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# on the ground

An Israel/Palestine News Monitor ISSUE 2



"On the Ground" is produced by the NGO Working Group on Israel/Palestine at the New York offices of the United Nations. The IPWG seeks to serve as a dynamic bridge between Israelis and Palestinians while advocating for a just and lasting peace through the United Nations.

This news monitor provides information and eye witness accounts of events, comments by local people, alternate sources of information and statistics to help your Mission do its work.

On 9 July 2004 the International Court of Justice (ICJ) released its advisory opinion on the legality of the separation wall being built in the West Bank. The Court found that the construction is contrary to international law and that Israel is under an obligation to cease construction and dismantle the structure that has been built so far.

This monitor undertakes an analysis of the ICJ decision and its legal implication. It contrasts the language of the legal decision with the realities experienced daily by Israelis and Palestinians on the ground as a result of the wall's construction. The ICJ decision has at least five ramifications:

## 1. Occupied Territories: No Longer Disputed

The ICJ ruling clarified the status of the West Bank, the Gaza Strip, and East Jerusalem as under military occupation. Therefore, the Fourth Geneva Convention is fully applicable. The government of Israel has used numerous legal arguments over the years referring to these Territories as "disputed" rather than occupied and denying that the terms of the Fourth Geneva Convention apply there. The ICJ finally ended this legal debate and said that Israel holds obligations under international law as an occupying power.

Paragraph 78 of the ICJ decision reads: *"The territories situated between the Green Line and the former eastern boundary of Palestine under the Mandate were occupied by Israel in 1967. Under customary international law, these were therefore occupied territories in which Israel had the status of occupying power. Subsequent events in these territories have done nothing to alter this situation."*

*Continued over*

**On the Ground:** Amnesty International documented that regard for human rights has deteriorated and violence has reached a level unprecedented in the 36 years of Israel's occupation of the West Bank and Gaza. In the past three years more than 2,100 Palestinians have been killed by the Israeli army in the Occupied Territories, including some 380 children. Palestinian armed groups have killed some 750 Israelis, most of them civilians, including more than 90 children. Tens of thousands of people have been injured, many maimed for life.

The Israeli army has destroyed more than 3,000 Palestinian homes, and hundreds of workshops, factories and public buildings in the West Bank and Gaza. They have bulldozed vast areas of cultivated land, uprooting olive groves and orchards and flattening greenhouses and fields of growing crops. – From *"Israel and the Occupied Territories Surviving under siege: The impact of movement restrictions on the right to work,"* Amnesty International, September 2003.

## 2. Location is Everything

The ICJ judgment clarifies that it is the location of the wall, not the concept of the wall, which is illegal. If Israel had built (or will build) the wall on its own side of the 1949 Armistice line, it would not be in violation of international law.

Paragraph 122 of the decision reads: *"The Court recalls that the planned route [of the wall] would incorporate more than 16 per cent of the territory of the West Bank. Around 80 per cent of the settlers living in the Occupied Palestinian Territory, that is 320,000 individuals, would reside in that area... In other terms, the route chosen for the wall gives expression in loco to the illegal measures taken by Israel with regard to Jerusalem and the settlements."*



Prior to the ICJ ruling, the Israeli High Court, citing proportionality, ordered rerouting of a segment of the wall. It did not dictate a specific route and left itself open to hear petitions from people along other parts of the planned route. Israeli officials have agreed to work on a new route but the present wall is still in place.

**On the Ground:** Jessica Montell, Executive Director of B'tselem, The Israeli Information Center for Human Rights in the Occupied Territories, wrote in *Maariv International* on 14 July 2004, *"Not infrequently, the boundary goes down the center of a busy street. Now a concrete wall that is six to eight meters high is being built along that line, dividing thousands of Palestinian residents from their jobs, schools, families and health services....The barrier in Jerusalem does not separate between Israelis and Palestinians. It divides Palestinians from Palestinians. More than 200,000 Palestinian citizens will remain west [in the seam zone] of the barrier"*.

**On the Ground:** The commander of the Israel Defense Forces in the West Bank has stated that the fence was being constructed temporarily for security purposes with the goal of *"effective handling of security threats stemming from Palestinian terror,"* according to *Ha'aretz* of Monday, 5 July 2004. Eye witnesses, including humanitarian aid workers, have told of olive trees being uprooted and houses being demolished to make way for the wall and adjacent roads. These actions have produced a permanent, rather than a temporary, change in the lives and land and the ICJ advisory opinion states that Israel owes reparations for this destruction.

The December 2003 briefing paper from this working group cites specific ways in which the location of the wall produces dislocation among Palestinians. Jad Isaac, director of the Applied Research Institute – Jerusalem, (a partner with several of the NGOs in the working group) said, *"On 18 October 2003, the Israeli authorities issued orders stating that no Palestinian can enter the area between the separation zone and the Green Line [the seam zone] without a permit from the Israeli military government and imposed multiple conditions on the granting of such permits."*

--Newsletter of the Peace Office of the MCC, July – September 2004

### 3. Security for Both Parties

The Israeli government has protested that the ICJ ruling ignores questions of terrorism and security, which are its stated reasons for the construction of the wall on this particular route. In fact, the ICJ deals with this question in some depth.

In addition, the Israeli High Court decision cited the part of the fence in the case before it as constituting severe non-proportional harm to the local population, in relation to the security advantages that would accrue from it.

Paragraph 141 of the decision reads: *"The fact remains that Israel has to face numerous indiscriminate and deadly acts of violence against its civilian population. It has the right, and indeed the duty, to respond in order to protect the life of its citizens. The measures taken are bound nonetheless to remain in conformity with applicable international law."*

Paragraph 137 of the decision reads: *"The Court is not convinced that the specific course Israel has chosen for the wall was necessary to attain its security objectives. The wall, along the route chosen, gravely infringes a number of rights of Palestinians residing in the territory occupied by Israel, and the infringements resulting from that route cannot be justified by military exigencies or by the requirements of national security or public order. The construction of such a wall accordingly constitutes breaches by Israel of various of its obligations under the applicable international humanitarian law and human rights instruments."*

The desire for Israeli security from bombers needs to be acknowledged and affirmed but the court decision was a reminder that security for Palestinians must also be protected, including food security, education, and medical security, as well as life and death issues.

**On the Ground:** In its own decision the Israeli High Court said, *"Only a Separation Fence built on a base of law will grant security to the state and its citizens. Only a separation route based on the path of law will lead the state to the security so yearned for."*

**On the Ground:** *"Putting up a barrier and excluding the other might provide temporary security for Israelis but it does not solve the long term problem and it increases Palestinian insecurity."* - Samia Houry, Palestinian Christian laywoman.

Examples of the wall's humanitarian impact on Palestinian security are available on the UNRWA website at [www.un.org/unrwa/emergency/barrier](http://www.un.org/unrwa/emergency/barrier) and also in the December 2003 briefing paper from this working group.

### 4. Illegality of Settlements is Reinforced

As well as ruling on the separation wall, the ICJ also stated clearly that the policy of building settlements in occupied territory is illegal under international law.

Paragraph 120 reads: *"As regards the settlements, the Court notes that Article 49, paragraph 6, of the Fourth Geneva Convention provides: 'The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.'... The information provided to the Court shows that, since 1977, Israel has conducted a policy and developed practices involving the establishment of settlements in the Occupied Palestinian Territory, contrary to the terms of the Fourth Geneva Convention... The Court concludes that the Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem) have been established in breach of international law."*



**On the Ground:** The recent Israeli Plan to build up the settlements [on the Jerusalem side of Maale Audumim] counters all international laws and the Fourth Geneva Convention, in addition to Security Council resolutions, specifically 446 which *“determines that Israeli settlements are a serious obstruction to peace”*, resolution 452 which calls upon Israel *“to cease building settlements in occupied territories”* and resolution 465 which *“...asks all member states not to assist Israel’s settlement program.”* Furthermore, Israel failed to abide by its commitment to the “Road Map” initiative.... This *“E1 plan...expropriate[s] approximately 12,500 dunums of land that belong to Palestinian residents of several villages: Al-Tur, ‘Anata, El-Eizaryieh, Abu Dis, Al-Essawyieh and Hizma.”* --Jad Issac, of the Applied Research Institute in

Jerusalem, in *“The Obstacles to Peace Just Got Bigger,”* August 2004.

## 5. The obligations of all states

In addition to clarifying Israel’s obligations to dismantle the wall and pay reparations, the ICJ also emphasised the obligations of all states not to provide aid or assistance to the illegal situation that results from the construction of the wall.

One of the Court’s final conclusions in paragraph 163, reads: *“All States are under an obligation not to recognize the illegal situation resulting from the construction of the wall and not to render aid or assistance in maintaining the situation created by such construction; all States parties to the Fourth Geneva Convention... have in addition the obligation to ensure compliance by Israel.”*

Although the media has emphasised the “non-binding” character of this ruling, the ICJ advisory opinion is actually an interpretation and application of existing international laws, which are, in fact, binding. Israel is party to the Geneva Conventions, the International Covenant on Civil and Political Rights, the Hague Regulations, the UN Charter, and other relevant international laws, all of which are binding upon it. The actions or inactions of any one country do not negate international laws.

On 20 July 2004 the General Assembly held an emergency session and voted resolution A/ES-10/18, which acknowledged the advisory opinion of the ICJ and demanded that Israel comply with its obligations to dismantle the wall and make reparations for the damage. This resolution was adopted with an overwhelming majority of 150 in favor and 6 against and 10 abstentions. The General Assembly resolution invited Switzerland, as the depository of the Geneva Conventions, to report to the General Assembly on the matter of ensuring that Israel complies with its obligations under the Fourth Geneva Convention.

**On the Ground:** A team set up by Israeli Attorney General Menachem Mazuz recommended in August that the government should consider applying the Fourth Geneva Convention to the West Bank and Gaza. Yuval Steinitz, chair of the Knesset’s foreign affairs and defense committee, criticized the proposal and questioned the Attorney General’s competence to make it, according to BBC News.

The full text of the International Court of Justice Advisory Opinion can be found on the web at [www.icj-cji.org/icjwww/idocket/imwframe.htm](http://www.icj-cji.org/icjwww/idocket/imwframe.htm).