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ICJ advisory opinion on illegality of Israel's Wall

Providing a Voice

Background

It is seven years since the International Court of Justice (ICJ) ruled that Israel's West Bank Wall is a violation of international law because it invades Palestinian territory. Nevertheless, construction of the Wall has continued. The advisory opinion was sought by the United Nations General Assembly and was the first time the Court had been asked to look at the legality of an Israeli-Palestinian issue. It was delivered on 9 July 2004 and clearly affirmed Israel's obligations under international humanitarian law.

The 14-1 majority opinion rejected Israel's illegitimate security justifications for the Wall and said that any part of the Israeli security Wall, which diverges from the 1949 Armistice Line – known as the Green Line – and encroaches on occupied Palestinian land in the West Bank, is illegal. The Israeli Government was advised not to take part in the oral hearings because its presence would then have made it party to the Court's decision. In its written submission, Israel said that the Court had no authority to discuss "the terrorism prevention fence" because of its basic right to self-defence and that by hearing an "overtly political" issue, the Court was endangering peace negotiations between itself and the Palestinians.

To win over public opinion, Israel brought the burnt-out remains of a bus to the Hague and displayed the names and photos of Israel's victims of suicide bombings outside the Court. Israel's purpose was to show that the Wall is necessary for Israel's security against Palestinian violence. What was not on show was Israel's overwhelming violence against Palestinian civilians.

The Wall clearly violates the most fundamental human rights, yet Israel deflected its legal obligations by insisting that the Wall is a "temporary" structure, purely for self-defence. The court reasoned that if the Wall was in fact intended for self-defence, it should have been built on the Israeli side of the Green Line.

The Wall, however, is being built well into the occupied territory in order to annex illegal settlements and in the process is dividing Palestinian areas, fragmenting communities and separating many Palestinians from their means of livelihood and access to health, education and other services. If there were no illegal settlements, there would be no reason for an illegal Wall *inside* Palestinian territory.

The Court stated that construction of the Wall should cease, that all structures supporting the Wall should be dismantled immediately, and that compensation should be paid for all the damage caused.

Is the advisory opinion binding?

Although not binding on states, advisory opinions are very persuasive statements on questions of international law. The legal reasoning used to arrive at such opinions are based on the same rules and procedures that govern the Court's binding judgments. Consequently, they are influential and are likely to have significant political and diplomatic effects, which if nothing else, will embarrass the offending country. It also adds considerable weight to the "discomfort" already being felt in the international community about Israel's continual disregard of its legal responsibilities as an occupying state.

Were Israel's reasons for not appearing reasonable?

By claiming the right to self-defence, Israel forgets that it is the Occupier, that it is occupying Palestinian land and that its occupation is illegal according to international law. This land belongs to the Palestinians and it is Israel, which is continually expropriating Palestinian land for illegal settlements and destroying Palestinian land to build the Wall. Despite UN resolutions condemning Israel's actions and upholding

the rights of the Palestinians, it has been ineffectual in holding Israel to account. Israel's claim that the Court was endangering the peace process has no validity. Any peace negotiations were and are meaningless while Israel continues its occupation, colonisation and using the Wall to expropriate more territory. If Israel had been party to the proceedings, the Court could have required Israel to return expropriated land to the Palestinians.

On 20 July 2004, the UN General Assembly overwhelmingly adopted a resolution demanding that Israel comply with the ICJ advisory opinion. Six countries voted against: Israel, USA, AUSTRALIA, Micronesia, the Marshall Islands and Palau. The US and Israel rejected both the verdict and the resolution.

If the Wall is a "temporary security measure" to combat the threat of suicide bombings as claimed by Israel, then it should be built along the Green Line, that is, the 1949 Armistice Line between Israel and the West Bank. Instead, the Wall is being built deep inside the West Bank - sometimes as far as 20kms inside - in order to catch the illegal Israeli settlements. And, a sub-system of smaller enclaves has been designed outside the main Wall to imprison the 500-600,000 Palestinians who will be trapped between the Wall and the Green Line. Once the 700+km Wall is completed, 55% of the West Bank will be *de facto* annexed to Israel leaving more than 4 million Palestinians squeezed into 7% of their former homeland (and this includes the Gaza Strip). The Wall, which is 8 metres (25 feet) high and constructed from thick concrete, incorporates watch towers, is reinforced by razor wire, electric fencing and wide ditches. At a cost of \$AUS5+ billion, this wall can hardly be called a "temporary measure".

Human impact of the Wall

The Wall takes away the right of Palestinians to move freely within their own land. This has drastically affected their health needs, their ability to work, their access to education, their right to own property, their most basic food and water requirements, access to their farms and the right to their identity. It has set up a system of Apartheid, which clearly benefits the State of Israel and the Jewish settlers at the humiliating expense of the Palestinian civilian population. By creating unsustainable living conditions, the Wall will cause the forcible expulsion/transfer of thousands of Palestinian civilians. This is ethnic cleansing and is a crime against humanity.

Weekly protests against the illegal Wall

Palestinians, internationals and Israeli activists have been holding nonviolent weekly protests in various villages since 2003 to stop construction of the Wall proceeding along an illegal path deliberately designed for settlement expansion.

After 2 years of weekly nonviolent protests in the village of Bil'in, the Israeli High Court ruled in 2007 that the Wall's path through Bil'in was illegal. Despite that ruling, it took another 4 years for that Wall to come down returning to Bil'in only 150 acres of 490 acres annexed by the original path. The Court has rarely ruled in favour of Palestinian claimants, in most cases accepting the security arguments brought by the government. Nor has it questioned the legality of the Wall itself as required by international law.

The Wall is about borders not security. On 8 March 2006, then acting Israeli Prime Minister Ehud Olmert said that "The course of the fence – which until now has been a security fence – will be in line with the new course of the permanent border".

Eastern Wall planned for Jordan Valley

Israel's intentions in the Jordan Valley are clear: it first declared the agriculturally rich Jordan Valley a "closed area"; it then restricted the movement of Palestinians in and out of the area and only those Palestinians who are registered residents of the Jordan Valley are given permits; it has since been systematically demolishing Palestinian homes to clear the way for the Wall which will isolate and annex the region to its settlements. This will give Israel another **25% of the West Bank**, leaving the Palestinians with only truncated parcels of arid land. Trapped inside the Wall that would mark out Israel's permanent borders, the Palestinians would have no land that would constitute a viable Palestinian state. Under such conditions, the Palestinians would become mere prisoners of the long planned for "Greater Israel" on all of historic Palestine.

ICJ, "Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, 9 July 2004

Al Haq, "The Wall in the West Bank", November 2006

Aluf Benn and Yossi Verter, "Olmert to Offer Settlers: Expand blocs, cut outposts," Ha'aretz, 3 March 2006.

Usama Halabi, The Israeli High Court approves the legality of the Wall and its associated regime, BADIL, Spring 2007

The Alternative Information Centre, "Bil'in demonstrators to take down the Wall", 23 June 2011

