barrier four times, twice in each direction.

### **Case study: Kafr 'Aqeb**

Kafr 'Aqeb is a Palestinian community located north of the Atarot airport, which lies in North Jerusalem.<sup>43</sup> The municipal border of Jerusalem that was set following annexation of West Bank land in 1967 crosses between houses in the community. As a result, part of Kafr 'Aqeb lies within Jerusalem's area of jurisdiction. We shall discuss the effects of the barrier on the

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<sup>41</sup> For more information on this school, see the frame on demolition of houses.

<sup>42</sup> The Palestinian Authority's Ministry of Health classifies this clinic as Level 2, meaning it provides mother and child care, immunizations, and general medical treatment, and takes blood for testing ([www.healthinform.org](http://www.healthinform.org)).

<sup>43</sup> Some of the information on Kafr 'Aqeb presented in this section was gathered during a visit by B'Tselem to the village on 24 January 24, 2003. Details were also provided by a member of the village committee, Samih Abu Ramila.

Jerusalem part of the community. According to the *Jerusalem Statistical Yearbook*, Kafr 'Aqeb had 10,500 residents at the end of 2000.<sup>44</sup>

The residents of Kafr 'Aqeb, like other residents of East Jerusalem, hold the status of permanent resident in Israel and carry Israeli identity cards. They pay property taxes to the Jerusalem Municipality and other taxes (such as income tax, V.A.T., and health insurance), but receive almost no services from the public authorities. The village has no welfare services, no health-fund clinic and mail is not delivered to the homes. Only the main street has lights. The houses are not connected to the municipal water system, but rather are connected to the Ramallah water system, which is unable to supply water on a daily basis.

In August 2002, the Cabinet approved Stage 1 of the barrier, which also included the northern section of the Jerusalem envelope. The route passes south of Kafr 'Aqeb, several meters from the last houses in the village, and stretches from the Ofer army base, west of the village, to the Qalandiya checkpoint on the east, for a distance of 3.8 kilometers. Unlike the barrier in the northern section of the West Bank, the barrier in this area will range from twenty-five to sixty meters across. According to the State Attorney's Office's statement to the High Court of Justice, Israel plans to erect a depth barrier between Kafr 'Aqeb and Ramallah, but B'Tselem does not have information on the precise route.<sup>45</sup> The main barrier, along the route decided by the Cabinet, is liable to cause grave violations of the human rights of the village's residents.

The most significant violation stems from the planned severance of the area from the other parts of Jerusalem. Because of their status as permanent residents of Israel, the residents of Kafr 'Aqeb are not subject to the restrictions on movement imposed on residents of the Occupied Territories. They can move about within Israel and cross through checkpoints. Regarding this point, the State Attorney's Office stated, "It should be understood that the Jerusalem envelope is solely a security barrier, and it does not alter the status, rights, and/or obligations as they currently exist."<sup>46</sup> The State Attorney's Office added that, "The local population will be issued special permits to enable them free movement to and from Jerusalem, subject to security arrangements." However, despite the state's promises, the residents' experience over the past two years regarding freedom of movement raises major concern that the state's promises will not be kept.

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<sup>44</sup> *Jerusalem Statistical Yearbook*, 2002, Table C/13. The village committee estimates the current population at 15,000.

<sup>45</sup> In its response, the State Attorney's Office stated that, "An additional barrier, referred to as the depth barrier, is planned in the area from Ofer Camp to Pesagot." See Comm. App./2597, *Kafr 'Aqeb Development Committee et al. v. Ministry of Defense et al.* (hereafter: *Kafr 'Aqeb Development Committee*), response of the state, sec. 33/c.

<sup>46</sup> *Ibid*, sec. 43.

The Qalandiya checkpoint is located south of the village, three kilometers inside Jerusalem's jurisdictional area, and residents have to cross it every time they want to enter the city or return home. The vast majority of its residents work in other areas of Jerusalem and have to cross the checkpoint to reach their workplace. Residents of Kafr 'Aqeb also go into Jerusalem to receive medical treatment or other services.<sup>47</sup> The existence of the checkpoint delays, and sometimes prevents, the passage of residents of Kafr 'Aqeb to and from Jerusalem. Whenever the IDF imposes a hermetic closure, whether because of a specific warning of a planned attack against Israelis, an IDF invasion into Ramallah, or Knesset elections, the checkpoint is closed, making it impossible for residents to reach other parts of Jerusalem.

When the checkpoint is not closed, it is open from 6:00 A.M. to 6:00 P.M. Recently, it has remained open until 9:00 P.M. When it closes, residents of Kafr 'Aqeb are cut off from Jerusalem, except in cases of emergency. Shortly before the opening and closing of the checkpoint, long lines of pedestrians form and the wait is an hour or more. Residents in vehicles have an even longer wait because the checkpoint lies on the main road north to Ramallah, which is used by dozens of trucks daily. Residents of Kafr 'Aqeb complain that the body checks are, at times, excessive and degrading.

After crossing the Qalandiya checkpoint, the residents of Kafr 'Aqeb then have to cross the a-Ram checkpoint, which is located on the main road in Beit Hanina. This checkpoint remains open even when a comprehensive closure is imposed on the Occupied Territories, but the residents have to wait in long lines before they can cross. Recently, following the construction of Road No. 45 (North Begin Road), the residents have an alternative to crossing the a-Ram checkpoint. Along this road, too, there is a checkpoint that delays entry into the city.

Due to the difficulties in crossing the checkpoint, many of the village's residents who worked in Jerusalem were fired because they did not show up for work or were frequently late. The few merchants in the village have suffered because of the decreased demand resulting from the poor economic condition and the irregular delivery of merchandise.

Erection of the barrier south of the village will almost certainly make the current situation permanent or even make the situation worse. Residents are now required to show an identity card when they reach the checkpoint, but when the barrier is in place, they will have to receive a "special permit" to enable them to cross into Jerusalem.

Residents of the village who decide to move to another location in the Occupied Territories to live or work due to the problems resulting from the barrier, risk losing their status as

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<sup>47</sup> Village residents, represented by Daniel Zeidman, petitioned the High Court of Justice to change the procedures for crossing the Qalandiya checkpoint. The petition is pending. HCJ/1745, *Community Administration for the Development of Beit Hanina et al. v. Commander of Central Command*.

permanent residents, including the right to return to live in the village. This is because of Israel's policy, which was applied most extensively in 1996-1999, to revoke the status of residents of East Jerusalem who, according to Israeli officials, moved their "center of life" to an area outside the city.<sup>48</sup>

Further harm to the residents of Kafr 'Aqeb results from Israel's taking control of land to build the barrier and from the separation between the residents and their fields. In this regard, the situation of Kafr 'Aqeb is similar to that of villages in the northern West Bank. Given that the average width of the barrier in the Kafr 'Aqeb area is forty meters, the Ministry of Defense took control of 150 dunam. Most of the area is privately owned by forty-six families living in the village, and some by residents of the nearby village Rafat. The barrier will separate residents from 105 parcels of land located southwest of the barrier that are owned by eighty-five families. About half of these lands are cultivated and used for growing vegetables. For some of the families, marketing their produce is their sole source of income.

In addition, according to the opinion of the NGO Bimkom, the route chosen will impair the urban development of the village, as appears from two outline plans that the Jerusalem Municipality is promoting for the village.<sup>49</sup> The principal land reserves of Kafr 'Aqeb for building lie southwest of the village, which will remain on the other side of the barrier. As a result, the possibility of development will be diminished and the community will not be able to meet the residents' future housing, commercial, and social needs.

The present route may also endanger the lives of the residents living near the barrier's route. The military patrols along the patrol road are liable to be a target of attack by armed Palestinians, who will use residents' homes, with or without consent, to fire at IDF patrols. Occupants of the houses will pay the price if the IDF returns fire, and their homes are likely to be destroyed.<sup>50</sup>

In one of hearings on the appeal filed by residents of Kafr 'Aqeb against seizure of their land, Colonel Dani Tirzah, who is in charge of planning the route of the barrier for the Seam Area Administration, was asked whether he thought construction of the barrier so close to houses risks the lives of the residents, and if this consideration had been taken into account. He responded:

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<sup>48</sup> B'Tselem and HaMoked: Center for the Defense of the Individual, *The Silent Deportation – Revocation of Residency Status of Palestinians in East Jerusalem* (April 1997).

<sup>49</sup> Bimkom, *Opinion on the Plan Regarding the Separation Barrier in Kafr 'Aqeb* (March 2003). The non-governmental organization Bimkom – Planners for Human Rights was founded in 1999 by planners, geographers, architects, and human rights activists to promote the rights of disadvantaged populations in Israel and the Occupied Territories in the area of planning.

<sup>50</sup> In early January, the IDF demolished a house in Kafr 'Aqeb from which, the army contends, Palestinians fired at soldiers at the Qalandiya checkpoint.

The situation is similar to what occurred at Kibbutz Metzger. Terror strikes everywhere, regardless of whether it exists in a Palestinian vicinity... If a terrorist fires from your office, don't expect that they won't fire back at him... The consideration of risk to human life is taken in the context of the discussions taking place now regarding the patrols that will operate along the fence; that is where these considerations should be taken into account, rather than the consideration about the route.<sup>51</sup>

Another risk to the lives of Palestinians living near the barrier's route stems from the proximity of the IDF patrols to houses in the village. The open-fire regulations allow lethal fire also in cases in which soldiers' lives are not in jeopardy. Since the beginning of the al-Aqsa intifada, hundreds of innocent Palestinians have been killed or wounded by IDF gunfire.<sup>52</sup> The movement of civilians near IDF patrols along the barrier, primarily at night, is liable to lead to additional injuries to innocent people. The degree of this danger largely depends on the open-fire directives given to the soldiers.

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<sup>51</sup> Minutes of the session of the Tel-Aviv Magistrate's Court, 20 November 2002, *Kafr 'Aqeb Development Committee*.

<sup>52</sup> See B'Tselem, *Trigger Happy: Unjustified Shooting and the Open-Fire Regulations during the al-Aqsa Intifada*, (May 2002).



### **Demolition of houses in the enclaves**

With the start of construction of the barrier, the Civil Administration began to issue demolition orders and demolish homes in Palestinian communities near the barrier's route. The official pretext for this policy is the lack of a building permit. The Civil Administration has issued about 280 demolition orders in these communities.

Most of the orders relate to buildings in enclaves west of the barrier's route. In Nazlat 'Issa (2,300 residents), 170 demolition orders (eleven residential dwellings and the remainder commercial buildings) were issued. On 21 January 2003, the Civil Administration demolished sixty structures in the market near the Arab-Israeli village Baqa a-Gharbiya. In Bart'a a-Sharqiya (3,200 residents), in Jenin District, the Civil Administration issued seventy-two demolition orders in recent months (twelve residential dwellings, fifty-six shops, three sewing workshops, and one other workshop). In December 2002, residents in Azzun 'Atma (1,500 residents) received twenty demolition orders, eighteen of them residential dwellings and two structures that served as bathrooms for the village's high school. In Umm a-Rihan and Dhaher al-Malah, Jenin District (total of 600 residents), nine demolition orders were issued (eight residential dwellings and a school).

Orders were also received in communities that are scheduled to become enclaves east of the barrier. In 'Izbat Jalud, Qalqiliya District (100 residents), demolition orders were issued for three structures (two residential dwellings and one mosque). In a-Taybeh, Jenin District (2,100), orders were issued to demolish three residential dwellings. One of these dwellings was recently demolished.

The ostensibly illegal building throughout the West Bank results from Israel's age-old policy of refusing to issue Palestinians building permits outside the built-up area of the towns and villages. The refusal is based on the outdated outline plans from the time of the British Mandate, which classified most of the territory of the West Bank as agricultural areas. The policy has remained in effect as regards Area C (which constitutes about sixty percent of the West Bank) even after the Oslo Accords. To meet the population-growth needs and to earn a living, the residents in certain areas have no choice but to build without a permit.<sup>53</sup> The current wave of demolition orders constitutes another form of pressure and hardship that the Israeli authorities currently impose, and will continue to impose on Palestinians living near the barrier's route.

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<sup>53</sup> See B'Tselem, *Demolishing Peace: Israel's Policy of Mass Demolition of Palestinian Houses in the West Bank* (September 1997).

## **Infringement of human rights – violation of international law**

At the beginning of the al-Aqsa intifada, Israel defined the situation in the Occupied Territories as “an armed conflict short of war,” and that the relevant provisions of international law are thus the laws of warfare.<sup>54</sup> The Supreme Court recently sanctioned this position.<sup>55</sup> Israel uses this position to justify the violations of human rights of Palestinians resulting from building the separation barrier, as it has since the outbreak of the current intifada.

Many organizations and jurists in Israel and abroad, including B’Tselem, do not accept Israel’s categorization of the present situation. Even after transfer of part of the West Bank and Gaza Strip to the Palestinian Authority, Israel remains the occupier in these areas. The combat actions now taking place in the Occupied Territories do not justify the sweeping definition of events there as war, and do not allow Israel to ignore its duties as the occupier. These duties require Israel to protect the civilian population and ensure their safety and welfare. The International Committee of the Red Cross, which is charged with implementation of the Geneva Conventions, held that, “even in the present violence,” Israel remains the occupying power in the Occupied Territories and therefore must comply with the provisions of the Fourth Geneva Convention and other rules relating to occupation.<sup>56</sup>

The application of the laws of occupation do not nullify international human rights law, which remain binding on Israel in its actions in the Occupied Territories. The UN committees in charge of implementing this law have categorically stated that Israel must comply with the provisions of the human rights conventions in all the territories under its control, including the West Bank and the Gaza Strip, and that this obligation applies also in the circumstances that have been created following the outbreak of the al-Aqsa intifada.<sup>57</sup>

International law does not provide absolute protection for all human rights. There are circumstances in which infringement of certain human rights is lawful, whether because the situation is defined as “armed conflict short of war” or as occupation. However, violations of human rights are lawful only where certain conditions are met as laid out in international law.

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<sup>54</sup> Since the beginning of the current intifada, Israel has made this argument before the High Court of Justice and in international forums. The state recently clarified its position at length in its response to the “assassinations” policy. See *Public Committee Against Torture in Israel et al. v. Government of Israel et al.*, Supplemental Response of the State Attorney’s Office, sections 7-58.

<sup>55</sup> HCCJ/7015, 7019/02, *Ajuri v. Commander of IDF Forces in the West Bank et al.*

<sup>56</sup> *Committee of Contracting States of the Fourth Geneva Convention – Statement of the International Committee of the Red Cross*, Geneva, 5 December 2001, sec. 2.

<sup>57</sup> Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel 31 August 2001, E/C/12/1.Add69; Conclusions and Recommendations of the Committee against Torture, Israel, 23.11.01CAT, /C/XXVII/Concl. 5; Concluding Observations of the Committee on the Rights of the Child: Israel, 9.10.02CRC,/C/.Add195.

Thus, even accepting Israel's definition of the situation prevailing in the Occupied Territories, Israel is not entitled to do whatever it wishes and without limitation. Even in war, as harsh as war can be, states are required to act in accordance with international law. For some time, jurists and international courts have rejected the contention that military needs prevail over every other consideration in wartime. All actions must be carried out in accordance with law, and the parties involved in the armed conflict are not free to select any method or means of warfare that comes to mind.<sup>58</sup>

### **The duty to examine alternatives**

The infringement of human rights is not justified if other courses of action are available to achieve the same objective without causing such infringement. This principle is firmly enshrined in international humanitarian law, which deals with war and occupation,<sup>59</sup> in international human rights law,<sup>60</sup> and in decisions of Israel's Supreme Court.<sup>61</sup>

In one of its responses to the High Court of Justice regarding erection of the barrier, the state mentioned that, "This is a process that was taken because there was no option and only after various other measures did not succeed in curbing the wave of terror."<sup>62</sup> However, the state did not describe in that response, or its other statements to the High Court on this matter, those "other measures" and why they failed.

An examination conducted by the State Comptroller indicates that there are at least two means that are suitable alternatives to the separation barrier. The state did not investigate the efficacy of these options, even though they would result in less extensive violations of Palestinian human rights than that caused by the erection of the barrier.

### **Efficacy of checkpoints on the Green Line**

The decision to erect a barrier separating Israel from the West Bank to prevent attacks within Israel is based on the assumption that the perpetrators of the attacks enter Israel through the open areas between the checkpoints and not through the checkpoints, which ostensibly check the people who cross into Israel. According to the State Comptroller's report on the seam area, which was published in July 2002, that assumption is imprecise.

Thirty-two checkpoints exist along the Green Line, through which entry into Israel is possible. Thirty of these checkpoints are run by the IDF, and the Israel Police Force is in

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<sup>58</sup> L.C. Green, *The Contemporary Law of Armed Conflict* (Manchester University Press, 2000) 123.

<sup>59</sup> See, for example, Article 57 (3) of the First Additional Protocol to the Geneva Conventions, of 1977.

<sup>60</sup> On the right to health, see, for example, sec. 29 of General Comment No. 15 of the UN Committee on Economic, Social, and Cultural Rights, 2000.

<sup>61</sup> See, for example, H CJ 6055/95, *Sagy Tsemach et al. v. Minister of Defense et al.*, *Piskei Din* 53 (5) 241.

<sup>62</sup> State's response in *Ajuri*, sec. 58.

charge of the other two. Regarding attacks committed in Israel since the beginning of the current Intifada, the State Comptroller found that, "IDF documents indicate that most of the suicide terrorists and the car bombs crossed the seam area into Israel through the checkpoints, where they underwent faulty and even shoddy checks."<sup>63</sup>

The State Comptroller's report pointed out the significant defects at the checkpoints. The report stated that, "The checkpoints do not have a specific command or a task file from brigade headquarters that classifies the assignments at the checkpoint and coordinates the procedures for its operation," and that the "checkpoints do not have proper equipment and infrastructure to conduct security checks of vehicles, individuals, and merchandise." In his conclusions, the State Comptroller discussed an army document on checkpoints, finding that, "The existing checkpoints in the seam area are not organized to properly check vehicles, freight, and people, and there is an urgent need to improve inspections at checkpoints by having permanent and skilled personnel check vehicles, using technological means, and institutionalizing the crossing points."<sup>64</sup>

The findings of the State Comptroller were published in July 2002, while the government's decision to erect the barrier was reached a month earlier. The decision was not changed following publication of the State Comptroller's findings, and it appears that no meaningful changes were made to address even some of the problems mentioned by the State Comptroller. Rather, the state preferred a more extreme alternative that entails numerous human rights violations. In deciding to choose to erect a barrier, Israel violated its legal duty to implement optional means before adopting a means that will lead to especially grave human rights violations.

Furthermore, erection of the barrier will increase the number of checkpoints between Israel and the West Bank. According to a document that the State Attorney's Office submitted to the High Court, five checkpoints and twenty-six agricultural gates are to be built along the barrier in Stage 1 alone. If the state does not improve the effectiveness of the checkpoints, a paradoxical situation will arise in which the barrier will increase the danger of attacks within Israel. If the defense establishment plans to rectify the flaws at the checkpoints as part of the barrier project, by adding sophisticated inspection mechanisms and skilled personnel, these improvements could be carried out immediately irrespective of the barrier project. The lack of connection between the problem and the proposed solution may be what Prime Minister Ariel

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<sup>63</sup> State Comptroller's report, p. 35.

<sup>64</sup> *Ibid.*, p. 36.

Sharon was alluding to when he said, "The idea [to build the barrier] is populist and intended to serve political objectives."<sup>65</sup>

### **Guarding the seam area**

The State Comptroller also examined IDF deployment along the seam area to prevent Palestinians without permits from entering Israel through the open areas, as the Cabinet ordered in its decision of July 2001. Changes in the manner of deployment, like improvement of the faulty operations at the checkpoints, is an alternative that would cause a lesser degree of human rights violations than a separation barrier.

According to the State Comptroller's report, the IDF formulated a "new concept" for action in the Occupied Territories, which the chief-of-staff approved in January 2002. As a result, the IDF forewent special deployment in the seam area and disbanded the "task command" that was set up in July 2001 to coordinate IDF activity in the seam area. Responsibility for guarding the seam area was divided among the brigade commanders in each sector. The main efforts and means encompassed within the new model were directed to other objectives:

The IDF's new concept [for action] in Judea and Samaria led to shifting the responsibility of most of the forces active in the seam area to the task of guarding roads on which Israeli vehicles travel, on-going security activity near Israeli communities in Judea and Samaria; and thwarting hostile terrorist activity within Judea and Samara, primarily in the Palestinian cities. The IDF forces' operations did not focus on preventing movement of individuals and vehicles from Judea and Samaria into Israel in areas other than the designated crossing points. This trend was reflected in the orders given by the relevant forces in the seam area, and in operational directives of the brigades operating in the area. IDF documents reveal that combat deep inside the territory of the Palestinian Authority is given top priority, and not the seam area...

Implementation of the IDF's new concept in the seam area both directly and indirectly affected the ability to implement the seam area plan. Among these effects were the significant reduction in activity to prevent Palestinians from crossing from Judea and Samaria into Israel; reduction in the IDF presence in unpopulated territories along the seam area; and a decline in coordination and cooperation between IDF forces and the Israel Police Force...

At the time that the audit was conducted, observation posts had not been set up to cover a great part of the seam area. The IDF lacked technological means

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<sup>65</sup> Amit Ben-Aroya, "Sharon to Seam Area Police: The Separation Fence is a Populist Idea," *Ha'aretz*, 12 April 2002.

- 1) *Topography* – According to Israel, “The selection of the topographic route of the barrier was derived from security reasons. The barrier must pass through, to the greatest extent possible, areas from which the surrounding territory can be controlled, in order to prevent harm to forces operating along the route, and to enable the forces to operate observation points that overlook both sides of the fence.”
- 2) *Security area* – “The fear is that the barrier will not prevent every penetration, and that security forces will not be able to arrive in time to thwart the crossing of potential attackers. A geographic security area is necessary to enable the combat forces to chase the terrorists within Judea and Samaria before they are able to cross into Israel and disappear within the population.”
- 3) *Inclusion of as many settlements as possible west of the barrier* - “The fear is that erection of the barrier will channel the attacks to these communities, so it was decided to have the fence pass east of these settlements in order to provide protection for them and for the access roads that reach them.”<sup>68</sup>

At first glance the first two components seem legitimate. However, B’Tselem does not have the tools necessary to determine the degree to which they were factored into the determination regarding the barrier’s route. It is clear that including settlements west of the barrier is not an imperative military need justifying grave violations of human rights. This consideration and other illegitimate considerations (see below) led to selection of a route that severely violates human rights without any justification based on security needs, in violation of international law.

### **Perpetuation of the settlements**

Pursuant to international humanitarian law, the settlements that Israel established in the Occupied Territories are illegal. The Fourth Geneva Convention prohibits an occupying state from transferring a population from its territory into the occupied territory, and the Hague Regulations forbid making permanent changes in the occupied territory. Breaches of these prohibitions resulted in increasing violations of the human rights of the residents in the Occupied Territories, primarily to protect the settlers from Palestinian attacks.<sup>69</sup>

Because the very existence of the settlements violates international law, Israel must dismantle them. Clearly, moving the settlers to areas within Israel will supply them with comparable – if not better – protection than including them west of the barrier. This solution would also prevent additional violations of the Palestinians’ human rights.

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<sup>68</sup> *Ibid.*, sections 18-19.

<sup>69</sup> For discussion on the human rights violations resulting from the location of the settlements, see B’Tselem, *Land Grab*.

to locate infiltrators; IDF patrols in the seam area did not reach relevant points within a short span of time; communication between the IDF and the Israel Police Force were limited, which prevented efficient use of the forces.<sup>66</sup>

These comments indicate many means that jointly could provide a proper response to the entry of Palestinians into Israel through the open areas. These means include a substantial presence of security forces, patrols, observation points, and close coordination between IDF and Police forces. However, the IDF decided not to examine these options because of its new policy, which gave low priority to protecting the seam area. Rather, the IDF preferred to invest in other efforts, such as attacking persons suspected of committing actions against Israel, attacking the infrastructure of the Palestinian Authority and protecting settlers.

The fact that the IDF's new policy creates a shortage of soldiers to guard the seam area does not release Israel from its duty to implement options that violate human rights to a lesser degree. If blocking the entry of Palestinians into Israel is indeed urgent, as the state contends, the urgency should be reflected in allocation of the necessary resources. If, alternatively, the defense establishment does not give this task top priority, the state cannot justify the grave human rights violations it entails.

#### **Determining the route: legitimate considerations versus extraneous considerations**

Even if we accept Israel's contention that the separation barrier is the only way to prevent Palestinians from entering Israel to commit attacks, Israel has the duty to plan the route of the barrier such that it harms human rights to the least extent possible. An examination of the considerations that Israeli policy-makers took into account in determining the route of Stage 1 of the barrier indicates that the human rights component was not a decisive factor. Other reasons, which are entirely unrelated to human rights, were ultimately the basis for determining the route of the barrier.

General declarations about the reasons underlying the determination of the barrier's route are insufficient. Israel must provide justifications separately for each section of the route that results in human rights violations.

In its response to the High Court, Israel stated that, "Operational considerations were the main consideration in selecting the barrier's route."<sup>67</sup> These considerations include three principal components:

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<sup>66</sup> *Ibid.*, pp. 21-22.

<sup>67</sup> State's response in *al-Hadi*, sec. 18.

Even if Israel does not dismantle the settlements, the contention that the only option to defend the settlements is to situate them west of the barrier is baseless. Most of the settlements will remain east of the barrier. With the objective of protecting these settlements, the Ministry of Defense decided to erect “a new protection system that includes an electronic fence to provide warning [of infiltration], and a staffed central-control room,”<sup>70</sup> and to set up “special security areas” surrounding the settlements, where protection would be greater.<sup>71</sup> These same measures can be taken for the settlements that, according to the current plan, will lie west of the barrier. Such action would provide a reasonable solution to the security threat they face and significantly reduce the infringement of the rights of the Palestinians that will occur if the barrier is erected on land within the West Bank.

The existence of these two alternatives, which Israel chose to ignore, raises concern that the real reason for the Cabinet’s decision on the barrier’s route was not to provide maximum protection of the settlers. Rather, the underlying reason was to establish facts on the ground that would perpetuate the existence of settlements and facilitate their future annexation into Israel.

#### **Political-party considerations**

The idea to establish a barrier that runs along the entire “seam area” was met with substantial opposition, in particular from right-wing politicians and settlement officials. Their main argument was that such a barrier would likely soon become the political border between Israel and the Palestinian state to be established. In addition, it was claimed that construction of a barrier of such size on a route that follows the Green Line would be a political achievement for the Palestinians, as it would recognize the Green Line as a relevant starting point for discussions on the border between Israel and the West Bank.<sup>72</sup> In the words of Israel Harel, a *Ha’aretz* columnist and former head of the YESHA Council:

About two months after the IDF restored a significant portion of its deterrence capability in the battles of Operation Defensive Shield, the Israeli government, headed by Ariel Sharon, gave the strategic victory to Arafat. Exactly thirty-five years after the Six Day War, and after two years of a brutal and unceasing

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<sup>70</sup> Alex Fishman and Yuval Karni, “Forty Settlements to be Surrounded by Electronic Fence,” *Ynet*, 9 July 2002.

<sup>71</sup> Amos Harel, “Security areas in settlements will include observation posts and patrols,” *Ha’aretz*, 26 December 2002.

<sup>72</sup> Later, the YESHA Council supported erection of the barrier along a route that would pass east of the present route and include a larger number of settlements west of it. See Nadav Shargai, *Ha’aretz*, 4 February 2003.



war of terror, Israel's government has decided that it is not meeting the feeble pressure of the public – and of past and present senior defense establishment officials – to establish a security separation line, that will essentially coincide with the cease-fire lines of 1949.<sup>73</sup>

In response to these objections and criticism, government ministers, and the Minister of Defense in particular, repeatedly stated that the barrier that would be constructed is purely for security reasons, and in no way constitutes a political border. One of the means that the government apparently uses to convey to opponents of the project that the course is not a political border is by setting the route in a manner that does not coincide with the Green Line.

For example, an article in *Ha'aretz* reported that, “[Minister of Defense] Ben Eliezer instructed the Seam Area Administration that the separation fence will be built on a course that is not to be construed as a political border, but as a barrier intended to increase security.”<sup>74</sup> Minister of Education Limor Livnat stated at a cabinet meeting that one of the “principles that should guide construction of the fence is that it will be a security fence and not be viewed as a political border.”<sup>75</sup> In a document that Minister of the Interior Eli Yishai submitted to the Prime Minister, Yishai suggested that the “fence’s route not coincide with the Green Line, but that it be as far away as possible so that it will indeed be a security, and not a political, separation fence.”<sup>76</sup>

These statements further substantiate the concern that the decision on the placement of the barrier was not determined solely on the basis of purely military-security considerations, but that it was tainted by political considerations. It may be that in several areas, a barrier that runs along the Green Line or even within Israeli territory would be of no less security value than if it ran along the route selected, but such a route was rejected due to the political cost involved.

### **Quality of life of residents of Israel**

The barrier's route on Stage 1, as approved by the Cabinet in August 2002, turns Qalqiliya, Habla, and Ras 'Atiya into enclaves (see map). The route was chosen so that the Alfe Menashe settlement would be west of the barrier. However, this leaves Route No. 55, which joins Alfe Menashe with Israel, east of the barrier. To ensure that residents of the settlement

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<sup>73</sup> “Sharon Grants Victory to Arafat,” *Ha'aretz*, 13 June 2002.

<sup>74</sup> Amnon Barzilai and Zvi Zarhiya, “Work on Erecting the Seam-Line Fence Begins,” *Ha'aretz*, 11 June 2002. (emphasis added)

<sup>75</sup> Diana Bahor, “Separation Fence: All the Objections,” *Ynet*, 4 July 2002. (emphasis added)

<sup>76</sup> Mazal Mualem, “SHAS: Include more Communities West of the Fence,” *Ha'aretz*, 4 July 2002

have access to Israel, the defense establishment decided to build a new road that will link Alfe Menashe to Israel. The road will pass through Matan, a town within Israel.<sup>77</sup>

Residents of Matan (2,500) strongly opposed this route. They contended that it gravely affected their quality of life. Their main concern was that the new road would create traffic congestion in the middle of town and harm some of its green areas. In addition, according to town representatives, the route will connect Habla and Qalqiliya, thus creating a security threat for nearby Israeli communities. To effect a change in the planned route, the residents set up a staff to lead the struggle, which organized demonstrations and conducted guided tours of the area for army and political officials.<sup>78</sup>

The pressure succeeded. The authorities altered the route. Road No. 55 will continue to serve as the traffic artery for Alfe Menashe and nearby settlements (Qarne Shomron, Ma'ale Shomron, and Immanu'el). As a result of this change, Habla and Ras 'Atiya (6,700) will become enclaves isolated from Qalqiliya, where the residents of the two communities receive services. Habla is only two hundred meters from Qalqiliya. After the barrier is constructed, the residents will have to travel twenty kilometers to travel from one to the other, assuming that they are allowed to drive along the road.

In deciding on actions to be taken in occupied territory, the quality of life of Israeli residents is not a relevant consideration under international law. It certainly cannot justify violation of the human rights of thousands of Palestinians.

### **Safeguarding antiquities**

State officials admitted that the desire to protect underground antiquities was taken into account in determining the barrier's route. For example:

- Col. Dani Tirzah, Seam Administration official in charge of planning the route, testified in court that several factors may require changes in the precise location of the barrier, among them "archeological factors."<sup>79</sup>
- Press reports indicate that, following determination of the route, the Seam Area Administration learned about the existence of approximately ten archeological sites under the proposed route. To prevent harm to the antiquities, the Administration took different measures in accordance with the particular features of each site. Changing the barrier's route was one of these measures.<sup>80</sup>

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<sup>77</sup> Mazal Mualem, "The Battle against the Large Qalqiliya," *Ha'aretz*, 27 August 2002.

<sup>78</sup> The staff's actions are documented on the town's Website, [www.matan.muni.il](http://www.matan.muni.il).

<sup>79</sup> Minutes of the hearing of the Tel-Aviv Magistrate's Court, held on 20 November 2002, in *Kafir 'Aqeb Development Committee*.

<sup>80</sup> Mazal Mualem, "Route Restraints cause Movement of Fence based on Past Communities," *Ha'aretz*, 17 October 2003.

- In one of its responses to the High Court, the State Attorney's Office stated that the decision was made to move the barrier's route in an area north of Shweikeh, Tulkarm District, a few kilometers to the east "to protect antiquities."<sup>81</sup>
- Members of Kibbutz Metzger requested that the Ministry of Defense shift the route in the area of the kibbutz so that it runs along the Green Line, and thereby not harm access of residents of Qaffin, a neighboring town, to their fields, which under the original plan would be located west of the barrier. Col. Tirzah visited the area and said he was willing to grant the request. However, a few days later, he informed the kibbutz that the route could not be changed because the area contains antiquities and there was insufficient time to execute the requisite excavations.

As occupier, Israel is required to safeguard cultural and historic sites in the occupied territory. However, this reason does not justify the violation of human rights that would result from moving the route a few more kilometers within the West Bank. This conclusion is strengthened by the fact that the failure to change the route would not destroy the antiquities, but would merely delay construction work on the barrier until completion of the excavation work to protect the antiquities.

#### **Access to religious sites**

The determination of the barrier's route in the southern part of the Jerusalem envelope was part of the Cabinet's decision of August 2002. A month later, the matter was again discussed in the Cabinet following political pressure of ministers from Shas and the National Religious Party and from Jerusalem's mayor who sought, in opposition to the opinion of the minister of defense, to move the route a few hundred meters south, which would *de facto* annex Rachel's tomb into Jerusalem. The Cabinet approved the change.<sup>82</sup>

Rachel's tomb lies at the northern tip of Bethlehem, five hundred meters south of the checkpoint separating Bethlehem from the jurisdictional boundary of Jerusalem (Checkpoint 300). Although Bethlehem is included within Area A according to the Interim Agreement, the area between Rachel's tomb and the checkpoint is defined as Area C and thus remains under complete Israeli control. Rachel's tomb is a sacred site in Judaism and many Jews go there to pray. Since the outbreak of the intifada, the site has frequently been closed to visitors because of Palestinian attacks against Israeli civilians and soldiers stationed at the site.

Along with the route change, it was decided to erect an eight-meter-high wall south of Rachel's tomb that would stretch a few hundred meters to the west. If this is done, thirty-five

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<sup>81</sup> State's response in *al-Hadi*, sec. 30.

<sup>82</sup> Nadav Shargai and others, "De Facto Annexation of Rachel's' Tomb into Jerusalem Approved," *Ha'aretz*, 12 September 2002.

multi-story houses, in which four hundred Palestinians live, and dozens of shops would be left north of the wall, isolating them from Bethlehem. Similar to the case of the residents of the enclaves lying west of the barrier in the northern portion of the West Bank, residents of this Bethlehem neighborhood are not expected to receive Israeli resident status, and they will not be allowed to enter Jerusalem.

Under international law, the entry of Israelis into the Occupied Territories to worship and guaranteeing their freedom of movement are not legitimate considerations in determining Israeli policy in the Occupied Territories. This is true even more so if it results in grave human rights violations against hundreds of local residents.

### **Illegal expropriation of land**

Taking control of Palestinian land to erect the separation barrier is another illegal element involved in constructing the barrier. To justify taking control of their private land, Israel relies on Article 23(g) of the Regulations Attached to the Hague Convention Regarding the Laws and Customs of War on Land of 1907, which appears in Part 2 of the convention under the heading "Hostilities."<sup>83</sup> Reliance on an article from this part of the regulations is based on Israel's perception of the current situation in the Occupied Territories as "armed conflict," as if the occupation had ended. According to Article 23(g), an army is prohibited from seizing or destroying private property unless the action is absolutely necessary for military needs. The state argues that seizure of the land is indeed necessary for that purpose, and that the action is therefore legal.

The State Attorney's Office made sure to mention in its response to the High Court of Justice that Israel is only taking control of this land temporarily. The seizure orders that were issued to enable construction of the barrier indeed stated that they were valid only until the end of 2005. However, the military legislation does not prevent indefinite extension of the orders, and Israel has extended such orders indefinitely in cases of land taken to establish new settlements and bypass roads.

In the state's response to the appeal filed by residents of Kafr 'Aqeb against the taking of their land to build the barrier (see above), the State Attorney's Office admitted that the temporary seizure orders were also used to erect permanent structures and that they may be extended indefinitely:

The state is not prevented from seizing land by means of temporary seizure orders even for the purpose of erecting structures that are not necessarily temporary in nature. By way of illustration: in Judea and Samaria, temporary

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<sup>83</sup> The State's response in *al-Hadi*, sections 46-47.

seizure orders have been used to erect permanent structures of many kinds, such as bypass roads and Israeli communities...

Also within the State of Israel, temporary seizure orders (issued pursuant to the Requisition of Land Arrangement (Emergency Order), 5715 – 1955) were used to establish the Sde Dov airport, which all can agree is a permanent facility. This temporary seizure continued by lawful expropriation of land in accordance with the Lands Ordinance (Acquisition for Public Purpose), of 1943.<sup>84</sup>

The permanent nature of the barrier, together with past experience with Israel's "temporary" seizures of land, leads to the conclusion that "taking control of land" is in fact expropriation. Article 46 of the Hague Regulations, which is located in the part that deals with occupied territory, unequivocally states that, "it is prohibited to expropriate private property," even for military needs.<sup>85</sup> The expropriation of the land is also illegal if we accept Israel's argument that construction of the barrier along the proposed route is the only way to prevent Palestinians from entering Israel to commit attacks.

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<sup>84</sup> State's response in *Kafr 'Aqeb Development Committee*.

<sup>85</sup> On this point, Justice Aharon Barak held that, despite the lack of an explicit provision in the Hague Convention, the prohibition on expropriation of property applies only to land expropriated for military purposes and not when it is done to meet needs of the local population and in accordance with local law (see HCJ 393/82, *Jam'iyyat Iskan Al-Mualiman v. Commander of IDF Forces in Judea and Samaria*, *Piskei Din* 37 (4) 785.

## **Conclusions**

The public debate taking place in Israel today on the separation barrier focuses primarily on the delays in the barrier's construction and the defense establishment's faulty planning for its construction. The implications of the project on the Palestinian population and the grave harm they will suffer as a result of the barrier are ignored.

Most of the violations of Palestinian rights have not yet occurred, so it is not possible at this time to determine the magnitude of the harm. However, it is clear that erection of the barrier will increase the fragmentation of the West Bank that has resulted from Israel's policy in the Occupied Territories since the beginning of the current Intifada. For the past two and a half years, the IDF has prevented almost all movement of Palestinians in the West Bank. To accomplish this, the IDF has used prolonged curfews, staffed checkpoints, concrete blocks, dirt piles, and trenches. This policy has greatly disrupted every aspect of life of the local population – the health and education systems have difficulty operating, the economy has never been worse, and social and family relations have been severed.

Erection of Stage 1 of the barrier within the West Bank will increase these disruptions and cause further harm to more than 200,000 Palestinians. The barrier will isolate Palestinian communities from other areas in the West Bank and turn them into enclaves between the barrier and the Green Line. Other communities will become enclaves east of the barrier, some due to the winding route of the barrier and some because they will be imprisoned between it and the secondary barrier that will be erected east of them. Some residents will become detached from their farmland that remains west of the barrier. The restrictions on movement of the residents will violate their right to work and earn a living, and families are liable to fall into poverty. The barrier will also lead to the violations of other rights: the right to medical treatment, the right to education, and the ability of the population to carry on with their normal lives, including maintaining a family and social life.

Israel, as the occupying force, is obliged to safeguard the human rights of the Palestinians under its control. Israel's duty to protect the life of its citizens does not release it from its obligation to protect the Palestinians' human rights. In erecting the separation barrier, Israel completely disregards this obligation, and in doing so breaches international law.

First, erecting the barrier to prevent attacks in Israel is the most extreme solution and causes the most severe harm to the Palestinian residents. Israel preferred this solution to alternative methods that would cause a lesser degree of harm. Although most of the Palestinians who perpetrated attacks in Israel entered the country through the checkpoints situated along the Green Line, and not through the open areas between the checkpoints, Israel decided to erect the barrier before it solved the problems that were found in the operation of checkpoints. Also, the IDF did not take any meaningful action in the seam area that could prevent Palestinians from entering Israel, and gave low priority to this objective as compared with other objectives, such as attacking institutions of the Palestinian Authority and protecting the settlements.

Second, even if we accept Israel's claim that it has no choice and must erect a separation barrier, Israel is required to select the route that results in the fewest human rights violations possible. It has not done this. Rather, it has selected a route that, in at least some cases, ignores human rights considerations and is based on extraneous considerations, such as perpetuation of some of the settlements, the desire to transmit a political message that erection of the barrier is not a permanent political border, the quality of life of Israeli residents, preservation of antiquities, and access of Israeli citizens to a religious site. These considerations led to the choice of a route that gravely violates human rights, without any security justification whatsoever.

Third, the decision to erect a permanent barrier in the West Bank at a cost of hundreds of millions of shekels breaches the Hague Convention, which prohibits expropriation of land in occupied territory.

The overall features of the separation-barrier project give the impression that Israel is once again relying on security arguments to establish, unilaterally, facts on the ground that will affect any future arrangement between Israel and the Palestinians. In the past, Israel used "imperative military needs" to justify expropriation of land to establish settlements and argued that the action was temporary. The settlements have for some time been facts on the ground. In the peace talks with the Palestinian, the settlements are listed as one of the issues to be discussed in negotiating the final-status agreement. In the Camp David talks that took place in July 2000, Israel's position was that some of the settlements established in the West Bank would be annexed into Israel.

It is reasonable to assume that, as in the case of the settlements, the separation barrier will become a permanent fact to support Israel's future claim to annex territories. In any event, the geographic reality being created by the erection of the barrier will impair any political solution based on recognition of the right of the Palestinian people to self-determination and the establishment of an independent and viable Palestinian state.

For these reasons, B'Tselem urges Israel's government to:

- Nullify the government and Cabinet decisions regarding the separation barrier and immediately stop all work on the barrier, including the taking of land;
- Reopen discussions on ways to cope with Palestinian attacks within Israel, and examine alternatives to erecting the separation barrier. Every decision must take into account the limitations resulting from international law and Israel's duty to respect the human rights of residents in areas under its control;
- If it is decided that there is no choice other than to build the barrier, the government must set the route to run along the Green Line or, alternatively, within Israel. Deviations from this principle should be allowed only in exceptional cases, based on only two considerations: benefit to the local Palestinian population and meeting Israel's military needs in the narrow sense of the term. In any event, any such deviation must be examined while taking into account its effects on the human rights of the residents residing near the barrier's route.





# ANNEX 14

Ms. Catherine Bertini, Personal Humanitarian Envoy of the  
Secretary-General, Mission Report, 11-19 August 2002,  
[http://domino.un.org/bertini\\_rpt.htm](http://domino.un.org/bertini_rpt.htm)

**Ms. Catherine Bertini,  
Personal Humanitarian Envoy of the Secretary-General**

**Mission Report**

**11 – 19 August 2002**

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## **A. INTRODUCTION**

1. In response to a request from Prime Minister Sharon of Israel to the Secretary-General to assist in addressing humanitarian needs arising from the ongoing Israeli-Palestinian conflict, as well as concerns expressed by the Quartet about the mounting humanitarian crisis, the Secretary-General appointed Ms. Catherine Bertini as his Personal Humanitarian Envoy on 7 August 2002. Ms. Bertini was asked to travel to the region to assess the nature and scale of the humanitarian crisis, to review humanitarian needs in light of recent developments, to identify what needs to be done to respond to the humanitarian situation and prevent its further deterioration, and to clarify the respective responsibilities of all actors with regard to humanitarian needs. She was further tasked to report on her observations and recommendations to the Secretary-General and, through him, to the Quartet.

2. Ms. Bertini traveled to the region from 12 to 19 August accompanied by a small team. The mission was ably supported by the Office of the United Nations Special Coordinator (UNSCO). The United

Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) also provided significant assistance. During the mission, Ms. Bertini had the opportunity to meet with the senior leaders of the State of Israel and the Palestinian Authority, including Prime Minister Sharon, Foreign Minister Peres and Defense Minister Ben-Eliezer as well as with Chairman Arafat, Minister of Local Government Erekat, Minister of Social Affairs Al-Wazeer and Health Minister Zahnoun. She traveled to both the West Bank and Gaza where she met with a wide variety of local leaders, women's groups, youth, business people, farmers and labour leaders and with Palestinians in their homes and places of work. She visited refugee camps, women's centres, villages and neighbourhoods throughout the West Bank and Gaza. Ms. Bertini also met with representatives of UN agencies, NGOs, the ICRC and donors. A complete itinerary of the mission is attached as Annex A.

## **B. OVERVIEW**

3. The mission concluded that there is a serious humanitarian crisis in the West Bank and Gaza. The crisis is not a "traditional" humanitarian crisis, such as those caused by famines or droughts, but is inextricably linked to the ongoing conflict and particularly to the measures imposed by Israel in response to suicide and other attacks against Israeli military and civilian targets. Unless the situation improves, the lives of Palestinians will continue to deteriorate and the humanitarian crisis will quickly spiral out of control. Conversely, if the overall environment improves sufficiently to enable a free flow of people, goods and services, the humanitarian crisis will rapidly dissipate.

4. The situation is a crisis of access and mobility. Palestinians are subject to a variety of closures, curfews, roadblocks and restrictions that have caused a near-collapse of the Palestinian economy, rising unemployment, increased poverty, reduced commercial activities, limited access to essential services (such as water, medical care, education, emergency services) and rising dependency on humanitarian assistance. The restrictions affect almost all activities, rendering most Palestinians unable to carry out any semblance of a normal life and subject to daily hardships, deprivations and affronts to human dignity.

5. Restrictions on access and mobility largely prevent travel to or from Jerusalem, Gaza and the West Bank and allow for travel abroad only with great difficulty. Palestinians, with limited exceptions, can no longer work in Israel. Within Gaza and particularly the West Bank, Palestinians are subject to a wide variety of restrictions that prevent or seriously inhibit movement and generally keep people confined to their villages or cities and often to their houses for extended periods. Opportunities to earn a living, access basic services or conduct routine business have been drastically reduced.

6. The mission observed numerous indicators of the mounting humanitarian crisis. These include a lack of money to purchase essential supplies, deteriorating health and sanitation and increasing dependency on food assistance. Currently, while malnutrition levels are increasing, some 1.5 million Palestinians of a total population of 3.3 million receive direct food assistance, a more than five-fold increase over assistance levels two years ago. The overall unemployment rate has reached an estimated 50 percent while fully two thirds of the population are now at the poverty level. Coping mechanisms, which initially consist most often of borrowing and drawing on savings, are approaching exhaustion as the economy winds down.

7. There is widespread recognition by all parties in the region of the growing humanitarian crisis. Israeli authorities have relaxed some controls by allowing more permits for work in Israel. The Palestinian Authority, UN agencies, NGOs, the ICRC and donors are reluctantly re-orienting increasing resources from development towards relief. If current conditions persist, the proportion of efforts and resources devoted to direct humanitarian assistance will have to grow significantly.

8. The mission obtained several commitments from Israeli authorities to address some of the most immediate constraints. These include a commitment to clear all ambulances at checkpoints in no longer than 30 minutes, establish mechanisms to permit swift transit of checkpoints by Palestinians in need of

critical medical services and to ensure the regular and uninterrupted delivery of water to cities and villages. Previously, Israel had committed itself to improving the situation at checkpoints, including the deployment of more experienced Israeli Defense Forces (IDF) personnel, and full implementation of a twelve-mile fishing zone off the Gaza coast. Implementation of these five measures will save lives, provide a measure of relief and represent a glimmer of hope on an otherwise bleak horizon. It should be recognized that these are small steps forward that address symptoms rather than causes. However, their effective and timely implementation is nevertheless critical.

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## **C. OBSERVATIONS**

### **I. Crisis of Access and Mobility**

#### Closures and Curfews as Security Measures

9. In reviewing the effects of the closure and curfew regime on the Palestinian population, it should be borne in mind that the Government of Israel maintains that all of restrictions it has imposed on Palestinians and others are intended and necessary to protect its own civilian population from further terrorist attacks. The Government of Israel also believes that the tight internal and external closures and curfews have in fact prevented a significant number of attacks inside Israel. In discussions with the mission, Israeli government officials stated that, in their experience, any lifting of restrictions on movement almost immediately results in attempts to plan or carry out attacks against Israeli military or civilian targets. The Government of Israel also justifies restrictions on the movement of ambulances by citing cases in which they assert ambulances were used to transport explosives or armed men. While acknowledging the impact of the current regime on the Palestinian population and its potential to result in an increase in violence in the medium and long term, Israeli officials see it as their first priority to prevent attacks on their population today.

10. On the other hand, among the Palestinians the mission spoke with, there is a strongly held belief that many of the imposed restrictions have no discernable security purpose. Several Palestinians, including members of the Palestinian Authority, business leaders and ordinary citizens, believe that these measures are instead intended as punishment and humiliation of the Palestinian population as a whole. Some also expressed the view that the measures by the Government of Israel are intended to "break the backs" of the Palestinians in preparation for a political settlement that would otherwise be unacceptable to them. The most common examples that are given for measures that fall into this category are: numerous checkpoints that are easily circumvented on foot with heavy baggage in full view of IDF soldiers; the "back-to-back" system for trucks inside the West Bank, where, according to statements made by Palestinians, often no security checks are carried out; the extensive delays or denials of access for essential supplies and services, such as ambulances and water tankers; the continuing destruction of civilian infrastructure; and extended curfews which prevent entire populations from leaving their homes.

11. Among donor countries' local representatives, the mission found a high degree of skepticism about the necessity of a range of restrictions for the purpose of maintaining security. Several areas were mentioned where security arguments made by the Government of Israel to justify general restrictions either did not appear to be based on actual security concerns or did not result in the implementation of effective security procedures, even when donors were willing to help fund them. Donor representatives also saw a contradiction between Israeli appeals for increased international assistance to the Palestinian population and the severe constraints often imposed on assistance activities, including the movement of international personnel and essential supplies. Another concern expressed by some donors was that IDF soldiers, responsible for administering the current closure regime, apparently are not being encouraged to ease the burdens on the Palestinian population or the constraints on those trying to assist them.

12. The mission was not tasked with reviewing the measures put in place by the Government of Israel on the basis of their necessity or effectiveness for security purposes. The mission was asked to review the humanitarian situation in the West Bank and Gaza. There is a consensus among all parties, and this report confirms, that the current regime of closures and curfews is having a devastating impact on the Palestinian population, both on their economy and the humanitarian situation. As a consequence, it is incumbent upon the Government of Israel to minimize as much as possible these adverse effects on civilians while at the same time safeguarding the security of its civilian population. In striking an appropriate balance between these sometimes competing interests, the necessity, effectiveness and proportionality of all measures taken to ensure security should be reviewed carefully and continuously. In addition, gaps between stated official Israeli policy, which is to minimize harm to civilians and to fully facilitate assistance activities, and its implementation on the ground must be closed. Finally, it must be recognized that the social and economic misery of the Palestinian people is a serious obstacle to achieving lasting peace and security. Sharply declining living conditions help destabilize the political environment and increase the sense of desperation that is so successfully exploited by extremists.

### The Closure and Curfew Regime

#### *Closures*

13. Israel has been imposing "closures" since the situation started deteriorating in late September 2000. There are three forms of closure restrictions: internal closure within the West Bank and Gaza, closure of the border between Israel and the Occupied Palestinian Territory, and closure of international crossings between the Occupied Territory and Jordan and Egypt. Israel has steadily tightened each form of closure, particularly since the violent events of March and April 2002, resulting, according to the World Bank, in the most severe and sustained mobility restrictions since 1967. Stricter enforcement and an increase in checkpoints, roadblocks and border controls have confined Palestinians to progressively smaller areas.

14. The IDF currently holds positions encircling most Palestinian cities and has established an extensive system of checkpoints and roadblocks, including trenches, earth mounds and concrete blocks. The number of manned checkpoints varies but generally is in the range of 120 in total, with 80 to 90 in the West Bank alone. A recent map of checkpoints in the West Bank is attached as Annex B. The number of additional unmanned roadblocks is estimated to be around 200. The level of internal closure is distributed unevenly across the Occupied Palestinian Territory. The areas which are typically most affected in the West Bank are the Tulkarm/Jenin/Qalqiliya crescent in the north-west, Nablus, Ramallah/Al-Bireh in the central West Bank and Jericho, Bethlehem and Hebron in the south. In Gaza internal closures primarily affect north-south travel, at times creating three semi-isolated enclaves (Gaza City, the Jalabalia area and Rafah/Khan Yunis). The external and internal movement of goods has been further affected by the introduction in May 2002 of the "back-to-back system" in the West Bank according to which goods have to be offloaded from incoming trucks and then re-loaded onto local trucks at eight checkpoint locations near major Palestinian cities. Previously the "back-to-back" system had only been in place for the transport of goods from Israel to the West Bank and Gaza.

#### *Curfews*

15. In addition to the closures between population centers, curfews have been imposed in most major cities and towns of the West Bank (and some areas of Gaza), at some stage directly affecting approximately 600,000 people according to UNSCO estimates. The curfews are often in force round-the-clock and lifted only periodically, resulting in some West Bank locations being under curfew for 90 percent of the time. During curfews, the population is not permitted to leave their houses and IDF soldiers are authorized to shoot-to-kill any violators. In addition to ambulances, which are generally permitted to operate during curfews, a limited number of permits have been granted to municipal workers conducting emergency repairs. However, with the exception of certain refugee camps and other areas the IDF is less likely to patrol, the entire civilian population essentially remains

under house arrest during curfews and commercial activities come to a halt.

16. In some cases, these periods can last for more than one week without interruption. For example, when the mission visited Nablus on 17 August, the curfew was lifted for the first time since the previous Friday, 9 August. Curfews are also imposed on larger villages on a regular basis, such as the curfew that was imposed on Beit Furik, a village near Nablus, about one hour after the mission departed at around 12 p.m.

17. One factor that has made curfews particularly disruptive and dangerous to the civilian population is the unpredictability of the liftings and the lack of reliable information regarding their exact timing. Announcement made by the IDF are often not heard in all areas under curfew and residents are forced to rely on media reports or informal sources (e.g. bakeries which are often told of liftings in advance) to learn when curfews are to be lifted and for how long.

18. While a total of 55 localities in the West Bank remained under total or partial curfew by mid-August 2002, the curfew regime has recently been relaxed in several cities. Curfews were lifted entirely in Qalqiliya and Hebron. In Jenin, Ramallah and Bethlehem the curfew has been lifted for 12 hours daily, except for Fridays. However, Tulkarm and Nablus remain under severe curfew, with sporadic lifting for several hours occurring every few days. In Nablus, the curfew has only been lifted for a total of 52 hours over a period of 62 days.

#### *Effects on the Movement of People, Goods and Money*

19. As a consequence of the restrictions on movement, most Palestinians remain confined to their own villages and towns, unable to access any other areas for work, education, to purchase goods, receive medical care or any other purposes. Since May 2002, Palestinians in the West Bank can travel between cities and between villages and cities only with a permit issued by the Israeli authorities that allows travel between 5 a.m. and 7 p.m. In addition, Palestinians can no longer travel from the West Bank or Gaza to Israel or East Jerusalem without special permits. These permits remain largely unavailable to ordinary Palestinians and are only issued for one month at a time. Even those Palestinians who have special permits are not allowed to drive to Israel or East Jerusalem in their own vehicles which requires separate driving permits that are no longer available. Travel time for all Palestinians has increased exponentially, in many cases by several hours for short distances.

20. Movements from villages to surrounding fields have become increasingly difficult. The IDF has been destroying or blocking numerous side roads which farmers used to reach their fields. The mission for example had to bypass several trenches and earth mounds during a visit to olive groves near Beit Furik. An additional factor that has affected access to agricultural areas is settler violence. Farmers working in fields and orchards near settlements (which are typically built on or near mountaintops and overlook large areas) or near bypass roads have been shot at and stoned. Significant areas of agricultural land have therefore become inaccessible to them.

21. Transporting goods, including water, raw materials, vegetables, fruit and other products, within the West Bank and Gaza has also become increasingly cumbersome and in some cases impossible. Travel distances, time and cost for commercial transportation have been rising steadily. Checkpoints and roadblocks that prevent transit force Palestinian trucks to take dirt roads, significantly increasing travel time and maintenance costs. Except for certain food transports and municipal vehicles, trucks generally have no access to any areas under curfew.

22. The mission spoke with the chief executives of two major Palestinian companies about the difficulties they were facing on a daily basis. One stated that he spends most of his time lately on logistical efforts. His company's storage and maintenance cost had doubled since additional storage facilities had to be established and trucks were forced to travel on dirt roads for most deliveries. Half of the company's staff currently sleeps on the factory premises since internal closures prevent them from



reaching home or because their commuting time has multiplied, in some cases from 20 minutes to more than three hours. The other executive recounted how even sophisticated equipment often had to be transported to remote locations on foot or by mule.

23. Certain measures taken by Israel over the past few months have resulted in minor improvements in the movement of goods to Gaza and access by a small number of people to Israel. The Karni commercial crossing from Israel to Gaza has been reopened to a limited amount of containerized traffic. Inside the Gaza Strip, the Abu Houli checkpoint that had been disrupting the movement of people and goods since May 2002 has been open more frequently. Another measure taken by Israel was the announced extension of the fishing zone off Gaza to 12 miles which still must be effectively implemented.

24. The Government of Israel has also increased the number of available work permits for Palestinian laborers, particularly those crossing from Gaza into Israel. According to UNRWA, on average approximately 8,000 Palestinian workers have recently been granted permits on a daily basis as compared to an average of 2-3,000 permits in the first half of 2002. In addition, Israel has increased the number of permits for industrial parks that are located close to Gaza and the West Bank. According to Israeli authorities, Israel intends to increase the number of permits for the Erez industrial park from 3,000 to 7,000 in the near future. Also mentioned was that an additional 5,000 permits have been issued to tradesmen and a further 3,000 to people working in settlements. Israel intends to increase the total number of permits gradually, depending on security conditions. The average number of permits for workers in Israel that was issued before September 2000 was 55,000.

#### Loss of Access to Employment and Income

25. The regime of closures and curfews over the past 23 months has had a cumulative and devastating impact on the Palestinian economy. The most significant effect of this economic collapse on the humanitarian situation has been a steep decline in income levels and purchasing power.

#### *Unemployment and Decline in Production*

26. The economic decline has been driven by a rapid rise in unemployment in the private sector. During the last quarter of 2000, about 100,000 jobs in Israel were lost according to World Bank estimates, including tens of thousands of workers who had worked in Israel without permits. An additional 60,000 jobs inside the West Bank and Gaza were lost by the end of 2001 as demand collapsed and businesses laid off workers. In addition to the reduction in permits to enter Israel, stricter controls on routes to Israel and the settlements have discouraged the large number of non-permit holding workers who, according to the World Bank, accounted for more than half of the Palestinians working in Israel and the settlements before September 2000. The decrease in remittances from Palestinian workers in Israel, whose wages are significantly higher than in the West Bank and Gaza, has depressed overall purchasing power and employment inside the West Bank and Gaza. In addition to these job losses, more than 120,000 additional people have joined the working-age population since September 2000.

27. By the end of 2001, the World Bank estimated unemployment at 26 percent compared to ten percent in late 2000. According to recent UNSCO estimates, overall unemployment rates have doubled since then, reaching 50 percent during the second quarter of 2002. In addition, a large percentage of the labor force relies heavily on day labor and is deprived of their income during periods under curfew.

28. The closure and curfew regime has also resulted in an almost complete cessation of productive activity in the main West Bank centers of manufacturing, construction, commerce and private and public services, which, according to UNSCO estimates, account for at least 75 percent of the goods and services produced in the West Bank. UNSCO also estimates that income losses to date for 2002 alone are approaching \$1 billion, with losses since September 2000 at \$3.3 billion. The chart attached as Annex C illustrates the direct correlation between per capita income and the number of annual closure

days in effect since 1994.

29. The impact of recent events on agricultural production, which is a source of main and secondary income to a large portion of the rural population, has also been severe. In addition to physical destruction estimated at \$167 million and extensive water shortages, the closures have been preventing farmers from pruning, harvesting, processing and marketing a variety of crops. The orange harvest in Gaza, for example, was almost entirely lost because no exports were allowed until the oranges were no longer marketable. A total collapse of the agriculture sector would also have a significant impact on food security. As described in paragraph 54, rural areas already show higher levels of acute malnutrition than urban areas.

### *Rising Poverty Levels*

30. The level of poverty in the West Bank and Gaza has multiplied over the past two years. In September 2000, the World Bank estimated that 21 percent of the population lived below the poverty line (defined as less than \$2 consumption per person per day). By January 2001, the poverty ratio had risen to 33 percent. Data collected by the Palestinian Central Bureau of Statistics (PCBS) in January and February of 2002 suggests that poverty levels have doubled since then, rising to 66.5 percent (57.8 percent in the West Bank and 84.6 percent in Gaza).

31. At the same time as poverty rates have increased threefold, there has not been a general decrease in prices. Despite an overall decrease in demand, supply has also decreased in many areas due to market disruptions caused by access restrictions. In addition, the price structure in both the West Bank and Gaza remains heavily influenced by prices in Israel, resulting in an environment where prices remain high but incomes have collapsed.

### Loss of Access to Basic Services and Needs

32. From a humanitarian perspective, the most devastating consequence of the closure regime is that large parts of the civilian population are neither able to access nor be provided with the most basic services. In part, this has been the result of the widespread loss of income. An increasing portion of the population is simply no longer able to afford basic services or to meet basic needs. The closures also have a more direct impact on access to basic services. They physically prevent people in need from reaching services, for example patients with chronic diseases who can not travel to towns and cities to receive treatment. At the same time, the civilian population is often cut off from essential supplies and services that can not reach them, for example patients in need of medicine and villages that rely almost exclusively on water tankers during the summer months. The services most affected have been health, education, food, and water and sanitation.

### *Health*

33. Access restrictions continue to prevent many Palestinians in need of medical treatment from reaching health services. This is especially the case for populations under curfew and the more than 60 percent of the population in the West Bank that lives in rural areas. They need access to the hospitals and other secondary and tertiary health care facilities in towns and cities, both in emergencies and for regular treatment, such as dialysis and chemotherapy. Many hospitals have reported a steep decline in access to services. For example, St Luke's Hospital in Nablus has seen a 49 percent decline in general practice patients, a 73 percent decline in specialty services and a 53 percent decline in surgeries. UNRWA has reported decreases in access to preventive services, including a 52 percent decrease in women attending post-natal care. According to the Ministry of Health (MoH), school health programmes have declined by 60 percent. Medical personnel have also been facing serious difficulties in reaching their workplaces, resulting in non-attendance rates of up to 40 percent in some areas.

34. The extensive delays and denials of access at checkpoints for ambulances and people in need of

urgent medical care have been widely reported. The mission saw long lines of vehicles which included ambulances at many checkpoints it passed. According to the Union of Palestinian Medical Relief Committees (UPMRC), these delays and denials have resulted in the birth of an estimated 39 children at checkpoints. B'Tselem has documented numerous cases in which the IDF has prevented sick and wounded from crossing checkpoints, in several cases resulting in the death of those being held up. The Palestinian Red Crescent Society (PCRS) and UPMRC have reported more than 600 cases in which their ambulances have been denied access. Often ambulances are unable to reach remote areas due to waiting periods of up to several hours at each checkpoint. Patients are often forced to leave ambulances, subjected to intrusive searches and required to walk across checkpoints, including women in labour.

35. In order to mitigate the effects of closures, the MoH and other health care providers have tried to decentralize specialized services as much as possible, for example through mobile clinics or by increasing the number of available dialysis machines and relocating them to more remote areas. While some of these measures have helped increase access in certain areas of the West Bank and Gaza, they are extremely costly and not sustainable over the long term. The movement of mobile clinics has also been obstructed at checkpoints. A representative of a leading international medical NGO told the mission that their teams are turned back at checkpoints 50 percent of the time. When they are permitted to pass, medical staff are often forced to carry their equipment over checkpoints. Since March 2002, internal closures have brought the mobile clinics UNRWA had developed after September 2000 to a virtual standstill.

36. The import and distribution of medical supplies continues to be hampered, both upon entry into Israel or the Occupied Palestinian Territory and within the West Bank and Gaza. Certain raw materials required by pharmaceutical companies have been banned. Medical and other humanitarian supplies are subject to extensive delays at ports of entry in Israel, Jordan and Egypt. The head of UPMRC told the mission that two of the organization's ambulances had been held up at the border for more than seven months. Medical equipment from Sweden with a value of \$20,000 had to be sent back after its was denied entry. The Minister of Health of the Palestinian Authority stated that 30 new ambulances in Jordan and Egypt were awaiting clearance by Israeli authorities. Within the West Bank – and despite assurances given by the Coordinator for Government Activities in the Territories that essential services such as health would not be hindered - the MoH has been forced to enlist the support of UN agencies and international NGOs to transport medical supplies from central warehouses to more remote locations because Palestinian MoH workers have been denied access to these areas.

37. An example of the difficulties people in villages face was a man who approached the mission for help in Beit Furik. His two daughters, who were seriously ill, urgently required special milk products from Nablus and medicine from Tel Aviv. Because of the internal closures, their father was unable to travel the less than 10 kilometers to Nablus to buy the needed milk. He could also no longer order the required medicine from Israel. The mission asked an international UN (WFP) staff member to buy the milk for him and return to Beit Furik the same afternoon. He was accompanied by the head of the local branch of the Palestinian Agricultural Relief Committees (PARC). After waiting for two hours at the checkpoint just outside Beit Furik on their way back from Nablus, the international UN staff was allowed to proceed while the Palestinian was denied access to his village where a curfew had been imposed in the meantime.

38. There is growing concern among health professionals that immunization stocks and vaccination campaigns are inadequate. Immunization campaigns can only be carried out intermittently. The access restrictions and the sharp increase in home deliveries have also affected Hepatitis B vaccinations and phenylketonuria (PKU) tests which screen for two diseases for which the timing of diagnosis and treatment is crucial to prevent mental retardation in children. The PKU screening tests should be performed within seven days of birth. Under the closure regime, infants often either can not be tested at all or the transfer of tests and results between patients, laboratories and clinics is disrupted. The Hepatitis B vaccinations should be given in three doses at birth, one month and six months.

39. Increasingly, lack of income has become one of the main reasons why families lose access to medical care. A study conducted by PCBS more than one year ago showed that one third of families did not obtain needed medical care for financial reasons. In a PCBS survey in July 2002, 76.5 percent of households that were not able to access health services cited lack of resources as a major cause. UNRWA has reported an 18.6 percent increase in the number of refugees using its free health care facilities in the West Bank, indicating that alternatives are not available or that the refugees can no longer afford private medical care.

### *Education*

40. The internal closures have had extensive negative effects on education, mainly due to restrictions on the movement of teachers and students. UNICEF estimates that during the 2001/2002 school year more than 600,000 (61 percent) of the 986,000 children in the West Bank and Gaza were unable to attend school on a regular basis. Teaching time has also been reduced because of sharp declines in teacher attendance. UNRWA schools in Gaza have faced particular difficulties, as almost 1,000 of the Agency's education personnel live in the intermittently isolated southern regions of the Gaza Strip. During a visit to a "Children's Parliament" in Gaza City, the mission was told by the children that the delegates from southern parts of Gaza were able to attend for the first time since September 2000. UNRWA's education programme in the West Bank, which includes 95 schools, has also been severely affected during the 2001/2002 school year, with 72,571 teacher days being lost, compared to 5,585 in the previous school year. In April 2002, 76 percent of the teaching staff were absent and 66 percent of school days were lost. Several UNRWA schools sustained damage because they came under fire or were used as temporary detention centers.

41. While no unified examinations at the primary school level could be held at the end of the 2001/2002 school year, last year's examinations showed a marked deterioration in children's achievement levels, particularly in numeracy and literacy. The overall success rate decreased by more than 20 percent in both mathematics and Arabic language. Given the extensive disruptions during the 2001/2002 school year it can be assumed that these levels have deteriorated further. There is also increasing concern about the number of drop-outs in the coming school year. The impediments to access and the high adult unemployment rate may force more children to leave school to supplement family income. Before September 2000, the rate of ten to 14 year-olds employed in the West Bank was at 0.6 percent. Under current circumstances this rate is likely to multiply.

### *Food*

42. Access to food has become more and more difficult as the ability of families to purchase food has been severely curtailed. While this is primarily caused by families' lack of money to buy food, shortages of certain types of food due to market disruptions have also been reported. According a recent survey conducted by Johns Hopkins University and others and funded by USAID<sup>[1]</sup>, more than half the Palestinian population reported having to decrease food consumption. The primary reasons cited were lack of money (65 percent) and curfews (33 percent). Fifty-three percent of households said they had to borrow money to purchase food (88.8 percent in Bethlehem). About 17 percent of households were forced to sell assets to buy food, with rates highest in Gaza City and Khan Yunis. Thirty-two percent of all households reported buying less bread, potatoes and rice. Households are also buying less higher priced food items, such as meat, fish and chicken.

43. According to the same survey, extensive market disruptions have resulted in shortages of high protein foods such as fish, chicken and dairy products among wholesalers and retailers in the West Bank and Gaza. Fifty-two percent of wholesalers and 48.3 percent of retailers also reported a shortage of infant formula. In the West Bank, survey respondents said food shortages were caused by a combination of road closures, checkpoints, curfews and military incursions. Shortages in northern Gaza were primarily due to border closures that seal the Gaza Strip off from Israel and the West Bank while central and southern areas were more or less equally affected by border closures and internal closures.

### *Water and Sanitation*

44. Water and sanitation services required for maintenance of daily needs and basic health have been affected by the closure regime in several ways. The most direct impact relates to water supply and solid waste disposal. Collecting and disposing of solid waste has been particularly difficult in areas where garbage trucks are unable to move around freely, including towns and cities under extended curfews and areas where several villages are serviced by a small number of trucks. The collection and disposal of solid waste has also been problematic in the Gaza Strip where the landfill for Gaza City, which is located south of the by-pass leading to Netzarim settlement, has been out of reach for extended periods. As a result of the restrictions on garbage trucks, solid waste is often disposed of in the open, inside populated areas.

45. Potentially catastrophic from a humanitarian perspective are the severe water shortages experienced in many rural areas throughout the West Bank.[2] Especially during the summer months when cisterns run dry, an estimated 300 localities depend largely on water delivered by private and municipal water tankers. Water tankers are subject to extensive restrictions on movement imposed by checkpoints and roadblocks throughout the West Bank. In some cases, water tankers are not permitted access to villages for several days. They also are often not permitted to refill in urban areas during curfews. Preliminary findings from an ongoing water and sanitation survey by the Palestinian Hydrology Group shows that 24 of 27 surveyed villages experienced difficulties related to water and sanitation as a result of curfews and closures. The survey also shows that water and sanitation related diseases have occurred in 12 of these 27 villages.

46. When the mission visited Beit Furik, a village less than 10 kilometers southeast of Nablus, it had not received any tanked water for nine consecutive days since tankers had not been allowed access to the village.[3] Before this period, only a fraction of the required water supply of 30-50 truckloads per day had been delivered. According to statements made by villagers, attempts to reach springs in areas surrounding the village have been stopped by IDF patrols and villagers have on occasion been forced to discard water they had collected. The lack of sufficient water supplies in the village has already resulted in the loss of thousands of chickens, sheep and agricultural production.

47. An additional cause for water shortages in certain rural areas is actions taken by Israeli settlers. According to the Palestinian Hydrology Group, Israeli settlers in one case cut off water pipes which served seven surrounding villages. Other cases in which settlers have interfered with the water supply for West Bank villages have been documented by B'Tselem.

48. As a result of increasing transportation costs and cut-offs, the average price for tanked water has risen considerably, by up to 80 percent in certain West Bank locations. The higher cost of water is making it more difficult for families to meet their basic domestic and vital needs. Urban areas also continue to experience water shortages. In some case, municipalities are unable to import spare parts for well pumps or pumps have to be shut off because of fuel shortages.

### The Importance of the Upcoming Olive Harvest

49. During the mission's visit to the West Bank, a major concern raised by farmers, local officials and NGO representatives was the potential loss of the olive harvest which is due to begin in October. Olive harvests follow a two-year cycle and this year's olive harvest is expected to yield high levels of production. Under current circumstances, many farmers will not be able to harvest olives and produce and market olive oil.

50. The main constraint, as in most other areas of employment and production, is access. Farmers are unable to access their fields because of blocked roads, including dirt roads that have been dug up by the IDF, threats and violence from nearby settlers, and new requirements for permits that in some cases are

needed to reach fields on the other side of by-pass roads. Once olives are harvested, they typically have to be transported to the nearest olive press in neighboring villages, ideally on the same day they are harvested to prevent a rise in the acidity level that will render them unsuitable for oil production. Once the olive oil is produced, farmers and merchants will need access to towns and villages to market and buy the oil.

51. Unless the closure regime in the West Bank changes significantly before October, the movements of people and goods required to harvest, produce and market olives will be curtailed so severely that most of the income farmers derive from olive oil production will be lost. One quarter of the Palestinian agricultural sector is dedicated to olive production. In addition, the number of people dependent on revenue from agricultural production has increased substantially since workers have lost their jobs in Israel and the settlements. Without the income from the sale of olive oil, a large portion of the rural population will be even less able to afford basic goods and services or to pay off their rising debts.

## **II. Humanitarian Situation**

52. Before summarizing the main indicators of a mounting humanitarian crisis, it should be noted that the population in much of the West Bank and, to a lesser extent, in Gaza had reached a standard of living comparable to other middle-income countries, including a sophisticated health care system and a literacy rate of 98 percent. The Palestinian economy had also begun an economic recovery in 1998 that came to an abrupt halt in September 2000. Donor disbursements since 1993 had amounted to a total of \$4.4 billion, resulting in one of the highest levels of per capita official development assistance anywhere in the world (\$195 per person per year). The value of this enormous collective effort is in danger of evaporating if the situation does not improve in the near future.

### Indicators of a Growing Humanitarian Crisis

#### *Increase in Malnutrition*

53. Preliminary results of the nutritional assessment conducted by Johns Hopkins University and others indicate a substantial increase in the number of malnourished children over the past two years, with 22.5 percent of children under five suffering from acute (9.3 percent) or chronic (13.2 percent) malnutrition.<sup>[4]</sup> According to PCBS surveys, the level of acute malnutrition in 2000 was 1.4 percent and the level of chronic malnutrition was 6.2 percent.

54. The preliminary rates are particularly high in Gaza with the survey showing 13.2 percent of children suffering from acute malnutrition, more than three times the rate in the West Bank (4.3 percent). The rate of chronic malnourishment in Gaza (17.5 percent) is five times higher than in the West Bank (3.5 percent). Non-urban areas show higher rates of acute malnutrition, suggesting that the traditional food-producing areas are facing significant food security problems. Chronic malnutrition, on the other hand, is more prevalent in urban areas.

#### *Deteriorating Health*

55. Given the difficulties faced by the population in accessing health services and medicines, a steady increase in mortality rates and spread of diseases should be expected. There is also rising concern about the spread of diseases such as diarrhea and insect born diseases as a result of water contamination, lack of garbage disposal and the reduced coverage of vaccination programmes, especially for children under the age of five. For example, some 600 cases of shigellosis (bloody diarrhea) have been registered in the Nablus Governorate since July 2002.

56. The Johns Hopkins University survey found that the rate of anemia in Palestinian children under five has reached 19.7 percent (20.9 percent in the West Bank and 18.9 percent in Gaza). Anemia is caused by a deficiency of iron, folic acid and dietary protein and can lead to impaired learning and

growth development in children, low birthweight infants and premature deliveries, and decreased immunity from infectious diseases.

57. Lack of access to health services is also resulting in higher rates of infant and maternal mortality although exact overall figures have not been reported. According to UNRWA, the number of stillbirths in the West Bank increased by 31 percent between September 2000 and December 2001. According to UNFPA, unattended home deliveries have increased from three percent to 30 percent and the percentage of births attended by a trained professional has decreased from 97.4 percent to 67 percent.

### *Exhaustion of Coping Mechanisms*

58. An analysis of the ways in which Palestinian households have been coping with prolonged closure and reduced income over the past 23 months shows that the humanitarian crisis is likely to deepen rapidly in the very near future. Long-term effects on the ability of the population to re-enter the development process are also becoming increasingly likely. Surveys conducted in Spring 2001 by Bir Zeit University and PCBS and the Johns Hopkins University survey in Summer 2002 show that most coping strategies adopted are unsustainable in the long run and have severe long-term repercussions on households' ability to sustain themselves. They either reach intrinsic limits or result in a reduction of the productive capacity of the household. In both surveys, approximately half the respondents said they had to borrow money to purchase food. Most borrowing is done informally, from family member and local shops and retailers. In Spring 2001, only five percent borrowed from banks or other financial institutions. About 17 percent of households had to sell assets to buy food (2002) and around 20 percent said they had to sell jewelry or other personal effects (2001).

59. Recent surveys of West Bank villages conducted by Oxfam and its partners, and the mission's interviews in both the West Bank and Gaza indicate that the networks of support that have enabled households to cope have started breaking down. More and more people have exhausted their savings. Retailers, including shopkeepers and water providers, are no longer able to give credit to poor families, depriving the population of essential supplies and in many cases the means to make a living. Increasingly poor friends and families can no longer afford to provide support to other vulnerable member of their communities whose debts have been rising. Lack of money has also reduced the ability of farmers to purchase basic supplies, including seeds and water.

## **III. Humanitarian Response and Coordination**

### Recent Expansion of Assistance Activities

60. Since September 2000, assistance activities have been expanding in both scope and scale to address the increasing vulnerability of a continuously growing portion of the population. An estimated 1.8 million Palestinians are now receiving food aid and other forms of emergency support from a variety of sources, including local charity institutions. This represents almost 55 percent of the total population of 3.3 million in the Occupied Palestinian Territory and, with regard to direct food aid, a more than five-fold increase over assistance levels two years ago. The main providers of assistance and basic services include:

- the Palestinian Authority, particularly the Ministries of Health, Education and Social Affairs as well as the municipalities;
- UNRWA, the second-largest provider of social services after the Palestinian Authority, focusing primarily on assistance to refugees;
- other UN agencies, including WFP, UNDP, UNFPA and UNICEF;
- the International Committee of the Red Cross (ICRC) and the Palestinian Red Crescent Society (PCRS);
- Palestinian NGOs, which for example account for a large portion of health services; and
- international NGOs, which have progressively increased their presence since September

2000.

61. Donors have adjusted their programmes in view of the emergency situation and have increased their budget support to the Palestinian Authority, financed job creation and welfare programmes and increased their contributions to other emergency relief. More than 80 percent of disbursements in 2001 were devoted to budget support and emergency relief, compared to less than 10 percent during the previous year. At the same time, support for growth-oriented infrastructure and capacity building projects decreased significantly.

62. Since the primary causes of the humanitarian crisis are loss of income and an inability to access essential services and supplies, the emergency response has focused on four main areas of intervention: food assistance, cash assistance, employment generation, and emergency measures to deliver essential services, especially in the health and education sectors.

#### *Food Assistance*

63. UNRWA has been providing humanitarian assistance (food and cash) to a total of 216,000 poor refugee families (990,000 persons), representing 67 percent of the refugee population and a more than nine-fold increase in UNRWA's hardship caseload compared to the year 2000. Likewise, the World Food Programme has increased its beneficiary caseload from about 150,000 before September 2000 to 500,000 people today. This means that almost 1.5 million people (or 45 percent of the total population) currently receive some form of direct food aid. WFP and ICRC, which also provides direct food assistance, target the non-refugee population while UNRWA programmes primarily support refugees.

64. WFP intends to deliver 70,340 metric tons by the end of 2002, 61,250 metric tons of which consist of wheat flour (49,000) and rice (12,250). UNRWA's emergency food deliveries also consist primarily of flour and rice. Since the Palestinian economy is highly dependent on cereals imported from Israel, WFP and UNRWA do not expect these commodities to have a disincentive effect on domestic food production.

65. ICRC provides food assistance to a total of 300,000 beneficiaries through direct food assistance from WFP stocks for 30,000 families in closed villages in the West Bank (and in ad hoc cases in the Gaza Strip) and a voucher programme that was launched on 13 August 2002. The voucher programme supports 120,000 people in the nine largest urban centers in the West Bank. Each family will receive vouchers of up to \$90 a month which they can exchange for food and basic non-food items in previously selected shops, providing a stimulus to local businesses. The approved list of items contains products which must be procured locally from rural communities (e.g. fresh food and olive oil).

#### *Cash Assistance*

66. Direct cash assistance still represents a small portion of overall assistance activities. The social assistance budget of the Ministry of Social Affairs (MOSA) for 2001 included \$47 million for cash assistance to 45,000 families. However, lack of funds has caused the MOSA to be several months in arrears on these payments. UNRWA requires almost \$20 million in 2002 to provide cash assistance to several thousand destitute families in Gaza and the West Bank (also see paragraph 63 above). NGOs have also been used by donors to channel cash assistance to poor families.

67. Another form of financial assistance has been provided through UNRWA's Microfinance and Microenterprise Programme which provides loans to small business owners and micro entrepreneurs. The programme has been severely affected since September 2000. In 2001, the value of its lending fell to 52 percent of the previous year. In addition, many of its clients have been unable to repay their loans.

#### *Employment Generation Programmes*



68. UNRWA's emergency employment generation programmes, which require about \$56 million in 2002, benefit workers who are hired directly by the Agency and indirectly through community-based projects and private-sector contracts. NGOs have also played an effective and growing role in employment generation, for example through the World Bank's Palestinian NGO Project and the Palestinian Agricultural Relief Committees (PARC) which has played a pioneering role in rural areas.

#### *Delivery of Emergency Services*

69. The two main service providers in the West Bank and Gaza, the Palestinian Authority and UNRWA, have tried to maintain previous levels of service delivery as much as possible. In order to reach areas cut off from essential services, they and other service providers had to adopt extraordinary measures, including a "decentralization" strategy pursued by the MoH that aimed at empowering local health officials, redeploying health equipment to smaller towns and rural areas and the creation of mobile clinics. UNRWA adopted similar strategies and for example hired large numbers of additional teaching staff in remote locations. These measures have not been able to compensate for the sharp drop in overall service provision which has resulted from access constraints and a decline in available resources. As a result, a significant increase in demand for health services has been accompanied by severe cutbacks in supply and availability, despite increased efforts by international agencies, NGOs and donors. Emergency supplies of water for villages that depend on local water tankers have generally not been available.

#### Access and Other Operational Constraints for Assistance Activities

70. Since September 2000, it has become increasingly difficult for both international and Palestinian aid organizations and service providers to provide assistance to the Palestinian population. At the same times as critical needs have multiplied, they have faced a widening range of access and other operational constraints that have made it more and more difficult to meet these needs. The constraints have resulted in a major increase in operating costs as additional international staff had to be deployed and other costs have escalated. They have also had a disproportionate impact on organizations that have to rely heavily on Palestinian staff, most notably the Ministries of the Palestinian Authority, UNRWA and Palestinian NGOs. Organizations with higher ratios of international staff are able to operate with relatively fewer difficulties but nevertheless face enormous obstacles.

#### *Permits for Palestinian Staff*

71. Constraints put in place since September 2000 affect Palestinian staff of the UN, other aid organizations and the Palestinian Authority most severely. They are subject to the same restrictions as other Palestinians, including requirements for permits to enter Israel or East Jerusalem from the West Bank and from Gaza and, in many cases, for permits to move around within the West Bank and Gaza itself. UNRWA, which employs a total of 11,000 Palestinians in the Occupied Palestinian Territory, requires 383 permits for staff from the West Bank to access its field office in Jerusalem. After years in which only a very small number of such permits were denied on security grounds, UNRWA experienced great difficulties in securing permits during most of 2002. In a positive development in mid-August, UNRWA received an additional 140 permits, allowing its local staff members from the West Bank to report to work in Jerusalem. Thus far the Agency has received a total of 247 permits of the 383 required to ensure the normal functioning of its West Bank operation. Permits have also been issued to several international NGOs, allowing some key Palestinian personnel to work in Jerusalem. However, permits are only valid for one month (compared to three months before September 2000) and permit-holders are not allowed to drive to Israel or East Jerusalem in their own vehicles. In addition, the travel time and cost for Palestinian staff has increased exponentially.

72. In Gaza, all of UNRWA's 36 permits for local staff to enter Israel (and the West Bank) were revoked after September 2000. UNRWA must now apply for one-day entry permits on an exceptional basis. No driving permits are available so the local staff must rely on international drivers. In addition,

765 field staff members and 26 percent of Gaza headquarter staff members have been affected by internal closures in Gaza and are unable to reach their normal duty stations for much of the time. These restrictions have eased somewhat since the opening of the coastal road and the Gush Qatif crossing.

### *General Restrictions on Movement of Personnel and Aid Supplies*

73. Freedom of movement for UN and other aid vehicles and staff continues to be constrained by checkpoints and roadblocks at which vehicles face long delays and are sometimes refused entry. Access by humanitarian convoys and medical teams (including ambulances) to areas under curfew is frequently denied. In addition, UN and other aid personnel have been subject to abuse, physical harassment, arrest and violence at checkpoints and elsewhere in the West Bank. UN personnel, including international staff without diplomatic status, continue to be subject to a full search of vehicles and baggage at the Erez crossing between Gaza and Israel. When the mission returned to Israel from Gaza, one of the mission's three vehicles was subjected to search and was held up at the Erez crossing. This incident occurred despite prior written clearance for all vehicles from Israeli authorities.

74. Trucks of aid organizations are only permitted to enter and circulate within the West Bank upon prior clearance with the IDF District Coordinator's Office (DCO) and only if driven by an international driver. UNRWA trucks can only circulate between UNRWA warehouses in Jerusalem and its programmes in the West Bank with international drivers and Jerusalem identification card holders. WFP had to mobilize a fleet of eight trucks with international drivers and support teams from the Swedish Rescue Service Agency. This short-term arrangement has been extended until October 2002 to help WFP transport its food supplies and also to assist other organizations which do not have access to international trucks with international drivers. In mid-August 2002, WFP for example made the truck fleet available to assist the MoH in transporting 26 tons of medical supplies from the MoH central warehouse in Ramallah to Tulkarm and Bethlehem.

75. Humanitarian and other cargoes for aid organizations and the Palestinian Authority continue to experience significant delays and, in some case, are denied entry to Israel or the Occupied Palestinian Territory. Delays are particularly severe at the port of Ashdod, where average transit time for containerized cargo is more than two weeks, and at Allenby Bridge, the main entry point from Jordan. In many cases, demurrage and storage charges that are incurred while cargoes are being inspected and cleared have exceeded the value of the goods being imported.

76. Another constraint affecting the operations of several UN agencies and international NGOs is that Israel has denied entry visas to staff or contractors of Arab origin or nationalities. International aid agencies urgently require Arabic speaking staff as they expand their presence. Even regular UN staff members have been subject to this restriction. In some cases, Arab nationals are given visas to enter Israel but are not permitted to enter the West Bank or Gaza.

77. The European Union has documented 19 cases since June 2001, of which 13 occurred since the end of March 2002, in which international consultants and experts who were contracted for relief and development projects have been denied entry to Israel at Ben Gurion Airport or Allenby Bridge. In the most recent case, three Italian humanitarian workers were refused access at Ben Gurion Airport on 5 August 2002 despite having cleared their travel with the Israeli embassy in Rome. The same workers had been denied access on 13 July 2002.

### The Gap Between Israeli Policy and Implementation

78. One issue that was consistently mentioned by donors, UN agencies and other aid organizations was the existence of a wide gap between official Israeli policy and its implementation on the ground. The mission raised this concern with Israeli officials at the highest levels.

79. In principle, the Government of Israel has agreed on several occasions to facilitate assistance

activities by all international assistance providers and to minimize negative effects of its security measures on the civilian population. This includes commitments and policies to allow free access for staff and supplies and to improve the situation at checkpoints, including the passage of Palestinians requiring medical treatment. As mentioned above, the Coordinator for Government Activities in the Territories has repeatedly given assurances that essential services such as health would not be hindered.

80. Despite these assurances and commitments, there has been little improvement on the ground over the past 23 months. On the contrary, as the conflict has intensified new constraints have been added and many existing restrictions have been tightened. The entry of international staff into Israel has proven to be extremely difficult, as evidenced by the multiple rejections of aid workers contracted by the EU. An even more serious concern is access problems to and within the West Bank and Gaza which have been described above. Even international staff are frequently turned away by IDF soldiers at checkpoints despite previous clearance with Israeli authorities.

81. A persistent problem since September 2000 has been the lack of cooperation from the IDF, particularly at the operational level and among soldiers and mid-level officers on the ground. It is well known and has been recognized by Israeli authorities that many soldiers stationed at checkpoints are relatively inexperienced and have little training in interacting with the civilian population or aid personnel. Recent government reports have recommended that urgent measures be taken to place more senior reservists at checkpoints to decrease levels of harassment and the number of violent incidents. An additional concern raised by many UN agencies and donors is that their regular interlocutor, the Office of the Coordinator for Government Activities in the Territories, while technically part of the IDF, is unable to ensure the effective implementation by IDF operational personnel of most of the measures it agrees to.

#### Capacity of the Palestinian Authority as Service Provider

82. Throughout the current crisis, the Palestinian Authority, particularly its Ministries of Health, Education and Social Affairs as well as the municipalities, have tried to continue to deliver a minimum level of services, despite damage to their infrastructure and severe impediments to the movements of their staff and supplies. However, the Palestinian Authority has suffered from an acute fiscal crisis since September 2000. Its monthly requirements under an austerity budget amount to \$90 million per month, of which about \$55 million is needed for salaries. Despite generous contributions from EU members and members of the Arab League, and its own monthly revenues of about \$15 million, the Palestinian Authority currently faces monthly budget shortfalls of \$30-40 million and is barely able to pay for its salaries and utilities. This has already resulted in a marked decrease in the delivery of services, including cash assistance to destitute families.

83. A major reason for the budget crisis is that Israel, which currently collects about \$30 million in taxes (VAT, custom duties and purchase tax) every month on behalf of the Palestinian Authority, has been withholding the amounts it collects, arguing that the funds may be used for corruption and in support of terrorism if released. Israel recently agreed to release three tranches of \$15 million each. Since remittances by Israel were suspended in December 2000, the cumulative amount of funds held by Israel is estimated by the IMF to be more than \$600 million.

84. An additional consequence of a complete collapse of the Palestinian Authority would be the loss of employment for some 120,000 government employees. Although not its primary purpose, budget support to the Palestinian Authority has in effect been the largest emergency employment scheme. A significant reduction in the number or level of government salaries would significantly increase poverty and vulnerability levels, particularly in Gaza.

85. Recent news reports and discussions with UN agencies indicate an increasing breakdown of law and order in the Occupied Palestinian Territory. Most uniformed Palestinian police have stopped patrolling the streets. Since the IDF does not engage in regular law enforcement activities, this vacuum has

already resulted in an increase in economic crimes. As we know from many other crises, a further breakdown of law and order will exacerbate the humanitarian condition of the most vulnerable and undermine the international community's ability to assist them.

86. A further weakening or complete collapse of the Palestinian Authority therefore would have a major impact on the humanitarian situation. Essential services in several critical areas, including health, education, water, electricity and law enforcement, could no longer be provided, leaving a wide gap that other assistance providers will be unable to fill. The loss of income for a large percentage of the population would further increase poverty, with the consequences described elsewhere in this report. And finally, the effect on the nation-building and peace process would have indirect and potentially far reaching consequences for the humanitarian situation that are difficult to predict.

#### Central Importance of UNRWA and Support by the Government of Israel

87. UNRWA, as the second largest service provider after the Palestinian Authority, has played a crucial role in the current crisis, responding to the emergency needs of hundreds of thousands of refugees and a significant number of non-refugees. Its mandate encompasses a total of 1.5 million refugees in the Occupied Palestinian Territory of which 42 percent live in refugee camps. Education and health services normally account for 70 percent of the Agency's budget and have resulted in high literacy, health and other human development indicators among the refugee population. Most of the refugees had become self-reliant before the current crisis, with only 7.4 percent of the refugee population in the Occupied Territory receiving food or other direct assistance from UNRWA.

88. The mission was encouraged to learn that the Government of Israel fully recognizes and supports the positive and important role of UNRWA. Both Prime Minister Sharon and Foreign Minister Perez stressed the importance of UNRWA and assured the mission of their full support for its activities. They specifically advised against creating new UN organizations or structures and encouraged the mission to find ways of strengthening existing ones.

#### Appropriate Forms of Assistance

89. Since the current situation is not a traditional humanitarian crisis, more extensive analysis and strategic planning is required to determine what types of assistance are appropriate. One of the most consistent messages the mission heard from almost all Palestinians it spoke with was that they would rather not receive charity. Many of them said they wanted jobs instead of handouts and dependency. Some expressed their concern that an increase in direct food assistance would rob people of their sense of dignity and hope. Other forms of assistance, particularly employment opportunities and education, were thought to have the opposite effect.

90. There were also some voices that pleaded for additional food assistance, for example a group of women in Rafah, one of the poorest areas in Gaza. The mission also heard that many children in Rafah save their summer camp lunch for family members in more urgent need of food. When asked why their families do not have enough food, the women responded that most of their husbands had lost their jobs and that they could no longer afford to buy the food that is available in the market.

91. As the recommendations included in part E. of this report suggest, one of the main challenges for future assistance activities will be to strike the right balance between various forms of assistance. On the one hand, there is a strong desire among most people who have been impoverished by the recent developments to be given opportunities to support themselves instead of receiving "handouts". On the other hand, there are urgent needs, including nutritional needs, among families whose support networks and coping mechanisms have been breaking down. Some of these needs could be met through coupons that would enable destitute families to purchase supplies available in the markets. In other cases, ways will have to be found to make supplies available that currently can not reach retailers and customers due to the closure regime.

92. Discussions among the World Bank, donors and UN agencies are ongoing about the appropriate balance between three main forms of intervention that will help address the dramatic drop in purchasing power: food assistance, cash assistance and employment generation programmes. A comprehensive review of employment programmes is currently under way and will be completed in September 2002. This review will assist in formulating an overall strategy that will take the factors mentioned above into account.

93. An additional and fairly unique feature of the current situation is that, in September 2000, the Occupied Palestinian Territory was in the midst of a major international development assistance effort. As a consequence, a strong development community and mechanisms, which were led by the World Bank and several large bilateral donors, were in place in September 2000. Even under current circumstances, the development actors and the Palestinian Authority are trying to continue their development efforts as much as possible while at the same time ensuring emergency assistance and sufficient budget support. Achieving the right balance between development assistance and emergency assistance has presented a major challenge to the donor community and international organizations active in the region. This challenge is closely linked to the question of what types of assistance are appropriate and most effective in the current circumstances.

94. Representatives of Palestinian and international NGOs as well as Palestinian Authority officials expressed concern that Palestinian structures, coping mechanisms and organizations that have grown over many years should not be replaced or weakened by an increase in international assistance. The strong Palestinian NGO and community network, local market and credit mechanisms, and local food production were emphasized as structures that should be protected and strengthened.

### Coordination

95. Numerous coordination bodies have been established to bring together UN agencies, UNRWA, UNSCO, the World Bank, donors, and international and national NGOs as well as Israel and the Palestinian Authority. The focus of these entities, at least until recently, had remained on development activities that have stalled due to the intensified conflict. Considerable efforts have been made to re-orient existing capacities and create new arrangements to also address the emerging humanitarian crisis. However, progress has been uneven and has yet to achieve coherence.

96. The consensus view on the ground, in which the mission concurs, is that no new institutions should be established. Rather, coordination needs to be strengthened in order to ensure that:

- humanitarian needs are expeditiously identified and met;
- coordination mechanisms are inclusive of all humanitarian actors;
- existing information collection, collation and analysis capacities are strengthened;
- no artificial divisions occur between humanitarian and development planning and activities; and
- consistency of assistance to refugees and non-refugees based on need is ensured.

97. The volatile situation and the nature of the key players on the ground are unique and do not lend itself to traditional humanitarian coordination solutions. UNRWA is the major UN provider of humanitarian assistance to refugees. It has also expanded its humanitarian assistance to reach some non-refugees over the last year. Other agencies, especially WFP, have become more active in recent years. UNSCO has a coordination mandate, originally more political/donor relations in focus. International NGOs are increasing their presence while the Palestinian Authority and Palestinian NGOs remain major channels of assistance. The ICRC has begun a large-scale assistance programme in addition to its traditional protection activities. Donors and the World Bank play a pre-eminent role in coordination fora and consultations.

98. The mission consulted extensively with each of the above actors on coordination issues. While there was no broad agreement on the most suitable structure, there was a clear consensus that humanitarian coordination, especially for the current emergency phase, needs improvement. The mission's recommendations in this regard are included in part E.

#### **IV. International Humanitarian Law and the Protection of Civilians**

##### Obligations under International Humanitarian Law

99. The mission was asked to clarify the responsibilities of all parties with regard to humanitarian needs. These responsibilities are specified in international humanitarian law.

##### *Applicability of the Fourth Geneva Convention*

100. Israel's obligations in the Occupied Palestinian Territory are set out in the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949 (the Fourth Geneva Convention), to which Israel is a High Contracting Party. Palestinian residents of the Occupied Territory are "protected persons" under the Convention and Israel, which currently exercises effective control over the Occupied Territory, is considered the Occupying Power. While the Government of Israel has not accepted the de jure applicability of the Fourth Geneva Convention to all territory occupied since 1967, it has stated that it has undertaken to comply with the "humanitarian provisions" of the Fourth Geneva Convention. All other High Contracting Parties, as well as the International Committee of the Red Cross, maintain that the Fourth Geneva Convention does apply de jure to the Occupied Palestinian Territory. Both the General Assembly and the Security Council have also stated on numerous occasions that the Fourth Geneva Convention is applicable in the Occupied Territory.

##### *Obligations Regarding Relief*

101. The Fourth Geneva Convention includes detailed provisions regarding the Occupying Power's obligation to ensure the well-being of the civilian population. Israel has the affirmative obligation to ensure, to the fullest extent of the means available to it, adequate supplies of food, medicines and other basic needs for the population under its occupation. Israel also has certain obligations to permit the free passage of relief consignments, including medical supplies, food and other items intended for certain vulnerable groups. However, the Fourth Geneva Convention makes clear that relief from other sources, including other States and humanitarian organizations, in no way relieves Israel of any of its affirmative obligations to ensure adequate supplies of food, medicines and other basic needs.

102. Both the ICRC and some donors have insisted that external assistance should not be seen to relieve Israel of its basic obligations as the Occupying Power. For example, the ICRC stated that "[n]either the fact that the ICRC conducts a relief operation in order to respond to urgent humanitarian needs, nor legitimate security concerns of the authorities relieve the Occupying Power from its duties to ensure a sufficient supply for the daily life of the whole population." Some donor representatives have indicated their countries' unwillingness to bear what they regard as the financial burden of Israeli occupation and the current closure regime. They were also concerned that the provision of humanitarian assistance may help ease the political pressure on Israel to reconsider its current policies.

##### Safety and Protection of Civilians

103. Several Palestinians the mission spoke with requested that the number of international staff in the West Bank and Gaza be increased to ensure better protection of the civilian population against violations of international humanitarian and human rights law. They cited the presence of international volunteers as a factor that had often made a major contribution to their safety and protection.

104. The UN currently has very limited capacity to help ensure the safety and protection of civilians,

with a permanent presence of international staff that is limited to Jerusalem, Gaza and Jenin. It should be recalled in this context that in the late 1980s, the Secretary-General decided to deploy additional international UNRWA staff with a specific protection mandate.<sup>[5]</sup> Until the signing of the Oslo Accords, these additional staff members " helped to defuse tense situations, avert maltreatment of vulnerable groups, reduce interference with the movement of ambulances, and facilitate the provision of food and medical aid during curfews". They also assisted the Commissioner-General in reporting to the Secretary-General on protection concerns on a regular basis. The Secretary-General then reported to the Security Council in accordance with Security Council resolution 681 (1990). UNRWA recently deployed a small number of "Operation Support Officers" ; who perform certain of these functions, in particular facilitating access for UNRWA's assistance. However, they do not appear to have a specific protection mandate and their activities are limited to UNRWA and therefore mainly concern refugees.

## **D. COMMITMENTS MADE BY ISRAEL**

### **I. Immediate Results of the Mission**

105. The Government of Israel made the following commitments to the mission:

1. Palestinian ambulances will wait no more than 30 minutes at any checkpoints.
2. Effective mechanisms will be put in place to ensure that Palestinians seeking critical medical services (e.g. giving birth, dialysis, chemotherapy) can quickly pass all checkpoints.
3. Problems related to water deliveries to Palestinian towns and villages will be addressed to ensure that daily water deliveries in proper quantities can be supplied by Palestinian water tankers.
4. Israel will fully facilitate the assistance activities of international agencies, with particular reference to UNRWA.
5. Israel agreed to review and strengthen the liaison arrangements between international agencies and the IDF to facilitate assistance activities.

### **II. Previous Commitments Made by Israel**

106. On previous occasions, the Government of Israel has made the following commitments, which were reconfirmed to the mission:

1. Israel will improve the situation at checkpoints, including the deployment of more experienced IDF personnel.
2. The fishing zone for Palestinian fishing boats off the Gaza coast is 12 nautical miles. This policy needs to be fully implemented.

107. Other areas in which Israeli authorities promised to take action were the need to enable olive farmers access to their fields, an increase in shipments at the Karni commercial crossing, an increase in the number of work permits for workers in Israel (including overnight workers), a review of port and border delays of humanitarian goods, entry and visa denials for humanitarian workers, and improvements in access for UN staff members.

108. Each of the commitments made by the Government of Israel to the mission and on previous occasions to the UN and others should be fully implemented in an effective and expeditious manner. In addition, any gaps between official Israeli policy and its implementation should be closed.

## **E. RECOMMENDATIONS**

### **I. Measures that should be taken by the Government of Israel**

## Security

109. This report fully acknowledges the need of the Government of Israel to protect its civilian population from further attacks by Palestinian groups, while recognizing that every effort should be made to minimize the adverse effects of all security measures on the well-being and survival of the Palestinian population.

### Access by the Population to Basic Services and Needs

110. *Health* : In addition to the commitments made with regard to the transit of patients and ambulances through checkpoints, Israel should ensure: (i) full access by all people in need of medical services to areas in which they are provided; (ii) the free flow of all medical supplies, including medicines, vaccines and medical equipment, to and within the Occupied Palestinian Territory, including when they are imported or transported by the Palestinian Authority or Palestinian NGOs; and (iii) that all efforts are made to further reduce waiting time for ambulances to the absolute minimum required for security purposes, if possible even below the agreed 30-minute maximum.

111. *Education* : Israel should ensure that all children, students and teachers have full access to schools and universities throughout the West Bank and Gaza. In particular, it should take all measures to protect children from exposure to military conflict on their way to and from school.

112. *Water and Sanitation* : In addition to the commitments made with regard to the movement of water tankers, Israel should (i) ensure free access by rural communities to alternative water sources they are entitled to access and (ii) provide adequate protection to rural communities and water infrastructure.

### Access by the Population to Employment and Income

113. Israel should ensure the movement of goods and people to allow trading, farming and other forms of economic activities inside the Occupied Palestinian Territory. In particular, the free movement of workers and Palestinian trucks should be made a priority, including a review of the "back-to-back" system within the West Bank.

114. Transshipment operations at the Karni commercial crossing and other crossings between Israel and Gaza should be streamlined and expanded to allow all commercial and humanitarian goods to enter and leave Gaza in the quantities and with the speed required.

115. Israel should gradually increase the number of permits for Palestinian workers to allow them to work in Israel and Israeli settlements.

116. Israel should take immediate measures to allow farmers to harvest olives and to produce and market olive oil. In particular, Israel should provide adequate protection to rural communities and enable farmers to have free access to their fields.

### Access by Aid Organizations

117. In addition to the general commitment made to facilitate the activities of international assistance providers, Israel should: (i) accelerate the import procedures for aid supplies through all international entry points, including supplies intended for the Palestinian Authority and Palestinian NGOs; (ii) ensure full access by aid workers to the West Bank and Gaza, including international aid workers of Arab origin; (iii) ensure freedom of movement for all aid workers, including Palestinian UN and NGO staff, and for aid supplies to and within the West Bank and Gaza; (iv) improve access of aid workers and supplies to areas under curfew; and (v) ensure full respect of the privileges and immunities of all UN staff and assets.



### Release of Funds to the Palestinian Authority

118. To avoid the consequences on the humanitarian situation described in this report, Israel should urgently accelerate the release of funds it holds on behalf of the Palestinian Authority.

## **II. Measures that should be taken by the Palestinian Authority**

### Integrity of Aid Activities and Supplies

119. The Palestinian Authority should ensure with all means at its disposal that its supplies and assets, including ambulances and other means of providing services, are not used for unlawful activities or contain any contraband. It should prosecute and effectively bring to justice any personnel and other individuals suspected of being involved in criminal activities.

### Emergency Management Plan

120. The Palestinian Authority should develop, in full consultation with relevant parties, an emergency management plan that will ensure that all available resources are properly prioritized and used in an effective and transparent manner.

## **III. Assistance Activities**

### Technical Assessment Mission

121. In view of the growing humanitarian crisis, a UN inter-agency technical assessment mission should be deployed as soon as possible, preferably during the second half of September or early October. The mission should be led by OCHA at a senior level and include participation from the main operational agencies active in the region. The mission should assess needs and required assistance for refugees and non-refugees on a sectoral basis, with particular emphasis on the water, health, education and food security sectors, and should propose specific measures required to address the rising rates of malnutrition and anemia (e.g., changes in the food basket, expansion of voucher programmes, school feeding and iron fortification). It should make recommendations with regard to humanitarian contingency planning, and identify gaps and additional resource requirements. OCHA must review this assessment carefully to ensure that any additional resource requirements that may be appealed for only include those measures critical to the current needs.

122. In close consultation with UNSCO, the World Bank, Palestinian and international NGOs, as well as the relevant Ministries of the Palestinian Authority, the technical assessment mission should also make specific proposals on how coordination mechanisms could be strengthened. The proposals should also include a suggested mechanism for high-level and operational coordination with the IDF, in addition to existing arrangements with the Coordinator for Government Activities in the Territories.

### Support to Local Mechanisms

123. International assistance providers should generally aim to protect and strengthen existing Palestinian structures and coping mechanisms and limit direct reliance by the population on international assistance. To this end:

- Assistance activities should avoid disrupting market mechanisms and local production. To the extent possible, assistance supplies should be procured in the West Bank and Gaza, for example locally produced olive oil.
- Direct food assistance should be limited to special hardship cases and other limited areas of intervention, e.g. school feeding. An expansion of employment generation, cash assistance

- and microcredit programmes should be considered.
- After an initial evaluation, an expansion of the ICRC or other voucher programmes to other areas in the West Bank and to Gaza should be considered.
  - Urgent measures that would provide direct financial assistance to families in rural areas should be evaluated to prevent further asset depletion and ensure access to basic supplies.
  - Palestinian NGOs should be effectively included in coordination mechanisms and their activities generally should be protected and supported.

### Assistance to the Palestinian Authority and Palestinian NGOs

124. UN agencies and donors should continue to assist the Palestinian Authority and Palestinian NGOs in the import of essential supplies, including vaccines, ambulances and other medical supplies, and in the delivery of essential services. Donors should continue to provide budgetary support to the Palestinian Authority.

### Temporary Increase in International Staff

125. Depending on full support of the donor community, additional international staff should be deployed on a temporary basis to the Occupied Palestinian Territory to facilitate access and enhance protection capacity. Special care should be taken not to displace any Palestinian staff from functions they can continue to perform. For the purposes of enhancing the protection of civilians, the deployment of international staff to locations in southern Gaza and in the West Bank (e.g. Ramallah, Nablus and Hebron) should be considered.

### Monitoring of Commitments

126. UNSCO should put in place mechanisms that permit the comprehensive monitoring of, and appropriate follow-up regarding, compliance by Israel and the Palestinian Authority with commitments made to the UN with regard to the facilitation of assistance activities. Whenever possible, a joint approach should be taken towards any new restrictions on the delivery of assistance.

### Coordination

127. There are currently a variety of groups, meetings and discussion fora among donors, UN agencies and NGOs. The mission did not evaluate these groups in detail, but would suggest that they may be part of a future review. To enhance the coordination of humanitarian assistance, particularly for the non-refugee population, the mission recommends that UNRWA, as the lead operational agency in the region, chairs a group at a senior level that is charged with action-oriented humanitarian coordination. OCHA should provide the secretariat for this group. Existing sectoral working groups and operations rooms, led by agencies and NGOs, should be strengthened and closely linked to this group.

### Funding for UNRWA and Other Aid Organizations

128. UNRWA, which plays a crucial role in the current crisis and enjoys the full support of both the Government of Israel and the Palestinian Authority, is facing a severe funding shortfall of \$90 million (52 percent) under its 2002 Emergency Appeal. Donors should urgently increase their contributions to ensure that UNRWA can implement its assistance programmes.

129. Several other UN agencies and aid organizations, which have been expanding their programmes since September 2000, also remain severely underfunded and should be supported. Annex D provides an overview of the current funding status of the main UN agencies active in the region.

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## Mission Itinerary

12-19 August 2002Monday, 12 August:

- Arrival in Tel Aviv
- Meeting with Foreign Minister Peres

Tuesday, 13 August:

- Briefing by UNSCO
- Briefing by UNRWA
- UN Inter-Agency Meeting
- Meeting with Deputy Coordinator for the Territories, Kamil Abu Rokon, and tour of Eretz Industrial Area and Karni Commercial Crossing
- Meeting with international NGO coordination body (AIDA)
- Meeting with ICRC, Head of Delegation
- Meeting with Head of USAID

Wednesday, 14 August:

- Visit of El Am'ari Camp and UNRWA school and clinic, Ramallah
  - Meeting with Chairman Arafat and Minister for Local Government Erekat, Ramallah
  - Meeting with Dr. Hanan Ashrawi, Member of the Palestinian Legislative Council
  - Meeting with Dr. Mustafa Barghouti, Head, Union of Palestinian Medical Relief Committee
- Meeting with Minister of Trade Al Masri
- Visit of UNRWA Women's Centre and Beitounia Industrial Zone
- *Meeting with US Ambassador to Israel*

Thursday, 15 August:

- Meeting with Minister of Social Affairs Al-Wazeer, and Minister of Health Zahnoun and Minister of Supplies Ali Shaheen, UNSCO HQ, Gaza
- Tour of Karni Terminal (Palestinian side)
- Visit of Jabaliya Health Centre and Women's Programme Centre
- Visit to special hardship case families in Jabaliya

Friday, 16 August:

- Visit to Children's Parliament at El Mutasem Elementary School in Gaza City
- Visit of Toufah area, Women's Programme Centre in Shabwa and meetings with families
- Tour of Rafah Camp, Block "O"

- Visit of UNRWA Re-housing Project
- Meeting with the Local Aid Coordination Committee, Jerusalem
- Meeting with European Commission and Deputy Head of Danish Representative Office (in their capacity as Presidency of the EU)

Saturday, 17 August:

- UNRWA Commissioner General, Mr. Peter Hansen, to join delegation.
- Visit to Beit Furik; meeting with Mayor Atef Abu Akram and village council; meetings with shop owners, families and farmers; briefing by Palestinian Agricultural Relief Committee (PARC); visit of WFP food for work and land reclamation program.
- Visit to Balata Refugee Camp, Nablus
- Meeting with Nablus Mayor Ghassan Shakaa
- Tour of Nablus Old City
- Lunch with business leaders and academics in Nablus
- Meeting with Palestinian workers group and women's emergency group; briefing on telephone counseling centre

Sunday, 18 August:

- Meeting with Minister of Defence Ben Eliezer
- Meeting with Foreign Minister Peres
- Meeting with Prime Minister Sharon

Monday, 19 August:

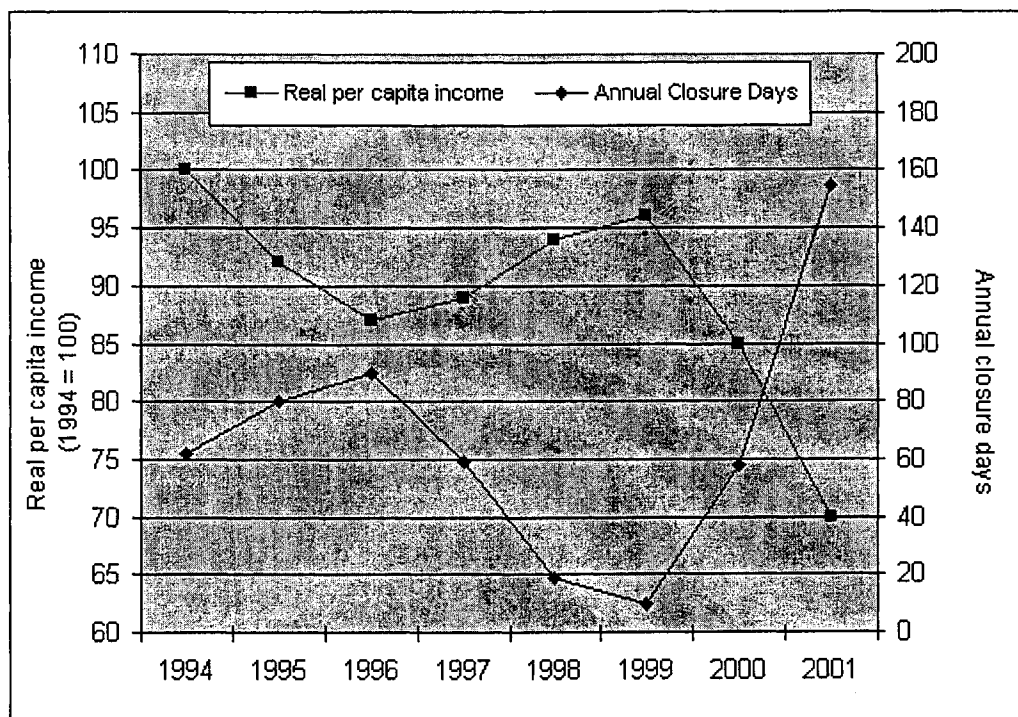
- Visit to Bethlehem; meeting with shopkeepers, residents and church officials
- Departure from Tel Aviv

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*[insert map (pdf file)]*

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## **The Relationship Between Economic Growth and Closure**



Source: World Bank and UNSCO

### Funding of UN Agencies' Emergency Appeals

#### UNRWA

**2002 Emergency Appeal** : UNRWA has received pledges of approximately \$82.5 million against a total requirement of \$172.9 million under its 2002 Emergency Appeal, leaving a funding shortfall of \$90 million or 52 percent. This deficit is being felt acutely in the Agency's emergency job creation, food assistance and direct relief responses. The emergency job creation programme is experiencing a shortfall of some \$40 million, or 72 percent of the requested amount. The shortfall in the emergency food assistance programme is approximately \$15 million, or 57 percent of the requested amount, and the shortfall in the emergency education programme is approximately \$3 million, or 41 percent of the requested amount. Of the pledged total of \$82.5 million, only \$46.9 million have been received.

**Regular Programme** : In addition to its 2002 Emergency Appeal, UNRWA's regular programmes for more than four million refugees in Lebanon, Syrian Arab Republic, Jordan as well as in the West Bank and Gaza face a deficit of \$24.9 million. UNRWA's budgeted requirements for 2002 are \$301.8 million while projected income for the year is \$276.9 million. So far, the Agency has received \$184.5 million against total pledges of \$271.3, leaving \$86.8 million in donor pledges unpaid. In addition, UNRWA's funding gap with respect to capital projects in 2002 is in excess of \$40 million.

#### Other Agencies

Agency	Funding Requirements (US\$)	Received (US\$)	Shortfall (%)
WFP	18,200,000	2,300,000	87
UNFPA	3,600,000	0	100
WHO	2,500,000	900,000	64
UNICEF	1,800,000	2,500,000	0

In some cases, the above emergency requirements are in addition to regular programmes the agencies conduct in the Occupied Palestinian Territory. Other agencies, including UNDP, require additional funding but have not issued separate emergency appeals.

[1] Preliminary Findings of the Nutritional Assessment and Sentinel Surveillance System for West Bank and Gaza, 5 August 2002.

[2] Even under regular circumstances, the availability of renewable water resources in the Occupied Palestinian Territory (115 cubic metres per capita per year) is among the lowest in the world.

[3] This information was given to the mission by the mayor of the village and confirmed by international UN staff.

[4] Acute malnutrition, or wasting, reflects inadequate nutrition in the short-term period immediately preceding the survey. Chronic malnutrition, or stunting, indicates a state of longer-term undernutrition and can lead to serious growth and development delays.

[5] See the Report submitted to the Security Council by the Secretary-General in accordance with Resolution 672, 31 October 1990 (S/21919).