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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

INTERNATIONAL COURT OF JUSTICE

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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.[1]

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.[2] 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.[3] 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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1 See ICJ Communiqué 2003/42 (10 Dec. 2003).

2 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 (3rd 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."[4]

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

[4] See General Assembly Press Release GA/10177 of 20 October 2003, text from <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.[5]

(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.'"[6]

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[5] 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.

[6] *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."[7]

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,"[8] 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."[9] Consecutive Presidents of the Court have made appeals before the General Assembly for greater recourse to the advisory function of the Court.[10]

(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."[11]

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7 *Ibid.* at 233, para. 11.

8 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."

9 Boutros Boutros-Ghali, *Agenda for Peace*, 1992, p. 22.

10 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.

11 *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[12] 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."[13]

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.

[12] See UN Doc. A/520/Rev.15.

[13] *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.[14]

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

[14] 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);[15] 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.

[15] 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.[16] 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.[17]

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 ... ."[18] 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.

[16] 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.[19] 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.[20]

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

[18] See Dugard Report (2003), at 2, 8, para. 14.

[19] 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.

[20] 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)*.[21]

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."[22]

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.[23]

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[21] *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)?").

[22] *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.

[23] 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.[24] 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.

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.

[24] 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.[25]

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,[26] 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.[27] 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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[25] 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.

[26] 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."[28]

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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[27] See Dugard Report (2003).

[28] *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."[29]

48. Still more emphatically, in 1956, the Court said that only "compelling reasons" would lead it to refuse giving a requested opinion. [30] 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."[31]

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

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

[31] *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."[32]

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.[33] Consequently, the question put to the Court is not devoid of object or purpose.[34]

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.[35] 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.[36]

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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[32] *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 12, at 37, para. 73.

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

[34] Cf. *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 12, at 37, para. 73.

[35] 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.").

[36] 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.[37] 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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[37] *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.[38]

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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[38] 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.[39]

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. [40] 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."[41] In the present case, the Court is not confronted with a question involving extensive factual issues which could not be

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[39] 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* (2nd ed., 1958), p. 248. See also Shabtai Rosenne, *The Law and Practice of the International Court, 1920-1996*, Vol. II (3rd ed., 1997), p. 1061 ("the comparison is between two unlikes.").

[40] *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)).

[41] *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.[42] 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."[43] 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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[42] 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>.

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 ... ."[44]

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.[45]

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 ... ."[46]

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[43] *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 12, at 28-29, para. 46.

[44] *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).

[45] 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>.

[46] *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."[47]

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 ... ."[48]

(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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[47] *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.

[48] *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 ... ."[49]

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."[50]

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.[51] 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."[52] 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."[53]

71. In sum, the Court is entitled "to act independently of any formal expression of consent on the part of States individually"[54] and the giving of the opinion does not

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[49] *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.

[50] *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.

[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 23, para. 31.

[52] *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 12, at 24, para. 30 (emphasis added).

[53] *Ibid.* at 25, para. 34.

[54] Shabtai Rosenne, *The Law and Practice of the International Court, 1920-1996*, Vol. II (3rd 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."[55]

(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.[56]

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."[57] 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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[55] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226, at 235, para. 16.

[56] *Ibid.*

[57] *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. [58]

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. [59]

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.

[58] *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.

[59] 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.[60]

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

[60] 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.[61] 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.

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

[61] 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[62] and the Interim Agreement[63] 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.[64] 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.[65]

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62 Articles XIII and XV. See note 71 *infra.*
63 Article X, Annex I, Art. 1.5. See note 75 *infra.*
64 Laws of the State of Israel, Vol. 34 (1979/80), p. 209.
65 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.[66]

(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.*[67] 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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66 For example, Resolution 694 of 24 May 1991;and Resolution 1073 of 28 September 1996.

67 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.[68]

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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[68] 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.[69] 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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[69] 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 1859th 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.[70] The Declaration of Principles on Interim Self-Government Agreements of 13 September 1993,[71] Agreement on the Gaza Strip and the Jericho Area of 4 May 1994,[72] Agreement on Preparatory Transfer of Powers and Responsibilities of 29 August 1994,[73] Protocol on Further Transfer of Powers and Responsibilities of 27 August 1995,[74] the Israeli – Palestinian Interim Agreement on the West Bank and the Gaza Strip of 28 September 1995,[75] Protocol Concerning the Redeployment in Hebron of 17 January 1997,[76] Sharm El-Sheikh Memorandum of 4 September 1999,[77] Protocol Concerning Safe Passage between the West Bank and the Gaza Strip of 5 October 1999[78], 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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70 The Palestine YBIL., Vol. 7 (1992/1994), p. 230.
71 *Ibid.*, p. 232.
72 *Ibid.*, p. 243.
73 The Palestine YBIL., Vol. 8 (1994/1995), p. 315.
74 *Ibid.*, p. 341.
75 *Ibid.*, p. 353.
76 The Palestine YBIL., Vol. 9 (1996/1997), p. 437.
77 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').[79] Palestinians living in East Jerusalem participated in these elections and elected seven members to the Council.[80] 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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78 *Ibid.*, p. 343.

79 This arrangement was expressed in article IV of the Interim Agreement of 1995.

80 *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.[81] 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[82] of this territory by Israel.

(a) Phases of settlement activities[83]

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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81 *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

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

83 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,[84] 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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84 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.[85] (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. [86] Israel has claimed that

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[85] Israeli Central Bureau of Statistics, 2002.

[86] 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,[87] 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[88] 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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87 World Bank, Developing the Occupied : An Investment in Peace, Volume 3 Private Sector Development, World Bank 1993, p. 113.

88 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."[89]

132. The concept of 'state land' was introduced during the British Mandate in the 1922 Order-in-Council.[90] 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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[89] 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.[91]

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

91 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.[92] 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.[93] 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.[94] In both cases, the burden of proof was imposed on the Palestinians claiming to own land to prove that it was not state land.[95]

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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92 Military Order 291(1968).

93 World Bank op. cit. p. 114-5.

94 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.[96]

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,[97] 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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95 Military Order 364 (1969)

96 World Bank, op. cit. p.115.

97 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,[98] "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[99]), expropriation for public purposes (which accounted for the acquisition of 150,000 dunums seized or designated for seizure by 1988[100]), requisitioning for military purposes (which accounted for the acquisition of 50,000 dunums of land by 1988[101]), 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

98 West Bank Data Project, op. cit. p. 30
99 West Bank Data Project, op. cit. p.30.
100 West Bank and Gaza Atlas. op. cit, p. 62.
101 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).[102] Amendments were then made to these plans, whereby the locations of

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102 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.[103] 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.[104]

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.[105]

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."[106]

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103 From Occupation to Interim Accords, op. cit, p.83

104 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.

105 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.[107] 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."[108] Creating accessibility to settlement areas would also serve to increase demand in these areas.[109]

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.[110] The special committee, composed entirely of Israeli officers, which considered these objections decided in its session on 12 March 1991 to reject them.[111]

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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106 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

107 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.

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

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

110 Shehadeh, Raja, "From Occupation to Interim Accords: Israel and the Palestinian , Kluwer International, 1997, p. 83

111 Shehadeh, Raja, "From Occupation to Interim Accords: Israel and the Palestinian , Kluwer International, 1997, p. 83

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

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,[114] while their access to the new roads created in according with Road Plan No. 50 continues to be restricted.[115]

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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112 Question of the Violation of Human Rights, supra note 87.

113 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.

114 "West Bank Barrier: Humanitarian Access and the Jerusalem Wall, United Nations Officer for the Coordination of Humanitarian Affairs, 3rd December 2003, p. 5; See www.reliefweb.int-hic-opt

115 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,[116] 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.[117] 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.[118]

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."[119]

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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116 B'Tselem 2002 Report, p. 87, Annex 12 in Annex Volume 2 accompanying this Written Statement.

117 From Occupation to Interim Accords, p. 83, 1997.

118 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.[120] 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.[121] (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. [122] 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.[123]

(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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119 From Occupation to the Interim Accords, p. 83-84.

120 *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.

121 *Ibid.*

122 *Ibid.*

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

occupying forces and the Palestinian population.[124] 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.[125] 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.[126]

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".[127]

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

125 *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.

126 *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,[128] 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."[129]

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.[130]

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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127 *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.

128 "Barak Renews Hi-Priority Status for Settlements", Press Release, Peace Now, December 30, 2000.

129 "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.[131] 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.[132]

(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.[133] 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.[134] 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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130 See http://www.ariga.com/peacenowsettlementbudgetreport.htm

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

132 *Ibid*, p. 84.

133 *Ibid*, p. 65.

134 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. [135]

(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.[136] 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."[137] By way of Resolution 446 (1979), the Council also established a Commission to examine the situation relating to the settlements.[138]

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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135 Rules of Civil Procedure (Furnishing of Documents for the Administered), 5730-1969, Kovetz Takkanot2482, 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.

136 S/RES/446 (1979).

137 *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."[139]

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.[140]

(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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[138] 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^2 – an area about ten times that of the Jordanian East Jerusalem municipality.[141]

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."[142]

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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[140] See for example resolution A/58/98 of 9 December 2003.

[141] 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.[143]

174. Israel extended its law over Al-Haram Al-Sharif and Holy Places through the June 1967 Protection of Holy Places Law.[144] 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."[145]

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

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

144 Protection of the Holy Places Law, 5727, 1967.

145 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.[146] To retain his or her Jerusalem identity card a Palestinian Jerusalemite must:

- not acquire any other nationality or citizenship[147]
- 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[148]
- 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.[149]

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

147 Article 11 of the Law of Entry into Israel 1952

148 *Ibid.*

149 *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, 22nd August 2003, pp 40.

(7) Other Illegal Measures Related to Occupied East Jerusalem

183. In its 48th 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.[150] 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,..."[151]

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

151 *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[152], 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.[153] 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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152 *UN Habitat: Progress Report of the Executive Director*, HSP/GC/19/2/Add.3, 13th May, 2003

enforced displacement of people. Currently 28,000 Palestinian dwellings in Jerusalem are under threat of 'administrative destruction'.[154]

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

154 *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.[155] Since 1967, out of a total area of 36 km² in East Jerusalem, 24.5 km² have been expropriated for construction of settlements.[156]

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.[157] The necessary authorizations were to be finalized by the end of the year.[158] Further, in August 2003, the Israeli government launched the Eitam plan, which provides funding for purchases of apartment housing in National Priority Areas.[159] 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.[160]

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.[161]

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

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

157 *Ibid.*

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

159 Elazar Levin, "A four month window of opportunity," Globes Real Estate Supplement, August 17, 2003.

160 *Ibid.*

161 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."[162]

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[162] *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.[163] 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.[164] 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*,[165] which, despite Israel's refusal to cooperate, has submitted periodic reports on the matter to each Assembly session.[166] 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.[167]

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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[163] Raja Shehadeh, *Occupiers' Law: Israel and the West Bank*, (IPS, Washington, D.C., 1988)

[164] 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)

[165] 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.*

[166] 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)

[167] 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 censured all press and media.[168] 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.[169] 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.[170] 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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168 Raja Shehadeh, 1988.

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

170 B'Tselem (The Israeli Information Center for Human Rights in the Occupied Territories), www.btselem.org/English/Deportation/Statistics.

1980.[171] 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.[172] Currently, more than 6,000 Palestinian civilians, including women and youths, are being held in Israeli detention centres or prisons.[173] Israel has also subjected Palestinians in custody to abuse and physical ill-treatment, including torture, and to unhygienic and inhumane conditions.[174]

205. Throughoutits 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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171 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).

172 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.

173 Dugard Report (2003), para. 29.

174 *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.[175] 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 polices 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."[176] 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".[177] 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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175 *Origins and Evolution of the Palestine Problem*, 1917-1988 (UN, New York, 1990). See also reports of the Special Committee to Investigate Israeli Practices.

176 S/RES/605 (1987).

177 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."[178] 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 esolution 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."[179] 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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178 S/RES/672 (1990); UN Secretary-General submitted a report pursuant to resolution 672 (1990) contained in document S/21919 of 31 October 1990.

179 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.[180]

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[180] 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.[181] Contrary to accusations of orchestration, the *intifada* erupted following that event in a culmination of the rising tensions caused by the

[181] 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."[182]

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.[183] 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."[184]

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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)

[182] *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.

[183] 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.

[184] 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.[185] 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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[185] 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.[186] 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)

[186] *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.[187]

220. At the same time, Israel has inflicted vast physical damage and destruction in the Occupied Palestinian Territory since September 2000.[188] 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.

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

187 Dugard Report (2003), para. 24.

188 *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.[189] 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.[190] 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."[191]

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189 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.

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

191 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.[192] 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.[193]

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.[194] 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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[192] 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).

[193] 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",[195] 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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194 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."[196]

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

196 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.[197]

(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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[197] '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."[198]

- *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."[199]

- *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."[200]

(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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198 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.

199 *Ibid.*

200 *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.[201] Orders were issued for construction along the entire blueprint of the Wall simultaneously, instead of building it stage after stage.[202]

(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.[203] 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).[204] (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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201 Prime Minister Ariel Sharon's Speech at the Herziliya Conference, 18 December 2003.

202 Amir Rapaport, *Ma'ariv*, 24 December 2003.

203 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; cf., Jonathan Cook, "Thwarting the State," *Al-Ahram Weekly* on-line, Issue No. 61, 27 March – 2 April 2003.

204 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."[205]

(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 Kaspit, *Ma'ariv*, 14 January 2004.

[205] 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.[206]

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[206] 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.[207] 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.[208]

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.[209]

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207 See Chapter 4 for Israeli planning policy in the West Bank.

208 B'Tselem 2003 Report, p. 24.

209 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[210]

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.[211]

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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[210] 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.

[211] 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.

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.[212] 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.[213] 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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212 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 Falamya 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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213 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.[214] 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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214 '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.[215]

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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215 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[216] 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

[216] '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.[217] 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.[218] (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.

[217] 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.. The report appears as Annex 14 to this Written Statement.

[218] 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.[219] 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.[220]

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.

[219] 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.

[220] 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.[221] 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.[222] 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.[223] 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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221 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.

222 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.

223 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.[224]

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.[225]

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.[226]

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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224 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.

225 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).

226 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. [227] 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."[228]

281. The constructed and approved sections of the Wall situate approximately 80 percent of the settler population to the west of the Wall.[229] 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.

[227] *Ibid.*, p. 21

[228] 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.

[229] 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.[230]

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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230 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.[231]

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[231] 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'[232] 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[233] construction tenders issued by these two government agencies, all are for settlements[234] 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.[235]

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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232 This bloc includes the settlements of 'Bet Horon,'Including 'Givon Ha Hasasha,' 'Givat Ze'ev,' 'Har Adar,' and, 'Ha Samuel.'

233 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.

234 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.[236]

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.[237]

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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[235] 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.

[236] 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.

[237] 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.[238] 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

[238] 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.[239]

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.

[239] 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.[240] 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.[241]

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

241 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.[242]

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.[243]

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[242] 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.

[243] 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-Sharqyia 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-Sharqyia who have married in Israel have all moved across the Green Line. For them it becomes difficult now to return and visit their families.[244]

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.

[244] 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.[245]

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.[246]

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

[245] 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.

[246] 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.[247]

(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.[248] 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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[247] 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.

[248] 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.[249] 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.[250]

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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[249] 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.

[250] 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[251] (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[252] (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.[253] 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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[251] Palestinian Agricultural Relief Committee, *Needs Assessment Study and Proposed Intervention 4*, (2003).

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

[253] *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.[254]

(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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[254] 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.[255]

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.[256] 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. [257] 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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[255] 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.

[256] 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.[258]

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.[259] Additionally, regular vaccination programs have been pushed back, though with great effort some vaccinations have continued.[260]

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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257 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.

258 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.

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

260 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.[261]

(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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261 *Ibid.*

and Israeli authorities have prevented other schools from adding space to relieve overcrowding.[262]

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.[263] 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.[264] 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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262 *Ibid.* p. 40.

263 *Ibid.*

264 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.[265]

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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[265] 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.[266] 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.[267] 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.[268]

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.[269]

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[266] 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.

[267] 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.

[268] 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.

[269] *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 since1967, 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.[270] 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.[271] Furthermore, the essential test is one of actual overall control.[272] 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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270 Already in 1948-9 Israel had occupied about half of the territory allocated to the Arab State.

271 See in particular Articles 4 and 47 of the Fourth Geneva Convention.

272 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.[273] 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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[273] *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."[274]

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."[275]

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."[276]

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[274] 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.

[275] *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."[277]

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.[278] 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.[279] 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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276 *The Law of War on Land, Part III Manual of Military Law* (The War Office, 1958) §509.
277 *The Law of Land Warfare, Field Manual* (U.S. Department of the Army, July 1956) § 360.
278 Oppenheim, *International Law* (6th ed, London 1944) pp. 432- 4.
279 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."[280]

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.[281]

(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.[282] It does not put an end to the

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[280] ICRC (ed. Pictet), *Commentary. IV Geneva Convention relative to the Protection of Civilian Persons in Time of War* (Geneva, 1958) 275.

[281] 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).

[282] 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.[283] 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*,[284] 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."[285]

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):

Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), ICJ Reports 1971, p. 6.

283 *Ibid.* And see United Nations Charter, Article 80.

284 *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.

285 *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 deplores* 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."[286]

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.[287] It cannot admit of any doubt.

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[286] 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.[288] 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

287 See Annex volume 1

288 *LNOJ* vol.3, No 8 Pt II (August 1922) 798 – 802, 817 – 825.

on numerous occasions, including in 1994.[289] 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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[289] 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;[290]
- Israel-Palestine Liberation Organisation, Declaration of Principles on Interim-Self Government Arrangements, 13 September 1993 (Declaration of Principles);[291]
- Israel-Palestine Liberation Organisation, Agreement on the Gaza Strip and the Jericho Area, 4 May 1994;[292]

Series 395.

290 Text in (1992-4) 7 *Palestine YBIL* 230.

291 (1993) 32 ILM 1525.

- Israel-Palestine Liberation Organisation, Agreement on Preparatory Powers and Responsibilities, 29 August 1994;[293]
- Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, 28 September 1995;[294]
- Note for the Record (Ross-Netanyahu-Arafat), 17 January 1997;[295]
- Israel-Palestine Liberation Organisation, Protocol concerning the Redeployment in Hebron, 17 January 1997;[296]
- Israel-Palestine Liberation Organisation, Wye River Memorandum, 23 October 1998;[297]
- Israel-Palestine Liberation Organisation, Sharm El-Sheikh Memorandum, 4 September 1999.[298]

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."[299]

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292 (1994) 33 ILM 622.
293 (1995) 34 ILM 455.
294 (1997) 36 ILM 551.
295 (1997) 36 ILM 655.
296 (1997) 36 ILM 650.
297 (1998) 37 ILM 1251.
298 (1999) 38 ILM 1465.
299 (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').[300] 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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[300] 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."[301]

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301 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) <u>International recognition that the Palestinian territory is occupied within the meaning of the Fourth Geneva Convention</u>

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, 55th Sess., UN Doc S/RES/56 (2000)
- SC Resolution 904, UN SCOR, 49th Sess., UN Doc S/RES/50 (1994)
- SC Resolution 799, UN SCOR, 47th Sess., UN Doc S/RES/ 48 (1992)
- SC Resolution 726, UN SCOR, 47th Sess., UN Doc S/RES/48 (1992)
- SC Resolution 694, UN SCOR, 46th Sess., UN Doc S/RES/47 (1991)
- SC Resolution 681, UN SCOR, 45th Sess., UN Doc S/RES/46 (1990)
- SC Resolution 673, UN SCOR, 45th Sess., UN Doc S/RES/ 46 (1990
- SC Resolution 672, UN SCOR, 45th Sess., UN Doc S/RES/46 (1990)
- SC Resolution 641, UN SCOR, 44th Sess., UN Doc S/RES/45 (1989)
- SC Resolution 636, UN SCOR, 44th Sess., UN Doc S/RES/45 (1989)
- SC Resolution 608, UN SCOR, 43rd Sess., UN Doc S/RES/44 (1988)
- SC Resolution 607, UN SCOR, 43rd Sess., UN Doc S/RES/44 (1988)
- SC Resolution 605, UN SCOR, 42nd Sess., UN Doc S/RES/43 (1987)
- SC Resolution 592, UN SCOR, 42nd Sess., UN Doc S/RES/42 (1986)
- SC Resolution 484, UN SCOR, 35th Sess., UN Doc S/RES/36 (1980)
- SC Resolution 478, UN SCOR, 35th Sess., UN Doc S/RES/36 (1980)
- SC Resolution 476, UN SCOR, 35th Sess., UN Doc S/RES/36 (1980)
- SC Resolution 471, UN SCOR, 35th Sess., UN Doc S/RES/36 (1980)
- SC Resolution 469, UN SCOR, 35th Sess., UN Doc S/RES/36 (1980)
- SC Resolution 468, UN SCOR, 35th Sess., UN Doc S/RES/36 (1980)
- SC Resolution 465, UN SCOR, 35th Sess., UN Doc S/RES/36 (1980)

- SC Resolution 452, UN SCOR, 34th Sess., UN Doc S/RES/35 (1979)
- SC Resolution 446, UN SCOR, 34th Sess., UN Doc S/RES/35 (1979)
- SC Resolution 271, UN SCOR, 24th 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."[302]

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[303] and the Special Rapporteur for the Occupied Territories appointed by the United Nations Commission on Human Rights.[304]

391. Particularly strong evidence of this is provided in the Declaration of High Contracting Parties to the Fourth Geneva Convention of 5 December 2001.[305] 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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[302] GA Res 58/97, UN GAOR, 58th 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 57th Sess., GA Res 56/204, UN GAOR, 56th Sess., UN Doc A/56/49 (2001); GA Res ES-10/8, UN GOAR, 56th Sess., UN Doc A.ES-10/8 (2001); GA Res 56/60, UN GOAR, 56th Sess., UN Doc A 56/49 (2001); GA Res 55/131, UN GOAR, 55th Sess., UN Doc A/55/49 (2000); GA Res 54/77, UN GOAR, 54th 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).

[303] The Reports of the Special Committee can be seen in UN Doc A/57/207 and UN Doc A/57/421.

[304] 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.

[305] 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.[306]

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[306] 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."[307] 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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307 *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."[308]

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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[308] 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.[309] Israel's own Supreme Court has also taken this position.[310]

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.[311] 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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309 *Legality of the Threat of Nuclear Weapons, Advisory Opinion, 8 July 1996, I.C.J. Reports 1996*, p. 226 at 258 (para. 80).

310 *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.[312] 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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311 Report of the Secretary-General prepared pursuant to General Assembly Resolution ES-10/13, A/ES-10/248, 24 November 2003, Annex I.

312 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."[313]

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".[314] The International Criminal Tribunal for the Former Yugoslavia[315] and the Eritrea-Ethiopia Claims Commission[316] have endorsed this view in their own work.

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313 International Committee of the Red Cross, "General Problems in Implementing the Fourth Geneva Convention", Meeting of Experts, 27 October 1998.

314 *Legality of the Threat of Nuclear Weapons*, Advisory Opinion, 8 July 1996, ICJ Reports 1996, p. 226 at 257-(para. 79).

315 See, e.g., *Prosecutor v. Tadić*, judgment of 7 May 1997, 112 ILR 1, 179 ff.

316 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).[317] 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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317 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.[318]

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.[319]

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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[318] 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.

[319] 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."[320]

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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[320] 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."[321]

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.

(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.

[321] *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."[322]

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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322 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.[323] Similar conclusions have been drawn by the Committee on Economic, Social and Cultural Rights.[324]

(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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[323] 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.

[324] 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."[325]

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.[326] 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.[327]

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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[325] Dieter Fleck (ed.), *The Handbook of Humanitarian Law in Armed Conflicts*, (OUP, 1995), section 531.

[326] 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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[327] 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.[328]

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

328 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."[329]

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."[330] 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."[331] 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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329 Hersh Lauterpacht, *Oppenheim's International Law*, vol. II, (7th 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".[332] 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.[333] 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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330 Hague Regulations, Article 52.

331 Fourth Geneva Convention, Article 53.

332 Hague Regulations, Article 43.

333 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."[334] 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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[334] 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.[335] 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.[336]

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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[335] 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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336 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."[337]

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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[337] 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."[338]

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).[339] 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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338 *Digest of US Practice in International Law ['DUSPIL'}1978*, p. 1575 at 1577.

339 *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.[340]

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.[341]

(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.[342] 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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340 See Chapter 7, above, and Appendix 1.

341 See the UN Commission on Human Rights, Resolution 2003/7 of 15 April 2003.

342 *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 proprietorial 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.[343]

(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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343 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.[344]

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:[345] 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"[346]

Precisely the same observation may be made about the Wall. The cost –estimated at NIS 10 million per kilometre[347] 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.[348]

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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344 UN Charter, Article 2(4); UNGA Res. 2625 (XXV).

345 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.

346 UN Doc. E/CN.4/2001/121, 16 March 2001, paragraph 21, Annex 10 in Annex Volume 2 accompanying this Written Statement.

347 B'Tselem 2003 Report, p. 7, Annex 13 in Annex Volume 2 accompanying this Written Statement.

348 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."[349]

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,[350] and an estimated 6,000 to 8,000 people have already left the area.[351] 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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349 For extensive discussion on this subject, see B'Tselem 2002 Report, Annex 12 in Annex Volume 2 accompanying this Written Statement.

350 Dugard Report (2003), para. 10.

351 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.[352] 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.[353] International humanitarian law applies as a *lex specialis*, but does not exclude international human rights law, which continues to apply.[354] 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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352 See Annexes 1-11 and 14 in Annex Volume 2 accompanying this Written Statement.

353 See Chapter 8.

354 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.[355]

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[355] 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."[356]

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."[357]

488. Article 12 is subject to derogation in time of public emergency threatening the life of the nation.[358] 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"[359]

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356 The right to freedom of movement is also asserted in Article 13 of the Universal Declaration of Human Rights.

357 (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."

358 International Covenant on Civil and Political Rights, Article 4.

359 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."[360] 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.

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."

[360] 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."[361]

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."[362] 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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361 Fourth Geneva Convention, Article 64.2.

362 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."[363]

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) <u>The Wall violates the right to earn a livelihood</u>

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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[363] 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.[364] 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."

364 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."[365]

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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[365] 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."[366]

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

366 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.[367] 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.[368] 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."[369]

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).

367 Ziegler Report, para. 16.

368 Ziegler Report, para. 9.

369 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.[370]

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."[371]

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.[372] 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.[373]

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370 Fourth Geneva Convention, Article 55. Cf., International Covenant on Economic, Social and Cultural Rights, Article 11; Universal Declaration on Human Rights, Article 25.

371 Ziegler Report, paras. 58, 59.

372 See Dossier nos. 55, 56 and 85-88 accompanying the UN Secretary-General's submission.

373 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.[374]

512. These effects are, furthermore, incompatible with Israel's obligations assumed by it under the International Covenant on Economic, Social and Cultural Rights.[375] 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." [376]

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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374 See in particular Articles 24, 27, 28.

375 ICESCR Articles 12, 13. Cf., the Universal Declaration on Human Rights, Article 26.

376 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."[377]

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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[377] 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.[378] 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

[378] 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.[379]

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."[380]

(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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[379] 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.".

[380] 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.[381] It is recognized, for example, in Article 17 of the Universal Declaration on Human Rights.[382] In international humanitarian law, the right is protected in the special circumstances of a military occupation by the provisions on the requisitioning[383] and the destruction of property.[384]

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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381 As reflected in, *inter alia*, Protocol 1 to the European Convention on Human Rights.

382 "*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.[385] 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.[386]

(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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383 Hague Regulations, Article 52.

384 Fourth Geneva Convention, Article 53.

385 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.

386 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."[387]

(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.[388]

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387 E/C.12/1/Add.27, 4 December 1998, para. 39.

388 *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.[389] 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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389 *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." [390]

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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[390] *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 " [391].

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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[391] 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."[392]

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392 Dugard Report (2003), para. 15.

394 *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)."[394]

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."[395]

- 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." [396]

- 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."[397]

- 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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395 UN Doc. S/PV.4841, p. 18.
396 S/PV.4841, p. 31.
397 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. "[398]

553. Numerous other States have made declarations asserting a similar position: for example, Cuba,[399] Guinea,[400] Libyan Arab Jamahiriya,[401] Pakistan,[402] Syrian Arab Republic,[403] South Africa,[404] Pakistan,[405] and Zimbabwe.[406]

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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[398] General Assembly, Emergency Special Session, 21st meeting, 20 October 2003, A/ES-10/PV.21, p. 14.

[399] " 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).

[400] " 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).

[401] "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).

[402] "It is imperative to recognize that the separation wall is an unlawful annexation of occupied Palestinian territory " (S/PV.4841, p. 22).

[403] "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).

[404] "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).

[405] "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).

[406] "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."[408]

(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."[410]

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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[408] 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.

[410] 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."[411]

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:[412]

- 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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411 *In* P.M. Speeches, text *available at* http://www.first.gov.il/first/english/Html/homepage.htm

412 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. [...]." [413]

- 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. " [415]

- 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 ".[416]

- 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".[417]

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413 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. 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).

415 S/PV.4841, p. 18.

416 S/PV.4841, p. 15.

417 S/PV.4841, p. 19.

- China :

> "Israel must stop building the separation wall and stop expanding settlements."[419]

- 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." [420]

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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[419] S/PV.4841, p. 20.

[420] 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 1949,1/ 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 prejudge 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." [421]

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

421 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."[423]

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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423 *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."[424]

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[425] of creating enclaves. For example:

- France:

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[424] Ziegler Report, para. 18-19. Footnotes omitted, Secretary-General's Dossier no. 56.

[425] 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."[426]

- 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."[427]

(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."[428]

- 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."[429]

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426 S/PV.4181, p. 18.

427 General Assembly, Emergency Special Session, 21st meeting, 20 October 2003, A/ES-10/PV.21, p. 10.

428 S/PV.4841, p. 41.

429 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."[431]

- 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."[432]

(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

431 S/PV.4841, p. 13.
432 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."[433]

(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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[433] 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.

[435] 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 prejudge 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."[435]

- 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..." [436]

- 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."[437]

- 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." [438]

- Committee on the Exercise of the Inalienable Rights of the Palestinian People:[440]

"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."[441]

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436 S/PV.4841, p. 24.

437 General Assembly, Emergency Special Session, 21st meeting, 20 October 2003, A/ES-10/PV.21, p. 10.

438 General Assembly, Emergency Special Session, 21st meeting, 20 October 2003, A/ES-10/PV.21, pp. 12-13.

440 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.

441 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/9a798adbf322aff38525617b006d88d7/618f78e6c6dce8ac85256de3005376b8!OpenDocument.para. 26.

579. Numerous other States have made declarations expressing a similar position: for example, Malaysia,[442] United Arab Emirates,[443] Pakistan,[444] Syrian Arab Republic,[445] and Qatar.[446]

(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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442 "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).

443 " 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).

444 "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).

445 "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).

446 "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."[447] (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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447 *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 prejudge 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 prejudge the final borders of a future Palestinian State. The current and planned path of the security fence is unacceptable."[448]

- 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

448 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."[449]

- France:

"The planned route, if indeed followed, prejudges 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."[450]

- 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."[451]

- 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 prejudge the outcome of a peace agreement."[452]

- 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."[453]

- 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 prejudge the final status of the negotiations, as the fence is to be extended inside the Green Line."[454]

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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."[455]

- 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."[456]

587. Other delegations have expressed the same opinion in their statements, including South Africa,[457] Syrian Arab Republic,[458] Guinea,[459] Switzerland,[460] and India.[461] Likewise, the Secretary-General of the United Nations stated that he "views

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[455] General Assembly, Tenth Emergency Special Session, 21st meeting, 8 December 2003, A/ES-10/PV.23, p. 13.

[456] 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.

[457] " 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).

[458] " [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).

[459] " 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).

[460] " 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).

[461] " 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."[462]

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).

462 " 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

territoral 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,[463] 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

[463] 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. "[464]

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."[465]

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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[464] 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.

[465] 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."[466]

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."[467]

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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[466] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), I.C.J. Reports 1986*, p. 149.

[467] *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."[468]

(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."[469]

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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[468] 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.

[469] Presidency Conclusions, Thessaloniki European Council, 19 and 20 June 2003, 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 " [470].

- *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

[470] 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."[471]

605. As is well known, this text was not adopted, following the veto of one permanent member of the Council.[472] 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."[473]

- 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."[474]

- 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."[475]

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471 UN Doc. S/2003/980 (emphasis added).

472 UN Doc. S/PV.4842, 14 October 2003. There were four abstentions: Bulgaria, Cameroon, Germany and United Kingdom.

473 UN Doc. S/PV.4841, p. 15.

474 UN Doc. S/PV.4841, p. 31.

475 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."[476]

607. Mexico,[477] Pakistan,[478] Yemen,[479] Egypt,[480] and Argentina[481] 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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476 UN Doc. S/PV.4841, p. 42.

477 "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).

478 "[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).

479 "[...] 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).

480 "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).

481 "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[482] to four against,[483] with 12 abstentions.[484]

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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[482] 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.

[483] 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."[485] 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 (...)."[486]

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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484 Australia, Burundi, Dominican Republic, Ecuador, Honduras, Malawi, Nauru, Nicaragua, Papua New Guinea, Rwanda, Tuvalu, Uruguay.

485 *Factory at Chorzów, Merits, 1928, P.C.I.J., Series A, No. 17*, p. 47.

486 *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*. See *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.[487] 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*
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> 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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[487] 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."[488]

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).*[489] 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."[490] 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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488 *Factory at Chorzów, Merits, 1928, P.C.I.J., Series A, No. 17*, p. 47.

489 *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, Judgment of 14 February 2002. See also *Gabcíkovo-Nagymaros Project (Hungary v. Slovakia), Judgement, 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 [...]."[491]

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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[490] *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, Judgment of February 2002, para. 76.

[491] *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."[492]

- *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 [...] " [493].

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."[494]

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 [...]."[495]

- 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'."[496]

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[492] 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.

[493] Text *available at* http://www.oic-oci.org/french/is/10/10%20is-main-f.htm.

[494] UN Doc. S/2003/980 (emphasis added).

[495] 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,[497] Lebanon,[498] Indonesia,[499] Bahrain,[500] United Arab Emirates,[501] and Chile.[502]

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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496 General Assembly, Tenth Emergency Special Session, 21st meeting, 8 December 2003, UN Doc. A/ES-10/PV.23, p. 14.

497 "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).

498 "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).

499 "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).

500 "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).

501 "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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[502] "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."[503] 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."[504]

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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503 *Factory at Chorzów, Merits, 1928, P.C.I.J., Series A, No. 17*, p. 27

504 *Gabcíkovo-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.[505]

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*."[506]

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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[505] 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.

[506] *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."[507] 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."[508] 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.[509]

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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507 *Id.*, at para. 34.

508 *East Timor (Portugal v. Australia), Judgement, I.C.J. Reports 1995,* p. 90, at 102, para. 29.

509 *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.[510] 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."[511]

-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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[510] 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).

[511] 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 [...]."[512]

- 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."[513]

- 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."[514]

- 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/03/108|0|AGED&lg=EN&display.

512 Text *available at* http://www.oic-oci.org/english/is/10/10is-fc-en.htm.

513 UN Doc. S/PV.4841, p. 26.

514 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."[515]

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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[515] Official Records, Fifty-eighth Session, Supplement No. 35 (A/58/35), 9 October 2003, http://domino.un.org/unispal.nsf/9a798adbf322aff38525617b006d88d7/618f78e6c6dce8ac85256de3005376b8!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."[516]

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."[517]

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.[518]

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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[516] 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.

[517] *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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518 *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."[519]

- 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."[520]

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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519 UN Doc. S/PV.4841, p. 27.

520 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.

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

Resolution Number	Date Adopted	Recorded Vote
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 January1992	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

Resolution Number	Date Approved	Recorded Vote
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 is 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 Falamya 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. There 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:	**44 Minutes**
Maximum Delay:	**2 Hours and 15 Minutes**
Standard Deviation in the Time of Delay:	**31 Minutes**
Average No. of Farmers Allowed to Cross:	**41 Farmers**
Total Hours Delay in Respect of Number of Farmers Crossed:	**1209 Hours**
Average Checking Time per Farmer:	**34 Seconds**

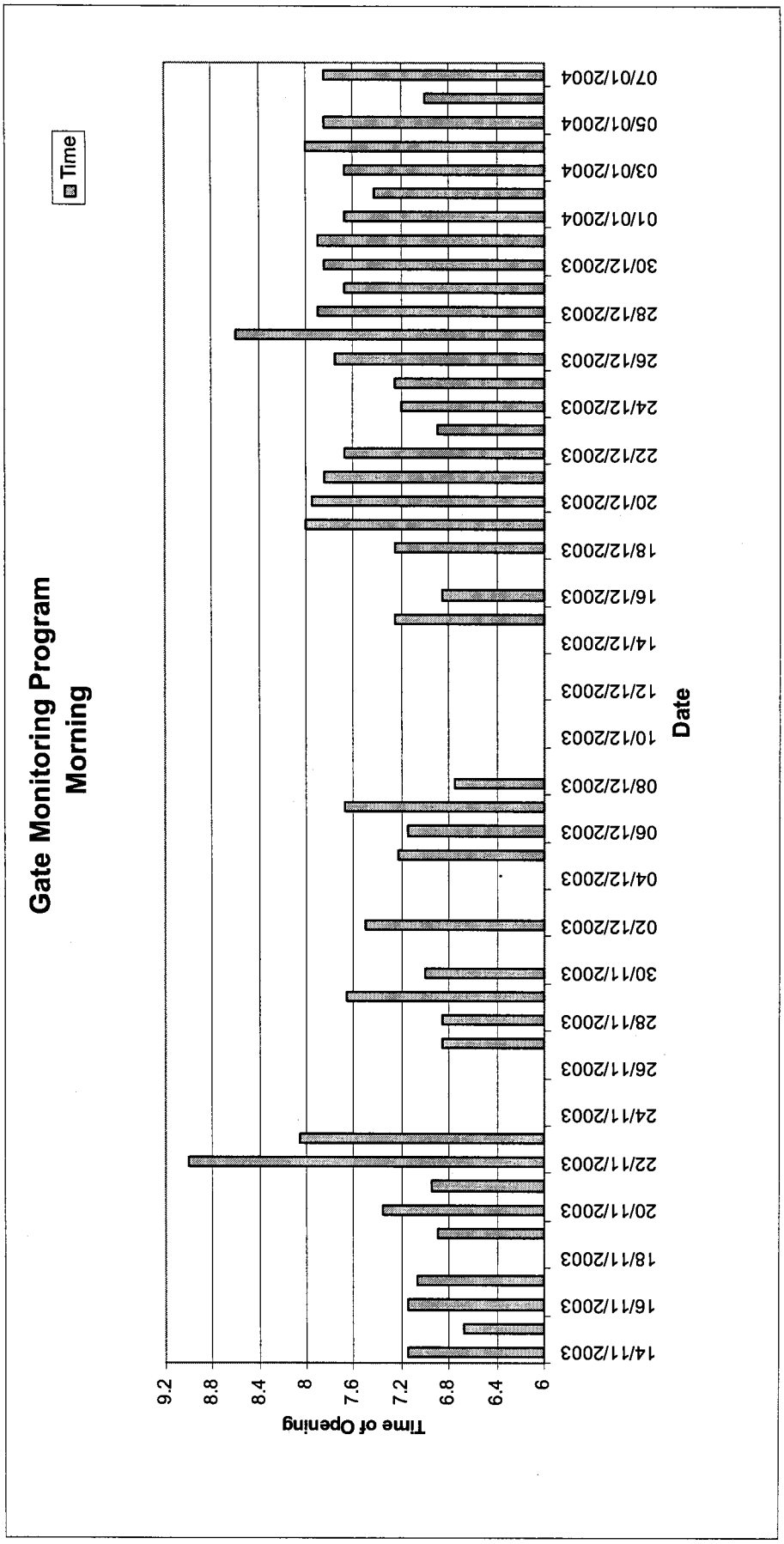
The Results of Analyses at Evening Time over 28 days

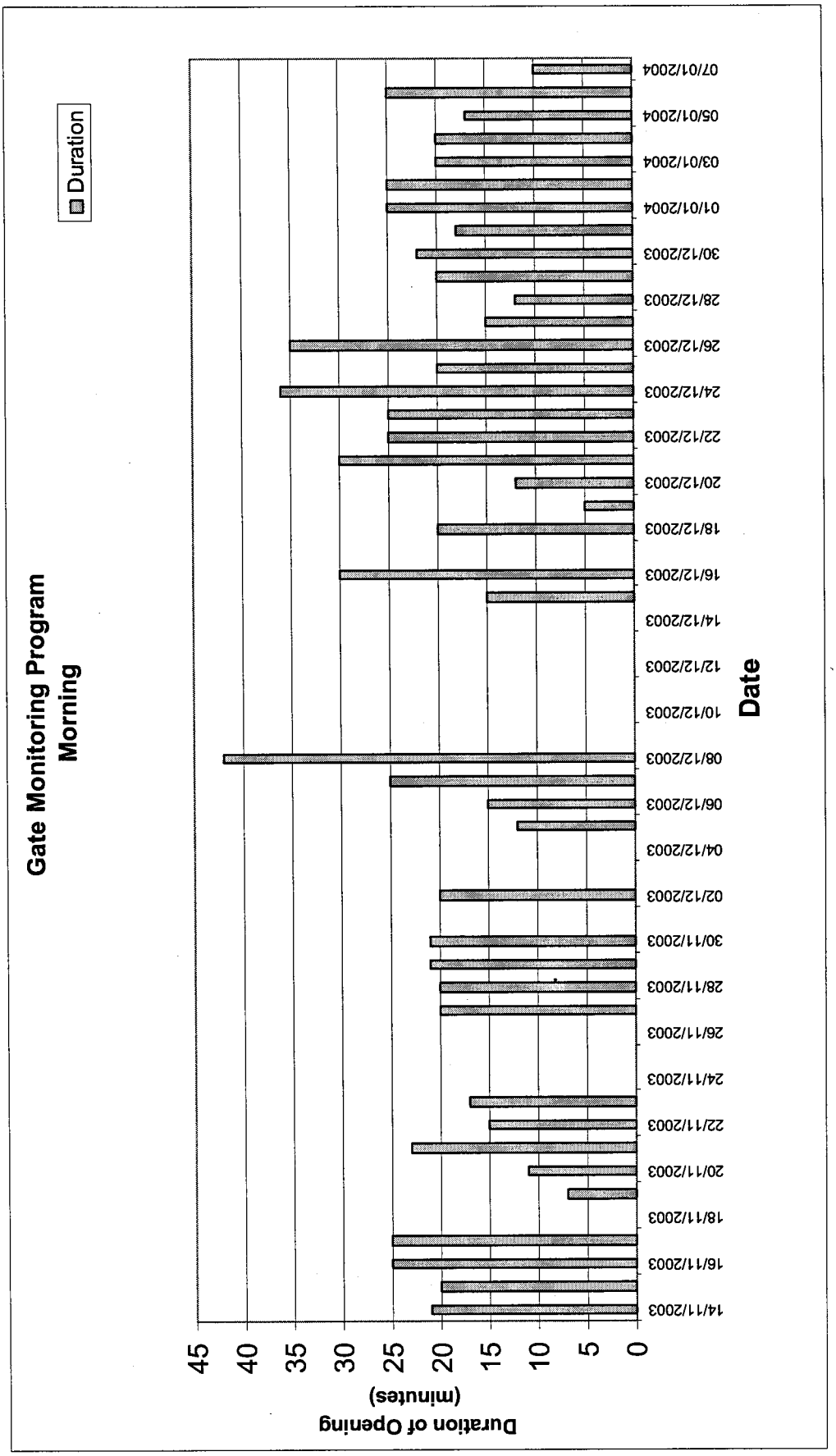
Average Delay Every Day:	**35 Minutes**
Maximum Delay:	**1 Hour and 5 Minutes**
Standard Deviation in the Time of Delay:	**25 Minutes**
Average No. Of Farmers Allowed Crossing:	**34 Farmer**
Total Hours Delay in Respect of Number of Farmers Crossed:	**524 Hours**
Average Checking Time per Farmer:	**37 Seconds**

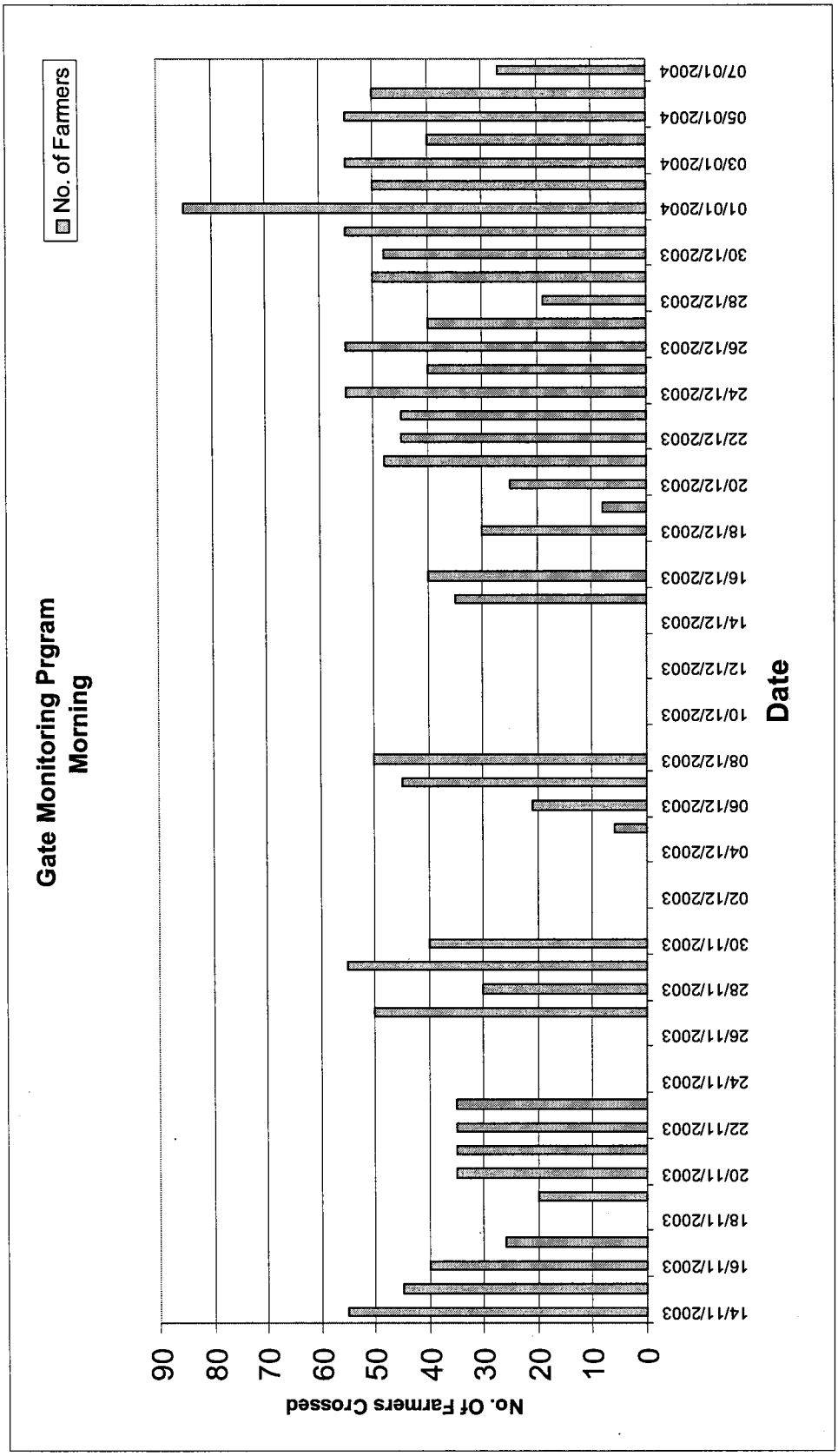
Remarks on the graphs:

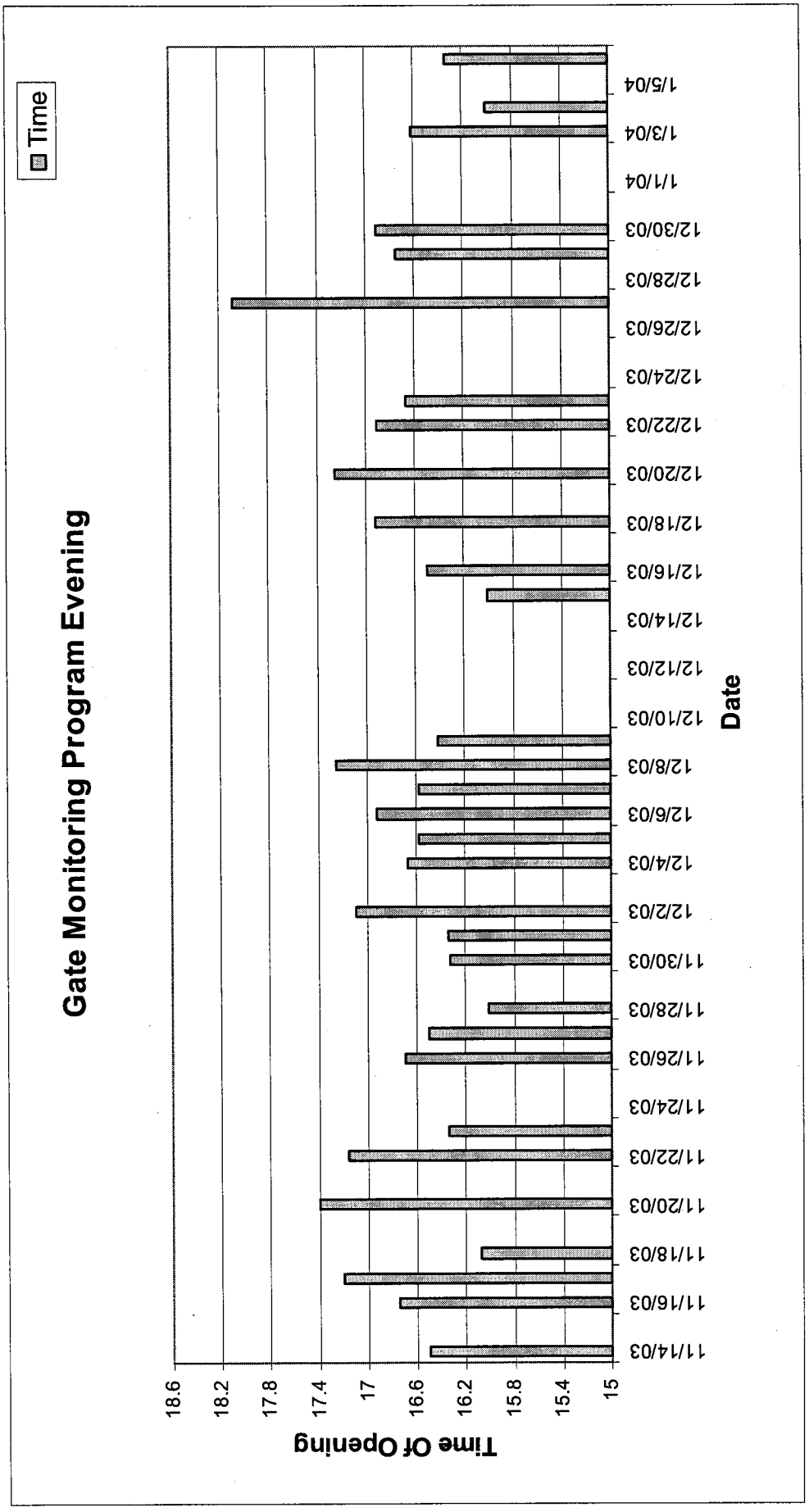
1- The duration graph: each column shows the number of minutes the gate is open.
   a. The no. of farmers graph: each column shows the number of farmers coming in or out is recorded.
   b. The time graph: on this graph the top of the column represents the time the gate opened.

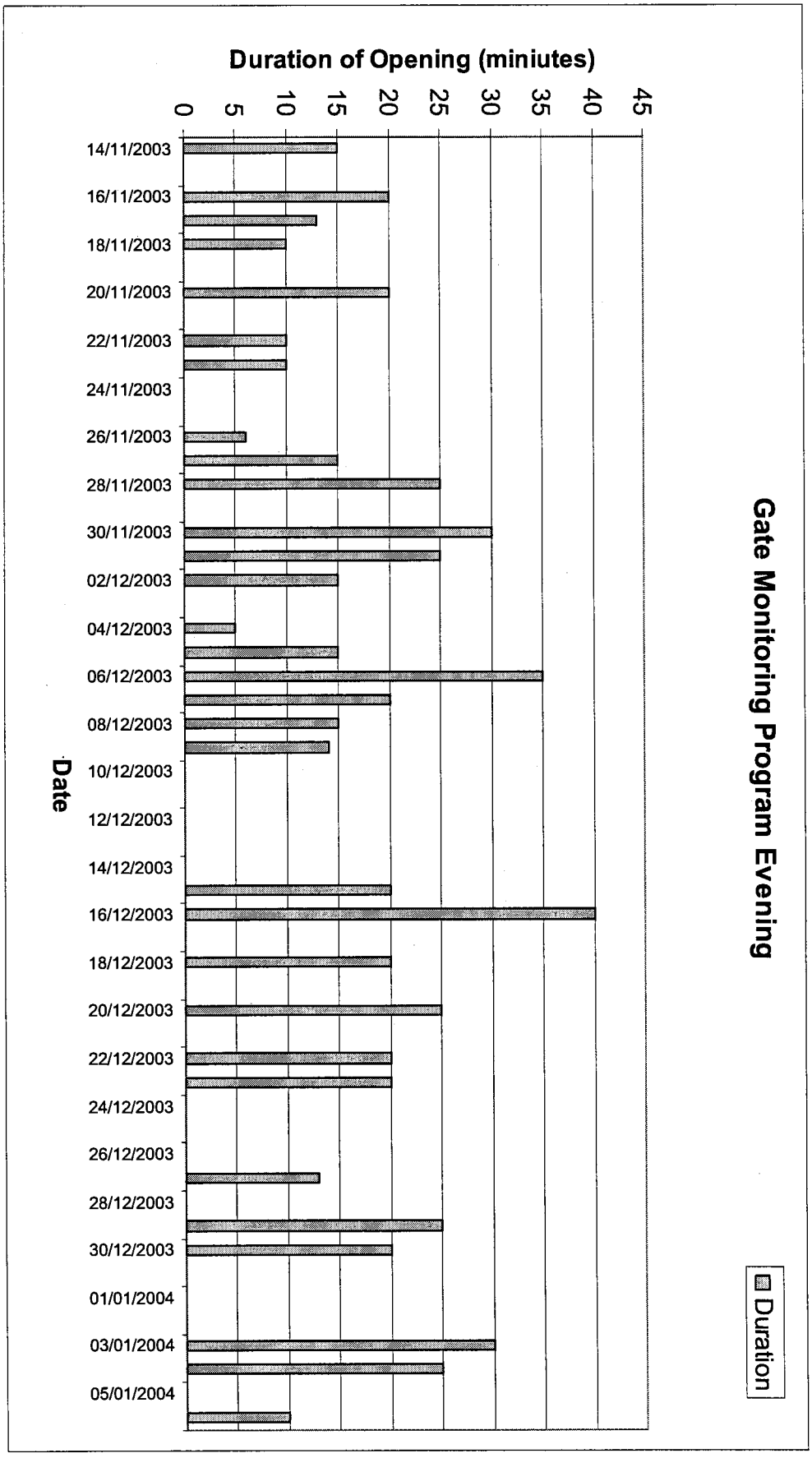
Done By:
EAPPI: Maurice Hopper
Palestinian Hydrology Group: Abdul-Latif Khaled

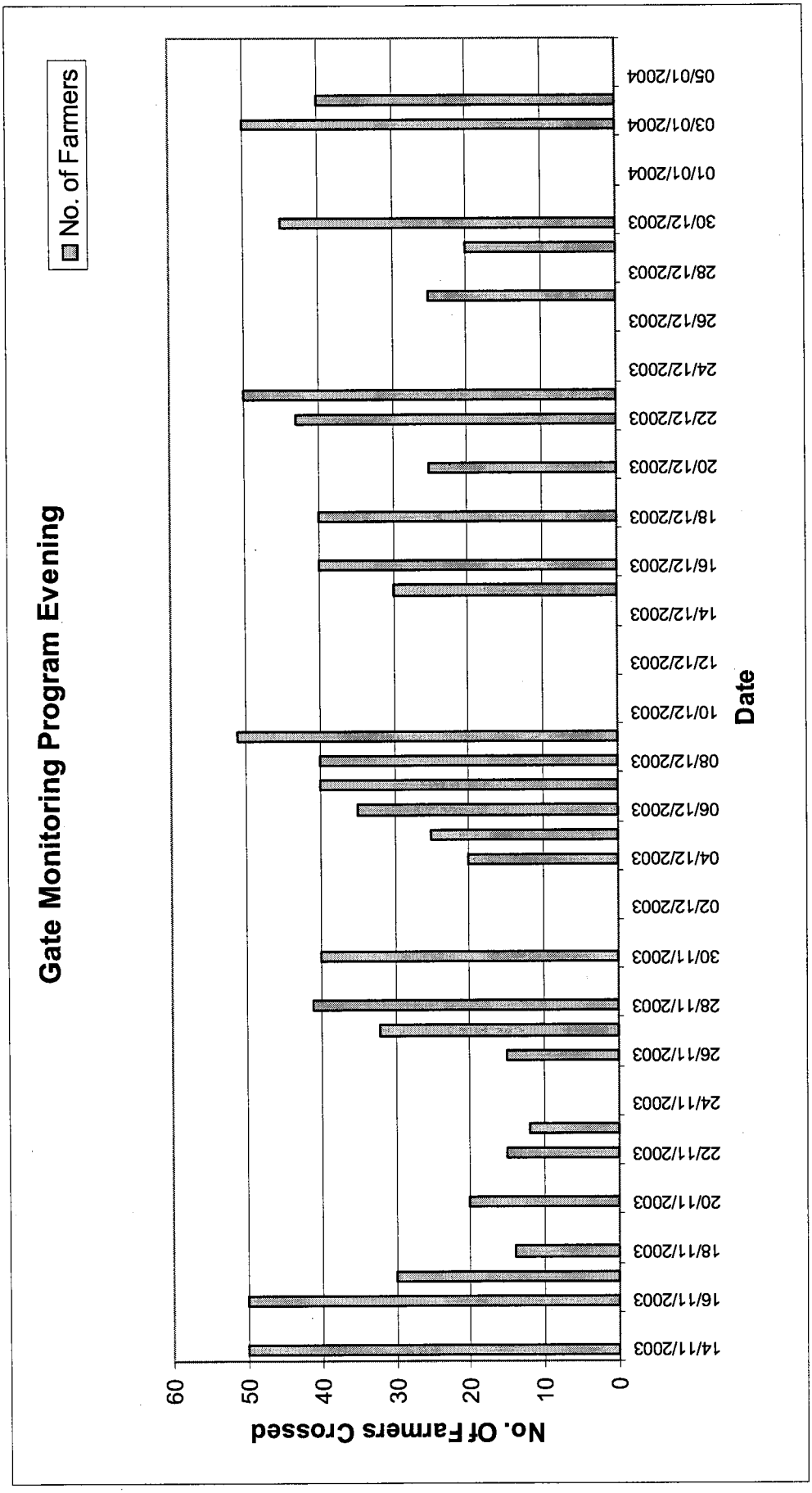

Gate Monitoring Program
Morning
Time
Time of Opening
9.2
8.8
8.4
8
7.6
7.2
6.8
6.4
6
Date
14/11/2003
16/11/2003
18/11/2003
20/11/2003
22/11/2003
24/11/2003
26/11/2003
28/11/2003
30/11/2003
02/12/2003
04/12/2003
06/12/2003
08/12/2003
10/12/2003
12/12/2003
14/12/2003
16/12/2003
18/12/2003
20/12/2003
22/12/2003
24/12/2003
26/12/2003
28/12/2003
30/12/2003
01/01/2004
03/01/2004
05/01/2004
07/01/2004


Gate Monitoring Program
Morning
Duration
Duration of Opening
(minutes)
0
5
10
15
20
25
30
35
40
45
Date
14/11/2003
16/11/2003
18/11/2003
20/11/2003
22/11/2003
24/11/2003
26/11/2003
28/11/2003
30/11/2003
02/12/2003
04/12/2003
06/12/2003
08/12/2003
10/12/2003
12/12/2003
14/12/2003
16/12/2003
18/12/2003
20/12/2003
22/12/2003
24/12/2003
26/12/2003
28/12/2003
30/12/2003
01/01/2004
03/01/2004
05/01/2004
07/01/2004


Gate Monitoring Prgram
Morning
No. of Farmers
No. Of Farmers Crossed
0
10
20
30
40
50
60
70
80
90
Date
14/11/2003
16/11/2003
18/11/2003
20/11/2003
22/11/2003
24/11/2003
26/11/2003
28/11/2003
30/11/2003
02/12/2003
04/12/2003
06/12/2003
08/12/2003
10/12/2003
12/12/2003
14/12/2003
16/12/2003
18/12/2003
20/12/2003
22/12/2003
24/12/2003
26/12/2003
28/12/2003
30/12/2003
01/01/2004
03/01/2004
05/01/2004
07/01/2004


Gate Monitoring Program Evening
Time
Time Of Opening
18.6
18.2
17.8
17.4
17
16.6
16.2
15.8
15.4
15
Date
11/14/03
11/16/03
11/18/03
11/20/03
11/22/03
11/24/03
11/26/03
11/28/03
11/30/03
12/2/03
12/4/03
12/6/03
12/8/03
12/10/03
12/12/03
12/14/03
12/16/03
12/18/03
12/20/03
12/22/03
12/24/03
12/26/03
12/28/03
12/30/03
1/1/04
1/3/04
1/5/04


Gate Monitoring Program Evening
Duration of Opening (miniutes)
0
5
10
15
20
25
30
35
40
45
Date
14/11/2003
16/11/2003
18/11/2003
20/11/2003
22/11/2003
24/11/2003
26/11/2003
28/11/2003
30/11/2003
02/12/2003
04/12/2003
06/12/2003
08/12/2003
10/12/2003
12/12/2003
14/12/2003
16/12/2003
18/12/2003
20/12/2003
22/12/2003
24/12/2003
26/12/2003
28/12/2003
30/12/2003
01/01/2004
03/01/2004
05/01/2004
Duration


Gate Monitoring Program Evening
No. of Farmers
No. Of Farmers Crossed
0
10
20
30
40
50
60
Date
14/11/2003
16/11/2003
18/11/2003
20/11/2003
22/11/2003
24/11/2003
26/11/2003
28/11/2003
30/11/2003
02/12/2003
04/12/2003
06/12/2003
08/12/2003
10/12/2003
12/12/2003
14/12/2003
16/12/2003
18/12/2003
20/12/2003
22/12/2003
24/12/2003
26/12/2003
28/12/2003
30/12/2003
01/01/2004
03/01/2004
05/01/2004

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

Israel Defense Force
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 genera, 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 peoples 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 to 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, whose 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:

a. When having a written permit, according to section (a), as long as he is not under the age of 12 years old.
b. Accompanied by a person whose entry was allowed by section (a).
c. In any other way set by me or on my behalf.

Passages 6. a. Entering the seam zone and exiting it will by through the detailed passages detailed in section B of the appendix of this declaration, marked in blue line in the map, all according to the conditions set by me or on my behalf.

b. For this section:

"**Entering the seam zone**" – Entering the seam zone from the area [West Bank] direction that are not included within the seam zone.

"**Exiting the seam zone**" – Exiting the seam zone to the direction of the area [West Bank] that are not included within the seam zone.

Authorization 7. The head of the civil administration is authorized to set rules and procedures as related to this declaration.

Publication 8. a. Copies of this declaration and the attached map will be deposited for review for those interested during regular working hours in the following offices:

1. Regional District Coordination 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 the declaration and the attached map 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 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. Falamya west passage.
24. Falamya 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

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:

General permit to enter the seam zone and stay in it

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.

Conditions

2. 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.

Reservation of Applicability

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.

Publication

4. a. Copies of this permit will be deposited for review for those interested during 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 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

2/10/2003

Moshe Kaplinsky,
General Commander of IDF Forces
Judea and Samaria Area

PART F

IDF MILITARY ORDER: "REGULATIONS REGARDING ENTRY AND STAY PERMITS TO 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 Entry and Stay Permits to 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.

"**Permit**"- A personal written permit to enter and stay in the seam zone, issued to a person by the certified authority.

"**The Committee**" – A committee established by me in order to examine request for permits.

Issuing a permit 2. a. A permit will be issued by the certified authority for one of the purposes detailed in section A to the appendix of these regulations.

b. A permit will be issued for a period set by the certified authority, according to procedures yet to be set.

Request for a permit 3. a. A request for a permit for a person whose age turned 12 years old will be applied through one of the forms set in sections B-M to the appendix, according to the purpose of entry and stay.

b. A person whose age did not turn 12 years old will be allowed to enter and stay in the seam zone, when accompanied by a person carrying a permit issued according

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

picture

Request Regarding Entry And Stay Permit To The Seam Zone For Business Owner In The Seam Zone

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

Details Of The Requestant (Inviter – Permanent Resident In The Seam Zone)

picture

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/Infrustructure Company
Details Of The Requestant (Employee of Local Municipality/Infrustructure 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

picture

Request Regarding Entry And Stay Permit To The Seam Zone For Member of Medical Staff

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

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

Israel Defense Force
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.

Publication 7. 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 8. These regulations will enter into force from the date of its signature.

Name 9. These regulations will be entitled: "Regulations Regarding Permit to Permanent Resident in the Seam Zone (Judea and Samaria), 5764- 2003".

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 Distrtict

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

7/10/2003

Ilan Paz,
Major General
Head of the Civil Administration
Judea and Samaria Area

Annex 3

APPENDIX 3 SUMMARY OF RECENT ISRAELI ACTIVITY IN CONSTRUCTION OF THE WALL

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

10 December	**Allocation of Funds:** 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.
18 December	**Acceleration of Wall Construction:** At the Herziliya Conference, Israeli Prime Minister Ariel Sharon announced a "Disengagement Plan" and acceleration of construction of the Wall.

JERUSALEM

8 December	**Wall Construction:** Israeli authorities continue construction of the Wall in Abu Dis, Al Sawahira, Al Eizariya, Al Tur and Al Shayyah.
9 December	**Wall Construction:** Israeli authorities continue construction of the Wall in Abu Dis, Al Sawahira, Al Eizariya, Al Tur and Al Shayyah.
10 December	**Wall Construction:** Israeli authorities continue construction of the Wall in Abu Dis, Al Sawahira, Al Eizariya, Al Tur and Al Shayyah.
11 December	**Wall Construction:**: Israeli authorities continue construction of the Wall in Abu Dis, Al Sawahira, Al Eizariya, Al Tur and Al Shayyah.
12 December	**Wall Construction**: Israeli authorities continue construction of the Wall in Abu Dis, Al Sawahira, Al Eizariya, Al Tur and Al Shayyah.
14 December	**Wall Construction**: Israeli authorities continue construction of the Wall in Abu Dis, Al Sawahira, Al Eizariya, Al Tur and Al Shayyah.
15 December	**Wall Construction**: Israeli authorities continue construction of the Wall in Abu Dis, Al Sawahira, Al Eizariya, Al Tur and Al Shayyah.
16 December	**Wall Construction**: Israeli authorities continue construction of the Wall in Abu Dis, Al Sawahira, Al Eizariya, Al Tur and Al Shayyah.
17 December	**Wall Construction:** (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	**Wall Construction:** (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	**Land Confiscation:** Israeli authorities issued confiscation orders for 8,000 *dunums* (2000 acres) from Beit 'Anan, an estimated 2/3 of the village lands.
21 December	**Wall Construction:** (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). **Land Confiscation:** (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	**Wall Construction:** (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	**Wall Construction:** Israeli authorities continue construction of the Wall in Abu Dis, Al Sawahira, and Al Eizariya. **Settlement Activity:** The Israeli army has begun enclosing Ma'ale Adummim settlement with barbed wire.
24 December	**Wall Construction**: Israeli authorities continue construction of the Wall in Abu Dis, Al Sawahira, and Al Eizariya.
25 December	**Wall Construction:** Israeli authorities continue construction of the Wall in Al Shayyah, Abu Dis, Al Sawahira, and Al Eizariya.
26 December	**Wall Construction:** Israeli authorities continue construction of the Wall in Al Tur, Al Shayyah, Abu Dis, Al Sawahira, and Al Eizariya.
27 December	**Wall Construction:** Construction of the Wall in Al Tur, Al Shayyah, Abu Dis, Al Sawahira, and Al Eizariya was suspended for the weekend.
29 December	**Wall Construction:** Construction of the Wall continues in Al Shayyah, Abu Dis, and Al Sawahira.
30 December	**Wall Construction:** Construction of the Wall continues in Al Shayyah, Abu Dis, and Al Sawahira.
31 December	**Wall Construction:** Construction of the Wall continues in Al Shayyah, Abu Dis, and Al Sawahira.
1 January	**Wall Construction:** Construction of the Wall continues in Al Shayyah, Abu Dis, and Al Sawahira.
2 January	**Wall Construction:** Construction of the Wall continues in Al Shayyah, Abu Dis, and Al Sawahira.
3 January	**Wall Construction:** Construction of the Wall was suspended for the weekend in Al Shayyah, Abu Dis, and Al Sawahira.
4 January	**Wall Construction:** Construction of the Wall was resumed in Al Shayyah, Abu Dis, Al Eizariya and Al Sawahira.

5 January	**Wall Construction:** (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. **Land Confiscation:** Palestinian residents of Beit Iksa, Biddu and Qibya received land confiscation orders.
6 January	**Wall Construction:** Construction of the Wall continues in Al Shayyah, Abu Dis, Al Eizariya and Al Sawahira. **Land Confiscation:** Palestinian residents of Beit Surik and Beit 'Anan received land confiscation orders for 2,500 *dunums* (625 acres) and 400 *dunums* (100 acres), respectively.
7 January	**Wall Construction:** Construction of the Wall continues in Al Shayyah, Abu Dis, Al Eizariya and Al Sawahira.
8 January	**Wall Construction:** Construction of the Wall continues in Al Shayyah, Abu Dis, Al Eizariya and Al Sawahira.
9 January	**Wall Construction:** Construction of the Wall continues in Al Shayyah, Abu Dis, Al Eizariya and Al Sawahira.
10 January	**Wall Construction:** Construction of the Wall in Al Shayyah, Abu Dis, Al Eizariya and Al Sawahira was suspended for the weekend.
11 January	**Wall Construction:** Construction of the Wall continues in Abu Dis, Al Eizariya and Al Sawahira.
12 January	**Wall Construction:** 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.
13 January	**Wall Construction:** Construction of the Wall continues in Abu Dis, Al Eizariya and Al Sawahira.
14 January	**Wall Construction:** Construction of the Wall continues in Abu Dis, Al Eizariya and Al Sawahira.
15 January	**Wall Construction:** Construction of the Wall continues in Al Eizariya and Al Sawahira and has been suspended in Abu Dis. **Land Confiscation:** The Israeli authorities issued confiscation orders for 107 *dunums* (26.75 acres) of land from Shu'fat refugee camp and the town of Anata for construction of the Wall.
16 January	**Wall Construction:** Construction of the Wall continues in Al Eizariya and Al Sawahira.
17 January	**Wall Construction:** Construction of the Wall in Al Eizariya and Al Sawahira was suspended for the weekend.
18 January	**Wall Construction:** Construction of the Wall in Al Eizariya, Abu Dis and Al Sawahira was resumed.
19 January	**Wall Construction:** Construction of the Wall continues in Al Eizariya, Abu Dis and Al Sawahira.

RAMALLAH & EL BIREH

10 December	**Closure:** 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.
11 December	**Closure**: For the 4th 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.
14 December	**Wall/Settlement Land Levelling**: (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.
15 December	**Wall Construction:** (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.
16 December	**Wall House Demolitions**: 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. **Wall Land Confiscation**: 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.
17 December	**Closure:** The Israeli army closed the iron gate near An Nabi Salih village, isolating the northern and north-western villages from the city of Ramallah. **Land Confiscation:** The Israeli army raided the village of Beit Liqya and posted orders announcing the confiscation of 2100 *dunums* (525 acres) of land for construction of the Wall.
18 December	**Closure:** The iron gate near An Nabi Salih village remains closed, isolating the northern and north-western villages from the city of Ramallah.
19 December	**Closure:** The iron gate near An Nabi Salih village remains closed, isolating the northern and north-western villages from the city of Ramallah.
20 December	**Closure:** The iron gate near An Nabi Salih village remains closed, isolating the northern and north-western villages from the city of Ramallah.
21 December	**Closure:** The iron gate near An Nabi Salih village remains completely closed, even to ambulances, isolating the north-western villages from the city of Ramallah.

22 December	**Closure:** The iron gate near An Nabi Salih village remains completely closed, isolating the north-western villages from the city of Ramallah. **Settlement Activities:** (i) For the past 3 days, Israeli settlers have placed caravans at the Shevut Rahel outpost and occupied and enclosed 1750 m^2 of land adjacent to the settlement with barbed wire. (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.
23 December	**Closure:** The iron gate near An Nabi Salih village remains completely closed, isolating the north-western villages from the city of Ramallah.
24 December	**Settlement Activity:** The Israeli army enclosed land belonging to the village of Deir Nidham with barbed wire for the expansion of Hallamish settlement.
25 December	**Closure:** (i) The iron gate near An Nabi Salih village remains completely closed, isolating north-western villages from the city of Ramallah. (ii) The Israeli army declared Bani Zeid village a closed military area.
26 December	**Destruction of Property:** 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.
30 December	**Settlement Activity:** 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.
31 December	**Wall Construction:** 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. **Settlement Activity:** 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.
1 January	**Wall Construction:** 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. **Settlement Activity:** 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.
2 January	**Wall Construction:** 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. **Settlement Activity:** 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.
3 January	**Wall Construction:** Construction activities in the area of Budrus were suspended for the weekend.
5 January	**Land Confiscation:** Palestinian residents of the villages of Beit Liqya, Beit Ur and Al Tira received land confiscation orders for construction of the Wall.

8 January	**Wall Construction:** Construction of the western portion of the Wall continues in the areas of Budrus and Rantis. **Land Confiscation:** The Israeli authorities confiscated 1,500 *dunums* (375 acres) of land from Betunia, south of Ramallah, for construction of the Wall.
9 January	**Wall Construction:** Construction of the western portion of the Wall continues in Budrus and Rantis.
10 January	**Wall Construction:** Construction of the western portion of the Wall in Budrus and Rantis was suspended for the weekend.
11 January	**Wall Construction:** Construction of the western portion of the Wall continues in Budrus and Rantis.
12 January	**Wall Construction:** Construction of the western portion of the Wall continues in Budrus and Rantis.
13 January	**Wall Construction:** Construction of the western portion of the Wall continues in Budrus and Rantis.
14 January	**Wall Construction:** Construction of the western portion of the Wall continues in Budrus and Rantis.
15 January	**Wall Construction:** Construction of the western portion of the Wall continues in Budrus and Rantis. **Land Confiscation:** The Israeli authorities issued confiscation orders for 41 *dunums* (10.25 acres) of land from Beit Ur al Foqa for construction of the Wall. The confiscation of land will: (i) Deny 400 students access to their schools in nearby towns; (ii) Isolate 8 families from the village; (iii) Lead to the demolition of many poultry and live stock farms and the uprooting of trees.
16 January	**Wall Construction:** Construction of the western portion of the Wall continues in Budrus and Rantis.
17 January	**Wall Construction:** Construction of the western portion of the Wall in Budrus and Rantis was suspended for the weekend.
18 January	**Wall Construction:** Construction of the western portion of the Wall in Budrus and Rantis was resumed. **Land Confiscation:** The Israeli authorities notified villagers of Rantis of their intention to confiscate 500 *dunums* (125 acres) of land for construction of the Wall.
January 19	**Wall Construction:** Construction of the western portion of the Wall in Budrus and Rantis continues. **Settlement Activity:** Israeli settlers erected a new settlement outpost near the settlement of Hallamish.

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.

20 December	**Wall Land Levelling:** The Israeli army started levelling land in the Bardala area for construction of the eastern portions of the Wall.
23 December	**House Demolitions:** 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.
26 December	**Wall Gates: (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.
27 December	**Wall Gates:** 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.
28 December	**Wall Gates**: 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. **Land Levelling/Eastern Wall Construction:** Israeli bulldozers are levelling land east of the village of Al Mutilla in preparation for construction of the Wall.
30 December	**Wall Construction:** The Israeli army continues levelling land north of the village of Bardala in preparation for construction of the eastern section of the Wall.
31 December	**Wall Construction:** (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.
1 January	**Wall Construction:** (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.
2 January	**Wall Construction:** (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	**Wall Construction:** (i) Israeli activities in the village of Bardala in preparation for construction of the eastern portion of the Wall were suspended for the weekend. (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.
4 January	**Wall Gates/Detentions:** 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.
9 January	**Wall Construction/Land Levelling:** (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. (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.
11 January	**Wall Construction/Land Levelling:** (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. (ii) Construction on the Wall has begun on Al Buqe'a plateau east of the town of Tubas. (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.
12 January	**Wall Construction/Land Levelling:** 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.
13 January	**Wall Construction/Land Levelling:** 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.
14 January	**Wall Construction/Land Levelling:** 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.
15 January	**Wall Construction/Land Levelling:** 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.

16 January	**Wall Construction/Land Levelling:** 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.
17 January	**Wall Construction:** 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.
18 January	**Wall Construction / Land Levelling:** Land levelling in the northern valleys (Bardala, and 'Ein al Beida) and east of Tubas (Al Mutilla, Al Mughayyir, Raba, and Al Buqei' plateau) continues.
19 January	**Wall Construction / Land Levelling:** Land levelling in the northern valleys (Bardala, and 'Ein al Beida) and east of Tubas (Al Mutilla, Al Mughayyir, Raba, and Al Buqei' plateau) continues.

JERICHO

10 December	**Destruction of Property**: The Israeli army destroyed Bedouin tents and barracks belonging to the family of Abu-Dahouk located in the area of Nabi Mousa.
24 December	**Destruction of Property:** The Israeli army tore down tents belonging to a civilian from the village of Al 'Ojai.

BETHLEHEM

18 December	**Uprooting of Trees:** 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.
21 December	**Land Confiscation:** Fayez Mohammad Al Sa'afen from Husan village received land confiscation orders for 5 *dunums* (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.
22 December	**Closure:** 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. **Land Levelling:** At 08:00, the Israeli army, including 2 bulldozers, levelled lands owned by the Greek Orthodox church near checkpoint 300, separating Jerusalem and Bethlehem.
24 December	**Destruction of Property:** Israeli bulldozers levelled land located between the town of Nahhalin and the village of Husan.
4 January	**Land Levelling:** Israeli bulldozers levelled dozens of *dunums* of agricultural land located near the town of Al Khadr.
14 January	**Wall Construction/Destruction of Property:** The Israeli army destroyed a privately owned live stock ranch measuring 400 *dunums* (100 acres) for construction of the Wall.

17 January	**Settler Violence:** Israeli settlers from the settlement of Kfar Ezyon uprooted approximately 80 olive trees belonging to Palestinians from land near the settlement.
19 January	**Settler Violence / Destruction of Property:** 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	**Wall Gates:** (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	**Closures:** (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	**Closure:** Al Kafriyat gate remains closed, closing off Tulkarem from Qalqilya.
18 December	**Closure:** Al-Kafriyat gate remains closed, cutting off Tulkarem from Qalqilya. **Wall Gates:** (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. **Land Levelling:** The Israeli army, including bulldozers, began levelling an estimated area of 100 *dunums* (25 acres) of land in Far'un village.
19 December	**Closure:** Al-Kafriyat gate remains closed, cutting off Tulkarem from Qalqilya.
25 December	**Wall Gates:** 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	**Wall Gates:** 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.

27 December	**Wall Gates:** Al Kafriyat gate remains closed, isolating the district of Qalqiliya from Tulkarem.
28 December	**Wall Gates:** (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.
30 December	**Closure:** The Israeli army closed the Enav iron gate and Al Kafriyat Wall gate, isolating Tulkarem from the districts of Qalqiliya and Nablus.
31 December	**School Disruption:** 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.
1 January	**Closure:** The Israeli army closed the Enav iron gate and Al Kafriyat Wall gate, which separate Tulkarem from the districts of Qalqiliya and Nablus. **Wall Gates:** 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.
2 January	**Closure:** The Israeli army continues to close the Enav iron gate and Al Kafriyat Wall gate, separating Tulkarem from the districts of Qalqiliya and Nablus.
3 January	**Closure:** The Israeli army continues to close the Enav iron gate and Al Kafriyat Wall gate, separating Tulkarem from the districts of Qalqiliya and Nablus.
4 January	**Closure:** The Israeli army continues to close the Enav iron gate and Al Kafriyat Wall gate, separating Tulkarem from the districts of Qalqiliya and Nablus.
12 January	**Wall Construction:** The Israeli army completed levelling approximately 500 *dunums* (125 acres) of land located between the village of Irtah and Far'un, south of the city, for construction of the Wall.
15 January	**Wall Construction/Land Levelling:** The Israeli army continues to level land south of the village of Far'un for construction of the Wall. **Land Confiscation:** 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

8 December	**Land Confiscation:** The Israeli army confiscated 2 sections of land, near the village of Sad, covering an area over 2 *dunums* (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.
22 December	**Uprooting of Trees:** The Israeli army uprooted dozens of trees on the main road through the town of Huwwara (south).
24 December	**House Demolitions:** (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

10 December	**Land Confiscation/Settler Violence:** Israeli settlers from the settlement of Haggai took over dozens of *dunums* 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.
11 December	**Land Levelling:** (i) The Israeli army levelled around 40 *dunums* (10 acres) of land between the settlement of Kiryat Arba and Al Kharisina, and another 20 *dunums* (5 acres) around the settlement of Harisina, for the construction of the Wall and settlement roads. (ii) The Israeli army levelled around 40 *dunums* (10 acres) of land from the town of Beit Ummar for construction and expansion of settlement roads.
14 December	**Closure:** (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.
17 December	**Land Levelling:** The Israeli army, including bulldozers, levelled 10 *dunums* (2.5 acres) of land in the village of Yatta for expansion of the settler road 60. Land levelling activities continue. **Uprooting of Trees:** Israeli authorities informed the Palestinian Civil Coordination of its intention to uproot trees from Tarqumiya village near Telem settlement.
18 December	**Uprooting of Trees:** Israeli authorities issued an order to uproot thousands of trees in the Tarqumiya area due to its proximity to Telem settlement.
23 December	**Destruction of Property:** 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.
24 December	**Destruction of Property:** The Israeli army levelled 10 *dunums* (2.5 acres) of agricultural land for construction of a wall surrounding the settlement of Kiryat Arba and a settlement road.

26 December	**Land Levelling:** 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. **Uprooting of Trees:** The Israeli authorities issued military orders to uproot hundreds of trees near the junction of Idhna/Tarqumiya.
28 December	**Settlement Activity:** (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. (ii) Israeli settlers added 3 caravans to the settlement outpost of Evangel, south east of Yatta.
30 December	**Land Levelling:** 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.
31 December	**Land Levelling:** 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.
1 January	**Land Levelling:** 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.
2 January	**Land Levelling:** 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.
5 January	**Land Levelling:** Israeli bulldozers continue to level agricultural land near the settlement of Kiryat Arba.
6 January	**Land Levelling:** Israeli bulldozers continue to level agricultural land north and east of the settlements of Kiryat Arba and Harsina. **Settlement Activity:** The Israeli authorities began construction of 144 housing units on Palestinian land for the expansion of Harsina settlement.
7 January	**Land Levelling:** (i) Israeli bulldozers continue to level agricultural land north and east of the settlements of Kiryat Arba and Harsina. (ii) Israeli bulldozers levelled agricultural land and demolished fences in Al 'Arrub refugee camp, adjacent to the Hebron/Jerusalem road. **Land Confiscation:** The Israeli authorities issued orders confiscating land south of the city of Hebron in order to expand the settlement of Haggai.
13 January	**Land Levelling:** The Israeli army leveled 15 *dunums* (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.
16 January	**Chemical Destruction:** 3 Israeli helicopters sprayed an unidentified chemical substance over 1000 *dunums* (250 acres) of agricultural land east of the town of Yatta. All crops were destroyed.
18 January	**Livestock Slaughter/Fine:** 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).

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.

14 December	**Wall Gates**: The gates leading to the agricultural lands of the town of Jayyus and the village of Falamya were closed, preventing farmers, even those with permits, from accessing their lands.
15 December	**Wall Gates:** (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.
16 December	**Wall Gates:** (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 4th 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.
25 December	**Closure:** 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. **Wall Gates:** 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.
26 December	**Demolition Orders:** 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.
12 January	**Settlement Activity:** 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 *dunums* of Palestinian land.

SALFIT

8 December	**Tree Uprooting:** At 21:45, an Israeli bulldozer uprooted olive trees in the town of Kafr 'Ein.
23 December	**Closure:** The Israeli army closed the iron gate at the entrance of the town of Deir Ballut. **Medical Obstruction/Death:** 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.
24 December	**Wall Property Demolitions:** 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. **Death:** 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. **Settler Violence:** 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.
3 January	**Settlement Activity:** 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.
18 January	**Wall Construction:** 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.

Cour internationale de Justice
Enregistré au Greffe le :
International Court of Justice
Filed in the Registry on : 29 JAN. 2004 / 8.(2)

INTERNATIONAL COURT OF JUSTICE

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

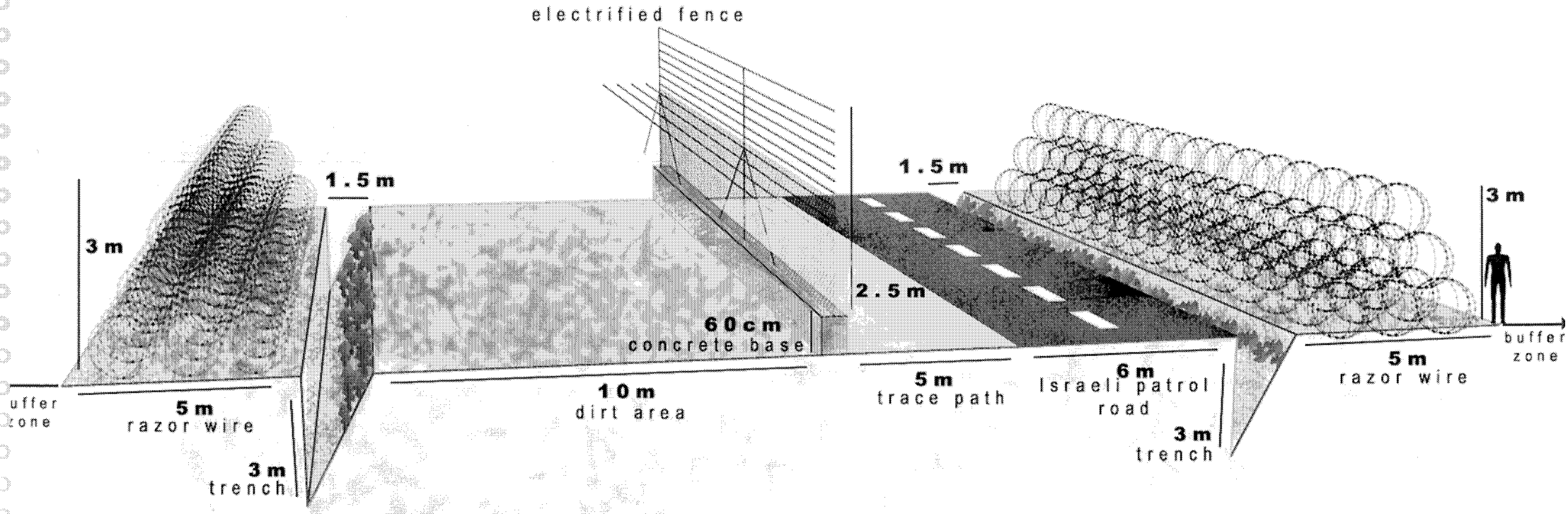
30 JANUARY 2004

Graphics/Maps Annex

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Cross Section of the Wall Complex

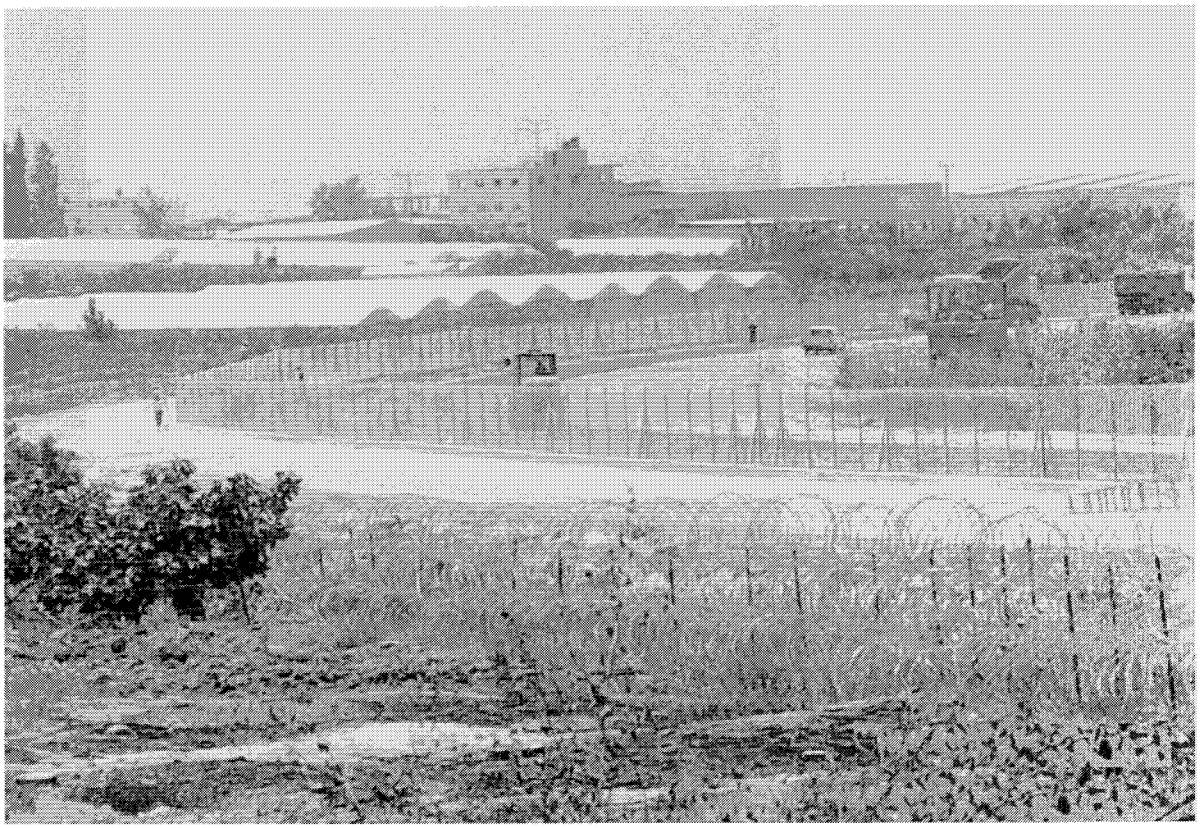


The Wall complex is a closed military zone

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.



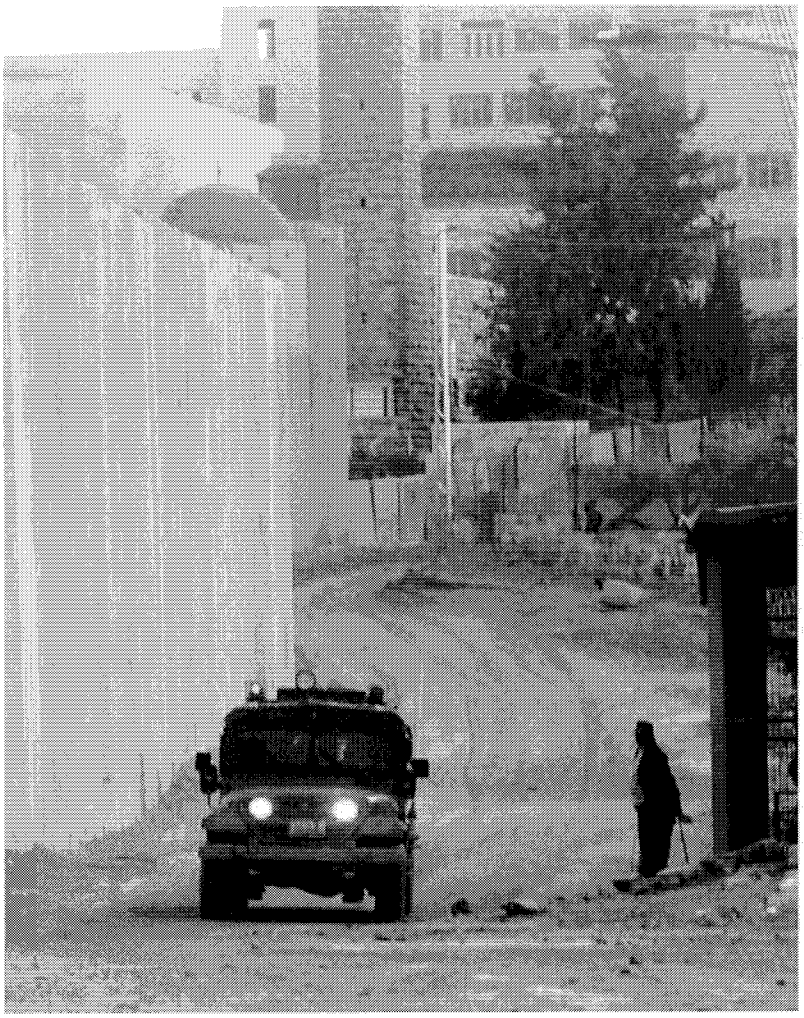
Photograph 2: Qalqilya (July 2003): Qalqilya northern area greenhouses isolated on the western side of the Wall. On 4 October 2003, the Israeli Army closed the agricultural gate allowing farmers access to this area. The gate was never re-opened. Palestinian farmers have started dismantling and selling 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.



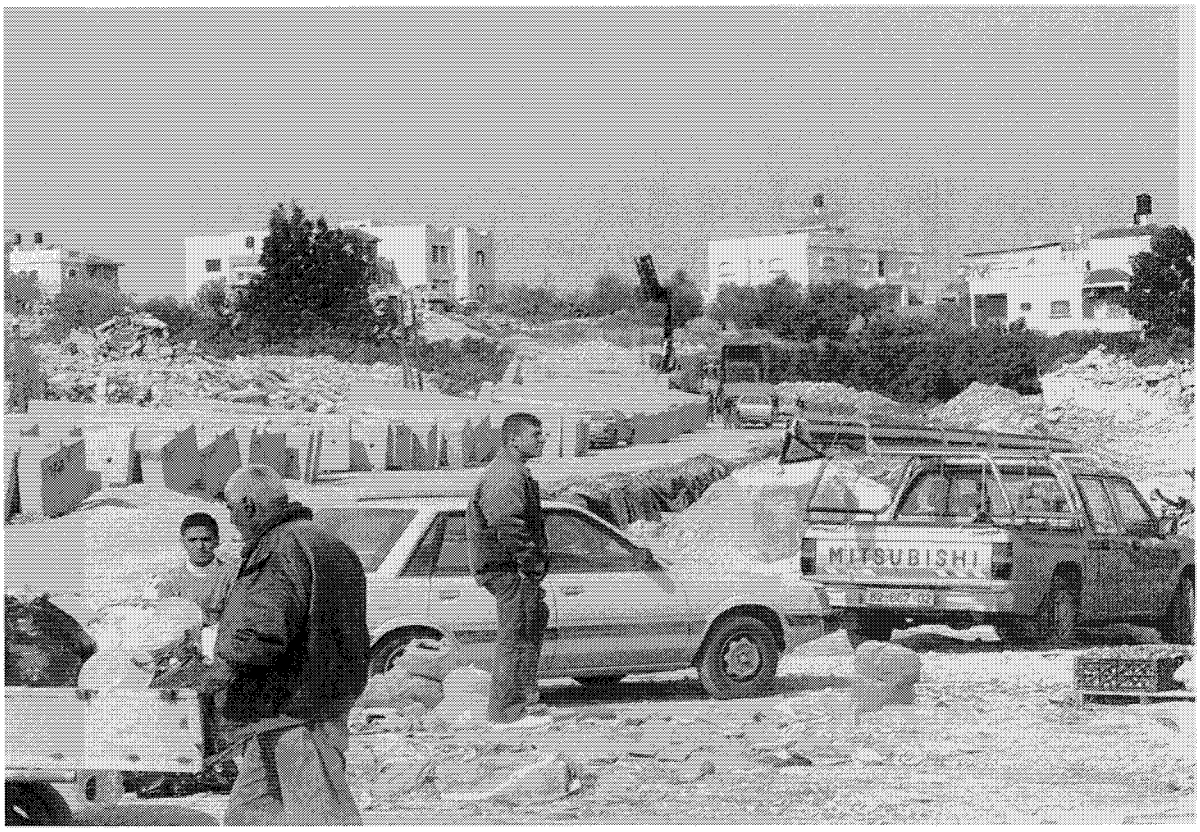
Photograph 8: Al-Daba, Qalqilya Governorate (March 2003): Elderly Palestinian farmers from the Palestinian village of Daba watch as their olive crops are uprooted by Israeli bulldozers.



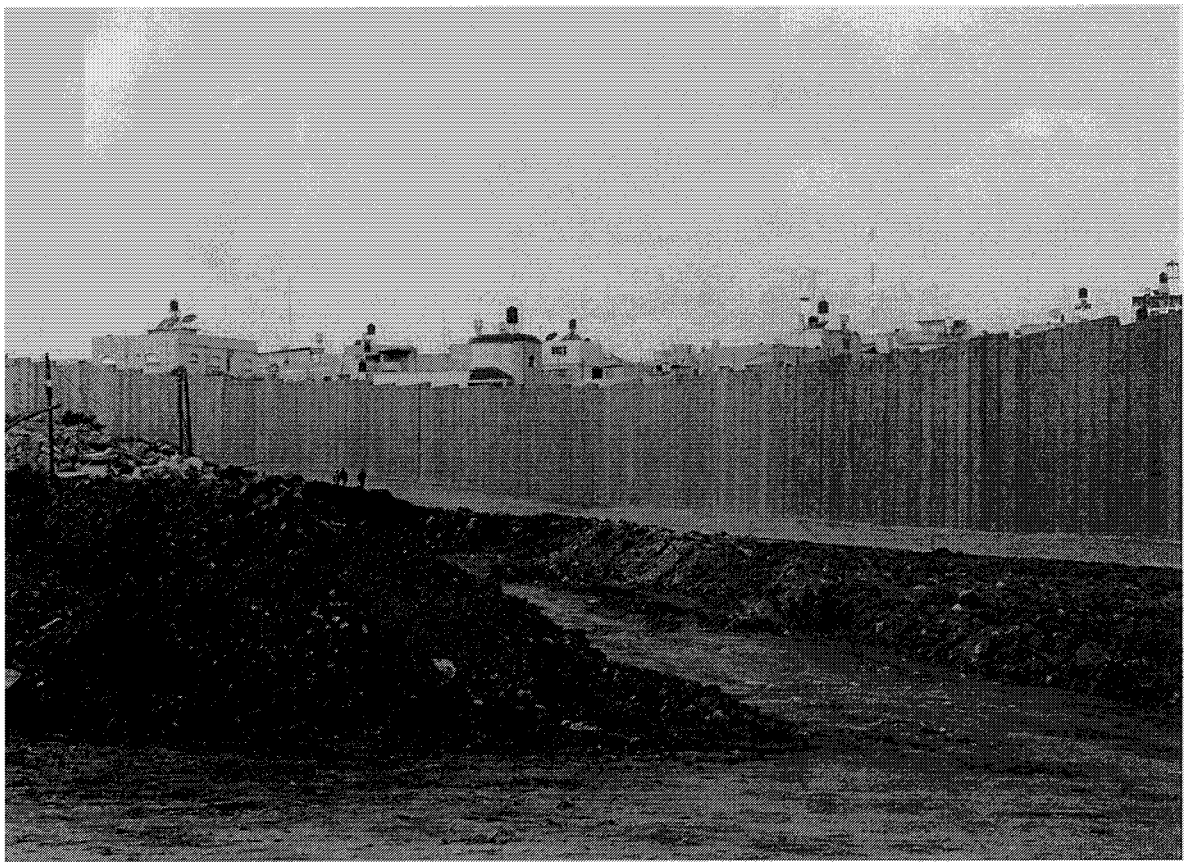
Photograph 9: Nazlat Issa, Tulkarem Governorate (21 August, 2003): In August 2003, the Israeli Army destroyed 124 market stalls and 7 homes in what was once one of the largest open-air markets in the Occupied Palestinian Territory. On 21 January 2003, 62 stalls were destroyed. On 24 August 2003 Israeli 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.



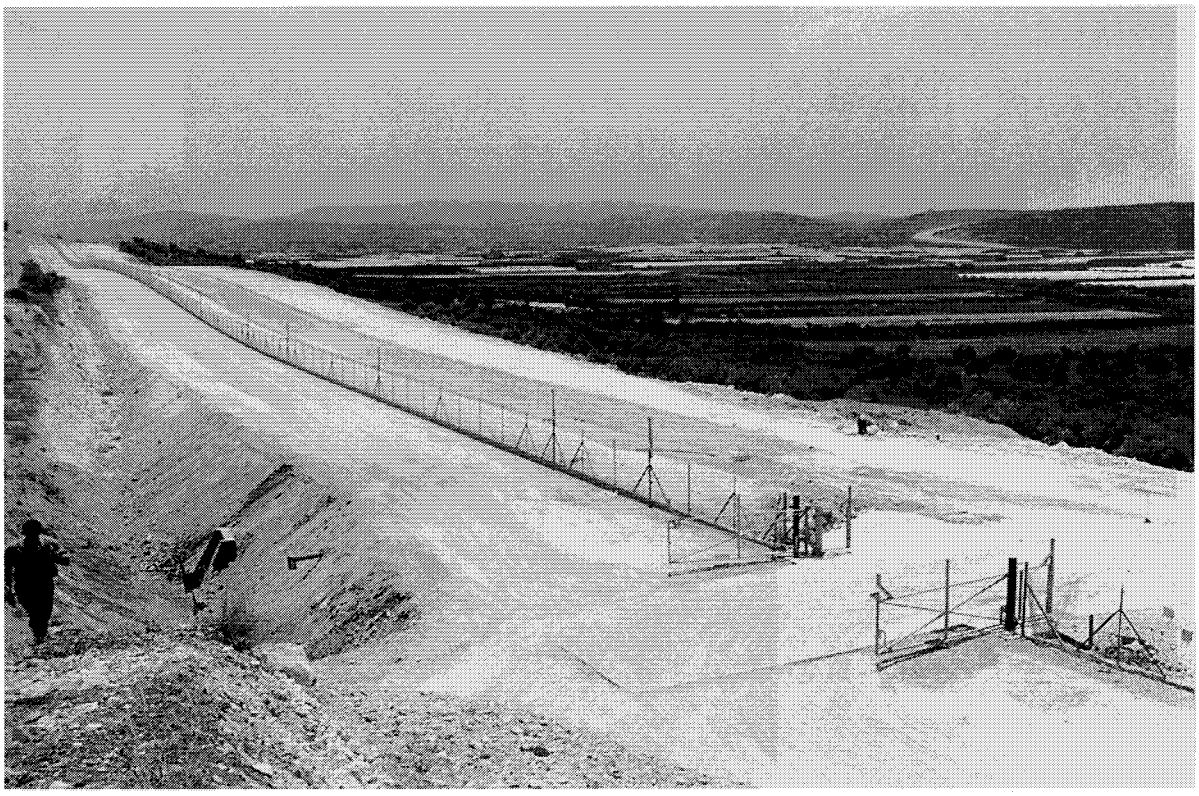
Photograph 10: Nazlat Issa, Tulkarem Governorate (October 2003): Palestinian merchants amidst the rubble of the destroyed market area.



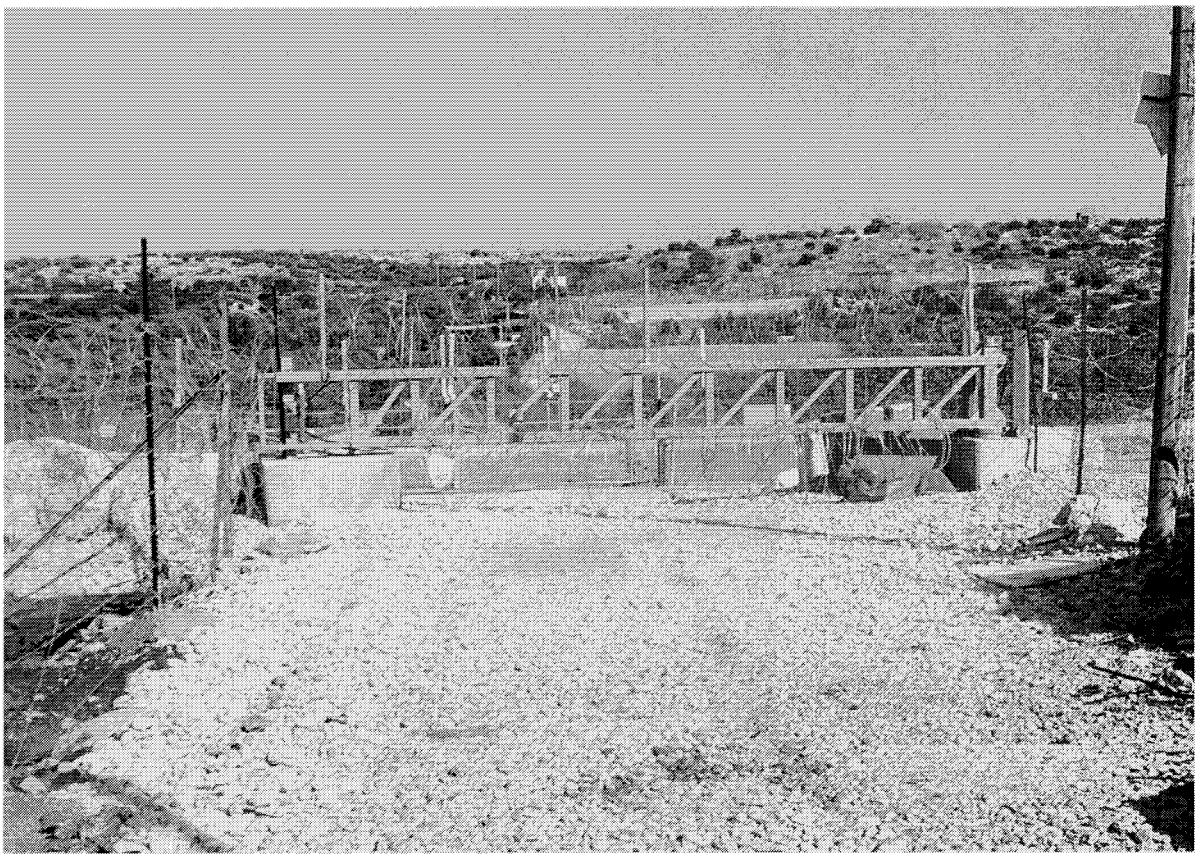
Photograph 11: Nazlat Issa, Tulkarem Governorate (24 November 2003): After the destruction of the market in August 2003, the rubble was cleared and Israelis prepare to erect the 8 - meter high concrete Wall encircling the Palestinian towns of Baka Sharqiya, Nazlat Issa and Abu Nar, in effect destroying 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.



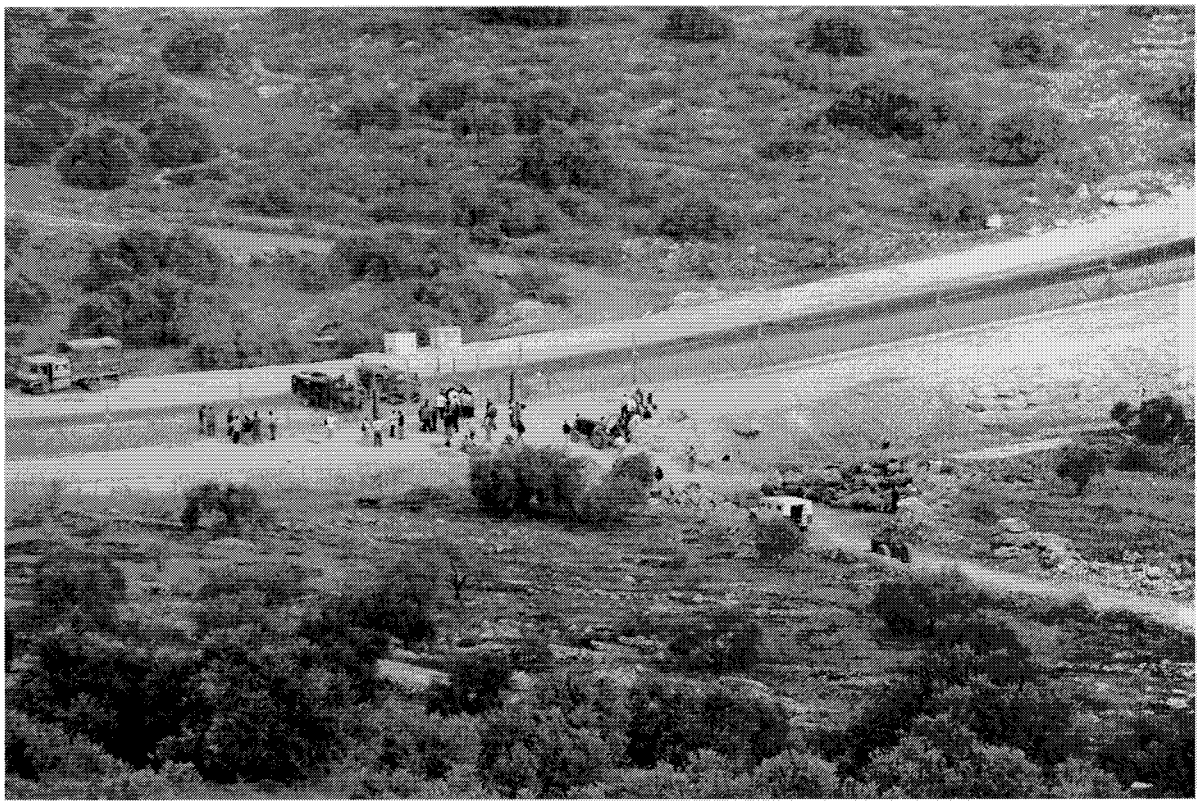
Photograph 13: Zayta, Tulkarem Governorate (July 2003): Palestinian owned greenhouses "isolated" on the western side of the wall. Palestinian farmers must obtain permits from the Israeli military in order to access their land in the Closed Zone.



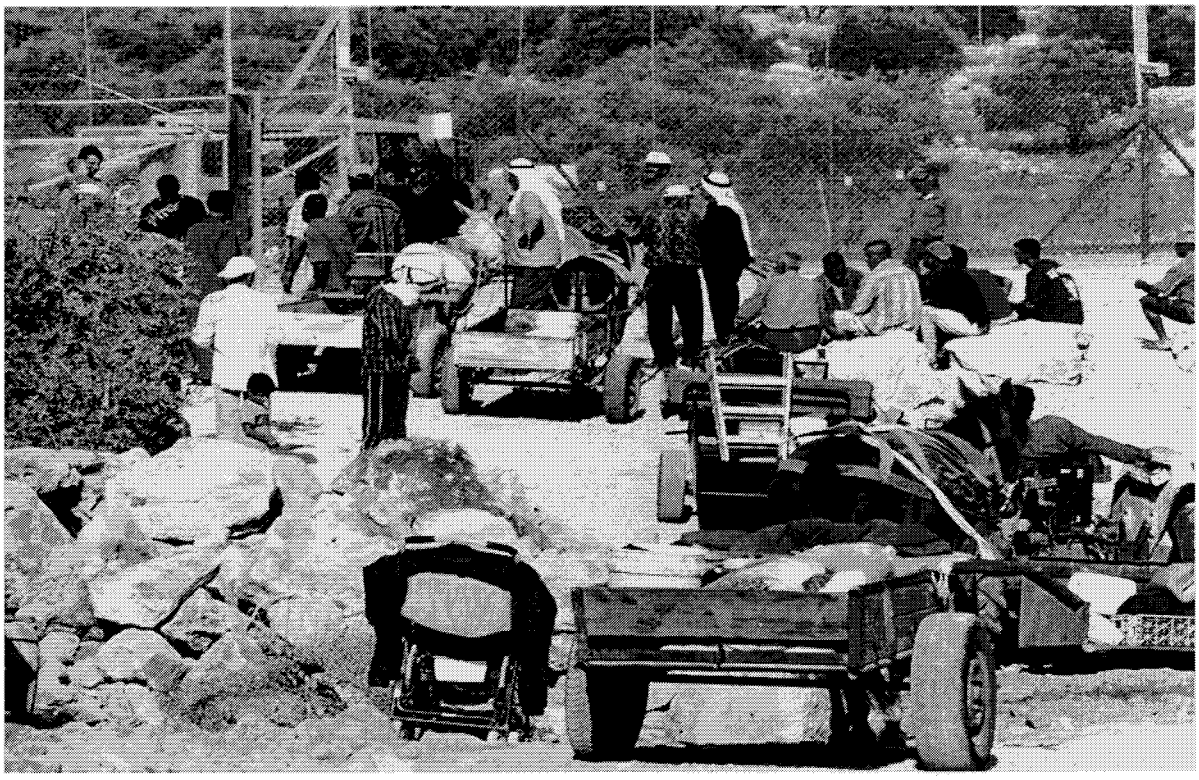
Photograph 14: Qalqilya (November 2003): Qalqilya northern area gate closed since 4 October 2003. It has never re-opened. Over 280 Qalqilya farmers depend on this gate to access their farms and greenhouses.



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.



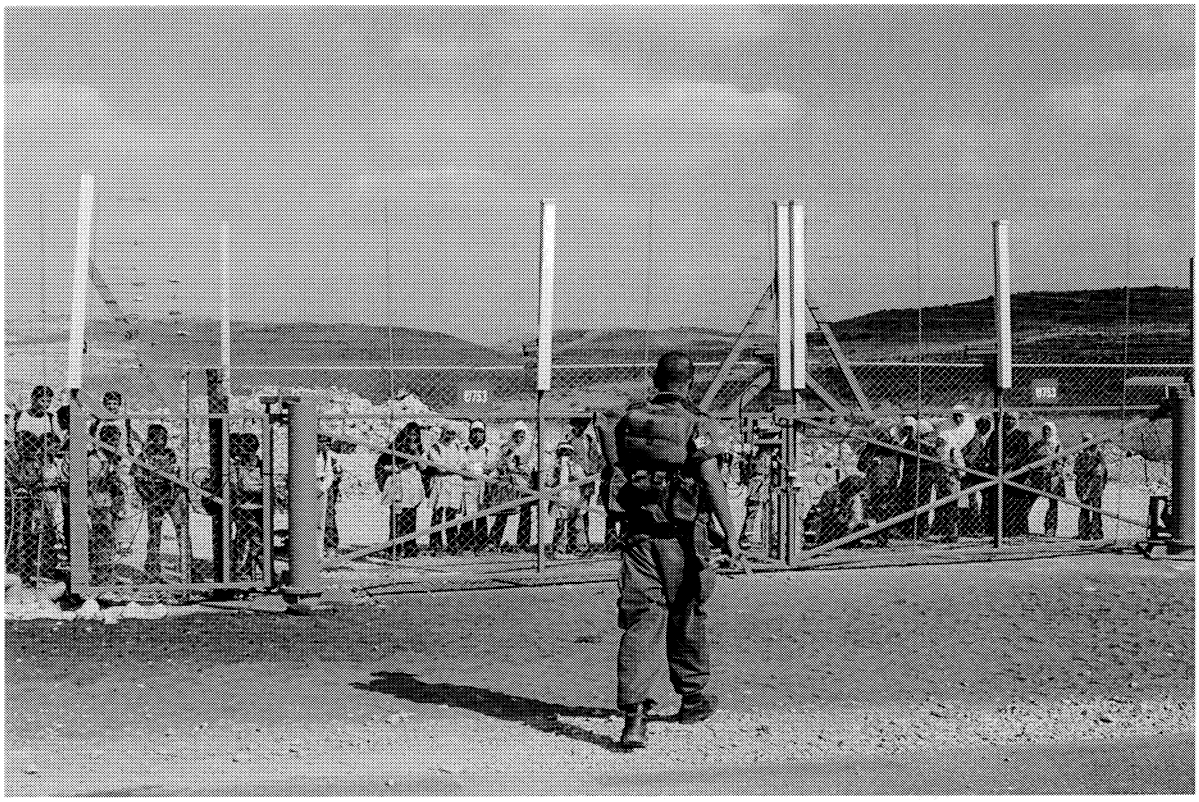
Photograph 18: Jayyus, Qalqilya Governorate (November 2003): Palestinian farmer with Israeli military issued Closed Zone access permit is checked by Israeli soldiers before crossing to his land on the western side of the Wall.



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%.



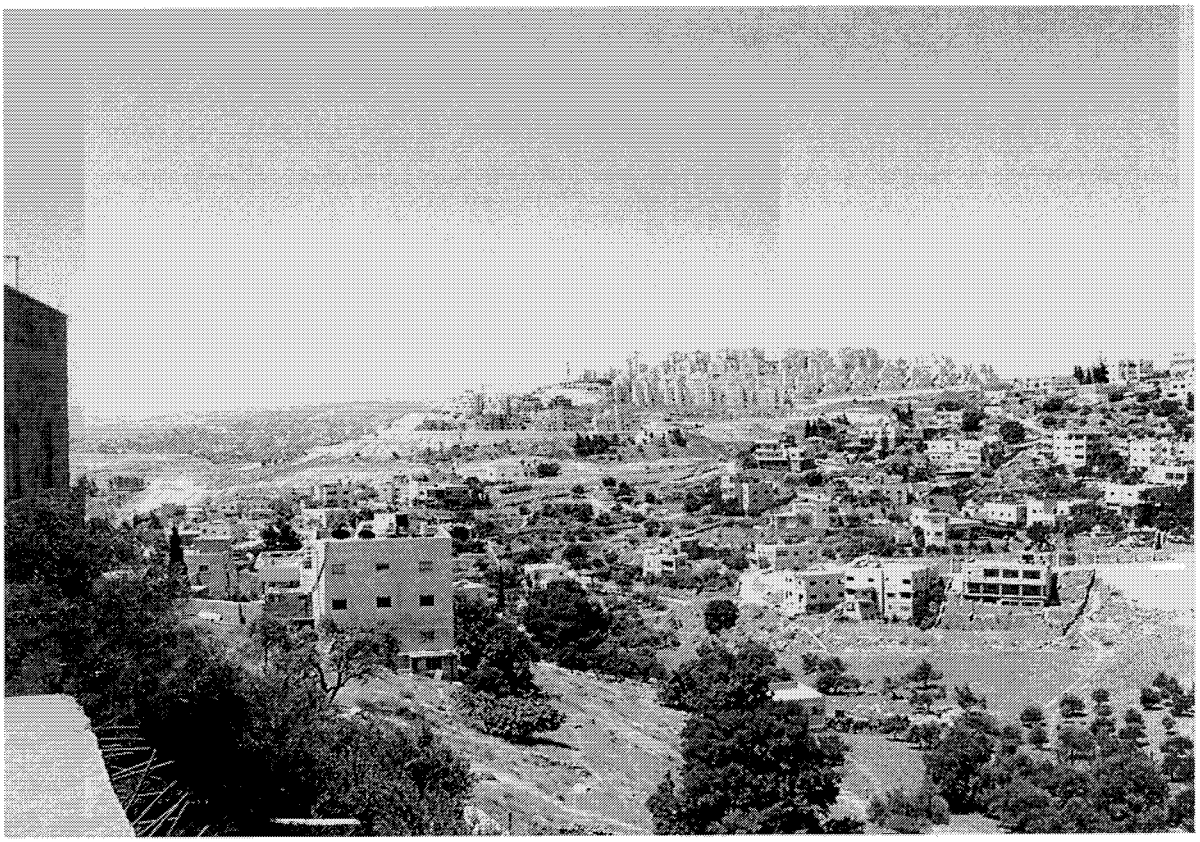
Photograph 24: The Israeli 'Kfar Tapuah' settlement linked with one of its outposts situated on a hilltop south of the Palestinian city of Nablus in the Occupied Palestinian Territory. Erecting of 'outposts' is used by Israel as a tool for extending and expanding settlements.



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.

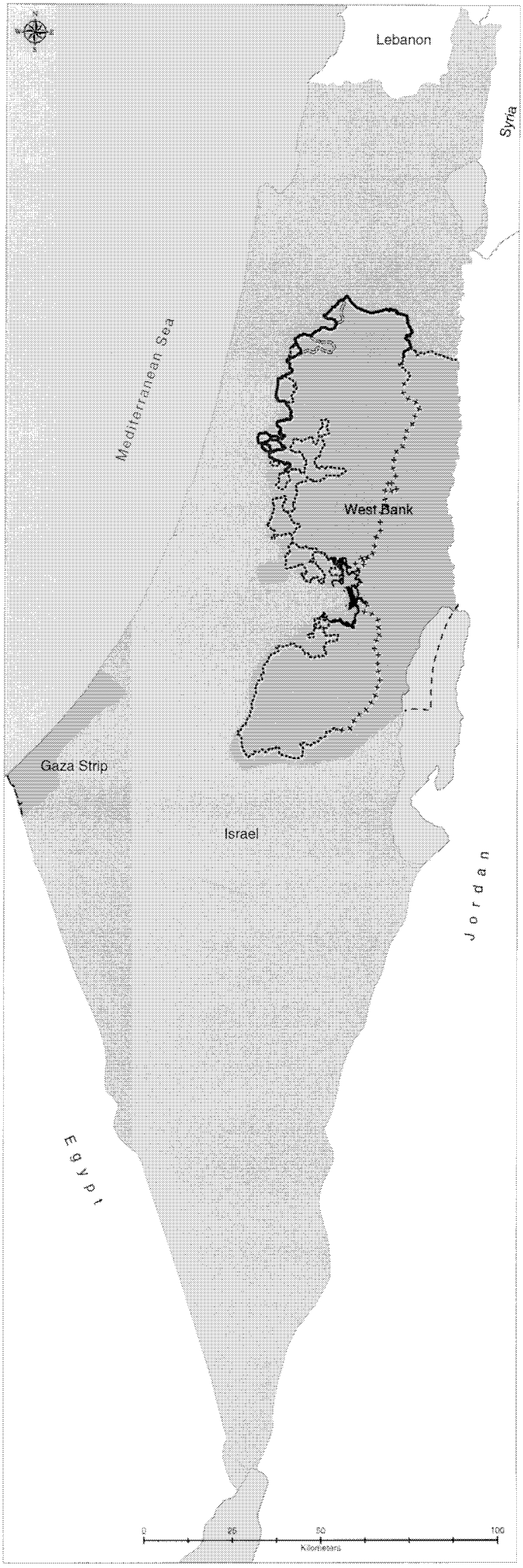


Photograph 27: In the distance, the Israeli settlement of 'Har Homa' situated south of Jerusalem and encroaching on the land of Sur Baher, a Palestinian village (2003). This settlement closes off to Palestinians southern access into Jerusalem and isolates East Jerusalem from neighboring Palestinian areas. 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.

MAP 1



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)

For illustrative purposes only. Produced exclusively for the purpose of presentation to the International Court of Justice.

Palestinian Ministry of Planning
@ Specialized Technical Support Unit
January 2004

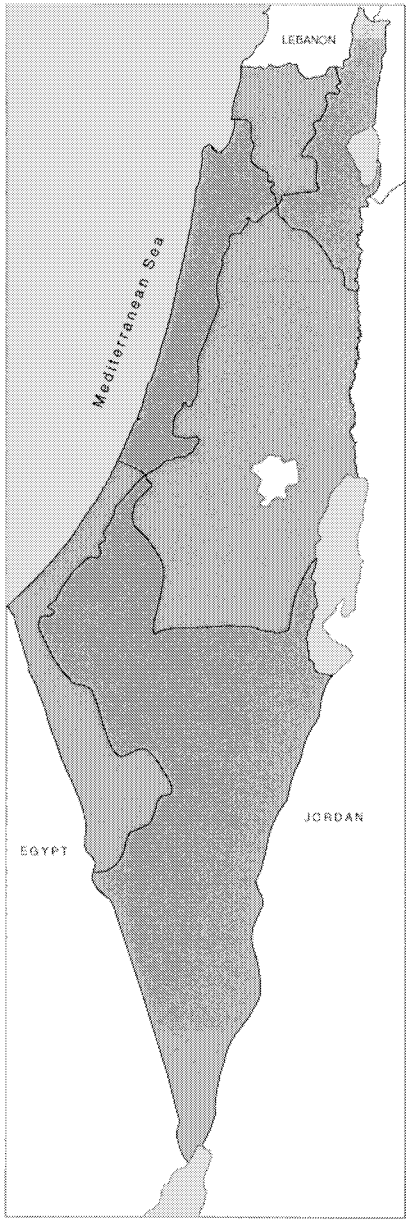
MAP 1

MAP 2

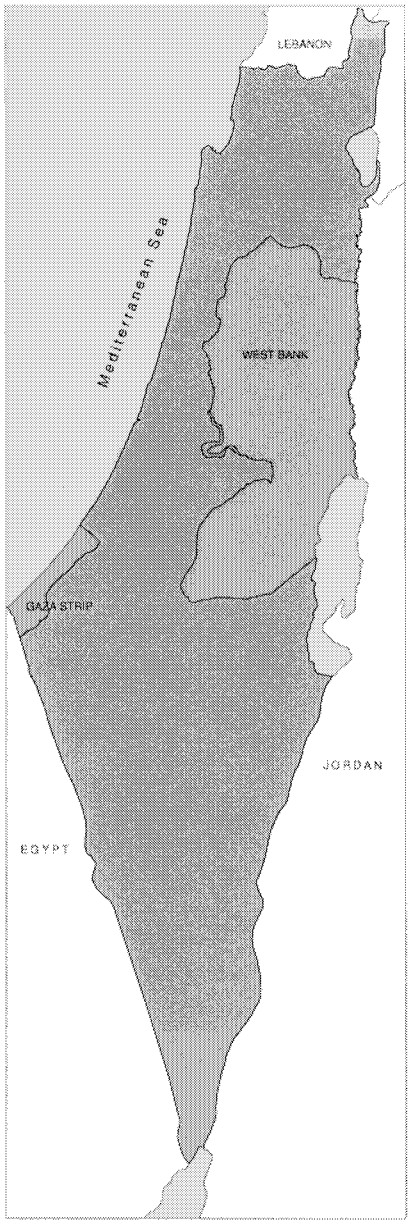
MAP a
Mandated Palestine



MAP b
UN Partition Plan 1947



MAP c
Armistice Lines 1949



HISTORICAL DIVISION OF PALESTINE

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 42.88%.

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

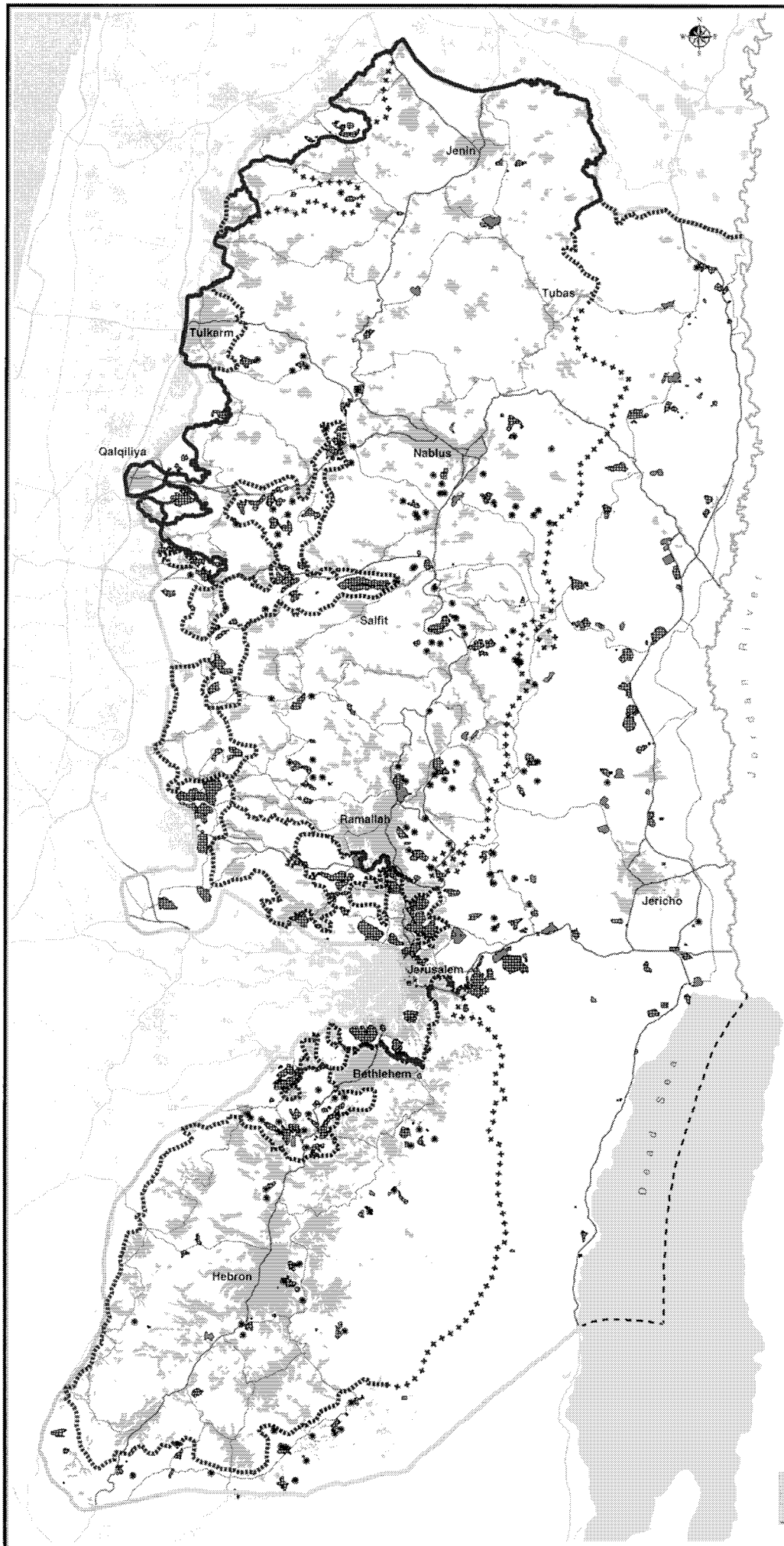
Occupied Palestinian Territory

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MAP 3

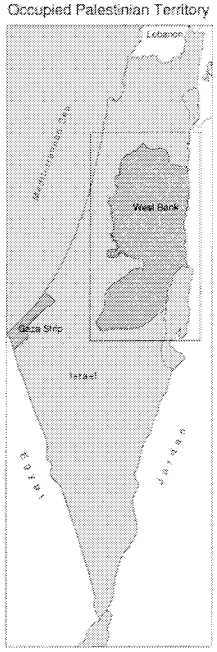
THE WALL
IN THE WEST BANK



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

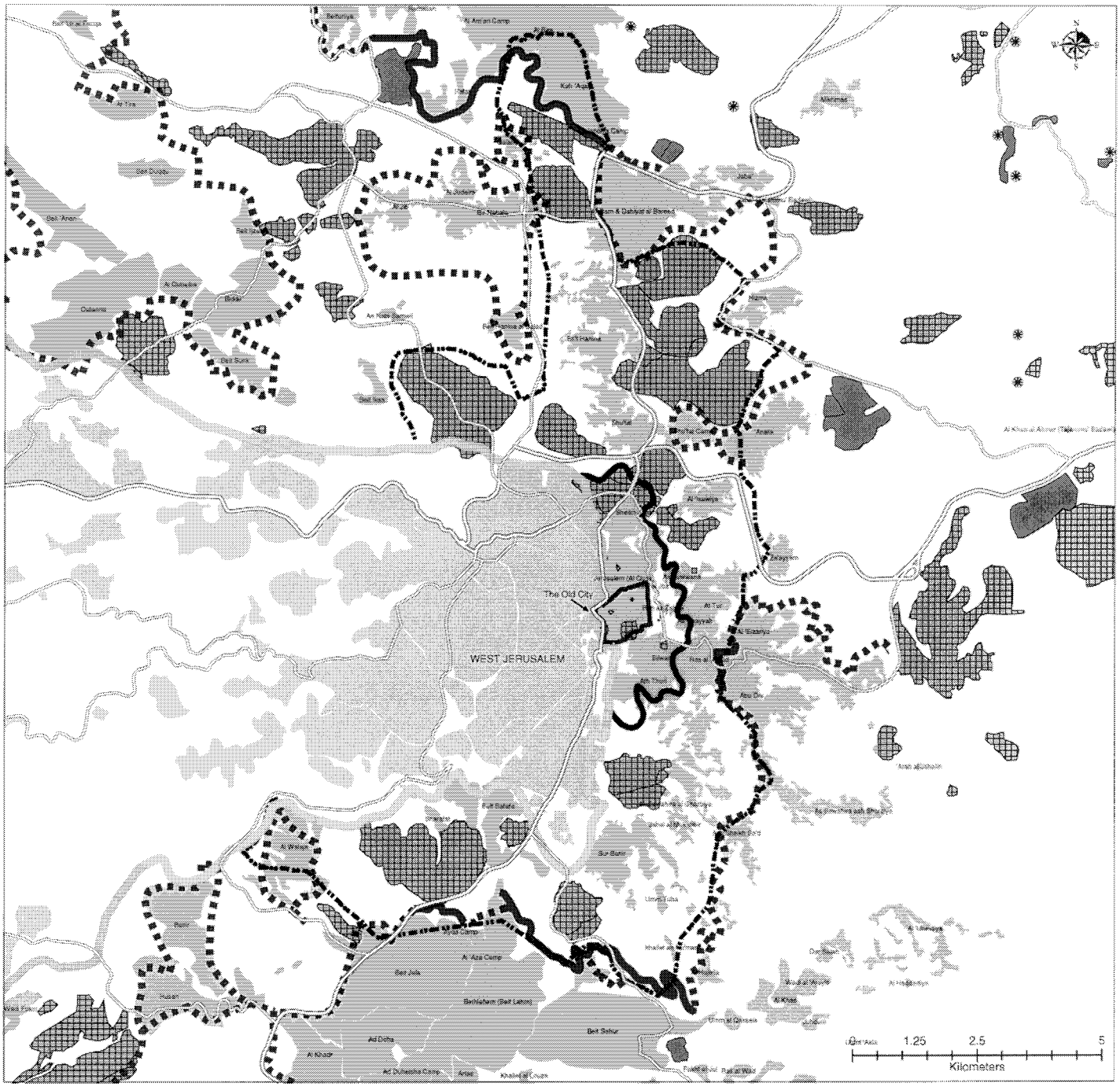


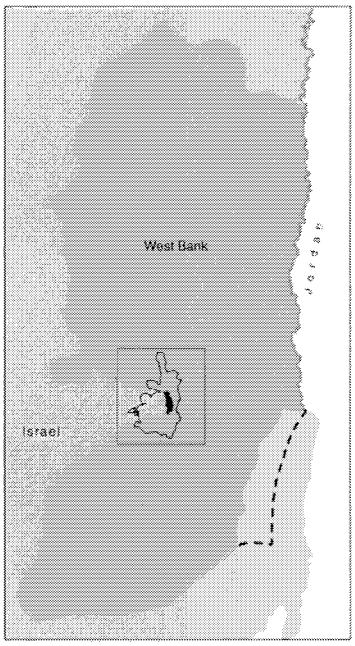
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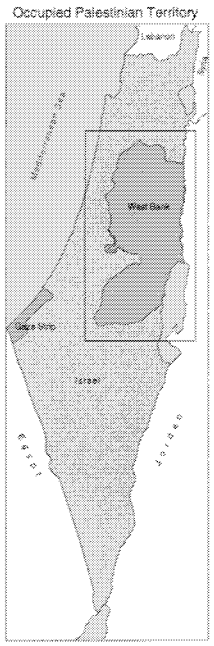
0 5 10 20
Kilometers

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MAP 3







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

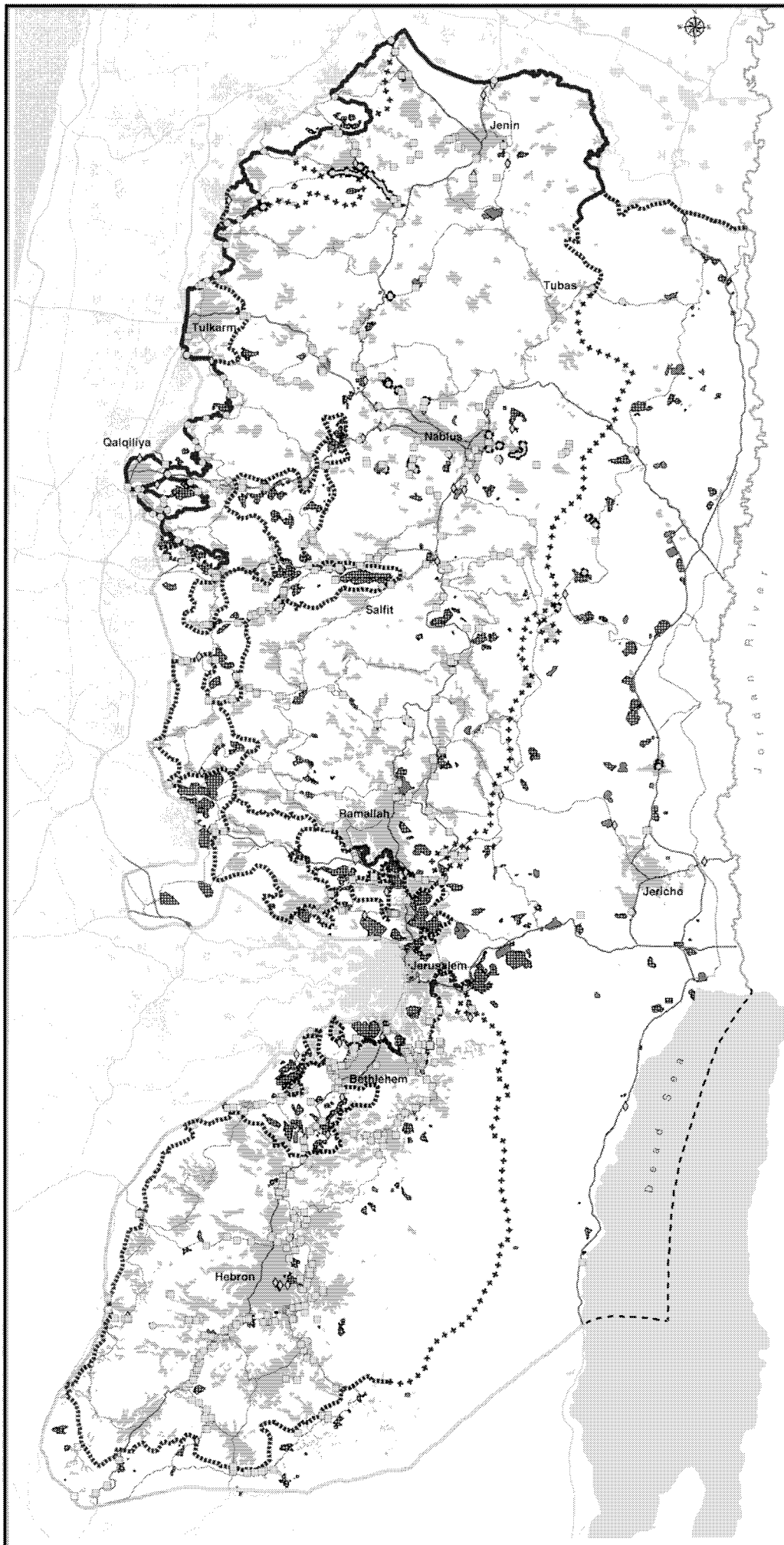
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MAP 4

MAP 5

THE WALL AND CLOSURE
IN THE WEST BANK



Legend

Closure Elements:

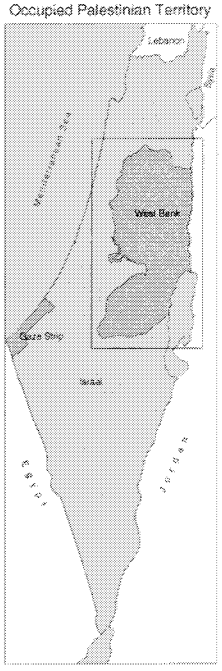
- Checkpoint
- Obstacle (Cement Block or Earthmound)
- Road or Wall Gate
- Ditch
- Green Line (Armistice Line 1949)
- Highway
- Main Road
- Regional Road
- Constructed Part of the Wall
- Wall Trajectory Approved/Under Construction
- Projected Wall
- Palestinian Built Up Area
- Israeli Military Base
- 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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0 5 10 20
Kilometers

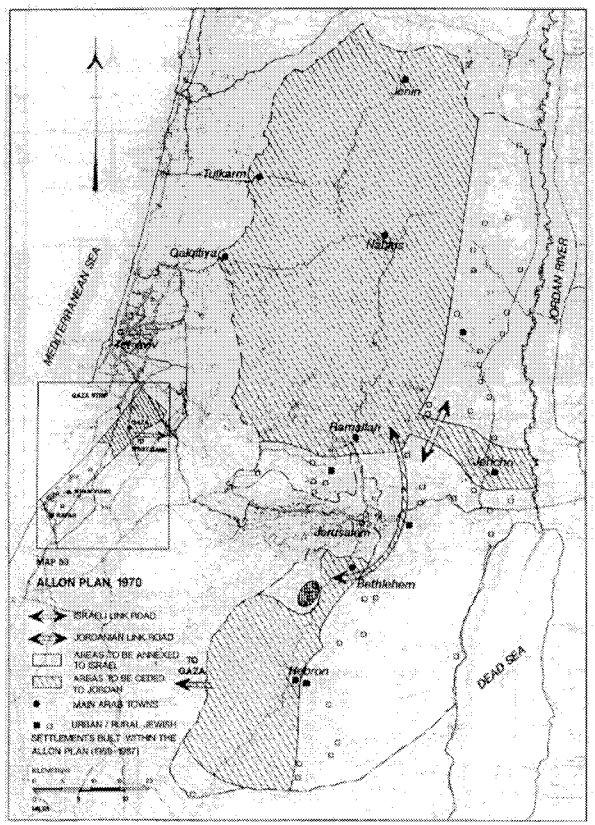
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MAP 5

MAP 6

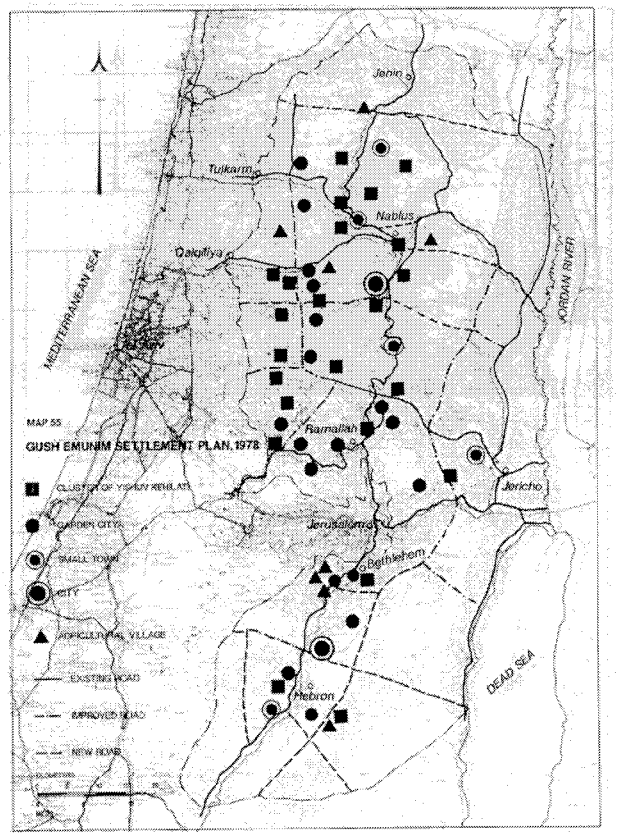
ISRAELI SETTLEMENT PLANS IN OCCUPIED PALESTINIAN TERRITORY INCLUDING EAST JERUSALEM

Allon Plan



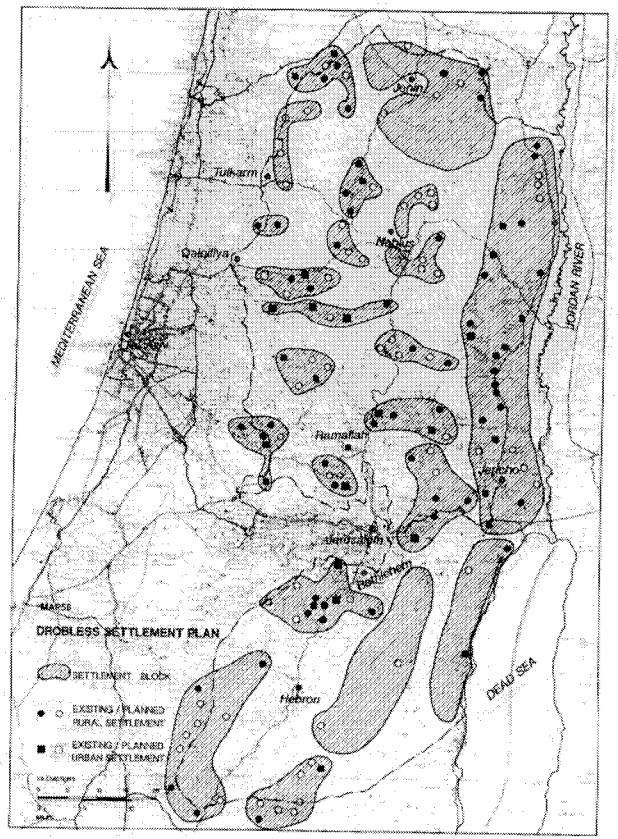
The Allon Plan called for creating defensive and political borders by establishing civilian settlements along the Jordan Valley, in a band across Jerusalem and in the west Bethlehem Area.

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.

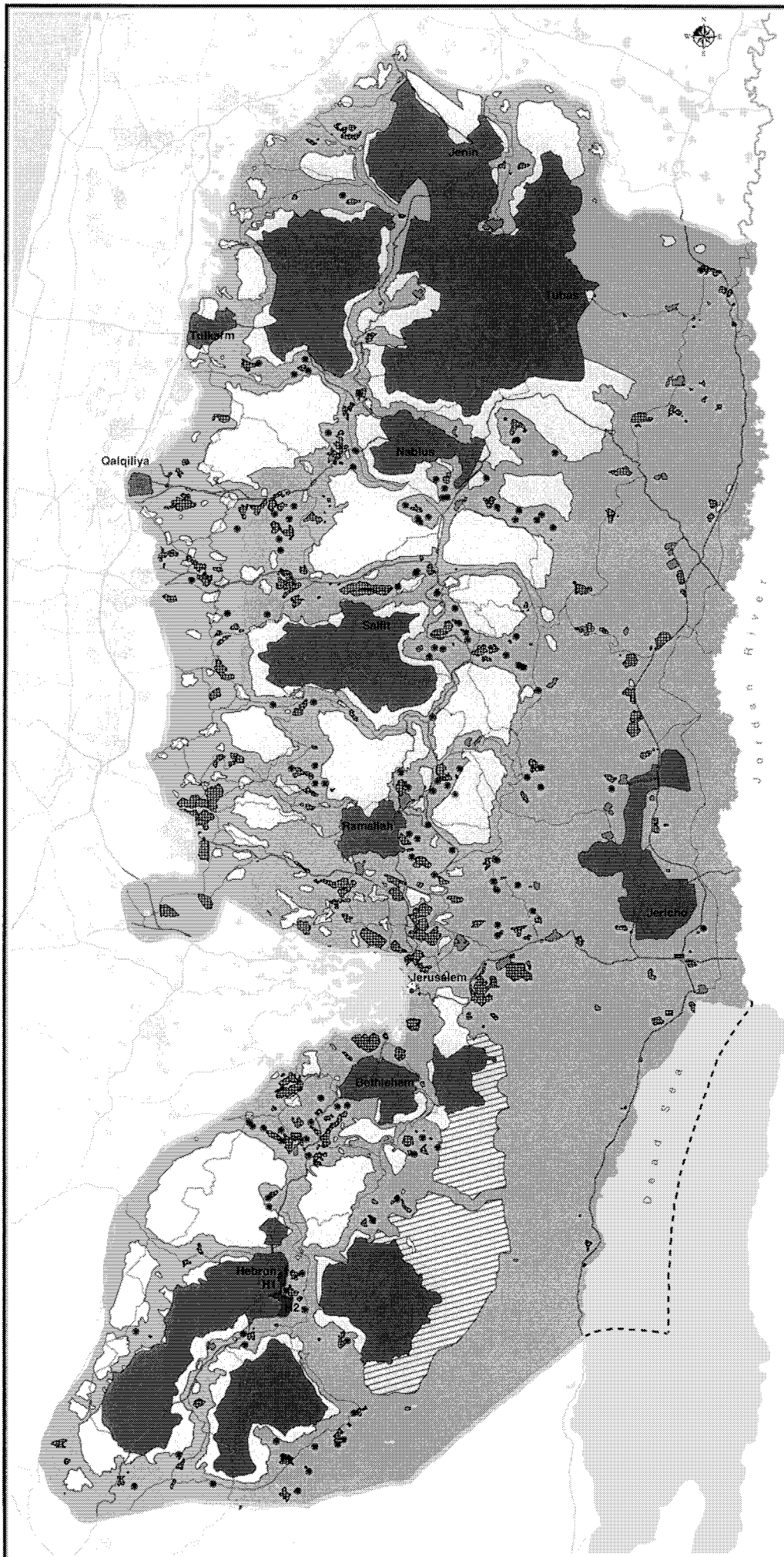
Source: The West Bank and Gaza Atlas. 1988. The West Bank Database Project.

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MAP 7

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

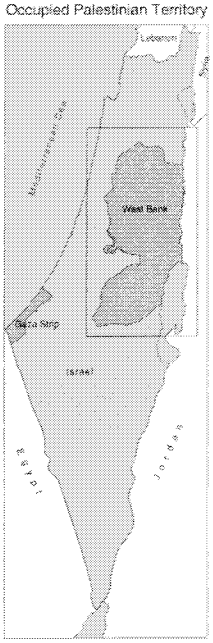
Interim Agreement (Oslo Accords) Areas:

- 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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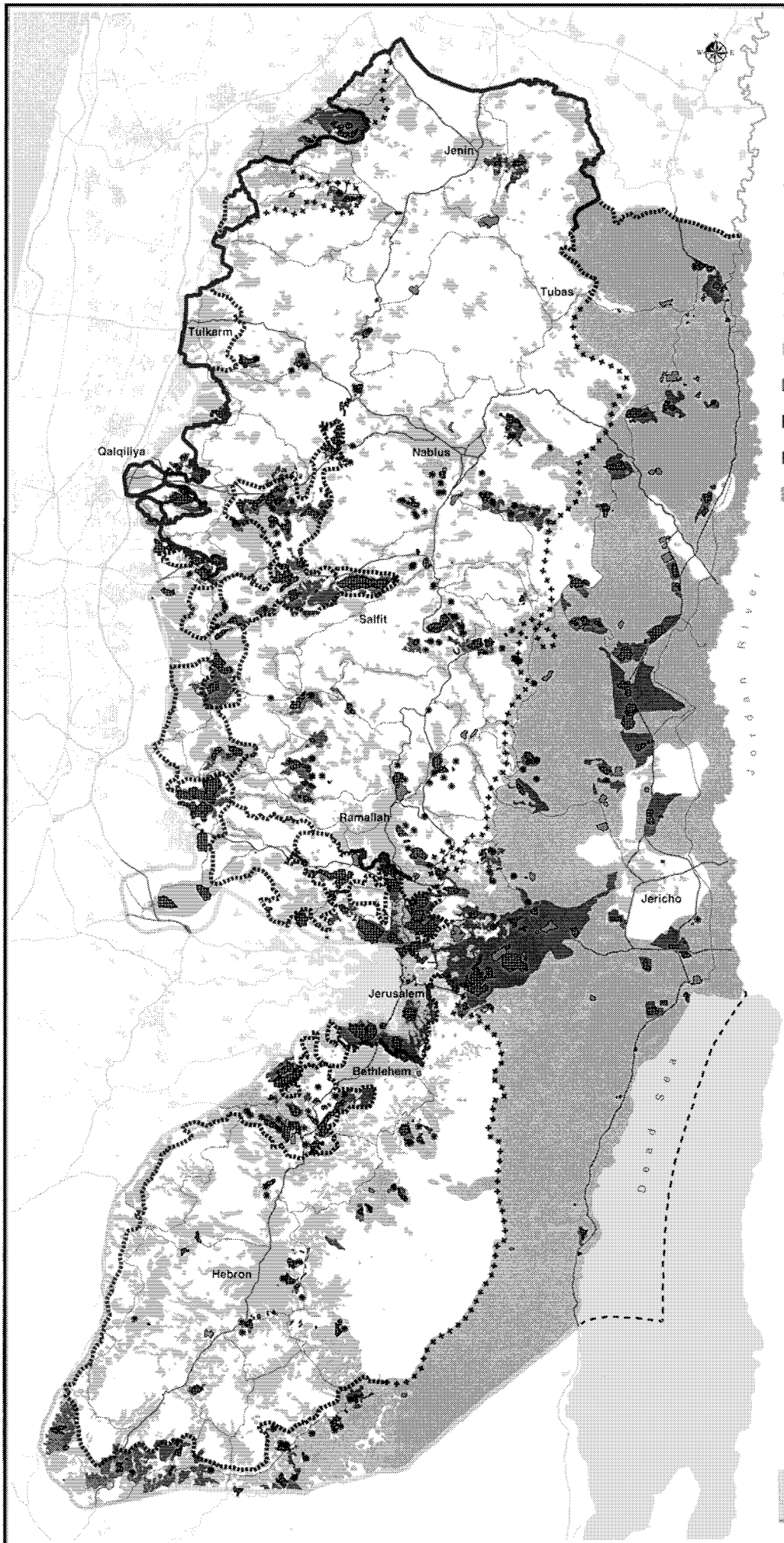
0 5 10 20
Kilometers

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MAP 7

MAP 8

THE WALL AND ISRAELI SETTLEMENT EXPANSION IN THE WEST BANK



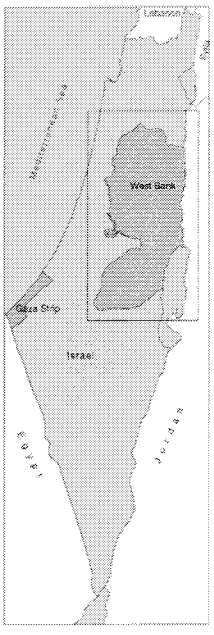
Legend

- 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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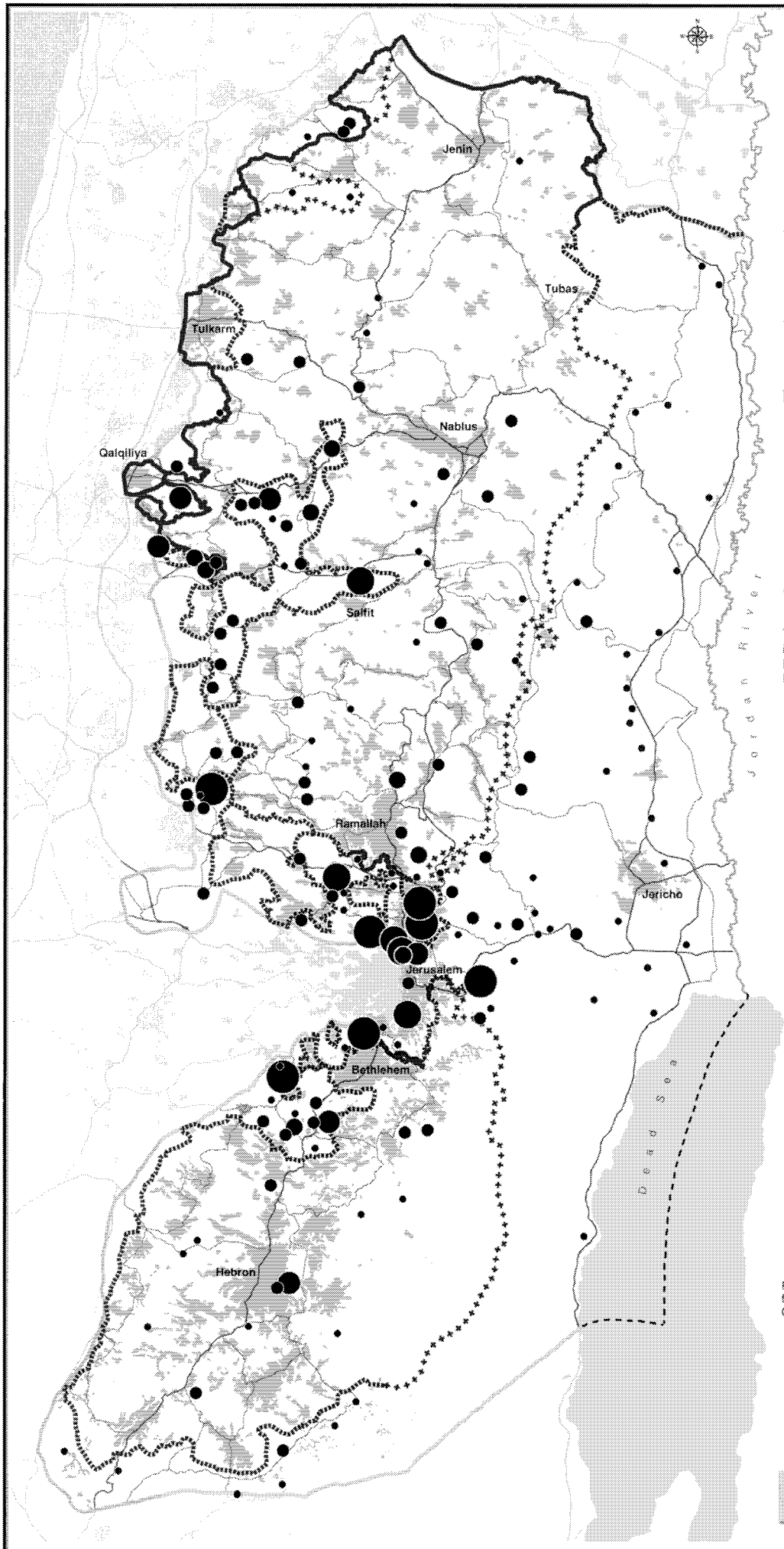
0 5 10 20
Kilometers

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MAP 8

MAP 9

THE WALL AND ISRAELI SETTLER POPULATION IN THE WEST BANK



Legend

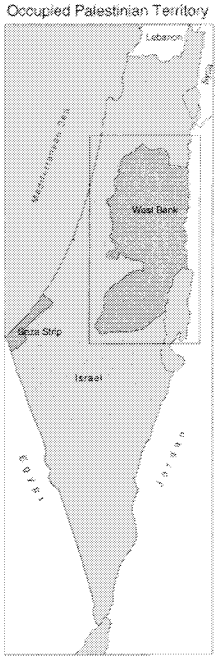
- Green Line (Armistice Line 1949)
- Constructed Part of the Wall
- Wall Trajectory Approved/Under Construction
- Projected Wall
- Highway
- Main Road
- Regional Road
- Palestinian Built Up Area

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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0 5 10 20
Kilometers

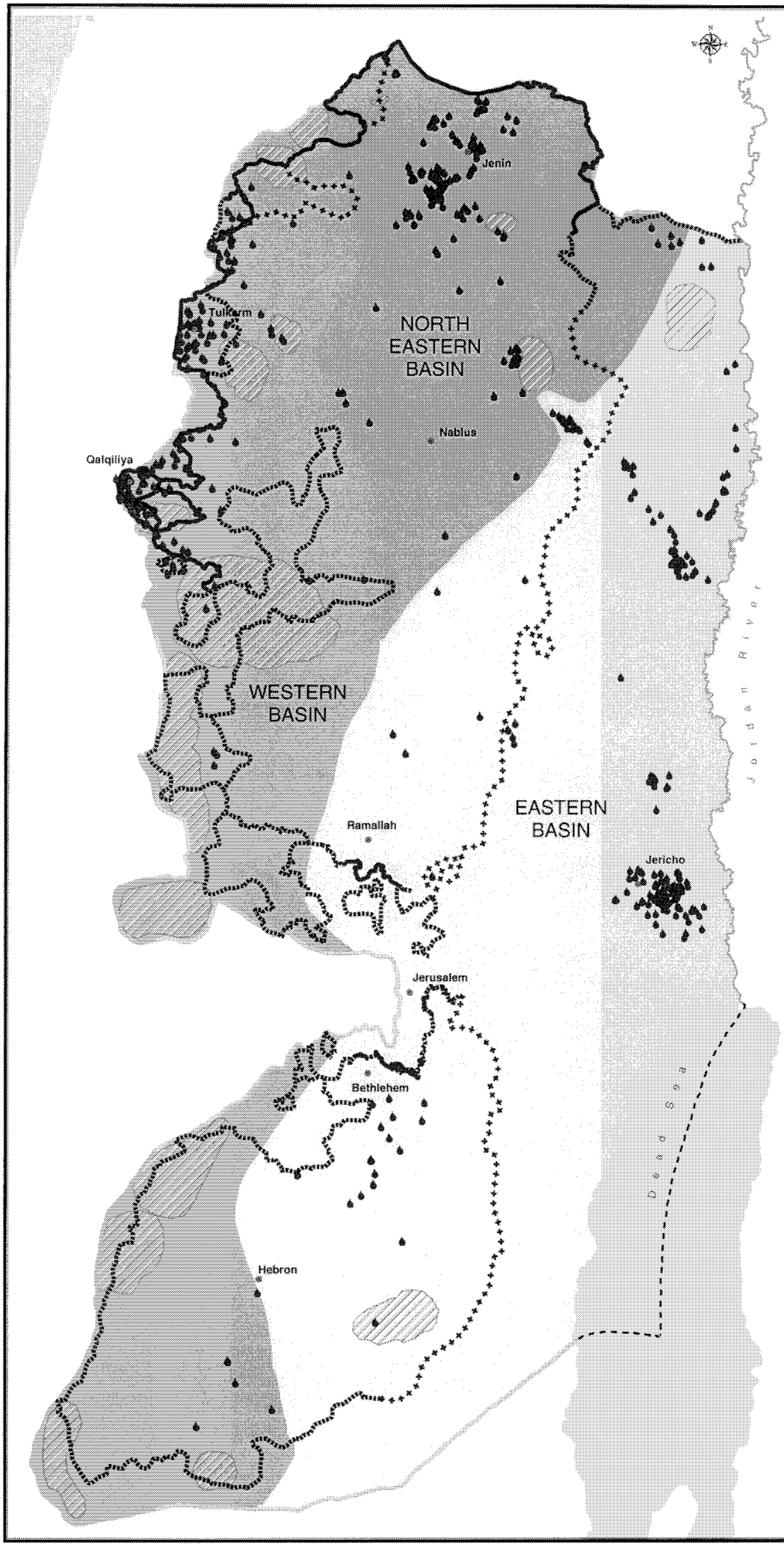
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MAP 9

MAP 10

THE WALL AND WATER RESOURCES

IN THE WEST BANK

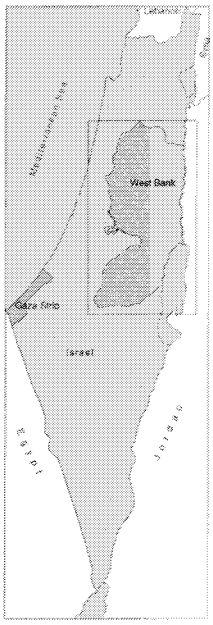


Legend

- 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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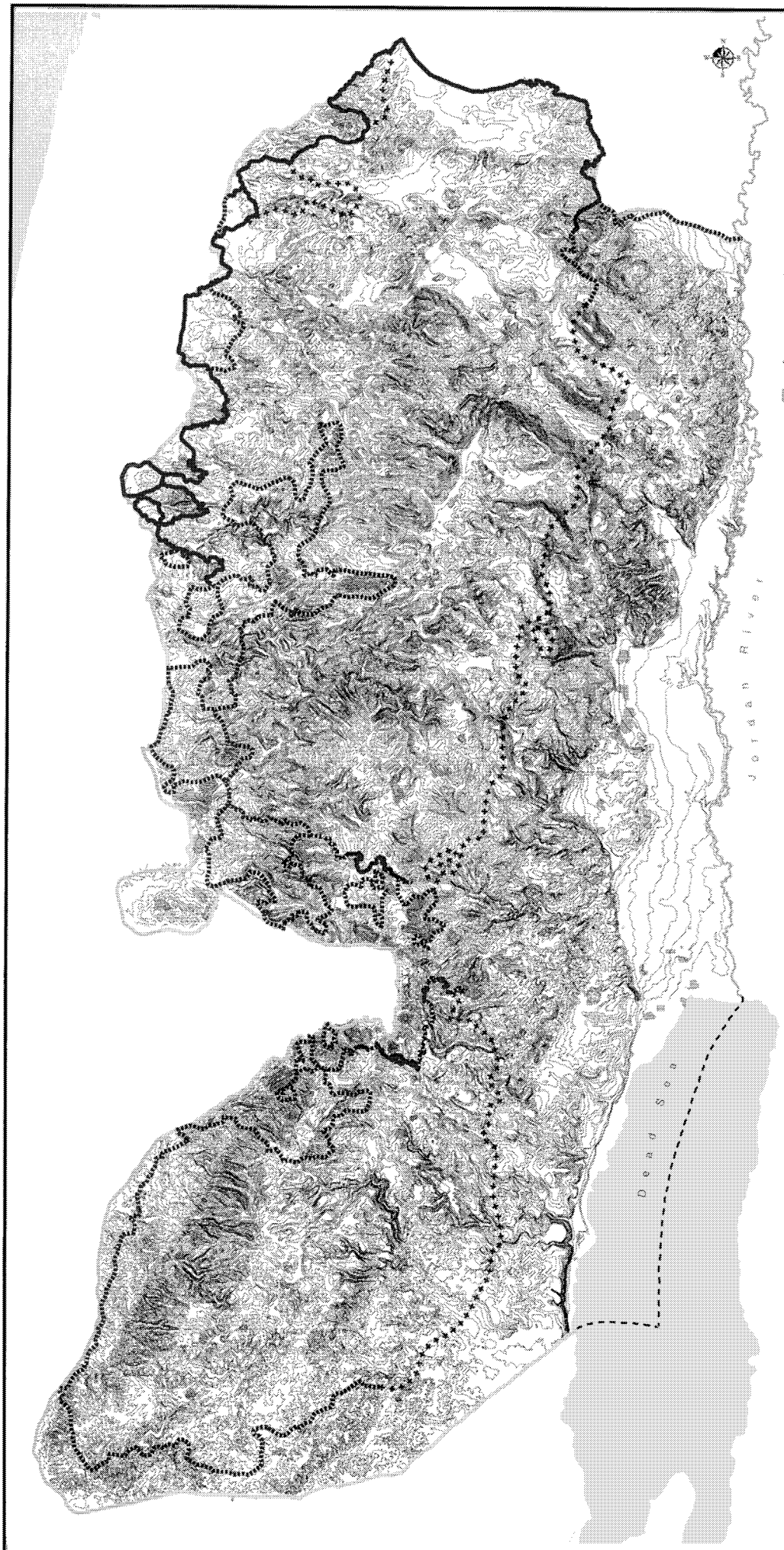
0 5 10 20
Kilometers

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MAP 10

MAP 11

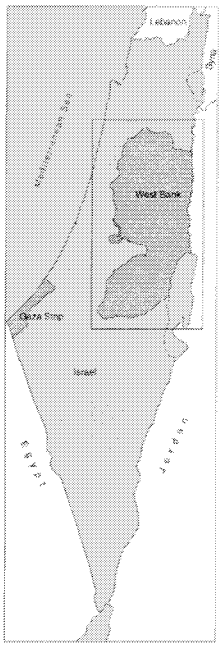
THE WALL AND WEST BANK TOPOGRAPHY



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



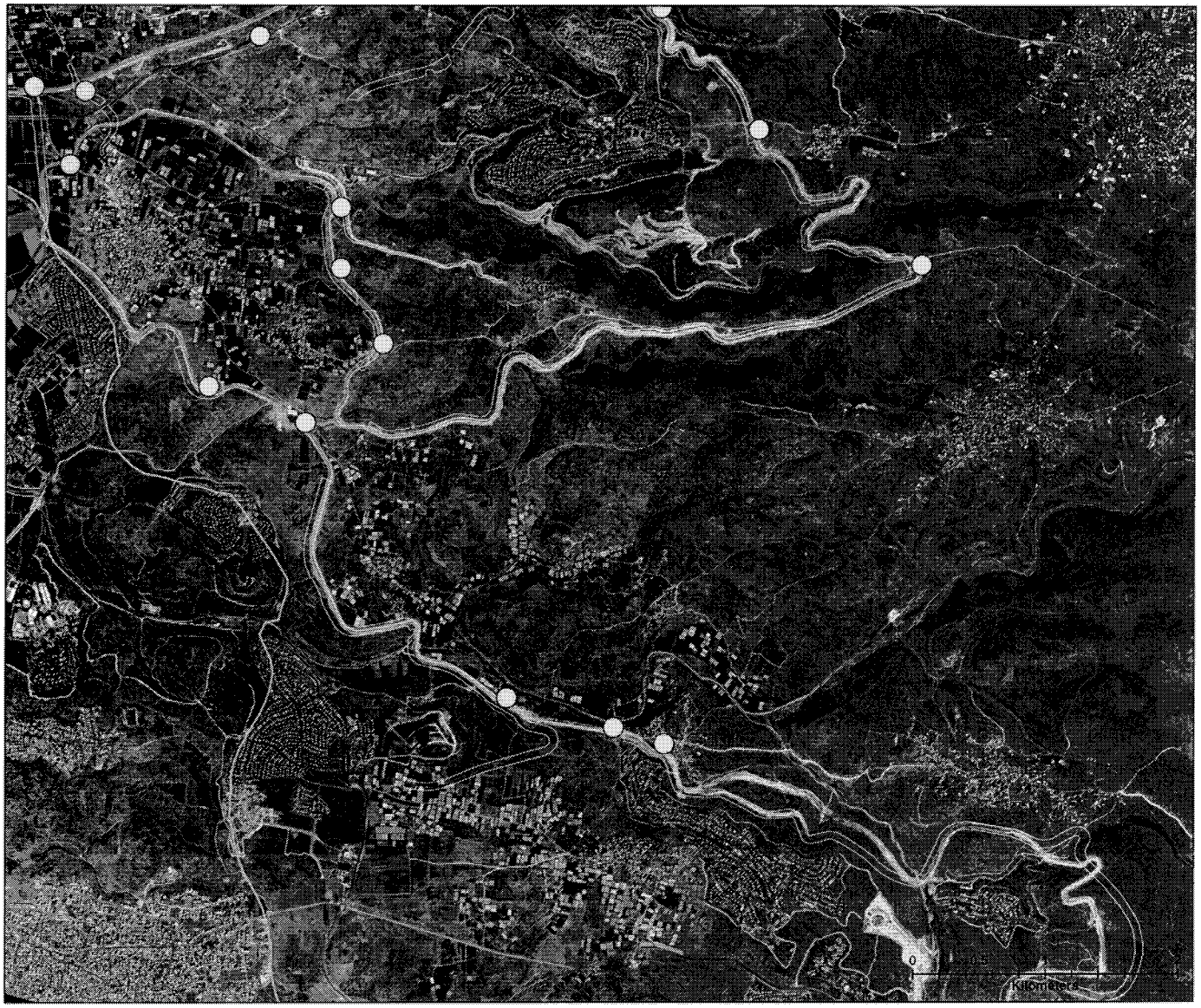
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0 5 10 20
Kilometers

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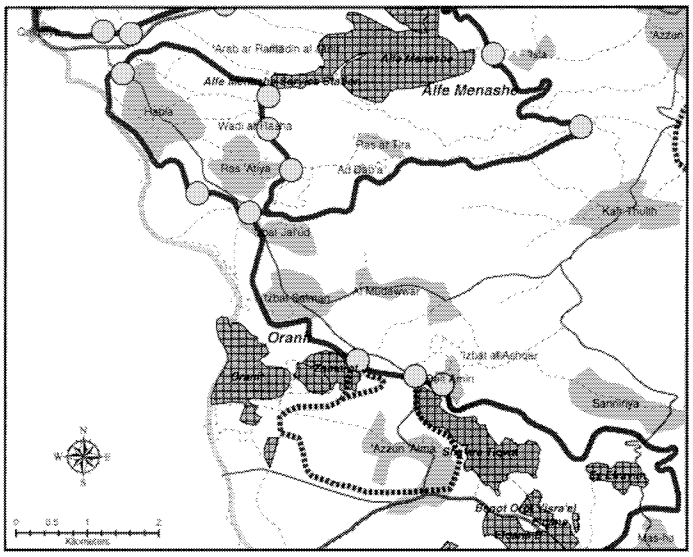
MAP 11

MAP 12a

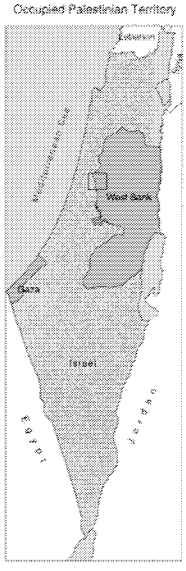


Background: Satellite Image, September 2003

THE WALL
IN THE WEST BANK
Section a: South of Qalqilya Area



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

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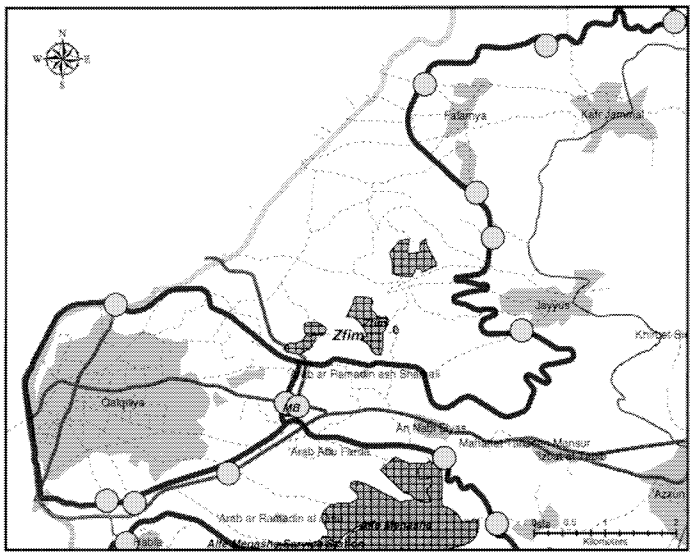
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MAP 12a

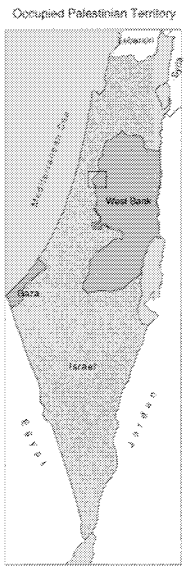


Background: Satellite Image, September 2003

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

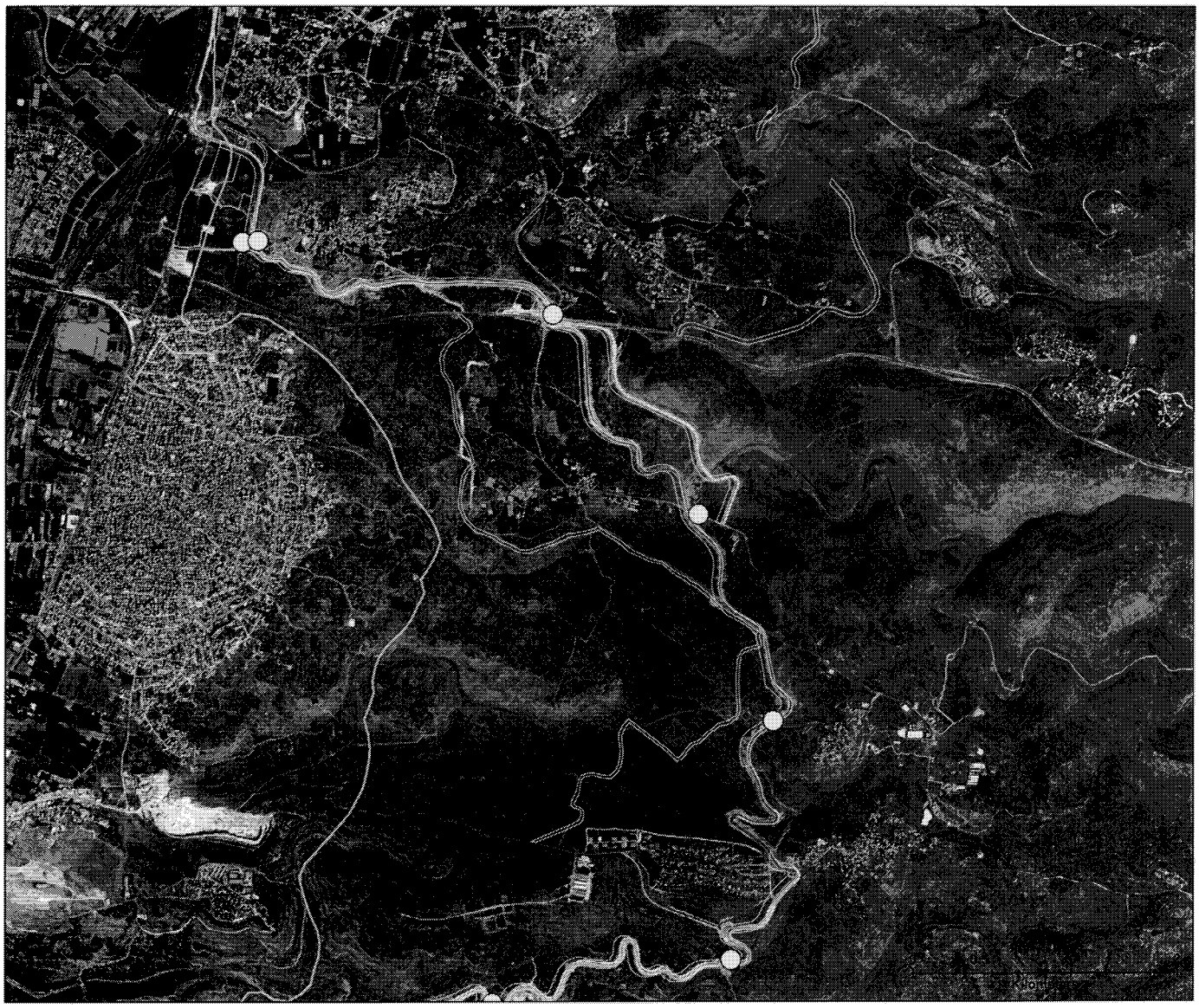
Source of Land confiscation data: available Israeli Military Orders

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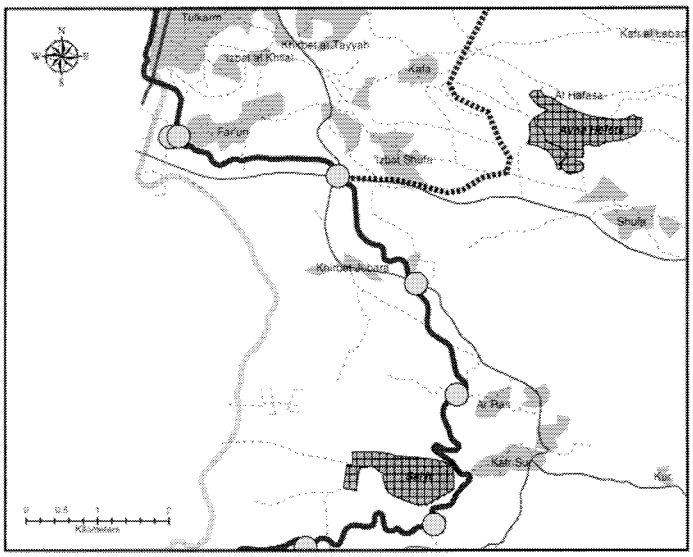
MAP 12b

MAP 12c

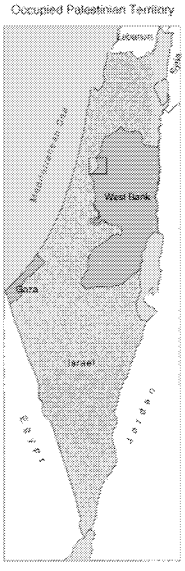


Background: Satellite image, September 2003

THE WALL
IN THE WEST BANK
Section c: South of Tulkarm Area



Section c: South 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

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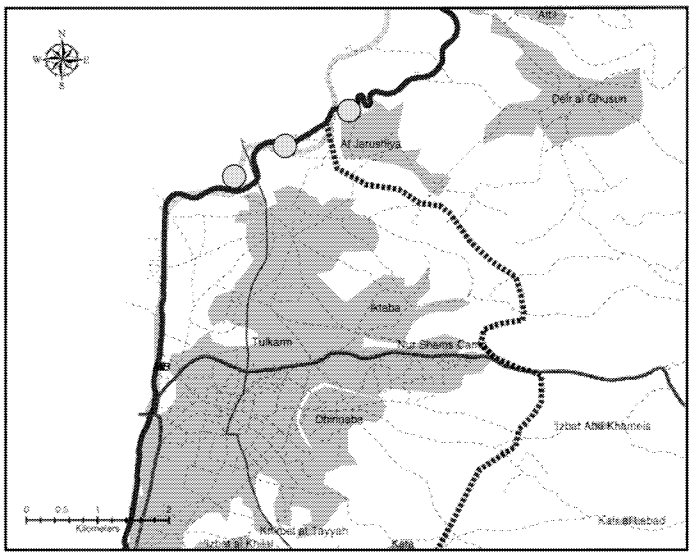
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MAP 12c

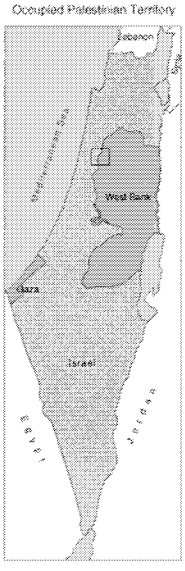


Background: Satellite Image, September 2003

THE WALL
IN THE WEST BANK
Section d: Tulkarm Area



Section d: Tulkarm Area



Legend

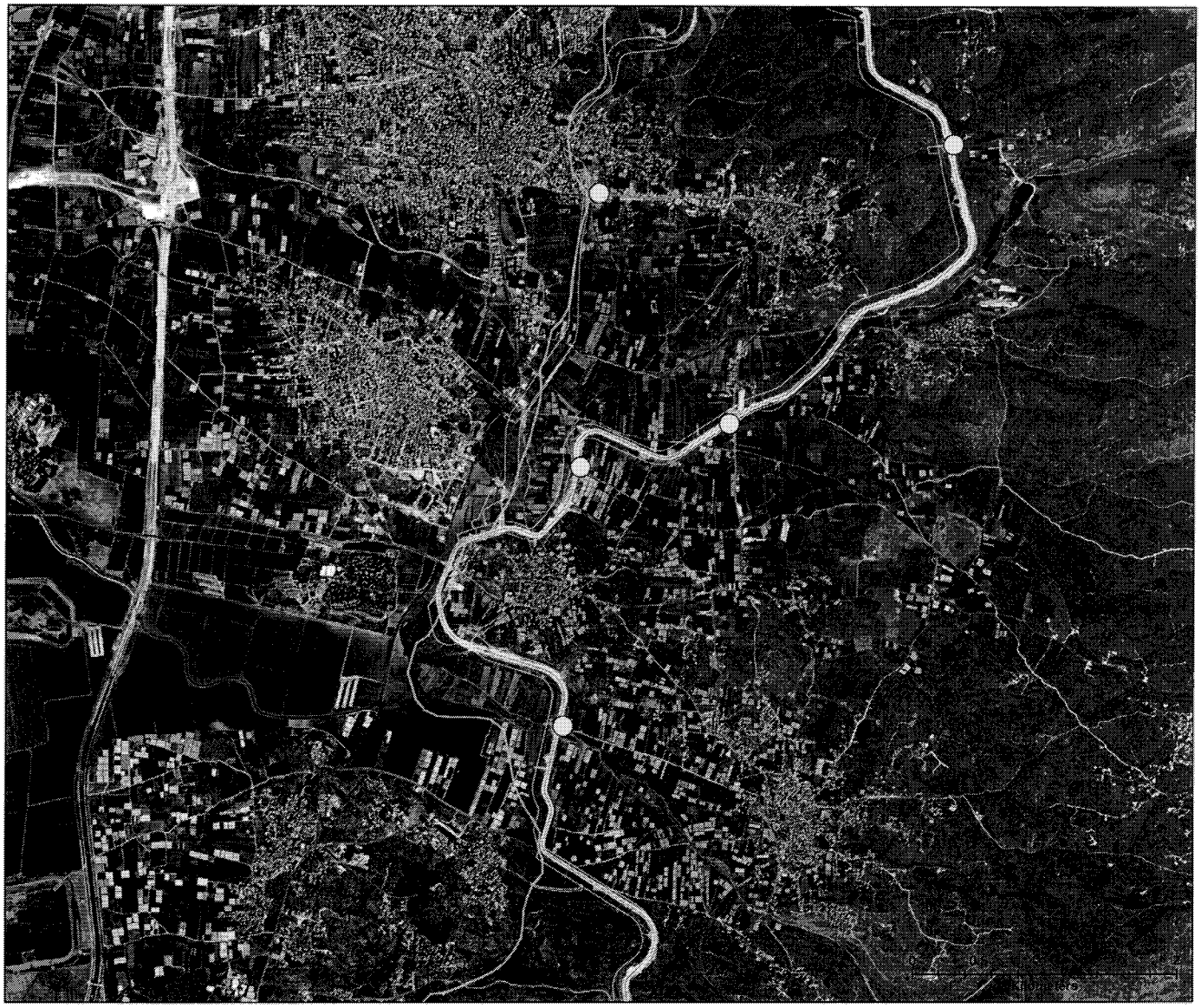
- Green Line (Armistice Line 1949)
- Constructed Part of the Wall
- Wall Trajectory approved/under construction
- Projected Wall
- Main Road
- Regional Road
- Local Road
- Palestinian Built Up Area
- Israeli Settlement
- Confiscated Land (2002-2004)
- Wall Gate

Source of Land confiscation data: available Israeli Military Orders

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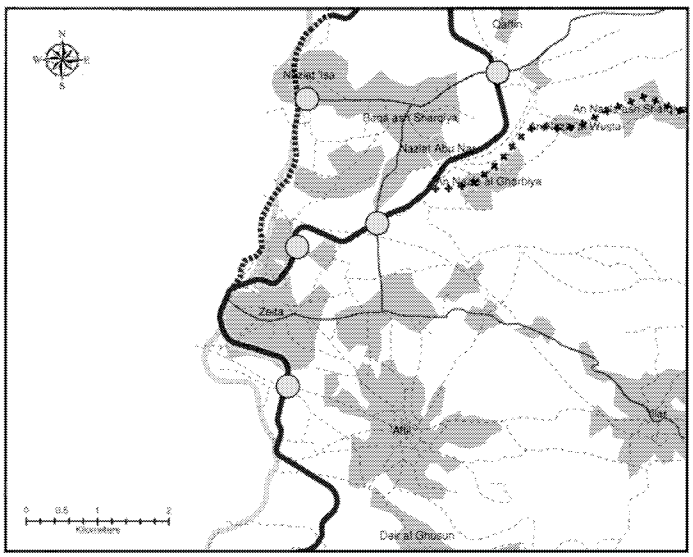
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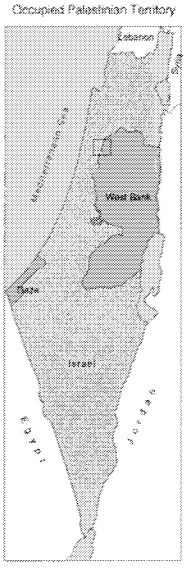
MAP 12d



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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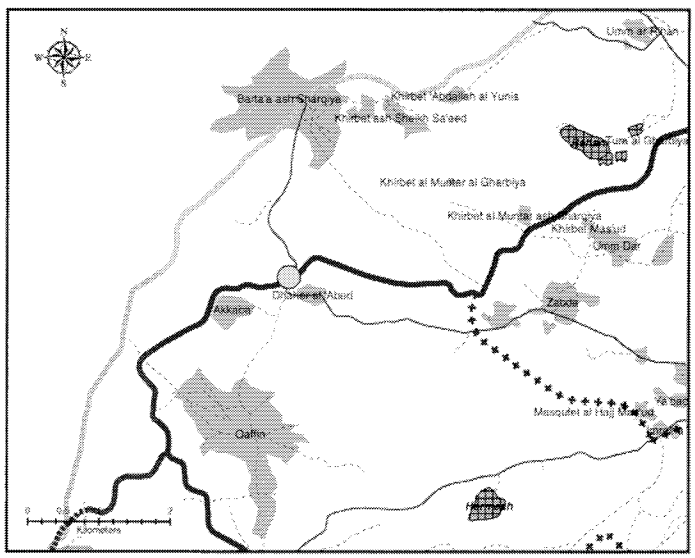
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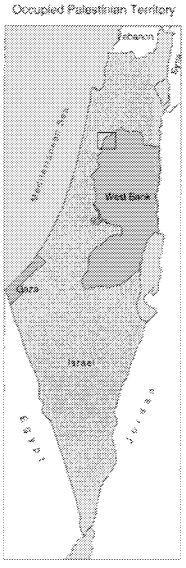
MAP 12e



Background: Satellite Image, September 2003

THE WALL
IN THE WEST BANK
Section f: Qaffin 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

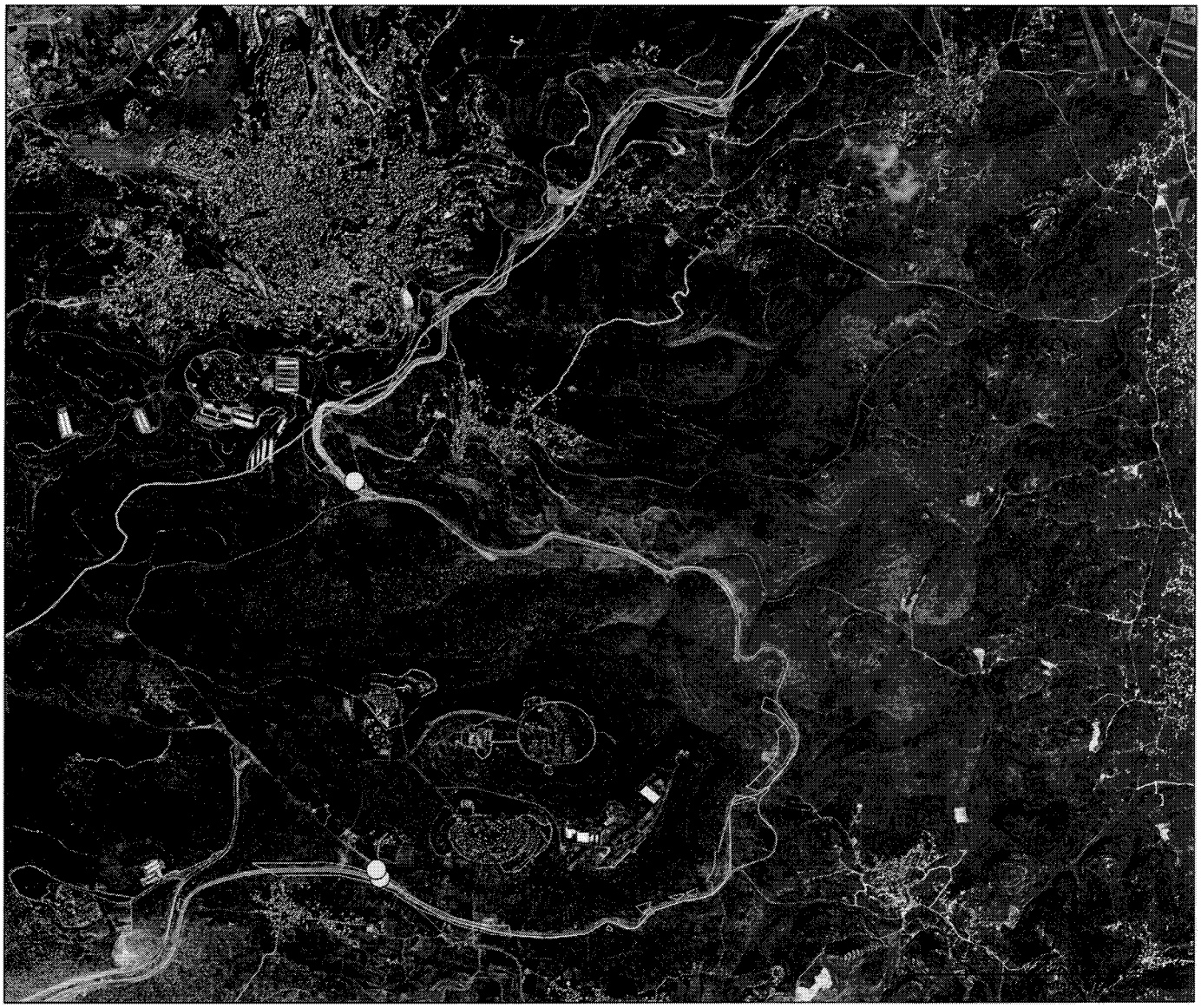
Source of Land confiscation data: available Israeli Military Orders

Section f: Qaffin Area

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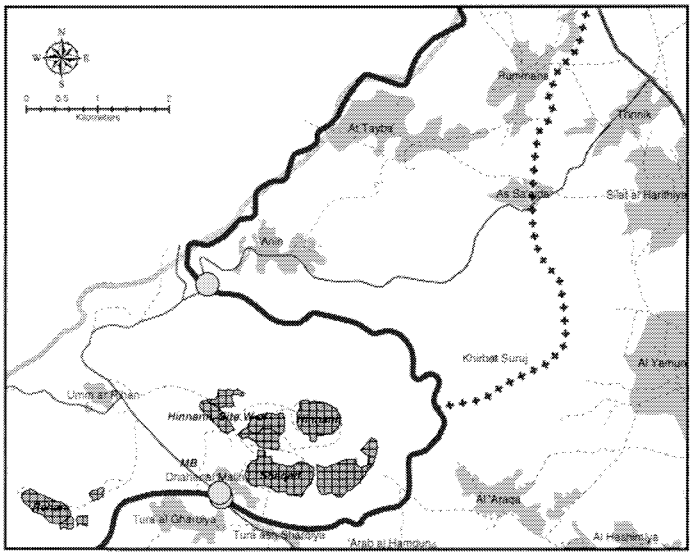
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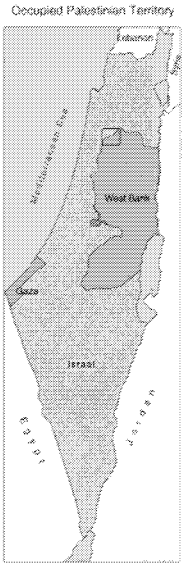
MAP 12f



Background: Satellite Image, September 2003

THE WALL
IN THE WEST BANK
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

Section g: Umm ar-Rihan Area

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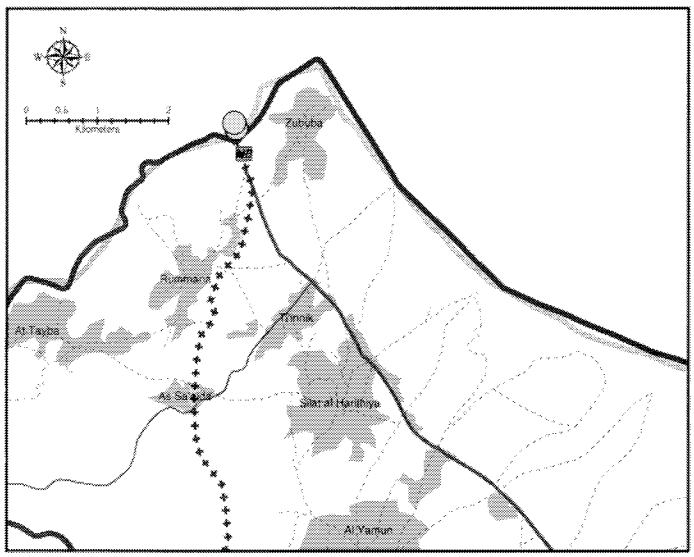
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MAP 12g

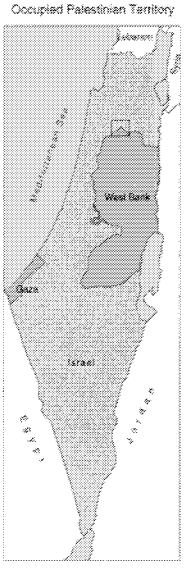


Background: Satellite Image, September 2003

THE WALL
IN THE WEST BANK
Section h: Zububa Area



Section h: Zububa Area



Legend

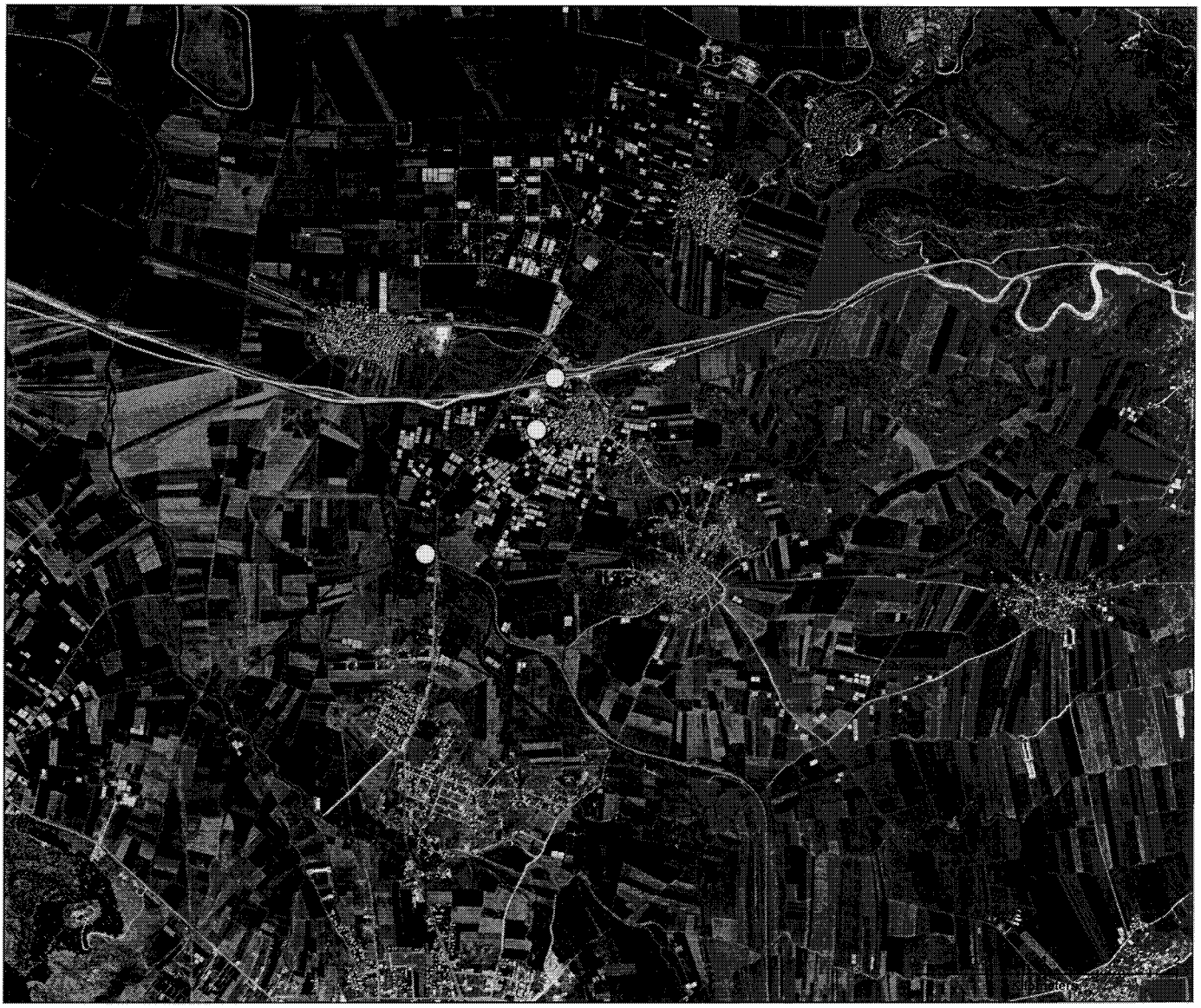
- Green Line (Armistice Line 1949)
- Constructed Part of the Wall
- Wall Trajectory approved/under construction
- Projected Wall
- Main Road
- Regional Road
- Local Road
- Palestinian Built Up Area
- Israeli Settlement
- Israeli Military Base
- Confiscated Land (2002-2004)
- Wall Gate

Source of Land confiscation data: available Israeli Military Orders

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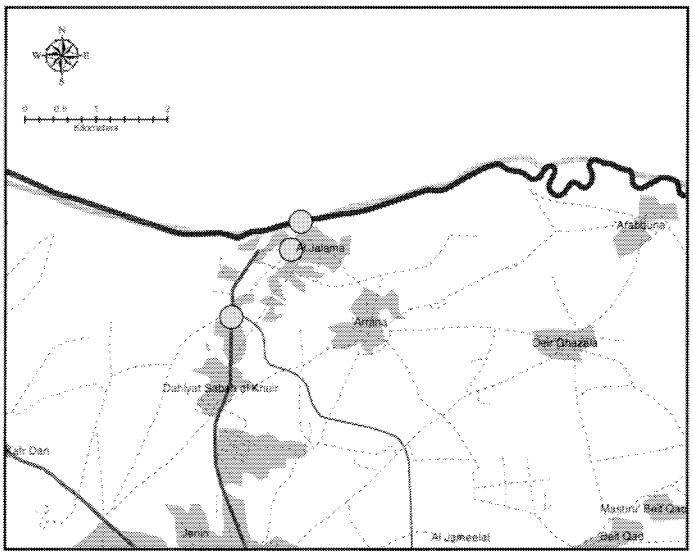
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MAP 12h



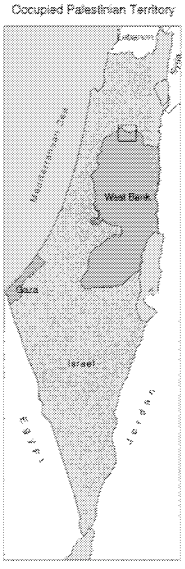
Background: Satellite Image, September 2003

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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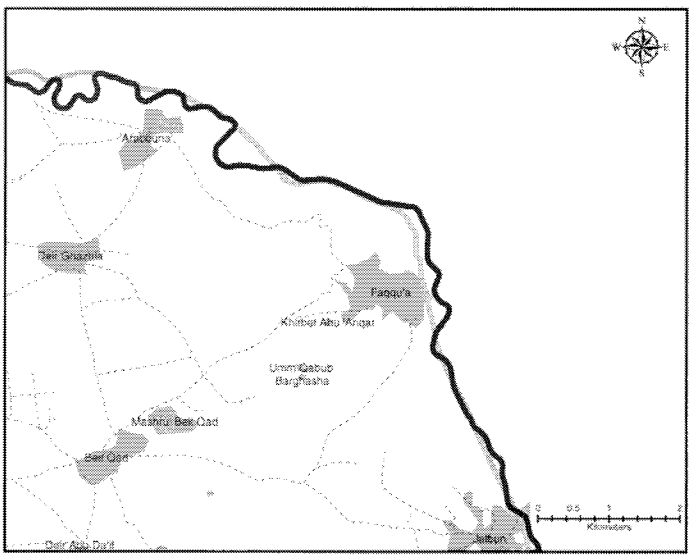
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MAP 12i

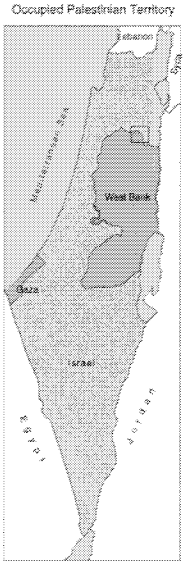


Background: Satellite Image, September 2003

THE WALL
IN THE WEST BANK
Section j: Faqqu'a Area



Section j: Faqqu'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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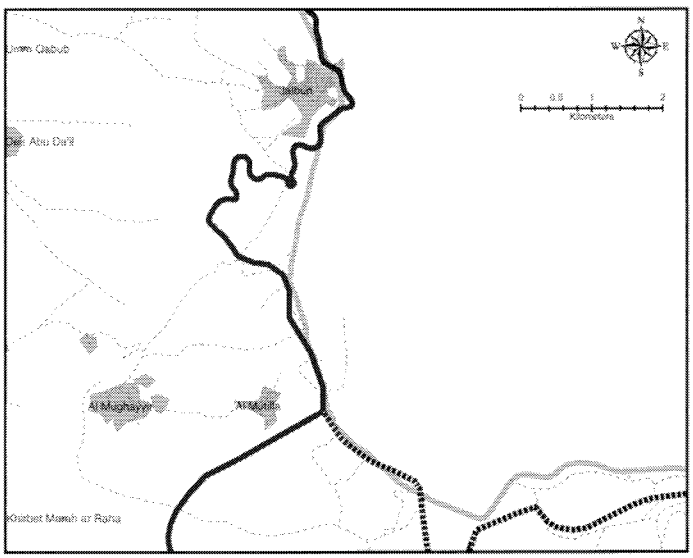
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MAP 12j

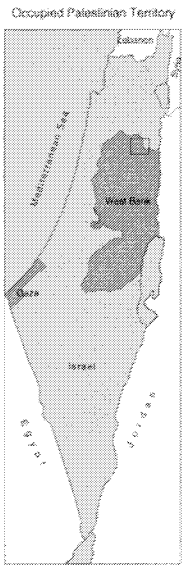


Background: Satellite Image, September 2003

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

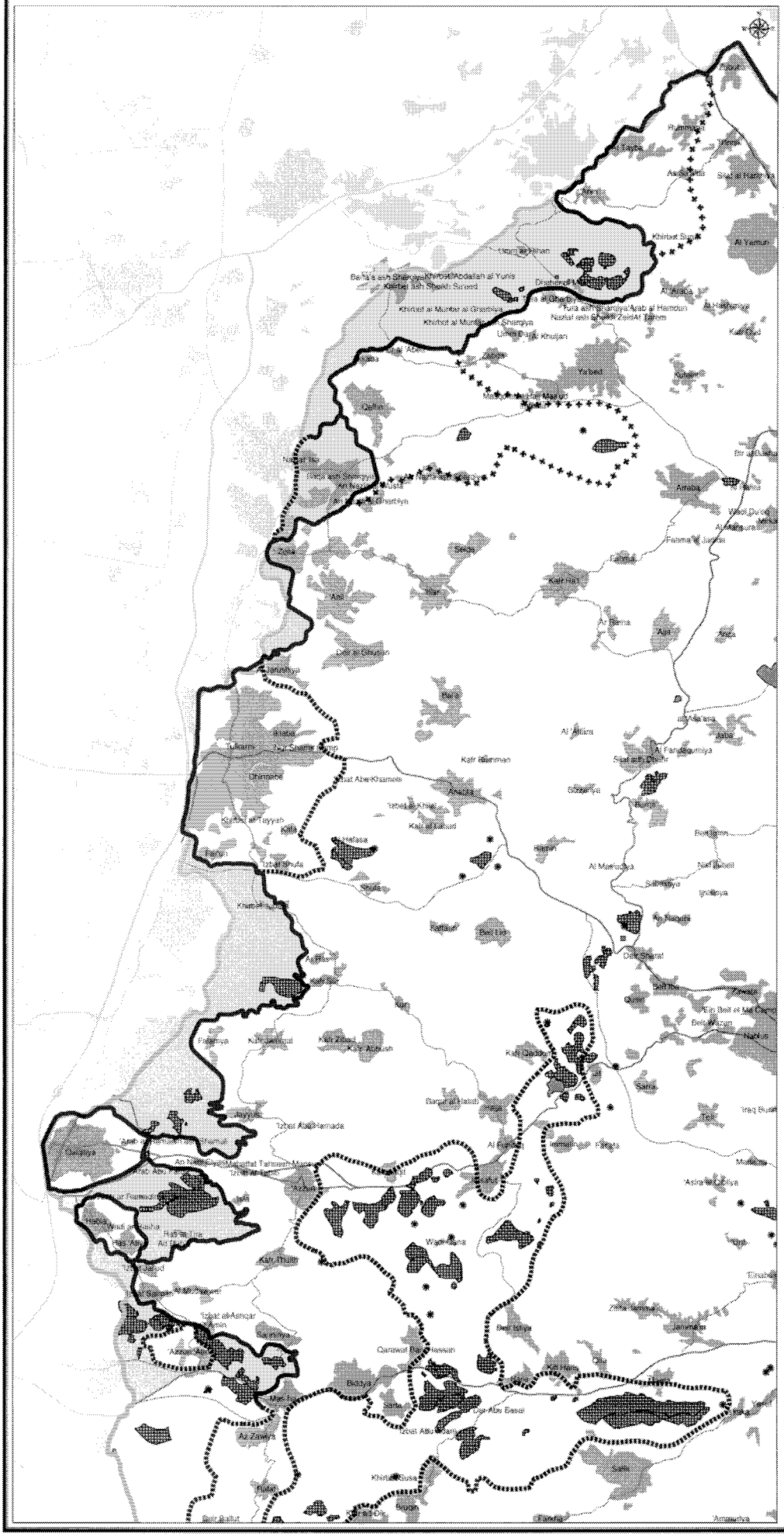
Source of Land confiscation data: available Israeli Military Orders

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MAP 12k

MAP 13



THE WALL AND THE CLOSED ZONE

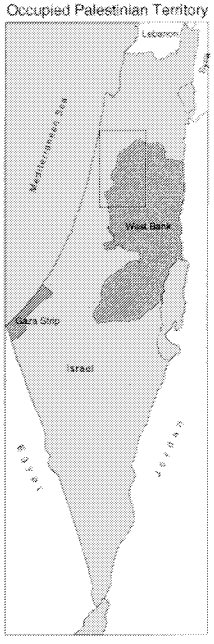
Legend

- 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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0 2.5 5 10
Kilometers

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January 2004

MAP 13

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 Comission on Human Rights on the situation of human rights in the Palestinian territories occupied by Israel since 1967,
4 October 2001, A/56/440

United Nations 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.

* 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.

01-56549 (E) 231001

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.

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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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.[1] 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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[1] 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.)

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

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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 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.

* 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.

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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.[1] 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.[2] 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.[3] 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, Qalquiliya, 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.[4] 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.[5]

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.[6]

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".[7]

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.[8] 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.[9] 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.[10] 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

[1] See Security Council resolutions 1397 (2002), 1402 (2002) and 1405 (2002) as well as General Assembly resolution ES-10/10.

[2] Statement by the State Attorney's Office to the Israeli Supreme Court: HCJ 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.

[3] See the report on Israeli Practice towards Palestinian Children submitted by Defense for Children International, Palestine Section, to the Committee against Torture, May 2002.

[4] *International Herald Tribune*, 16 May 2002.

[5] Amnesty International, *Israel and the Occupied Territories: The Heavy Price of Israeli incursions*, 12 April 2002.

[6] See further, B'Tselem, *Land Grab: Israeli Settlement Policy in the West Bank*, 2002.

[7] E. Benvenisti, *The International Law of Occupation* (1993), pp. 4-5.

[8] M. Greenspan, *The Modern Law of Land Warfare* (1959), pp. 230-235.

[9] See the statements by Mr. Ben-Eliezer, Minister of Defence, and Major General Amos Gilad reported in the *International Herald Tribune*, 24 June.

[10] *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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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

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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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

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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 themandate 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.[1]

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.[2] 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.[3]

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.[4]

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."[5] 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."[6]

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.[7] 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.[8]

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."[9]

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".[10]

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."[11]

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."[12]

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.[13] 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.[14]

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 1detained 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[15] and Amnesty International[16] 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

[1] 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.

[2] 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.

[3] 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.

[4] Amnesty International, *Israel and the Occupied Territories: Shielded from Scrutiny: IDF Violations in Jenin and Nablus* (AI Index: MDE 15/143/2002), November 2002.

[5] Reported in *Ha'aretz*, 4 November 2002 (Danny Rubinstein, "A Land of Roadblocks and Barriers").

[6] *Humanitarian Plan of Action 2003 for the Occupied Palestinian Territory*, United Nations, New York and Geneva, November 2002, p. 30.

[7] 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.

[8] See the statements by Mr. Ben-Eliezer, Minister of Defence, and Major General Amos Gilad reported in the *International Herald Tribune*, 24 June 2002.

[9] Op. cit., p. 2.

[10] *Policy of Destruction. House Demolitions and Destruction of Agricultural Land in the Gaza Strip*, February 2002, pp. 32, 35.

[11] Amnesty International, op. cit. at note 4, p. 41.

[12] Ibid., p. 57.

[13] *International Herald Tribune*, 16 May 2002.

[14] Amnesty International, *Israel and the Occupied Territories: The Heavy Price of Israeli Incursions*, 12 April 2002.

[15] *Violations of Children's Rights Stemming from the Israeli Occupation* (August 2002).

[16] *Israel and the Occupied Territories and the Palestinian Authority: Killing the Future. Children in Line of Fire*, MDE 02/005/2002 (October 2002).

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

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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"[1]. 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".[2]

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.[3] 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*:[4] "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."[5] 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.[6]

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."[7] 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.[8] 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

[1] 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.

[2] State Comptroller, *Audit Report on the Seam Area*, p. 35.

[3] Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, 28 September 1995, chap. 5, art. XXXI, para. 7.

[4] Also published as *When the Birds Stopped Singing: Life in Ramallah Under Seige.*

[5] *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.

[6] *B'Tselem Newspaper*, 29 June 2003.

[7] *International Herald Tribune*, 23 June 2003.

[8] *The Jerusalem Post*, 28 July 2003.

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

CCP

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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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

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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 disclose 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 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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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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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 Gurien 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 lethalness 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 Palestian 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 grantingArabs 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 cdequately 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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* The annex is reproduced in English only.

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
Mashriqqyiat
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

UNITED
NATIONS

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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

GE.01-11872 (E)

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* Reproduced in English only.

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.[1] 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.[2] 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 and 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

[1] 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.

[2] 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) Aurélie 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 - Ihad 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)

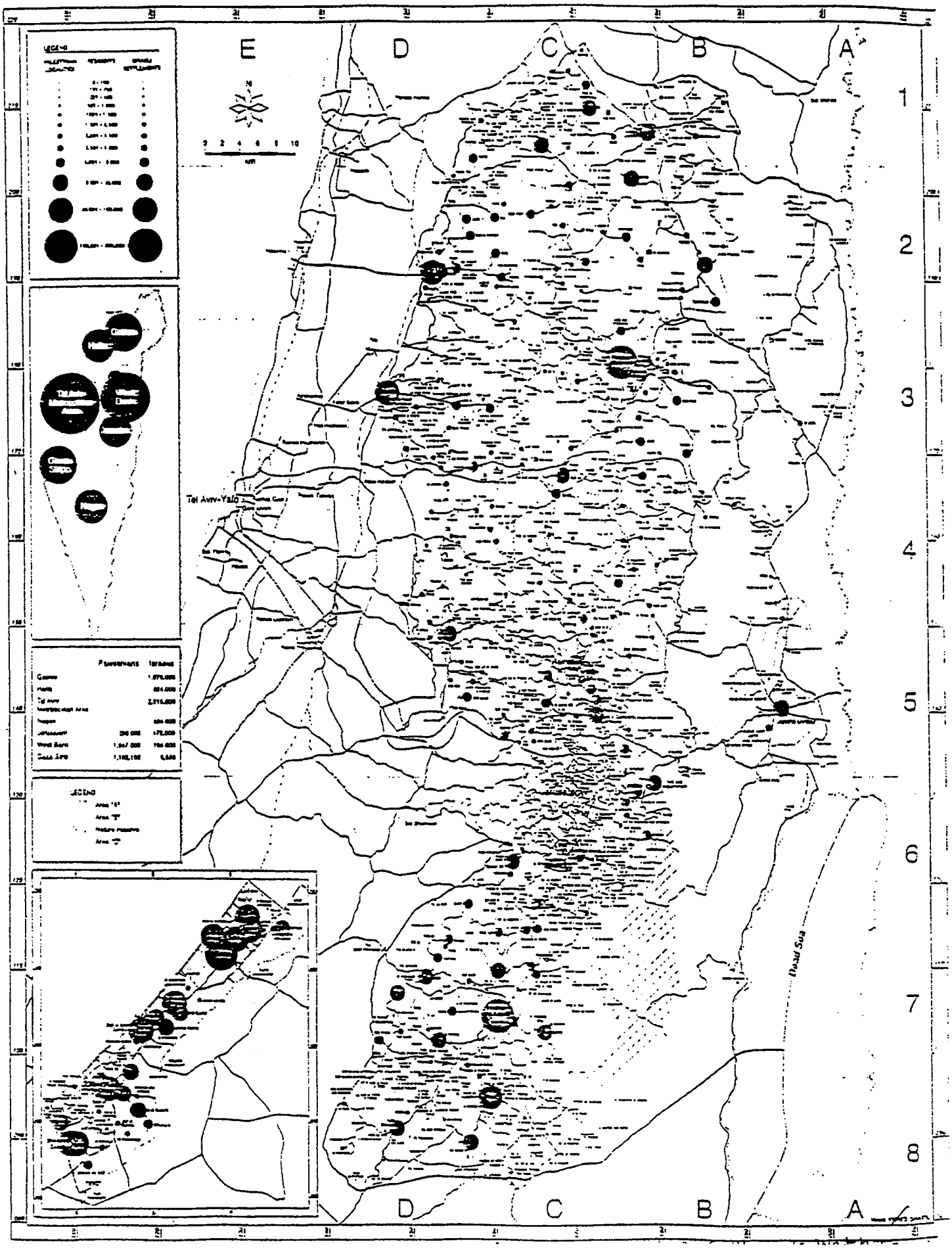
8-9 a.m.	Travel to Hebron
9-11 a.m.	Briefing by members of Temporary International Presence (TIP) in Hebron Director of TIPH

	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 Pappe (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 [illegible] it is allowed to live as normal a life as possible, in accordance with its own 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 structures, organization, legal system or demography. It must ensure the protection, 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 those settlements can be the object of attack. They are protected by humanitarian law as civilians as long as they do not take an active part in fighting.

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

בצלם
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."[1] 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"[2] 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.

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 *hitnachlut*, 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,[3] 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."

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.[4]

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.[5]

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.[6]

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.[7]

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.[8] 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.[9] 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.[10] 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."[11]

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.[12] 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.[13]

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.[14]

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.[15]

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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, Matitiyahu Drobless, head of the World Zionist Organization's Settlement Division, prepared a comprehensive plan for the establishment of settlements throughout the West Bank.[16] 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.[17]

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.[18] 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 a Umm el-Fahm and Kafr Qasem.[19] 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.[20]

16. Regarding the role of the World Zionist Congress in initiating and establishing new settlements, see below.
17. Matitiyahu 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.[21] 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.[22] 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.[23] 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.[24]

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."[25]

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

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.[26] 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.[27]

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.[28] 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.[29]

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.

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

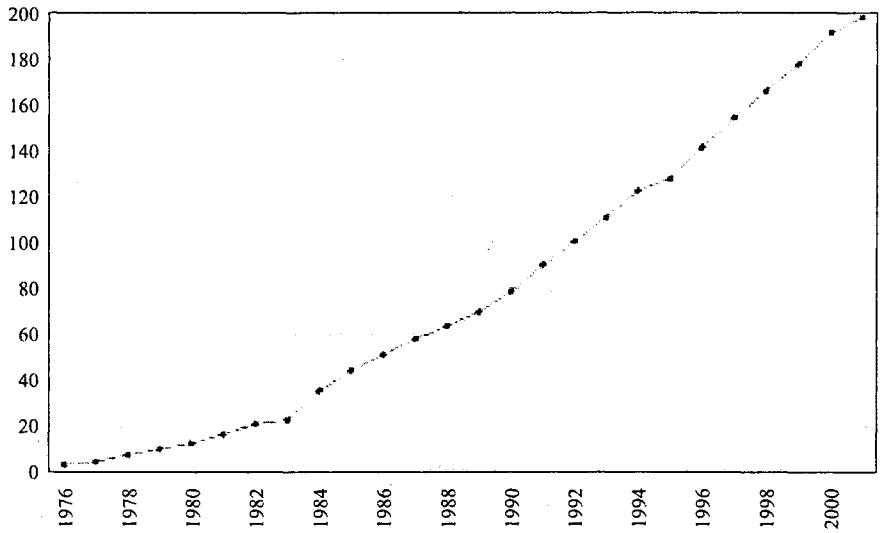
Settlements and Settlers in the West Bank*

Year	Number of Settlements**	Population (in thousands)
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

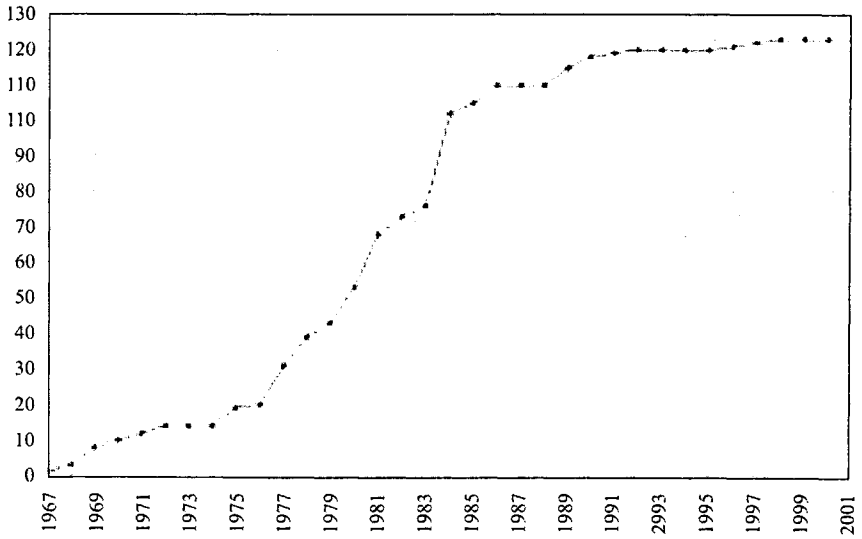
Settlers in the West Bank* (in thousands)



* Not including East Jerusalem.

Diagram 2

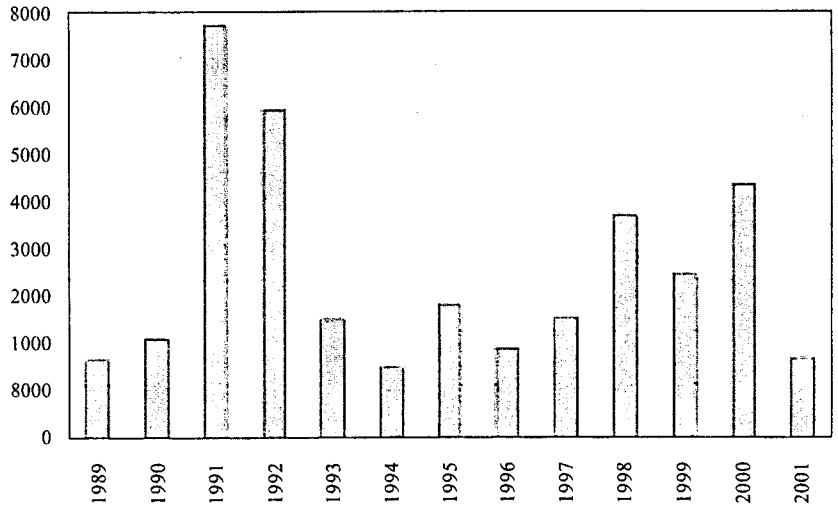
Settlements in the West Bank*



* 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.[30]

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.[31]

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.[32] 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.[33] Since the beginning of 1993, the Settlement Division has operated separately from the Settlement Department.[34]

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.[35]

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.[36] 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.[37] Since 1996, any new permission granted by the Custodian for Governmental Property requires the approval of the Minister of Defense.[38]

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

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 Harnoy, "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.[39] 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.[40] 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.[41]

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.[42] 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.[43]

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.[44] 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.

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.

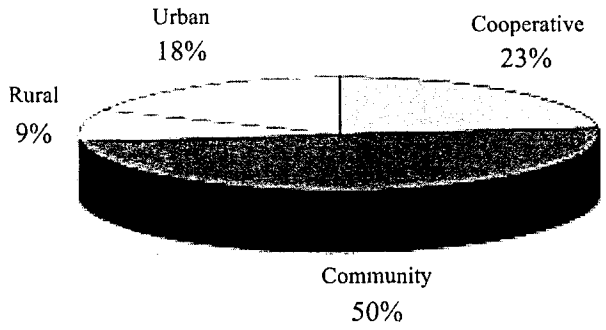
44. For examples of this phenomenon, see the reports of the State Comptroller (all in Hebrew): *Annual Report 37* (Jerusalem, 1987), p. 1205; *Annual Report 43* (Jerusalem, April 1993), pp. 911-914; *Annual Report 51B* (Jerusalem, April 2001), pp. 398-405.

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.[45]

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).[46] 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.[47] 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.

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

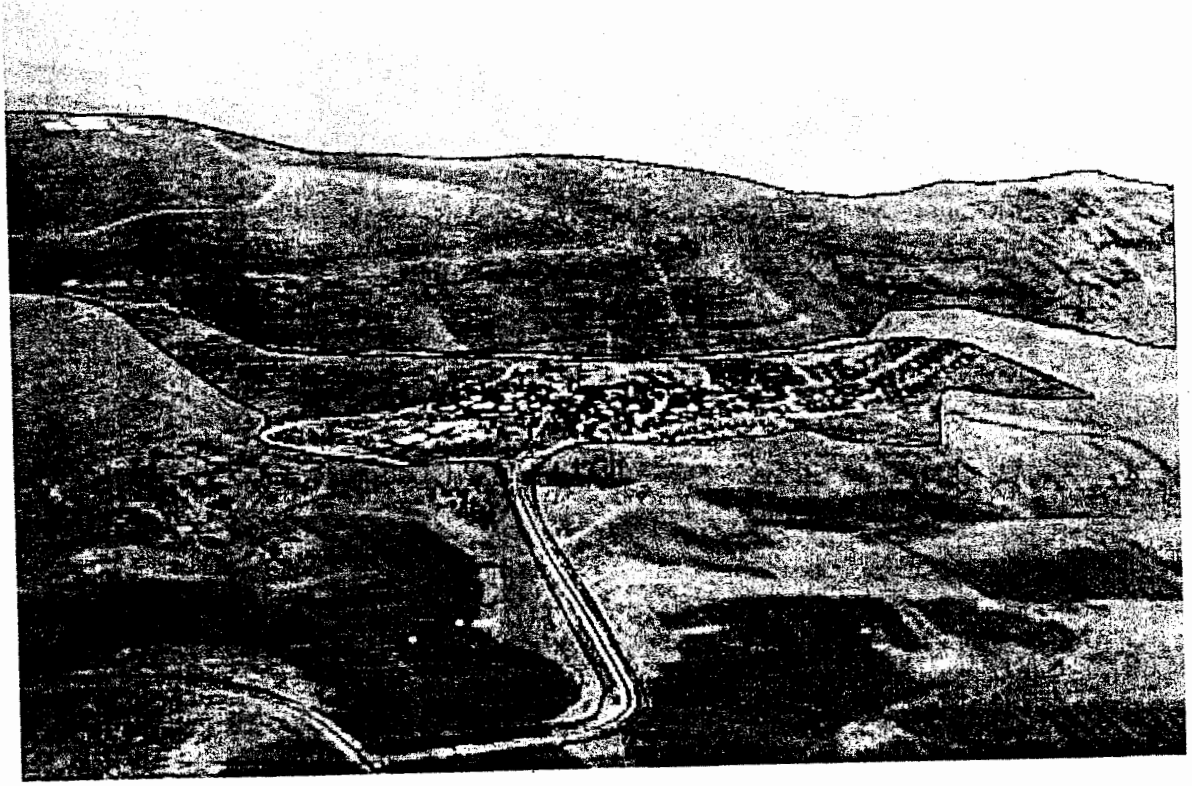


Photo 4 Ez Efrayim: municipal boundaries



Photo 5 Pesagot (on the right), Ramallah and al-Bira (on the left)



Photo 6 Ma'ale Addumim: built-up area and land reserves

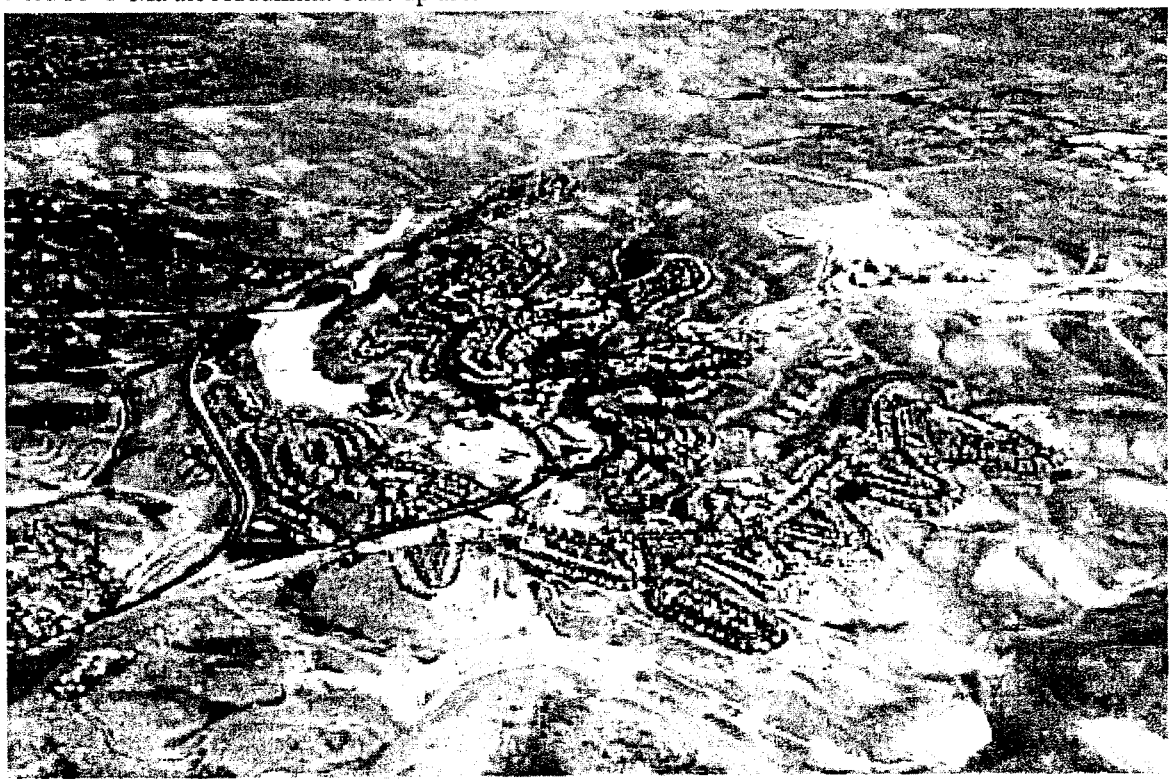


Photo 7 Har Homa: construction stage



Photo 8 Har Adar: built-up area and expansion area

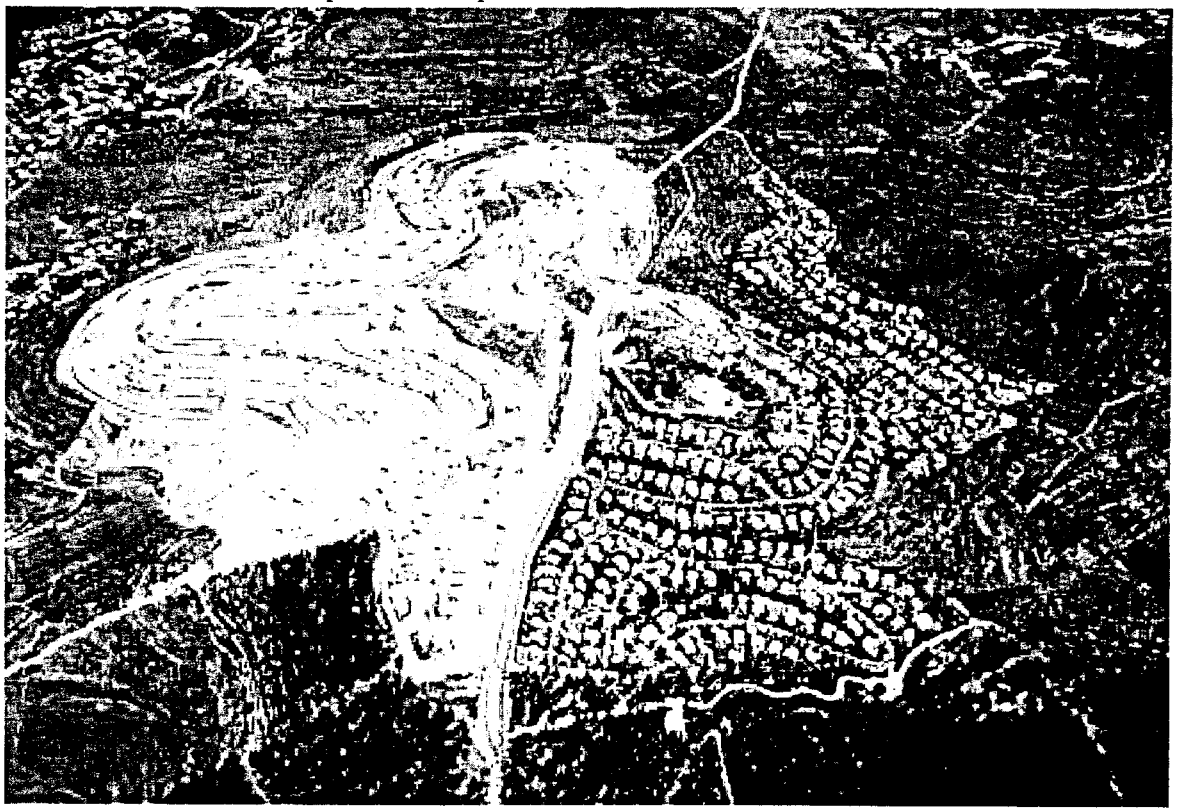


Photo 9 Alone Shilo Farm (bottom) outpost with Qarne Shomeron and Kafr Laqif in the background

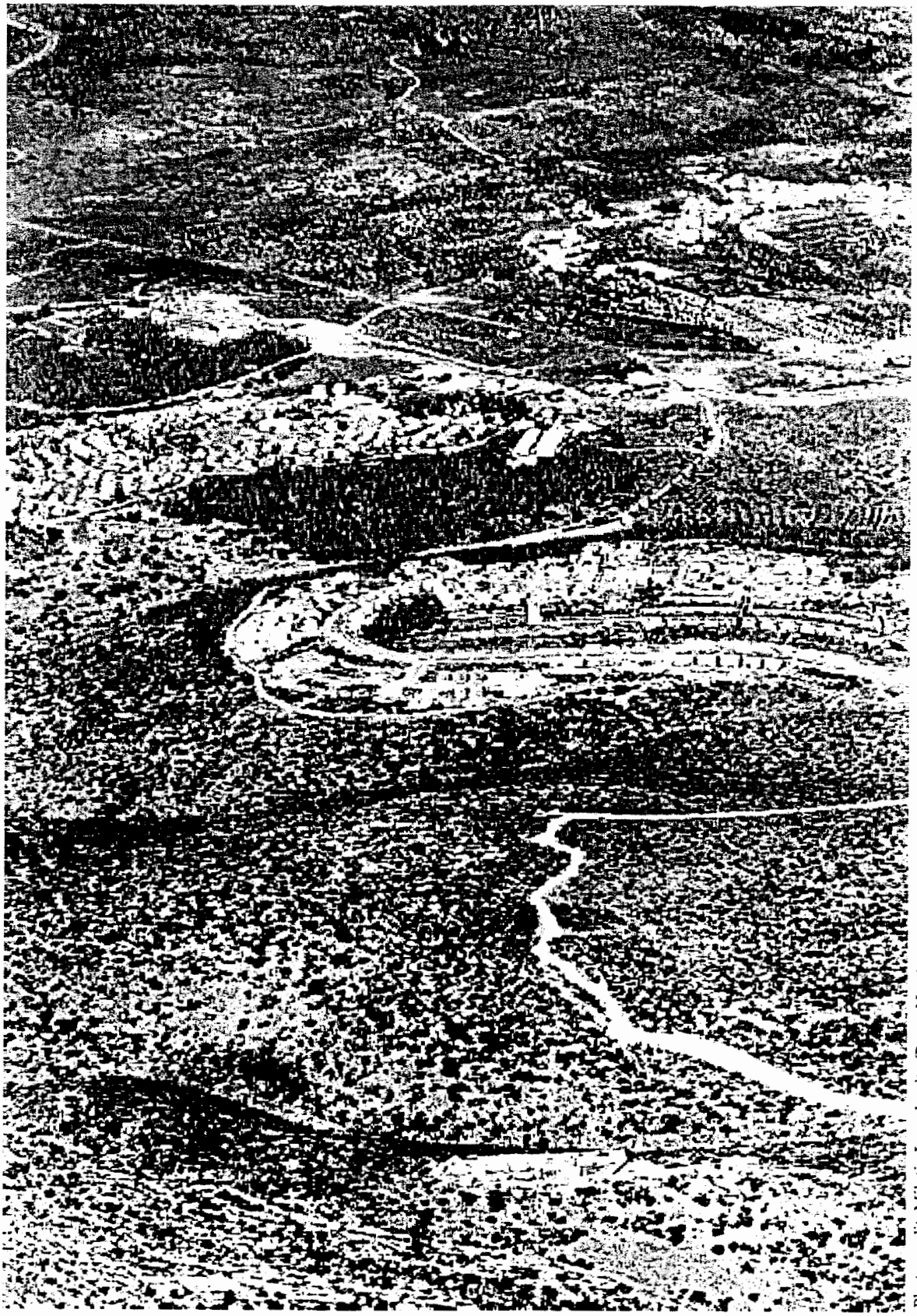


Photo credit: Milotin Levodowitz (Peace Now)

Photo 10 Mizpe Keramim outpost, near Kokhav Hashahar

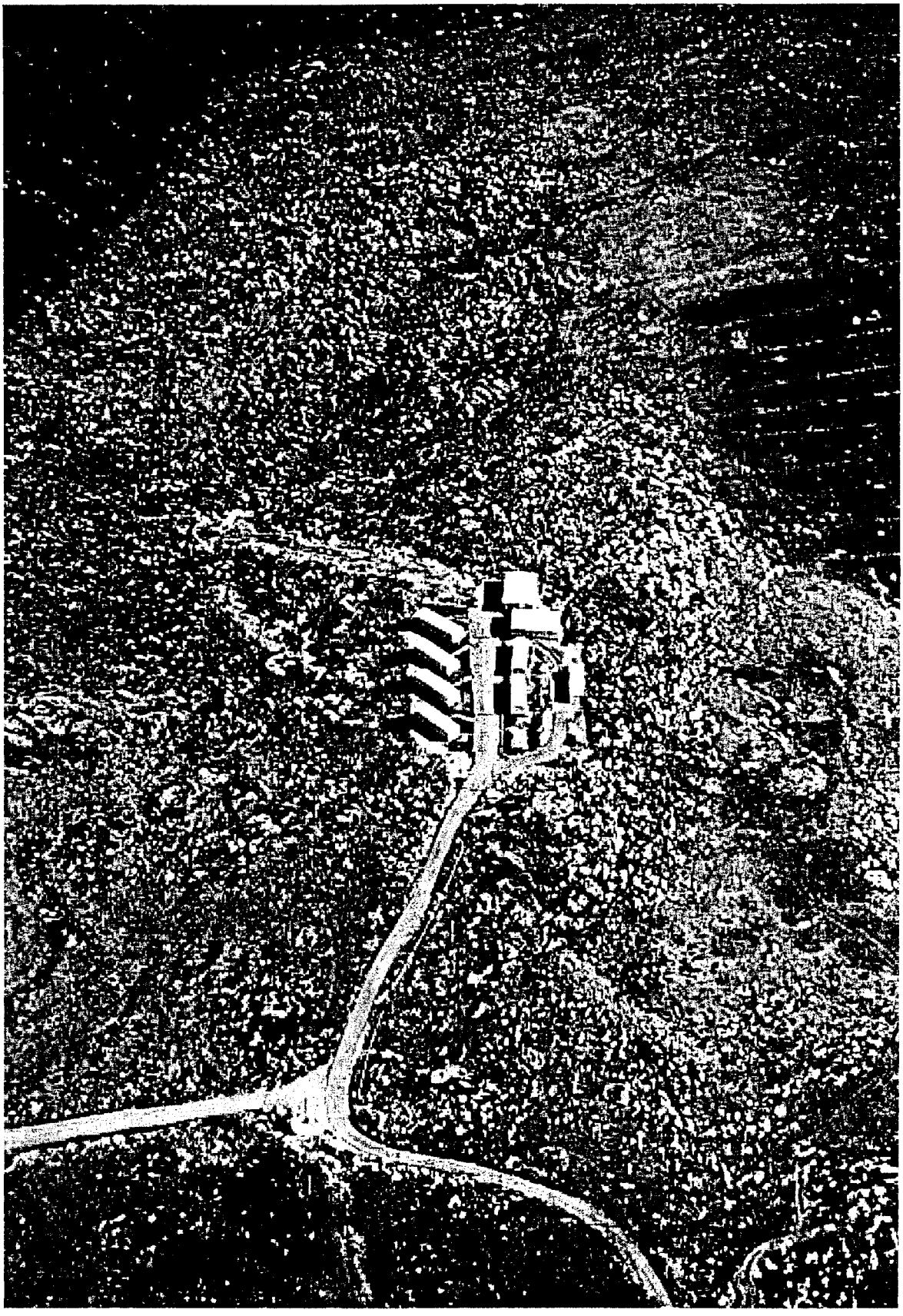


Photo credit: Milotin Levodowitz (Peace Now)

Photo 11 Nili

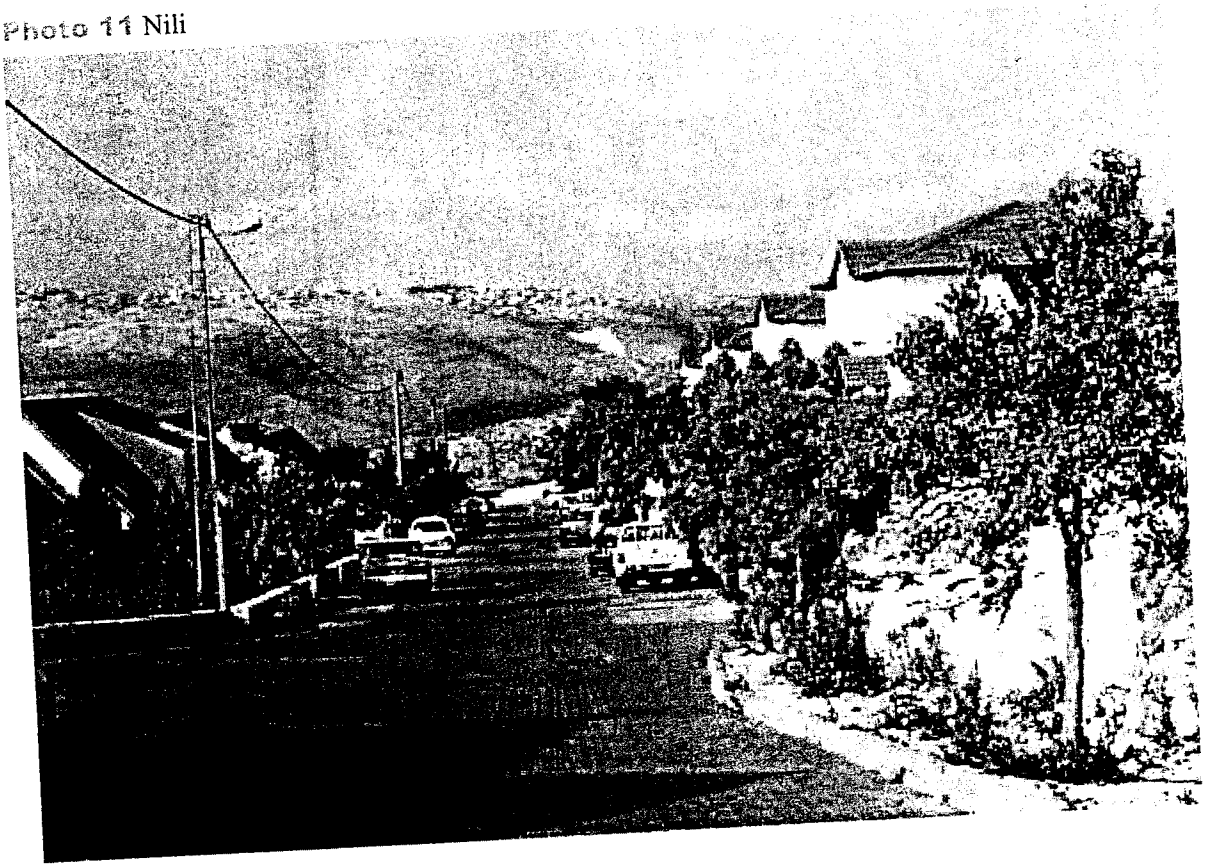


Photo 12 Qedar

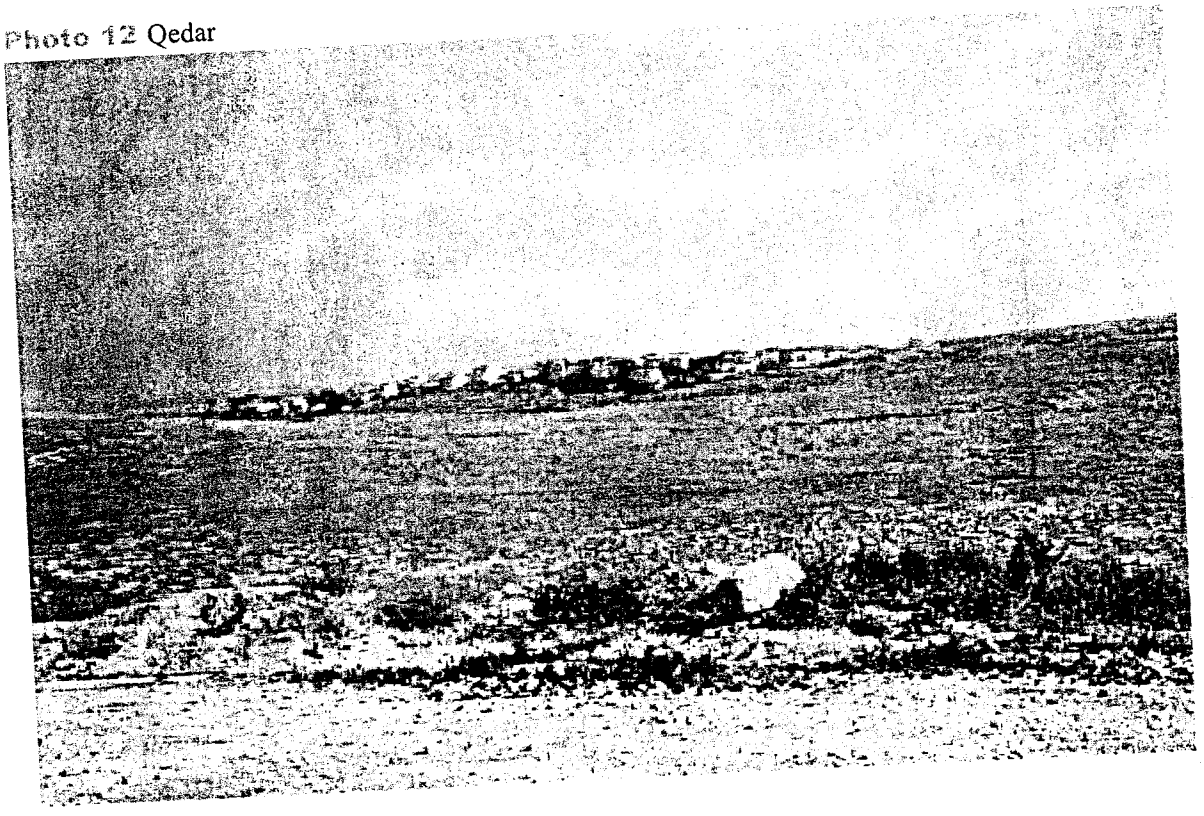


Photo 13 The Tunnels Road

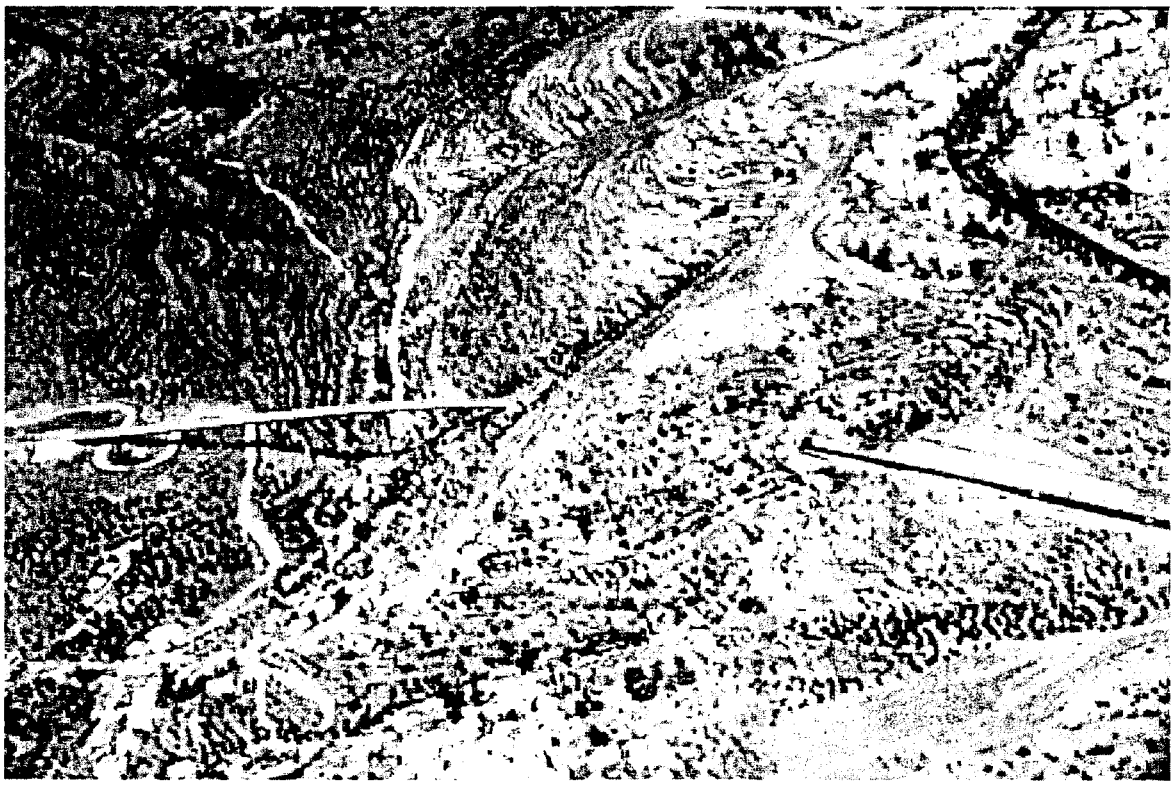


Photo 14 IDF soldiers during Operation Defensive Shield, the Itamar settlement in the background

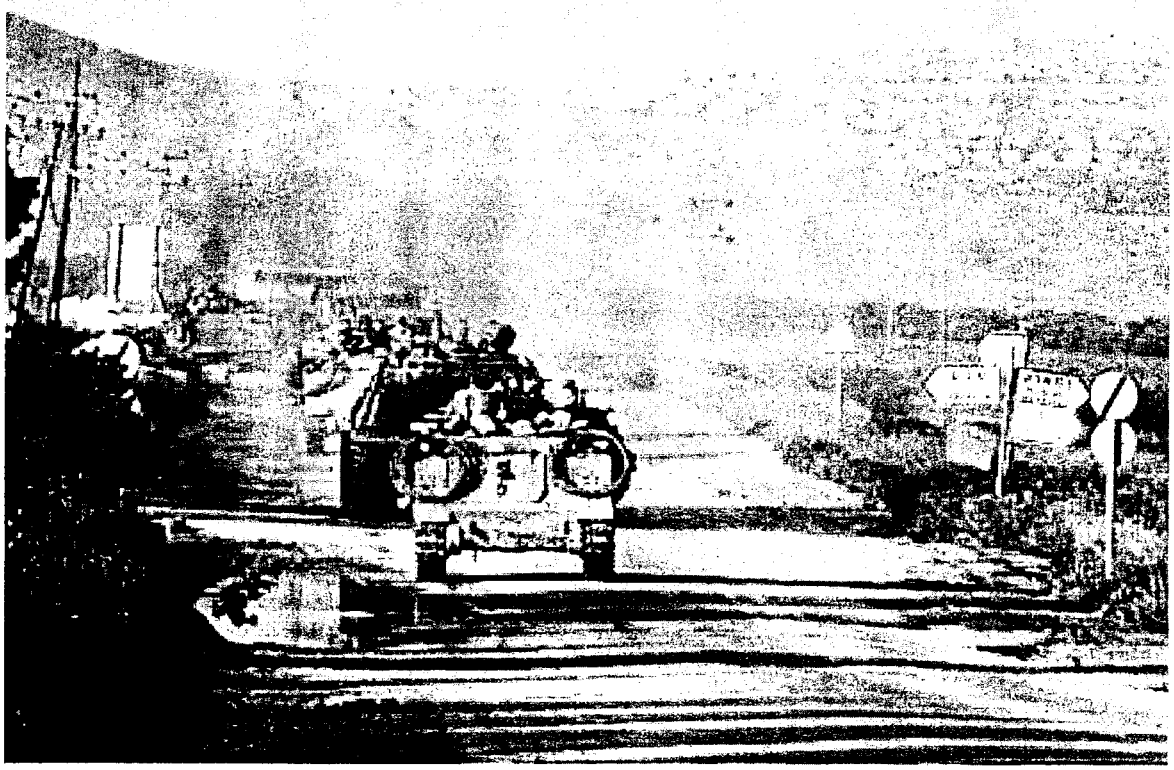
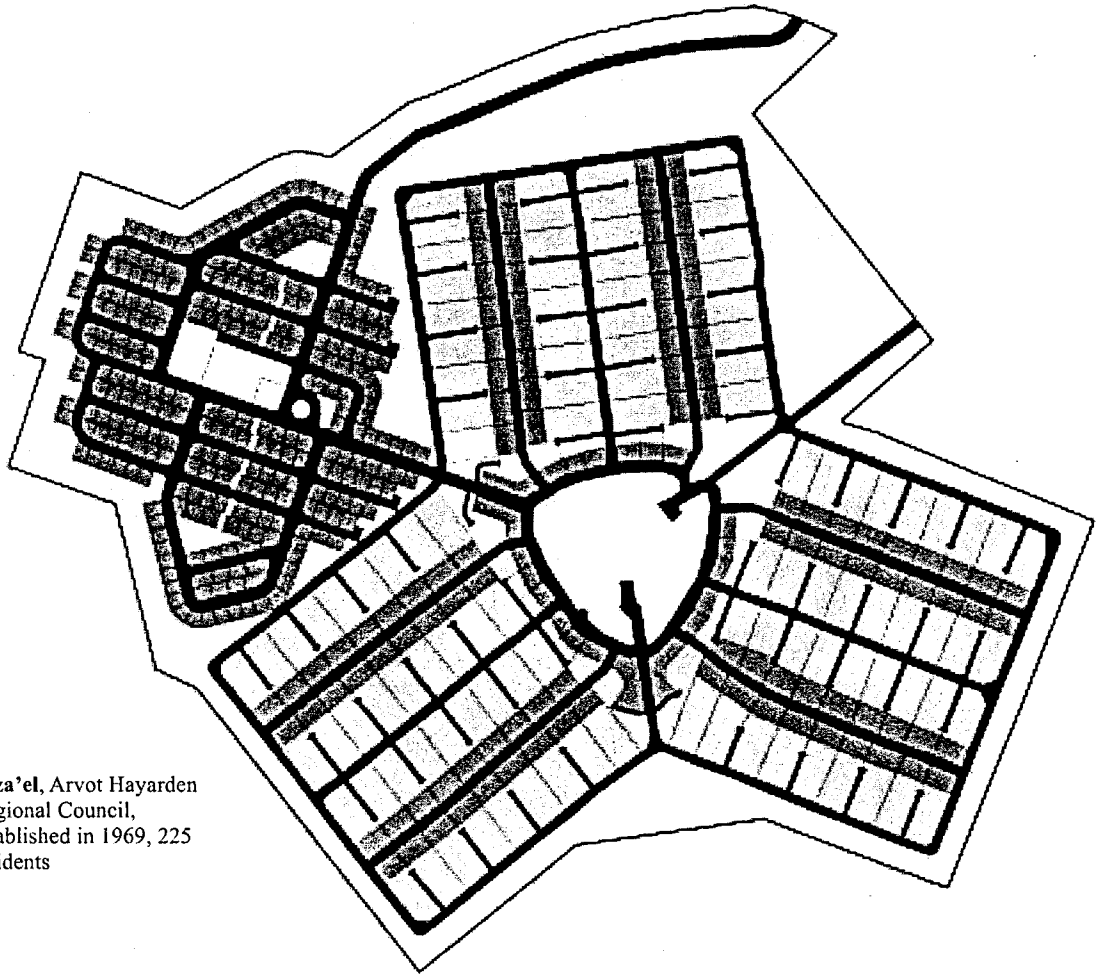


Photo credit: Anonymous

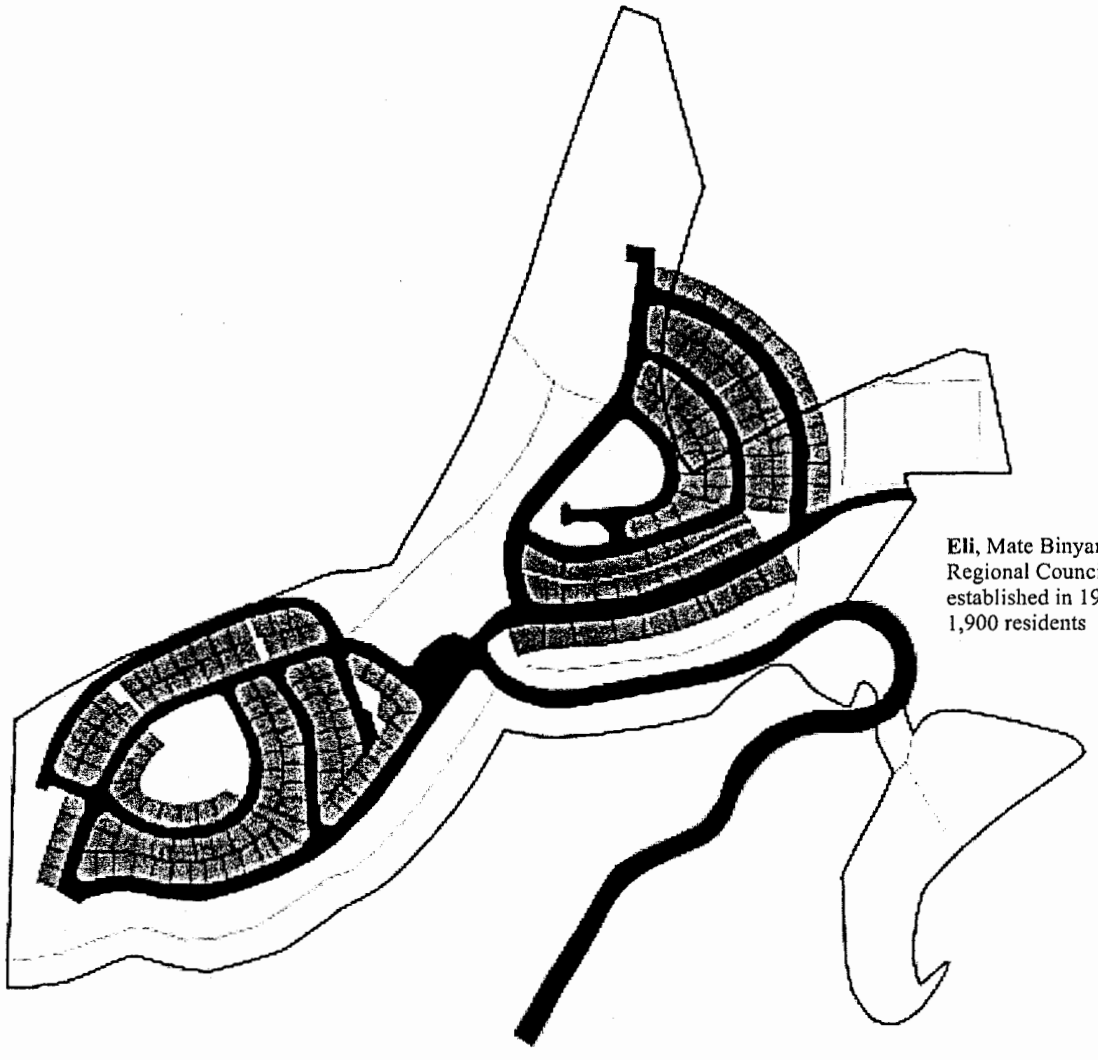
Types of Settlements: Planning Structure



Peza'el, Arvot Hayarden Regional Council, established in 1969, 225 residents

Cooperative Settlement

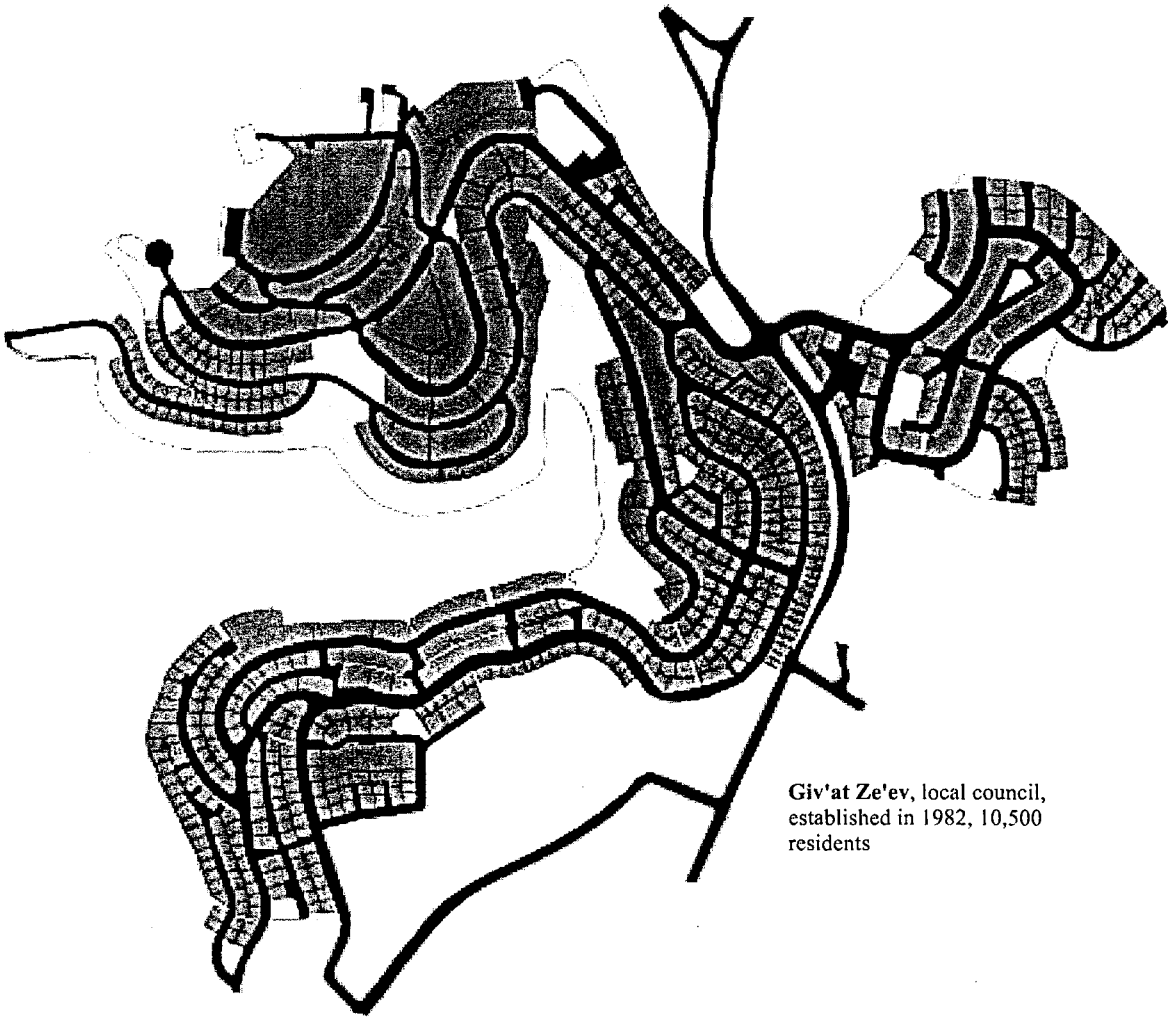
Most of the settlements in the Jordan Valley are similar in form to the cooperative settlements within Israel. Unlike the other kinds of settlements, the planning of cooperative settlements is affected primarily by its social organization and less by topography or the restrictions associated with land 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.



Eli, Mate Binyamin Regional Council, established in 1984, 1,900 residents

Community Settlement

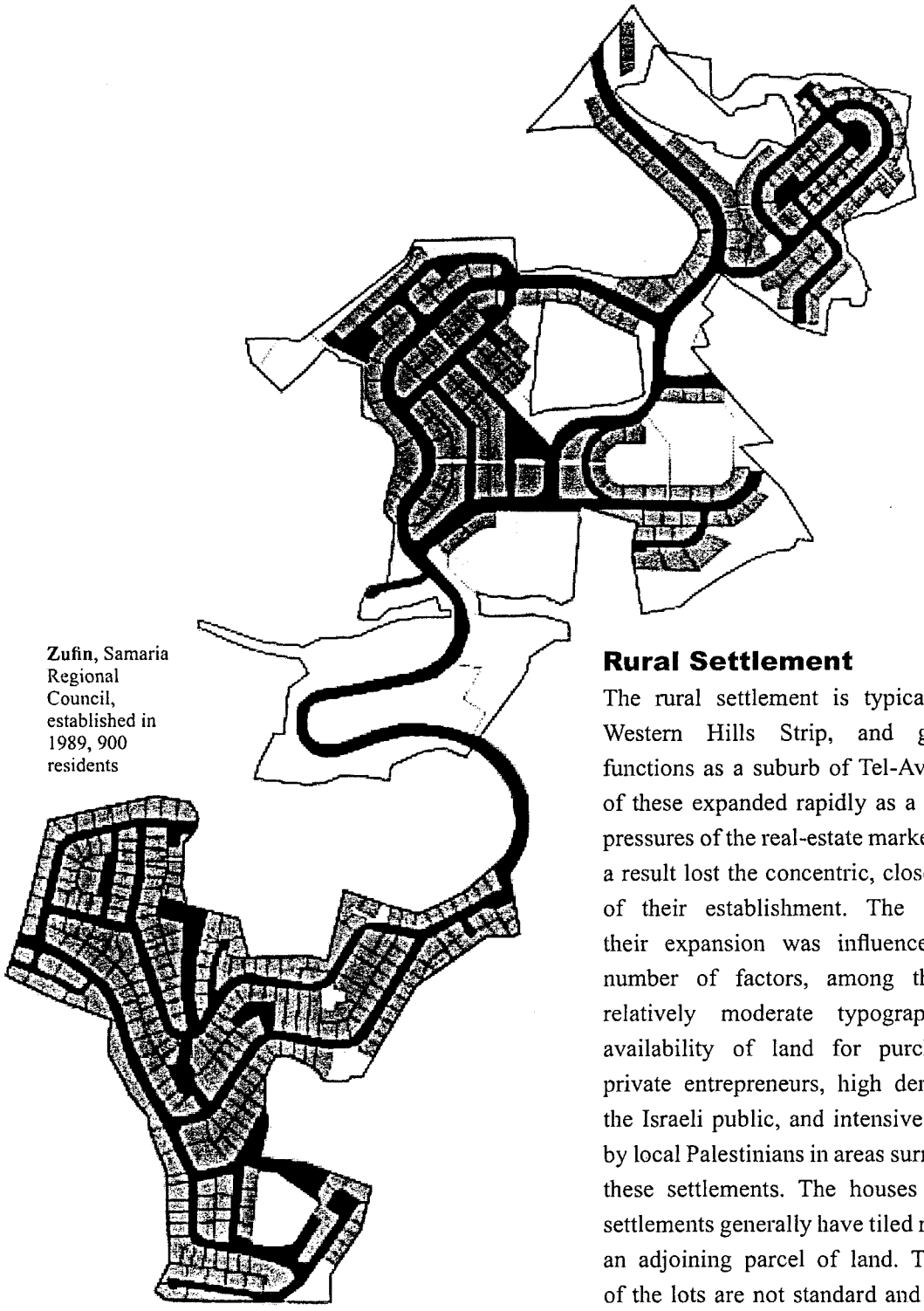
Most of the community settlements were established on mountainous terrain and their shape was primarily determined by topographical constraints. A typical layout of such settlement is concentric circles along the contour line around the perimeter of the summit. The houses are mostly single-family homes 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.



Giv'at Ze'ev, local council, established in 1982, 10,500 residents

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 typography, 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.[48] 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."[49] 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.[50]

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.[51] 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, esp. 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. HCJ 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.[52]

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."[53]

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.[54]

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.[55]

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.

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.[56]

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.[57] 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.[58]

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-Mahiddudat al-Mas'uliyyah 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."[59] 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.[60]

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.[61] 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.[62]

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.[63]

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, 19th Session, E/C.12/1Add.27; Committee on Human Rights, 63rd 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-Razel, 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.[64]

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.[65] 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. [66]

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.[67] 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.[68]

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.[69] 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. [70]

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."[71] 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. [72]

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.[73] 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.[74]

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.[75]

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.[76] 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.[77]

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."[78]

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.[79] 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.[80]

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."[81]

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.[82] 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.[83]

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).

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).[84] 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.[85]

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.[86] 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.[87]

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.[88] 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.[89]

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.[90] *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.[91] 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.[92] 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.[93]

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."[94] 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.[95] *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.[96]

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.[97] 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.[98] 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.[99] 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.[100] 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.[101] 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.[102]

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:[103]

- *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,[104] 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 *mukhtar*s 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.[105] Thus, the Custodian transferred to the *mukhtar*s 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.[106]

Approximately 800,000 dunam of land were declared and registered during the period 1980-1984.[107] 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.[108] 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.[109] 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.[110] 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.[111] 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.[112] 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.[113]

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.[114] 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."[115] 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.[116] 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 Shehade, *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.[117] 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."[118] 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."[119] The case is pending before the appeals committee.[120]

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,[121] precise mapping by a qualified surveyor of the land of which the appellant claims ownership,[122] and retaining an attorney to prepare an affidavit and represent the appellant before the committee.[123]

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.[124] 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."[125]

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.[126] 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 Avraham 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.[127]

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.[128]

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.[129] 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."[130]

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.[131] 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.[132] 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."[133] 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.[134]

C. Absentee Property

According to the Order Regarding Abandoned Property, [135] 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.[136] 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.[137] 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.[138]

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 restitute not only the property itself, but also the profits he derived therefrom.[139] 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.[140]

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.[141]

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.[142] 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."[143]

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.[144] 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.[145]

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.[146] 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.[147] 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.[148] 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.[149] 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.[150] 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.[151] 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.[152]

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.[153]

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.[154]

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.[155]

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.[156] 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[157]

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.[158] This order is similar,

152. *Ibid.*, p. 34.

153. Paragraph 3 of the response of the state in HCJ 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 HCJ 393/82, *Jam'ayat Iskan Al-Mu'almun v. Commander of IDF Forces*, *Piskei Din* 37(4) 785, and HCJ 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.[159] While it is difficult to calculate a precise figure, most of the expropriated land was undoubtedly privately owned by Palestinians,[160] and only a small proportion was state land, *waqf* land, or land owned by Jews prior to 1948.[161] 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."[162] 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.[163] 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."[164]

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.[165] 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.[166]

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."[167] 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. HCJ 5601/94, *'Odeh A'ida Abu Tier et al. v. Prime Minister et al., Takdin Elyon* 94 (4) 246.
165. Order Regarding Land Transactions (Judea 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.[168] 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.[169]

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.[170] 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.[171] 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.[172]

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.[173] These offenses were possible, *inter alia*, because of the relatively vague nature of the registration of land ownership in most of the West Bank.[174] 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.[175]

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.[176]

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.[177] 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.[178]

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.[179] 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.[180] 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.

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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.[181] 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.[182]

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.[183]

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.[184] 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.[185]

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,

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.[186]

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.[187] 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.'"[188]

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.[189]

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.[190]

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.[191]

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."[192] 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..."[193] 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.[194]

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.

194. 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.[195] 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.[196] 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,[197] 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." [198]

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).[199] 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).[200] 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;[201] 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.[202] 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).[203] 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.[204] The enterprises established in these industrial zones are under Israeli ownership, and some employ Palestinians.[205]

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.

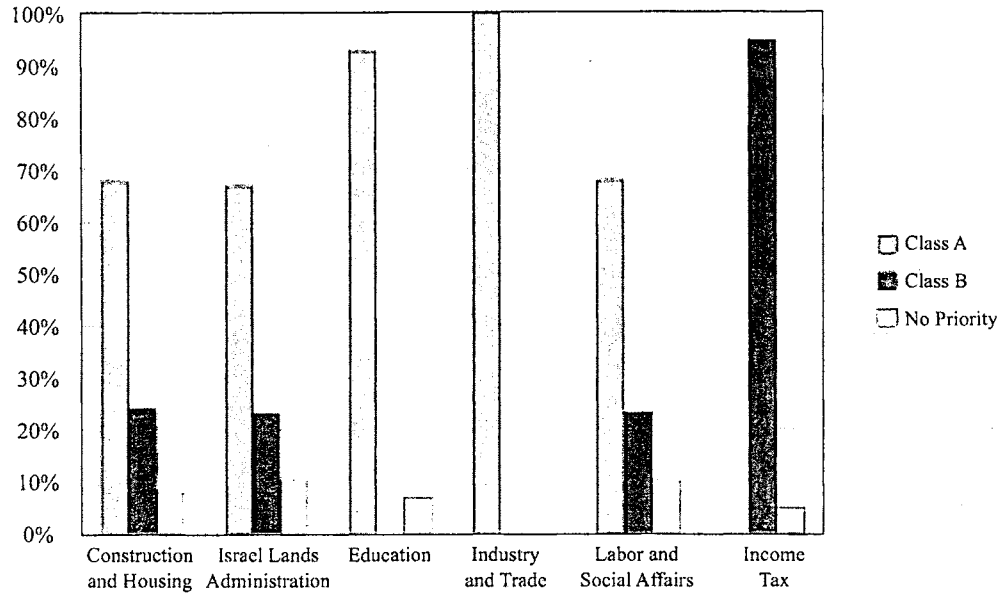
204. "Sha'ar Binyamin" between Pesagot and Ofra; "Emek Shilo" near Shilo; "Baron" near Qedumim; Gush Ezyon Industrial Park near Efrat; Mishor Adummim Industrial Park; Ma'ale Efrayim Industrial Park; Immanu'el Industrial Park; Qiryat Arba Industrial Park; Barkan Industrial Park near Ari'el; and Shim'a 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.[206]

Diagram 5

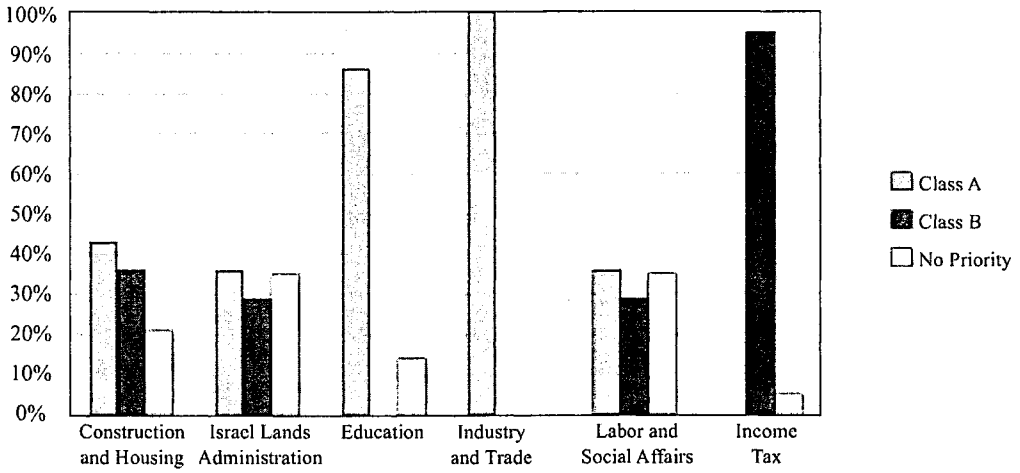
Settlements in the West Bank,* by Level of Priority



* 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.[207] 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: Floresheimer 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,[208] ranged from NIS 153 million to NIS 194 million per annum during the period 1992-1998.[209]

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.[210]

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 (Arych 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."[211]

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.[212] 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),[213] 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.

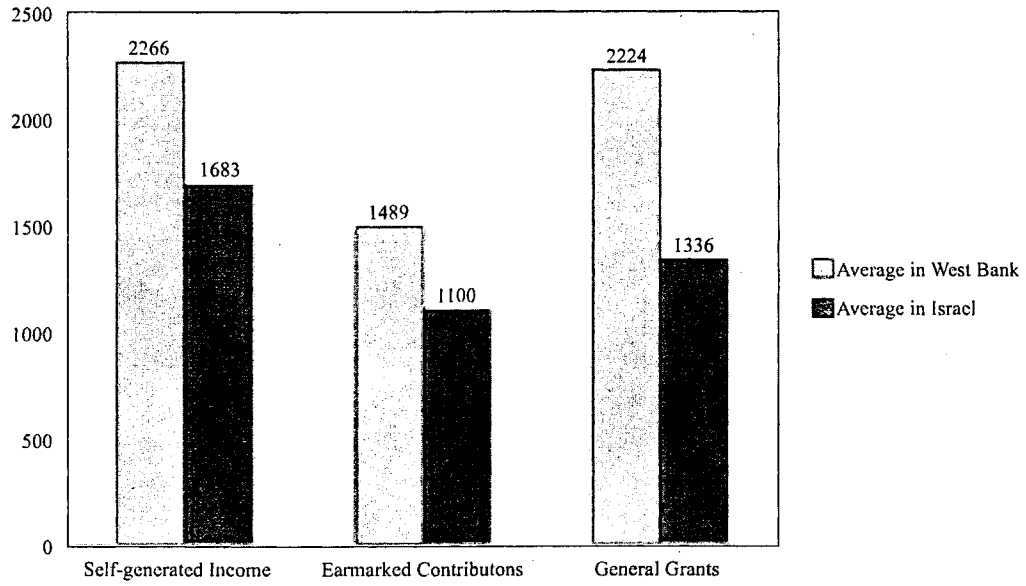
Table 4

Per-capita Income in West Bank Local Councils (in NIS)

Name of Council	Self-generated Income	Earmarked Contributions	General Grants	Total Per Capita Income
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
Average Income in West Bank Local Councils	**2,266**	**1,489**	**2,224**	**5,995**
Average Income in Local Councils in Israel	**1,683**	**1,100**	**1,336**	**4,119**

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.

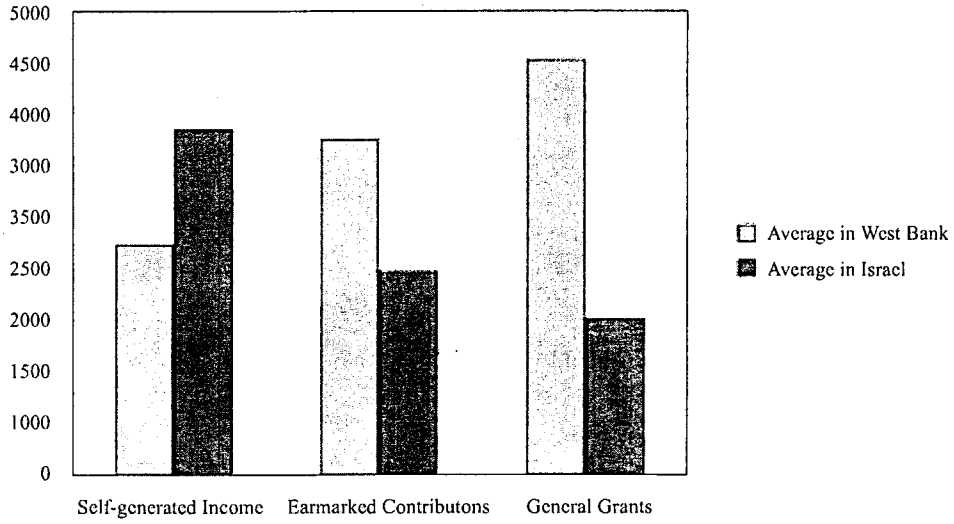
Table 5

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
Average Income in West Bank Regional Councils	**2,207**	**3,232**	**4,006**	**9,452**
Average Income in Regional Councils in Israel	**3,333**	**1,952**	**1,498**	**6,783**

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.[214] 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).[215] 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.[216]

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***
West Bank, Gaza and Golan	5,428	1,732	3,679
Development Towns**	4,176	1,925	2,308
Israel	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.[217] 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.[218] For the purposes of the law, the village councils and municipalities function as local planning boards, as is also customary in Israel.[219] 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.[220] 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.[221] 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.[222]

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.[223]

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.[224] 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.[225]

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.[226] The Civil Administration issues demolition orders against houses built without a permit.[227]

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.[228]

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.[229]

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."[230] 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...

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.[231]

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).

231. Paragraph 9 of the response of the Attorney General in HCJ 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:[232] 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.[233]

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.[234]

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.[235]

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."[236] 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) and the Website of ARIJ (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
Total	**5,538**	**100**

* 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.[237]

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, a 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.[238] 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.[239] 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.[240] 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.[241] 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."[242]

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."[243] 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.[244] 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.[245]

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, Mezad, Pene Hever, Carmel, Ma'on, Suseya, Shani and Mezadot 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.[246]

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).[247]

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.[248]

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.[249] 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.[250]

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.[251] 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).[252]

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.[253] 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.[254]

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.[255]

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.[256] 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.

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).[257] 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.[258] 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, Biddya, 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 – Matitiyahu 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.[259] 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.[260]

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.[261] 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,[262] 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 (Ramot 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.[263]

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 Jarah 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.[264] 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.[265] 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.

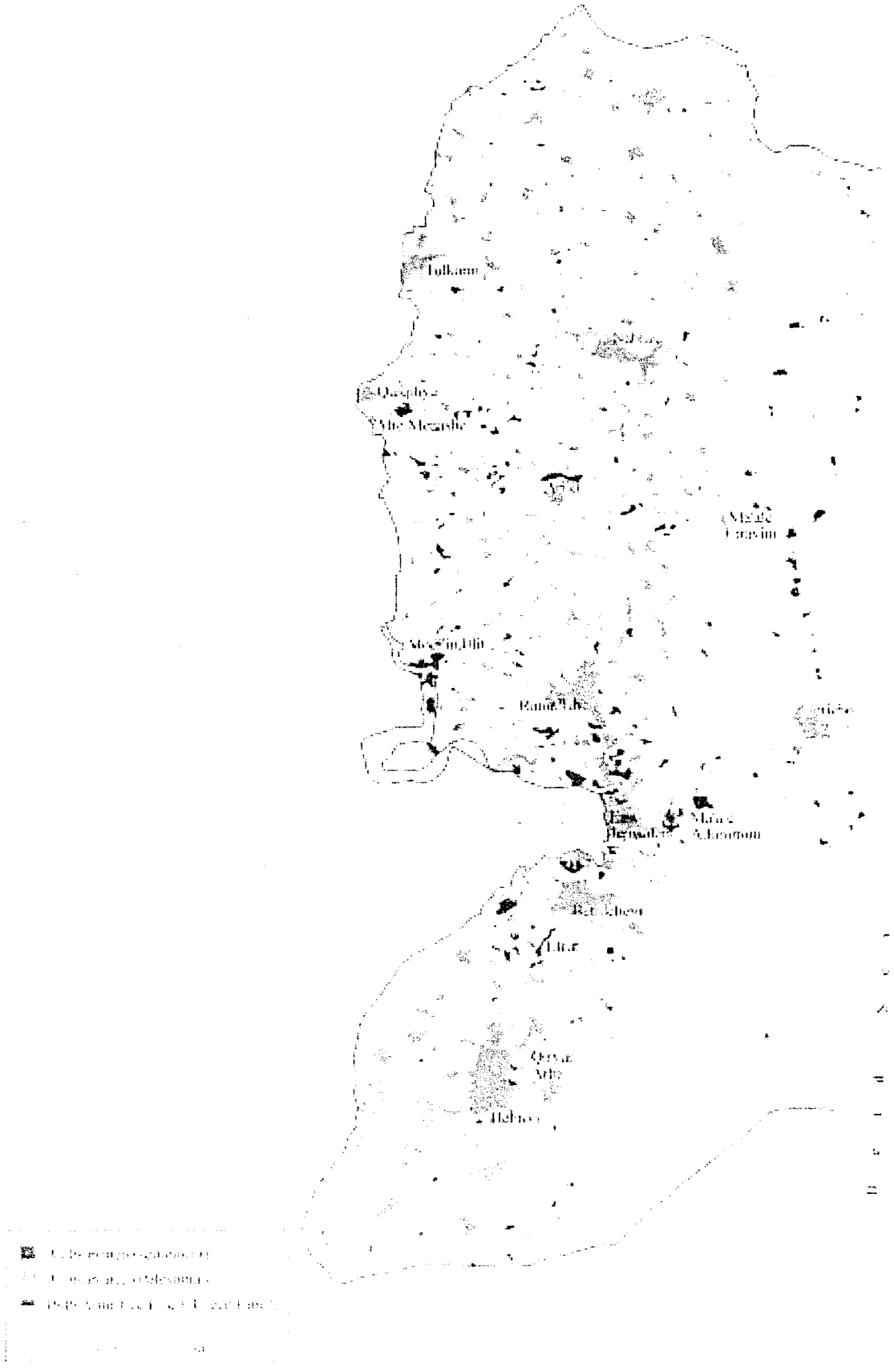
One of the settlement blocs is situated to the northwest of the area of jurisdiction of Jerusalem, including the settlements of Giv'on, Giv'on Hahadasha and Bet Horon (total 2,000), which form part of Mate Binyamin Regional Council, and Giv'at Ze'ev (10,300) which is a local council. The borders of these 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.

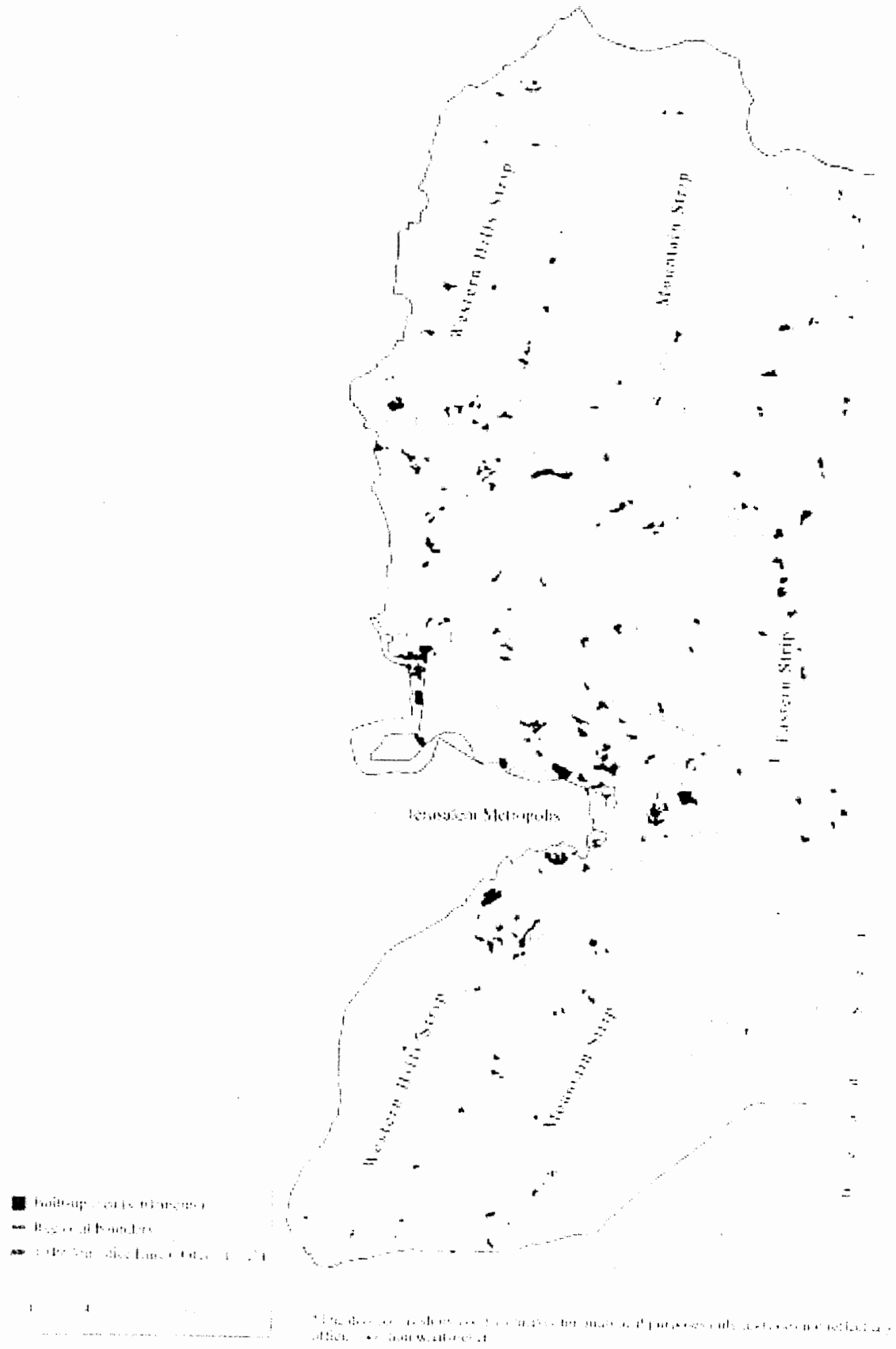
264. For more on this aspect, see B'Tselem, *Divide and Rule: Prohibition on Passage between the Gaza Strip and the West Bank* (Information Sheet, May 1998), pp. 5-6.

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 1 Dispersion of Built-up Areas



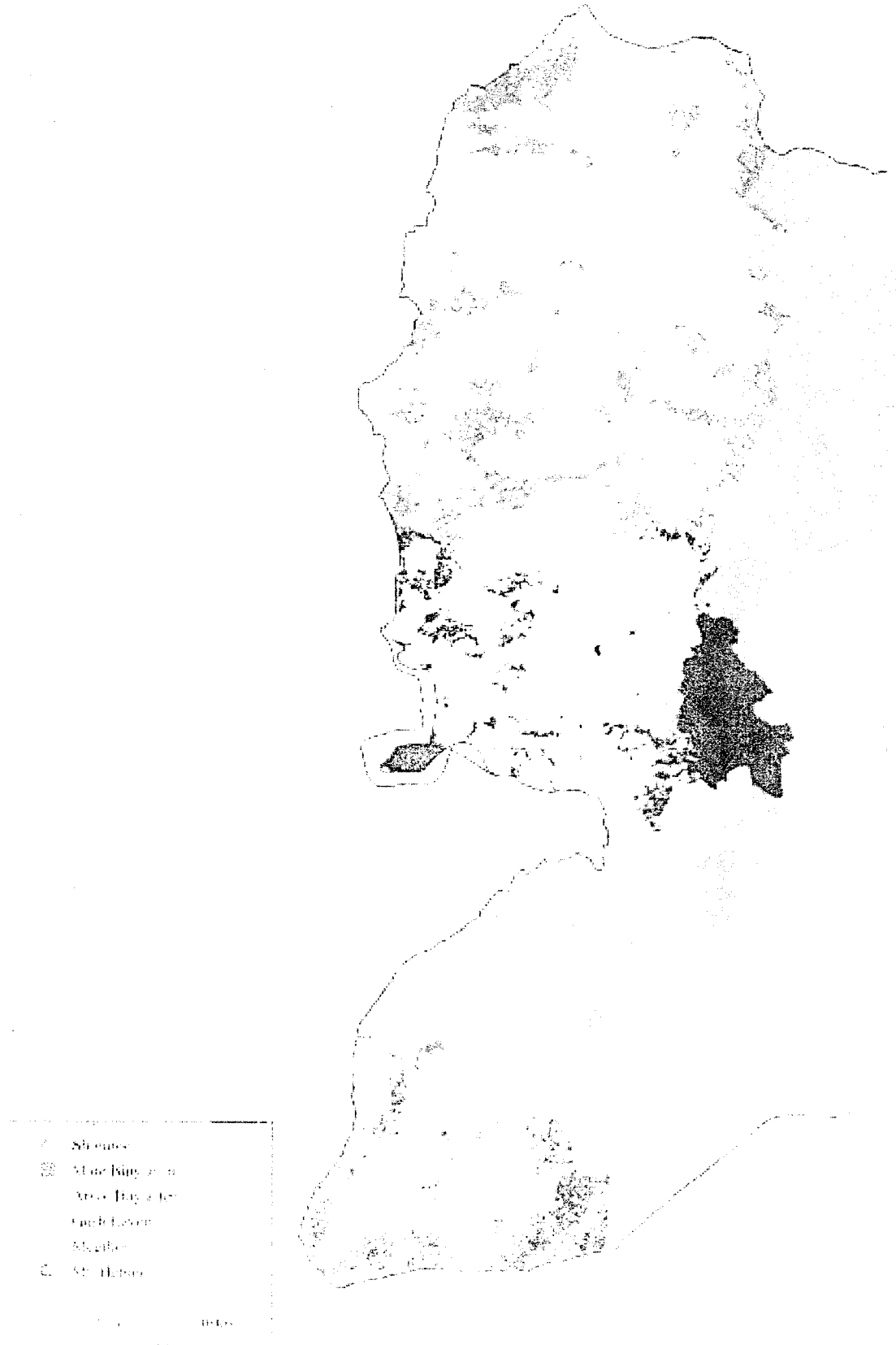
Map 2: Settlements (Divided into Regions*)



Map 3 Areas controlled by Settlements



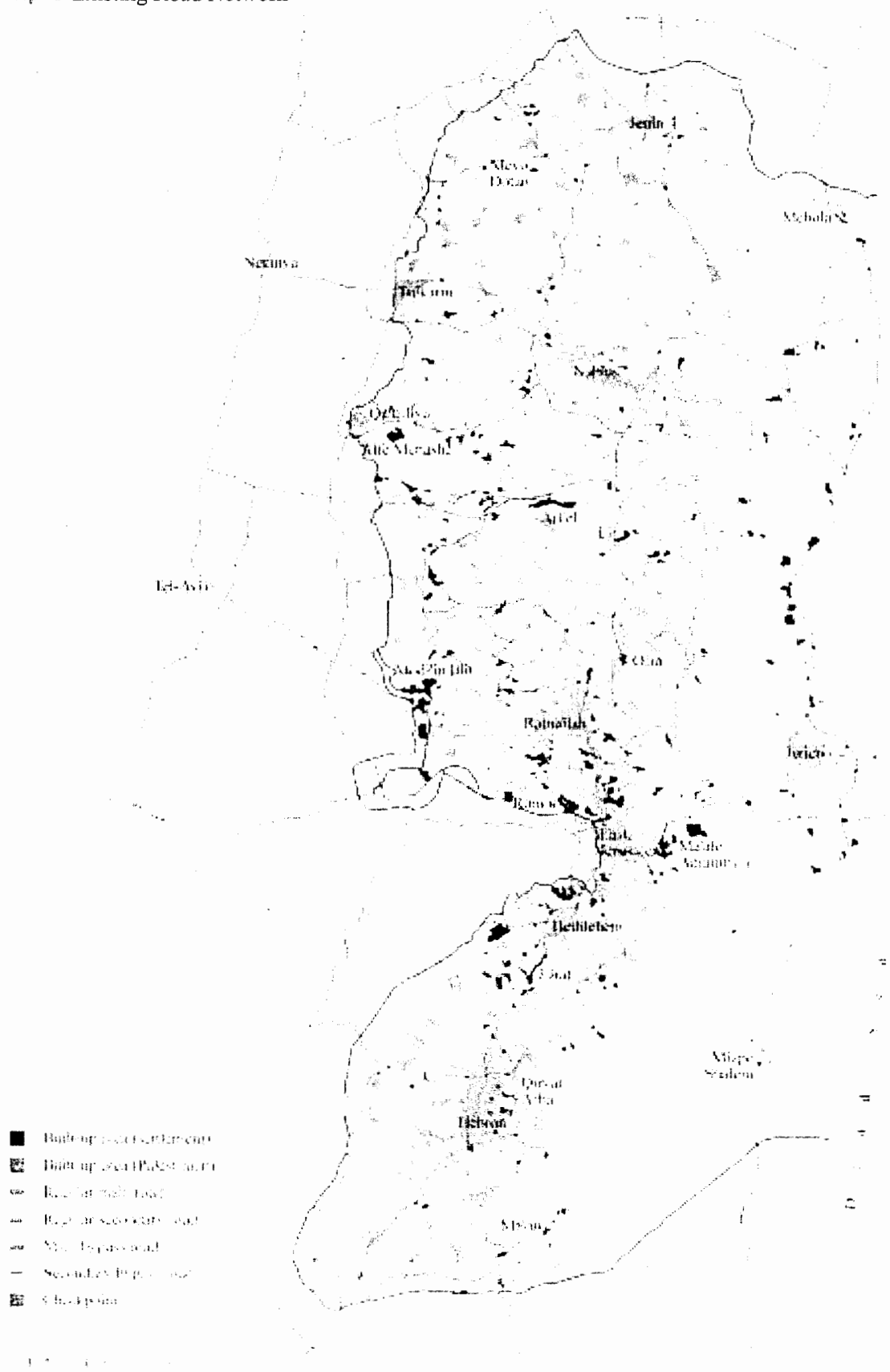
Map 4 Area of Jurisdiction of Settlements' Regional Councils



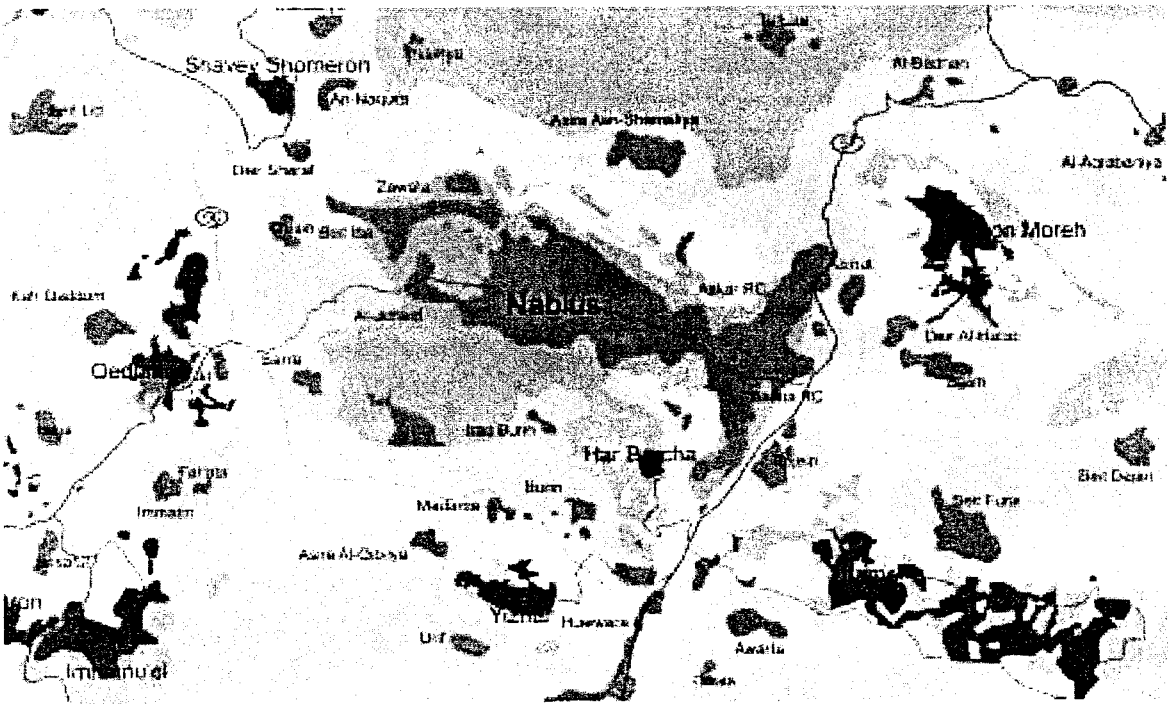
Map 5 Division of Powers pursuant to Oslo Accords



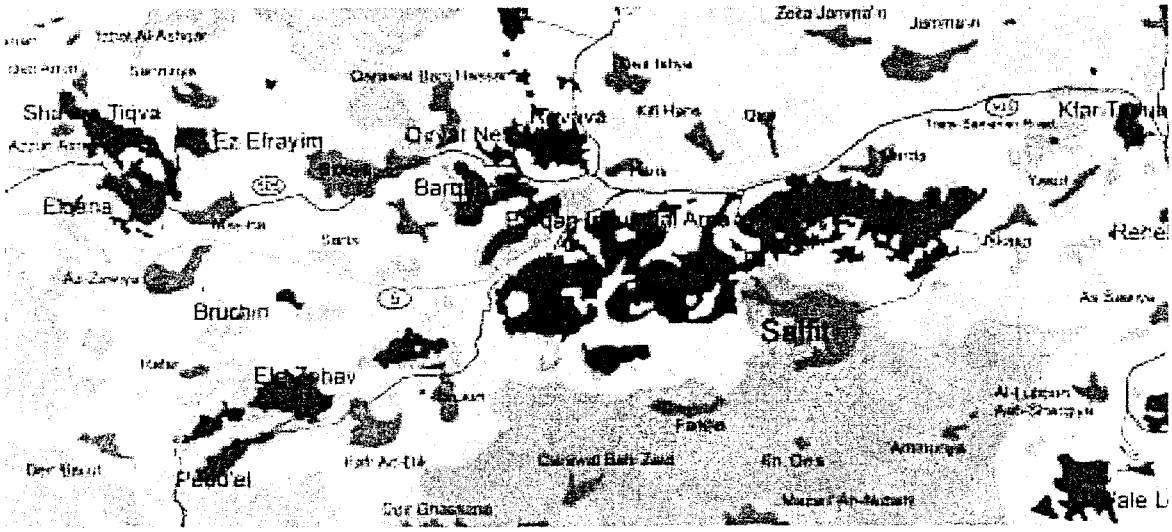
Map 6 Existing Road Network



Map 7 Settlements surrounding Nablus

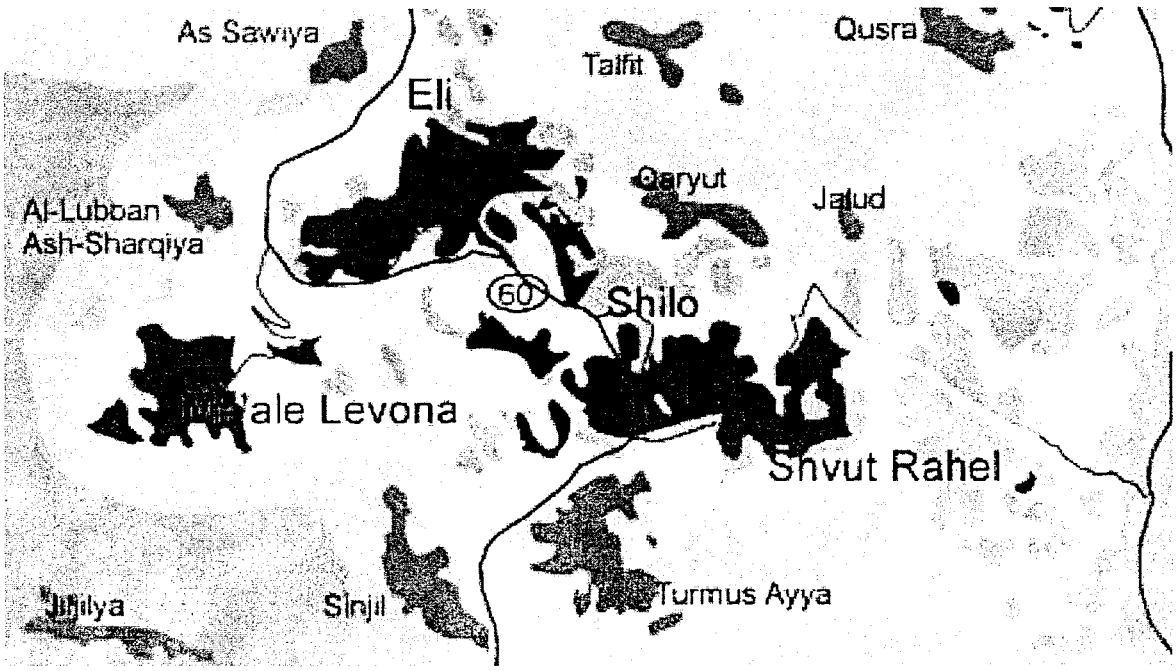


Map 8 Settlements in the Western Hills Strip

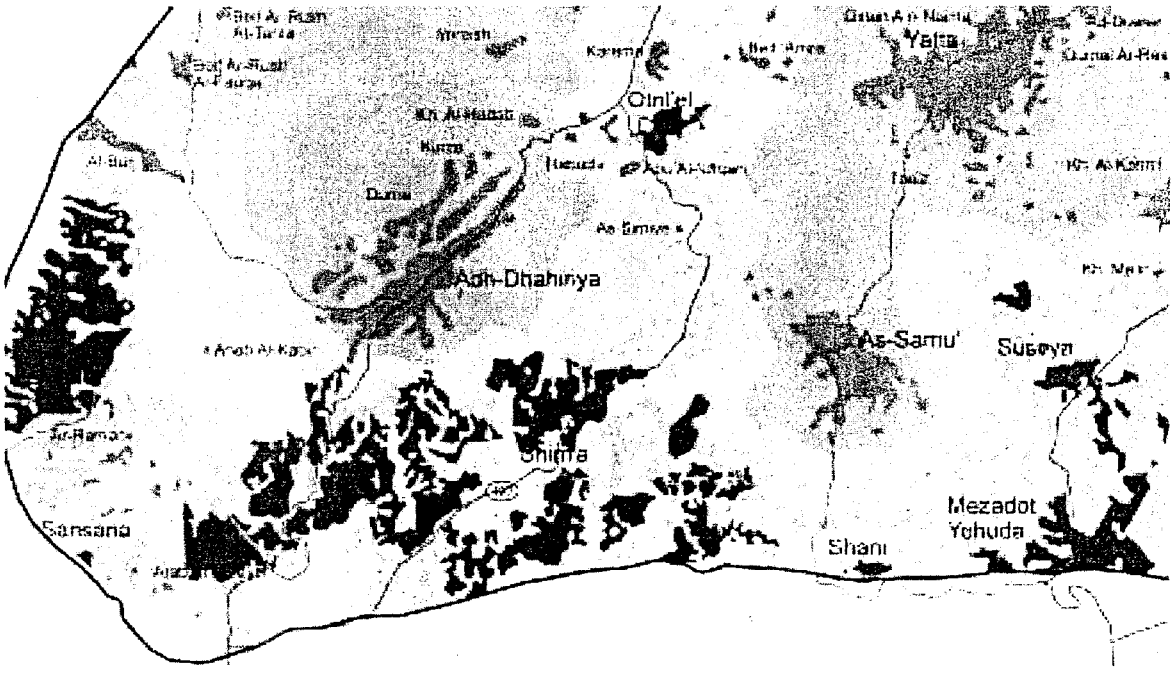


Built-up Area (Settlement)
Area within Municipal Boundary (Settlement)
Regional Council Jurisdictions Area (Settlement)
Military base
Built-up Area (Settlement)
Area A
Area B
Area C
Regular road
By-pass road
1949 Armistice Line (Green Line)
Road number

Map 9 Settlements Bloc along Road 60



Map 10 Settlements' Land Control in South Mount Hebron Area



Built-up area (Settlement)
Area within Municipal Boundary (Settlement)
Regional Council Jurisdictional Area (Settlement)
Military base
Built-up area (Palestinian)
Area A
Area B
Area C
Regular road
By-pass road
1949 Armistice Line (Green Line)
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.[266] In 1998, following the amendment to the Ma'ale Adummim outline plan calling for the expansion of Ma'ale Adummim to the west,[267] the Bedouin population (Jahalin tribe) living in the area was expelled.[268] 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'Tselem, *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.[269] 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
Total	96.9	280.8	1,968.2	2,346
Total as a percentage of the area of the West Bank* **	1.7%	5.1%	35.1%	41.9%

* 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.[270]

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.[271]

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.[272] 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.[273]

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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. Matitiyahu 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.[274] 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.[275]

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),[276] 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.

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).[277] 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.[278]

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.

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 Ari'el: view from the southeast

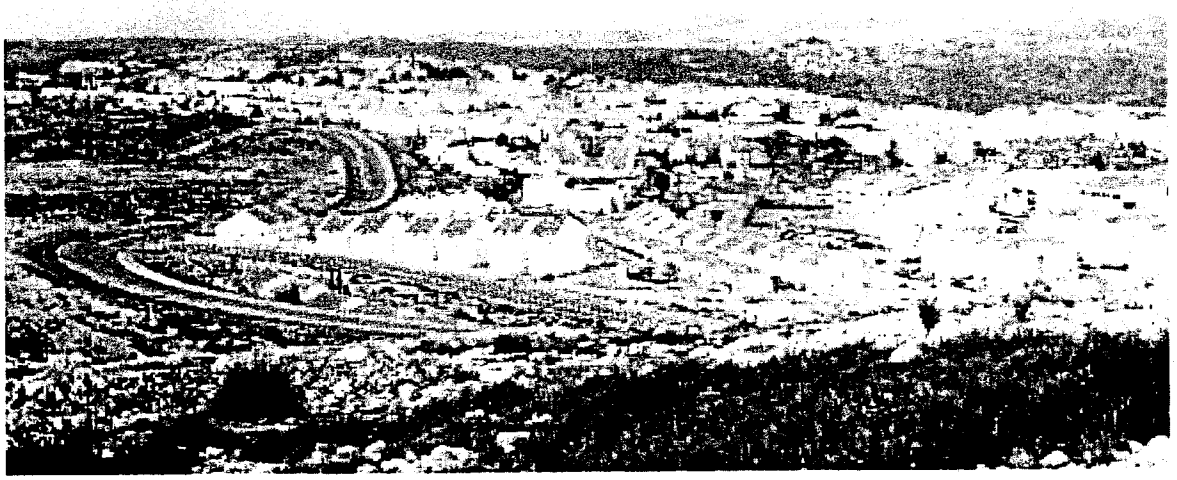


Photo 16 Caravans in the area east of Ari'el with Jamma'in in the background



Photo 17 Physical roadblock at entrance to Yasuf



Photo 18 Sewage from Ari'el flowing toward Salfit's pumping station

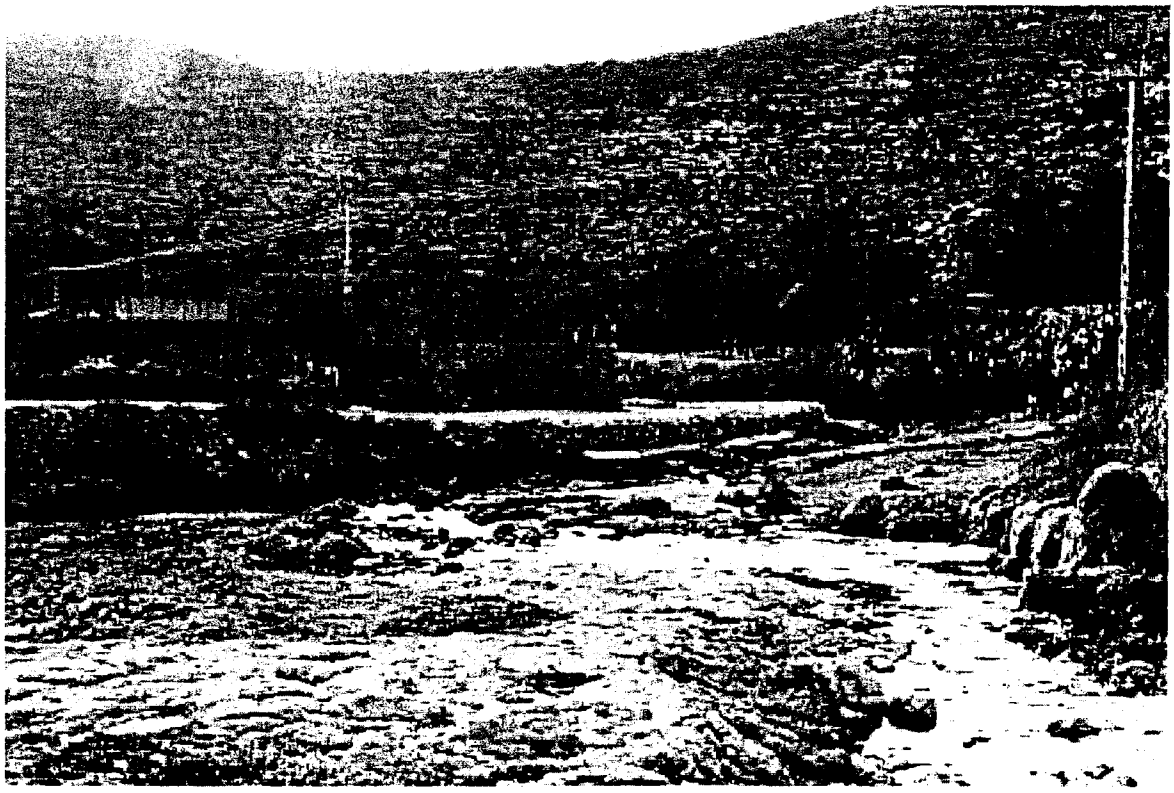
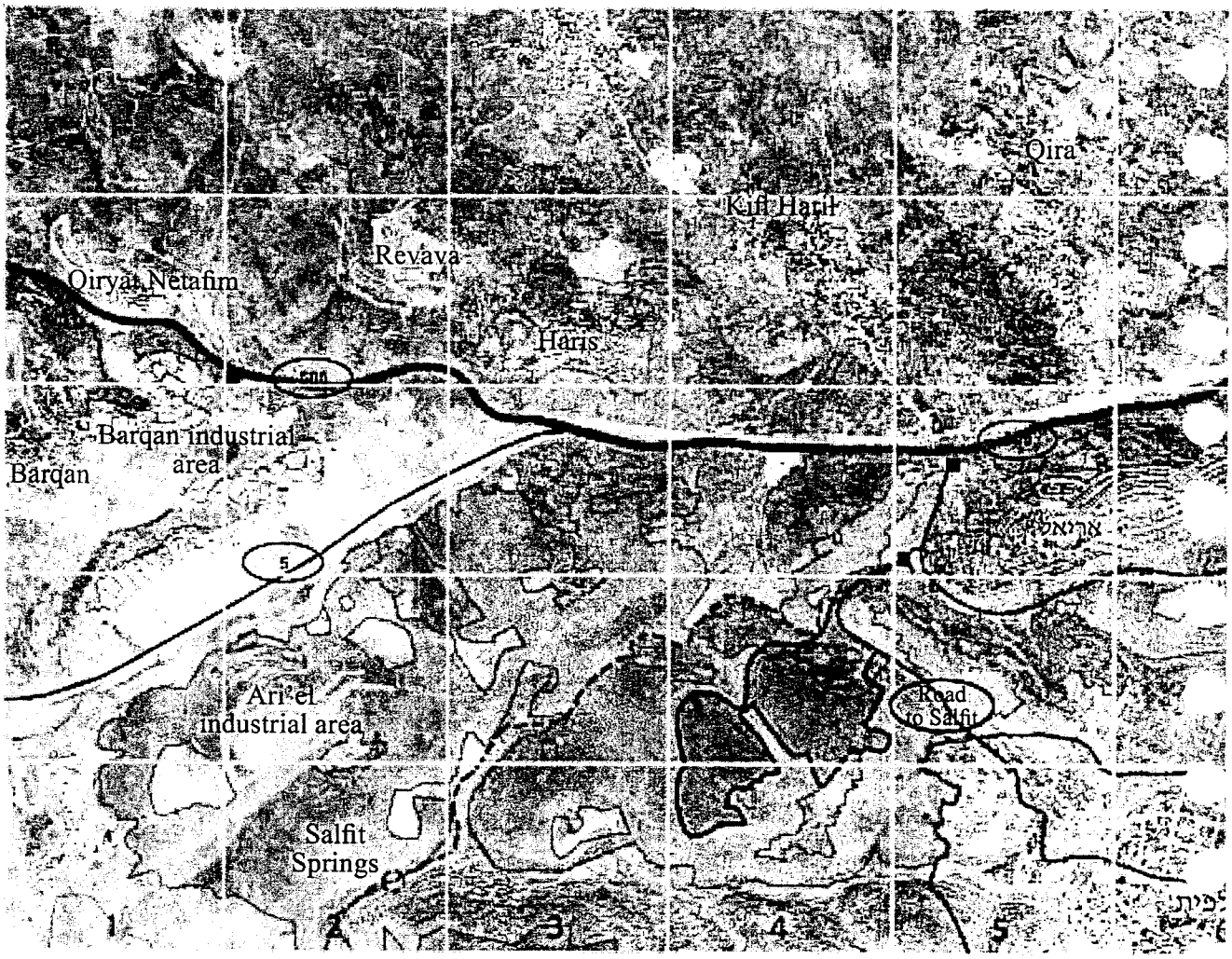


Photo 19 Ari'el and Salfit

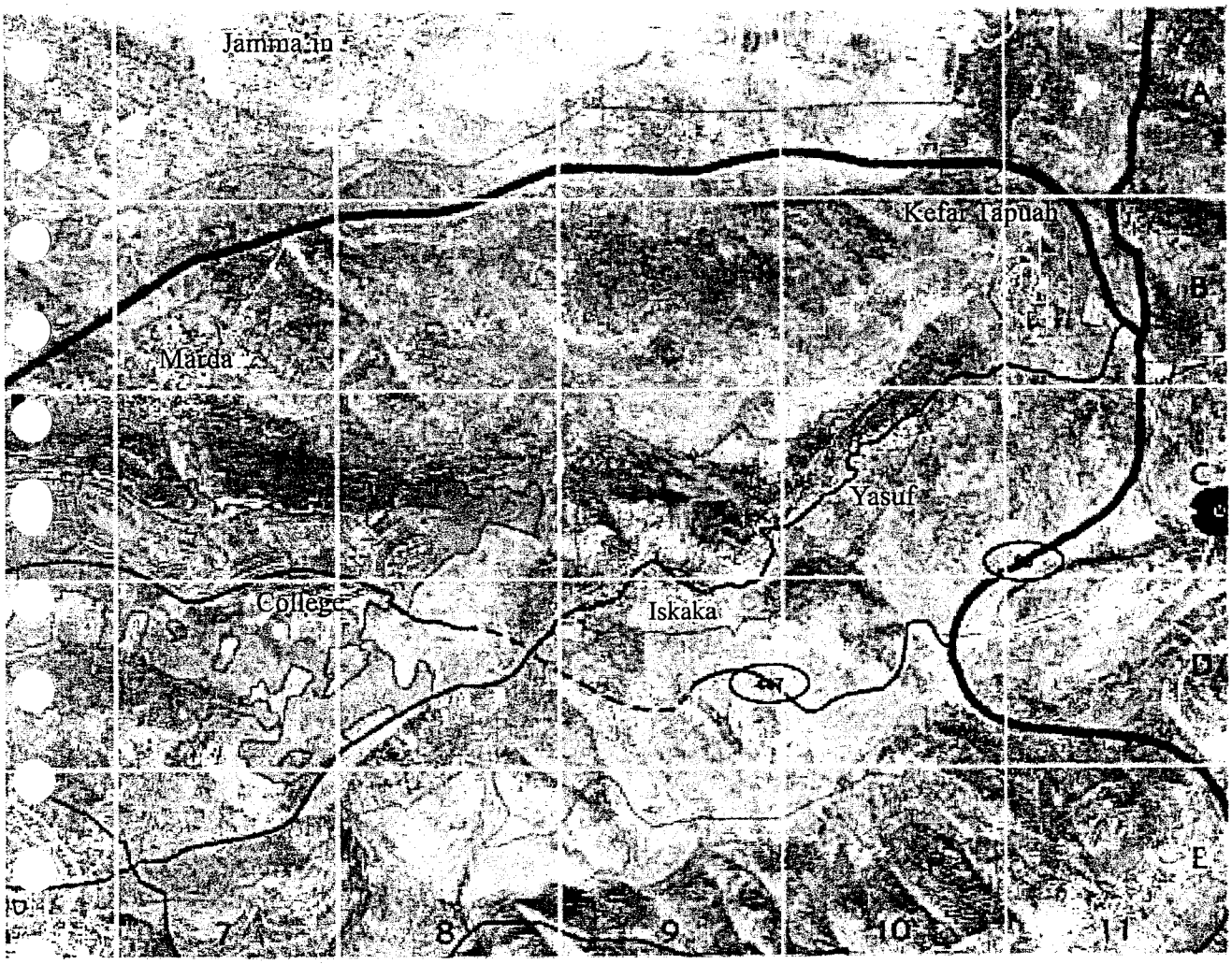


Photo credit: Israel Mapping Center

Photo 20 Ari'el and surrounding areas



- Area of jurisdiction of Ari'el
- Planned neighborhood – Ari'el
- Road
- (5) 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



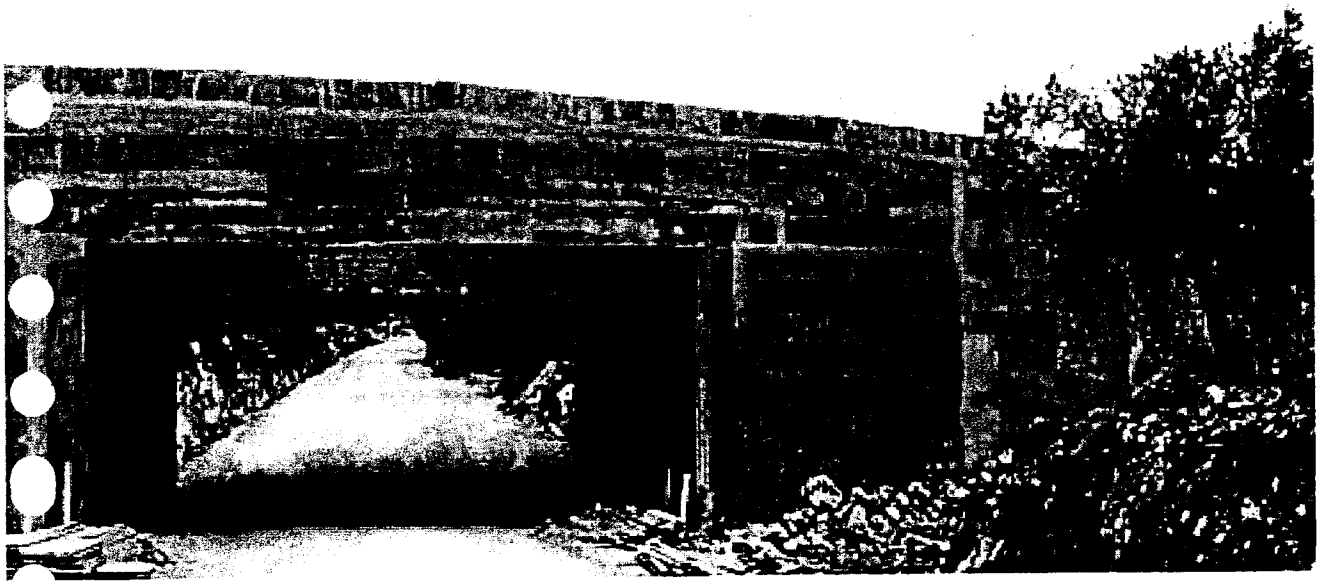




Photo 23 Houses in Ari'el: view from the settlement's ring road

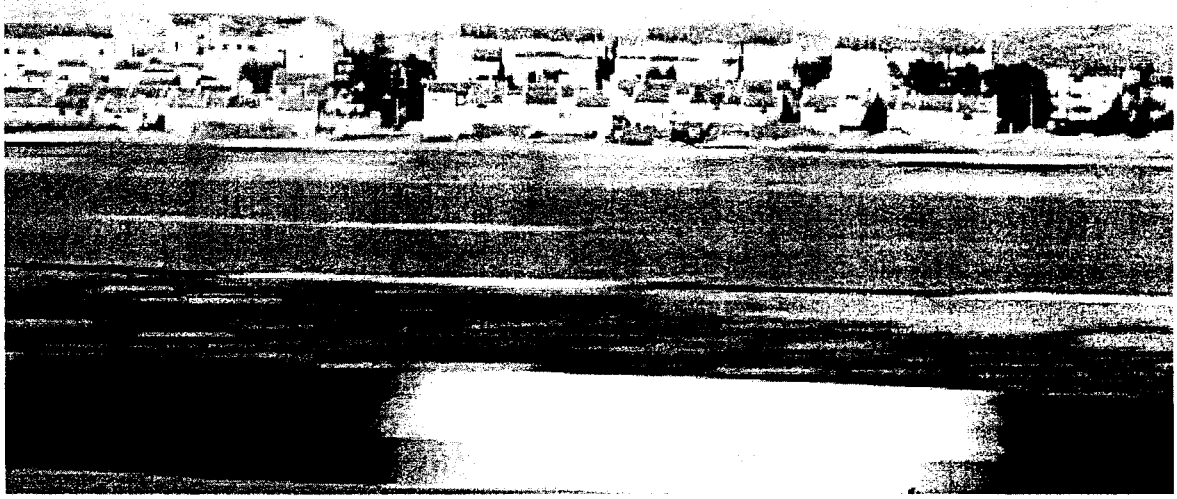


Photo 24 Houses in Ari'el: view from the settlement's ring road



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.[279]

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.[280]

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 Biddya, 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).[281]

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

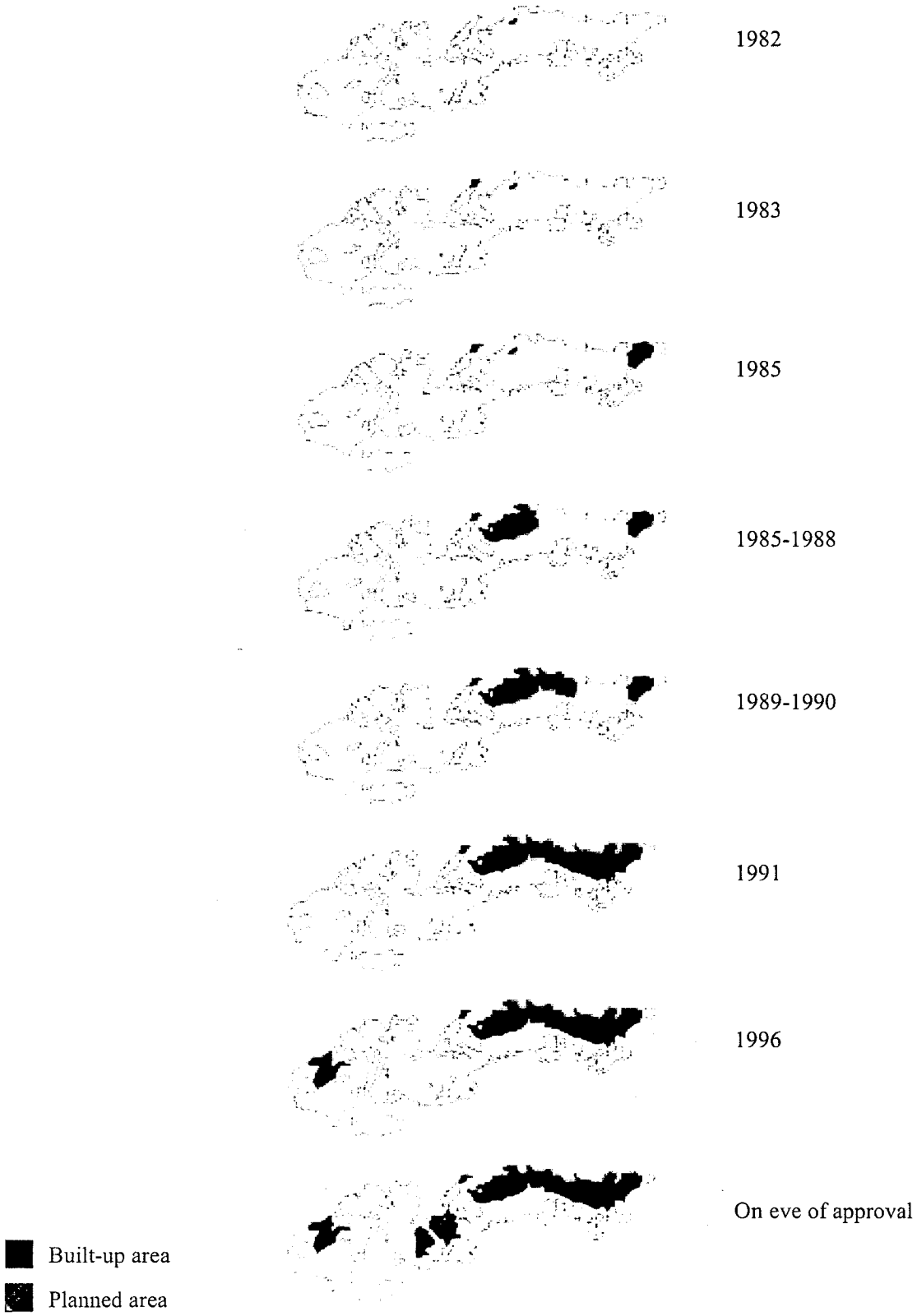
281. For details of this policy as implemented in the Gaza Strip, see B'Tselem, *A Policy of Destruction: House Demolitions and Destruction of Agricultural Land in the Gaza Strip* (Information Sheet, February 2002).

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."[282]

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.[283] 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.

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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April 1997	The Quiet Deportation: Revocation of Residency of East Jerusalem Palestinians (joint report issued with HaMoked: Center for the Defence of the Individual)
January 1997	Legitimizing Torture: The Israeli High Court of Justice Rulings in the Bilbeisi, Hamdan and Mubarak Cases
December 1996	Human Rights in the Occupied Territories since the Oslo Accords: Status Report (joint report issued with The Palestinian Human Rights Monitoring Group)

Position Papers

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B'Tselem Quarterly for Human Rights in the Occupied Territories

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March 2000	Sixth Issue (Primary subject: Rights of the Child)
December 1999	Fifth Issue (Primary subject: Fiftieth Anniversary of the Geneva Convention)
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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

בצלם

מרכז המידע הישראלי לזכויות האדם בשטחים (ע.ר.)
B'Tselem – The Israeli Information Center for Human Rights in the Occupied Territories

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.[1] 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.[2]

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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[1] State Comptroller, *Audit Report on the Seam Area* (in Hebrew), Report No. 2 (Jerusalem, July 2002), pp. 10-12.
[2] *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.[3] 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.[4]

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.[5]

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[3] Decision 64/B, section E.

[4] 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, *Kafr a-Ras et al. v. Commander of IDF Forces in Judea and Samaria et al.*

[5] 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.[6]

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 .[7] The Ministry of Defense estimates that Stage 1 of the barrier will be completed by July 2003.[8] 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.[9]

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."[10] 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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[6] This figure is based on a digital measurement made by B'Tselem.
[7] Felix Frisch, "Israel Plans: Tax to be imposed on Palestinians who enter Israel," Y-net, 4 March 2003.
[8] Letter of 12 February 2003 from the Defense Ministry's spokesperson to B'Tselem.
[9] Amos Harel, "Construction of the Separation Fence Begins between Gilboa Villages and the West Bank," *Ha'aretz, 28 January 2003.*
[10] The information on the barrier's components is based on the state's response in HCJ 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.[11] 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.[12]

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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[11] State Comptroller, *Audit Report on Seam Area*, p. 30.
[12] Frisch, "Israel Plans."

that, "Publication of the map has not been authorized."[13] 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."[14] 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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[13] Letter of 2 January 2003 from Defense Ministry Spokesperson Rachel Nidak-Ashkenazi.
[14] 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[15]

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.[16]

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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[15] 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."

[16] 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.[17] 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 Falamya (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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[17] 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).[18]

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).[19]

[18] Central Bureau of Statistics, List of Settlements, their Populations, and Markings – 12 December 2001.

[19] 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.[20] 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.[21] 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."[22] However, except for this general commitment, the state has not provided other details regarding arrangements .

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[20] Response of the state in *al-Hadi*, sec. 22.
[21] *Ibid.*
[22] *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.[23]

Whatever the crossing arrangements will be, it is clear that hundreds of thousands of Palestinians will be dependent on Israel' 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.[24]

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.[25] This experience

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[23] Akiva Eldar, "The Great Failure of the Separation Fence," *Ha'aretz*, 31 October 2002.

[24] 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).

[25] *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.[26]

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.[27] 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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[26] 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).

[27] 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.[28]

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.[29] 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.[30]

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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[28] 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).
[29] PCBS, *Labor Force Survey Annual Report for 2001.*
[30] 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 .[31] 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, Khirbet Jubara, Ras a-Tira, Khirbet 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.[32]

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.

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[31] UNSCO, *The Impact of Closure and Other Mobility Restriction on Palestinian Productive Activities,* 1 January – 30 June 2002.

[32] The information is based on the "Map of Health Services" of the Palestinian Ministry of Health (www.healthinforum.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.[33] 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.[34] 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

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[33] Response of the state in *al-Hadi*, sec. 31.

[34] 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.[35]

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.[36] 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."[37] 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.[38] 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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[35] For extensive discussion on this subject, see B'Tselem: *Land Grab: Israel's Settlement Policy in the West Bank*, May 2002.
[36] See *Land Grab*, pp. 51-58.
[37] Response of the state in a*l-Hadi*, sec. 27.
[38] 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*.[39] 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.[40] 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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[39] Dani Abbaba, Meron Rappoport, and Oron Meiri, "Olive Booty," *Yediot Aharonot, Seven Days* [Weekend Supplement], 22 November 2002.

[40] 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.[41]

'Azzun 'Atma has a medical clinic operated by the Palestinian Authority that provides basic medical treatment.[42] 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.[43] 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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[41] For more information on this school, see the frame on demolition of houses.

[42] 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).

[43] 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.[44]

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.[45] 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."[46] 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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[44] *Jerusalem Statistical Yearbook*, 2002, Table C/13. The village committee estimates the current population at 15,000.

[45] 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.

[46] *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.[47] 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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[47] 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.[48]

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.[49] 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.[50]

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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[48] 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).

[49] 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.

[50] 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 Metzer. 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.[51]

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.[52] 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.

[51] Minutes of the session of the Tel-Aviv Magistrate's Court, 20 November 2002, *Kafr 'Aqeb Development Committee.*

[52] 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.[53] 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.

[53] 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.[54] The Supreme Court recently sanctioned this position.[55] 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.[56]

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.[57]

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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[54] 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.

[55] HCCJ/7015, 7019/02, *Ajuri v. Commander of IDF Forces in the West Bank et al.*

[56] *Committee of Contracting States of the Fourth Geneva Convention – Statement of the International Committee of the Red Cross*, Geneva, 5 December 2001, sec. 2.

[57] 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.[58]

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,[59] in international human rights law,[60] and in decisions of Israel's Supreme Court.[61]

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."[62] 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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[58] L.C. Green, *The Contemporary Law of Armed Conflict* (Manchester University Press, 2000) 123.
[59] See, for example, Article 57 (3) of the First Additional Protocol to the Geneva Conventions, of 1977.
[60] 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.
[61] See, for example, HCJ 6055/95, *Sagy Tsemach et al. v. Minister of Defense et al., Piskei Din* 53 (5) 241.
[62] 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."[63]

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."[64].

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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[63] State Comptroller's report, p. 35.
[64] *Ibid.*, p. 36.

Sharon was alluding to when he said, "The idea [to build the barrier] is populist and intended to serve political objectives."[65]

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

[65] 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."[68]

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.[69]

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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[68] *Ibid.*, sections 18-19.

[69] 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.[66]

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 to 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."[67] These considerations include three principal components:

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[66] *Ibid.*, pp. 21-22.
[67] 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,"[70] and to set up "special security areas" surrounding the settlements, where protection would be greater.[71] 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.[72] 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

[70] Alex Fishman and Yuval Karni, "Forty Settlements to be Surrounded by Electronic Fence," *Ynet,* 9 July 2002.
[71] Amos Harel, "Security areas in settlements will include observation posts and patrols," *Ha'aretz,* 26 December 2002.
[72] 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.[73]

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."[74] 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."[75] 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."[76]

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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[73] "Sharon Grants Victory to Arafat," *Ha'aretz,* 13 June 2002.
[74] Amnon Barzilai and Zvi Zarhiya, "Work on Erecting the Seam-Line Fence Begins," *Ha'aretz*, 11 June 2002. (emphasis added)
[75] Diana Bahor, "Separation Fence: All the Objections," *Ynet*, 4 July 2002. (emphasis added)
[76] 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.[77]

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.[78]

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."[79]

- 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.[80]

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[77] Mazal Mualem, "The Battle against the Large Qalqiliya," *Ha'aretz*, 27 August 2002.
[78] The staff's actions are documented on the town's Website, www.matan.muni.il.
[79] Minutes of the hearing of the Tel-Aviv Magistrate's Court, held on 20 November 2002, in *Kafr 'Aqeb Development Committee.*
[80] 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."[81]

- Members of Kibbutz Metzer 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.[82]

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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[81] State's response in *al-Hadi,* sec. 30.

[82] 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."[83] 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

[83] 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.[84]

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.[85] 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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[84] State's response in *Kafr 'Aqeb Development Committee.*

[85] 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 heath 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

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.

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 form 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[1], 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.[4] 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 pe rcent 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 mention 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.[5] 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.

Mission Itinerary

12-19 August 2002

Monday, 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 Counsel
- 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

- Luch 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

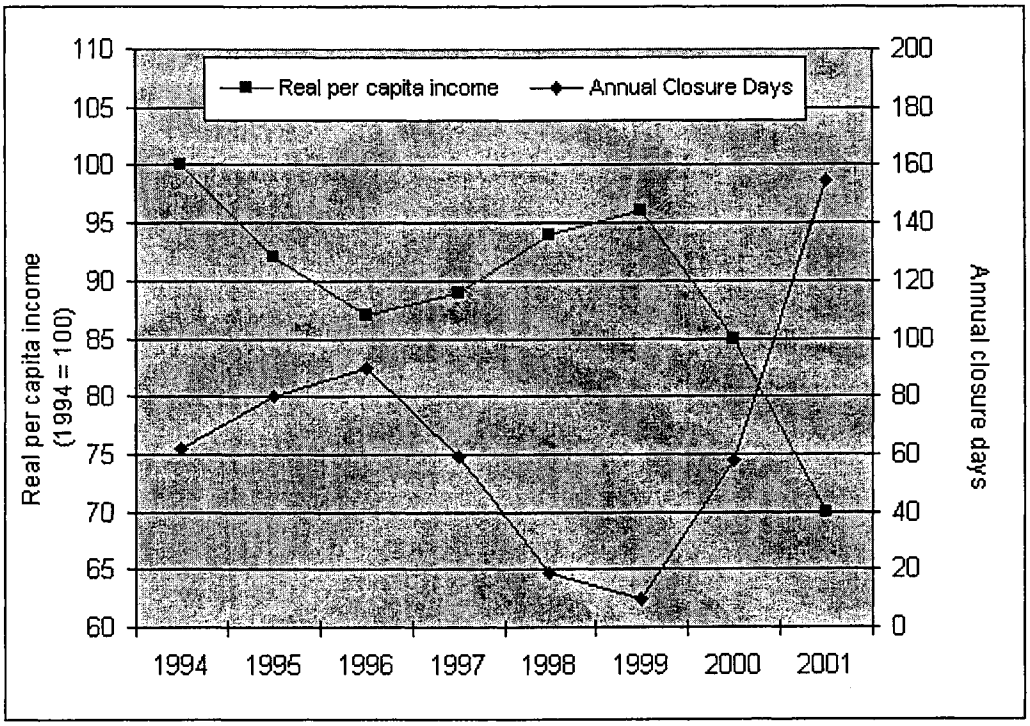
Monday, 19 August:

- Visit to Bethlehem; meeting with shopkeepers, residents and church officials

- Departure from Tel Aviv

[*insert map (pdf file)*]

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).

COUR INTERNATIONALE DE JUSTICE

CONSÉQUENCES JURIDIQUES DE L'ÉDIFICATION D'UN MUR DANS LE TERRITOIRE PALESTINIEN OCCUPÉ

(REQUÊTE POUR AVIS CONSULTATIF)

EXPOSÉ ÉCRIT

DÉPOSÉ PAR

LA PALESTINE

30 JANVIER 2004

[Traduction]

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PARTIE A

INTRODUCTION ET COMPETENCE

CHAPITRE 1

INTRODUCTION

1. Le présent exposé écrit est déposé conformément à l'ordonnance rendue par la Cour le 19 décembre 2003 en réponse à la requête de l'Assemblée générale des Nations Unies pour avis consultatif sur les conséquences juridiques de l'édification d'un mur dans le Territoire palestinien occupé. Ce chapitre introductif examine les termes de la requête, étudie son champ d'application et décrit la structure du présent exposé.

1) Les termes de la requête

2. La requête a été présentée par l'Assemblée générale des Nations Unies dans sa résolution A/RES/ES-10/14 du 8 décembre 2003. Par cette résolution, l'Assemblée générale décidait, conformément au paragraphe 1 de l'article 96 de la Charte des Nations Unies, de demander à la Cour internationale de Justice de donner un avis consultatif urgent sur la question suivante :

> «Quelles sont en droit les conséquences de l'édification du mur qu'Israël, puissance occupante, est en train de construire dans le Territoire palestinien occupé, y compris à l'intérieur et sur les pourtours de Jérusalem-Est, selon ce qui est exposé dans le rapport du Secrétaire général, compte tenu des règles et des principes du droit international, notamment la quatrième convention de Genève de 1949, et les résolutions consacrées à la question par le Conseil de sécurité et l'Assemblée générale ?»

3. La demande a été transmise à la Cour par le Secrétaire général des Nations Unies dans une lettre datée du 8 décembre 2003[1].

4. Par ordonnance datée du 19 décembre 2003, la Cour a fixé au 30 janvier 2004 l'expiration du délai à l'intérieur duquel pouvaient être soumis à la Cour les exposés écrits se rapportant à la question. Se référant à la résolution A/RES/ES-10/14 de l'Assemblée générale et au rapport du Secrétaire général des Nations Unies communiqué à la Cour en même temps que la requête, et relevant «que l'Assemblée générale a accordé à la Palestine un statut spécial d'observateur et que celle-ci est coauteur du projet de résolution demandant l'avis consultatif», la Cour a décidé que «la Palestine pourra également soumettre à la Cour un exposé écrit sur la question posée, dans le délai sus-indiqué», c'est-à-dire d'ici au 30 janvier 2004.

5. La Palestine se félicite de l'occasion qui lui est donnée de prendre part à la phase écrite et à la phase orale de cette procédure consultative et de communiquer des informations sur tous les aspects soulevés par la requête.

---

[1] Voir communiqué 2003/42 de la CIJ (le 10 décembre 2003).

6. Il est évident que la Palestine est directement concernée par l'objet de la requête et qu'elle a un intérêt spécial dans l'avis consultatif de la Cour[2]. En décidant d'inviter la Palestine à participer à cette procédure consultative, la Cour a reconnu que la Palestine détient cet intérêt spécial. Ainsi que le rappelle l'ordonnance de la Cour en date du 19 décembre 2003, la Palestine était coauteur de la résolution A/RES/ES-10/14 en même temps que vingt-six Etats Membres des Nations Unies. La Palestine s'est exprimée en faveur de la résolution A/RES/ES-10/14 à l'Assemblée générale[3]. La Palestine s'est également exprimée en faveur de la résolution A/RES/ES-10/13 du 21 octobre 2003, dont était coauteur l'Union européenne. Dans cette résolution, l'Assemblée générale exigeait «qu'Israël arrête la construction du mur dans le Territoire palestinien occupé, y compris Jérusalem-Est et ses alentours, et revienne sur ce projet, qui s'écarte de la ligne d'armistice de 1949 et qui est contraire aux dispositions pertinentes du droit international»[4].

7. Le préambule de la résolution A/RES/ES-10/14 évoque «la confiscation et la destruction de terres et de ressources palestiniennes, le bouleversement de la vie de milliers de civils jouissant d'une protection et l'annexion de fait de vastes parties du territoire», par suite de la construction par Israël du mur dans le Territoire palestinien occupé. La résolution signale aussi «les effets encore plus dévastateurs qu'auraient les parties du mur dont la construction est prévue sur la population civile palestinienne et sur les perspectives de règlement du conflit israélo-palestinien et l'établissement de la paix dans la région».

2) Champ de la requête

8. Les termes de la requête établissent le champ de l'avis consultatif demandé à la Cour. Il importe d'emblée de savoir précisément à quoi se rapporte la présente affaire et à quoi elle ne se rapporte pas.

9. Il est demandé à la Cour d'indiquer à l'Assemblée générale les conséquences juridiques découlant de la construction du mur dans le Territoire palestinien occupé, y compris à l'intérieur et sur les pourtours de Jérusalem-Est. Le tracé actuel et prévu du mur, ainsi que l'ensemble des restrictions qui s'y rattachent, seront décrits plus en détail au chapitre 6. Le tracé du mur figure sur la carte-dépliant jointe au présent exposé.

10. Il n'est pas demandé à la Cour de déterminer les limites territoriales du Territoire palestinien occupé. Il n'est pas nécessaire pour la Cour de déterminer les limites précises du Territoire palestinien occupé, non plus que de Jérusalem-Est, pour répondre à la question posée par l'Assemblée générale. Il suffit en tout état de cause qu'une portion appréciable du mur traverse le Territoire palestinien occupé et que le mur ait d'importantes répercussions sur ce territoire, aujourd'hui et dans l'avenir.

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[2] En rapport avec la compétence consultative de la Cour, les commentateurs ont parlé des «Etats et autres entités directement concernées». Shabtai Rosenne, *The Law and Practice of the International Court, 1920-1996*, vol. II (3e éd., 1997), p. 993.

[3] Voir communiqué de presse GA/10216 du 8 décembre 2003 de l'Assemblée générale, texte tiré de www.un.org/News/Press/docs/2003/ga10216.doc.htm.

[4] Voir communiqué de presse GA/10177 du 20 octobre 2003 de l'Assemblée générale, texte tiré de www.un.org/News/Press/docs/2003/ga10177.doc.htm.

11. Deux aspects fondamentaux *sont* implicites dans la question sur laquelle est demandé l'avis de la Cour. Le *premier* est la notion de Territoire palestinien occupé, le territoire du peuple palestinien, un peuple fondé à l'autodétermination selon le droit international, ainsi que l'ont maintes fois rappelé l'Assemblée générale et le Conseil de sécurité. Le *deuxième* est le fait que le mur lui-même et ses conséquences juridiques mettent en cause non seulement sa construction, mais également son utilisation. Car le mur n'est pas simplement une clôture; c'est un régime, un régime d'isolement, de discrimination et de déni de droits, qui ne s'accorde pas avec son apparente motivation, à savoir la sécurité. Sauf sur de courtes distances, le mur n'a pas été et ne sera pas construit le long de la Ligne verte, cette ligne bien connue séparant Israël du Territoire palestinien occupé. Il n'est pas non plus utilisé d'une quelconque manière susceptible de répondre à son mobile officiel, la protection d'Israël contre les attaques. Il est plutôt une tentative de modifier unilatéralement le statut du Territoire palestinien occupé, notamment par l'annexion de fait de larges zones, et il est annonciateur d'un règlement unilatéral qu'Israël voudra imposer, au lieu d'un règlement entériné par la communauté internationale — il est une tentative d'imposer une «solution» au mépris du droit international.

12. Dans le présent exposé, la Palestine se focalisera sur les points de droit soulevés par la construction et l'utilisation du mur, aujourd'hui et demain. Rendre un avis sur ces points de droit requiert un rappel des faits sur la Palestine et sur son statut juridique, ce qui sera l'objet du chapitre 3. Mais cela ne veut pas dire que la Cour doit résoudre tous les aspects qui historiquement ont divisé, et divisent encore, la Palestine et Israël. Car il se trouve que le mur est une source nouvelle, et très grave, de division accrue — une division assimilable à une totale exclusion — et de séparation permanente, non pas entre la Palestine et Israël, mais entre une portion importante du Territoire palestinien occupé et le reste de ce territoire.

13. Dans le présent exposé, la Palestine se focalise donc sur la question précise qui est posée — celle qui concerne le mur, ses effets et sa licéité. La Palestine réserve sa position sur toutes les questions et tous les enjeux qui ne sont pas expressément examinés dans le présent mémoire.

3) Terminologie

14. Les expressions et termes qui suivent sont fréquemment employés dans le présent exposé. Ils sont définis ainsi :

Protocoles additionnels — Protocole I additionnel aux conventions de Genève relatif à la protection des victimes des conflits armés internationaux, et protocole II additionnel aux conventions de Genève relatif à la protection des victimes des conflits armés non internationaux, adoptés le 8 juin 1977, avec entrée en vigueur le 7 décembre 1978, texte publié dans 1125 *RTNU* 3 (1979). Le protocole I constitue le dossier n° 61 accompagnant la communication du Secrétaire général des Nations Unies.

Protocole I additionnel — Protocole I additionnel aux conventions de Genève relatif à la protection des victimes des conflits armés internationaux, adopté le 8 juin 1977, avec entrée en vigueur le 7 décembre 1978. Le protocole I constitue le dossier n° 61 accompagnant la communication du Secrétaire général des Nations Unies.

Rapport Bertini Rapport de mission de Mme Catherine Bertini, envoyée humanitaire personnelle du Secrétaire général, en date du 19 août 2002, qui forme l'annexe 14 du volume 2 des annexes accompagnant le présent exposé.

Rapport 2002 de B'Tselem Le rapport de mai 2002 de B'Tselem (le centre israélien d'information pour les droits de l'homme dans les territoires occupés) intitulé «Land Grab : Israel's Settlement Policy in the West Bank» [Accaparement de territoire : la politique israélienne de peuplement en Cisjordanie], constituant l'annexe 12 du volume 2 des annexes qui accompagnent le présent exposé.

Rapport 2003 de B'Tselem Le rapport d'avril 2003 de B'Tselem intitulé «Behind the Barrier: Human Rights Violations as a result of Israel's Separation Barrier» [Au-delà du mur : les violations des droits de l'homme en conséquence de la barrière de séparation érigée par Israël], constituant l'annexe 13 du volume 2 des annexes qui accompagnent le présent exposé.

Zone fermée La zone, parfois appelée aussi «zone tampon», «zone de soudure» ou «zone de sécurité», formée par le secteur qui sépare la Ligne verte et le mur.

Déclaration de principes La déclaration de principes sur les arrangements intérimaires d'autonomie, signée par Israël et l'Organisation de libération de la Palestine à Washington, D.C., le 13 septembre 1993, dans le cadre du processus de paix d'Oslo, texte publié dans *Palestine Year Book of International Law*, vol. 7 (1992-1994), p. 230; elle constitue le dossier n° 65 qui accompagne la communication du Secrétaire général des Nations Unies.

Rapport Dugard (2003) Le rapport du rapporteur spécial de la Commission des droits de l'homme, M. John Dugard, sur la situation des droits de l'homme dans les territoires palestiniens occupés par Israël depuis 1967, soumis conformément à la résolution 1993/2 A de la commission, Nations Unies, doc. E/CN.4/2004/6 (8 septembre 2003); le rapport constitue l'annexe 6 du volume 2 des annexes qui accompagnent le présent mémoire.

Quatrième convention de Genève La convention de Genève n° IV relative à la protection des personnes civiles en temps de guerre, conclue à Genève le 12 août 1949, 75 *RTNU* 287 (1950); elle constitue le dossier n° 60 qui accompagne la communication du Secrétaire général.

Conventions de Genève Ces conventions regroupent la convention de Genève n° I pour l'amélioration du sort des blessés et des malades dans les forces armées en campagne, la convention de Genève n° II pour l'amélioration du sort des blessés, des malades et des naufragés des forces armées sur mer, la convention de Genève n° III relative au traitement des prisonniers de guerre, et la convention de Genève n° IV relative à la protection des personnes civiles en temps de guerre, conclues le 12 août 1949, 75 *RTNU* (1950).

Ligne verte	Aux fins du présent exposé uniquement, la ligne définie dans l'accord d'armistice conclu en 1949 entre Israël et la Jordanie.
PIDCP	Le pacte international relatif aux droits civils et politiques, 999 *RTNU* 172 (1983); il constitue le dossier n° 62 qui accompagne la communication du Secrétaire général des Nations Unies.
PIDESC	Le pacte international relatif aux droits économiques, sociaux et culturels, 993 *RTNU* 3 (1983); il constitue le dossier n° 63 qui accompagne la communication du Secrétaire général des Nations Unies.
CICR	Le Comité international de la Croix-Rouge.
FDI	Les Forces de défense israéliennes.
CDI	La Commission du droit international des Nations Unies.
Articles de la CDI	Les articles sur la responsabilité de l'Etat pour fait internationalement illicite, adoptés par la CDI le 9 août 2001.
Règlement de La Haye	Le règlement annexé à la convention de La Haye de 1907 n° IV concernant les lois et coutumes de la guerre sur terre, 18 octobre 1907, 36 Stat. 2277, *RT* n° 539; elle constitue le dossier n° 57 qui accompagne la communication du Secrétaire général des Nations Unies.
Territoire palestinien occupé	
ou TPO	Le territoire palestinien de la Cisjordanie, y compris Jérusalem-Est, et de la bande de Gaza, occupé par Israël depuis 1967, ainsi qu'il est expliqué plus en détail au chapitre 7 du présent exposé. Cette expression apparaît parfois dans le présent exposé sous la forme suivante : «Territoire palestinien occupé, y compris Jérusalem-Est».
Accords d'Oslo	Les accords et protocoles conclus entre Israël et l'Organisation de libération de la Palestine dans le cadre du processus de paix d'Oslo, entre 1993 et 1999, et détaillés au chapitre 3 du présent exposé.
Processus de paix d'Oslo	Le processus de paix israélo-palestinien des années 1990, qui a conduit aux accords d'Oslo.
Quatuor	Le groupe comprenant les Etats-Unis, la Fédération de Russie, l'Union européenne et les Nations Unies, responsable des initiatives actuelles de paix, notamment de la feuille de route.
Feuille de route	La feuille de route axée sur des résultats en vue d'un règlement permanent du conflit israélo-palestinien prévoyant deux Etats, Nations Unies, doc. S/2003/259 (2003), entérinée par le Conseil de sécurité des Nations Unies dans sa résolution 1515 adoptée le 19 novembre 2003, Nations Unies, doc. S/RES/1515 (2003); la feuille de route constitue le dossier n° 70 qui accompagne la communication du Secrétaire général des Nations Unies
Mur	Le système intégré de murs de béton, de clôtures (y compris de clôtures électriques), de barrières, de zones avec barbelés, de fossés, de tranchées, de routes de contournement, de chemins de ronde et de tours de garde fortifiées, construit par Israël dans le Territoire palestinien occupé, tel que ce système figure sur les cartes énumérées

dans le volume I des annexes qui accompagnent le présent exposé, y compris le régime (réglementations, mesures, politiques, actions et pratiques) qui s'y rapporte, et tel qu'il est décrit plus en détail au chapitre 6 du présent mémoire.

UNRWA — L'Office de secours et de travaux des Nations Unies pour les réfugiés de Palestine dans le Proche-Orient, établi par la résolution 302 (IV) du 8 décembre 1949 de l'Assemblée générale des Nations Unies.

UNSCOP — La commission spéciale des Nations Unies pour la Palestine, établie par l'Assemblée générale des Nations Unies le 15 mai 1947.

Rapport Ziegler — Le rapport du rapporteur spécial de la Commission des droits de l'homme, Jean Ziegler, sur le droit à l'alimentation dans les territoires palestiniens occupés par Israël depuis 1967, Nations Unies, doc. E/CN.4/2004/10/Add.2 du 31 octobre 2003; le rapport constitue le dossier n° 56 qui accompagne la communication du Secrétaire général des Nations Unies.

4) Structure du présent exposé

15. Le présent exposé comprend trois parties. Le chapitre 2, qui complète la présente partie A, fait valoir que la requête est recevable et que, en accord avec sa jurisprudence constante, la Cour est compétente pour en disposer.

16. La partie B porte sur la genèse de la requête. Elle comprend trois chapitres. Le chapitre 3 donne la chronologie des principaux événements intéressant la Palestine, dans la mesure où ils concernent la requête. Le chapitre 4 explique en quoi les multiples tentatives d'Israël de modifier unilatéralement le statut juridique du Territoire palestinien occupé menacent de trouver leur aboutissement dans la construction du mur, avec les conséquences qui s'y rattachent. Le chapitre 5 examine les pratiques observées par Israël en tant que puissance occupante, en expliquant la situation actuelle en matière de sécurité, une situation rendue explosive en raison du mur. La partie C (chap. 6) examine le tracé et le régime du mur.

17. La partie D examine les aspects juridiques soulevés par la requête. Les deux premiers chapitres (chap. 7 et 8) s'intéressent au droit applicable. Le chapitre 7 fait valoir qu'Israël occupe le territoire palestinien, auquel il est porté atteinte en raison du mur. Le chapitre 8 décrit le droit international applicable dans le Territoire palestinien occupé. Le chapitre 9 décrit les principales violations du droit applicable commises par Israël en raison de la construction du mur et de l'application de son régime. Le chapitre 10 examine les conséquences de ces violations, qui sont une négation du droit du peuple palestinien à l'autodétermination. Les conséquences juridiques pour Israël et la communauté internationale sont examinées au chapitre 11.

18. L'exposé se termine par un résumé des conclusions. Trois appendices sont annexés à l'exposé.

19. Sont annexés au présent exposé un ensemble de cartes et de graphiques (vol. 1), ainsi que quatorze annexes documentaires, composées surtout de rapports publiés de tierces parties relatifs au mur, qui sont reproduites pour la commodité de la Cour (vol. 2).

CHAPITRE 2

LA COUR A COMPETENCE POUR DONNER L'AVIS CONSULTATIF DEMANDE, ET AUCUNE RAISON DECISIVE N'EMPECHE LA COUR DE DONNER SON AVIS

1) La Cour a compétence pour donner l'avis consultatif demandé

20. Le paragraphe 1 de l'article 96 de la Charte des Nations Unies prévoit ce qui suit : «L'Assemblée générale ou le Conseil de sécurité peut demander à la Cour internationale de justice un avis consultatif sur toute question juridique.»

21. Le paragraphe 1 de l'article 65 du statut de la Cour prévoit ce qui suit : «La Cour peut donner un avis consultatif sur toute question juridique, à la demande de tout organe ou institution qui aura été autorisé par la Charte des Nations Unies, ou conformément à ses dispositions, à demander cet avis.»

22. Ces deux dispositions suffisent à établir la compétence de l'Assemblée générale pour demander à la Cour un avis consultatif, et la compétence de la Cour pour donner l'avis demandé[5].

a) *Compétence relative : la requête a été présentée par un organe régulièrement autorisé*

23. Ainsi que la Cour l'expliquait dans sa réponse à la demande la plus récente d'avis consultatif formulée par l'Assemblée générale :

> «Pour que la Cour ait compétence aux fins de donner un avis consultatif, il faut donc tout d'abord que l'organe qui sollicite l'avis soit «autorisé par la Charte des Nations Unies, ou conformément à ses dispositions, à demander cet avis». La Charte, à l'article 94, paragraphe 1, dispose : «L'Assemblée générale ou le Conseil de sécurité peut demander à la Cour internationale de Justice un avis consultatif sur toute question juridique.»»[6]

24. Se référant aux articles 10 à 13 de la Charte, la Cour a conclu que «en l'espèce, l'Assemblée générale a compétence en tout état de cause pour saisir la Cour»[7].

25. En présentant la requête, l'Assemblée générale agit aussi conformément à l'esprit de la recommandation exprimée dans sa résolution 171A (II) du 14 novembre 1947 sur la «nécessité d'un recours accru des Nations Unies et de ses organes à la Cour internationale de justice»[8], et conformément à l'appel lancé par l'ancien Secrétaire général des Nations Unies, M. Boutros-Ghali,

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[5] Ainsi que l'a rappelé la Cour dans son avis le plus récent, «le caractère consultatif de la fonction de la Cour,… est régie par les termes de la Charte et du Statut». *Différend relatif à l'immunité de juridiction d'un rapporteur spécial de la Commission des droits de l'homme, avis consultatif, C.I.J. Recueil 1999*, p. 62, par. 26.

[6] *Licéité de la menace ou de l'emploi d'armes nucléaires, avis consultatif, C.I.J. Recueil 1996*, p. 232, par. 11.

[7] *Ibid.*, p. 233, par. 11.

[8] A/RES/171A (II), Nations Unies, *Répertoire des organes des Nations Unies*, vol. V, art. 92 à 111 de la Charte. Voir aussi le nouvel appel de l'Assemblée contenu dans la résolution 3232 (XXIX), «Examen du rôle de la Cour internationale de Justice».

dans son «Agenda pour la paix», pour que «les organes de l'Organisation … s'adressent plus souvent à la Cour pour obtenir d'elle des avis consultatifs»[9]. Les présidents successifs de la Cour ont appelé l'Assemblée générale à recourir davantage à la compétence consultative de la Cour[10].

b) ***La résolution a été validement adoptée au point de vue de la procédure***

26. La jurisprudence de la Cour atteste la présomption de validité d'une résolution adoptée par un organe régulièrement constitué des Nations Unies. En réponse à l'argument de l'Afrique du Sud selon lequel la résolution d u Conseil de sécurité qui demandait à la Cour un avis consultatif dans l'affaire de la *Namibie* était invalide, la Cour s'était exprimée ainsi : «Toute résolution émanant d'un organe des Nations Unies régulièrement constitué, prise conformément à son règlement et déclarée adoptée par son président, doit être présumée valable.»[11]

27. La résolution A/RES/ES-10/14 du 8 décembre 2003 a été adoptée à la faveur d'un vote enregistré de quatre-vingt-dix voix pour et huit contre. La résolution a été dûment adoptée par la majorité constitutionnellement requise des Membres des Nations Unies qui se sont exprimés sur la question. Elle doit être considérée comme l'expression de la volonté juridiquement valide de l'Assemblée générale.

28. Le nombre d'abstentions et d'absences lors du vote n'a aucun effet sur la validité et la régularité procédurale de la résolution adoptant la requête. L'article 86 du règlement intérieur de l'Assemblée[12] définit les mots «membres présents et votants», qui apparaissent aux paragraphes 2 et 3 de l'article 18 de la Charte des Nations Unies, comme une expression signifiant les Membres qui votent pour ou contre une décision, à l'exclusion des Membres qui s'abstiennent de voter ou qui sont absents lors du vote. Cette règle est confirmée et appliquée de longue date par l'Assemblée générale.

29. En tout état de cause, ainsi que la Cour l'avait dit dans l'avis donné par elle en 1996 à propos de la *Licéité de la menace ou de l'emploi d'armes nucléaires* : «Dès lors que l'Assemblée a demandé un avis consultatif sur une question juridique par la voie d'une résolution qu'elle a adoptée, la Cour ne prendra pas en considération… la répartition des voix lors de l'adoption de la résolution.»[13]

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[9] Boutros Boutros-Ghali, *Agenda pour la paix*, 1992, p. 22.

[10] Voir par exemple *Annuaire de la C.I.J. 1991-1992*, p. 210-211; *Annuaire de la C.I.J. 1992-1993*, p. 252; *Annuaire de la C.I.J. 1994-1995*, p. 213; *Annuaire de la C.I.J. 1995-1996*, p. 281; *Annuaire de la C.I.J. 1997-1998*, p. 292.

[11] *Conséquences juridiques pour les Etats de la présence continue de l'Afrique du Sud en Namibie (Sud-Ouest africain) nonobstant la résolution 276 (1970) du Conseil de sécurité, avis consultatif, C.I.J. Recueil 1971*, p. 22, par. 20; voir aussi *Licéité de l'utilisation des armes nucléaires par un Etat dans un conflit armé, avis consultatif, C.I.J. Recueil 1996*, p. 82, par. 29.

[12] Voir Nations Unies, doc. A/520/Rev.15.

[13] *Licéité de la menace ou de l'emploi d'armes nucléaires, avis consultatif, C.I.J. Recueil 1996*, p. 237, par. 16. Le fait que la résolution renfermant la demande dans cette affaire avait été adoptée avec un nombre substantiel de votes négatifs et d'abstentions (c'est-à-dire, soixante-dix-huit voix pour, quarante-trois contre et trente-huit abstentions) n'a à l'évidence pas empêché la Cour de donner son avis consultatif. *Ibid.*, p. 255, par. 71.

c) ***La résolution adoptant la requête ressortissait à l'Assemblée***

30. Conformément au paragraphe 1 de l'article 96 de la Charte des Nations Unies, l'Assemblée générale «peut demander» à la Cour un avis consultatif. Ayant décidé de présenter la requête, l'Assemblée générale doit être présumée avoir exercé validement son pouvoir dans ce cas particulier. Interpréter d'une manière restrictive le pouvoir de l'Assemblée générale d'introduire une procédure consultative sur une question juridique serait aller à l'encontre de l'intention claire de l'article 96 de la Charte.

31. Contrairement aux «autres organes des Nations Unies et institutions spécialisées», dont le pouvoir de demander des avis consultatifs se limite aux questions juridiques «qui se poseraient dans le cadre de leur activité», le pouvoir de l'Assemblée n'est pas ainsi limité par l'article 96 de la Charte. La Cour a confirmé le pouvoir général conféré à l'Assemblée par la Charte[14].

32. Les pouvoirs de l'Assemblée générale, qui sont généralement exposés au chapitre IV de la Charte des Nations Unies, englobent le pouvoir de «discuter toutes questions ou affaires rentrant dans le cadre de la présente Charte…» (art. 10). La question entre tout à fait dans le champ du mandat étendu de l'Assemblée selon la Charte, un mandat qui englobe une grande diversité d'activités. Ce mandat comprend les questions relatives aux droits de l'homme, à l'autodétermination et à la décolonisation. De plus, l'article 11 de la Charte autorise l'Assemblée générale *a)* à étudier les principes généraux de coopération pour le maintien de la paix et de la sécurité internationales (art. 11, par. 1), et *b)* à discuter toutes questions se rattachant au maintien de la paix et de la sécurité internationales dont elle aura été saisie par l'une quelconque des Nations Unies ou, dans certaines circonstances, par un Etat qui n'est pas Membre des Nations Unies (art. 11, par. 2).

33. Ainsi, les points intéressant la situation des droits de l'homme, l'autodétermination, le recours à la force et autres aspects dans le Territoire palestinien occupé par Israël depuis 1967, y compris les conséquences juridiques de la construction et de l'utilisation du mur dans le Territoire palestinien occupé, entrent parfaitement dans les attributions et activités explicites de l'Assemblée générale telles qu'elles sont énoncées dans son acte constitutif.

34. Ainsi que le confirme la pratique de l'Assemblée générale, l'objet de la requête est un objet que l'Assemblée a régulièrement étudié au fil de ses activités. Son intérêt et son engagement de longue date pour la Palestine et pour le droit à l'autodétermination, ainsi que d'autres droits fondamentaux, du peuple palestinien sont bien connus. Ils se sont manifestés dans les débats annuels de plusieurs des principaux comités de l'Assemblée s'intéressant entre autres à l'autodétermination et à la décolonisation en général, et à la question de la Palestine en particulier; dans les assemblées ordinaires du comité de l'Assemblée pour l'exercice des droits inaliénables du peuple palestinien depuis 1975; dans les débats pléniers concernant la question de la Palestine, et dans les nombreuses résolutions de l'Assemblée sur cette question; dans la tenue de la dixième session extraordinaire d'urgence sur les «actions israéliennes illicites menées dans Jérusalem-Est occupée et dans le reste du Territoire palestinien occupé» (une session qui remonte à 1997, quand

[14] Voir *ibid.*, p. 233, par. 11. Les rédacteurs de la Charte voulaient donner à l'Assemblée générale un *accès général* au système consultatif, et cela a été souligné par un ancien président de la Cour lorsqu'il s'était exprimé devant la Sixième Commission de l'Assemblée générale en 1994. Voir *C.I.J. Annuaire 1994-1995*, p. 219.

Israël avait entrepris de construire une nouvelle colonie au sud de Jérusalem-Est)[15]; et aussi dans la commande de nombreuses études sur la situation des droits de l'homme dans les territoires palestiniens occupés par Israël depuis 1967, y compris la section relative au mur[16]. La pratique de l'Assemblée générale confirme donc à la fois sa compétence dans la présente affaire et son engagement actuel sur la question. L'Assemblée est clairement fondée à connaître les effets juridiques de l'occupation par Israël des territoires palestiniens occupés depuis 1967, et plus particulièrement à connaître les conséquences juridiques du mur que construit aujourd'hui Israël dans le Territoire palestinien occupé, y compris Jérusalem-Est et ses alentours[17].

35. La question soumise concerne une affaire qui intéresse directement les Nations Unies. Les violations de la Charte des Nations Unies sont des affaires de ce genre. Le rapport du 8 septembre 2003 du rapporteur spécial de la Commission des droits de l'homme sur la situation des droits de l'homme dans les territoires palestiniens occupés par Israël depuis 1967, rapport qui est mentionné dans la résolution A/RES/ES-10/14, qualifiait la construction du mur de «conquête en droit international, … interdite par la Charte des Nations Unies…»[18]. Les Nations Unies en général sont fondées à garantir la stricte observation par leurs Etats membres des objets et des dispositions de la Charte, y compris la stricte observation des résolutions adoptées en vertu de la Charte par les principales instances de l'Organisation. Israël néglige de longue date de se conformer aux résolutions applicables du Conseil de sécurité et de l'Assemblée générale, notamment à la toute récente résolution A/RES/ES-10/13 du 21 octobre 2003, ainsi que le confirmait le Secrétaire général des Nations Unies dans son rapport daté du 28 novembre 2003. Il en a résulté la requête de l'Assemblée pour un avis consultatif, requête dont fait état la résolution A/RES/ES-10/14.

d) ***Compétence absolue : il est demandé à la Cour de donner un avis sur une question juridique***

36. Le paragraphe 1 de l'article 96 de la Charte des Nations Unies et le paragraphe 1 de l'article 65 du Statut de la Cour requièrent tous deux que la question formant l'objet de la demande soit une «question juridique». Comme il est expliqué ci-après, l'avis consultatif demandé en l'espèce se rapporte à une «question juridique» au sens de ces dispositions.

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[15] Ainsi, la résolution A/RES/ES-10/13 du 21 octobre 2003, adoptée par cent quarante-quatre voix pour (quatre voix contre) exigeait «qu'Israël arrête la construction du mur dans le Territoire palestinien occupé, y compris Jérusalem-Est et ses alentours, et revienne sur ce projet, qui s'écarte de la Ligne d'armistice de 1949 et qui est contraire aux dispositions pertinentes du droit international». La résolution renfermant la requête pour avis consultatif a été adoptée dans le cadre de la dixième session extraordinaire d'urgence de l'Assemblée.

[16] Voir par exemple le rapport du Secrétaire général des Nations Unies du 28 novembre 2003, Nations Unies, doc. A/ES-10/248. Le rapport du Secrétaire général a été présenté conformément au paragraphe 3 de la résolution A/RES/ES-10/13 de l'Assemblée générale. Cf. *Licéité de la menace ou de l'emploi d'armes nucléaires, avis consultatif, C.I.J. Recueil 1996*, p. 233, par. 12. D'autres exemples récents sont le rapport du comité spécial chargé d'enquêter sur les pratiques israéliennes affectant les droits de l'homme du peuple palestinien et des autres Arabes des territoires occupés (Nations Unies, doc. A/58/311) et le rapport de la Commission politique spéciale pour la décolonisation (Quatrième Commission) (Nations Unies, doc. A/58/473 et Corr.1), mentionnés dans la résolution A/RES/58/99 du 9 décembre 2003 et la résolution A/RES/58/97 du 9 décembre 2003 de l'Assemblée générale.

[17] Cf. *Réserves à la convention pour la prévention et la répression du crime de génocide, avis consultatif, C.I.J. Recueil 1951*, p. 19.

[18] Voir le rapport Dugard (2003), p. 2 et 8, par. 14.

37. Il convient de rappeler qu'il appartient à l'organe demandeur — et non à un Etat Membre — de formuler le texte de la question qu'il souhaite poser[19]. L'objectif de la question est clair : déterminer les conséquences juridiques du mur construit aujourd'hui par Israël dans le Territoire palestinien occupé, à la lumière du cadre juridique international applicable[20].

38. La question posée par l'Assemblée générale en l'espèce est semblable à celle qui a conduit la Cour à donner en 1971 l'avis concernant les *Conséquences juridiques pour les Etats de la présence continue de l'Afrique du Sud en Namibie (Sud-Ouest africain) nonobstant la résolution 276 (1970) du Conseil de sécurité*[21].

39. Comme l'indiquait la Cour dans l'avis qu'elle a donné en 1975 à propos de l'affaire du *Sahara occidental*, les questions : «ont été libellées en termes juridiques et soulèvent des problèmes de droit international… Ces questions sont, par leur nature même, susceptibles de recevoir une réponse fondée en droit … elles ont en principe un caractère juridique.»[22]

40. La Cour peut donner une réponse juridique à la question posée en l'espèce. L'avis consultatif demandé par l'Assemblée générale concerne les «conséquences juridiques» de la construction du mur dans le Territoire palestinien occupé «compte tenu des règles et des principes du droit international, notamment la quatrième convention de Genève de 1949, et les résolutions consacrées à la question par le Conseil de sécurité et l'Assemblée générale». Il ressort clairement de ce texte que la requête concerne les *aspects juridiques internationaux de* la construction du mur, et uniquement ces aspects. Pour statuer sur les conséquences juridiques de la construction du

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[19] Voir *Différend relatif à l'immunité de juridiction d'un rapporteur spécial de la Commission des droits de l'homme, avis consultatif, C.I.J. Recueil 1999*, p. 62, par. 36.

[20] Cf. *Licéité de la menace ou de l'emploi d'armes nucléaires, avis consultatif, C.I.J. Recueil 1996*, p. 238, par. 20.

[21] *Conséquences juridiques pour les Etats de la présence continue de l'Afrique du Sud en Namibie (Sud-Ouest africain) nonobstant la résolution 276 (1970) du Conseil de sécurité, avis consultatif, C.I.J. Recueil 1971*, p. 17, par. 1 : «Quelles sont les conséquences juridiques pour les Etats de la présence continue de l'Afrique du Sud en Namibie, nonobstant la résolution 276 (1970) du Conseil de sécurité ?»

[22] *Sahara occidental, avis consultatif, C.I.J. Recueil 1975*, p. 18, par. 15. Voir aussi *Licéité de la menace ou de l'emploi d'armes nucléaires, avis consultatif, C.I.J. Recueil 1996*, p. 234, par. 13.

mur dans le Territoire palestinien occupé, la Cour doit déterminer les actuels «règles et principes du droit international», les interpréter et les appliquer à la construction et à l'utilisation du mur, pour ainsi offrir une réponse à la question posée en se fondant sur le droit international[23].

41. La question posée en l'espèce n'est pas une question abstraite, mais une question qui se rattache directement à un cas particulier, à une situation concrète, savoir la construction et l'utilisation, par Israël, du mur dans le Territoire palestinien occupé, y compris à l'intérieur et sur les pourtours de Jérusalem-Est[24]. La requête découlait de circonstances marquées par la nécessité pratique et par l'urgence. (Depuis que la requête a été présentée, le rythme de construction du mur semble en effet s'être accéléré.) La question posée ne requiert pas que la Cour se livre à des affirmations spéculatives.

42. La plupart, sinon la totalité, des circonstances essentielles de la présente affaire ne sont pas controversées. L'établissement de certains faits relève ici manifestement de la fonction judiciaire de la Cour et ne saurait faire de la question une question non juridique[25].

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[23] Cf. *Licéité de la menace ou de l'emploi d'armes nucléaires, avis consultatif, C.I.J. Recueil 1996*, p. 234, par. 13. La question de l'applicabilité d'un traité, dont la quatrième convention de Genève mentionnée dans la requête constitue un exemple, à une situation donnée a été examinée par la Cour au titre de sa compétence consultative. Voir par exemple *Interprétation des traités de paix conclus avec la Bulgarie, la Hongrie et la Roumanie, première phase, avis consultatif, C.I.J. Recueil 1950*, p. 71; *Applicabilité de l'obligation d'arbitrage en vertu de la section 21 de l'accord du 26 juin 1947 relatif au siège de l'Organisation des Nations Unies, avis consultatif, C.I.J. Recueil 1988*, p. 26, par. 33; *Applicabilité de la section 22 de l'article VI de la convention sur les privilèges et immunités des Nations Unies, avis consultatif, C.I.J. Recueil 1989*, p. 187, par. 28 : «La question qui fait l'objet de la demande est une question juridique en tant qu'elle implique l'interprétation d'une convention internationale à l'effet de déterminer son applicabilité»; *Différend relatif à l'immunité de juridiction d'un rapporteur spécial de la Commission des droits de l'homme, avis consultatif, C.I.J. Recueil 1999*, p. 187, par. 26. Par ailleurs, la Cour a toujours affirmé que l'interprétation des dispositions d'un traité constitue «une tâche essentiellement judiciaire» (*Certaines dépenses des Nations Unies, avis consultatif, C.I.J. Recueil 1962*, p. 155; *Conditions de l'admission d'un Etat comme Membre des Nations Unies (article 4 de la Charte), avis consultatif, C.I.J. Recueil 1947-1948*, p. 61 :«fixer la portée d'un texte conventionnel … est un problème d'interprétation et, partant, une question juridique»; *Compétence de l'Assemblée générale pour l'admission d'un Etat aux Nations Unies, avis consultatif, C.I.J. Recueil 1950*, p. 6-7; *Interprétation de l'accord du 25 mars 1951 entre l'OMS et l'Egypte, avis consultatif, C.I.J. Recueil 1980*, p. 87, par. 33). Dans son avis le plus récent, la Cour est arrivée à la conclusion que la condition représentée par l'existence d'une question juridique était remplie eu égard au fait que l'avis demandé se rapportait à l'interprétation d'un traité qui était mentionné dans la requête. Voir *Différend relatif à l'immunité de juridiction d'un rapporteur spécial de la Commission des droits de l'homme, avis consultatif, C.I.J. Recueil 1999*, p. 62, par. 26. Les termes de la requête dans ladite affaire n'invitaient pas expressément la Cour à procéder à l'interprétation du traité mentionné dans la requête. Ici, la requête fait expressément état de la quatrième convention de Genève, mais le texte de la requête («compte tenu des règles et des principes du droit international, notamment») atteste que sa portée ne se limite pas à ce traité, ni d'ailleurs à aucun autre.

[24] S'agissant de la nature de la question juridique, la Cour a déclaré : «Selon l'article 96 de la Charte et l'article 65 du Statut, la Cour peut donner un avis sur toute question juridique, abstraite ou autre.» *Conditions de l'admission d'un Etat comme Membre des Nations Unies (article 4 de la Charte), avis consultatif, 1948, C.I.J. Recueil 1947-1948*, p. 61. Voir aussi *Effet de jugements du Tribunal administratif des Nations Unies accordant indemnité, avis consultatif, C.I.J. Recueil 1954*, p. 47, 51; *Conséquences juridiques pour les Etats de la présence continue de l'Afrique du Sud en Namibie (Sud-Ouest africain) nonobstant la résolution 276 (1970) du Conseil de sécurité, avis consultatif, C.I.J Recueil 1971*, p. 27, par. 40; *Licéité de la menace ou de l'emploi d'armes nucléaires, avis consultatif, C.I.J. Recueil 1996*, p. 236, par. 14.

[25] Comme la Cour l'a expliqué dans une affaire antérieure :

43. Les faits sur lesquels la Cour peut s'appuyer pour donner suite à la requête sont bien documentés. Ils ont été soumis à la Cour dans les documents accompagnant la requête, notamment le rapport du Secrétaire général mentionné dans la résolution renfermant la requête[26], et le rapport du rapporteur spécial de la Commission des droits de l'homme des Nations Unies sur la situation des droits de l'homme dans les territoires palestiniens occupés par Israël depuis 1967[27]. Le rapport du Secrétaire général informait les Membres des Nations Unies, en des termes clairs et sans équivoque, que la construction du mur se poursuivait. Il décrivait aussi les activités de construction et autres liées au tracé du mur et à ses répercussions humanitaires et socioéconomiques sur le peuple palestinien. Il n'est pas contesté, et il est amplement attesté par lesdits rapports et par les documents annexés au présent exposé, qu'Israël construit et entretient un mur dans le Territoire palestinien occupé, et il y est précisé ce que sont le tracé, l'emplacement et l'effet, actuels et prévus, du mur.

44. La requête de l'Assemblée sollicite l'avis de la Cour sur les conséquences juridiques de l'édification du mur dans le Territoire palestinien occupé, «selon ce qui est exposé dans le rapport du Secrétaire général». Malgré le contexte différent, les vues exprimées par la Cour dans son avis le plus récent sont ici à propos. Dans ladite affaire, la requête formulée par l'organe d'origine renfermait les mots «compte tenu des circonstances exposées aux paragraphes 1 à 15 de la note du Secrétaire général…». La Cour est donc arrivée à la conclusion suivante : «Il ressort … que, si la note du Secrétaire général a été mentionnée dans cette demande, c'est pour fournir à la Cour les faits de base à garder à l'esprit pour se prononcer.»[28]

45. De même, si le rapport du Secrétaire général était joint à la requête comprise dans la résolution A/RES/ES-10/14, c'était pour signifier à la Cour les faits de base qu'elle devait garder à l'esprit pour se prononcer. La Cour peut donner son avis consultatif en s'appuyant sur les faits de base en question, et au besoin sur d'autres faits de notoriété publique.

> «Le Gouvernement sud-africain a également mis en doute que la Cour soit compétente pour donner un avis ou encore qu'elle doive le faire si, pour cela, il lui faut se prononcer sur des questions de fait d'une portée étendue. Selon la Cour, ce n'est pas parce que la question posée met en jeu des faits qu'elle perd le caractère de «question juridique» au sens de l'article 96 de la Charte. On ne saurait considérer que cette disposition oppose les questions de droit aux points de fait. Pour être à même de se prononcer sur des questions juridiques, un tribunal doit normalement avoir connaissance des faits correspondants, les prendre en considération et, le cas échéant, statuer à leur sujet. Les limites que le Gouvernement sud-africain prétend assigner aux pouvoirs de la Cour n'ont de fondement ni dans la Charte ni dans le Statut.» (*Conséquences juridiques pour les Etats de la présence continue de l'Afrique du Sud en Namibie (Sud-Ouest africain) nonobstant la résolution 276 (1970) du Conseil de sécurité, avis consultatif, C.I.J. Recueil 1971*, p. 27, par. 40.)

De plus, «une question qui présente à la fois des aspects de droit et de fait n'en est pas moins une question juridique au sens de l'article 96, paragraphe 1, de la Charte et de l'article 65, paragraphe 1, du Statut» (*Sahara occidental, avis consultatif, C.I.J. Recueil 1975*, p. 19, par. 17).

[26] Voir Nations Unies, doc. A/ES-10/248. Le rapport du Secrétaire général était fondé surtout sur les informations obtenues des bureaux des Nations Unies sur place dans le Territoire palestinien occupé (y compris d'un suivi sur le terrain), ainsi que sur les rapports de la Banque mondiale, sur une étude du programme alimentaire mondial, sur des documents du ministère israélien de la défense (notamment une carte officielle du tracé du mur, certaines décisions du cabinet israélien et certains ordres militaires), ainsi que sur d'autres documents dont disposaient les Nations Unies, notamment des documents du domaine public. Voir *ibid.,* aux par. 2-3, 6, 9, 23 et 25. Le rapport du Secrétaire général relève aussi qu'Israël et la Palestine ont été consultés lors de la préparation du rapport et renferme un résumé de leurs positions juridiques, aux annexes I et II. Voir *id.,* au par. 2.

[27] Voir le rapport Dugard (2003).

[28] *Différend relatif à l'immunité de juridiction d'un rapporteur spécial de la Commission des droits de l'homme, avis consultatif, C.I.J. Recueil 1999*, p. 62, par. 39. De même, la juridiction à laquelle a succédé la Cour a une fois jugé qu'«elle estime être dans l'obligation … d'accepter les constatations du Comité [nommé par la Société des Nations pour enquêter sur l'affaire à laquelle se rapportait la requête pour avis consultatif] sur des points de fait, à moins que le dossier soumis à la Cour ne contienne des éléments permettant de réfuter ces constatations» (*Compétence de la Commission européenne du Danube, avis consultatif, 1927, C.P.J.I. série B n° 14*, p. 46).

2) Aucune raison décisive n'empêche la Cour de donner l'avis consultatif demandé

46. Nonobstant le caractère non impératif du texte du paragraphe 1 de l'article 65 du Statut de la Cour, et nonobstant la position de la Cour, depuis l'affaire du Statut de la *Carélie orientale* de 1923 (affaire qui sera examinée en détail plus loin), selon laquelle l'exercice de sa fonction consultative est «discrétionnaire», la Cour actuelle n'a jamais usé de son pouvoir discrétionnaire pour refuser de donner l'avis consultatif qu'on lui demandait. Au reste, aucune demande admissible d'avis consultatif présentée par un organe quelconque n'a jamais été refusée.

47. Déjà en 1950, la Cour déclarait : «la réponse constitue une participation de la Cour, elle-même «organe des Nations Unies», à l'action de l'Organisation et, en principe, elle ne devrait pas être refusée»[29].

48. D'une manière encore plus catégorique, la Cour disait en 1956 que seuls des «motifs déterminants» pourraient la conduire à refuser de donner un avis qui lui serait demandé[30]. Plus récemment, la Cour résumait comme il suit sa pratique en matière d'avis consultatifs :

> «La Cour a toujours été consciente de ses responsabilités en tant qu'«organe judiciaire principale des Nations Unies» (Charte, art. 92). Lors de l'examen de chaque demande, elle garde à l'esprit qu'elle ne devrait pas, en principe, refuser de donner un avis consultatif. Conformément à sa jurisprudence constante, seules des «raisons décisives» pourraient l'y inciter… Aucun refus, fondé sur le pouvoir discrétionnaire de la Cour, de donner suite à une demande d'avis consultatif n'a été enregistré dans l'histoire de la présente Cour.»[31]

a) ***La question soumise à la Cour est à la fois urgente et pertinente, et elle est susceptible de produire un effet pratique à l'heure actuelle***

49. La Cour a déclaré que : «[l]a fonction de la Cour est de donner un avis fondé en droit, dès lors qu'elle a abouti à la conclusion que les questions qui lui sont posées sont pertinentes, qu'elles ont un effet pratique à l'heure actuelle et que par conséquent elles ne sont pas dépourvues d'objet ou de but»[32].

50. Par sa résolution A/RES/ES-10/14, l'Assemblée générale demandait à la Cour «de donner d'urgence un avis consultatif» sur la question soumise. L'urgence et la pertinence de la question sont attestées par les événements qui sont survenus depuis que la requête a été reçue par le greffe de la Cour. Ainsi, le 18 décembre 2003, huit jours seulement après réception par la Cour de la requête de l'Assemblée, le premier ministre d'Israël prononçait un discours-programme, lors de la «Conférence Herzliya», dans lequel il exposait un «plan de désengagement». Selon ce plan, Israël prendrait rapidement des mesures unilatérales modifiant les frontières d'Israël avec la Palestine. Le premier ministre a dit expressément : «Israël accélérera considérablement la construction de la barrière de sécurité.» Le discours ne laisse aucun doute sur l'existence de plans visant à imposer un règlement unilatéral au Territoire palestinien occupé par Israël, et cela en le détachant selon le tracé du mur.

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[29] *Interprétation des traités de paix conclus avec la Bulgarie, la Hongrie et la Roumanie, première phase, avis consultatif, C.I.J. Recueil 1950*, p. 71.

[30] *Jugements du Tribunal administratif de l'OIT sur requêtes contre l'Unesco, avis consultatif, C.I.J. Recueil 1956*, p. 86.

[31] *Licéité de la menace ou de l'emploi d'armes nucléaires, avis consultatif, C.I.J. Recueil 1996*, p. 226, 235, par. 14 (y compris renvois à la jurisprudence antérieure).

[32] *Sahara occidental, avis consultatif, C.I.J. Recueil 1975*, p. 37, par. 73.

51. Il est évident qu'un avis consultatif sur la requête présentée par l'Assemblée générale aura une grande valeur pratique et une importance réelle pour l'Assemblée dans l'examen qu'elle fera de la situation. La résolution A/RES/ES-10/13 du 21 octobre 2003, qui constitue la première déclaration de l'Assemblée à propos du mur, évoquait en son paragraphe 3 le fait que «de nouvelles mesures devraient être envisagées, le cas échéant, par les organismes des Nations Unies». Dans ce contexte, il n'importe pas que les aspects juridiques se rapportant au mur soient considérés au sein d'autres tribunes, notamment par la plus haute juridiction d'Israël[33]. Par conséquent, la question posée à la Cour n'est pas dépourvue d'objet ou de but[34].

52. La requête de l'Assemblée générale en l'espèce donne à la Cour l'occasion de préciser d'importantes questions de droit international qui présentent une utilité directe et pratique pour un point qui figure à l'ordre du jour de l'Assemblée générale depuis de nombreuses années et à l'égard duquel l'Assemblée générale joue un rôle considérable[35]. Une réponse de la Cour à la requête qui lui est soumise éclairerait l'Assemblée sur les aspects juridiques soulevés et sur le contexte juridique de la poursuite de son rôle dans l'avenir de la Palestine[36].

53. Un avis consultatif sur la question précise posée à la Cour ne serait pas préjudiciable aux efforts entrepris pour résoudre le conflit global israélo-palestinien. Au contraire, un prononcé de la Cour sur les conséquences juridiques, selon le droit international, de la construction du mur dans le Territoire palestinien occupé pourrait faciliter les efforts en question en établissant d'une manière persuasive la situation juridique actuelle. Un prononcé indépendant et impartial de la Cour sur les conséquences juridiques de la construction du mur par Israël n'est en aucune façon incompatible avec la poursuite de négociations, aujourd'hui ou dans l'avenir.

54. Ce sont plutôt des actions telles que la décision d'Israël de continuer et d'accélérer la construction du mur dans le Territoire palestinien occupé, en particulier Jérusalem-Est et ses alentours, et cela malgré les résolutions des Nations Unies, qui sont bien davantage susceptibles de saper les efforts déployés par les Nations Unies et d'autres instances pour résoudre le conflit global israélo-palestinien. La Palestine conserve l'espoir que la présente procédure consultative convaincra Israël de cesser ses activités de construction. La construction et l'utilisation du mur ne peuvent que réduire à néant les possibilités d'un règlement négocié du conflit israélo-palestinien.

b) ***L'affaire du Statut de la Carélie orientale n'est pas assimilable à la présente affaire***

55. Le précédent constitué par l'affaire du Statut de la *Carélie orientale*, décidée par la Cour permanente de Justice internationale, est sans rapport avec la présente affaire[37]. Dans ladite affaire, le Conseil de la Société des Nations demandait à la Cour permanente si le traité du 14 octobre 1920 conclu entre la Finlande et la Russie, traité qui comprenait une annexe relative à la reconnaissance de l'autonomie de la Carélie orientale, une région russe, liait la République fédérative soviétique de

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[33] Voir *Licéité de la menace ou de l'emploi d'armes nucléaires, avis consultatif, C.I.J. Recueil 1996*, p. 233, par. 12.

[34] Cf. *Sahara occidental, avis consultatif, C.I.J. Recueil 1975*, p. 37, par. 73.

[35] Cf. *ibid.,* p. 37, par. 72 : «De façon générale, l'avis consultatif que rendra la Cour en l'espèce fournira à l'Assemblée générale des éléments de caractère juridique qui lui seront utiles quand elle traitera à nouveau de la décolonisation du Sahara occidental.»

[36] Voir *Applicabilité de la section 22 de l'article VI de la convention sur les privilèges et immunités des Nations Unies, avis consultatif, C.I.J. Recueil 1989*, p. 188-189, par. 31 :«La compétence de la Cour en vertu de l'article 96 de la Charte et de l'article 65 du Statut pour donner des avis consultatifs sur des questions juridiques permet à des entités des Nations Unies de demander conseil à la Cour afin de mener leurs activités conformément au droit.»

[37] *Statut de la Carélie orientale, avis consultatif, 1923, C.P.J.I. série B n° 5*.

Russie. Le Conseil avait adopté sa résolution après que la Finlande, un Etat Membre de la Société des Nations, eut saisi le Conseil d'un litige entre elle-même et la Russie soviétique, un Etat non membre, bien que la Russie soviétique eût rejeté l'invitation à soumettre la question de la Carélie orientale à l'examen du Conseil sur la base de l'article 17 du Pacte de la Société des Nations.

56. Le principal fondement de la décision de la Cour permanente de refuser de donner son avis était que le Conseil de la Société n'avait pas compétence, en l'absence du consentement de la Russie soviétique, pour se saisir de la question selon le pacte et n'avait donc pas compétence pour demander un avis consultatif.

57. Selon la Cour permanente, d'autres «raisons convaincantes» justifiaient son refus de donner un avis consultatif, en particulier le fait que la Cour ne pouvait, en l'absence d'une partie, vérifier des points de fait controversés. La Cour permanente avait fait observer que la demande concernait un différend entre la Finlande et la Russie soviétique, que la Russie soviétique n'était pas membre de la Société des Nations, qu'elle n'avait pas consenti à la compétence de la Cour et qu'elle refusait de participer à la procédure de la Cour[38].

58. Malgré de fréquents arguments avancés par des Etats depuis 1949, pour qui elle devrait s'abstenir dans tel cas particulier de donner un avis consultatif afin de rester dans son rôle judiciaire, la présente Cour n'a jamais donné effet à l'exception appliquée par la Cour permanente dans l'affaire du statut de la *Carélie orientale* et n'a jamais exercé son pouvoir discrétionnaire de ne pas donner un avis consultatif lorsqu'il lui était demandé.

59. De puissants motifs justifient le présent dossier, des motifs qui font que l'unique précédent de la Cour permanente n'est pas applicable ici.

60. D'abord, il convient de noter qu'aucune relation organique n'existait entre la Cour permanente de Justice internationale et la Société des Nations. A l'époque (1923), le Statut de la Cour permanente ne renfermait pas de dispositions traitant expressément de procédures consultatives, ce qui peut expliquer l'attitude prudente affichée par la Cour permanente dans l'affaire du statut de la *Carélie orientale*.

[38] Le refus de la Cour permanente n'était pas principalement fondé, contrairement à ce que d'aucuns ont affirmé parfois, sur l'absence d'un consentement de la Russie soviétique à la procédure consultative elle-même. En réalité, la Cour a dit qu'il était «inutile» en l'espèce de se demander «si des questions pour avis consultatif, pour autant qu'elles se réfèrent à des points de fait actuellement en litige entre deux nations, devraient être soumises à la Cour sans le consentement des parties» (*ibid.*, p. 27). Il ne s'agissait pas de cela. La Cour a fondé en amont son principal motif de refus, à savoir sur l'incompétence du Conseil à se saisir de la question.

61. En revanche, la Cour internationale de justice est l'organe judiciaire principal des Nations Unies, en application de l'article 92 de la Charte des Nations Unies et de l'article 1 du Statut, lequel fait partie intégrante de la Charte. Ce constat, combiné au texte de l'article 96 de la Charte et à celui de l'article 65 du Statut, a d'importantes conséquences sur la manière dont la Cour voit sa compétence consultative, ainsi qu'on l'a montré plus haut[39].

62. Deuxièmement, une importante raison du refus de la Cour permanente de donner un avis consultatif dans l'affaire du statut de la *Carélie orientale* était que la Cour permanente considérait le point central dont elle était saisie comme un point de fait, qu'elle ne pouvait trancher sans la participation des deux Etats parties au litige[40]. Sur cet aspect, selon les propos tenus par la Cour dans l'affaire de la *Namibie*, l'affaire du statut de la *Carélie orientale* «n'est pas pertinente car elle diffère de la présente affaire»[41]. En l'espèce, la Cour n'est pas saisie d'une question faisant intervenir de nombreux points de fait qu'il serait impossible d'éclaircir sans que soient entendus à la fois Israël et la Palestine, ou que la Cour elle-même ne pourrait établir à défaut d'une telle participation. La Russie soviétique, l'Etat qui refusait de coopérer avec le Conseil de la Société des Nations et la Cour permanente, n'était pas à l'époque un Etat membre de la Société des Nations. Israël est un Etat Membre des Nations Unies[42]. La Palestine, pour sa part, est un observateur permanent qui participe pleinement à la présente procédure. La demande concerne un territoire qui a toujours relevé des attributions des Nations Unies depuis ses premiers jours.

63. Qu'Israël participe ou non à la présente procédure est sans conséquence. Comme on l'a dit précédemment à propos de la condition selon laquelle il doit exister une «question juridique», l'établissement de faits relativement simples relève de la fonction judiciaire de la Cour. Ainsi que l'a dit la Cour, «il s'agit de savoir si la Cour dispose de renseignement et d'éléments de preuve suffisants pour être à même de porter un jugement sur toute question de fait contestée et qu'il lui faudrait établir pour se prononcer d'une manière conforme à son caractère judiciaire»[43]. La Cour peut s'appuyer sur les documents des Nations Unies versés dans le dossier pour établir les circonstances de la présente affaire, et sur l'information publique exposant en détail la position d'Israël au regard du mur que construit Israël dans le Territoire palestinien occupé.

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[39] Evoquant l'incidence, sur l'affaire du Statut de la *Carélie orientale*, de la mission de la Cour, celle de «principal organe judiciaire» des Nations Unies, sir Hersch Lauterpacht, une sommité en la matière, avait conclu que l'affaire du Statut de la *Carélie orientale* «ne peut plus être considérée comme un précédent faisant autorité». Sir Hersch Lauterpacht, *The Development of International Law by the International Court* (2e éd., 1958), p. 248. Voir aussi Shabtai Rosenne, *The Law and Practice of the International Court, 1920-1996*, vol. II (3e éd., 1997), p. 1061 («nous comparons ici deux choses dissemblables»).

[40] *Statut de la Carélie orientale, avis consultatif, 1923, C.P.J.I. série B* n° 5, p. 29 : «La question posée à la Cour … *il ne peut y être répondu* qu'à la suite d'une enquête sur les faits qui sont à la base de l'affaire.» (Les italiques sont de nous.)

[41] *Conséquences juridiques pour les Etats de la présence continue de l'Afrique du Sud en Namibie (Sud-Ouest africain) nonobstant la résolution 276 (1970) du Conseil de sécurité, avis consultatif, C.I.J. Recueil 1971*, p. 23, par. 31.

[42] Le site Internet de BBC News renfermait l'information suivante le 9 décembre 2003, lendemain de l'adoption de la requête de l'Assemblée pour un avis consultatif : «Israël a réitéré sa décision de se défendre devant la Cour de La Haye. «Nous l'allons pas nous dérober», a dit Raanan Gissin, conseiller principal du premier ministre israélien Ariel Sharon. «Nous allons mener notre combat à La Haye… Nous présenterons nos arguments…»» Reportage de BBC News, voir le texte à www.bbc.co.uk/2/hi/middle_east/3302637.stm.

[43] *Sahara occidental, avis consultatif, C.I.J. Recueil 1975*, p. 28-29, par. 46.

64. Il est rappelé que la Cour permanente avait fait la précision suivante, dans l'affaire du statut de la *Carélie orientale* : «La Cour ne saurait aller jusqu'à dire qu'en règle générale une requête pour avis consultatif ne puisse impliquer une vérification de faits…»[44] Il existe des sources autonomes d'information sur la construction du mur et sur le régime qu'il représente. Il s'agit notamment des documents des Nations Unies soumis à la Cour[45].

65. Troisièmement, si l'affaire à laquelle se rapporte la présente requête pour avis consultatif est l'objet d'un litige entre Israël et la Palestine, cela n'est pas en soi un motif de refus d'accéder à la requête. Ainsi que l'a dit la Cour : «l'existence, en arrière-plan, d'un différend et de parties que l'avis de la Cour peut affecter ne modifie … pas le caractère consultatif de la fonction de la Cour, consistant à répondre aux questions qui lui sont posées…»[46].

66. Certes, en l'espèce, la question posée par l'Assemblée générale concerne une importante controverse entre Israël et la majorité des Etats Membres des Nations Unies, ainsi qu'il ressort des résolutions A/RES/ES-10/13 et A/RES/A/ES-10/14 de l'Assemblée générale, mais la Cour elle-même a reconnu qu'à l'origine de toute requête pour avis consultatif, c'est probablement une controverse qui a conduit l'organisation à présenter la requête : «Presque toutes les procédures consultatives ont été marquées par des divergences de vues entre Etats sur des points de droit; si les opinions des Etats concordaient, il serait inutile de demander l'avis de la Cour.»[47]

67. Par ailleurs, ainsi que l'a dit la Cour dans l'avis qu'elle a donné en 1973 concernant l'affaire de la *Demande de réformation du jugement n° 158 du Tribunal administratif des Nations Unies :*«l'existence, en arrière-plan, d'un différend et de parties que l'avis de la Cour peut affecter ne modifie … pas le caractère consultatif de la fonction de la Cour, consistant à répondre aux questions qui lui sont posées…»[48].

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[44] *Statut de la Carélie orientale, avis consultatif, 1923, C.P.J.I. série B* n° 5, p. 28. Comme l'a expliqué la Cour, «c'est l'absence concrète des «renseignements matériels nécessaires pour lui permettre de porter un jugement sur la question de fait» (*C.P.J.I. série B n° 5*, p. 28) qui a été considérée par la Cour permanente comme l'empêchant, pour des raisons d'opportunité judiciaire, de donner un avis» (*Sahara occidental, avis consultatif, C.I.J. Recueil 1975*, p. 28, par. 46). Voir aussi Manley O. Hudson, *The Permanent Court of International Justice, 1920-1942, A Treatise* (1943), p. 498 :

> «Dans l'affaire de la *Commission du Danube*, la Cour a dit que, puisque la Société des Nations avait enquêté sur les faits, il n'était pas «opportun d'entreprendre de nouvelles investigations et de nouvelles enquêtes»; le Gouvernement roumain avait refusé d'accepter les faits constatés par un comité de la Société, mais la Cour a estimé qu'elle devrait «accepter les conclusions du comité sur les points de fait à moins que les documents soumis à la Cour ne renferment des preuves propres à les réfuter».» (*Compétence de la Commission européenne du Danube, avis consultatif, 1927, C.P.J.I. série B* n° 14.)

[45] Les sources en question comprennent aussi les sites Internet officiels des Nations Unies. Par exemple, le centre d'information humanitaire du Territoire palestinien occupé, qui relève du bureau des Nations Unies pour la coordination des affaires humanitaires (OCHA), possède un site Internet qui comprend des cartes relatives au mur construit dans le Territoire palestinien occupé, ainsi que des traductions des Nations Unies relatives à des ordres militaires des Forces de défense israéliennes qui font de la «zone de soudure» un secteur fermé. Voir www.reliefweb.int/hic-opt/top.htm.

[46] *Demande de réformation du jugement n° 158 du Tribunal administratif des Nations Unies, avis consultatif, C.I.J. Recueil 1973*, p. 171, par. 14. Pour un résumé de la jurisprudence antérieure de la Cour sur ce point, voir sir Gerald Fitzmaurice, *The Law and Procedure of the International Court of Justice*, vol. 2 (repr. 1995), p. 566-567.

[47] *Conséquences juridiques pour les Etats de la présence continue de l'Afrique du Sud en Namibie (Sud-Ouest africain) nonobstant la résolution 276 (1970) du Conseil de sécurité, avis consultatif, C.I.J. Recueil 1971*, p. 25.

[48] *C.I.J. Recueil 1973*, p. 171, par. 14 (cité avec approbation dans l'affaire du *Différend relatif à l'immunité de juridiction d'un rapporteur spécial de la Commission des droits de l'homme, avis consultatif, C.I.J. Recueil 1999*, p. 62, par. 25).

c) ***Le consentement d'un Etat ou d'un groupe d'Etats n'est pas requis pour que puisse être donné un avis consultatif et aucun Etat ne peut empêcher qu'un tel avis soit donné***

68. Israël a voté contre la résolution adoptant la requête, mais cela ne constitue pas une raison décisive empêchant la Cour de donner un avis consultatif. La Cour a maintes fois affirmé que «l'avis est donné par la Cour non aux Etats, mais à l'organe habilité pour le lui demander…»[49].

69. La Cour a souligné que : «aucun Etat … n'a qualité pour empêcher que soit donné suite à une demande d'avis dont les Nations Unies, pour s'éclairer dans leur action propre, auraient reconnu l'opportunité»[50].

70. La Cour a indiqué que, en devenant partie à la Charte et au Statut, un Etat donne son consentement à l'exercice de la compétence consultative de la Cour[51]. Elle a d'ailleurs fait observer qu'un Etat «*ne pouvait pas validement objecter* à ce que l'Assemblée générale exerce ses pouvoirs … et demande un avis sur des questions intéressant l'exercice de ces pouvoirs»[52]. A l'instar de l'affaire du *Sahara occidental*, la présente affaire n'est pas : «une controverse qui a surgi lors des débats de l'Assemblée générale et au sujet de problèmes traités par elle. Il ne s'agit pas d'une controverse née indépendamment, dans le cadre de relations bilatérales.»[53]

71. En somme, la Cour est fondée «à agir indépendamment de toute expression formelle de consentement de la part de tel ou tel Etat»[54] et, lorsqu'elle donne son avis, elle n'est pas subordonnée au consentement d'un Etat ou d'un groupe d'Etats. Il n'appartient pas à un Etat ou à un organe de juger, plutôt que l'Assemblée générale, du «bien-fondé» ou de l'«opportunité» de la requête ou d'annuler la requête quand l'Assemblée l'a déjà jugée souhaitable.

72. La Cour est même allée jusqu'à tenir les propos suivants : «Il n'appartient pas à la Cour de prétendre décider si l'Assemblée a ou non besoin d'un avis consultatif pour s'acquitter de ses fonctions. L'Assemblée générale est habilitée à décider elle-même de l'utilité d'un avis au regard de ses besoins propres.»[55]

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[49] *Interprétation des traités de paix conclus avec la Bulgarie, la Hongrie et la Roumanie, première phase, avis consultatif, C.I.J. Recueil 1950*, p. 71. Voir aussi *Licéité de la menace ou de l'emploi d'armes nucléaires, avis consultatif, C.I.J. Recueil 1996*, p. 235, par. 14.

[50] *Interprétation des traités de paix conclus avec la Bulgarie, la Hongrie et la Roumanie, première phase, avis consultatif, C.I.J. Recueil 1950*, p. 71; voir aussi *Applicabilité de la section 22 de l'article VI de la convention sur les privilèges et immunités des Nations Unies, avis consultatif, C.I.J. Recueil 1989*, p. 188-189.

[51] *Conséquences juridiques pour les Etats de la présence continue de l'Afrique du Sud en Namibie (Sud-Ouest africain) nonobstant la résolution 276 (1970) du Conseil de sécurité, avis consultatif, C.I.J. Recueil 1971*, p. 23, par. 31.

[52] *Sahara occidental, avis consultatif, C.I.J. Recueil 1975*, p. 24, par. 30; les italiques sont de nous.

[53] *Ibid.,* p. 25, par. 34.

[54] Shabtai Rosenne, *The Law and Practice of the International Court, 1920-1996*, vol. II (3e éd., 1997), p. 989.

[55] *Licéité de la menace ou de l'emploi d'armes nucléaires, avis consultatif, C.I.J. Recueil 1996*, p. 235, par. 16.

d) ***Le simple fait que la question a pu être motivée politiquement ne saurait empêcher la Cour de donner son avis consultatif***

73. La Cour a dit que, en règle générale, elle ne mettra pas en doute l'à-propos de l'action de l'organe d'origine[56].

74. La Cour a toujours affirmé qu'elle «ne saurait attribuer un caractère politique à une requête qui l'invite à s'acquitter d'une tâche essentiellement judiciaire»[57]. Lorsque la Cour est invitée à qualifier une forme particulière de comportement au regard des dispositions du droit international conventionnel ou coutumier, elle accomplit une tâche qui est essentiellement juridique. La question juridique concrète sur laquelle l'avis de la Cour a été demandé concerne la compatibilité de la construction du mur dans le Territoire palestinien occupé avec le droit international. En demandant à la Cour de qualifier le comportement (c'est-à-dire la construction du mur dans le Territoire palestinien occupé) par rapport aux règles du droit positif, l'Assemblée générale invite en effet la Cour à accomplir une tâche qui entre dans l'exercice normal de son pouvoir judiciaire.

75.En ce qui a trait à la requête antérieure de l'Assemblée pour un avis consultatif, la Cour a habilement résumé sa jurisprudence sur les aspects «politiques»[58].

76. Il ressort donc clairement de la jurisprudence de la Cour qu'il n'appartient pas à la Cour de s'enquérir du mobile qui conduit un organe régulièrement autorisé à demander un avis consultatif sur une question juridique entrant manifestement dans la compétence de cet organe, quand bien même ladite question renfermerait un aspect ayant d'autres importantes facettes politiques. Dans la requête soumise à la Cour, les questions juridiques sont claires et la Cour peut y répondre sans chercher à connaître les mobiles politiques, apparents ou occultes, de cette requête, ni ses autres facettes politiques[59].

3) Conclusion

77. Au vu des motifs susmentionnés, la Cour a compétence pour donner un avis consultatif en l'espèce, puisque l'Assemblée générale est habilitée à demander à la Cour un avis consultatif sur l'objet de la requête, et aucune raison décisive n'empêche la Cour de donner son avis sur la question posée.

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[56] *Ibid.*

[57] *Certaines dépenses des Nations Unies, avis consultatif, C.I.J. Recueil 1962*, p. 155; *Conditions de l'admission d'un Etat comme Membre des Nations Unies (article 4 de la Charte), avis consultatif, C.I.J. Recueil 1947-1948*, p. 61; *Compétence de l'Assemblée générale pour l'admission d'un Etat aux Nations Unies, avis consultatif, C.I.J. Recueil 1950*, p. 6-7; *Interprétation de l'accord du 25 mars 1951 entre l'OMS et l'Egypte, avis consultatif, C.I.J. Recueil 1980*, p. 87, par. 33.

[58] *Licéité de la menace ou de l'emploi d'armes nucléaires, avis consultatif, C.I.J. Recueil 1996*, p. 234, par. 13. Selon la jurisprudence antérieure de la Cour, la Cour n'est pas concernée par les mobiles qui ont incité l'organe à présenter la requête, et elle ne tiendra pas compte des circonstances qui ont conduit au dépôt de la requête. Voir par exemple *Conditions de l'admission d'un Etat comme Membre des Nations Unies (article 4 de la Charte), avis consultatif, 1948, C.I.J. Recueil 1947-1948*, p. 61; *Compétence de l'Assemblée générale pour l'admission d'un Etat aux Nations Unies, avis consultatif, C.I.J. Recueil 1950*, p. 6.

[59] Déjà auparavant, la Cour a clairement indiqué que l'existence d'une controverse politique à l'origine de la question posée à la Cour ne constitue pas pour elle une raison de refuser l'avis consultatif demandé. Voir *Conséquences juridiques pour les Etats de la présence continue de l'Afrique du Sud en Namibie (Sud-Ouest africain) nonobstant la résolution 276 (1970) du Conseil de sécurité, avis consultatif, C.I.J. Recueil 1971*, p. 27, par. 27.

PARTIE B

CONTEXTE HISTORIQUE

CHAPITRE 3

CHRONOLOGIE DES PRINCIPAUX EVENEMENTS CONCERNANT LA PALESTINE

1) Le territoire de la Palestine

78. Historiquement, la Palestine est l'entité territoriale qui a été délimitée et définie par la Société des Nations peu après la fin de la première guerre mondiale. Elle a été soumise au régime du mandat (classe «A») instauré par l'article 22 du Pacte de la Société des Nations et la Grande-Bretagne fut désignée puissance mandataire en 1922. Le mandat en ce qui concerne la Palestine entra en vigueur le jour de son approbation par le Conseil de la Société des Nations (29 septembre 1923).

79. Le régime du mandat sur la Palestine intégrait la déclaration Balfour, qui avait été faite par la Grande-Bretagne le 2 novembre 1917. La version finale de la déclaration portait sur l'établissement en Palestine d'un foyer national juif : «étant clairement entendu que rien ne sera fait qui porte atteinte aux droits civils et religieux des communautés non juives de Palestine ainsi qu'aux droits et au statut dont les Juifs jouissent dans les autres pays». Ces deux clauses de sauvegarde ont été intégrées à la déclaration Balfour sur l'insistance du Gouvernement britannique.

80. Entre 1917, année où la Grande-Bretagne était parvenue à expulser les forces ottomanes de Palestine, et 1948, la Grande-Bretagne fut d'abord la puissance occupante puis, à partir de 1923, devint la puissance mandataire en Palestine. A ces deux titres, elle déploya des efforts pour faciliter la création du «foyer national juif». Elle simplifia les formalités d'immigration et supprima les restrictions sur la vente ou sur l'achat de biens fonciers à des immigrants juifs. Cette politique engendra toutefois des conditions propices à un accroissement des tensions et des troubles entre immigrants juifs et la population palestinienne en Palestine.

81. En raison de ces tensions et de la disparition de la Société des Nations, la Grande-Bretagne demanda officiellement au Secrétaire général des Nations Unies, le 12 avril 1947, de convoquer une session extraordinaire de l'Assemblée générale pour la création d'un comité spécial chargé de préparer le débat sur la question de la Palestine[60].

82. Le 15 mai 1947, l'Assemblée générale des Nations Unies adopta une résolution autorisant une commission spéciale sur la Palestine («UNSCOP») composée de représentants de onze pays à étudier la question de la Palestine et à faire des recommandations à ce sujet.

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[60] Ainsi qu'en décida la Cour en 1950 en ce qui concerne l'Afrique du Sud-Ouest (Namibie), la dissolution de la Société des Nations en 1946 n'avait pas mis fin au statut international des territoires sous mandat. L'Assemblée générale assumait l'exercice du pouvoir de surveillance sur tous les territoires sous mandat qui n'étaient pas devenus indépendants avant 1946, que ces territoires aient été placés sous le régime de tutelle ou non. L'exercice de ce pouvoir fut systématiquement confirmé par la Cour dans divers avis consultatifs.

83. Le rapport de l'UNSCOP, rendu public en septembre 1947, contenait deux propositions en ce qui concerne la Palestine. La majorité des membres de l'UNSCOP proposèrent le partage de la Palestine en trois : 1) un Etat arabe, auquel on attribua 42,88 % du territoire de la Palestine historique; 2) un Etat juif, auquel on attribua 56,47 % de ce territoire; et 3) une ville de Jérusalem indépendante couvrant 0,65 % du territoire de la Palestine sous le régime de tutelle des Nations Unies. Le plan proposait en outre une union économique entre l'Etat arabe et l'Etat juif. Le 29 novembre 1947, l'Assemblée générale, qui accordait la préférence au plan de partage de l'UNSCOP, adopta le plan prévoyant la création de deux Etats dans la résolution 181 (II) par trente-deux voix contre dix-huit, avec dix abstentions.

84. Le 15 mai 1948, les troupes et l'administration britanniques se retirèrent de Palestine. Le jour même ou peu après, l'«Agence juive pour la Palestine» déclara unilatéralement un Etat d'Israël souverain en s'appuyant sur la résolution 181 (II) de l'Assemblée générale.

85. La guerre éclata en décembre 1947 et dura jusqu'en janvier 1949. Au cours des six premiers mois, les combats étaient locaux et se déroulaient entre des groupes paramilitaires juifs et les habitants palestiniens. Plus tard, la guerre mit l'armée arabe aux prises avec l'armée israélienne. A la suite de cette guerre, l'armée israélienne occupa environ la moitié du territoire qui avait été attribué aux Etats arabes dans la résolution 181 (II). Le territoire de la Palestine sous mandat était en fait subdivisé en trois zones territoriales. La plus grande tomba sous l'emprise israélienne. La deuxième, l'actuelle Cisjordanie, incluant Jérusalem-Est, tomba sous l'emprise de la Jordanie et fut fusionnée avec le Royaume hachémite de Jordanie le 24 avril 1950[61]. La troisième zone, appelée maintenant bande de Gaza, tomba sous contrôle égyptien et fut placée sous l'administration du Gouvernement égyptien avec l'approbation de la Ligue des Etats arabes, le 13 avril 1950.

86. La guerre se termina à la suite des armistices conclues entre Israël et l'Egypte en février 1949, avec le Liban en mars 1949, avec la Jordanie en avril 1949 et avec la Syrie en juillet 1949. La zone de la Cisjordanie, y compris Jérusalem-Est, fut délimitée dans l'armistice entre la Jordanie et Israël et la ligne d'armistice fut communément appelée «Ligne verte». La zone de la bande de Gaza fut délimitée dans l'Armistice entre l'Egypte et Israël.

87. Le 11 mai 1949, Israël fut admis à l'ONU à la suite de la recommandation faite à l'Assemblée générale par le Conseil de sécurité dans la résolution 69 du 4 mars 1949. En admettant Israël, l'Assemblée générale fit expressément mention, dans sa résolution 273 (III), des efforts d'Israël pour appliquer la résolution 181 (II) et la résolution 194 (III) du 11 décembre 1948, ainsi que des déclarations faites et des explications fournies par le représentant d'Israël devant la commission politique spéciale en ce qui concerne la mise en œuvre desdites résolutions.

88. Le 5 juin 1967 éclata la guerre de Six Jours. Israël parvint à occuper toute la bande de Gaza et toute la Cisjordanie (y compris Jérusalem-Est) en plus d'autres territoires situés en Egypte et en Syrie.

89. Le 22 novembre 1967, le Conseil de sécurité des Nations Unies adopta à l'unanimité la résolution 242 (1967) qui devint la plate-forme principale d'un règlement pacifique au Moyen-Orient. Cette résolution maintient entre autres choses le principe de la non-admissibilité de l'acquisition du territoire par la force et exige que les forces armées d'Israël se retirent des territoires «occupés au cours du récent conflit». La référence dans la résolution aux territoires récemment occupés signifiait de toute évidence que les territoires situés au-delà des lignes d'armistice (incluant, bien entendu, les territoires égyptiens et syriens occupés par Israël en

[61] En juillet 1988, la Jordanie annonça qu'elle rompait ses liens juridiques et administratifs avec la Cisjordanie, abrogeant ainsi l'acte d'union de 1950.

juin 1967). En l'occurrence, ces territoires sont la Cisjordanie, y compris Jérusalem-Est, et la bande de Gaza, auxquels on fait référence dans l'analyse qui suit. [La Cisjordanie et la bande de Gaza furent dès lors désignées sous l'appellation «Territoire palestinien occupé» («TPO»).]

90. Le Gouvernement israélien entama ses fonctions de puissance occupante sur le Territoire palestinien occupé. Depuis 1967, Israël gouverne le Territoire palestinien occupé en vertu des ordres militaires que les commandants de l'armée dirigeant les opérations en Cisjordanie et dans la bande de Gaza donnent de temps à autre. Cette pratique ne changea pas à la suite de la conclusion des accords d'Oslo, malgré que la déclaration de principes[62] et l'entente provisoire[63] exigeaient le retrait du Gouvernement militaire israélien du Territoire palestinien occupé. L'occupation de ce territoire par Israël est examinée en détail dans d'autres chapitres du présent document.

2) Jérusalem

91. En vertu de la résolution 181 (II) concernant le partage, la ville de Jérusalem fut désignée *corpus separatum* sous un régime international particulier et fut administrée par les Nations Unies. Cependant, lorsque la guerre de 1947-1948 éclata, les forces israéliennes occupèrent Jérusalem-Ouest et l'armée jordanienne resta à Jérusalem-Est. La division de fait de la ville de Jérusalem fut reconnue officiellement dans l'armistice entre la Jordanie et Israël de 1949.

92. Le 23 janvier 1950, Israël déclara que Jérusalem était sa capitale. Aucun autre Etat ne reconnut cette déclaration. Cependant, après la guerre de six jours de juin 1967, Israël s'appuya initialement sur la législation locale pour modifier le statut juridique de toute la zone de Jérusalem. Le 27 juin 1967, le Parlement israélien (la Knesset) adopta trois lois en vertu desquelles le Gouvernement israélien intégrait toute la zone de Jérusalem dans les sphères municipales et administratives de son gouvernement. (Pour plus d'information à ce sujet, voir chap. 4.)

93. Le 30 juillet 1980, la Knesset d'Israël adopta la «loi fondamentale» : Jérusalem, capitale d'Israël[64]. L'article 1 dit : «Jérusalem, entière et réunifiée, capitale de l'Etat d'Israël». L'article 2 dit que «Jérusalem est le siège du président de l'Etat, de la Knesset, du gouvernement et de la Cour suprême».

94. L'Assemblée générale des Nations Unies réagit à cette initiative d'Israël en adoptant la résolution 35/169E du 15 décembre 1980, dans laquelle l'Assemblée affirme au paragraphe clé 2 :

> «que l'adoption de la «loi fondamentale» par Israël constitue une violation du droit international et n'affecte pas le maintien en application de la convention de Genève relative à la protection des personnes civiles en temps de guerre, du 12 août 1949, dans les territoires palestiniens et aux autres territoires arabes occupés depuis juin 1967, y compris Jérusalem;...».

La position de l'Assemblée fut maintenue systématiquement dans des résolutions ultérieures[65].

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[62] Articles XIII et XV. Voir note 71 *infra*.

[63] Article X, annexe I, art. 1.5. Voir note 75 *infra*.

[64] Lois de l'Etat d'Israël, vol. 34 (1979/80), p. 209.

[65] Par exemple, 42/209 B, C et D; 44/42 du 8 décembre 1989.

95. Le Conseil de sécurité a également rejeté systématiquement toute tentative de la part d'Israël de modifier le statut juridique de Jérusalem. Dans sa résolution 252 (1968) du 21 mai 1968, le Conseil : «*Considér[ait]* que toutes les mesures et dispositions législatives et administratives prises par Israël, y compris l'expropriation de terres et de biens immobiliers, qui tendent à modifier le statut juridique de Jérusalem sont non valides et ne peuvent modifier ce statut».

96. Cette résolution fut suivie par la résolution 267 (1969) du 3 juillet 1969. En outre, dans la résolution n° 271 du 15 septembre 1969, le Conseil demandait à Israël, dans le paragraphe clé 4, d'observer scrupuleusement les dispositions de la quatrième convention de Genève et du droit international «régissant l'occupation militaire». Dans sa résolution 298 (1971) du 25 septembre 1971, le Conseil : «*Invit[ait] instamment* Israël à rapporter toutes les mesures et dispositions précédentes et à ne prendre dans la partie occupée de Jérusalem aucune autre mesure pouvant viser à modifier le statut de la ville...»

97. Le Conseil de sécurité réagit à la loi fondamentale et adopta la résolution 478 (1980) du 20 août 1980 par quatorze voix contre zéro, avec une abstention, en disant qu'il était profondément préoccupé par l'adoption de la loi fondamentale par Israël. Le Conseil :

> «*Affirm[ait]* que l'adoption de la «loi fondamentale» par Israël constitue une violation du droit international et n'affecte pas le maintien en application de la [quatrième] convention de Genève ... dans les territoires palestiniens et autres territoires arabes occupés depuis juin 1967, y compris Jérusalem;»

et considérait que toutes les mesures prises par Israël, en particulier la «loi fondamentale», étaient nulles et non avenues. Le Conseil pria les Etats qui avaient établi des missions diplomatiques à Israël de les retirer de la Ville sainte.

98. Le Conseil a traité systématiquement Jérusalem comme un territoire occupé et a demandé à Israël d'observer scrupuleusement les dispositions de la quatrième convention de Genève[66].

3) Le peuple palestinien

99. Le 31 décembre 1931, le Gouvernement britannique fit un recensement en Palestine dont les résultats furent publiés dans le *Census of Palestine*[67]. Les résultats indiquent qu'un peu plus d'un million de personnes vivaient alors en Palestine, dont environ 84 % étaient des Arabes palestiniens et environ 16 % des Juifs. La majorité de la population juive était composée d'immigrants récents. Les statistiques officielles les plus récentes concernant la population palestinienne, publiées en décembre 1947, indiquaient qu'il y avait alors 1,3 million de Palestiniens et environ 590 000 habitants juifs. Ces résultats démontrent que, même après l'immigration juive, la majorité de la population était composée de musulmans et de chrétiens palestiniens.

100. Le plan de partage de 1947 attribuait, comme nous l'avons mentionné ci-dessus, moins de 43 % du territoire à environ 70 % de la population et environ 56 % du territoire à environ 30 % de la population. C'est la raison pour laquelle le peuple palestinien avait rejeté le plan.

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[66] Par exemple, résolution 694 du 24 mai 1991 et résolution 1073 du 28 septembre 1996.

[67] E. Mills (ed. 1932) *Census of Palestine 1931 – Population of Villages, Towns and Administrative Area.*

101. A la suite des événements survenus entre 1947 et 1949, le peuple palestinien subit une défaite ultime, se soldant par la perte de 78 % du territoire palestinien et par la subversion de son droit à l'autodétermination, ainsi que par la création d'un grave problème de réfugiés, au moins la moitié des Palestiniens étant déracinés de leurs foyers et de leur territoire.

102. Le 11 décembre 1948, l'Assemblée générale adopta la résolution 194 (III) dans laquelle, au paragraphe 11, elle décide que :

> «il y a lieu de permettre aux réfugiés qui le désirent, de rentrer dans leurs foyers le plus tôt possible et de vivre en paix avec leurs voisins, et que des indemnités doivent être payées à titre de compensation pour les biens de ceux qui décident de ne pas rentrer dans leurs foyers et pour tout bien perdu ou endommagé lorsque, en vertu des principes du droit international ou en équité, cette perte ou ce dommage doit être réparé par les gouvernements ou autorités responsables».

Cette résolution fut rappelée pratiquement chaque année par l'Assemblée générale des Nations Unies.

103. Le 8 décembre 1949, l'Assemblée générale adopta la résolution 302 (IV), qui instituait l'Office de secours et de travaux des Nations Unies pour les réfugiés de Palestine («UNRWA»). Le nombre de réfugiés enregistré par l'UNRWA s'élevait alors à neuf cent quarante mille[68].

104. Cette tragédie prit de plus amples proportions lorsque la Guerre de juin de 1967 donna naissance à une nouvelle classe de réfugiés appelés «personnes déplacées». Leur nombre s'élevait à trois cent vingt-cinq mille. Dans la résolution 237 (1967) du 14 juin 1967, le Conseil de sécurité priait Israël «de faciliter le retour des habitants qui se sont enfuis de ces zones depuis le déclenchement des hostilités».

105. Bien que le nombre de réfugiés et de personnes déplacées ait doublé à plusieurs reprises, leur problème n'est toujours pas résolu.

106. Le peuple palestinien a toutefois été en mesure de faire reconnaître à nouveau son droit à l'autodétermination à l'échelle internationale. Dans la résolution 2649 (XXV) du 30 novembre 1970, l'Assemblée générale est préoccupée par le fait que, en raison de la domination étrangère, de nombreux peuples se voient refuser le droit à l'autodétermination. L'Assemblée condamne les gouvernements qui refusent ce droit aux peuples «auxquels on a reconnu ce droit, notamment les peuples d'Afrique australe et de Palestine». Dans la résolution 2672 C du 8 décembre 1970, l'Assemblée générale :

> «1. *Reconnaît* que le peuple de la Palestine doit pouvoir jouir de l'égalité de droits et exercer son droit à disposer de lui-même, conformément à la Charte des Nations Unies;
>
> *Déclare* que le respect intégral des droits inaliénables du peuple de Palestine est un élément indispensable à l'établissement d'une paix juste et durable au Moyen-Orient.»

[68] Rapport annuel du Secrétaire général sur l'activité de l'Organisation, du 1er juillet 1948 au 30 juin 1949, p. 102.

107. Cette reconnaissance a été confirmée à maintes reprises par l'Assemblée générale et par les autres organes des Nations Unies. A titre de renseignement, la communauté mondiale reconnaît actuellement le droit du peuple palestinien à un Etat indépendant et viable.

4) L'entité représentative palestinienne

108. Après la chute de l'Empire ottoman dans le sillage de la première guerre mondiale et l'occupation de la Palestine par la Grande-Bretagne, un congrès arabe, composé de représentants de diverses villes palestiniennes, se réunit à Haïfa en 1920. Le Congrès élut le comité exécutif arabe («CEA») qui demeura actif jusqu'en 1936, année où lui succéda le haut comité arabe («HCA»), qui fit preuve d'un degré considérable d'efficacité au sein de la communauté palestinienne. Le CEA et le HCA furent reconnus à divers niveaux politiques, y compris par le Gouvernement mandataire. Le HCA comparut devant la commission royale britannique en 1937 comme représentant du peuple palestinien. Le Gouvernement britannique invita également le HCA à participer à la première et à la deuxième conférences de Londres de 1939 et de 1946.

109. Lorsque l'UNSCOP se rendit en Palestine à la recherche d'une solution, il invita le HCA à participer et à exposer les opinions du peuple palestinien. Le HCA a également participé, à titre d'organisme reconnu, aux délibérations de la Première Commission de l'Assemblée générale des Nations Unies, en mai 1947. Le 1er avril 1948, dans la résolution 43 (1948), le Conseil de sécurité invita : «l'agence juive pour la Palestine et le haut comité arabe à envoyer des représentants au Conseil de sécurité en vue de la conclusion d'une trêve entre les communautés arabe et juive de Palestine».

110. Lorsque le plan de partage de l'UNSCOP fut rendu public, le HCA se déclara Gouvernement de Toute-Palestine[69]. Le nouveau gouvernement fut reconnu par cinq Etats arabes et par l'Afghanistan. Il devint membre de la Ligue arabe avec pleins de droits de vote sur toutes les questions concernant la Palestine. Il conserva ce statut jusqu'en 1974, année où lui succéda l'Organisation de libération de la Palestine.

111. Le 20 mai 1964, le Conseil national de la Palestine («CNP») se réunit à Jérusalem et déclara la création de l'Organisation de libération de la Palestine («l'OLP»). Les participants au CNP étaient des Palestiniens représentant leurs communautés respectives. Le CNP élut l'exécutif de l'OLP appelé Comité exécutif qui élut à son tour le président du Comité. Le CNP décida par la suite d'élire un Conseil central pour agir en son nom entre les sessions régulières du CNP.

112. L'OLP affirma qu'elle était le seul représentant légitime du peuple palestinien. Après la guerre de juin de 1967, l'OLP gagna en prestige et fut davantage reconnue. Elle devint membre à part entière de la Ligue des Etats arabes et, en 1973, le sommet arabe, réuni à Alger, reconnut l'OLP comme «seul représentant du peuple palestinien».

113. A l'extérieur de la région arabe, l'OLP obtint une reconnaissance internationale qui accrut son prestige. Outre la reconnaissance par plus de cent Etats sur le plan diplomatique, l'Assemblée générale des Nations Unies adopta la résolution 3236 du 22 novembre 1974 dans laquelle elle reconnut que l'OLP était le «représentant du peuple palestinien...». A la même date, l'Assemblée adopta la résolution 3237, accordant à l'OLP le statut d'observateur et l'invitant à participer aux sessions et aux travaux de l'Assemblée en cette qualité.

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[69] Texte publié dans le *Palestine Yearbook of International Law («Palestine YBIL»)*, vol. 4 (1987/88), p. 294.

114. A sa 1 859e réunion du 4 décembre 1975, le Conseil de sécurité des Nations Unies décida également d'inviter l'OLP à participer à sa discussion concernant les raids israéliens contre les camps de réfugiés palestiniens au Liban. Cette invitation fut lancée à l'OLP avec les mêmes droits de participation que ceux accordés en vertu de l'article 37 et pas de l'article 39 du règlement intérieur provisoire du Conseil. L'article 37 est applicable à «tout membre des Nations Unies qui n'est pas membre du Conseil de sécurité...»; l'article 39 s'applique aux «personnes». Le Conseil invite maintenant régulièrement la Palestine à participer à ses discussions sur la situation au Moyen-Orient, y compris sur la question palestinienne.

115. Le 20 décembre 1998, l'Assemblée générale des Nations Unies adopta la résolution 43/177, selon laquelle l'Assemblée a pris acte de la proclamation de l'Etat palestinien par le Conseil national palestinien, conformément à la résolution 181 (II) de l'Assemblée générale et dans l'exercice des droits inaliénables du peuple palestinien. La résolution a reconnu la proclamation de l'Etat de la Palestine par le CNP le 15 novembre 1998 et, «*a décidé* que, à partir du 15 décembre 1988, la désignation de «Palestine» devrait être employée au sein du système des Nations Unies au lieu de la désignation «Organisation de libération de la Palestine»...».

116. Le 7 juillet 1998, l'Assemblée générale adopta à une majorité écrasante la résolution 52/250, conférant à la Palestine des droits et privilèges supplémentaires de participation, réservés aux Etats membres, y compris le droit de se porter coauteur de projets de résolution sur les questions concernant la Palestine.

117. En raison de cette capacité de représentation et de ce statut, l'OLP signa avec Israël tous les accords et toutes les lettres qui avaient été produits dans le cadre du processus de paix d'Oslo. Le 9 septembre 1993, Yasser Arafat, président du comité exécutif de l'OLP, échangea avec Yitzhak Rabin, premier ministre israélien, des lettres de reconnaissance réciproque par l'OLP et Israël[70]. La déclaration de principes sur des arrangements intérimaires d'autonomie du 13 septembre 1993[71], l'accord sur la bande de Gaza et la zone de Jéricho du 4 mai 1994[72], l'accord sur le transfert préparatoire des pouvoirs et responsabilités du 29 août 1994[73], le protocole relatif à la continuation du transfert des pouvoirs et responsabilités du 27 août 1995[74], l'accord intérimaire israélo-palestinien sur la Cisjordanie et la bande de Gaza du 28 septembre 1995[75], le protocole d'accord sur le redéploiement dans la ville d'Hébron du 17 janvier 1997[76], le mémorandum de Sharm El-Sheikh du 4 septembre 1999[77], le protocole relatif aux voies de passage sûr entre la Cisjordanie et la bande de Gaza du 5 octobre 1999[78] et les arrangements ultérieurs, furent signés et exécutés par l'Etat d'Israël et par l'OLP.

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[70] *The Palestine YBIL*, vol. 7 (1992/1994), p. 230.

[71] *Ibid.,* p. 232.

[72] *Ibid.*, p. 243.

[73] *The Palestine YBIL*, vol. 8 (1994/1995), p. 315.

[74] *Ibid.,* p. 341.

[75] *Ibid.,* p. 353.

[76] *The Palestine YBIL*, vol. 9 (1996/1997), p. 437.

[77] *The Palestine YBIL*, vol. 11 (2000/2001), p. 339.

[78] *Ibid.,* p. 343.

5) L'Autorité palestinienne

118. A la suite de la signature de la déclaration de principes, le Conseil central de la Palestine, agissant au nom du CNP, se réunit à Tunis les 10 et 11 octobre 1993. Au cours de cette réunion, le Conseil avalisa l'accord d'Oslo et décida d'établir l'Autorité palestinienne («AP»), en nommant Yasser Arafat président et l'autorisant à choisir ses membres. Il fut décidé que l'AP devrait rendre compte au comité exécutif de l'OLP.

119. L'AP était structurée comme n'importe quel autre conseil de ministres, un portefeuille étant attribué à chaque membre. Les forces de sécurité palestiniennes qui furent établies demeurèrent sous le commandement de M. Arafat. L'AP resta responsable des négociations avec l'Etat d'Israël, mais l'autorité suprême est l'OLP.

120. Le 20 janvier 1996, des élections générales eurent lieu et les Palestiniens du Territoire palestinien occupé élurent M. Yasser Arafat président et leur premier corps législatif, le conseil législatif palestinien (le «CLP»)[79]. Les Palestiniens vivant à Jérusalem-Est participèrent à ces élections et élurent sept membres du Conseil[80]. Le CLP est composé de quatre-vingt-huit représentants. Ce corps législatif est toujours actif dans le Territoire palestinien occupé malgré l'expiration de son mandat le 4 mai 1999. En raison du climat de coercition qui règne sur le Territoire palestinien occupé, de nouvelles élections n'ont pas encore été possibles.

[79] Cet arrangement est énoncé à l'article IV de l'accord provisoire de 1995.

[80] *Ibid.*, art. II 3).

CHAPITRE 4

TENTATIVES ISRAELIENNES DE MODIFIER LE STATUT JURIDIQUE DU TERRITOIRE PALESTINIEN OCCUPE, Y COMPRIS JERUSALEM-EST

1) Politique et pratique israéliennes en matière d'implantation de colonies : aperçu historique

121. A l'exception de Jérusalem-Est, à aucun moment Israël n'a officiellement annexé le territoire palestinien occupé en 1967. Ce qui ne signifie nullement que son statut juridique ait pour autant été préservé. Les Gouvernements israéliens qui se sont succédé depuis 1968, y ont, en effet, poursuivi une politique de colonisation illicite, y compris à Jérusalem-Est, y transférant une partie de la population civile israélienne[81]. La mise en oeuvre de cette politique fut à l'origine de bouleversements considérables, matériels, juridiques et administratifs et eut pour résultat la saisie de plus de 41,9 %[82] de ce territoire par Israël.

a) *Phases des activités de colonisation*[83]

122. Trois phases sont à distinguer dans ces activités d'implantation de colonies.

i) Première phase : le plan de colonisation Allon

123. Initialement conçu en 1967, le plan Allon, du nom du ministre de la défense, M. Yigal Allon, fut soumis à plusieurs cabinets israéliens successifs de 1968 à 1970. Quoique n'ayant jamais été officiellement approuve[84], ce plan fit, jusqu'en 1977, office de guide pour l'établissement de colonies de peuplement israéliennes en rive occidentale. L'hypothèse de départ était qu'il fallait doter Israël de frontières défendables, suivant le tracé du Jourdain et de sa vallée (dépression du Ghol) ainsi que du désert de Judée. Les frontières sécuritaires devaient être aussi politiques. Seules des colonies de peuplement israéliennes, bordant entièrement la frontière, seraient de nature à leur conférer ce caractère. Des frontières défendables, selon M. Allon, appelaient donc la création d'une chaîne de colonies juives relevant elles-mêmes de la souveraineté israélienne, mais sans pour autant entraîner l'annexion d'une large population palestinienne. Le plan Allon fut la base des plates-formes d'accord (coalition travailliste) de 1974, 1977, 1981, 1984 et 1988 (cf. annexe vol. 1, carte 6, plans israéliens de colonisation dans les territoires palestiniens occupés).

ii) La seconde phase : les colonies «Gush Emunim»

124. *Gush Emunim* (ou bloc des Croyants), un mouvement israélien de droite axé sur une idéologie religieuse, avait été fondé en février 1974, avec pour objectif de coloniser l'intégralité de la «terre d'Israël». L'adoption of sa stratégie par le parti du Likoud, l'alliance de droite qui

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[81] «Question de la violation des droits de l'homme en territoire arabe occupé, y compris en Palestine», rapport de la commission d'enquête sur les droits de l'homme, établi en vertu de la résolution de la commission S-51 du 19 octobre 2000.18.

[82] Rapport B'Tselem 2003, p. 116, annexe 13 du volume 2 de l'annexe accompagnant cet exposé écrit.

[83] Adapté de l'ouvrage de Benvenisti et Méron, *The West Bank Data Project : A Survey of Israel's Policies*, American Enterprise Institute for Public Policy Research, Washington D.C. 1984.

[84] Gazit, Shlomo, *La carotte et le bâton, politique israélienne en Judée et Samarie*, 1967-68, ouvrages B'nai B'rith, Washington D.C. 1995, p. 156-7.

s'opposa au parti travailliste et remporta les élections de 1977, marquait un changement historique par rapport à la politique travailliste de compromis territorial. La stratégie colonisatrice *Gush Emunim* fut exposée par Mattitiahu Drobles dans le cadre de ce qu'il est convenu d'appeler le plan Drobles. Elle reposait sur les principes suivants:

— les colonies ne devaient pas être isolées. «Auprès de chaque colonie existante il fallait en construire d'autres, afin de former des blocs»;

— un barrage de colonies devait être construit pour «inspirer un sentiment de sécurité aux colons de la vallée du Jourdain — notre premier mur défensif à l'Est — et leur éviter de se retrouver pris en étau à l'est et l'ouest entre des populations hostiles»;

— les colonies étaient censées morceler la continuité territoriale palestinienne. Pour ce faire, elles devaient s'insérer «entre les centres de population palestiniens et autour», avec pour objectif d'empêcher, autant que faire se peut, le développement d'un autre Etat arabe dans ces régions. Il devenait malaisé pour la population minoritaire ainsi séparée par des colonies juives de constituer la moindre continuité territoriale ou unité politique.

125. Toutefois, en raison du faible nombre de colons assez motivés sur le plan idéologique pour quitter les régions métropolitaines et aller s'exiler au loin, dans de petites colonies isolées, la politique d'installation des Juifs israéliens dans les régions montagneuses centrales de la rive occidentale ne fut pas un succès.

iii) La troisième phase : la banlieue

126. Au cours de la troisième phase, une nouvelle stratégie fut élaborée, qui insistait sur les objectifs démographiques, outre sécuritaires et idéologiques. Le gouvernement du Likoud (1977-84) tenta d'attirer l'Israélien moyen, désireux d'améliorer sa qualité de vie. On espérait que ces colons banlieusards, afin de protéger l'investissement économique qu'ils avaient fait pour l'amélioration de leur qualité de vie, formeraient un lobby fort qui empêcherait toute solution politique basée sur le compromis territorial. Les colonies de Cisjordanie devenaient des banlieues d'accès facile à partir des grandes métropoles israéliennes.

127. Avec l'adoption de cette stratégie, le nombre de colonies commença à grimper. L'année 1984 enregistra une croissance de 60,5 %, qui fit passer la population des colons de 27 000 en 1983 à 44 146 en 1984. En 1993, date de la signature de la déclaration de principes entre Israël et l'OLP, l'on comptait 120 000 colons en Cisjordanie (en excluant Jérusalem) qui vivaient dans 150 colonies de peuplement, ainsi que 160 000 à Jérusalem-Est vivant dans 9 colonies. A l'heure actuelle, il existe environ 395 000 colons israéliens vivant en Cisjordanie, dont 177 000 à Jérusalem-Est[85] (voir vol. 1, images 24-28).

b) *Méthodes d'appropriation des terres pour bâtir des colonies israéliennes*

i) Les terres sont proclamées terres de l'Etat

128. Au début de l'occupation, les terres appartenant aux Juifs avant 1948 et administrées par le gardien jordanien de la propriété ennemie *(Jordanian Custodian of Enemy Property)* en Cisjordanie, était estimée à 30 000 dunums sur une superficie totale de 5,50 millions de dunums

[85] Bureau israélien central des statistiques, 2002.

(un dunum représente 1000 mètres carrés). Ces terres se trouvaient principalement dans la zone métropolitaine entourant Jérusalem et le bloc Etzion, au sud de Jérusalem. Déjà en 2003, les appropriations de terre pour construire, entre autres, les colonies israéliennes de la rive occidentale (y compris Jérusalem) représentaient 2 346 000 dunums, c'est-à-dire 41,9 % de la superficie totale de la rive occidentale[86]. Israël a prétendu ne pas s'être emparé de terrains appartenant à des privés pour l'usage des colons israéliens — uniquement des terres du domaine public ou de «l'Etat». L'argument relatif à l'illicéité de l'utilisation des ressources naturelles (y compris la terre) dans les territoires occupés — au bénéfice de l'occupant et le transfert de la population — de l'occupant vers le territoire occupé est évoquée au chapitre 9, ci-après. Notre propos est ici de répondre à l'allégation israélienne selon laquelle les colonies de peuplement auraient été établies sur des «terres domaniales» et n'auraient conduit à aucune confiscation, par Israël, de terres palestiniennes privées dans le Territoire palestinien occupé.

129. D'après la Banque mondiale[87], la superficie totale des terres domaniales, en l'occurrence les terres cadastrées sous le nom du Gouvernement jordanien avant le début de l'occupation, est estimée à environ 13 % du territoire total de la Cisjordanie.

130. Pourtant, en 1984 déjà, Israël proclamait que 40 %[88] de ce territoire était domaine de l'Etat, réservé exclusivement à l'usage de la population juive d'Israël. Par quel subterfuge juridique Israël parvint-il à faire passer de 13 à 40 % la proportion des terres appartenant à cette catégorie ?

131. Une étude de 1993 de la Banque mondiale sur le droit foncier conclut que le code ottoman de propriété foncière ne reconnaissait pas la notion de «terre publique» ou «de domaine de l'Etat». Selon le raisonnement de la Banque :

> «Au début du mandat, le territoire de la Palestine se divisait en deux catégories : le *waqf* (biens de main-morte à vocation caritative ou religieuse, administrés par les tribunaux de la Shari'a islamique) et le *mulk* (toutes les terres non comprises dans le *waqf*). Le code de propriété foncière considérait toutes les terres *mulk* comme appartenant d'abord au sultan. Des étendues de terre importantes étaient données à perpétuité aux résidents et imposées en conséquence. Elles étaient généralement propriété résidentielle, urbaine ou rurale et un titre de propriété *(taboo)* était donné au propriétaire et aisément cessible en modifiant le nom du propriétaire au cadastre qui était conservé, en partie, pour la commodité du percepteur. Les terres qui n'étaient ni urbaines, ni résidentielles tombaient sous trois catégories : *miri*, *matrouk* and *mawat*. Les terres *Miri* pouvaient être considérées comme privatives si elles étaient cultivées. En revanche, si elles venaient à tomber en friche ou n'étaient pas utilisées, elles devenaient *mahlul* au bout de trois ans et étaient mises à la disposition d'un autre usager (ce qui en faisait une source continue de revenus fiscaux). Les terres *Matrouk* étaient laissées à l'usage du public : par exemple, les routes, parcs ou pâturages. Le sultan en demeurait propriétaire, mais l'usage en était concédé à un groupe, village ou district donné, qui était alors chargé de son entretien. Les terres *Mawat* étaient des terres vacantes qui n'étaient possédées ou utilisées par personne en particulier, ni

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[86] Rapport B'Tselem de 2002, annexe 12 de l'annexe, vol. 2, accompagnant cet exposé. Les auteurs estiment à 5 608 000 dunums la superficie totale de Cisjordanie qui inclut les zones annexées à Jérusalem. Ce chiffre n'inclut pas le no man's land ni la superficie correspondante de la Mer morte.

[87] Banque mondiale, *Développer le Territoire occupé: investir dans la paix*, vol. 3, développement du secteur privé, Banque mondiale 1993, p. 113.

[88] Rapport sur la saisie de territoires : politique israélienne d'implantation de colonies, mai 200 *(sic)*, *op. cit.*, p. 51.

> individu ni groupe. Elles étaient considérées comme si éloignées d'une ville ou d'un village que la voix humaine n'y était pas entendue. Le code ottoman de propriété foncière ne reconnaissait pas les terres «publiques» ou «domaine de l'Etat».»[89]

132. La notion de «terres domaniales» fut introduite au cours du mandat britannique par une ordonnance de 1922[90]. Celle-ci définit les terres publiques comme étant «toutes les terres appartenant à la Palestine en vertu de traités, d'accords ou de successions, ainsi que toutes autres terres pouvant être acquises à des fins de service public ou autres». Les droits de propriété du sultan se voyaient cédés au Haut Commissaire britannique.

133. Il ressort clairement de la définition que le domaine public était limité aux terres sous contrôle du gouvernement et utilisées en exécution de ses projets. Il ne comprenait pas les terres non concédées au public, c'est-à-dire les terres *miri*, *mawat*, et *matrouk*.

134. Le contrôle jordanien civil de la rive occidentale dura de 1951 à 1967. Conformément à sa loi de réforme agraire, la Jordanie y organisa l'implantation et se mit à recenser et à cadastrer tous les terrains. Lorsque la guerre de 1967 éclata, le processus n'était pas encore parachevé. A peine 40 % des terres avaient été cadastrées. Comme indiqué plus haut, parmi celles-ci, 13 % l'étaient sous le nom du Gouvernement jordanien[91].

135. Il n'était pas d'usage alors pour le Gouvernement jordanien — maintenant non plus, d'ailleurs — de considérer toutes les terres tombant dans la catégorie *waqf* ou *mulk* comme terres domaniales. Il est donc correct de conclure qu'en juin 1967, les terres de l'Etat ne représentaient que 13 % des terres cadastrées sous le nom du Gouvernement jordanien en rive occidentale.

136. Lors de son occupation du Territoire palestinien occupé en 1967, Israël se mit en devoir de faire passer sous son contrôle les terres cadastrées sous le nom du Gouvernement jordanien, mais sans toutefois s'en rendre propriétaire. En vertu de l'ordonnance militaire n° 59, ces terres furent commises à la garde du gardien du domaine de l'Etat *(Custodian of Government Property)*.

137. En 1968, Israël suspendit le processus d'inscription au cadastre des terres palestiniennes, entamé en 1928 à l'époque du mandat britannique. La procédure était complexe mais avait offert des garanties considérables aux requérants, surtout dans les affaires de pâturages et de terres arables[92].

138. Vers la fin de 1979, la direction israélienne du gardien des terres de propriétaires absents *(Office of the Custodian of Absentee Property)* entama une procédure de recensement des terres de Cisjordanie, afin d'évaluer la superficie des terres privées (c'est-à-dire cadastrées) et publiques. Comme nous l'avons déjà indiqué, cette étude conclut que 40 % de toutes les terres de Cisjordanie pouvaient être déclarés terres de l'Etat[93]. Les responsables israéliens parvinrent à gonfler ainsi ce pourcentage en partant de l'hypothèse fallacieuse que les terres de Cisjordanie

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[89] Banque mondiale. *op. cit.*, p. 113.

[90] Ordonnance de 1922, citée dans *Les lois de la Palestine*, Londres (1933), vol. III, p. 2569.

[91] Banque mondiale, *op. cit.*, p. 113.

[92] Ordonnance militaire 291 (1968).

[93] Banque mondiale, *op. cit.*, p. 114-115.

étaient réputées domaniales à moins d'avoir été soit cadastrées, soit cultivées continûment sur une période d'au moins dix ans[94]. Dans les deux cas, la charge de la preuve qu'il s'agissait bien de terres privées, incombait aux Palestiniens faisant valoir leur droit de propriété sur elles[95].

139. Alors que l'occupation militaire israélienne avait eu pour effet de suspendre le processus d'inscription au cadastre des terres palestiniennes, Israël poursuivit celle de ses colons à la faveur des déclarations unilatérales du commandant de la zone, selon lesquelles de vastes portions de territoire étaient terres d'Etat. Ceci conduisit à l'inscription de terres nouvelles (la majorité en fait) sous le nom du Gouvernement israélien et d'institutions semi-gouvernementales, au bénéfice des colons israéliens. En 1986, quasiment toutes ces terres avaient été cédées au gardien du domaine de l'Etat *(Custodian of Government Land)* et avaient passé sous la juridiction administrative des Conseils israéliens chargés d'encadrer l'implantation en Territoire palestinien occupé *(Settlement Councils in the Occupied Territory)*[96].

140. Avant qu'Israël n'occupe la rive Occidentale, il n'y avait qu'un cadastre unique pour tous les habitants de la région, auquel le public avait librement accès. Après 1967, Israël en restreignit l'accès et en créa un autre. Ce nouveau cadastre, créé en vertu d'une ordonnance militaire israélienne[97], était utilisé exclusivement pour l'inscription de terres sous le nom de propriétaires israéliens. Il était tenu, non en Cisjordanie mais en Israël et pour finir, il fusionna avec les registres de l'administration israélienne de la propriété foncière *(Israeli Land Administration Authority)* en Israël, auprès de laquelle les terres domaniales israéliennes étaient cadastrées.

141. Ainsi, le cadastre cisjordanien *(Land Registration Department)* qui, jusqu'en 1967, était le mode d'inscription unique de toutes les terres cisjordaniennes, ne servit plus qu'à l'inscription des seules terres laissées à l'usage des Palestiniens. Le cadastre israélien, en revanche, servait désormais à l'inscription des terres sous contrôle du Gouvernement israélien et réservées aux colons israéliens. De la sorte, la saisie par Israël de quelques 41,9 % du territoire palestinien était consommée. Quant à la portion restante, elle demeura entre les mains des Palestiniens mais était menacée de saisie à tout moment par les forces israéliennes. Tel est leur cas aujourd'hui encore.

ii) Autres modes de saisie des terres

142. Dans leur quête de nouvelles terres en territoire occupé, les autorités israéliennes avaient, selon Méron Benvenisti[98], «usé de tous les moyens juridiques ou quasi-juridiques existants, en inventant sans cesse de nouveaux pour parvenir à leurs fins». Ces méthodes comprenaient l'acquisition de terres appartenant aux Palestiniens qui se trouvaient hors de Cisjordanie au début de l'occupation (les terres des propriétaires absents, estimées à 430 000 dunums[99]), expropriations à des fins d'utilité publique (représentant 150 000 dunums qui furent saisis ou réservés à une saisie ultérieure en 1988)[100], réquisition à des fins militaires (50 000 dunums en 1988)[101] et bouclage de

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[94] Shehadeh, Raja, *Le droit de l'occupant*, Israël, Institut d'études palestiniennes, Washington, D.C 1985, p. 31. Benvenisti, Méron et Shlomo Khayat, «Atlas de la Rive occidentale et de Gaza», *Le Jérusalem Post*, 1988, p. 61.

[95] Ordonnance militaire 364 (1969).

[96] Banque mondiale, *op. cit.*, p. 115.

[97] Ordonnance militaire 569, concernant l'enregistrement des transactions dans les territoires à statut particulier, 1974.

[98] Projet de base de données de Cisjordanie, *op. cit.*, p. 30.

[99] Projet de base de données de Cisjordanie, *op. cit.*, p. 30.

[100] «Atlas de Cisjordanie et de Gaza», *op. cit.*, p. 62.

zones à des fins militaires, représentant un million de dunums en 1988. Toutefois, aucune des méthodes précitées n'avait fait passer sous contrôle israélien autant de terres que celle consistant à considérer les terres non cadastrées comme tombant dans le domaine public et relevant du contrôle du Gouvernement israélien, qui les affectait ensuite à l'usage exclusif des colons israéliens.

143. En dépit des aspects territoriaux des accords d'Oslo, de la déclaration de principes signée entre Israël et l'OLP en 1993, ainsi que de l'accord intérimaire signé en 1995, l'entrée en vigueur de ces instruments ne permit pas aux Palestiniens de modifier les politiques et pratiques illégales à la faveur desquelles Israël avait acquis la majorité des terres de la rive gauche. Lorsque, conformément à l'accord intérimaire, Israël transféra la juridiction relative à l'inscription des terres au cadastre aux Palestiniens, il ne s'agissait que du cadastre cisjordanien, pas israélien. Aussi, la majeure partie des terres sous contrôle israélien direct et exclusif et réservées aux colons, demeura hors du contrôle palestinien. Ce fut en vain que les négociateurs palestiniens tentèrent de modifier cet état de choses en élargissant la définition de l'inscription des terres de l'article 22, annexe III.

iii) Planification de l'usage des terres, employée comme méthode pour restreindre l'usage des terres par les Palestiniens

144. L'inscription des terres au cadastre n'était pas le seul procédé qui avait permis de réserver les terres palestiniennes à l'usage des colons israéliens. La planification urbaine avait joué un rôle tout aussi important en imposant l'acquisition de terres palestiniennes au bénéfice des colons israéliens et en établissant des structures séparées pour les colonies.

145. Les lois palestiniennes en rive occidentale reconnaissent quatre types distincts de plans de développement : plans régionaux, plans d'ébauche, plans détaillés et plans de morcellement. Deux plans régionaux furent préparés sous le mandat britannique. Le premier fut le plan régional de Samarie (appelé «S15»), couvrant la partie septentrionale de la Cisjordanie et le second le plan régional de Jérusalem (appelé «RJ5»), couvrant la majeure partie de la Cisjordanie. Les plans régionaux avaient pour objet d'offrir un contexte à la préparation de plans d'ébauche pour les villages.

146. La haute Autorité israélienne de la planification en Cisjordanie a prétendu avoir découvert ces vieux plans régionaux en 1980 (dans le cas du RJ5) et en 1985 (dans le cas du S15)[102]. Des amendements leur furent par la suite apportés pour permettre la localisation des colonies israéliennes et de vastes secteurs furent réservés pour leur expansion ultérieure. La population palestinienne avait au moins quadruplé depuis la date de préparation de ces plans, sans que les modifications ou amendements introduits tiennent le moindre compte de ce facteur[103]. Ces plans, sous leur forme amendée, avaient pour double objet de restreindre la croissance palestinienne et faire la place large à l'établissement et au développement des colonies israéliennes[104].

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[101] «Atlas de Cisjordanie et de Gaza», *op. cit.*, p. 62.

[102] «De l'occupation aux accords intérimaires», p. 83.

[103] «De l'occupation aux accords intérimaires», *op. cit.*, p.83.

[104] «De l'occupation aux accords intérimaires», p. 83; «Atlas de Cisjordanie et Gaza», p. 55-56; rapport B'Tselem 2002, p. 89, annexe 12 de l'annexe, vol. 2, accompagnant cet exposé.

147. L'un des amendements à ces plans régionaux revêtit la forme d'un plan régional partiel d'ébauche d'un réseau routier (plan n° 50). Il reposait sur deux plans antérieurs préparés en Israël : le plan routier T/M/A/3 et le plan de 1983-1986 préparé par l'Organisation sioniste mondiale, qui visaient à intégrer les réseaux routiers cisjordanien et israélien, pour relier les colonies à Israël en contournant les centres de population palestiniens[105].

148. En 1967, l'artère palestinienne principale de transport en Cisjordanie traversait la région du nord au sud. Cependant, au début des années soixante-dix, Israël commença à introduire un réseau de voies de contournement allant d'est en ouest, dont l'objectif, défini par le ministre de la défense israélien était de :

> «permettre aux [Israéliens] de se déplacer à travers les Territoires occupés sans avoir à traverser les centres de population palestiniens;
>
> permettre aux Israéliens de traverser la Ligne verte en empruntant des raccourcis;
>
> maintenir un «tissu conjonctif vital» reliant les blocs de colonies israéliennes; et
>
> veiller à éviter tout trafic palestinien à travers les colonies.»[106]

149. Les routes initiales allant d'est en ouest et bâties au début des années soixante-dix par Israël, puissante occupante, relient les colonies de la vallée du Jourdain avec les zones côtières de son territoire[107]. L'introduction du plan n° 50 en 1983-84 institua un vaste réseau routier reliant est et ouest, dont le but était d'«intégrer les réseaux israélien et cisjordanien et promouvoir la construction de colonies juives dans toute la Cisjordanie»[108]. Permettre l'accès aux zones d'implantation permettrait aussi de répondre à la demande accrue dans ces zones[109].

150. Lorsque le plan de réseau routier n° 50 fut déposé en 1984, mille six cents contestations furent faites à son encontre par des Palestiniens qui se sentaient lésés par les dommages considérables qu'il allait causer à leurs terres[110]. Le comité spécial, entièrement composé d'officiers israéliens, qui était chargé de statuer sur ces contestations décida, à sa séance du 12 mars 1991, de les rejeter[111].

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[105] «De l'occupation aux accords intérimaires», *op. cit.*, p.83.

[106] Contrôleur de l'Etat, rapport annuel 48 (en Hébreu) (Jérusalem; 1998), p. 1032-1033, cité dans B'Tselem (2002) «Land Grab : Israel's Settlement Policy in the West Bank», p. 50.

[107] Projet de réseau routier israélien pour la Cisjordanie. Question posée à la Cour internationale de Justice, annexée à la lettre en date du 5 février 1985 du président du comité sur l'exercice par le peuple palestinien de ses droits inaliénables adressée au Secrétaire général. A/40/119; S/16943, 7 février 1985.

[108] Benvenisti, Méron, «Atlas de Cisjordanie et de Gaza, le projet de base de données relatives à la Cisjordanie», p. 35.

[109] Benvenisti, Méron, «Atlas de Cisjordanie et de Gaza, le projet de base de données relatives à la Cisjordanie», p. 35.

[110] Raja Shehadeh, «De l'occupation aux accords intérimaires : Israël et les Palestiniens», *Kluwer International*, 1997, p. 83.

[111] Raja Shehadeh, «De l'occupation aux accords intérimaires : Israël et les Palestiniens», *Kluwer International*, 1997, p. 83.

151. Tout au long du processus d'Oslo, la construction des routes de contournement se poursuivit au même rythme, parallèlement à l'expansion des colonies. Entre 1994 et 1997, des voies de contournement furent construites sur 159,2 kilomètres; en 1999, les autorités israéliennes chargées de la planification approuvèrent quatorze nouvelles voies de contournement, chose qui entraîna la confiscation de 10 219 dunums (2532 acres) de terres palestiniennes[112]. En 2000, Israël avait réquisitionné environ 160 000 dunums, afin de construire son réseau de voies de contournement d'une longueur de 400 kilomètres[113].

152. Pendant plus de trois ans, les Palestiniens n'eurent qu'un accès limité à ces routes construites sur sol palestinien. Depuis le début de la seconde Intifada, en septembre 2000, quelques sept cent cinquante barrages routiers et barrières avaient été érigés, empêchant les Palestiniens d'utiliser les anciennes routes[114], tout en continuant à leur restreindre l'accès aux nouvelles, créées conformément au plan n° 50[115].

153. De même, les limites des centres de population palestiniens, villes ou villages, avaient été tracées par des plans de zonage obligatoires, parachevés par Israël en Territoire palestinien occupé avant la passation de pouvoirs en faveur de l'Autorité palestinienne. La raison en était que les régions sur lesquelles cette dernière détenait une juridiction territoriale étaient déterminées dans l'accord intérimaire et ne pouvaient être étendues qu'avec l'assentiment d'Israël.

154. Avant la signature de la déclaration de principes de septembre 1993, des plans d'ébauche pour environ quatre cents villes et villages palestiniens avaient déjà été élaborés[116], principalement par l'autorité israélienne de planification de la Cisjordanie. Dans la majorité, il s'agissait de plans grossièrement tracés au marqueur sur des photographies de vues aériennes[117]. Le détail le plus frappant de ces plans rudimentaires étaient leur tracé. Plutôt que de délimiter la zone que devaient couvrir les politiques de planification, les limites étaient celles de la zone dans laquelle le développement palestinien urbain devait être entièrement circonscrit[118].

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[112] Question de la violation des droits de l'homme, *supra*, note 87.

[113] Question de la violation des droits de l'homme dans les territoires arabes occupés, y compris la Palestine, rapport de la commission chargée d'enquêter sur les droits de l'homme établie en vertu de la résolution de la commission S-51 du 19 octobre 2000, p. 18.

[114] «La barrière de la Cisjordanie : accès humanitaire et le mur de Jérusalem», bureau des Nations Unies pour la coordination des affaires humanitaires, 3 décembre 2003, p. 5; voir www.reliefweb.int-hic-opt.

[115] En dépit de la rédaction en apparence inclusive de l'article 27, annexe III de l'accord intérimaire de 1995, l'Autorité palestinienne n'avait aucun contrôle sur la majeure part du réseau routier en Cisjordanie, parce que ce dernier se trouvait dans ce que l'accord désignait comme zone C, qui devait demeurer sous la juridiction territoriale exclusive d'Israël. L'article 27 1), annexe III, énonce :

> «Les pouvoirs et responsabilités afférant à la planification et au zonage en Cisjordanie et dans la bande de Gaza seront transférées par le gouvernement militaire et son administration civile à la partie palestinienne. Ceci englobe la conception, la préparation, la modification et l'abrogation de projets de planification ainsi que de la réglementation relative aux questions liées à ces projets de planification (appelés ci-après «projets de planification») et la délivrance de permis de construire et la surveillance de la construction.»

[116] Rapport B'Tselem de 2002, p. 87, annexe 12 de l'annexe, vol. 2, accompagnant cet exposé écrit.

[117] «De l'occupation aux accords intérimaires», p. 83, 1997.

[118] Rapport B'Tselem de 2002, p. 87, annexe 12 de l'annexe, vol. 2, accompagnant cet exposé écrit.

155. Un rapport décrit le processus correspondant d'implantation israélienne en Territoire palestinien occupé dans les termes suivants:

> «Dans le même temps, les plans d'ébauche pour l'implantation des colonies étaient élaborés par la même autorité de planification, suivant des plans détaillés qui prenaient pleinement en considération les exigences présentes et futures de l'expansion des zones habitées par les Juifs. De la sorte, l'expansion des zones dévolues aux Palestiniens se voyait circonscrite. On empêchait la formation de blocs d'implantation arabes, tandis que des blocs d'implantation juive étaient établis en prévoyant un espace aussi vaste que possible pour leur permettre de s'étendre par la suite. La mise en œuvre du plan de réseau routier n° 50 reliait ces blocs d'implantation juive entre eux ainsi qu'aux centres de population israéliens, tout en contournant les villes et villages palestiniens.»[119]

156. Tous ces projets de planification furent rendus obligatoires et, en fait, incorporés à la législation en vigueur avant la signature des accords d'Oslo. Ce fut cette planification urbaine éminemment discriminatoire et ségrégationniste qui, sous couvert de loi, influa sur le contenu desdits accords.

2) Effets de la présence des colonies et des colons dans le Territoire palestinien occupé

a) *Effets sur l'économie et le développement*

157. Les colonies, ainsi que le réseau routier, détruisent l'intégrité territoriale de la Palestine[120]. Les colonies et les voies de contournement limitent le développement urbain et économique, en raison de la saisie des terres et des entraves apportées à l'expansion géographique des villes et villages palestiniens[121] (voir annexe, vol. 1, illustration 27-28). Elles le limitent aussi en imposant des restrictions à la liberté de mouvement des Palestiniens et en faisant obstacle aux échanges commerciaux et à la circulation des travailleurs d'une zone palestinienne à l'autre[122]. La puissance occupante contrôle, par exemple, l'artère principale de transport allant du nord au sud, empruntée par la population palestinienne, en empêchant les constructions palestiniennes de s'étendre en direction de la route, ainsi que toute voie de communication reliant les communautés palestiniennes situées des deux côtés de la route[123].

b) *Conditions favorisant la violence*

158. La présence des colonies et des colons contribue à l'escalade de la violence contre les Palestiniens, y compris les actes de violence directs commis par les colons. Les dispositions prises pour protéger les colonies et les colons israéliens requièrent une présence militaire renforcée dans les régions habitées et ont suscité de violents accrochages entre les forces d'occupation israélienne

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[119] «De l'occupation aux accords intérimaires», p. 83-84.

[120] «Question de la violation des droits de l'homme dans les territoires arabes occupés, y compris la Palestine», rapport de la commission chargée d'enquêter sur les droits de l'homme en vertu de la résolution S-51 de la commission, 19 octobre, E/CN.4/2001/121, 16 mars 2002, p. 18, annexe 10 de l'annexe, vol. 2, accompagnant cet exposé écrit.

[121] *Idem.*

[122] *Idem*.

[123] Rapport B'Tselem de 2002, p. 81, annexe 12 de l'annexe, vol. 2, accompagnant cet exposé écrit.

et la population palestinienne[124]. Par ailleurs, bien des actes de violence commis par les forces d'occupation israéliennes et par les colons, qui ont fait des morts et des blessés parmi les Palestiniens, se sont produits sur des routes bien défendues qui conduisaient à des colonies où se trouvaient à proximité[125]. De plus, un grand nombre de maisons palestiniennes rasées au sol par les forces d'occupation avant la construction du mur, le furent pour sécuriser les colons et non pour des raisons de sécurité militaire[126].

159. En dépit de la résolution 904 du Conseil de sécurité qui «demande que des mesures soient prises pour garantir la sécurité et la protection des civils palestiniens dans tout le territoire occupé» (adoptée en 1994 après qu'un colon israélien ait massacré des Palestiniens en prière à la mosquée Al-Haram Al-Ibrahimi à Al-Khalil (Hébron)), les Palestiniens sont toujours en but à la violence des colons israélien et ce, de manière routinière. Le rapporteur spécial de la Commission des droits de l'homme de l'ONU nota, dans son rapport de mars 2002, à propos du phénomène de la violence des colons : «Les colons, qui sont protégés par l'armée israélienne et ne sont pas soumis à la juridiction de l'Autorité palestinienne, se livrent à de nombreux actes de violence à l'égard des Palestiniens et détruisent leurs terres et leurs biens.»[127]

3) Incitations financières à l'implantation dans le Territoire palestinien occupé

160. Conscients du fait qu'une politique d'implantation réussie en Territoire palestinien occupé dépendait aussi de l'implantation de colons non motivés par l'idéologie[128], les Gouvernements israéliens successifs usèrent de subventions financières pour favoriser une implantation israélienne en territoire palestinien. Pour ce faire, le Gouvernement israélien subdivisa les colonies israéliennes en «Zones de priorité nationale—A ou B»**,** donnant droit à des primes d'incitation généreuses. Comme indiqué dans un rapport:

> «La carte des zones de priorités nationales est un outil important pour la mise en oeuvre de la politique du gouvernement. Elle permet d'acheminer des fonds substantiels vers des régions dont le gouvernement désire le développement. Conférer à une localité le statut de «Priorité nationale A» s'assortit d'un ensemble considérable d'incitations financières.»[129]

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[124] Comité international de la croix rouge, rapport annuel, septembre 2001, p. 327.

[125] «Question de la violation des droits de l'homme dans les territoires arabes occupés, y compris la Palestine», rapport de la commission chargée d'enquêter sur les droits de l'homme en vertu de la résolution S-51 de la commission, 19 octobre 2000, p. 18, par. 70.

[126] «Question de la violation des droits de l'homme dans les territoires arabes occupés, y compris la Palestine», rapport de la commission chargée d'enquêter sur les droits de l'homme en vertu de la résolution S-51 de la commission, 19 octobre 2000, p. 18, par. 70.

[127] «Question de la violation des droits de l'homme dans les territoires arabes occupés, y compris la Palestine», rapport de la commission chargée d'enquêter sur les droits de l'homme en vertu de la résolution S-51 de la commission, 19 octobre 2000, p. 18, par. 70.

[128] «Barak renouvelle aux colonies leur statut hautement prioritaire», communiqué de presse, *Peace Now*, 30 décembre 2000.

[129] «Barak renouvelle aux colonies leur statut hautement prioritaire», communiqué de presse, *Peace Now*, 30 décembre 2000; voir également rapport B'Tselem sur la saisie des terres, chap. 5, «Allocations et incitations financières».

161. Ces incitations et allocations comprennent, entre autre, un abattement fiscal de 7 % par rapport à l'impôt sur le revenu, des allocations au logement, des hypothèques à des taux préférentiels, une scolarité gratuite à partir de l'âge de trois ans, un ramassage scolaire gratuit et des primes aux secteurs industriels, agricole et du tourisme[130].

162. Les ministères israéliens chargés de transférer les allocations budgétaires aux colonies sont ceux du transport, du logement et de la construction, du commerce de l'industrie, de la défense, le département de l'implantation des colonies au sein du ministère de l'agriculture, et l'Autorité israélienne chargée de la propriété foncière. La plupart des ministères sont reliés à l'entreprise d'implantation au niveau institutionnel et fonctionnel car tous, ou presque, contribuent à leur gestion, leur expansion et leur encadrement.

163. Tout au long des années quatre-vingt-dix, le Gouvernement israélien réserva un traitement de faveur aux autorités locales chargées de l'implantation en Territoire palestinien occupé, par rapport aux autorités locales israéliennes, les faisant bénéficier d'une majoration de 150 % par habitant pour les transferts[131]. En fait, le budget total par habitant alloué aux autorités locales d'implantation en Territoire palestinien occupé était de plus de 40 % supérieur à la moyenne nationale pendant les années quatre-vingt-dix[132].

4) Extension de la juridiction territoriale

164. Les Gouvernements israéliens ont pris soin d'éviter les problèmes qu'une annexion de droit serait de nature à poser, particulièrement au regard de la communauté internationale; ils optèrent donc pour une annexion de fait. Le Gouvernement israélien, la Knesset et les commandants des FDI, avec la bénédiction de la Cour suprême israélienne, modifièrent les lois israéliennes et les lois d'exception, dans le but de permettre une annexion de fait des colonies au territoire de l'Etat d'Israël[133]. Israël se mit à imposer l'application extraterritoriale des lois israéliennes aux zones d'implantation dans le Territoire palestinien occupé ainsi qu'aux citoyens israéliens juifs où qu'ils se trouvaient en Territoire palestinien occupé[134]. La juridiction des tribunaux israéliens fut étendue aux civils israéliens coupables d'infractions commises sur le Territoire palestinien occupé. Les litiges civils entre colons israéliens ou bien entre un colon et un Palestinien relevaient également de la juridiction israélienne. Ces mesures eurent pour effet d'encourager davantage les citoyens israéliens à s'installer dans les colonies, contribuant par là même à leur développement[135].

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[130] Voir http://www.ariga.com/peacenowsettlementbudgetreport.htm

[131] Rapport «La saisie des terres: la politique d'implantation israélienne en Cisjordanie», mai 2002, p. 84.

[132] *Ibid*., p. 84.

[133] *Ibid.*, p. 65.

[134] Réglementation de l'état d'urgence (infractions commises par les administrés, juridiction et aide judiciaire), 5727-1967. En 1977, le titre fut modifié pour devenir «La Judée et la Samarie, la bande de Gaza, les hauteurs du Golan, le Sinaï et le sud du Sinaï», comme l'indique le rapport B'Tselem 2002, p. 65, annexe 12 de l'annexe, vol. 2, accompagnant cet Exposé écrit. Certains de ces principes sont confirmés à l'annexe IV du protocole relatif aux questions d'ordre juridique de l'accord intérimaire entre Israël et l'OLP de 1995.

[135] Règles de procédure civile (fourniture de documents aux administrés), 5730-1969, Kovetz Takkanot 2482, p. 458, comme indiqué dans le rapport B'Tselem 2002, p. 65, annexe 12 de l'annexe, vol. 2, accompagnant cet exposé écrit. Un grand nombre de ces règles de procédure sont consignées à l'annexe IV du protocole relatif aux questions d'ordre juridique de l'accord intérimaire entre Israël et l'OLP de 1995.

5) Réactions internationales à la politique et aux pratiques israéliennes en matière d'implantation

165. La réaction de la communauté internationale face aux activités israéliennes d'implantation en Territoire palestinien occupé, y compris Jérusalem-Est, a toujours été celle d'une opposition ferme et constante à ces politiques et pratiques illicites. Le Conseil de sécurité de l'ONU, dans sa résolution 446 (1979) du 22 mars 1979, considéra que «la politique et les pratiques israéliennes consistant à établir des colonies de peuplement dans les territoires palestiniens et autres territoires arabes occupés depuis 1967 n'ont aucune validité en droit» et constitue un sérieux obstacle à la paix[136]. Dans cette même résolution, le Conseil enjoignit Israël une fois de plus de

> «de respecter scrupuleusement la convention de Genève relative à la protection des personnes civiles en temps de guerre, du 12 août 1949, de rapporter les mesures qui ont déjà été prises et de s'abstenir de toute mesure qui modifierait le statut juridique et le caractère géographique des territoires arabes occupés depuis 1967, y compris Jérusalem, et influerait sensiblement sur leur composition démographique, et, en particulier, de ne pas transférer des éléments de sa propre population civile dans les territoires arabes occupés»[137].

Par sa résolution 446 (1979), le Conseil établit également une commission chargée d'examiner la situation relative aux colonies de peuplement[138].

166. Le 1er mars 1980, le Conseil réitéra par sa résolution 465 (1980), sa condamnation des politiques et pratiques israéliennes d'implantation et demanda à «tous les Etats de ne fournir à Israël aucune assistance qui serait utilisée spécifiquement pour les colonies de peuplement des territoires occupés»[139].

167. L'Assemblée générale de l'ONU a aussi constamment exprimé sa forte condamnation des politiques et pratiques israéliennes d'implantation, y compris à sa dixième session extraordinaire d'urgence. Une résolution annuelle de l'Assemblée traite spécifiquement des «colonies de peuplement israéliennes dans le territoire palestinien occupé, y compris Jérusalem-Est, et le Golan syrien occupé» y réaffirme notamment l'applicabilité de la quatrième convention de Genève au Territoire palestinien occupé, y compris Jérusalem-Est, et aux hauteurs syriennes du Golan occupé et réaffirme que les colonies israéliennes sont illégales et qu'elles constituent un obstacle à la paix et au développement économique et social, demandant à nouveau leur cessation complète[140].

6) Annexion et régime de Jérusalem-Est

a) ***Législation et annexion de droit***

168. Les principaux événements concernant Jérusalem sont indiqués au chapitre 3, dans le cadre plus général d'un historique sur la Palestine. Ils sont placés ici dans le contexte de la politique israélienne constante visant à l'annexion du territoire palestinien. A la fin de la guerre

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[136] S/RES/446 (1979).

[137] *Ibid.*

[138] Voir rapports de la commission parus aux documents de l'ONU S/13450; S/13450/Add.1, S/13450/Corr.1; S/13679; et S/14268.

[139] S/RES/465 (1980); voir également S/RES/452 (1979); S/RES/476 (1979); S/RES/478 (1980).

[140] Voir par exemple résolution A/58/98 du 9 décembre 2003.

de 1948, les forces militaires israéliennes occupaient le secteur ouest de Jérusalem, tandis que les forces jordaniennes contrôlaient la partie est. En janvier 1950, la Knesset (Parlement) israélienne proclama Jérusalem capitale d'Israël.

169. A la suite de la conquête militaire israélienne de Jérusalem-Est, la Knesset adopta, le 27 juin 1967, le onzième amendement à la loi et ordonnance administrative de 1948 qui étendait la juridiction israélienne à toutes les régions contrôlées par ses forces militaires. L'amendement prévoyait que «la loi, la juridiction et l'administration de l'Etat s'étendraient à toute région de l'Eretz Israël désignée par ordonnance».

170. Parallèlement à la loi et à l'ordonnance administrative mentionnées plus haut, une ordonnance municipale fut adoptée le 28 juin 1967, par laquelle le ministre de l'intérieur déclarait que les limites de la municipalité de Jérusalem s'étendraient sur environ 70 kilomètres carrés, superficie dix fois supérieure à celle de la municipalité jordanienne de Jérusalem-Est[141].

171. Ayant ainsi étendu l'empire de la loi israélienne à une Jérusalem-Est agrandie, Israël procéda, le 29 juin 1967, à la dissolution de la municipalité jordanienne de Jérusalem-Est, consacrant par là le contrôle administratif israélien exclusif sur la partie est occupée de la ville. L'objectif déclaré de ces mesures politiques et administratives de l'époque était, selon les autorités israéliennes, de rendre l'intégration de Jérusalem-Est «irréversible et non négociable»[142].

172. Un certain nombre d'institutions israéliennes furent amenées à Jérusalem-Est pour consacrer son intégration au sein d'Israël. Parmi celles-ci, il faut citer le ministère de la Justice, le tribunal de district, le tribunal du travail de deuxième instance et l'institut de la sécurité nationale.

173. Les entreprises de Jérusalem-Est qui étaient immatriculées en Jordanie, mais qui avaient indiqué Jérusalem-Est comme lieu de leur siège ou centre d'activité, furent requises de s'immatriculer à nouveau en tant qu'entreprises israéliennes. La plupart d'entre elles refusèrent et Israël le fit pour elles, les convertissant de jordaniennes qu'elles étaient en entreprises israéliennes[143].

174. Israël étendit sa juridiction sur Al-Haram Al-Sharif et les lieux saints par le biais de sa loi de juin 1967 relative à la protection des lieux saints[144]. Celle-ci donnait au Gouvernement israélien le droit d'accès et la liberté de culte dans les lieux saints. Ce contrôle se vit renforcé par un arrêt de la Cour suprême israélienne de 1993, qui déclara que la loi israélienne s'appliquait aux secteurs de Al-Haram Al Sharif.

175. De cette manière, passèrent sous contrôle administratif israélien les activités commerciales, les lieux saints, les terres entourant Jérusalem-Est et le conseil municipal de Jérusalem-Est.

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[141] Menachem Klein, *Jérusalem : ville contestée*, (Hurst, 2001).

[142] Rapport du Secrétaire général présenté en vertu de la résolution 2254 de l'Assemblée générale (ES-V), Nations Unies, doc. S/8146 et A/6973, point 35.

[143] Questions juridiques et administratives (règlement), loi (version unifiée) 5730-1970, lois de l'Etat d'Israël, art. 6 à 14.

[144] Loi de protection des lieux saints, 5727, 1967.

176. Le 30 juillet 1980, Israël se mit en devoir de consolider ces changements. La «Loi fondamentale : Jérusalem capitale d'Israël» fut adoptée par la Knesset. Cette loi proclama que Jérusalem, entière et unifiée, «était la capitale d'Israël»[145].

b) ***Statut des habitants palestiniens de Jérusalem***

177. Les mesures israéliennes relatives aux habitants palestiniens de Jérusalem visent à en limiter le nombre et à créer les conditions propices à leur déplacement forcé.

178. Durant son administration civile de la ville, entre 1951 à 1967, la Jordanie donna aux résidents palestiniens de Jérusalem des passeports jordaniens. Après l'occupation israélienne de Jérusalem-Est, la loi israélienne fut amendée afin que les citoyens jordaniens résidant à Jérusalem-Est ne reçoivent pas automatiquement le statut d'ennemi. Cela se fit au moyen de l'article 4 du règlement relatif aux questions juridiques et administratives, la loi unifiée n° 5730-1970. A compter de la date de cette loi, les habitants palestiniens de Jérusalem reçurent une carte d'identité israélienne qui différait de celle des Palestiniens vivant dans le restant du Territoire palestinien occupé.

179. Conformément au statut de Jérusalem-Est, en tant que territoire tombant sous le coup de la loi israélienne, les habitants palestiniens de Jérusalem qui demeurèrent dans la ville durant l'occupation de juin 1967, se virent conférer des permis de résidence israéliens en vertu de la loi d'entrée en Israël de 1952 et du règlement d'entrée en Israël de 1974.

180. Le ministre de l'intérieur israélien a le pouvoir, en vertu des lois et règlements israéliens, de révoquer le droit de résidence des habitants palestiniens de Jérusalem. Cela ne s'applique pas aux Palestiniens du reste de la rive occidentale et de la bande de Gaza. Cela ne s'applique pas non plus aux citoyens israéliens. Il existe à l'heure actuelle deux cent quinze mille quatre cents Palestiniens détenant la carte d'identité de résident de Jérusalem[146]. Pour conserver ce statut, le résident palestinien de Jérusalem doit :

— ne pas acquérir d'autre nationalité ou citoyenneté[147];

— prouver que Jérusalem est le «centre de sa vie» depuis 1994 et, pour se faire, prouver qu'il paie ses taxes municipales à Jérusalem;

— ne pas vivre hors de Jérusalem pendant plus de sept ans[148];

— ne pas épouser un non-résident, à moins d'avoir à requérir une ordonnance, rarement concédée, de réunification des familles.

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[145] Site Internet du ministère des affaires étrangères israélien : les lois du pays/lois fondamentales/Jérusalem.

[146] «La Barrière de la Cisjordanie : accès humanitaire et le mur de Jérusalem», bureau des Nations Unies pour la coordination des affaires humanitaires, 3 décembre 2003, p. 3.

[147] Art. 11 de la loi d'entrée en Israël, 1952

[148] *Ibid.*

181. L'absence de permis de résidence prive ces familles des services sanitaires et sociaux et empêche les enfants d'aller à l'école publique israélienne. En mai 2002, toutes les demandes de réunification des familles furent gelées par le Gouvernement israélien. Avant septembre 2000, 5 % seulement des requérants s'étaient vus octroyé le permis[149].

182. En limitant, par tous les moyens possibles, le nombre des Palestiniens résidents de la ville, Israël continue d'essayer d'intégrer Jérusalem-Est à l'«Etat juif». Pourtant, la «Jérusalem unifiée» demeure aussi divisée qu'auparavant, avec des interactions limitées entre les habitants de la ville divisée et ceux du secteur est en butte à la discrimination flagrante et systématique à quasiment tous les niveaux.

7) Autres mesures illégales relatives à la ville occupée de Jérusalem-Est

183. A sa quarante-huitième session, la Commission des droits de l'homme de l'ONU, en examinant la question de la violation des droits de l'homme dans les territoires arabes occupés, y compris la Palestine, condamna énergiquement la construction et l'expansion des colonies israéliennes, ainsi que l'expropriation des terres et la construction de voies de contournement[150]. La Commission condamna également :

> «l'expropriation d'habitations palestiniennes à Jérusalem … l'annulation des cartes d'identité des citoyens de Jérusalem-Est, l'imposition de taxes forgées de toutes pièces et exorbitantes dans le but de forcer les citoyens palestiniens de Jérusalem, qui n'ont pas les moyens de s'acquitter de ces taxes élevées, à quitter leur foyer et leur ville, préparant ainsi la voie à la judaïsation de Jérusalem»[151].

184. Ces déclarations font référence aux deux volets essentiels de la politique israélienne à l'intérieur et autour de Jérusalem. Le premier d'entre eux consiste à construire de manière systématique des routes et des colonies à Jérusalem et autour de la ville occupée, dans le but de créer une infrastructure indivisible de routes reliant Israël aux colonies israéliennes qui encerclent le secteur est de la ville. Le second groupe de mesures vise à limiter la croissance démographique palestinienne et à forcer les Palestiniens hors de la ville.

a) *Déplacement de la frontière sur le pourtour de Jérusalem-Est*

185. A l'heure actuelle, Jérusalem-Est est sillonnée de postes de contrôle et de barrières temporaires qui l'entourent depuis 1990, privant les Palestiniens de Cisjordanie d'accès à la ville. Ce faisant, le Gouvernement israélien est en train de consolider l'intégration de la ville au sein d'Israël. Il a également entrepris de déplacer *de facto* la frontière précédente (la Ligne verte), de l'emplacement qui était le sien avant l'occupation vers le périmètre extérieur de la ville unifiée, marqué par la série de ces postes de contrôle et barrières temporaires érigés par Israël sur un périmètre élargi de Jérusalem-Est s'enfonçant bien avant en rive occidentale.

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[149] Rapport du comité spécial chargé d'enquêter sur les pratiques israéliennes affectant les droits de l'homme du peuple palestinien et autres arabes des territoires occupés, A/58/311, 22 août 2003, p. 40.

[150] Commission des droits de l'homme, résolution 2003/6 du 15 avril 2003, par. 6

[151] *Ibid.*, par. 7.

b) ***Les démolitions de maisons***

186. Lorsque l'objectif est de limiter la croissance démographique d'une population d'une certaine région, il faut restreindre le droit de cette communauté à s'étendre géographiquement. Cela se fait normalement au moyen de plans et de règlements de zonage. Israël a usé de ces pratiques à l'encontre des résidents palestiniens de Jérusalem-Est, depuis les premiers jours de l'occupation. Et quand un permis de construire ne pouvait pas être refusé, les autorités israéliennes en gonflaient le coût afin de décourager l'expansion palestinienne. Les permis de construire à Jérusalem-Est coûtent plus de 25 000 dollars comparés aux 6 000 ou 10 000 de Cisjordanie[152], ce qui fait du respect des lois à Jérusalem un luxe hors de portée pour la majorité des Palestiniens.

187. La difficulté d'obtenir des permis de construire et le coût élevé des charges poussent de nombreux Palestiniens de Jérusalem-Est à construire sans permis. Quand cela se produit, les autorités israéliennes prennent des actions punitives. Dans les trois dernières années seulement, quatre mille maisons ont été démolies en rive occidentale, à Gaza et à Jérusalem-Est[153]. Cela fait partie d'une politique systématique destinée à prendre le contrôle des terres palestiniennes peuplées, afin d'en manipuler la composition démographique et créer ainsi les conditions propices à un déplacement forcé de cette population. A l'heure actuelle, vingt-huit mille habitations palestiniennes à Jérusalem sont menacées de «destruction administrative»[154].

c) ***Réseaux de transport doubles***

188. Le Gouvernement israélien a fermé le réseau routier palestinien qui reliait Jérusalem-Est à la Cisjordanie, au moyen de plus de soixante-dix barrages. Les véhicules arborant une plaque d'immatriculation palestinienne, mais aussi souvent les piétons, sont effectivement privés d'accès à ces routes. Depuis 1995, un réseau de voies de contournement a été construit pour relier à la partie ouest de la ville les banlieues juives établies en Cisjordanie et annexées à Jérusalem. A l'exception des Palestiniens auxquels il est délivré des permis spéciaux pour emprunter ces voies de contournement, ce réseau routier est exclusivement réservé aux usagers israéliens.

189. Le blocage de l'ancien réseau routier reliant Jérusalem-Est à la Cisjordanie et la construction d'un nouveau réseau réservé aux seuls Israéliens ont eu pour effet d'isoler encore davantage Jérusalem-Est de la Cisjordanie, rendant l'accès des Palestiniens de Cisjordanie à Jérusalem-Est encore plus malaisé, pour ne pas dire impossible. En raison de l'emplacement central de Jérusalem-Est, cette privation d'accès a également coupé la Cisjordanie en deux parties, nord et sud, rendant les déplacements entre elles très difficiles.

190. Les Palestiniens de Cisjordanie n'ont pas le droit d'utiliser les autobus israéliens pour se déplacer à l'intérieur de Cisjordanie ni pour se rendre à Jérusalem ou en revenir. Les autobus israéliens en service entre Jérusalem et la Cisjordanie ne desservent que les colonies. Contrairement aux termes de l'accord intérimaire, le nombre d'autobus palestiniens en circulation est limité par les autorités israéliennes. Ces mesures isolent encore plus la Cisjordanie de Jérusalem, en empêchant la liberté de mouvement.

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[152] Habitat de l'ONU : rapport intérimaire du directeur exécutif, HSP/GC/19/2/Add.3, 13 mai 2003.

[153] Déclaration du rapporteur spécial sur le logement décent, démolitions d'habitations en Territoire palestinien occupé, 6 novembre 2003.

[154] Rapport du rapporteur spécial sur le logement décent comme composante du droit à un niveau de vie décent. Rapport de visite du Territoire palestinien occupé, 5-10 janvier 2002 : 10 Juin 2003, E/CN.4/2003/5/Add.1 2002.

d) ***La construction des colonies***

191. Consolider l'emprise militaire israélienne sur Jérusalem-Est, en créant une situation de fait, a été favorisée par une activité d'implantation remontant pratiquement au lendemain de la guerre de 1967. L'objectif en est demeuré le même, notamment de modifier la composition démographique de la ville, créer une infrastructure estompant la frontière traversant Jérusalem, limiter encore plus l'expansion palestinienne et morceler les centres stratégiques de population palestiniens en s'implantant parmi eux.

192. D'importantes confiscations de terrain continuent de se produire, prétendument pour des raisons de sécurité. Ces terres sont ensuite utilisées pour la construction de colonies ou de réseaux routiers les reliant. Pour la construction du mur, 2680 dunums (670 acres) ont été confisqués jusqu'à présent dans la zone de Jérusalem[155]. Depuis 1967, sur une superficie totale de 36 kilomètres carrés à Jérusalem-Est, 24,5 kilomètres carrés ont été expropriés pour la construction de colonies[156].

193. En 2003 seulement, le Gouvernement israélien a commencé à se préparer pour deux nouvelles colonies à Jérusalem-Est : «Nof Zahar» et «Kedimet Zion», devant toutes deux comprendre initialement quatre cents unités de logement. En mai-juin, le Gouvernement israélien inaugura des plans de construction de onze mille huit cent six unités de logement en Territoire palestinien occupé. La majorité de celles-ci sont des colonies autour de la zone de Jérusalem-Est occupée[157]. Les autorisations nécessaires devraient être données d'ici à la fin de l'année[158]. En outre, en août 2003, le Gouvernement israélien a lancé le plan Eitam, prévoyant le financement d'achats d'appartements dans les zones de priorité nationale[159]. Le double de ces sommes sera consacré aux achats de logements dans la zone de Jérusalem-Est occupée ainsi que dans d'autres zones éligibles dans le cadre du programme[160].

194. Le nombre total des colonies à l'intérieur et autour de Jérusalem est supérieur à vingt-sept, en excluant les «colonies illégales». En décembre 2002, le nombre total des colons de Jérusalem-Est était supérieur à cent soixante-dix-sept mille[161].

8) Conclusions

195. En résumé, pendant plus de trente ans, Israël s'est employé à coloniser et a même tenté d'annexer le territoire occupé depuis 1967. Pour ce faire, il a recouru à l'acquisition illicite de territoires et au transfert illicite d'une partie de sa population civile, à la consécration de structures séparées et d'un système double de lois, ainsi qu'à d'autres mesures visant à modifier la composition démographique du territoire palestinien occupé incluant, en particulier, Jérusalem-Est.

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[155] «La barrière de la Cisjordanie : accès humanitaire et le mur de Jérusalem», bureau des Nations Unies pour la coordination des affaires humanitaires, 3 décembre 2003, p. 3.

[156] L'Académie palestinienne pour l'étude des affaires internationales, journal de 2004, p 312.

[157] *Ibid.*

[158] Rapport du comité des droits inaliénables du peuple palestinien, A/58/35, 9 octobre 2003, p 21; rapport sur les colonies israéliennes en territoire occupé, juillet–août 2003, vol.13, n° 4, p. 8.

[159] Elazar Levin, «A four month window of opportunity», supplément du *Globe Real Estate*, 17 août 2003.

[160] *Ibid.*

[161] Bureau central de statistiques de Jérusalem, 2002.

196. Le mur que construit Israël, à l'heure actuelle, sur le territoire palestinien occupé, marque le point culminant de ces politiques et pratiques israéliennes, conduisant à l'annexion de fait de vastes portions de territoire, spécialement celles comptant une forte concentration de colonies. Le mur ne peut être véritablement appréhendé que dans le contexte de politiques et pratiques illicites qui remontent loin dans le temps. L'on assiste à une tentative de s'accaparer toujours de nouvelles terres tout en contenant le «facteur démographique» palestinien dans l'enceinte du mur, fermant du coup la porte à toute perspective réelle d'établissement d'un Etat palestinien viable et indépendant.

CHAPITRE 5

LES POLITIQUES ET LES PRATIQUES D'ISRAËL, LA PUISSANCE OCCUPANTE, ET LA SITUATION SUR LE PLAN DE LA SECURITE DANS LE TERRITOIRE PALESTINIEN OCCUPE

1) Introduction

197. Outre la saisie du territoire palestinien et le transfert de ses nationaux dans le Territoire palestinien occupé, y compris Jérusalem-Est, tel que nous l'avons expliqué au chapitre précédent, Israël, la puissance occupante, a en outre, dès le début de son occupation, mis en œuvre de façon systématique des politiques et des pratiques violant les droits de l'homme de la population civile palestinienne et les normes fondamentales du droit humanitaire international et de la législation internationale en matière de droits de l'homme. Pendant près d'une trentaine d'années, ces politiques et pratiques ont été imposées à la population palestinienne dans le Territoire palestinien occupé en l'absence de toute menace réelle ou perceptible pour la sécurité de l'Etat d'Israël et sans représailles contre lui. Cependant, la perpétuation et l'intensification de ces mesures et leurs effets cumulatifs avaient amorcé, vers le milieu des années quatre-vingt-dix, le cycle de violence qui caractérise la situation actuelle. Comme l'a déclaré la Haut Commissaire aux droits de l'homme des Nations Unies, Mary Robinson, dans son rapport du 29 novembre 2000, après sa visite dans le Territoire palestinien occupé, «La conclusion qui s'impose est que la situation actuelle est dans une large mesure liée aux réalités de la vie quotidienne sous l'occupation, y compris à ce que les Palestiniens estiment être les nombreuses humiliations quotidiennes qui leur sont imposées.»[162]

198. Les politiques et pratiques israéliennes ont engendré les conditions sous-jacentes à l'instabilité, aux troubles et aux problèmes de sécurité actuels, y compris les attentats suicide à la bombe, en raison desquels Israël affirme devoir construire le mur dans le Territoire palestinien occupé pour protéger ses citoyens. En outre, les agissements d'Israël, y compris la destruction de l'appareil sécuritaire palestinien, ont gravement compromis l'efficacité de tout effort palestinien en matière de sécurité. Un bref examen des politiques et pratiques d'Israël est nécessaire pour mieux saisir la situation actuelle sur le terrain, et plus particulièrement en ce qui concerne la question du mur qu'Israël construit dans le Territoire palestinien occupé, y compris à Jérusalem-Est.

2) Politiques et pratiques israéliennes

199. Depuis le début de son occupation de la Cisjordanie, y compris de Jérusalem-Est, et de la bande de Gaza en 1967, Israël a eu recours à des ordres militaires pour réglementer tous les aspects de la vie palestinienne et a en outre invoqué le règlement de 1945 sur la défense (urgence), bien qu'il ait été abrogé par la Grande-Bretagne le 14 mai 1948[163]. Depuis lors, Israël a invoqué le règlement pour justifier notamment l'application de sanctions extrajudiciaires comme les déportations, la démolition de maisons et les internements administratifs, en violation des droits de l'homme de la population civile palestinienne sous occupation.

200. L'Assemblée générale et le Conseil de sécurité des Nations Unies ont examiné régulièrement la question des abus et violations généralisés des droits de l'homme commis par Israël dans le Territoire palestinien occupé, condamnant systématiquement les politiques et les

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[162] Rapport de la Haut Commissaire des Nations Unies aux droits de l'homme et suivi de la conférence mondiale sur les droits de l'homme, Nations Unies, doc. E/CN.4/2001/114 (29 novembre 2000), par. 23; reproduit à l'annexe 9, ci-après.

[163] Shehadeh, Raja, *Occupiers' Law: Israel and the West Bank*, (IPS, Washington, D.C., 1988).

pratiques d'Israël à cet égard et l'invitant à mettre un terme à ses violations et à se conformer aux dispositions de la quatrième convention de Genève[164]. En 1968, l'Assemblée générale institua en outre le comité spécial chargé d'enquêter sur les pratiques israéliennes affectant les droits de l'homme de la population des territoires occupés[165] qui, malgré le refus de coopérer d'Israël, a présenté régulièrement des rapports sur la question à chaque session de l'Assemblée[166]. En raison de la gravité persistante de la situation, en 1993, la Commission des droits de l'homme des Nations Unies décida de nommer un rapporteur spécial «chargé d'enquêter sur les violations par Israël des principes et des fondements du droit international, du droit humanitaire international et de la convention de Genève du 12 août 1949 relative à la protection des personnes civiles en temps de guerre, dans le Territoire palestinien occupé depuis 1967», qui a présenté régulièrement des rapports à la Commission, dont le plus récent, le 8 septembre 2003[167].

201. Bravant entre autres les résolutions de l'Assemblée générale, du Conseil de sécurité et de la Commission des droits de l'homme l'invitant à cesser ses violations, à respecter la Charte des Nations Unies et à se conformer au droit international, Israël a maintenu ses politiques et pratiques illégales à l'égard du peuple palestinien. Dès le début de l'occupation, Israël imposa diverses mesures endommageant gravement le tissu social de la population palestinienne. Il interdit notamment toute forme de liberté civile, bannit la liberté d'expression et de réunion et censura systématiquement la presse et les autres médias[168]. Des contraintes restrictives furent en outre imposées au secteur médical et au système éducatif, notamment des fermetures d'écoles et d'universités pour des périodes prolongées, surtout pendant la première Intifada palestinienne qui débuta en 1987.

202. L'économie palestinienne subit en outre des dommages en raison de l'imposition par Israël, dans le Territoire palestinien occupé, d'une série de lois et de mesures restrictives qui entravèrent le développement de l'économie et l'affaiblirent considérablement[169]. Ces politiques avaient pour objet de transformer le territoire en un marché captif pour Israël et en une source de main-d'œuvre bon marché.

203. La déportation de civils palestiniens du Territoire palestinien occupé est une autre pratique illégale adoptée par Israël pendant des dizaines d'années. Les déportations sont généralement exécutées par le biais d'ordonnances administratives extrajudiciaires prises par des

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[164] 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). L'Assemblée générale commença à rappeler la quatrième convention de Genève à cet égard dans sa résolution 2546 (XXIV) du 11 décembre 1969 et a réaffirmé chaque année son applicabilité au TPO. Cela inclut notamment une résolution annuelle portant spécifiquement sur son applicabilité (voir résolutions A/58/97 du 9 décembre 2003; A/58/98 du 9 décembre 2003; A/58/99 du 9 décembre 2003; A/58/21 du 3 décembre 2003 et A/58/229 du 23 décembre 2003).

[165] A/2443 (XXIII) du 9 décembre 1968. En 1989, le nom du Comité fut modifié par la résolution A/44/48 (A); il fut désormais dénommé «comité spécial chargé d'enquêter sur les pratiques israéliennes affectant les droits de l'homme du peuple palestinien et des autres Arabes des territoires occupés».

[166] Le premier rapport du comité spécial fut présenté le 5 octobre 1970 (A/8089). Le rapport le plus récent a été présenté le 22 août 2003 (A/58/311).

[167] Résolution E/CN.4/1993/2 (A+B) du 19 février 1993. Le premier rapport du rapporteur spécial fut présenté le 13 décembre 1994 (E/CN.4/1995/19). Le plus récent rapport du rapporteur spécial (rapport Dugard (2003)) fut présenté le 8 septembre 2003 (E/CN.4/2004/6).

[168] Raja Shehadeh, 1988.

[169] *Origins and Evolution of the Palestine Problem*, 1971-1988 (ONU, New York, 1990); voir également les rapports du comité spécial chargé d'enquêter sur les pratiques israéliennes.

commandants militaires israéliens. Au cours des dix premières années de l'occupation, le nombre total de Palestiniens expulsés à titre permanent par Israël s'éleva à plus de 1 522[170]. Le Conseil de sécurité des Nations Unies a adopté plusieurs résolutions condamnant cette pratique illégale d'Israël, à commencer par la résolution 468 du 8 mai 1980[171]. Tout récemment, Israël a entrepris de déporter des Palestiniens, depuis la Cisjordanie jusqu'à la bande de Gaza.

204. Israël poursuivit sa pratique du «bouclage» et des arrestations collectives et individuelles ainsi que celle de la détention et de l'emprisonnement arbitraires de civils palestiniens dans le Territoire palestinien occupé et dans des installations situées à Israël, en l'absence de chefs d'accusation, sans accès à un avocat, sans procès et souvent sans contacts avec leur famille[172]. A l'heure actuelle, plus de six mille civils palestiniens, y compris des femmes et des jeunes, sont détenus dans des centres de détention ou des prisons israéliens[173]. Israël a en outre soumis des Palestiniens en détention à des abus et à des mauvais traitements corporels, y compris à la torture, et à des conditions non hygiéniques et inhumaines[174].

205. Pendant toute la durée de l'occupation du territoire palestinien, Israël a causé des dégâts matériels importants aux maisons et aux biens palestiniens, en particulier par la démolition systématique de maisons. Des milliers de maisons palestiniennes, y compris des abris de réfugiés, ont été détruites au cours de la période d'occupation par Israël qui dura plus de trente-six ans, à titre de sanction collective et de punition sévère liées aux restrictions sévères imposées par Israël en ce qui concerne l'octroi de permis de construction aux Palestiniens. En outre, les forces d'occupation ont détruit des milliers de dunums de terrain et ont exploité de façon abusive les ressources naturelles dans le Territoire palestinien occupé.

206. Israël s'est en outre adonné à d'autres formes de représailles collectives contre la population civile palestinienne, y compris l'imposition de restrictions sévères sur la liberté de circulation des personnes et des biens dans le Territoire palestinien occupé et entre ce territoire et le monde extérieur. Il a imposé ces restrictions en mettant en place des postes de contrôle et des barrages routiers militaires et un système complexe de formalités, notamment des cartes d'identité, des cartes de séjour et des permis de voyage. Des couvre-feux prolongés, durant parfois plusieurs jours ou plusieurs semaines, ont parfois été imposés à des villes, des villages et des camps de réfugiés palestiniens entiers. Ces pratiques ont entraîné l'immobilisation du peuple palestinien sur son propre territoire et, pendant les couvre-feux, le confinement dans leurs maisons; elles leur ont en outre bloqué l'accès à leur travail, à leurs écoles et aux soins médicaux, et même à leurs sources d'approvisionnement en denrées alimentaires et en eau potable. L'impact sur les conditions sociales, économiques et sanitaires du peuple palestinien a été grave.

207. Au déclenchement de la première Intifada, en décembre 1987, Israël entama un nouveau chapitre quant à la nature et l'ampleur de ses politiques et pratiques oppressives dans le Territoire palestinien occupé. L'intensification des politiques et pratiques mentionnées ci-dessus s'ajouta à une recrudescence de la violence contre les populations civiles. Les forces d'occupation

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[170] B'Tselem (le centre d'information israélien pour les droits de l'homme dans les territoires occupés), www.btselem.org/English/Deportation/Statistics.

[171] S/RES/468 (1980). Voir également 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).

[172] Voir Rapport Dugard (2003); voir également les rapports du comité spécial chargé d'enquêter sur les pratiques israéliennes, notamment le rapport A/58/311 (22 août 2003), dossier n° 53 accompagnant l'exposé du Secrétaire général.

[173] Rapport Dugard (2003), par. 29.

[174] *Ibid*., par. 30-32.

israéliennes se mirent notamment à adopter des comportements tels que le tabassage et le harcèlement physique de la population palestinienne, dans le contexte de la politique de la «main de fer» instituée par Israël pour étouffer la résistance palestinienne[175]. En outre, les forces d'occupation utilisèrent plus fréquemment les gaz lacrymogènes dans des zones exiguës et des munitions revêtues de caoutchouc ainsi que des munitions chargées contre la population civile non armée, tuant et blessant des milliers de manifestants palestiniens.

208. En réaction à la détérioration rapide de la situation dans le Territoire palestinien occupé, le Conseil de sécurité des Nations Unies adopta la résolution 605 (1987) le 22 décembre 1987. Dans cette résolution, le Conseil déplore vivement «ces politiques et pratiques d'Israël, puissance occupante, qui viole les droits de l'homme du peuple palestinien dans les territoires occupés, en particulier le fait que l'armée israélienne a ouvert le feu, tuant ou blessant des civils palestiniens sans défense[176]». Le Conseil demanda également au Secrétaire général de présenter un rapport «contenant ses recommandations concernant les moyens d'assurer la sécurité et la protection des civils palestiniens soumis à l'occupation israélienne[177]». Par la suite, la question de la protection de la population civile palestinienne dans le Territoire palestinien occupé fut au premier plan du programme de divers organes des Nations Unies. La résolution 605 (1987) fut suivie de près par deux autres résolutions du Conseil sur la question, à savoir les résolutions 607 (1988) du 5 janvier 1988 et 608 (1988) du 14 janvier 1988.

209. Au cours des années qui suivirent le déclenchement de la première Intifada palestinienne, la population civile palestinienne subit de nombreuses pertes de vies, et fut notamment victime de plusieurs massacres. Cela inclut le massacre de plus de vingt fidèles palestiniens au Haram al-Charif, dans la Jérusalem-Est occupée, le 8 octobre 1990. A la suite de la recrudescence de la perpétration accrue d'actes de violence contre la population civile par Israël, le Conseil de sécurité des Nations Unies adopta la résolution 672 (1990) le 12 octobre, dans laquelle il se déclare

> «alarmé par la violence qui s'est déchaînée le 8 octobre dans Al-Haram Al-Charif et dans d'autres lieux saints à Jérusalem et qui a fait plus de vingt morts parmi les Palestiniens et plus de cent cinquante blessés, notamment parmi des civils palestiniens et des personnes innocentes qui s'étaient rendues à la prière[178]».

Un autre incident constituant un massacre est l'abattage de civils palestiniens par un colon israélien à la mosquée d'Al-Haram Al-Ibrahimi à Al-Khalil (Hébron) le 25 février 1994. Dans la résolution 904 (1994) du 18 mars 1994, le Conseil de sécurité condamne «le massacre d'Hébron et ses suites, qui ont coûté la vie à plus de cinquante civils palestiniens et fait plusieurs centaines de blessés» et demande que «des mesures soient prises pour garantir la sécurité et la protection des civils palestiniens dans tout le territoire occupé[179]». Le premier attentat palestinien à la bombe eut lieu peu après, à savoir le 6 avril 1994, à Afula, tuant huit civils israéliens.

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[175] *Origins and Evolution of the Palestine Problem*, 1917-1988 (ONU, New York, 1990). Voir également les rapports du comité spécial chargé d'enquêter sur les pratiques israéliennes.

[176] S/RES/605 (1987).

[177] *Ibid*.; le rapport du Secrétaire général des Nations Unies présenté conformément à la résolution 604 (1987) fait partie du document S/19443 du 21 janvier 1988.

[178] S/RES/672 (1990); le Secrétaire général des Nations Unies présenta un rapport en vertu de la résolution 672 (1990) qui fait partie du document S/21919 du 31 octobre 1990.

[179] S/RES/904 (1994).

210. La situation dans le Territoire palestinien occupé fut fortement influencée et modifiée par les progrès politiques réalisés par la signature par le Gouvernement d'Israël et par l'Organisation de libération de la Palestine (OLP) de la déclaration de principes sur des arrangements intérimaires d'autonomie du 13 septembre 1993. Précédée par des lettres de reconnaissance réciproque, la déclaration de principes prévoyait un processus graduel de retrait des troupes d'occupation israéliennes du Territoire palestinien occupé. L'accord intérimaire conclu par les deux parties en 1994 expose en détail les mécanismes de redéploiement des forces d'occupation israéliennes du territoire palestinien, en trois étapes, commençant en octobre 1996 et se terminant dans un délai de 18 mois après l'élection du Conseil législatif palestinien, en septembre 1997.

211. Le premier redéploiement eut lieu en 1994, de la ville de Gaza et de Jéricho, permettant pour la première fois le déploiement des forces de sécurité palestiniennes (FSP). En l'absence d'institutions gouvernementales et policières palestiniennes établies, les diverses branches des FSP furent toutefois confrontées à la difficulté de regrouper et d'assumer immédiatement leurs responsabilités couvrant un large éventail de tâches, notamment faire respecter la loi et maintenir l'ordre public dans les zones sous contrôle palestinien.

212. Malgré les progrès réalisés dans le cadre du processus de paix entre les deux parties et l'établissement d'une autorité autonome palestinienne (Autorité palestinienne) en 1994, outre la création des FSP, la situation sur le terrain dans le Territoire palestinien occupé ne s'améliora pas de façon marquée. A l'échéance de la période transitoire de cinq ans convenue dans la déclaration de principes et de la poursuite des activités de colonisation, les frictions entre les deux parties s'amplifièrent à nouveau. La poursuite intransigeante par Israël de sa campagne de colonisation dans le Territoire palestinien occupé aboutit à la convocation par l'Assemblée générale des Nations Unies de sa dixième session extraordinaire d'urgence en avril 1997, afin d'examiner les agissements d'Israël dans Jérusalem-Est occupée dans le cadre de ses projets d'implantation de nouvelles colonies dans la région[180].

213. Malgré les tensions croissantes et l'exacerbation des conditions socio-économiques dans le Territoire palestinien occupé, les négociations du processus de paix se poursuivirent au cours des années suivantes pour tenter d'appliquer les ententes passées portant sur la tenue de négociations en vue d'un règlement définitif. Pourtant, la troisième et plus importante phase de redéploiement, au cours de laquelle les forces israéliennes devaient se redéployer à partir de toute la Cisjordanie, à l'exception des zones sur lesquelles devaient porter les négociations concernant le statut permanent, y compris Jérusalem, les colonies et les lieux militaires spécifiés dans le Territoire palestinien occupé, n'a jamais eu lieu. C'est pourquoi, le 28 septembre 2000, le jour du déclenchement de la seconde Intifada palestinienne, Israël avait toujours le contrôle exclusif de 61 % de la Cisjordanie (zone C) avec un contrôle prépondérant en matière de sécurité sur une autre zone de 21 % (zone B). L'Autorité palestinienne (AP) n'avait le contrôle que sur des zones non contiguës du territoire couvrant environ 18 % de la Cisjordanie (zone A). (En juin 2002, Israël occupait à nouveau toute la zone A et, en une semaine, avait assumé tout le contrôle de sécurité sur toute la Cisjordanie, ce qui est toujours le cas, à l'exception du redéploiement israélien à partir de certains centres de population.)

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[180] A/ES-10/2 du 25 avril 1997. Le Secrétaire général des Nations Unies présenta un rapport en vertu de la résolution A/ES-10/2, se trouvant dans le document A/ES-10/6-S/1997/494 (26 juin 1997), à la suite de quoi on convoqua une conférence des hautes parties contractantes à la quatrième convention de Genève en juin 1999 et en décembre 2001, au cours de laquelle on adopta une déclaration réaffirmant l'applicabilité de la convention au TPO et invitant les parties à respecter la convention et à veiller à ce qu'elle soit respectée dans toutes les circonstances. Le texte de la déclaration du 5 décembre 2001, dossier n° 67, accompagne le rapport du Secrétaire général.

3) La situation actuelle sur le plan de la sécurité

214. La seconde Intifada, déclenchée par les événements du 28 septembre 2000 en rapport avec la visite du chef Likoud, Ariel Sharon, au Haram al-Charif dans Jérusalem-Est occupée donna lieu à une violente réaction des forces d'occupation israélienne aux manifestations palestiniennes[181]. Contrairement aux accusations concernant l'orchestration des événements, l'Intifada s'était déclenchée à la suite de cet événement au point culminant des tensions croissantes engendrées par l'impasse politique et par la détérioration des conditions socio-économiques résultant des politiques et des pratiques israéliennes. Comme l'indique la commission d'enquête sur les droits de l'homme,

> «L'insistance avec laquelle les FDI affirment que les manifestants palestiniens, humiliés par des années d'occupation militaire qui fait désormais partie de leur culture et de leur éducation, sont organisés et manipulés par l'Autorité palestinienne révèle soit une ignorance de l'histoire soit un mépris cynique du poids écrasant des faits prouvés[182]».

215. Dès le début de cette Intifada, les forces d'occupation israéliennes eurent recours à l'aveuglette à une force excessive, utilisant tous les types d'armes militaires, contre la population civile palestinienne, tuant et blessant de nombreux civils et entraînant des dommages matériels considérables dans tous le Territoire palestinien occupé[183]. Le Conseil de sécurité des Nations Unies réagit immédiatement à la situation en adoptant la résolution 1322 (2000) du 7 octobre, dans laquelle le Conseil déplore

> «l'acte de provocation commis le 28 septembre 2000 au Haram al-Charif, à Jérusalem, de même que les violences qui ont eu lieu par la suite ainsi que dans d'autres lieux saints, et d'autres secteurs sur l'ensemble des territoires occupés par Israël depuis 1967, et qui ont causé la mort de plus de quatre-vingt Palestiniens et fait de nombreuses autres victimes[184]».

216. Alors que les forces d'occupation continuaient d'avoir recours à une force excessive contre la population civile dans le Territoire palestinien occupé, la période qui suivit le déclenchement de la seconde Intifada fut également marquée par une recrudescence des attentats suicide à la bombe palestiniens dirigés contre des civils israéliens à Israël. Les premiers civils israéliens tués par ces actes palestiniens depuis le début de l'Intifada étaient deux personnes qui périrent dans un attentat à la voiture piégée le 2 novembre 2000. A cette date, cent quarante huit Palestiniens, y compris des enfants, avaient déjà été tués par les forces

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[181] Voir procès-verbal de la réunion du Conseil de sécurité des Nations Unies S/PV.4204 du 3 octobre 2000, S/PV.4202 (première reprise) du 4 octobre 2000 et S/PV.4204 (deuxième reprise) du 5 octobre 2000. Voir également Nations Unies, doc. A/55/432-S/2000/921 du 29 septembre 2000; A/55/437-S/2000/930 du 2 octobre 2000 et A/55/440-S/2000/936 du 2 octobre 2000 (lettres adressées au président du Conseil de sécurité).

[182] Rapport de la commission d'enquête sur les droits de l'homme établie en application de la résolution S-5/1de la commission en date du 19 octobre 2000, E/CN.4/2001/121 (16 mars 2001), par. 48, annexe 20 du volume 2 des annexes accompagnant le présent document.

[183] Voir rapports E/CN.4/2001/114 et E/CN.4/2001/121, annexes 9 et 10 du volume 2 des annexes accompagnant le présent document.

[184] S/RES/1322 (2000).

d'occupation israéliennes[185]. A la fin de l'an 2000, au moins trois cent vingt-deux Palestiniens avaient été tués par les forces d'occupation et trente-sept Israéliens, y compris des membres des forces d'occupation, avaient été tués au cours d'attaques palestiniennes.

217. Le fait que, dès le début, les dirigeants palestiniens avaient condamné sans équivoque ce type d'attaques contre des civils israéliens se doit d'être signalé. Les dirigeants ont systématiquement condamné les attentats suicide à la bombe et continuent de les condamner, considérant qu'il s'agit d'actes immoraux et injustes qui doivent cesser. Il convient toutefois de faire une distinction entre les actes illégaux de violence contre des civils israéliens en Israël et les actes de la résistance palestinienne à l'occupation israélienne et aux attaques militaires menées par les forces d'occupation, dans le contexte du droit international, et sans égard aux positions prises par les dirigeants palestiniens prônant la cessation totale des actes de violence.

218. Au cours des mois et des années qui suivirent le déclenchement de la seconde Intifada, Israël intensifia ses politiques et pratiques répressives et illégales contre la population civile palestinienne dans le Territoire palestinien occupé dans des proportions encore jamais atteintes depuis le début de son occupation militaire en 1967. Utilisant tous les types d'armes lourdes, notamment des tanks, des hélicoptères, des hélicoptères armés, des avions de chasse et des bulldozers, les forces d'occupation israéliennes se sont mises à avoir recours à la force de façon excessive et à l'aveuglette et ont lancé d'innombrables attaques militaires, compromettant la sécurité et le bien-être de la population civile palestinienne. Elles ont notamment mené des raids et des incursions violentes dans les centres de population palestiniens, lancé des bombardements aériens et des attaques aux missiles ayant pour cibles des édifices et des véhicules palestiniens, généralement situés dans des zones à forte densité de population civile, ainsi que des attaques avec des tireurs embusqués. Les forces d'occupation israéliennes ont en outre fréquemment utilisé des civils palestiniens comme boucliers humains au cours d'attaques militaires. En raison de ces pratiques, la puissance occupante avait tué, entre le 28 septembre 2000 et le 21 janvier 2004, deux mille sept cent huit civils palestiniens, incluant des hommes, des femmes et des enfants; elle avait en outre blessé plus de 40 000 autres personnes, dont plusieurs milliers souffrent actuellement d'invalidité permanente[186]. Au 1er janvier 2004, plus de 800 Israéliens, y compris des civils et des membres des forces d'occupation, avaient été tués depuis le début de l'Intifada.

219. Un pourcentage élevé des Palestiniens tués par les forces d'occupation israéliennes l'ont été par exécution extrajudiciaire (assassinat), une politique publiquement reconnue par le Gouvernement d'Israël. Les assassinats israéliens de «militants» ont généralement été perpétrés au cours de périodes de calme relatif, voire à des périodes où le processus de paix progressait, redéclenchant le cycle de violence et minant les efforts de paix. Dans un des nombreux exemples, pendant un mois après la déclaration d'un cessez-le-feu unilatéral par les Palestiniens, le 16 décembre 2001, pas un seul civil israélien n'a été blessé ou tué par un Palestinien du Territoire palestinien occupé. Par contre, le 14 janvier 2002, Israël a assassiné un chef des brigades Al-Aqsa, Raed Karmi, à Tulkarem. Le groupe a riposté en lançant une attaque le 17 janvier 2002, entraînant une nouvelle explosion de violence. D'après le rapporteur spécial de la Commission des droits de l'homme sur la situation des droits de l'homme dans le Territoire palestinien occupé par Israël

[185] Voir les lettres adressées au président du Conseil de sécurité des Nations Unies et au Secrétaire général des Nations Unies par l'observateur permanent de la Palestine auprès de l'Office des Nations Unies (depuis la lettre A/55/432 du 29 septembre 2000, A/ES-10/39-S/2000/1015 du 24 octobre 2003 jusqu'aux lettres A/ES-10/255-S/2003/1206 du 26 décembre 2003).

[186] *Ibid*. Ce chiffre représente le nombre de Palestiniens tués directement par les forces d'occupation. Il n'inclut pas les Palestiniens décédés des suites d'autres pratiques israéliennes dans le Territoire palestinien occupé, notamment ceux qui sont décédés à des postes de contrôle après qu'on leur eut bloqué l'accès à des soins médicaux.

depuis 1967, entre octobre 2000 et avril 2003, les forces d'occupation «ont tué plus de deux cent trente Palestiniens, dont quatre-vingt femmes, enfants et tiers innocents dans des opérations d'assassinat» d'octobre 2000 à avril 2003[187].

220. En outre, Israël a causé des dommages matériels et une destruction considérables dans le Territoire palestinien occupé depuis septembre 2000[188]. Des milliers de maisons, de biens et de véhicules palestiniens ont été détruits. L'infrastructure palestinienne a été gravement endommagée à la suite de la destruction de routes et de réseaux d'électricité, d'adduction d'eau et d'égouts par les forces d'occupation. Des milliers de *dunums* de terres agricoles ont été rasés et des centaines de milliers d'arbres productifs ont été déracinés.

221. En outre, dans les sanctions collectives contre la population palestinienne, Israël a considérablement accru et appliqué de façon beaucoup plus stricte ses restrictions sur la liberté de circulation des personnes et des biens, y compris du personnel et des biens médicaux et humanitaires, dans le Territoire palestinien occupé. La liberté de circulation est restreinte entre les villes et les villages palestiniens et à l'intérieur ce ceux-ci, ainsi qu'en direction et en provenance des territoires, par la mise en place de centaines de postes de contrôle et de barrages routiers, dans la périphérie de toutes les villes et à tous les principaux carrefours routiers, entraînant la division interne du territoire[189]. Ces restrictions et l'imposition de «bouclages» militaires généralisés et de couvre-feux prolongés ont perturbé tous les aspects de la vie quotidienne palestinienne et ont pratiquement paralysé l'économie palestinienne, déjà précaire, en provoquant d'énormes hausses des taux de chômage et en semant la pauvreté généralisée au sein de la population. La Banque mondiale estime qu'au moins 60 % de la population palestinienne vit sous le seuil de la pauvreté et que le taux de chômage s'élève à 53 % de la population active[190]. Les conséquences socio-économiques cumulatives ont été catastrophiques, entraînant une crise humanitaire aiguë. Comme l'indique l'envoyée personnelle du Secrétaire général de l'ONU pour les questions humanitaires, Catherine Bertini,

> «Les Palestiniens sont soumis à divers bouclages, couvre-feux, barrages routiers et restrictions qui ont provoqué un quasi effondrement de l'économie palestinienne, une hausse du chômage, une recrudescence de la pauvreté, un ralentissement des activités économiques, un accès limité aux services essentiels (comme l'eau, les soins médicaux, l'éducation, les services d'urgence) et une dépendance croissante de l'aide humanitaire. Les restrictions frappent pratiquement tous les secteurs d'activité, empêchant totalement la plupart des Palestiniens de poursuivre un semblant de vie normale et les confrontant quotidiennement à des épreuves, des privations et des atteintes à la dignité humaine.»[191]

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[187] Rapport Dugard (2003), par. 24.

[188] *Ibid*. Voir également Commission des droits de l'homme, rapport de la Haut Commissaire, E/CN.4/2001/114, annexe 9 du volume 2 des annexes accompagnant le présent document; Commission des droits de l'homme; rapport de la commission d'enquête sur les droits de l'homme, E/CN.4/2001/121, annexe 10 du volume 2 des annexes; A/58/311; rapport du commissaire général de l'UNRWA (A/58/13).

[189] Rapport Dugard (2003), par. 17; voir également Commission des droits de l'homme, rapport de la commission d'enquête sur les droits de l'homme, E/CN.4/2001/121, annexe 10 du volume 2 des annexes et le rapport de mission de Mme Catherine Bertini, envoyée personnelle du Secrétaire général pour les questions humanitaires, du 19 août 2002 (appelé ci-après «rapport Bertini»), annexe 14 du volume 2 des annexes accompagnant le présent document.

[190] *Two Years of Intifada, Closures and the Palestinian Economic Crisis*, Banque mondiale, 5 mars 2003.

[191] Rapport Bertini, par. 4, annexe 14 du volume 2 des annexes accompagnant le présent document.

222. Certaines des mesures prises et certains des actes commis par les forces d'occupation israéliennes dans le Territoire palestinien occupé constituent de graves violations de la quatrième convention de Genève au sens de l'article 147, à savoir notamment des homicides intentionnels, le fait de causer intentionnellement de grandes souffrances ou de porter des atteintes graves à l'intégrité physique ou à la santé, la détention illégale, la destruction et l'appropriation systématiques de biens, tel que mentionné au chapitre 9. Ainsi, certains des actes commis par les forces d'occupation israéliennes pendant l'attaque menée contre le camp de réfugiés de Djénine et ses habitants en avril 2002 peuvent être considérés comme tels[192]. Un autre exemple est l'homicide extrajudiciaire de Salah Shehada perpétré le 23 juillet 2002 à son domicile, dans une zone très peuplée de Gaza, par le largage d'une bombe d'une tonne sur sa maison qui entraîna la mort de quinze civils, notamment des enfants, et causa des blessures à plus de cent cinquante personnes et des dégâts matériels considérables[193].

223. L'escalade militaire israélienne dans le Territoire palestinien occupé depuis septembre 2000 cibla non seulement la population civile, mais aussi l'Autorité palestinienne. Les forces d'occupation menèrent de nombreuses attaques et de nombreux bombardements dirigés contre les installations et les institutions de l'Autorité palestinienne, notamment des ministères et des installations des services de sécurité et du renseignement. Les forces d'occupation lancèrent même des attaques contre l'enceinte de la résidence du président de l'Autorité palestinienne, Yasser Arafat, à Ramallah, où il est assiégé depuis décembre 2001[194]. L'impact sur l'appareil de sécurité palestinien a été terrible; à l'instar de l'Autorité palestinienne, il a été pratiquement mis hors d'état d'agir et immobilisé. En outre, en janvier 2003, Israël a mis un terme à la coopération et à la coordination civiles et en matière de sécurité qui avaient été instaurées avec l'Autorité palestinienne, ce qui entrava encore davantage les efforts des services de sécurité palestiniens.

224. De nombreux efforts ont été déployés à l'échelle internationale, notamment à l'initiative des Nations Unies, pour redresser la situation critique dans le Territoire palestinien occupé. Ces efforts incluent la création du Comité d'enquête dirigé par l'ex-sénateur américain George Mitchell, qui a présenté le «rapport Mitchell»[195], ainsi que l'examen répété de la situation par le Conseil de sécurité et l'adoption par lui des résolutions 1402 (2002) du 30 mars 2002, 1403 (2002) du 4 avril 2002, 1405 (2002) du 19 avril 2002 et 1435 (2002) du 24 septembre 2002. Des efforts ont en outre été déployés par d'autres acteurs internationaux; diverses initiatives ont notamment été prises par les Etats-Unis et par d'autres membres du Quatuor. Aucun de ces efforts n'a malheureusement été couronné de succès et n'a permis d'améliorer la situation et d'aboutir à une reprise du processus de paix.

4) Conclusions

225. La situation actuelle dans le Territoire palestinien occupé est la suivante : les forces d'occupation israéliennes sont actuellement présentes à l'intérieur et dans la périphérie de tous les centres de population palestiniens et elles continuent d'imposer des restrictions sévères sur les déplacements. C'est donc dans ce contexte que le peuple palestinien poursuit ses efforts pour surmonter les conséquences des pertes en vies humaines et de la destruction, y compris celle de leurs institutions, à la suite des agissements d'Israël. La crise humanitaire à laquelle est confronté

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[192] Voir rapport du Secrétaire général des Nations Unies dans A/ES-10/186 du 30 juillet 2002; Human Rights Watch Report, *Jenin: IDF Military Operations* (mai 2002, Volume 14, n° 3 (E).

[193] A/ES-10/185-S/2002/827 du 23 juillet 2002.

[194] S/RES/1435 (2002).

[195] Rapport du comité d'enquête de Sharm-el-Scheikh (rapport Mitchell), 30 avril 2001.

le peuple palestinien a été fondamentalement aggravée par la construction du mur par Israël dans le Territoire palestinien occupé, y compris Jérusalem-Est, étant donné que les expropriations, l'obstruction de la circulation et l'isolation des villes et villages palestiniens l'un de l'autre aggravent encore les conditions socio-économiques extrêmement précaires et accentuent la frustration et le désespoir de la population. Comme l'a déclaré l'envoyée personnelle du Secrétaire général des Nations Unies pour les questions humanitaires dans son rapport de mission,

> «Il faut reconnaître que la misère sociale et économique du peuple palestinien est un obstacle sérieux à la mise en place d'une paix et d'une sécurité durables. La détérioration considérable des conditions de vie contribue à déstabiliser l'environnement politique et augmente le sentiment de désespoir que les extrémistes savent si bien exploiter.»[196]

226. Il est un fait indéniable que les attentats suicide à la bombe contre les civils à Israël doivent cesser. Il est en outre indéniable que les Etats ont le droit et la responsabilité, dans les limites du droit international, de protéger leurs citoyens. Cependant, la perception qu'Israël est un pays pacifique et passif victime d'attaques est dénuée de fondement. Un changement radical des politiques et pratiques israéliennes, conforme aux obligations qu'a Israël en vertu du droit international, est une condition essentielle à toute amélioration de la situation sur place. La Palestine affirme que la seule possibilité d'assurer la sécurité des deux parties consiste à mettre un terme aux politiques et pratiques israéliennes illégales mentionnées ci-dessus et à l'occupation et non à construire des murs, même en territoire israélien. Pour mettre un terme à la situation actuelle, notamment pour rétablir la sécurité et s'engager dans un règlement pacifique du conflit, le respect du droit international, l'adhésion à la solution des deux Etats et la reconnaissance effective des droits inaliénables du peuple palestinien sont essentiels.

[196] Rapport Bertini, par. 12, annexe 14 du volume 2 des annexes accompagnant le présent document.

PARTIE C

LE MUR

CHAPITRE 6

LE MUR QU'ISRAËL CONSTRUIT ACTUELLEMENT EN TERRITOIRE PALESTINIEN OCCUPE, Y COMPRIS A JERUSALEM-EST ET DANS LES ENVIRONS

1) Introduction

227. Israël construit actuellement un mur qui se trouve presque entièrement en Territoire palestinien occupé, y compris à Jérusalem-Est et dans les environs, et qui s'écarte du tracé de la ligne d'armistice établie en 1949 (Ligne verte). Il s'agit d'un régime complet, comprenant une structure complexe ainsi que de mesures concrètes, administratives et autres. Le mur encercle des collectivités entières et forme des enclaves. Lorsqu'il sera terminé, il enfermera la quasi-totalité de la population palestinienne. Il a entraîné des destructions à grande échelle et la confiscation de milliers de dunums de terre palestinienne et il emprisonne déjà des milliers de Palestiniens entre ses pierres et la Ligne verte. Il existe une corrélation indéniable entre le tracé du mur d'une part et les colonies israéliennes illégales en Territoire palestinien occupé et les ressources en eau d'autre part. Le mur a une incidence socio-économique dévastatrice sur le peuple palestinien. Il a manifestement pour but l'annexion effective de vastes pans du Territoire palestinien occupé, il enlève pratiquement toute viabilité à l'Etat palestinien et à la solution des deux Etats. Le présent chapitre présente et décrit le tracé des tronçons existants, approuvés et prévus du mur et explique le régime administratif, les mesures et effets connexes ainsi que les incidences sociales et économiques que le mur aura sur le peuple palestinien dans le Territoire palestinien occupé.

228. Aux fins de la présente déclaration, la construction du mur est divisée en trois phases, décrites ci-après et établies en fonction des dates d'approbation par le cabinet israélien. Dans certains cas, la décision finale n'est peut-être pas encore prise, mais il est possible de définir des projections fiables[197].

2) Le tracé du mur : tronçons existants, approuvés et projetés

a) *La phase I du mur*

229. Le 14 avril 2002, le cabinet israélien a décidé de construire une «barrière permanente» dans la «zone de séparation hermétique» entre la Cisjordanie et Israël. Une «administration de la zone de séparation hermétique», ayant à sa tête le directeur général du ministère de la défense, a été créée pour mettre cette décision en œuvre. Au début de juin 2002, l'administration de la zone de séparation hermétique a mis la dernière main au projet de la phase I du mur, qui devait commencer à la limite nord-ouest de la Cisjordanie, près du village de Salem, et mener jusqu'à la colonie israélienne d'Elkana, dans le centre de la Cisjordanie (voir la carte n° 3 : «Le mur en Cisjordanie», et la carte générale). Un plan a aussi été dressé en vue de la construction d'un mur dans le nord et le sud de Jérusalem-Est (voir la carte n° 4 : «Le mur dans Jérusalem-Est»). Le 23 juin 2002, le

[197] La «phase I» correspond à ce qu'Israël considère comme l'étape 1 de la construction et la «phase II», à ce qu'Israël considère comme les étapes 2, 3 et 4. Ces étapes sont aussi parfois appelées phases A et B.

Gouvernement israélien a accordé, par la décision 2077, son approbation de principe au plan. Le 14 août 2002, le cabinet approuvait le tracé final de la phase I. La construction de la phase I du mur était presque terminée à la fin de juillet 2003.

230. Israël a déclaré que des «considérations opérationnelles» étaient les principaux facteurs influant sur le tracé de la phase I du mur. Ces considérations sont principalement de trois ordres.

— *Topographie* : d'après Israël :

> «Le tracé topographique du mur a été choisi pour des raisons de sécurité. La barrière doit, dans toute la mesure du possible, traverser des secteurs d'où le territoire environnant peut être contrôlé; pour que les forces travaillant le long du mur ne soient pas menacées et puissent utiliser les postes d'observation qui permettent la surveillance des deux côtés de la clôture.»[198]

— *Zone de sécurité* : d'après Israël :

> «On craint que la barrière ne bloque pas toutes les tentatives de pénétration et que les forces de sécurité ne puissent pas arriver à temps pour empêcher d'éventuels attaquants de franchir l'obstacle. Il faut donc délimiter une zone de sécurité géographique pour permettre aux forces de combat de pourchasser les terroristes à l'intérieur [de la Cisjordanie] avant qu'ils ne parviennent à passer en Israël et à disparaître dans la population.»[199]

— *Conserver le plus grand nombre de colonies possible à l'ouest de la barrière* : d'après Israël, «On craint que la construction de la barrière canalise les attaques vers ces collectivités, et il a donc été décidé de faire passer la clôture à l'est de ces colonies afin d'en assurer la protection et celle des chemins d'accès qui y mènent.»[200]

b) *La phase II de la construction du mur*

231. La phase II a été approuvée par le cabinet israélien le 1er octobre 2003. Elle comprend les prolongements suivants du mur.

232. La construction de la partie orientale du mur a débuté par un tronçon partant de Salem et allant jusqu'au Jourdain, à l'est. Une autre section se dirige vers le sud, d'Al Mutilla à Tayasir, et devrait être terminée d'ici mars 2004 (voir la carte no 3 : «Le mur en Cisjordanie», et la carte générale).

233. Suite à une décision prise par le cabinet israélien le 5 septembre 2003, les tronçons du mur déjà construits à Jérusalem-Est et dans les environs (sauf dans le secteur de Ma'ale Adumim) ont été prolongés (voir la carte no 4 : «Le mur dans Jérusalem-Est»).

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[198] Réponse de l'Etat d'Israël, art. 18-19, dans *Sa'al 'Awani 'Abd al Hadi et al. v. Commander of IDF Forces in the West Bank*, CIJ 7784/02, reproduit dans le rapport 2003 de B'Tselem, p. 32.

[199] *Ibid*.

[200] *Ibid*.

234. Le mur a aussi été prolongé vers le sud à partir de l'implantation d'Elkana en direction de Jérusalem, et de la colonie de Gilo vers le sud du Mont Hébron (voir la carte n° 3 : «Le mur en Cisjordanie», et la carte générale).

235. La phase II devait prendre fin en 2005, mais le 18 décembre 2003 le premier ministre Ariel Sharon a annoncé qu'Israël allait sensiblement accélérer la construction de la clôture de sécurité, en prévision d'un plan de désengagement unilatéral[201]. Des ordres ont été donnés pour que la construction commence simultanément tout le long du tracé plutôt que par étapes[202].

c) ***Plan de la phase III du mur***

236. En mars 2003, le premier ministre israélien a présenté des plans en vue de la construction d'un mur longeant la vallée du Jourdain. Même si le tracé n'a pas encore été officiellement approuvé par le cabinet, le Gouvernement israélien aurait déjà, selon certaines sources, décidé de construire ce tronçon[203]. D'après le rapport Dugard (2003, par. 11), «on s'attend toutefois à ce qu'un autre mur soit édifié plus à l'est, le long de la chaîne montagneuse située à l'ouest de la vallée du Jourdain, une fois que la construction du mur séparant Israël de la partie occidentale de la Cisjordanie sera achevée». Ce tronçon du mur devrait suivre la route d'Allon (route 80) de Tayasir à Al-Ram, puis continuer vers le sud pour relier Abu Dis à Um Diraj et rejoindre ainsi la partie déjà approuvée du mur au sud-est d'Al-Khalil (Hébron)[204] (voir la carte n° 3 : «Le mur en Cisjordanie», et la carte générale). Un corridor est prévu pour le passage des Palestiniens vers la Jordanie entre Ramallah et la frontière jordanienne, en passant par Jéricho.

d) ***Jérusalem-Est***

237. Comme nous l'avons vu, le tracé du mur serpente dans Jérusalem-Est occupée et aux environs. Dans le rapport que le Secrétaire général de l'ONU a établi en application de la résolution A/ES-10/13 de l'Assemblée générale, il est dit que

> «[L]a barrière existante et le tracé prévu autour de Jérusalem se trouvent au-delà de la Ligne verte et, dans certains cas, au-delà de la limite orientale de la municipalité de Jérusalem telle qu'elle a été annexée par Israël. Les deux tronçons achevés représentent au total 19,5 kilomètres sur le pourtour de Jérusalem et 1,5 kilomètre de mur en béton dans le quartier d'Abou Dis à Jérusalem-Est. Le tracé prévu comprend un tronçon à l'est de Jérusalem qui relie le mur actuel d'Abou Dis; les travaux de nivellement du terrain ont débuté à son extrémité sud.»

Le rapport précise aussi que

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[201] Allocution du premier ministre Ariel Sharon à la conférence d'Herziliya, 18 décembre 2003.

[202] Amir Rapaport, *Ma'ariv*, 24 décembre 2003.

[203] Ze'ev Schiff, «Something's afoot along the fence», *Ha'aretz*, 30 décembre 2003. D'autres sources mentionnent que les plans d'un mur dans la vallée du Jourdain ont été établis, dont Geoffrey Aronson, «Sharon Government's Separation Plan Defines Palestine's Provisional Borders», *Report on Israeli Settlement in the Occupied Territories*, vol. 13, n° 4, juillet-août 2003, p. 4; Service Ha'aretz, «US Opposes Israël's Plan for Jordan Valley Fence» *Ha'aretz*, 21 juillet 2003; Eyal Weizman, «Ariel Sharon and the Geometry of Occupation, Part 3», 15 septembre 2003, www.opendemocracy.net/themes/article.isp?id=2&articleID=1476; cf Jonathan Cook, «Thwarting the State», *Al-Ahram Weekly* en ligne, n° 61, 27 mars-2 avril 2003.

[204] Les estimation de la longueur et du tracé sont basées sur des rapports publiés dans les médias par des sources militaires et détaillant l'emplacement et la longueur du mur, sur des rencontres avec des représentants israéliens engagés dans la planification du tracé, et sur le calcul du total des tracés approuvés et de la longueur totale prévue pour le mur. Voir Ben Kaspit, *Ma'ariv*, 14 janvier 2004.

«[U]n deuxième tronçon traverse la banlieue d'Al-Ram, au nord de Jérusalem, qui sera coupée de Jérusalem, et rejoint l tronçon nord actuel de la barrière au poste de contrôle de Qalandia. Un troisième tronçon entourera cinq communautés palestiniennes au nord-ouest de Jérusalem, créant une enclave de 800 hectares comptant quatroze mille cinq cents habitants. Il manque encore un maillon dans l'itinéraire prévu à l'est de Jérusalem, près de la colonie de Maale Adumim.»[205]

e) ***Sommaire : le mur en rapport avec la Ligne verte***

238. Dans la présente section, la Palestine fait spécifiquement mention de la longueur et du tracé du mur au moment de la rédaction du présent mémoire.

— Jusqu'à maintenant, 186 kilomètres de mur ont été construits dans les régions nord et centre de la Cisjordanie (Jérusalem).

— Un tronçon de 25 kilomètres de plus est actuellement en construction.

— La construction d'un segment de 381 kilomètres a également été approuvée.

— Une portion de 196 kilomètres pourrait en outre être planifiée, selon ce que recommanderont les responsables militaires israéliens.

A en juger par ces chiffres, le mur une fois terminé aura au total 788 kilomètres de longueur.

i) Tronçons des phases I et II déjà terminés

239. Six tronçons du mur ont été construits jusqu'à maintenant. (Voir les cartes n°s 12a-12k : «Le mur en Cisjordanie», sections a-l).

Emplacement	Longueur du mur
— Salem/Mutilla	31 kilomètres
— Jourdain /Mutilla	9 kilomètres
— Salem/Masha (Salfit)	126 kilomètres
— Ramallah/Jérusalem	9 kilomètres
— Bet Sahur/Bethléem/Jérusalem (sud)	10 kilomètres
— Abu Dis/Al Eizariya	1 kilomètre
Total :	186 kilomètres

[205] Rapport du Secrétaire général établi en application de la résolution ES-10/13 de l'Assemblée générale, Nations Unies, doc. A/ES-10/248, en date du 24 novembre 2003, dossier n° 52 accompagnant le mémoire du Secrétaire général.

ii) Tronçons de la phase II en construction

240. Trois portions du mur sont actuellement en construction (voir la carte générale).

Emplacement	Longueur du mur
— Abu Dis/Al 'Eizariya	14 kilomètres
— Mutilla/'Mehola' (Jourdain)	6 kilomètres
— Rantis	5 kilomètres
— Total :	25 kilomètres

iii) Tracé approuvé de la phase II

241. La construction immédiate de six tronçons du mur a été approuvée. La formation d'enclaves intérieures à Jérusalem a été approuvée et annoncée; les clôtures enfermeront les banlieues de Jib-Bir Nabala, Al Ram, Anata, Hizma, le camp de réfugiés de Shufat, et Al Walaja (voir la carte générale).

Emplacement	Longueur du mur
— Masha/Ariel/Ramallah	132 kilomètres
— Mutilla/Tayasir (vallée du Jourdain)	14 kilomètres
— Gilo (Bethléem)/Um Diraj (A-Khalil)	129 kilomètres
— Secteurs doublement murés	
— Qibya	25 kilomètres
— Bet Ur	42 kilomètres
— Enclaves à l'intérieur de Jérusalem	
— Jib	17 kilomètres
— Al Walaja	5 kilomètres
— Al Ram/Anata	17 kilomètres
Total :	381 kilomètres

iv) Tracé projeté de la phase III

242. Les responsables militaires israéliens recommandent la construction d'autres parties du mur. Le tracé dans la vallée du Jourdain et les Monts Hébron, entre Tayasir et Um Diraj, mesure environ 196 kilomètres (voir la carte carte générale).

f) ***Corrélation entre le tracé du mur et la Ligne verte***

243. Sur la longueur totale des trois phases (788 kilomètres), seulement 6 % du mur sera à moins de 100 mètres de la Ligne verte, et ce presque toujours en Territoire palestinien occupé. Les parties du mur construites jusqu'à maintenant pendant la phase I ne sont qu'à 22 % à moins de 100 mètres de la Ligne verte, et ce presque entièrement en Territoire palestinien occupé.

244. Plus précisément, parmi les tronçons érigés dans le cadre des phases I et II en Territoire palestinien occupé :

— 41 kilomètres de mur se trouvent à moins de 100 mètres de la Ligne verte;

— 3 kilomètres se trouvent entre 100 mètres et 200 mètres de la Ligne verte;

— 17 kilomètres sont entre 200 mètres et 1 000 mètres de la Ligne verte;

— 124 kilomètres sont entre 1 000 et 8 000 mètres de la Ligne verte.

3) Le régime du mur ainsi que les mesures et effets connexes

a) ***Structure concrète et caractéristiques du mur***

245. Les parties du mur érigées à Jérusalem, Abu Dis, Qalqiliya, Tulkarem, Nazlat Issa et Salem ont huit mètres de hauteur et sont en béton (voir les photos n° 4, 5 et 12). Des miradors sont installés le long du mur à intervalles d'environ 300 mètres dans des zones comme Qalqiliya et Tulkarem (voir la photo n° 3). Il y a treize miradors pour la seule ville de Qalqiliya. Au moment de la rédaction du présent mémoire, environ 9 kilomètres du mur, dont deux à Jérusalem, étaient construits en béton. Cependant, vu le rythme de la construction, ces chiffres augmentent chaque jour.

246. La plus grande partie du complexe du mur est d'une largeur variant de 30 à 100 mètres. Dans la plupart des cas, les zones jouxtant le mur sont considérées comme des zones militaires d'accès restreint (voir la photo n° 15). Le mur rassemble divers éléments, et l'exemple suivant décrit le mur en coupe à Qalqiliya, mais il est représentatif d'une bonne partie de l'ensemble (voir la coupe de la structure du mur et les photos n° 1 et 2). Le mur vu en coupe est formé des éléments suivants, dans l'ordre :

— des boudins de barbelés et de barbelés à lames sur 5 mètres de profondeur et 3 mètres de hauteur;

— une tranchée de 3 mètres de profondeur et de 1,5 mètre de largeur,

— une route pavée de 6 mètres de largeur, pour les patrouilles israéliennes;

— une bande de sable de 5 mètres de largeur, pour repérer les traces de pas;

— une clôture électrique, avec détecteurs automatiques, haute de 2,5 mètres, sur une base en béton de 60 centimètres de hauteur;

— un terrain vague de 10 mètres de largeur;

— une autre tranchée de 3 mètres de profondeur et de 1,5 mètre de largeur;

— une autre série de boudins de barbelés et de barbelés à lames, de 5 mètres de profondeur et de 3 mètres de hauteur;

— de chaque côté du mur, des zones tampons et des fossés;

— des caméras de surveillance tout le long du mur;

— la presse israélienne a révélé que des mitrailleuses télécommandées seront installées dans le secteur de Gilboa[206].

247. Par ailleurs, le mur de la phase I est percé de trente sept portes (voir la carte n° 13 : «Le mur et la zone fermée», et les photos n°s 13 et 14). Environ la moitié de ces portes fonctionnent, mais leurs heures d'ouverture sont réduites et variables (voir l'annexe n° 2 : «Closed Zone Permit System»).

248. Dans l'ensemble, le système du mur est intégré à un système plus vaste de barrières, y compris des éléments de la topographie naturelle, le réseau routier, les postes de contrôle fixes, les postes de contrôle «aérien», des remblais, des blocs de béton et des barrières sur les chemins secondaires. Au total, ce système de portes et de bouclage a plus d'effet que les éléments linéaires du mur (voir la carte n° 11 : «Le mur et la topographie de la Cisjordanie», ainsi que la carte n° 5 : «Le mur et le bouclage en Cisjordanie»).

b) ***Des enclaves murées***

249. Si ses trois phases sont menées à bien, le mur enfermera presque toute la population palestinienne dans deux grandes enclaves de type bantoustans et à Jérusalem-Est. Les phases I et II ont déjà créé et créeront encore plusieurs petites enclaves supplémentaires le long du tracé. A ce titre, le mur définit plusieurs types de zones fermées. Qalqiliya en est le meilleur exemple. Cette ville de quarante et un mille habitants est entièrement encerclée par le mur et fermée par une unique porte (voir la carte n° 12b : «Le mur en Cisjordanie», section *b)* : «Secteur de Qalqiliya»). Il y a aussi des zones doublement murées, dans lesquelles un deuxième mur distinct du mur principal encercle et enferme un secteur particulier. Un deuxième mur est par exemple en construction à l'ouest de Baqa Sharqiya. Des ordonnances de confiscation de terres ont également été émises en vue de la construction d'un deuxième mur à l'est de Tulkarem. Des terres ont aussi été confisquées et nivelées en prévision de la construction d'un deuxième mur autour de Qibya et de Bet Ur (voir la carte n° 3 : «Le mur en Cisjordanie», et la carte générale). Il ne s'agit plus d'enclaves, c'est-à-dire des collectivités fermées qui ne sont pas raccordées au mur principal, comme c'est le cas pour Jib et Al Walaja (voir la carte n° 4 : «Le mur dans Jérusalem-Est», et l'encadré consacré à Jérusalem dans la carte générale). Les zones doublement murées créeront un isolement plus strict parce que les Palestiniens y seront à tous égards séparés de leurs terres et des collectivités environnantes.

[206] Félix Frish, «Revelation: The separation wall will shoot at terrorists «by itself»», *Ynet*, 22 septembre 2003.

c) ***Démolition de bâtiments et nivellement de terres***

250. En juin 2002, l'administration civile israélienne a commencé à émettre des ordres de démolition visant des bâtiments palestiniens à proximité du tracé du mur, surtout sous prétexte qu'ils avaient été construits sans permis adéquat[207]. Pour la construction de la phase I du mur, au moins deux cent quatre-vingt ordres de démolition ont été émis dans les collectivités de Nazlat Issa, Baqa a-Gharbiya, Baqa a-Sharqiya, Azzun Atma, Umm a-Rihan et Dhaher al-Malah. Dans la plupart des cas, il s'agissait d'habitations[208].

251. Outre les habitations, environ 21 002 dunums (5 251 acres) de terre ont été rasés pour la construction de la phase I du mur. Des infrastructures agricoles, des terres arabes, des serres, un terrain de jeux pour enfants à Al Tayba, une école secondaire à Ras Atiya, des boutiques et des abris pour les animaux ont ainsi été nivelés[209].

d) ***Instauration d'une zone fermée et d'un système de permis***[210]

252. Les 2 et 7 octobre 2003, le Gouvernement d'Israël a émis quatre ordonnances militaires (n° 378) qui transforment en zone fermée le secteur compris entre le mur et la Ligne verte dans le Territoire palestinien occupé et établissent un onéreux système de permis de circuler pour les résidents de l'intérieur de cette zone et les travailleurs qui doivent s'y rendre. Il s'agit des quatre ordonnances suivantes :

— déclaration concernant la fermeture d'une zone (zone de séparation hermétique), 2 octobre 2003 (avec carte jointe);

— permis général d'entrer dans la zone de séparation hermétique et d'y demeurer, 2 octobre 2003;

— règlement concernant les permis d'entrer et de demeurer dans la zone de séparation hermétique, 7 octobre 2003;

— règlement concernant les permis de résident permanent dans la zone de séparation hermétique, 7 octobre 2003.

Ces quatre ordonnances ont été distribuées aux conseils de village locaux les 9 et 10 octobre 2003[211].

253. Les ordonnances militaires prévoient que les résidents palestiniens dans la zone fermée devront obtenir des permis pour vivre dans leurs propres foyers, demeurer sur leurs terres et se déplacer. Les Palestiniens qui n'habitent pas dans la zone fermée mais dont les terres, l'entreprise ou le travail se trouvent dans cette zone sont également tenus de se procurer des permis.

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[207] Voir le chapitre 4 de la politique de planification israélienne en Cisjordanie.

[208] B'Tselem, rapport 2003, p. 24.

[209] Bureau central de statistique palestinien, *Survey on the Impact of Separation Wall on the Localities Where it Passed Through, 2003*, août 2003, p. 7.

[210] Pour ce qui est de l'implantation d'un système de permis dans les divers villages, voir l'appendice «Closed Zone Permit System» partie A; et de façon plus générale la publication et au comité local de coordination de l'aide intitulée *The Impact of Israël's Separation Barrier on Affected West Bank Communities*, mise à jour n° 3, 30 novembre 2003, dossier n° 88 accompagnant le mémoire du Secrétaire général de l'ONU.

[211] On trouvera le texte complet des ordonnances militaires, traduit par le bureau de la coordination des affaires humanitaires de l'ONU, sur le site www.reliefweb.int/hic-opt.

254. Même si les Palestiniens doivent obtenir des permis pour demeurer sur leurs terres, ces permis ne constituent pas une preuve de propriété des terres. Non seulement les procédures détaillées dans les ordonnances militaires pour l'obtention de permis sont complexes, mais encore le critère en vertu duquel un permis est accordé ou refusé n'est pas spécifié. Le fardeau de la preuve de la résidence permanente ou de la nécessité de l'accès incombe au propriétaire palestinien.

255. Les ordonnances militaires accordent aux dirigeants des bureaux de coordination de district israélien (BCD) ou à un «comité» créé par le chef de l'administration civile israélienne dans le TPO les pleins pouvoirs pour déterminer la possibilité et le droit légal des Palestiniens de demeurer dans leurs foyers et sur leurs terres et d'avoir accès à leurs propriétés ainsi que pour décider de la période de validité de ce droit.

256. L'application du système de permis à l'ensemble de la zone fermée est incohérente, imprévisible et incertaine. Jusqu'à maintenant, de nombreux Palestiniens habitant les villages situés à l'intérieur de la zone fermée se sont vu refuser des permis. En outre, les permis sont délivrés pour des périodes de seulement un, trois ou six mois. Il est donc nécessaire de les renouveler à répétition, et les autorités israéliennes peuvent isoler et contenir les collectivités palestiniennes. En règle générale, les permis de résidence permanente dans la zone fermée ne sont pas délivrés pour plus de six mois ou, exceptionnellement, plus d'une année complète.

257. Au début, un nombre considérable de Palestiniens dont la survie est liée à leurs terres se sont vu refuser des permis. Par contre, des habitants des mêmes villages qui sont incapables de travailler la terre, par exemple des personnes âgées et des petits enfants, ont reçu des permis. En outre, au sein d'une même famille, certains membres ont obtenu des permis alors que d'autres s'en sont vu refuser. Dans bien des cas, le principal soutien de famille n'a pas reçu de permis, ce qui affecte toute la famille.

258. Le Gouvernement israélien a refusé des permis de résidence permanente à des Palestiniens pour des motifs de «sécurité», bien que ces Palestiniens vivent et travaillent dans ces villages depuis de nombreuses années. Aucun détail n'a été fourni quant à la menace spécifique que présentait l'intéressé dont la demande était rejetée. Des raisons de «sécurité» ont également été invoquées par Israël pour refuser à des Palestiniens la permission de pénétrer sur le territoire de l'Etat d'Israël ou de se rendre à l'étranger. En janvier 2004, la majorité des villageois avaient des permis de résidence permanente de durées diverses. Certains de ceux dont la demande avait d'abord été refusée pour des motifs de «sécurité» ont finalement reçu des permis pour une période n'excédant pas trois mois.

259. A la mi-novembre 2003, jusqu'à 75 % des résidents de certains villages n'avaient toujours pas de permis d'accès[212]. Un certain nombre d'agriculteurs ont réduit leurs cultures en raison du manque d'accès, quand ils n'y ont pas entièrement renoncé. Des villageois se sont opposés au système de permis et ont refusé les permis qui leur étaient délivrés, par crainte de légitimiser le système et les mesures connexes. Leur geste a entraîné de sévères mesures de bouclage en guise de représailles. Tant les refus de permis que leur acceptation obligatoire sont des moyens de contrôler la présence palestinienne dans la zone fermée.

[212] On trouvera à l'appendice «Closed Zone Permit System», partie A, la ventilation des permis par village.

260. Les propriétaires de terres agricoles dans la zone fermée, tout comme ceux d'autres entreprises agricoles, sont fortement tributaires de la main-d'œuvre, formée en général de jeunes hommes de moins de 35 ans, pour travailler la terre. Dans la plupart des cas, les propriétaires des terres ont reçu des permis, mais les travailleurs nécessaires à la culture et aux récoltes n'en ont pas eu. Par conséquent, les propriétaires terriens n'ont pas été en mesure de cultiver leurs champs ni de faire les récoltes. Ils sont confrontés à des difficultés économiques supplémentaires, tandis qu'un plus grand nombre de travailleurs sont menacés de chômage, ce qui aggrave la situation humanitaire déjà pénible en Territoire palestinien occupé. Les jeunes hommes palestiniens de cette catégorie d'âge se voient catégoriquement refuser l'autorisation de pénétrer sur le territoire de l'Etat Israël.

261. Plus grave encore, la possession d'un permis de résidence permanente ou d'accès ne garantit d'aucune façon la liberté de mouvement de l'intéressé dans la zone fermée ou à l'extérieur. Les portes le long du mur sont presque toujours fermées et ne s'ouvrent que pour des périodes de quinze minutes, selon le bon vouloir des soldats. Les heures d'ouverture varient, et les procédures sont appliquées au petit bonheur[213]. Par ailleurs, deux postes de contrôle essentiels à proximité de la Ligne verte ont été réinstallés trois kilomètres plus avant en Cisjordanie, ce qui modifie les trajets des villageois.

262. Au cours du seul mois d'octobre 2003, les portes du mur ont été fermées sans interruption pendant environ dix-huit jours sur vingt-deux en ligne, essentiellement en raison de fêtes juives en Israël. En fermant ses portes, Israël applique les mêmes procédures qu'aux points de passage entre la Cisjordanie occupée et le territoire de l'Etat d'Israël. Cette fermeture a des effets économiques graves pour les secteurs à l'intérieur de la zone fermée et les collectivités tributaires du produit de l'agriculture et de l'élevage des volailles dans ces secteurs. Dans le seul village de Falamya, par exemple, des centaines d'arbres produisant des agrumes se meurent faute d'irrigation. Dans le village de Jayyus, quelque 90 % de la récolte de goyaves a été perdue. En outre, l'un des principaux aviculteurs de la Cisjordanie a perdu ses huit mille poulets. Le même éleveur avait précédemment perdu sept mille poulets suite à la fermeture prolongée des portes en août 2003.

263. Dans certains secteurs, les portes se sont rouvertes vers le week-end du 24 au 27 octobre 2003, mais seulement pendant cinq à quinze minutes à la fois, deux ou trois fois par jour. Ces heures ne conviennent pas aux agriculteurs, qui ont des horaires de travail différents et qui n'ont pas toujours le droit de se servir, de façon limitée, de véhicules. Les charrettes tirées par des ânes et les tracteurs sont les principaux moyens de transport autorisés. Les camions, nécessaires pour transporter les produits au marché, sont interdits. En conséquence, les agriculteurs ne peuvent pas cultiver, récolter et vendre les produits de la terre. En outre, ce sont surtout les écoliers et les enseignants qui sont autorisés à utiliser les portes depuis l'instauration des nouvelles procédures basées sur la détention d'un permis. Vu l'irrégularité des heures d'ouverture, les élèves et les enseignants sont souvent en retard à l'école. En outre, les villages où l'eau est distribuée par camion-citerne sont maintenant privés d'eau car les camions n'ont pas le temps de terminer les livraisons pendant les courtes périodes d'ouverture. En règle générale, les produits de base -- y compris la volaille, le pain et les légumes — étaient livrés par camion, mais suite aux refus de permis et à la fermeture des portes, les produits sont maintenant acheminés selon un système de «relais» (déchargement d'un camion et rechargement à bord d'un autre camion aux postes de contrôle, ce qui accroît les coûts de transport) (voir la photo n° 23).

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[213] Au sujet de la fermeture des portes à Jayyus et Qalqiliya, par exemple, voir l'appendice «Closed Zone Permit System», parties B et C. Voir aussi les photos n° 16-22.

264. Dans d'autres secteurs, notamment le village d'Attil (près de Zayta) et la ville de Qalqiliya, même si les agriculteurs ont obtenu des permis pour se rendre sur leurs terres, les portes demeurent fermées. La porte d'Attil, par exemple, et l'une des portes des Zayta n'ont jamais été ouvertes depuis leur installation. D'autres portes sont fermées depuis le 4 octobre 2003, notamment la porte nord de Qalqiliya. Dans d'autres cas, depuis l'érection du mur, les agriculteurs doivent parcourir une plus grande distance pour se rendre sur leurs terres : à Daba, les agriculteurs doivent effectuer un aller-retour de 30 kilomètres. Malgré les annonces récentes d'Israël concernant l'assouplissement des contraintes, y compris une prolongation des heures d'ouverture des portes, c'est le contraire qui se produit. Ainsi, près de Daba, dans la zone fermée, deux petites portes utilisées par des écoliers bédouins sont fermées depuis le début de janvier 2004.

265. Grâce aux exigences touchant la délivrance et le renouvellement des permis et grâce à la fermeture des portes et des postes de contrôle, les autorités israéliennes sont en mesure de gérer le déroulement de la vie palestinienne dans la zone fermée et aux environ. Les mesures et procédures israéliennes forcent les résidents palestiniens à évaluer s'ils peuvent demeurer dans des zones où ils sont privés de toute liberté de mouvement, où les propriétaires de terres et les travailleurs se voient refuser les permis nécessaires et où la capacité de gagner sa vie se trouve considérablement limitée.

266. Dans certains cas, on a signifié aux Palestiniens qu'ils ne pouvaient plus vivre dans leur zone d'origine, ce qui a entraîné le dépeuplement de certains secteurs de la zone fermée et des déplacements de population. Ainsi, un fermier de Jayyus qui vivait dans la zone fermée a été informé au début de janvier 2004 par un officier israélien que lui et sa famille devaient se réinstaller à l'est du mur, avec les autres villageois. Dans un autre cas, un vieil agriculteur de Zayta habitant dans la zone fermée a obtenu un permis, mais sa fille et son travailleur principal n'en ont pas eu. Dans un autre cas encore, les habitants d'Arab Ramadin (des Bédouins) qui vivent dans la zone fermée ont récemment reçu une ordonnance militaire leur imposant de cesser de travailler aux six abris qu'ils occupent actuellement (et les ordres de démolition devraient suivre sous peu, comme cela s'est fait dans le village voisin de Wad Irsha). Les agents de l'administration civile israélienne ont informé les représentants locaux à Qalqiliya que les habitants d'Arab Ramadin devraient être réinstallés.

e) ***Annexion de fait et confiscation de terres***

267. Le régime du mur sépare les populations palestiniennes des terres qui se trouvent entre le mur et la Ligne verte. Ce fait, combiné aux diverses mesures concrètes, administratives et autres, décrites ci-dessus, équivaut à l'annexion pure et simple de ces terres par Israël. Si les 788 kilomètres du mur sont construits, alors plus de 43,5 % de la Cisjordanie se trouvera à l'extérieur du mur[214] et 56,5 % de la Cisjordanie sera formé de zones palestiniennes fermées, y compris les deux % du territoire cisjordanien qui constituent des enclaves murées. Une telle annexion de fait a lieu parallèlement à la confiscation directe de terres due à la construction du mur.

— Jusqu'à maintenant, 95 kilomètres carrés de terres, soit 1,6 % de la Cisjordanie, se trouvent à l'extérieur de la partie terminée de la phase I du mur entre Salem et Masha (Salfit).

[214] L'expression «à l'extérieur du mur» désigne les terres et les collectivités se trouvant à l'ouest du tronçon occidental du mur ou à l'est du tronçon oriental prévu. L'expression «à l'intérieur du mur» désigne les terres et les collectivités qui seront encerclées par le mur ou enclavées.

— Une autre section de 661 kilomètres carrés se trouvera à l'extérieur du mur approuvé pour la phase II (notamment autour d'Ariel, d'Adumim et d'Al-Khalil (Hébron)). Cela correspond à près de 11,4 % de plus de la Cisjordanie et porte à 13 % de la Cisjordanie le total de la superficie à l'extérieur des tronçons occidentaux du mur déjà construits ou approuvés.

— Si les parties orientales du mur recommandées sont construites pendant la phase III, environ 1 786 kilomètres carrés de plus, soit 30,5 % de la Cisjordanie, se trouveront à l'extérieur du mur Le total de la superficie à l'extérieur du mur sera donc de 2 541 kilomètres carrés (43,5 %de la Cisjordanie), et 56,5 % du territoire constitueront les secteurs palestiniens murés.

— A Jérusalem, environ 336 kilomètres carrés se trouveront à l'extérieur du mur sur une longueur de 145 kilomètres, et notamment les colonies de Giv'on, d'Adumim et d'Etzion ouest.

268. La majorité des ordonnances militaires émises pour la saisie de terres en vue de la construction de la phase I du mur sont valables jusqu'au 31 décembre 2005. Toutefois, la prolongation indéfinie des ordonnances n'est pas interdite par la loi militaire. Ces ordonnances précisent que la nécessité militaire justifie la saisie de terres et prennent effet à la date de signature. Les propriétaires terrains, en règle générale, sont informés des ordonnances de confiscation seulement lorsque des avis sont affichés sur leurs terres. Les avis sont souvent simplement cloués sur un arbre, même si la loi prévoit qu'ils doivent être remis directement aux propriétaires. Cette façon de procéder s'est avérée arbitraire, pour dire le moins. Les ordonnances antérieures détaillaient le processus d'appel, mais celles qui les ont suivies ne n'expliquent pas cette procédure, bien que les parties visées puissent toujours présenter une requête à la Cour supérieure de justice israélienne.

269. Le commandant militaire israélien chargé de la délivrance des ordonnances de confiscation de propriété n'a pas à tenir compte des recommandations du conseiller juridique en cas d'appel interjeté par les propriétaires terriens contre une ordonnance de confiscation. Par conséquent, même si le propriétaire terrien peut en appeler de l'ordonnance de confiscation, le processus d'appel est un problème en soi. Par ailleurs, nombre des propriétaires touchés ont eu de la difficulté à prouver leur titre de propriété, car le système d'enregistrement des terres en Cisjordanie n'est pas mis à jour[215].

270. Même si les ordonnances militaires prévoient que les propriétaires terriens ont le droit de demander une indemnité pour la confiscation de terre, aucune procédure en vigueur ne permet de le faire. D'après les Forces de défense israéliennes, les propriétaires terriens peuvent demander une indemnisation pour les dommages causés à la terre et aux structures sous forme d'un montant forfaitaire qui s'ajoute à un droit d'utilisation de la terre. Le ministère israélien de la Défense calcule l'indemnisation, qui ne couvre que la propriété confisquée ou abîmée pour la construction du mur et des barrières avancées. La propriété abîmée parce que le propriétaire ne peut pas y accéder pour la cultiver n'est pas comprise dans la formule de calcul de l'indemnisation. Jusqu'à maintenant, la majorité des propriétaires n'ont pas demandé d'indemnisation, surtout de crainte de légitimer le processus de confiscation en acceptant l'indemnité.

f) *Déplacements de population et autres effets démographiques*

271. A l'heure actuelle, environ treize mille cinq cents Palestiniens se trouvent à l'extérieur du tronçon du mur construit pendant la phase I. Cependant, ce nombre s'élèvera à trois cent quarante trois mille trois cents quand les trois phases du mur auront été menées à bien.

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[215] Voir le chapitre 4.

— Quinze villages palestiniens regroupant environ 13 500 habitants se trouvent actuellement à l'extérieur des tronçons du mur construits pendant la phase I.

— Soixante villes et villages palestiniens de plus se trouveront à l'extérieur des parties du mur qui sont en construction ou dont la construction a été approuvée pour la phase II. Le total, soit soixante-quinze villes et villages, représente 13 % de tous les établissements palestiniens recensés en Cisjordanie. Le total des habitants approchera les 336 000 Palestiniens (dont environ 65 % à Jérusalem-Est), ce qui représente à peu près 14,5 % de la population palestinienne de Cisjordanie.

— Lorsque la phase III du mur sera terminée dans la vallée du Jourdain, il y aura en tout quatre-vingt-onze villes et villages palestiniens situés à l'extérieur du mur. Le total des habitants à l'extérieur du mur s'élèvera à 343 300, soit 14,9 % de la population palestinienne de Cisjordanie.

— Par ailleurs, cent cinquante six villes et villages palestiniens subiront directement les effets du mur[216] parce qu'ils seront coupés de leurs terres. Les habitants de ces villes et villages sont au nombre de 522 000. Ils représentent 22,6 % de la population palestinienne de Cisjordanie. A la fin des trois phases du projet, il y aura en tout 865 300 Palestiniens qui se trouveront à l'extérieur du mur ou qui seront coupés de leurs terres par le mur. C'est 37,5 % de la population palestinienne de Cisjordanie.

272. Le mur isolera les Palestiniens vivant en Territoire palestinien occupé, y compris à Jérusalem-Est, ce qui aggravera les difficultés d'ordre économique, social et culturel que ces populations connaissent déjà en raison de la stricte politique de bouclage instaurée depuis le début de la seconde Intifada palestinienne, en septembre 2000[217]. Le mur brise les liens entre les composantes de la population palestinienne et concentre les habitants dans des zones isolées de la collectivité dans divers secteurs. Il les enferme derrière des barrières, sous la surveillance de militaires, et il limite leurs déplacements à l'extérieur de ces zones fermées et contrôlées.

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[216] Les collectivités directement touchées sont les villages à l'extérieur du mur et les villages qui se trouvent à l'intérieur des murs mais dont les terres sont situées à l'extérieur. Parmi les collectivités directement touchées, mentionnons les suivantes : après la phase I, 26 localités regroupant 73 000 habitants; après la phase II, 105 localités et 311 000 personnes de plus; après la phase III, 25 localités et 138 000 habitants de plus.

[217] Entre le 11 et le 19 août 2002, Mme Catherine Bertini, envoyée personnelle du Secrétaire général des Nations Unies, s'est rendue dans la région pour évaluer la situation humanitaire. Dans son rapport de mission, Mme Bertini constate que l'on est devant une crise de l'accessibilité et de la mobilité. Selon elle, les Palestiniens sont assujettis à diverses mesures de bouclage, de couvre-feu, de barrages routiers et de restrictions diverses qui se traduisent par un quasi-effondrement de l'économie palestinienne, une augmentation du chômage et de la pauvreté, une diminution des activités commerciales, une réduction de l'accès aux services essentiels (notamment l'eau, les soins de santé, l'éducation, les services d'urgence) et une dépendance accrue à l'égard de l'aide humanitaire. Les restrictions touchent pratiquement toutes les activités, ce qui fait que la plupart des Palestiniens sont incapables de mener une vie à peu près normale et se heurtent à des difficultés quotidiennes, à des privations et à des affronts. Elle précise que toutes les parties s'entendent et que son rapport confirme que le régime actuel de fermeture et de couvre-feu a une incidence dévastatrice sur la population palestinienne, tant au plan de l'économie que du point de vue de la situation humanitaire. Catherine Bertini, envoyée personnelle du Secrétaire général de l'ONU pour les questions humanitaires, *Mission Report : 11-19 August 2002*, p. 1 et 4, www.reliefweb.int/library/documents/ 2002/un-opt-19aug.pdf. Ce rapport constitue l'annexe 14 des présentes.

273. Le mur a sur tous les aspects du tissu social palestinien des effets profonds. La chose est manifeste dans la création de poches de populations isolées et vulnérables qui sont coupées des services sociaux et des réseaux élémentaires. Ces groupes ont déjà beaucoup souffert au cours des trois dernières années, en raison d'une politique israélienne de bouclage strictement appliquée[218] (voir la carte n° 5 : «Le mur et le bouclage en Cisjordanie»).

274. D'après un sondage auprès des ménages réalisé par le bureau central de statistique palestinien en octobre 2003, 91 % des ménages interrogés qui se trouvent entre le mur et la Ligne verte signalent des effets négatifs sur les activités sociales, alors que 83,3 % des répondants mentionnent des effets négatifs sur les activités culturelles[219]. L'accès est devenu l'un des principaux facteurs déterminant la qualité des services sociaux dans les régions touchées. Certains des problèmes les plus souvent dénoncés en matière d'accès aux services ont trait à la santé, à l'éducation et aux ressources en eau; on relève aussi des problèmes d'élimination des déchets solides[220].

275. Les conditions sociales se détériorent déjà aux environs des tronçons terminés du mur. Comme pour l'économie, cette détérioration donne un aperçu des conditions qui prévaudraient sans doute dans l'ensemble de la Cisjordanie si le mur était entièrement construit. Le maintien des services sociaux essentiels dans les collectivités touchées est presque totalement lié à la capacité des fournisseurs et des bénéficiaires de contourner les contrôles israéliens, par exemple en circulant sur des chemins agricoles et à travers champs. D'après les agents des ministères palestiniens de la santé et de l'éducation à Qalqiliya et à Tulkarem, par exemple, c'est ce que font les membres du personnel des services de santé pour poursuivre les programmes de vaccination réguliers ainsi que les enseignants et les médecins qui se rendent dans les écoles et les cliniques des villages[221]. Les villages situés entre le mur et la Ligne verte sont les collectivités les plus directement touchées par l'érection du mur. Lorsque le mur sera terminé, il aura un effet dévastateur sur la communauté palestinienne, et minera plus encore l'économie palestinienne, accroissant les niveaux de chômage et de pauvreté, réduisant les activités commerciales, limitant l'accès aux services essentiels (notamment l'éducation, les soins de santé, les services d'urgence et l'eau) et accroissant la dépendance à l'égard de l'aide humanitaire.

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[218] Le rapport de la mission au groupe chargé de la politique humanitaire et des interventions d'urgence et au comité local de coordination de l'aide, intitulé *The Impact of Israel's Separation Barrier on Affected West Bank Communities* (4 mai 2003), définit quatre grands secteurs d'occupation liés aux effets sociaux de la construction du mur : 1. la création de poches très isolées et vulnérables, où l'infrastructure sociale est tout à fait inadéquate, alliée à la faible présence des fournisseurs de services des ONG et de l'UNRWA, en comparaison des autres secteurs de la Cisjordanie; 2. une augmentation du stress pour les fournisseurs de services publics locaux, en raison des dédoublements accrus et de la dispersion des installations, du personnel et des ressources visant à pallier les restrictions touchant les déplacements; 3. une érosion de la fréquentation scolaire et des réalisations des populations touchées, en particulier en milieu rural, qui vient gonfler les rangs de la «génération perdue» des enfants palestiniens; 4. une vulnérabilité accrue des malades chroniques et des personnes ayant besoin de soins urgents et spécialisés. Il faut aussi mentionner la vulnérabilité accrue des femmes et des enfants (p. 37). Le rapport figure dans le dossier présenté par le Secrétaire général, au n° 85.

[219] Bureau central de statistique palestinien, *Impact of the Separation Wall on the Socioeconomic Conditions of Palestinian Households in the Localities in which the Separation Wall Passes Through (October 2003),* décembre 2003, p. 5.

[220] Rapport de suivi de la mission au groupe chargé de la politique humanitaire et des interventions d'urgence et au comité local de coordination de l'aide, intitulé *The Impact of Israel's Separation Barrier on Affected West Bank Communities : Access Issues in «Stage A Localities»*, mise à jour n° 3, 30 novembre 2003, p. 12. Le rapport figure dans le dossier présenté par le Secrétaire général, au n° 88.

[221] Rapport de mission au groupe chargé de la politique humanitaire et des interventions d'urgence et au comité local de coordination de l'aide, *The Impact of Israel's Separation Barrier on Affected West Bank Communities* (4 mai 2003), p. 38. Le rapport figure dans le dossier présenté par le Secrétaire général, au n° 85.

276. Le mur aura de graves conséquences pour les Palestiniens en matière de résidence et de migration, surtout en raison de la destruction ou de la perte des structures d'habitation et du déplacement des populations entre les zones les plus touchées par le mur, des deux côtés. En octobre 2003, 5 % des ménages à l'ouest du mur et 4,9 % du coté oriental du mur avaient modifié ou avaient l'intention de modifier leur lieu de résidence[222]. Dans le nord de la Cisjordanie, un total de quatre cent deux ménages ont été déplacés à la suite de la construction du mur, dont cent treize dans le gouvernorat de Djénine, pour un total de deux mille trois cent vingt-trois personnes[223]. Les habitants s'inquiètent en particulier du risque de déracinement et de déplacement accru, suite à la détérioration des conditions de vie, y compris la forte marginalisation sociale et économique, la démolition des maisons et les restrictions d'accès prolongées dans les villages menacés. Parmi les collectivités à haut risque, mentionnons Azzun Atma, Ras at Tira et Ad Dab'a, à Qalqiliya, ainsi que Khirbet Abdallah al Yunis, Dhaher al Malih et Umm ar-Rihan, à Djénine, pour une population totale estimée à environ deux mille sept cent personnes[224].

277. La destruction de maisons imputable à la construction du mur est également un facteur déterminant de déplacement des populations. Les unités d'habitation de 19,3 % des ménages situés à l'ouest du mur et de 30,1 % des ménages à l'est du mur ont été en tout ou en partie détruites. 8,7 % des ménages du côté occidental du mur ont indiqué que leurs maisons étaient totalement ou en partie détruites, alors que 23,1 % des ménages du côté est ont signalé la même chose[225].

278. D'autres facteurs pourraient aussi entraîner des déplacements internes après la construction du mur :

a) migration de particuliers ou de familles en raison de la destruction partielle ou complète des habitations;

b) migration de particuliers ou de familles qui ont des pièces d'identité israéliennes et qui passeront de la Cisjordanie à Israël;

c) tentative de migration de la part de particuliers ou de familles à destination ou en provenance des secteurs que l'on craint voir pris en serre entre le mur et la Ligne verte;

d) mouvement de commerçants vers les secteurs immédiatement voisins des terminaux planifiés du mur, pour faciliter la circulation des denrées entre la Cisjordanie et Israël[226].

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[222] Bureau central de statistique palestinien, *Impact of the Separation Wall on the Socioeconomic Conditions of Palestinian Households in the Localities in which the Separation Wall Passes Through (October 2003)*, décembre 2003, p. 5.

[223] Bureau central de statistique palestinien, *Survey on the Impact of Separation Wall on the Localities Where it Passed Through, 2003*, conférence de presse sur les résultats du sondage (août 2003).

[224] Rapport de mission au groupe chargé de la politique humanitaire et des interventions d'urgence et au comité local de coordination de l'aide, *The Impact of Israel's Separation Barrier on Affected West Bank Communities* (4 mai 2003), p. 46. Le rapport figure dans le dossier présenté par le Secrétaire général, au n° 85.

[225] Bureau central de statistique palestinien, *Impact of the Separation Wall on the Socioeconomic Conditions of Palestinian Households in the Localities in which the Separation Wall Passes Through (octobre 2003),* conférence de presse sur les résultats du sondage (décembre 2003).

[226] Rapport de suivi de la mission au groupe chargé de la politique humanitaire et des interventions d'urgence et au comité local de coordination de l'aide, *The Impact of Israel's Separation Barrier on Affected West Bank Communities: Jenin* Governorate, mise à jour n° 1 (31 juillet 2003), p. 16. Le rapport figure dans le dossier présenté par le Secrétaire général, au n° 86.

279. La migration de population à la suite de la construction du mur dans le nord de la Cisjordanie a déjà débuté. La migration vers Israël des hommes ayant des pièces d'identité israéliennes s'est avérée le type de déplacement le plus courant et ne s'est généralement matérialisée qu'une fois les travaux de construction du mur ont véritablement commencé[227]. Toutefois, l'isolement croissant, le manque de services sociaux, la réquisition et la destruction des bâtiments pourraient encourager les déplacements de population à mesure que les travaux de construction du mur progresseront.

4) Corrélation du tracé du mur avec l'emplacement des colonies, des routes et des sources d'eau

a) *Relations entre le mur d'une part et les colonies et les routes d'autre part*

280. Le rapport Dugard (2003, par. 12) présente l'observation suivante au sujet des liens entre le mur et les colonies : «La construction du mur doit être analysée à la lumière des activités de colonisation et de l'annexion illégale de Jérusalem-Est. Les colonies de Jérusalem-Est et de la rive occidentale sont les premières à tirer des avantages de cette mesure…» Comme le disait un spécialiste israélien de la topographie et de la planification en Cisjordanie, le mur s'inscrit dans la chaîne logique hermétique d'une politique de «sécurité» excessive, d'ordre territorial, poursuivie par Israël :

> «Au début, une série de colonies ont été implantées le long de la vallée du Jourdain. L'évolution a ensuite continué avec l'établissement de points de colonisation stratégiques dans toute la largeur du territoire, puis par une tentative de réunir tous ces points à l'intérieur d'un réseau de barricade distinct et complexe.»[228]

281. Les tronçons du mur construits ou approuvés laissent environ 80 % de la population des colonies à l'ouest du mur[229]. Après la réalisation du projet de mur oriental le long de la vallée du Jourdain, il y aura huit % de colons de plus à l'extérieur du mur (voir la carte n° 9 : «Le mur et la population des colons israéliens en Cisjordanie»). Les tronçons terminés, approuvés et projetés du mur délimitent des secteurs géostratégiques israéliens précis et, par conséquent, un système intégré de colonies et de routes de contournement d'Israël[230].

282. Le tracé du mur s'éloigne de la Ligne verte, apparemment pour englober les principales routes de contournement dans l'axe est-ouest et les liens nord-sud pour ces colonies. Ainsi, le tracé du mur dans la zone de la colonie Alfe-Menashe correspond à une route de colonie en construction, qui relie la route 5 et Alfe-Menashe à la nouvelle autoroute 55, également en construction (voir Qalqiliya l'encadré consacré à Qalqiliya sur la carte générale, ainsi que la carte 12b : «Le mur en Cisjordanie» — section *b)* : «Secteur de Qalqiliya»). Le tracé du mur qui longe les colonies du

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[227] *Ibid*., p. 21

[228] Eyal Weizman, «Ariel Sharon and the Geometry of Occupation, Part 3 », 15 septembre 2003, p. 7, www.opendemocracy.net/themes/article.isp?id=2&articleID=1476.

[229] Ce chiffre s'appuie sur des calculs réalisés selon les données démographiques établies en 2003 au sujet des colons par le centre de recherche israélien de la Knesset. Les données israéliennes sont peut-être différentes, car Israël a illégalement annexé Jérusalem-Est et ne considère donc pas les colons de Jérusalem-Est comme faisant partie de la population du Territoire palestinien occupé.

[230] Il s'agit entre autres d'une ceinture de 10 à 15 kilomètres tout le long de la vallée du Jourdain, d'une bande au nord de la route Jérusalem-Jéricho jusqu'à la crête de Latroun, du désert de Judée entre le Mont Hébron et la mer Morte, de Jérusalem, et d'une pointe à l'est de Qalqiliya et de Tulkarem, longeant la crête nord-sud qui sépare les Palestiniens du TPO et les Palestiniens d'Israël.

groupe Ariel englobe les chemins existants, soit les routes 5, 55 et le prolongement actuel de la nouvelle route 55, en construction, de même, pendant la phase II, la route 60, située à l'ouest de Bethléem, sert à relier les colonies de Har Gilo et de Gilo (sud de Jérusalem) avec le bloc Etzion, situé au sud (voir l'encadré consacré à Bethléem-Ouest sur la carte générale).

283. Le tracé du mur favorise l'expansion des colonies. Le mur consolide la présence et la viabilité des colonies dans des secteurs qu'Israël considère d'importance stratégique. Les zones d'expansion prévues et les secteurs de compétence régionale des colonies correspondent au tracé approuvé et projeté du mur, ce qui montre que le tracé du mur a été établi afin de faciliter l'expansion continue des colonies dans les «secteurs autorisés» ainsi que l'implantation de nouvelles colonies (voir la carte n° 8 : «Le mur et l'expansion des colonies israéliennes en Cisjordanie»).

284. Si, par exemple, Qalqiliya est enfermée dans un étranglement du mur, c'est apparemment parce que les colonies de Zufin et d'Alfe Menashe se trouvent respectivement au nord et au sud de la ville et pour faciliter l'expansion des colonies israéliennes du secteur (indiquées en bleu dans l'encadré consacré à Qalqiliya sur la carte générale). Il faut d'abord limiter l'accès des Palestiniens à la terre et leur exploitation de cette terre, puis les leur refuser. De la sorte, les colonies pourront se développer géographiquement, comme le prévoient les plans autorisés, et les colons seront libres de circuler et auront accès au territoire de l'Etat d'Israël. Il est prévu que les colonies de Zufin et d'Alfe Menashe se développeront et deviendront environ six et deux fois plus grandes, respectivement, dans les zones de culture des Palestiniens (voir l'encadré consacré à Qalqiliya dans la carte générale, où les zones en bleu montrent l'expansion prévue des colonies). Deux exemples sont particulièrement probants dans la phase II, soit les colonies d'Ofarim et d'Efrat. Le tracé du mur permettra à la colonie d'Ofarim de concrétiser pleinement la croissance planifiée pour atteindre une taille à peu près onze fois supérieure à sa taille actuelle, et la colonie d'Efrat sera environ trois fois et demie plus grande que maintenant (voir l'encadré consacré à Bethléem-Ouest dans la carte générale; voir aussi la carte n° 8 : «Le mur et l'expansion des colonies israéliennes»). Pour construire des chemins de contournement à l'intention des colons israéliens, il faut aussi refuser aux Palestiniens la possibilité de se rendre sur les terres et de les exploiter[231].

285. A Jérusalem-Est, les préparatifs pour établir deux nouvelles colonies, Nof Zahav et Kedimet Zion, à l'ouest du mur, ont débuté. Au nord-ouest de Jérusalem, l'emplacement des zones doublement murées correspond aux plans israéliens pour développer et relier les colonies du bloc de Givon[232] et facilite l'expansion planifiée vers le nord de Mevaseret Zion, une banlieue ouest de Jérusalem, au-delà de la Ligne verte sur les terres des villages palestiniens de Beit Iksa et de Beit Surik.

286. Les zones de colonisation pour lesquelles la majorité des appels d'offres ont été émis par le ministère israélien de l'habitation et l'agence israélienne responsable des questions foncières en 2003 correspondent aussi au tracé du mur. Les deux mille cent vingt-sept[233] appels d'offres

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[231] Voir le chapitre 4, consacré aux politiques de saisie de terres israéliennes en vue de la construction de routes de contournement et de colonies.

[232] Ce bloc comprend les colonies de Bet Horon, soit Givon Ha Hasasha, Givat Ze'ev, Har Adar, et Ha Samuel.

[233] Le Gouvernement israélien publie ces appels d'offres dans les journaux israéliens et sur le site Internet du ministère de l'habitation et de la construction. Voir Foundation for Middle East Peace, «Snapshots of Settlement Expansion», un rapport sur la colonisation israélienne dans les territoires occupés, vol. 13, n° 6, novembre-décembre 2003, p. 12. En outre, quatre cents appels d'offres pour Har Homa ont été annoncés à la fin de septembre 2003.

pour des travaux de construction publiés par ces agences gouvernementales concernent tous des colonies[234] situées à l'ouest du mur, à l'exception de ceux destinés à la colonie de Neve Deklim, à Gaza, et à la colonie de Ma'ale Adumim, en Cisjordanie, où le tracé du mur n'est pas encore déterminé. En outre, la publication du tracé définitif du mur aurait, selon les rapports, stimulé les ventes d'habitations dans des colonies comme Modi'in Ilit et Beitar Ilit, à l'ouest du mur[235].

287. Le mur consacre la séparation créée par les colonies d'Israël en Territoire palestinien occupé et le réseau de routes de contournement construites pour relier ces colonies les unes aux autres et au territoire de l'Etat d'Israël. La décision de murer Qalqiliya du côté oriental permet donc aux colons de circuler librement entre le secteur des colonies d'Ariel et d'Alfe-Menashe et la Ligne verte en limitant l'accès des Palestiniens à l'ancienne route 55, en Territoire palestinien occupé[236].

288. Pendant la phase II, le tracé approuvé du mur englobant les colonies de la «pointe d'Ariel» empêchera définitivement les Palestiniens d'accéder à ce secteur. A l'heure actuelle, l'accès dans cette zone est régulièrement refusé ou strictement limité en raison de l'existence des routes 5 et 546, des patrouilles militaires israéliennes et des menaces de violence par les colons israéliens habitant la colonie de Brukhin (voir la carte générale, «Pointe d'Ariel»). Dans le sud de la Cisjordanie, la route 60, principale voie reliant Bethléem à Al-Khalil (Hébron), se trouvera à l'ouest du mur, ce qui en restreindra en permanence l'accès pour les Palestiniens[237].

289. Le tracé du mur, accentuant la tendance à la séparation et à l'isolement, crée de nouveaux trajets pour les habitants de la Palestine et les denrées. Il englobe Qalqiliya du côté sud et Habla du côté nord, de telle sorte que les Palestiniens ne peuvent ni traverser ni utiliser la route de contournement des colons, la route 55, pour se rendre sur leurs terres[238]. De même, en raison de la construction du mur en Territoire palestinien occupé près de la «pointe d'Ariel», les habitants du secteur de Qalqiliya qui veulent se rendre à Naplouse doivent faire de grands détours. Plutôt que de parcourir les 31 kilomètre qui les séparent de Naplouse, ils devront contourner les colonies de Shomron et the mur, aller vers l'est jusqu'à Azzun, tourner vers le nord jusqu'à Jayyus, monter jusqu'à Kufr Jammal, puis aller vers l'est, vers Naplouse, en passant par Funduk ou Beit Lid, ce qui porte la distance à au moins 46 kilomètres, soit 50 % de plus que le trajet direct. De même, la distance entre Bidya et Salfit en passant par Harris est d'environ 11,8 kilomètres si l'on ne tient pas

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[234] Il s'agit des colonies d'Ariel, Beitar Illit, Efrat, Elkana, Har Adar, Givat Ze'ev, Har Homa et Karne Shomron.

[235] Foundation for Middle East Peace, «Settlement Time Line», un rapport sur la colonisation israélienne dans les territoires occupés, vol. 14, n° 1, janvier-février 2004, p. 13.

[236] Depuis la construction du mur, la porte orientale de Qalqiliya est le seul point d'entrée et de sortie possible pour les citoyens de la ville. L'accès en est contrôlé par les forces militaires israéliennes. La construction de la porte/du poste de contrôle du côté oriental a limité ou bloqué l'accès des Palestiniens à la route 55, principale voie menant de Qalqiliya vers l'est jusqu'à Naplouse, et dont certaines parties sont également utilisées par les colons israéliens. Ze'ev Schiff, «Fence route is moved, scrapping 2 enclaves», *Ha'aretz*, 12 décembre 2003.

[237] A l'heure actuelle, les Palestiniens ne peuvent emprunter certaines parties de la route 60 que s'ils ont un permis. La route 60 a été, à l'origine, construite comme principal lien nord-sud entre les villes de la Palestine, avant l'occupation de 1967.

[238] Nombre de chemins de contournement des colons servent aussi de barrières, par leur conception même. Certains n'ont pas de point d'accès en zone palestinienne. D'autres sont clôturés ou murés, ce qui concrètement sépare les villages les uns des autres et empêche l'accès d'un côté à l'autre du chemin pour les secteurs palestiniens situés à proximité. Ainsi, la ville palestinienne de Beit Hanina la Vieille est maintenant coupée de Beit Hanina par une autoroute clôturée, la route 1, qui relie Jérusalem-Ouest aux colonies israéliennes au nord-ouest de Jérusalem. Les résidents palestiniens de Beit Hanina la Vieille doivent effectuer de longs détours ou traverser par un tunnel sous l'autoroute pour se rendre à Beit Hanina.

compte du mur et des colonies. Le détour que crée la colonie d'Ariel passe par Azzun, Kufr Sur, Funduk, Immatin, Huwara et Iskaka pour finalement mener à Salfit, au bout d'un trajet de 61,3 kilomètres, environ cinq fois la distance de la route directe (voir la carte générale).

b) ***Rapport entre le mur et les sources d'eau***

290. La Cisjordanie recèle trois aquifères principaux : l'aquifère de l'ouest, l'aquifère de l'est et l'aquifère du nord-est. Les aquifères de l'ouest et du nord-est vont au-delà de la Ligne verte et sont partagés avec Israël (voir la carte n° 10 : «Le mur et les ressources en eau en Cisjordanie»).

291. Le sol de la Cisjordanie est rocheux et difficile à forer; la qualité des champs de captage varie considérablement selon les endroits. La région qui longe les limites nord et ouest de la Cisjordanie, où le mur est en construction, recèle certains des champs de captage les plus productifs de l'aquifère de l'ouest. Il est beaucoup plus facile et beaucoup plus économique d'extraire de l'eau dans cette région de la Cisjordanie que plus à l'est.

292. Les nappes souterraines sont la principale source d'eau de la Cisjordanie. La plupart des réserves d'eau que les Palestiniens peuvent utiliser en Cisjordanie sont des sources souterraines exploitées grâce à des puits.

293. La construction du mur a un effet marqué sur l'accès à l'eau et sur l'utilisation et la répartition de cette ressource, en particulier pour les collectivités voisines du tracé du mur et celles qui sont maintenant prises entre le mur et la Ligne verte.

294. Le mur a déjà créé des problèmes d'accès à l'eau, et la situation risque fort de s'aggraver à mesure que sa construction progresse. Dans certains cas, les habitations des résidents se trouvent à l'est du mur tandis que leurs puits et les réseaux d'adduction d'eau sont entièrement du côté l'ouest. Dans d'autres cas, les puits des résidents sont à l'est du mur, mais les terres cultivées sont à l'ouest. Cet état de chose a entraîné et continue d'entraîner une diminution considérable des quantités d'eau que les Palestiniens de Cisjordanie peuvent utiliser. Les études locales de la Banque mondiale ont permis de dégager plusieurs problèmes liés à l'accès à l'eau, en particulier pour les propriétaires de puits privés et communautaires[239].

295. L'économie agricole palestinienne se ressentira nettement de cet accès réduit aux sources d'eau et aux terres agricoles. Lorsque la partie ouest du mur sera terminée, on estime que la valeur annuelle de la production agricole en Cisjordanie diminuera de 22,8 %. Cette réduction atteindra 41,7 % après la construction de la partie orientale du mur[240]. Cela accentuera en outre l'insécurité alimentaire en Cisjordanie et pourrait entraîner une augmentation des maladies liées à la malnutrition chez les enfants de Cisjordanie[241].

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[239] Voir *The Impact of Israel's Separation Barrier on Affected West Bank Communities*, rapport de mission au groupe chargé de la politique humanitaire et des interventions d'urgence et au comité local de coordination de l'aide, 4 mai 2003.

[240] Institut de recherche appliquée de Jérusalem, «Undermining Peace, Israel's Unilateral Segregation Plans in the Palestinian Territories», décembre 2003.

[241] Résultats préliminaires de la première étude menée par CARE International en août 2002, qui constate une augmentation du nombre d'enfants mal nourris, 22,5 % des enfants de moins de cinq ans souffrant de malnutrition aiguë ou chronique en Cisjordanie et à Gaza.

296. Le tracé actuel du mur le long des parties nord et ouest de la Cisjordanie touche les établissements palestiniens dont les ressources en eaux sont partagées. Une bande de 2 à 6 kilomètres de largeur aux limites nord et ouest de la Cisjordanie contient des champs de captage indispensables, qui se trouvent maintenant entre le mur et la Ligne verte.

297. D'après les projections du tracé oriental du mur, la Cisjordanie ne sera plus coriveraine du Jourdain et de la mer Morte lorsque le mur sera terminé. La vallée du Jourdain est sans doute l'une des principales zones où l'agriculture palestinienne pourrait se développer. Si Israël construit la section orientale du mur, il bloquera l'accès palestinien à l'eau du Jourdain, et les perspectives de mise en valeur de la vallée seront compromises. En outre, le secteur où le mur sera construit dans Jérusalem-Est et aux environs et dans la vallée du Jourdain comprend souvent les versants est qui contrôlent les eaux d'amont de l'aquifère oriental, où Israël a déjà foré de nombreux puits pour alimenter ses colonies dans le TPO.

5) Effets sociaux et économiques du mur

a) *Effets sociaux du mur*

298. Le mur aura une incidence considérable sur le tissu social des collectivités en Territoire palestinien occupé, notamment sur les liens traditionnels et de parenté, le mariage, les activités sociales et religieuses, et la mobilité des femmes. Les relations sociales et les activités des communautés palestiniennes établies à l'ouest du mur ont été plus perturbées que celles des collectivités à l'est du mur. Une étude du bureau central de statistique palestinien (BCSP) concernant les collectivités touchées par le mur a révélé que 90,6 % des ménages à l'ouest du mur étaient incapables de visiter leurs parents, en comparaison de 63,5 % des ménages du côté est. La capacité de participer à des activités sociales et culturelles a été réduite pour 83,3 % des ménages sondés à l'ouest du mur et pour 48,4 % des ménages à l'est. Selon 50,4 % des personnes interrogées, le mur est devenu un obstacle au mariage entre les personnes vivant de part et d'autre de la structure. Les membres de certaines familles sont isolés les uns des autres, et 50,9 % des habitants des collectivités à l'ouest du mur sont déjà séparés de leurs parents alors que 37,3 % de ceux qui vivent à l'est du mur sont séparés d'une partie de leur parenté[242].

299. Aucun permis n'est accordé pour l'entretien des relations familiales. Les membres de divers villages de part et d'autre du mur sont liés par le sang ou par mariage. Ils sont membres soit de familles nucléaires, soit de familles élargies, les *a'ella*', par exemple ou d'*hamula* (clans). Le mur a coupé la population de plusieurs collectivités de ses contacts avec des parents qui étaient autrefois voisins[243].

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[242] Bureau central de statistique palestinien, *Impact of the Separation Wall on the Socioeconomic Conditions of Palestinian Households in the Localities in which the Separation Wall Passes Through (October 2003)***,** conférence de presse sur les résultats du sondage (décembre 2003), p. 5.

[243] Ainsi, la majorité de la population de Khirbet Jubara est originaire du village d'A Ras. Entre 1967 et 1972, deux cent cinquante personnes se sont installées près de leurs jardins pour pouvoir mieux les cultiver. Dans les années soixante-dix, Khirbet Jubara est devenu indépendant sur le plan administratif, mais les liens familiaux et par alliance sont restés étroits. Les habitants des deux villages ont encore une identité commune. Ils partagent encore les ressources économiques et font partie d'un même «réseau social» où les parents s'appuient mutuellement. Récemment, les deux villages ont été séparés par le mur. Khirbet Jubara se trouve maintenant dans la zone fermée. Depuis la construction du mur, les habitants de Khirbet Jubara peuvent aller à A Ras en passant par une porte qui s'ouvre deux fois par jour. D'A Ras, seuls les agriculteurs munis de permis peuvent se rendre sur leurs terres dans la zone fermée, mais ces permis sont temporaires et pourraient un jour n'être pas renouvelés. Certains villageois ne sont même pas autorisés à se rendre à Khirbet Jubara pour visiter des membres de leurs familles.

300. Depuis la construction du mur, de nombreux membres des familles sont isolés les uns des autres et les villages qui, traditionnellement, s'échangeaient des conjoints sont incapables de le faire. La population de Nazlat Isla, un village maintenant situé à l'ouest du mur, entretient des rapports sociaux avec tous les villages voisins ainsi qu'avec Baqa al-Sharqyia sur la Ligne verte. Quelque soixante-dix hommes du village ont épousé des femmes originaires de l'autre côté de la Ligne verte. Conformément à la coutume, la majorité de ces femmes sont venues s'installer en Cisjordanie dans la famille de leur mari. Toutefois, maintenant que le mur est en construction, certains hommes ont loué des logements de l'autre côté de la Ligne verte pour y vivre là lorsque les travaux seront terminés. Les femmes de Baqa al-Sharqyia qui ont épousé des hommes en Israël sont toutes installées de l'autre côté de la Ligne verte. Il leur est maintenant difficile de venir visiteur leurs familles[244].

301. Nombre de petits villages palestiniens sont issus des villes de la Cisjordanie. Même si leurs habitants ont migré il y a plus ou moins longtemps, ils ont encore des liens avec la ville. Souvent, les habitants de régions éloignées sont d'un même *hamula*. Les occasions religieuses et rituelles, en particulier les mariages et les funérailles, requièrent la participation des membres de la famille étendue, qui doivent assister et contribuer financièrement à l'événement. Dans les sociétés à structure étatique faible, en particulier, de telles manifestations sociales sont essentielles pour redéfinir continuellement l'univers social d'un peuple et faire ressortir son identité commune[245].

302. Une partie importante de la communauté palestinienne entretient des liens étroits avec la terre et les activités agraires. A mesure qu'augmentent les saisies nécessitées par la construction du mur, les activités liées à la terre diminuent. La récolte des olives, par exemple, a toujours été importante non seulement pour la survie économique des collectivités, mais aussi comme occasion de rapprochement grâce aux gestes de la cueillette et aux activités culturelles connexes. Les collectivités qui ont perdu des terres agricoles avec la construction du mur ne peuvent plus participer à ces activités.

303. La construction du mur a un effet particulier sur les femmes et leur mobilité, compte tenu des règles sociales se rapportant aux déplacements (il est généralement inacceptable de se déplacer seule après la tombée du jour ou de passer la nuit à l'extérieur du foyer, par exemple). Les femmes qui ont épousé des hommes d'autres villages ont de plus en plus de difficultés à visiter les membres de leur famille. Dans les collectivités maintenant isolées par le mur, on a de plus en plus tendance à n'autorise que les mariages à des hommes vivant du même côté du mur et à marier les filles plus jeunes car, vu les restrictions découlant de la construction du mur, le père peut ainsi éviter de devoir les envoyer à l'école ou à l'université dans des circonstances incertaines[246].

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[244] Entrevue avec Abu Ashraf, membre du conseil du village de Nazlat Isa, 6 novembre 2003. Rapport de suivi de la mission au groupe chargé de la politique humanitaire et des interventions d'urgence et au comité local de coordination de l'aide, *The Impact of Israel's Separation Barrier on Affected West Bank Communities: Access Issues in «Stage A Localities»*, mise à jour n° 3 (30 novembre 2003), p. 14.

[245] Les habitants de Ras Tireh et de Ras Atyia viennent de Kaffr Thulth et sont du même *hamula*. Maintenant, le mur sépare les villageois de Ras Tireh de leurs parents à Ras Atyia et dans d'autres villages voisins, comme Kaffr Tulth. La population de Ras Tireh affirme se sentir très isolée. Seule une porte éloignée permet à ses habitants d'aller à Ras Atyia, et leurs parents à Ras Atyia ne peuvent même pas venir les visiter dans leur village.

[246] Rapport de suivi de la mission au groupe chargé de la politique humanitaire et des interventions d'urgence et au comité local de coordination de l'aide, *The Impact of Israel's Separation Barrier on Affected West Bank Communities: The «Jerusalem Envelope»*, mise à jour n° 2 (30 septembre 2003), p. 17. Le rapport figure dans le dossier présenté par le Secrétaire général, au n° 87.

304. Le mur exerce aussi un poids psychologique sur les Palestiniens, dont bon nombre expriment un sentiment de désespoir face à l'avenir de leurs collectivités. Les premières études révèlent que les effets psychologiques du mur sur la population touchée englobent la dépression, des sentiments d'angoisse et de désespoir, des sentiments d'isolement, des pensées suicidaires et des symptômes du syndrome de stress post-traumatique. Ces effets sont liés à l'absence de système de soutien social, une absence attribuable à l'isolement, aux relations sociales limitées à mesure que les habitants sont de plus en plus confinés à leur foyer, à la désintégration des relations familiales et sociales et à la hausse du chômage et de la pauvreté[247].

b) ***Effets économiques du mur***

i) Incidences macro-économiques

305. Le mur et les politiques connexes privent les Palestiniens de leurs ressources économiques et de leur capacité d'exploiter efficacement ces ressources pour favoriser le développement palestinien. Les ressources économiques palestiniennes, notamment la terre, l'eau, le travail et les compétences, sont soit confisquées par la construction du mur soit inutilisées faute d'accessibilité.

306. Lorsqu'il sera terminé, le mur créera des enclaves distinctes qui ne sont pas adjacentes les unes aux autres. Même si les déplacements entre ces enclaves sont autorisés, dans des conditions administratives déterminées, le marché national palestinien se trouvera concrètement fragmenté en une série de marchés disjoints. La capacité d'échanger des services et des biens ou de demander du travail dans l'ensemble du marché palestinien deviendra imprévisible et coûteuse, car Israël refuse de laisser les personnes et les biens se déplacer librement.

307. Le mur entravera le développement et la planification économiques palestiniens car son tracé a pour effet de confisquer et d'isoler les ressources économiques palestiniennes ainsi que de diviser le marché palestinien. Des milliers de Palestiniens sont tributaires de l'agriculture, en particulier dans les gouvernorats du nord de la Cisjordanie, qui regroupent près de 40 % des terres agricoles de la Cisjordanie[248]. Le mur prive déjà les Palestiniens d'une partie de ces moyens de subsistance, suite à la confiscation de milliers de dunums de riches terres agricoles qui ont déjà été détruites ou isolées. Même si le système israélien de barrières en zone agricole était mis en œuvre, l'augmentation des temps de déplacement et les frais afférents feraient monter considérablement les coûts de transaction. L'incertitude au sujet du futur statut des terres décourage aussi la culture et pourrait faire monter encore plus les prix des denrées agricoles.

308. Vu l'incapacité de produire de façon concurrentielle et d'accéder aux marchés étrangers sans engager de dépenses excessives, le marché palestinien, comme dans les années ultérieures à 1967, sera l'otage du marché israélien «concurrentiel». Les exportations israéliennes seront plus compétitives que les biens palestiniens; les denrées étrangères seront plus faciles à importer en passant par un interlocuteur israélien. La réalité économique ainsi créée rendra très difficile un désengagement auprès d'Israël et une diversification des relations «à l'avenir».

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[247] Palestinian Counselling Center, *Mental Health Effects on the Israeli Apartheid Wall on Palestinians in the Qalqiliya District : Pilot Questionnaire*, octobre 2003, p. 6.

[248] Rapport de mission au groupe chargé de la politique humanitaire et des interventions d'urgence et au comité local de coordination de l'aide, *The Impact of Israel's Separation Barrier on Affected West Bank Communities*, 4 mai 2003, p. 43. Le rapport figure dans le dossier présenté par le Secrétaire général, au n° 85.

ii) Incidences micro-économiques

309. Pour ériger la phase I du mur en s'éloignant de la Ligne verte, Israël a confisqué des terres palestiniennes, détruit des ressources économiques palestiniennes et interdit aux Palestiniens l'accès à certains biens, à des véhicules et à des personnes en zone palestinienne.

310. Confiscation de terre : trente-sept collectivités de Cisjordanie, qui rassemblent cent huit mille sept cent soixante-seize habitants, ont perdu des terres par suite de la construction du mur[249]. En août 2003, plus de 124 323 dunums (31 081 acres) de terre, qui étaient la propriété privée de Palestiniens et qui, pour la plupart, servaient à l'arboriculture fruitière, à la culture de grande production et à la culture en serres, ont été confisqués pour la construction du mur[250].

311. Destruction des ressources économiques : pour la construction de la première phase du mur, plus de cent mille arbres ont été déracinés (dont quatre vingt-trois mille oliviers), ce qui a sérieusement abîmé plus de 2500 acres de terre, et plus de 30 000 mètres de réseau d'irrigation et de tuyaux d'adduction d'eau ont été détruits[251] (voir les photos n°s 6 à 8). Pendant la construction de la phase I du mur, des installations commerciales situées sur le tracé même ou dans son voisinage ont été détruites. Ainsi, quelque deux cents boutiques formant le principal centre d'achat à Nazlat Isa dans le nord de la Cisjordanie ont été rasées pour faire place au mur[252] (voir les photos n^{os}9 à 12).

312. Perte d'accès aux ressources économiques en raison des limitations des déplacements : les ressources économiques qui n'ont pas été démolies ou détruites pour la construction du mur ont diminué en raison du manque d'accès. L'accès des agriculteurs aux terres agricoles qu'ils possèdent ou qu'ils cultivent à l'extérieur de la zone délimitée par le mur est devenu difficile, vu les restrictions liées au système de permis et les embûches à surmonter pour obtenir l'autorisation d'utiliser des véhicules agricoles. La construction du mur a aussi coupé les habitants de l'accès à cinquante puits alimentés par les eaux souterrains et d'où ils tiraient leur eau potable et l'eau nécessaire à l'agriculture[253]. En outre, comme les activités de pâturage requièrent un accès continu à la terre, les restrictions d'accès à cet égard ont provoqué la mort d'animaux d'élevage.

313. Accès aux marchés : avant la construction du mur, les marchés locaux étaient dans une large mesure tributaires des consommateurs israéliens, qui venaient acheter des denrées et des services à meilleur prix en Territoire palestinien occupé. La construction de la première phase du mur a mis un terme à cette activité. Il a fallu adopter un régime de transport coûteux et complexe, basé sur le principe du «relais» pour transporter les denrées entre les secteurs à l'extérieur du mur et ceux qui sont à l'intérieur du mur.

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[249] Rapport de suivi de la mission au groupe chargé de la politique humanitaire et des interventions d'urgence et au comité local de coordination de l'aide — *The Impact of Israel's Separation Barrier on Affected West Bank Communities: Access Issues in «Stage A Localities»*, mise à jour n° 3, 30 novembre 2003, p. 6. Le rapport figure dans le dossier présenté par le Secrétaire général, au n° 88.

[250] Bureau central de statistique palestinien, *Survey on the Impact of the Separation Wall on Localities Where it Passed Through, 2003* (août 2003), p. 7. D'après l'enquête, 62 623 dunums (15 656 acres) étaient consacrés à la culture des oliviers, 18 522 dunums (4631 acres), à la culture de grande production, 9800 dunums (2450 acres), aux pâturages, et 8008 dunums (2002 acres), à la culture des agrumes. En outre, 21 002 dunums (5251 acres) de terre privée ont été nivelés.

[251] Comité de secours agricole palestinien, *Needs Assessment Study et Proposed Intervention 4* (2003).

[252] Groupe de surveillance palestinien, «Special Report : Land Confiscation and Destruction of Property—Focus: Nazlat Isa, Zayta, and Baqa Sharqiya», 4 septembre 2003.

[253] *Ibid.*

314. Accès à l'emploi : les Palestiniens ont maintenant plus de difficulté à trouver du travail à l'extérieur du mur parce qu'il leur faut un permis pour entrer dans les zones fermées ou en sortir. Au moins 23,6 % de la population vivant à l'ouest du mur dans le groupe des ménages dont un seul membre occupe un emploi ont entièrement changé de travail (activité et lieu de travail), en comparaison de 21,7 % dans le cas de ceux qui vivent à l'est du mur[254].

iii) Conséquences économiques de la phase I

315. La construction du mur a eu quatre conséquences économiques principales : perte d'actifs, perte d'investissements éventuels, coûts de transaction pour revendre les denrées, taux de chômage plus élevés.

316. Perte d'actifs : confiscation permanente de ressources économiques, détérioration des ressources économiques ou incapacité d'utiliser les ressources économiques, tout cela s'est traduit par une perte nette d'actifs économiques.

317. Perte d'investissements éventuels : l'incertitude liée à l'avenir des secteurs se trouvant à l'extérieur du mur a entraîné une diminution des occasions d'investissement. L'incertitude crée des dilemmes particuliers pour les agriculteurs, notamment pour ce qui est de planter ou non, du choix des cultures et du niveau d'investissement dans la mise en culture. La perte d'investissements possibles touche aussi les secteurs à l'extérieur du mur suite au manque d'accessibilité et elle accroît les risques de détérioration, tout comme dans les secteurs qui se trouvent de l'autre côté du mur et qui forment des enclaves distinctes sans perspectives économiques aucunes. Même si un investisseur voulait investir dans la zone fermée, les restrictions israéliennes rendraient la chose pratiquement impossible.

318. Coûts de transaction plus élevés pour les denrées : vu la difficulté ou l'absence d'accès tant pour les personnes (qui ont besoin de permis et doivent circuler par les portes) que pour les denrées (qu'il faut transporter à relais), les coûts de transport et de production/de culture ont augmenté à un rythme exponentiel.

319. Taux de chômage plus élevé : la phase I de la construction du mur a entraîné une augmentation des taux de chômage dans les secteurs palestiniens, tant à l'extérieur qu'à l'intérieur du mur.

320. Conjuguées, les conséquences économiques du mur et des politiques connexes, mentionnées ci-dessus, privent les Palestiniens de la capacité d'utiliser leurs actifs économiques et de déterminer leurs politiques économiques et entraînent un accroissement de la pauvreté au sein de la population.

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[254] Bureau central de statistique palestinien, *Impact of the Separation Wall on the Socioeconomic Conditions of Palestinian Households in the Localities in which the Separation Wall Passes Through (October 2003)*, conférence de presse sur les résultats du sondage (décembre 2003), p. 5.

c) ***Effets du mur sur la santé***

321. Le mur restreint l'accès aux services de santé dans les collectivités fermées à la suite de sa construction, en particulier chez les habitants de la zone située entre le mur et la Ligne verte, et pourrait compromettre plus encore les services de santé. Cet état de chose a réduit plus encore les niveaux des services de santé, déjà touchés par les restrictions et les bouclages imposés par les forces d'occupation israéliennes depuis le début de l'Intifada en cours.

322. Après la construction du mur, 80,1 % des personnes vivant à l'ouest du mur et 48,3 % des personnes habitant à l'est devront parcourir plus de quatre kilomètres pour se rendre à l'hôpital le plus rapproché. En outre, pour 73,7 % des ménages du côté ouest et 38,6 % des ménages du côté est, le mur constituera un obstacle à l'obtention des services de santé nécessaires[255].

323. Neuf des quinze collectivités de la zone fermée à l'ouest du mur n'ont aucun centre de services de santé et doivent se tourner vers les professionnels de la santé itinérants pour obtenir des soins. Le mur rend maintenant les déplacements et l'accessibilité de ces professionnels presque impossibles[256]. De nombreuses autres collectivités touchées dans le nord offrent des services de prévention et des services primaires, mais s'adressent aux trois villes principales (Qalqiliya, Tulkarem et Djénine) lorsqu'elles ont besoin de soins spécialisés et de services d'urgence ainsi que pour les traitements de dialyse régulière et la chimiothérapie[257]. La construction du mur dans le sud, en particulier dans le secteur de Jérusalem-Est occupée («l'enveloppe de Jérusalem»), complique l'accès aux installations de soins de santé pour les Palestiniens qui vivent à l'extérieur du mur. Tel sera le cas dans l'ensemble de la Cisjordanie si l'accès aux hôpitaux de Jérusalem-Est qui offrent des services médicaux spécialisés inexistants ailleurs en Cisjordanie est restreint par le mur[258].

324. Les services préventifs de santé, déjà minés par les restrictions applicables aux déplacements, seront encore plus limités en raison de l'incapacité des habitants de se rendre aux établissements de santé. L'UNRWA signale par exemple une diminution de 52 % des femmes qui reçoivent des soins postnatals. Avant l'Intifada, 95 % des femmes accouchaient dans les hôpitaux. Cette proportion est tombée à 50 % dans certains secteurs, et il y a au moins trente-neuf cas

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[255] Bureau central de statistique palestinien, *Impact of the Separation Wall on the Socioeconomic Conditions of Palestinian Households in the Localities in which the Separation Wall Passes Through (October 2003),* décembre 2003, p. 5. Ces statistiques s'appuient sur une enquête auprès de huit cent quatre-vingt-dix ménages dans des collectivités palestiniennes traversées par le mur. Il y a cent quatre vingt quinze ménages à l'ouest du mur de séparation, et six cent quatre vingt-quinze à l'est.

[256] Les travailleurs de la santé ne peuvent pas se rendre dans ces secteurs aussi souvent qu'ils le voudraient, sinon pas du tout, en raison des temps de déplacement accrus, des coûts liés au transport et de l'irrégularité des horaires d'ouverture des portes. Par exemple, les habitants d'Azun Atma, un village de mille cinq cents personnes à l'est du mur, ont maintenant moins souvent accès aux travailleurs de la santé itinérants et ils ne peuvent pas se rendre à Qalqiliya pour obtenir des services d'urgence. On trouvera des études de cas détaillées dans le rapport de mission au groupe chargé de la politique humanitaire et des interventions d'urgence et au comité local de coordination de l'aide, *The Impact of Israel's Separation Barrier on Affected West Bank Communities* (4 mai 2003), p. 41 (ce document figure dans le dossier présenté par le Secrétaire général, au n° 85), et dans le rapport 2003 de B'Tselem, p. 17.

[257] Il s'agit notamment d'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, et Arab a-Ramadeen al-Janubi. BCAH, *Monthly Status Report: The West Bank Wall,* juillet 2003, p. 4.

[258] Ainsi, l'hôpital Augusta Victoria est le seul hôpital de Cisjordanie qui offre des services de dialyse. L'hôpital Mukassad est la seule source de services de cardiologie spécialisés. Voir le rapport de suivi au groupe chargé de la politique humanitaire et des interventions d'urgence et au comité local de coordination de l'aide, *The Impact of Israel's Separation Barrier on Affected West Bank Communities: The «Jerusalem Envelope»*, mise à jour n° 2, (30 septembre 2003), p. 4. Le rapport figure dans le dossier présenté par le Secrétaire général, au n° 87.

documentés de femmes qui ont accouché à un poste de contrôle[259]. Par ailleurs, des programmes de vaccination réguliers ont dû être reportés, mais les efforts ont tout de même permis de maintenir certains programmes de vaccination[260].

325. Privés d'accès aux services de santé, les habitants sont plus exposés aux problèmes sanitaires, aux maladies d'origine hydrique, à l'élévation de la mortalité infantile et à l'absence de services d'urgence. Il est de plus en plus difficile d'obtenir rapidement des soins d'urgence efficaces, à moins de s'adresser à des hôpitaux israéliens. La poursuite de la construction du mur ne pourra qu'aggraver tous ces problèmes et bien d'autres, car le mur retardera les cliniques mobiles, les ambulances et la distribution de fournitures médicales et de vaccins. Il accroîtra en outre le fardeau des fournisseurs de service de santé publique en dispersant les installations, le personnel et les ressources et il ajoutera à la charge et au coût des centres de santé dans les villages.

326. L'assainissement constitue aussi une préoccupation importante dans les collectivités voisines du mur, des deux côtés. Nombre de ces collectivités font appel à des camions qui viennent régulièrement enlever les eaux usées et les déchets déposés dans les installations de rétention. Le mur a empêché les camions de se rendre dans certains villages et a accru les coûts de ces services dans d'autres, ce qui augmente le risque de maladie d'origine hydrique dans ces collectivités. Dans les petites collectivités, par exemple à Dhaher al Malih dans le gouvernorat de Djénine, les limitations d'accès ont eu des retombées particulièrement marquées en matière de gestion des déchets. Depuis le début de la construction du mur, de nombreuses collectivités le long de son tracé ont été incapables d'éliminer les déchets car elles n'ont pas accès aux décharges publiques situées à l'extérieur des limites municipales[261].

d) ***Effets du mur sur l'éducation***

327. La construction du mur ainsi que l'isolement et les restrictions connexes ont un effet sur l'éducation. Dans les gouvernorats de Tulkarem, de Qalqiliya et de Djénine, le mur a des répercussions directes sur sept mille quatre cents élèves, et au moins cent cinquante enseignants du district de Tulkarem ont maintenant de graves difficultés pour se rendre à leurs écoles. Les problèmes dans le gouvernorat de Qalqiliya sont particulièrement sérieux car il n'y a qu'un seul point de contrôle dans la ville de Qalqiliya et le mur suit un tracé tortueux. Des établissements d'enseignement situés à proximité du mur ont été endommagés, et les autorités israéliennes ont empêché d'autres écoles d'agrandir leurs locaux pour palier le surpeuplement[262].

328. Dans le district de Tulkarem, qui comprend le plus grand nombre de collectivités emmurées, le ministère palestinien de l'Education estime qu'au moins un mois de l'année scolaire 2003-2004 a déjà été perdu en 2003, en raison des couvre-feu ou des restrictions des déplacements dus aux activités de nivellement ou de construction liées au mur, et qu'environ six cent cinquante des mille neuf cent soixante quatre enseignants ont actuellement de la difficulté

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[259] UNRWA, *Impact of the First Pahse of the Security Barrier on the Qalqiliya, Tulkarm and Jenin Districts* (juillet 2003), p. 6.

[260] Rapport de mission au groupe chargé de la politique humanitaire et des interventions d'urgence au comité local de coordination de l'aide, *The Impact of Israel's Separation Barrier on Affected West Bank Communities* (4 mai 2003), p. 42. Le rapport figure dans le dossier présenté par le Secrétaire général, au n° 85.

[261] *Ibid*.

[262] *Ibid.* p. 40.

à se rendre au travail[263]. De plus, l'augmentation des taux de pauvreté due au mur aura une incidence sur la capacité des élèves à fréquenter l'école, car les familles auront de plus en plus de difficultés à payer les droits d'inscription.

329. Plusieurs villages entre le mur et la Ligne verte n'ont ni école primaire ni école secondaire, ce qui oblige les étudiants à traverser le mur pour se rendre à l'école (voir les photos n[os] 21 et 22). Suite aux retards causés par les points de passage et suite aux fermetures des portes, l'accès à l'éducation pour ces élèves est maintenant difficile[264]. Il faut en outre posséder un permis pour franchir les portes, que l'on soit élève ou enseignant. La délivrance de permis jusqu'à maintenant n'a pas été systématique. Les enseignants de certains villages ou districts ont obtenu des permis pour franchir les portes du mur pour se rendre à l'école, mais d'autres ont été écartés, tout comme certains élèves.

330. Les difficultés croissantes que rencontrent les enseignants et les élèves pour se rendre dans les écoles et les universités en raison de l'existence du mur ont sensiblement perturbé le processus éducatif. D'après un sondage récent mené par le bureau central de statistique palestinien, 13,9 % des ménages à l'est du mur dont au moins un membre fréquente l'école ou l'université on a éprouvé des difficulté à se rendre à l'école ou à l'université, tandis que 29,4 % de ces ménages à l'ouest du mur rencontrent de plus en plus de difficultés à cet égard. Le fonctionnement des écoles a également été perturbé en raison de l'incapacité des enseignants à se rendre au travail. En effet, 45,3 % des enseignants à l'est du mur et 74,6 % de ceux qui vivent à l'ouest éprouvent de difficultés à cet égard. En outre, les déplacements entre le lieu de résidence de 86,5 % des élèves de sexe féminin qui habitent à l'ouest du mur sont restreints, tandis que 77,4 % des élèves de sexe féminin qui vivent à l'est du mur éprouvent des difficultés similaires[265].

331. L'effet psychologique qu'a sur les élèves la nécessité de traverser le mur ou de suivre des cours en étroite proximité du mur n'a pas encore été évalué. Vu les délais plus longs qu'il faut prévoir pour se rendre en classe et, parfois, les trajets difficiles qu'il faut emprunter, vu aussi le surpeuplement des classes attribuable aux restrictions d'accès, la capacité des élèves de se concentrer et d'apprendre peut être sensiblement amoindrie. Les contacts quotidiens avec des militaires sur le chemin de l'école et les risques qui s'y rapportent auront certainement un effet à long terme sur les écoliers palestiniens.

332. Les élèves qui veulent poursuivre des études postsecondaires devront surmonter de sérieuses difficultés pour pouvoir fréquenter l'université ou le collège, vu l'imposition d'un régime de permis et les restrictions des déplacements découlant de la présence du mur. Ils auront en outre moins de choix quant aux domaines d'étude au niveau postsecondaire. Des disciplines comme le droit et la médecine, par exemple, ne sont enseignées que dans un petit nombre d'universités.

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[263] *Ibid.*

[264] A Ar Ras, 44 des 172 élèves de l'école primaire doivent traverser le mur tous les matins en provenance de Khirbet Jubara. Quarante-six autres élèves de Khirbet Jubara vont à l'école secondaire à Kafr Sur. Pendant les bouclages ou les fêtes israéliennes, les portes ne s'ouvrent pas et ces élèves ne peuvent suivre les cours. Certains jours, le passage aux portes est retardé, parfois pendant des heures. Rapport de suivi de la mission au groupe chargé de la politique humanitaire et des interventions d'urgence au comité local de coordination de l'aide, *The Impact of Israel's Separation Barrier on Affected West Bank Communities: Access Issues in «Stage A Localities»*, mise à jour n[o] 3, (30 novembre 2003), p. 13. Le rapport figure dans le dossier présenté par le Secrétaire général, au n[o] 88.

[265] Bureau central de statistique palestinien, *Impact of the Separation Wall on the Socioeconomic Conditions of Palestinian Households in the Localities in which the Separation Wall Passes Through (October 2003),* conférence de presse sur les résultats de l'enquête (décembre 2003), p. 6.

e) ***Effets du mur sur le patrimoine culturel***

333. Le patrimoine culturel est un élément de l'identité culturelle de la communauté palestinienne et fait partie intégrante du patrimoine humain. Le mur sépare les collectivités dans le Territoire palestinien occupé, y compris Jérusalem-Est, de centaines de sites du patrimoine archéologique et culturel. De plus, peu d'opérations de sauvetage ont été menées pendant la construction du mur, ce qui indique qu'aucune évaluation adéquate des dommages à l'environnement et aux sites archéologiques n'a été réalisée avant le début des travaux.

334. Au cours de la première phase de la construction du mur, environ deux cent trente sites archéologiques importants ont été isolés dans la zone fermée, en plus de mille sept cent cinquante et un sites de moindre importance et éléments du patrimoine culturel, dont des cavernes, des tombes, des cimetières, des sanctuaires, des tours, des presses à vin et à raisin[266]. Le mur a aussi enfermé certains des sites naturels les plus importants, notamment la forêt naturelle d'Umm er-Rihan, au sud de Djénine.

335. Dans la partie sud de la Cisjordanie, de vastes portions des sites archéologiques se trouveront à l'ouest du mur. Dans la seule zone de Ramallah, plus de cinq cents sites se trouveront à l'ouest du mur. Par ailleurs, le tracé proposé pour le tronçon oriental du mur le long de la vallée du Jourdain reléguera plus de mille sites et éléments du patrimoine archéologique dans la partie orientale de la Cisjordanie qui, sauf la région de Jéricho, est sous contrôle israélien.

336. Dans le district de Bethléem, un grand nombre de sites archéologiques des villages d'Al Khader et Housan ont été démolis ou annexés à des colonies voisines[267]. La destruction d'un certain nombre de sites archéologiques est déjà attribuable à la construction du mur, notamment celle du site archéologique byzantin abîmé en octobre 2003 pendant la construction du mur dans Jérusalem-Est occupée[268].

337. L'effet direct et continu du mur sur le patrimoine culturel comprendra notamment la destruction de sites archéologiques, la destruction du patrimoine naturel, la destruction des paysages historiques et naturels, l'isolement des sites archéologiques de leur contexte culturel, la confiscation de vestiges archéologiques, le bouleversement de l'intégrité géographique des secteurs palestiniens[269].

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[266] Hamdan Taha, directeur général, département des antiquités et du patrimoine culturel, ministère palestinien du Tourisme et des Antiquités, *The Separation Wall : An Archaeological Atrocity*, 16 janvier 2004, p. 1.

[267] Mentionnons entre autres Kh. Hammouda, Kh. Qedis, Kh. El-Keneiseh, Kh. Deir Baghel et les anciennes sources à Ain el-Kalbeh Ain Qadis, Ain et-Taqa et Ain el-Qaniseh, les cavernes de Qedis et celles de Daher el-Matarseh. D'autres sites archéologiques, y compris Kh. Ed-Deir, Kh. El-Aid, Kh. Farash, ASin Faris Ain el-Masayeh Ain Abu Zeid, Ain el-Faqeh et Ain Abu Kleibeh, ont été annexés à la colonie de Bitar Aleat. D'autres sites dans les villages d'El-Jaba'a et de Wadi Fukin ont aussi été annexés à la colonie voisine. Les sites archéologiques de Kh. El-Khamasah ont été en partie détruits. *Ibid*., p. 2.

[268] Khirbet Salah se trouve à l'est de la ville d'Abu Dis, à Jérusalem, et recèle les vestiges d'un monastère byzantin. Pendant la construction du mur, les bouteurs ont été dépêchés dans le secteur pour commencer les travaux sans que la coordination ait été assurée avec l'autorité archéologique israélienne. Une partie importante du site a été démolie et nivelée, entraînant des dommages irréversibles, avant que les travaux ne soient interrompus par l'autorité archéologique israélienne. On n'a pas accordé suffisamment de temps aux archéologues pour terminer les travaux sur le site et, au bout de trois semaines, le site a été nivelé et le mur a été construit dessus.

[269] *Ibid*. p. 2.

6) Conclusions

338. Le mur ne suit pas le tracé de la Ligne verte. Il est presque entièrement construit en Territoire palestinien occupé. Il divise et isole les Palestiniens entre eux et d'avec leurs terres. Il crée des enclaves et bouleverse l'intégrité territoriale et la continuité du Territoire palestinien occupé. Outre son effet important sur tous les aspects de la vie palestinienne et même au-delà des populations directement touchées par la construction du mur, l'ouvrage menace la viabilité des Palestiniens.

339. Le mur vise à protéger et à favoriser l'expansion des colonies israéliennes en Territoire palestinien occupé, y compris à Jérusalem-Est et aux environs. Sans tenir compte des secteurs de colonisation approuvés, près de 80 % de la population de colons en Cisjordanie et en Jérusalem-Est se trouveront à l'extérieur du mur.

340. Le mur est conçu pour permettre à Israël de garder la mainmise sur les ressources naturelles du Territoire palestinien occupé. Les sources d'eau de grande qualité en Cisjordanie sont exploitées par Israël depuis 1967. La majorité de l'eau douce extraite par Israël des aquifères de Cisjordanie est utilisée par les colons.

341. Le mur fait partie d'un système plus vaste de routes, d'expansion des colonies et d'intégration avec l'infrastructure d'Israël. L'échelle et la nature du mur consacrent la présence d'Israël en Territoire palestinien occupé.

342. La construction du mur a déjà causé des dommages permanents au Territoire palestinien occupé, à la suite du nivellement des terres, de la démolition des habitations et du bouleversement de la vie sociale et économique des Palestiniens.

Terminologie des résolutions du Conseil de sécurité depuis 1967

Résolution	Terminologie utilisée
242 (1967)	«les territoires occupés lors du récent conflit»
446 (1979)	«les territoires arabes occupés par Israël depuis 1967, y compris Jérusalem» «les territoires arabes occupés»
452 (1979)	«le territoires arabes occupés depuis 1967, y compris Jérusalem» «les territoires arabes occupés»
465 (1980)	«les territoires arabes occupés depuis 1967, y compris Jérusalem; «les territoires arabes occupés par Israël depuis 1967, y compris Jérusalem» «les territoires palestiniens et autres territoires arabes occupés depuis 1967» «les territoires occupés» «soumis à l'occupation»
476 (1980)	«les territoires arabes occupés par Israël depuis 1967, y compris Jérusalem»
478 (1980)	«les territoires palestiniens et autres territoires arabes occupés depuis juin 1967, y compris Jérusalem»
484 (1980)	«les territoires arabes occupés par Israël en 1967»
605 (1987)	«les territoires palestiniens et autres territoires arabes occupés par Israël depuis, y compris Jérusalem» «les territoires occupés» «soumis à l'occupation israélienne»
607 (1988)	«les territoires occupés» «les territoire palestiniens et autres territoires arabes occupés par Israël, depuis 1967, y compris Jérusalem»
608 (1988)	«les territoires palestiniens occupés» «les territoires occupés» «les territoires palestiniens et les autres territoires arabes occupés par Israël depuis 1967, y compris Jérusalem»
636 (1989)	«les territoires palestiniens occupés» «les territoires palestiniens occupés par Israël depuis 1967, y compris Jérusalem, (ainsi qu'aux autres territoires arabes occupés)»
641 (1989)	«les territoires palestiniens occupés» «les territoires palestiniens occupés par Israël depuis 1967, y compris Jérusalem»
672 (1990)	«tous les territoires occupés par Israël depuis 1967»
681 (1990)	«soumis à l'occupation israélienne» «les territoires palestiniens occupés par Israël depuis 1967, y compris Jérusalem» «les territoires occupés» «tous les territoires occupés par Israël depuis 1967»
694 (1991)	«les territoires palestiniens occupés par Israël depuis 1967, y compris Jérusalem»
726 (1992)	«les territoires palestiniens occupés» «les territoires palestiniens occupés par Israël depuis 1967, y compris Jérusalem» «les territoires occupés»
799 (1992)	«les territoires occupés par Israël depuis 1967, y compris Jérusalem» «les territoires palestiniens occupés par Israël depuis 1967, y compris Jérusalem»
904 (1994)	«les territoires occupés par Israël depuis juin 1967, y compris Jérusalem» «le territoire occupé»
1322 (2000)	«les territoires occupés par Israël depuis 1967»
1397 (2002)	«la Palestine (deux Etats)»
1402 (2002)	«villes palestiniennes»
1435 (2002)	«villes palestiniennes»
1515 (2003)	«Palestine (deux Etats)»

PARTIE D

ANALYSE JURIDIQUE

CHAPITRE 7

ISRAËL MAINTIENT LE TERRITOIRE PALESTINIEN EN ETAT D'OCCUPATION

1) Introduction

343. La requête pour le présent avis consultatif se réfère à l'emplacement du mur en «Territoire palestinien occupé, comprenant Jérusalem-Est et ses environs». Le terme de «Territoire palestinien occupé» (TPO) est largement accepté dans la pratique des organes des Nations Unies, y compris celle de l'Assemblée générale et du Conseil de sécurité. Ces termes, ou d'autres expressions analogues, ont été utilisés depuis 1967 par le Conseil de sécurité et l'Assemblée générale. On le constate dans le tableau en annexe, qui indique la terminologie utilisée dans les résolutions du Conseil de sécurité, de 1967 à ce jour.

344. Dans ce chapitre, le sens et la portée du terme «Territoire palestinien occupé» sera précisé et il sera démontré que le droit international de l'occupation est applicable à ce territoire et à Israël en tant que puissance occupante. Le chapitre 8 sera consacré au contenu du droit international applicable, en ce compris son volet relatif au droit international humanitaire et aux droits de l'homme.

345. Le fait qu'Israël a été, et demeure, l'occupant du territoire palestinien ne fait l'objet d'aucune controverse internationale. Cette occupation résulte de la guerre de six jours qui opposa, en juin 1967, Israël, la Jordanie, la Syrie et l'Egypte. Tous ces Etats étaient alors et sont toujours parties à la quatrième convention de Genève : voir article 2, première phrase. La guerre de 1967 fut, sans aucun doute, un conflit armé international au sens des conventions de Genève. Lors de ce conflit armé, les forces armées israéliennes envahirent et occupèrent, entre autres, la Cisjordanie et la bande de Gaza, qui représentaient environ la moitié du territoire attribué aux pays arabes par le plan de partition de la résolution 181 (II) de l'Assemblée générale de 1947[270]. Ces événements ont déjà été évoqués au chapitre 3 de cet exposé.

346. Le statut actuel d'Israël au regard de ce territoire n'est autre que celui d'occupant. En droit international, une puissance occupante ne détient pas la souveraineté sur le territoire occupé. Elle ne fait qu'exercer son autorité sur ce territoire à titre temporaire[271]. Le critère, à cet égard, est celui du contrôle effectif du territoire[272]. Il importe peu que l'administration quotidienne soit exercée par des autorités locales. Un territoire qui a été occupé continue de l'être jusqu'à ce qu'intervienne soit un retrait définitif, soit un règlement international définitif et acceptable. Or, aucun de ces événements ne s'est réalisé en l'espèce.

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[270] Déjà en 1948-49 Israël avait occupé environ la moitié du territoire alloué à l'Etat arabe.

[271] Voir en particulier les articles 4 et 47 de la quatrième convention de Genève.

[272] Voir article 42 du règlement de La Haye de 1907.

347. Nul Etat, qu'il soit puissance occupante ou Etat tiers, n'a le droit d'acquérir des territoires par la menace ou par l'usage de la force. Le principe selon lequel le titre sur un territoire ne peut être valablement acquis par l'usage de la force est si fondamental et si indiscutable qu'il n'est pas nécessaire de citer ici les sources jurisprudentielles et doctrinales y relatives. Il découle de ce principe et de l'interdiction du recours à la force, que le droit traditionnel relatif à l'occupation de territoires, tel que consacré par la quatrième convention de Genève de 1949, a été puissamment renforcé par le droit international moderne.

2) Le régime du territoire occupé

a) *Régime général*

348. Le droit de l'occupation comprend les règles de droit international coutumier consacrées notamment par le règlement de La Haye de 1907 et la quatrième convention de Genève. Il est généralement admis que ces instruments reflètent le droit coutumier et, partant, qu'ils ne se limitent pas à régir les relations entre Etats parties seulement[273]. Mais, même en tant que traité, la quatrième convention de Genève s'applique, selon ses propres termes, à la situation créée en 1967. L'article 2 de la convention précise en effet que celle-ci est applicable «en cas de guerre déclarée ou de tout autre conflit armé surgissant entre deux ou plusieurs Hautes Parties Contractantes». En 1967, à l'issue d'un conflit armé international entre des parties à la convention, Israël a occupé un territoire qui n'était pas le sien. Ce territoire est toujours sous occupation, sans que ne soit intervenu un règlement internationalement accepté le concernant. La situation juridique qui en découle, opposable *erga omnes* en vertu de la valeur de droit coutumier international que revêtent les règles qui la régissent, est aussi opposable à tous les Etats parties à la quatrième convention de Genève, soit cent quatre-vingt-dix Etats, c'est à dire à la grande majorité des membres de la communauté internationale. Comme il est démontré ci-dessous, cette situation a été expressément reconnue comme telle par la conférence des hautes parties contractantes à la quatrième convention de Genève. Il s'agit donc d'une situation juridique que tous les organes des Nations Unies peuvent prendre en compte et c'est sur la base de cette situation qu'ils doivent agir.

349. La définition de l'occupation en droit humanitaire international repose largement sur des éléments de fait. Selon la définition qu'en donne l'article 42 du règlement de La Haye de 1907 : «Un territoire est considéré comme occupé lorsqu'il se trouve *placé sous l'autorité de l'armée ennemie*. L'occupation ne s'étend qu'aux territoires où cette autorité est établie et en mesure de s'exercer.» (Les italiques sont de nous.)

350. Afin de décider si un territoire est occupé ou non, le critère décisif consiste donc à déterminer si ledit territoire se trouve sous l'autorité d'un pouvoir ennemi. Pour établir si un territoire est sous l'autorité d'une puissance ennemie, il faut que cette puissance ait le «contrôle effectif» du territoire concerné. En d'autres termes, la question de savoir si une puissance ennemie exerce un contrôle effectif sur un territoire est une question de fait. L'article 42 ne dit rien, par ailleurs, quant au statut du territoire occupé. En particulier, il est muet sur d'éventuelles revendications sur le territoire ou sur la légalité de la présence de la puissance étrangère (par exemple, dans le contexte de l'affirmation de l'exercice du droit de légitime défense). De telles considérations sont, en effet, indépendantes de la question de savoir si le territoire est occupé.

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[273] Affaire de la *Licéité de la menace ou de l'emploi d'armes nucléaires, avis consultatif*, 8 juillet 1996, *C.I.J. Recueil 1996*, p. 266, 256 (par. 75), 257 (par. 79), 258 (par. 82).

351. Une puissance occupante ne peut se soustraire à ses obligations envers la population civile soumise à son occupation, en choisissant de ne pas exercer de «contrôle effectif», alors qu'elle militairement en mesure de le faire. Comme l'a noté le rapporteur spécial de la Commission des droits de l'homme sur la situation des territoires palestiniens occupés par Israël depuis 1967 :

> «Les principes régissant l'occupation visent à protéger les intérêts de la population d'un territoire occupé et non ceux de la puissance souveraine évincée … Le critère d'application du régime juridique d'occupation n'est pas de savoir si la puissance occupante exerce ou non un véritable contrôle sur un territoire, mais si elle a les moyens d'exercer un tel pouvoir, principe qui a été affirmé par le Tribunal militaire des Etats Unis à Nuremberg dans l'affaire *List and others* (l'affaire des *Otages*) en 1948.»[274]

352. Dans l'affaire des *Otages*, le Tribunal militaire de Nuremberg adopta la position selon laquelle un contrôle du territoire, même temporaire, par des résistants ne met pas nécessairement fin à l'état d'occupation :

> «Alors qu'il est vrai que les partisans étaient parvenus à contrôler certains secteurs de ces pays en plusieurs occasions, il est bien connu que les Allemands pouvaient à tout moment, s'ils le désiraient, prendre le contrôle effectif de toute partie du pays. Le contrôle exercé par la résistance n'était donc que temporaire et non pas de nature à priver les forces armées allemandes de leur statut d'occupant.»[275] *[Traduction non officielle.]*

353. L'existence d'un contrôle effectif de la part d'une puissance occupante se mesure donc à sa capacité à assumer effectivement les responsabilités qui lui incombent, et notamment à sa capacité à promulguer des directives et à les faire respecter par les habitants du territoire, et non pas à sa volonté de le faire.

354. La persistance de la résistance armée de la part de la population sous occupation n'exclut pas l'existence d'un statut juridique d'occupation. Les principaux manuels militaires parus depuis 1949 fournissent de fortes preuves à l'appui de cette thèse. Ainsi le *British Manual of Military Law* prévoit que :

> «L'occupation ne cesse pas du simple fait que certains des habitants sont en état de rébellion ou du fait de succès temporaires remportés par des bandes de guérilleros ou de résistants. Les succès temporaires remportés par la rébellion ne sont pas non plus suffisants pour réinterpréter l'occupation ou considérer qu'elle a pris fin, tant que l'autorité du gouvernement légitime n'est pas effectivement rétablie et tant que l'occupant n'aura pas complètement maté la rébellion.»[276] *[Traduction non officielle.]*

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[274] Le rapport du rapporteur spécial de la Commission des droits de l'homme sur la situation dans les territoires palestiniens occupés par Israël depuis 1967, A/56/440, par. 7 (annexe 1 du volume 2 accompagnant l'exposé écrit).

[275] *Etats-Unis c. Wilhelm List* et al., 11 *Procès de criminels de guerre devant les Tribunaux militaires de Nuremberg*, 1230, 1243 (1948).

[276] *The Law of War on Land,. Part III Manual of Military Law,* The War Office, 1958, par. 509.

De même, le *Field Manual* des Etats-Unis dispose que :

> «L'occupation, pour être effective, doit être maintenue … L'existence d'une rébellion ou l'activité d'unités paramilitaires ne provoque pas non plus, en elle-même, la cessation de l'occupation, à condition qu'il soit possible à l'occupant, pour peu qu'il le désire, de reprendre le contrôle effectif de toute portion du territoire. Si, toutefois, l'occupant devait être effectivement dessaisi de son pouvoir pour un laps de temps déterminé, sa position au regard des habitants redeviendrait ce qu'elle était avant le début de l'occupation.»[277] *[Traduction non officielle.]*

355. A l'époque de l'adoption du règlement de La Haye, il existait déjà un principe clairement établi, selon lequel une occupation militaire résultant d'une guerre ne confère aucune souveraineté à la Puissance Occupante sur le territoire occupé[278]. Les deux principes-clés régissant le régime de l'occupation belligérante sont, d'une part, que l'occupation est un état de choses temporaire et, d'autre part, que le statut du territoire ne peut être modifié unilatéralement par la puissance occupante. Le Tribunal international de Nuremberg décida ainsi que même dans le cas où l'Etat dont le territoire est occupé est complètement écrasé, l'annexion restait illégale et ne transférait aucun droit de souveraineté territoriale, aussi longtemps que la puissance occupante demeurait en guerre avec les alliés de l'Etat concerné[279]. Les velléités d'annexion d'un territoire occupé étaient donc expressément prohibées.

356. Ces principes restent aujourd'hui applicables au régime de l'occupation, étant bien entendu que l'évènement déclenchant l'application de ce régime est l'occupation intervenant dans le contexte d'un conflit international armé, que celui-ci constitue ou non un cas de guerre déclarée. Toute tentative d'annexion d'un territoire occupé par une puissance occupante sera sans effet sur le statut du territoire ou de ses habitants, qui restent soumis au droit relatif à l'occupation. Selon l'article 47 de la quatrième convention de Genève :

> «Les personnes protégées qui se trouvent dans un territoire occupé ne seront privées, en aucun cas ni d'aucune manière, du bénéfice de la présente convention, soit en vertu d'un changement quelconque intervenu du fait de l'occupation dans les institutions ou le gouvernement du territoire en question, soit par un accord passé entre les autorités du territoire occupé et la puissance occupante, soit encore en raison de l'annexion par cette dernière de tout ou partie du territoire occupé.»

357. Le commentaire de l'article 47 du CICR précise aussi que :

> «Ainsi, l'occupation pour cause de guerre, qui a le caractère d'une possession de fait, ne saurait-elle comporter un droit quelconque de disposition sur un territoire. Aussi longtemps que les hostilités sont en cours, la puissance occupante ne pourra donc pas «annexer» le territoire occupé, même si elle occupe l'ensemble de ce territoire. Seul le traité de paix pourra se prononcer à cet égard. C'est là un principe universellement acquis et confirmé par la doctrine et de nombreux jugements rendus par des tribunaux internationaux ou nationaux.»[280]

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[277] *The Law of War on Land Warfare, Field Manual,* U.S. Department of the Army, juillet 1956, par. 360.

[278] Oppenheim, *International Law*, 6e éd., Londres, 1944, p. 432-434.

[279] Cmd. 6964, 65.

[280] CICR, *Commentaire. Convention (IV) de Genève relative à la protection des personnes civiles en temps de guerre,* Genève, 1958.

358. De plus, certains comportements généralement associés à l'annexion de territoire — en particulier le transfert direct ou indirect, vers les territoires occupés, de populations civiles de la puissance occupante, ou le transfert d'une partie de la population hors du territoire occupé — constituent un crime de guerre[281].

b) ***Application du régime de l'occupation à la Palestine***

359. Le droit international de l'occupation s'applique à fortiori à un territoire sous mandat dont le peuple n'a pas réalisé son droit à l'autodétermination et qui a été occupé par un Etat, à la suite d'un conflit armé international. Un tel conflit ne met pas fin à son statut de territoire sous mandat[282]. Il ne met pas, non plus, fin aux droits du peuple concerné[283]. Un tel conflit ne confère, par ailleurs, aucune souveraineté à la puissance occupante. Le régime de l'occupation prévu par le droit international continue de s'appliquer au territoire en question jusqu'à la survenance d'un règlement légitime, avalisé par les Nations Unies et accepté par la communauté internationale.

360. Dans l'affaire de la Namibie[284], la Cour a été sollicitée par le Conseil de sécurité afin de l'éclairer sur les conséquences juridiques de la présence continue de l'Afrique du Sud en Namibie, nonobstant la résolution 276 du Conseil de sécurité (1970). Dans son avis sur cette question, la Cour a précisé que le principe de non–annexion est l'un des deux principes cardinaux sous-tendant le régime des mandats de l'article 22 de la convention de la Société des Nations.

> «le Gouvernement sud-africain s'est étendu assez longuement sur les négociations qui ont précédé l'adoption de la version définitive de l'article 22 du Pacte de la Société des Nations et a soutenu qu'on pouvait en tirer une interprétation différente de cette disposition. Il est vrai, comme ce gouvernement le fait observer, qu'il y avait eu une tendance marquée à l'annexion des anciens territoires coloniaux ennemis. Quoi qu'il en soit, le résultat final de ces négociations — même s'il n'a pas été obtenu sans mal — a été le rejet de l'idée d'annexion. Prétendre qu'on peut méconnaître le sens évident de l'institution des mandats, en donnant aux dispositions explicites qui en expriment les principes une interprétation contraire à son but et à son objet, est une thèse insoutenable.»[285]

361. Le principe selon lequel le territoire occupé par Israël en 1967 ne doit pas faire l'objet d'une annexion ou d'une modification unilatérale de son statut, a été reconnu et appliqué par la communauté internationale dans son ensemble. En particulier, le Conseil de sécurité a, en 1967, adopté la résolution 242 (1967), libellée comme suit :

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[281] Voir protocole additionnel I, art. 85 4) *a)*; voir également le statut de Rome instituant la Cour pénale internationale, 17 juillet 1998, art. 8 2) *a)* iv), *b)* viii).

[282] Ceci a été confirmé par la Cour dans plusieurs avis consultatifs, à commencer par *Statut international du Sud-Ouest africain, avis consultatif*, 11 juillet 1950, *C.I.J. Recueil 1950*, p. 128, pour terminer par *Conséquences juridiques pour les Etats de la présence continue de l'Afrique du Sud en Namibie (Sud-Ouest africain) nonobstant la résolution 276 (1970) du Conseil de sécurité, avis consultatif*, 26 janvier 1971, *C.I.J. Recueil 1971*, p. 6.

[283] *Ibid.* Voir également l'article 80 de la Chartre des Nations Unies.

[284] *Conséquences juridiques pour les Etats de la présence continue de l'Afrique du Sud en Namibie (Sud-Ouest africain) nonobstant la résolution 276 (1970) du Conseil de sécurité, avis consultatif,* 26 janvier 1971, *C.I.J. Recueil 1971*, p. 6.

[285] *Ibid.*, p.30.

«Le Conseil de sécurité,

Exprimant l'inquiétude que continue de lui causer la grave situation au Moyen-Orient,

Soulignant l'inadmissibilité de l'acquisition de territoire par la guerre et la nécessité d'œuvrer pour une paix juste et durable, permettant à chaque Etat de la région de vivre en sécurité,

Soulignant en outre *que* tous les Etats Membres, en acceptant la Charte des Nations Unies, ont contracté l'engagement d'agir conformément à l'article 2 de la Charte,

1. *Affirme* que l'accomplissement des principes de la Charte exige l'instauration d'une paix juste et durable au Moyen-Orient, qui devrait comprendre l'application des deux principes suivants :

i) retrait des forces armées israéliennes des territoires occupés lors du récent conflit;

ii) cessation de toutes assertions de belligérance ou de tous les états de belligérance et respect et reconnaissance de la souveraineté, de l'intégrité territoriale et de l'indépendance politique de chaque Etat de la région et de leur droit de vivre en paix à l'intérieur de frontières sûres et reconnues à l'abri de menaces ou d'actes de force…»

362. Le 30 juillet 1980 Israël a tenté d'annexer Jérusalem-Est en promulguant la «loi fondamentale : Jérusalem, Capitale d'Israël, 30 juillet 1980». Cette action lui valut la condamnation du Conseil de sécurité dans de nombreuses résolutions, à commencer par la résolution 476 (1980), dans laquelle le Conseil de sécurité indique que :

«*Ayant examiné* la lettre en date du 28 mai 1980 du représentant du Pakistan, président en exercice de l'Organisation de la Conférence islamique, figurant dans le document S/13966 du 28 mai 1980,

Réaffirmant que l'acquisition de territoire par la force est inadmissible,

Gardant présents à l'esprit le statut particulier de Jérusalem et, spécialement, la nécessité de protéger et de préserver la dimension spirituelle et religieuse unique des lieux saints de cette ville,

Réaffirmant ses résolutions concernant le caractère et le statut de la ville sainte de Jérusalem, en particulier les résolutions 252 (1968), 267 (1969), 271 (1969), 298 (1971) et 465 (1980),

Rappelant la convention de Genève relative à la protection des personnes civiles en temps de guerre, du 12 août 1949,

Déplorant qu'Israël persiste à modifier le caractère physique, la composition démographique, la structure institutionnelle et le statut de la ville sainte de Jérusalem,

Gravement préoccupé par les mesures législatives entamées à la Knesset israélienne en vue de modifier le caractère et le statut de la ville sainte de Jérusalem,

1. *Réaffirme* la nécessité impérieuse de mettre fin à l'occupation prolongée des territoires arabes occupés par Israël depuis 1967, y compris Jérusalem;

2. *Déplore vivement* le refus continu d'Israël, la puissance occupante, de se conformer aux résolutions pertinentes du Conseil de sécurité et de l'Assemblée générale;

3. *Confirme* à *nouveau* que toutes les mesures et dispositions législatives et administratives prises par Israël, la puissance occupante, en vue de modifier le caractère et le statut de la ville sainte de Jérusalem n'ont aucune validité en droit et constituent une violation flagrante de la convention de Genève relative à la protection des personnes civiles en temps de guerre et font en outre gravement obstacle à l'instauration d'une paix d'ensemble, juste et durable au Moyen-Orient;

4. *Réaffirme* que toutes les mesures qui ont modifié le caractère géographique, démographique et *historique* et le statut de la ville sainte de Jérusalem sont nulles et non avenues et doivent être rapportées en application des résolutions pertinentes du Conseil de sécurité;

5. *Demande instamment* à Israël, la *puissance* occupante, de se conformer à la présente résolution et aux résolutions précédentes du Conseil de sécurité et de cesser immédiatement de poursuivre la mise en oeuvre de la politique et des mesures affectant le caractère et le statut de la ville sainte de Jérusalem;

6. *Réaffirme* sa détermination, au *cas* où Israël ne se conformerait pas à la présente résolution, d'examiner, conformément aux dispositions pertinentes de la Charte des Nations Unies, des moyens pratiques en vue d'assurer l'application intégrale de la présente résolution».

363. Cette résolution a été suivie par la résolution 478 (1980) du Conseil de sécurité :

«*Réaffirmant de nouveau* que l'acquisition de territoire par la force est inadmissible,

Profondément préoccupé par le fait que la Knesset israélienne a adopté une «loi fondamentale» proclamant une modification du caractère et du statut de la ville sainte de Jérusalem, avec ce que cela implique pour la paix et la sécurité,

Notant qu'Israël ne s'est pas conformé à la résolution 476 (1980),

Réaffirmant sa détermination d'examiner, conformément aux dispositions pertinentes de la Charte des Nations Unies, des moyens pratiques en vue d'assurer l'application intégrale de sa résolution 476 (1980) au cas où Israël ne s'y conformerait pas,

1. *Censure* dans les termes les plus énergiques l'adoption par Israël de la «loi fondamentale» sur Jérusalem et son refus de se conformer aux résolutions pertinentes du Conseil de sécurité;

2. *Affirme* que l'adoption de la «loi fondamentale» par Israël constitue une violation du droit international et n'affecte pas le maintien en application de la convention de Genève relative à la protection des personnes civiles en temps de guerre, du 12 août 1949, dans les territoires palestiniens et autres territoires arabes occupés depuis juin 1967, y compris Jérusalem;

3. *Considère* que toutes les mesures et dispositions législatives et administratives prises par Israël, la puissance occupante, qui ont modifié ou visent à modifier le caractère et le statut de la ville sainte de Jérusalem, et en particulier la récente «loi fondamentale» sur Jérusalem, sont nulles et non avenues et doivent être rapportées immédiatement;

4. *Affirme également* que cette action fait gravement obstacle à l'instauration d'une paix d'ensemble, juste et durable au Moyen-Orient;

5. *Décide* de ne pas reconnaître la «loi fondamentale» et les autres actions d'Israël qui, du fait de cette loi, cherchent à modifier le caractère et le statut de Jérusalem et demande :

   a) à tous les Etats Membres d'accepter cette décision;

   b) aux Etats qui ont établi des missions diplomatiques à Jérusalem de retirer ces missions de la Ville sainte.»

364. Israël occupe, jusqu'à présent, la Cisjordanie et Jérusalem-Est, ainsi que la bande de Gaza. Même s'il y a eu, dans certaines portions du territoire palestinien, transfert partiel de certains pouvoirs et responsabilités à l'Autorité palestinienne (dont les détails n'ont pas besoin d'être examinés par la Cour), Israël continue à exercer un contrôle global du Territoire palestinien occupé, en ce compris de Jérusalem-Est et son pourtour. Selon le rapporteur spécial de l'ONU chargé du Territoire palestinien occupé :

> «Les accords d'Oslo ont laissé à Israël le contrôle légal des territoires palestiniens occupés et le fait que, pour des raisons politiques, il ait généralement choisi de ne pas exercer ce contrôle, alors qu'il possède indiscutablement la capacité militaire de l'exercer (comme cela a été démontré en août 2001 par l'intervention militaire israélienne dans la ville de Beit Jala, en zone A), ne saurait le dégager de ses responsabilités en tant que puissance occupante.»[286]

365. La résistance palestinienne contre la puissance occupante n'ôte pas non plus le statut légal d'«occupation» au Territoire palestinien occupé. Tant qu'Israël maintiendra un contrôle effectif sur le territoire palestinien, ce dernier est sous occupation au regard du droit international. D'importantes conséquences en découlent pour le droit applicable au territoire occupé, lesquelles sont développées au chapitre suivant.

3) La présente requête ne demande pas à la Cour de déterminer les limites territoriales de la Palestine

366. La question soumise pour avis consultatif à la Cour est la suivante :

> «Quelles sont en droit les conséquences de l'édification du mur qu'Israël, puissance occupante, est en train de construire dans le Territoire palestinien occupé, y compris à l'intérieur et sur le pourtour de Jérusalem-Est, selon ce qui est exposé dans le rapport du Secrétaire Général, compte tenu des règles et des principes du droit international, notamment la quatrième convention de Genève de 1949 et les résolutions consacrées à la question par le Conseil de sécurité et l'Assemblée générale ?»

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[286] Rapport du rapporteur spécial de la Commission des droits de l'homme sur la situation dans les territoires palestiniens occupés par Israël depuis 1967, A/56/440, par. 7 (annexe 1 du volume 2 de l'annexe accompagnant cet exposé écrit).

367. Afin de répondre à cette question, il suffira à la Cour de prendre acte du fait qu'un mur est en train d'être construit par Israël sur le Territoire palestinien occupé comprenant Jérusalem-Est et ses environs. La Cour n'a nullement besoin, dans le cas d'espèce, de délimiter le tracé exact dudit territoire. Les principaux faits, sur lesquels la Cour peut s'appuyer avec certitude, sont simples : abstraction faite de l'emplacement exact des frontières de la Palestine, il est universellement admis (en ce compris par Israël) que la majeure partie du mur a été construite par Israël à l'intérieur du territoire palestinien. Cette situation ressort d'ailleurs clairement des cartes géographiques jointes en annexe[287], avec pour conséquence que ce fait est établi et qu'il ne fait l'objet d'aucun doute.

a) ***La division de la «Palestine sous mandat»***

368. Un historique du territoire palestinien ayant déjà été soumis à la Cour (voir *supra*, chap. III), seul un bref récapitulatif sera esquissé ici.

369. En 1914, la Palestine faisait partie intégrante de l'Empire ottoman et ne bénéficiait pas de statut autonome. La Palestine ayant été occupée en 1917 par les troupes britanniques, son sort fut réglé dans le cadre des négociations de l'après guerre.

370. Un mandat sur la Palestine fut établi à la suite du traité de Versailles. Les principes de base de ce mandat étaient régis par l'article 22 du Pacte de la Société des Nations. Dans ce cadre, la Palestine était considérée comme un mandat de classe «A». Le Conseil de la Société des Nations a approuvé les termes du mandat britannique le 24 juillet 1922[288]. Ce dernier est entré en vigueur le 29 septembre 1923. L'assise territoriale de la Palestine sous mandat avait fait l'objet d'un amendement approuvé en novembre 1922, qui autorisait la Grande-Bretagne à diviser le territoire en deux, aux fins d'exclure la Transjordanie (aujourd'hui le Royaume hachémite de Jordanie). Cette séparation fut concrétisée en 1928, avec l'approbation de la Société des Nations. La pleine indépendance de la Jordanie devait être, par la suite, consacrée dans un traité d'alliance avec le Royaume-Uni, signé le 22 mars 1946, sur la base du tracé territorial de 1928. Cette situation fut maintes fois reconnue par Israël, y compris en 1994[289]. Au terme de ce processus, la Palestine sous mandat se voyait limitée aux territoires de la Cisjordanie.

371. Le 18 février 1947, la Grande-Bretagne annonça qu'elle renvoyait la question de la Palestine aux Nations Unies et qu'elle retirerait son administration mandataire au 1er août 1949. Le 29 novembre 1947, l'Assemblée générale a adopté la résolution 181 (II). Celle-ci comprenait un plan de partition de la Palestine en deux Etats (un arabe et un juif), une union économique entre ceux-ci ainsi que l'internationalisation de Jérusalem. Par ailleurs, cette résolution fixait les frontières de «l'Etat arabe», de «l'Etat juif» et de Jérusalem.

372. La Grande-Bretagne se retira de Palestine la nuit du 14-15 mai 1948, à minuit. Des hostilités éclatèrent, qui conduisirent aux accords d'armistice de 1949. Israël fit, peu après, son entrée aux Nations Unies.

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[287] Voir volume 1 de l'annexe du présent exposé.

[288] *Journal officiel de la Société des Nations*, vol.3, no 8, deuxième partie, août 1922, p. 798-802, 817-825.

[289] Art. 3(2) du traité de paix entre l'Etat d'Israël et le Royaume hachémite de Jordanie du 26 octobre 1994, *RTNU*, vol. 2042, p 395.

373. Il n'a jamais été contesté qu'en 1949, Israël ne s'étendait ni à la Cisjordanie, ni à Jérusalem-Est, ni à la bande de Gaza. La situation demeure inchangée. Aucun des événements survenus depuis 1949 n'a pu procurer la moindre reconnaissance internationale aux poussées expansionnistes d'Israël sur ces territoires. Israël est donc bel et bien en situation d'occupation de tous les territoires s'étendant au-delà de la zone de cessez-le-feu de 1949 (surnommée aussi «Ligne verte»).

374. Le principe de deux Etats en Palestine (un arabe et un juif), est resté en vigueur depuis la résolution 181 (II) de l'Assemblée générale. Ceci ressort clairement des principaux accords conclus, depuis 1993, entre l'Organisation de libération de la Palestine et Israël, ainsi que des résolutions de l'Assemblée générale et du Conseil de sécurité adoptées après la résolution 181 (II) de l'Assemblée générale.

375. En dépit de certains évènements survenus sur le territoire depuis qu'il fut occupé pour la première fois en 1967, Israël en a gardé, de manière générale, le contrôle et les forces israéliennes continuent d'occuper la Cisjordanie, y compris Jérusalem-Est, et la bande de Gaza. Ces régions, prises dans leur ensemble, ont reçu l'appellation de «Territoire palestinien occupé», car elles ne font pas parties de l'Etat d'Israël : elles sont territoire du peuple palestinien, destiné à faire partie de l'Etat palestinien, dont le droit à l'existence a été posé par la résolution 181 (II) et a été largement reconnu depuis lors.

b) ***Reconnaissance de la division du territoire de la Palestine sous mandat : accords passés entre Israël et la Palestine***

376. Ainsi que déjà mentionné au chapitre 3, les principaux accords conclus depuis 1993, entre l'Organisation de la libération de la Palestine et Israël, dans le cadre du processus de paix au Moyen-Orient sont les suivants :

— échange de lettres (Arafat-Rabin), 9 septembre 1993[290];

— Israël-OLP, déclaration de principes sur des arrangements intérimaires d'autonomie, 13 septembre 1993 (déclaration des principes)[291];

— accord Israël-OLP, sur la bande de Gaza et le secteur de Jéricho, 4 mai 1994[292];

— accord Israël-OLP sur les pouvoirs et responsabilités de la phase préparatoire, 29 août 1994[293];

— accord intérimaire israélo-palestinien sur la Cisjordanie et la bande de Gaza, 28 septembre 1995[294];

— note de dossier (Ross-Netanyahu-Arafat), 17 janvier 1997[295];

— Israël-OLP, protocole concernant le redéploiement à Hébron, 17 janvier 1997[296];

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[290] Texte publié au *Y.B.I.L.,* 1992-1994, p. 230.

[291] *ILM*, 1993, vol. 32, p. 1525.

[292] *ILM*, 1994, vol. 33, p.622.

[293] *ILM*, 1995, vol. 34, p.455.

[294] *ILM*, 1997, vol. 36, p.551.

[295] *ILM*, 1997, vol. 36, p. 655.

— Israël-OLP, mémorandum de Wye River, 23 octobre 1998[297];

— Israël-OLP, mémorandum de Sharm El-Sheikh, 4 septembre 1999[298].

377. L'article premier de la déclaration de principes sur des arrangements intérimaires d'autonomie de 1993 débute comme suit :

> «L'objet des négociations israélo-palestiniennes, au sein du processus actuel de paix au Moyen-Orient est, entre autres, l'établissement d'une Autorité palestinienne intérimaire et autonome, d'un conseil élu (le «conseil») du peuple palestinien en Cisjordanie et dans la bande de Gaza, pour une période transitoire ne dépassant pas cinq ans et conduisant à un règlement définitif, sur la base des 242 et 338. Il est entendu que les dispositions intérimaires formeront partie intégrante de tout le processus de paix et que les négociations relatives au statut définitif conduiront à la mise en œuvre des résolutions 242 et 338.»[299] *[Traduction non officielle.]*

378. L'accord intérimaire sur la Cisjordanie et la bande de Gaza comprend une disposition consacrée au territoire.

> *«Article XI*
>
> *Le Territoire*
>
> 1. Les deux parties considèrent la Cisjordanie et la bande de Gaza comme une unité territoriale unique, dont l'intégrité et le statut seront préservés durant la période intérimaire.»

379. Le mémorandum de Wye River et celui de Sharm El-Sheikh indiquent tous deux les dispositions à prendre par les parties afin de mettre en oeuvre l'accord intérimaire. Ces deux mémorandum retiennent la nomenclature utilisée dans l'accord intérimaire, classant le territoire palestinien en secteurs «A», «B» ou «C», comme expliqué brièvement aux chapitres précédents du présent Exposé.

380. Le texte le plus récent relatif au processus de paix est la « feuille de route axée sur les résultats en vue d'un règlement permanent du conflit israélo-palestinien prévoyant deux Etats» (la feuille de Route)[300]. Cet instrument n'affecte le statut d'aucun territoire et ne modifie aucun tracé frontalier.

381. Il ressort clairement de cet aperçu qu'Israël et la Palestine sont d'accord sur le principe que le territoire de la Palestine sous mandat était divisé en deux parties : l'une israélienne et l'autre palestinienne.

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[296] *ILM*, 1997, vol. 36, p. 650.

[297] *ILM*, 1998, vol. 37, p. 1251.

[298] *ILM*, 1999, vol. 38, p.1465.

[299] *ILM*, 1993, vol. 32, p. 1527.

[300] Feuille de route axée sur les résultats en vue d'un règlement permanent du conflit israélo-palestinien prévoyant deux Etats, Nations Unies, doc. S/2003/529. Cet instrument fut approuvé par le Conseil de sécurité le 19 novembre 2003 dans sa résolution 1515 (2003), Nations Unies, doc. S/RES/1515 (2003).

c) ***Reconnaissance de la division de la Palestine sous mandat : position des Nations Unies***

382. Le principe selon lequel deux Etats émergeront du territoire de la Palestine sous mandat a été clairement posé et réitéré par des résolutions de l'Assemblée générale et du Conseil de sécurité.

383. L'Assemblée générale a adopté de nombreuses résolutions sur la Palestine après la résolution 181 (II) de 1947. Une constante de ces résolutions est la référence faite à la Ligne d'Armistice de 1949 (la «Ligne verte»), chaque fois qu'il est question d'évènements se déroulant en Territoire palestinien occupé.

384. Par exemple, dans la résolution A/ES-10/14 du 8 décembre 2003, l'Assemblée générale se déclarait :

> «Gravement préoccupée par le fait qu'Israël, puissance occupante, a commencé et continué à construire un mur dans le Territoire palestinien occupé, y compris à l'intérieur et sur le pourtour de Jérusalem-Est, dont le tracé s'écarte de la ligne d'armistice de 1949 (Ligne verte) et qui a entraîné la confiscation et la destruction de terres et de ressources palestiniennes, le bouleversement de la vie de milliers de civils jouissant d'une protection et l'annexion de fait de vastes parties du territoire et soulignant que la communauté internationale toute entière est opposée à la construction de ce mur.»

385. Dans une résolution précédente, A/RES/ES-10/13 du 21 octobre 2003, l'Assemblée générale demandait à Israël d'arrêter la construction du mur dans le Territoire occupé comprenant Jérusalem-Est et ses environs, dont l'Assemblée générale déclara qu'il : «s'écarte de la ligne d'armistice de 1949 et … est contraire aux dispositions pertinentes du droit international»[301].

386. Le principe de deux Etats émergeant de la Palestine sous mandat, a été confirmé par le Conseil de sécurité. Ce dernier avait, depuis très longtemps, entériné le projet de «deux Etats vivant côte à côte à l'intérieur de frontières reconnues» (pour reprendre la formule de la 1397 (2002)). Ceci a été réaffirmé par le Conseil de sécurité encore tout récemment, dans la résolution 1515 (2003) par laquelle il approuve la feuille de Route.

> «*Le Conseil de sécurité,*
>
> *Rappelant* toutes ses résolutions antérieures pertinentes, notamment les résolutions 242 (1967), 338 (1973) et 1397 (2002), ainsi que les principes de Madrid,
>
> *Profondément préoccupé* par la poursuite des événements tragiques et violents au Moyen-Orient,
>
> *Exigeant de nouveau* la cessation immédiate de tous les actes de violence, y compris tous les actes de terrorisme et toutes provocations, incitations et destructions,
>
> *Se déclarant de nouveau attaché* à la vision d'une région dans laquelle deux Etats, Israël et la Palestine, vivent côte à côte, à l'intérieur de frontières sûres et reconnues,

[301] A/ES-10/13, 21 octobre 2003.

Soulignant la nécessité de parvenir à une paix complète, juste et durable au Moyen-Orient, y compris sur les volets israélo-syrien et israélo-libanais,

Se félicitant des efforts diplomatiques déployés par le Quatuor international et par d'autres, et les *encourageant*,

1. *Approuve* la feuille de Route axée sur les résultats en vue d'un règlement permanent du conflit israélo-palestinien prévoyant deux Etats, établie par le Quatuor (S/2003/529);

2. *Demande* aux parties de s'acquitter des obligations qui leur incombent en vertu de la feuille de route, en coopération avec le Quatuor, et de concrétiser la vision de deux Etats vivant côte à côte dans la paix et la sécurité;

3. *Décide* de rester saisi de la *question*.»

d) *Reconnaissance internationale du fait que le territoire palestinien est un territoire occupé au sens de la quatrième convention de Genève*

387. On peut affirmer que pratiquement tous les Etats du monde — à l'exception d'Israël — reconnaissent le territoire palestinien comme étant un territoire occupé au sens de la quatrième convention de Genève.

388. Depuis le début de l'occupation israélienne du territoire palestinien, l'Assemblée générale et le Conseil de sécurité des Nations Unies ont estimé à maintes reprises que la quatrième convention de Genève était applicable au Territoire palestinien occupé. Ceci est précisé dans les résolutions du Conseil de sécurité suivantes :

— Résolution 1322 du CS, documents officiels CS, 55e session, S/RES/56 (2000)

— Résolution 904 du CS, documents officiels CS, 49e session, S/RES/50 (1994)

— Résolution 799 du CS, documents officiels CS, 47e session, S/RES/ 48 (1992)

— Résolution 726 du CS, documents officiels CS, 47e session, S/RES/48 (1992)

— Résolution 694 du CS, documents officiels CS, 46e session, S/RES/47 (1991)

— Résolution 681 du CS, documents officiels CS, 45e session, S/RES/46 (1990)

— Résolution 673 du CS, documents officiels CS, 45e session, S/RES/ 46 (1990

— Résolution 672 du CS, documents officiels CS, 45e session, S/RES/46 (1990)

— Résolution 641 du CS, documents officiels CS, 44esession, S/RES/45 (1989)

— Résolution 636 du CS, documents officiels CS, 44e session, S/RES/45 (1989)

— Résolution 608 du CS, documents officiels CS, 43e session, S/RES/44 (1988)

— Résolution 607 du CS, documents officiels CS, 43e session, S/RES/44 (1988)

— Résolution 605 du CS, documents officiels CS, 42e session, S/RES/43 (1987)

— Résolution 592 du CS, documents officiels CS, 42e session, S/RES/42 (1986)

— Résolution 484 du CS, documents officiels CS, 35e session, S/RES/36 (1980)

— Résolution 478 du CS, documents officiels CS, 35e session, S/RES/36 (1980)

— Résolution 476 du CS, documents officiels CS, 35e session, S/RES/36 (1980)

— Résolution 471 du CS, documents officiels CS, 35e session, S/RES/36 (1980)

— Résolution 469 du CS, documents officiels CS, 35e session, S/RES/36 (1980)

— Résolution 468 du CS, documents officiels CS, 35e session, S/RES/36 (1980)

— Résolution 465 du CS, documents officiels CS, 35e session, S/RES/36 (1980)

— Résolution 452 du CS, documents officiels CS, 34e session, S/RES/35 (1979)

— Résolution 446 du CS, documents officiels CS, 34e session, S/RES/35 (1979)

— Résolution 271 du CS, documents officiels CS, 24e session, S/RES/24/Rev.1 (1969)

389. De même, de nombreuses résolutions de l'Assemblée générale ont affirmé l'applicabilité de la quatrième convention de Genève au Territoire palestinien occupé, et ont demandé à Israël d'accepter l'application *de jure* de la convention au Territoire palestinien occupé. Par exemple, la résolution la plus récente, adoptée à une écrasante majorité d'Etats avec seulement neuf voix contre, dispose ce qui suit :

«*L'Assemblée générale,*

Rappelant ses résolutions sur la question,

Ayant à l'esprit les résolutions pertinentes du Conseil de sécurité,

Rappelant le règlement annexé à la quatrième convention de La Haye de 1907, la convention de Genève relative à la protection des personnes civiles en temps de guerre, du 12 août 1949, et les dispositions pertinentes du droit coutumier, y compris celles qui ont été codifiées dans le protocole additionnel I aux quatre conventions de Genève,

Ayant examiné le rapport du comité spécial chargé d'enquêter sur les pratiques israéliennes affectant les droits de l'homme du peuple palestinien et des autres Arabes des territoires occupés, et les rapports du Secrétaire général sur la question,

Considérant que l'un des buts et principes fondamentaux de l'Organisation des Nations Unies est d'encourager le respect des obligations découlant de la Charte des Nations Unies et des autres instruments et règles du droit international,

Notant la tenue à Genève, du 27 au 29 octobre 1998, à l'initiative de la Suisse en sa qualité de dépositaire de la convention de Genève relative à la protection des personnes civiles en temps de guerre, du 12 août 1949, de la réunion d'experts des Hautes Parties contractantes à la convention, sur les problèmes courants liés à l'application de la convention en général et à son application dans les territoires occupés en particulier,

Notant également la tenue, le 15 juillet 1999, pour la première fois, d'une conférence des Hautes Parties contractantes à la quatrième convention de Genève, conformément à la recommandation faite par l'Assemblée générale dans sa résolution ES-10/6 du 9 février 1999, sur les mesures à prendre pour imposer la convention dans le Territoire palestinien occupé, y compris Jérusalem-Est, et la faire respecter conformément à l'article premier commun aux quatre conventions de Genève, et ayant à l'esprit la déclaration adoptée par la conférence,

Se félicitant que la conférence des Hautes Parties contractantes à la quatrième convention de Genève se soit réunie de nouveau, le 5 décembre 2001, à Genève, soulignant l'importance de la déclaration adoptée par la conférence et insistant sur la nécessité pour les parties d'assurer le suivi de l'application de la déclaration,

Saluant et encourageant les initiatives prises par les Etats parties à la convention, tant séparément que collectivement, conformément à l'article premier commun aux quatre conventions de Genève, pour faire respecter la convention,

Soulignant qu'Israël, puissance occupante, doit se conformer strictement aux obligations qui lui incombent en vertu du droit international, y compris le droit international humanitaire,

1. *Réaffirme* que la convention de Genève relative à la protection des personnes civiles en temps de guerre, du 12 août 1949, est applicable au Territoire palestinien occupé, y compris Jérusalem-Est, et aux autres territoires arabes occupés par Israël depuis 1967;

2. *Enjoint* à Israël de *reconnaître* l'applicabilité *de jure* de la convention au Territoire palestinien occupé, y compris Jérusalem-Est, et aux autres territoires arabes occupés par lui depuis 1967, et d'en respecter scrupuleusement les dispositions;

3. *Exhorte* toutes les Hautes Parties *contractantes* à la convention, agissant conformément à l'article premier commun aux quatre conventions de Genève, à continuer de tout mettre en œuvre pour en faire respecter les dispositions par Israël, puissance occupante, dans le Territoire palestinien occupé, y compris Jérusalem-Est, et les autres territoires arabes occupés par lui depuis 1967;

4. *Souligne de nouveau* la nécessité *d'une* mise en œuvre rapide des recommandations pertinentes figurant dans les résolutions qu'elle a adoptées à sa dixième session extraordinaire d'urgence, le but étant de faire respecter les dispositions de la convention par Israël, puissance occupante;

5. *Prie* le Secrétaire général de lui rendre compte, à sa cinquante-neuvième session, de l'application de la présente résolution.»[302]

390. D'autres organes des Nations Unies partagent la même opinion : par exemple, le comité spécial chargé d'enquêter sur les pratiques israéliennes affectant les droits de l'homme du peuple palestinien et autres arabes des territoires occupés[303] et le rapporteur spécial chargé des territoires occupés et nommé par la Commission des droits de l'homme de l'ONU en 1993[304].

391. Une preuve particulièrement probante de ceci ressort aussi de la déclaration des hautes parties contractantes à la quatrième convention de Genève du 5 décembre 2001[305]. La déclaration reflète l'accord «conclu entre les Hautes Parties Contractantes participant à la reprise des travaux de la conférence des Hautes Parties Contractantes à la quatrième convention de Genève». La déclaration, entre autres :

— réaffirme «que la quatrième convention de Genève était applicable au Territoire palestinien occupé, y compris Jérusalem-Est» (par. 1, 3);

— appelle «toutes les parties impliquées directement dans le conflit ou non, de respecter et de faire respecter les conventions de Genève en toutes circonstances» (par. 4);

— souligne que «la quatrième convention de Genève, qui prend pleinement en compte les impératifs et nécessités militaires, doit être respectée en toutes circonstances» (par. 5)

— appelle «la Puissance occupante [c'est-à-dire Israël] à respecter pleinement et effectivement la quatrième convention de Genève dans le Territoire palestinien occupé, y compris Jérusalem-Est, et de s'abstenir de commettre toute violation de la convention» (par. 12).

392. Conformément à l'article 31 3) *a)* de la convention de Vienne sur le droit des traités de 1969, pour interpréter un traité il sera tenu compte : «de tout accord ultérieur intervenu entre les parties au sujet de l'interprétation du traité ou de l'application de ses dispositions». La déclaration du 5 décembre 2001 a valeur d'interprétation authentique de la quatrième convention de Genève, dans le sens d'une reconnaissance claire et explicite de son application effective au Territoire

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[302] Rés. AG 58/97, Nations Unies, *Document Officiels de l'Assemblée générale*, cinquante-huitième session, doc. A/RES/58/97 adoptée le 9 décembre 2003. Seuls six Etats votèrent contre la résolution : Israël, les Iles Marshall, les Etats fédérés de Micronésie, Nauru, Palau et Etats-Unis. D'autres résolutions de l'Assemblée générale allant dans le même sens comprennent : AG rés. 57/125, Nations Unies, *Document Officiels de l'Assemblée générale*, cinquante-septième session, AG rés. 56/204, Nations Unies, *Document Officiels de l'Assemblée générale*, cinquante-sixième session, doc. A/56/49 (2001); AG rés. ES-10/8, Nations Unies, *Document Officiels de l'Assemblée générale*, cinquante-sixième session, doc. A.ES-10/8 (2001); AG rés. 56/60, Nations Unies, *Document Officiels de l'Assemblée générale*, cinquante-sixième session, doc. A 56/49 (2001); AG rés. 55/131, Nations Unies, *Document Officiels de l'Assemblée générale*, cinquante-cinquième session, doc. A/55/49 (2000); AG rés. 54/77, Nations Unies, *Document Officiels de l'Assemblée générale*, cinquante-quatrième session, doc. A/54/49 (1999); AG rés. 53/54, Nations Unies, *Document Officiels de l'Assemblée générale*, cinquante-troisième session, doc. A/53/49 (1998); AG rés. 52/65, Nations Unies, *Document Officiels de l'Assemblée générale*, cinquante-deuxième session, doc. A/53/49 (1997); AG rés. 42/160 C, Nations Unies, *Document Officiels de l'Assemblée générale*, cinquante-deuxième session, doc. A/42/49 (1987); AG rés. 32/91, Nations Unies, *Document Officiels de l'Assemblée générale*, trente-deuxième session, doc. A/32/45 (1977); AG rés. 2252 (ES-V), Nations Unies, *Document Officiels de l'Assemblée générale*, doc. A/6798 (1967).

[303] Rapports du comité spécial, Nations Unies, doc. A/57/207 et A/57/421.

[304] Rapport du rapporteur spécial de la Commission des droits de l'homme sur la situation dans les territoires palestiniens occupés par Israël depuis 1967, A/56/440, par. 7 et 8 (annexe 1, du volume 2 de l'annexe accompagnant cet exposé écrit).

[305] Reproduite à l'annexe 11 de cet exposé écrit et à la pièce n° 67 du dossier du Secrétaire général.

palestinien occupé. En conséquence, il est respectueusement suggéré à la Cour de lui donner un poids prépondérant et décisif. Et ce d'autant plus que cette déclaration est étayée et renforcée par les déclarations répétées du Comité international de la Croix-Rouge, selon lesquelles la quatrième convention de Genève s'applique au Territoire palestinien occupé[306].

4) Conclusion

393. En conclusion et pour les raisons évoquées ci-dessus, il est universellement admis que le territoire palestinien est un territoire occupé au sens du droit international coutumier et au sens de la quatrième convention de Genève. Dans ces conditions, la Cour peut se limiter à identifier les effets juridiques qui découlent des parties du mur — la grande majorité — qui ont été construites par Israël en territoire palestinien (plutôt qu'en territoire israélien).

[306] Voir, par exemple, Comité international de la Croix-Rouge, déclaration prononcée à la conférence des hautes parties contractantes à la quatrième convention de Genève, 5 décembre 2001, *Revue Internationale de la Croix-Rouge*, vol. 84, n° 847, septembre 2002, p. 692-695 (reproduite à l'annexe 11 du volume 2 de l'annexe au présent exposé écrit).

CHAPITRE 8

ISRAËL EST LIÉ PAR LE DROIT INTERNATIONAL HUMANITAIRE ET PAR LA RÉGLEMENTATION INTERNATIONALE RELATIVE AUX DROITS DE L'HOMME POUR CE QUI EST DE SA CONDUITE EN TERRITOIRE PALESTINIEN OCCUPÉ

1) Introduction

394. Le droit régissant les droits et les obligations d'Israël sur le Territoire palestinien occupé, y compris Jérusalem-Est est le droit international humanitaire et la réglementation internationale relative aux droits de l'homme. Israël a contesté l'applicabilité de chacun de ces ceux volets du droit international au Territoire palestinien occupé. Les deux sections ci-après mettent en évidence les raisons pour lesquelles cette réglementation s'applique bien au Territoire palestinien occupé.

395. Mais avant de nous tourner vers ces questions, une réserve s'impose : les droits d'Israël concernant la construction et la gestion du mur ne sauraient dépasser ceux d'une puissance occupante. L'on peut d'ailleurs se poser la question de savoir si Israël peut même se prévaloir de tels droits. Les conventions de Genève envisageaient de toute évidence l'occupation comme une situation temporaire et l'idée généralement admise est que l'occupation devait cesser avec la cessation des hostilités ou peu de temps après. Elles n'ont jamais envisagé une occupation prolongée ni que les Etats puissent revendiquer le droit de se maintenir en tant que puissances occupantes sur le long terme. Cette situation, assimilée à la conquête, est prohibée par une norme obligatoire du droit international contemporain. Or, quelque trente-six ans se sont écoulés depuis l'éruption du conflit armé ayant conduit à l'occupation du territoire palestinien, objet de la présente instance.

396. Il n'est cependant pas nécessaire d'aborder cette question pour répondre à la requête pour avis consultatif dont la Cour est saisie. En effet, un principe axiomatique du droit international humanitaire est que ses dispositions s'appliquent dans les situations de conflit armé, indépendamment de la légalité du recours initial à la force armée. Le *jus in bello* s'applique chaque fois qu'existe en fait une situation de conflit armé et pour aussi longtemps que subsiste l'occupation résultant d'un conflit armé international. Tel est le cas en l'occurrence.

2) Droit international humanitaire

397. Le droit international humanitaire impose à Israël des obligations relatives à l'occupation du Territoire palestinien occupé, y compris Jérusalem-Est. Ces obligations ont pris naissance dès le moment où Israël a occupé des territoires qui ne faisaient pas partie de l'Etat d'Israël, obligations qui continuent à s'imposer aussi longtemps qu'Israël continuera d'occuper ledit territoire.

398. Le droit international humanitaire comprend, selon les termes mêmes de la Cour, «un corps de règles conventionnelles qui étaient déjà devenues coutumières dans leur grande majorité et correspondaient aux principes humanitaires les plus universellement reconnus»[307]. Cet ensemble comprend les règles régissant la conduite effective du conflit armé et de l'occupation belligérante

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[307] *Licéité de la menace ou de l'emploi d'armes nucléaires, avis consultatif,* 8 juillet 1996, *C.I.J. Recueil 1996*, p. 258, par. 82.

(ou plus simplement «occupation», comme on l'appelle maintenant). Ces règles sont essentiellement exposées dans les conventions de La Haye et de Genève et dans leurs protocoles additionnels ainsi que dans le droit humanitaire coutumier.

399. En tant qu'un des aspects du droit international humanitaire, il s'applique à l'administration des territoires occupés, y compris à la conduite de la puissance occupante envers les personnes protégées durant l'occupation. Ces règles de droit international général furent codifiées dans le règlement de La Haye de 1907, annexé à la quatrième convention de La Haye sur les lois et les coutumes de la guerre sur terre (règlement de La Haye), ainsi qu'à la quatrième convention de Genève de 1949 relative à la protection des personnes civiles en temps de guerre (la quatrième convention de Genève). Cent quatre-vingt-dix Etats sont actuellement parties à la quatrième convention.

a) ***Principes fondamentaux du droit international humanitaire dans les conventions de La Haye et de Genève***

400. Le cadre général du droit international régissant l'occupation est tracé par les articles 42 à 56 du règlement de La Haye de 1907 et par la section III de la quatrième convention de Genève. Un point de départ commode est l'article 43 du règlement de La Haye qui stipule :

> «L'autorité du pouvoir légal ayant passé de fait entre les mains de l'occupant, celui-ci prendra toutes les mesures qui dépendent de lui en vue de rétablir et d'assurer, autant qu'il est possible, l'ordre et la vie publics *en respectant, sauf empêchement absolu, les lois en vigueur dans le pays*.» (Les italiques sont de nous.)

Cette disposition exprime une règle de droit international général.

401. La puissance occupante doit donc respecter les lois en vigueur dans le pays, et ne pas priver les personnes protégées de leurs droits, en procédant à des changements non nécessaires et disproportionnés. Cette obligation est réaffirmée à l'article 47 de la quatrième convention de Genève, qui insiste sur le fait que les personnes protégées ne peuvent être privées de la protection de la convention soit

> «en vertu d'un changement quelconque intervenu, du fait de l'occupation, dans les institutions ou le gouvernement du territoire en question, soit par un accord passé entre les autorités du territoire occupé et la puissance occupante, soit encore en raison de l'annexion par cette dernière de tout ou partie du territoire occupé».

Dans son commentaire sur l'article 47, le CICR déclare :

> «Cette disposition [article 43] du règlement de La Haye ne vise pas seulement les habitants du territoire occupé; elle protège aussi l'Etat, son individualité, ses institutions et ses lois. La nouvelle convention de Genève ne fait rien perdre de sa valeur à ce texte; elle se borne à le développer en ce qui concerne la protection des personnes civiles.»[308]

[308] Comité international de la Croix-Rouge, *commentaire, quatrième convention de Genève relative à la protection des personnes civiles en temps de guerre* (ICRC, 1958) p. 273-274.

402. La protection de l'existence séparée du territoire occupé se retrouve également au règlement de La Haye, dans la protection qu'il prévoit non seulement pour la propriété privée (art. 46 et 47), mais aussi pour les biens publics et les ressources naturelles dont la puissance occupante «ne se considèrera que comme administrateur et usufruitier», devant «sauvegarder le fonds de ces propriétés et les administrer conformément aux règles de l'usufruit» (art. 55).

403. La quatrième convention de Genève contient un certain nombre d'autres devoirs en faveur des personnes protégées. Ces obligations se subdivisent en deux catégories. La première s'applique au bénéfice de toutes les personnes protégées, que ce soit dans une situation de conflit armé international ou de territoire occupé. En tête de ces obligations figure celle de l'article 27 qui est de réserver à ces personnes un traitement humain. La deuxième catégorie s'applique plus spécifiquement aux personnes protégées se trouvant en territoire occupé. Ces dispositions sont énoncées à la section III de la quatrième convention de Genève. Une puissance occupante ne saurait transférer ou déporter des personnes protégées hors du territoire occupé, ni déporter ou transférer une partie de sa propre population vers le territoire occupé (art. 49), saisir ou détruire des biens publics ou privés «sauf dans les cas où ces destructions seraient rendues absolument nécessaires par les opérations militaires» (art. 53), ni modifier le statut des fonctionnaires du territoire occupé (art. 54). Elle doit assurer l'approvisionnement en vivres et en fournitures médicales à la population dans toute la mesure du possible (art. 55 et 56) et respecter les lois en vigueur au début de l'occupation tout en rétablissant et maintenant l'ordre public et la sécurité (art. 64).

404. Certaines violations de la quatrième convention de Genève sont qualifiées d'infractions graves aux termes de l'article 147 :

> «Les infractions graves visées à l'article précédent sont celles qui comportent l'un ou l'autre des actes suivants, s'ils sont commis contre des personnes ou des biens protégés par la convention : l'homicide intentionnel, la torture ou les traitements inhumains, y compris les expériences biologiques, le fait de causer intentionnellement de grandes souffrances ou de porter des atteintes graves à l'intégrité physique ou à la santé, la déportation ou le transfert illégaux, la détention illégale, le fait de contraindre une personne protégée à servir dans les forces armées de la puissance ennemie, ou celui de la priver de son droit d'être jugée régulièrement et impartialement selon les prescriptions de la présente convention, la prise d'otages, la destruction et l'appropriation de biens non justifiées par des nécessités militaires et exécutées sur une grande échelle de façon illicite et arbitraire.»

405. La portée et le contenu de ces obligations sont examinés plus avant au chapitre 9, au regard de la construction du mur par Israël en Territoire palestinien occupé.

b) ***L'obligation, pour Israël, de se conformer au droit international humanitaire en Territoire palestinien occupé***

406. Israël est partie aux quatre conventions de Genève de 1949. Il n'est pas partie aux protocoles additionnels aux conventions de Genève, ni aux conventions de La Haye de 1907.

407. Il est généralement reconnu que les conventions de La Haye et leurs annexes, le règlement de La Haye, ont un caractère déclaratoire du droit international général. La Cour a confirmé qu'il en était ainsi dans son avis consultatif relatif aux *Armes nucléaires*[309]. La Cour suprême israélienne adopta elle-même une position identique[310].

408. Malgré cela, le gouvernement israélien semble suggérer dans certaines de ses déclarations qu'il ne serait pas tenu d'appliquer le règlement de La Haye ni les conventions de Genève car elles sont pas incorporées dans son droit interne[311]. Cet argument doit être rejeté. Il est bien établi en droit international qu'un Etat ne saurait se prévaloir de son droit interne, pour ne pas se conformer à une obligation internationale. Les articles sur la responsabilité des Etats pour actes internationaux illicites, adoptés par la Commission du droit international et annexé à la résolution de l'Assemblée générale 56/83 du 12 décembre 2001, se réfèrent à ce principe de base aux articles 3 et 32 :

«*Article 3*

> La qualification du fait de l'Etat comme internationalement illicite relève du droit international. Une telle qualification n'est pas affectée par la qualification du même fait comme licite par le droit interne.

Article 32

> L'Etat responsable ne peut pas se prévaloir des dispositions de son droit interne pour justifier un manquement aux obligations qui lui incombent en vertu de la présente partie (cf. les obligations de cesser ou de réparer).»

Cette thèse est largement accréditée, aussi bien par une longue jurisprudence de cette Cour que de la Cour précédente, ainsi que cela est mentionné dans les commentaires de la CDI sur ces articles.

409. Israël a accepté initialement l'applicabilité de la quatrième convention de Genève, en droit, au Territoire palestinien occupé[312]. Cette reconnaissance ne fut que de brève durée et révoquée. Depuis cette révocation, Israël a formellement renié l'applicabilité de la convention, tout en déclarant avoir décidé de respecter *de facto* ses dispositions humanitaires.

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[309] *Licéité de la menace ou de l'emploi d'armes nucléaires, avis consultatif,* 8 juillet 1996, *C.I.J. Recueil 1996*, p. 258, par. 80.

[310] L'affaire de la *Société coopérative de logement des enseignants*, HC 393/82, p. 802. La Cour a appliqué l'article 43 du règlement de La Haye, dont elle dit qu'il créait un «cadre large et flexible». Voir aussi *Ajuri* v. *IDF Commander in West Bank*, Case n° HCJ 7015/02 [2002] Israël Law Reports 1, Cour suprême d'Israël, 3 septembre 2002, par. 131-133, 138, 144, spécialement 155-162 :

> «La Cour a estimé que l'interdiction de transfert forcé est une règle du droit international des traités et que par conséquent elle n'est pas applicable en droit interne, à moins d'être promulguée sous forme de loi. Cependant, cette conception a évolué, en droit international public, tout comme dans la jurisprudence de cette Cour. Il est désormais indiscutable que la quatrième convention de Genève est constitutive de droit coutumier et engage tous les Etats — même les non-signataires — parce qu'elle consacre des principes de base reconnus par tous.»

[311] Rapport du Secrétaire général en vertu de la résolution de l'Assemblée générale ES-10/13, A/ES-10/248, 24 novembre 2003, annexe I.

[312] Ordonnance militaire n° 3, 7 juin 1967, art. 35 : «La Cour militaire … doit appliquer les dispositions de la convention de Genève, en date du 12 août 1949, relative à la protection des civils en temps de guerre, pour ce qui est de sa procédure judiciaire. En cas de conflit entre la présente ordonnance et ladite convention, c'est la convention qui s'applique.» Cet article fut par la suite supprimé par l'ordonnance no 144 de la Cour militaire du 22 octobre 1967.

410. Une telle distinction ente l'application *de facto* et *de jure* de la convention au Territoire palestinien occupé doit être rejetée. Le Comité international de la Croix-Rouge a exprimé ses propres réserves à ce sujet lors d'une réunion d'experts du 27 octobre 1998, en ces termes :

> «Certains belligérants n'ont accepté d'appliquer que *de facto* les règles de la quatrième convention. Ils ont même parfois ajouré une réserve de réciprocité… Néanmoins, on ne saurait accepter — et encore moins encourager — l'établissement de normes parallèles, d'un «sous-droit» qui serait invocable à la carte par les Etats, alors qu'ils se sont formellement engagés à reconnaître des textes juridiques comportant des droits et des obligations précis. Des considérations politiques ne devraient en aucun cas affaiblir la protection effective des populations civiles telle que stipulée par le droit positif.»[313]

411. Une distinction entre les règles de la quatrième convention de Genève qui ont un caractère sont de nature humanitaire et celles qui ne le sont pas n'a pas de fondement juridique. La quatrième convention de Genève est humanitaire par nature, étant consacrée exclusivement a la protection des civils en temps de guerre.

412. Comme il est démontré au chapitre 7, la quatrième convention de Genève s'applique *de jure* au Territoire palestinien occupé, d'abord en tant que traité multilatéral applicable en substance à la situation encore non résolue résultant de la guerre de 1967, ensuite parce qu'elle reflète dans tous ses aspects le droit international général. La Cour a elle-même affirmé, à propos des conventions de La Haye et de Genève, que «ces règles fondamentales s'imposent d'ailleurs à tous les Etats, qu'ils aient ou non ratifié les instruments conventionnels qui les expriment, parce qu'elles constituent des principes intransgressibles du droit international coutumier. » [314] Le Tribunal pénal international pour l'ex-Yougoslavie[315] et la commission des recours de l'Erythrée et de l'Ethiopie[316] ont adopté, eux aussi, un point de vue identique dans leurs propres travaux.

413. En outre, bon nombre des dispositions du protocole additionnel I de 1977 reflètent le droit international coutumier, spécialement celles d'entre elles qui développent ou explicitent certains des standards contenus dans les conventions de Genève de 1949.

3) Réglementation internationale en matière de droits de l'homme

414. Le droit applicable au Territoire palestinien occupé est le droit international humanitaire et la réglementation internationale en matière des droits de l'homme. Bien que certains aspects du droit des droits de l'homme fassent partie du droit coutumier international, il nous suffira, pour notre propos, de nous appuyer sur les traités universels pertinents qu'Israël a lui-même reconnus en y accédant.

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[313] Comité international de la Croix-Rouge, «Réunion d'experts sur les problèmes généraux d'application de la quatrième convention de Genève, 27-29 octobre 1998», rapport du CICR, p. 5.

[314] *Licéité de la menace ou de l'emploi d'armes nucléaires, avis consultatif*, 8 juillet 1996, *C.I.J. Recueil 1996*, p. 257, par. 79.

[315] Voir par exemple, *Procureur c. Tadic*, jugement du 7 mai 1997, 112 *ILR* 1, 179 et suiv.

[316] Commission des recours de l'Erythrée et de l'Ethiopie, *arrêt partiel – prisonniers de Guerre*, 1er juillet 2003, 42 *ILM* 1056, par. 39-41.

415. Israël est, en particulier, partie au pacte international relatif aux droits civils et politiques et au pacte international relatif aux droits économiques, sociaux et culturels (qu'il a tous deux ratifiés le 3 octobre 1991)[317]. L'article 2 1) du pacte des droits civils et politiques dispose que les Etats parties «s'engagent à respecter et à garantir à tous les individus se trouvant sur leur territoire et relevant de sa compétence» les droits qui leur sont reconnus par le pacte. L'expression «sur leur territoire et relevant de leur compétence» à l'article 2 1) est disjonctive; les Etats parties sont, en effet, tenus d'appliquer les dispositions du pacte aux territoires sur lesquels ils exercent leur juridiction, y compris en tant qu'occupant belligérant.

416. Le Comité des droits de l'homme de l'ONU a donc raison de conclure que le pacte international sur les droits civils et politiques s'applique au bénéfice de la population du Territoire palestinien occupé[318].

417. Israël maintient que le droit applicable au Territoire palestinien occupé est le droit international humanitaire plutôt que la réglementation internationale relative aux droits de l'homme. A son avis, il existerait une distinction bien établie entre ces deux branches du droit international et en temps de conflit armé, c'est le droit international humanitaire qui est le droit applicable. Le pacte international relatif aux droits civils et politiques et le pacte international relatif aux droits économiques, sociaux et culturels ne s'appliqueraient pas, selon Israël, en temps de conflit armé, selon Israël, mais seulement en temps de paix.[319]

418. De nombreux traités internationaux en matière de droits de l'homme énoncent expressément qu'ils s'appliquent aussi bien en temps de guerre qu'en temps de paix. Par exemple, l'article 2 2) de la convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants de 1984 stipule : «2. Aucune circonstance exceptionnelle, quelle qu'elle soit, qu'il s'agisse de l'état de guerre ou de menace de guerre, d'instabilité politique intérieure ou de tout autre état d'exception, ne peut être invoquée pour justifier la torture.»

419. La convention sur le génocide prévoit de même à l'article 1 : «Les parties contractantes confirment que le génocide, qu'il soit commis en temps de paix ou en temps de guerre, est un crime du droit des gens, qu'elles s'engagent à prévenir et à punir.»

420. De nombreuses conventions internationales et régionales relatives aux droits de l'homme, y compris le pacte international sur les droits civils et politiques, contiennent des clauses permettant aux Etats de déroger à certaines de leurs dispositions en temps de guerre: voir en

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[317] Israël est aussi partie, entre autres, à la convention sur la prévention et la répression du crime de génocide (ratifiée le 9 mars 1950), la convention relative au statut de réfugié (ratifiée le 1er octobre 1954), la convention sur l'esclavage (signée le 12 septembre 1955) et la convention des Nations Unies sur les droits de l'enfant (ratifiée le 3 octobre 1991).

[318] Le Comité des droits de l'homme a, à deux reprises, examiné les rapports périodiques d'Israël soumis au Comité. Le Comité a formulé des observations, en chacune de ces deux occasions, affirmant que le pacte s'appliquait au TPO : *Conclusions du Comité des droits de l'homme : Israël,* 21 août 2003, CCPR/CO/78/ISR, par. 11, annexe 8, volume 2 de l'annexe accompagnant cet exposé écrit; *Conclusions du Comité des droits de l'homme : Israël*, 18 août 1998, CCPR/C/79/Add.93, par. 10, annexe 7, volume 2 de l'annexe. Cette opinion fut reprise à son compte par le Comité des droits économiques, sociaux et culturels, *Conclusions du Comité des droits économiques, sociaux et culturels : Israël,* E/C.12/1/Add.90, 23/05/2003, par. 15 et 31; *Conclusions du Comité des droits économiques, sociaux et culturels : Israël*, E/C.12/1/Add.69, 31/08/2001, par. 11 et 12.

[319] La position d'Israël, par exemple, présentée au rapport du Secrétaire général préparé en vertu de la résolution de l'Assemblée générale ES-10/13, A/ES-10/248, 24 novembre 2003, annexe I; rapport d'Israël au Comité des droits de l'homme, CCPR/C/ISR/2001/2, par. 8.

particulier l'article 4 du pacte. L'exception explicite de dérogation en temps de guerre implique clairement qu'à défaut, les dispositions conventionnelles relatives aux droits de l'homme s'appliqueront pleinement, y compris en temps de guerre : de plus, cette clause fixe une limite aux types de dérogations qui seront acceptables même en temps de guerre ou en cas d'état d'exception, conférant du même coup un statut particulier aux droits non dérogeables; nombreux parmi ceux-ci sont ceux qui, comme nous le verrons, sont violés par la construction et la gestion du mur par Israël en Territoire palestinien occupé.

421. Le Comité des droits de l'homme a déclaré, dans son projet de commentaire le plus récent sur l'article 2,

> «le pacte s'applique aussi aux situations de conflits armés auxquelles les règles du droit humanitaire international sont applicables. Alors que, pour ce qui est de certains des droits prévus par le pacte, des règles plus spécifiques du droit humanitaire international peuvent s'avérer nécessaires aux fins de l'interprétation des droits reconnus par le pacte, ces deux domaines du droit sont complémentaires et non pas exclusifs l'un de l'autre.»[320]

422. Comme indiqué par la Cour dans l'avis consultatif sur les *Armes nucléaires*, il existe une distinction conceptuelle entre l'ensemble des normes du droit international humanitaire et celles qui protègent les droits de l'homme. La Cour a en même temps confirmé l'application continue des droits de l'homme aux territoires affectés par un conflit armé, sous réserve de l'application du droit international humanitaire en tant que *lex specialis*. Il a été soulevé devant la Cour que le pacte des droits civils et politiques ne concernait la protection des droits de l'homme qu'en temps de paix. La Cour a déclaré :

> «La Cour observe que la protection offerte par le pacte international relatif aux droits civils et politiques ne cesse pas en temps de guerre, si ce n'est pas l'effet de l'article 4 du pacte qui prévoit qu'il peut être dérogé, en cas de danger public, à certaines des obligations qu'impose cet instrument. Le respect pour le droit à la vie ne constitue cependant pas une prescription à laquelle il peut être dérogé. En principe, le droit à ne pas être arbitrairement privé de la vie vaut aussi pendant des hostilités. C'est toutefois, en pareil cas, à la *lex specialis* applicable, à savoir le droit applicable dans les conflits armés, conçu pour régir la conduite des hostilités, qu'il appartient de déterminer ce qui constitue une privation arbitraire de la vie. Ainsi c'est uniquement au regard du droit applicable dans les conflits armés et non au regard des dispositions du pacte lui-même que l'on pourra dire que tel ou tel cas de décès, provoqué par l'emploi d'armes au cours du conflit doit être considéré comme une privation arbitraire de la vie contraire à l'article 6 du pacte.»[321]

La relation entre le droit international humanitaire et le droit international des droits de l'homme n'est donc pas une relation d'exclusion mais de coordination. Alors que la réglementation internationale relative aux droits de l'homme traite en termes généraux de certaines questions (comme la privation «arbitraire» de la vie) qui sont régies de manière plus détaillée par le droit international humanitaire, ce dernier précise le contenu du droit applicable; en d'autres termes, il détermine la portée des normes juridiques. En revanche, là où la réglementation internationale en

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[320] Voir Comité des droits de l'homme, projet de commentaire général sur l'article 2, la nature des obligations juridiques d'ordre général incombant aux Etats Parties du pacte, CCPR/C/74/CPR.4/Rev.4 §11. Le commentaire général n'a pas été adopté dans sa totalité, mais le paragraphe 11 reproduit dans le texte est déjà adopté.

[321] *Licéité de la menace ou de l'emploi d'armes nucléaires, avis consultatif,* 8 juillet 1996, *C.I.J. Recueil 1996,* p. 240, par. 25.

matière de droits de l'homme exclurait certains traitements, par exemple la torture, ces derniers demeureraient internationalement illicites, en tout temps et en tout lieu, y compris en temps de conflit armé ou en situation d'occupation.

423. Israël est tenu de respecter les droits de l'homme en vertu du droit international général et du droit conventionnel. Ces obligations conventionnelles n'incluent pas seulement les traités internationaux relatifs aux droits de l'homme ayant un caractère obligatoire pour Israël, mais également l'accord intérimaire sur la rive occidentale et la bande de Gaza (accord intérimaire). En vertu de ce dernier, Israël et l'Autorité palestinienne «exercent leurs pouvoirs et responsabilités conformément au présent accord, en tenant dûment compte des normes et principes internationalement reconnus en matière de droits de l'homme et de primauté du droit»[322]. Cette disposition requiert le respect, de la part d'Israël, des droits de l'homme ainsi que du droit international humanitaire.

424. Les arguments d'Israël ont, à juste titre, été rejetés au plan international, y compris par le Comité des droits de l'homme des Nations Unies. Ce dernier a indiqué que le refus d'Israël d'accepter l'applicabilité de la convention de Genève au territoire palestinien occupé était l'un de ses principaux motifs de préoccupation. A deux reprises, en commentant les rapports périodiques d'Israël, il a recommandé qu'Israël reconsidère sa position et inclue dans ses prochains rapports des informations sur l'application de la quatrième convention de Genève dans le Territoire palestinien occupé. Les deux fois, le Comité a catégoriquement rejeté les arguments d'Israël selon lesquels l'application du droit international humanitaire en temps de conflit armé excluait l'application du pacte et toute responsabilité des Etats Parties à celui-ci pour les actes commis en dehors de leur propre territoire, y compris en territoire occupé[323]. Les mêmes conclusions ont été formulées par le Comité des droits économiques, sociaux et culturels[324].

4) Conclusion

425. Au vu de ce qui précède, le droit applicable au Territoire palestinien occupé, y compris Jérusalem-Est, est bien le droit international humanitaire et la réglementation internationale relative aux droits de l'homme.

426. Dans le passé, Israël a tenté de se soustraire à l'application du droit humanitaire international, en particulier de la quatrième convention de Genève, ainsi que des conventions internationales relatives aux droits de l'homme, comme le pacte des droits civils et politiques, afin de s'exonérer de toute responsabilité internationale susceptible de découler de ses politiques, de ses pratiques et de ses actes dans le Territoire palestinien occupé. Les arguments d'Israël ont été largement rejetés à la fois par la pratique des Nations Unies et par celle d'autres instances internationales comme le Comité international de la Croix-Rouge. La position correcte est qu'en vertu du droit international, le statut d'Israël en tant que puissance occupante lui impose d'agir conformément à la fois au droit international humanitaire et aux règles relatives aux droits de l'homme.

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[322] Article XIX, Israël–Organisation de libération de la Palestine : accord intérimaire sur la Rive occidentale et la bande de Gaza, 28 septembre 1995 : S/1997/357 du 5 mai 1997, annexe.

[323] Voir *Conclusions du Comité des droits de l'homme : Israël*, 21 août 2003, CCPR/CO/78/ISR, par. 11, annexe 8 volume 2 de l'annexe accompagnant cet exposé écrit; et *Conclusions du Comité des droits de l'homme : Israël* CCPR/C/79/Add.93, 18 août 1998, par. 10, annexe 7, volume 2 de l'annexe.

[324] Comité des droits économiques, sociaux et culturels, *Conclusions du Comité des droits économiques, sociaux et culturels : Israël*, E/C.12/1/Add.90, 23/05/2003, par. 15 et 31; *Conclusions du Comité des droits économiques, sociaux et culturels : Israël*, E/C.12/1/Add.69, 31/08/2001, par. 11 et 12.

CHAPITRE 9

ISRAEL VIOLE LE DROIT APPLICABLE EN CONSTRUISANT ET EN EXPLOITANT LE MUR

Introduction

1) Le cadre de l'analyse juridique

427. Il a été démontré dans les deux chapitres précédents que les portions existantes et projetées du mur se trouvaient en Territoire palestinien occupé et que les droits d'Israël dans ce territoire étaient ceux d'une puissance occupante.

428. Le présent chapitre présente la thèse palestinienne au sujet des principes applicables au cas d'espèce. La description du contexte factuel opérée dans les chapitres 3 à 6 du présent exposé montre que la construction et l'utilisation du mur ont pour conséquence la violation de certaines dispositions spécifiques du droit international. Ces violations seront analysées dans la dernière partie du présent chapitre. Mais la question de droit essentielle qui se pose ici est celle de la liceité du mur. Sa construction et sa mise en service constituent une violation du droit international. On est ici confronté à une situation identique à celle d'une personne qui bâtirait un mur dans le jardin d'autrui. Le mur aura indéniablement des conséquences préjudiciables et illicites; mais le problème de base est qu'il ne devrait tout simplement pas être là.

429. Aussi, après un bref rappel des règles et principes du droit international applicables (sect. 2), la section suivante du présent chapitre traitera de la question de la liceité de la construction du mur (sect. 3). La section 4 sera consacrée à l'examen de violations spécifiques des règles de droit international régissant l'occupation. Les règles du droit international humanitaire et du droit international des droits de l'homme y seront examinées conjointement. Bien qu'il s'agisse de corps de règles distincts, dont la mise en œuvre fait l'objet de procédures différentes, il est apparu préférable d'organiser la section 4 en fonction de la nature des dommages causés par le mur.

2) Les principes du droit international humanitaire

430. Comme cela a été expliqué dans les chapitres 7 et 8, les droits d'Israël en Territoire palestinien occupé, y compris Jérusalem-Est, sont ceux d'une puissance occupante. Ces droits découlent du droit international humanitaire et leur exercice est assorti de contraintes imposées tant par le droit des conflits armés que par le droit international des droits de l'homme. Les principes du droit international humanitaire qui occupent une place centrale dans le cas d'espèce ont déjà été brièvement évoqués dans le chapitre 8. Ce sont les suivants.

431. Premièrement, étant donné l'interdiction absolue de l'acquisition de territoires par la force, il est absolument exclu que les droits de la puissance occupante puissent découler d'un quelconque exercice de sa souveraineté sur les territoires qu'elle occupe. Les droits qui sont reconnus à la puissance occupante concernent un territoire sur lequel, par définition, cette puissance ne dispose d'aucune souveraineté. Il ne peut donc exister aucune présomption dans le sens de la reconnaissance de droits quelconques dans le chef de la puissance occupante. C'est plutôt à celle-ci qu'il incombe de démontrer sur quelle base elle s'estime habilitée à poser un acte quelconque en territoire occupé.

432. En second lieu, la puissance occupante a l'obligation «de prendre toutes les mesures en son pouvoir en vue de rétablir et d'assurer, autant qu'il est possible, l'ordre et la vie publics en respectant, sauf empêchement absolu, les lois en vigueur dans le pays» (règlement de La Haye, art. 43). Cette disposition, qui constitue indubitablement l'expression d'une règle de droit international coutumier, consacre tout à la fois un droit et un devoir. La puissance occupante a le droit et le devoir de prendre les mesures qui s'imposent pour assurer l'ordre public et la sécurité; mais elle a aussi l'obligation de le faire dans le cadre des lois déjà en vigueur dans le pays, «à moins d'en être absolument empêchée». Ceci correspond aussi au principe selon lequel, pour reprendre les termes d'un auteur, «les institutions politiques et la vie publique en général devraient … pouvoir continuer d'exister avec aussi peu de bouleversements que possible»[325].

433. Troisièmement, c'est la puissance occupante qui a, du fait de son occupation du territoire, l'obligation juridique, «dans toute la mesure de ses moyens», d'assurer «l'approvisionnement de la population en denrées alimentaires et fournitures médicales», et d'assurer le fonctionnement des services médicaux et de santé publique dans les territoires occupés[326]. Il s'agit là d'une expression particulière de ses responsabilités d'assurer le bien-être et les droits de la population, qui se manifeste aussi par maintien de l'applicabilité aux territoires occupés du droit international des droits de l'homme[327].

434. Quatrièmement, la puissance occupante n'a le droit de réquisitionner des biens et des services que dans la mesure où ceux-ci s'avèrent nécessaires pour répondre aux besoins de l'armée d'occupation. Comme l'indique l'article 52 du règlements de La Haye :

> «Des réquisitions en nature et des services ne pourront être réclamées des communes ou des populations, que pour les besoins de l'armée d'occupation. Elles seront en rapport avec les ressources du pays, et de telle nature qu'elles n'impliqueront pas pour les populations l'obligation de prendre part aux opérations de la guerre contre leur patrie.»

435. Cinquièmement, le droit de détruire des biens privés est limité par le critère de l'absolue nécessité pour des opérations militaires. Aux termes de l'article 53 de la quatrième convention de Genève,

> «Il est interdit à la puissance occupante de détruire des biens mobiliers ou immobiliers, appartenant individuellement ou collectivement à des personnes privées, à l'Etat ou à des collectivités publiques, ou à des organisations sociales ou coopératives, sauf dans le cas où ces destructions seraient rendues absolument nécessaires par les opérations militaires.»

436. Sixièmement, le droit de réquisitionner et de détruire les biens privés pour couvrir les besoins des forces d'occupation est soumis à des limitations strictes découlant du principe de proportionnalité. Ce principe, pour n'être pas expressément énoncé comme tel dans les conventions de La Haye ou de Genève; n'en est pas moins un principe fondamental qui constitue une véritable clé de voûte du droit international humanitaire et que l'on retrouve implicitement dans le concept de nécessité.

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[325] Dieter Fleck (éd.), *The Handbook of Humanitarian Law in Armed Conflicts*, (OUP, 1995), sect. 531.

[326] Quatrième convention de Genève de 1949, art. 55 et 56.

[327] Voir, par ex., *Conclusions du Comité des Droits de l'homme : Israël*, Nations Unies, doc. CCPR/CO/78/ISR, 21 août 2003, par. 11, annexe 8, volume 2 de l'annexe accompagnant le présent exposé écrit.

437. Dans le cas d'espèce, ces principes tracent les limites dans lesquelles doivent s'inscrire les actions qu'Israël, en tant que puissance occupante, a le droit d'entreprendre en Territoire palestinien occupé, y compris Jérusalem-Est. Israël ne possède le droit de construire et d'administrer le mur que si, et seulement si, cet Etat est en mesure de démontrer qu'il dispose de ce droit en vertu du régime de l'occupation. Ce régime reconnaît que la puissance occupante peut être confrontée à des nécessités militaires. Il le fait en lui conférant des droits bien précis d'entreprendre certaines actions lorsque les nécessités militaires l'exigent. Ces droits bien précis sont les seuls que la puissance occupante détienne sur le territoire qu'elle occupe. Il n'existe en effet pas de droit *général* d'entreprendre des actions sous prétexte de nécessité militaire.

438. Les droits d'Israël doivent être établis en relation avec le mur tel qu'il se présente; c'est-à-dire le mur tel qu'il est construit, mis en service et planifié par Israël, en tant que puissance occupante, suivant le tracé qui est le sien dans les faits. Ces droits doivent également être démontrés en rapport avec les nécessités réelles qui sont avancées pour justifier la construction et l'exploitation du mur. Comme dans d'autres situations d'exercice de pouvoirs comportant une dimension internationale, l'opportunité de l'exercice des droits invoqués est susceptible de faire l'objet d'un examen par un tribunal international[328].

439. Ce dernier point mérite d'être souligné. Il ne fait pas de doute qu'Israël a, en principe, le droit de construire un mur sur le sol israélien, c'est-à-dire du côté israélien de la ligne verte. Les obligations juridiques qui pèsent sur Israël affecteraient bien sûr la manière selon laquelle un tel mur pourrait être construit et utilisé. Par exemple, des armes prohibées ne pourraient pas être utilisées dans les systèmes de sécurité incorporés au mur. Nonobstant cette réserve, Israël jouit manifestement du droit de construire un mur de sécurité sur son propre territoire, le long de la Ligne verte et dispose en pratique des moyens de le faire.

440. La question centrale, dans la présente espèce, est donc de savoir si, à la lumière de ces possibilités dont dispose Israël, cet Etat possède un droit quelconque de construire un mur *en dehors* de son territoire, suivant un tracé de son choix, et de mettre en œuvre le régime réglementaire qu'il a institué à l'égard de cette barrière physique.

3) Il n'existe pas de fondement juridique pour la construction du mur

441. Comme l'a mis en évidence sir Hersch Lauterpacht, les droits de la puissance occupante sont de nature très différente de ceux d'un gouvernement souverain :

> «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 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

[328] Voir l'affaire des *Pêcheries (Royaume-Uni c. Norvège)*, *C.I.J. Recueil 1951,* p. 116-132.

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.»[329]

442. Les nécessités militaires ne constituent pas une justification de portée générale pour les actions accomplies en territoire occupé. Elles n'offrent une telle justification que *dans les limites fixées par les règles spécifiques* du droit international humanitaire. Par ailleurs, ces règles spécifiques traitent les nécessités militaires de manière différente selon les cas.

443. Ainsi, la saisie de biens n'est permise que pour «couvrir les besoins de l'armée d'occupation»[330]. Les saisies ou réquisitions servant de façon plus large les intérêts de la puissance occupante, ou les besoins d'unités ne faisant pas partie de l'armée d'occupation, ne sont pas permises. Dans le cas présent, il faut opérer une distinction claire entre les saisies de biens palestiniens destinées à couvrir les besoins de l'armée israélienne et celles qui sont destinées à couvrir les besoins des civils israéliens. Si, dans le premier cas, la saisie peut se justifier en droit, il n'en va certainement pas ainsi dans le second.

444. La destruction de biens, en revanche, n'est permise qu'à des fins encore plus limitées. Elle n'est pas autorisée, «sauf dans les cas où ces destructions seraient rendues absolument nécessaires par des opérations militaires»[331]. Cette phrase contient deux critères limitatifs.

445. Tout d'abord, la nécessité doit résulter d'«*opérations* militaires», ce qui n'est pas la même chose qu'une «occupation militaire». En pleine bataille, il peut s'avérer nécessaire pour un char de traverser un verger ou un champ et de détruire les récoltes sur son chemin. Mais dans le calme relatif de l'occupation qui s'ensuit, une telle destruction ne sera ni nécessaire ni excusable. Au cas où la puissance occupante désirerait s'emparer de biens privés et les détruire au cours de la phase d'occupation, elle devra passer par la procédure officielle de réquisition, qui n'est autorisée que pour couvrir les besoins de l'armée d'occupation. Ensuite, la nécessité doit être «absolue». Il ne saurait être question de «balance des intérêts» ou d'appréciation «raisonnable» du degré de nécessite : il faut qu'il n'existe réellement aucune autre alternative à la destruction des biens en question.

446. La notion de nécessité trouve aussi application avec un sens bien précis dans le contexte des droits et devoirs de la puissance occupante en ce qui concerne le rétablissement et le maintien de l'ordre public. D'après le règlement de La Haye, ce devoir doit être exercé «en respectant, sauf empêchement absolu, les lois en vigueur dans le pays»[332]. L'article 64 de la quatrième convention de Genève énonce le principe en termes légèrement différents, autorisant la puissance occupante à modifier la loi pénale du territoire occupé, dans la mesure nécessaire pour assurer la sécurité de la puissance occupante ou pour lui permettre de remplir ses obligations en matière de rétablissement et de maintien de la paix et de l'ordre public[333]. Ces formulations sont quelque peu plus larges que

[329] H. Lauterpacht, *Oppenheim's International Law*, vol. II, (7e éd., Longmans, 1952), p. 437.

[330] Règlement de La Haye, art. 52.

[331] Quatrième convention de Genève, art. 53.

[332] Règlement de La Haye de 1907, art. 43.

[333] L'article 64 se lit comme suit :

celles qui renvoient à ce qui est nécessaire pour couvrir les besoins de l'armée d'occupation ou de ses opérations militaires; elles sont néanmoins toutes strictement limitées à une nécessité qui s'apparente étroitement à la notion des nécessités militaires auxquelles doit faire face la puissance occupante.

447. En toute hypothèse, la nécessité militaire doit se rattacher aux besoins de l'occupation. Une puissance occupante peut occuper un territoire pour atteindre ses objectifs militaires, mais l'occupation militaire du territoire n'est pas en soi un objectif militaire légitime. La quatrième convention de Genève reconnaît le fait que les Etats recourent parfois à la force armée, de façon licite ou illicite, pour atteindre leurs objectifs et elle énonce les règles juridiques qui doivent être respectées lors du recours à la force armée, y compris celles qui sont relatives à l'occupation militaire — le *jus in bello*. Mais la convention ne saurait en aucun cas faire de l'occupation militaire, en elle-même, un objectif licite. Ceci serait en contradiction avec l'interdiction de *jus cogens* de l'acquisition de territoires par la force.

448. Israël, en tant que puissance occupante, n'a pas le droit de maintenir le degré d'occupation militaire de son choix dans le Territoire palestinien occupé, y compris Jérusalem-Est, indépendamment des objectifs du conflit armé initial. L'occupation militaire a commencé en 1967. Israël a, depuis lors, conclu des traités de paix avec l'Egypte et la Jordanie, même si la question des territoires occupés reste non résolue, comme ces traités le reconnaissent. La justification de la poursuite de l'occupation n'est pas claire, mais semble s'apparenter à un raisonnement circulaire, selon lequel Israël doit maintenir une présence militaire en Cisjordanie afin de protéger ses installations en territoire israélien et en Cisjordanie contre les attaques menées par ceux qui s'opposent à la poursuite de l'occupation, par Israël, du territoire palestinien, y compris Jérusalem-Est.

449. Ainsi que cela sera exposé plus loin, le mur n'est pas nécessaire à la sécurité d'Israël. La portée juridique de ce constat est fondamentale. La construction et la mise en service du mur outrepassent les droits d'Israël et constituent une violation du droit international. Comme le mur ne répond pas à une nécessité, il n'est pas besoin de pousser l'analyse plus loin. En particulier, la question de la proportionnalité ne se pose pas, parce que l'exigence de montrer que le mur constitue une riposte proportionnée aux menaces pesant sur Israël ne s'imposerait que si la nécessité militaire initiale était démontrée. Quoi qu'il en soit, le mur constitue en tous cas une riposte visiblement disproportionnée à la situation du Territoire palestinien occupé.

a) *Le mur est dépourvu de toute justification en tant que mesure de sécurité*

450. La Palestine s'est très rapidement trouvée confrontée à un problème dans la présentation de son argumentation. Le rapporteur spécial de la Commission des droits de l'homme des Nations Unies a en effet relevé qu'il n'existe aucune transparence au sujet de la construction du mur et que seul un cercle restreint de responsables militaires et politiques israéliens semble connaître son tracé définitif[334]. Ce constat a des implications en termes de procédure et de fond.

«1) La législation pénale des territoires occupés demeurera en vigueur, sauf dans la mesure où elle pourra être abrogée ou suspendue par la puissance occupante si cette législation constitue une menace pour la sécurité de cette puissance ou un obstacle à l'application de la présente convention… 2) La puissance occupante pourra cependant soumettre la population des territoires occupés à des dispositions qui sont indispensables pour lui permettre de remplir ses obligations découlant de la présente convention et d'assurer l'administration régulière du territoire ainsi que la sécurité soit de la puissance occupante, soit des membres et des biens des forces ou de l'administration d'occupation et des lignes de communication utilisées par elle.»

[334] Rapport Dugard (2003), par. 11.

451. Sur le plan de la procédure, si la Palestine est en mesure de présenter des arguments précis au sujet du mur tel qu'il se présente à l'heure actuelle et tel qu'il apparaît dans des plans déjà publiés, le manque de transparence rend malaisée pour la Palestine la présentation d'une argumentation d'ensemble précise qui couvrirait l'ensemble de la construction du mur, présente et à venir. Ce n'est que lorsque le mur deviendra, dans son intégralité, un fait concret au tracé connu, qu'il sera possible de présenter, à son encontre, une argumentation s'appuyant sur des données précises. Sur le plan du fond, l'incertitude au sujet du tracé et des phases de construction du mur et des points de passage qui y seraient laissés, ainsi que l'incertitude relative au calendrier de la construction, constituent en soi une source de difficultés considérables pour ceux qui doivent tenter d'organiser leur vie afin de s'adapter à l'arrivée du mur.

452. La présente section des observations écrites se base donc sur la connaissance qu'a la Palestine des travaux déjà exécutés et des plans déjà publiés et sur tous les renseignements que la Palestine a réussi à obtenir sur les intentions d'Israël quant à la poursuite de ce projet.

453. Il ne fait aucun doute qu'un Etat a le droit, en principe, de fortifier sa frontière pour prévenir les incursions illicites dans son territoire. L'usage de murs défensifs en vue de protéger certaines installations militaires appartenant à une puissance occupante ne peut pas plus, en principe, faire l'objet de contestations. Un mur construit autour d'un complexe militaire, d'un poste de police ou d'une ambassade peut constituer une mesure prudente et proportionnée pour écarter le risque d'attaques contre les installations protégées par le mur. Mais le mur construit par Israël n'entoure pas d'installations militaires vulnérables. Il encercle des Palestiniens.

454. Comme cela a été exposé au chapitre 6 du présent exposé écrit, le mur, tel qu'il a été bâti ou tel qu'il est envisagé, s'étend pratiquement à travers toute la Cisjordanie et est presque entièrement construit en Territoire palestinien occupé. De plus, il est largement fait état du fait que le Gouvernement israélien a l'intention de faire encercler toute la Cisjordanie par le mur — ou pour être plus précis, du fait que le mur devrait entourer un secteur beaucoup plus réduit de la Cisjordanie, bien en deçà de la Ligne verte[335]. Aucun plan officiel de la partie orientale du mur n'a été publié, mais ces rumeurs ont été confirmées, entre autres, par le rapporteur spécial de la Commission des droits de l'homme des Nations Unies[336].

455. Dans les lieux où le mur suit la ligne verte, tout en étant, en partie ou en totalité, construit en territoire situé du côté palestinien de la Ligne verte, le mur peut de manière générale être considéré comme «défendant» le territoire israélien. Il n'en est pas moins illicite. Il est manifeste que le mur aurait pu être bâti en territoire israélien. Il n'y avait aucun *besoin* de l'ériger en territoire palestinien. La réquisition ou la confiscation des terres sur lesquels le mur est construit constitue, en conséquence, une violation du droit international. La question de la légalité de la «réquisition» ou de la confiscation des terres sur lesquels le mur est construit est abordée plus en détail plus loin.

456. La majeure partie du mur ne suit pas la Ligne verte et est construite bien à l'intérieur du Territoire palestinien occupé, y compris Jérusalem-Est. Il est prétendu que le mur serait nécessaire pour prévenir et empêcher des attaques contre Israël en provenance de Cisjordanie. Les menaces contre lesquelles le mur est censé offrir une protection ne sont pas des menaces d'attaques à l'aide de roquettes ou d'artillerie. (Et si tel était le cas, étant donné la taille exiguë du territoire

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[335] Voir par exemple rapport B'Tselem de 2003, p. 3, annexe 13, du volume 2 de l'annexe accompagnant le présent exposé écrit.

[336] Rapport Dugard (2003), par. 11.

palestinien, l'on ne voit pas très bien quelle protection le mur pourrait bien offrir.) Ces menaces sont essentiellement des menaces d'attentats-suicides ou d'autres types d'attentats à la bombe, dont les auteurs sont, dans la plupart des cas, si ce n'est toujours, motorisés et empruntent donc des routes ou des sentiers connus pour attaquer des cibles israéliennes.

457. Il n'y a aucune raison de supposer qu'un mur construit à 5 kilomètres de la Ligne verte, offrirait une meilleure protection au territoire israélien qu'un mur bâti sur la frontière elle-même. Comme cela a été exposé dans le chapitre 5, Israël déclare avoir besoin d'un secteur fermé dans lequel il puisse donner la chasse aux auteurs potentiels d'attentats qui lui glissent entre les doigts aux postes de contrôle amenagés dans le mur. Cet argument est peu convaincant. Les individus en question pourraient aussi bien être pourchassés si le mur se trouvait sur la Ligne verte : ils pourraient être poursuivis jusqu'à l'intérieur du territoire israélien. S'il existe des sites particulièrement vulnérables en Israël près du mur, ces sites peuvent eux-mêmes être protégés.

458. Au demeurant, le risque de ne pas pouvoir détecter certains auteurs d'attentats potentiels aux postes de contrôle met en évidence la nécessité de renforcer l'efficacité de ces points de contrôle, plutôt que de faire dévier le tracé du mur. Cet argument fut soulevé au sein du Gouvernement israélien. Le contrôleur général d'Israël a signalé, dans son rapport de juillet 2002 sur le secteur fermé (le secteur charnière), que, d'après les documents des Forces de défense israéliennes, «la plupart des auteurs d'attentats-suicide et d'attentats à la voiture piégée traversaient la zone de séparation hermétique en passant par des postes de contrôle, où ils subissaient des contrôles sommaires et insuffisants»[337].

459. En outre, les chances qu'un auteur d'attentat potentiel qui n'aurait pas été appréhendé, puisse être ensuite identifié à temps pour être retenu dans le secteur fermé, sont si faibles qu'elles relèvent de la fantaisie; elles ne sauraient constituer la base rationnelle de la décision de modifier le tracé du mur en l'écartant de la frontière. Que telle ne soit pas la motivation du tracé du mur ressort clairement du fait que la largeur du secteur fermé entre le mur et la Ligne verte est loin d'être uniforme. Elle fluctue essentiellement entre un minimum de 5 kilomètres et un maximum de 22 kilomètres environ et en certains points (surtout au nord), elle est pratiquement inexistante.

460. Quelle peut bien être, dès lors, la logique de la décision qui pousse le tracé du mur profondément en Territoire palestinien occupé, laissant une superficie de terre estimée à 43 % de la Cisjordanie en dehors du mur ? Israël n'a donné aucune explication adéquate pour justifier le mur, hormis des affirmations abruptes de ses intérêts en matière de sécurité. Ceci se comprend aisément. Il existe principalement trois types de lieux où le tracé du mur s'écarte notablement de la Ligne verte :

i) les endroits où le tracé du mur est poussé vers l'intérieur du territoire palestinien afin de laisser les colonies de peuplement israéliennes ou d'autres installations civiles de Cisjordanie en dehors du mur;

ii) le segment du mur entourant Jérusalem-Est;

iii) le segment oriental projeté du mur, qui longe le Jourdain.

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[337] Rapport d'enquête du contrôleur général de l'Etat israélien sur le secteur charnière, cité dans le rapport Dugard (2003), par. 8.

b) ***Le mur ne peut pas être dévié pour protéger les colonies de peuplement israéliennes en Territoire palestinien occupé, y compris Jérusalem-Est***

461. Comme le montrent les cartes reproduites en annexe du présent exposé écrit (vol. I), le tracé du mur est de toute évidence destiné à faire sortir de ce tracé des colonies de peuplement — telles qu'«Ariel», «Ma'ale Adumim», et «Etzion» — situées en Territoire palestinien occupé. La question est de savoir si les colonies de peuplement peuvent recevoir une protection spéciale à la faveur de déviations du tracé du mur par rapport à la Ligne verte.

462. Les puissances occupantes ont le droit, en période d'occupation militaire, de défendre leurs installations militaires se trouvant en territoire occupé. Les installations de l'armée israélienne se trouvant à l'intérieur du Territoire palestinien occupé peuvent dès lors être défendues en recourant aux méthodes militaires habituelles : structures défensives, surveillance et récolte d'informations (bien entendu, celles de ces installations qui se trouvent à l'intérieur du tracé du mur ne peuvent être protégées par le mur; il n'existe aucune preuve du fait que le mur a été construit pour protéger les installations militaires se trouvant entre le mur et la Ligne verte).

463. Le statut juridique des colonies de peuplement civiles est fort différent. L'article 49, paragraphe 6 de la quatrième convention de Genève dispose que «la puissance occupante ne pourra procéder à la déportation ou au transfert d'une partie de sa propre population civile dans le territoire occupé par elle». L'établissement, par la puissance occupante, de colonies de peuplement dans le territoire occupé ne constitue pas seulement une violation du droit international, mais est aussi considéré comme une «infraction grave» et comme un crime de guerre par l'article 85 du protocole additionnel I aux conventions de Genève.

464. L'interdiction énoncée dans l'article 49, paragraphe 6 de la quatrième convention de Genève n'est pas limitée au transfert forcé d'éléments de sa propre population par une puissance occupante vers le territoire occupé. Selon un conseiller juridique du département d'Etat des Etats-Unis, «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.»[338]

465. Il ne fait pas de doute qu'Israël a contribué à l'établissement de nombreuses colonies en Cisjordanie, en recourant à plusieurs des procédés évoqués dans l'extrait qui vient d'être cité, et que les actions d'Israël dans cette zone constituent bien un «transfert d'une partie de sa propre population civile vers le territoire occupé par lui», en violation de l'article 49, paragraphe 6[339]. La politique de colonisation israélienne, dans ses aspects relatifs à la construction du mur, a été décrite au chapitre 4 du présent exposé écrit.

466. Tout comme le transfert des populations civiles vers le territoire occupé est illicite, les colonies qui abritent ces populations le sont également. Il s'agit là d'un principe bien établi. L'illicéité des colonies israéliennes en Territoire palestinien occupé, y compris Jérusalem-Est, a été clairement affirmée de façon répétée par les Etats et les instances internationales, y compris le Conseil de sécurité de l'ONU[340].

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[338] *Digest of US Practice in International Law [«DUSPIL»], 1978*, p. 1577.

[339] *DUSPIL 1978*, 1575-1578; Letter of H.J. Hansell, Legal Advisor, US Department of State, to House Committee on International Relations, (21 avril 1978), 17 *ILM* 777 (1978).

[340] Voir chap. 7 ci-dessus.

467. Les colonies étant illicites, nul n'est habilité, en droit, à les protéger en écartant le tracé du mur de la Ligne verte. La conclusion est incontournable. Le même raisonnement s'applique aux installations et infrastructures, telles que les routes, construites en Territoire palestinien occupé, y compris Jérusalem-Est, pour desservir les colonies. De même que le mur ne saurait être bâti de façon licite pour protéger des colonies illicites, il ne saurait non plus être bâti, par exemple, pour protéger une route construite pour desservir cette colonie[341].

c) ***Le tracé du mur ne peut être dévié pour protéger des portions de territoire annexées à Jérusalem-Est***

468. L'interdiction de l'acquisition de territoires par la force constitue un principe impératif du droit international. Israël n'en a pas moins manifesté son intention d'annexer Jérusalem-Est et un vaste secteur entourant la ville. Comme cela a été expliqué au chapitre 7, le Conseil de sécurité a décidé de ne pas reconnaître les velléités d'annexion de Jérusalem-Est. Cette décision lie les Etats membres, en vertu de l'article 25 de la Charte[342]. La déviation du tracé du mur par rapport à la Ligne verte dans ce secteur constitue à l'évidence une tentative, s'inscrivant dans le prolongement de la politique et des pratiques israéliennes, d'ignorer cette décision obligatoire (qui ne fait au demeurant qu'énoncer une position bien établie en droit international) et de traiter le territoire annexé de Jérusalem comme relevant de sa souveraineté.

469. La situation de la partie du mur qui protège Jérusalem-Est est, par voie de conséquence, analogue à celle de la partie du mur qui protège les colonies de peuplement israéliennes illicites implantées en Cisjordanie. Dès lors qu'Israël ne jouit d'aucun droit de propriété sur cette partie du Territoire palestinien occupé, cet Etat ne peut faire dévier le tracé du mur de la Ligne verte pour protéger cette zone.

d) ***Il n'existe pas de justification à la construction du murdans la partie orientale de la Cisjordanie***

470. Quelle raison pourrait bien être invoquée pour poursuivre le tracé du mur à l'intérieur de la limite orientale de la Cislordanie ? Cette limite constitue en fait la frontière de la Palestine avec la Jordanie et, la Jordanie ayant conclu avec Israël un traité de paix en 1994, Israël n'a guère à redouter une attaque venant de l'est. Si danger il y avait, en provenance du Territoire palestinien occupé et en direction de l'est, c'est la Jordanie et non Israël qui serait menacée. S'il est à craindre que des individus projetant un attentat à partir de la Cisjordanie puissent se diriger vers l'est, puis vers le nord ou le sud et pénétrer en Israël par une voie détournée; et si un mur est vraiment la solution appropriée, il faudrait alors prolonger celui-ci jusqu'aux frontières septentrionales et méridionales d'Israël avec la Jordanie. La construction du mur en pleine Cisjordanie, le long de la vallée du Jourdain, n'est à l'évidence justifiée par aucune considération de sécurité.

471. En règle générale, la Palestine s'est abstenue de spéculer sur les motivations des actions entreprises par Israël; mais en l'occurrence, il s'avère difficile d'identifier une quelconque raison qui expliquerait le tracé projeté du mur, autre que le désir d'étendre le territoire israélien le long de la vallée du Jourdain. Cela reviendrait à une annexion de fait de nouveaux territoires, qui enclaverait la Cisjordanie, l'isolerait à la fois de Gaza et de Jéricho et aurait des conséquences

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[341] Voir résolution 2003/7 de la Commission des droits de l'homme de l'ONU du 15 avril 2003.

[342] *Conséquences juridiques pour les Etats de la présence continue de l'Afrique du Sud en Namibie (Sud-Ouest africain) nonobstant la résolution 276 (1970) du Conseil de sécurité, avis consultatif, C.I.J. Recueil 1971*, p. 53.

dramatiques et extrêmement préjudiciables sur la capacité de la Palestine à créer un Etat viable et à établir des relations économiques, sociales et politiques stables avec ses voisins. Une telle action ne serait pas seulement dépourvue de toute base juridique, mais elle serait également incompatible avec le droit de la Palestine de disposer librement d'elle-même en devenant indépendante[343].

e) ***Le mur représente une tentative de modifier le statut du Territoire palestinien occupé, y compris Jérusalem-Est***

472. Israël n'a aucun besoin de bâtir le mur pour des raisons de sécurité en Territoire palestinien occupé. Le mur apparaît comme une tentative de modifier le statut juridique du Territoire palestinien occupé, y compris Jérusalem-Est.

473. L'interdiction de modifier le statut d'un territoire occupé constitue une règle fondamentale du droit international humanitaire et un corollaire de l'interdiction de l'acquisition de territoires par la force. Enfreindre cette interdiction constituerait une grave violation du droit international. Cette règle a été réaffirmée avec force et à maintes reprises par le Conseil de sécurité, en particulier à propos du Territoire palestinien occupé, y compris Jérusalem-Est. Ce fut le cas, par exemple, avec l'adoption de la résolution 446 (1979) qui enjoignait :

> «une fois encore à Israël, en tant que puissance occupante, de respecter scrupuleusement la convention de Genève relative à la protection des personnes civiles en temps de guerre, du 12 août 1949, de rapporter les mesures qui ont déjà été prises et de s'abstenir de toute mesure qui modifierait le statut juridique et le caractère géographique des territoires arabes occupés depuis 1967, y compris Jérusalem, et influerait sensiblement sur leur composition démographique, et, en particulier, de ne pas transférer des éléments de sa propre population civile dans les territoires arabes occupés».

474. Le concept de «modification du statut d'un territoire» n'est pas défini par les conventions de Genève ni par aucun autre instrument juridique international. Le sens de cette expression doit être induit de l'usage qui en est fait et du rôle qu'elle joue dans le système du droit international humanitaire.

475. Le concept de modification du statut juridique d'un territoire est évidemment plus large que celui d'annexion. Il serait absurde d'imaginer qu'un Etat puisse se prévaloir de tous les droits afférant à la souveraineté territoriale sur un territoire occupé par la force et contourner l'interdiction juridique de l'acquisition de territoires par la force en évitant simplement de procéder à un transfert formel du titre sur ce territoire et en évitant d'utiliser le langage de la souveraineté. De même, si le Conseil de sécurité avait voulu, dans sa résolution 446, limiter son injonction à l'annexion, il l'aurait dit expressément et en recourant à des formules moins complexes que celle utilisée dans cette résolution.

476. Le rôle que joue, en droit international humanitaire, l'interdiction de modifier le statut juridique d'un territoire souligne également la portée du principe. Ce principe est garanti dans la quatrième convention de Genève par l'obligation de respecter les lois en vigueur sur le territoire et est renforcé par l'interdiction de l'acquisition de territoires par la force[344].

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[343] Voir chap. 10.

[344] Charte de l'ONU, art. 2 (4); ONU AG résolution 2625 (XXV).

477. Le «statut» d'un territoire est constitué par l'ensemble des règles de droit qui y sont applicables et par pouvoir effectif de contrôler les évènements qui s'y déroulent. Dans les cas où les résidents de certaines portions de territoire préalablement délimitées sont expulsés, dans des conditions prohibées par l'article 49 de la quatrième convention de Genève, le statut de ce territoire est modifié. Tel est le cas, également, lorsqu'il est exigé des résidents d'obtenir un permis pour pouvoir demeurer dans leur maison, ou pour se déplacer entre leur domicile et leur lieu de travail, l'école ou l'université, se rendre chez le médecin ou se déplacer en d'autres points du territoire. Il en va de même encore lorsqu'un nombre important de ressortissants de la puissance occupante sont installés en Territoire palestinien occupé dans des zones délimitées pour eux au moyen du mur.

478. Toutes ces modifications apportées au régime juridique du Territoire palestinien occupé sont la conséquence du mur, qui les rend de moins en moins réversibles. Israël a déclaré que le mur n'est pas destiné à modifier le statut du territoire qu'il traverse et qu'il a un caractère temporaire[345], mais ces assertions se révèlent peu convaincantes. Comme le note le rapporteur du Comité des droits de l'homme des Nations Unies, «l'implantation des colonies à Gaza semble pouvoir être rediscutée dans le cadre de négociations relatives à un statut définitif, ce qui à présent ne semble pas envisageable pour la Cisjordanie»[346].

La même observation peut être faite à propos du mur. Son coût, estimé à 10 millions de NIS par kilomètre[347], alors qu'il s'étend sur 788 kilomètres, suggère qu'il constituera bien plus qu'une simple mesure temporaire de sécurité destinée à fonctionner durant le court laps de temps précédant la consécration d'un Etat palestinien, au terme du processus décrit dans la «feuille de route» de juin 2003, qui envisageait un règlement définitif et global du conflit israélo-palestinien d'ici à 2005[348].

479. Les craintes que le mur ait un caractère permanent sont justifiées par les pratiques antérieures d'Israël à l'égard du Territoire palestinien occupé. Comme l'indique l'organisation israélienne de défense des droits de l'homme, B'Tselem, dans l'un de ses rapports :

> «Dans le passé, Israël a utilisé la méthode des ordres de «réquisition pour besoins militaires» pour faire passer sous son contrôle des terres palestiniennes et y établir des colonies de peuplement. Ces terres ne furent jamais rendues à leurs propriétaires. Il est désormais clair qu'Israël n'avait pas l'intention de saisir temporairement ces terres mais d'en exproprier les propriétaires de manière définitive.»[349]

480. En outre, les modifications d'ordre juridique et les restrictions apportées à l'habitation et à la circulation à proximité du mur, sont déjà en train de modifier de manière visible la composition démographique du Territoire palestinien occupé, non seulement en ce qui concerne la population des colonies illicites, mais également pour ce qui est de la population palestinienne. A Qalqiliya, par exemple, l'on rapporte qu'environ 600 négoces et entreprises ont dû fermer en

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[345] Voir annexe I du rapport du Secrétaire général, A/ES-10/248, 24 novembre 2003, inclus en tant que dossier n° 52 accompagnant le rapport du Secrétaire général.

[346] Nations Unies, doc. E/CN.4/2001/121, 16 mars 2001, par. 21, annexe 10, volume 2 de l'annexe accompagnant le présent exposé écrit.

[347] Rapport B'Tselem de 2003, p. 7, annexe 13, volume 2 de l'annexe accompagnant le présent exposé écrit.

[348] Voir rapport du Secrétaire général, A/ES-10/248, 24 novembre 2003, par. 28-31, inclus dans le dossier n° 52 joint aux conclusions du Secrétaire général.

[349] En vue d'un débat approfondi sur ce sujet, voir rapport B'Tselem de 2002, annexe 12, volume 2 de l'annexe accompagnant cet exposé écrit.

conséquence de la construction du mur[350] et l'on estime que de 6000 à 8000 personnes ont déjà quitté la région[351]. Face à l'alternative d'avoir à demeurer pris au piège d'une ville entourée de murs et d'avoir peut-être besoin d'obtenir un permis de résidence, ou une permission spéciale pour passer le mur tous les jours pour aller travailler, étudier ou recevoir des soins médicaux ou d'aller habiter ailleurs, il n'est pas surprenant de constater un mouvement, qui va en s'amplifiant, de déplacement de la population du Territoire palestinien occupé, y compris de Jérusalem-Est, en provenance de la zone extérieure au mur.

481. Si l'on ajoute à tout ceci le nombre toujours croissant de colons venant grossir les colonies de peuplement illicites, l'on arrive à une modification radicale de la composition démographique du Territoire palestinien occupé. Il s'agit là de l'un des effets les plus délétères du mur, revenant à modifier de manière illicite la «situation sur le terrain», d'une manière que la Palestine est impuissante à prévenir et qu'il lui sera très difficile de combattre. Il s'agit d'une annexion de fait de la zone extérieure au mur, qui s'accompagne d'un déplacement de population à travers le Territoire palestinien occupé.

f) *Conclusion sur le droit d'Israël de construire le mur*

482. Au vu de ce qui précède, la Palestine affirme qu'Israël, en tant que puissance occupante, n'a aucun droit de construire le mur en Territoire palestinien occupé, y compris à Jérusalem-Est. Le mur constitue une tentative, de la part d'Israël, de modifier unilatéralement le statut juridique du Territoire palestinien occupé que le mur traverse. La construction de ce mur constitue une violation du droit international.

4) Les conséquences de la construction du mur constituent une violation du droit international et en font une mesure disproportionnée

483. La section précédente du présent exposé a montré que le mur ne répondait à aucune nécessité. Or, la nécessité est la condition préalable aux droits limités qui peuvent être reconnus à Israël, en tant que puissance occupante. Mais même si l'on pouvait démontrer le respect de l'exigence de nécessité prescrite par le droit de l'occupation, la conduite d'Israël n'en deviendrait pas pour autant licite. Le droit international humanitaire impose en effet que les mesures adoptées par une puissance occupante qui apparaissent licites de prime abord, soient également proportionnées aux circonstances qui les ont rendues nécessaires. Or, le mur qui est actuellement construit en Territoire palestinien occupé constitue une mesure disproportionnée.

484. Les effets de la construction du mur sont exposés au chapitre 6 et, de manière plus détaillée, dans divers rapports présentés aux Nations Unies, dont les plus pertinents aux fins de la présente instance sont annexés au présent exposé écrit[352]. Ils seront résumés dans paragraphes qui suivent et abordés sous deux angles juridiques distincts. Tout d'abord, les effets de la construction du mur entraînent une violation manifeste de certaines règles spécifiques du droit international humanitaire et du droit international des droits de l'homme, qui trouvent application au Territoire palestinien occupé, y compris Jérusalem-Est[353]. Le droit international humanitaire s'applique en tant que *lex specialis*, mais n'exclut pas les normes relatives aux droits de l'homme, qui continuent

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[350] Rapport Dugard (2003), par. 10.

[351] Rapport Ziegler par. 51.

[352] Voir annexes 1-11 et 14, volume 2 de l'annexe accompagnant l'exposé écrit.

[353] Voir chap. 8.

de s'appliquer[354]. En toute hypothèse, certains de ces droits ne souffrent pas de dérogation et doivent être respectés en toutes circonstances; mais même ceux de ces droits qui sont susceptibles de dérogation ne le sont que dans la stricte mesure où la situation l'exige, c'est-à-dire dans les limites strictes du principe de proportionnalité. En second lieu, les contraintes considérables qu'occasionne le mur pour les populations du Territoire palestinien occupé, y compris celle de Jérusalem-Est, en fait une mesure disproportionnée et, de ce fait, incompatible avec le droit de l'occupation.

a) ***Le mur constitue une violation du droit à la liberté de mouvement***

485. Les restrictions concrètes à la liberté de mouvement résultant du mur sont, en résumé, les suivantes :

a) privation de circulation à l'intérieur du Territoire palestinien occupé, y compris à l'intérieur de Jérusalem-Est, occasionnée par le mur et, dans des cas extrêmes, par l'enclavement des villes résultant de leur enmurement;

b) obligation de faire des détours d'une longueur injustifiable; retards imposés à la circulation à l'intérieur du Territoire palestinien occupé, y compris à Jérusalem-Est;

c) possibilités d'accès arbitraire et imprévisible par des points d'entrée laissés dans le mur, isolant de l'extérieur les résidents, les terres et les biens situés à l'intérieur du mur;

d) assujettissement du peuple palestinien, dans la zone entourant le mur, à des restrictions à la liberté de circulation, de manière discriminatoire et dégradante.

486. Le droit à la liberté de mouvement est reconnu par l'article 12 du pacte international relatif aux droits civils et politiques, qui dispose que

> «1. Quiconque se trouve légalement sur le territoire d'un Etat a le droit d'y circuler librement et d'y choisir librement sa résidence.
>
> 2. Toute personne est libre de quitter n'importe quel pays, y compris le sien.

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[354] Voir chap. 8. Voir le rapport Ziegler, par. 25 :

> «L'applicabilité du droit relatif aux droits de l'homme dans les territoires palestiniens occupés a été confirmé à plusieurs reprises par divers organes de l'ONU, dont le Conseil de sécurité (résolution 237 (1967)), le rapporteur spécial de la Commission des droits de l'homme sur la situation des droits de l'homme dans le TPO, John Dugard (voir E/CN.4/2002/32 [Ce rapport est reproduit à l'annexe 2, volume 2 de l'annexe accompagnant le présent exposé écrit]), le comité des droits économiques, sociaux et culturels ainsi que d'autres organes de contrôle. Ceci est également réaffirmé dans l'accord intérimaire israélo-palestinien de 1995 sur la Cisjordanie et la Bande de Gaza (art. XIX).»

Voir également la décision de la commission inter-américaine sur les mesures préventives de Guatanamo à Cuba, du 12 mars 2002, 41 ILM 532 (2002); *Loizidou c. Turquie*, Cour européenne des droits de l'homme, *Recueil série A n° 310*, par. 62 (1995).

3. Les droits mentionnés ci-dessus ne peuvent être l'objet de restrictions que si celles-ci sont prévues par la loi, nécessaires pour protéger la sécurité nationale, l'ordre public, la santé ou la moralité publiques, ou les droits et libertés d'autrui, et compatibles avec les autres droits reconnus par le présent pacte[355].

4. Nul ne peut être arbitrairement privé du droit d'entrer dans son propre pays.»[356]

487. Les restrictions à la liberté de circulation ne sont prévues par l'article 12, paragraphe 3 que dans des cas très limités. Le Comité des droits de l'homme de l'ONU a affirmé que :

> «Les limitations pouvant être imposées aux droits énoncés à l'article 12 ne doivent pas rendre sans objet le principe de la liberté de circulation, et doivent répondre aux exigences de protection prévues au paragraphe 3 de cet article et être compatibles avec les autres droits reconnus dans le pacte.»[357]

488. L'article 12 est susceptible de dérogation dans des situations où un danger public exceptionnel menace la vie de la nation[358] Israël a fait, en 1991, une déclaration de dérogation au pacte, mais seulement au sujet de l'article 9 (relatif à la détention arbitraire). Quelles que soient les circonstances, le pacte ne permet pas de dérogation illimitée, mais seulement :

> «dans la stricte mesure où la situation l'exige … sous réserve que ces mesures ne soient pas incompatibles avec les autres obligations que leur impose le droit international et qu'elles n'entraînent pas une discrimination fondée uniquement sur la race, la couleur, le sexe, la langue, la religion ou l'origine sociale»[359].

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[355] Le Comité des droits de l'homme a spécifié, notamment dans ses commentaires généraux n° 27 et 29, les conditions auxquelles de telles restrictions sont admises. Ces conditions comprennent la nécessité et la proportionnalité. Au paragraphe 13 du commentaire général n° 27, «Liberté de circulation (art. 12)», CCPR/C/21/Rev.1/Add.9 du 2 novembre 1999, le Comité a déclaré que «les restrictions ne doivent pas porter atteinte à l'essence même du droit … le rapport entre le droit et la restriction, entre la règle et l'exception, ne doit pas être inversé. Les lois autorisant l'application de restrictions devraient être formulées selon des critères précis et ne peuvent pas conférer des pouvoirs illimités aux personnes chargées de veiller à leur application »; cf. par. 11-18, commentaires généraux n° 29, «L'Etat d'urgence (art. 4)», CCPR/C/21/Rev.1/Add.11 du 31 août 2001, par. 1 : «Le retour à une situation normale, permettant d'assurer de nouveau le plein respect du pacte, doit être l'objectif primordial de l'Etat partie qui déroge au pacte.» : cf., par. 4, 7 et 9.

[356] Le droit à la liberté de mouvement est également réaffirmé dans l'article 13 de la Déclaration universelle des droits de l'homme.

[357] Comité des droits de l'homme, commentaire général n° 27 : Liberté de mouvement (art.12) : Nations Unies, doc. CCPR/C/21/Rev.1/Add.9, 2 novembre 1999, par. 2. Voir également les paragraphes 14, 15 et 17 du commentaire général :

> «(14) Le paragraphe 3 de l'article 12 indique clairement qu'il ne suffit pas que les restrictions servent les buts autorisés; celles-ci doivent être également nécessaires pour protéger ces buts. Les mesures restrictives doivent être conformes au principe de la proportionnalité; elles doivent être appropriées pour remplir leurs fonctions de protection, elles doivent constituer le moyen le moins perturbateur parmi ceux qui pourraient permettre d'obtenir le résultat recherché et elles doivent être proportionnées à l'intérêt à protéger. (15) Le principe de la proportionnalité doit être respecté non seulement dans la loi qui institue les restrictions, mais également par les autorités administratives et judiciaires chargées de l'application de la loi. Les Etats devraient veiller à ce que toute procédure concernant l'exercice de ces droits ou les restrictions imposées à cet exercice soit rapide et que les raisons justifiant l'application de mesures restrictives soient fournies. (17) Les nombreux obstacles juridiques et bureaucratiques qui entravent inutilement le plein exercice des droits des individus de se déplacer librement, de quitter un pays, y compris le leur, et d'établir leur résidence, sont une source majeure de préoccupations.»

[358] Pacte international relatif aux droits civils et politiques, art. 4.

[359] Pacte international relatif aux droits civils et politiques, art. 4. cf., art. 2.1 du pacte :

489. Le régime du mur dépasse largement le cadre de «la stricte mesure où la situation l'exige». Cela ressort de son tracé et de la manière dont les autorités israéliennes conduisent les opérations de contrôle aux points d'accès aménagés dans le mur, ainsi que cela a été exposé au chapitre 6 du présent exposé et dans les rapports présentés aux Nations Unies annexés à cet exposé. La violation de la liberté de circulation revêt un degré extrême dans certaines villes comme Qalquiliya, qui est complètement entourée par le mur et par les barrages routiers israéliens. Ces villes sont devenues de véritables enclaves, coupées du Territoire palestinien occupé, à l'intérieur comme à l'extérieur du mur.

490. De plus, comme cela a été expliqué au chapitre 6, le régime du mur est ouvertement discriminatoire, en ce qu'il impose aux Palestiniens des restrictions auxquelles ne sont pas soumis les citoyens israéliens ou les personnes qui pourraient réclamer la citoyenneté israélienne. Ce caractère discriminatoire des restrictions à la liberté de mouvement dans le Territoire palestinien occupé a fait l'objet de critiques de la part du comité des droits économiques, sociaux et culturels, avant même le début de la construction du mur. Le comité a noté «avec préoccupation que ces restrictions ne s'appliquent qu'aux Palestiniens, et non aux citoyens israéliens juifs»[360]. Ceci ne veut pas dire pour autant que ces restrictions seraient licites si elles s'appliquaient de la même manière aux Palestiniens et aux Israéliens. Ces restrictions sont illicites car elles ne sont pas nécessaires et sont disproportionnées. Leur caractère discriminatoire, qui touche des secteurs très variés comprenant les droits de résidence et de propriété foncière, accentue encore la gravité des violations des droits garantis par le pacte.

491. Le droit international humanitaire ne prévoit pas un droit spécifique à la liberté de mouvement. Il réglemente plutôt le droit d'une puissance occupante d'imposer des restrictions à la population d'un territoire occupé. La première de ces limitations réside dans le fait que tout changement à la législation du territoire occupé doit être :

> «indispensable pour lui permettre de remplir ses obligations découlant de la [quatrième convention de Genève], et d'assurer l'administration régulière du territoire ainsi que la sécurité soit de la puissance occupante, soit des membres et des biens des forces ou de l'administration d'occupation ainsi que des établissements et des lignes de communications utilisés par elle»[361].

492. Cette obligation est aussi reprise à l'article 43 du règlement de La Haye, qui impose à la puissance occupante de remplir ses obligations concernant le rétablissement et le maintien de l'ordre public en respectant, «à moins d'en être absolument empêchée, les lois en vigueur dans le pays».

493. Outre l'obligation de démontrer la nécessité absolue des nouvelles restrictions imposées à la population, en adoptant et en mettant en œuvre ces mesures la puissance occupante devra traiter les populations «sans aucune distinction défavorable, notamment de race, de religion ou d'opinions politiques»[362]. Elle devra leur assurer des conditions de vie aussi normales que possible.

> «Les Etats parties au présent pacte s'engagent à respecter et à garantir à tous les individus se trouvant sur leur territoire et relevant de leur compétence les droits reconnus dans le présent pacte, sans distinction aucune, notamment de race, de couleur, de sexe, de langue, de religion, d'opinion politique ou de toute autre opinion, d'origine nationale ou sociale, de fortune, de naissance ou de toute autre situation.»

[360] Nations Unies, doc. E/C.12/1/Add.27, 4 décembre 1998, par. 17.

[361] Quatrième convention de Genève, art. 64.2.

[362] Quatrième convention de Genève, art. 27.

494. Les prescriptions de la quatrième convention de Genève sont violées de manière routinière par Israël, du fait de la construction et de la gestion du mur. Ces agissements sont exposés en détail ailleurs et l'on n'y reviendra pas ici.

495. Les restrictions à la liberté de circulation entraînent la violation d'autres droits fondamentaux protégés par le droit international, notamment celui de gagner sa vie, le droit d'accès à la nourriture, aux soins médicaux et à l'instruction, le droit à la vie de famille et le droit à l'autodétermination. Les effets extrêmement étendus des restrictions à la liberté de mouvement ont été relevés par le rapporteur spécial de la Commission des droits de l'homme des Nations Unies sur la question du droit à l'alimentation, qui rapportait en octobre 2003 que :

> «les limitations sans précédent imposées à la circulation des Palestiniens à l'intérieur des territoires occupés les privent non seulement de leur liberté de mouvement, mais aussi de leur droit d'accès aux aliments. L'imposition généralisée et durable de couvre-feux, les routes bloquées, les différents systèmes de permis de circuler, les barrages de sécurité et le système imposé par les forces militaires d'occupation, dit de «dos à dos», qui consiste à décharger les camions d'un côté d'un poste de contrôle pour ensuite recharger leur contenu sur d'autres camions, de l'autre côté de ce poste, sont à l'origine de la crise humanitaire. Une étude financée par l'USAID avance que «l'Intifada, en septembre 2000, et les incursions militaires israéliennes qui l'ont suivie, ainsi que les bouclages et les couvre-feux, ont dévasté l'économie palestinienne et miné les systèmes sur lesquels la population palestinienne s'appuyait habituellement afin d'obtenir les produits (et services) de première nécessité, notamment la nourriture et les soins». La Banque mondiale a constaté que «la cause directe de la crise économique palestinienne est le bouclages de secteurs». Les restrictions aux déplacements se traduisent par l'effondrement quasi-total de l'économie : les Palestiniens sont nombreux à ne pas pouvoir se nourrir, ils ne peuvent plus se rendre sur leur lieu de travail, ni aller moissonner leurs champs ou simplement aller acheter de quoi manger. Pour de nombreux Palestiniens, cette incapacité à nourrir leur famille entraîne une perte de leur dignité humaine, souvent aggravée par les brutalités et les humiliations auxquelles ils sont soumis aux postes de contrôle»[363].

496. Le droit de gagner sa vie, le droit d'accès à l'alimentation, au soins médicaux et à l'instruction, ainsi que le droit à la vie de famille sont traités dans les paragraphes qui suivent.

b) *Le mur constitue une violation du droit de gagner sa vie*

497. L'impact du mur sur les communautés du Territoire palestinien occupé, en particulier son impact économique, a fait l'objet d'une série d'études, connues sous le nom de «Rapports de la Banque mondiale». Ces études sont commanditées, par l'intermédiaire du groupe de la politique humanitaire et des interventions d'urgence (HEPG), par la communauté internationale des bailleurs de fonds, comprenant la présidence de l'Union européenne, la Commission européenne, le Gouvernement norvégien, le Gouvernement des Etats-Unis, le bureau du coordonnateur spécial des Nations Unies dans les territoires occupés (UNSCO), la Banque mondiale et le Fonds monétaire international. Quatre de ces rapports, en date des mois de mai, juillet, septembre et novembre 2003, sont repris dans le dossier soumis par le Secrétaire général de l'ONU à la Cour[364]. Un autre rapport doit être publié d'ici au 31 janvier 2004, mais il n'est pas encore prêt. Ces rapports sont basés sur des études fouillées de la situation sur le terrain.

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[363] Nations Unies, doc. E/CN.4/2004/10/Add.2, 31 octobre 2003, par. 11.

[364] Dossier du Secrétaire général, n° 85-88.

498. L'image qui ressort de ces rapports est identique à celle qui émerge d'autres rapports soumis aux organes de l'ONU. Le mur sépare les propriétaires palestiniens des terres qu'ils possèdent et exploitent. Même si les propriétaires eux-mêmes ont accès à leurs terres, le travail des champs requiert presque toujours que d'autres travailleurs ou fournisseurs puissent y accéder également. Mais le mur les en empêche. Dans certains cas, le mur empêche également l'eau d'arriver jusqu'aux récoltes ou aux animaux. Ces différents éléments portent atteinte à la possibilité, pour les Palestiniens, de gagner leur vie.

499. L'accès aux champs pour la récolte, puis l'accès des récoltes aux marchés, sont des questions pour lesquelles le facteur temps est crucial. Les dommages causés par les retards sont parfois irréparables. Le rapporteur spécial sur le droit à l'alimentation relate que :

> «La plupart des trajets, qui n'auraient pris que quelques minutes en temps normal, prennent des heures, voire des journées entières. Les mouvements de biens sont contrôlés au moyen du système dit de «dos à dos», qui consiste à décharger tous les camions d'un côté d'un poste de contrôle pour ensuite recharger leur contenu sur d'autres camions, de l'autre côté de ce poste. Etant donné la multitude de postes de contrôle dans l'ensemble de la Cisjordanie et de Gaza, cette mesure augmente considérablement le coût du transport de la nourriture et des productions agricoles. Dans certains cas, il est refusé d'accorder un permis pour franchir les barrages et aller chercher de la nourriture ou transporter des produits agricoles, plusieurs journées durant, sans autre explication. A plusieurs postes de contrôle de Cisjordanie, le rapporteur spécial a vu des camions entiers chargés de fruits et de légumes qui étaient en train de pourrir au soleil.»

500. L'économie palestinienne est mise en pièces par les restrictions à la liberté de mouvement dans le Territoire palestinien occupé. Ces restrictions sont en passe d'être rendues permanentes du fait du mur construit à travers ce territoire. Elles affectent tous les secteurs de l'économie. Si les travailleurs ne peuvent gagner leur vie, ils ne pourront pas dépenser leur argent dans les boutiques qui emploient d'autres travailleurs, qui à leur tour dépendent du travail du secteur des services et d'autres secteurs de l'économie encore. Mais des effets de si vaste portée ne sont pas seulement indirects : *tous* les Palestiniens du Territoire palestinien occupé sont personnellement confrontés aux difficultés liées aux déplacements entre leur domicile et leur travail, et vice versa, ou aux déplacements en vue d'une recherche d'emploi, à moins qu'ils restent tout près de leur domicile.

501. Les Etats parties au pacte international relatifs aux droits économiques, sociaux et culturels, y compris Israël, sont tenus de reconnaître le droit de tout individu de gagner sa vie. L'article 6 du pacte dispose que «1. Les Etats parties au présent pacte reconnaissent le droit au travail, qui comprend le droit qu'a toute personne d'obtenir la possibilité de gagner sa vie par un travail librement choisi ou accepté, et prendront des mesures appropriées pour sauvegarder ce droit.»[365]

502. Chacun des Etats parties au pacte a l'obligation, en vertu de l'article 2 1), d'«agir … au maximum de ses ressources disponibles, en vue d'assurer progressivement le plein exercice des droits reconnus dans le présent pacte» et, en vertu de l'article 2 2), de garantir que les droits «seront exercés sans discrimination». Le Comité des Nations Unies sur les droits économiques, sociaux et culturels a précisé la nature des obligations découlant du pacte :

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[365] Les Etats parties au pacte sont autorisés à soumettre les droits figurant dans le pacte aux limitations établies par la loi, «dans la seule mesure compatible avec la nature de ces droits et exclusivement en vue de favoriser le bien-être général dans une société démocratique» : pacte international relatif aux doits économiques, sociaux et culturels, art. 4.

«1) si le pacte prévoit que l'exercice des droits devra être assuré progressivement et reconnaît les contraintes découlant du caractère limité des ressources disponibles, il impose aussi diverses obligations ayant un effet immédiat, dont deux sont particulièrement importantes pour comprendre la nature précise des obligations des Etats parties. L'une de ces obligations … est que les Etats parties «s'engagent à garantir» que les droits considérés «seront exercés sans discrimination»;

2) l'autre obligation réside dans le fait que, aux termes du paragraphe 1 de l'article 2, les Etats s'engagent à prendre des mesures, obligation qui, en elle-même, n'est pas nuancée ou limitée par d'autres considérations…;

9) la principale obligation de résultat dont il est fait état au paragraphe 1 de l'article 2, est d'agir «en vue d'assurer progressivement le plein exercice des droits reconnus» dans le pacte… Ainsi, cette clause impose l'obligation d'œuvrer aussi rapidement et aussi efficacement que possible pour atteindre cet objectif. En outre, toute mesure délibérément régressive dans ce domaine doit impérativement être examinée avec le plus grand soin, et pleinement justifiée par référence à la totalité des droits sur lesquels porte le pacte, et ce en faisant usage de toutes les ressources disponibles.»[366]

503. Le mur a imposé d'importantes limitations à la liberté de circulation à l'intérieur du Territoire palestinien occupé. La Palestine soutient qu'Israël, en sa qualité d'Etat partie au pacte, est tenu de ne pas adopter de lois, de réglements, ou de politiques régressives, qui iraient à l'encontre des objectifs du pacte, en entravant ou en empêchant l'exercice de droits garantis par le pacte. Lorsque des persones sont empêchées de gagner leur vie en raison de contraintes matérielles ou juridiques qui ne sont pas justifiées comme étant une reponse proportionnée à une menace à l'ordre public (ou aux droits d'autres individus), leur droit de gagner leur vie est violé.

c) ***Le mur constitue une violation des droits fondamentaux au bien-être***

504. Il existe plusieurs droits qui peuvent être regroupés sous l'appellation de «droit au bien-être» et qu'il est plus commode de considérer conjointement. Il s'agit du droit à l'alimentation et du droit à l'accès aux soins médicaux et à l'instruction. Ces droits seront traités successivement dans les paragraphes qui suivent.

505. Les entraves apportées par le mur à la production agricole et au commerce ont été relévées. Les entraves à la liberté de mouvement également, qui limitent ou excluent la possibilité de gagner sa vie afin d'acheter de quoi se nourrir, ou même à se déplacer dans les villes voisines pour s'approvisionner en nourriture. L'expropriation et confiscation des terres agricoles pour construire le mur constitue également une menace pour le droit à l'alimentation[367]. A des titres divers, le mur affecte gravement la possibilité pour le peuple palestinien de se nourrir.

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[366] Comité sur les droits économiques, sociaux et culturels, commentaire général n° 3, «La nature des obligations des Etats parties (art. 2, par. 1 du pacte)» (cinquième session, 1990), *Compilation des observations générales et des recommandations générales adoptés par les organes de surveillance de l'application des traités*, Nations Unies, doc. HRI/GEN/1/Rev.1-45 (1994).

[367] Rapport Ziegler, par. 16.

506. Un rapport soumis à la Commission des droits de l'homme de l'ONU le 31 octobre 2003 indique que plus de 22 % des enfants palestiniens âgés de moins de 5 ans souffrent maintenant de malnutrition et environ 15,6 % d'entre eux d'anémie aiguë. La consommation de nourriture a chuté de 25 à 30% *per capita*. Plus de la moitié des foyers palestiniens ne peuvent plus prendre qu'un seul repas par jour[368]. Le même rapport précise que :

> «La situation est particulièrement grave dans les deux cent quatre-vingt localités rurales qui n'ont pas de puits et ne sont pas raccordées au réseau de distribution d'eau. Leurs habitants sont donc entièrement tributaires de l'eau livrée par des camions-citernes municipaux ou privés, qui doit souvent être achetée à la compagnie israélienne de distribution d'eau, Mekorot. Le prix de l'eau acheminée par camions-citernes a augmenté de 80 % depuis septembre 2000, du fait du renchérissement du transport imputable aux barrages routiers. La plupart du temps, la qualité de l'eau acheminée par camions-citernes ne satisfait pas aux critères de l'Organisation mondiale de la santé...»[369]

507. Ces effets ne sont pas tous imputables au mur. Certains d'entre eux sont engendrés par des restrictions à la liberté de mouvement imposées ailleurs en Territoire palestinien occupé. Mais ils démontrent les conséquences des restrictions à la liberté de circulation, restrictions que le mur renforce sous la forme d'une structure qui consacre, de façon plus absolue et plus durable que toutes les mesures prises antérieurement par le Gouvernement israélien, la division du Territoire palestinien occupé en plusieurs enclaves.

508. Israël a l'obligation, en sa qualité de puissance occupante, de ravitailler en nourriture et en eau la population du Territoire palestinien occupé, y compris Jérusalem-Est, dans toute la mesure des moyens dont il dispose[370].

509. Le rapporteur spécial de l'ONU sur le droit à la nourriture a conclu qu'Israel violait cette obligation :

> «En tant que puissance occupante, le Gouvernement israélien a l'obligation de garantir le droit du peuple palestinien à l'alimentation. Or, le rapporteur spécial pense que les mesures prises dans les territoires palestiniens occupés par les forces d'occupation violent ce droit…
>
> Il doit être mis fin immédiatement à l'«emprisonnement» de fait de certaines communautés, comme celle de Qalqiliya, par la nouvelle clôture de sécurité/le mur de l'apartheid.»[371]

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[368] Rapport Ziegler sur le droit à l'alimentation, par. 9.

[369] Rapport Ziegler sur le droit à l'alimentation, par. 14.

[370] Quatrième convention de Genève, art. 55. cf., pacte international relatif aux droits économiques, sociaux et culturels, art. 11; déclaration universelle des droits de l'homme, art. 25.

[371] Rapport Ziegler sur le droit à l'alimentation, par. 58-59.

510. L'entrave que représente aussi le mur par rapport aux étudiants ou enseignants se rendant dans les établissements scolaires ou universitaires, sont mentionnés au chapitre 6 du présent exposé et dans de nombreux rapports accompagnant le dossier du Secrétaire général[372]. Ces entraves empêchent aussi les ambulances et les patients de parvenir aux hopitaux ou aux centres médicaux et restreignent l'accès du personnel médical aux patients[373].

511. Le mur viole ainsi le droit d'accès aux aliments et à l'eau, ainsi qu'aux soins médicaux. Ces droits devraient être l'apanage de tous les Palestiniens et ils sont garantis, en termes particulièrement catégoriques, aux enfants par la convention des droits de l'enfant de 1989 à laquelle Israël est partie[374].

512. Ces effet sont, en outre, incompatibles avec les obligations assumées par Israël en vertu du pacte international relatif aux droits économiques, sociaux et culturels[375]. Le droit au bien-être institué par ce pacte n'est cependant pas absolu, dans le sens où chaque Etat partie à la convention serait tenu de les garantir pleinement à chaque individu. Ces droits sont cependant progressifs et la commission de l'ONU sur les droits économiques, sociaux et culturels a précisé que chaque Etat partie a

> «10) l'obligation fondamentale minimum d'assurer, au moins, la satisfaction de l'essentiel de chacun des droits. Ainsi, un Etat partie dans lequel, par exemple, de nombreuses personnes manquent de l'essentiel, qu'il s'agisse de nourriture, de soins de santé primaires, de logement ou d'enseignement, est un Etat qui, à première vue, néglige les obligations qui lui incombent en vertu du pacte.»[376]

513. La Palestine affirme que les Etats parties sont tenus de ne pas adopter de lois, de politiques ou de pratiques régressives qui seraient contraires aux objectifs du pacte. Elle affirme aussi que lorsque des individus sont privés d'accès à l'alimentation, à l'instruction et aux soins médicaux, du fait de contraintes matérielles ou juridiques qui ne peuvent être justifiées en tant que réponses proportionnées à une menace à l'ordre public (ou aux droits d'un autre individu), l'on peut conclure à la violation de leur droit d'accès à l'alimentation, l'instruction et la santé. Le comportement d'Israël constitue donc une violation de ces droits.

d) *Le mur constitue une violation du droit à la vie de famille*

514. Par comparaison avec les droits à la liberté de mouvement, à gagner sa vie et à la protection sociale, le droit à la famille pourrait sembler moins important. Tel n'est pourtant pas le cas. La violation du droit à la vie de famille est susceptible de détruire des communautés, au niveau de la famille, d'abord, puis de la ville ou du village et enfin de la nation.

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[372] Voir dossiers n°s 55-56 et 85-88 accompagnant le rapport du Secrétaire général.

[373] Voir les rapports reproduits au volume 2 de l'annexe, en tant qu'annexes 1-6, 9 et 14 et en tant que pièces n°s 56 et 85-88 du dossier accompagnant le rapport du Secrétaire général.

[374] Voir en particulier les art. 24, 27 et 28.

[375] Pacte international relatif aux droits économiques, sociaux et culturels, art. 12-13. Cf., Déclaration universelle des droits de l'homme, art. 26.

[376] Comité des droits économiques, sociaux et culturels, observation générale n° 3, «La nature des obligations des Etats parties (art. 2, par. 1 du pacte)» (cinquième session, 1990), *Compilation des observations générales et des recommandations générales adoptées par les organes de surveillance de l'application des traités des droits de l'homme*, Nations Unies, doc. HRI/GEN/1/Rev.1-45 (1994).

515. Le droit à la vie de famille est proclamé dans de nombreux instruments internationaux. Par exemple, l'article 17 du pacte international relatif aux droits civils et politique stipule que : «1. Nul ne sera l'objet d'immixtions arbitraires ou illégales dans sa vie privée, sa famille, son domicile ou sa correspondance, ni d'atteintes illégales à son honneur et à sa réputation.»[377]

516. Le mur rend difficile ou même impossible pour les familles, qui sont la cellule d'encadrement social de base en Territoire palestinien occupé, de continuer à fonctionner. Il empêche de visiter les parents ou les enfants malades ou infirmes pour leur prodiguer des soins, ou de faire garder les enfants, pour les parents qui travaillent. Il entrave les contacts sociaux, le mariage et la création de familles. La violation du droit à la vie de famille est en train de provoquer l'érosion de la base même de la société palestinienne dans le Territoire palestinien occupé.

e) ***Le mur constitue une forme de châtiment collectif***

517. Le mur frappe de plein fouet les intérêts palestiniens. Il porte atteinte au droit à la dignité de chaque Palestinien[378]. Le sentiment d'impuissance résultant du fait d'être privé de sa dignité dans sa propre patrie, surtout lorsqu'il existe une discrimination juridique ouverte en faveur des colonies de peuplement illicites, est l'une des humiliations les plus dures à porter pour les Palestiniens qui y sont soumis par la force.

518. Ces contraintes sont imposées non seulement aux auteurs présumés ou réels d'attentats ou d'attaques, mais à toute la population non israélienne du Territoire palestinien occupé. Le mur y rend l'existence précaire et incertaine. Il provoque des bouleversements dans la vie des gens : les déplacements, même sur de courtes distances, sont conditionnés par les humeurs des jeunes soldats armés qui gardent les points de contrôle.

519. Toutes les violations qui ont été résumées ci-dessus affectent la population palestinienne du Territoire palestinien occupé dans son ensemble. Ces contraintes ne sont pas limitées à des malfaiteurs identifiés, et n'ont même pas ces derniers pour cible. Ce sont des mesures collectives d'intimidation et de répression de la population, incompatibles avec l'article 33 de la quatrième convention de Genève, qui stipule que «[l]es peines collectives, de même que toute mesure d'intimidation ou de terrorisme, sont interdites » et avec l'article 75 du premier protocole additionel qui, sur ce point au moins, reflète le droit international coutumier[379].

519. Le rapporteur spécial de la Commission des droits de l'homme est arrivé aux mêmes conclusions en ce qui concerne les restrictions à la liberté de circulation en Territoire palestinien occupé :

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[377] Le droit est également garanti par l'article 16 de la convention relative aux droits de l'enfant, cf., art. 23 du pacte, qui stipule que «la famille, unité fondamentale de la société et milieu naturel pour la croissance et le bien-être de tous ses membres et en particulier des enfants, doit recevoir la protection et l'assistance dont elle a besoin pour pouvoir jouer pleinement son rôle dans la communauté».

[378] L'article premier de la Déclaration universelle des droits de l'homme proclame que : «Tous les êtres humains naissent libres et égaux en dignité et en droits. Ils sont doués de raison et de conscience et doivent agir les uns envers les autres dans un esprit de fraternité.» Le préambule de la Déclaration dispose que «la reconnaissance de la dignité inhérente à tous les membres de la famille humaine et de leurs droits égaux et inaliénables constitue le fondement de la liberté, de la justice et de la paix dans le monde».

[379] Voir Dieter Fleck (éd.), *Handbook of Humanitarian Law in Armed Conflicts*, (OUP, 1995), sect. 507. Cf., *the US Judge Advocate General's School, US Army, Operational Law Handbook*, JA 422 at 18-2 (1977) : «Les Etats-Unis considèrent [entre autres l'article 75 du premier protocole additionel] comme de droit international coutumier.»

> «ces postes divisent la rive occidentale en une mosaïque de cantons : depuis mars 2002, des permis sont exigés pour se rendre d'un district dans un autre… Ces mesures n'ont pourtant pas empêché des militants de circuler entre différentes villes ou régions ou entre la Palestine et Israël. Elles n'ont pas pour objet de protéger les colonies de peuplements qui le sont déjà bien par les Forces de défense israéliennes. En fait, les postes de contrôle internes servent à limiter les échanges commerciaux à l'intérieur des territoires palestiniens occupés et restreignent les possibilités de circulation de toute la population de village à village ou de ville à ville. Elles doivent donc être considérées comme une forme de châtiment collectif.»[380]

f) Le mur constitue une violation du droit de propriété des Palestiniens

521. Les violations du droit international évoquées jusqu'ici étaient d'ordre général, en ce sens qu'elles affectent l'ensemble de la population du Territoire palestinien occupé, y compris Jérusalem-Est. Mais il existe une autre catégorie de violations affectant plus spécifiquement certains Palestiniens : les violations du droit de propriété.

522. Le chapitre 6 du présent exposé décrit la saisie et la destruction de biens qu'a entraînées — et que continue à entraîner — la construction du mur. Ces saisies et ces destructions sont la conséquence, non seulement de la construction du mur lui-même mais également de l'aménagement de la zone de sécurité adjacente et de l'installation de structures d'appui.

523. Le droit à la jouissance paisible de sa propriété est l'un des droits les plus fermement consacrés dans la jurisprudence internationale relative au droit international des droits de l'homme[381]. Il est reconnu, entre autres, à l'article 17 de la Déclaration universelle des droits de l'homme[382]. En droit international humanitaire, ce droit est protégé dans le contexte spécifique d'une occupation militaire, par les disposition relatives à la réquisition[383] et à la destruction de propriété[384].

524. La destruction pure et simple de propriétés par Israël, comme dans le cas des champs et vergers qui sont rasés au bulldozer, constitue une action illégale, dès lors qu'il s'agit là d'une destruction arbitraire et sauvage non requise par des opérations militaires et qui viole donc l'article 53 de la quatrième convention de Genève.

525. Dans les cas de saisie ou réquisition, par Israël, de biens palestiniens, la violation est d'une autre nature. L'illicéité résulte de deux vices qui affectent la réquisition. Le premier, comme indiqué ci-dessus, tient au fait que l'action n'est pas justifiée pour satisfaire aux besoins de l'armée israélienne et est incompatible avec l'article 52 du règlement de La Haye de 1907. Cette disposition met en œuvre un principe plus général, lui-même énoncé à l'article 55 du même règlement, selon lequel la puissance occupante n'est que l'administrateur et l'usufruitier du territoire occupé.

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[380] Rapport Dugard (2003), par. 19. Voir également le rapport de J. Dugard du 29 août 2002 et l'addendum du 16 septembre 2002, ainsi que son rapport du 17 décembre 2002, reproduits dans les annexes 3, 4 et 5, volume 2 de l'annexe accompagnant le présent exposé écrit.

[381] Enoncé, *inter alia*, dans le premier protocole additionnel à la convention européenne des droits de l'homme.

[382] «*Article 17.* 1) Toute personne, aussi bien seule qu'en collectivité, a droit à la propriété. 2) Nul ne peut être arbitrairement privé de sa propriété.»

[383] Règlement de La Haye de 1907, art. 52. Voir ci-dessus.

[384] Quatrième convention de Genève, art. 53. Voir ci-dessus.

526. Le second est que la réquisition est bien souvent illicite car viciée sur le plan de la procédure : les propriétaires ne reçoivent pas nécessairement d'avis de réquisition. Ces avis sont parfois simplement accrochés sur des troncs d'arbre ou des poteaux se trouvant sur leur propriété. La procédure d'«appel» implique des formalités lourdes et coûteuses et il a été rapporté récemment que tous les appels dans les cas de réquisition de terres (il en existe des centaines) avaient été rejetés par le comité des appels militaires. Il en va de même pour les recours formés devant la Cour supérieure israélienne[385]. La procédure de saisie viole donc les droits procéduraux fondamentaux, bien établis en droit international. Elle permet de s'emparer, de manière illicite, de la propriété privée et n'offre aucun recours *effectif* aux individus dont les droits sont ainsi violés.

527. En outre, comme cela a déjà été indiqué, le mur, en empêchant les propriétaires d'user de leur propriété, constitue une autre catégorie de violation du droit de propriété. Parmi les situations évoquées dans d'autres passages du présent exposé, on peut retenir le cas des propriétaires qui se voient forcés de vendre leurs propriétés agricoles parce qu'ils ne peuvent plus s'y rendre assez souvent pour les entretenir et s'occuper de leurs récoltes[386].

g) *Le mur constitue une violation du droit du peuple palestinien à disposer de lui-même*

528. Le mur constitue une violation du droit du peuple palestinien à disposer de lui-même, consacré par l'article 1 des deux pactes. Cette question est détaillée dans le chapitre suivant du présent exposé, mais il convient d'en faire mention ici car le comité des droits économiques, sociaux et culturels de l'ONU l'a expressément reliée aux stipulations du pacte. Dans ses conclusions au sujet d'un rapport soumis par Israël, le Comité a déclaré demander

> «39. Instamment à l'Etat partie de respecter le droit à l'autodétermination inscrit au paragraphe 2 de l'article premier du pacte selon lequel «en aucun cas, un peuple ne pourra être privé de ses propres moyens de subsistance». Le bouclage des territoires occupés entrave la circulation des personnes et des biens, interdisant l'accès aux marchés extérieurs ainsi qu'aux revenus tirés de l'emploi et aux moyens de subsistance. Le comité demande au gouvernement de s'acquitter pleinement des obligations qui lui incombent en vertu du pacte et de donner la priorité absolue aux mesures destinées à assurer le passage en toute sécurité, aux points de contrôle, du personnel médical palestinien et des Palestiniens allant se faire soigner, ainsi que la libre circulation des denrées alimentaires et des approvisionnements essentiels, le déplacement protégé des étudiants et enseignants se rendant dans leurs établissements d'enseignement ou en revenant, et la réunification des familles dont les membres se trouvent séparés du fait des bouclages.»[387]

5) Le mur ne se justifie pas par le droit de légitime défense

529. Finalement, en ce qui concerne le *jus ad bellum*, Israël aurait tenté de justifier le mur en invoquant son droit de légitime défense. Cet argument est dépourvu de fondement.

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[385] Les détails figurent en annexe 1 : «Impact de la barrière de séparation israélienne sur les communautés affectées de Cisjordanie : rapport de suivi du groupe chargé de la politique humanitaire et des interventions d'urgence (HEPG) et du Comité de coordination de l'aide locale», 30 septembre 2003. Ce rapport est la pièce 87 du dossier accompagnant le rapport du Secrétaire général de l'ONU.

[386] Rapport B'Tselem 2003, annexe 13, volume 2 de l'annexe accompagnant le présent exposé écrit.

[387] E/C.12/1/Add.27, 4 décembre 1998, par. 39.

530. Tout d'abord, le droit de légitime défense, dans le sens qui lui a été donné depuis fort longtemps, ne s'applique pas à des circonstances semblables à celles qui prévalent dans le Territoire palestinien occupé, y compris Jérusalem-Est. Les conditions permettant l'exercice du droit de légitime défense sont bien connues en droit international. Il faut qu'il y ait eu agression armée contre l'Etat et que cette agression ne puisse être prévenue qu'en recourant à la force. Les mesures qui peuvent être prises au titre de la légitime défense sont, en outre, strictement limitées par le double critère de la nécessité et de la proportionnalité. Il ne faut utiliser que le minimum de force nécessaire mais, même dans ce cas, la force doit être proportionnée au dommage que l'on cherche à prévenir[388].

531. Or, la construction du mur ne satisfait pratiquement aucun de ces critères. La violence, en Territoire palestinien occupé, n'est pas d'une intensité ou d'une nature susceptibles de la rendre équivalente à une «agression armée» contre Israël, au sens requis pour l'exercice du droit de légitime défense[389]. En effet, celui-ci, en droit international, ne peut être invoqué pour répondre à des actes criminels individuels, qui appellent des mesures policières ou judiciaires, et non militaires.

532. En outre, le droit de légitime défense justifie l'emploi de la force dans le cas où l'agression est en train d'être commise — une agression palpable, présente. Une partie de la doctrine élargit ce droit au cas où une agression armée imminente a commencé. Jamais à une situation où l'usage de la force aurait un caractère prophylactique, préventif et ne correspondrait à aucune agression en cours ou imminente. Les Etats n'ont pas de droit général à user de force hors de leur territoire pour empêcher la commission de crimes sur ce territoire.

533. Le droit de légitime défense est, en outre, soumis au principe de la proportionnalité. La force utilisée doit être proportionnelle au dommage présent ou imminent. Or, comme il a été montré, le mur ne constitue pas une réponse proportionnée aux attaques teroristes.

534. L'argument est boiteux à un autre titre encore. Le droit des Etats d'utiliser la force est aménagé et réglementé par le droit de la guerre, le *jus in bello*. La quatrième convention de Genève permet l'emploi de la force contre la population civile, mais dans des limites très strictes. Les droits de la puissance occupante ne vont pas au-delà. En d'autres termes, il n'est pas permis à un Etat d'utiliser toutes ses prérogatives en vertu de la quatrième convention de Genève et du droit de la guerre, puis de décider que celles-ci sont insuffisantes, pour invoquer le droit plus général de légitime défense, qui relève du *jus ad bellum*, afin d'échapper aux contraintes du droit international humanitaire.

6) Remarques finales

535. Le présent chapitre avait pour but d'identifier les violations spécifiques du droit international humanitaire et du droit international des droits de l'homme qui résultent de la construction et de la gestion du mur en Territoire palestinien occupé, y compris Jérusalem-Est. L'analyse juridique sera poursuivie dans le chapitre suivant, qui traite de la question de la violation du droit du peuple palestinien à disposer de lui-même, en vertu du droit international.

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[388] *Plates-formes pétrolières*, *C.I.J. Recueil 2003*, par. 43, 51, 57 et 73-75.

[389] *Ibid*.

CHAPITRE 10
LES VIOLATIONS DU DROIT A L'AUTODETERMINATION DU PEUPLE PALESTINIEN

536. Le droit à l'autodétermination du peuple palestinien a été clairement reconnu par la communauté internationale et par les Nations Unies et la construction du mur par Israël sur le Territoire palestinien occupé constitue une violation grave de ce droit.

1) Le droit à l'autodétermination du peuple palestinien tel que reconnu par la communauté internationale et par les Nations Unies

537. L'existence du principe de l'égalité de droits des peuples et de leur droit à disposer d'eux-mêmes n'est plus contestée en droit international. Le principe a été clairement établi dans la déclaration relative aux principes de droit international touchant les relations amicales et la coopération entre les Etats conformément à la Charte des Nations Unies (résolution GA Res 2625(XXV) du 24 octobre 1970), qui énonce notamment que :

> «En vertu du principe de l'égalité de droits des peuples et de leur droit à disposer d'eux-mêmes, principe consacré par la Charte des Nations Unies, tous les peuples ont le droit de déterminer leur statut politique, en toute liberté et sans ingérence extérieure, et de poursuivre leur développement économique, social et culturel, et tout Etat a le devoir de respecter ce droit conformément aux dispositions de la Charte.»

538. La Cour a reconnu ce droit, entre autres, dans son jugement du 30 juin 1995 :

> «Le principe du droit des peuples à disposer d'eux-mêmes a été reconnu par la Charte des Nations Unies et dans la jurisprudence de la Cour (voir les *Conséquences juridiques pour les Etats de la présence continue de l'Afrique du Sud en Namibie (Sud-Ouest africain) nonobstant la résolution 276 (1970) du Conseil de sécurité, avis consultatif, C.I.J. Recueil 1971*, p. 31-32, par. 52-53; *Sahara occidental, avis consultatif, C.I.J. Recueil 1975*, p. 31-33, par. 54-59); il s'agit là d'un des principes essentiels du droit international contemporain.»[390]

539. L'application de ce principe à la Palestine n'est plus contestée. Le principe tire son origine de la résolution 181 (II) de l'Assemblée générale des Nations Unies adoptée le 29 novembre 1947, qui présentait un plan de partage de la Palestine en deux Etats, un Etat arabe et un Etat juif, assorti d'une union économique et accordait à Jérusalem le statut de *corpus separatum*. Il a, toutefois, fallu un certain temps avant que les droits du peuple palestinien soient pleinement reconnus par les Nations Unies.

540. Dans sa résolution 2535 B (XXIV) du 10 décembre 1969, l'Assemblée générale a : «1. Réaffirm[é] les droits inaliénables du peuple palestinien.» Au cours des années qui ont suivi, l'Assemblée générale a constamment réaffirmé que les Palestiniens formaient un peuple et elle a précisé leurs droits. Ainsi, dans la résolution 2649 (XXV) du 30 novembre 1970, l'Assemblée :

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[390] *Timor oriental (Portugal c. Australie), arrêt, C.I.J. Recueil 1995*, p. 102, par. 29.

«2. reconnaît le droit qu'ont les peuples assujettis à une domination coloniale et étrangère, dans l'exercice légitime de leur droit à l'autodétermination, de solliciter et de recevoir tous types d'assistance morale et matérielle, conformément aux résolutions de l'Organisation des Nations Unies et à l'esprit de la Charte de Nations Unies;

3. demande à tous les gouvernements qui refusent le droit à l'autodétermination à des peuples assujettis à une domination coloniale et étrangère de reconnaître et de respecter ce droit conformément aux instruments internationaux pertinents et aux principes et à l'esprit de la Charte;

4. considère que l'acquisition et la conservation d'un territoire contrairement au droit à l'autodétermination du peuple de ce territoire est inadmissible et constitue une violation flagrante de la Charte;

5. condamne les gouvernements qui refusent le droit à l'autodétermination aux peuples auxquels on a reconnu ce droit, notamment les peuples d'Afrique australe et de Palestine.»

541. La résolution 2672 C (XXV) du 8 décembre 1970, «reconnaît que le peuple de Palestine doit pouvoir jouir de l'égalité de droits, et exercer son droit à disposer de lui-même, conformément à la Charte des Nations Unies». Un autre pas a été franchi avec la résolution 3236 (XXIX) du 22 novembre 1974, dans laquelle l'Assemblée générale : «1. [r]éaffirme les droits inaliénables du peuple palestinien en Palestine, y compris : *a*) le droit à l'autodétermination sans ingérence extérieure; *b*) le droit à l'indépendance et à la souveraineté nationales»[391].

542. A son tour, la résolution ES 7/2 de l'Assemblée générale (juillet 1980) mentionne expressément parmi les droits inaliénables du peuple palestinien : «*b*) Le droit de créer son propre Etat souverain et indépendant.»

543. Les résolutions récentes adoptées par l'Assemblée générale expriment un appui sans réserve au droit à l'autodétermination du peuple palestinien. Par exemple, dans la résolution 58/163 du 22 décembre 2003, qui a été adoptée par 169 voix contre 5 (Israël, Iles Marshall, Micronésie, Palaos et les Etats-Unis d'Amérique), sans abstention, l'Assemblée générale :

«Affirmant le droit de tous les Etats de la région de vivre en paix à l'intérieur de frontières sûres et internationalement reconnues,

1. Réaffirme le droit du peuple palestinien à l'autodétermination, y compris son droit à un Etat palestinien indépendant.»

544. Le Conseil de sécurité a été moins rapide que l'Assemblée générale. Ainsi, la résolution 242 (1967) du 22 novembre 1967, confirmée par la résolution 338 (1973) du 22 octobre 1973, affirme les principes suivants :

[391] Autres résolutions affirmant les droits inaliénables du peuple palestinien :A/RES/33/24, 29 novembre 1978; A/RES/34/44, 23 novembre 1979; A/RES/37/43, 3 décembre 1982; A/RES/38/17, 22 novembre 1983.

«i) retrait des forces armées israéliennes des territoires occupés lors du récent conflit;

ii) respect et reconnaissance de la souveraineté, de l'intégrité territoriale et de l'indépendance politique de chaque Etat de la région et de leur droit de vivre en paix à l'intérieur de frontières sûres et reconnues à l'abri de menaces ou d'actes de force».

545. Dans la résolution 1397 (2002) du 12 mars 2002, le Conseil déclarait encore plus clairement que la Palestine faisait partie des Etats de la région qui avaient le droit de vivre à l'intérieur de frontières sûres : «*Attaché* à la vision d'une région dans laquelle deux Etats, Israël et la Palestine, vivent côte à côte, à l'intérieur de frontière reconnues et sûres.»

546. Plus récemment, la résolution 1515 (2003) du 19 novembre 2003 citait ce paragraphe et ajoutait :

«Le Conseil :

1. approuve la feuille de route axée sur les résultats en vue d'un règlement permanent du conflit israélo-palestinien prévoyant deux Etats, établie par le Quatuor (S/2003/529);

2. demande aux parties de s'acquitter des obligations qui leur incombent en vertu de la feuille de route, en coopération avec le Quatuor, et de concrétiser la vision de deux Etats vivant côte à côte dans la paix et la sécurité.»

547. Il est incontestable que, lorsqu'on fait référence au droit à l'autodétermination du peuple palestinien, cela vise un peuple dans le cadre d'un territoire donné : en l'occurrence, le Territoire palestinien occupé, y compris Jérusalem-Est; autrement dit, tous les territoires palestiniens qui ont été occupés par Israël en 1967.

2) L'édification du mur constitue une atteinte grave au droit à l'autodétermination du peuple palestinien

548. L'édification du mur constitue une atteinte grave au droit à l'autodétermination du peuple palestinien. Comme les développements ci-dessus le démontrent, l'édification du mur touche l'exercice du droit à l'autodétermination du peuple palestinien sous les aspects suivants :

a) dans la mesure où le mur se situe au-delà de la Ligne verte et est construit en Territoire palestinien occupé, y compris Jérusalem-Est et ses alentours, il ampute l'assiette territoriale sur laquelle le peuple palestinien est fondé à exercer son droit à l'autodétermination. Dans la même mesure, le mur contrevient également au principe juridique qui interdit l'acquisition de territoire par le recours à la force;

b) le tracé du mur est conçu pour modifier la composition démographique du Territoire palestinien occupé, y compris Jérusalem-Est, par le renforcement des colonies de peuplement israéliennes situées en Territoire palestinien occupé et par l'emploi de moyens destinés à faciliter leur expansion – au mépris du fait que ces colonies sont elles-mêmes contraires au droit international;

c) par la création d'enclaves palestiniennes, par la discrimination dont il rend victime la population palestinienne par rapport aux colons israéliens, et par la création de conditions économiques insupportables, le mur a pour effet manifeste et prévisible le déplacement forcé de

la population palestinienne vers des zones de plus en plus limitées, considérées comme sûres et vivables pour les Palestiniens. Le mur vise à réduire et à morceler l'assiette territoriale sur laquelle le peuple palestinien est fondé à exercer son droit à l'autodétermination. Cette politique a pour but d'établir des secteurs palestiniens non contigus assimilables aux bantoustans, ce qu'interdit le droit international;

d) le mur porte atteinte au droit du peuple palestinien à la souveraineté permanente sur ses ressources naturelles en Territoire palestinien occupé, y compris à Jérusalem-Est, et détruit le tissu économique et social de la vie du peuple palestinien;

e) le mur compromet la praticabilité d'un Etat viable pour le peuple palestinien et porte ainsi atteinte aux futures négociations basées sur le principe des «deux Etats».

a) ***Le mur ampute l'assiette territoriale sur laquelle le peuple palestinien est fondé à exercer son droit à l'autodétermination et contrevient au principe interdisant l'acquisition de territoire par le recours à la force***

549. Le rapporteur spécial de la Commission des droits de l'homme, M. John Dugard, fait bien ressortir, dans son rapport à la Commission sur la situation des droits de l'homme dans les territoires palestiniens occupés par Israël, le lien entre le droit à l'autodétermination du peuple palestinien sur l'ensemble du Territoire palestinien occupé, y compris Jérusalem-Est, et la construction du mur :

> «15. Le droit à l'autodétermination est étroitement lié à la notion de souveraineté territoriale. Un peuple ne peut exercer son droit à l'autodétermination qu'à l'intérieur d'un territoire donné. L'amputation du territoire palestinien par la construction du mur porte gravement atteinte au droit à l'autodétermination du peuple palestinien dans la mesure où elle réduit substantiellement la taille du territoire (déjà petite) sur lequel ce droit peut être exercé.»[392]

550. Parallèlement, l'édification du mur a pour effet d'incorporer au territoire d'Israël une partie importante du territoire palestinien, et constitue, par conséquent, une violation du principe qui interdit l'acquisition de territoire par le recours à la force ou par annexion. Ici aussi, le rapport de M. John Dugard décrit clairement la situation :

> «14. Cette mesure[le mur] a manifestement pour but de créer une situation de fait sur le terrain. Il n'existe peut-être pas d'acte d'annexion, comme ce fut le cas pour Jérusalem-Est et les hauteurs du Golan. Pourtant l'effet est le même : il s'agit d'une annexion. En droit international, un autre terme est employé pour désigner ce type d'annexion, à savoir celui de conquête. La conquête, ou l'acquisition de territoire par la force, a été proscrite en vertu du pacte Briand-Kellogg de 1928 et du paragraphe 4 de l'article 2 de la Charte des Nations Unies. L'acquisition de territoire par la force est interdite, qu'elle résulte d'une agression ou d'un acte de légitime défense. La déclaration relative aux principes du droit international touchant les relations amicales et la coopération entre les Etats conformément à la Charte des Nations Unies (résolution 2625 (XXV) de l'Assemblée générale, en date du 24 octobre 1970, annexe) dispose que «le territoire d'un Etat ne peut faire l'objet d'une acquisition par un autre Etat à la suite du recours à la menace ou à l'emploi de la force. Nulle acquisition territoriale obtenue par la menace ou l'emploi de la force ne sera reconnue comme légale.» Cette interdiction a été confirmée par la résolution 242 (1967) du Conseil de sécurité et les accords d'Oslo, en vertu desquels le statut

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[392] Rapport Dugard (2003), par. 15.

[394] *Ibid.*, par. 14.

de la Cisjordanie et de Gaza ne peut pas être modifié tant que les négociations sur le statut permanent n'auront pas abouti. La convention de Genève relative à la protection des personnes civiles en temps de guerre (quatrième convention de Genève) dispose que les personnes protégées qui se trouvent dans un territoire occupé ne peuvent être privées du bénéfice de la convention … «en raison de l'annexion de tout ou partie du territoire occupé» (art. 47).»[394]

551. Il est incontestable que l'Assemblée générale des Nations Unies souscrit à ce point de vue, puisque sa résolution ES-10/13 du 21 octobre 2003 réaffirme dans son préambule «le principe de l'inadmissibilité de l'acquisition de territoire par le recours à la force».

552. Plusieurs délégations en sont arrivées aux mêmes conclusions dans les discours qu'elles ont prononcés devant les organes des Nations Unies :

— France :

«Le caractère permanent du mur fait que les territoires entre le mur et la Ligne verte se trouveront de facto incorporés par Israël et sous son contrôle. Or, le caractère inadmissible de l'acquisition des territoires par la force est un principe fondamental de la résolution 242 (1967) du Conseil de sécurité sur laquelle est basé le processus de paix.»[395]

— Jordanie :

Nous condamnons la construction du mur de séparation qui consolide l'occupation israélienne du territoire palestinien, empiète sur ce territoire et impose une situation *de facto* s'agissant de l'avenir de l'Etat palestinien, dans la mesure où il pénètre très profondément sur le territoire palestinien et ne respecte pas la Ligne verte de juin 1967. L'achèvement du mur implique l'annexion, par Israël, de plus de 10 % des terres de la bande de Gaza et l'enfermement de plus de 95 000 citoyens palestiniens entre le mur et la Ligne verte de juin 1967.»[396]

— Malaisie, parlant au nom de l'Organisation de la Conférence islamique :

«La construction du mur constitue en elle-même une violation flagrante du droit international et du droit humanitaire international, car ce mur vise à modifier radicalement l'intégrité territoriale de la Cisjordanie et à annexer de fait les territoires palestiniens occupés.»[397]

— République islamique d'Iran, pour le compte de l'Organisation de la Conférence islamique :

«La construction par le régime israélien d'un mur de séparation en plein Territoire palestinien occupé, combinée à la poursuite des implantations de colonies de peuplement juives sur le même territoire occupé, est une violation supplémentaire du droit international et des droits fondamentaux du peuple palestinien. C'est une

[395] Nations Unies, doc. S/PV.4841, p. 19.

[396] S/PV.4841, p. 33.

[397] S/PV.4841, p. 44.

nouvelle manière pour Israël d'atteindre son objectif de nier aux Palestiniens leurs droits nationaux naturels, ce qui, en retour, a un impact grave sur tous les aspects de la question palestinienne.»[398]

553. De nombreux Etats ont également fait des déclarations dans lesquelles ils expriment une position similaire : par exemple, Cuba[399], la Guinée[400], la Jamahiriya arabe libyenne[401], le Pakistan[402], la République arabe syrienne[403], l'Afrique du Sud[404], le Pakistan[405] et le Zimbabwe[406].

554. Le Quatuor composé des Etats-Unis, de la Fédération de Russie, de l'Union européenne et des Nations Unies a exprimé la même opinion dans sa déclaration du 26 septembre 2003 :

«Les membres du Quatuor réaffirment que, conformément à la feuille de route, les activités d'implantation de colonie doivent s'arrêter et relèvent avec une vive préoccupation le tracé réalisé et proposé de la clôture qu'Israël construit en Cisjordanie, d'autant plus qu'elle entraîne la confiscation de terres palestiniennes,

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[398] Session extraordinaire d'urgence de l'Assemblée générale, 21e séance, 20 octobre 2003, A/ES-10/PV.21, p. 14.

[399] «La construction du mur de séparation, l'expansion des colonies de peuplement et la construction de routes de sécurité entre les implantations et Israël constituent une expansion territoriale claire au détriment du peuple palestinien et de son droit inaliénable à l'autodétermination et à établir son propre Etat indépendant et souverain.» (S/PV.4841, p. 32.)

[400] «A l'évidence, le mur de séparation, dont le tracé empiète gravement et en profondeur sur les terres palestiniennes, constitue un moyen pernicieux de poursuivre et d'étendre la colonisation des territoires occupés et de priver le peuple palestinien d'un attribut territorial essentiel à l'exercice de sa pleine souveraineté.» (S/PV.4841, p. 18.)

[401] «Le Conseil de sécurité se réunit aujourd'hui pour discuter des activités illégales qu'Israël poursuit dans les territoires palestiniens occupés, et en particulier de la construction du mur de séparation, présentée comme une mesure de sécurité mais qui s'inscrit en fait dans le plan israélien d'annexion à terme de nouveaux territoires par la force des armes.» (S/PV.4841, p. 41.)

[402] «Il est impératif que nous reconnaissions que le mur de séparation représente une annexion illégale du Territoire palestinien occupé.» (S/PV.4841, p. 24.)

[403] «La construction du mur expansionniste n'est rien que la continuation des activités colonialistes israéliennes… Il constitue également une violation du ferme principe de droit international interdisant l'acquisition de territoires appartenant à autrui par la force.» (Session extraordinaire d'urgence de l'Assemblée générale, 21e séance, 20 octobre 2003, A/ES-10/PV.21, p. 10.)

[404] «Nous partageons l'avis de M. Dugard [le rapporteur spécial de la Commission des droits de l'homme sur la situation des droits de l'homme dans les territoires palestiniens occupés par Israël depuis 1967] quand il affirme que nous devrions éviter les euphémismes politiques et au contraire, dire en termes précis et juridiquement exacts que «ce que nous constatons à l'heure actuelle en Cisjordanie constitue de manière claire et visible une annexion territoriale menée en prétextant des raisons de sécurité».» (S/PV.4841, p. 38-39.)

[405] «Le mur de séparation est construit en violation flagrante du droit international et des engagements pris par Israël au titre des accords bilatéraux et internationaux. Le mur ne suit pas ce que l'on appelle la «Ligne verte» et en fait, il pénètre profondément dans les terres palestiniennes. Partant, il est contraire au principe fondamental du droit international, qui considère comme illégale l'acquisition de territoire par la force.» (Session extraordinaire d'urgence de l'Assemblée générale, 21e séance, 20 octobre 2003, A/ES-10/PV.21, p. 19.)

[406] «La construction du mur, qui ne tient pas compte des préoccupations légitimes du peuple palestinien, a engendré la confiscation de terres palestiniennes, la destruction des moyens de subsistance de la population et l'annexion de ses terres. On a coupé les gens de leurs terres, de leur lieu de travail, de leur école, de leur centre de soins et d'autres services sociaux.» (Session extraordinaire d'urgence de l'Assemblée générale, 21e séance, 20 octobre 2003, A/ES-10/PV.21, p. 22.)

bloque la circulation des personnes et des biens et nuit à la confiance des Palestiniens dans le processus de la feuille de route, du fait qu'elle semble préjuger des frontières finales du futur Etat palestinien.»[408]

b) ***Le tracé du mur est conçu pour modifier la composition démographique du Territoire palestinien occupé, y compris Jérusalem-Est, par le renforcement des colonies de peuplement israéliennes situées en Territoire palestinien occupé et par l'emploi de moyens destinés à faciliter leur expansion — au mépris du fait que ces colonies sont elles-mêmes contraires au droit international***

555. Il a été montré aux chapitres 4 et 6, et dans les rapports des Nations Unies annexés, que le mur protège les colonies israéliennes implantées dans les territoires palestiniens occupés. Le lien entre la construction du mur et la protection et l'expansion des colonies est encore une fois clairement établi par le rapporteur spécial de la Commission des droits de l'homme, M. John Dugard, dans son rapport à la Commission sur la situation des droits de l'homme dans les territoires palestiniens occupés par Israël : «Tout comme les colonies qu'il vise à protéger, ce mur a manifestement pour but de créer une situation de fait sur le terrain.»[410]

556. Le discours prononcé à la conférence Herzliya le 18 décembre 2003, par le premier ministre Sharon semble confirmer, même si c'est de façon détournée, que le mur a bien pour but d'intégrer aux territoires d'Israël une partie importante des colonies israéliennes situées entre le mur et la Ligne verte, conformément au «plan de désengagement unilatéral» d'Israël :

> «Le plan de désengagement s'accompagnera du redéploiement de l'armée israélienne selon de nouvelles lignes de sécurité et d'une modification du déploiement des colonies, dans le but de réduire, dans toute la mesure du possible, le nombre des Israéliens vivant au cœur de la population palestinienne. Nous traçerons des lignes de sécurité provisoires et l'Armée sera déployée le long de ces lignes. Le déploiement de l'armée, la barrière de sécurité et d'autres obstacles physiques assureront la sécurité.»[411]

557. Le fait que le mur soit principalement conçu pour renforcer les colonies de peuplement d'Israël établies dans les territoires palestiniens occupés, y compris Jérusalem-Est, ressort des déclarations de nombreuses délégations. Par exemple[412] :

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[408] Déclaration du Quatuor, New York, 26 septembre 2003, annexe à la lettre datée du 6 octobre 2003 envoyée au président du Conseil de sécurité par le Secrétaire général, S/2003/951.

[410] Rapport Dugard (2003), par. 14.

[411] *In* P.M. Speeches, via http://www.first.gov.il/first/francais/Html/homepage.htm.

[412] Voir également les déclarations faites par les délégations suivantes :

— République arabe syrienne :

> «Israël compte faire passer le mur autour des grandes colonies établies sur les territoires palestiniens occupés, où vivent plus de 200 000 colons. Non content de violer la quatrième convention de Genève en établissant ces colonies, Israël cherche de surcroît à les intégrer à son territoire… Ces pratiques sont, en réalité, des crimes de guerre au sens de la quatrième convention de Genève et de son protocole I. Il faut donc dissuader Israël de poursuivre sur cette voie. Il ne faut en aucun cas conférer une légitimité politique ou juridique à de telles pratiques.» (S/PV.4841, p. 13.)

— Jamahiriya arabe libyenne :

— Union européenne : conclusions de la présidence, Conseil européen de Copenhague, 12 et 13 décembre 2002 :

> «A cet égard, le Conseil européen est très préoccupé par la poursuite des activités illégales de colonisation, qui menacent de rendre matériellement inapplicable la solution fondée sur la coexistence de deux Etats. Le développement des colonies et les activités de constructions qui l'accompagnent, dont on possède de nombreux témoignages, émanant notamment de l'observatoire de l'Union européenne pour les colonies de peuplement, viole le droit international, envenime une situation déjà instable et conforte les Palestiniens dans leur crainte qu'Israël n'a pas vraiment l'intention de mettre un terme à l'occupation. C'est là un obstacle à la paix. Le Conseil européen engage le Gouvernement israélien à abandonner sa politique de colonisation en commençant par déclarer, avec effet immédiat, le gel complet et effectif de toutes les activités de colonisation. Il demande l'arrêt de la confiscation de terres pour construire la clôture dite de sécurité…»[413]

— France : «Il s'agit d'une structure fixe qui va modifier durablement les données géographiques et démographiques. Cette construction ne peut qu'encourager le développement des colonies et aggraver le problème déjà très sérieux posé par celles-ci.»[415]

> «La construction de ce mur est également une tentative que fait Israël pour confirmer son annexion de Jérusalem-Est. En outre, la puissance occupante israélienne poursuit l'implantation de colonies de peuplements illégales sur les territoires palestiniens occupés, y compris Jérusalem-Est, démontrant ainsi ses véritables intentions expansionnistes et le manque de sérieux des efforts qu'elle déploie au plan international en vue du règlement pacifique de ce problème.» (S/PV.4841, p. 41.)

— Arabie saoudite :

> «Ce plan a pour objet d'effacer la Ligne verte et de l'abolir complètement dans plusieurs zones afin d'annexer les colonies de peuplement israéliennes, en créant d'étroits couloirs entre les villes et les zones palestiniennes peuplées que le Gouvernement israélien considère comme des cantons séparés qui seront contrôlés par Israël et permettront aux Palestiniens de diriger leurs affaires internes afin qu'Israël soit libéré du fardeau que représenteront les populations étrangères.» (S/PV.4841, p. 39.)

— Afrique du Sud :

> «La construction accélérée d'un mur de séparation, ainsi que l'expansion des implantations illégales sur des terres palestiniennes, constituent des actes d'annexion incompatibles avec les obligations internationalement acceptées par Israël dans le cadre de la feuille de route du Quatuor.» (Session extraordinaire d'urgence de l'Assemblée générale, 21e séance, 20 octobre 2003, A/ES-10/PV.21, p. 13.)

[413] Déclaration du Conseil de l'Union européenne sur le Moyen-Orient, conclusions de la présidence, Conseil européen de Copenhague, 12 et 13 décembre 2002, annexe III, doc./02/15, p. 14, http://europa.eu.int/futurum/documents/other/oth121202_fr.pdf. Voir également la déclaration de la présidence, pour le compte de l'Union européenne, sur la situation au Moyen-Orient, 11 septembre 2003 :

> «L'Union européenne demande instamment aux deux parties de demeurer fermement attachées à la nécessité d'un dialogue permanent et de la mise en œuvre de la feuille de route et, à cet égard, de prendre les mesures suivantes… En ce qui concerne le Gouvernement israélien … le gel de toutes les activités liées à l'implantation de colonies de peuplement et de la construction du mur de sécurité selon un tracé qui comprend la recherche d'une solution politique au conflit.» (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.)

[414] S/PV.4841, p. 24.

[415] S/PV.4841, p. 20.

— Fédération de Russie :

> «Les implantations de colonies de peuplement illégales sur les territoires palestiniens et la construction du soi-disant mur de séparation, qui provoque le morcellement des terres palestiniennes, doivent cesser immédiatement. Ces actes vont à l'encontre de la création de deux Etats indépendants, la Palestine et Israël.»[416]

— Allemagne :

> «C'est pourquoi l'Allemagne exhorte le Gouvernement israélien à mettre fin à ses activités de peuplement et à arrêter la construction de la barrière dite de sécurité. Tout en reconnaissant les besoins d'Israël en matière de sécurité, nous estimons que cette barrière nuit à la mise en oeuvre de la feuille de route.»[417]

— Chine : «Israël doit arrêter la construction du mur de séparation et cesser d'agrandir les colonies de peuplement.»[419]

— République islamique d'Iran, au nom de l'Organisation de la Conférence islamique :

> «La politique de construction du mur vient compléter l'expansion des colonies illégales de peuplement juives dans le territoire occupé. Les implantations illégales en Cisjordanie, effectuées contre la volonté de la communauté internationale, seront les premières et principales bénéficiaires du mur. Dans le même temps, les implantations juives illégales se multiplient au fur et à mesure que se construit ce mur qui véhicule le racisme.»[420]

558. La situation particulière qui prévaut dans la zone située entre la Ligne verte et le mur ne doit pas faire oublier le fait que la politique israélienne à l'égard de ses colonies — où qu'elles puissent être situées dans le Territoire palestinien occupé — est déjà par elle-même une violation du droit international, comme le reconnaissent de nombreuses sources :

i) Résolutions du Conseil de sécurité

559. De nombreuses résolutions du Conseil de sécurité ont reconnu l'illégalité de la politique israélienne relative à ses colonies. Par exemple :

— Résolution 446 (1979) du 22 mars 1979 :

> «Le Conseil de sécurité,
>
> 1. considère que la politique et les pratiques israéliennes consistant à établir des colonies de peuplement dans les territoires palestiniens et autres territoires arabes occupés depuis 1967 n'ont aucune validité en droit et font gravement obstacle à l'instauration d'une paix générale, juste et durable au Moyen-Orient;
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> . . . . . .

[416] S/PV.4841, p. 16.

[417] S/PV.4841, p. 21.

[419] S/PV.4841, p. 21.

[420] Session extraordinaire d'urgence de l'Assemblée générale, 21e séance, 20 octobre 2003, A/ES-10/PV.21, p. 15.

3. demande une fois encore à Israël, en tant que puissance occupante, de respecter scrupuleusement la convention de Genève relative à la protection des personnes civiles en temps de guerre, du 12 août 1949, de rapporter les mesures qui ont déjà été prises et de s'abstenir de toute mesure qui modifierait le statut juridique et le caractère géographique des territoires arabes occupés depuis 1967, y compris Jérusalem, et influerait sensiblement sur leur composition démographique, et, en particulier, de ne pas transférer des éléments de sa propre population civile dans les territoires arabes occupés.»

— Résolution 465 (1980), du 1er mars 1980 :

«Le Conseil de sécurité,

5. considère que toutes les mesures prises par Israël pour modifier le caractère physique, la composition démographique, la structure institutionnelle ou le statut des territoires palestiniens et des autres territoires arabes occupés depuis 1967, y compris Jérusalem, ou de toute partie de ceux-ci n'ont aucune validité en droit et que la politique et les pratiques d'Israël consistant à installer des éléments de sa population et de nouveaux immigrants dans ces territoires constituent une violation flagrante de la convention de Genève relative à la protection des personnes civiles en temps de guerre et font en outre gravement obstacle à l'instauration d'une paix d'ensemble, juste et durable au Moyen-Orient;

6. déplore vivement qu'Israël persiste et s'obstine dans ces politiques et pratiques et demande au Gouvernement et au peuple israéliens de rapporter ces mesures, de démanteler les colonies de peuplement existantes et. en particulier, de cesser d'urgence d'établir, édifier et planifier des colonies de peuplement dans les territoires arabes occupés depuis 1967, y compris Jérusalem;

7 demande à tous les Etats de ne fournir à Israël aucune assistance qui serait utilisée spécifiquement pour les colonies de peuplement des territoires occupés.»

ii) Résolutions de l'Assemblée générale

560. De nombreuses résolutions de l'Assemblée générale ont reconnu l'illégalité de la politique israélienne en matière de colonies. Par exemple, la résolution 32/5 du 28 octobre 1977 énonce :

«L'Assemblée générale,

Exprimant sa profonde préoccupation et sa vive inquiétude devant la gravité de la situation actuelle dans les territoires arabes occupés, résultant du maintien de l'occupation israélienne et des mesures et décisions prises par le Gouvernement israélien, en tant que puissance occupante, en vue de modifier le statut juridique, le caractère géographique et la composition démographique de ces territoires,

Considérant que la convention de Genève relative à la protection des personnes civiles en temps de guerre, du 12 août 1949, est applicable à tous les territoires arabes occupés depuis le 5 juin 1967,

1. constate que toutes les mesures et décisions de ce genre prises par Israël dans les territoires palestiniens et autres territoires arabes occupés depuis 1967 n'ont pas de validité juridique et constituent une grave obstruction des efforts visant à instaurer une paix juste et durable au Moyen-Orient;

2. déplore vivement le fait qu'Israël persiste à appliquer ces mesures, en particulier la création de colonies dans les territoires arabes occupés;

3. demande à Israël de respecter strictement ses obligations internationales conformément aux principes du droit international et aux dispositions de la convention de Genève relative à la protection des personnes civiles en temps de guerre, du 12 août 1949;

4. demande une fois de plus au Gouvernement israélien, en tant que puissance occupante, de cesser immédiatement de prendre toute mesure qui aurait pour effet de modifier le statut juridique, le caractère géographique ou la composition démographique des territoires arabes occupés depuis 1967, y compris Jérusalem.»

561. La résolution la plus récente de l'Assemblée générale sur ce point, la résolution A/58/98 du 9 décembre 2003, est particulièrement pertinente parce qu'elle souligne le lien qui existe entre, d'une part, l'implantation de colonies et l'annexion de territoires et, d'autre part, le caractère illégal de ces activités dans l'ensemble du Territoire palestinien occupé, y compris Jérusalem-Est, des deux côtés du mur :

«Les colonies de peuplement israéliennes dans le Territoire palestinien occupé, y compris Jérusalem-Est, et le Golan syrien occupé

L'Assemblée générale,

. . . . . .

Réaffirmant que la convention de Genève relative à la protection des personnes civiles en temps de guerre, du 12 août 1949, est applicable au Territoire palestinien occupé, y compris Jérusalem-Est, et au Golan syrien occupé,

. . . . . .

Accueillant avec satisfaction la présentation aux parties par le Quatuor de la feuille de route pour une solution permanente du conflit israélo-palestinien par la création de deux Etats, et notant la demande de blocage de toutes les activités d'implantation de colonies de peuplement formulée dans ce document,

Consciente que les activités de peuplement israéliennes se sont traduites, notamment, par le transfert dans les territoires occupés de ressortissants de la puissance occupante, la confiscation de terres, l'exploitation de ressources naturelles et d'autres actions illégales dirigées contre la population civile palestinienne,

Considérant les effets préjudiciables que les politiques, décisions et activités israéliennes en matière de colonies de peuplement ont sur les efforts visant à instaurer la paix au Moyen-Orient,

Se déclarant gravement préoccupée par la poursuite des activités de peuplement israéliennes en violation du droit international humanitaire, des résolutions de l'Organisation des Nations Unies sur la question et des accords conclus entre les parties, notamment par la construction et l'expansion en cours des colonies de Djabal Abou Ghounaym et de Ras El-Amoud à Jérusalem-Est occupée et alentour,

Se déclarant gravement préoccupée également par la construction d'un mur par Israël, dans le Territoire palestinien occupé, y compris à Jérusalem-Est et alentour, et se déclarant particulièrement préoccupée par le tracé de ce mur, qui s'écarte de la

ligne d'armistice de 1949 et risque de préjuger des négociations futures et de rendre la solution prévoyant deux Etats matériellement impossible à appliquer, et qui entraînerait une aggravation de la situation humanitaire difficile du peuple palestinien,

Se redisant fermement opposée aux activités d'implantation de colonies de peuplement dans le Territoire palestinien occupé, y compris Jérusalem-Est, et à toutes activités entraînant la confiscation de terres, la désorganisation des moyens d'existence de personnes protégées et l'annexion *de facto* de terres…

1. Réaffirme que les colonies de peuplement israéliennes établies dans le territoire palestinien, y compris Jérusalem-Est, et le Golan syrien occupé sont illégales et constituent un obstacle à la paix et au développement économique et social;

2. Demande à Israël de reconnaître l'applicabilité de jure de la convention de Genève relative à la protection des personnes civiles en temps de guerre, du 12 août 1949, au Territoire palestinien occupé, y compris Jérusalem-Est, et au Golan syrien occupé, et d'en respecter scrupuleusement les dispositions, en particulier l'article 49;

3. Exige une fois de plus l'arrêt complet de toutes les activités de peuplement israéliennes dans le Territoire palestinien occupé, y compris Jérusalem-Est, et le Golan syrien occupé;

4. Exige qu'Israël arrête la construction du mur dans le Territoire palestinien occupé, y compris à Jérusalem-Est et alentour, qui s'écarte de la ligne d'armistice de 1949 et est en contravention des dispositions pertinentes du droit international, et revienne sur ce projet…

5. Invite les Etats parties à la convention de Genève relative à la protection des personnes civiles en temps de guerre d'assurer le respect de ses dispositions dans tous les territoires arabes occupés par Israël depuis 1967, y compris Jérusalem.»

Cette résolution a été adoptée à une majorité très large, 156 voix pour, 6 voix contre (Israël, Nauru, Palaos, Iles Marshall, Micronésie et les Etats-Unis d'Amérique), 13 abstentions et 16 non votants.

iii) La déclaration des hautes parties contractantes à la quatrième convention de Genève

562. Dans la déclaration des hautes parties contractantes de la quatrième convention de Genève, du 5 décembre 2001, les parties : «réaffirment l'illégalité des colonies établies dans ces territoires [à savoir le Territoire palestinien occupé, y compris Jérusalem-Est] et de leur expansion»[421].

563. Cette position se fonde sur l'article 49 de la quatrième convention de Genève qui énonce catégoriquement «La Puissance occupante ne pourra procéder à la déportation ou au transfert d'une partie de sa propre population civile dans le territoire occupé par elle.» Le statut de Rome de la Cour pénale internationale, en vigueur depuis le 1er juillet 2002, inclus dans la définition des crimes de guerre relevant de la compétence de la Cour pénale internationale le «transfert, direct ou indirect, par une puissance occupante d'une partie de sa population civile, dans le territoire qu'elle occupe» (article 8 2) *b*) vii)).

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[421] Par. 12, doc. 67 du dossier du Secrétaire général.

c) ***Par la création d'enclaves palestiniennes, par la discrimination et l'humiliation de la population palestinienne, et par la création de conditions économiques insupportables, le mur a pour effet manifeste et prévisible de contraindre la population palestinienne à migrer vers des zones de plus en plus limitées, considérées comme sûres et vivables pour les Palestiniens. Le mur vise à réduire et à morceler le territoire sur lequel le peuple palestinien est fondé à exercer son droit à l'autodétermination. Cette politique a pour but d'établir des secteurs palestiniens non contigus assimilables aux bantoustans***

564. Dans les chapitres précédents, en particulier dans les chapitres 4 et 6, il a été décrit comment la construction du mur entraînait de nombreux effets préjudiciables :

— le mur crée des enclaves qui séparent artificiellement la population palestinienne de son propre environnement; le mur entoure ces populations avec des colonies de peuplement israéliennes hostiles et des routes réservées aux colons israéliens; il établit des secteurs non contigus assimilables aux bantoustans de l'ancien régime d'apartheid d'Afrique du Sud. Le terme bantoustan pourrait sembler impropre, puisqu'un de ses aspects était l'attribution fictive d'une «souveraineté» à chacune de ses composantes, mais le but recherché est le même. Progressivement se met en place un processus au terme duquel serait créé un «Etat palestinien» limité aux villes et villages palestiniens, composé d'enclaves séparées, sans souveraineté et sans ressources auto-suffisantes, et où la population palestinienne ne pourrait circuler librement, ces enclaves étant par ailleurs entourées de zones intersticielles où s'exercerait la souveraineté israélienne;

— le mur implique des discriminations vis-à-vis de la population palestinienne et favorise les intérêts des colons israéliens illégaux, notamment pour les raisons suivantes;

— il porte atteinte au droit de la population à la liberté et à la dignité;

— son édification s'accompagne d'arrestations arbitraires et d'emprisonnements illégaux;

— il crée des conditions de vie visant à contraindre la population palestinienne à migrer;

— il s'accompagne de mesures qui empêchent la population palestinienne de participer à la vie politique sociale, économique et culturelle, il restreint le droit des palestiniens de travailler et d'avoir accès à l'éducation et aux services de santé, il limite leurs droits de circuler librement à l'intérieur et à l'extérieur de leur pays ainsi que leur droit de choisir librement leur lieu de résidence;

— il entraîne l'expropriation de terres et de biens appartenant aux palestiniens, la destruction de leurs maisons, de leurs vergers et autres propriétés.

565. L'article 1 de la convention internationale sur l'élimination de toutes les formes de discrimination raciale du 7 mars 1966, à laquelle Israël est Partie, définit l'expression «discrimination raciale» de la façon suivante :

> «toute distinction, exclusion, restriction ou préférence fondée sur la race, la couleur, l'ascendance ou l'origine nationale ou ethnique, qui a pour but ou pour effet de détruire ou de compromettre la reconnaissance, la jouissance ou l'exercice, dans des conditions d'égalité, des droits de l'homme et des libertés fondamentales dans les domaines politique, économique, social et culturel ou dans tout autre domaine de la vie publique».

566. Dans l'affaire concernant les *Conséquences juridiques pour les Etats de la présence continue de l'Afrique du Sud en Namibie (Sud-Ouest africain) nonobstant la résolution 276 (1970) du Conseil de sécurité,* la Cour a défini l'apartheid de la façon suivante :

> «130. Ainsi que l'a reconnu l'Afrique du Sud, la mise en œuvre de cette politique [d'apartheid] nécessite des mesures de contrôle, adoptées et appliquées officiellement dans le territoire par le pouvoir coercitif de l'ancien mandataire. Ces mesures ont pour objet de limiter, d'exclure ou de restreindre la participation des membres des groupes de population autochtones à certains types d'activité, à certains domaines d'étude ou de formation et à certains travaux ou emplois, et d'imposer aux autochtones des restrictions ou des prohibitions en matière de résidence et de déplacement dans de vastes régions du territoire.
>
> 131. En vertu de la Charte des Nations Unies, l'ancien mandataire s'était engagé à observer et à respecter, dans un territoire ayant un statut international, les droits de l'homme et les libertés fondamentales pour tous, sans distinction de race. Le fait d'établir et d'imposer, au contraire, des distinctions, exclusions, restrictions et limitations qui sont uniquement fondées sur la race, la couleur, l'ascendance ou l'origine nationale ou ethnique, et qui constituent un déni des droits fondamentaux de la personne humaine, est une violation flagrante des buts et principes de la Charte.»[423]

567. La ressemblance avec la situation qui prévaut dans le Territoire palestinien occupé est frappante. Le rapport Ziegler présenté à la Commission des droits de l'homme des Nations Unies qualifie la politique d'Israël de la façon suivante :

> «3. Une stratégie de «bantoustanisation».
>
> 18. Pour de nombreux analystes israéliens et palestiniens, la politique de confiscation des terres est sous-tendue par une une stratégie qui vise à fragmenter le territoire et à isoler progressivement les uns des autres des groupes de population palestiniens, aboutissant à la création de «bantoustans». Michael Warshawski y voit une politique délibérée de «bantoustanisation» des territoires palestiniens occupés. Un analyste israélien de renom, Akiva Eldar, a écrit que le premier ministre israélien Ariel Sharon, s'était explicitement référé à la notion de «bantoustan» «en expliquant longuement que le modèle des bantoustans était la solution la plus appropriée au conflit». Historiquement, le terme «bantoustan» désigne des territoires séparés qui étaient attribués à la population noire par le Gouvernement sud africain au temps de l'apartheid. La création de «bantoustans» aurait pour effet de couper totalement les Palestiniens de leurs terres et de leurs ressources en eau et de les empêcher d'édifier une nation palestinienne capable d'assurer à sa population l'exercice du droit à l'alimentation.
>
> 19. La construction de la clôture de sécurité ou mur de l'apartheid est considérée comme la manifestation concrète de cette «bantoustanisation», de même que l'extension des colonies, l'implantation de nouvelles colonies et la construction de routes réservées aux colons, qui découpent la Cisjordanie et la bande de Gaza en unités territoriales qui ne sont plus vraiment contiguës. Si l'on regarde les plans

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[423] *Conséquences juridiques pour les Etats de la présence continue de Afrique du Sud en Namibie (Sud-Ouest africain) nonobstant la résolution 276 (1970) du Conseil de sécurité, avis consultatif, C.I.J. Recueil 1971*, p. 57, par. 130-131.

> détaillés de construction de la clôture de sécurité ou mur de l'apartheid et des colonies, cartes qui ont été fournies au rapporteur spécial tant par les Autorités israéliennes et palestiniennes que par les organisations non gouvernementales, on constate que cette stratégie de bantoustanisation est bien en cours d'application. Selon Jeff Halper, coordonnateur du comité israélien contre la démolition des habitations, «la feuille de route est propre à rendre espoir puisqu'elle mentionne expressément la «fin de l'occupation», mais elle a été adoptée au moment où «Israël met la touche finale à la campagne qu'il mène depuis trente-cinq ans pour rendre l'occupation irréversible.»»[424]

568. Ainsi qu'expliqué au chapitre 6, le mur entraîne, pour plusieurs raisons, un transfert de la population palestinienne, en particulier de celle qui se trouve dans la zone fermée, et il confine la population palestinienne dans différentes enclaves. Il bouleverse l'unité démographique et l'intégrité territoriale du Territoire palestinien occupé, y compris Jérusalem-Est. Il morcelle ce territoire, et il perpétue et renforce la colonisation du territoire par Israël. Comme cela a été indiqué au chapitre 9, ces effets du mur constituent des violations flagrantes du droit international.

i) Enclaves

569. Un bon nombre de délégations auprès de l'ONU ont dénoncé le caractère illicite de la politique d'Israël[425] de création d'enclaves. Par exemple :

— France : «Le tracé [du mur] porte aussi gravement atteinte à la viabilité du futur Etat palestinien, qui risquerait de se retrouver réduit à une collection d'enclaves isolées.»[426]

— Afghanistan, en qualité de vice-président du comité pour l'exercice des droits inaliénables du peuple palestinien :

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[424] Rapport Ziegler, par. 18-19. Notes de bas de page omises, doc. 56 du dossier du Secrétaire général.

[425] Voir également les déclarations faites par les délégations suivantes :

— Pakistan :

> «Il est impossible de mettre en place un Etat palestinien viable, tel que l'envisage la feuille de route du Quatuor dans les bantoustans qui seront créés par le mur de séparation. La paix qu'Israël recherche ne sera pas le résultat de la poursuite de l'occupation illégale des territoires palestiniens et de l'assujettissement d'une population palestinienne hostile et pleine de ressentiment.» (S/PV.4841, p. 24.)

— République arabe syrienne :

> «Premièrement, son tracé est loin de correspondre à celui des frontières des territoires occupés depuis 1967 et pénètre loin dans les territoires palestiniens. Cela révèle le véritable dessein du Gouvernement israélien : créer une situation *de facto* lui permettant d'imposer les frontières de son choix et de confiner le peuple palestinien dans de vastes Bantoustans pour les isoler.» (S/PV.4841, p. 13.)

— Guinée : «Il est, de surcroît, l'expression d'une politique avérée de «bantoustanisation» dont le but est de créer des enclaves non viables déniant toute liberté de circulation au peuple palestinien et réservant les terres les plus fertiles et les plus productrices à l'occupant.». (S/PV.4841, p. 18.)

[426] S/PV.4181, p. 19.

> «En août dernier, les autorités israéliennes ont publié des arrêtés d'expropriation en vue d'ériger la barrière dite «enveloppe de Jérusalem». Quelque 50 000 Palestiniens pourraient ainsi être relégués dans des enclaves situées du côté israélien. Certes, le mur sépare les Israéliens des Palestiniens. Mais, et c'est là une tragédie, il sépare aussi les Palestiniens des Palestiniens.»[427]

ii) Une ségrégation assimilable à une bantoustanisation

570. Certaines délégations de l'ONU ont expressément décrit la politique d'Israël en termes de création de bantoustans. Par exemple :

— Organisation de la Conférence islamique : «Le mur perpétue la «bantoustanisation» de la Cisjordanie, qui est divisée en centaines de petites entités dépendantes non autonomes et qui s'apparentent plus à des prisons extérieures entourées de points de contrôle militaires israéliens et de colonies de peuplement.»[428]

— Cuba :

> «La construction de nouvelles divisions physiques sur le Territoire palestinien occupé éloigne encore davantage les chances d'un règlement définitif et juste de ce conflit. La «bantoustanisation» du Territoire palestinien occupé crée de nouveaux changements sur le terrain, qui compliquent davantage les possibles négociations futures sur le statut permanent et interdit la possibilité d'établir un Etat palestinien contigu sur tout son territoire.»[429]

iii) Discrimination

571. Ici aussi, de nombreuses délégations ont critiqué l'aspect discriminatoire de la politique d'Israël relative à la construction du mur dans le Territoire palestinien occupé, y compris Jérusalem-Est. Par exemple :

— Royaume-Uni :

> «En particulier, nous sommes alarmés par la délivrance d'un ordre militaire par Israël déclarant la terre entre la clôture et la Ligne verte zone fermée dans laquelle les résidents palestiniens doivent déposer une demande de permis pour rester dans leurs propres villages.»[431]

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[427] Session extraordinaire d'urgence de l'Assemblée générale, 21e séance, 20 octobre 2003, A/ES-10/PV.21, p. 11.

[428] S/PV.4841, p. 45.

[429] S/PV.4841, p. 32.

[431] S/PV.4841, p. 14.

— Arabie saoudite :

> «Il ressort donc clairement de tout cela que l'objectif de ce mur raciste n'est pas d'assurer la sécurité, comme le prétend insolemment Israël, mais de confisquer davantage de terres et d'humilier et d'opprimer le peuple palestinien en créant des conditions leur rendant la vie difficile ou impossible dans leur propre pays et sur leur propre terre.»[432]

iv) Transfert de population

572. Plusieurs délégations ont insisté sur le fait que la construction du mur entraîne un déplacement illégal de populations. Par exemple :

— La Malaisie, au nom du mouvement des pays non alignés :

> «Le mur constitue une violation grave de la quatrième convention de Genève, car il implique une annexion *de facto* et illégale de vastes parties du territoire palestinien et de ses ressources, le transfert d'un grand nombre de civils palestiniens et le non-respect des droits de l'homme à l'égard des palestiniens, ce qui entraîne des conséquences humanitaires de plus en plus catastrophiques pour un peuple déjà déshérité.»[433]

d) *Le mur viole le droit du peuple palestinien à la souveraineté permanente sur les ressources naturelles du Territoire palestinien occupé, y compris de Jérusalem-Est, et détruit le tissu économique et social de la vie du peuple palestinien*

573. Dans les chapitres précédents, en particulier aux chapitres 4 et 6, il a été expliqué que la construction du mur avait un effet préjudiciable sur l'environnement, qu'il privait la population palestinienne de ses terres et de son travail, et qu'il bloquait son accès aux ressources en eau et en empêchait la gestion. Le mur détruit les bases de l'économie palestinienne locale. Il a des répercussions socio-économiques très graves.

574. Outre le caractère illicite de ce comportement, au regard des dispositions pertinentes du droit humanitaire et des droits fondamentaux de l'homme, comme cela est expliqué au chapitre 9, il y a lieu de souligner le fait que ces politiques d'Israël portent également atteinte à la souveraineté permanente du peuple palestinien sur ses ressources naturelles.

575. Depuis 1973, l'Assemblée générale attire l'attention sur ce problème général qui prévaut en Territoire palestinien occupé. Ainsi, la résolution 3175 (XXVII) «Souveraineté permanente sur les ressources naturelles dans les territoires arabes occupés» du 17 décembre 1973, énonçe notamment que :

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[432] S/PV.4841, p. 39.

[433] Session extraordinaire d'urgence de l'Assemblée générale, 21e séance, 20 octobre 2003, A/ES-10/PV.21, p. 12. Voir également la déclaration prononcée devant l'Assemblée générale le 8 décembre, A/ES-10/PV.23, p. 11.

[434] Session extraordinaire d'urgence de l'Assemblée générale, 21e séance, 20 octobre 2003, A/ES-10/PV.21, p. 14.

«L'Assemblée générale,

Ayant présents à l'esprit les principes pertinent du droit international et les dispositions des conventions et règlements internationaux, en particulier la quatrième convention de Genève concernant les obligations et les responsabilités de la puissance occupante,

Rappelant ses précédentes résolutions relatives à la souveraineté permanente sur les ressources naturelles, y compris la résolution 1803 (XVII) du 18 décembre 1962, dans laquelle elle a proclamé le droit des peuples et des nations à la souveraineté permanente sur leurs richesses et leurs ressources naturelles…

Rappelant également sa résolution 3005 (XXVII) du 15 décembre 1972, dans laquelle elle a affirmé le principe de la souveraineté de la population des territoires occupés sur ses richesses et ressources nationales et demandé à tous les Etats, organisations internationales et institutions spécialisées de n'accorder ni reconnaissance, ni concours, ni aucune aide à toutes mesures prises par la puissance occupante pour exploiter les ressources des territoires occupés ou pour modifier d'une façon quelconque la composition démographique, le caractère géographique ou l'organisation institutionnelle de ces territoires,

1. affirme le droit des Etats et des peuples arabes dont les territoires sont sous occupation étrangère à la souveraineté permanente sur toutes leurs ressources naturelles;

2. réaffirme que toutes les mesures prises par Israël pour exploiter les ressources humaines et naturelles des territoires arabes occupés sont illégales et demande à Israël de mettre immédiatement un terme à ces mesures;

3. affirme le droit des Etats et des peuples arabes dont les territoires sont sous occupation israélienne à la restitution des ressources naturelles, des territoires occupés et à une pleine indemnisation pour l'exploitation, la spoliation et les dommages dont elles ont fait l'objet, ainsi que pour l'exploitation et la manipulation des ressources humaines de ces territoires;

4. déclare que les principes ci-dessus s'appliquent à tous les Etats, territoires et peuples soumis à l'occupation étrangère, au régime colonial ou à l'apartheid.»

576. Plus récemment, l'Assemblée générale a réaffirmé dans la résolution A/57/269 du 20 décembre 2002 concernant «La souveraineté permanente du peuple palestinien dans le Territoire palestinien occupé, y compris Jérusalem-Est, et de la population arabe dans le Golan syrien occupé sur leurs ressources naturelles» : «les droits inaliénables du peuple palestinien et de la population du Golan syrien occupé sur leurs ressources naturelles, en ce compris la terre et l'eau».

577. La récente résolution A/58/493 du 18 décembre 2003, qui porte le même titre, traite à la fois de la situation générale créée par Israël dans le Territoire palestinien occupé, y compris Jérusalem-Est, et du régime spécial créé par la construction du mur. Elle énonce ce qui suit :

«L'Assemblée générale,

Réaffirmant le principe de la souveraineté permanente des populations sous occupation étrangère sur leurs ressources naturelles;

Guidée par les principes énoncés dans la Charte des Nations Unies, affirmant l'inadmissibilité de l'acquisition de territoire par la force, et rappelant les résolutions pertinentes du Conseil de sécurité, notamment les résolutions 242 (1967) du 22 novembre 1967, 465 (1980) du 1er mars 1980 et 497 (1981) du 17 décembre 1981;

Réaffirmant que la convention de Genève relative à la protection des personnes civiles en temps de guerre, du 12 août 1949, est applicable au Territoire palestinien occupé, y compris Jérusalem-Est, et aux autres territoires arabes occupés par Israël depuis 1967;

Se déclarant préoccupée par le fait qu'Israël, puissance occupante, exploite les ressources naturelles du Territoire palestinien occupé, y compris Jérusalem-Est, et des autres territoires arabes occupés par Israël depuis 1967;

Se déclarant également préoccupée par les destructions considérables par Israël, puissance occupante, au cours de la période récente, de terres agricoles et de vergers dans le Territoire palestinien occupé, notamment l'arrachage d'un grand nombre d'oliviers;

Consciente des répercussions néfastes des colonies de peuplement israéliennes sur le ressources naturelles du territoire palestinien et des autres territoires arabes, en particulier la confiscation de terres et le détournement forcé de ressources en eau, et des conséquences économiques et sociales dramatiques qu'elles entraînent;

Consciente également des répercussions néfastes sur les ressources naturelles du territoire palestinien du mur qu'Israël construit à l'intérieur du Territoire palestinien occupé, en particulier à Jérusalem-Est, et alentours, et de ses effets graves sur les conditions économiques et sociales du peuple palestinien,

1. réaffirme les droits inaliénables du peuple palestinien et de la population du Golan syrien occupé sur leurs ressources naturelles, notamment leurs terres et leurs eaux;

2. demande à Israël, puissance occupante, de ne pas exploiter, détruire, épuiser ni mettre en péril les ressources naturelles du Territoire palestinien occupé, y compris Jérusalem-Est, et du Golan syrien occupé;

3. reconnaît le droit du peuple palestinien de demander réparation en cas d'exploitation, de destruction, d'épuisement ou de mise en péril de ses ressources naturelles, et exprime l'espoir que cette question sera traitée dans le cadre des négociations sur le statut définitif entre les parties israéliennes et palestiniennes…»

578. Là encore, plusieurs délégations ont souligné la gravité des atteintes portées à ce droit souverain et inaliénable du peuple palestinien. Par exemple :

— Déclaration de l'Union européenne, quatrième session du conseil d'association UE — Israël, Bruxelles —, 17 et 18 novembre 2003 :

«L'UE est particulièrement préoccupée par le tracé de la clôture dite de sécurité en Cisjordanie occupée et à Jérusalem-Est. Si, comme cela est envisagé, ce tracé devait s'écarter de celui de la «Ligne verte», cela risque de préjuger les négociations à venir et de rendre matériellement impossible à mettre en oeuvre la solution fondée sur la coexistence de deux Etats. Il aggraverait encore la situation humanitaire et économique des Palestiniens. Des milliers de Palestiniens se trouvant à l'ouest de la

clôture seront privés de services de première nécessité disponibles en Cisjordanie; quant aux Palestiniens qui se trouvent à l'est de la clôture, ils perdront accès à des terres et à des ressources en eau.»[435]

— Ligue des pays arabes : «Les répercussions économiques de la construction du mur équivalent à la destruction presque totale de l'économie palestinienne; à l'isolement du peuple palestinien dans des îlots encerclés…»[436]

— Afghanistan, en qualité de vice-président du comité pour l'exercice des droits inaliénables du peuple palestinien :

> «La partie du mur déjà construite a occasionné la confiscation illégale de quelque 1100 hectares de terres palestiniennes qui constituaient une source importante de revenus. Certains agriculteurs palestiniens contemplent désormais une nouvelle clôture électronique en acier, qui les empêche d'accéder aux oliviers que leurs familles cultivent depuis des générations.»[437]

— Afrique du Sud :

> «Comme le commissaire européen Chris Patten l'a récemment fait observer, des images satellitaires de la Cisjordanie montrent que 45 % des ressources palestiniennes en eau, 40 % des terres agricoles palestiniennes et 30 % des Palestiniens eux-mêmes se retrouveront en définitive du côté israélien du mur de séparation.»[438]

— Comité pour l'exercice des droits inaliénables du peuple palestinien[440] :

> «Le tracé du mur limitait l'accès des Palestiniens aux puits dont les meilleurs se trouvaient en Cisjordanie. Du fait qu'il était situé au-dessus du bassin hydrogéologique occidental, le mur avait des conséquences majeures sur l'accès à l'eau, son utilisation et sa répartition. La première phase de la construction du mur avait déjà affecté au moins cinquante puits communautaires qui se trouvaient soit isolés à l'ouest du mur soit dans la zone tampon à l'est du mur. Elle avait également entraîné la destruction de près de 35 kilomètres de conduites d'eau.»[441]

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[435] Déclaration de l'Union européenne, quatrième session du Conseil d'association UE-Israël, Bruxelles, 17 et 18 novembre 2003, 14796/03 (Presse 328), http://ue.eu.int/pressData/fr/er/77932.pdf.

[436] S/PV.4841, p. 26.

[437] Session extraordinaire d'urgence de l'Assemblée générale, 21e séance, 20 octobre 2003, A/ES-10/PV.21, p. 13 et 14.

[438] Session extraordinaire d'urgence de l'Assemblée générale, 21e séance, 20 octobre 2003, A/ES-10/PV.21, p. 12-13.

[440] Le Comité est composé des Etats membres suivants : Afghanistan, Belarus, Cuba, Chypre, Guinée, Guyane, Hongrie, Inde, Indonésie, la République démocratique du peuple laotien, Madagascar, Malaisie, Mali, Malte, Namibie, Nigeria, Pakistan, Roumanie, Sénégal, Sierra Leone, Afrique du Sud, Tunisie, Turquie et Ukraine.

[441] Rapport du comité pour l'exercice des droits inaliénables du peuple palestinien, documents officiels, 58e session, Supplément no 35 (A/58/35), 9 octobre 2003, par. 26, http://domino.un.org/unispal.nsf/9a798adbf322aff38525617b006d88d7/618f78e6c6dce8ac85256de3005376b8!OpenDocument.

579. De nombreux autres Etats ont fait des déclarations dans lesquelles ils exprimaient une position semblable : par exemple, la Malaisie[442], Emirats arabes unis[443], Pakistan[444], République arabe syrienne[445] et Qatar[446].

e) ***Le mur compromet la possibilité de la création d'un Etat palestinien viable et porte en conséquence atteinte aux futures négociations basées sur le principe de «deux Etats»***

580. La construction du mur, dont les conséquences ont été énumérées dans les paragraphes précédents, compromet sérieusement la possibilité de créer un Etat palestinien viable. Il s'agira d'un Etat composé d'enclaves, entouré de routes de contournement et de colonies de peuplement, divisé en plusieurs parties par des murs — il ne faut pas oublier que la prolongation du mur le long de la vallée du Jourdain (le mur est) fait partie des projets d'Israël. Dans ces conditions, où se situeraient les frontières du futur Etat palestinien, complètement encerclé et morcelé, avec les forces d'occupation israélienne stationnées à chaque point de contrôle ? Si le mur est achevé, la notion d'Etat palestinien sera vide de sens, en l'absence de toute frontière internationale.

581. Par conséquent, le mur ne peut que vider de toute signification le résultat attendu des négociations entre la Palestine et Israël, qui envisagent la solution basée sur «deux Etats» et non pas sur l'acquisition par Israël de territoire par le recours à la force.

582. La ligne dite de sécurité prônée par Israël vise manifestement à préjuger des négociations à venir. Personne ne croit à sa nature provisoire. La majorité des Etats considèrent ce mur comme une annexion *de facto* de larges portions de territoire où sont établies les principales colonies israéliennes, et comme un obstacle supplémentaire à la création d'un Etat palestinien viable.

583. Ici aussi, le discours récemment prononcé par le premier ministre Sharon à la conférence Herzliya le 18 décembre 2003 ne laisse planer aucun doute sur les véritables intentions d'Israël :

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[442] «De larges sections du mur empiètent largement sur les territoires palestiniens occupés, séparant les Palestiniens de leurs terres arables et des ressources en eau. Ce mur vise à encercler les colonies de peuplement. Outre les confiscations massives de terres palestiniennes fertiles, d'importantes nappes aquifères ont également été annexées.» (S/PV.4841, p. 28.)

[443] «Le mur de séparation qui est érigé loin à l'intérieur du territoire palestinien, dans les villes et les villages, et jusqu'à 6 kilomètres de la frontière dans certains cas, va entraîner l'annexion *de facto* de milliers d'hectares de terre palestinienne, privée et publique, riche en eau et en ressources naturelles…» (S/PV.4841, p. 34.)

[444] «Il n'y a guère de doute que le mur sépare les Palestiniens de leurs propres villes et ressources. Il isole, fragmente et dans certains cas appauvrit les personnes affectées par sa construction.» (S/PV.4841, p. 24.)

[445] «L'aspect le plus dangereux dans l'édification de ce mur est la création d'une situation *de facto* sur le terrain et le fait qu'il isole les Palestiniens de chaque côté du mur, les empêchant de communiquer et de bénéficier de leurs ressources naturelles et provoquant de nouvelles situations environnementales qui conduiront à la pauvreté, au déplacement et aux souffrances des Palestiniens.» (Session extraordinaire d'urgence de l'Assemblée générale, 21e séance, 20 octobre 2003, A/ES-10/PV.21, p. 9.)

[446] «La situation continue de se détériorer, en particulier depuis la décision d'Israël de construire le mur de séparation, condamné par la communauté internationale, et même par certaines personnes dans la société israélienne, au vu de ses effets négatifs sur la vie socioéconomique des Palestiniens, la circulation des citoyens et le libre-échange. Le mur a annexé les terres de vingt-cinq villages palestiniens, détruisant complètement leur économie et les coupant les uns des autres.» (S/PV.4841, p. 37.)

«Cette ligne de sécurité ne sera pas la frontière permanente de l'Etat d'Israël; cependant, tant que la mise en œuvre de la feuille de route n'aura pas repris, les FDI seront déployés le long de cette ligne. Les colonies qui seront déplacées sont celles qui ne seront pas comprises dans le territoire de l'Etat d'Israël dans le cadre d'un accord permanent qui pourrait être conclu à l'avenir. *Parallèlement, dans le cadre du plan de désengagement, Israël va renforcer le contrôle qu'il exerce sur ces mêmes secteurs de la terre d'Israël qui constitueront une partie intégrante de l'Etat d'Israël dans tout accord futur*.»[447] (Les italiques sont de nous.)

584. La politique du *fait accompli* appliquée par Israël a été clairement condamnée par l'Assemblée générale dans la résolution ES-10/13 du 21 octobre 2003 :

«*Préoccupée particulièrement* par le fait que le tracé prévu du mur que construit Israël, la puissance occupante, dans le Territoire palestinien occupé, y compris Jérusalem-Est et ses alentours, pourrait préjuger des négociations futures et rendre la solution de deux Etats physiquement impossible à appliquer et pourrait entraîner une situation humanitaire encore plus difficile pour les Palestiniens.»

585. Cette politique d'Israël ne peut être qualifiée autrement que de violation des résolutions adoptées par le Conseil de sécurité à cet égard, à commencer par la résolution 242 (1967) du 22 novembre 1967, et en ce compris la résolution 1397 (2002) du 12 mars 2002 et la résolution 1515 (2003) du 19 novembre 2003.

586. De nombreuses délégations ont souligné l'incompatibilité du mur avec la solution de «deux Etats». Par exemple :

— Union européenne (déclaration de la présidence italienne, parlant aussi au nom des Etats candidats à l'adhésion, Chypre, République tchèque, Estonie, Hongrie, Latvie, Lithuanie, Malte, Pologne, Slovaquie et Slovénie, des Etats associés, Bulgarie, Roumanie et Turquie, et des Etats membres de l'Association européenne de libre-échange, Islande et Liechtenstein, qui font partie de l'Espace économique européen) : «[Le mur] sape la confiance des Palestiniens dans la feuille de route et paraît préjuger des frontières définitives du futur Etat palestinien. Le parcours actuellement prévu pour la construction de la barrière de sécurité est inacceptable.»[448]

— Malaisie, au nom du Mouvement des non alignés :

«S'agissant du mur de séparation, nous estimons que sa construction a mis en péril la création d'un Etat palestinien limitrophe viable et l'adoption de la solution de deux Etats. Le Gouvernement israélien déclare que le mur est nécessaire pour protéger Israël des terroristes. Mais les plans de construction du mur, et sa construction elle-même, indiquent que ce mur ne répond pas seulement à des motifs de sécurité. Il apparaît être une voie détournée pour créer une nouvelle situation sur le terrain et imposer une solution unilatérale qui pourrait préjuger des résultats des futures négociations ayant trait aux frontières des deux Etats, Israël et Palestine.»[449]

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[447] *In* P.M. Speeches, http://www.first.gov.il/first/francais/Html/homepage.htm.

[448] S/PV.4841, p. 42.

[449] S/PV.4841, p. 25-26.

— France :

> «Le tracé programmé, s'il est effectivement suivi, préjuge des frontières du futur Etat palestinien. La poursuite de la construction du mur de séparation suivant un tracé qui s'écarte de la Ligne verte signifierait *de facto* qu'Israël ne reconnaît plus la résolution 242 (1967) comme une des bases essentielles de la négociation avec les Palestiniens.»[450]

— Royaume-Uni :

> «Mais ce qui compte le plus, c'est l'impact de ce mur de séparation. Il sape la confiance mutuelle entre les parties, élément indispensable pour les négociations. Cela a un impact négatif sur la vie quotidienne des palestiniens et remet en question la solution des deux Etats.»[451]

— Etats-Unis : «Il importe au plus haut point que ce mur, s'il doit absolument être érigé, n'empiète pas sur la vie des Palestiniens et surtout, n'apparaisse pas comme une tentative de préjuger l'issue des négociations d'un accord de paix.»[452]

— Jordanie :

> «Nous condamnons aussi la construction du mur de séparation qui consolide l'occupation par Israël de territoires palestiniens, qui s'empare d'autres terres palestiniennes, qui aggrave la souffrance de la population palestinienne et anticipe, en tant que fait accompli, sur la forme de l'Etat palestinien. Nous appelons Israël à cesser immédiatement la construction du mur, et insistons sur la nécessité de respecter la ligne du 4 juin 1967.»[453]

— Japon :

> «Ces barrières de séparation, bien que l'on prétende qu'elles ont été conçues pour prévenir l'intrusion des terroristes, non seulement ont un impact sur la vie des Palestiniens, mais aussi préjugent du statut final des négociations, car la barrière va au-delà de la Ligne verte.»[454]

— Sénégal, en tant que président du comité pour l'exercice des droits inaliénables du peuple palestinien :

> «Cette barrière est un moyen de fixer unilatéralement les frontières du futur Etat palestinien – quelques puissent être les informations fournies par nos amis israéliens – et cette barrière va, sans l'ombre d'un doute, compromettre les négociations sur le statut final lorsque les parties en seront arrivées à cette étape.»[455]

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[450] S/PV.4841, p. 18.

[451] S/PV.4841, p. 13.

[452] S/PV.4841, p. 25.

[453] A/58/PV.16, p. 33.

[454] S/PV.4841, p. 35.

[455] Assemblée générale, 10e séance de la session extraordinaire d'urgence, 21e séance, 8 décembre 2003, A/ES-10/PV.23, p. 13.

— Le comité pour l'exercice des droits inaliénables du peuple palestinien :

> «La construction du mur compromet également les efforts déployés au plan international pour régler le conflit et inscrire dans la réalité la vision d'une région où deux Etats, Israël et Palestine, vivraient côte à côte dans la paix et la sécurité, comme il est dit dans la feuille de route. Compte tenu de ces préoccupations, le comité demande à la communauté internationale, et en premier lieu au Conseil de sécurité et à l'Assemblée générale, d'accorder toute l'importance nécessaire à cette question afin de mettre un terme à l'annexion de facto de terres palestiniennes et à la construction du mur par la puissance occupante.»[456]

587. D'autres délégations ont exprimé la même opinion dans leurs déclarations, notamment l'Afrique du Sud[457], la République arabe syrienne[458], la Guinée[459], la Suisse[460] et l'Inde[461]. De même, le Secrétaire général des Nations Unies a déclaré qu'il considérait «à la fois le mur de sécurité et les colonies de peuplement en Cisjordanie, construites sur la terre palestinienne, comme un sérieux obstacle à la concrétisation de la solution des deux Etats»[462].

588. En conclusion, la construction du mur est totalement incompatible avec le droit à l'autodétermination du peuple palestinien.

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[456] Rapport du comité pour l'exercice des droits inaliénables du peuple palestinien, documents officiels, 58e session, Supplément no 35 (A/58/35), 9 octobre 2003, par. 73.

[457] «La construction d'un mur de séparation est un prétexte pour occuper plus de terre et rendre encore plus difficile la possibilité de parvenir à un règlement négocié.» (S/PV.4841, p. 39.)

[458] «[Le tracé retenu pour le mur rendra] dès lors impossible de réaliser l'objectif du processus de paix avec les Palestiniens : doter ces derniers d'un Etat dans les limites des territoires occupés depuis 1967, avec Jérusalem-Est pour capitale.» (S/PV.4841, p. 13.)

[459] «Elle s'inscrit à contre-courant de la vision de deux Etats, palestinien et israélien, vivant côte à côte, dans des frontières sûres et internationalement reconnues. Elle est l'une des manifestations les plus éloquentes du déni au peuple palestinien d'exercer son droit à la pleine souveraineté, dans le cadre d'un Etat indépendant, libre et viable.» (S/PV.4841, p. 18.)

[460] «La Suisse est fermement opposée à la construction du mur de séparation entreprise par Israël. Ce mur est illégal en regard du droit international et contraire à la feuille de route, constitue un clair obstacle au processus de paix et à la réalisation de la vision de deux Etats.» (Assemblée générale, dixième session extraordinaire d'urgence, 21e séance, 8 décembre 2003, A/ES-10/PV.23, p. 25.)

[461] «Et surtout, l'insistance d'Israël à poursuivre la construction d'un mur de sécurité pourrait largement être interprétée comme une tentative de préjuger de l'issue de toute négociation sur le statut définitif entre Israël et l'Autorité palestinienne, sur la base du principe «terre contre paix», tel que demandé dans les résolutions pertinentes du Conseil de sécurité.» (Session extraordinaire d'urgence de l'Assemblée générale, 21e séance, 20 octobre 2003, A/ES-10/PV.21, p. 20.)

[462] «Kofi Annan vivement préoccupé par la décision d'Israël de poursuivre l'édification du mur de séparation profondément en Cisjordanie», communiqué de presse, SG/SM/8913, 2 octobre 2003.

CHAPITRE 11
CONSEQUENCES JURIDIQUES DES VIOLATIONS COMMISES PAR ISRAËL

589. Il découle des chapitres précédents qu'en construisant et en utilisant un mur dans le Territoire palestinien occupé, y compris à Jérusalem-Est, Israël a contrevenu, et continue de contrevenir, à un certain nombre d'obligations internationales distinctes applicables à cette question. Ainsi :

A. Israël n'a aucun droit de construire et d'utiliser le mur dans le Territoire palestinien occupé, y compris dans Jérusalem-Est et aux alentours.

B. La construction et l'utilisation du mur violent le droit international humanitaire, en particulier pour les raisons suivantes :

1. le mur est construit dans le Territoire palestinien occupé;

2. le mur reflète la volonté constante de modifier le statut juridique du Territoire palestinien occupé, y compris Jérusalem-Est, et de procéder à l'annexion de fait du Territoire palestinien;

3. la construction du mur et la zone contiguë a entraîné la destruction de biens palestiniens contrairement à l'article 53 de la quatrième convention de Genève;

4 la construction du mur et de la zone environnante a entraîné la réquisition de biens palestiniens, en contravention de l'article 52 du règlement de La Haye;

5. contrairement à l'article 64 du règlement de La Haye, la construction et l'utilisation du mur ne respectent pas les lois en vigueur dans le pays;

6. la construction et l'utilisation du mur sont incompatibles avec les obligations d'Israël aux termes de l'article 55 de la quatrième convention de Genève pour ce qui est d'assurer l'approvisionnement en aliments et en fournitures médicales de la population du Territoire palestinien occupé;

7. la construction et l'utilisation du mur constituent une forme de peine collective contraire à l'article 33 de la quatrième convention de Genève, et à l'article 75 du protocole I additionnel, qui représente sur ce point le droit international coutumier;

8. la construction et l'utilisation du mur constituent une réponse démesurée par rapport à toute menace dont Israël pourrait être la cible.

C. La construction et l'administration du mur contreviennent aux règles internationales régissant les droits de l'homme, en particulier pour les raisons suivantes :

1. la construction et l'administration du mur nient le droit à la liberté de circulation, tel que garanti en particulier par l'article 12 du pacte international relatif aux droits civils et politiques et par l'article 13 de la Déclaration universelle des droits de l'homme;

2. le mur contrevient aux obligations qu'assume Israël aux termes de l'article 6 du pacte international relatif aux droits économiques, sociaux et culturels pour ce qui est du droit qu'a toute personne d'obtenir la possibilité de gagner sa vie;

3. la construction et l'administration du mur contreviennent aux obligations assumées par Israël aux termes des articles 11 et 12 du pacte international relatif aux droits économiques, sociaux et culturels et par l'article 25 de la Déclaration universelle des droits de l'homme, ainsi que par les

articles 24 et 27 de la convention relative aux droits de l'enfant, pour ce qui est de donner accès à une nourriture et à des conditions de vie adéquates, ainsi qu'à des soins médicaux et à des services sociaux suffisants;

4. la construction et l'utilisation du mur contreviennent aux obligations qu'impose à Israël l'article 13 du pacte international relatif aux droits économiques, sociaux et culturels et l'article 26 de la Déclaration universelle des droits de l'homme ainsi que l'article 28 de la convention relative aux droits de l'enfant, pour ce qui est du droit à l'éducation;

5. la construction et l'administration du mur nient les droits des Palestiniens du Territoire palestinien occupé à la vie culturelle et familiale, droits qui sont conférés notamment par l'article 17 du pacte international relatif aux droits civils et politiques et par l'article 16 de la convention relative aux droits de l'enfant;

6. la construction du mur a entraîné la confiscation de biens sans justification légale et sans que soient respectées les voies de droit, contrairement au droit coutumier international tel que reflété, notamment, dans le protocole I de la convention européenne des droits de l'homme;

7. la gravité des violations énumérées dans les paragraphes précédents est accentuée par le fait que l'utilisation du mur établit expressément une discrimination contre les Palestiniens et qu'elle est appliquée aux Palestiniens de façon dégradante et humiliante.

D. La construction et l'administration du mur nient le droit du peuple palestinien à l'autodétermination, en particulier sous les aspects suivants :

1. dans la mesure où le mur s'écarte de la Ligne verte et est construit dans le Territoire palestinien occupé, y compris Jérusalem-Est, il ampute la zone géographique sur laquelle le peuple palestinien est fondé à exercer son droit à l'autodétermination. Dans la même mesure, le mur contrevient également au principe juridique qui interdit l'acquisition ou l'annexion de territoire par la force;

2. le tracé du mur est conçu pour modifier la composition démographique du Territoire palestinien occupé, y compris Jérusalem-Est, par le renforcement des colonies d'implantation d'Israël et par l'emploi de moyens propres à faciliter leur expansion, au mépris du fait que ces colonies sont contraires au droit international;

3. par la création d'enclaves palestiniennes, par la discrimination et l'humiliation dont il rend victime la population palestinienne, enfin par la création de conditions économiques insupportables, le mur a pour effet prévisible et manifeste de contraindre la population palestinienne à migrer vers des régions considérées comme sûres et habitables par les Palestiniens, régions qui sont par ailleurs de plus en plus restreintes;

4. le mur s'inscrit dans une politique visant à réduire et à morceler la zone géographique sur laquelle le peuple palestinien est fondé à exercer son droit à l'autodétermination, en établissant des zones palestiniennes non contiguës assimilables à des bantoustans;

5. la construction et l'administration du mur nient le droit du peuple palestinien à une souveraineté permanente sur les ressources naturelles du Territoire palestinien occupé, y compris Jérusalem-Est, et détruisent le tissu économique et social du peuple palestinien;

6. la construction et l'administration du mur compromettent la praticabilité d'un Etat palestinien viable et, par conséquent, mettent en danger la possibilité de négocier à l'avenir une solution fondée sur le principe des «deux Etats».

590. Il y a lieu d'examiner séparément les conséquences juridiques de ces violations, (1) pour l'Israël et (2) pour les Etats autres qu'Israël.

1) Les conséquences juridiques pour Israël

591. Les violations du droit international énumérées précédemment constituent des faits internationalement illicites au sens des articles sur la responsabilité de l'Etat, adoptés par la CDI en 2001, dont l'Assemblée générale des Nations Unies a pris note dans sa résolution A/RES/56/83 du 12 décembre 2001.

592. Les faits internationalement illicites découlant de la construction et de l'utilisation par Israël du mur sont imputables à Israël et engagent sa responsabilité selon le droit international. Comme le confirme l'article 1 des articles de la CDI : «Tout fait internationalement illicite de l'Etat engage sa responsabilité internationale.»

593. Les articles de la CDI contiennent, dans la partie deux, diverses dispositions concernant les conséquences juridiques d'un fait internationalement illicite. Ces conséquences, dont le caractère coutumier ne peut être contesté, comprennent notamment ce qui suit :

— maintien du devoir d'exécuter l'obligation (art. 29);

— cessation et non répétition (art. 30); et

— réparation (art. 31), qui peut prendre la forme d'une restitution (art. 35) et d'une indemnisation (art. 36).

Nous allons examiner ci-dessous ces diverses conséquences et leur application à Israël.

a) *Maintien du devoir d'exécuter l'obligation violée*

594. L'article 29 des articles de la CDI énonce : «Les conséquences juridiques d'un fait internationalement illicite prévu dans la présente partie n'affectent pas le maintien du devoir de l'Etat responsable d'exécuter l'obligation violée.»

595. Selon cette disposition, les violations commises par ce pays dans la construction et l'administration du mur n'ont pas pour effet de modifier ses obligations internationales. Les mesures prises sur le terrain ne modifient pas l'application des normes juridiques. Les normes applicables conservent toute leur valeur juridique d'après le principe *ex injuria jus non oritur* et Israël est tenu de respecter ces normes dans le Territoire palestinien occupé, y compris Jérusalem-Est.

596. Israël a reçu des avertissements répétés au sujet de sa politique visant apparemment à créer des *faits accomplis* dans l'intention de renforcer les colonies illégales ou de mettre en œuvre un processus progressif d'annexion par le truchement de la construction du mur sur le Territoire palestinien occupé, y compris Jérusalem-Est. Par exemple[463], comme cela a été mentionné ci-dessus, le Quatuor responsable de la feuille de route a déclaré :

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[463] Voir également les nombreuses déclarations citées dans le chapitre 10, *passim.*

«Les membres du Quatuor réaffirment que, conformément à la feuille de route, les activités d'implantation de colonie doivent s'arrêter et relèvent avec une vive préoccupation le tracé réalisé et proposé de la clôture qu'Israël construit en Cisjordanie, d'autant plus qu'elle entraîne la confiscation de terres palestiniennes, bloque la circulation des personnes et des biens et nuit à la confiance des Palestiniens dans le processus de la feuille de route, du fait qu'elle semble préjuger des frontières finales du futur Etat palestinien.»[464]

597. En outre, le paragraphe 13 de la déclaration de la conférence des hautes parties contractantes à la quatrième convention de Genève, adoptée à Genève le 5 décembre 2001, énonçait : «Les Hautes Parties contractantes participant à la conférence rappellent que selon l'article 148, aucune Haute Partie contractante ne pourra s'exonérer elle-même des responsabilités encourues par elle en raison de graves violations.»[465]

598. En conclusion, Israël a le devoir permanent d'exécuter et de respecter toutes les obligations internationales auxquelles il a contrevenu dans le cadre de la construction et l'administration du mur dans le Territoire palestinien occupé, y compris Jérusalem-Est. En particulier, Israël est tenu de reconnaître et d'accepter toutes les obligations mentionnées aux chapitres 7, 8, 9 et 10 ci-dessus.

b) ***Cessation du fait internationalement illicite***

i) Le principe

599. Selon l'obligation de cessation, l'Etat responsable du fait internationalement illicite a l'obligation d'y mettre fin. L'article 30 des articles de la CDI décrit de la façon suivante les conséquences juridiques :

«*Cessation et non-répétition*

L'Etat responsable du fait internationalement illicite a l'obligation :

a) d'y mettre fin si ce fait continue…»

600. C'est une norme classique. La Cour y fait référence dans son jugement du 27 juin 1986 : «La Cour ... *décide* que les Etats-Unis d'Amérique ont l'obligation de mettre fin et de renoncer à tout acte constituant une violation des obligations juridiques susmentionnées.»[466]

601. Les ordonnances par lesquelles la Cour adopte des mesures conservatoires prévoient fréquemment la cessation immédiate d'un certain comportement en attendant la décision de la Cour sur le fond de l'affaire. Ainsi, l'ordonnance prononcée le 3 mars 1999 dans l'affaire *LaGrand* énonçait :

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[464] Déclaration du Quatuor, New York, 26 septembre 2003, annexe à la lettre datée du 6 octobre 2003 envoyée au président du Conseil de sécurité par le Secrétaire général des Nations Unies, Nations Unies, doc. S/2003/951.

[465] La déclaration constitue le document n° 67 annexé au mémoire du Secrétaire général de la présente affaire. Les violations graves sont énumérées à l'article 147 de la convention et à l'article 85 du protocole I additionnel.

[466] Affaires des *Activités militaires et paramilitaires au Nicaragua et contre celui-ci (Nicaragua c. Etats-Unis d'Amérique)*, *C.I.J. Recueil 1986*, p. 149.

«[l]es Etats-Unis d'Amérique doivent prendre toutes les mesures dont ils disposent pour que M. Walter LaGrand ne soit pas exécuté tant que la décision définitive dans la présente instance n'aura pas été rendue, et doivent porter à la connaissance de la Cour toutes les mesures qui auront été prises en application de la présente ordonnance»[467].

602. L'Assemblée générale des Nations Unies (voir ci-dessous un exemple concernant le mur) et le Conseil de sécurité réitèrent fréquemment l'existence de cette obligation dans les cas de violation grave du droit international. Comme le souligne le commentaire de la CDI :

«La cessation a pour fonction de mettre fin à une violation du droit international et de préserver la validité et l'efficacité de la règle primaire sous-jacente. L'obligation de cessation qui incombe à l'Etat responsable sert ainsi à protéger aussi bien l'intérêt de l'Etat ou des Etats lésés que l'intérêt de la communauté internationale dans son ensemble à préserver l'état de droit et à s'appuyer sur lui.»[468]

ii) Application à la présente affaire

603. De nombreux Etats et organisations internationales ont invité Israël à mettre un terme à la construction du mur. Les déclarations suivantes en sont des exemples représentatifs :

— Union européenne

Conclusions de la présidence à l'issue de la réunion du Conseil de l'Union européenne de Thessalonique les 19 et 20 juin 2003 :

«86. Le Conseil européen invite également Israël à abandonner sa politique et ses activités de colonisation et à mettre fin aux confiscations de terre ainsi qu'à la construction de la «clôture de sécurité», autant d'éléments qui menacent de rendre matériellement impossible la mise en œuvre de la solution fondée sur la coexistence de deux Etats.»[469]

Il est bon de rappeler que l'Union européenne a présenté, avec l'appui des candidats à l'adhésion à l'Union, en mai 2004 *(sic)* un projet de résolution A/ES-10/L.15 devant l'Assemblée générale. Ce projet a été adopté par l'immense majorité des membres de l'Assemblée le 21 octobre 2003 et il est devenu la résolution A/ES-10/13.

— Organisation de la Conférence islamique

Selon la résolution n° 1/10-Pal (Is) sur la cause de la Palestine et le conflit arabo-israélien, adoptée lors de la dixième session de la Conférence islamique au sommet (session du savoir et de la moralité pour le progrès de la Oummah) tenue à Putrajaya, en Malaisie, les 20 et 21 cha'abane 1424 H (16 et 17 octobre 2003) :

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[467] Affaire *LaGrand (Allemagne c. Etats-Unis d'Amérique)*, *mesures conservatoires, ordonnance du 3 mars 1999*, *C.I.J. Recueil 1999*, par. 29 *a)*.

[468] Commentaires sur les projets d'article sur la responsabilité de l'Etat à l'égard des faits internationalement illicites adoptés par la Commission du droit international au cours de sa cinquante-troisième session (2001), *Rapport de la Commission du droit international sur les travaux de sa cinquante-troisième session*, *Documents officiels de l'Assemblée générale*, Cinquante-sixième Session, supplément n° 10 (A/56/10), p. 235.

[469] Conclusions de la présidence, conseil de l'Union européenne de Thessalonique, 19 et 20 juin 2003, http://www.europa.eu.int/european_council/conclusions/index_fr.htm. Voir également la déclaration de l'Union européenne, quatrième session du conseil d'association UE-Israël, Bruxelles, 17 et 18 novembre 2003, 14796/03 (Presse 328), http://ue.eu.int/pressData/fr/er/77932.pdf.

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 :

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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.»[470]

— Projet de résolution du Conseil de sécurité déposé le 14 octobre 2003.

604. Le 14 octobre 2003, la Guinée, la Malaisie, le Pakistan et la République arabe syrienne ont présenté un projet de résolution devant le Conseil de sécurité de l'ONU qui formulait en termes dépourvus de toute ambiguïté les conclusions à tirer des violations commises par avec dans l'édification du mur. Le texte proposait que le Conseil de sécurité :

«décide … que l'édification par Israël, la puissance occupante, d'un mur dans les territoires occupés qui s'écarte de la ligne d'armistice de 1949 est illégale aux termes des dispositions pertinentes du droit international et qu'il *doit y être mis fin* et les lieux remis dans leur état antérieur»[471]. (Les italiques sont de nous.)

605. Il est bien connu que ce texte n'a pas été adopté en raison du veto d'un des membres permanents du Conseil[472]. Le projet a néanmoins obtenu dix votes en sa faveur provenant des Etats suivants : Angola, Chili, Chine, France, Guinée, Mexique, Pakistan, Fédération de Russie, Espagne et la République arabe syrienne.

606. En outre, au cours du débat sur le projet de résolution, un grand nombre d'Etats ont insisté dans leurs interventions sur la nécessité urgente d'arrêter immédiatement l'édification du mur. Par exemple :

— Fédération de Russie :

«Nous sommes convaincus qu'un élément important de la stratégie de sortie de ce conflit est la cessation des mesures unilatérales prises par les dirigeants israéliens. Les implantations de colonies de peuplement illégales sur les territoires palestiniens et la construction du soi-disant mur de séparation, qui provoque le morcellement des terres palestiniennes, doivent cesser immédiatement.»[473]

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[470] http://www.oic-oci.org/french/is/10/10%20is-main-f.htm.

[471] Nations Unies, doc. S/2003/980.

[472] Nations Unies, doc. S/PV.4842, 14 octobre 2003. Il y eut quatre abstentions : Bulgarie, Cameroun, Allemagne et Royaume-Uni.

[473] Nations Unies, doc. S/PV.4841, p. 16.

— Jordanie : «Nous en appelons à Israël pour qu'il cesse immédiatement la construction du mur et nous insistons sur la nécessité de respecter le tracé du 4 juin 1967.»[474]

— Japon :

> «En ce qui concerne la décision récemment prise par Israël de prolonger la barrière, ce qui est réellement regrettable, le Japon a fermement demandé au Gouvernement israélien, le 1er octobre, jour où le Cabinet a donné son approbation, de s'abstenir d'appliquer la décision. Aujourd'hui, je voudrais saisir cette occasion pour demander encore une fois au Gouvernement israélien de ne pas appliquer cette décision.»[475]

— Union européenne (déclaration de la présidence italienne, parlant au nom des candidats à l'adhésion, Chypre, République tchèque, Estonie, Hongrie, Lettonie, Lituanie, Malte, Pologne, Slovaquie et Slovénie, des Etats associés, Bulgarie, Roumanie et Turquie et de l'Association européenne de libre-échange, l'Islande et le Liechtenstein, membres de l'Espace économique européen) :

> «L'Union européenne s'oppose vigoureusement à la construction d'un mur de séparation par Israël en Cisjordanie et exhorte le Gouvernement israélien à mettre fin à sa construction sur le Territoire palestinien, y compris à Jérusalem et dans ses environs, et aux autres activités illégales qui en découlent telles que la confiscation de terres et la démolition de maisons.»[476]

607. Le Mexique[477], le Pakistan[478], le Yémen[479], l'Egypte[480] et l'Argentine[481] ont fait des déclarations allant dans le même sens.

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[474] Nations Unies, doc. S/PV.4841, p. 33.

[475] Nations Unies, doc. S/PV.4841, p. 35.

[476] Nations Unies, doc. S/PV.4841, p. 46.

[477] «Nous estimons, par conséquent, que l'Etat israélien doit suspendre la construction de ce mur et éviter de prendre sur le territoire palestinien des mesures qui ne sauraient se justifier par son droit légitime à des frontières sûres ou à empêcher que des attentats terroristes ne soient commis sur son territoire.» (Nations Unies, doc. S/PV.4841, p. 17.)

[478] «Il [le mur de séparation] doit être déclaré illégal par le Conseil de sécurité et le Gouvernement israélien doit se voir demander d'en cesser et d'en annuler la construction.» (Nations Unies, doc. S/PV.4841, p. 24.)

[479] «Il incombe au Conseil de sécurité d'adopter une résolution devant être mise en oeuvre pour obliger Israël de cesser immédiatement la construction de ce mur sur les territoires palestiniens occupés, loin de la Ligne verte, et d'honorer scrupuleusement ses engagements, conformément aux normes du droit international et à la quatrième convention de Genève.» (Nations Unies, doc. S/PV.4841, p. 30.)

[480] «Aujourd'hui, ce que nous demandons au Conseil de sécurité, c'est de faire sien le consensus de la communauté internationale qui demande instamment à Israël de cesser d'ériger ce mur de séparation à l'intérieur du territoire palestinien, d'abandonner sa politique de peuplement et de s'acquitter de ses obligations de puissance occupante qui découlent de la quatrième convention de Genève de 1949.» (Nations Unies, doc. S/PV.4841, p. 31.)

[481] «La construction par Israël d'un mur dans les territoires occupés est une cause supplémentaire de préoccupation et constitue une violation du droit international. C'est pourquoi nous demandons que cessent les travaux de construction en cours, particulièrement dans les zones qui ne suivent pas la «Ligne verte».» (Nations Unies, doc. S/PV.4841, p. 40.)

— *La résolution A/ES-10/13 de l'Assemblée générale,* adoptée le 21 octobre 2003.

608. La résolution A/ES-10/13 de l'Assemblée générale est un document important. Son texte, qui a été présenté par les Etats membres de l'Union européenne ainsi que par les Etats candidats à l'adhésion (Chypre, République tchèque, Estonie, Hongrie, Lettonie, Lituanie, Malte, Pologne, Slovaquie et Slovénie) énoncent que l'Assemblée :

> «1. *Exige* qu'Israël arrête la construction du mur dans le Territoire palestinien occupé, y compris Jérusalem-Est et ses alentours, et revienne sur ce projet, qui s'écarte de la ligne d'armistice de 1949 et qui est contraire aux dispositions pertinentes du droit international.»

Cette résolution a été adoptée par un vote de 144 voix en faveur[482], 4 contre[483], et 12 abstentions[484].

609. En conclusion, Israël est tenu de cesser immédiatement de poser tous les actes internationaux illicites découlant de la construction et l'utilisation du mur dans le territoire palestinien occupé, y compris Jérusalem-Est. Par conséquent, Israël est notamment tenu de cesser immédiatement l'édification, la planification et l'utilisation du mur dans le Territoire palestinien occupé, y compris Jérusalem-Est, et de se conformer aux obligations que lui imposent les résolutions adoptées par le Conseil de sécurité. Israël est également tenu de s'abstenir de prendre toute autre mesure modifiant, ou visant à modifier, le statut juridique, la structure institutionnelle, le caractère géographique et historique ainsi que la composition démographique de la zone fermée ou d'un secteur de cette zone, à l'intérieur du Territoire palestinien occupé, y compris dans Jérusalem-Est, ou de toute mesure qui porterait atteinte aux droits des Palestiniens qui résident dans le secteur pertinent ou au droit à l'autodétermination du peuple palestinien. Par conséquent, Israël a l'obligation de s'abstenir de transférer une partie de sa population civile dans le Territoire palestinien occupé, et d'entraîner le déplacement de la population palestinienne dans la zone visée.

c) *Réparation*

610. Selon le droit régissant la responsabilité de l'Etat à l'égard des faits internationalement illicites, la réparation constitue, en cas de préjudice, la conséquence juridique classique de la responsabilité. Comme l'a déclaré la Cour permanente de Justice internationale, la réparation «doit, dans la mesure du possible, supprimer toutes les conséquences du fait illicite et rétablir la situation qui aurait existé, selon toute probabilité, si l'acte en question n'avait pas été commis.»[485]

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[482] Afrique du Sud, Albanie, Algérie, Allemagne, Andorre, Angola, Antigua et Barbuda, Arabie saoudite, Argentine, Arménie, Autriche, Azerbaïdjan, Bahamas, Bahreïn, Bangladesh, Barbade, Belarus, Belgique, Belize, Bénin, Bosnie et Herzégovine, Botswana, Brésil, Brunei Darussalam, Bulgarie, Burkina Faso, Cambodge, Cameroun, Canada, Cape Verde, Chili, Chine, Colombie, Comoros, Costa Rica, Côte d'Ivoire, Croatie, Cuba, Chypre, Danemark, Djibouti, Dominique, Egypte, Emirats arabes unis, Erythrée, Espagne, Estonie, Ethiopie, Fédération de Russie, Finlande, France, Gabon, Gambie, Ghana, Grèce, Grenade, Guatemala, Guinée, Guinée-Bissau, Guyana, Hongrie, Île Maurice, Islande, Inde, Indonésie, Iran, Irlande, Italie, Jamaïque, Japon, Jordanie, Kazakhstan, Kenya, , Kirghizstan, l'ancienne République yougoslave de Macédoine, Latvie, Liban, Lesotho, Libye, Liechtenstein, Lithuanie, Luxembourg, Malaisie, Maldives, Mali, Malta, Mauritanie, Mexique, Monaco, Mongolie, Maroc, Mozambique, Myanmar, Namibie, Népal, Nouvelle-Zélande, Niger, Nigeria, Norvège, Oman, Pakistan, Panama, Paraguay, Pays-Bas, Pérou, Philippines, Pologne, Portugal, Qatar, République de Corée, République démocratique du peuple laotien, République tchèque, République unie de Tanzanie, Roumanie, Royaume-Uni, Sainte-Lucie, San Marino, , Sénégal, Serbie et Monténégro, Sierra Leone, Singapour, Slovaquie, Slovénie, Somalie, Sri Lanka, Soudan, Surinam, Suède, Suisse, Syrie, Thaïlande, Togo, Trinidad et Tobago, Tunisie, Turquie, Ukraine, Venezuela, Viet-nam, Yémen, Zambie, Zimbabwe.

[483] Etats fédérés de Micronésie, Israël, Iles Marshall et Etats-Unis.

[484] Australie, Burundi, République dominicaine, Equateur, Honduras, Malawi, Nauru, Nicaragua, Papouasie-Nouvelle-Guinée, Rwanda, Tuvalu, Uruguay.

[485] *Usine de Chorzów, fond, arrêt n° 13, 1928, C.P.J.I. série A n° 17*, p. 47.

D'après la Cour permanente de Justice internationale : «C'est un principe de droit international que la violation d'un engagement entraîne l'obligation de réparer dans une forme adéquate. La réparation est donc le complément indispensable d'un manquement...»[486]

611. L'article 31 1) des articles de la CDI énonce le principe de la façon suivante : «L'Etat responsable est tenu de réparer intégralement le préjudice causé par le fait internationalement illicite.»

612. Ce principe a été affirmé dans la jurisprudence de la Cour[487]. Israël a donc l'obligation de réparer intégralement tous les dommages causés à la Palestine et au peuple palestinien par l'édification du mur et par les violations du droit international décrites dans les chapitres précédents de l'exposé écrit.

i) La réparation sous la forme de restitution

1. Le principe

613. Comme cela a été décrit ci-dessus, la réparation peut prendre diverses formes, notamment la restitution (appelée *restitutio in integrum*) et l'indemnisation. D'après l'article 34 des articles de la CDI :

> «*Formes de la réparation*
>
> La réparation intégrale du préjudice causé par le fait internationalement illicite prend la forme de restitution, d'indemnisation et de satisfaction, séparément ou conjointement…»

614. La restitution est la forme de réparation d'un préjudice qui vise à rétablir la situation qui existait avant la violation, en revenant au *statu quo* antérieur. L'article 35 des articles de la CDI énonce :

> «*Restitution*
>
> L'Etat responsable du fait internationalement illicite a l'obligation de procéder à la restitution, consistant en le rétablissement de la situation qui existait avant que le fait illicite ne soit commis, dès lors et pour autant qu'une telle restitution :
>
> *a)* n'est pas matériellement impossible;
>
> *b)* n'impose pas une charge hors de toute proportion avec l'avantage qui dériverait de la restitution plutôt que de l'indemnisation.»

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[486] *Usine de Chorzów, compétence*, *1927, C.P.J.I. série A, n° 9*, p. 22. La Cour a tout dernièrement fait référence à cette observation dans l'affaire *LaGrand*. Voir l'affaire *LaGrand (Allemagne c. Etats-Unis d'Amérique), fond*, *arrêt*, 27 juin 2001, par. 45.

[487] Voir par exemple, affaires des *Activités militaires et paramilitaires au Nicaragua et contre celui-ci (Nicaragua c. Etats-Unis d'Amérique), fond, arrêt*, *C.I.J. Recueil 1986*, p. 149, par. 13-14.

615. Comme l'a déclaré la Cour permanente de Justice internationale :

> «Le principe essentiel, qui découle de la notion même d'acte illicite, et qui semble se dégager de la pratique internationale, notamment de la jurisprudence des tribunaux arbitraux, est que la réparation doit, autant que possible, effacer toutes les conséquences de l'acte illicite et rétablir l'état qui aurait vraisemblablement existé si ledit acte n'avait pas été commis : restitution en nature, ou, si elle n'est pas possible, paiement d'une somme correspondant à la valeur qu'aurait la restitution en nature. L'attribution, le cas échéant, de dommages et intérêts pour le préjudice subi, ne serait pas couvert par la restitution en nature ou par le paiement d'une somme destinée à la remplacer ― voilà les principes qui devraient guider la fixation du montant de l'indemnité due pour un acte contraire au droit international.»[488]

616. Ce principe a encore récemment été appliqué par la Cour dans l'affaire du *Mandat d'arrêt du 11 avril 2000 (République démocratique du Congo c. Belgique*[489]. Se référant à l'observation reproduite ci-dessus, la Cour a déclaré que : «Le rétablissement de «l'état qui aurait vraisemblablement existé si [l'acte illicite] n'avait pas été commis» ne saurait résulter simplement de la constatation par la Cour du caractère illicite du mandat d'arrêt en regard du droit international.»[490] Elle a dès lors jugé que «la Belgique doit, par les moyens de son choix, mettre à néant le mandat en question et en informer les autorités auprès desquelles ce mandat a été diffusé».

2. Application à la présente espèce

617. La restitution peut prendre diverses formes : restitution matérielle de territoire, de personnes ou de biens ou encore annulation d'un acte juridique. En l'espèce, les violations établies exigent l'annulation d'actes, de décrets législatif ou administratifs, de mesures administratives reliées à l'édification du mur, ainsi que le démantèlement physique du mur et la restitution des terres et des biens confisqués. Dans les cas où les actes illicites commis par Israël touchent les secteurs du territoire palestinien occupé, situés à l'est de la Ligne verte, on se retrouve devant une situation semblable à celle qu'examinait la Cour permanente dans l'affaire des *Zones franches de la Haute-Savoie et du Pays de Gex*, et qui a décidé que le gouvernement français devait «reculer sa ligne de douane conformément aux stipulations desdits traités et actes…»[491]

618. La restitution joue un rôle particulièrement important, comme c'est le cas ici, lorsque les violations sont de nature continue et lorsque les normes violées constituent des normes de droit international impératives : l'interdiction de l'usage de la force, l'interdiction de l'annexion, le droit à l'autodétermination, les normes fondamentales du droit international humanitaire et des droits de l'homme.

619. En fait, dans certaines situations, la restitution est impossible (par exemple des villages ou des vergers ont pu être détruits, etc.); lorsque la reconstruction ou le reboisement n'est plus faisable, il faut procéder à l'indemnisation intégrale du préjudice.

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[488] *Usine de Chorzów, fond, arrêt n° 13, 1928, C.P.J.I. série A n° 17*, p. 47.

[489] *Mandat d'arrêt du 11 avril 2000 (République démocratique du Congo c. Belgique*, *arrêt*, 14 février 2002. Voir également *Projet Gabčíkovo-Nagymaros (Hongrie/Slovaquie), arrêt*, *C.I.J. Recueil 1997*, p. 81, par. 149-150.

[490] *Mandat d'arrêt du 11 avril 2000 (République démocratique du Congo c. Belgique), arrêt,* février 2002, par. 76.

[491] *C.P.J.I. série A/B n° 46*, p. 172.

620. En l'espèce, de nombreux Etats et organismes internationaux ont invité Israël à non seulement mettre fin aux pratiques et aux mesures reliées à l'édification du mur, mais à démanteler le mur complètement. En voici quelques exemples :

— Union européenne :

déclaration de l'Union européenne à l'issue de la quatrième session du conseil d'association UE-Israël Bruxelles, 17–18 novembre 2003 :

> «A cet égard, l'UE s'inquiète de ce que les terres situées entre la clôture et la «Ligne verte» soient classées comme zone militaire fermée. Cela constitue une modification de fait du statut juridique des Palestiniens vivant dans cette région et rend leur vie encore plus difficile. *C'est pourquoi l'UE invite Israël à cesser et à inverser la construction de la «clôture de sécurité» à l'intérieur des territoires palestiniens occupés, y compris à l'intérieur et autour de Jérusalem-Est, ce qui constitue une entrave à la ligne d'armistice de 1949 et est contraire aux dispositions pertinentes du droit international*.»[492]

— Organisation de la Conférence islamique :

Selon la résolution n° 1/10-Pal (Is) sur la cause de la Palestine et le conflit arabo-israélien, adoptée lors de la dixième session de la Conférence islamique au sommet (session du savoir et de la moralité pour le progrès de la Oummah), tenue à Putrajaya, Malaisie, du 20 au 21 cha'abane 1424 H., 16-17 octobre 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…»[493] (Les italiques sont de nous.)

621. C'était également la position implicite de tous les Etats membre du Conseil de sécurité qui ont voté en faveur du projet parrainé par la Guinée, la Malaisie, le Pakistan et la République arabe syrienne et qui a été examiné en session plénière, le 14 octobre 2003. Le projet proposait que le Conseil de sécurité :

> «Décide que l'édification par Israël, la puissance occupante, d'un mur dans les territoires occupés s'éloignant de la ligne d'armistice de 1949 est illégale aux termes des dispositions pertinentes du droit international et doit y être mis fin et la situation antérieure rétablie.»[494]

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[492] Déclaration de l'Union européenne, quatrième session du conseil d'association UE-Israël, Bruxelles, 17-18 novembre 2003, 14796/03 (Presse 328), http://ue.eu.int/pressData/fr/er/77932.pdf.

[493] http://www.oic-oci.org/french/is/10/10%20is-main-f.htm.

[494] Nations Unies, doc. S/2003/980.

622. Les dix Etats qui ont voté en faveur du projet de résolution étaient les suivants : Angola, Chili, Chine, France, Guinée, Mexique, Pakistan, Fédération de la Russie, Espagne et la République arabe syrienne. En outre, au cours des sessions consacrées à l'examen de la question du mur devant le Conseil de sécurité et l'Assemblée générale, de nombreux Etats ont fait des déclarations qui allaient dans le même sens. Par exemple :

— Malaisie, au nom du mouvement des pays non alignés :

> «Le mouvement des pays non alignés réaffirme sa position concernant le mur expansionniste israélien, tel qu'il a été clairement énoncé lors du débat du Conseil de sécurité le 14 octobre dernier. En résumé, nous réaffirmons que le mur expansionniste israélien construit sur le territoire palestinien occupé est illégal, doit être démantelé et son édification doit être immédiatement interrompue…»[495]

— République islamique d'Iran, au nom de l'Organisation de la Conférence islamique :

> «Le fait qu'Israël n'ait aucunement tenu compte de la décision de cette Assemblée et ait affiché ouvertement son mépris à l'égard de la volonté de la communauté internationale en poursuivant la construction de ce mur expansionniste a amené le Secrétaire général à conclure dans son rapport publié sous la cote A/ES-10/248, qu'«Israël ne se conformait pas à l'exigence qu'elle a formulée».»[496]

623. De nombreux autres Etats ont adopté la même position, notamment Malte[497], le Liban[498], l'Indonésie[499], le Bahreïn[500], les Emirats arabes unis[501] et le Chili[502].

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[495] Dixième session extraordinaire d'urgence de l'Assemblée générale, 21e séance, 20 octobre 2003, Nations Unies, doc. A/ES-10/PV.21, p. 12. Voir également la déclaration faite par le délégation malaisienne pour le compte du mouvement des pays non alignés devant le Conseil de sécurité, Nations Unies, doc. S/PV.4841, p. 26.

[496] Dixième session extraordinaire d'urgence de l'Assemblée générale, 21e séance, 8 décembre 2003, Nations Unies, doc. A/ES-10/PV.23, p. 15.

[497] «Israël doit reconnaître clairement l'illégalité de sa présence dans les territoires occupés, ce qui veut dire qu'il doit renoncer aux mesures qui accompagnent cette occupation – en particulier la construction et l'entretien des colonies et la construction d'un mur de séparation sur le territoire palestinien.» (Nations Unies, doc. A/58/PV.11, p. 29.)

[498] «En conséquence, le Liban lance un appel au Conseil de sécurité pour qu'il adopte un projet de résolution, soumis par le groupe arabe, qui considère la construction par Israël, force d'occupation, de ce mur sur le territoire palestinien occupé comme une violation de la ligne d'armistice de 1949. Ce projet de résolution indique aussi que la construction est illégale sur la base du droit international et exige l'arrêt de la construction du mur, la démolition des portions qui ont déjà été construites et le retour au *statu quo ante*.» (Nations Unies, doc. S/PV.4841, p. 50.)

[499] «Pour cela, Israël doit cesser toutes ses pratiques illégales, notamment la construction du mur, puisqu'elles violent et mettent en péril la feuille de route. En outre, les parties du mur déjà achevées doivent être démolies.» (Dixième session extraordinaire d'urgence de l'Assemblée générale, 21e séance, 20 octobre 2003, Nations Unies, doc. A/ES-10/PV.21, p. 15).

[500] «Le royaume de Bahreïn demande au Conseil de sécurité, au Quatuor et aux pays qui parrainent le processus de paix d'exercer des pressions sur le Gouvernement israélien afin de mettre fin immédiatement au mur de séparation, de le détruire et de cesser la construction des colonies de peuplement.» (Nations Unies, doc. S/PV.4841, p. 36.)

[501] «Nous demandons également au Conseil de sécurité d'adopter une résolution efficace condamnant catégoriquement le mur de séparation et demandant à Israël de le détruire complètement et sans condition, conformément à la Charte des Nations Unies, au droit international humanitaire et aux résolutions pertinentes de l'ONU.» (Nations Unies, doc. S/PV.4841, p. 35.)

[502] «La délégation chilienne estime que le Conseil de sécurité doit se prononcer sur la situation, et lancer, par une résolution, un ferme appel à arrêter la construction du mur et à démanteler la partie déjà construite. Par conséquent, le Chili appuie le texte que nous avons ici.» (Nations Unies, doc. S/PV.4841, p. 18.)

624. Il convient là encore de rappeler que la résolution A/ES-10/13 de l'Assemblée générale, qui a reçu 144 votes en sa faveur, déclarait que l'Assemblée : «1. *Exige* qu'Israël arrête la construction du mur dans le territoire palestinien occupé, y compris Jérusalem-Est et ses alentours, et revienne sur ce projet, qui s'écarte de la ligne d'armistice de 1949 et qui est contraire aux dispositions pertinentes du droit international.»

625. En conclusion, Israël est tenu de fournir réparation par voie de restitution, en inversant le processus d'édification du mur et en supprimant le régime qui y est associé, dans le Territoire palestinien occupé, y compris Jérusalem-Est. Israël est notamment tenu de rapporter toutes les mesures, politiques, actions et pratiques administratives et législatives adoptées à l'égard du mur, y compris l'expropriation des terres et des biens situés dans le Territoire palestinien occupé, et d'annuler toutes ses mesures antérieures, notamment en supprimant les restrictions imposées à la circulation des personnes et des biens et aux activités des organismes humanitaires dans le secteur considéré. En outre, Israël a l'obligation de procéder immédiatement au rapatriement de sa population civile qui s'est installée dans les zones adjacentes au mur à l'intérieur du Territoire palestinien occupé depuis le début de la construction du mur, de démanteler les colonies établies dans le secteur considéré, d'assurer et de faciliter le retour immédiat, en toute sécurité, des civils palestiniens ayant dû quitter le secteur considéré et de libérer les personnes détenues en raison de la construction et de l'entretien par Israël du régime d'administration associé au mur.

ii) La réparation par voie d'indemnisation

626. Il est bien établi en droit international que la partie lésée a le droit d'être indemnisée par la partie qui a commis un fait internationalement illicite à l'égard du dommage causé par cet acte.

627. L'indemnisation peut prendre la forme d'un paiement d'une somme d'argent. L'article 36 des articles de la CDI envisage cette conséquence juridique :

> «*Indemnisation*
>
> 1. L'Etat responsable du fait internationalement illicite est tenu d'indemniser le dommage causé par ce fait dans la mesure où ce dommage n'est pas réparé par la restitution.
>
> 2. L'indemnité couvre tout dommage susceptible d'évaluation financière, y compris le manque à gagner dans la mesure où celui-ci est établi.»

628. La Cour permanente de Justice internationale a déclaré, dans l'affaire *Usine de Chorzów*, qu'il est «un principe de droit international [selon lequel] la réparation d'un tort peut consister à obtenir une indemnité»[503]. La Cour a confirmé ce principe dans l'affaire concernant le *Projet Gabčíkovo-Nagymaros* : «Il est une règle bien établie du droit international qu'un Etat lésé est en droit d'être indemnisé par l'Etat auteur d'un fait internationalement illicite des dommages résultant de celui-ci.»[504]

629. Comme nous l'avons montré dans les chapitres précédents, les dommages causés à la Palestine et au peuple palestinien par les violations du droit international décrites ci-dessus et commises par Israël comprennent tous les dommages qui ne seront pas réparés par la restitution.

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[503] *Usine de Chorzów, fond, arrêt n° 13, 1928, C.P.J.I. série A n° 17*, p. 27.

[504] *Projet Gabčíkovo-Nagymaros (Hongrie/Slovaquie), arrêt, C.I.J. Recueil 1997*, p. 81, par. 152.

Par exemple, même si les terres sont rendues aux fermiers, les vergers replantés et les maisons reconstruites, ces personnes devront néanmoins être indemnisées de la perte de revenus et de bénéfices subie pendant les années au cours desquelles elles ont été privées de leurs biens.

2) Conséquences de nature pénale

630. En conformité avec ses obligations aux termes du droit international humanitaire, Israël est tenu de rechercher et de traduire devant ses tribunaux les personnes dont il est allégué qu'elles ont commis, ou qu'elles ont ordonné que soient commis de graves manquements au droit international humanitaire et de prendre les mesures nécessaires pour empêcher tout autre manquement au droit international humanitaire découlant de l'édification, de l'utilisation et de la planification du mur.

3) Conséquences juridiques pour les Etats autres qu'Israël

a) *Les principes*

631. Dans le cas où un acte internationalement illicite entraîne une violation grave d'une obligation découlant d'une norme impérative du droit international, tous les Etats sont tenus de coopérer pour mettre fin à cette violation, pour refuser de reconnaître la situation créée à la suite de cette violation, et pour s'abstenir de porter aide et assistance au maintien de la situation causée par la violation[505].

632. Il y a lieu de rappeler que la Cour a, dans l'affaire *Barcelona Traction, Light and Power Company, Limited,* établi la distinction suivante :

> «Une distinction essentielle doit en particulier être établie entre les obligations des Etats envers la communauté internationale dans son ensemble et celles qui naissent vis-à-vis d'un autre Etat dans le cadre de la protection diplomatique. Par leur nature même, les premières concernent tous les Etats. Vu l'importance des droits en cause, tous les Etats peuvent être considérés comme ayant un intérêt juridique à ce que ces droits soient protégés; les obligations dont il s'agit sont des obligations *erga omnes*.»[506]

633. A titre d'exemples d'obligations *erga omnes*, la Cour a fait référence aux obligations

> «qui découlent, par exemple, dans le droit international contemporain, de la mise hors la loi des actes d'agression et du génocide, mais aussi des principes et des règles concernant les droits fondamentaux de la personne humaine, y compris la protection contre la pratique de l'esclavage et la discrimination raciale»[507].

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[505] Voir les commentaires sur l'article 38, commentaires au projet d'articles sur la responsabilité des Etats à l'égard des actes internationalement illicites adoptés par la Commission du droit international au cours de sa cinquante-troisième session (2001), *Rapport de la Commission du droit international sur les travaux de sa cinquante-troisième session*, *Documents officiels de l'Assemblée générale*, Cinquante-sixième Session, supplément n° 10 (A/56/10), p. 230.

[506] *Barcelona Traction, Light and power Company, Limited, arrêt, C.I.J. Recueil 1970*, p. 32, par. 33.

[507] *Ibid.*, par. 34.

Dans son arrêt du 30 juin 1995, la Cour a considéré qu'il n'y a rien à redire à l'affirmation du «Portugal selon laquelle le droit des peuples à disposer d'eux-mêmes, tel qu'il s'est développé à partir de la Charte et de la pratique de l'Organisation des Nations Unies, est un droit opposable *erga omnes»*[508]. On se rappellera aussi que dans l'affaire de la *Licéité de la menace ou de l'emploi d'armes nucléaires*, la Cour a eu l'occasion de rappeler que les règles fondamentales du droit humanitaire applicables dans les conflits armés ont un caractère «intransgressible»[509].

634. Il découle de ce qui précède que parmi les violations du droit international qu'a occasionné la construction et l'administration du mur dans le Territoire palestinien occupé, y compris Jérusalem-Est, Israël a contrevenu, et contrevient toujours, aux normes impératives du droit international imposant des obligations erga omnes à l'égard des aspects suivants : Le droit des peuples à disposer d'eux-mêmes tel qu'il s'est développé à partir de la Charte des

— Nations Unies et de la pratique internationale;

— le principe interdisant l'acquisition de territoire par la force;

— les droits fondamentaux de la personne humaine;

— les règles fondamentales du droit international humanitaire applicables en cas de conflit armé.

635. Les articles 40 et 41 des articles de la CDI sont particulièrement pertinents pour la présente affaire. Ils énoncent ce qui suit :

«*Article 40*

Application au présent chapitre

1. Le présent chapitre s'applique à la responsabilité internationale qui découle d'une violation grave par l'Etat d'une obligation découlant d'une norme impérative du droit international général.

2. La violation d'une telle obligation est grave si elle dénote de la part de l'Etat responsable un manquement flagrant ou systématique à l'exécution de l'obligation.

Article 41

Conséquences particulières d'une violation grave d'une obligation en vertu du présent chapitre

1. Les Etats doivent coopérer pour mettre fin, par des moyens licites, à toute violation grave au sens de l'article 40.

2. Aucun Etat ne doit reconnaître comme licite une situation créée par une violation grave au sens de l'article 40, ni prêter aide ou assistance au maintien de cette situation…»

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[508] *Timor oriental (Portugal c. Australie), arrêt*, *C.I.J. Recueil 1995*, p. 102, par. 29.

[509] *Licéité de la menace ou de l'emploi d'armes nucléaires, avis consultatif, C.I.J. Recueil 1996*, p. 257, par. 79.

636. Il est particulièrement utile de rappeler ces articles, en pensant à la possibilité que certains Etats tentent d'accepter et de reconnaître le mur comme un *fait accompli*, dans le cas où Israël atténuerait certains de ses excès qui constituent des violations fondamentales du droit international humanitaire et des droits de l'homme. D'après ces articles, certaines obligations incombent aux Etats tiers, notamment, en particulier, i) l'obligation de coopérer pour mettre fin à toute violation grave ii) l'obligation de ne pas reconnaître une situation illicite et iii) l'obligation de ne pas prêter aide ou assistance au maintien d'une telle situation.

i) L'obligation de coopérer pour mettre fin à toute violation grave

637. Face aux violations graves commises par Israël et décrites ci-dessus, il est nécessaire que tous les Etats déploient des efforts concertés et coordonnés pour mettre fin à ces violations et à leurs conséquences. Rappelons que de nombreux appels en ce sens ont été lancés au cours des derniers mois[510].

— Déclaration de la présidence pour le compte de l'Union européenne sur la situation au Moyen-Orient, 11 septembre 2003 :

> «Pour que ces mesures [c'est-à-dire, le gel de toute activité liée à l'implantation de colonies de peuplement et de la construction du mur de sécurité] puissent être effectivement mises en œuvre, l'UE réaffirme toute l'importance qu'elle accorde à une action déterminée et coordonnée de la communauté internationale.»[511]

— Communiqué final de la dixième session de la Conférence islamique au sommet Putrajaya–Malaisie, 20-21 cha'abane 1424 H., 16-17 octobre 2003 :

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[510] Voir également les déclarations faites par les délégations suivantes :

— Pakistan :

> «La communauté internationale a l'obligation de prévenir l'annexion illégale des terres palestiniennes. Il est indubitable que lorsque le mur de séparation sera achevé, il invalidera toute possibilité de créer un Etat palestinien viable et contigu. Il importe donc de convaincre le Gouvernement israélien de mettre un terme à la construction du mur que nous déplorons, et de le démanteler.» (Dixième session extraordinaire d'urgence de l'Assemblée générale, 21e séance, 20 octobre 2003, Nations Unies, doc. A/ES-10/PV.21, p. 20.)

— Emirats arabes unis :

> «Nous demandons à la communauté internationale de forcer Israël à cesser immédiatement les meurtres et les agressions, à mettre un terme à sa politique de siège et de blocus et à détruire le mur de séparation, qui ne fera qu'entraîner une véritable catastrophe humanitaire et économique en Cisjordanie. Nous exigeons aussi qu'Israël laisse les organisations humanitaires à acheminer les secours d'urgence dont la population palestinienne a besoin, conformément au droit international humanitaire, notamment la quatrième convention de Genève.» (Nations Unies, doc. A/58/PV.38, p. 3.)

— Koweït :

> «Nous condamnons ces pratiques et politiques israéliennes qui aggravent les souffrances du peuple palestinien. Nous conjurons la communauté internationale de remplir ses obligations et d'obliger Israël à respecter l'ONU et à arrêter ces politiques qui entraîneront sans nul doute une nouvelle détérioration de la situation en matière de sécurité et accroîtront l'instabilité dans la région.» (Dixième session extraordinaire d'urgence de l'Assemblée générale, 21e séance, 8 décembre 2003, Nations Unies, doc. A/ES-10/PV.23, p. 2.)

[511] Déclaration de la présidence pour le compte de l'Union européenne sur la situation au Moyen-Orient, 11 septembre 2003, 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.

«14. La Conférence a demandé à la communauté internationale de contraindre Israël à arrêter la construction et à procéder au démantèlement du mur de l'apartheid qui dévore les territoires palestiniens, transforme ces territoires en bantoustans, impose des faits accomplis politiques totalement injustes et contribue à détériorer encore davantage la situation dans la région…»[512]

— Malaisie, au nom du mouvement des non alignés : «La communauté internationale doit exercer des pressions sur Israël pour qu'il respecte les exigences de la communauté internationale en ce qui concerne ce mur.»[513]

— Sénégal, président du Comité pour l'exercice des droits inaliénables du peuple palestinien :

«Aussi ma délégation en appelle-t-elle à une mobilisation de la communauté internationale, de notre organisation – en particulier, du Conseil de sécurité – ainsi que du Quatuor des médiateurs, afin de faire entendre raison au Gouvernement israélien en exigeant l'arrêt immédiat de l'édification de ce mur de la discorde et la destruction pure et simple des premières réalisations.»[514]

— Rapport du Comité de l'ONU pour l'exercice des droits inaliénables du peuple palestinien :

«73. Le Comité souligne sa ferme opposition à la construction illégale du mur par la puissance occupante dans la Cisjordanie occupée et aux alentours de Jérusalem Est. Le Comité rappelle au gouvernement israélien que cette construction a, dans l'immédiat aussi bien qu'à long terme, des effets dévastateurs sur les conditions de vie du peuple palestinien. La construction de ce mur compromet également les efforts déployés au plan international pour régler le conflit et inscrire dans la réalité la vision d'une région où deux Etats, Israël et Palestine, vivraient côte à côte dans la paix et la sécurité, comme il est dit dans la feuille de route. Compte tenu de ces préoccupations, le Comité demande à la communauté internationale, et en premier lieu au Conseil de sécurité et à l'Assemblée générale, d'accorder toute l'importance nécessaire à cette question afin de mettre un terme à l'annexion *de facto* de terres palestiniennes et à la construction du mur par la puissance occupante.»[515]

638. En conclusion, tous les Etats ont l'obligation de coopérer entre eux pour assurer le respect par Israël de ses obligations internationales. En particulier, les hautes parties contractantes à la quatrième convention de Genève sont tenues de reconnaître l'applicabilité *de jure* de la quatrième convention de Genève au Territoire palestinien occupé, y compris dans la zone fermée. En outre, aux termes de l'article 1 de la convention, les Etats tiers ont le devoir «de respecter et d'assurer le respect de la présente convention en toute circonstance».

639. Les Etats sont également tenus de coopérer avec les Nations Unies et les autres organismes responsables, y compris le Secrétaire général des Nations Unies, le rapporteur spécial de la Commission des Nations Unies sur les droits de l'homme sur la situation des droits de

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[512] http://www.oic-oci.org/english/is/10/10is-fc-fr.htm.

[513] Nations Unies, doc. S/PV.4841, p. 26.

[514] Dixième session extraordinaire d'urgence de l'Assemblée générale, 21e séance, 20 octobre 2003, Nations Unies, doc. A/ES-10/PV.21, p. 17. Voir également la déclaration faite devant le Conseil de sécurité, Nations Unies, doc. S/PV.4841, p. 53.

[515] *Documents officiels des Nations Unies*, Cinquante-huitième Session, supplément no 35 (A/58/35), 9 octobre 2003, http://domino.un.org/unispal.nsf/9a798adbf322aff38525617b006d88d7/618f78e6c6dce8ac85256de3005376b8!OpenDocument.

l'homme dans les territoires palestiniens occupés par Israël depuis 1967, l'Office de secours et des travaux des Nations Unies pour les réfugiés de Palestine dans le Proche-Orient, ainsi que le Comité international de la Croix-Rouge, dans l'exécution de leurs fonctions et de leurs attributions dans le Territoire palestinien occupé, y compris Jérusalem-Est, et de s'abstenir de tout comportement susceptible d'empêcher ces organismes d'exercer leurs attributions.

ii) Obligation de ne pas reconnaître les situations illicites

640. La CDI a fait référence à l'obligation qu'a l'ensemble de la communauté internationale de ne pas reconnaître comme légales les situations qui ont été créées par une violation grave au sens de l'article 40 des articles de la CDI :

> «Cette obligation s'applique dans le cas des situations créées par ces violations, telles que, par exemple, la tentative d'acquisition de la souveraineté sur un territoire par le biais du déni du droit des peuples à disposer d'eux-mêmes. Cette obligation se réfère non seulement à la reconnaissance formelle de ces situations, mais interdit également les actes qui impliquent une telle reconnaissance.»[516]

641. La Cour a exprimé ce principe dans l'avis consultatif qu'elle a rendu en 1971 dans l'affaire de la *Namibie* :

> «La cessation du mandat et la déclaration de l'illégalité de la présence sud-africaine en Namibie étaient opposables à tous les Etats, en ce sens qu'elles rendent illégales *erga omnes* une situation qui se prolonge en violation du droit international.»[517]

642. Par la suite, la Cour a, dans son jugement du 27 juin 1986, mentionné l'obligation de ne pas reconnaître l'acquisition territoriale effectuée par la force[518].

643. Par conséquent, tous les Etats sont tenus de refuser de reconnaître la souveraineté israélienne sur le Territoire palestinien occupé, y compris Jérusalem-Est, ainsi que les changements apportés au statut juridique de la zone fermée découlant de la construction et de l'administration du mur par Israël. En particulier, ils ont l'obligation de reconnaître la nullité de toutes les mesures, politiques, actions et pratiques, tant administratives que législatives, adoptées par Israël en ce qui concerne le mur. Le principe bien établi prévoyant la non-reconnaissance des annexions illégales, en particulier, impose cette conséquence juridique aux Etats tiers.

644. En outre, et sans préjudice du fait que le Conseil de sécurité et l'Assemblée générale ont déclaré que les colonies établies sur le Territoire palestinien occupé, y compris Jérusalem-Est, (ce qui comprend nécessairement les colonies établies dans la zone fermée) sont illégales selon le droit international – tous les Etats ont l'obligation de reconnaître l'illégalité des colonies israéliennes

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[516] Commentaires sur les projets d'article sur la responsabilité de l'Etat pour les faits internationalement illicites adoptés par la Commission du droit international au cours de sa cinquante-troisième session (2001), *Rapport de la Commission du droit international sur les travaux de sa cinquante-troisième session*, *Documents officiels de l'Assemblée générale*, Cinquante-sixième Session, supplément n° 10 (A/56/10), p. 287, par. 5.

[517] *Conséquences juridiques pour les Etats de la présence continue de l'Afrique du Sud en Namibie (Sud-Ouest africain) nonobstant la résolution 276 (1970) du Conseil de sécurité, avis consultatif, C.I.J. Recueil 1971*, p. 56, par. 126.

[518] *Activités militaires et paramilitaires au Nicaragua et contre celui-ci (Nicaragua c. Etats-Unis d'Amérique)*, *C.I.J. Recueil 1986*, par. 188.

établies dans la zone fermée sur le Territoire palestinien occupé, y compris Jérusalem-Est, et de s'abstenir de tout acte et en particulier, de toute action conjointe avec le Gouvernement israélien susceptibles d'équivaloir implicitement à une reconnaissance de la légalité de ces colonies.

iii) L'obligation de ne pas prêter aide ou assistance au maintien d'une situation illicite

645. Les Etats tiers semblent être tout à fait conscients de leurs obligations sur ce point.

646. Malgré le fait que ces obligations s'appliquent principalement à des Etats, il est possible de considérer qu'elles s'appliquent également, par analogie, aux organismes intergouvernementaux. Sur ce point, l'Assemblée générale des Nations Unies et le Secrétaire général des Nations Unies ont adopté certaines positions, dont fait état le dossier soumis à la Cour, qui montrent qu'ils expriment la volonté clairement exprimée de la communauté internationale au sujet de la question du mur.

647. De nombreux Etats ont essayé d'amener le Conseil de sécurité des Nations Unies à intervenir dans le même sens. Certaines délégations ont parlé ouvertement de ce sujet. Par exemple :

— Iran :

> «Ainsi, vu l'énormité des enjeux et étant donné le consensus international autour de la nécessité de mettre fin à la construction illégale du mur en Cisjordanie, il incombe au Conseil de sécurité de se montrer à la hauteur des attentes de la communauté internationale et de prendre les mesures nécessaires en vue de faire respecter le droit international. En particulier, il est temps que le Conseil de sécurité exige que la construction du mur de séparation soit interrompue et que le processus soit inversé.»[519]

— Arabie saoudite :

> «Etant donné que l'Organisation des Nations Unies reste en permanence responsable de la question palestinienne au niveau international jusqu'à ce que celle-ci soit résolue sous tous ses aspects, et étant donné les termes de la quatrième convention de Genève relative à la protection des personnes civiles en temps de guerre, le Royaume d'Arabie saoudite appelle le Conseil de sécurité à assumer pleinement ses responsabilités et à remplir son rôle en affirmant que la construction d'un tel mur par Israël est illégitime et en exigeant que ces travaux cessent immédiatement.»[520]

648. Il est regrettable que le Conseil de sécurité, à qui les Etats membres ont conféré «la responsabilité principale du maintien de la paix et de la sécurité internationale» et qui a pour mission d'agir en leur nom «en s'acquittant des devoirs que lui impose cette responsabilité» (article 24 de la Charte des Nations Unies), n'ait pas répondu à l'appel de l'ensemble de la communauté internationale sur cette question cruciale, à cause de l'utilisation de son veto par un de ses membres permanents.

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[519] Nations Unies, doc. S/PV.4841, p. 29-30.

[520] Nations Unies, doc. S/PV.4841, p. 40.

649. Par conséquent, tous les Etats ont l'obligation de s'abstenir de poser des actes et en particulier, de prendre des actions conjointement avec le gouvernement israélien qui auraient pour effet de prêter aide et assistance à ce dernier en ce qui touche l'édification, l'utilisation ou la planification du mur et les colonies israéliennes situées dans la zone fermée du Territoire palestinien occupé, y compris Jérusalem-Est.

4) Conclusion générale

650. En raison des violations graves du droit international mentionnées aux chapitres 7, 8, 9 et 10, Israël est tenu :

— conformément à son obligation de cessation, de cesser immédiatement la construction et l'utilisation du mur, et de se soumettre à la résolution du Conseil de sécurité concernant les colonies illégalement établies dans cette zone;

— conformément à son obligation de rétablir le *statu quo* antérieur, de démanteler tous les tronçons du mur qui franchissent la Ligne verte;

— conformément à son obligation de réparer le dommage causé, d'indemniser les personnes lésées pour les préjudices personnels et matériels subis par elles par suite de la violation par Israël de ses obligations internationales;

— en conformité avec ses obligations selon le droit international humanitaire, de rechercher et de traduire devant ses tribunaux les personnes dont il est allégué qu'elles ont commis de graves violations du droit international humanitaire qui découlent de l'édification, de l'utilisation et de la planification du mur.

651. En raison des graves violations du droit international décrites aux chapitres 7, 8, 9 et 10, les autres Etats ont :

— l'obligation de coopérer les uns avec les autres, ainsi qu'avec les Nations Unies et les organismes internationaux compétents, en vue de mettre fin à ces violations du droit international;

— l'obligation de ne pas reconnaître ces situations illicites;

— l'obligation de ne pas prêter aide et assistance au maintien de ces situations.

CHAPITRE 12
CONCLUSIONS

652. Pour les motifs qui ont été détaillés dans le présent exposé écrit, la Palestine soumet respectueusement les conclusions suivantes à la Cour :

I. La Cour a compétence pour donner l'avis consultatif demandé par l'Assemblée générale dans sa résolution A/RES/ES-10/14 du 8 décembre 2003, et aucune raison décisive n'empêche la Cour de donner son avis.

II. La Cour devrait répondre de la manière suivante à la question posée par l'Assemblée générale :

A. Les droits et les obligations d'Israël dans le Territoire palestinien occupé, y compris Jérusalem-Est et ses alentours, sont ceux d'une puissance occupante, régie par les dispositions du droit international humanitaire, notamment le règlement de La Haye, la quatrième convention de Genève et le droit international humanitaire coutumier, ainsi que par les règles du droit international des droits de l'homme, notamment le pacte international relatif aux droits civils et politiques, le pacte international relatif aux droits économiques, sociaux et culturels, la convention relative aux droits de l'enfant et les règles coutumières internationales relatives aux droits de l'homme.

B. Israël n'a aucun droit de construire et de gérer le mur dans le Territoire palestinien occupé, y compris Jérusalem-Est et ses alentours.

C. La construction et la gestion du mur contreviennent au droit international humanitaire, notamment pour les raisons suivantes :

1. le mur est construit dans le Territoire palestinien occupé;

2. le mur s'inscrit dans la volonté constante d'Israël de modifier le statut juridique du Territoire palestinien occupé, y compris de Jérusalem-Est, et de procéder à l'annexion *de facto* du territoire palestinien;

3. la construction du mur et des zones environnantes a entraîné la destruction de biens palestiniens, en contravention de l'article 53 de la quatrième convention de Genève;

4. la construction du mur et des zones environnantes a entraîné la réquisition de biens palestiniens, en contravention de l'article 52 du règlement de La Haye;

5. en violation de l'article 64 du règlement de La Haye, la construction et la gestion du mur ne respectent pas les lois en vigueur dans le pays occupé;

6. la construction et l'utilisation du mur sont incompatibles avec les obligations d'Israël en vertu de l'article 55 de la quatrième convention de Genève, pour ce qui est de garantir des approvisionnements en nourriture et en fournitures médicales pour la population du Territoire palestinien occupé;

7. la construction et la gestion du mur constituent une forme de peine collective contraire à l'article 33 de la quatrième convention de Genève et à l'article 75 du premier protocole additionnel, qui à cet égard reflète le droit international coutumier;

8. la construction et la gestion du mur constituent une réponse disproportionnée à toute menace dont Israël pourrait être considéré la cible.

D. La construction et la gestion du mur contreviennent aux règles du droit international des droits de l'homme, notamment pour les motifs suivants :

1. la construction et la gestion du mur portent atteinte au droit à la liberté de circulation, garanti notamment par l'article 12 du pacte international relatif aux droits civils et politiques et par l'article 13 de la Déclaration universelle des droits de l'homme;

2. le mur contrevient aux obligations qui pèsent sur Israël en vertu de l'article 6 du pacte international relatif aux droits économiques, sociaux et culturels, pour ce qui concerne le droit qu'a toute personne d'obtenir la possibilité de gagner sa vie;

3. la construction et la gestion du mur contreviennent aux obligations qui pèsent sur Israël en vertu des articles 11 et 12 du pacte international relatif aux droits économiques, sociaux et culturels et de l'article 25 de la Déclaration universelle des droits de l'homme, ainsi que des articles 24 et 27 de la convention relative aux droits de l'enfant, en ce qui concerne l'accès à une nourriture suffisante et à des conditions de vie suffisantes, ainsi qu'à des soins médicaux et à des services sociaux suffisants;

4. la construction et la gestion du mur contreviennent aux obligations qui pèsent sur Israël en vertu de l'article 13 du pacte international relatif aux droits économiques, sociaux et culturels et de l'article 26 de la Déclaration universelle des droits de l'homme, ainsi qu'en vertu de l'article 28 de la convention relative aux droits de l'enfant, pour ce qui concerne le droit à l'éducation;

5. la construction et la gestion du mur portent atteinte aux droits des Palestiniens du Territoire palestinien occupé à la vie familiale et culturelle, droits qui sont conférés notamment par l'article 17 du pacte international relatif aux droits civils et politiques et par l'article 16 de la convention relative aux droits de l'enfant;

6. la construction du mur a entraîné la confiscation de biens sans justification légale et sans que soient observées les voies de droit, contrairement au droit international coutumier tel qu'il est reflété notamment dans le premier protocole additionnel à la convention européenne des droits de l'homme;

7. la gravité des violations énumérées dans les paragraphes précédents est accentuée par le fait que l'utilisation du mur établit expressément une discrimination à l'encontre des Palestiniens et qu'elle est appliquée aux Palestiniens d'une manière dégradante et humiliante.

E. La construction et la gestion du mur portent atteinte au droit du peuple palestinien à l'autodétermination, notamment sous les aspects suivants :

1. dans la mesure où le mur s'écarte de la Ligne verte et est construit dans le Territoire palestinien occupé, y compris Jérusalem-Est, il divise l'assiette territoriale sur laquelle le peuple palestinien est en droit d'exercer son droit à l'autodétermination. Dans la même mesure, le mur contrevient aussi au principe juridique qui interdit l'acquisition ou l'annexion d'un territoire par la force;

2. le tracé du mur est conçu pour modifier la composition démographique du Territoire palestinien occupé, y compris de Jérusalem-Est, en renforçant les colonies de peuplement israéliennes et en facilitant leur extension, sans égard au fait que ces colonies sont illicites au regard du droit international;

3. en ce qu'il implique la création d'enclaves palestiniennes, la discrimination et l'humiliation de la population palestinienne, et la création de conditions économiques insupportables, le mur a pour effet manifeste et prévisible de contraindre la population palestinienne à migrer vers des régions considérées comme sûres et habitables pour les Palestiniens, régions qui sont par ailleurs de plus en plus restreintes;

4. le mur s'inscrit dans une politique de rétrécissement et de morcellement de l'assiette territoriale sur laquelle le peuple palestinien a droit d'exercer son droit à l'autodétermination, en établissant des zones palestiniennes non contiguës similaires à des bantoustans;

5. la construction et la gestion du mur portent atteinte au droit du peuple palestinien à la souveraineté permanente sur les ressources naturelles du Territoire palestinien occupé, y compris de Jérusalem-Est, et détruisent le tissu économique et social de la vie du peuple palestinien;

6. la construction et l'utilisation du mur compromettent la possibilité de créer un Etat palestinien viable et rendent par conséquent matériellement impossible la solution consistant dans la solution de «deux Etats», Israël et la Palestine.

F. En conséquence de ces graves violations du droit international, Israël est tenu :

1. en conformité avec son obligation de cessation, de cesser immédiatement la construction et la gestion du mur;

2. en conformité avec son obligation de rétablissement du *statu quo ante*, de démanteler immédiatement toutes les portions du mur situées en Territoire palestinien occupé qui franchissent la Ligne verte, de faciliter le retour immédiat et en sécurité des Palestiniens déplacés en raison de la construction et de la gestion du mur, et de rendre à leurs propriétaires tous les biens saisis ou réquisitionnés en rapport avec la construction, la gestion et/ou la planification du mur;

3. en conformité avec son obligation de réparer les dommages causés, d'indemniser les personnes lésées pour tous les préjudices matériels et personnels subis à la suite de la violation par Israël de ses obligations internationales;

4. en conformité avec ses obligations en vertu du droit international humanitaire, de respecter et de faire respecter la quatrième convention de Genève, de rechercher et de traduire devant ses tribunaux les personnes suspectées d'avoir commis ou d'avoir ordonné que soient commis de graves manquements au droit international humanitaire, et de prendre les mesures nécessaires pour empêcher tous autres manquements au droit international humanitaire qui découlent de la construction, de la gestion et/ou de la planification du mur;

5 de se conformer aux résolutions du Conseil de sécurité et de se plier à la volonté de la communauté internationale.

G. En conséquence de ces graves manquements au droit international, les autres Etats ont :

1. l'obligation de coopérer, les uns avec les autres, ainsi qu'avec les Nations Unies et les autres organismes internationaux compétents, en vue de mettre fin aux violations du droit international par Israël;

2. l'obligation de ne pas reconnaître de telles situations illicites; et

3. l'obligation de ne pas apporter aide ou assistance au maintien de telles situations.

COUR INTERNATIONALE DE JUSTICE

CONSÉQUENCES JURIDIQUES DE L'ÉDIFICATION D'UN MUR DANS LE TERRITOIRE PALESTINIEN OCCUPÉ

(REQUÊTE POUR AVIS CONSULTATIF)

EXPOSÉ ÉCRIT

DÉPOSÉ PAR

LA PALESTINE

APPENDICES 1-3

30 JANVIER 2004

[Traduction]

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APPENDICE 1
TABLEAUX DES RÉSOLUTIONS DU CONSEIL DE SÉCURITÉ CONCERNANT LA PALESTINE

Le présent appendice comprend des tableaux des résolutions pertinentes adoptées par le Conseil de sécurité de l'ONU concernant la Palestine en général (sect. I), l'applicabilité de la quatrième convention de Genève au Territoire palestinien occupé (sect. II), Jérusalem (sect. III), et les colonies israéliennes établies dans le Territoire palestinien occupé (sect. IV).

Le présent appendice a été préparé par la mission permanente d'observation de la Palestine auprès des Nations Unies pour les seules fins de la demande de l'avis consultatif. Ce document ne prétend pas être complet.

I. Tableau des résolutions pertinentes du Conseil de sécurité concernant la Palestine (en général)

Numéro de la résolution	Date d'adoption	Vote enregistré
49	22 mai 1948	8-0-3 (Trois abstentions : Syrie, RSS d'Ukraine et URSS)
50	29 mai 1948	Certaines parties du projet ont fait l'objet d'un vote, mais il n'y a pas eu de vote sur l'ensemble du projet
54	15 juillet 1948	7-1-3 (Voix contre : Syrie, trois abstentions : Argentine, RSS d'Ukraine et URSS)
60	29 octobre 1948	Adoptée sans vote
127	22 janvier 1958	Unanime
162	11 avril 1961	8-0-3 (Trois abstentions : Ceylan, URSS et République arabe unie)
237	14 juin 1967	Unanime
250	27 avril 1968	Unanime
251	2 mai 1968	Unanime
252	21 mai 1968	13-0-2 (Deux abstentions : Canada et Etats-Unis)
259	27 septembre 1968	12-0-3 (Trois abstentions : Canada, Danemark et Etats-Unis)
267	3 juillet 1969	Unanime
271	15 septembre 1969	11-0-4 (Quatre abstentions : Colombie, Finlande, Paraguay et Etats-Unis)
298	25 septembre 1971	14-0-1 (Une abstention : Syrie)
446	22 March 1979	12-0-3 (Trois abstention : Norvège, Royaume-Uni et Etats-Unis)
452	20 juillet 1979	14-0-1 (Une abstention : Etats-Unis)
465	1 March 1980	Unanime

468	8 mai 1980	14-0-1 (Une abstention : Etats-Unis)
469	20 mai 1980	14-0-1 (Une abstention : Etats-Unis)
471	5 juin 1980	14-0-1 (Une abstention : Etats-Unis)
476	30 juin 1980	14-0-1 (Une abstention : Etats-Unis)
478	20 août 1980	14-0-1 (Une abstention : Etats-Unis)
484	19 décembre 1980	Unanime
592	8 décembre 1986	14-0-1 (Une abstention : Etats-Unis)
605	22 décembre 1987	14-0-1 (Une abstention : Etats-Unis)
607	5 janvier 1988	Unanime
608	14 janvier 1988	14-0-1 (Une abstention : Etats-Unis)
636	6 juillet 1989	14-0-1 (Une abstention : Etats-Unis)
641	30 août 1989	14-0-1 (Une abstention : Etats-Unis)
672	12 octobre 1990	Unanime
673	24 octobre 1990	Unanime
681	20 décembre 1990	Unanime
694	24 mai 1991	Unanime
726	6 janvier 1992	Unanime
799	18 décembre 1992	Unanime
904	18 mars 1994	Certaines parties du projet ont fait l'objet d'un vote, les Etats-Unis se sont abstenus lors du vote sur deux paragraphes du préambule. L'ensemble du texte n'a pas été soumis au vote
1073	28 septembre 1996	14-0-1 (Une abstention : Etats-Unis)
1322	7 octobre 2000	14-0-1 (Une abstention : Etats-Unis)
1397	12 mars 2002	14-0-1 (Une abstention : Syrie)
1402	30 mars 2002	14-0-0 (La Syrie n'a pas participé au vote)
1403	4 avril 2002	Unanime
1405	19 avril 2002	Unanime
1435	24 septembre 2002	14-0-1 (Une abstention : Etats-Unis)
1515	19 novembre 2003	Unanime

II. Tableau des résolutions du Conseil de sécurité concernant l'applicabilité de la quatrième convention de Genève au Territoire palestinien occupé, y compris Jérusalem-Est

Numéro de la résolution	Date d'adoption	Vote enregistré
237	14 juin 1967	Unanime
271	15 septembre 1969	11-0-4 (Quatre abstentions : Colombie, Finlande, Paraguay et Etats-Unis)
446	22 mars 1979	12-0-3 (Trois abstentions : Norvège, Royaume-Uni et Etats-Unis)
452	20 juillet 1979	14-0-1 (Une abstention : Etats-Unis)
465	1 mars 1980	Unanime
468	8 mai 1980	14-0-1 (Une abstention : Etats-Unis)
469	20 mai 1980	14-0-1 (Une abstention : Etats-Unis)
471	5 juin 1980	14-0-1 (Une abstention : Etats-Unis)
476	30 juin 1980	14-0-1 (Une abstention : Etats-Unis)
478	20 août 1980	14-0-1 (Une abstention : Etats-Unis)
484	19 décembre 1980	Unanime
592	8 décembre 1986	14-0-1 (Une abstention : Etats-Unis)
605	22 décembre 1987	14-0-1 (Une abstention : Etats-Unis)
607	5 janvier 1988	Unanime
608	14 janvier 1988	14-0-1 (Une abstention : Etats-Unis)
636	6 juillet 1989	14-0-1 (Une abstention : Etats-Unis)
641	30 août 1989	14-0-1 (Une abstention : Etats-Unis)
672	12 octobre 1990	Unanime
673	24 octobre 1990	Unanime
681	20 décembre 1990	Unanime
694	24 mai 1991	Unanime
726	6 January1992	Unanime
799	18 décembre 1992	Unanime
904	18 mars 1994	Certaines parties du projet ont fait l'objet d'un vote, les Etats-Unis se sont abstenus lors du vote sur deux paragraphes du préambule. L'ensemble du texte n'a pas été soumis au vote
1322	7 octobre 2000	14-0-1 (Une abstention : Etats-Unis)
1435	24 septembre 2002	14-0-1 (Une abstention : Etats-Unis)

III. Tableau des résolutions du Conseil de sécurité concernant Jérusalem

Numéro de la résolution	Date d'adoption	Vote enregistré
49	22 mai 1948	8-0-3 (Trois abstentions : Syrie, RSS d'Ukraine et URSS)
50	29 mai 1948	Certaines parties du projet ont fait l'objet d'un vote, l'ensemble du texte n'a pas été soumis au vote
54	15 juillet 1948	7-1-3 (Une voix contre : Syrie, trois abstentions : Argentine, RSS d'Ukraine et URSS)
60	29 octobre 1948	Adoptée sans vote
127	22 janvier 1958	Unanime
162	11 avril 1961	8-0-3 (Trois abstentions : Ceylon, URSS et République arabe unie)
250	27 avril 1968	Unanime
251	2 mai 1968	Unanime
252	21 mai 1968	13-0-2 (Deux abstentions : Etats-Unis et Canada)
267	3 juillet 1969	Unanime
271	15 septembre 1969	11-0-4 (Quatre abstentions : Colombie, Finlande, Paraguay et Etats-Unis)
298	25 septembre 1971	14-0-1 (Une abstention : Syrie)
465	1 mars 1980	Unanime
476	30 juin 1980	14-0-1 (Une abstention : Etats-Unis)
478	20 août 1980	14-0-1 (Une abstention : Etats-Unis)
672	12 octobre 1990	Unanime
1073	28 septembre 1996	14-0-1 (Une abstention : Etats-Unis)

IV. Tableau des résolutions du Conseil de sécurité concernant les «colonies» situées dans le Territoire palestinien occupé

Numéro de la résolution	Date d'adoption	Vote enregistré
252	21 mai 1968	13-0-2 (Deux abstentions : Canada et Etats-Unis)
267	3 juillet 1969	Unanime
271	15 septembre 1969	11-0-4 (Quatre abstentions : Colombie, Finlande, Paraguay et Etats-Unis)
298	25 septembre 1971	14-0-1 (Une abstention : Syrie)
446	22 mars 1979	12-0-3 (Trois abstentions : Norvège, Royaume-Uni et Etats-Unis)
452	20 juillet 1979	14-0-1 (Une abstention : Etats-Unis)
465	1 mars 1980	Unanime
476	30 juin 1980	14-0-1 (Une abstention : Etats-Unis)
478	20 août 1980	14-0-1 (Une abstention : Etats-Unis)

APPENDICE 2
RÉGIME DES PERMIS DE LA ZONE FERMÉE

[Nous présentons les exemples suivants à titre d'illustration. Il ne s'agit pas d'un constat exhaustif de la situation.]

PARTIE A
MISE EN OEUVRE DU SYSTÈME DES PERMIS DE LA ZONE FERMÉE

Préparé à la lumière de visites sur le terrain menées entre octobre 2003 et janvier 2004 par le Groupe de surveillance palestinien, Département des affaires liées aux négociations, Organisation de libération de la Palestine.

1. Village de Ras Tira (Gouvernorat de Qalqilya)

Population : 400

Emplacement : Ras Tira se trouve du côté occidental du mur.

Permis de résidence permanente dans la zone fermée : en octobre, cent douze hommes, femmes et personnes âgées se sont vu refuser des permis de résidence permanente. Après que le chef du conseil du village s'est plaint à l'administration civile israélienne, le commandant du secteur a délivré vingt-huit permis additionnels le 28 octobre.

Au sein d'une même famille, certains membres ont reçu des permis, d'autres pas. Par exemple, dans un cas, un homme a obtenu un permis, mais pas son épouse ni sa mère. Dans certains cas, les enfants ont obtenu des permis, mais pas leurs parents.

Même si les agriculteurs obtiennent des permis, il est possible qu'ils ne puissent tout de même pas cultiver leur terre parce qu'ils doivent faire appel à de jeunes manœuvres et utiliser des camions pour la récolte. Jusqu'à présent, les autorités israéliennes n'ont pas accordé de permis aux travailleurs qui ne sont pas propriétaires. Par conséquent, un nombre important de manœuvres risquent de se trouver en chômage. Bon nombre d'agriculteurs qui possèdent des terres sont âgés ou ont d'autres emplois, si bien qu'ils ne sont pas en mesure de cultiver leurs terres et d'effectuer la récolte sans embaucher de manœuvres.

En janvier 2004, tous les résidents actuels de Ras Tira avaient obtenu des permis de résidence permanente. Toutefois, les résidents qui n'avaient pas encore obtenu ces permis en octobre n'ont pas pu quitter la zone fermée pour se rendre ou pour travailler dans les villages voisins de Ras Atiya et de Habla ni dans la ville de Qalqilya en novembre et en décembre. De plus, les résidents qui étudient à l'étranger ou vivent dans des villages à l'extérieur de Ras Tira n'ont pas encore reçu leurs permis de résidence. Cela crée des difficultés. Si par exemple un résident de Ras Tira se marie et déménage dans un autre village ou dans une autre ville de la Cisjordanie, il ne sera pas autorisé à entrer dans la zone fermée, à moins que l'administration civile israélienne ne lui délivre un permis.

Permis d'accès aux terres dans la zone fermée : les résidents qui habitent à l'est du mur n'ont pas réussi à obtenir de permis pour accéder aux terres qu'ils possèdent à l'ouest du mur.

Fermeture des portes : du 4 au 24 octobre, les portes ménagées dans le mur sont demeurées fermées. Le 25 octobre, l'armée israélienne a ouvert les portes à deux reprises pendant quinze minutes — de 7 h 15 à 7 h 30 puis de 13 h 15 à 13 h 30 — mais n'a laissé passer que des écoliers.

Au cours de la troisième semaine d'octobre, l'administration civile israélienne a avisé les villageois que s'ils refusaient de demander des permis, les portes ne s'ouvriraient pas pour eux. Pour cette raison, le 24 octobre, la porte principale de Ras Atiya est demeurée fermée pendant vingt-quatre heures.

Déplacement du poste de contrôle : depuis le 5 novembre, le poste de contrôle de Jarjouliya se trouve à peu près trois kilomètres plus à l'intérieur de la Cisjordanie, à l'endroit où le mur coupera la voie de contournement de la route 55. Les résidents de Ras Tira qui se rendent à Qalqilya ou dans un autre village de Cisjordanie à l'est du mur doivent passer par ce poste de contrôle, et ceux qui ne détiennent pas de permis ne sont pas autorisés à poursuivre leur chemin. De plus, les personnes sans permis ne peuvent pas passer par la porte de Ras 'Atiya pour se rendre aux villages voisins de Habla et de Ras 'Atiya, où habitent environ huit mille Palestiniens et où se trouvent la plupart des services élémentaires dont Ras Tira a besoin, notamment les médecins, les écoles et les magasins. Par conséquent, les résidents sans permis sont prisonniers dans leurs propres villages. Plus d'une famille s'est plainte de ne pas avoir pu emmener un enfant chez un médecin à Habla.

2. Village de Daba (Gouvernorat de Qalqilya)

Population : 250

Emplacement : Daba se trouve à l'ouest du mur, mais ses terres sont situées à l'est du mur.

Permis de résidence permanente dans la zone fermée : en octobre, entre soixante-dix et quatre-vingt résidents de Daba n'avaient pas encore de permis de résidence permanente. Le 10 novembre, les treize derniers ont reçu leurs permis de résidence. Auparavant, une liste des demandeurs qui n'avaient pas reçu de permis avait été acheminée au BCD israélien. Bon nombre de ces demandeurs ont reçu seulement des permis d'accès, au lieu de permis de résidence permanente. En décembre, tous les résidents de plus de douze ans avaient reçu des permis de résidence permanente valides pour une période de six mois, soit jusqu'en avril 2004.

Permis d'accès aux terres dans la zone fermée : en octobre et novembre, on a accordé cent permis sur un total d'environ cent quarante-cinq demandes soumises par la municipalité. Une quarantaine de résidents qui habitent à l'est du mur et dont les terres sont à l'ouest du mur n'avaient pas reçu de permis. De plus, des gens d'affaires n'avaient pas obtenu de permis. En date du 9 novembre, onze enseignants (cinq de Qalqilya et six des villages avoisinants) n'avaient pas les permis requis pour entrer dans la zone fermée pour y enseigner. Le 10 novembre, huit des enseignants ont obtenu des permis, mais il en manquait encore pour trois des enseignants de villages avoisinants. On a en outre demandé des permis pour que des parents habitant de l'autre côté du mur puissent visiter des habitants durant le congé de la fête de l'Eid; environ cinquante-trois des soixante-quinze demandes ont été acceptées.

Depuis le déplacement du poste de contrôle de Jarjouliya le 5 novembre, les villageois sans permis ne peuvent pas se rendre à Qalqilya ni passer par la porte de Ras 'Atiya. Ils sont confinés à la zone fermée.

Parce qu'elles n'ont plus accès à leurs terres de l'autre côté du mur, plusieurs familles ont abandonné leurs terres, y compris trois familles qui n'ont aucune autre source de revenus. Deux autres familles se rendent sur leurs terres en charrettes tirées par un âne; la distance est de 20 kilomètres. Les agriculteurs qui n'ont plus les moyens de cultiver leurs terres sèment du blé ou d'autres semences à prix abordables pour montrer que ces terres sont exploitées et éviter qu'Israël les déclare «abandonnées» et les confisque. Le village a un taux de chômage de 35 %, et dans 27 % de ces cas, il s'agit d'agriculteurs qui n'ont pas les moyens de cultiver leurs terres.

Permis pour véhicule dans la zone fermée : en octobre, aucun permis de voiture n'a été accordé. Les procédures sont exigeantes. Lorsque les villageois ont tenté de soumettre des demandes en se conformant à un ensemble de procédures, le responsable de la délivrance des permis à l'administration civile israélienne a modifié les procédures. En novembre, on avait accordé des permis pour seulement cinq des onze voitures qui se trouvent à Daba.

Fermeture des portes : à Daba, les portes sont désignées par les chiffres 33, 34 et 36; il y a aussi la porte d'entrée du BCD. On assigne aux résidents les portes par lesquelles ils sont autorisés à passer (elles sont indiquées sur les permis); il leur est interdit de passer par les autres portes.

Les heures d'ouverture des portes changent selon les caprices des soldats israéliens, qui mettent en oeuvre de tels changements sans en informer les villageois ni les chefs de conseil des villages. Toutes les portes ont été fermées le 24 octobre; auparavant, elles étaient demeurées fermées pendant environ vingt jours, durant les fêtes juives. Les 25 et 26 octobre, on a ouvert les portes seulement trois fois par jour, pendant quinze minutes — de 7 h 15 à 7 h 30, de 13 h 15 à 13 h 30 et de 18 h 15 à 18 h 30. Durant la semaine du 2 au 8 novembre, on a modifié l'horaire en après-midi (de 17 heures à 17 h 15, plutôt que de 18 h 15 à 18 h 30) sans consulter les villageois. Les villageois se plaignent que, souvent, les soldats ferment les portes au bout de cinq ou dix minutes, ce qui ne laisse pas suffisamment de temps pour que tous ceux qui attendent puissent passer.

Souvent, l'armée israélienne arrive en retard pour déverrouiller les portes, si bien que les enfants — ils sont nombreux dans les villages avoisinants de Habla et de Ras Atiya — ne peuvent pas arriver à l'école à l'heure. De plus, les écoliers craignent d'être seuls avec des soldats de l'armée israélienne au moment où on ouvre les portes, alors un adulte doit quitter le travail pour attendre avec les enfants et les escorter de l'autre côté.

Daba est fortement tributaire des services fournis par les villages avoisinants ou d'autres sources extérieures. Par exemple, Daba utilise les services de santé de Qalqilya. Les services publics, par exemple la cueillette des ordures, et les ressources comme le carburant solaire pour le chauffage viennent tous de l'extérieur de Daba. L'accès à ces services et ressources essentiels est gravement perturbé, particulièrement en ce qui concerne l'eau. L'eau est livrée à Daba par un camion-citerne de l'ONU qui vient de Kufr Thult, et il en coûte 65 NIS du réservoir. Toutefois, le camion-citerne ne peut pas arriver à la porte à temps pour passer durant les trois périodes où elle est ouverte, et il a d'autres livraisons à effectuer. La réponse israélienne aux villageois de Daba est qu'ils doivent trouver un autre camion pour leur livrer de l'eau. Toutefois, les autres camions coûtent cher et la période de quinze minutes pendant laquelle la porte est ouverte est insuffisante pour permettre à un camion de faire une livraison dans le village.

La fermeture des portes a également eu un impact sur la récolte des olives la saison dernière. Le jour, les travailleurs récoltaient les olives et, le soir, ils les emmenaient à Kufr Thult pour la transformation. Toutefois, parce que les portes ne s'ouvraient que pendant de courtes périodes, les travailleurs ont été pris à l'extérieur de Daba et ils ont dû dormir dans les villages avoisinants. En guise de réponse, les soldats israéliens ont demandé pourquoi des personnes étaient à l'extérieur du village à une heure si tardive. Le soir du 5 novembre, par exemple, un villageois de Daba s'est vu obligé de dormir à la porte de Ras 'Atiya parce qu'il n'avait pas de permis de résidence et il n'a pas pu rentrer chez lui. Lorsque le chef du village a tenté d'intercéder en sa faveur auprès des soldats israéliens, ces derniers ont menacé de l'arrêter. Le villageois n'a pu rentrer à Daba que le lendemain matin. Ce genre de problèmes est survenu dans plusieurs villages.

En décembre 2003, on n'a pas permis à un médecin de franchir la porte de Ras 'Atiya pour aller soigner un enfant malade à Daba, et les parents ont dû emmener l'enfant malade jusqu'à la porte, où le médecin lui a fait une injection.

L'expérience des villageois à la porte de Ras 'Atiya est que, parfois, quand il y a des observateurs étrangers, les soldats israéliens maintiennent la porte ouverte pendant toute la période prévue et même davantage. Par conséquent, certains estiment que la présence d'observateurs internationaux aux portes le long du mur pourrait influer sur le comportement des soldats.

Présentement, les périodes d'ouverture de la porte de Daba sont de 7 heures à 8 h 15, de 12 h 30 à 13 h 45 et de 16 heures à 17 h 15. D'après les villageois, les heures peuvent varier, et si l'armée israélienne signale des problèmes dans le secteur toutes les portes sont fermées, comme cela s'est produit le 11 janvier 2004.

Accroissement des tensions au niveau local : la tension au sein des collectivités locales a augmenté considérablement dans les semaines qui ont suivi la mise en oeuvre des ordres militaires concernant la zone fermée. Il y a eu des discussions passionnées dans le village entre ceux qui détenaient des permis et ceux qui n'en détenaient pas. Le niveau de frustration va sans doute s'accroître davantage puisqu'il demeurera impossible pour les personnes sans permis de se rendre à leur travail ou de faire leurs récoltes de l'autre côté du mur.

En janvier 2004, le maire de Daba a reçu un coup de téléphone d'un agent israélien de l'administration civile qui l'avisait que si quiconque, même un enfant, s'approchait trop du mur, les soldats tireraient. La mesure donnait suite à des allégations selon lesquelles, en décembre, deux écoliers auraient creusé un trou sous le mur et seraient passés de l'autre côté.

Construction de routes pour les colonies : le 27 novembre 2003, l'armée israélienne a annoncé un ensemble de mesures qui «atténueraient les restrictions» dans la région de Qalqilya. Une de ces mesures prévoyait la redirection de la circulation routière de la colonie d'Alfe Menashe grâce à une nouvelle bretelle qui sera construite pour relier Alfe Menashe à la nouvelle route de contournement (entre le bloc de colonies de Shomron et la colonie de Nirit). Cette nouvelle route de contournement, d'une largeur de 22 mètres, traversera le village de Daba.

3. Village d'Azzun Atma (gouvernorat de Qalqilya)

Population : 1500

Emplacement : le mur enfermera entièrement Azzun Atma. Le village sera entièrement séparé et isolé des villages voisins de Beit Amin et de Sannirya. Les trois villages sont étroitement liés. De nombreuses familles dans chacun des villages ont des liens de parenté. Les agriculteurs ont des serres et les enfants vont à l'école dans les villages avoisinants. Azzun Atma a le taux d'exportation par *dounoum* (1/4 acre) le plus élevé de Cisjordanie.

Permis de résidence permanente dans la zone fermée : aucun permis de résidence permanente n'a encore été accordé.

Permis d'accès à la zone fermée : aucun permis d'accès n'a encore été accordé. Présentement, les agriculteurs d'Azzun Atma ne peuvent se rendre à environ 15 % des serres du village qui se trouvent dans les villages avoisinants de l'autre côté du mur. Dans le village voisin de Beit Amin, cent cinquante villageois ont reçu des permis pour se rendre à leurs terres à Azzun Atma.

Fermeture des portes : depuis le 30 octobre 2003, la porte à l'entrée du village est en service. Au début, on ouvrait les portes trois fois par jour. Puis, le matin du 8 novembre, plus d'une centaine de villageois se sont rassemblés à la porte et sont parvenus à la maintenir ouverte pendant plus de trois heures, puis encore une période de trois heures au cours de l'après-midi du même jour. Aujourd'hui, la porte s'ouvre à 6 heures et se ferme à 19 heures, et des soldats y sont postés.

Il est interdit aux camions transportant le pain, les volailles et d'autres produits de base de passer par cette porte, si bien que tous les approvisionnements destinées au village doivent être déchargés à la main d'un côté de la porte, puis chargés sur un autre camion de l'autre côté de la porte, ce qui entraîne une hausse considérable des coûts de transport. De plus, il est interdit aux taxis de franchir la porte, si bien que les passagers doivent parcourir à pied une distance d'un ou 2 kilomètres entre la porte et leur village ou leur ferme. Il y a également eu des actes de violence physique et verbale de la part des soldats israéliens postés à la porte.

Déplacement du poste de contrôle : le 8 novembre, on a déplacé le poste de contrôle qui se trouve près du village, sur la route de contournement adjacente, environ deux 2 kilomètres plus loin à l'intérieur de la Cisjordanie, à l'est du village de Mas Ha. Les résidents de Sannirya, de Beit Amin et d'Azzun Atma devront entrer dans leurs villages et en sortir en passant par ce poste de contrôle à des heures précises, et à condition d'avoir les permis requis.

4. Village de Wad Irsha (gouvernorat de Qalqilya)

Population : 180

Emplacement : Wad Irsha se trouve du côté occidental du mur.

Permis de résidence permanente dans la zone fermée : tous les résidents de Wad Irsha ont obtenu des permis de résidence permanente.

Toutefois, on détruit des habitations. En avril 2003, des ordres concernant la démolition de cinq habitations à Wad Irsha ont été émis. La date de mise en oeuvre de ces ordres reste à déterminer, car la cause est devant les tribunaux israéliens. Précédemment en 2003, l'armée israélienne avait détruit un abri doté d'un toit cannelé à Wad Irsha. Les ordres sont émis sous prétexte que les habitations n'étaient pas autorisées et se trouvent dans le «secteur C».

Le 11 janvier 2004, un agent de l'administration civile israélienne a rendu visite au maire d'Arab Ramadin (un village d'environ deux cent quatre-vingt Bédouins vivant dans la zone fermée, à environ 100 mètres du village de Wad Irsha) et lui a présenté un décret militaire ordonnant l'arrêt des travaux sur six abris dans lesquels vivent présentement les Bédouins; ce décret touche une quarantaine de personnes. D'après certaines informations, le secteur où vivent les Bédouins servira à l'élargissement de la colonie d'Alfe Menashe. Les agents de l'Administration civile israélienne ont avisé les représentants locaux à Qalqilya que les habitants d'Arab Ramadin devaient être réinstallés.

Fermeture des portes : la vie quotidienne des quaa=rante-six écoliers du village d'Arab est profondément perturbée. Jusqu'au début de janvier, on a permis aux écoliers d'utiliser deux petites portes contrôlées par l'armée israélienne. Pour traverser ces portes, ils formaient un groupe et étaient escortés le long du mur par les soldats israéliens; on leur permettait de sortir et d'entrer deux fois par jour. Au début de janvier, l'armée israélienne a scellé ces deux portes. Maintenant, les enfants doivent parcourir une distance beaucoup plus grande, environ sept kilomètres aller-retour, tous les jours pour se rendre à l'école. De plus, il n'y a pas de taxis collectifs dans la zone fermée et, étant donné que les résidents n'ont pas les moyens de payer un taxi privé tous les jours, les enfants doivent se rendre à pied au chemin principal et à la porte de Ras'Atiya, puis aux écoles de Habla.

5. Village de Jayyus (gouvernorat de Qalqilya)

Population : 3000

Emplacement : Jayyus se trouve à l'est du mur, mais environ les deux tiers des terres de ses habitants se trouvent à l'ouest du mur.

Permis d'accès aux terres dans la zone fermée : en octobre, sur les trois cents agriculteurs que compte Jayyus, plus de cent cinquante n'avaient pas reçu de permis. L'administration civile israélienne a délivré sic cent trente permis au total, mais seulement cent à l'intention des soutiens de familles tributaires de l'agriculture. Les permis ont été accordés aux enfants, aux aînés et aux résidents de Jayyus qui vivent et travaillent à Ramallah ou qui vivent à l'étranger. Les cent cinquante agriculteurs dont on a rejeté les demandes de permis devaient se rendre sur leurs terres pour gagner leur vie. Israël a évoqué des raisons de «sécurité» pour justifier le refus de permis, notamment des peines de détention antérieures ou des parents actifs sur le plan politique.

On n'a pas autorisé les agriculteurs à se rendre sur leurs terres pour arroser les cultures, si bien que ces dernières ont péri. Les olives n'ont pu être récoltées. Pour environ la moitié des cultivateurs d'olives, il était impossible de se rendre sur leurs terres. Les commerçants et les distributeurs qui devaient venir chercher les récoltes pour les transformer et les vendre n'on pas pu le faire. Ceux qui avaient accès à leurs terres n'ont pas eu l'autorisation d'utiliser une voiture ou un camion pour transporter leurs récoltes.

Au mois de novembre, plus de cent cinquante agriculteurs n'avaient toujours pas obtenu de permis pour accéder aux serres et aux terres qu'ils possèdent à l'ouest du mur. Dans l'ensemble, 25 % des permis délivrés visaient des enfants, des aînés, des personnes vivant à l'étranger ou des personnes déjà décédées. Dans un cas, on a refusé d'accorder un permis à un agriculteur de 43 ans, mais son père et un oncle qui était mort depuis six ans ont reçu des permis. Tous ces permis ne sont valides que pour trois mois.

Durant la semaine du 2 au 8 novembre, l'armée israélienne a effectué plusieurs «rafles» d'agriculteurs de Jayyus qui n'ont pas de permis, elle les a obligés à quitter leurs champs et à rentrer au village.

A la mi-décembre, cent trente-cinq agriculteurs n'avaient toujours pas de permis pour se rendre sur leurs terres. Parmi les trois cents agriculteurs du village, quinze ménages (y compris sept des cent trente-cinq agriculteurs sans permis) vivent de l'élevage des moutons. Le 18 octobre, l'armée israélienne a effectué une rafle des bergers et de leurs moutons, et elle les a obligés à quitter la zone fermée et à rentrer à Jayyus, à l'est du mur. Depuis, on interdit même aux bergers munis de permis d'entrer dans la zone fermée avec leurs moutons. L'armée israélienne a refusé l'accès aux bergers et les a avisés qu'ils doivent obtenir des permis pour leurs moutons ou des permis pour séjourner la nuit — ce qui ajoute de nouveaux obstacles imprévisibles à l'accès à la zone fermée. Depuis environ un mois, quelque deux mille moutons ne peuvent plus paître dans la zone fermée. De plus, vu la nature même de leur activité, les bergers et leurs troupeaux se verraient obligés de parcourir 5 kilomètres pour trouver des pâturages. Il n'est pas possible d'effectuer l'aller-retour tous les jours, car les moutons auraient à parcourir 10 kilomètres par jour. Par conséquent, les bergers sont obligés d'acheter des aliments pour leurs moutons au coût de 1000 NIS la tonne (une tonne peut nourrir environ cent cinquante moutons pendant dix jours). Les bergers dépensent à peu près 10 000 NIS tous les dix jours pour nourrir leurs moutons; comme cela est au-delà de leurs moyens, ils ne nourrissent leurs bêtes qu'une fois tous les cinq jours.

Permis pour véhicule dans la zone fermée : en octobre, aucun permis pour véhicule n'a été accordé. Ces permis sont d'une importance vitale parce que les commerçants et les distributeurs ne sont pas en mesure de se rendre sur leurs terres ni de transporter les récoltes. Tout au long du mois de novembre, on n'a obtenu de permis que pour deux des trois petits camions utilisés en

agriculture. Autrefois, les villageois pouvaient compter chaque jour sur cinq camions plus grands, venus de l'extérieur (de Hébron et de Ramallah), pour le transport des produits achetés; maintenant, ces camions ne peuvent plus entrer dans Jayyus. De plus, on a avisé les villageois qu'ils devaient obtenir des permis pour les tracteurs, mais pour ce faire il faut soumettre des preuves de propriété et des documents d'assurance, et de nombreux villageois n'en ont pas.

Fermeture des portes : on ouvre les portes deux fois par jour — à 8 h 30 et à 19 heures. Les gens doivent souvent attendre que l'on déverrouille les portes. Les agriculteurs de Jayyus signalent que les soldats changent souvent les heures d'ouverture des portes sans en aviser les résidents. Ainsi, durant une semaine en décembre, on a ouvert les portes à 8 heures, puis la semaine suivante à 7 h 30, si bien que des agriculteurs ont raté l'ouverture des portes.

Avant le 25 octobre, les portes sont demeurées fermées pendant environ vingt jours à cause des fêtes juives. Par conséquent, des centaines d'arbres à Falamya ont péri parce que les agriculteurs ne pouvaient se rendre sur leurs terres et arroser ces arbres. D'autres arbres à Jayyus, à Attil, à Qalqilya et à Habla ont péri pour des raisons similaires. La fermeture des portes a également entraîné la destruction d'environ 90 % de la récolte de goyaves et a gravement nui à d'autres récoltes.

Dépopulation de la zone fermée : Ali Abu Shareb, son épouse et ses sept enfants sont la seule famille qui habite du côté occidental du mur. `Leur maison est séparée du reste du village depuis la construction du mur. Au début de janvier 2004, un agent de l'administration civile israélienne leur a rendu visite et les a avisés qu'ils seraient tenus de déménager à l'est du mur. Jusqu'à présent, on permet à la famille d'utiliser la porte sud des agriculteurs, mais seulement deux fois par jour, pour que les enfants puissent se rendre à l'école au village. La porte sud est fermée depuis plus d'un mois au reste des villageois de Jayyus, ce qui oblige les agriculteurs à parcourir tous les jours plusieurs kilomètres additionnels pour utiliser l'autre porte qui leur est réservée à Jayyus.

6. Ville de Qalqilya (gouvernorat de Qalqilya)

Population : 41 500 – 43 000

Emplacement : le mur encercle Qalqilya de tous les côtés.

Permis d'accès aux terres dans la zone fermée : depuis le 25 octobre 2003, environ quatre cents des mille trois cents agriculteurs (soit à peu près le quart) ont obtenu des permis d'accès à leurs terres. (Ces données ne tiennent pas compte des milliers de manœuvres qui doivent se rendre dans ce secteur de la zone fermée pour travailler sur les terres qui s'y trouvent.) Parmi les permis accordés, environ 20 % l'ont été à des Palestiniens décédés ou vivant à l'étranger. En novembre et décembre, le maire de Qalqilya a demandé plus de cent permis d'accès, mais seulement vingt nouveaux permis ont été délivrés. De plus, environ trois cents résidents de Qalqilya ont des permis pour entrer en Israël, mais aucun nouveau permis n'a été délivré en novembre. L'administration civile israélienne a avisé le maire qu'une révision des procédures était en cours.

Au moment de l'entrée en vigueur du régime des permis de la zone fermée, en octobre, la municipalité de Qalqilya assurait régulièrement le suivi des permis initialement accordés par l'administration civile israélienne et elle soumettait des demandes de permis au nom des agriculteurs. Depuis, les agents israéliens encouragent les Palestiniens à soumettre personnellement leurs demandes de permis à l'administration civile. Les agents de l'administration civile rendent visite aux agriculteurs sur leurs fermes, leur donnent leurs numéros de téléphone mobile et les encouragent à présenter leur demande directement. Cette façon de procéder engendre des tensions au sein de la collectivité, car ceux qui font une demande personnelle éveillent des soupçons chez les autres. Les autorités israéliennes encouragent des relations personnelles qui

rappellent la période antérieure au BCD. Ceux qui possèdent des permis n'admettent pas toujours qu'ils en ont, si bien qu'il sera maintenant difficile de connaître leur nombre exact; toutefois, jusqu'à présent, environ 40 % des personnes ayant besoin de tels permis en ont obtenu.

Permis pour véhicule dans la zone fermée : les autorités ont accordé des permis pour seulement trois des vingt camions utilisés pour l'agriculture, et un de ces permis n'a pas été renouvelé.

Fermeture des portes / postes de contrôle : il y a deux portes réservées aux agriculteurs, l'une au nord et l'autre au sud de Qalqilya. La porte nord est fermée depuis le 4 octobre. En octobre, en raison de la fermeture de cette porte, les huit mille poules de Jallal Zeid, un des principaux éleveurs de volailles de Cisjordanie, ont péri parce que M. Zeid ne pouvait pas aller leur donner à boire et à manger. Auparavant, il a perdu sept mille poules en raison d'une fermeture prolongée entre le 19 et le 27 août. De plus, les coûts d'entretien des serres, jumelés à la difficulté d'accéder aux marchés de la région, ont poussé les agriculteurs à démonter leurs serres et à les vendre ou à les utiliser comme enclos pour leurs moutons, car l'accès aux pâturages est également restreint, ce qui oblige les bergers à nourrir leurs bêtes avec du grain, entraînant des dépenses élevées.

Le 27 novembre, l'administration civile israélienne a annoncé au maire un ensemble de mesures visant à relaxer les restrictions liées aux fermetures.

La première mesure consistait à ouvrir le poste de contrôle principal du BCD aux taxis et aux autres véhicules vingt-quatre heures par jour. Cette mesure a été mise en oeuvre et, en date du 1er janvier 2004, il n´y a plus de soldats israéliens affectés au poste de contrôle (mais l'armée israélienne entre fréquemment dans Qalqilya). Toutefois, la mesure facilite un peu les déplacements. Après avoir traversé le poste de contrôle du BCD, si les Palestiniens veulent aller vers l'ouest, ils rencontrent immédiatement un poste de contrôle sur la route de contournement (à environ 200 mètres du poste de contrôle du BCD). Ce poste de contrôle, le poste de contrôle de Jarjouliya, a été déplacé 3 kilomètres plus loin à l'intérieur de la Cisjordanie le 5 novembre 2003. Au poste de contrôle de Jarjouliya, on demande aux Palestiniens leur permis pour entrer en Israël; sans ce permis, il est impossible de passer. Si, par exemple, une personne possède des terres dans cette région, elle ne pourra pas s'y rendre (car les permis d'accès de la zone fermée ne sont pas reconnus à ce poste de contrôle; on ne reconnaît que les permis de résidence de la zone fermée pour Daba, Ras Tira et Wad Irsha). Bien qu'on permette aux voitures de passer par ce poste de contrôle, les camions qui se rendraient aux terres agricoles y sont interdits. Par conséquent, il est impossible de transporter par camion les produits agricoles des fermes de la région du sud vers les marchés. Selon certains rapports, des agriculteurs ont été chassés de ces régions, ainsi que dans le nord, par des jeeps de l'armée israélienne.

Plus tard, le mur fermera définitivement le poste de contrôle de Jarjouliya, et les colons utiliseront un nouveau chemin de contournement qui traversera le village de Daba. De plus, un autre poste de contrôle permanent sera établi près d'Immatin, à l'est sur le chemin de contournement. Ainsi, la circulation des personnes et des denrées entre Naplouse et Qalqilya sera contrôlée et possiblement redirigée vers le nord afin d'éviter les colonies de Shomron et de Kedumim. Par conséquent, au lieu de soldats israéliens au poste de contrôle du BCD, il y a maintenant un poste de contrôle permanent tout juste à l'ouest, là où le chemin sera un jour bloqué par le mur; et il y aura bientôt un poste de contrôle permanent à l'est (maintenant il y a des «postes de contrôle mobiles» à l'est pour contrôler les déplacements vers Naplouse).

De plus, bien qu'on permette maintenant aux voitures de passer par la porte d'Azzun, qui est demeurée fermée pendant deux ans et dont l'accès était bloqué par un barrage de terre, les résidents de Habla, de Ras Tira, de Jallud et d'autres hameaux doivent parcourir au moins 15 kilomètres pour se rendre à Qalqilya. Leur trajet passe par Kufr Thult, sur une route secondaire, en direction de la porte d'Azzun puis, après quelques kilomètres de plus sur la route de contournement, du BCD de Qalqilya. Autrefois, il ne fallait que quelques minutes pour se rendre de Habla et de Ras Tira à Qalqilya, qui n'est qu'à quelques centaines de mètres. Maintenant, les gens qui vont à l'école ou

au travail doivent parcourir 30 kilomètres par jour en raison du labyrinthe de murs et de barrières dans la région. De plus, les gens qui se déplacent de la porte d'Azzun vers l'ouest atteindront le nouveau poste de contrôle de Jarjouliya après quelques kilomètres, où les soldats israéliens exigent, selon leur humeur, les permis qui donnent accès à la zone fermée ou à Israël.

La seconde mesure est un tunnel qui sera construit entre le village de Habla et la ville de Qalqilya, sous la route allant de Qalqilya à Kedumim. Toutefois, comme c'est le cas pour les portes dans le mur, les forces israéliennes contrôleront le tunnel. La construction de ce tunnel a commencé le 11 janvier 2004, et on prévoit l'achever en trois mois.

La troisième mesure est l'installation de portes additionnelles pour les agriculteurs le long du mur. Toutefois, si on ne les ouvre pas, l'installation de portes supplémentaires ne fera aucune différence. Bien que des périodes d'ouverture additionnelles aient été annoncées, la mise en oeuvre se fait attendre.

7. Village d'Azzun (gouvernorat de Qalqilya)

Population : 7000

Emplacement : Azzun se trouve à l'est du mur, mais les terres de ses habitants sont à l'ouest du mur.

Permis d'accès aux terres dans la zone fermée : que les autorités accordent ou non des permis est sans importance, car il n'y a pas de porte dans le mur. Pour se rendre à leurs terres, les résidents doivent parcourir une grande distance : environ 4 kilomètres pour se rendre à une porte près d'Isla à l'ouest, et 9 kilomètres vers une autre porte près de Nabi Ilyas, où se trouvent d'autres terres appartenant à des habitants du village. Pour accéder à certaines terres dans le nord, les résidents doivent se rendre à Jayyus. Comme il est souvent interdit aux Palestiniens d'utiliser les routes principales, réservées à l'armée et aux colons israéliens, ils sont obligés de faire des trajets encore plus longs, souvent à pied, et on leur interdit d'utiliser les camions au moment des récoltes.

8. Village de Kufr Thult (gouvernorat de Qalqilya)

Population : 4000

Emplacement : Kufr Thult se trouve à l'est du mur, mais ses terres se situent dans la zone fermée.

Permis d'accès aux terres dans la zone fermée : que les autorités accordent ou non des permis est sans importance, car la porte de Kufr Thult est presque toujours fermée.

9. Village de Qaffin (gouvernorat de Tulkarem)

Population : 9000

Emplacement : Qaffin se trouve à l'est du mur, mais les deux tiers environ des terres de ses habitants (6000 *dounoums* — 1500 acres), surtout des oliveraies, se situent à l'ouest du mur.

Permis d'accès aux terres dans la zoe fermée : il y a une porte réservée aux agriculteurs qui sépare Qaffin de terres que ses habitants possèdent dans la zone fermée ainsi que des villages de Baqa Sharqiya, de Nazlat Issa et d'Abu Nar. Les résidents de Qaffin doivent donc demander des permis pour accéder à leurs terres. Au début de novembre, trois cents personnes ont obtenu ces permis. Quelques semaines plus tard, trois cents autres agriculteurs ont reçu leurs permis. Environ

sept cents familles de Qaffin ont soit perdu des terres ou ont vu des parcelles isolées à cause du mur, si bien que près de deux mille personnes ont maintenant besoin de permis. Qaffin a un taux de chômage supérieur à 80 %. Comme dans de nombreux autres villages de la Cisjordanie, la majorité des résidents travaillaient en Israël avant l'*Intifada*.

Les agriculteurs de Qaffin ont obtenu des permis de la zone fermée valables pour un mois. Les Israéliens n'ont pas renouvelé leurs permis, prétextant qu'ils cultivaient principalement des oliviers dans la zone fermée et que, comme la récolte des olives se fait en octobre et en novembre, la saison était terminée.

10. Village de Zayta (gouvernorat de Tulkarem)

Population : 3000

Emplacement : Zayta se trouve à l'est du mur, mais plus de 80 % des terres de ses habitants se situent à l'ouest du mur. Deux murs cernent les terres de Zayta au nord du village, et un autre mur sépare le village des terres du côté sud. La majorité des résidents dépendent de leurs terres pour leur subsistance.

Permis d'accès aux terres dans la zone fermée : en octobre, les autorités ont rejeté les demandes de permis de trois cent cinquante habitants. Le 22 octobre, seulement trente agriculteurs parmi les trois cent quatre-vingt noms soumis ont obtenu des permis. Les permis ont été délivrés à une porte. Toutefois, les trente agriculteurs munis d'un permis n'ont pas tous été autorisés à se rendre sur leurs terres. Parmi ceux qui s'y sont rendus, certains ont décidé d'y demeurer et de dormir sur le sol, de crainte qu'on ne leur permette plus de revenir.

Les Israéliens soutiennent qu'ils refusent des permis pour des raisons de sécurité. Il y a des cas où certains membres d'une famille ont obtenu des permis, tandis que d'autres membres de la même famille ont essuyé un refus. Par exemple, dans un cas, on a refusé un permis au père, mais son épouse et ses filles en ont obtenu. Par conséquent, le principal soutien de famille ne pouvait se rendre sur ses terres; en outre, comme le père n'avait pas de permis, sa fille refusait de se rendre seule sur les terres pour y travailler. Selon le maire de Zayta, dans une famille de douze personnes à Shweika (région de Tulkarem), seules les trois femmes ont obtenu des permis, et les neuf hommes ont essuyé un refus. Israël a invoqué des raisons de «sécurité» pour cette décision. La famille n'a pas été en mesure de récolter ses olives.

En décembre, sur un total d'environ trois cent quatre-vingt agriculteurs, seulement cent avaient obtenu des permis d'accès à la zone fermée, valables pour un mois. Certains des permis sont renouvelés, d'autres pas; toutefois, les autorités n'accordent aucun nouveau permis. En général, on n'accorde pas de permis aux propriétaires de serres. Par conséquent, seulement 30 *dounoums* (7,5 acres) de terres servent à la culture en serres, alors qu'il y avait autrefois 600 *dounoums* (150 acres) de terres couvertes de serres. Les agriculteurs ont démonté leurs serres et les ont réinstallées dans le village voisin d'Illar, à l'est de Zayta, où il leur est plus facile de se rendre. Pour des raisons de «sécurité», on a refusé des permis à quatre propriétaires de serres dont Ahmad Abu Jaser, un homme de 70 ans qui possède 13 *dounoums* (3,25 acres) de serres. Les propriétaires fonciers louent leurs terres à des agriculteurs qui ont des permis. Parfois même, ils ne perçoivent aucun loyer, car ils veulent simplement garder les terres en exploitation et éviter qu'elles soient déclarées «abandonnées». D'une manière générale, les petits lots de culture potagère remplacent les nombreuses serres qui autrefois couvraient la région, ce qui mine le niveau de développement.

Un agriculteur de Zayta et sa famille ont été séparés du reste du village à la suite de la construction du mur. En août 2003, Zikrallah Aqad, 75 ans, a dû envoyer ses trois enfants vivre au village, chez des parents du côté est du mur, pour qu'ils puissent fréquenter l'école. Puisque l'agriculture est la seule source de revenus de Zikrallah et de sa famille, lui et sa fille aînée sont

demeurés sur la ferme de 7 *dounoums* (1,75 acres); toutefois, en janvier 2003, seul Zikrallah avait obtenu un permis de zone fermée (sa fille Najah n'en avait pas). En septembre 2003, l'alimentation électrique chez Zikrallah a été coupée en raison de la construction du mur, une situation qui a duré plus de vingt jours. Pendant cette période, le maire de Zayta a à plusieurs reprises demandé à l'administration civile israélienne de rétablir l'électricité. Finalement, on a permis à la compagnie d'électricité palestinienne d'entrer dans le secteur et de réparer les fils.

La vie est de plus en plus difficile pour Zikrallah, car il doit maintenant parcourir plusieurs kilomètres pour se rendre à son propre village, et le chemin qu'il emprunte sera tôt ou tard bloqué par la construction d'un deuxième mur dans la région. Malgré plusieurs requêtes présentées par le maire de Zayta et par Zikrallah lui-même à l'administration civile israélienne afin que l'on installe une porte pour Zikrallah, pour que sa famille puisse demeurer unie, aucune amélioration n'a été apportée. Un agent israélien a rendu visite à Zikrallah en septembre 2003 et l'a avisé qu'aucune porte ni installation spéciale ne serait mise en place pour lui.

Permis pour véhicule dans la zone fermée : les autorités n'ont délivré aucun permis pour des voitures ou des camions.

Fermeture des portes : autour de Zayta, il y a trois portes : deux dans le village, pour les agriculteurs, et la porte de Baqa Sharqiya, par laquelle passent les véhicules. La porte du sud est continuellement fermée depuis son installation il y a environ un an. La porte du nord-ouest s'ouvre dans la direction d'Israël, mais les agriculteurs ne peuvent pas passer par Israël pour aller sur leurs terres situées en Cisjordanie, au sud de Zayta. D'après l'horaire, cette porte devrait être ouverte pendant quinze minutes à 6 h 30, à 12 h 30 et à 16 heures. Toutefois, les heures d'ouverture n'ont jamais été régulières. Parfois, on ouvre les portes seulement deux fois par jour, ou on les ouvre plus tôt ou plus tard que prévu. En octobre, les portes de Zayta sont demeurées fermées pendant vingt jours d'affilée, durant les fêtes juives. On les a ouvertes le 25 et le 26 octobre, mais seulement deux ou trois fois par jour, pour une période de cinq minutes — à 6 heures, à 12 heures et à 18 heures.

Les agriculteurs qui ont tenté de passer par la porte de Baqa Sharqiya ont essuyé des refus, tout comme les enseignants et les médecins qui possèdent des permis. Le 3 décembre, par exemple, on a interdit le passage aux enseignants et aux médecins à la porte de Baqa Sharqiya, sans motif. Autrefois, la police frontalière contrôlait les portes, mais l'armée israélienne l'a remplacée. Il y a maintenant moins de raclées et de harcèlement, mais aussi moins de flexibilité pour ce qui est du passage par ces portes.

Parmi les trois cent quatre-vingt agriculteurs de Zayta, soixante-cinq cultivent des olives et aucun n'a pu aller sur ses terres pour cueillir les olives la saison dernière.

Déplacement du poste de contrôle : le 24 novembre, les autorités ont déplacé le poste de contrôle de Nazlat Issa 2 kilomètres plus loin à l'intérieur de la Cisjordanie, au-delà de Baqa Sharqiya et près de la porte de Qaffin. Depuis, il est plus difficile de transporter des produits entre Israël et la Cisjordanie. On a dit aux commerçants d'utiliser le poste de contrôle de Taybe (le poste de contrôle principal de Tulkarem) et on les refoule souvent vers le poste de contrôle de Qaffin — ce qui permet à Israël de contrôler le transport des denrées palestiniennes ainsi que les déplacements des habitants. De plus, un mur de béton semblable à celui d'Abu Dis a été érigé entre Baqa Sharqiya et Baqa Gharbiya.

Selon les médias israéliens, les restrictions devaient être allégées, et tous les résidents des villages avoisinants auraient accès à la région. D'après les reportages, on prévoyait utiliser le mur actuellement en construction plus près de la Ligne verte, entre Baqa Sharqiya et Baqa Gharbiya, plutôt que le mur construit 3 kilomètres plus loin en Cisjordanie. La situation n'a toutefois pas changé sur le terrain, et le passage n'est pas plus facile aux portes. Au contraire, les villageois signalent un recours accru aux gaz lacrymogènes ainsi qu'à la violence verbale et physique de la part des soldats israéliens de faction.

11. Village de Khirbet Jabara (gouvernorat de Tulkarem)

Population : 310

Emplacement : Khirbet Jabara, au sud de Tulkarem, se trouve du côté occidental du mur. Le village dépend presque entièrement de Tulkarem pour obtenir des services, élémentaires et autres, y compris l'éducation et les soins de santé.

Permis de résidence permanente dans la zone fermée : en octobre, les autorités ont refusé de douze à quinze demandes de permis de résidence permanente, une mesure qui a eu une incidence sur une cinquantaine de personnes (les douze ou quinze intéressés et les membres de leurs familles). Pour justifier ces refus, les autorités ont invoqué des raisons de «sécurité» et des problèmes informatiques. Suite au refus de ces demandes, et parce qu'ils rejettent par principe le système dans son ensemble, les villageois (tous, à l'exception de vingt à quarante personnes sur une population de trois cent dix habitants) ont refusé de demander des permis et n'ont pas accepté les permis délivrés unilatéralement par les autorités israéliennes.

Toutefois, au cours de la deuxième semaine de novembre, après une interdiction des déplacements imposée à titre punitif, trente personnes ont cédé et accepté les permis de résidence permanente qu'on leur offrait. Puis, le 20 décembre 2004, le reste des habitants qui refusaient de se procurer des permis ont été détenus au poste de contrôle de Tulkarem jusqu'à ce qu'ils aient accepté de se plier au régime de permis. De plus, ceux à qui on avait refusé des permis pour des «raisons de sécurité» ont obtenu des permis de résidence, mais valides pour trois mois seulement, alors que les permis de résidence accordés aux autres villageois étaient valides pour un an.

Les villageois ne voient pas d'avantages au système de permis. Ils croient plutôt que ce système et les procédures connexes visent uniquement à leur compliquer la vie. En vertu du système de permis, un enfant de 12 ans, par exemple, devra se rendre au BCD israélien pour le renouveler à la date d'expiration. Les villageois doutent que les permis seront effectivement renouvelés.

De nombreux agriculteurs n'ont pas pu faire les récoltes ni vendre leurs produits la saison dernière. De trente à quarante agriculteurs propriétaires de terres à l'est du mur ont interrompu ou considérablement réduit leurs activités agricoles, que ce soit la culture en pleine terre, la culture en serre ou l'élevage de volailles. L'entretien des serres coûte cher, et si les agriculteurs ne peuvent pas commercialiser leurs produits, il est alors inabordable de conserver les serres. De plus, la réparation des serres coûte cher (les villageois ont dépensé environ 30 000 NIS pour le plastique des serres). Au début d'octobre, un agriculteur a réparé sa serre — à moins de 500 mètres à l'est du mur — mais elle a été détruite avant la fin du mois par une fusée éclairante lancée par l'armée israélienne est tombée sur la serre et a brûlé le plastique.

Les résident des villages avoisinants d'Ar Ras, de Kafr Sur, de Kafr Jammal, de Kafr Abbush, de Far'un et de la ville de Tulkarem ne peuvent pas se rendre sur les terres qu'ils possèdent à Khirbet Jabara. Parmi ceux qui ont soumis des demandes de permis, bon nombre ont essuyé des refus, certains pour des raisons de «sécurité». Un homme d'une soixantaine d'années d'Ar Ras a soumis une demande à trois reprises, en vue d'accéder à ses terres et de rendre visite à sa fille à Khirbet Jabara, mais on refuse toujours de lui accorder un permis sans préciser de raison. La plupart des résidents d'Ar Ras n'ont pu rendre visite à leurs parents à Khirbet Jabara durant la fête de l'Eid. Même les propriétaires de terres de Khirbet Jabara à qui les autorités ont accordé des permis n'ont pas été en mesure de faire la récolte des olives parce que les manœuvres ou les autres membres de la famille n'avaient pas obtenu de permis. Un nombre proportionnellement plus élevé d'enfants et d'aînés ont obtenu des permis.

Permis pour véhicule dans la zone fermée : les autorités n'ont délivré aucun permis pour véhicule.

Fermeture des portes : en octobre, les portes sont demeurées fermées pendant environ vingt-six jours, sauf deux journées où l'on a laissé passer uniquement les piétons. Après que les villageois ont refusé de demander des permis, seuls les écoliers et les enseignants ont pu utiliser les portes pour se rendre à l'école. Toutefois, les enfants et les enseignants sont souvent en retard parce que les portes s'ouvrent plus tard que prévu. En outre, pendant plus de dix jours, les villageois qui n'ont pas de permis se sont vu refuser le passage au poste de contrôle du côté de Tulkarem.

Pendant tout le mois de novembre, on a permis uniquement aux élèves (et plus tard à quelques agriculteurs) de franchir la porte est. Depuis la construction du mur, il y a environ un an, il y a un bloc de béton devant la porte, placé par l'armée israélienne, si bien qu'aucun véhicule, y compris les voitures et les autobus, ne peut entrer ou sortir par cette porte. L'autobus scolaire, qui venait autrefois du village d'Ar Ras, ne peut plus aller au village chercher les élèves de Khirbet Jabara. Les enfants doivent maintenant se rendre à la porte de leurs propres moyens, à pied ou en voiture, attendre que les soldats israéliens ouvrent la porte, puis parcourir presque 500 mètres à pied pour prendre l'autobus d'Ar Ras. Le 9 novembre, les enfants étaient trempés après avoir marché et attendu sous la pluie que les soldats ouvrent la porte. Le 10 novembre, sous une pluie particulièrement drue et malgré le froid, les enfants ont dû attendre devant la porte de midi à 13 h 45, que les soldats leur ouvrent le passage.

Le 7 et le 8 novembre, l'armée israélienne a ouvert les portes de 7 heures à 14 heures; d'après les villageois, c'était en raison de la présence des médias, notamment la BBC. Le 9 novembre, l'armée israélienne a repris l'horaire antérieur et a ouvert la porte à 7 heures, pendant quinze minutes seulement, puis à 13 h 45, pendant quelques minutes pour laisser passer les élèves.

En décembre, en plus de la porte d'Ar Ras et de la porte principale, on a ajouté une troisième porte au mur à l'intérieur du village, près de l'entrée. Maintenant, les écoliers doivent franchir trois portes, au lieu de deux, pour se rendre prendre l'autobus scolaire à Ar Ras. Ils doivent passer une porte, parcourir de 20 à 30 mètres jusqu'à la porte principale, puis marcher encore de 20 à 30 mètres jusqu'à la troisième porte. On ne permet pas aux voitures de passer par ces portes. De nombreux enfants doivent faire deux kilomètres à pied pour se rendre à la première porte. Ils sont trempés par la pluie et tombent malades à cause du froid. L'armée contrôle les portes et ne les ouvre que le matin et l'après-midi pour les écoliers.

Fermeture du poste de contrôle : le poste de contrôle principal pour entrer et sortir du village se trouve à l'intersection de la route de contournement et de la route qui relie Khirbet Jabara à Tulkarem. Avant le 7 novembre, les soldats israéliens empêchaient les résidents de quitter le village s'ils n'avaient pas de permis. Toutefois, par la suite, l'armée a repris le système en vigueur auparavant et les villageois sont autorisés à traverser le poste de contrôle si leur nom et leur numéro d'identification figurent au registre du poste de contrôle. Le 8 novembre, les villageois ont pu passer à pied, mais on a interdit aux agriculteurs de faire passer aussi leurs produits ou leurs volailles au poste de contrôle.

La plupart des villageois peuvent passer au poste de contrôle principal parce que leur nom figure sur une liste qui y est conservée. Les résidents inscrits sur cette liste peuvent passer dans de petites voitures personnelles. Toutefois, les autres voitures et les camions munis de plaques d'immatriculation palestiniennes, même si le chauffeur a un permis, ne sont pas autorisés à passer. En règle générale, le passage au poste de contrôle est laissé à la discrétion du soldat israélien de faction. De plus, depuis quatre ou cinq mois, les camions à ordures de Kafr Majlis ne peuvent plus passer au poste de contrôle, si bien que les résidents doivent brûler leurs ordures.

On permet uniquement aux camions en provenance d'Israël d'entrer au village, mais le coût de ces camions est inabordable pour les agriculteurs locaux, compte tenu des distances additionnelles à parcourir. Auparavant, il en coûtait de 50 à 100 NIS pour le transport de produits ou d'approvisionnements sur les 4 kilomètres séparant Khirbet Jabara de Tulkarem. Si on fait appel à des camions israéliens, il faut compter 300 NIS pour la même distance. Si la porte entre

Khirbet Jabara et Kafr Sur était accessible aux camions, on n'aurait pas besoin des camions d'Israël. D'après les agriculteurs, les autorités israéliennes permettent seulement aux camions israéliens de circuler parce qu'elles veulent séparer les villageois de Tulkarem de la région avoisinante et ainsi les obliger à aller s'installer ailleurs.

La plupart des agriculteurs n'entretiennent plus leurs serres ou n'élèvent plus de volaille, parce qu'ils ne peuvent plus sortir leurs produits du village ou faire entrer les fournitures requises, par exemple des aliments pour les poules, faute de moyens de transport viables et abordables. Autrefois, on élevait 150 000 poules dans le village. Environ 80 % des cinquante-cinq agriculteurs ont cessé toute activité agricole commerciale en raison de l'incertitude de l'avenir. Les 20 % restants poursuivent la lutte pour conserver leur moyen de subsistance.

12. Village de Baqa Sharqiya (gouvernorat de Tulkarem)

Population : 4000

Emplacement : le mur enfermera Baqa Sharqiya de tous les côtés.

Permis d'accès à la zone fermée : les Palestiniens détenant des permis pour se rendre en Israël n'ont pas pu traverser les portes de Baqa Sharqiya et entrer dans la zone fermée. Les soldats israéliens leur ont dit qu'ils devaient obtenir des permis de la zone fermée.

L'armée israélienne a déplacé le poste de contrôle séparant les villages de Nazlat Issa et de Baqa Sharqiya, d'une part, et celui de Baqa Gharbiya (à l'intérieur de la Ligne verte), d'autre part, 2 kilomètres plus loin en Cisjordanie, en direction de la porte de Qaffin. Un deuxième mur, qui encerclera Nazlat Issa, Baka Sharqiya et Abu Nar, est presque achevé. Dans certains cas, le mur se trouve à quelques mètres des habitations.

13. Village de Mutilla (gouvernorat de Djénine)

Population : 300

Emplacement : Mutilla est une collectivité isolée et vulnérable qui se trouve à l'ouest de la section nord-ouest du mur, près de la vallée du Jourdain. Mutilla est également à proximité de l'endroit où, selon les informations diffusées par la presse, on songerait à installer des mitrailleuses automatiques.

Fermeture des portes : le long d'un pan du mur d'une longueur de 20 à 30 kilomètres, près de Mutilla, les autorités n'ont pas ménagé de porte, prétextant que le mur se trouve sur la Ligne verte. Toutefois, plusieurs villages sont séparés de leurs oliveraies. L'armée israélienne a averti les villageois de ne pas se rendre sur leurs terres. La mesure est appliquée par les gardes de sécurité d'une société privée (chargée de protéger les travailleurs qui construisent le mur), qui se font passer pour des soldats et des policiers et qui usent de tactiques d'intimidation et de harcèlement des villageois. Lorsque plusieurs centaines d'oliviers ont été déracinés, au début de décembre, on n'a pas permis aux agriculteurs d'aller chercher ces arbres pour les replanter. Une bande de 300 mètres à partir du secteur où le mur est en construction est considérée comme une zone militaire fermée, ce qui empêche les villageois de s'occuper de leurs oliviers.

PARTIE B
FERMETURE DE LA BARRIÈRE À QALQILYA

Source : municipalité de Qalqilya, ministère du gouvernement local, Autorité palestinienne.

Barrières sud et nord utilisées par les agriculteurs et poste de contrôle du BCD entre le 1er septembre 2003 et le 17 janvier 2004

Date	Barrière sud	Barrière nord	Poste de contrôle du BCD	Observations concernant le poste de contrôle du BCD
1-9-2003	Ouverte	Ouverte	Ouverte	
2-9-2003	Ouverte	Ouverte	Ouverte	
3-9-2003	Ouverte	Ouverte	Ouverte	
4-9-2003	Ouverte	Ouverte	Ouverte	
5-9-2003	Fermée	Ouverte	Ouverte	
6-9-2003	Fermée	Ouverte	Ouverte	
7-9-2003	Fermée	Ouverte	Fermée	
8-9-2003	Fermée	Ouverte	Fermée	
9-9-2003	Ouverte	Ouverte	Ouverte	
10-9-2003	Ouverte	Partiellement ouverte de 13 heures à 20 heures	Ouverte	Pour les piétons seulement jusqu'à 13 heures
11-9-2003	Ouverte	Fermée	Ouverte	Pour les piétons seulement
12-9-2003	Ouverte	Ouverte	Ouverte	
13-9-2003	Ouverte	Ouverte	Ouverte	
14-9-2003	Ouverte	Ouverte	Ouverte	Ouverte à minuit
15-9-2003	Ouverte	Ouverte	Ouverte	
16-9-2003	Ouverte	Ouverte	Ouverte	
17-9-2003	Ouverte	Ouverte	Ouverte	
18-9-2003	Ouverte	Ouverte	Ouverte	
19-9-2003	Ouverte	Fermée	Ouverte	
20-9-2003	Ouverte	Fermée	Ouverte	
21-9-2003	Ouverte	Fermée	Ouverte	
22-9-2003	Ouverte	Fermée	Ouverte	
23-9-2003	Ouverte	Fermée	Ouverte	
24-9-2003	Ouverte	Fermée	Ouverte	
25-9-2003	Fermée	Fermée	Ouverte	
26-9-2003	Fermée	Fermée	Fermée	
27-9-2003	Fermée	Fermée	Ouverte	Piétons seulement
28-9-2003	Fermée	Fermée	Ouverte	Piétons seulement
29-9-2003	Fermée	Fermée	Ouverte	
30-9-2003	Fermée	Fermée	Ouverte	
31-9-2003	Fermée	Fermée	Ouverte	
1-10-2003	Fermée	Fermée	Ouverte	
2-10-2003	Fermée	Fermée	Ouverte	
3-10-2003	Fermée	Fermée	Ouverte	
4-10-2003	Fermée	Fermée	Ouverte	
5-10-2003	Fermée	Fermée	Partiellement ouverte	

6-10-2003	Fermée	Fermée	Fermée	Piétons seulement
7-10-2003	Fermée	Fermée	Ouverte	Employés seulement
8-10-2003	Fermée	Fermée	Ouverte	Employés seulement
9-10-2003	Fermée	Fermée	Ouverte	Ouverte pour les employés selon l'humeur des soldats
10-10-2003	Fermée	Fermée	Fermée	Fermée également pour les piétons
11-10-2003	Fermée	Fermée	Fermée	Fermée également pour les piétons
12-10-2003	Fermée	Fermée	Fermée	Fermée également pour les piétons
13-10-2003	Fermée	Fermée	Fermée	
14-10-2003	Fermée	Fermée	Fermée	
15-10-2003	Fermée	Fermée	Fermée	
16-10-2003	Fermée	Fermée	Fermée	
17-10-2003	Fermée	Fermée	Fermée	
18-10-2003	Fermée	Fermée	Fermée	
19-10-2003	Fermée	Fermée	Fermée	BCD : Ouverte uniquement pour les professeurs et les médecins avec autorisation préalable de l'armée israélienne
20-10-2003	Fermée	Fermée	Fermée	
21-10-2003	Fermée	Fermée	Fermée	
22-10-2003	Fermée	Fermée	Fermée	
23-10-2003	Fermée	Fermée	Fermée	
24-10-2003	Fermée	Fermée	Fermée	
25-10-2003	Fermée	Fermée	Fermée	
26-10-2003	Fermée	Fermée	Fermée	
27-10-2003	Fermée	Fermée	Fermée	
28-10-2003	Fermée	Fermée	Fermée	
29-10-2003	Fermée	Fermée	Fermée	
30-10-2003	Fermée	Fermée	Fermée	
31-10-2003	Fermée	Fermée	Fermée	
1-11-2003	Fermée	Fermée	Fermée	
2-11-2003	Fermée	Fermée	Fermée	
3-11-2003	Fermée	Fermée	Fermée	
4-11-2003	Fermée	Fermée	Fermée	
5-11-2003	Fermée	Fermée	Fermée	
6-11-2003	Fermée	Fermée	Ouverte	
7-11-2003	Fermée	Fermée	Ouverte	
8-11-2003	Fermée	Fermée	Ouverte	
9-11-2003	Fermée	Fermée	Ouverte	
10-11-2003	Fermée	Fermée	Ouverte	
11-11-2003	Fermée	Fermée	Ouverte	
12-11-2003	Fermée	Fermée	Ouverte	
13-11-2003	Fermée	Fermée	Ouverte	
14-11-2003	Fermée	Fermée	Ouverte	
15-11-2003	Fermée	Fermée	Ouverte	
16-11-2003	Fermée	Fermée	Ouverte	
17-11-2003	Fermée	Fermée	Ouverte	
18-11-2003	Fermée	Fermée	Ouverte	
19-11-2003	Fermée	Fermée	Ouverte	

20-11-2003	Fermée	Fermée	Ouverte	
21-11-2003	Fermée	Fermée	Ouverte	
22-11-2003	Fermée	Fermée	Ouverte	
23-11-2003	Fermée	Fermée	Ouverte	
24-11-2003	Fermée	Fermée	Ouverte	
25-11-2003	Fermée	Fermée	Ouverte	
26-11-2003	Fermée	Fermée	Ouverte	
27-11-2003	Fermée	Fermée	Ouverte	
28-11-2003	Fermée	Fermée	Ouverte	
29-11-2003	Fermée	Fermée	Ouverte	
30-11-2003	Fermée	Fermée	Ouverte	
31-11-2003	Fermée	Fermée	Ouverte	
		Fermée	Ouverte	
1-12-2003	Fermée	Fermée	Ouverte	
2-12-2003	Fermée	Fermée	Ouverte	
3-12-2003	Fermée	Fermée	Ouverte	
4-12-2003	Fermée	Fermée	Ouverte	
5-12-2003	Fermée	Fermée	Ouverte	
6-12-2003	Fermée	Fermée	Ouverte	
7-12-2003	Fermée	Fermée	Ouverte	
8-12-2003	Fermée	Fermée	Ouverte	
9-12-2003	Fermée	Fermée	Ouverte	
10-12-2003	Fermée	Fermée	Ouverte	
11-12-2003	Fermée	Fermée	Ouverte	
12-12-2003	Fermée	Fermée	Ouverte	
13-12-2003	Fermée	Fermée	Fermée	Jusqu'à 23 heures
14-12-2003	Fermée	Fermée	Fermée	
15-12-2003	Fermée	Fermée	Ouverte	BCD : Ouverte seulement pour les personnes détenant des permis de l'extérieur de Qalqilya
16-12-2003	Fermée	Fermée	Ouverte	
17-12-2003	Fermée	Fermée	Ouverte	
18-12-2003	Fermée	Fermée	Ouverte	
19-12-2003	Fermée	Fermée	Ouverte	
20-12-2003	Fermée	Fermée	Ouverte	
21-12-2003	Fermée	Fermée	Ouverte	
22-12-2003	Fermée	Fermée	Ouverte	
23-12-2003	Fermée	Fermée	Ouverte	
24-12-2003	Fermée	Fermée	Ouverte	
25-12-2003	Fermée	Fermée	Ouverte	
26-12-2003	Fermée	Fermée	Ouverte	
27-12-2003	Fermée	Fermée	Ouverte	
28-12-2003	Fermée	Fermée	Ouverte	
29-12-2003	Fermée	Fermée	Ouverte	
30-12-2003	Fermée	Fermée	Ouverte	
31-12-2003	Fermée	Fermée	Ouverte	
1-1-2004	Fermée	Fermée	Ouverte	
2-1-2004	Fermée	Fermée	Ouverte	
3-1-2004	Fermée	Fermée	Ouverte	
4-1-2004	Fermée	Fermée	Ouverte	
5-1-2004	Fermée	Fermée	Ouverte	

6-1-2004	Fermée	Fermée	Ouverte	
7-1-2004	Fermée	Fermée	Ouverte	
8-1-2004	Fermée	Fermée	Ouverte	
9-1-2004	Fermée	Fermée	Ouverte	
10-1-2004	Fermée	Fermée	Ouverte	
11-1-2004	Fermée	Fermée	Ouverte	
12-1-2004	Fermée	Fermée	Ouverte	
13-1-2004	Fermée	Fermée	Ouverte	
14-1-2004	Fermée	Fermée	Ouverte	
15-1-2004	Fermée	Fermée	Ouverte	
16-1-2004	Fermée	Fermée	Ouverte	
17-1-2004	Fermée	Fermée	Ouverte	

PARTIE C
FERMETURE DE LA BARRIÈRE À JAYYUS

Résultats des analyses du Programme d'observation de la barrière

Le Conseil mondial des églises a lancé, à l'invitation des églises chrétiennes locales, un programme intitulé «Accompagnement œcuménique pour la Palestine et Israël» (AEPI). Depuis octobre 2002, et en collaboration avec le groupe palestinien d'hydrologie, les accompagnateurs œcuméniques basés à Jayyus ont mis en œuvre un programme d'observation et de collecte de données relatives au mur.

Le programme d'observation de la barrière a commencé en novembre 2003. Ce programme a pour but d'obtenir des données sur les heures d'ouverture des barrières, la durée de leur ouverture et le nombre d'agriculteurs qui franchissent ces barrières. Ce programme prévoit également la prise de notes au sujet des formalités de contrôle que subissent les agriculteurs lorsqu'ils quittent ou se rendent à leurs fermes.

Les accompagnateurs ont observé les deux barrières de Jayyus. La première est la barrière nord, qui est la barrière principale, et l'autre est appelée la barrière sud. L'administration civile israélienne a fourni «verbalement» au maire de Jayyus un horaire des heures d'ouverture de la barrière. D'après cet horaire, la barrière est ouverte trois fois par jour, pendant toute la semaine. La barrière est ouverte le matin entre 6 h 45 et 7 h 10, entre 12 h30 et 12 h 45 et de 16 h 10 à 16 h 35.

Entre le 14 novembre 2003 et le 6 janvier 2004, l'AEPI a recueilli des données concernant quarante-et-une matinées et vingt-huit soirées.

De façon générale, les heures d'ouverture sont beaucoup trop irrégulières. Les agriculteurs sont obligés d'attendre souvent plusieurs heures et il leur est difficile d'arriver à la barrière à un moment où il est possible de la franchir. Bien souvent, les soldats renvoient les agriculteurs d'où ils viennent en leur disant qu'ils sont en retard, même si la barrière est encore ouverte. Il y a aussi le fait que les barrières sont demeurées fermées le 17 décembre. Les données manquantes indiquent que les membres de l'équipe de l'AEPI n'étaient pas à Jayyus ou ne surveillaient pas la barrière à ce moment-là.

Données sur l'ouverture de la barrière le matin pendant quarante-et-un jours

Attente quotidienne moyenne	**44 minutes**
Attente maximale	**2 heures et 15 minutes**
Ecart type pour la durée de l'attente	**31 minutes**
Nombre moyen d'agriculteurs autorisés à passer	**41 agriculteurs**
Durée totale d'attente, en heures, par rapport au nombre d'agriculteurs	**1 209 heures**
Durée moyenne du contrôle par agriculteur	**34 secondes**

Données sur l'ouverture de la barrière le soir pendant vingt-huit jours

Attente quotidienne moyenne	**35 minutes**
Attente maximale	**1 heure et 5 minutes**
Ecart type pour la durée de l'attente	**25 minutes**
Nombre moyen d'agriculteurs autorisés à passer	**34 agriculteurs**
Durée totale d'attente, en heures, par rapport au nombre d'agriculteurs	**524 heures**
Durée moyenne du contrôle par agriculteur	**37 secondes**

Remarques au sujet des graphiques :

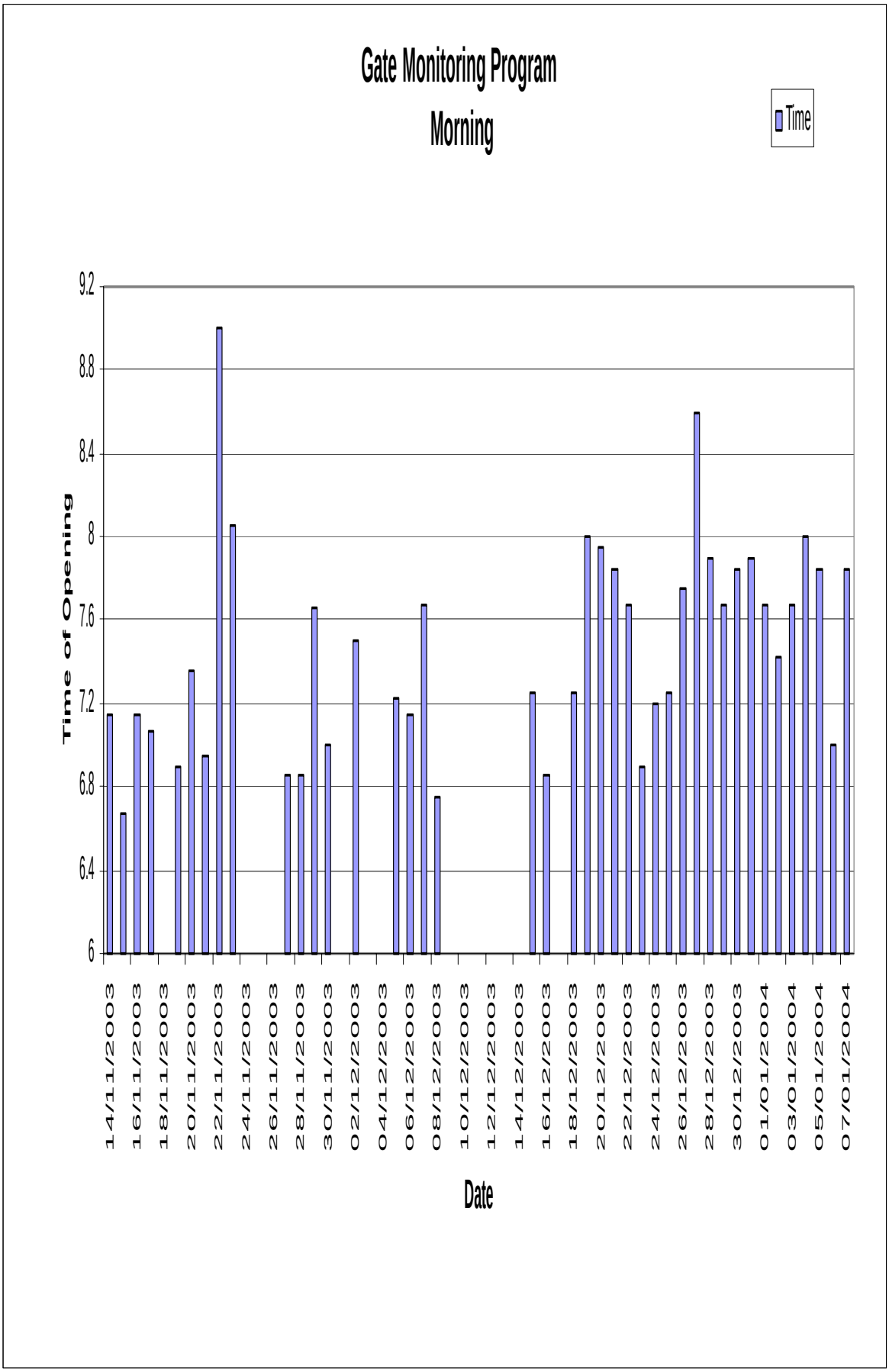
1. Les graphiques concernant la durée : chaque colonne indique le nombre des minutes pendant lesquelles la barrière est ouverte.

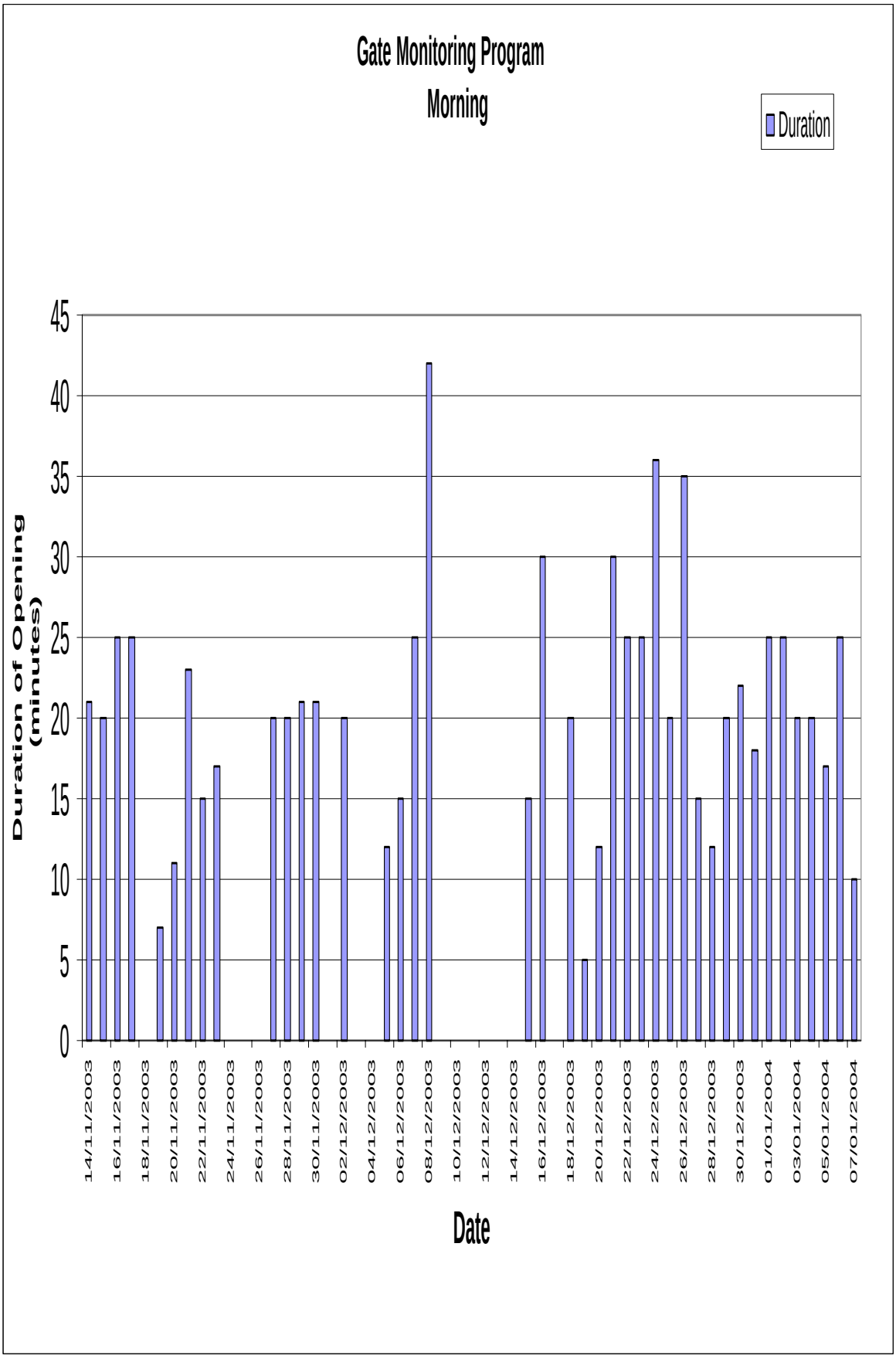
   a) Le graphique indiquant le nombre d'agriculteurs : chaque colonne indique le nombre d'agriculteurs ayant franchi la barrière.

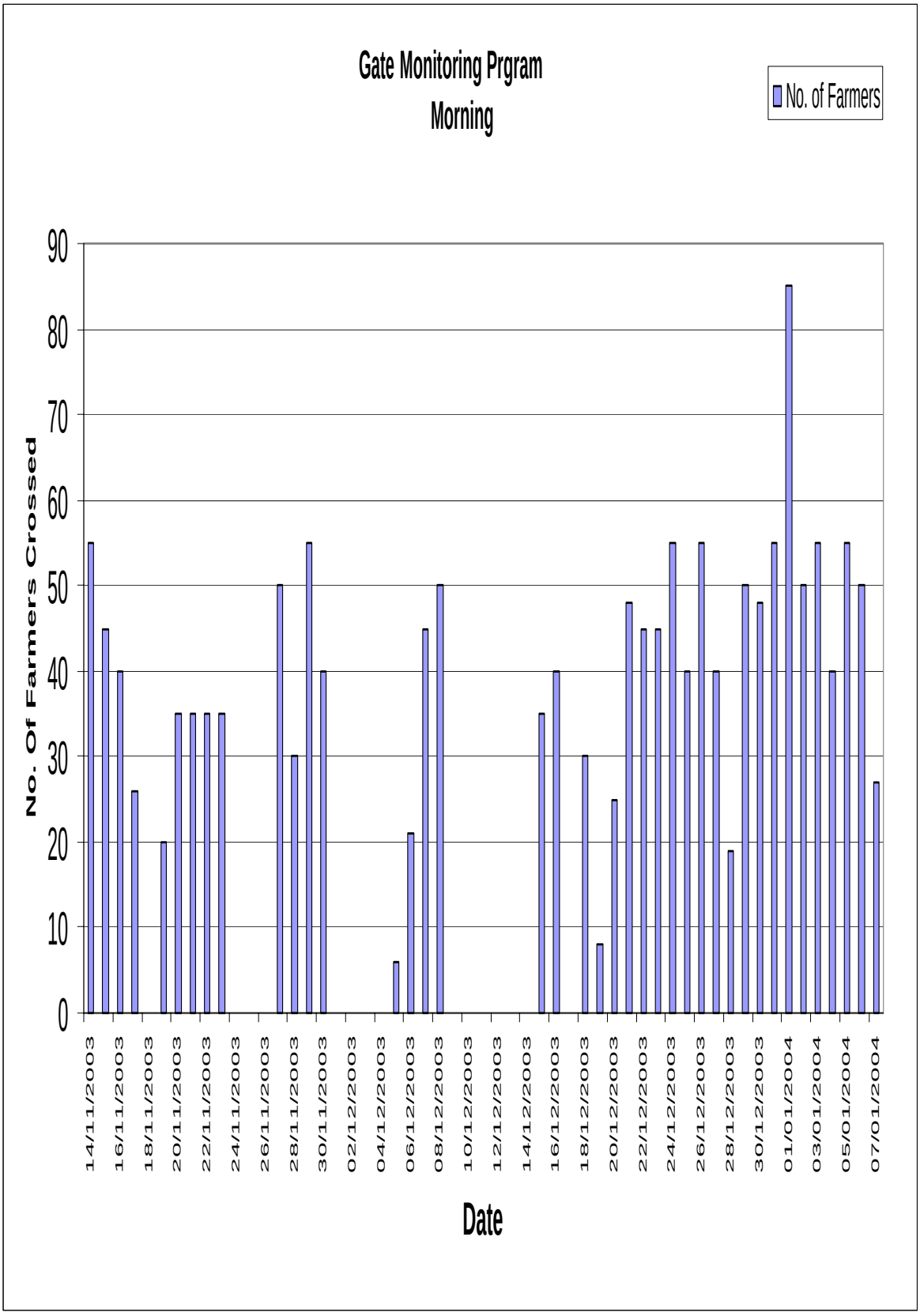
   b) Le graphique des heures : dans ce graphique, le haut de la colonne indique l'heure d'ouverture de la barrière.

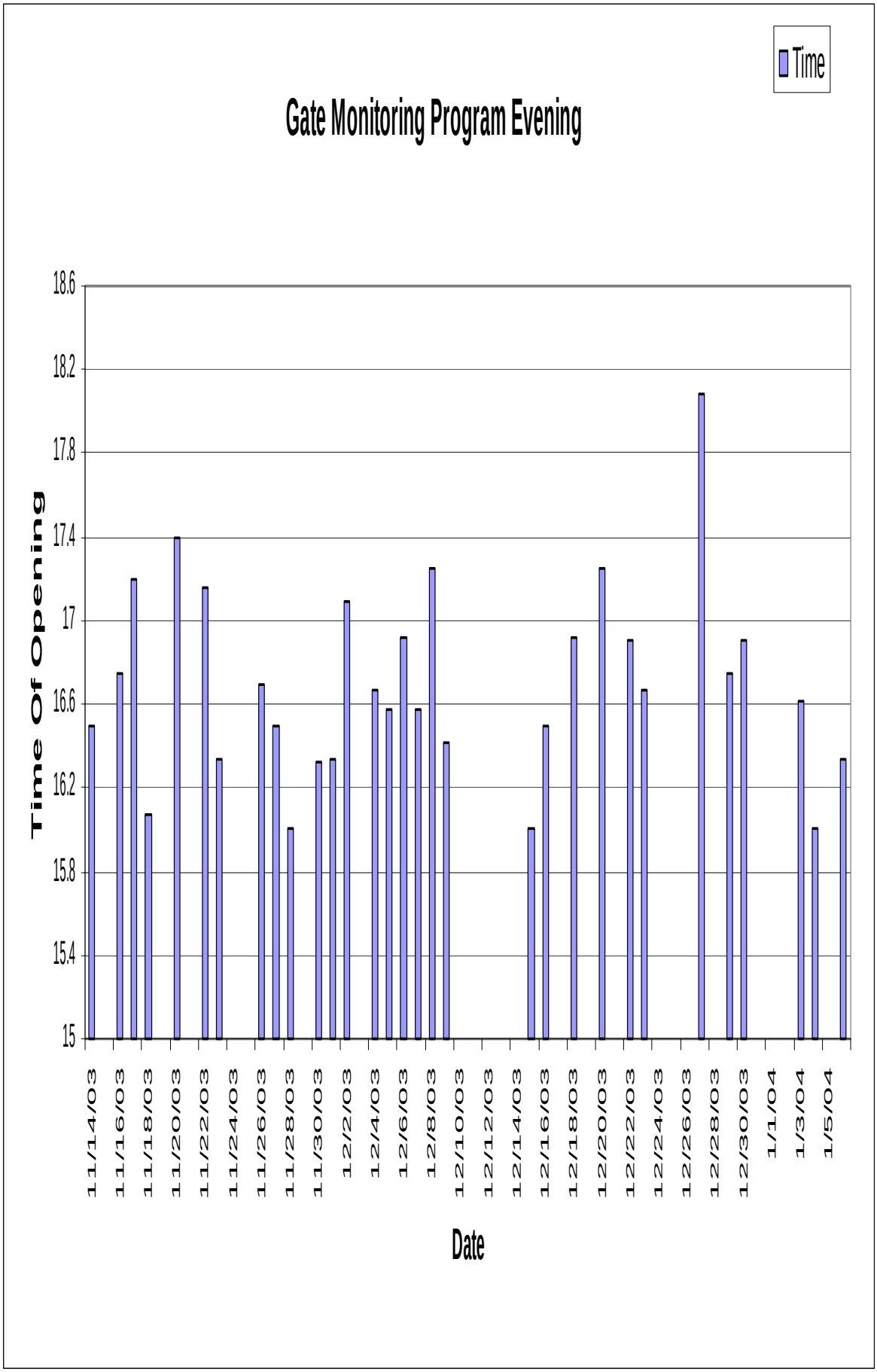
Réalisé par :

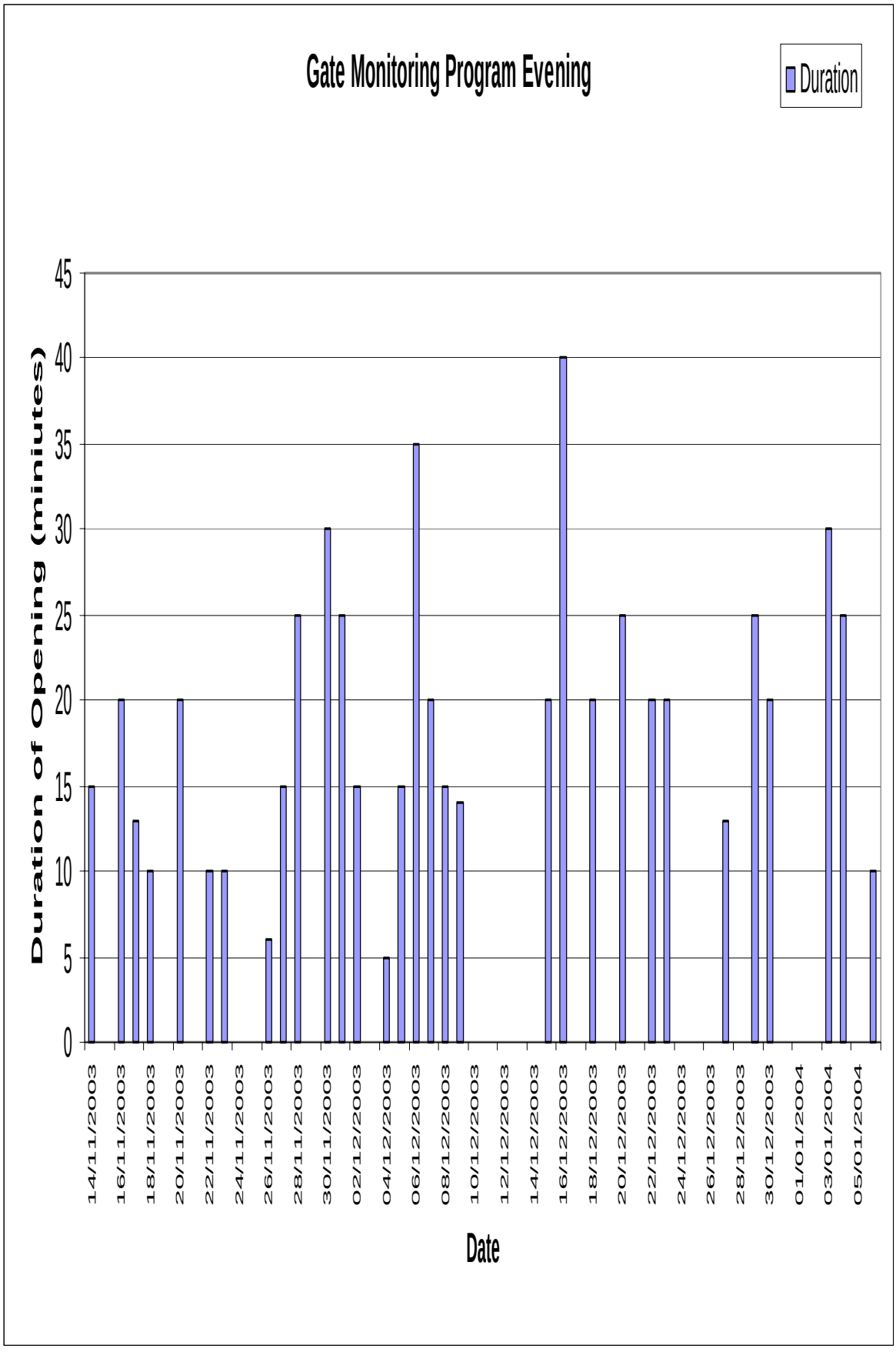
AEPI : Maurice Hopper
Groupe palestinien d'hydrologie : Abdul-Latif Khaled

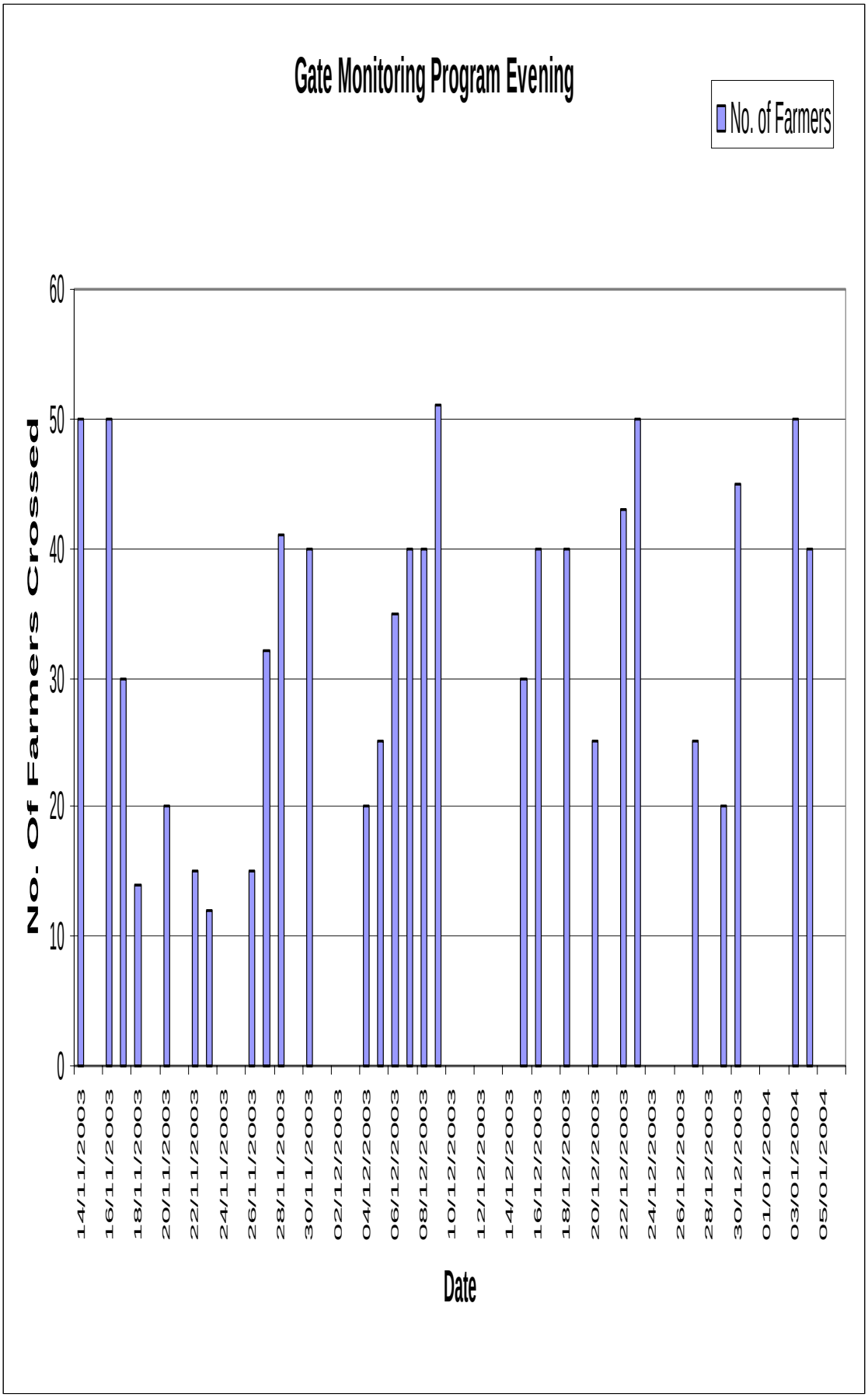

Gate Monitoring Program
Morning
Time
Time of Opening
9.2
8.8
8.4
8
7.6
7.2
6.8
6.4
6
14/11/2003
16/11/2003
18/11/2003
20/11/2003
22/11/2003
24/11/2003
26/11/2003
28/11/2003
30/11/2003
02/12/2003
04/12/2003
06/12/2003
08/12/2003
10/12/2003
12/12/2003
14/12/2003
16/12/2003
18/12/2003
20/12/2003
22/12/2003
24/12/2003
26/12/2003
28/12/2003
30/12/2003
01/01/2004
03/01/2004
05/01/2004
07/01/2004
Date


Gate Monitoring Program
Morning
Duration
Duration of Opening (minutes)
0
5
10
15
20
25
30
35
40
45
14/11/2003
16/11/2003
18/11/2003
20/11/2003
22/11/2003
24/11/2003
26/11/2003
28/11/2003
30/11/2003
02/12/2003
04/12/2003
06/12/2003
08/12/2003
10/12/2003
12/12/2003
14/12/2003
16/12/2003
18/12/2003
20/12/2003
22/12/2003
24/12/2003
26/12/2003
28/12/2003
30/12/2003
01/01/2004
03/01/2004
05/01/2004
07/01/2004
Date


Gate Monitoring Prgram
Morning
No. of Farmers
No. Of Farmers Crossed
0
10
20
30
40
50
60
70
80
90
14/11/2003
16/11/2003
18/11/2003
20/11/2003
22/11/2003
24/11/2003
26/11/2003
28/11/2003
30/11/2003
02/12/2003
04/12/2003
06/12/2003
08/12/2003
10/12/2003
12/12/2003
14/12/2003
16/12/2003
18/12/2003
20/12/2003
22/12/2003
24/12/2003
26/12/2003
28/12/2003
30/12/2003
01/01/2004
03/01/2004
05/01/2004
07/01/2004
Date


Time
Gate Monitoring Program Evening
Time Of Opening
18.6
18.2
17.8
17.4
17
16.6
16.2
15.8
15.4
15
11/14/03
11/16/03
11/18/03
11/20/03
11/22/03
11/24/03
11/26/03
11/28/03
11/30/03
12/2/03
12/4/03
12/6/03
12/8/03
12/10/03
12/12/03
12/14/03
12/16/03
12/18/03
12/20/03
12/22/03
12/24/03
12/26/03
12/28/03
12/30/03
1/1/04
1/3/04
1/5/04
Date


Gate Monitoring Program Evening
Duration
Duration of Opening (miniutes)
0
5
10
15
20
25
30
35
40
45
14/11/2003
16/11/2003
18/11/2003
20/11/2003
22/11/2003
24/11/2003
26/11/2003
28/11/2003
30/11/2003
02/12/2003
04/12/2003
06/12/2003
08/12/2003
10/12/2003
12/12/2003
14/12/2003
16/12/2003
18/12/2003
20/12/2003
22/12/2003
24/12/2003
26/12/2003
28/12/2003
30/12/2003
01/01/2004
03/01/2004
05/01/2004
Date


Gate Monitoring Program Evening
No. of Farmers
No. Of Farmers Crossed
0
10
20
30
40
50
60
14/11/2003
16/11/2003
18/11/2003
20/11/2003
22/11/2003
24/11/2003
26/11/2003
28/11/2003
30/11/2003
02/12/2003
04/12/2003
06/12/2003
08/12/2003
10/12/2003
12/12/2003
14/12/2003
16/12/2003
18/12/2003
20/12/2003
22/12/2003
24/12/2003
26/12/2003
28/12/2003
30/12/2003
01/01/2004
03/01/2004
05/01/2004
Date

PARTIE D
ORDONNANCE MILITAIRE DES FDI : «DÉCLARATION CONCERNANT LA FERMETURE DU SECTEUR N° S/2/03 (ZONE FERMÉE)», 2 OCTOBRE 2003.

Traduit vers l'anglais par le bureau de coordination des affaires humanitaires des Nations Unies

Forces de défense israéliennes

Ordonnance relative au règlement sur la sécurité (Judée et Samarie) (n° 378), 5730-1970
Déclaration concernant la fermeture du secteur n° S/2/03 (zone fermée)

En vertu des pouvoirs qui me sont conférés en qualité de commandant des FDI dans le secteur de la Judée et de la Samarie, et en vertu des articles 88 et 90 de l'ordonnance relative au règlement sur la sécurité (Judée et Samarie) (n° 378), 5730-1970 (ci-après l'ordonnance) et des autres pouvoirs qui m'ont été conférés par les différentes lois et règlements sur la sécurité, et compte tenu de la situation particulière qui existe dans le secteur en matière de sécurité et de la nécessité de prendre les mesures qui s'imposent pour arrêter les attaques terroristes et empêcher les attaquants de quitter les secteurs de Judée et Samarie pour se rendre dans l'Etat d'Israël, j'ordonne par les présentes ce qui suit :

Définitions

1. Dans la présente ordonnance :

«La carte» – la carte à l'échelle du 1:150,000, intitulée «Déclaration concernant la fermeture du secteur n° S/2/03 (zone fermée)» signée de ma main et qui fait partie intégrante de la présente déclaration.

«Israélien» – membre d'une des catégories suivantes :

a) citoyen de l'Etat d'Israël;

b) résident de l'Etat d'Israël dont le nom figure sur le registre de la population en Israël, conformément à la *loi sur le registre de population*, 5725 – 1965, telle qu'elle est en vigueur en Israël;

c) toute personne ayant le droit d'immigrer en Israël en vertu de la *loi sur le retour*, 7510-1950, telle qu'elle est en vigueur en Israël.

«Barrière» – clôtures, murs et routes militaires, visant à mettre un terme aux attentats terroristes et à empêcher les terroristes de quitter les secteurs de Judée et de Samarie pour se rendre en Israël, construits conformément aux ordonnances de confiscation décrites dans la section A de l'appendice à la présente déclaration, telles qu'elles sont en vigueur.

«Zone fermée» – les secteurs situés entre la barrière, indiquée en rouge sur la carte, et l'Etat d'Israël.

Fermeture d'un secteur

2. Je déclare par la présente que la zone fermée est une zone de sécurité, au sens de la présente ordonnance.

Interdiction d'entrer ou de séjourner dans la zone

3. *a)* Il est interdit d'entrer dans la zone fermée ou d'y demeurer.

b) Toute personne qui se trouve dans la zone fermée est tenue de la quitter immédiatement.

Réserve au sujet de l'application de l'ordonnance

4. *a)* L'article 3 de la déclaration ne s'applique pas aux personnes suivantes :

1. les Israéliens;

2. les personnes à qui un permis a été accordé par moi ou en mon nom les autorisant à pénétrer dans la zone fermée et d'y demeurer, conformément aux conditions fixées dans le permis. Le permis dont il s'agit ici peut être général, personnel, spécial ou d'un type particulier.

b) Malgré la section *a)* ci-dessus, le commandant militaire a le pouvoir de décider que l'article 3 de la déclaration s'applique à une personne ou à une catégorie de personnes qui entre dans la zone fermée ou qui y demeure.

Résidents permanents

5. *a)* La personne de plus de 16 ans et dont le lieu de résidence permanent, le jour de l'entrée en vigueur de la déclaration, est situé dans la zone fermée, est autorisée à entrer dans ladite zone et à y demeurer, pourvu qu'elle détienne un permis écrit, accordé par moi ou en mon nom, indiquant que le lieu de résidence permanente de cette personne est situé au sein de la zone fermée, conformément aux conditions fixées dans le permis.

b) 1. La personne de moins de 18 ans et dont le lieu de résidence permanente est situé dans la zone fermée est autorisée à demeurer dans ladite zone, sans détenir de permis écrit, conformément à ce qui est mentionné ci-dessus dans la section *a)*.

2. La personne de moins de 18 ans, et dont le lieu de résidence permanente est situé dans la zone fermée, est autorisée à entrer dans ladite zone dans les cas suivants :

a) elle détient un permis, conformément à la section *a)*, pourvu qu'elle n'ait pas moins de 12 ans;

b) elle est accompagnée par une personne dont l'entrée est autorisée en vertu de la section *a)*;

c) de toute autre façon fixée par moi ou en mon nom.

Points de passage

6. *a)* L'entrée et la sortie de la zone fermée s'effectuent par les points de passage décrits dans la section B de l'appendice de la déclaration, marqués en bleu sur la carte, conformément aux conditions fixées par moi ou en mon nom.

b) Aux fins de la présente section :**«Entrée dans la zone fermée»** – fait d'entrer dans la zone fermée en provenance d'un secteur [Cisjordanie] qui n'est pas situé dans la zone fermée. **«Sortie de la zone fermée»** – fait de sortir de la zone fermée en direction d'un secteur [Cisjordanie] qui n'est pas situé dans la zone fermée.

Autorisation

7. Le directeur de l'administration civile est autorisé à établir des règles et des procédures relatives à la déclaration.

Publication

8. *a)* Des copies de la déclaration et les cartes jointes seront déposées pour consultation par les intéressés pendant les heures d'ouverture dans les bureaux suivants :

   1. bureaux régionaux de coordination de district (BCD);

   2. postes de police dans le secteur de Judée et de Samarie;

   3. bureau du conseiller juridique du secteur de Judée et de Samarie;

   4. bureaux du directeur de la Section des infrastructures de l'administration civile du secteur de Judée et de Samarie.

   b) Des copies de la déclaration et de la carte jointe seront affichées sur les tableaux d'affichage des bureaux régionaux BDC, tel que mentionné à la section *a)* 1), pour une période de trois mois à compter du jour de la publication de la déclaration.

   c) Le directeur de l'administration civile peut fixer pour la publication de la déclaration d'autres modalités que celles qui sont décrites aux sections *a)* et *b)*.

Application des lois

9. La déclaration ne limite aucunement l'applicabilité des déclarations relatives aux zones fermées et des autres ordonnances en vigueur dans la zone fermée.

Entrée en vigueur

10. La présente déclaration entrera en vigueur le jour de sa signature.

Titre

11. La présente déclaration est intitulée : «Déclaration relative à la fermeture du secteur n° S/2/03 (zone fermée)».

Appendice

Section A - Ordonnances de confiscation

1. Ordonnance concernant la confiscation de terre n^{o} T/35/95 (Judée et Samarie), 5755 – 1995.
2. Ordonnance concernant la confiscation de terre n^{o} T/12/02 (Judée et Samarie), 5762 - 2002.
3. Ordonnance concernant la confiscation de terre n^{o} T/17/02 (Judée et Samarie), 5762 - 2002.
4. Ordonnance concernant la confiscation de terre n^{o} T/18/02 (Judée et Samarie), 5762 - 2002.
5. Ordonnance concernant la confiscation de terre n^{o} T/19/02 (Judée et Samarie), 5762 - 2002.
6. Ordonnance concernant la confiscation de terre n^{o} T/20/02 (Judée et Samarie), 5762 - 2002.
7. Ordonnance concernant la confiscation de terre n^{o} T/21/02 (Judée et Samarie), 5762 - 2002.
8. Ordonnance concernant la confiscation de terre n^{o} T/22/02 (Judée et Samarie), 5762 - 2002.
9. Ordonnance concernant la confiscation de terre n^{o} T/23/02 (Judée et Samarie), 5762 - 2002.
10. Ordonnance concernant la confiscation de terre n^{o} T/24/02 (Judée et Samarie), 5762 - 2002.
11. Ordonnance concernant la confiscation de terre n^{o} T/25/02 (Judée et Samarie), 5762 - 2002.
12. Ordonnance concernant la confiscation de terre n^{o} T/26/02 (Judée et Samarie), 5762 - 2002.
13. Ordonnance concernant la confiscation de terre n^{o} T/31/02 (Judée et Samarie), 5762 - 2002.
14. Ordonnance concernant la confiscation de terre n^{o} T/33/02 (Judée et Samarie), 5762 - 2002.
15. Ordonnance concernant la confiscation de terre n^{o} T/34/02 (Judée et Samarie), 5762 - 2002.
16. Ordonnance concernant la confiscation de terre n^{o} T/35/02 (Judée et Samarie), 5762 - 2002.
17. Ordonnance concernant la confiscation de terre n^{o} T/37/02 (Judée et Samarie), 5762 - 2002.
18. Ordonnance concernant la confiscation de terre n^{o} T/39/02 (Judée et Samarie), 5762 - 2002.
19. Ordonnance concernant la confiscation de terre n^{o} T/402/02 (Judée et Samarie), 5762 - 2002.
20. Ordonnance concernant la confiscation de terre n^{o} T/41/02 (Judée et Samarie), 5762 - 2002.
21. Ordonnance concernant la confiscation de terre n^{o} T/43/02 (Judée et Samarie), 5762 - 2002.
22. Ordonnance concernant la confiscation de terre n^{o} T/46/02 (Judée et Samarie), 5762 - 2002.
23. Ordonnance concernant la confiscation de terre n^{o} T/7/03 (Judée et Samarie), 5763 - 2002.
24. Ordonnance concernant la confiscation de terre n^{o} T/21/03 (Judée et Samarie), 5763 - 2002.
25. Ordonnance concernant la confiscation de terre n^{o} T/25/03 (Judée et Samarie), 5763 - 2003.
26. Ordonnance concernant la confiscation de terre n^{o} T/36/03 (Judée et Samarie), 5763 - 2003.
27. Ordonnance concernant la confiscation de terre n^{o} T/57/03 (Judée et Samarie), 5763 – 2003.

Section B - Points de passage

1. Point de passage de Salem
2. Point de passage nord de Khirbet A-Taybe
3. Point de passage ouest de Khirbet A-Taybe
4. Point de passage d'Anin
5. Point de passage est d'Hinanit
6. Point de passage sud-est d'Hinanit
7. Point de passage d'Al 'Araqa
8. Point de passage de Khirbeat A Tura
9. Poste de contrôle de Raihan
10. Point de passage sud de Barta'a
11. Point de passage nord de Baka Al Sharkiya
12. Point de passage sud de Baka Al Sharkiya
13. Point de passage sud de Zeita
14. Point de passage ouest de 'Atil
15. Point de passage ouest de Dir Al 'Azzun
16. Point de passage nord-est de Shweikha
17. Point de passage nord de Shweikha
18. Point de passage sud de Tulkarem
19. Point de passage ouest de Far'un
20. Poste de contrôle de Shufa
21. Point de passage est de Khirbet Jubara
22. Point de passage sud de Sal'it
23. Point de passage ouest de Falamya
24. Point de passage sud de Falamya
25. Point de passage ouest de Jayyus
26. Point de passage sud de Jayyus
27. Point de passage sud de Tzufin
28. Point de passage nord-est de Qalqiliya
29. Point de passage sud-ouest de Qalqiliya
30. Point de passage sud de Qalqiliya
31. Poste de contrôle de Qalqiliya (109).
32. Point de passage sud de Nabi Elias
33. Point de passage est de Alfey Menashe
34. Point de passage est de Khirbet A-Ras A-Tira
35. Point de passage ouest de Wadi Rasha
36. Point de passage est de Khirbet Ras 'Atiya
37. Point de passage nord-est de Habla
38. Point de passage nord de Habla
39. Point de passage sud de Khirbet Ras 'Atiya
40. Point de passage nord de Khirbet Abu Saleman
41. Point de passage sud de Khirbet Abu Salman
42. Point de passage nord-ouest de Azzun- 'Atma
43. Point de passage sud-ouest d'Azzun-'Atma
44. Point de passage nord de Azzun- 'Atma
45. Point de passage sud de Beit Amin
46. Point de passage nord de Mas'ha
47. Point de passage ouest de Mas-ha

Date : 6 tishrey, 5774
2/10/2003

Général Moshe Kaplinsky
Commandant des FDI
Secteur de Judée et de Samarie

PARTIE E
ORDONNANCE MILITAIRE DES FDI : «PERMIS GÉNÉRAL D'ENTRÉE ET DE SÉJOUR DANS LA ZONE FERMÉE», 2 OCTOBRE 2003

Traduit vers l'anglais par le bureau de coordination des affaires humanitaires des Nations Unies

Forces de défense israéliennes

Ordonnance relative au règlement sur la sécurité (Judée et Samarie) (n° 378), 5730-1970
Permis général d'entrée et de séjour dans la zone fermée

En vertu des pouvoirs qui me sont conférés en qualité de commandant des FDI dans le secteur de la Judée et de la Samarie, et en vertu de l'article 4 *a)* 2) de la déclaration concernant la fermeture du secteur n° S/2/03 (zone fermée) (Judée et Samarie), 5764-2003 (ci-après «la déclaration»), j'ordonne par les présentes ce qui suit :

Permis général d'entrée et de séjour dans la zone fermée

1. Le permis d'entrée et de séjour dans la zone fermée, telle que définie dans la déclaration, est, par la présente, accordé à toute personne qui appartient à une catégorie décrite dans l'appendice de ce permis, conformément aux conditions précisées dans l'appendice.

Conditions

2. *a)* La personne qui entre et demeure dans la zone fermée, grâce à ce permis, est tenue de porter sur elle un document établissant qu'elle appartient à une des catégories de personnes décrites dans l'appendice; en plus d'une carte d'identité.

   b) Le directeur de l'administration civile peut modifier les conditions mentionnées à la section *a)* concernant une personne particulière ou une catégorie de personnes, ou en ajouter.

Restriction en matière d'application

3. Malgré l'article 1, le commandant militaire peut ordonner que ce permis ne s'applique pas à une personne ou à une catégorie de personnes qui entre dans la zone fermée.

Publication

4. *a)* Des copies de ce permis seront déposées pour consultation par les intéressés pendant les heures d'ouverture dans les bureaux suivants :

   1. bureaux régionaux de coordination de district (BCD);

   2. postes de police dans le secteur de Judée et de Samarie;

   3. bureau du conseiller juridique du secteur de Judée et de Samarie;

4. bureaux du chef de la Section des infrastructures de l'administration civile du secteur de Judée et de Samarie.

b) Des copies de la déclaration seront affichées sur les tableaux d'affichage des bureaux régionaux BDC, tel que mentionné dans la section *a)* 1), pour une période de trois mois du jour à compter du jour de la publication de la déclaration.

c) Le directeur de l'administration civile peut fixer pour la publication de la déclaration d'autres modalités que celles qui sont décrites aux sections *a)* et *b)*.

Entrée en vigueur

5. Le présent permis entrera en vigueur le jour de sa signature.

Titre

6. Le présent permis est intitulé : «Permis général d'entrée et de séjour dans la zone fermée» (Judée et Samarie), 5764-2003.

Appendice

Catégories de personnes	Conditions
Toute personne autre qu'un résident de la région [Cisjordanie] qui obtient un passeport étranger valide et un permis de séjour en Israël valide.	Entrée et séjour dans la zone fermée pour quelle que fin que ce soit.
Toute personne qui détient un permis de travail valide dans une colonie israélienne située dans la zone fermée, conformément à l'ordonnance relative à l'embauche de travailleurs dans certains secteurs (Judée et Samarie) (n° 967), 5742-1982	Entrée et séjour dans la zone fermée pour travailler dans une colonie mentionnée dans le permis de travail, selon les conditions fixées par le permis de travail.
Toute personne qui détient un permis de sortie du secteur valide (Cisjordanie -N.A.) pour se rendre en Israël.	Traverser la zone fermée pour quitter le secteur (Cisjordanie-N.A.) et se rendre en Israël.

Date : 6 tishrey, 5774
2/10/2003

Général Moshe Kaplinsky
Commandant des FDI
Secteur de Judée et de Samarie

PARTIE F
ORDONNANCE MILITAIRE DES FDI : «RÈGLEMENT CONCERNANT LES PERMIS D'ENTRÉE ET DE SÉJOUR DANS LA ZONE FERMÉE», 7 OCTOBRE 2003

Traduit vers l'anglais par le bureau de coordination des affaires humanitaires des Nations Unies

Forces de défense israéliennes

Ordonnance relative au règlement sur la sécurité (Judée et Samarie) (n° 378), 5730-1970
Règlement relatif aux permis d'entrée et de séjour dans la zone fermée

En vertu des pouvoirs qui me sont conférés en qualité de directeur de l'administration civile, et en vertu des articles 4 *a)* 2) et 7 de la déclaration concernant la fermeture du secteur n° S/2/03 (zone fermée) (Judée et Samarie), 5764-2003 (ci-après «la déclaration»), j'ordonne par les présentes ce qui suit :

Définitions

1. Dans la présente ordonnance :

   «Zone fermée» – La zone définie dans la déclaration.

   «Autorité désignée» – Les directeurs des bureaux civils israéliens de coordination de district.

   «Permis» – Le permis d'entrée et de séjour dans la zone fermée délivré à son titulaire par l'autorité désignée.

   «Comité» – Le comité créé par moi et chargé d'examiner les demandes de permis.

Délivrance des permis

2. *a)* L'autorité désignée délivre les permis pour l'une des fins énumérées à la section A de l'appendice du présent règlement.

   b) Le permis est délivré pour une période fixée par l'autorité désignée, selon des modalités à établir.

Demande de permis

3. *a)* La demande de permis pour une personne âgée de plus de 12 ans est présentée sur un des formulaires figurant dans les sections B à M de l'appendice, en fonction de l'objet de l'entrée et du séjour.

   b) La personne de moins de 12 ans est autorisée à entrer et à séjourner dans la zone fermée si elle est accompagnée d'une personne titulaire d'un permis délivré conformément à la section a) ci-dessus, dans le but pour lequel le permis a été délivré ou de toute autre façon fixée par moi ou en mon nom.

Examen de la demande

4. *a)* L'autorité désignée qui reçoit une demande de permis peut prendre l'une des décisions suivantes :

1. autoriser la demande ou la refuser;

2. transmettre la demande au comité pour examen.

b) Lorsque l'autorité désignée refuse la demande de permis présentée pour une des fins mentionnées aux articles 1 à 6 de la section A de l'appendice, le demandeur se voit offrir une autre occasion de faire valoir ses arguments devant le comité.

c) Lorsqu'il examine une demande de permis, le comité procède aux examens nécessaires; il peut notamment inviter le requérant et toute autre personne intéressée par la demande à comparaître devant lui, et donner des directives sur les documents à fournir pour l'examen de la demande.

d) Pendant qu'elle examine une demande de permis, l'autorité désignée peut délivrer au requérant un permis temporaire d'entrée et de séjour dans la zone fermée, pour une période et selon des modalités fixées par elle.

Renouvellement du permis

5. *a)* L'autorité désignée peut renouveler le permis pour la période qu'elle fixe, selon des modalités à fixer.

b) Lorsque l'autorité désignée rejette une demande de renouvellement de permis, le titulaire du permis a la possibilité de présenter une réclamation devant le comité; les sections 3) et 4) de l'article 4 de la présente ordonnance s'applique à l'examen du comité.

Application des lois

6. Le présent règlement ne modifie pas la validité d'un permis accordé à une personne dans la zone fermée, selon des modalités différentes de celles que prévoit le présent règlement.

Publication

7. *a)* Des copies du règlement seront déposées pour consultation par les intéressés pendant les heures d'ouverture dans les bureaux suivants :

1. bureaux régionaux de coordination de district (BCD);

2. postes de police dans le secteur de Judée et de Samarie;

3. bureau du conseiller juridique du secteur de Judée et de Samarie;

4. bureaux du chef de la Section des infrastructures de l'administration civile du secteur de Judée et de Samarie.

b) Des copies du règlement seront affichées sur les tableaux d'affichage des bureaux régionaux BDC, tel que mentionné à la section *a)* 1), pour une période de trois mois à compter du jour de l'entrée en vigueur du règlement, ou selon toute autre modalité fixée par moi.

Entrée en vigueur

8. Le présent règlement entrera en vigueur le jour de sa signature.

Titre

9. Le présent règlement s'intitule : «Règlement relatif aux permis d'entrée et de séjour dans la zone fermée (Judée et Samarie) 5764-2003».

Appendice

Section A

Objet de l'entrée et du séjour dans la zone fermée	**Formulaire de demande**
1. Propriétaire d'entreprise située dans la zone fermée	Tel que décrit dans la section B de l'appendice
2. Commerçant qui travaille dans la zone fermée	Tel que décrit dans la section C de l'appendice
3. Employé qui travaille dans la zone fermée	Tel que décrit dans la section D de l'appendice
4. Agriculteur qui travaille dans la zone fermée	Tel que décrit dans la section E de l'appendice
5. Enseignant qui travaille dans la zone fermée	Tel que décrit dans la section F de l'appendice
6. Etudiant qui étudie dans la zone fermée	Tel que décrit dans la section G de l'appendice
7. Employé de l'Autorité palestinienne	Tel que décrit dans la section H de l'appendice
8. Visiteur dans la zone fermée	Tel que décrit dans la section I de l'appendice
9. Employé d'un organisme international	Tel que décrit dans la section J de l'appendice
10. Employé d'une municipalité locale ou d'une entreprise de construction	Tel que décrit dans la section K de l'appendice
11. Membre du personnel médical	Tel que décrit dans la section L de l'appendice
12. Tout autre objet	Tel que décrit dans la section M de l'appendice

Section B

Formulaire de demande de permis pour un propriétaire d'entreprise située dans la zone fermée

Photo-graphie

Demande de permis d'entrée et de séjour dans la zone fermée pour le propriétaire d'une entreprise située dans la zone fermée

Renseignements concernant le demandeur (propriétaire d'une entreprise située dans la zone fermée)

Nom et prénoms	Numéro de carte d'identité	Date de naissance	Adresse de la résidence

Renseignements concernant l'entreprise :

Nom de l'entreprise	Adresse de l'entreprise	Type d'entreprise	Date de création

Numéro de permis	Date de délivrance	N° de téléphone

Demande l'autorisation de passer par le poste de contrôle : _____.
Motif : _____,

Demande d'autorisation de séjourner plus de 12 heures dans la zone fermée (facultatif)

Nom de la personne qui héberge le demandeur	Numéro de carte d'identité	Adresse du lieu d'hébergement	Date	Signature de la personne qui héberge le demandeur

Motif : _____.

Date	Signature du demandeur

Joindre à la demande les documents suivants :

- ✓ Copie de la carte d'identité + appendice concernant : 1. Le demandeur. 2. Le nom de la personne qui héberge le demandeur. (Facultatif)
- ✓ Copie du permis de l'entreprise / document établissant que le demandeur est propriétaire de l'entreprise.
- ✓ Copie des documents établissant la situation juridique du requérant dans l'entreprise.

* La copie sera comparée à l'original.

(Usage interne – Réservé à l'autorité désignée)

1. Observations du directeur des Services économiques, référence - _____.
2. Décision de l'autorité désignée : _____.

Entrée par la route : _____ Date : ___/___/___. Signature : _____.

Section C

Formulaire de demande de permis pour un commerçant travaillant dans zone fermée

Demande de permis d'entrée et de séjour dans la zone fermée par un commerçant travaillant dans la zone fermée

Renseignements concernant le demandeur (commerçant travaillant dans la zone fermée)

Photo-graphie

Nom et prénoms	Numéro de carte d'identité	Date de naissance	Adresse de la résidence

Renseignements concernant l'entreprise :

Type d'entreprise	Permis de l'entreprise	Délivré par	Date de délivrance

Adresse de l'entreprise	Permis de l'entreprise	Période de validité	No de téléphone

Demande l'autorisation de passer par le poste de contrôle : _____.
Motif : _____,

Demande d'autorisation de séjourner plus de 12 heures dans la zone fermée (facultatif)

Nom de la personne qui héberge le demandeur	Numéro de carte d'identité	Adresse du lieu d'hébergement	Date	Signature de la personne qui héberge le demandeur

Motif :
_____.

Date	Signature du demandeur

Joindre à la demande les documents suivants :

- ✓ Copie de la carte d'identité + appendice concernant : 1. Le demandeur. 2. Le nom de la personne qui héberge le demandeur (facultatif)
- ✓ Copie du permis de l'entreprise/ document établissant que le demandeur est propriétaire d'entreprise.
- ✓ Copie du permis du commerçant

* La copie sera comparée à l'original.

(Usage interne – Réservé à l'autorité désignée)

1. Observations du directeur des Services économiques, référence - _____.
2. Décision de l'autorité désignée : _____.

Entrée par la route : _____ Date : ___/___/___. Signature : _____.

Section D

Formulaire de demande de permis pour un employé travaillant dans la zone fermée

Demande de permis d'entrée et de séjour dans la zone fermée pour un employé travaillant dans la zone fermée

Photo-graphie

Renseignements concernant le demandeur (commerçant travaillant dans la zone fermée)

Nom et prénoms	Numéro de carte d'identité	Date de naissance	Adresse de la résidence

Renseignements concernant la terre agricole (pour un employeur agricole de la zone fermée)

Terre du village de	N° du lot	N° du bloc	Type de culture

Renseignements concernant l'entreprise (pour un employeur de la zone fermée)

Nom de l'entreprise	Adresse de l'entreprise	Type d'entreprise

Permis de l'entreprise	Période de validité	N° de téléphone	Remarques

Renseignements concernant l'employé :

Nom et prénoms	Numéro de carte d'identité	Adresse de la résidence	Date de naissance

Demande l'autorisation de passer par le poste de contrôle / Barrière agricole n° : _____.
Motif : _____,

Demande d'autorisation de séjourner plus de 12 heures dans la zone fermée (facultatif)

Nom de la personne qui héberge le demandeur	Numéro de carte d'identité	Adresse du lieu d'hébergement	Date	Signature de la personne qui héberge le demandeur

Motif :
_____.

Date	Signature du demandeur

Date	Signature de l'employé

Joindre à la demande les documents suivants :

- ✓ Copie de la carte d'identité + appendice concernant : 1. Le demandeur. 2. L'employé. 3. Le nom de la personne qui héberge le demandeur. (Facultatif)

* La copie sera comparée à l'original.

(Usage interne – Réservé à l'autorité désignée)

1. Observations du directeur des Services économiques, référence - _____.
2. Décision de l'autorité désignée : _____.

Entrée par la route : _____ Date : ___/___/___. Signature : _____.

Section E

Formulaire de demande de permis pour un agriculteur travaillant dans la zone fermée

Demande de permis d'entrée et de séjour dans la zone fermée pour un employé travaillant dans la zone fermée

Photo-graphie

Renseignements concernant le demandeur (commerçant travaillant dans la zone fermée)

Nom et prénoms	Numéro de carte d'identité	Date de naissance	Adresse de la résidence

Renseignements concernant la terre agricole (pour un employeur agricole de la zone fermée)

Terre du village de	N° du lot	N° du bloc	Type de culture

Demande l'autorisation de passer par le poste de contrôle / Barrière agricole n° : _____.
Motif : _____,

Demande d'autorisation de séjourner plus de 12 heures dans la zone fermée (facultatif)

Nom de la personne qui héberge le demandeur	Numéro de carte d'identité	Adresse du lieu d'hébergement	Date	Signature de la personne qui héberge le demandeur

Motif : _____.

Date	Signature du demandeur

Joindre à la demande les documents suivants :

- ✓ Copie de la carte d'identité + appendice concernant : 1. Le demandeur. 2. L'employé. 3. Le nom de la personne qui héberge le demandeur. (Facultatif)
- ✓ Documents établissant le droit que possède le demandeur sur la terre en question.

* La copie sera comparée à l'original.

(Usage interne – Réservé à l'autorité désignée)

1. Observations du directeur des Services économiques, référence - _____.
2. Observations de l'officier compétent, référence - _____.

Décision de l'autorité désignée : _____.
Entrée par la route : _____ Date : ___/___/___. Signature : _____.

Section F

Formulaire de demande de permis en matière d'éducation dans la zone fermée

Demande de permis d'entrée et de séjour dans la zone fermée pour un enseignant
Renseignements concernant le demandeur (chef de l'établissement d'enseignement situé dans la zone fermée)

Photo-graphie

Nom et prénoms	Numéro de carte d'identité	Emploi	Du

Nom de l'établissement d'enseignement	Adresse de l'établissement d'enseignement	Classe où enseigne le professeur	
		Âge/ Classe	Spécialisation

Renseignements concernant l'enseignant :

Nom et prénoms	Adresse de la résidence	Numéro de carte d'identité	Date de naissance

Certificat d'enseignement n°	Autorisé par	Délivré à	Du

Demande l'autorisation de passer par le poste de contrôle / Barrière agricole n° : _____.
Motif : _____,

Demande d'autorisation de séjourner plus de 12 heures dans la zone fermée (facultatif)

Nom de la personne qui héberge le demandeur	Numéro de carte d'identité	Adresse du lieu d'hébergement	Date	Signature de la personne qui héberge le demandeur

Motif : _____.

Date	Signature du demandeur

Date	Signature de l'enseignant

Joindre à la demande les documents suivants :

- ✓ Copie de la carte d'identité + appendice concernant : 1. Le demandeur. 2. L'enseignant. 3. Le nom de la personne qui héberge le demandeur. (Facultatif)
- ✓ Copie du permis d'enseignement de l'enseignant.

* La copie sera comparée à l'original.

(Usage interne – Réservé à l'autorité désignée)

1. Observations du directeur des Services d'éducation, référence - _____.
2. Décision de l'autorité désignée : _____.

Entrée par la route : _____ Date : ___/___/___. Signature : _____.

Section G

Formulaire de demande de permis d'entrée et de séjour dans la zone fermée à des fins d'études

Demande de permis d'entrée et de séjour dans la zone fermée à des fins d'études

Renseignements concernant le demandeur (chef de l'établissement d'enseignement situé dans la zone fermée)

Photo-graphie

Nom et prénoms	Numéro de carte d'identité	Emploi	Du

Nom de l'établissement d'enseignement	Adresse de l'établissement d'enseignement	Classe où enseigne le professeur	
		Âge/ Classe	Spécialisation

Renseignements concernant l'étudiant (de plus de 12 ans) :

Nom et prénoms	Numéro de carte d'identité (s'il n'a pas de CI, nom et numéro de la CI du père)	Date de naissance	Adresse de la résidence

Demande l'autorisation de passer par le poste de contrôle / Barrière agricole n^{o} : _____.
Motif : _____

Demande d'autorisation de séjourner plus de 12 heures dans la zone fermée (facultatif)

Nom de la personne qui héberge le demandeur	Numéro de carte d'identité	Adresse du lieu d'hébergement	Date	Signature de la personne qui héberge le demandeur

Motif : _____.

Date	Signature du demandeur

Date	Signature de l'étudiant

Joindre à la demande les documents suivants :

✓ Copie de la carte d'identité + appendice concernant : 1. Le demandeur. 2. L'étudiant (s'il n'a pas de CI – utiliser la CI du père). 3. Le nom de la personne qui héberge le demandeur. (Facultatif)

* La copie sera comparée à l'original.

(Usage interne – Réservé à l'autorité désignée)

1. Observations du directeur des Services d'éducation, référence - _____.
2. Décision de l'autorité désignée : _____.

Entrée par la route : _____ Date : ___/___/___. Signature : _____.

Section H

Formulaire de demande de permis pour un employé de l'Autorité palestinienne

Demande de permis d'entrée et de séjour dans la zone fermée pour un employé de l'Autorité palestinienne

Renseignements concernant le demandeur (employé de l'Autorité palestinienne dans la zone fermée)

Photo-graphie

Nom et prénoms	Numéro de carte d'identité	Date de naissance	Adresse de la résidence

Emploi	Travaille dans le village de	N° du certificat de travail

Demande l'autorisation de passer par le poste de contrôle : _____.

Motif : _____,

Demande d'autorisation de séjourner plus de 12 heures dans la zone fermée (facultatif)

Nom de la personne qui héberge le demandeur	Numéro de carte d'identité	Adresse du lieu d'hébergement	Date	Signature de la personne qui héberge le demandeur

Motif : _____.

Date	Signature du demandeur

Joindre à la demande les documents suivants :

- ✓ Copie de la carte d'identité + appendice concernant : 1. Le demandeur. 2. Le nom de la personne qui héberge le demandeur. (Facultatif)
- ✓ Copie du certificat de l'employé de l'Autorité palestinienne.

* La copie sera comparée à l'original.

(Usage interne – Réservé à l'autorité désignée)

1. Observations de l'officier compétent, référence - _____.
2. Décision de l'autorité désignée : _____.

Entrée par la route : _____ Date : ___/___/___. Signature : _____.

Section I

Formulaire de demande de permis de visiteur dans la zone fermée

Demande de permis d'entrée et de séjour dans la zone fermée pour un visiteur de la zone fermée

Renseignements concernant le demandeur (auteur de l'invitation – résident permanent de la zone fermée)

Photo-graphie

Nom et prénoms	Numéro de carte d'identité	Adresse de la résidence	Relation avec le visiteur

Renseignements concernant le visiteur :

Nom et prénoms	Numéro de carte d'identité	Adresse de la résidence	Date de naissance

Durée de la visite		Motif de la visite
Du-	Au-	

Renseignements concernant les personnes accompagnant le demandeur (de moins de 12 ans)

Nom et prénoms	Numéro de carte d'identité	Date de naissance	Relation avec le demandeur

Demande l'autorisation de passer par le poste de contrôle : _____.
Motif : _____,

Demande d'autorisation de séjourner plus de 12 heures dans la zone fermée (facultatif)

Nom de la personne qui héberge le demandeur	Numéro de carte d'identité	Adresse du lieu d'hébergement	Date	Signature de la personne qui héberge le demandeur

Motif : _____.

Date	Signature du demandeur

Date	Signature du visiteur

Joindre à la demande les documents suivants :

- ✓ Copie de la carte d'identité + appendice concernant : 1. Le demandeur. 2. Le visiteur. 3. Le nom de la personne qui héberge le demandeur. (Facultatif)
- ✓ Documents établissant les droits que possède le demandeur sur les terres en question.

* La copie sera comparée à l'original.

(Usage interne – Réservé à l'autorité désignée)

Décision de l'autorité désignée : _____.
Autorisé à se rendre à _____ du : ____/____/___ au ___/___/___.
Entrée par la route : _____ Date : ___/___/___. Signature : _____.

Section J

Formulaire de demande de permis pour un employé d'une organisation internationale

Demande de permis d'entrée et de séjour dans la zone fermée pour un employé d'une organisation internationale

Renseignements concernant le demandeur (employé d'une organisation internationale)

Photo-graphie

Nom et prénoms	Numéro de carte d'identité	Date de naissance	Adresse de la résidence

Nom de l'organisation	Travaille pour l'organisation depuis	N° du certificat de travail	Emploi	Posté dans le village/district

Demande l'autorisation de passer par le poste de contrôle : _____.
Motif : _____

Demande d'autorisation de séjourner plus de 12 heures dans la zone fermée (facultatif)

Nom de la personne qui héberge le demandeur	Numéro de carte d'identité	Adresse du lieu d'hébergement	Date	Signature de la personne qui héberge le demandeur

Motif : _____.

Date	Signature du demandeur

Date	Signature du visiteur

Joindre à la demande les documents suivants :

- ✓ Copie de la carte d'identité + appendice concernant : 1. Le demandeur. 2. Le nom de la personne qui héberge le demandeur. (Facultatif)
- ✓ Copie du certificat de travail de l'organisation internationale

***** La copie sera comparée à l'original.

(Usage interne – Réservé à l'autorité désignée)

1. Observations du directeur de l'organisation internationale, références : _____,
2. Décision de l'autorité désignée : _____.

Entrée par la route : _____ Date : ___/___/___. Signature : _____.

Section K
Formulaire de demande de permis pour un employé d'une municipalité locale ou d'une entreprise de construction

Demande de permis d'entrée et de séjour dans la zone fermée pour un employé d'une municipalité locale ou d'une entreprise de construction

Photo-graphie

Renseignements concernant le demandeur (employé d'une municipalité locale ou d'une entreprise de construction)

Nom et prénoms	Numéro de carte d'identité	Date de naissance	Adresse de la résidence

Emploi	Posté dans le village	N° du certificat de travail

Demande l'autorisation de passer par le poste de contrôle : _____.
Motif : _____

Demande d'autorisation de séjourner plus de 12 heures dans la zone fermée (facultatif)

Nom de la personne qui héberge le demandeur	Numéro de carte d'identité	Adresse du lieu d'hébergement	Date	Signature de la personne qui héberge le demandeur

Motif : _____.

Date	Signature du demandeur

Date	Signature du visiteur

Joindre à la demande les documents suivants :

- ✓ Copie de la carte d'identité + appendice concernant : 1. Le demandeur. 2. Le nom de la personne qui héberge le demandeur. (Facultatif)
- ✓ Copie du certificat de travail de l'employé d'une municipalité locale ou d'une entreprise de construction

* La copie sera comparée à l'original.

(Usage interne – Réservé à l'autorité désignée)

1. Observations de l'officier compétent, référence - _____.
2. Décision de l'autorité désignée : _____.

Autorisé à se rendre à _____ du : ____/____/___ au ___/___/___.
Entrée par la route : _____ Date : ___/___/___. Signature : _____.

Section L

Formulaire de demande de permis pour un membre du personnel médical

Demande de permis d'entrée et de séjour dans la zone fermée pour un membre du personnel médical

Photo-graphie

Renseignements concernant le demandeur :

Nom et prénoms	Numéro de carte d'identité	Date de naissance	Adresse de la résidence

Institution médicale -- Employeur	Emploi	Posté dans le village / district	N° du certificat de travail

Autorisation du directeur de l'établissement médical

Nom et prénoms	Numéro de carte d'identité	Adresse de l'établissement	Date	Signature

Demande l'autorisation de passer par le poste de contrôle : _____.
Motif : _____,

Demande d'autorisation de séjourner plus de 12 heures dans la zone fermée (facultatif)

Nom de la personne qui héberge le demandeur	Numéro de carte d'identité	Adresse du lieu d'hébergement	Date	Signature de la personne qui héberge le demandeur

Motif : _____.

Date	Signature du demandeur

Date	Signature du visiteur

Joindre à la demande les documents suivants :

✓ Copie de la carte d'identité + appendice concernant : 1. Le demandeur. 2. Le nom de la personne qui héberge le demandeur. (Facultatif)
✓ Copie du certificat de travail de l'employé d'une municipalité locale ou d'une entreprise de construction.
* La copie sera comparée à l'original.

(Usage interne – Réservé à l'autorité désignée)

1. Observations du directeur des Services d'éducation, référence - _____.
2. Décision de l'autorité désignée : _____.
   Entrée par la route : _____ Date : ___/___/___. Signature : _____.

Section M

Formulaire de demande d'autorisation exceptionnelle d'entrée dans la zone fermée

Demande d'autorisation exceptionnelle d'entrée et de séjour dans la zone fermée

Renseignements concernant le demandeur :

Photo-graphie

Nom et prénoms	Numéro de carte d'identité	Date de naissance	Adresse de la résidence

Destination (village/district)	But du déplacement

Demande l'autorisation de passer par le poste de contrôle : _____.
Motif : _____

Demande d'autorisation de séjourner plus de 12 heures dans la zone fermée (facultatif)

Nom de la personne qui héberge le demandeur	Numéro de carte d'identité	Adresse du lieu d'hébergement	Date	Signature de la personne qui héberge le demandeur

Motif : _____.

Date	Signature du demandeur

Joindre à la demande les documents suivants :

- ✓ Copie de la carte d'identité + appendice concernant : 1. Le demandeur. 2. Le nom de la personne qui héberge le demandeur (facultatif)

* La copie sera comparée à l'original.

(Usage interne – Réservé à l'autorité désignée)

Décision de l'autorité désignée : _____.
Entrée par la route : _____ Date : ___/___/___. Signature : _____.

Date : 11 tishrey, 5774
7/10/2003

Général Ilan Paz
Directeur de l'Administration civile
Secteur de Judée et de Samarie

PARTIE G
ORDONNANCE MILITAIRE DES FDI : «RÈGLEMENT CONCERNANT LE PERMIS DE RÉSIDENT PERMANENT DE LA ZONE FERMÉE», 7 OCTOBRE 2003

Traduit vers l'anglais par le bureau de coordination des affaires humanitaires des Nations Unies

Forces de défense israéliennes

Ordonnance relative au règlement sur la sécurité (Judée et Samarie) (n° 378), 5730-1970
Règlement relatif au permis de résident permanent de la zone fermée

En vertu des pouvoirs qui me sont conférés en tant que directeur de l'administration civile, et en vertu des articles 4a)(2) et 7 de la déclaration concernant la fermeture du secteur n° S/2/03 (zone fermée) (Judée et Samarie), 5764-2003 (ci-après «la déclaration»), j'ordonne par les présentes ce qui suit :

Définitions

1. Dans la présente ordonnance :

«Zone fermée» – zone définie dans la déclaration;

«Autorité désignée» – les directeurs des bureaux civils israéliens de coordination de district;

«Permis de résident permanent» – le permis délivré par l'autorité désignée établissant que le lieu de résidence permanente de son titulaire est situé dans la zone fermée;

«Comité» – le comité créé par moi et chargé d'examiner les demandes de permis.

Délivrance du permis de résident permanent

2. *a)* Le permis de résident permanent est délivré par l'autorité désignée :

1. a la personne qui séjourne légalement dans le secteur (Cisjordanie), qui a plus de 12 ans à la date de l'entrée en vigueur de la déclaration, qui établit à la satisfaction de l'autorité désignée qu'elle est un résident permanent de la zone fermée à la date d'entrée en vigueur de la déclaration, à la condition qu'elle dépose une demande de permis dans l'année suivant l'entrée en vigueur du présent règlement ou avant d'avoir atteint l'âge de 16 ans, à la dernière de ces deux dates;

2. à la personne qui séjourne légalement dans le secteur [Cisjordanie] qui obtient un nouveau permis de résident dans la zone fermée, tel que mentionné à l'article 6 du présent règlement, si elle établit à la satisfaction de l'autorité désignée qu'elle vit de façon permanente dans la zone fermée depuis plus de deux ans;

3. à la personne qui séjourne légalement dans le secteur [Cisjordanie], qui a eu 12 ans après la date d'entrée en vigueur de la déclaration et qui était inscrite en qualité de personne accompagnée sur le permis de résident permanent délivré selon les sections 1) et 2), pourvu que cette personne ait demandé un permis avant d'atteindre l'âge de 16 ans.

c) Le permis de résident permanent est délivré par l'autorité désignée pour une période fixée par elle, selon des modalités à fixer.

Demande de permis de résident permanent

3. La demande de permis de résident permanent est présentée sur le formulaire «Demande de permis de résident permanent de la zone fermée», conformément à la section A de l'appendice.

Examen de la demande

4. *a)* L'autorité désignée qui reçoit une demande de permis de résident permanent peut prendre l'une des décisions suivantes :

1. autoriser la délivrance du permis de résident permanent, conformément à la demande;

2. transmettre la demande au comité pour examen.

b) 1. Lorsqu'il examine une demande de permis de résident permanent, le comité prend les mesures d'instruction nécessaires; il peut notamment inviter le demandeur et les personnes touchés par la demande à comparaître devant lui, et donner des directives pour que soient présentés tous les documents nécessaires à l'examen de la demande.

2. Le comité ne refuse pas la demande de permis de résident permanent si le demandeur n'a pas eu la possibilité de faire valoir son point de vue.

3. Lorsque le comité a autorisé la demande de permis de résident permanent, l'autorité désignée délivre au demandeur le permis de résident permanent.

c) L'autorité désignée peut, pendant qu'elle examine une demande de permis, accorder au demandeur un permis temporaire d'entrée et de séjour dans la zone fermée, pour la période et aux conditions qu'elle fixe.

Renouvellement du permis

5. *a)* L'autorité désignée peut renouveler le permis de résident permanent pourvu que le détenteur établisse à sa satisfaction qu'il est un résident permanent de la zone fermée le jour du renouvellement du permis.

b) Si le demandeur ne démontre pas à la satisfaction de l'autorité désignée qu'il est un résident permanent de la zone fermée le jour du renouvellement du permis, la demande de renouvellement est transmise au comité; les sections (2) et (3) de l'article 4 de la présente ordonnance s'appliquent à l'examen du comité, avec les changements qui s'imposent.

Nouveau résident de la zone fermée

6. *a)* La personne qui n'est pas un résident permanent de la zone fermée, et qui souhaite y résider, présente une demande de permis de nouveau résident de la zone fermée à l'autorité désignée, sur le formulaire intitulé : «Demande de permis de nouveau résident de la zone fermée» conformément à la section B de l'appendice.

b) La demande est examinée par le comité conformément à l'article 4 2).

c) Lorsque le comité accepte la demande, l'autorité désignée délivre un permis de nouveau résident de la zone fermée valable un an; l'article 5 s'applique à la demande de renouvellement d'un nouveau permis de nouveau résident, avec les changements nécessaires.

d) Le nouveau résident qui vit de façon continue depuis au moins deux ans dans la zone fermée peut présenter une demande de permis de résident permanent, aux termes des articles 3 et 4, avec les changements nécessaires.

e) L'autorité désignée peut, pendant l'examen de la demande de permis, délivrer au demandeur un permis temporaire d'entrée et de séjour dans la zone fermée, pour la période et aux conditions qu'elle fixe.

Publication

7. *a)* Des copies du règlement seront déposées pour consultation par les intéressés pendant les heures d'ouverture dans les bureaux suivants :

1. bureaux régionaux de coordination de district (BCD);

2. postes de police dans le secteur de Judée et de Samarie;

3. bureau du conseiller juridique du secteur de Judée et de Samarie;

4. bureaux du chef de la Section des infrastructures de l'Administration civile du secteur de Judée et de Samarie.

b) Des copies de la déclaration seront affichées sur les tableaux d'affichage des bureaux régionaux BDC, tel que mentionné à la section a)(1), pour une période de trois mois à compter de l'entrée en vigueur du règlement ou selon d'autres modalités fixées par moi.

Entrée en vigueur

8. Le présent règlement entrera en vigueur le jour de sa signature.

Titre

9. Le présent règlement s'intitule : «Règlement relatif au permis de résident permanent de la zone fermée (Judée et Samarie) 5764-2003».

Appendice

Section A
Formulaire de demande de permis de résident permanent dans la zone fermée

Demande de permis de résident permanent de la zone fermée
Renseignements concernant le demandeur

Photo-graphie

Nom et prénoms	Numéro de carte d'identité (s'il n'a pas de CI, nom et numéro de CI du père)		
	Numéro de carte d'identité	Date de délivrance	Délivré dans le district de

Demande l'autorisation de passer par le poste de contrôle/barrière agricole : _____.
Motif : _____

Date	Signature du demandeur

Joindre à la demande les documents suivants :

- ✓ Copie de la carte d'identité + appendice concernant : 1. Le demandeur (lorsque le demandeur possède une CI). 2. Les parents des demandeurs (lorsque le demandeur ne possède pas de CI)
- ✓ Copie des documents établissant que le demandeur est un résident permanent de la zone fermée.

* La copie sera comparée à l'original.

(Usage interne – Réservé à l'autorité désignée)

3. Date de réception de la demande par le BCD : ___/___/___.
4. Observations du directeur du registre de la population de l'Administration civile- _____ référence _____.
5. Observations de l'officier compétent,- _____, référence : _____.
6. Décision du comité : _____ (joindre une copie).
7. Décision de l'autorité désignée : _____.

Date : ___/___/___. Signature : _____.

Demandeur qui n'est pas inscrit en qualité de résident de la zone fermée dans le registre israélien de population à la date de la présentation de la demande.

Joindre à la demande (après avoir inscrit sur la CI l'adresse du demandeur dans la zone fermée)

- ✓ Copie de la CI mise à jour du demandeur ou de ses parents du demandeur.

(Usage interne – Réservé à l'autorité désignée)

Autorisation du directeur du registre de la population de l'Administration civile concernant le changement d'adresse inscrit dans le registre israélien de population, référence - _____.

Section B

Formulaire de demande de permis de nouveau résident de la zone fermée

Demande de permis de nouveau résident de la zone fermée

Renseignements concernant le demandeur

Photo-graphie

	Numéro de carte d'identité		
Nom et prénoms	Numéro de carte d'identité	Date de délivrance	Délivré dans le district de

Adresse de la résidence			
Adresse inscrite sur la CI	À partir du	En fait	À partir du

Renseignements concernant le membre de la famille (Résident permanent de la zone fermée)

Nom et prénoms	CI		
	Numéro de carte d'identité	Date de délivrance	Délivré dans le district de

Adresse de la résidence			
Adresse inscrite sur la CI	À partir du	En fait	À partir du

Demande l'autorisation de passer par le poste de contrôle/barrière agricole : _____.
Motif : _____

Engagement

Nous nous engageons par la présente à ce que le demandeur établisse son lieu de résidence permanente dans la zone fermée, à l'adresse suivante _____, dans les six mois de la réception du permis.

Date	Signature du demandeur

Date	Signature du membre de la famille

Joindre à la demande les documents suivants :

- ✓ Copie de la carte d'identité + appendice concernant : 1. Le demandeur. 2. Le membre de la famille.
- ✓ Copie des documents de mariage / documents établissant la relation familiale.

* La copie sera comparée à l'original.

(Usage interne – Réservé à l'autorité désignée)

1. Observations du directeur du registre de la population de l'Administration civile, référence - _____ .
2. EFFACÉ SUR LE FORMULAIRE ORIGINAL
3. Observations de la police israélienne, référence : _____.
4. Délivrance d'un permis temporaire par l'autorité désignée du :___/___/___. au : ___/___.___
5. Passage par le poste de contrôle : _____. Signature : _____.
6. Rapport à l'Administration civile le : ___/___/___. Organisme auteur du rapport : _____.

Date : 11 tishrey, 5774
7/10/2003

Général Ilan Paz
Directeur de l'administration civile
Secteur de Judée et de Samarie

APPENDICE 3

RÉSUMÉ DES MESURES RÉCENTES PRISES PAR ISRAËL EN VUE DE L'ÉDIFICATION DU MUR

Etude des mesures prises par Israël en vue de l'édification du mur entre le 8 décembre 2003, date à laquelle l'Assemblée générale de l'ONU a adopté sa requête pour avis consultatif, et le 19 janvier 2004. L'enquête est basée sur les rapports quotidiens de situation du groupe palestinien d'observation, département des affaires reliées aux négociations, organisation de libération de la Palestine. Les rapports quotidiens de situation couvrent la période qui va de 8 heures le jour précédent à 8 heures le jour du rapport.

Activité générale

10 décembre	**Affectation de fonds :** Le comité du budget de la défense du parlement a autorisé l'affectation de 380 millions de NIS aux travaux d'infrastructure, de construction et d'acquisition reliés au mur et à d'autre équipement de surveillance.
18 décembre	**Accélération de l'édification du mur :** Au cours de la conférence d'Herziliya, le premier ministre israélien Ariel Sharon a annoncé un «plan de désengagement» et signalé que la construction du mur serait accélérée.

Jérusalem

8 décembre	**Construction du mur :** Les autorités israéliennes poursuivent la construction du mur à Abu Dis, Al Sawahira, Al Eizariya, Al Tur et Al Shayyah.
9 décembre	**Construction du mur :** Les autorités israéliennes poursuivent la construction du mur à Abu Dis, Al Sawahira, Al Eizariya, Al Tur et Al Shayyah.
10 décembre	**Construction du mur :** Les autorités israéliennes poursuivent la construction du mur à Abu Dis, Al Sawahira, Al Eizariya, Al Tur et Al Shayyah.
11 décembre	**Construction du mur :** : Les autorités israéliennes poursuivent la construction du mur à Abu Dis, Al Sawahira, Al Eizariya, Al Tur et Al Shayyah.
12 décembre	**Construction du mur** : Les autorités israéliennes poursuivent la construction du mur à Abu Dis, Al Sawahira, Al Eizariya, Al Tur et Al Shayyah.
14 décembre	**Construction du mur** : Les autorités israéliennes poursuivent la construction du mur à Abu Dis, Al Sawahira, Al Eizariya, Al Tur et Al Shayyah.
15 décembre	**Construction du mur** : Les autorités israéliennes poursuivent la construction du mur à Abu Dis, Al Sawahira, Al Eizariya, Al Tur et Al Shayyah.
16 décembre	**Construction du mur** : Les autorités israéliennes poursuivent la construction du mur à Abu Dis, Al Sawahira, Al Eizariya, Al Tur et Al Shayyah.
17 décembre	**Construction du mur :** (i) Les autorités israéliennes poursuivent la construction du mur à Abu Dis, Al Sawahira, Al Tur et Al Shayyah. (ii) Les autorités israéliennes ont arrêté les travaux de construction du mur dans le secteur d'Al Adyirah (près de Deir Faji) après avoir découvert des vestiges archéologiques. (iii) Les autorités israéliennes ont achevé la construction de la première section du mur dans le quartier d'Al 'Eizariya.
18 décembre	**Construction du mur :** (i) Les autorités israéliennes poursuivent la construction du mur à Abu Dis, Al Sawahira, Al Tur et Al Shayyah. (ii) Les autorités israéliennes ont repris la construction du mur dans le secteur d'Al Adyarah (près de Deir Faji).
19 décembre	**Confiscation de terres :** Les autorités israéliennes ont pris des ordonnances de confiscation visant 8 000 *dounoums* (2 000 acres) à Beit 'Anan, ce qui représente près des 2/3 des terres du village.

21 décembre	**Construction du mur :** (i) Les autorités israéliennes poursuivent la construction du mur à Abu Dis, Al Sawahira, Al Tur et Al Shayyah. (ii) Les autorités israéliennes ont repris la construction du mur dans le secteur d'Al Adyarah (près de Deir Faji). **Confiscation de terres :** (i) Les autorités israéliennes prennent des ordonnances de confiscation de terres appartenant à des résidents de Beit Surik, Beit Iksa et Al Qubeiba. (ii) Des résidents des villages de Liqya, Beit Anan, Qatanna et Biddu ont fait l'objet d'ordonnances de confiscation de terres et de 20 ordonnances de démolition de maison pour permettre la construction du mur.
22 décembre	**Construction du mur :** (i) Les autorités israéliennes poursuivent la construction du mur à Abu Dis, Al Sawahira et Al Eizariya. (ii) Les autorités israéliennes ont donné verbalement des avis d'éviction et de démolition à des résidents du secteur sud-est du village de 'Anata. Vingt bergeries seront démolies pour la préparation de la construction du mur. (iii) Les autorités israéliennes ont envoyé de la machinerie et de l'équipement lourds (y compris des bulldozers et des camions) dans le secteur situé entre Ma'ale Adummim et le village d'Az Za'ayyem en vue de préparer la construction du mur.
23 décembre	**Construction du mur :** Les autorités israéliennes poursuivent la construction du mur à Abu Dis, Al Sawahira et Al Eizariya. **Activité de colonisation :** L'armée israélienne a commencé à ériger une clôture en fil barbelé autour de la colonie de Ma'ale Adummim.
24 décembre	**Construction du mur** : Les autorités israéliennes poursuivent la construction du mur à Abu Dis, Al Sawahira et Al Eizariya.
25 décembre	**Construction du mur :** Les autorités israéliennes poursuivent la construction du mur à Al Shayyah, Abu Dis, Al Sawahira et La Eizariya.
26 décembre	**Construction du mur :** Les autorités israéliennes poursuivent la construction du mur à Al Tur, Al Shayyah, Abu Dis, Al Sawahira et Al Eizariya.
27 décembre	**Construction du mur :** La construction du mur in Al Tur, Al Shayyah, Abu Dis, Al Sawahira et Al Eizariya est arrêtée pour le week-end.
29 décembre	**Construction du mur :** La construction du mur se poursuit à Al Shayyah, Abu Dis et Al Sawahira.
30 décembre	**Construction du mur :** La construction du mur se poursuit à Al Shayyah, Abu Dis et Al Sawahira.
31 décembre	**Construction du mur :** La construction du mur se poursuit à Al Shayyah, Abu Dis et Al Sawahira.
1er janvier	**Construction du mur :** La construction du mur se poursuit à Al Shayyah, Abu Dis et Al Sawahira.
2 janvier	**Construction du mur :** La construction du mur se poursuit à Al Shayyah, Abu Dis et Al Sawahira.
3 janvier	**Construction du mur :** La construction du mur est arrêtée pour le week-end à Al Shayyah, Abu Dis et Al Sawahira.
4 janvier	**Construction du mur :** La construction du mur reprend à Al Shayyah, Abu Dis, Al Eizariya et Al Sawahira.
5 janvier	**Construction du mur :** (i) La construction du mur se poursuit à Al Shayyah, Abu Dis, Al Eizariya et Al Sawahira. (ii) La construction du mur dans le secteur de Al Adyarah (près de monastère Faji) est achevée. **Confiscation de terres :** Des ordonnances de confiscation de terres sont remises à des résidents palestiniens de Beit Iksa, Biddu et Qibya.
6 janvier	**Construction du mur :** La construction du mur se poursuit à Al Shayyah, Abu Dis, Al Eizariya et Al Sawahira. **Confiscation de terres :** Des ordonnances de confiscation de terres visant 2 500 *dounoums* (625 acres) et 400 *dounoums* (100 acres), respectivement sont remises à des résidents palestiniens de Beit Surik et Beit 'Anan.

7 janvier	**Construction du mur :** La construction du mur se poursuit à Al Shayyah, Abu Dis, Al Eizariya et Al Sawahira.
8 janvier	**Construction du mur :** La construction du mur se poursuit à Al Shayyah, Abu Dis, Al Eizariya et Al Sawahira.
9 janvier	**Construction du mur :** La construction du mur se poursuit à Al Shayyah, Abu Dis, Al Eizariya et Al Sawahira.
10 janvier	**Construction du mur :** La construction du mur in Al Shayyah, Abu Dis, Al Eizariya et Al Sawahira est arrêtée pour le week-end
11 janvier	**Construction du mur :** La construction du mur se poursuit à Abu Dis, Al Eizariya et Al Sawahira.
12 janvier	**Construction du mur :** La construction du mur se poursuit à Abu Dis, Al Eizariya et Al Sawahira. (ii) L'armée israélienne a bouclé le secteur contigu au mur à Ras Al Amud, Dahiyat Al Eizariya et Abu Dis pendant 15 jours pour apporter des modifications à certains tronçons du mur.
13 janvier	**Construction du mur :** La construction du mur se poursuit à Abu Dis, Al Eizariya et Al Sawahira.
14 janvier	**Construction du mur :** La construction du mur se poursuit à Abu Dis, Al Eizariya et Al Sawahira.
15 janvier	**Construction du mur :** La construction du mur se poursuit à Al Eizariya et Al Sawahira et est arrêtée à Abu Dis. **Confiscation de terres :** Les autorités israéliennes prennent des ordonnances de confiscation visant 107 *dounoums* (26,75 acres) de terres situées dans le camp de réfugié de Shu'fat et dans la ville d'Anata en vue de la construction du mur.
16 janvier	**Construction du mur :** La construction du mur se poursuit à Al Eizariya et Al Sawahira.
17 janvier	**Construction du mur :** La construction du mur in Al Eizariya et Al Sawahira est arrêtée pour le week-end
18 janvier	**Construction du mur :** La construction du mur in Al Eizariya, Abu Dis et Al Sawahira reprend.
19 janvier	**Construction du mur :** La construction du mur se poursuit à Al Eizariya, Abu Dis et Al Sawahira.

Ramallah et El Bireh

10 décembre	**Fermeture :** L'armée israélienne ferme la barrière métallique située près de la jonction d'An Nabi Salih, isolant le secteur de Bani Zeid (qui comprend les villes de Beit Rima, Deir Ghassana, Kafr 'Ein, An Nabi Salih et Qarawat Bani Zeid) de la ville de Ramallah et d'autres villes et villages.
11 décembre	**Fermeture** : Pour la quatrième journée consécutive, l'armée israélienne bloque la barrière métallique d'An Nabi Salih, isolant le secteur de Bani Zeid (qui comprend les villes de Beit Rima, Deir Ghassana, Kafr 'Ein, An Nabi Salih et Qarawat Bani Zeid) de la ville de Ramallah et d'autres villes et villages.
14 décembre	**Travaux de nivellement pour le mur et les colonies** : (i) Les autorités israéliennes continuent de niveler des terres appartenant aux villages de Rantis, Qibya et Budrus pour la construction du mur. (ii) Les autorités israéliennes ont commencé à niveler le sol près du village de Shuqba pour préparer la construction d'une voie de contournement donnant accès à la colonie d'Ariel.
15 décembre	**Construction du mur :** (i) Les bulldozers israéliens continuent de niveler les terres appartenant aux villages de Rantis, Shuqba et Qibya. Des travaux de nivellement sont en cours près de l'entrée du village de Budrus, où des arbres ont été marqués pour être arrachés plus tard. (ii) Le Département des terres israélien a placé des panneaux demandant aux agriculteurs du village d'Al-Midya de ne pas aller travailler dans leurs champs, parce qu'ils vont être nivelés.

16 décembre	**Démolition de maisons** : À 18 h 35, l'armée israélienne est entrée avec trois jeeps, dans le village de Beit Liqya, à l'ouest de Ramallah, et a informé les propriétaires des maisons situées au sud du village qu'ils devaient quitter leur maison le lendemain, parce qu'elles seront démolies à partir de 11 h pour la construction du mur. **Confiscation de terres** : Les fonctionnaires israéliens ont remis des ordonnances de confiscation accompagnées de cartes au bureau de Ramallah du Ministère des Affaires civiles. Les ordonnances prévoient la confiscation de terres situées entre Beit Sira et Beit Nuba pour la construction du mur.
17 décembre	**Fermeture :** L'armée israélienne a fermé la barrière métallique près du village d'An Nabi Salih, isolant de la ville de Ramallah les villages situés au nord et au nord-ouest. **Confiscation de terres :** L'armée israélienne a fait un raid dans le village de Beit Liqya et a affiché des ordonnances annonçant la confiscation de 2 100 *dounoums* (525 acres) de terres pour la construction du mur.
18 décembre	**Fermeture :** La barrière métallique située près du village d'An Nabi Salih est demeurée fermée, isolant ainsi les villages nord et nord-ouest de la ville de Ramallah.
19 décembre	**Fermeture :** La barrière métallique située près du village d'An Nabi Salih est demeurée fermée, isolant ainsi les villages nord et nord-ouest de la ville de Ramallah.
20 décembre	**Fermeture :** La barrière métallique située près du village d'An Nabi Salih est demeurée fermée, isolant ainsi les villages nord et nord-ouest de la ville de Ramallah.
21 décembre	**Fermeture :** La barrière métallique située près du village d'An Nabi Salih demeure complètement fermée, même pour les ambulances, isolant ainsi les villages nord-ouest de la ville de Ramallah.
22 décembre	**Fermeture :** La barrière métallique située près du village d'An Nabi Salih demeure complètement fermée, isolant ainsi les villages nord-ouest de la ville de Ramallah. **Activités reliées aux colonies :** (i) Depuis trois jours, les colons israéliens placent des caravanes sur l'avant-poste Shevut Rahel, occupent et ont délimité avec du fil barbelé 1 750 m^2 de terres adjacentes à la colonie. (ii) Les colons israéliens ont commencé de construire une route reliant la colonie de Shillo à celle de Shevut Rahel, ils ont planté des poteaux électriques le long de la route, isolant ainsi les districts nord de la Cisjordanie de districts du centre.
23 décembre	**Fermeture :** La barrière métallique située près du village d'An Nabi Salih demeure fermée, isolant ainsi les villages nord-ouest de la ville de Ramallah.
24 décembre	**Activités reliées aux colonies :** L'armée israélienne érige une clôture en fil barbelé autour des terres appartenant au village de Deir Nidham pour faciliter l'expansion de la colonie Hallamish.
25 décembre	**Fermeture :** (i) La barrière métallique située près du village d'An Nabi Salih demeure fermée, isolant ainsi les villages nord-ouest de la ville de Ramallah. (ii) L'armée israélienne décrète le bouclage militaire du village de Bani Zeid.
26 décembre	**Destruction de biens :** À 10 h 50, l'armée israélienne détruit quatre fermes d'élevage appartenant à un civil de la ville de Silwad, en prétendant que les fermes sont trop proches de la colonie d'Ofra.
30 décembre	**Activités reliées aux colonies :** Les autorités israéliennes poursuivent l'érection d'une clôture autour de la colonie d'Hallamish. La clôture empiète sur des terres appartenant à des résidents du village voisin de Deir Nidham.
31 décembre	**Construction du mur :** L'armée israélienne décrète le bouclage militaire du secteur situé entre Ni'lin et Budrus, impose le couvre-feu au village situé près du village de Raba, nivelle le sol, arrache des arbres dans le secteur en préparation de la construction de la section ouest du mur.

	<u>Activités reliées aux colonies</u> : Les autorités israéliennes poursuivent l'érection d'une clôture autour de la colonie de Hallamish. La clôture empiète sur des terres appartenant à des résidents du village voisin de Deir Nidham.
1er janvier	**<u>Construction du mur</u> :** Le secteur situé entre Ni'lin et Budrus demeure une zone militaire fermée. L'armée israélienne continue d'imposer le couvre-feu aux habitants des villages de la région; des bulldozers israéliens continuent à arracher des oliviers pour permettre la construction du mur. **<u>Activités reliées aux colonies</u> :** Les autorités israéliennes poursuivent l'érection d'une clôture autour de la colonie Hallamish. La clôture empiète sur des terres appartenant à des résidents du village voisin de Deir Nidham.
2 janvier	**<u>Construction du mur</u> :** Le secteur situé entre Ni'lin et Budrus demeure une zone militaire fermée. L'armée israélienne continue d'imposer le couvre-feu aux habitants des villages de la région; des bulldozers israéliens continuent à arracher des oliviers pour permettre la construction du mur. **<u>Activités reliées aux colonies</u> :** Les autorités israéliennes poursuivent l'érection d'une clôture autour de la colonie Hallamish. La clôture empiète sur des terres appartenant à des résidents du village voisin de Deir Nidham.
3 janvier	**<u>Construction du mur</u> :** Les travaux de construction dans le secteur de Budrus sont arrêtés pendant le week-end
5 janvier	**<u>Confiscation de terres</u> :** Des résidents palestiniens des villages de Beit Liqya, Beit Ur et Al Tira sont informés que leurs terres seront confisquées pour permettre la construction du mur.
8 janvier	**<u>Construction du mur</u> :** La construction de la partie ouest du mur se poursuit dans les secteurs de Budrus et Rantis. **<u>Confiscation de terres</u> :** Les autorités israéliennes confisquent 1 500 *dounoums* (375 acres) de terres situées à Betunia, au sud de Ramallah, pour permettre la construction du mur.
9 janvier	**<u>Construction du mur</u> :** La construction de la partie ouest du mur se poursuit à Budrus et Rantis.
10 janvier	**<u>Construction du mur</u> :** La construction de la partie ouest du mur à Budrus et Rantis est arrêtée pour le week-end
11 janvier	**<u>Construction du mur</u> :** La construction de la partie ouest du mur se poursuit à Budrus et Rantis.
12 janvier	**<u>Construction du mur</u> :** La construction de la partie ouest du mur se poursuit à Budrus et Rantis.
13 janvier	**<u>Construction du mur</u> :** La construction de la partie ouest du mur se poursuit à Budrus et Rantis.
14 janvier	**<u>Construction du mur</u> :** La construction de la partie ouest du mur se poursuit à Budrus et Rantis.
15 janvier	**<u>Construction du mur</u> :** La construction de la partie ouest du mur se poursuit à Budrus et Rantis. **<u>Confiscation de terres</u> :** Les autorités israéliennes ont pris des ordonnances de confiscation visant 41 *dounoums* (10,25 acres) de terres situées à Beit Ur al Foqa pour permettre la construction du mur. La confiscation de ces terres aura pour effet : (i) d'empêcher 400 élèves de fréquenter leurs écoles dans les villes voisines; (ii) d'isoler huit familles du village; (iii) d'entraîner la démolition de nombreuses fermes d'élevage d'animaux et de volailles et l'arrachage d'arbres.
16 janvier	**<u>Construction du mur</u> :** La construction de la partie ouest du mur se poursuit à Budrus et Rantis.
17 janvier	**<u>Construction du mur</u> :** La construction de la partie ouest du mur à Budrus et Rantis est arrêtée pour le week-end

18 janvier	**<u>Construction du mur</u> :** La construction de la partie ouest du mur à Budrus et Rantis reprend. **<u>Confiscation de terres</u> :** Les autorités israéliennes informent les villageois de Rantis de leur intention de confisquer 500 *dounoums* (125 acres) de terre pour permettre la construction du mur.
19 janvier	**<u>Construction du mur</u> :** La construction de la partie ouest du mur se poursuit à Budrus et Rantis. **<u>Activités reliées aux colonies</u> :** Les colons israéliens construisent une colonie avancée près de la colonie d'Hallamish.

Djénine

Seuls les civils qui possèdent des permis spéciaux israéliens accordés de façon discrétionnaire peuvent emprunter les barrières ouvertes dans le mur dans le district de Djénine. Ce bouclage israélien continue de nuire aux activités d'enseignement, étant donné que les professeurs, notamment, n'ont pas le droit d'utiliser ces barrières, en particulier dans les secteurs situés derrière le mur.

20 décembre	**<u>Travaux de nivellement pour le mur</u> :** L'armée israélienne a commencé à niveler le sol dans le secteur de Bardala pour permettre la construction des parties est du mur.
23 décembre	**<u>Démolition de maisons</u> :** Entre 9 h et 11 h, l'armée israélienne a démoli deux maisons dans le village d'Al 'Aqaba. Les deux maisons étaient visées par des ordonnances de démolition, adoptées le 22 octobre 2003, touchant 12 édifices, comprenant des maisons, des mosquées et une garderie. Les soldats israéliens ont informé les civils du secteur qu'ils reviendraient dans cinq jours pour démolir les dix maisons restantes.
26 décembre	**<u>Barrières</u> :** (i) L'armée israélienne interdit à un chargement de blé et d'aliments pour animaux de traverser la barrière située à Barta'a ash Sharqiya. (ii) L'armée israélienne empêche les civils de sexe féminin de traverser la barrière de Barta'a ash Sharqiya pour retourner à leur village, entre 13 h et 16 h, en prétendant qu'il n'y avait pas femmes soldats pour fouiller les femmes pendant cette période.
27 décembre	**<u>Barrières</u> :** Le village de Barta'a, situé derrière le mur, demeure complètement bouclé. Les médecins, les aliments de base et le lait ne parviennent pas dans le village. Les écoles sont fermées parce que les professeurs ne sont pas en mesure de se rendre dans ce village.
28 décembre	**<u>Barrières</u>** : Le village de Barta'a, situé derrière le mur, demeure complètement bouclé. Les médecins, les aliments de base et le lait ne parviennent pas dans le village. Les écoles sont fermées parce que les professeurs ne sont pas en mesure de se rendre dans ce village. **<u>Travaux de nivellement/Construction du mur de l'est</u> :** Les bulldozers israéliens nivellent le terrain à l'est du village d'Al Mutilla pour préparer la construction du mur.
30 décembre	**<u>Construction du mur</u> :** L'armée israélienne poursuit ses travaux de nivellement au nord du village de Bardala pour préparer la construction de la section est du mur.
31 décembre	**<u>Construction du mur</u> :** (i) L'armée israélienne poursuit ses travaux de nivellement au nord du village de Bardala pour préparer la construction de la partie est du mur. (ii) L'armée israélienne boucle des pâturages situés près du village de Raba, nivelle le sol et détruit des citernes.
1er janvier	**<u>Construction du mur</u> :** (i) L'armée israélienne poursuit ses travaux de nivellement au nord du village de Bardala pour préparer la construction de la partie est du mur. (ii) L'armée israélienne poursuit ses travaux de nivellement et détruit d'autres citernes près du village de Raba.

2 janvier	**Construction du mur :** (i) L'armée israélienne poursuit ses travaux de nivellement au nord du village de Bardala pour préparer la construction de la partie est du mur. (ii) L'armée israélienne poursuit ses travaux de nivellement près du village de Raba pour préparer la construction de la partie est du mur.
3 janvier	**Construction du mur :** (i) Les activités israéliennes visant à préparer la construction de la partie est du mur dans le village de Bardala cessent pendant le week-end. (ii) Les activités israéliennes visant à préparer la construction de la partie est du mur près du village de Raba cessent pendant le week-end On interdit aux bergers de faire paître leur troupeau dans les pâturages situés dans la zone de Raba.
4 janvier	**Barrières/Détentions :** Les soldats israéliens stationnés à la barrière de Barta'a (située derrière le mur) détiennent plus de 200 femmes du village, et les empêchent de retourner chez elle entre 11 h et 15 h. L'armée israélienne maltraite Ghassan Kabha, chef du conseil de village de Barta'a, et le détienne pendant plusieurs heures parce qu'il a protesté au sujet de la détention de 200 femmes. L'armée israélienne empêche les civils de franchir la barrière avec des provisions, notamment du pain.
9 janvier	**Construction du mur/Travaux de nivellement :** (i) L'armée israélienne nivelle des terres agricoles appartenant au village de Bardala pour préparer la construction du mur. Le village a été entouré et bouclé par l'armée israélienne qui a construit des miradors militaires et envoyé des jeeps et des chiens policiers dans le secteur. (ii) L'armée israélienne continue à creuser un fossé le long du Jourdain jusqu'au village de 'Ein Al Beida. L'armée israélienne a détruit six points de vente en excavant le fossé.
11 janvier	**Construction du mur/Travaux de nivellement :** (i) Les autorités israéliennes continuent à niveler le sol au nord du village de Bardala, à l'est du village de 'Ein al Beida et près des villages d'Al Mutilla et de Raba situés sur la chaîne de montagnes de Naplouse en vue de permettre la construction du mur. (ii) La construction du mur a commencé sur le plateau Al Buqe'a à l'est de la ville de Tubas. (iii) Les autorités israéliennes ont confisqué cinq réservoirs d'eau dans le secteur d'Al Malih qui appartenaient à des bergers qui faisaient paître leur troupeau dans le secteur, en vue de préparer la construction du mur.
12 janvier	**Construction du mur/Travaux de nivellement :** Les autorités israéliennes poursuivent leurs travaux de nivellement au nord du village de Bardala, à l'est du village de 'Ein al Beida et près des villages d'Al Mutilla et de Raba situés sur la chaîne de montagnes de Naplouse et sur le plateau d'Al Buqu'a à l'est de Tubas pour la construction du mur. (ii) La construction du mur a commencé sur le plateau Al Buqe'a à l'est de la ville de Tubas.
13 janvier	**Construction du mur/Travaux de nivellement :** Les autorités israéliennes poursuivent leurs travaux de nivellement au nord du village de Bardala, à l'est du village de 'Ein al Beida et près des villages d'Al Mutilla et de Raba situés sur la chaîne de montagnes de Naplouse et sur le plateau d'Al Buqu'a à l'est de Tubas pour la construction du mur.
14 janvier	**Construction du mur/Travaux de nivellement :** Les autorités israéliennes poursuivent leurs travaux de nivellement au nord du village de Bardala, à l'est du village de 'Ein al Beida et près des villages d'Al Mutilla et de Raba situés sur la chaîne de montagnes de Naplouse et sur le plateau d'Al Buqu'a à l'est de Tubas pour la construction du mur.
15 janvier	**Construction du mur/Travaux de nivellement :** Les autorités israéliennes poursuivent leurs travaux de nivellement au nord du village de Bardala, à l'est du village de 'Ein al Beida et près des villages d'Al Mutilla et de Raba situés sur la chaîne de montagnes de Naplouse et sur le plateau d'Al Buqu'a à l'est de Tubas pour la construction du mur.

16 janvier	**Construction du mur/Travaux de nivellement :** Les autorités israéliennes poursuivent leurs travaux de nivellement au nord du village de Bardala, à l'est du village de 'Ein al Beida et près des villages d'Al Mutilla et de Raba situés sur la chaîne de montagnes de Naplouse et sur le plateau d'Al Buqu'a à l'est de Tubas pour la construction du mur.
17 janvier	**Construction du mur :** Les travaux de nivellement effectués au nord du village de Bardala, à l'est du village de Ein al Beida, près des villages d'Al Mutilla et de Raba situés sur la chaîne de montagnes de Naplouse et sur le plateau d'Al Buqu'a à l'est de Tubas pour la construction du mur sons suspendus pour le week-end
18 janvier	**Construction du mur / Travaux de nivellement :** Les travaux de nivellement dans les vallées du nord (Bardala et 'Ein al Beida) et à l'est de Tubas (Al Mutilla, Al Mughayyir, Raba et le plateau Al Buqei') se poursuivent.
19 janvier	**Construction du mur / Travaux de nivellement :** Les travaux de nivellement dans les vallées du nord (Bardala et 'Ein al Beida) et à l'est de Tubas (Al Mutilla, Al Mughayyir, Raba et le plateau Al Buqei') se poursuivent.

Jéricho

10 décembre	**Destruction de biens** : L'armée israélienne a détruit des tentes et des baraquements de Bédouins appartenant à la famille d'Abu-Dahouk situés dans le secteur de Nabi Mousa.
24 décembre	**Destruction de biens :** L'armée israélienne a détruit des tentes appartenant à un civil du village d'Al 'Ojai.

Bethléem

18 décembre	**Arrachage d'arbres :** L'armée israélienne a arraché 400 oliviers du secteur de Wadi Fukin et a averti verbalement Mahmoud Mustafa al-Horoub que sa maison serait démolie.
21 décembre	**Confiscation de terres :** Des ordonnances de confiscation de terre ont été signifiées à Fayez Mohammad Al Sa'afen du village de Husan portant sur cinq *dounoums* (1,25 acre) de terres pour la construction d'une centrale électrique destinée à approvisionner en électricité les colonies israéliennes avoisinantes.
22 décembre	**Fermeture :** L'armée israélienne a bouclé Khirbet el Thebe à l'est de Bethléem, empêchant ainsi les civils d'avoir accès à leurs terres agricoles et à leurs pâturages; elle a informé verbalement les résidents que ces terres seraient confisquées. **Travaux de nivellement :** À 8 h, l'armée israélienne a nivelé, à l'aide notamment de deux bulldozers, des terres appartenant à l'église orthodoxe grecque près du poste de contrôle 300, qui sépare Jérusalem et Bethléem.
24 décembre	**Destruction de biens :** Des bulldozers israéliens ont nivelé le terrain situé entre la ville de Nahhalin et le village de Husan.
4 janvier	**Travaux de nivellement :** Des bulldozers israéliens ont nivelé des douzaines de *dounoums* de terres agricoles situées près de la ville de Al Khadr.
14 janvier	**Construction du mur/Destruction de biens :** L'armée israélienne a détruit une ferme d'élevage privée et confisqué 400 *dounoums* (100 acres) pour la construction du mur.
17 janvier	**Violence exercée par les colons :** Des colons israéliens établis dans la colonie de Kfar Ezyon ont arraché près de 80 oliviers appartenant à des Palestiniens qui se trouvaient sur des terres situées à proximité de la colonie.
19 janvier	**Violence exercée par les colons/Destruction de biens :** Des colons ont détruit des terres appartenant au village de Khirbet Sakariya, ils ont rompu des conduites d'eau, coupé 107 vignes et cassé les fenêtres d'un véhicules public.

Tulkarem

L'utilisation des barrières aménagées dans le mur dans le district de Tulkarem est réservée aux civils qui ont obtenu des permis spéciaux israéliens qui sont attribués de façon discrétionnaire. Le bouclage israélien continue à nuire à l'enseignement puisque les professeurs, notamment, ne sont pas autorisés à franchir ces barrières, en particulier dans les secteurs situés derrière le mur.

14 décembre	**Barrières aménagées dans le mur :** (i) Les entrées conduisant aux terres agricoles du village de Qaffin ont été fermées, ce qui empêche les fermiers, même ceux qui possèdent des permis, les enseignants et les ambulances d'emprunter ces barrières. (ii) L'armée israélienne a empêché les enseignants de se rendre dans les villages de Nazlat Isa et d'Al Baqa al Sharqiya (situés derrière le mur), et n'ont tenu aucun compte des ententes précédentes prévoyant la fourniture des services de base et l'entrée de ces personnes.
16 décembre	**Fermetures :** (i) La barrière d'Al-Kafriyat est demeurée fermée, empêchant les résidents de Qalqilya d'avoir accès à Tulkarem. (ii) L'armée israélienne empêche les enseignants de se rendre dans la ville de Baqa al Sharqiya.
17 décembre	**Fermeture :** La barrière d'Al Kafriyat est demeurée fermée, empêchant les résidents de Qalqilya d'avoir accès à Tulkarem.
18 décembre	**Fermeture :** La barrière d'A-Kafriyat est demeurée fermée, empêchant les résidents de Qalqilya d'avoir accès à Tulkarem. **Barrières :** (i) L'armée israélienne interdit à des véhicules transportant du gaz de se rendre dans le secteur d'al Baqa el Sharqiya situé derrière le mur. (ii) L'armée israélienne ferme la barrière conduisant au village de Jubara situé derrière le mur, empêchant ainsi les résidents, les employés et les étudiants de quitter le village. (iii) Les autorités israéliennes n'ont pas renouvelé les permis accordés aux résidents du village de Qaffin, situé derrière le mur, qui expiraient le 12 décembre 2003. (iv) Les autorités israéliennes n'ont pas accordé de permis autorisant les agriculteurs de la ville de Deir al Ghusun à se rendre sur leurs terres agricoles. **Travaux de nivellement :** L'armée israélienne a commencé à niveler, avec l'aide de bulldozers, une superficie estimée à 100 *dounoums* (25 acres) dans le village de Far'un.
19 décembre	**Fermeture :** La barrière d'Al-Kafriyat est demeurée fermée, empêchant l'accès à Tulkarem de Qalqilya.
25 décembre	**Barrières aménagées dans le mur :** Les troupes israéliennes stationnées près des barrières aménagées dans le mur ont empêché les agriculteurs de rentrer dans leur village de Deir al Ghusun, les obligeant ainsi à dormir dehors. Les soldats israéliens ont interdit aux agriculteurs de faire du feu pour se réchauffer.
26 décembre	**Barrières aménagées dans le mur :** À 9 h 30, l'armée israélienne a fermé les barrières d'Al Kafriyat, isolant le district de Qalqiliya de Tulkarem, et la barrière d'Enav, isolant le district de Tulkarem de Naplouse.
27 décembre	**Barrières aménagées dans le mur :** La barrière d'Al Kafriyat est demeurée fermée, isolant le district de Qalqiliya de Tulkarem.
28 décembre	**Barrières aménagées dans le mur :** (i) La barrière d'Al Kafriyat est demeurée fermée, isolant le district de Qalqiliya de Tulkarem. (ii) À 8 h 20, l'armée israélienne ferme la barrière d'Enav, isolant le district de Tulkarem de Naplouse.
30 décembre	**Fermeture :** L'armée israélienne ferme la barrière métallique d'Enav et la barrière d'Al Kafriyat, isolant Tulkarem des districts de Qalqiliya et Naplouse.
31 décembre	**Perturbation de l'enseignement :** Le bouclage hermétique imposé par l'armée israélienne a empêché les étudiants d'aller à l'école et a un effet préjudiciable sur les conditions de vie et sur l'enseignement dispensé dans les collectivités situées derrière le mur.

1er janvier	**Fermeture :** L'armée israélienne a fermé la barrière métallique d'Enav et la barrière d'Al Kafriyat, ce qui a pour effet d'isoler Tulkarem des districts de Qalqiliya et Naplouse. **Barrières aménagées dans le mur :** L'armée israélienne a interdit à des équipes médicales de franchir les barrières et de se rendre dans leurs cliniques situées dans les villes de Baqa ash Sharqiya et dans le village de Nazlat Isa, situées derrière le mur; elle a empêché une ambulance et des véhicules du ministère de la Santé transportant des médicaments de pénétrer dans cette zone.
2 janvier	**Fermeture :** L'armée israélienne maintient la fermeture de la barrière métallique d'Enav et la barrière d'Al Kafriyat, isolant ainsi tout Tulkarem des districts de Qalqiliya et Naplouse.
3 janvier	**Fermeture :** L'armée israélienne maintient la fermeture de la barrière métallique d'Enav et la barrière d'Al Kafriyat, isolant ainsi tout Tulkarem des districts de Qalqiliya et Naplouse.
4 janvier	**Fermeture :** L'armée israélienne maintient la fermeture de la barrière métallique d'Enav et la barrière d'Al Kafriyat, isolant ainsi tout Tulkarem du district de Qalqiliya et Naplouse.
12 janvier	**Construction du mur :** L'armée israélienne a achevé des travaux de nivellement touchant environ 500 *dounoums* (125 acres) de terres, situés entre les villages d'Irtah et Far'un, au sud de la ville, pour la construction du mur.
15 janvier	**Construction du mur/Travaux de nivellement :** L'armée israélienne poursuit ses travaux de nivellement au sud du village de Far'un pour la construction du mur. **Confiscation de terres :** Des arpenteurs israéliens, travaillant sous la protection de l'armée, ont commencé à arpenter et à borner des terres dans le but d'intégrer à une colonie des terres appartenant au village d'Al Ras et de Kafr Sur près de la colonie de Sal'it.

Naplouse

8 décembre	**Confiscation de terres :** L'armée israélienne a confisqué deux parcelles de terre, près du village de Sad, d'une superficie de plus de deux *dounoums* (0.5 acre), sur lesquels l'armée israélienne a installé un nouveau poste militaire. La terre appartient à des résidents des villages de Jit et Sarra.
22 décembre	**Arrachage d'arbres :** L'armée israélienne a arraché des douzaines d'arbres sur la route principale qui traverse la ville de Huwwara (sud).
24 décembre	**Démolition de maisons** : (i) À 13 h, l'armée israélienne a démoli une maison et des magasins appartenant à Khalid Asida, un jeune homme de 25 ans, du village de Sebastia. (ii) L'armée israélienne a lancé un raid dans la ville de Deir Sharaf, à l'ouest de la ville de Naplouse, et démoli, avec des bulldozers, deux maisons appartenant à Nidal Badawi et à Kheiri Nofal; elle a aussi démoli deux magasins appartenant à Abdul Jabbar Kayid et à Awad Abu Safad.

Hébron

10 décembre	**Confiscation de terres/Violence exercée par les colons** : Les colons israéliens de la colonie de Haggai se sont appropriés des douzaines de *dounoums* de terre, interdisant à leurs propriétaires d'y pénétrer, et ils ont gravement battu un civil, Musa Al Najjar. Entre-temps, l'armée israélienne détenait trois autres civils et menaçait d'arrêter les personnes qui s'approchaient de leurs terres.
11 décembre	**Travaux de nivellement :** (i) L'armée israélienne a nivelé près de 40 *dounoums* (10 acres) de terres situées entre la colonie de Kiryat Arba et celle d'Al Kharisina ainsi que 20 *dounoums* (5 acres) autour de la colonie de Harisina, pour la construction du mur et de routes d'accès. (ii) L'armée israélienne a nivelé près de 40 *dounoums* (10 acres) de terre appartenant à la ville de Beit Ummar pour la construction et l'expansion de routes d'accès.

14 décembre	**Fermeture :** (i) Les autorités israéliennes ont fermé les points d'entrée dans la ville de Sa'ir. (ii) Une barrière métallique a été construite dans la partie nord de la ville. Une tour de guet militaire a également été érigée.
17 décembre	**Travaux de nivellement :** L'armée israélienne a nivelé, avec des bulldozers, 10 *dounoums* (2,5 acres) de terres du village de Yatta pour élargir la route des colons n° 60. Les travaux de nivellement se poursuivent. **Arrachage d'arbres :** Les autorités israéliennes ont informé le Bureau de la coordination civile palestinienne de son intention d'arracher des arbres appartenant au village de Tarqumiya près de la colonie de Telem.
18 décembre	**Arrachage d'arbres :** Les autorités israéliennes ont donné l'ordre d'arracher des milliers d'arbres dans le secteur de Tarqumiya en raison de la proximité de la colonie de Telem.
23 décembre	**Destruction de biens :** L'armée israélienne, a démoli, à l'aide notamment d'un bulldozer, une station d'essence appartenant à Ibrahim Al Bratha'i dans la ville de Halhul, elle a détenu 15 civils et confisqué leurs cartes d'identité.
24 décembre	**Destruction de biens :** L'armée israélienne a nivelé 10 *dounoums* (2,5 acres) de terres agricoles pour la construction d'un mur entourant la colonie de Kiryat Arba et d'une route d'accès.
26 décembre	**Travaux de nivellement :** Des bulldozers israéliens ont continué à niveler des terres agricoles appartenant à des civils palestiniens et situées entre les colonies de Kiryat Arba et de Harsina pour permettre la construction d'un mur entourant les deux colonies et d'une route de contournement destinée aux colons. **Arrachage d'arbres :** Les autorités israéliennes ont pris des ordonnances militaires prévoyant l'arrachage de centaines d'arbres près de la jonction Idhna/Tarqumiya.
28 décembre	**Activités reliées aux colonies :** (i) Les colons israéliens ont reconstruit l'avant-poste de la colonie de Have Ma'on, situé au sud de la colonie de Ma'on. Les autorités israéliennes avaient annoncé auparavant que l'avant-poste avait été évacué. (ii) Les colons israéliens ont ajouté trois caravanes à l'avant-poste de la colonie d'Evangel, au sud-est de Yatta.
30 décembre	**Travaux de nivellement :** Les bulldozers israéliens continuent de niveler des terres appartenant à des civils palestiniens situées près des colonies de Kiryat Arba et de Harsina pour agrandir les deux colonies et construire un mur d'enceinte.
31 décembre	**Travaux de nivellement :** Les bulldozers israéliens continuent de niveler des terres appartenant à des civils palestiniens situées près des colonies de Kiryat Arba et de Harsina pour agrandir les deux colonies et construire un mur d'enceinte.
1er janvier	**Travaux de nivellement :** Les bulldozers israéliens continuent de niveler des terres appartenant à des civils palestiniens situées près des colonies de Kiryat Arba et de Harsina pour agrandir les deux colonies et construire un mur d'enceinte.
2 janvier	**Travaux de nivellement :** Les bulldozers israéliens continuent de niveler des terres appartenant à des civils palestiniens situées près des colonies de Kiryat Arba et de Harsina pour agrandir les deux colonies et construire un mur d'enceinte.
5 janvier	**Travaux de nivellement :** Des bulldozers israéliens continuent de niveler des terres agricoles situées près de la colonie de Kiryat Arba.
6 janvier	**Travaux de nivellement :** Des bulldozers israéliens continuent de niveler des terres agricoles situées au nord et à l'est des colonies de Kiryat Arba et de Harsina. **Activités reliées aux colonies :** Les autorités israéliennes ont commencé à construire 144 unités de logement sur des terres palestiniennes en vue d'agrandir la colonie de Harsina.
7 janvier	**Travaux de nivellement :** (i) Des bulldozers israéliens continuent de niveler des terres agricoles situées au nord et à l'est des colonies de Kiryat Arba et de Harsina. (ii) Des bulldozers israéliens ont nivelé des terres agricoles et démolie des clôtures dans le camp de réfugiés d'Al 'Arrub, adjacent à la route reliant Hébron à Jérusalem.

	<u>Confiscation de terres</u> : Les autorités israéliennes ont pris des ordonnances confiscant des terres au sud de la ville d'Hébron de façon à permettre l'expansion de la colonie de Haggai.
13 janvier	**<u>Travaux de nivellement</u> :** L'armée israélienne a nivelé 15 *dounoums* (3,75 acres) de terres agricoles situées au sud-ouest de la colonie de Kiryat Arba pour l'expansion de la colonie et la construction d'un mur de protection.

Cour internationale de Justice
Enregistré au Greffe le :
International Court of Justice
Filed in the Registry on : 29 JAN. 2004 / 8.(2)

INTERNATIONAL COURT OF JUSTICE

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

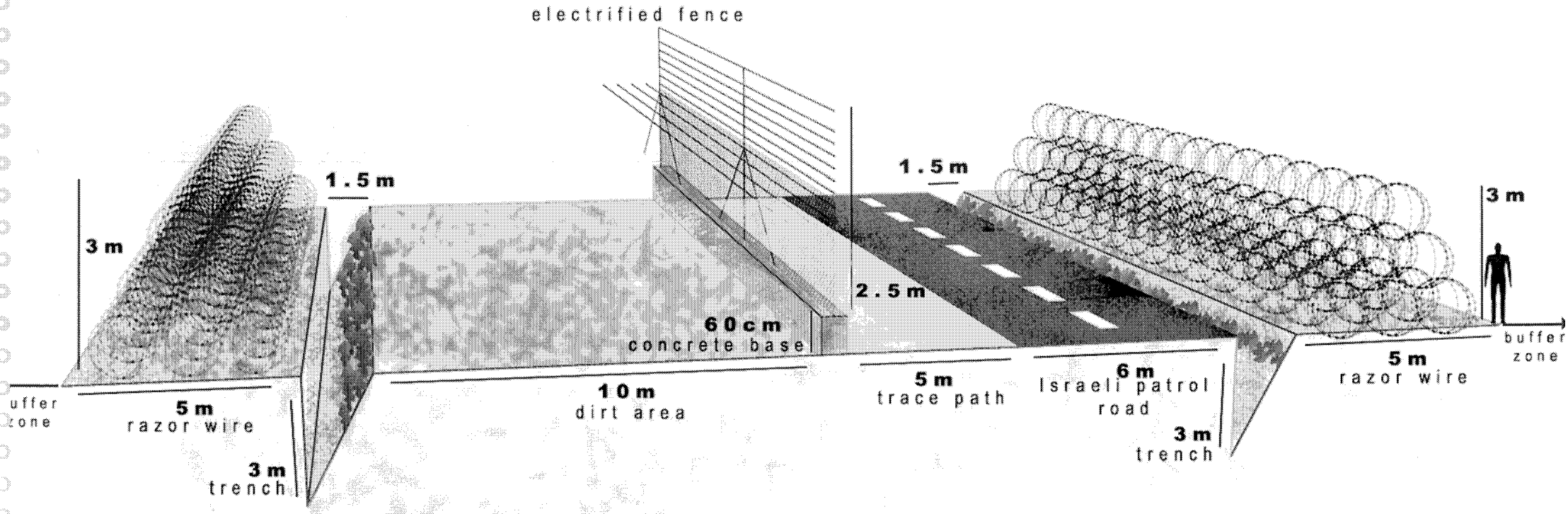
30 JANUARY 2004

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Cross Section of the Wall Complex

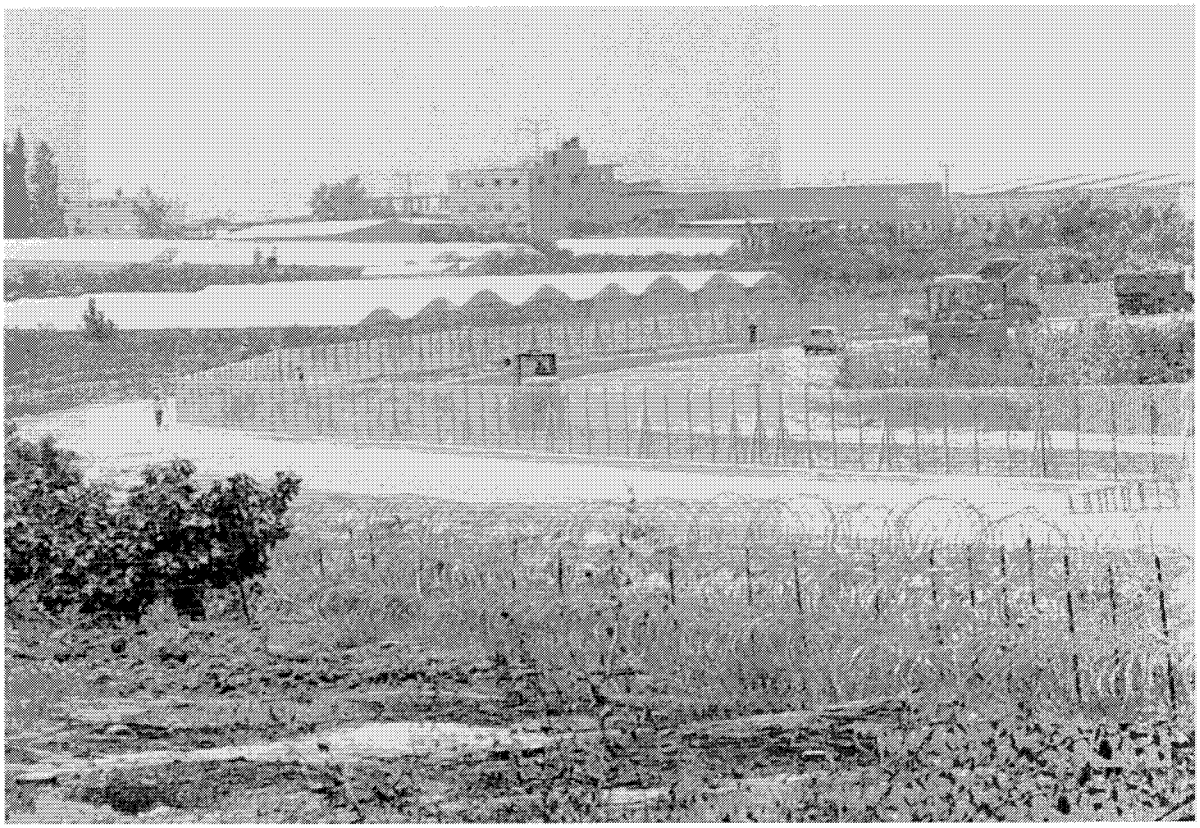


The Wall complex is a closed military zone

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.



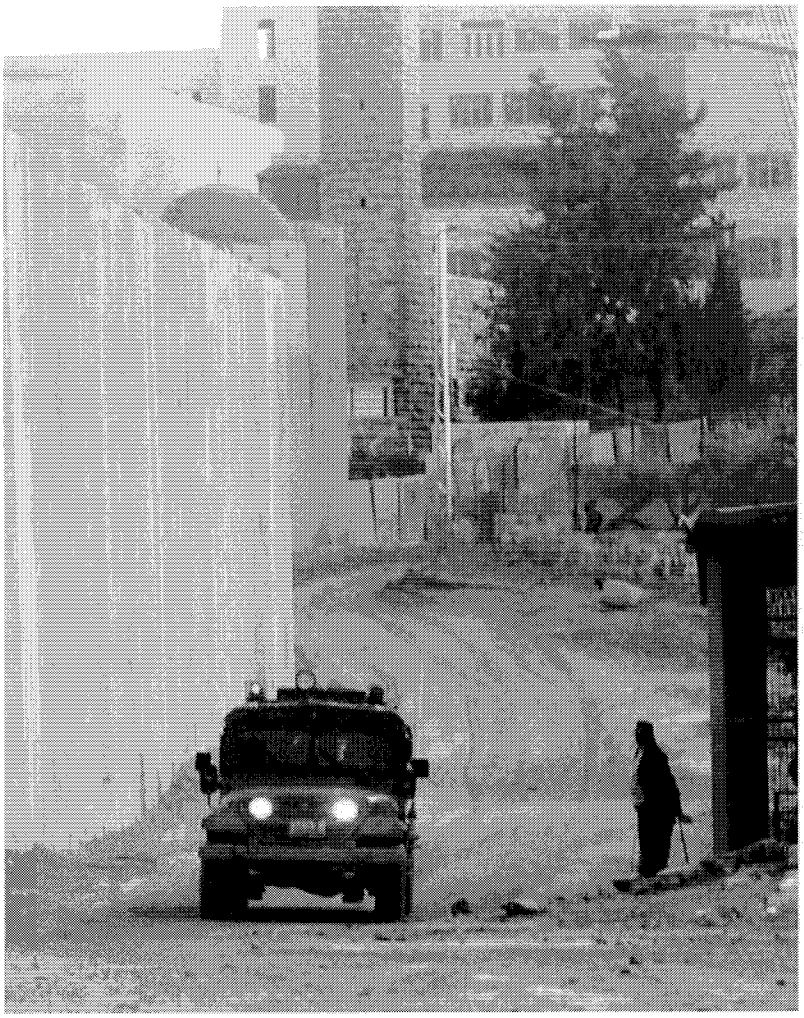
Photograph 2: Qalqilya (July 2003): Qalqilya northern area greenhouses isolated on the western side of the Wall. On 4 October 2003, the Israeli Army closed the agricultural gate allowing farmers access to this area. The gate was never re-opened. Palestinian farmers have started dismantling and selling 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.



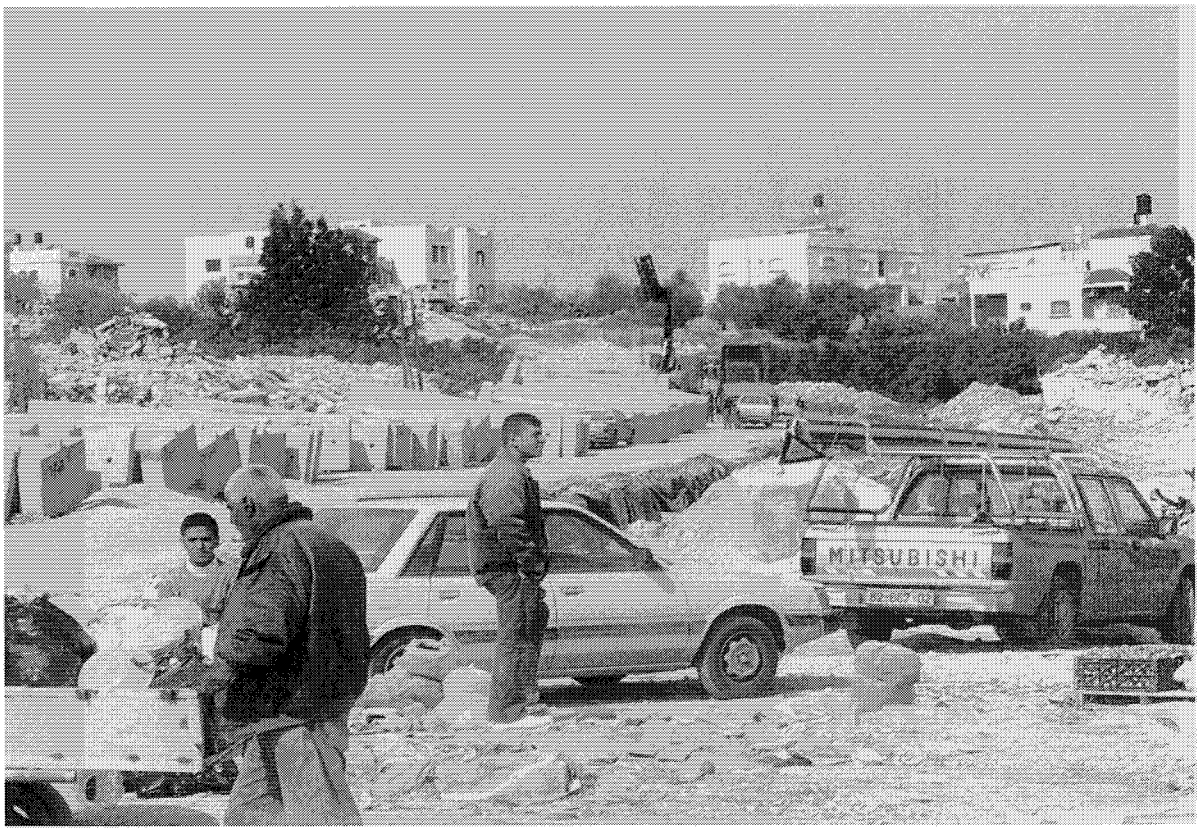
Photograph 8: Al-Daba, Qalqilya Governorate (March 2003): Elderly Palestinian farmers from the Palestinian village of Daba watch as their olive crops are uprooted by Israeli bulldozers.



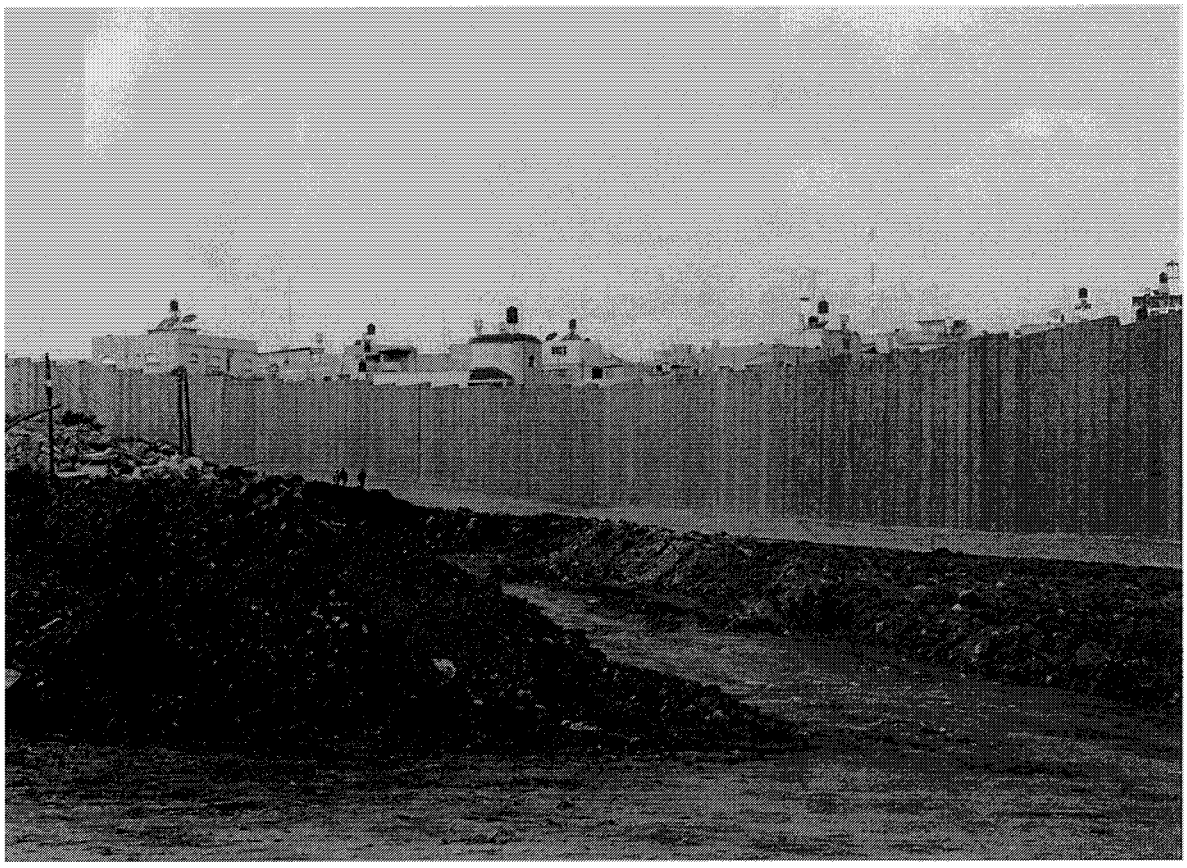
Photograph 9: Nazlat Issa, Tulkarem Governorate (21 August, 2003): In August 2003, the Israeli Army destroyed 124 market stalls and 7 homes in what was once one of the largest open-air markets in the Occupied Palestinian Territory. On 21 January 2003, 62 stalls were destroyed. On 24 August 2003 Israeli 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.



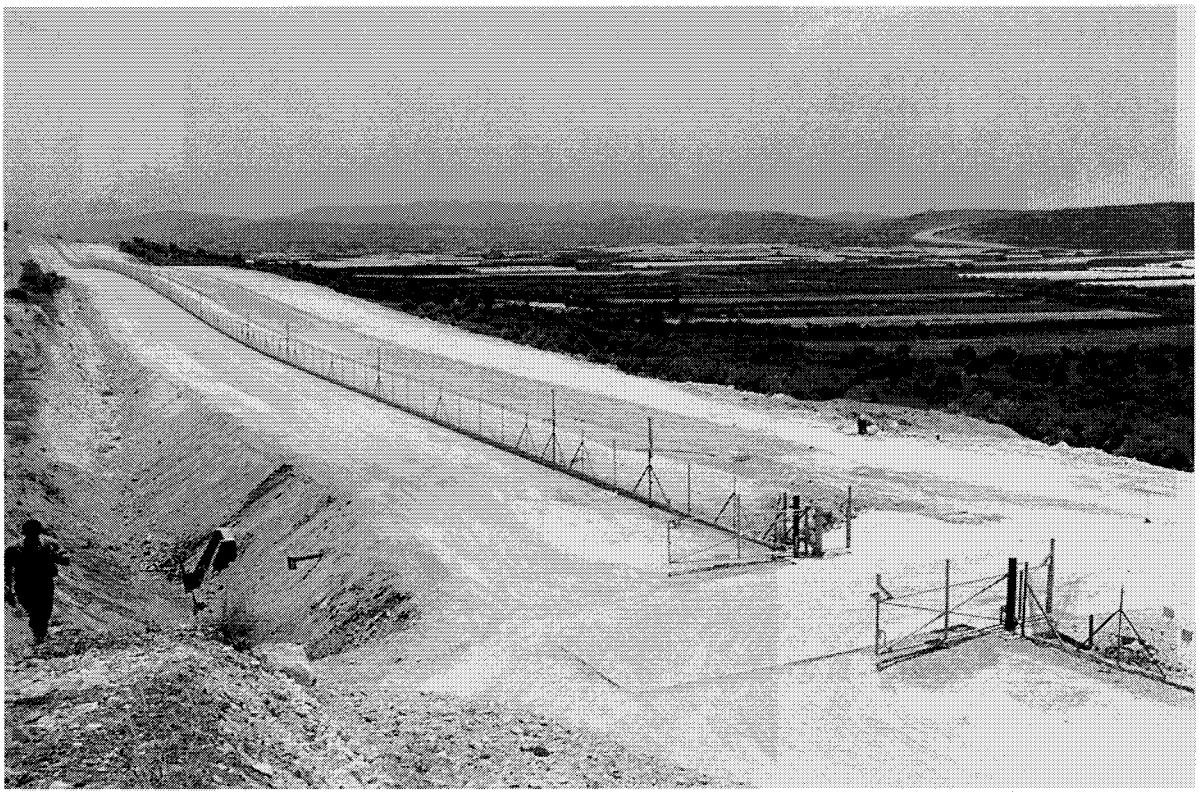
Photograph 10: Nazlat Issa, Tulkarem Governorate (October 2003): Palestinian merchants amidst the rubble of the destroyed market area.



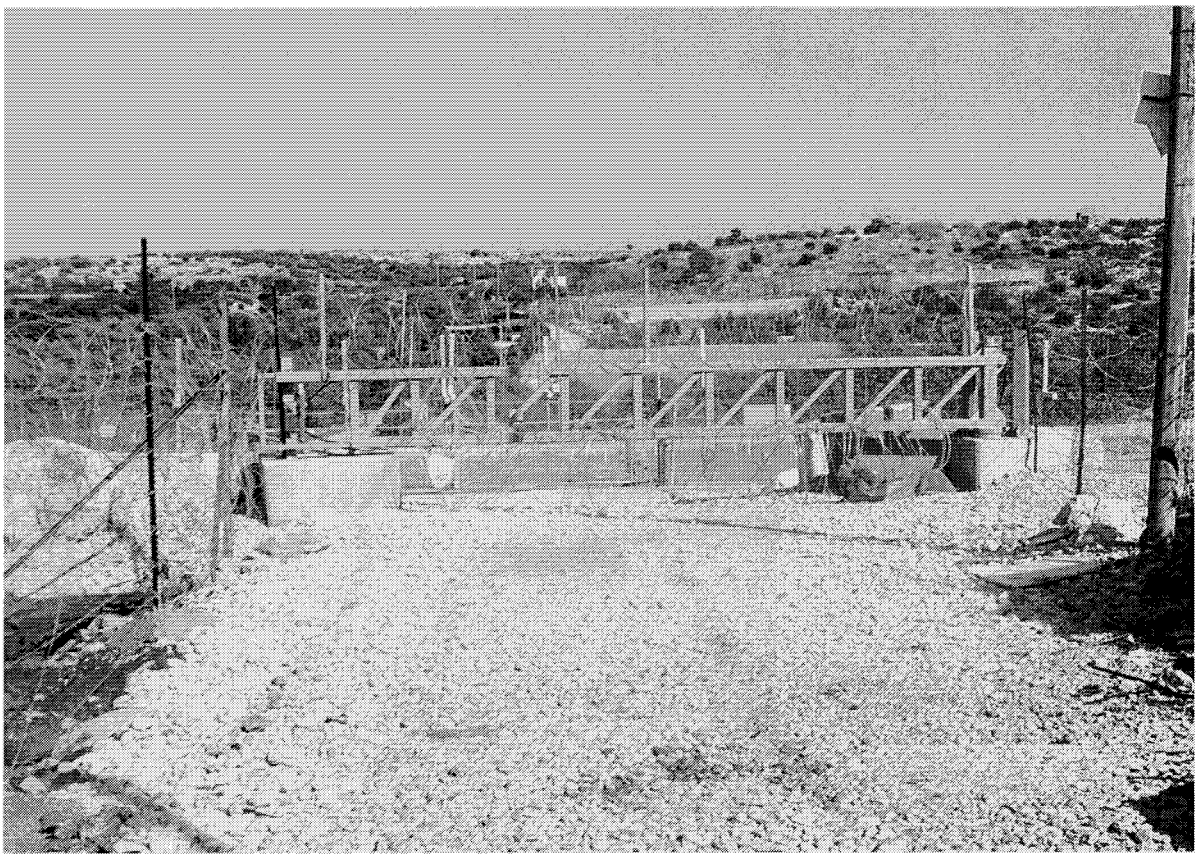
Photograph 11: Nazlat Issa, Tulkarem Governorate (24 November 2003): After the destruction of the market in August 2003, the rubble was cleared and Israelis prepare to erect the 8 - meter high concrete Wall encircling the Palestinian towns of Baka Sharqiya, Nazlat Issa and Abu Nar, in effect destroying 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.



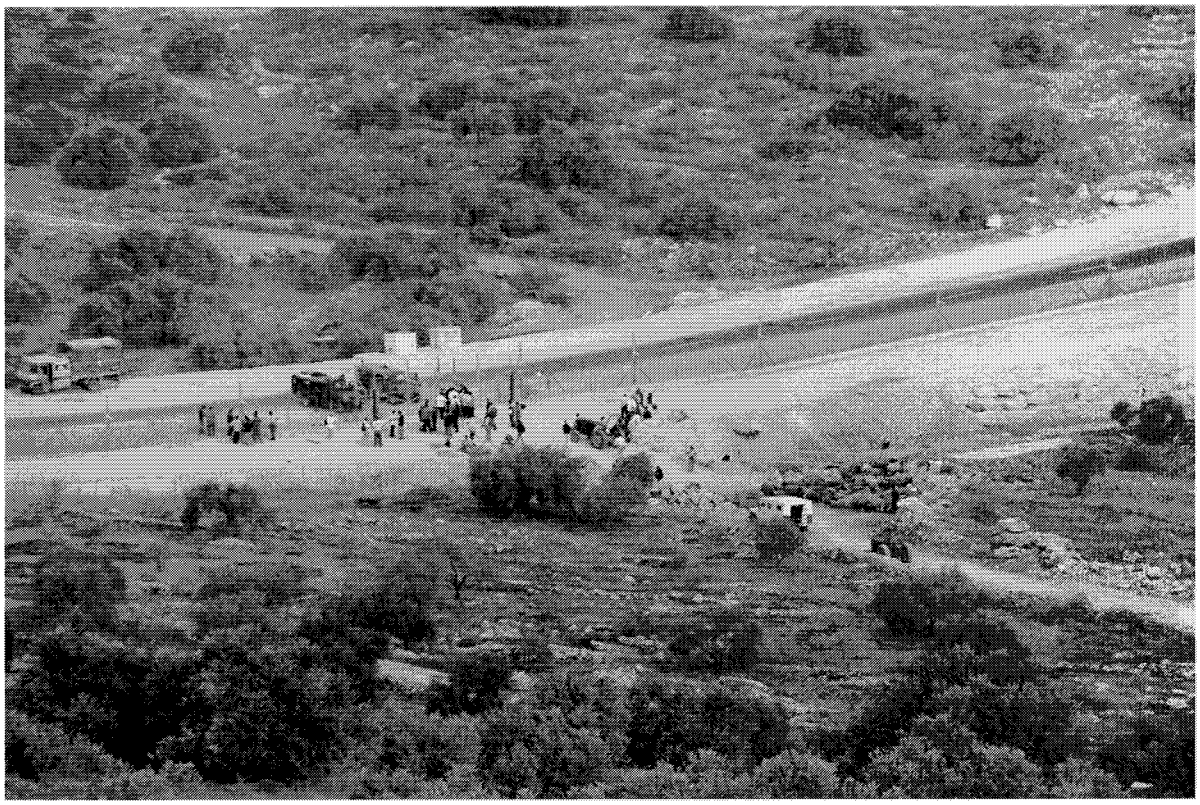
Photograph 13: Zayta, Tulkarem Governorate (July 2003): Palestinian owned greenhouses "isolated" on the western side of the wall. Palestinian farmers must obtain permits from the Israeli military in order to access their land in the Closed Zone.



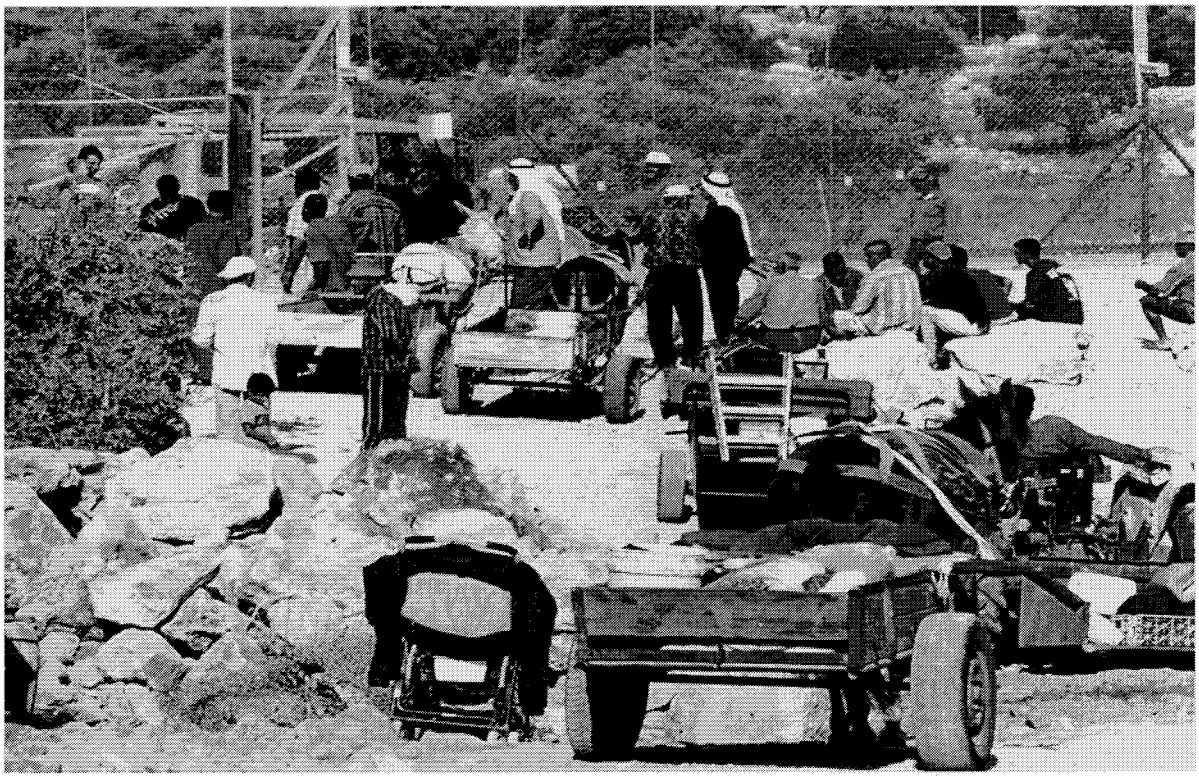
Photograph 14: Qalqilya (November 2003): Qalqilya northern area gate closed since 4 October 2003. It has never re-opened. Over 280 Qalqilya farmers depend on this gate to access their farms and greenhouses.



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.



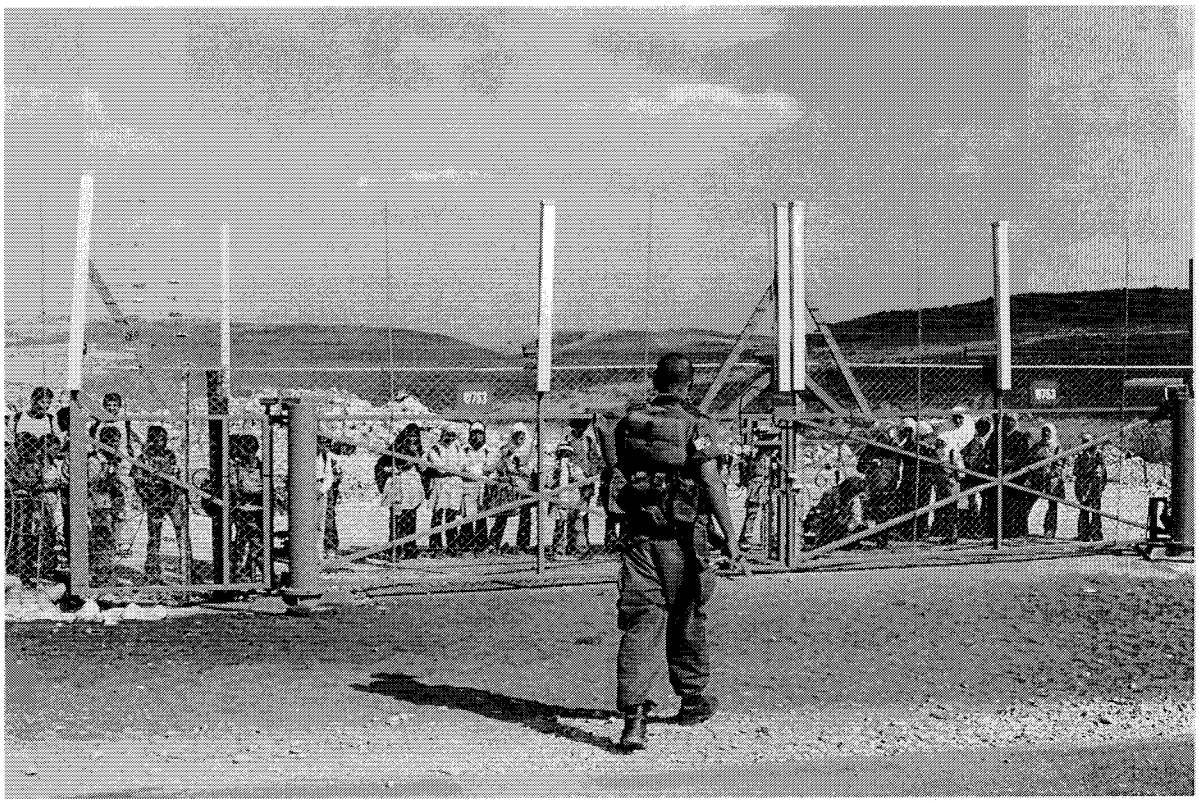
Photograph 18: Jayyus, Qalqilya Governorate (November 2003): Palestinian farmer with Israeli military issued Closed Zone access permit is checked by Israeli soldiers before crossing to his land on the western side of the Wall.



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%.



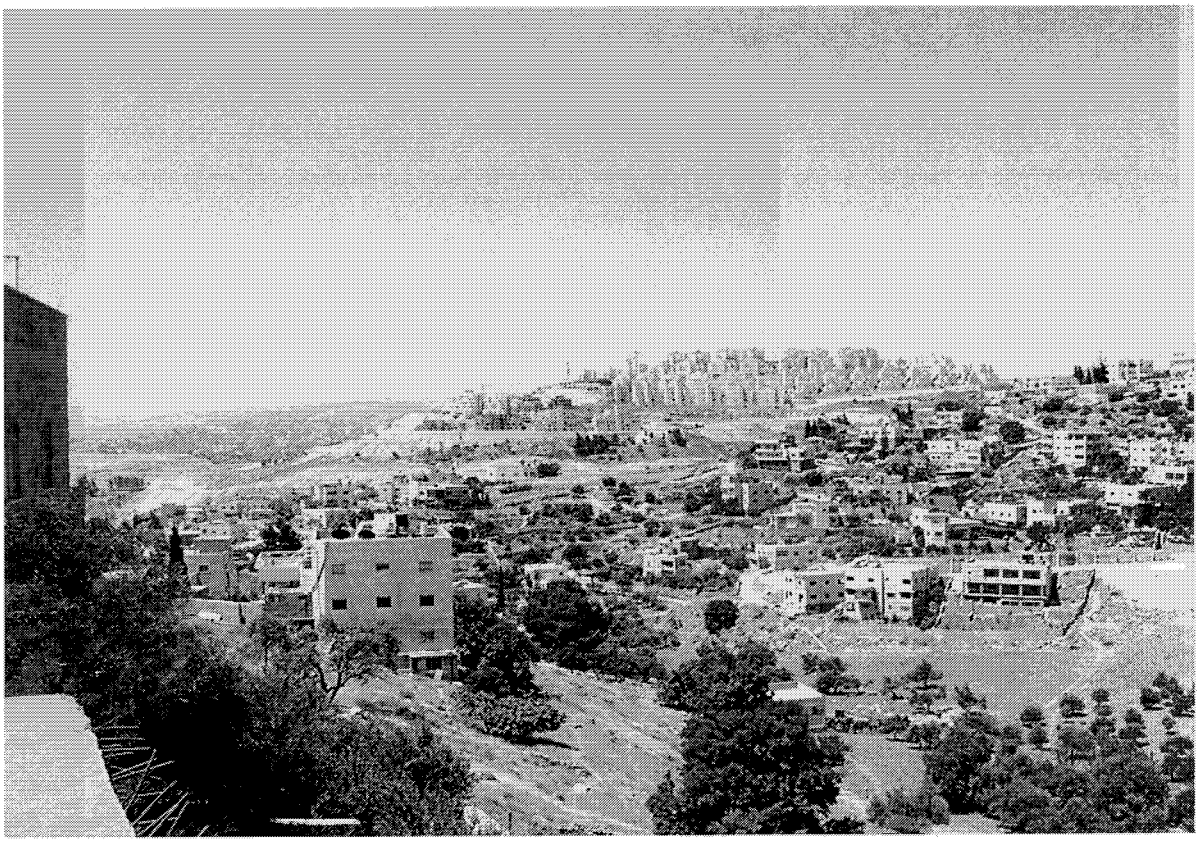
Photograph 24: The Israeli 'Kfar Tapuah' settlement linked with one of its outposts situated on a hilltop south of the Palestinian city of Nablus in the Occupied Palestinian Territory. Erecting of 'outposts' is used by Israel as a tool for extending and expanding settlements.



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.

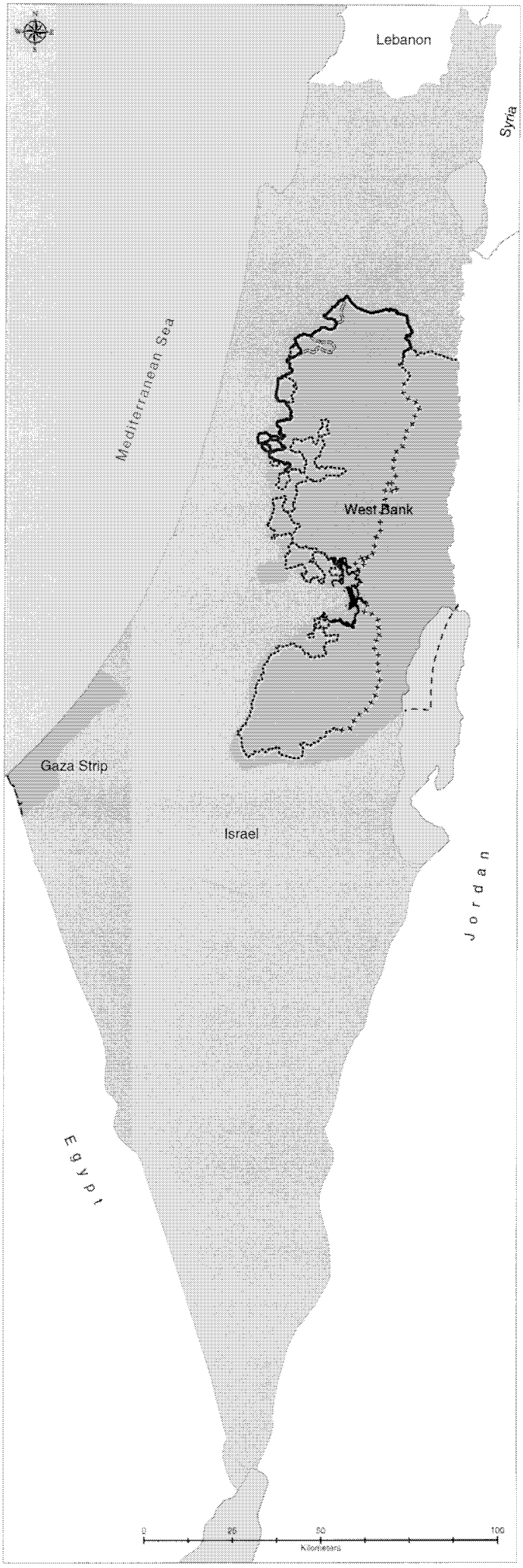


Photograph 27: In the distance, the Israeli settlement of 'Har Homa' situated south of Jerusalem and encroaching on the land of Sur Baher, a Palestinian village (2003). This settlement closes off to Palestinians southern access into Jerusalem and isolates East Jerusalem from neighboring Palestinian areas. 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.

MAP 1



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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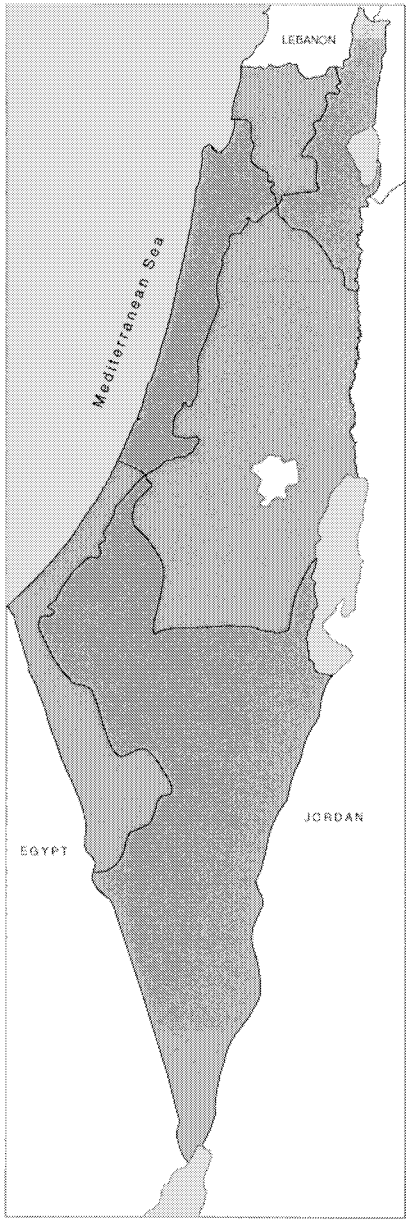
MAP 1

MAP 2

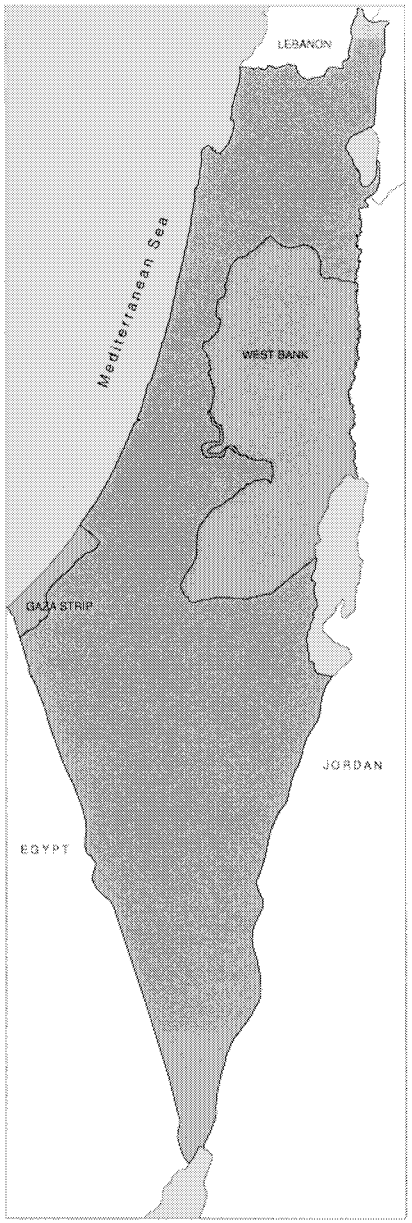
MAP a
Mandated Palestine



MAP b
UN Partition Plan 1947



MAP c
Armistice Lines 1949



HISTORICAL DIVISION OF PALESTINE

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 42.88%.

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

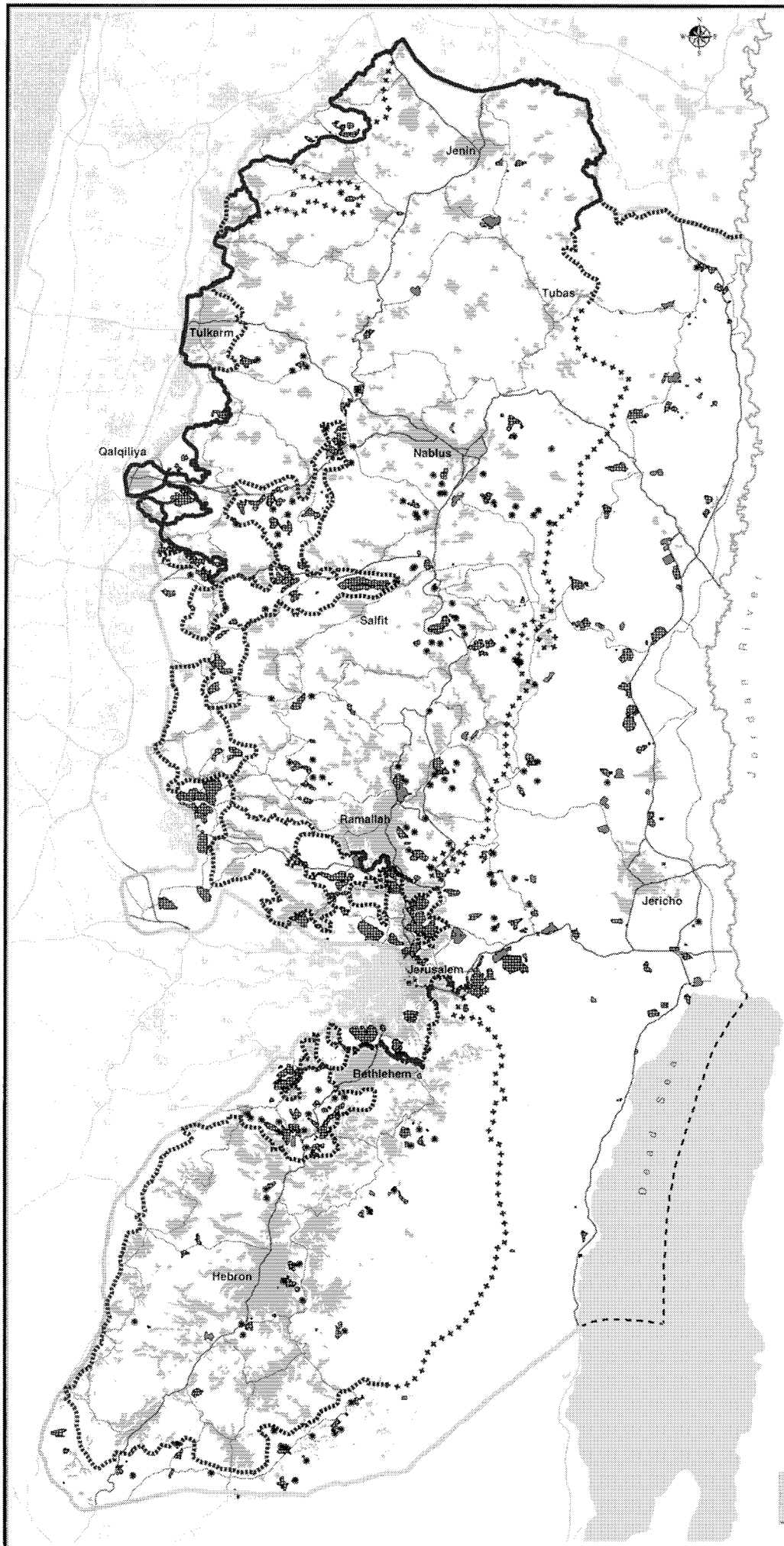
Occupied Palestinian Territory

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MAP 3

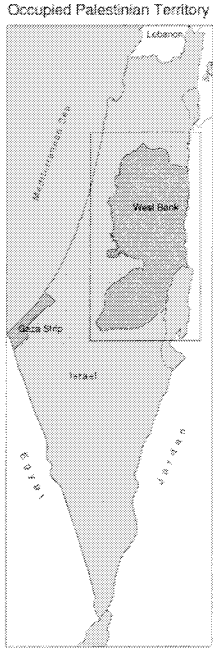
THE WALL
IN THE WEST BANK



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

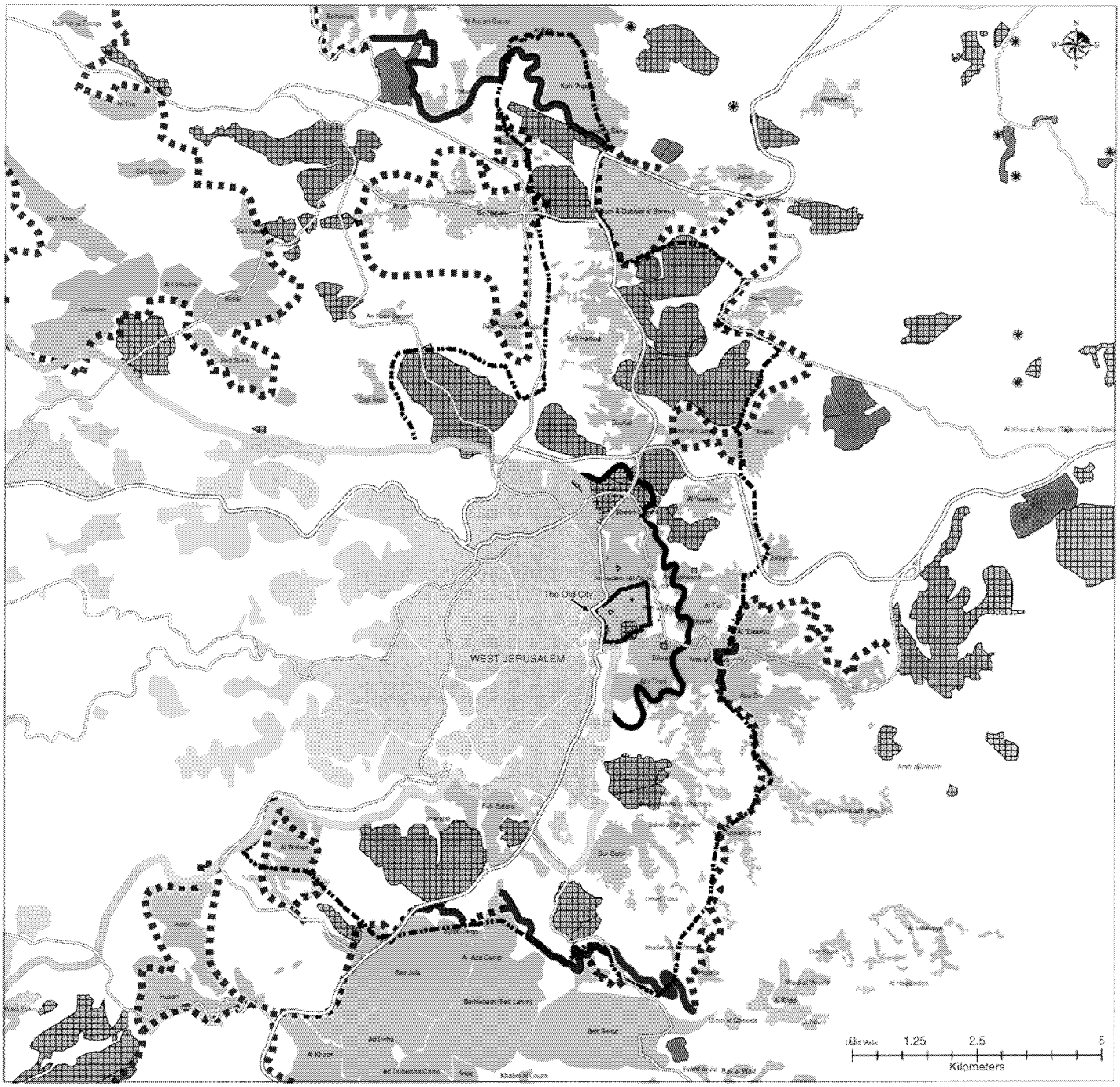


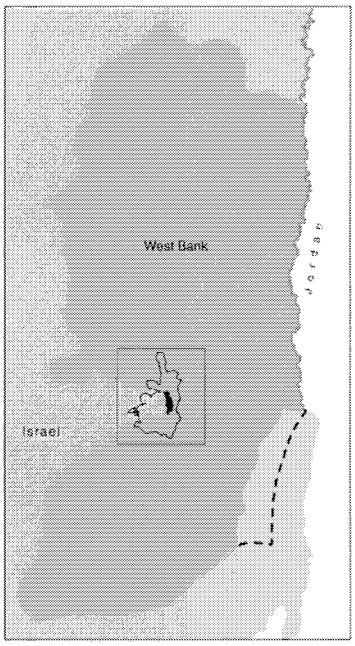
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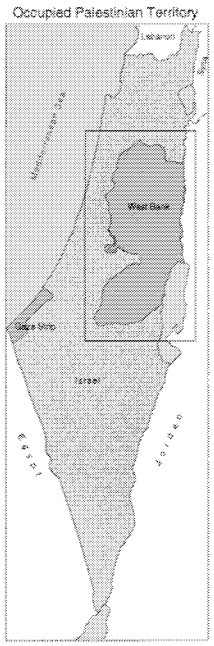
0 5 10 20
Kilometers

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MAP 3







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

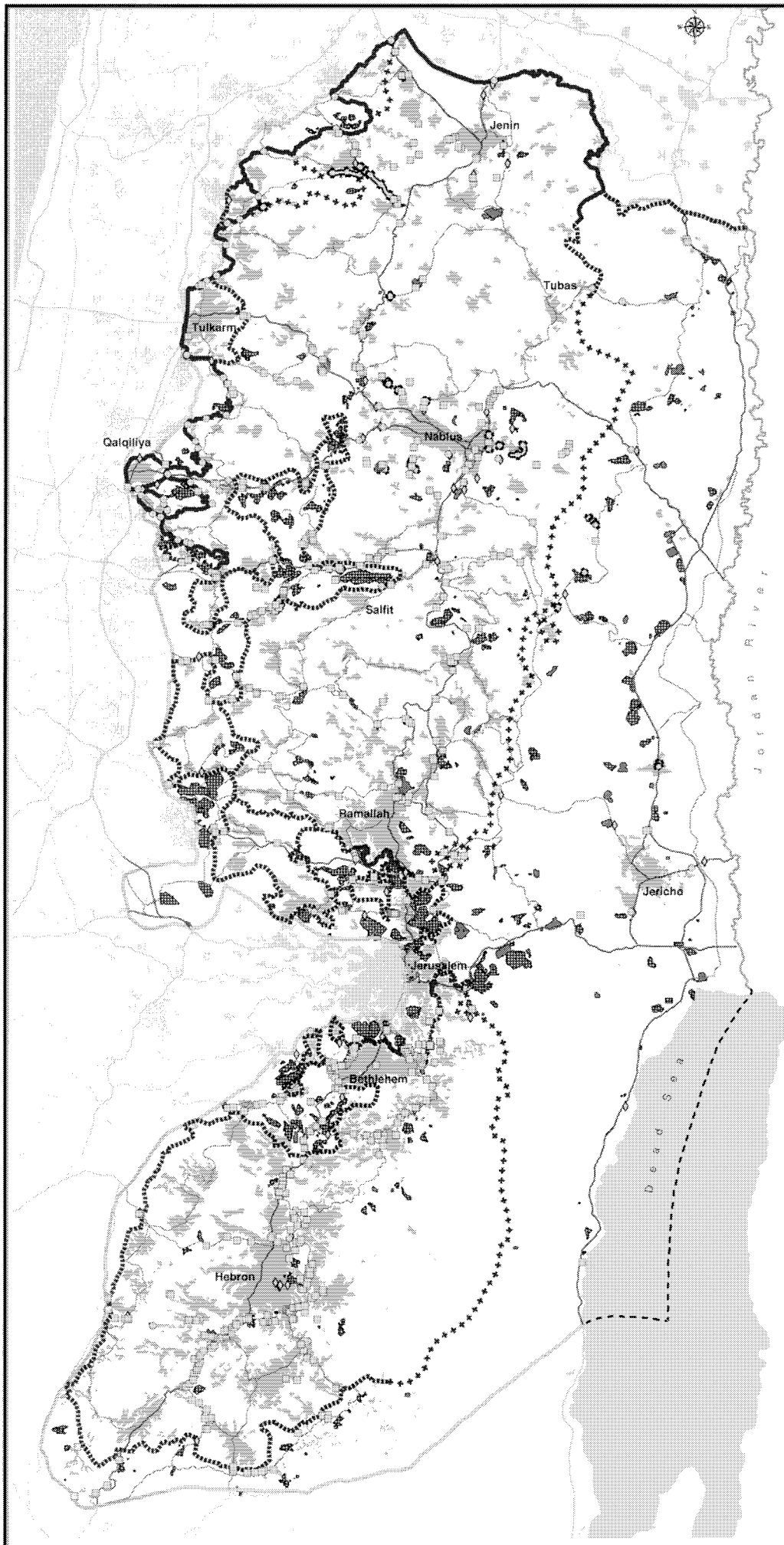
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MAP 4

MAP 5

THE WALL AND CLOSURE
IN THE WEST BANK



Legend

Closure Elements:

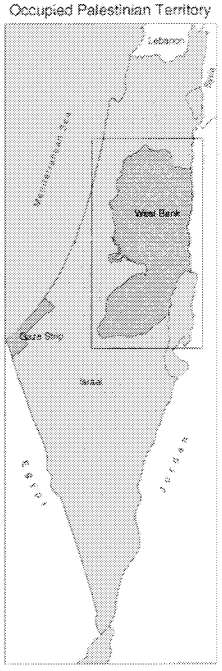
- Checkpoint
- Obstacle (Cement Block or Earthmound)
- Road or Wall Gate
- Ditch
- Green Line (Armistice Line 1949)
- Highway
- Main Road
- Regional Road
- Constructed Part of the Wall
- Wall Trajectory Approved/Under Construction
- Projected Wall
- Palestinian Built Up Area
- Israeli Military Base
- 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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0 5 10 20
Kilometers

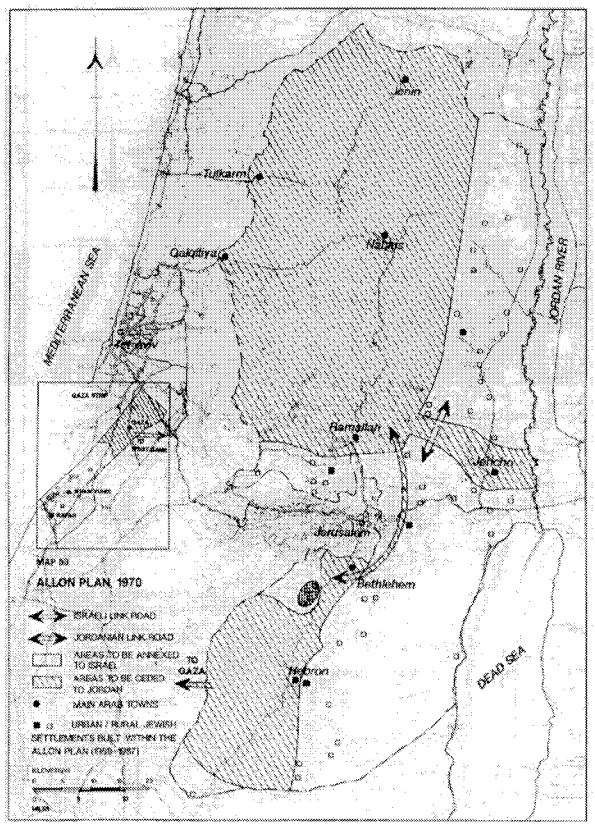
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MAP 5

MAP 6

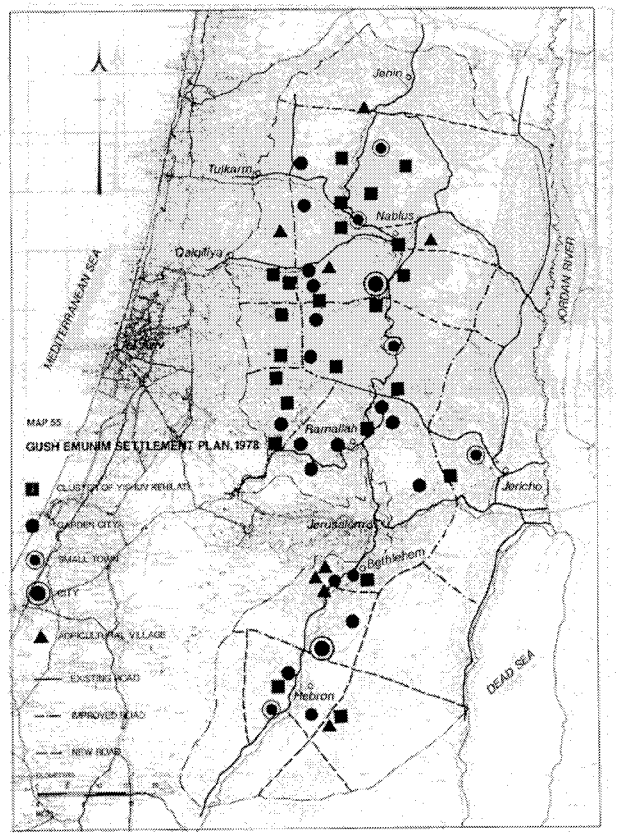
ISRAELI SETTLEMENT PLANS IN OCCUPIED PALESTINIAN TERRITORY INCLUDING EAST JERUSALEM

Allon Plan



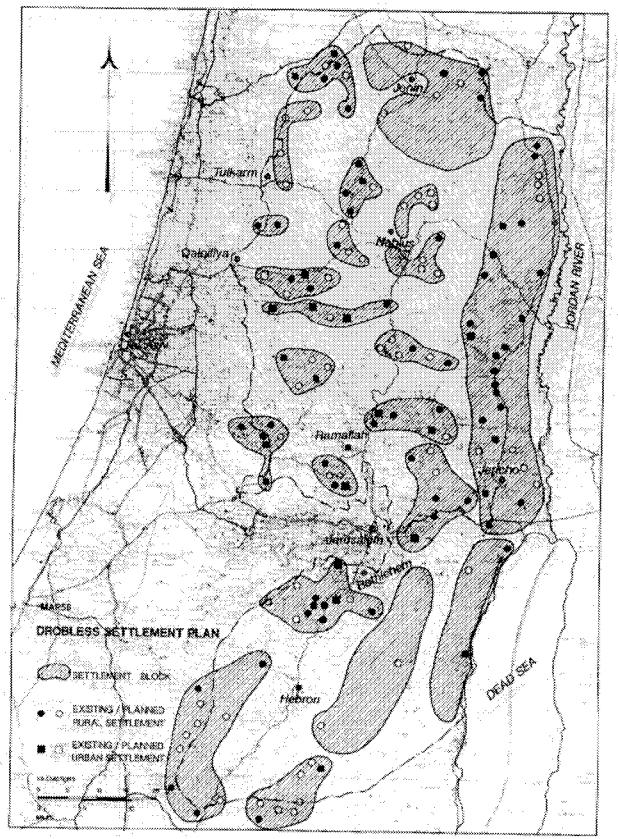
The Allon Plan called for creating defensive and political borders by establishing civilian settlements along the Jordan Valley, in a band across Jerusalem and in the west Bethlehem Area.

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.

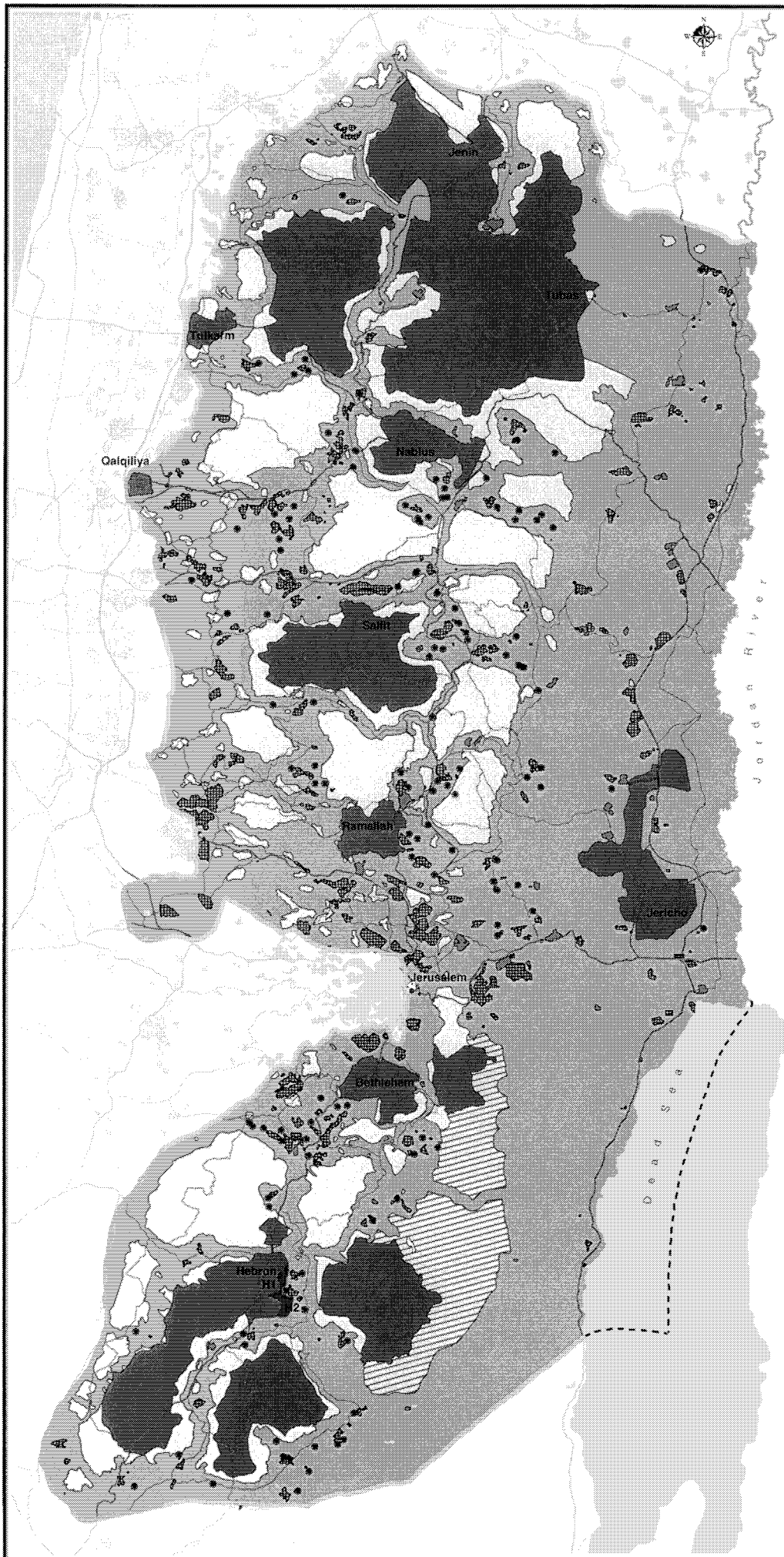
Source: The West Bank and Gaza Atlas. 1988. The West Bank Database Project.

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MAP 7

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

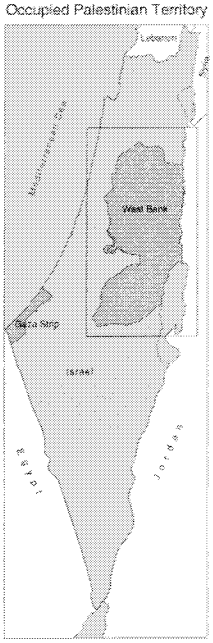
Interim Agreement (Oslo Accords) Areas:

- 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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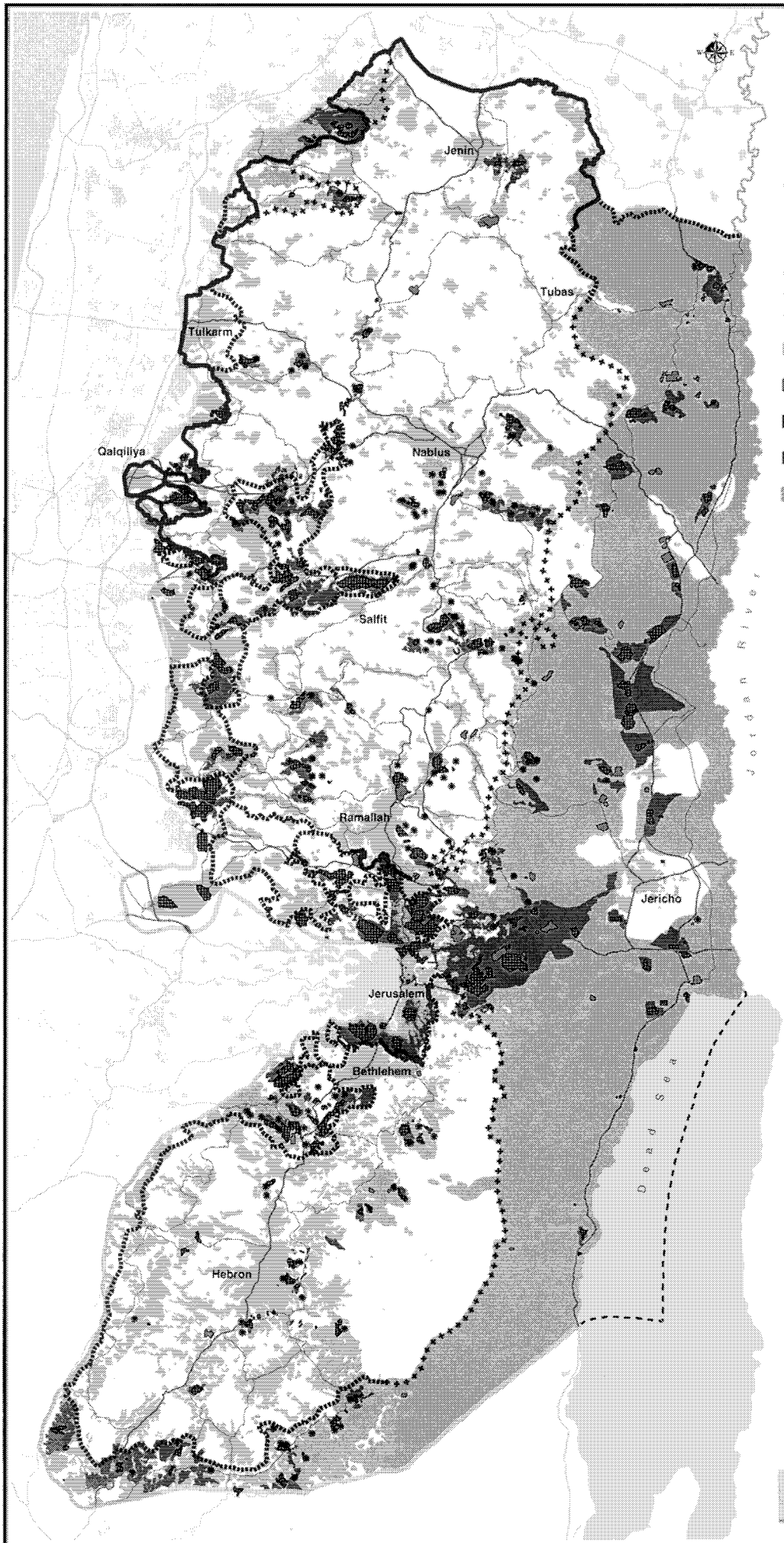
0 5 10 20
Kilometers

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MAP 7

MAP 8

THE WALL AND ISRAELI SETTLEMENT EXPANSION IN THE WEST BANK



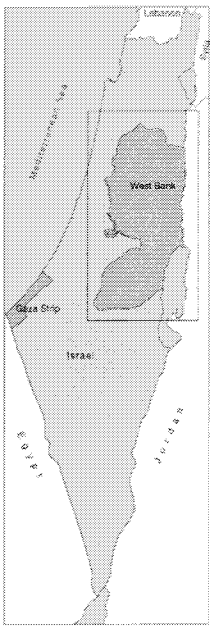
Legend

- 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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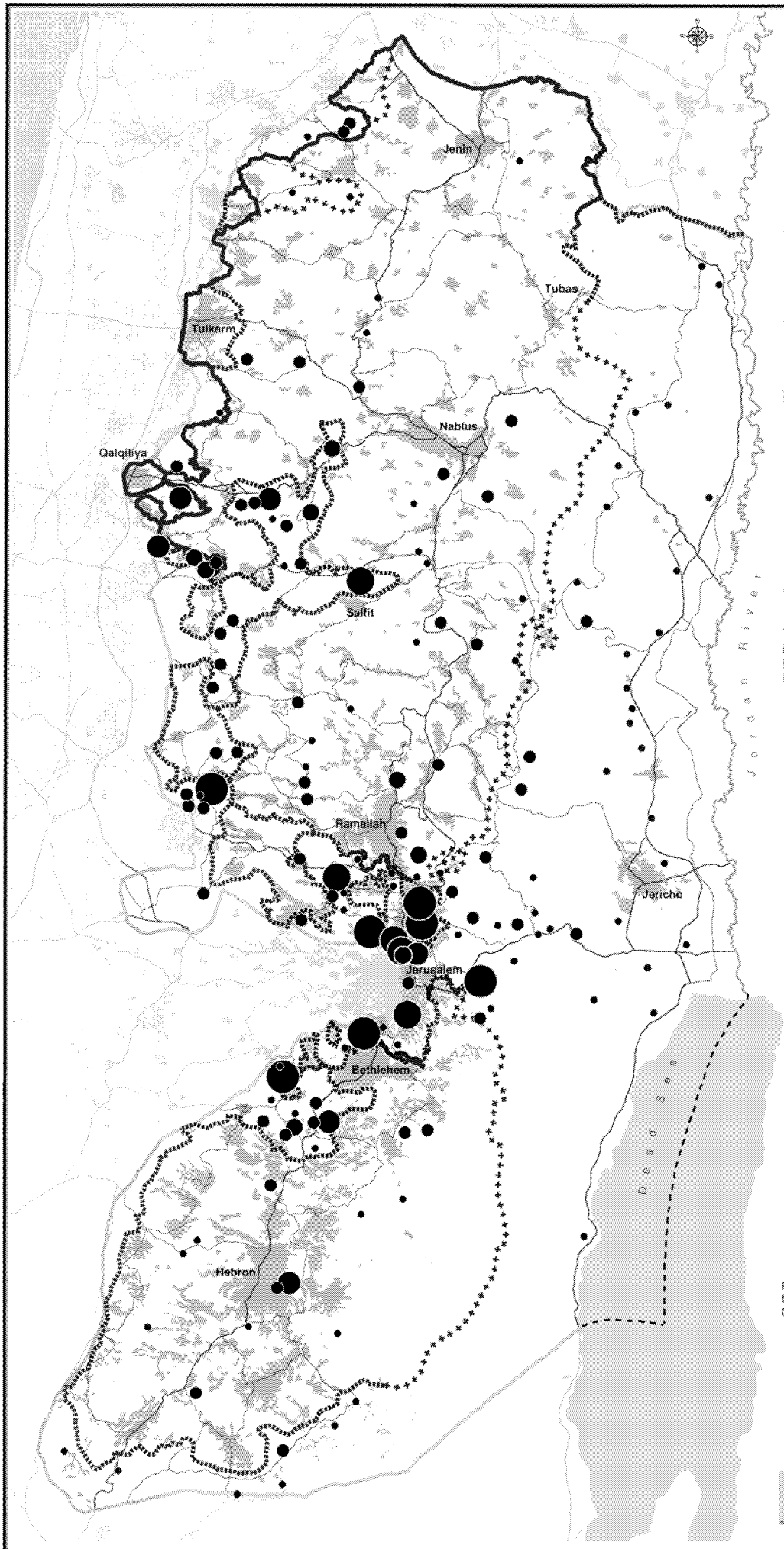
0 5 10 20
Kilometers

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MAP 8

MAP 9

THE WALL AND ISRAELI SETTLER POPULATION IN THE WEST BANK



Legend

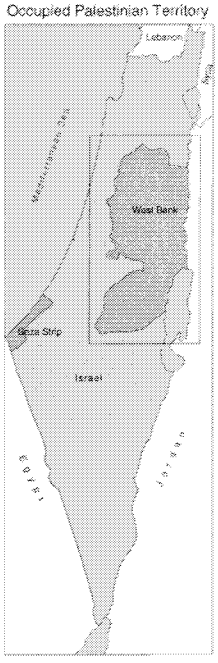
- Green Line (Armistice Line 1949)
- Constructed Part of the Wall
- Wall Trajectory Approved/Under Construction
- Projected Wall
- Highway
- Main Road
- Regional Road
- Palestinian Built Up Area

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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0 5 10 20
Kilometers

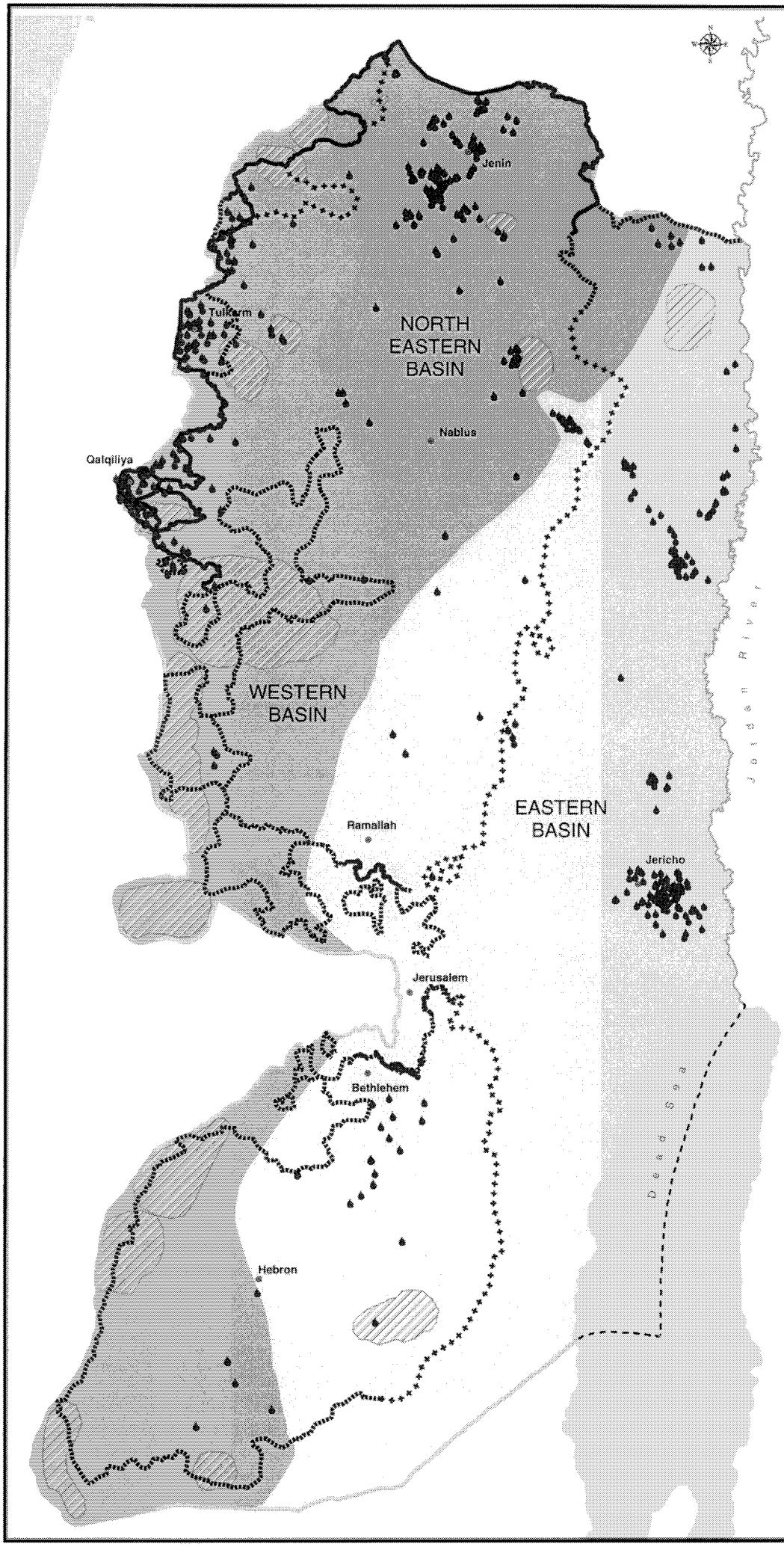
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MAP 9

MAP 10

THE WALL AND WATER RESOURCES

IN THE WEST BANK

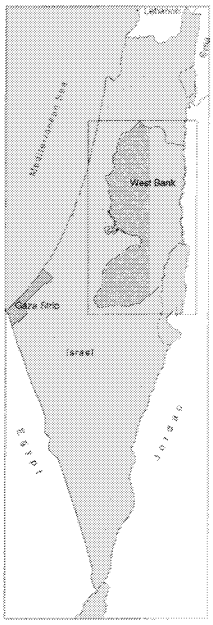


Legend

- 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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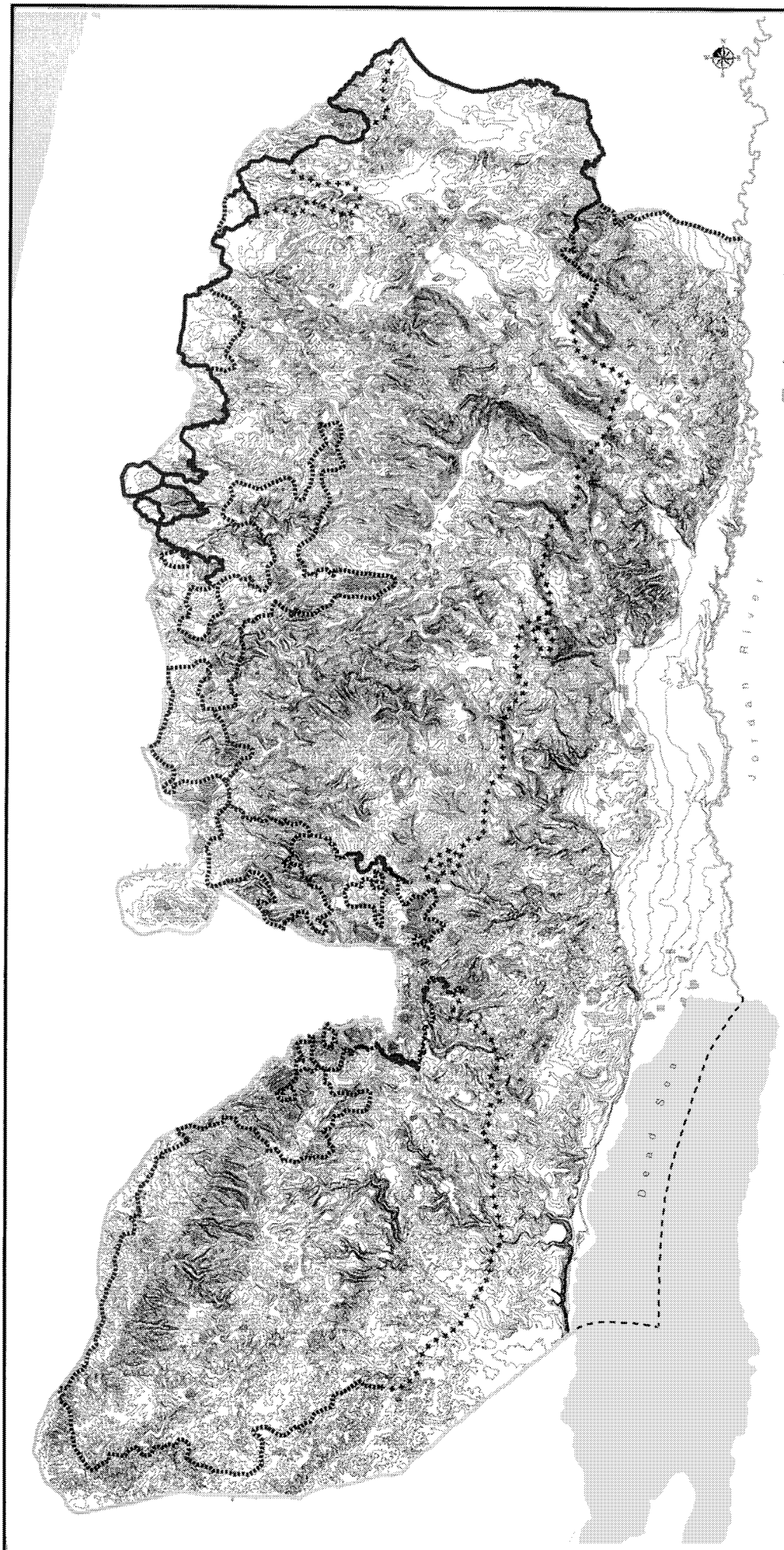
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Kilometers

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MAP 10

MAP 11

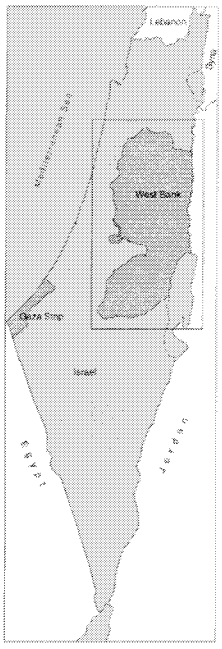
THE WALL AND WEST BANK TOPOGRAPHY



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



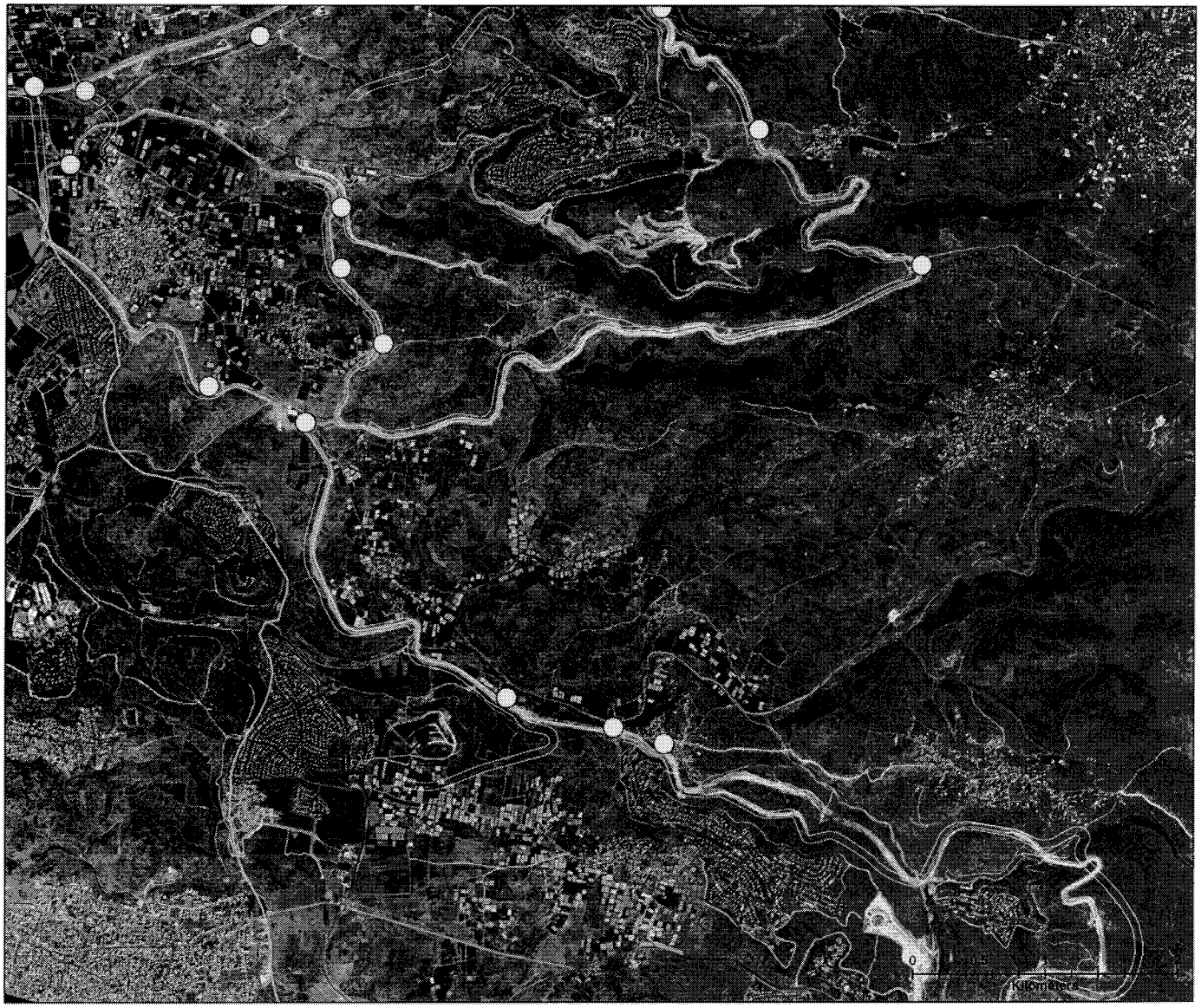
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0 5 10 20
Kilometers

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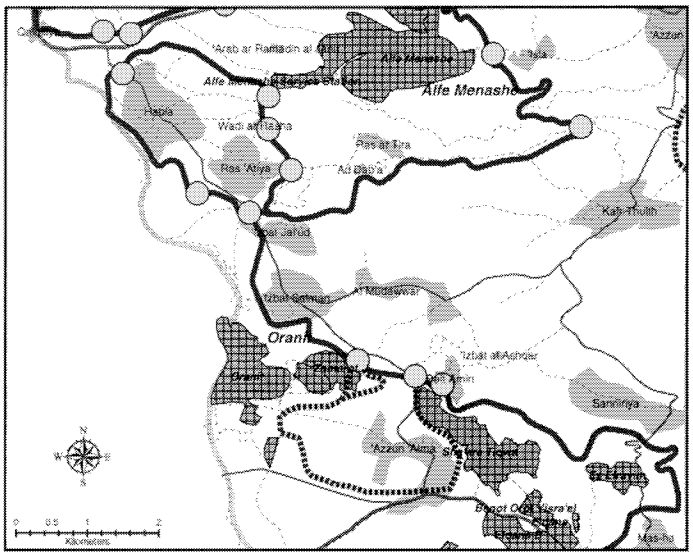
MAP 11

MAP 12a

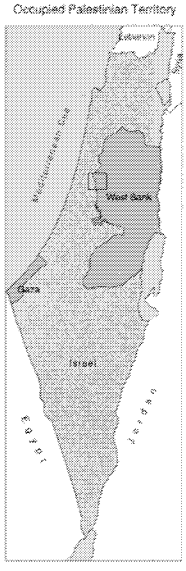


Background: Satellite Image, September 2003

THE WALL
IN THE WEST BANK
Section a: South of Qalqilya Area



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

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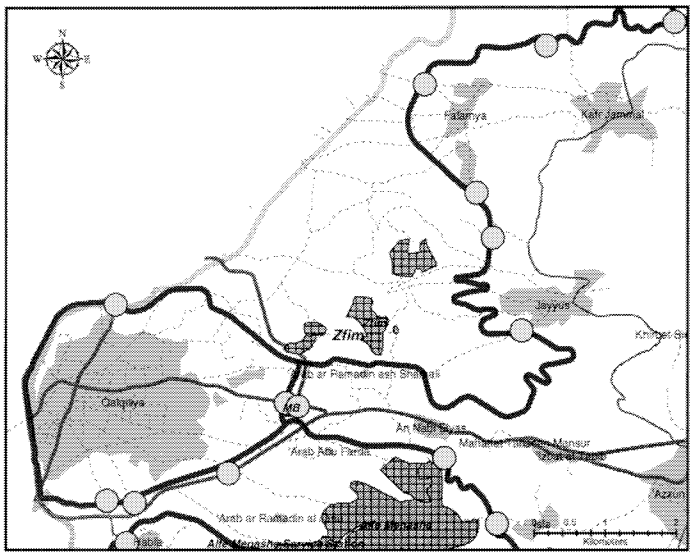
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MAP 12a

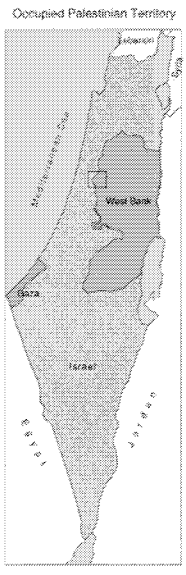


Background: Satellite Image, September 2003

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

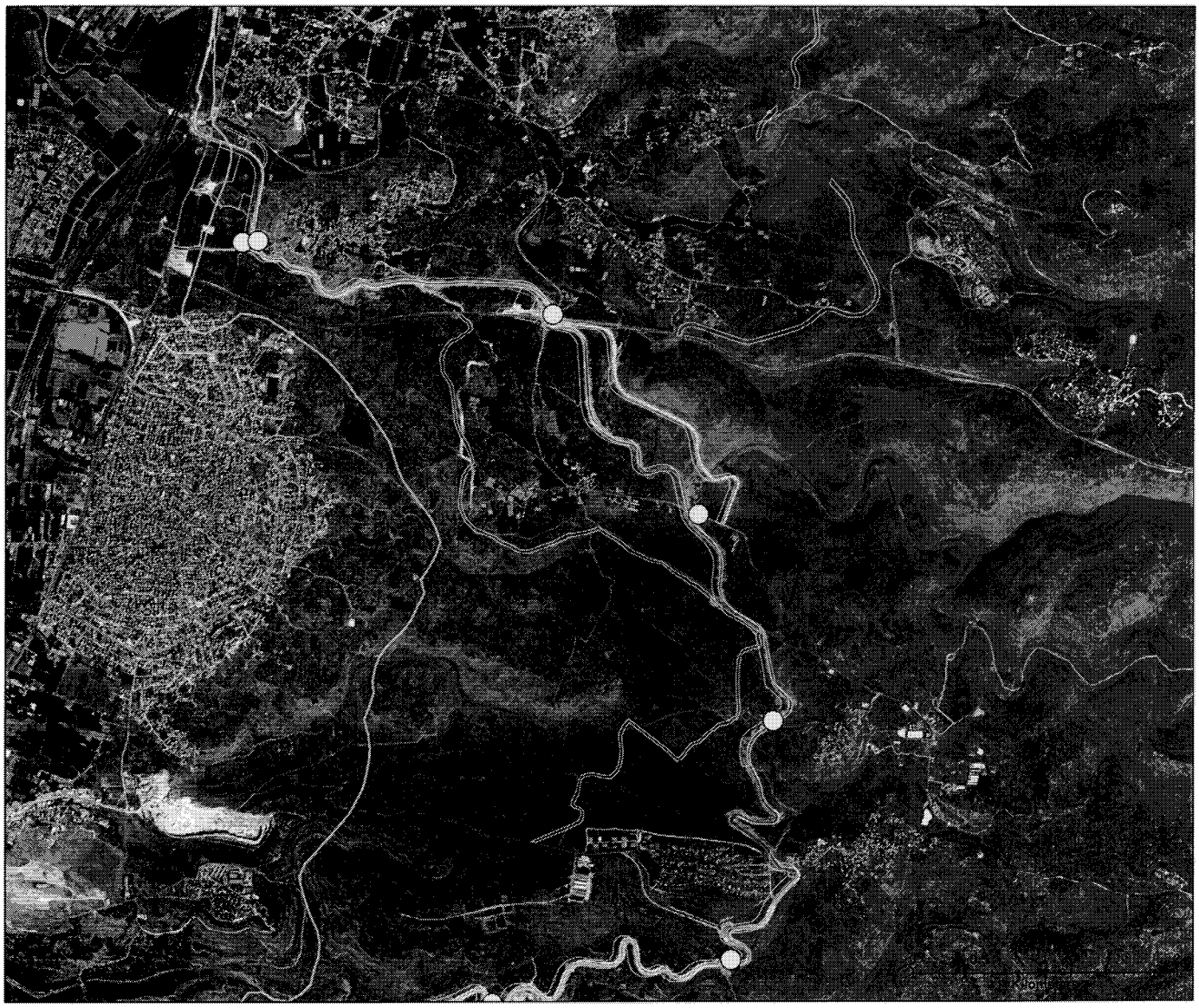
Source of Land confiscation data: available Israeli Military Orders

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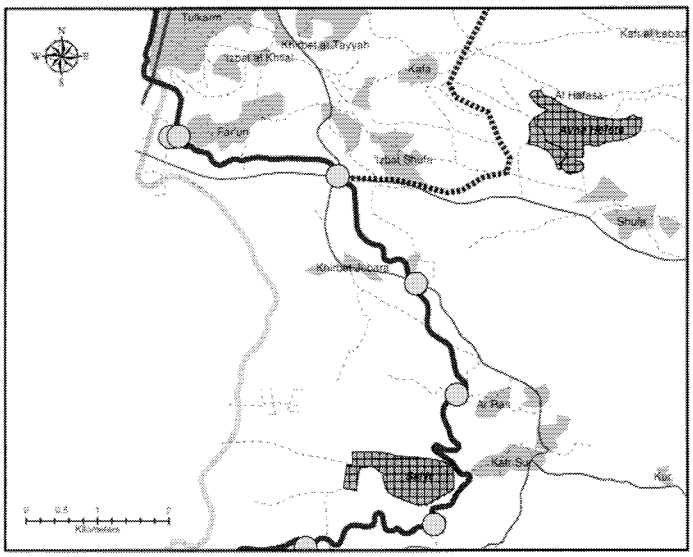
MAP 12b

MAP 12c

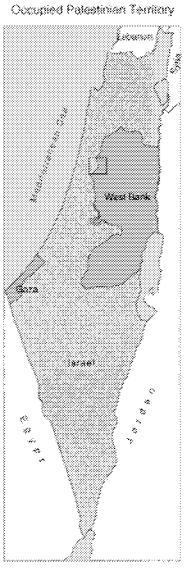


Background: Satellite image, September 2003

THE WALL
IN THE WEST BANK
Section c: South of Tulkarm Area



Section c: South 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

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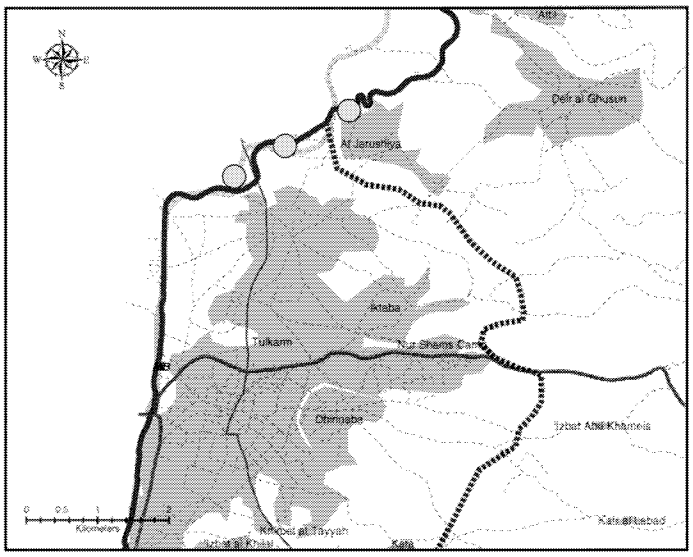
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MAP 12c

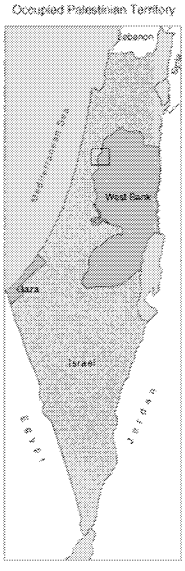


Background: Satellite Image, September 2003

THE WALL
IN THE WEST BANK
Section d: Tulkarm Area



Section d: Tulkarm Area



Legend

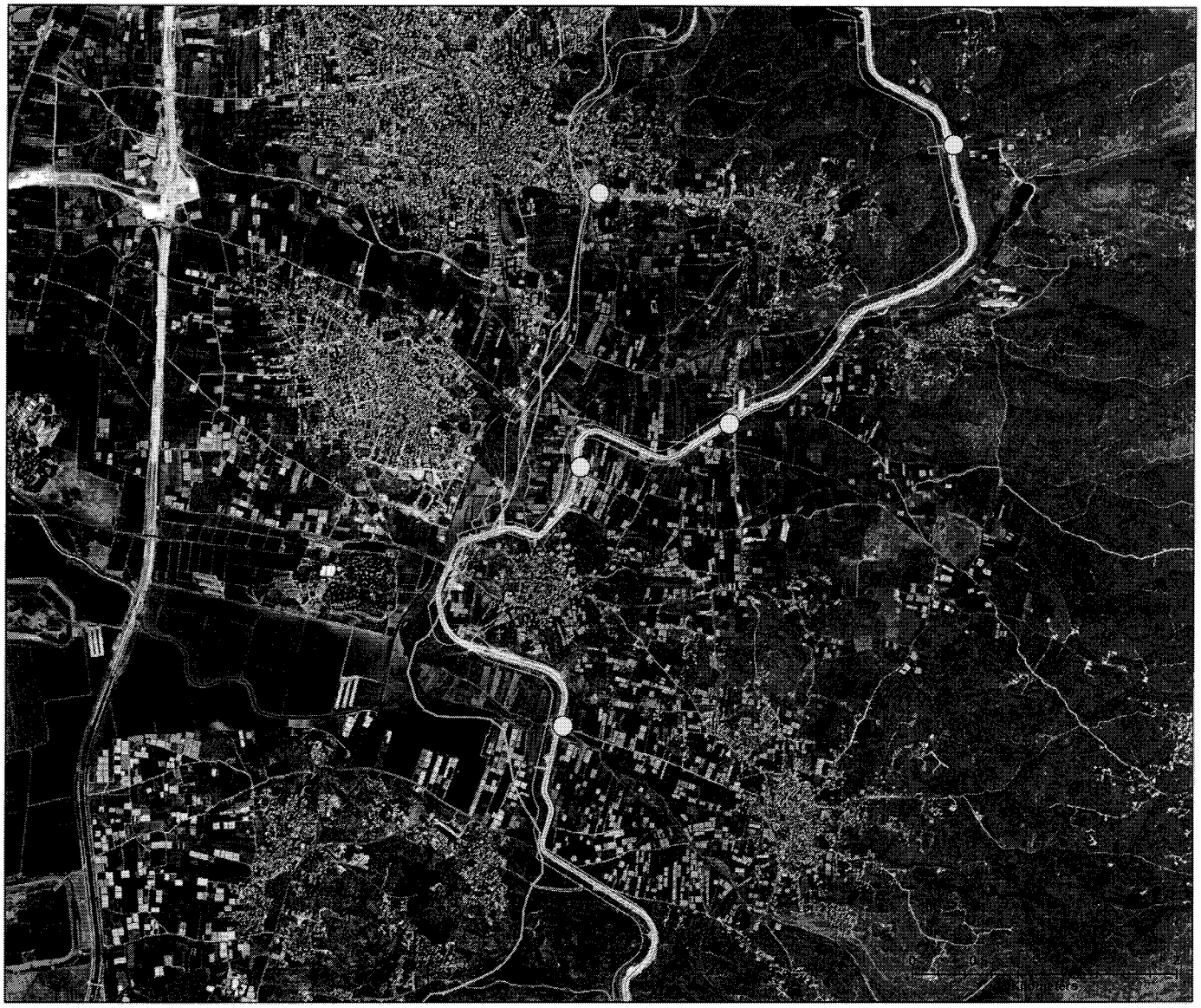
- Green Line (Armistice Line 1949)
- Constructed Part of the Wall
- Wall Trajectory approved/under construction
- Projected Wall
- Main Road
- Regional Road
- Local Road
- Palestinian Built Up Area
- Israeli Settlement
- Confiscated Land (2002-2004)
- Wall Gate

Source of Land confiscation data: available Israeli Military Orders

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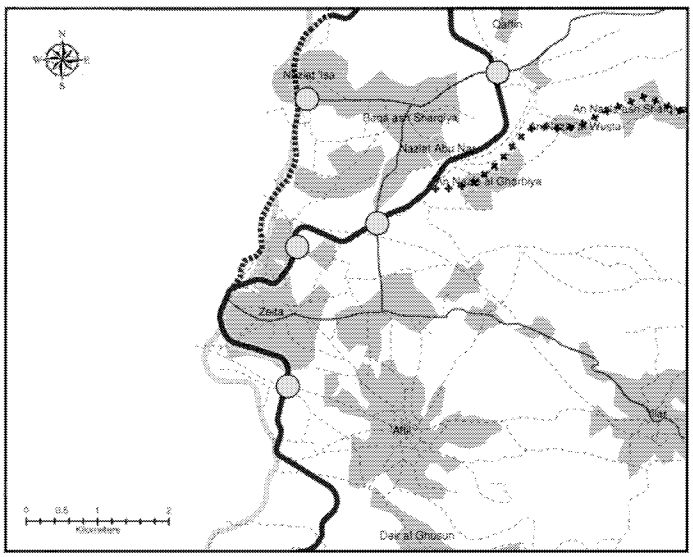
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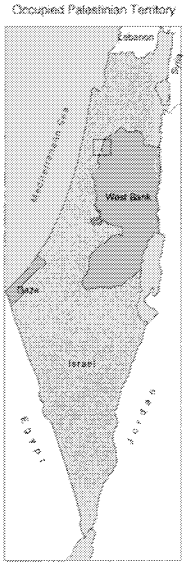
MAP 12d



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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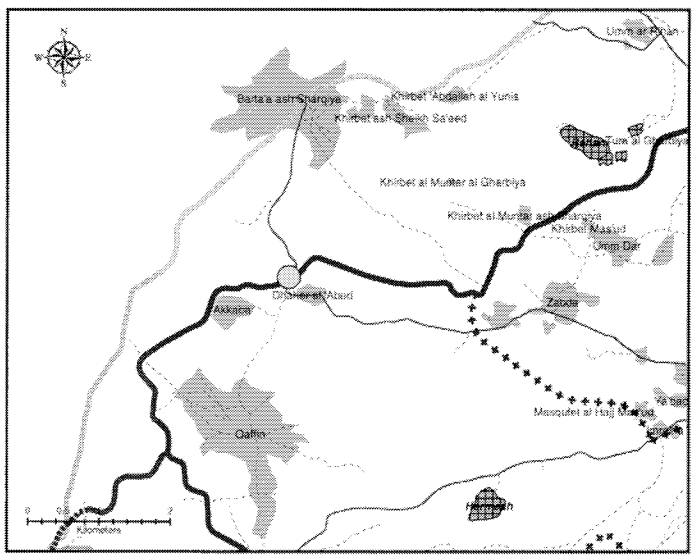
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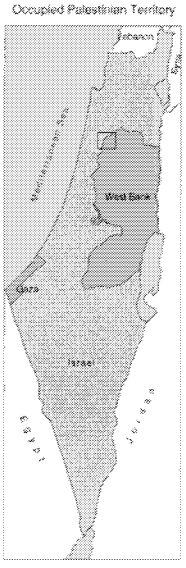
MAP 12e



Background: Satellite Image, September 2003

THE WALL
IN THE WEST BANK
Section f: Qaffin 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

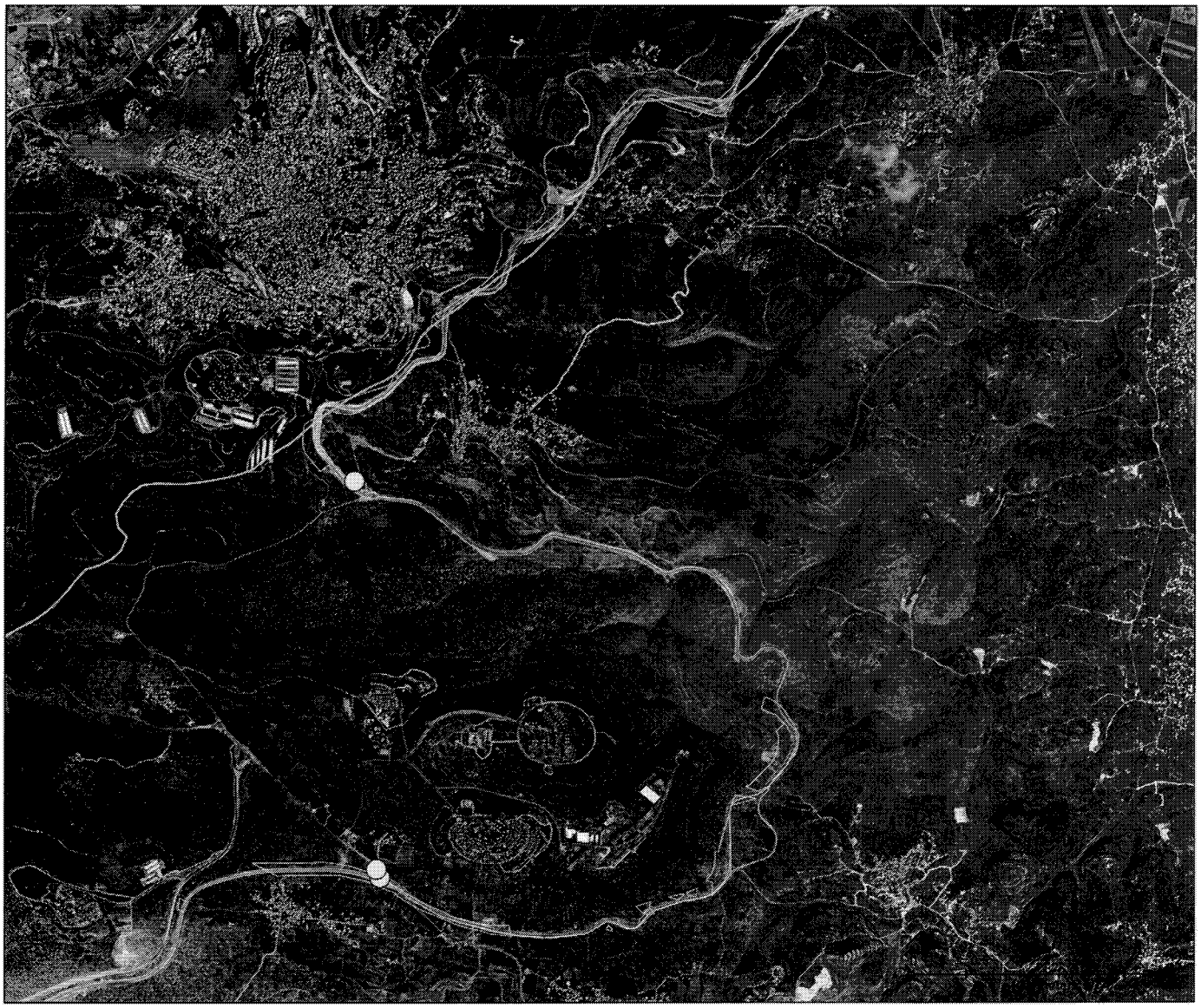
Source of Land confiscation data: available Israeli Military Orders

Section f: Qaffin Area

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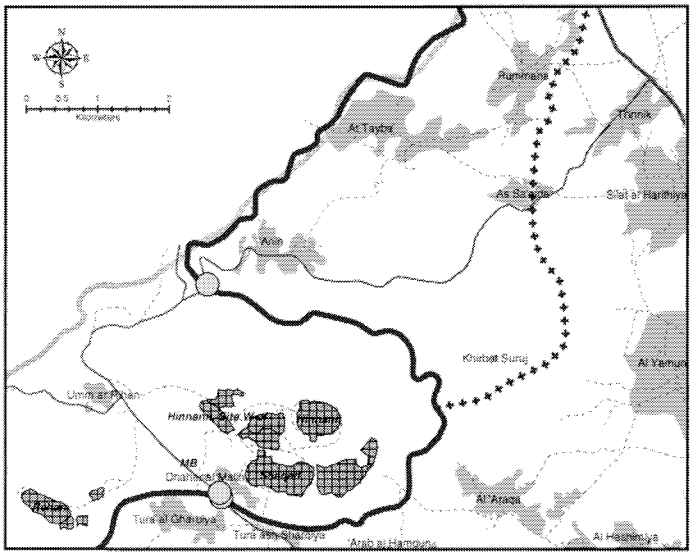
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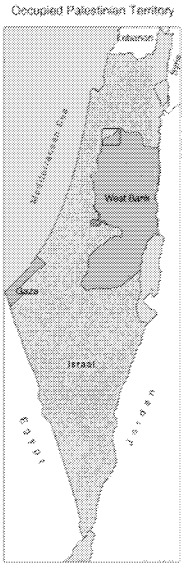
MAP 12f



Background: Satellite Image, September 2003

THE WALL
IN THE WEST BANK
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

Section g: Umm ar-Rihan Area

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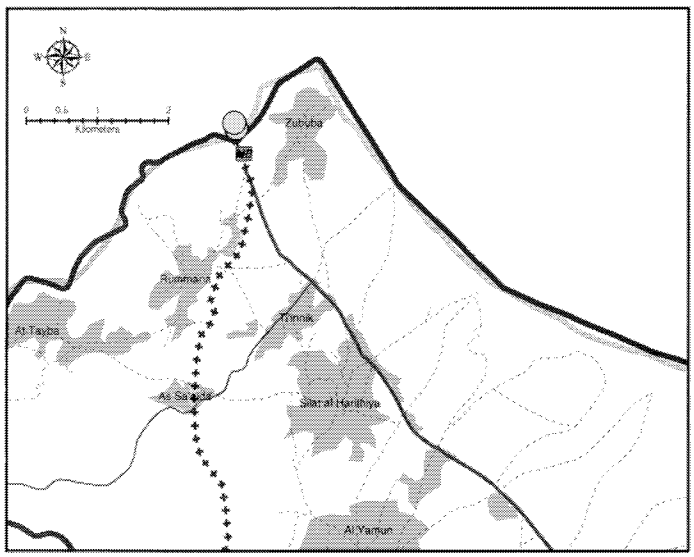
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MAP 12g

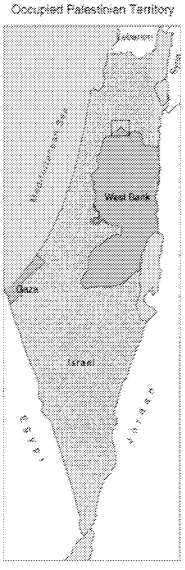


Background: Satellite Image, September 2003

THE WALL
IN THE WEST BANK
Section h: Zububa Area



Section h: Zububa Area



Legend

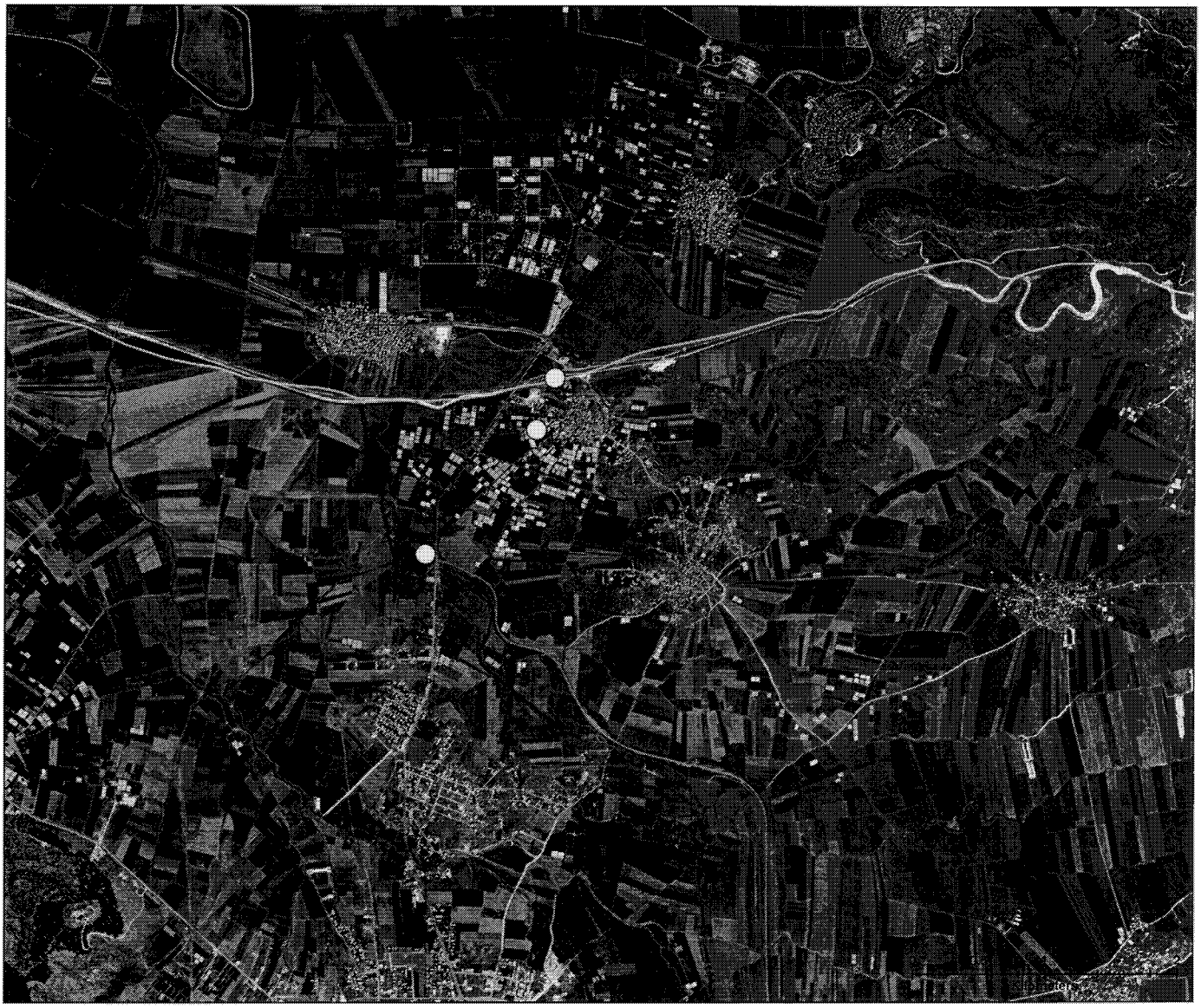
- Green Line (Armistice Line 1949)
- Constructed Part of the Wall
- Wall Trajectory approved/under construction
- Projected Wall
- Main Road
- Regional Road
- Local Road
- Palestinian Built Up Area
- Israeli Settlement
- Israeli Military Base
- Confiscated Land (2002-2004)
- Wall Gate

Source of Land confiscation data: available Israeli Military Orders

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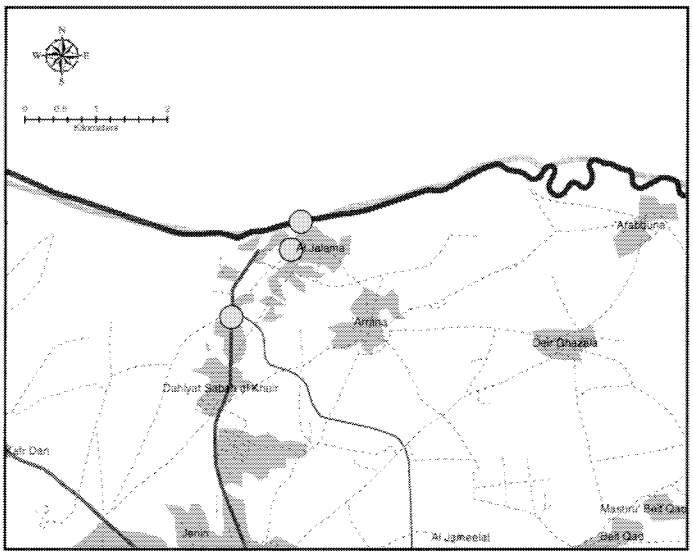
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MAP 12h



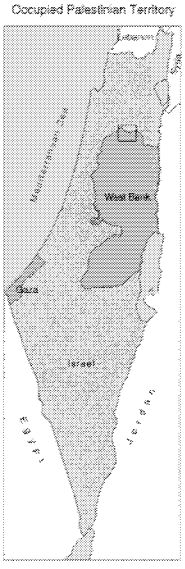
Background: Satellite Image, September 2003

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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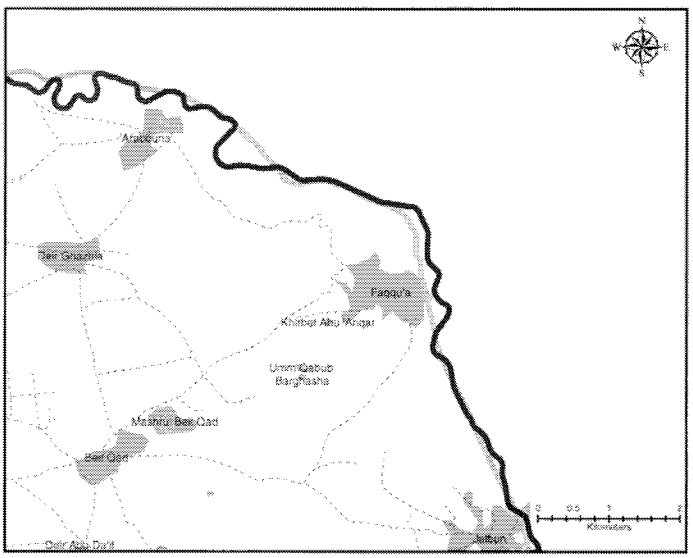
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MAP 12i

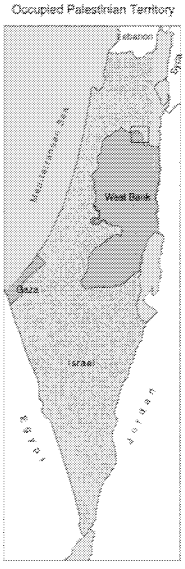


Background: Satellite Image, September 2003

THE WALL
IN THE WEST BANK
Section j: Faqqu'a Area



Section j: Faqqu'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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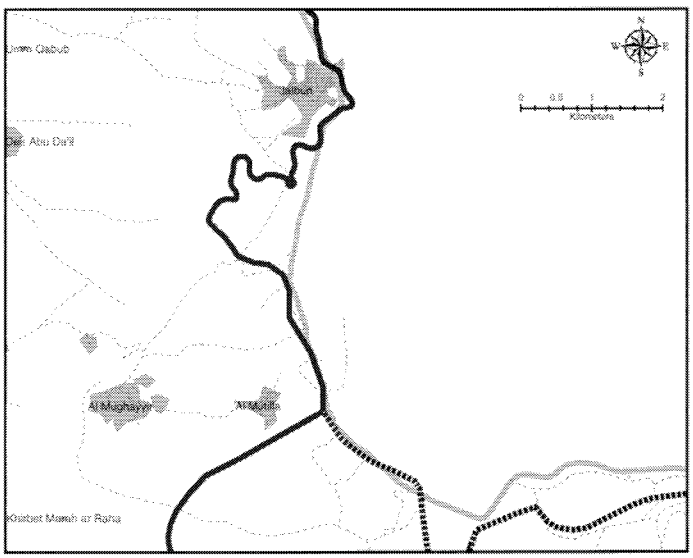
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MAP 12j

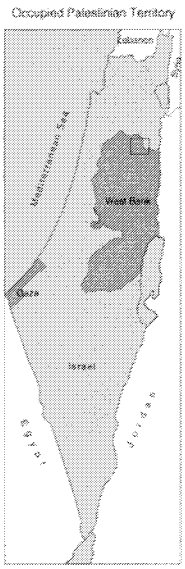


Background: Satellite Image, September 2003

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

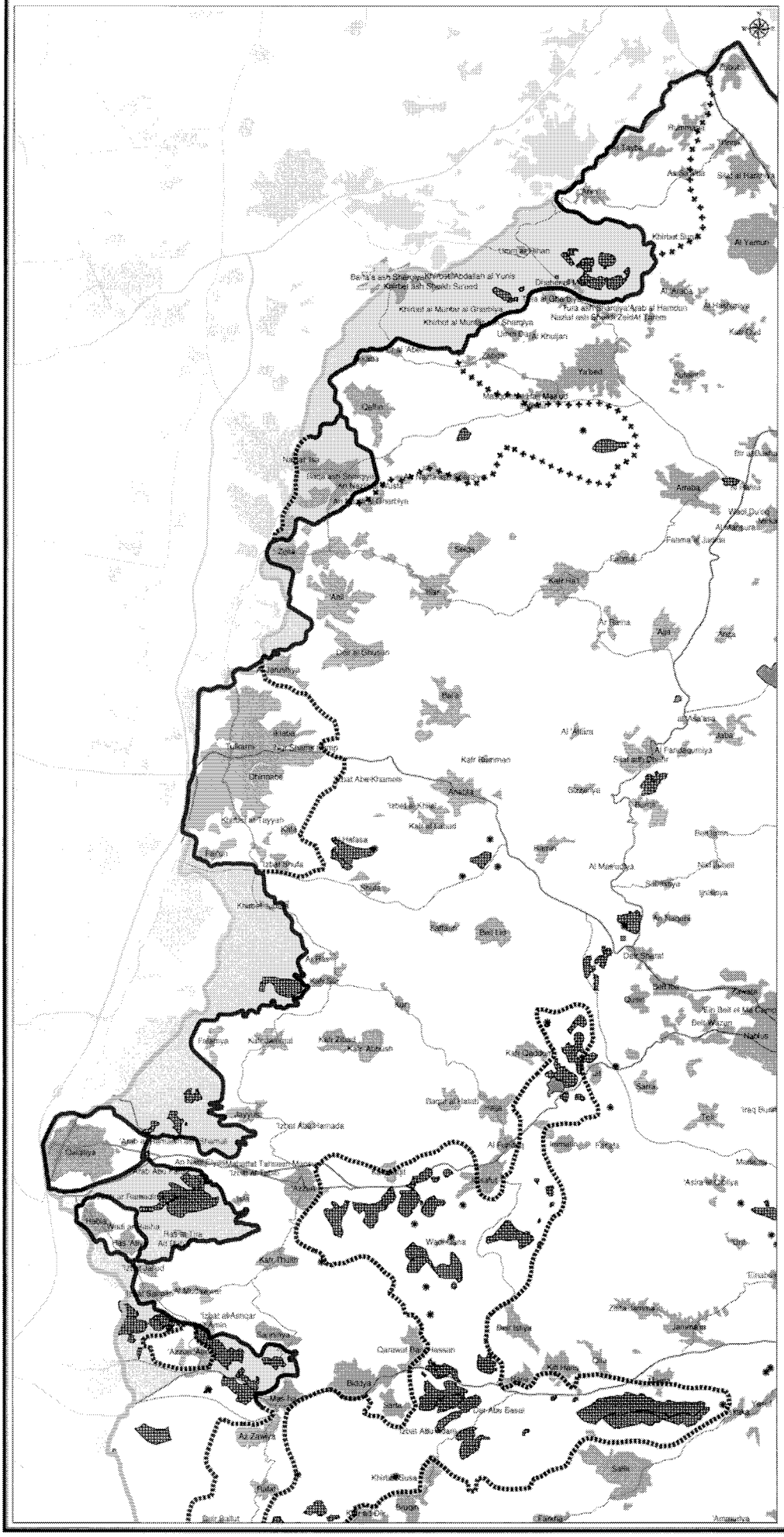
Source of Land confiscation data: available Israeli Military Orders

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MAP 12k

MAP 13



THE WALL AND THE CLOSED ZONE

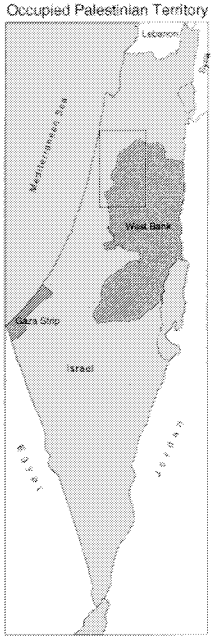
Legend

- 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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0 2.5 5 10
Kilometers

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MAP 13

COUR INTERNATIONALE DE JUSTICE

CONSÉQUENCES JURIDIQUES DE L'ÉDIFICATION D'UN MUR DANS LE TERRITOIRE PALESTINIEN OCCUPÉ

REQUÊTE POUR AVIS CONSULTATIF

EXPOSÉ ÉCRIT DE LA PALESTINE

VOLUME II

Première partie

(Annexes 1-11)

30 janvier 2004

[Traduction du Greffe]

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30 janvier 2004

[Traduction du Greffe]

ANNEXE 12

L'USURPATION DE TERRES

LA POLITIQUE ISRAELIENNE DE COLONISATION DE LA CISJORDANIE

MAI 2002

B'TSELEM

L'USURPATION DE TERRES

LA POLITIQUE ISRAELIENNE DE COLONISATION DE LA CISJORDANIE

Mai 2002

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INTRODUCTION

En décembre 2001, *Ha'aretz* a publié un long article intitulé «A cinq minutes de Kfar Saba — Un aperçu de la région d'Ari'el»[1]. Cet article examinait la situation immobilière dans un certain nombre de colonies situées à proximité de la route trans-samaritaine, non loin d'Ari'el. Il y était dit notamment que la plupart des terres sur lesquelles ces «communautés» étaient installées[2] «appartenaient à l'Etat» et que «malgré les problèmes de sécurité et l'atonie du marché immobilier, la situation n'y était pas aussi mauvaise qu'on aurait pu le croire».

L'optique dans laquelle cet article a été écrit (le marché immobilier) et la terminologie employée reflètent largement le processus d'assimilation des colonies par l'Etat d'Israël, qui fait que celles-ci sont devenues tout simplement une autre région de l'Etat d'Israël, où l'on construit des maisons et des appartements offerts au public selon les lois de l'offre et de la demande propres à une économie de marché.

Ce processus délibéré et systématique d'assimilation occulte un certain nombre de vérités fondamentales au sujet des colonies. La vérité, c'est que les «communautés» évoquées dans l'article ne font pas partie de l'Etat d'Israël, mais sont des colonies installées en Cisjordanie, région qui, depuis 1967, est un territoire occupé soumis à un régime militaire en violation de la quatrième convention de Genève. La vérité, c'est que les terres «appartenant à l'Etat» dont il est question dans l'article ont été prises à des résidents palestiniens par des moyens illégaux et iniques. La vérité, c'est que les colonies sont devenues une cause permanente de violations des droits humains des Palestiniens, et notamment de leur droit à la liberté de libre circulation, de leur droit à la propriété, de leur droit d'améliorer leurs conditions de vie et de leur droit à l'autodétermination. La vérité fondamentale est que l'expansion de ces colonies repose non pas sur les mécanismes neutres de l'offre et de la demande, mais avant tout sur un système étatique perfectionné visant à encourager les citoyens israéliens à vivre dans ces colonies. Par définition, le processus d'assimilation dissimule le fait que l'entreprise de colonisation dans les Territoires occupés a créé un système légal de séparation fondé sur une discrimination peut-être sans équivalent depuis le régime d'apartheid en Afrique du Sud.

Dans le cadre du mécanisme utilisé pour occulter ces vérités fondamentales, l'Etat d'Israël s'efforce délibérément de dissimuler les informations relatives aux colonies. Pour établir le présent rapport, B'Tselem a été contraint d'engager un combat de longue haleine et à grande échelle avec l'administration civile pour obtenir des cartes indiquant les limites municipales des colonies. Ces informations, faciles à obtenir auprès des autorités locales en Israël, n'ont finalement été fournies que partiellement seulement, près d'un an après la demande initiale, et uniquement après que B'Tselem a menacé d'engager une action en justice.

Le processus de paix entre Israël et les Palestiniens n'a entraîné le démantèlement d'aucune des colonies, et dans le même temps, celles-ci ont même vu leur superficie et leur population augmenter considérablement. Alors qu'à la fin de 1993, (au moment de la signature de la Déclaration de principes), les colonies de Cisjordanie –y compris celles de Jérusalem-Est) comptaient au total 247 000 habitants, à la fin de 2001, leur nombre était passé à 375 000.

---

[1] Shlomi Sheffer, «A cinq minutes de Kfar saba – Aperçu de la région d'Ari'el», *Supplément immobilier de Ha'aretz,* 13 décembre 2001.

[2] Dans le présent rapport, le terme de «communauté» est utilisé pour le mot hébreu *yishuv* qui est un terme général dissimulant le fait que les colonies se trouvent dans les Territoires occupés, tandis que le terme de «colonie» est utilisé pour traduire le mot hébreu *hitnashlut,* ce qui permet de faire la distinction (*note du traducteur).*

Les accords signés entre Israël et l'Autorité palestinienne (AP) prévoyaient le transfert de certains pouvoirs à l'AP. Ces pouvoirs sont exercés dans des enclaves discontinues où vit la majorité de la population palestinienne. Depuis 2000, ces enclaves appelées Zones A et B représentent environ quarante pour cent de la superficie de la Cisjordanie. Le contrôle des autres zones, notamment des routes assurant le transit entre les enclaves, de même que les points de départ de la Cisjordanie, restent sous le contrôle d'Israël.

Le présent rapport, qui s'inscrit dans le prolongement de plusieurs autres publiés par B'tselem ces dernières années[3], passe en revue un certain nombre d'aspects de la politique d'Israël à l'égard des colonies de Cisjordanie, ainsi que ses résultats du point de vue des droits de l'homme et du droit international. Il traite également des colonies de Jérusalem-Est qu'Israël a créées et officiellement annexées. En droit international, il s'agit de territoires occupés dont le statut est le même que celui du reste de la Cisjordanie.

Le présent rapport ne traite pas des colonies de la Bande de Gaza. Bien que similaires à maints égards à celles de Cisjordanie, elles s'en distinguent de plusieurs façons. Par exemple, le cadre juridique qui y est appliqué diffère de celui qui prévaut en Cisjordanie sous plusieurs aspects, notamment en matière de droit foncier. Ces différences tiennent aux différentes lois en vigueur dans ces zones avant 1967.

Le rapport comprend huit chapitres :

— le chapitre 1 présente un certain nombre de principes de base régissant les principaux plans mis en œuvre par les gouvernements israéliens, la procédure administrative de création de nouvelles colonies et les différents types de colonies;

— le chapitre 2 examine le statut des colonies et des colons en droit international et passe brièvement en revue les violations des droits des Palestiniens résultant de la création de ces colonies;

— le chapitre 3 examine l'appareil administratif et juridique utilisé par Israël pour s'emparer de terres en Cisjordanie afin de créer ou d'agrandir des colonies. Cet appareil - thème principal de ce chapitre- sert essentiellement à déclarer et à enregistrer des terres comme «propriétés domaniales»;

— le chapitre 4 examine les modifications apportées à la législation israélienne pour annexer les colonies dans l'Etat d'Israël en en faisant des enclaves civiles dans le territoire occupé. Il traite également de la structure de l'administration locale dans les colonies dans les limites des municipalités;

— le chapitre 5 examine les incitations économiques qu'offre Israël aux colons et aux colonies pour encourager des Israéliens à s'installer en Cisjordanie et ceux qui y sont déjà installés à y rester;

— le chapitre 6 analyse les mécanismes de planification appliqués en Cisjordanie par l'administration civile qui est habilitée à délivrer des permis de construire aussi bien dans les colonies que dans les communautés palestiniennes. Ce mécanisme joue un rôle décisif dans la création et l'expansion des colonies, et pour limiter le développement des communautés palestiniennes;

— le chapitre 7 analyse la carte de la Cisjordanie jointe au présent rapport. Cette analyse examine la configuration géographique des colonies en signalant certains de leurs effets négatifs sur les droits humains des Palestiniens;

---

[3] B'Tselem, *Une politique de discrimination, d'expropriation, de planification et de construction à Jérusalem-Est* (mai 1995); *Une coexistence impossible : les droits de l'homme à Hébron depuis le massacre de la grotte des patriarches* (note de septembre 1995); *La colonisation israélienne dans les territoires occupés en violation des droits de l'homme* (note de mars 1997); *La démolition du plan de paix : la politique de démolition par Israël de maisons palestiniennes en Cisjordanie* (note de septembre 1997); *Vers l'annexion : les violations des droits de l'homme résultant de la création ou de l'expansion de la colonie d'Afa'ale Adummim* (note de juin 1999).

— le chapitre 8 étudie de façon approfondie la colonie d'Ari'el et les effets de sa création sur les communautés palestiniennes voisines. Il évoque également les conséquences attendues de son expansion selon le plan prévu.

CHAPITRE 1

POLITIQUE, PROCEDURES ET INSTITUTIONS — PRINCIPES DE BASE

Le présent chapitre expose un certain nombre de concepts fondamentaux que nous devons comprendre pour pouvoir poursuivre l'examen de la question qui nous préoccupe. La première partie passe brièvement en revue un certain nombre d'approches et de plans clés mettant en évidence les activités des gouvernement israéliens en ce qui concerne les colonies de Cisjordanie. La deuxième examine les principales institutions et procédures intervenant dans la création d'une colonie. La dernière partie présente une typologie des colonies selon leurs diverses formes (kibboutz, colonie communale, colonie urbaine, etc.). Dans tout ce chapitre, on trouvera également un certain nombre de statistiques au sujet des colonies et des colons.

A. UNE POLITIQUE DE COLONISATION

La politique israélienne à l'égard des colonies de Cisjordanie a évolué à plusieurs reprises au fil des ans, en fonction des divergences de vues politiques des décideurs, du poids relatif des divers groupes d'intérêts concernés, et de l'évolution de la situation internationale. Bien que ces approches divergentes aient déterminé notamment l'importance relative des ressources consacrées à cette question et le choix des zones prévues pour la création de colonies, tous les gouvernements israéliens ont contribué au renforcement, au développement et à l'expansion du processus de colonisation.

Le gouvernement d'union nationale dirigé par Levi Eshkol a été constitué peu avant que la guerre n'éclate en juin 1967. Au cours des mois qui ont immédiatement suivi le conflit, ce gouvernement n'avait pas de politique bien définie concernant l'installation d'Israéliens en Cisjordanie. Au départ, la plupart de ses membres étaient désireux de garder ce territoire comme monnaie d'échange pour de futures négociations. Ils se sont donc opposés aux projets de création de colonies civiles dans cette région. Ces tendances n'ont cependant pas tardé à évoluer sous l'effet combiné des pressions exercées par divers groupes d'intérêt, et d'initiatives prises par le gouvernement. Dès septembre 1967, Kfar Ezyon est devenue la première colonie créée en Cisjordanie. Elle l'a été sous la pression d'un groupe de colons dont certains étaient apparentés aux résidents de la communauté initiale du même nom, abandonnée et détruite durant la guerre de 1948[4].

Le gouvernement d'union nationale a suivi une politique différente à l'égard de «Jérusalem-Est». Immédiatement après la guerre, il appliqué le droit israélien à de vastes zones situées au nord, à l'est et au sud de Jérusalem Ouest, qui ont été annexées par la municipalité. Le gouvernement y a engagé un processus accéléré d'implantation de colonies. Il s'agissait de prévenir toute menace sur la souveraineté d'Israël sur ces zones, et de faire obstacle aux initiatives susceptibles d'entraîner un retrait israélien[5].

En outre, Israël a annexé une bande de territoire parallèle à la Ligne verte sur quelques kilomètres au nord et au sud de la zone de Latroun (voir la carte jointe au présent rapport). Cette bande de territoire était considérée comme un «no man's land» car entre 1948 et 1967, ni Israël, ni la Jordanie ne la contrôlaient. Au fil des ans, Israël y a implanté quatre communautés (Shilat, Lapid, Kefar Rurh et Maccabim). Nous ne traiterons pas de ces colonies dans le présent rapport car en droit international, cette zone n'est pas considérée comme un territoire occupé.

---

[4] Shlomo Gazit, *Des idiots pris au piège-Trente ans de politique israélienne dans les territoires* (en hébreu) (Tel-Aviv ; Zemora-Beitan, 1999), p. 228.

[5] Comme indiqué en détail aux chapitres trois et sept ci-après, les zones annexées par Jérusalem en 1967 s'étendaient bien au-delà des limites de la ville d'alors, telles qu'elles étaient définies sous l'autorité jordanienne. Pour des raisons de commodité, cette zone sera désignée sous le nom de Jérusalem Ouest dans le reste de la présente étude.

Les gouvernements Ma'arach : le plan Alon

Dès la fin de 1967, Yigal Alon - à l'époque membre de la Commission ministérielle pour les colonies- a commencé à élaborer un plan stratégique de création de colonies dans certaines parties de la Cisjordanie. Ce plan a été remanié à plusieurs reprises dans les années qui ont suivi. Bien qu'il n'ait jamais été approuvé officiellement par le gouvernement israélien, il préfigurait la configuration géographique des colonies créées en Cisjordanie à l'initiative des gouvernements dirigés par le Ma'arach (prédécesseur de l'actuel parti travailliste) jusqu'en 1977, et il a servi de base au «compromis territorial» préconisé par le Ma'arach dans son programme jusqu'aux élections de 1988.

L'objectif initial du plan Alon était de rectifier les frontières de l'Etat d'Israël pour y inclure la vallée du Jourdain et le désert de Judée, ce qui était nécessaire pour assurer la sécurité de l'Etat, à en croire les partisans de ce plan. Dans ces zones, celui-ci prévoyait l'implantation d'une série de colonies israéliennes pour assurer une «présence juive» et il constituait l'étape préliminaire à une annexion officielle. Le plan Alon recommandait également d'éviter autant que possible l'annexion de zones à population palestinienne dense[6].

Malgré cette recommandation, la dernière version du plan de 1970 propose l'annexion par Israël de zones beaucoup plus vastes que prévu antérieurement. Celles-ci comprenaient notamment une bande d'une vingtaine de kilomètres située le long du Jourdain (et allant jusqu'au point où la population palestinienne commençait à être dense); diverses zones autour du Grand Jérusalem; le bloc d'Ezyon; la plus grande partie du désert de Judée, et une bande de territoire située dans le sud des montagnes d'Hébron. Au total, ces zones représentent environ la moitié de la superficie de la Cisjordanie. D'après le plan Alon, la moitié restante de la Cisjordanie, constituée de deux zones discontinues au nord et au sud, était censée faire partie d'un Etat jordano-palestinien[7].

Lorsque le Likoud est arrivé au pouvoir en 1977, près de trente colonies regroupant quelque 4500 Israéliens avaient été créées en Cisjordanie (Jérusalem-Est non compris) à l'initiative du gouvernement[8]. La plupart de ces colonies se trouvaient dans des zones qu'Israël prévoyait d'annexer conformément au plan Alon, tandis qu'une minorité d'entre elles étaient créées par le Gush Emunim (voir plus loin) en dehors de ces zones. De plus, dès 1977, une cinquantaine de milliers d'Israéliens vivaient dans des colonies créées à Jérusalem-Est[9]. Le plan Alon a été abandonné sous les gouvernements dirigés par le Likoud (1977-1984), qui ont fait porter l'essentiel de leurs efforts sur d'autres parties de la Cisjordanie. Sous le gouvernement d'union nationale dirigé par Shimon Peres et Yitzhak Shamir (1984-1988), le plan Alon a de nouveau fait partie de la politique officielle, ce qui explique l'afflux de ressources vers les colonies créées dans les zones couvertes par le Plan dans les années soixante-dix (voir le plan des «Cent mille» ci-après).

Influence du Gush Emunim

Dans certains milieux religieux de droite, la victoire d'Israël lors de la guerre de 1967 a été interprétée en termes théologiques, marquant le «commencement de la rédemption» et offrant la possibilité de «réaliser le projet d'une réunification de toute la terre d'Israël». En 1974, ces milieux ont ouvert la voie à la création du Gush Emunim (Bloc des croyants), sous la direction spirituelle du

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[6] Meron Benvenisti et Shlomo Khayat, *Atlas de la Cisjordanie et de Gaza,* projet de données sur la Cisjordanie (Jérusalem : The Jerusalem Post, 1987), p. 63-64.

[7] *Ibid.*

[8] Pour toutes données sur l'accroissement de la population et du nombre de colonies, voir les tableaux et les graphiques de ce chapitre.

[9] Geoffrey Aronson, *Les colonies et les négociations israélo-palestiniennes* (Washington Institute of Palestinian Studies, 1996), p. 5.

Rabbin Zvi Yehuda Kook[10]. L'objectif immédiat de ce mouvement était de créer autant de colonies que possible sur toute la «terre d'Israël». Le Gush Emunim s'efforçait de disperser sur la plus grande superficie possible les colonies qu'il créait. «Notre contrôle d'une région est fonction non seulement de la taille de la population qu y vit, mais aussi de la superficie de la zone dans laquelle celle-ci laisse son empreinte et exerce son influence.»[11]

Du fait que la vallée du Jourdain, Gush Ezyon et des zones de la région des montagnes d'Hébron faisaient partie de la stratégie du gouvernement travailliste, le Gush Emunim a accordé la priorité à la chaîne de montagnes du centre de la Cisjordanie, c'est à dire à la zone concentrant la plus grande partie de la population palestinienne[12]. La principale méthode utilisée par ce mouvement a consisté à accorder des terrains donnés sans la permission des autorités –et parfois, contrairement à sa politique- pour tenter de mettre le gouvernement devant le fait accompli. Entre juillet 1974 et décembre 1975, des membres du Gush Emunim ont tenté sept fois, mais sans succès, de créer une colonie à divers emplacements de la zone de Naplouse sans l'autorisation du gouvernement. La huitième tentative a abouti à un compromis entre les militants et Shimon Peres, alors ministre de la défense. Les colons ont été autorisés à rester dans la base militaire de Qadum, à l'ouest de Naplouse et deux ans plus tard, cette base est officiellement devenue la colonie de Qedunim[13].

Dans d'autres cas, les autorités ont permis au groupe des colons du Gush Emunim de créer une colonie sous de fallacieux prétextes. C'est ainsi que des membres de ce mouvement ont été autorisés à créer un «camp de travail» à proximité du village d'Ein Yabrud. Ce «camp» est devenu ultérieurement la colonie d'Ofra. Dans un autre cas, la colonie de Shilo a été créée sous prétexte de fouilles archéologiques[14].

Les heurts entre le Gush Emunim et les autorités se sont poursuivis durant la majeure partie du mandat du premier gouvernement du Likoud dirigé par Menachem Begin, mais ils ont cessé peu avant les élections de 1981, après que le Mouvement démocratique pour le changement s'est retiré du gouvernement. Le gouvernement a alors commencé à réaliser tous les plans de colonisation du Gush Emunim, accordant une aide financière considérable à ses activités[15].

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[10] Pour une analyse du programme idéologique du Gush Emunim, voir Gidon Eran, *Du sionisme religieux à la religion sioniste- Les racines et la culture du Gush Emunim* (en hébreu), thèse de doctorat présentée à L'Université hébreue de Jérusalem, 1987) .

[11] Le Gush Emunim, *Plan directeur de colonisation de la Judée et de la Samarie* (en hébreu) (1980) p. 15.

[12] Pour une description géographique détaillée de la Cisjordanie et la configuration des colonies dans la région, voir chapitre sept.

[13] David Newman, *Les colonies juives de Cisjordanie : le rôle du Gush Emunim* (Durham, Angleterre, Centre for Middle Eastern and Islamic Studies, 1982), p. 40-43.

[14] Une tactique similaire suivie en 1968 par un groupe de colons d'Hébron dirigé par le Rabbin Levinger a abouti à la création de la colonie de Qiryat Arba, Gazit, *Des idiots pris au piège,* p. 231.

[15] Meron Benvenisti, *Lexique de la Judée et de la Samarie : l'administration et la société des colonies* (en hébreu) (Jérusalem, Cana, 1987), p. 155.

La politique du Likoud : le Plan Drobless et le Plan Sharon

Après l'arrivée du Likoud au pouvoir en 1977, Matiyahu Drobless, chef de la Division des colonies de l'Organisation sioniste mondiale (OSM), a établi un plan détaillé concernant la création de colonies dans l'ensemble de la Cisjordanie[16]. Ce plan, publié en 1978 et mis à jour plusieurs fois dans les années qui ont suivi, était également connu sous le nom de Plan Drobless et constituait un document d'orientation pour le gouvernement et la politique de l'OSM en matière de colonies. Suivant ce plan :

La présence de communautés civiles juives est vitale pour la sécurité de l'Etat… Notre intention de conserver pour toujours les régions de Judée et de Samarie ne doit faire aucun doute… Le moyen le plus efficace d'éliminer le moindre doute à ce sujet consiste à nous y installer rapidement[17].

Le Plan Drobless concordait pleinement avec les plans du Gush Emunim, ce qui a ouvert la voie à une coopération étroite entre les deux mouvements. Cette coopération a débouché sur la création de douzaines d'«établissements communautaires» (voir plus loin) situés pour la plupart sur la chaîne de montagne centrale, à proximité des centres de population palestinienne.

Une autre personnalité clé qui a puissamment contribué à promouvoir la création de colonies est Ariel Sharon, ministre de l'Agriculture du premier gouvernement du Likoud (1977-1981). Celui-ci a établi un plan portant son nom qui incluait une carte délimitant les zones qu'il jugeait vitales pour la sécurité du pays et qui devaient donc être annexées. Suivant cette carte, seules quelques enclaves à population palestinienne dense ne devaient pas être soumises à la souveraineté israélienne à l'avenir[18]. Comme Alon et Drobless, Sharon recommandait la création de colonies dans ces zones en vue de leur annexion. Bien qu'il n'ait pas été adopté officiellement par le gouvernement, ce plan ouvrait la voie aux activités du ministère de l'Agriculture. Le pouvoir de ce ministère concernant la création de colonies résultait du contrôle qu'il exerçait sur l'Administration des Terres d'Israël, responsable de la gestion des «propriétés domaniales» (voir chapitre trois) et du financement des activités de la Division des colonies de l'OSM (voir plus loin).

Une fois ce plan établi, le ministère de l'agriculture et le ministère de la construction et du logement se sont employés en priorité à créer des colonies sur le versant ouest de la chaîne de montagne centrale de Cisjordanie, au nord de Jérusalem (Samarie occidentale). Ces efforts reflétaient la conviction de Sharon qu'il était important d'empêcher la création d'une zone contiguë peuplée d'Arabes des deux côtés de la Ligne verte, et ayant effet de relier la zone située à l'ouest de Jenine et Naplouse et au nord de Ramallah aux communautés palestiniennes se trouvant en Israël même à proximité de la Ligne verte, comme celles d'Umm-el-Fahm et Kafr Qasem[19]. Alors que les colonies créées à l'initiative de l'OSM dans la zone de la chaîne de montagne centrale comprenaient surtout des membres et des partisans du Gush Emunim, les ministères cités plus haut n'ont épargné aucun effort pour attirer des personnes sans motivation idéologique particulière dans les colonies de Samarie occidentale en leur garantissant un niveau de vie plus élevé non loin des centres urbains de la plaine côtière[20].

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[16] Voir plus loin en ce qui concerne le rôle du Congrès sioniste mondial dans la conception et la création des nouvelles colonies.

[17] Matiyahu Drobless, *Le peuplement de la Judée et de la Samarie-Stratégie, politique et programme* (en hébreu) (Jérusalem, Organisation sioniste mondiale, septembre 1980), p. 3.

[18] Benvenisti et Khayat, *Atlas de Cisjordanie et de Gaza,* p. 65.

[19] Geoffrey Aronson, *Créer des faits accomplis : Israël, les Palestiniens et la Cisjordanie* (Washington Institute for Palestinian Studies, 1987), p. 71.

[20] *Ibid.,* p. 72-74.

Au début de 1983, le ministère de l'Agriculture et l'OSM ont publié un plan directeur concernant les colonies de Cisjordanie jusqu'en 2010, notamment un plan de développement opérationnel pour la période 1983-1986[21]. Celui-ci est également connu sous le nom de «Plan des Cent mille» car il avait pour but d'attirer 80 000 nouveaux colons israéliens avant 1986, de façon à porter à plus de 100 000 personnes la population juive (compte non tenu de Jérusalem-Est). Selon ce plan, vingt-trois nouvelles communautés municipales et rurales devaient être créées ainsi que vingt sites de peuplement militaires de type NAHAL. En outre, de 300 à 450 kilomètres de nouvelles routes devaient être revêtues[22]. Le plan initial était essentiellement axé sur des colonies dans la chaîne de montagne centrale et sur son versant ouest, mais en raison de l'arrivée au pouvoir du gouvernement d'union nationale en 1984, une grande partie des ressources a en fait servi à promouvoir la création de colonies dans la vallée du Jourdain, pour donner satisfaction tout à la fois aux partisans de la méthode Drobless-Sharon et à ceux du plan Alon[23]. Durant la période couverte par le Plan, le gouvernement a atteint son objectif pour le nombre de nouvelles colonies, mais échoué en ce qui concerne la population, qui ne comptait que 51 000 personnes à la fin de 1986.

La création de colonies s'est poursuivie au même rythme sous le nouveau gouvernement Likoud (1988-1992). Celui-ci s'est employé essentiellement à développer les colonies existantes dont la population a augmenté de soixante pour cent durant cette période. Dix nouvelles colonies ont été créées, c'est-à-dire moins que par les gouvernements précédents. L'ampleur colossale des travaux de construction entrepris dans les Territoires par ce gouvernement a entraîné une confrontation ouverte avec le Gouvernement des Etats-Unis, qui a décidé de «geler» l'assistance qu'il avait promise à Israël pour l'aider à absorber la vague d'immigrants venus d'Union soviétique[24].

Le processus d'Oslo et la poursuite de l'expansion

La constitution en juillet 1992 d'un nouveau gouvernement dirigé par Yitzak Rabin a semblé offrir la possibilité de modifier réellement la politique de colonisation d'Israël. Durant sa campagne électorale, le Parti travailliste a promis un «changement des priorités nationales», notamment une réduction sensible des ressources affectées aux colonies. La signature de la Déclaration de principes entre Israël et l'OLP en septembre 1993 témoignait également de l'intention qu'avait le gouvernement de changer de politique, bien que cette Déclaration n'ait pas expressément interdit la création de nouvelles colonies. C'est seulement dans le cadre des Accords d'Oslo 2 signés deux ans plus tard que les parties ont déclaré : «Aucune des deux parties ne prendra de mesures visant à modifier le statut de la Cisjordanie et de la Bande de Gaza avant la fin des négociations sur leur statut permanent.»[25] Toutefois, il est apparu rapidement que ce changement de politique n'avait aucune portée et que le nouveau gouvernement avait l'intention de poursuivre le développement des colonies.

Il a promis aux Etats-Unis de ne pas créer de nouvelles colonies et de mettre un terme à l'expansion de celles qui existaient déjà, à l'exception des travaux de construction rendus nécessaires par «l'accroissement naturel» de la population locale[26]. Cet engagement figurait également dans le programme d'action de base du gouvernement, à deux importantes exceptions près héritées de la

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[21] Ministère de l'agriculture et Division des colonies de l'Organisation sioniste mondiale *Plan directeur concernant la colonisation de la Judée et de la Samarie, Plan de développement de la région pour 1983-1986* (Jérusalem, avril 1983).

[22] *Ibid*, p. 9.

[23] Benvenisti, *Lexique de la Judée et de la Samarie*, p. 52.

[24] Aronson, *les colonies et les négociations israélo-palestiniennes,* p. 48-49.

[25] Accord intérimaire israélo-palestinien sur la Cisjordanie et labBande de Gaza, 28 septembre 1995 (Oslo 2), chap. 5, art. 31 7).

[26] Aronson, *Les colonies et les négociations israélo-palestiniennes,* p. 50-51.

méthode suivie dans le plan Alon : «Aucune colonie nouvelle ne sera créée et les colonies existantes ne seront pas développées, à l'exception de celles qui sont situées dans la zone du Grand Jérusalem et dans la vallée du Jourdain.»

Les mesures d'exception maintenues par le gouvernement sont en fait devenues le principal instrument utilisé pour poursuivre la création de colonies et en augmenter la population israélienne. Selon les principes de base adoptés, le «Grand Jérusalem» incluait non seulement les zones annexées en 1967 et situées dans les limites de la municipalité, mais aussi de vastes zones en dehors de ces limites (voir au chapitre7, le passage sur l'agglomération de Jérusalem). De plus, sous le gouvernement Rabin, 9850 nouveaux logements ont été construits dans l'ensemble de la Cisjordanie (et non seulement dans les zones prioritaires pour le gouvernement). Leur construction avait commencé sous le gouvernement précédent, bien qu'il n'en soit pas fait mention dans les principes de base du gouvernement[27].

En outre, l'expression «accroissement naturel» n'a jamais été définie exactement et sa nature floue a permis à Israël de poursuivre le développement des colonies tout en parvenant à éviter un affrontement direct avec le Gouvernement des Etats-Unis. Depuis la signature de la Déclaration de principes en 1993, selon l'interprétation que tous les gouvernements en ont faite, cette expression inclut non seulement l'accroissement naturel de la population existante (c'est-à-dire les naissances) mais aussi l'accroissement de la population dû aux migrations. En même temps, les gouvernements eux-mêmes ont fortement encouragé les Israéliens à s'installer dans les colonies en leur offrant des incitations et avantages financiers généreux (voir chapitre 4 plus loin).

Au nom de cet «accroissement naturel», Israël a créé de nouvelles colonies au motif que celles qui existaient déjà comprenaient de «nouveaux quartiers». Ces nouvelles colonies ont ainsi été intégrées à la municipalité correspondant à la colonie adjacente, même en l'absence de continuité territoriale entre les deux colonies[28]. C'est seulement dans le cas des colonies de Modi'in Illit (Qiryat Sefer) et de Menorah, reconnues comme nouvelles colonies en 1996 et 1998 respectivement, que ce principe n'a pas été suivi.

Pour développer les colonies, un groupe de colons pouvait par exemple s'emparer d'un nouvel emplacement en y installant un certain nombre de caravanes (voir photos 9 et 10). Les colons agissaient de leur propre chef, sans l'accord des autorités compétentes mais celles-ci s'abstenaient généralement de leur faire quitter les lieux ou de démolir les bâtiments qu'ils avaient construit sans permis. Certains colons ont reçu rétroactivement l'accord des autorités[29]. Au total, contrairement aux espoirs qu'avait fait naître le processus d'Oslo, les gouvernements ont suivi une politique qui a abouti à un développement spectaculaire des colonies. Entre septembre 1993, date de signature de la Déclaration de principes et septembre 2001 (lorsqu'a éclaté l'Intifada d'Al-Aqsa), le nombre de logements construits dans les colonies de Cisjordanie (compte non tenu de Jérusalem-Est) et dans la Bande de Gaza est passé de 20 400 à 31 400, soit un accroissement d'environ 54 pour cent en sept ans seulement. La plus forte augmentation de cette période a été enregistrée en 2000, sous le gouvernement dirigé par Ehud Barak, lorsque la construction de près de 4800 logements a commencé. A la fin de 1993, les colonies de Cisjordanie (en dehors de Jérusalem-Est) comptaient au total 100 500 habitants, mais 191 600 à la fin de 2000, soit un taux de croissance de quelque 90 pour cent. En revanche, ce taux a été beaucoup plus faible dans les colonies de Jérusalem-Est, dont la population est passée de 146 800 habitants en 1993 à 176 900 en 2001, soit une augmentation de 20 pour cent seulement.

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[27] *Ibid,* p. 11.

[28] Le Contrôleur des comptes de l'Etat a présenté en 1998 une critique détaillée de certains aspects de cette méthode dans le cas précis de la colonie de Tel Zion qui était prétendument un «quartier» de la colonie de Kochav Ya'akov. Voir rapport annuel 51B du contrôleur des comptes de l'Etat (en hébreu) ‚Jérusalem, avril 2001, p. 398-405.

[29] Pour une liste des postes avancés installés depuis le début de l'intifada actuelle, voir le site web Peace Now : www.peacenow.org.il.

Tableau 1

Population des colonies de Jérusalem-Est (en milliers d'habitants)

Année	Nombre d'habitants
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

* Il s'agit d'une estimation fondée sur le taux de croissance de la population dans l'ensemble de Jérusalem (Bureau central de statistique).

Source : Jerusalem Institute for Israel Studies, *A propos de vos statistiques. Jérusalem* (différentes années).

Tableau 2

Colonies et colons en Cisjordanie*

Année	Nombre de colonies**	Population (en milliers d'habitants)
1967	1	Non connu
1968	3	Non connu
1969	8	Non connu
1970	10	Non connu
1971	12	Non connu
1972	14	Non connu
1973	14	Non connu
1974	14	Non connu
1975	19	Non connu
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

* Compte non tenu de Jérusalem-Est

** Ces chiffres indiquent le nombre de colonies reconnues par le ministère de l'Intérieur.

*** Au 30 septembre 2001 (données provisoires)

Source : Bureau central de statistique, *Annuaire statistique d'Israël* (différentes années), compte non tenu d'un «certain nombre de colonies» pour les années 1967-1981, d'après Benvenisti et Khayat, *Atlas de la Cisjordanie et de Gaza*, p. 138-140

Diagramme 1

Nombre de colons en Cisjordanie* (en milliers)

* Compte non tenu de Jérusalem-Est

Diagramme 2

Les colonies de Cisjordanie*

* Compte non tenu de Jérusalem-Est

Diagramme 3

Construction de logements en Cisjordanie* et dans la Bande de Gaza

* Compte non tenu de Jérusalem-Est

B. PROCEDURE ADMINISTRATIVE REGISSANT LA CREATION D'UNE COLONIE

La création d'une nouvelle colonie comporte de nombreuses phases et fait intervenir un certain nombre d'institutions et d'organismes. La première formalité officielle consiste à obtenir l'autorisation de la commission conjointe des colonies du gouvernement israélien et de l'Organisation sioniste mondiale (appelée ci-après commission ministérielle des colonies), qui a été créée en 1970 et est habilitée à décider de la création d'une nouvelle colonie. Cette commission comprend un nombre égal de ministres des ministères compétents et de membres du Comité exécutif de l'OSM[30]. Elle a notamment pour mandat de créer des colonies dans l'Etat d'Israël, mais depuis sa fondation, elle s'emploie essentiellement à en créer dans les territoires occupés en 1967 (Cisjordanie, Bande de Gaza, Hauteurs du Golan et Sinaï du Nord). Cette commission est chargée non seulement de donner son accord officiel mais aussi de prendre une décision concernant l'emplacement et la forme des colonies (voir plus loin) ainsi que leur taille du point de vue de la superficie et de la population, l'organisme officiel responsable de leur création, etc. Dans plusieurs cas, elle a reçu rétroactivement une autorisation après la création d'une colonie par le Gush Emunim. En août 1996, du fait du caractère politiquement sensible de cette question dans le contexte des relations entre les Etats-Unis et Israël, le gouvernement a décidé que toute décision de la commission ministérielle des colonies relative à la création d'une nouvelle colonie dans les territoires serait soumise à l'examen et à l'accord du gouvernement[31].

[30] Avshalon Rokach, *Les colonies rurales en Israël* (Jérusalem : Agence juive pour Israël et Organisation sioniste mondiale, 1978, p. 63).

[31] Contrôleur des comptes de l'Etat, *Rapport annuel 51B*, p. 399.

Le rôle de l'Organisation sioniste mondiale dans le cadre de ce mécanisme gouvernemental mérite des explications plus détaillées car l'OSM est un organisme non gouvernemental représentant non pas les citoyens israéliens mais la communauté juive mondiale. L'une des méthodes traditionnellement utilisée par Israël pour affecter les ressources nationales exclusivement à sa population juive sans pour autant être taxé de discrimination consiste à déléguer des responsabilités à l'agence juive, qui n'est pas un organisme gouvernemental. C'est ainsi que le Département des colonies de cette agence a été chargé de créer de nouvelles colonies réservées aux Juifs. Dans le cas de la création de colonies dans les Territoires occupés, l'agence s'est cependant heurtée à des problèmes en ne parvenant pas à obtenir d'exonérations fiscales aux Etats-Unis pour les donations effectuées à cette fin dans ce pays, au motif que les colonies étaient contraires à la politique des Etats-Unis[32]. En conséquence, le service des colonies a été créé en 1971 au sein de l'Organisation sioniste mondiale. Cet organisme a exercé les mêmes fonctions que le Département des colonies de l'agence juive pour toutes les questions liées à la création de colonies dans les Territoires occupés.

Le service des colonies est financé par le budget de l'Etat par l'intermédiaire du ministère de l'agriculture mais jusqu'en 1992, ses opérations étaient exécutées en grande partie par le personnel et l'appareil du Département des colonies de l'agence juive, sur le budget du service des colonies[33]. Depuis le début de 1993, ce service fonctionne indépendamment du Département des colonies[34].

Les deux principaux organismes participant à la mise en place de l'infrastructure matérielle et économique des colonies sont le ministère de la Construction et le service des colonies de l'Organisation sioniste mondiale. C'est la commission qui décide de façon ponctuelle lequel de ces deux organismes sera responsable d'une colonie donnée, les principales considérations étant le rythme d'exécution prévu, la disponibilité de crédits budgétaires et le type de colonie prévu[35]. La première mesure prise par l'organisme chargé par la commission ministérielle pour les colonies de créer une colonie consiste à recevoir du Responsable des propriétés publiques et abandonnées de Judée et de Samarie l'«autorisation» de planifier des travaux d'aménagement et de construction sur le terrain prévu pour l'installation de la colonie[36]. Dans leur grande majorité, les colonies ont été créées sur des terres saisies par Israël par divers moyens et dont la gestion est confiée au Conservateur. Du point de vue de l'organisation, celui-ci fait office d'agent de l'administration civile bien que professionnellement, il relève de l'administration foncière d'Israël[37]. Depuis 1996, toute nouvelle autorisation accordée par le Conservateur des propriétés domaniales nécessite l'accord du ministère de la défense[38].

Une fois un contrat d'autorisation signé avec le Conservateur, le ministère de la construction et du logement ou le service des colonies sont habilités à conclure des contrats avec toute association coopérative (voir plus loin) ou avec une entreprise de construction particulière qui bénéficie alors du statut d'«organisme autorisé». En même temps, ce ministère ou ce service sont censés faire le nécessaire pour obtenir l'accord de la Commission suprême du Plan de l'administration civile pour les

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[32] Benvenisti, *Lexique de la Judée et de la Samarie,* p. 50.

[33] Rokach, *Les colonies rurales en Israël*, p. 71.

[34] Pour de plus amples détails sur cette question, voir Contrôleur des comptes de l'Etat, *Rapport d'audit concernant l'aide de l'Etat au développement de nouvelles colonies en Judée, en Samarie, à Gaza et sur les Hauteurs du Golan,* (en hébreu) (Jérusalem, mai 1999).

[35] Meir Harnoy, «Processus de planification des colonies en Judée, en Samarie et dans la Bande de Gaza» (en hébreu) dans *Etudes sur la Judée et la Samarie,* Minutes de la deuxième conférence, 1992, p. 369.

[36] L'achat d'une terre à titre privé par des civils israéliens est exceptionnel. Pour un examen des méthodes utilisées pour prendre le contrôle des terres et au sujet du bureau du Conservateur des propriétés domaniales, voir chapitre trois ci-après.

[37] Contrôleur des comptes de l'Etat, *Rapport annuel 51B,* p. 399.

[38] *Ibid.*

plans préliminaires de la colonie, et délivrer les permis de construire en fonction de ce plan[39]. Une fois tous les contrats signés et tous les permis accordés, l'organisme autorisé a le droit d'entreprendre des travaux de construction.

Le service des colonies s'est spécialisé dans la création de petites colonies du type «colonie communautaire» ou de l'un des modèles des colonies coopératives, bien qu'il ait également créé des communautés rurales de type classique (voir plus loin). A mesure que les colons arrivent sur place, la gestion des affaires courantes est confiée à une association notamment chargée d'accepter (ou de rejeter) de nouveaux membres dans la colonie[40]. Dans certains cas, l'intervention de l'association coopérative commence au stade de la construction et celle-ci conclut directement des accords avec un entrepreneur chargé des travaux d'aménagement et de construction. Les associations coopératives opèrent généralement sous l'égide d'un des «mouvements de colonisation» - Amana, l'aile du Gush Emunim (qui est le mouvement le plus important du point de vue numérique) chargée des colonies, l'Union agricole, le Betar, l'Union de Moshavim du Po'alei Ahudat Yisraël, l'Union de Moshavim de Hapo'el Hamisrashi, etc.[41].

Le ministère de la Construction et du Logement s'occupe de la planification et de l'aménagement des colonies par l'intermédiaire de deux de ses services, le Service de la construction rurale et le Service de la construction urbaine dans chacun des districts ministériels. Le premier a été créé en 1968. Il est généralement responsable des communautés définies comme non urbaines, tant en Israël même que dans les territoires occupés en 1967[42]. Les services de la construction du ministère de la construction et du logement s'occupent des colonies de plus grande dimension, qui bénéficient généralement du statut de municipalité indépendante (voir chapitre 4). A la différence des colonies créées par le service des colonies, la gestion de celles qui sont fondées par le ministère de la construction et du logement n'est pas confiée à un «mouvement de colonisation» particulier, mais à une équipe d'aménagement constituée sous les auspices de ce ministère en attendant qu'une commission locale soit mise en place. Les habitations de ces colonies sont mises en vente libre sur le marché et accessibles à tout acheteur mais en réalité, elles sont vendues exclusivement à des Juifs[43].

Bien que le processus complexe décrit plus haut soit nécessaire en vertu des décisions gouvernementales et de la législation militaire, dans bien des cas, les autorités «sautent» une étape ou une autre ou bien agissent rétroactivement pour accorder les autorisations et signer les contrats appropriés[44]. Les exemples les plus spectaculaires de cette approche sont les postes avancés créés ces dernières années dans toute la Cisjordanie où aucune des étapes décrites plus haut n'a été suivie. Dans certains cas, les autorités israéliennes ont commencé progressivement à répondre aux conditions requises, et ce rétroactivement et par étapes.

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[39] Au sujet de l'appareil de planification physique, voir chapitre 6 plus loin.

[40] Harnoy, *Etudes sur la Judée et la Samarie,* p. 370-371.

[41] Au sujet de l'affiliation de chaque colonie à telle ou telle organisation, voir Bureau central de statistique, *Liste des localités, de leur population et de leurs codes* (différentes années).

[42] Au sujet des fonctions de ce service et des critiques quant à sa nécessité (pour des raisons d'efficacité), voir *Rapport annuel 47* du Contrôleur des comptes de l'Etat (en hébreu) (Jérusalem, avril 1997), p. 166-173.

[43] Harnoy, *Etudes sur la Judée et la Samarie,* p. 371.

[44] Au sujet de ce phénomène, voir les rapports du Contrôleur des comptes de l'Etat (tous en hébreu); *Rapport annuel 37* (Jérusalem, 1987), p. 1.205; *Rapport annuel 43* (Jérusalem, avril 1993), p. 911-914; *Rapport annuel 51B* (Jérusalem, avril 2001), p. 398-405.

C. TYPES DE COLONIES

Les colonies créées en Cisjordanie varient à plusieurs égards, notamment par leur structure sociale, ou «type» — colonies urbaines et rurales de type classique, colonies communautaires et colonies coopératives.

Les *colonies coopératives* se subdivisent en trois types bien définis : kibboutz, moshav et moshav coopératif- qui varient par le degré d'égalité et de coopération au niveau du statut de propriété en général, et des moyens de production en particulier. Toutefois, ces distinctions se sont atténuées depuis les années quatre vingt-dix du fait de la crise économique qui affecte les mouvements de kibboutz et de moshav, et en raison de l'évolution des valeurs au sein de la société israélienne. Ces formes de colonie sont les modèles classiques qui avaient les faveurs du mouvement travailliste et en conséquence, la plupart des kibboutz et des moshavim de Cisjordanie ont été créés dans les années soixante-dix sous les gouvernements Ma'arach et ils sont situés dans des zones correspondant au plan Alon. La caractéristique commune des trois types de colonie, du moins dans les premiers temps, est leur caractère agricole, bien que depuis 1980, beaucoup de ces colonies se soient réorientées vers l'industrie ou le tourisme, tandis que certains de leurs membres ont commencé à travailler comme salariés dans les centres urbains voisins. Il existe actuellement neuf kibboutz, treize moshavim et neuf moshavim coopératifs en Cisjordanie[45].

Diagramme 4

Différents types de colonies en Cisjordanie

[45] Le nombre de colonies de chaque type dépend de la définition du «type de colonie» adoptée par le bureau central de statistique.

A la différence des colonies coopératives, les *colonies communautaires* ont tout d'abord pris une forme spécifique aux Territoires occupés, sous l'initiative du Gush Emunim et de son aile chargée des colonies (Amana)[46]. Le cadre juridique consiste en une association coopérative inscrite au registre des associations, gérées lors de sa réunion générale et comprenant généralement quelque 100 à 200 familles. Comme les kibboutz et les moshavim coopératifs, les colonies communautaires absorbent de nouveaux membres suivant un processus clairement défini à l'issue duquel l'assemblée générale décide d'accepter ou non des candidats. La plupart des membres des colonies communautaires appartiennent aux classes moyennes et sont employés dans des villes voisines en Israël même[47]. Dans toute la Cisjordanie, en particulier dans la chaîne de montagne et l'agglomération de Jérusalem, il existe soixante-six colonies de type communautaire.

Les autres colonies sont des *colonies urbaines ou rurales de type classique* gérées par des comités ou conseils locaux dont les membres sont élus par les résidents. Ces colonies n'appliquent aucune procédure particulière de sélection ni de cadre financier coopératif particulier. Cependant, plus une colonie est petite, plus ses membres sont homogènes (du point de vue de l'identité religieuse/séculière, du statut économique, de l'origine, etc.). Les exceptions à cette règle sont les colonies ultra-orthodoxes de Betar Illit (15.800 habitants) et Modi'in Illit (16.400 habitants) qui, tout en figurant parmi les plus peuplées, sont presque totalement homogènes du point de vue démographique. Pour le Bureau central de statistique, une colonie est définie comme «urbaine» si elle compte au moins 2000 habitants alors que les colonies rurales ont une population inférieure. Actuellement, on compte douze colonies rurales et treize urbaines, à quoi il convient d'en ajouter douze autres créées à Jérusalem-Est et qui relèvent de la municipalité de Jérusalem.

[46] A un stade ultérieur, on a également commencé à construire des colonies communautaires

en Israël, en particulier en Galilée.

[47] Pour de plus amples détails sur les caractéristiques de ce type de colonie et les processus qui ont abouti à sa création, voir David Newman, *Le rôle du Gush Emunim et du Yeshiv Kelihati,* Thèse de doctorat, Université de Durham, 1981,chapitre 5.

Photo 1 : Limites des municipalités de Hinani (en haut) et de Shaqed (en bas)

Photo 2 : Limites de la municipalité de Tapuah

Photo 3 : Limites de la municipalité de Rimmonim

Photo 4 : Limites de la municipalité d'Ez Efrayim

Photo 5 : Pesagot (à droite) Ramallah et al-Bira (à gauche)

Photo 6 : Ma'ale Addumim : zone construite et réserve de terres

Photo 7 : Stade de la construction à Har Homa

Photo 8 : Har Adar : zone construite et zone d'expansion

Photo 9 : Poste avancé de l'exploitation agricole d'Alone Shilo (en bas) avec Qarne Shorneron et Kafr Laqif à l'arrière-plan

Photo 10 : Poste avancé de Mizpe Keranim, près de Kokhav Hashahar

Photo 11 : Nili

Photo 12 : Qedar

Photo 13 : Tunnels routiers

Photo 14 : Soldats des FAI durant l'opération Bouclier défensif, avec la colonie d'Itamar à l'arrière-plan

Types de colonies : Système de planification

Peza'el, Arvot Hayard
Conseil régional
créé en 1969,
223 habitants

Colonie coopérative

La plupart des colonies de la Vallée du Jourdain sont semblables par leur forme aux colonies coopératives d'Israël. A la différence des autres types, ces dernières sont planifiées essentiellement en fonction de leur organisation sociale et dans une moindre mesure, de la topographie ou des restrictions liées au statut des terres (propriété domaniale, contiguïté). La forme géométrique de la colonie reflète une division égalitaire des terres entre les membres de la colonie (moshav) suivant laquelle chaque terrain se trouve à côté de la maison du propriétaire. Peza'el a été initialement divisée en trois sections construites autour du centre social et administratif du moshav. Ultérieurement, le moshav a construit une nouvelle zone résidentielle destinée à la prochaine génération (enfants et leurs familles) de colons.

Eli,
conseil régional
de Binyamin,
créé en 1984,
1900 habitants

Colonies communautaires

La plupart des colonies de ce type ont été créées en terrain montagneux et leur forme est déterminée essentiellement par les contraintes topographiques. La configuration type de ce genre de colonie consiste en cercles concentriques le long des lignes de niveau autour du périmètre du sommet. Les maisons sont le plus souvent du type uni-familial, d'un ou deux étages avec un toit en tuiles, construites perpendiculairement aux lignes de niveau et avec vue sur le paysage. Les terrains attribués pour chaque maison sont identiques, d'une superficie d'environ un demi dunam (500 mètres carrés). Le centre social et administratif de la colonie se trouve généralement dans le premier cercle, au point le plus élevé. La colonie d'Eli, qui se trouve sur la route n° 60, à mi-chemin de Ramallah et de Naplouse est une colonie communautaire type. Elle s'étend sur un territoire comprenant deux sommets montagneux voisins.

Giv'at Ze'ev,
conseil local,
créé en 1982,
10 500 habitants

Colonies urbaines

Les colonies urbaines sont le plus souvent situées dans l'agglomération de Jérusalem ou à proximité (la plupart du temps dans la municipalité même). Toutefois, on en trouve également dans d'autres parties de la Cisjordanie. Ces colonies ont été prévues pour modifier rapidement les données démographiques dans les zones destinées à être annexées par Israël ou à servir de centres de services régionaux pour des groupes de petites colonies. Celles-ci consistent en immeubles coopératifs comprenant des appartements à terrasse. La densité des logements est donc élevée par rapport à celle des colonies rurales. La forme de ces colonies a également été influencée par la topographie et les contraintes liées au statut de propriété. La forme sinueuse de la colonie de Giv'at Ze'ev, située au nord-ouest de Jérusalem, montre bien l'effet de ces contraintes.

Zufin,
conseil régional,
créé en 1989,
900 habitants.

Colonies rurales

La colonie rurale est typique de la bande de collines de l'ouest et se situe généralement dans une banlieue de Tel Aviv. La plupart de ces colonies se sont développées rapidement en raison des pressions du marché immobilier et elles ont donc perdu leur forme concentrique et fermée initiale. Leur expansion a été influencée par un certain nombre de facteurs, parmi lesquels des caractéristiques topographiques relativement modérées, la disponibilité de terres pouvant être achetées par des entrepreneurs privés, une forte demande du public israélien et des cultures intensives pratiquées par les Palestiniens habitant à proximité de ces colonies. Les maisons des colonies rurales ont généralement des toits en tuiles et un terrain adjacent. La superficie de ces terrains est variable et reflète le comportement spéculatif du marché privé. Au nord-est de Qalqilya, la colonie de Zufin a été construite entièrement par des promoteurs privés. Sur la zone construite de cette colonie se trouvent deux enclaves palestiniennes appartenant à des propriétaires privés.

CHAPITRE 2

LES COLONIES ET LE DROIT INTERNATIONAL

Les colonies créées sur l'ensemble du territoire de Cisjordanie enfreignent diverses dispositions du droit international qui sont dans l'ensemble contraignantes. Le droit humanitaire interdit la création de colonies. Le non respect de cette disposition entraîne la violation de nombreux droits humains des Palestiniens stipulés par le droit international. Le présent chapitre décrit ces principes de droit international et examinera ensuite l'interdiction des attaques de Palestiniens contre des colons.

A. LE DROIT INTERNATIONAL HUMANITAIRE

Le droit international humanitaire énonce les principes applicables aux Etats en temps de guerre et d'occupation. Les colonies situées dans les Territoires occupés enfreignent deux instruments essentiels de ce droit : la convention de La Haye, les Lois et coutumes de la guerre sur terre et la réglementation annexe de 1907 (appelée ci-après la Réglementation) et la quatrième convention de Genève de 1949 relative aux personnes civiles en temps de guerre, ci-après appelée quatrième convention de Genève.

Suivant la politique officielle d'Israël, le droit international humanitaire n'est pas pleinement contraignant concernant ses actions dans les territoires occupés. Cette position a été arrêtée en 1971 par le Procureur général d'alors, Meir Shamgar[48]. Selon lui, le droit humanitaire ne s'applique pas à la Cisjordanie et à la Bande de Gaza parce que leur annexion par la Jordanie et par l'Egypte n'avait jamais été reconnue au plan international. Ainsi, les terres occupées n'étaient pas «le territoire d'une haute partie contractante», condition indispensable à l'application de la quatrième convention de Genève. Israël s'est toutefois engagé à respecter ce qu'il appelle les «dispositions humanitaires» de cette convention, sans toutefois avoir jamais précisé en quoi elles consistaient[49]. Il est intéressant de noter qu'à la différence de Shamgar initialement, les responsables israéliens s'abstiennent généralement de mettre en question l'application de la réglementation de La Haye applicable aux Territoires occupés, bien que le même problème d'application se pose[50].

La position d'Israël n'a jamais obtenu le moindre soutien au niveau international et est même rejetée par un grand nombre d'Israéliens. La Croix-Rouge internationale, les Nations Unies et la grande majorité des pays et des spécialistes du droit international ont souvent déclaré que la quatrième convention de Genève était contraignante pour Israël en ce qui concerne ses activités dans les Territoires occupés.

La Cour suprême d'Israël a décidé que l'application des lois d'occupation dépendait du contrôle militaire effectif exercé en dehors des frontières de l'Etat et non de la souveraineté antérieure d'un Etat particulier sur le territoire[51].

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[48] Meir Shamgar; «L'influence du droit international sur les territoires administrés», *«Annuaire des droits de l'homme d'Israël»*, 1971, 262, en particulier p. 262-266.

[49] Yahav *et al. Israël et l'Intifada, et la primauté du droit*, Tel Aviv, 1993, p. 22.

[50] Eyal Zamir et Eyal, *«Terres juives» en Judée, en Samarie, dans la Bande de Gaza et à Jérusalem-Est* (en hébreu), Jérusalem, Jerusalem Institute of Israel Studies, 1993, p.62.

[51] HCJ 785/87, *Afo. c. le Commandant des FAI en Cisjordanie, Piskei Din*, 42 2) 4.

Ce critère est préférable à celui de la souveraineté parce que très souvent, «les différends frontaliers sont des différends juridiques portant sur le statut du territoire occupé. Dans cette situation, le fait de subordonner les lois relatives à la saisie d'un territoire par la force à une épreuve juridique neutraliserait leur application», en ce sens que cela serait interprété comme une renonciation à des droits dans le territoire occupé[52].

Quatrième convention de Genève

L'article 49 de la quatrième convention de Genève stipule explicitement que «La puissance occupante ne pourra procéder à la déportation d'une partie de sa propre population civile dans le territoire occupé par elle». L'interprétation la plus couramment acceptée de cette convention est un commentaire formulé par la Croix-Rouge internationale. Selon le commentaire concernant cette section, «Il s'agissait d'empêcher une pratique adoptée durant la Deuxième guerre mondiale par certaines puissances, qui ont transféré une partie de leur propre population vers le territoire occupé pour des raisons politiques et raciales ou dans le but avoué de coloniser ces territoires»[53].

Israël a rejeté la thèse selon laquelle les colonies de Cisjordanie sont interdites par l'article 49. Selon les termes employés par le ministre israélien des affaires étrangères :

— les dispositions de la convention de Genève concernant les transferts forcés de populations vers un territoire souverain occupé ne peuvent pas être considérées comme interdisant le retour volontaire de particuliers dans les villes et les villages d'où ils avaient été expulsés, de même que leurs ancêtres…

— il faut souligner que le déplacement de personnes vers le territoire est entièrement volontaire, tandis que les colonies elles-mêmes n'ont pas pour but de déplacer des habitants arabes, et qu'elles n'ont pas cet effet dans la pratique[54].

Les commentaires du ministre contiennent des erreurs et des distorsions juridiques et factuelles.

Tout d'abord, d'après la quatrième convention de Genève, l'absence de contrainte dans le transfert d'Israéliens dans le territoire occupé ne légitime pas ledit transfert. A la différence de l'interdiction de la déportation de résidents locaux depuis le territoire occupé, qui est fondée sur le début de l'article 49 et interdit le «transfert forcé» de personnes protégées, à la fin de l'article, il est dit que la puissance occupante «ne pourra procéder à la déportation ou au *transfert* d'une partie de sa propre population civile dans le territoire occupé par elle» (italiques de l'auteur du présent chapitre). Le terme «forcé» est absent de cette dernière interdiction. L'interdiction du transfert d'une population civile du territoire de la puissance occupante vers le territoire occupé par elle est ainsi plus large et inclut également les transferts non forcés[55].

Ensuite, la thèse selon laquelle le transfert de colons dans le territoire occupé n'avait pas pour but l'expulsion d'habitants locaux et que celle-ci n'a pas eu lieu dans la pratique ne légitime pas l'existence des colonies. La dernière clause de l'article 49 a pour but de protéger les résidents locaux

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[52] Zamir et Benvenisti, «Les terres juives», p. 63.

[53] Jean S. Pictet (éd.), *Commentaire, quatrième convention de Genève relative à la protection des personnes civiles en temps de guerre*, Genève, Comité international de la Croix-Rouge, 1958, p. 283.

[54] Ministère israélien des affaires étrangères, «Les colonies israéliennes et le droit international», mai 2001, www.israel-mfa.gov.il.

[55] B'Tselem, *Les colonies israéliennes dans les territoires occupés, une violation des droits de l'homme :aspects juridiques et théoriques*, mars 1997, p. 18.

de l'installation d'une autre population sur leur terres, avec toutes les conséquences néfastes qui en résultent : extraction de ressources naturelles, handicap pour le développement économique, limitation du développement urbain, etc. — et non seulement de les protéger d'une expulsion.

Troisièmement, l'expression «transfert volontaire» est fallacieuse. Même si le transfert n'est pas forcé ou ne constitue pas une déportation, les civils désireux d'être transférés dans les territoires occupés n'auraient pas pu l'être sans une intervention massive de l'Etat pour créer et agrandir les colonies. Comme l'indique le rapport, un certain nombre d'autorités officielles ont conçu, approuvé et exécuté la saisie de terres et aussi planifié et financé la grande majorité des colonies. Bien que dans certains cas, l'initiative ait été prise par des entités sans rapport avec l'Etat, comme le Gush Emunim et qu'elle ait suscité l'opposition du gouvernement, celui-ci a fini par approuver rétroactivement la création de la colonie et lui a fourni un appui organisationnel et financier. De plus, comme on le verra au chapitre 5, les autorités ont toujours offert diverses incitations financières pour encourager des Israéliens à s'installer dans les Territoires occupés.

Enfin, les liens historiques ou religieux du peuple juif avec la Cisjordanie, mentionnés dans le document du ministère des affaires étrangères, ne peuvent légitimer un non respect flagrant des devoirs d'Israël en vertu du droit international humanitaire parce que dans leur grande majorité, les colonies n'ont pas été conçues comme «un retour aux villes et aux villages» (selon les termes du ministère) ni même comme un retour à des sites peuplés par des Juifs avant 1948, mais qu'il s'agissait de colonies entièrement nouvelles. On a procédé à ce «retour» en intégrant des colons à la population vivant dans la région. On l'a fait essentiellement en créant un système (matériel et juridique) séparé et discriminatoire entre colons et Palestiniens.

Il est à noter que les Juifs qui ont fui certaines zones de Cisjordanie ou en ont été expulsés durant la guerre de 1948 et qui, de ce fait, ont perdu leurs biens peuvent, dans le contexte d'un accord de paix ou de tout autre arrangement, en exiger la restitution ou prétendre à une compensation. Toutefois, ce droit n'a aucun rapport avec la politique de colonisation d'Israël.

La réglementation de La Haye

Un principe fondamental du droit humanitaire, et de la réglementation de La Haye en particulier est la nature temporaire de l'occupation militaire, qui limite obligatoirement la mesure dans laquelle l'occupant peut créer des faits accomplis dans le territoire occupé[56].

La Cour suprême a estimé qu'étant donné que la puissance occupante n'est pas souveraine sur le territoire qu'elle occupe et que son administration y est temporaire, elle ne peut prendre en compte que deux facteurs : les impératifs de sécurité et le bien-être de la population locale[57]. Selon les termes du Juge Aharon Barak :

La réglementation de La Haye obéit à deux grands principes : le premier consiste à ce que ceux qui occupent de force le territoire défendent la sécurité et le bien-être des détenteurs des terres, et l'autre à répondre aux besoins de la population civile du territoire soumise à la population belligérante … le responsable militaire ne peut prendre en considération les intérêts nationaux,

[56] Yuram Dinstein, *Le droit de la guerre* (en hébreu), Tel Aviv, Schocken et Université de Tel Aviv, 1983, p. 209-220.

[57] HCJ 293/82, *Jan'iyyat Iskan al-Mu'alimam ul-Mahduddat al Mas'uliyyah contre le Commandant des FAI, Piskei Din*, 37 4) 785.

économiques ou sociaux de son pays dans la mesure où ils sont sans rapport avec les impératifs de sécurité dans la zone, ni avec les intérêts de la population locale, même s'il s'agit des impératifs militaires du responsable militaire et de ceux du pays au sens large[58].

En fait, il est difficile d'imaginer un changement plus profond ou permanent que la transformation d'un paysage ouvert (cultures ou pâturages, ou collines vierges) en une communauté civile.

La permanence de ces changements repose non seulement sur les énormes investissements consacrés à des bâtiments, des infrastructures et des routes, mais aussi sur le fait que des familles entières vivent à un endroit donné.

Pour se dérober aux interdictions évoquées plus haut, Israël a soutenu que les colonies ne constituaient pas des changements permanents du territoire occupé. Même la Cour suprême a confirmé cette thèse. C'est ainsi que dans une décision concernant la réquisition d'une terre privée pour y établir la colonie de Bet El, le Procureur Miriam Ben-Porat a noté que l'expression «communauté permanente» était un «concept purement relatif»[59]. Elle a fait ce commentaire bien que la construction de communautés civiles et de quartiers civils permanents constitue l'un des exemples les plus évidents de changement permanent. Cette interprétation de l'interdiction de créer des faits accomplis rend sans objet les dispositions pertinentes du droit international.

Comme les colonies n'ont manifestement pas été conçues dans l'intérêt des Palestiniens, la principale justification d'Israël avant 1979 pour l'expropriation de terres privées était la nécessité de «répondre à des impératifs de sécurité».

La question de savoir si les colonies contribuent à la sécurité d'Israël fait l'objet d'un débat permanent au sein de l'armée. En tout état de cause, il est clair que même si certaines d'entre elles comportent un certain intérêt du point de vue militaire, ce n'est pas pour répondre à des impératifs de sécurité que la très grande majorité d'entre elles ont été créées. Comme on l'a vu dans le précédent chapitre, la politique de colonisation d'Israël a des motivations politiques, stratégiques et idéologiques sans aucun rapport avec les impératifs de sécurité au sens strict du terme. D'après le Général de réserve Shlomo Gazit, premier coordinateur des opérations du gouvernement dans les territoires occupés :

> «Il est clair que les colonies israéliennes dans les territoires et en particulier dans les zones à population dense ont des conséquences politiques de grande portée. Ces colonies ont pour but de créer un fait accompli pour influer sur la future solution politique. Il est clair que la création de colonies civiles israéliennes exprime une certaine politique, dont le poids n'est pas moindre que celui de la décision prise par la Knesset en 1967 d'annexer Jérusalem-Est : cette colonie a été créée sur des terres qu'Israël n'a pas l'intention d'évacuer»[60].

Dans ce contexte, il est à noter que l'une des fonctions des brigades NAHAL des FAI est de créer des postes de colonisation militaire. Bien que ces postes existent parfois depuis de nombreuses années et que les soldats qui y sont basés ne participent pas à des opérations militaires, il ne s'agit pas de campements permanents. Les soldats n'y restent que durant leur service militaire et ne s'y

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[58] *Ibid.*, p. 794.

[59] HCJ 258/79, *Ayyub et al. contre le Ministre de la Défense et al., Piskei Dini*, 33 2) 113 (appelé ci-après *Bet El*).

[60] Gazit, *Des idiots pris au piège*, p. 217.

installent pas ultérieurement. Ce type de colonie n'est pas contraire au droit international[61]. Toutefois, la plupart de ces campements NAHAL constituaient dans la pratique le stade préliminaire à la création de colonies civiles permanentes sur ces emplacements.

En créant des colonies depuis 1979, (cas d'Elon Moreh), Israël a utilisé non pas des terres expropriées pour des raisons de sécurité, mais plutôt des terres définies comme «propriétés domaniales» (voir chapitre trois). Même si ces terres appartenaient effectivement à l'Etat jordanien — ce qui est souvent douteux - leur utilisation pour y créer des colonies enfreint la réglementation de La Haye.

L'article 55 de la réglementation de La Haye énonce les règles concernant l'utilisation autorisée de propriété de l'Etat sous le contrôle de l'occupant :

La puissance occupante est considérée seulement comme l'administrateur et l'usufruitier des bâtiments publics, du parc immobilier, des forêts et des exploitations agricoles appartenant à l'Etat hostile, et situés dans le pays occupé. Elle doit protéger le capital que constituent ces propriétés et les administrer conformément aux règles d'usufruit.

Les termes «administrateur» et «usufruitier» indiquent que la puissance occupante a le droit de gérer les propriétés de l'Etat qu'elle occupe et de les utiliser pour répondre à ses besoins dans certaines limites. Celles-ci sont liées à la nature temporaire de l'occupation et au manque de souveraineté de la puissance occupante. Il lui est donc interdit , *notamment*, de *modifier le caractère et la nature* des propriétés de l'Etat (dans le contexte des colonies, les propriétés domaniales), sauf pour des raisons de sécurité ou dans l'intérêt de la population locale[62].

Comme on l'a vu, les colonies modifient de façon permanente et sensible le caractère des propriétés domaniales sur lesquelles elles sont construites. Les colonies ne répondant à aucune des deux exceptions prévues, leur création constitue une violation flagrante de l'article 55 de la réglementation de la Haye.

B. DROIT INTERNATIONAL RELATIF AUX DROITS DE L'HOMME

La violation fondamentale du droit international décrite plus haut a des répercussions qui constituent elles aussi des violations des droits de l'homme. Cette partie du rapport passe en revue les dispositions du droit international que viole Israël en autorisant la présence de colonies et de colons et se réfère aux chapitres du rapport qui traitent en détail de chacune de ces violations.

Les droits de l'homme fondamentaux tels qu'ils ressortent de la Déclaration universelle des droits de l'homme ont été énoncés dans deux conventions internationales que les Nations Unies ont adoptées en 1966 : le Pacte international relatif aux droits civils et politiques et le Pacte international sur les droits économiques, sociaux et culturels. Ces deux documents ont été signés et ratifiés par Israël. Les deux commissions des Nations Unies chargées de les interpréter et d'en vérifier l'application ont déclaré sans équivoque que ces pactes s'appliquent à toute personne sur laquelle les

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[61] Dinstein, *Les lois de la guerre*, p. 226.

[62] Yuval Ginbar, «L'occupant belligérant comme usufruitier et les colonies israéliennes en Cisjordanie et dans la Bande de Gaza», étude non publiée présentée à l'Université d'Essex, mars 1996.

Etats signataires exercent un contrôle, indépendamment de leur souveraineté. De plus, ces deux commissions ont déclaré expressément que les pactes s'appliquent également à Israël en ce qui concerne ses actions en Cisjordanie[63].

Droit à l'autodétermination

Il est dit, dans le premier article commun aux deux pactes, que :

1. Tous les peuples ont droit à l'autodétermination. En vertu de ce droit, ils déterminent librement leur statut politique et poursuivent librement leur développement économique, social et culturel.

2. Tous les peuples peuvent, à leurs propres fins, disposer librement de leur richesse naturelle … ils ne peuvent en aucun cas être privés de leurs moyens d'existence.

Ces dernières années, le gouvernement israélien, l'Autorité palestinienne et la plus grande partie de la communauté internationale ont reconnu que le cadre approprié pour respecter le droit à l'autodétermination du peuple palestinien –en même temps que celui de l'Etat d'Israël- consistait à créer un Etat palestinien indépendant en Cisjordanie et dans la Bande de Gaza.

On trouvera au chapitre 7 du présent rapport une carte de la Cisjordanie qui délimite les zones actuellement occupées par des colonies et leurs territoires juridictionnels proches des Palestiniens. Cette carte montre que de nombreuses colonies interrompent la continuité territoriale de douzaines d'enclaves palestiniennes actuellement définies comme Zones A et B. Cette solution de continuité empêche la création d'un Etat palestinien viable et par conséquent le respect du droit des Palestiniens à l'autodétermination.

En outre, comme l'indique le chapitre7, les colonies privent les Palestiniens d'une part importante de deux ressources vitales pour le développement urbain et économique- les terres et l'eau. Ce phénomène est évident dans la vallée du Jourdain, qui comprend d'importantes réserves de terres et d'eau abondamment utilisées par les colonies installées dans cette région.

Droit à l'égalité

Le droit à l'égalité est l'un des de l'homme fondamentaux. Il est énoncé comme suit dans le deuxième article des deux pactes ainsi que dans le deuxième article de la Déclaration universelle des droits de l'homme :

1. Chacun peut se prévaloir de tous les droits et de toutes les libertés proclamés dans la présente Déclaration, sans distinction aucune, notamment de race, de couleur, de sexe, de langue, d'opinion politique ou de toute autre opinion, d'origine nationale ou sociale, de fortune, de naissance ou de toute autre situation.

2. De plus, il ne sera fait aucune distinction fondée sur le statut politique, juridique ou international du pays ou du territoire dont une personne est ressortissante, qu'il s'agisse d'un territoire indépendant, d'un territoire sous tutelle, non autonome ou soumis à une limitation quelconque de sa souveraineté.

[63] Voir les remarques de conclusion que les deux commissions ont formulées après avoir pris connaissance des rapports soumis par Israël : Commission sur les droits économiques, sociaux et culturels, 19ème session, E/C.12/1Add.27; Commission des droits de l'homme, 63ème session, 1998, CCPR/C/79/Add. 93.

Le présent rapport, en particulier le chapitre4, démontre comment Israël a utilisé des lois, des réglementations et des ordres militaires pour procéder à une annexion non déclarée des colonies dans l'Etat d'Israël. L'effet direct de l'annexion est l'application de systèmes juridiques différents et de différentes protections aux populations juives et palestiniennes vivant sur le même territoire. Alors que les colons jouissent de leur statut de citoyens d'un pays démocratique et de tous les droits que cela implique, les Palestiniens vivent sous une occupation militaire qui leur dénie ces droits.

Le transfert de certains pouvoirs à l'Autorité palestinienne dans le contexte des accords d'Oslo n'a guère changé la donne. La plupart des Palestiniens restent exposés aux contrôles administratifs de l'occupation israélienne et les FAI sont encore en mesure d'imposer, par exemple, de larges restrictions à leurs déplacements, de limiter les possibilités d'entrer dans les territoires occupés et d'en sortir, et de détenir des Palestiniens. De leur côté, les colons restent totalement soumis à un régime civil, tout comme les citoyens israéliens vivant à l'intérieur des Lignes vertes, et ils ne sont soumis en aucune façon à l'Autorité palestinienne. Cette situation, dans laquelle les droits d'un individu sont déterminés en fonction de sa nationalité, constitue une violation flagrante du droit à l'égalité.

Droit à la propriété

Le droit à la propriété est garanti par l'article 17 de la Déclaration universelle des droits de l'homme, qui stipule :

1. Toute personne, aussi bien seule qu'en collectivité, a droit à la propriété.

2. Nul ne peut être arbitrairement privé de sa propriété.

La protection de la propriété privée est ancrée dans le droit international humanitaire, notamment dans la réglementation de La Haye (article 46) et la quatrième convention de Genève (article 53). Le droit israélien reconnaît ce droit dans la Section 3 de la Loi fondamentale sur la dignité humaine et la liberté, qui stipule que «La propriété d'une personne ne doit pas être violée».

Le chapitre trois examine le système juridico-administratif qu'a créé Israël pour contrôler les terres destinées à la création ou à l'agrandissement de colonies. Du fait que certaines de ces terres appartenaient à titre privé ou collectif à des Palestiniens et que les colonies étaient d'emblée illégales, les saisies de terres ont violé dans de nombreux cas le droit des Palestiniens à la propriété. En outre, les procédures utilisées par Israël pour s'emparer de terres impliquent des violations flagrantes et arbitraires de la légalité.

Droit à un niveau de vie suffisant

L'article 11 du Pacte international sur les droits économiques, sociaux et culturels stipule :

> «Les Etats parties au présent Pacte reconnaissent le droit de toute personne à un niveau de vie suffisant pour elle-même et sa famille, y compris une nourriture, un vêtement et un logement suffisants, ainsi qu'à une amélioration constante de ses conditions d'existence.»

Le chapitre 7 traite d'un phénomène courant dans diverses régions de la Cisjordanie, à savoir l'emplacement de colonies à proximité immédiate de villes et villages palestiniens, ce qui limite leur développement urbain, du moins dans une direction. Dans certains cas, on installe délibérément la colonie à côté d'une communauté palestinienne, là où celle-ci se développerait naturellement. Ce phénomène est analysé au chapitre 8, qui examine l'effet de la colonie d'Ari'el sur les résidents palestiniens de la région.

Un autre phénomène qui affecte les options de développement urbain dont disposent les Palestiniens est le recours discriminatoire à des mesures d'aménagement, dont il est question au chapitre 6. Israël a utilisé la législation militaire pour modifier le mécanisme de planification en vigueur précédemment. Ce changement avait essentiellement pour but de servir les intérêts de l'administration et des colons israéliens, tout en ignorant presque totalement les besoins de la population palestinienne.

Dans certaines zones, le blocage du développement urbain palestinien a créé des pénuries de logement et fait augmenter la densité de population. Ces conséquences pénibles ont été dues en partie à la politique de colonisation et au système de planification discriminatoire d'Israël, ce qui a eu pour effet d'enfreindre le droit des Palestiniens à un logement suffisant et à une amélioration constante de leurs conditions d'existence.

Comme le souligne le chapitre 8, la saisie de terres à usage agricole ou pastoral a souvent affecté sérieusement la principale source de revenu de familles entières. Ce tort qui leur a été causé a incontestablement entraîné une nette dégradation des conditions de vie, violation, en vertu de l'article 11 du Pacte international sur les droits économiques, sociaux et culturels cité plus haut, et de son article 6 qui reconnaît le droit de chacun au travail et à un revenu tiré du travail de son choix.

Liberté de circulation

L'article 12 du Pacte international sur les droits civils et politiques stipule que quiconque a le droit à la liberté de circulation, sans restrictions, dans son pays. Le droit de se déplacer est important car il est indispensable pour pouvoir vivre normalement et jouir de nombreux autres droits définis par le droit international, tels que le droit au travail, à la santé, à l'éducation et le droit de faire vivre sa famille.

Le chapitre 7 montrera que pour une large part, les colonies créées le long de la région des collines centrales l'ont été près de la route 60, principal axe nord-sud de la Cisjordanie. Pour assurer la sécurité et la liberté de circulation des colons dans cette zone, les FAI installent des points de contrôle sur cette route et ils imposent parfois de sérieuses restrictions au déplacement des Palestiniens sur certains de ses tronçons. Depuis le début de l'Intifada d'Al-Aqsa, et la recrudescence des attaques de voitures israéliennes sur les routes par des Palestiniens, les FAI ont renforcé les restrictions au point d'empêcher pratiquement ceux-ci d'utiliser les routes empruntées par les colons.

C. DOMMAGES CORPORELS CAUSES AUX COLONS

Depuis le début de l'occupation, les colons sont souvent victimes d'attaques de la part de résidents palestiniens. La gravité des attaques varie et va de jet de pierres, qui ne causent que des dégâts matériels, à des tirs et à la pose d'explosifs, qui ont tué des civils israéliens. Le nombre d'attaques a augmenté durant la première Intifada (1987-1993) et depuis celle d'Al-Aqsa, elles sont courantes et de plus en plus graves.

Les responsables de l'Autorité palestinienne et des organisations non gouvernementales ont suggéré, parfois ouvertement, que l'illégalité des colonies justifiait l'usage de tous les moyens pour les combattre. C'est ainsi que le ministre des questions relatives aux prisonniers de l'Autorité palestinienne Heysham'Abd al-Razel, a justifié une attaque contre un bus scolaire transportant des

enfants de la colonie de Kfar Darom, dans la Bande de Gaza, qui a tué deux civils et en a blessé neuf, dont cinq enfants, en déclarant : «L'auteur de cette attaque était un Palestinien. Il l'a commise contre des gens qui occupent notre terre. De notre point de vue, toute action contre l'occupation est légale.»[64]

Dans un autre cas, un certain nombre d'ONG palestiniennes ont publié une déclaration dans la presse disant que le droit de s'opposer à l'occupation légitimait les attaques de Palestiniens contre les colons. Ces ONG ont ajouté que les colonies avaient une fonction militaire et que par conséquent, les colons ne pouvaient prétendre au statut de civils[65]. Un autre argument invoqué parfois par les Palestiniens dans ce contexte est que les colons commettent des actes de violence contre eux et que les autorités israéliennes n'interviennent pas et n'appliquent pas la loi[66].

Les arguments de ce genre vont à l'encontre des principes fondamentaux du droit international relatif aux droits de l'homme et du droit international humanitaire. Ces principes font partie du droit coutumier international qui est contraignant pour tous les individus et tous les groupes, et non seulement pour les Etats signataires des conventions pertinentes. Le droit de lutter contre l'occupation en général et les colonies en particulier ne justifie pas que l'on néglige ces principes fondamentaux.

Les graves atteintes à l'intégrité physique des colons constituent une violation flagrante du droit à la vie et à la sécurité des personnes, qui est garanti par l'article 3 de la Déclaration universelle des droits de l'homme et l'article 6 du Pacte international sur les droits civils et politiques. En outre, un des principes fondamentaux du droit international humanitaire est l'obligation de distinguer entre les combattants et les civils qui ne participent pas au combat. Collectivement, les colons, parmi lesquels figurent des enfants, constituent manifestement une population civile et en tant que telle, ils ne font pas partie des FAI. Certains colons sont membres des forces de sécurité mais cela n'affecte pas le statut de civil des autres colons, qui ne constituent pas des cibles légitimes pour une attaque.

L'argument de l'ONG palestinienne selon lequel les colonies et les colons servent tous les besoins militaires d'Israël est imprécis. Comme on le verra au chapitre trois, Israël a invoqué le même argument pour justifier la légalité de la réquisition de propriétés palestiniennes privées afin de créer des colonies. Mais en 1979, la Cour suprême a rejeté cet argument (voir le passage sur *Elon Moreh* plus loin). Depuis lors, Israël n'a pas invoqué cet argument. Paradoxalement, si l'argument des Palestiniens (et celui d'Israël depuis 1979) selon lequel les colonies répondent à des fins militaires est valable, elles ne seraient pas contraires au droit international .

Les attaques individuelles commises par des colons contre des Palestiniens n'affectent pas le statut civil de leurs auteurs et certainement pas celui de leurs familles et voisins dans les colonies. Ce statut n'affecte naturellement pas le droit pour les Palestiniens victimes d'une attaque d'utiliser la force nécessaire pour se défendre.

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[64] Keith B. Richburg, «Les attaques au missile ne font que renforcer la détermination des Palestiniens», *International Herald Tribune*, 22 novembre 2000.

[65] *Al-Quds*, 3 juillet 2001. Cette déclaration a été publiée pour dénoncer un communiqué de presse de B'Tselem qui condamnait les attaques commises contre les colons.

[66] Pour de plus amples détails sur les actes de violence commis par les colons et sur la non application de la loi à leur encontre, voir B'Tselem, *L'application de la loi aux civils israéliens dans les Territoires occupés,* mars 1994; B'Tselem, *Un accord tacite : l'application de la loi israélienne aux colons dans les Territoires occupés*, mars 2001; B'Tselem, *Les mains libres : les colons-miliciens et la non application de la loi israélienne*, octobre 2001.

CHAPITRE 3

LES MECANISMES D'APPROPRIATION DES TERRES

Depuis le début de l'occupation, Israël a pris le contrôle de centaines de milliers de dunams (1 dunam = 1000 mètres carrés) dans l'ensemble de la Cisjordanie, avec pour objectif principal de créer des colonies et de disposer de réserves de terres pour les agrandir. Cela a été fait suivant un mécanisme juridico-administratif complexe dont l'élément central est la déclaration et l'enregistrement des terres comme «propriétés domaniales». De plus, Israël utilise trois méthodes complémentaires pour s'emparer de terres : la réquisition à des fins militaires, la déclaration de terres comme bien vacant et l'expropriation dans l'intérêt public. En outre, Israël a également aidé ses citoyens juifs à acheter des terres sur le marché libre pour créer de nouvelles colonies[67]. Par ces méthodes, Israël a pris le contrôle d'environ cinquante pour cent de la Cisjordanie, compte non tenu de Jérusalem-Est (voir carte).

Malgré les diverses méthodes employées, celles-ci ont toutes été perçues –et le restent encore- par toutes les parties concernées, à savoir le gouvernement israélien, les colons et les Palestiniens, comme un seul et même mécanisme répondant à une seule fin : créer des colonies civiles dans les Territoires occupés. C'est manifestement le cas des terres sur lesquelles sont construites certaines colonies composées d'un assemblage hétéroclite de terrains qu'Israël s'est appropriés par plusieurs moyens différents. C'est ainsi que sur la colonie de Shilo (en 1985), environ 740 dunams ont été saisis à des fins militaires, 850 dunams ont été déclarés propriétés domaniales et 41 dunams ont été expropriés dans l'intérêt public[68].

La création de colonies civiles dans les Territoires occupés est interdite par la quatrième convention de Genève et la réglementation de La Haye. Du fait que le but du mécanisme utilisé était précisément de s'emparer de terres en Cisjordanie, la saisie proprement dite constitue une violation du droit international. En prenant le contrôle des terres, Israël a également enfreint de façon flagrante les principes de justice naturelle incarnés dans de nombreuses décisions de la Cour suprême.

Utiliser les terres saisies dans l'intérêt exclusif des colonies tout en interdisant aux Palestiniens de les utiliser de quelque façon que ce soit, est interdit et illégal en soi. Ce serait le cas même si le processus par lequel les terres ont été saisies était juste et conforme au droit international et à la législation jordanienne. Cette utilisation exclusive des terres a gravement limité les possibilités de développement urbain et agricole des Palestiniens (voir chapitre7). En tant que puissance occupante dans les Territoires occupés, Israël n'a pas le droit de déterminer l'usage qui doit être fait de terres publiques en faisant fi des besoins d'une population toute entière.

D'une façon générale, la Cour suprême utilise elle aussi le mécanisme qui sert à prendre le contrôle des terres, et elle joue un rôle important en donnant une illusion de légalité. Initialement, elle a accepté l'argument de l'Etat selon lequel les colonies répondaient à des impératifs militaires, l'autorisant ainsi à saisir des terres privées pour y installer des colonies. Quand le processus de déclaration de terres comme propriétés domaniales a commencé, la Cour suprême a refusé d'intervenir et d'empêcher le nouveau processus.

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[67] Beaucoup des termes techniques utilisés dans le présent chapitre pourraient être mis entre guillemets compte tenu de la distance qui sépare leur signification apparente et l'utilisation effective qui en a été faite sur le terrain. Nous nous sommes abstenus de le faire car notre objectif majeur dans ce chapitre est précisément d'illustrer l'utilisation qui est faite des mécanismes juridiques à des fins autres que celles pour lesquelles ils ont prévus.

[68] Usamah Halabi, Aron Turner et Meron Benvenisti, *L'aliénation de terres en Cisjordanie : analyse juridique et géographique*, Jérusalem : projet de données sur la Cisjordanie, 1985, p. 85.

Chacune de ces méthodes repose sur une base juridique différente, combinant de différentes façons et à divers degrés la législation en vigueur avant l'occupation israélienne, notamment des vestiges du droit ottoman et de celui du Protectorat britannique, avec le système juridique jordanien et les ordres donnés par les commandants des Forces armées d'Israël. Dans ce chapitre, on examinera le contexte juridique de chacune des méthodes de saisie et l'on décrira leurs modalités d'application par Israël.

A. SAISIE A DES FINS MILITAIRES

En vertu du droit coutumier humanitaire, la puissance occupante est tenue de protéger les biens des résidents du territoire occupé et de ne pas les exproprier[69]. Toutefois, elle peut prendre temporairement possession de terres et de bâtiments privés appartenant à des habitants du territoire occupé pour y loger ses troupes et ses services administratifs. Une telle saisie est par définition temporaire et en conséquence, la puissance occupante n'acquiert pas de droits de propriété sur les terres et les bâtiments réquisitionnés et elle n'a pas le droit de les revendre. De plus, elle est tenue de payer une compensation aux propriétaires pour l'utilisation de leurs biens[70].

Compte tenu de cette exception, le commandement militaire israélien a, entre 1968 et 1979, donné des douzaines d'ordres de réquisition de terres privées en Cisjordanie, prétendant que «cela était nécessaire pour répondre à des besoins militaires impératifs et urgents»[71]. Durant cette période, près de 47 000 dunams de terres privées ont été réquisitionnés, le plus souvent en vue de la création de colonies. Les colonies suivantes figurent parmi celles créées sur ces terres : Matitiyahu, Neve Zuf, Rimonim, Bet El, Kokhav, Hashahar, Alon Shvut, El'azar, Efrat, Har Gilo, Migdal Oz, Gittit, Yitav et Qiryat Arba[72].

Des Palestiniens ont adressé à plusieurs reprises à la Cour suprême des pétitions pour se plaindre de la saisie de leurs terres, considérant que leur utilisation pour la création de colonies était contraire aux exigences du droit international humanitaire[73]. Jusqu'au jugement concernant Elon Moreh (voir plus loin), la Cour suprême a rejeté toutes ces pétitions et accepté l'argument de l'Etat selon lequel la saisie de terres est légale parce que les colonies jouent un rôle clé d'un point de vue militaire pour la défense du pays. Selon le Procureur Vitkon :

Du simple point de vue de la sécurité, il ne fait pas de doute que la présence dans le territoire administré de colonies –même «civiles»- de ressortissants du pays qui en assure l'administration contribue considérablement à la sécurité du territoire et aide l'armée à exercer ses fonctions.

Il n'est nullement besoin d'être un expert des questions militaires et de défense pour se rendre compte que des éléments terroristes opèrent plus facilement dans un territoire occupé exclusivement par une population indifférente ou favorable à l'ennemi que dans un territoire où se trouvent également

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[69] Voir notamment l'article 46 de la réglementation jointe à la convention de La Haye (IV) sur le respect des lois et des coutumes de la guerre sur terre de 1907, et l'article 53 de la quatrième convention de Genève.

[70] Cette norme n'est pas fixée explicitement, mais peut être déduite de l'interprétation acceptée de la réglementation de La Haye. Voir Yoram Dinstein, *Les lois de la guerre*, p. 224.

[71] C'est là la formule type qui figure dans les ordonnances. Voir par exemple *Bet El, supra*, note de bas de page 59.

[72] Halabi *et al. Transfert de terres en Cisjordanie*, p. 83.

[73] Les pétitions les plus connues sont *Bet El*; HCJ 834/78, *Salama* et al. *contre le ministère de la Défense* et al.*, Piskei Din* 33(1)971; HCJ 258/79, *Amira et al. contre le ministère de la Défense et al., Piskei Din*, 34 1) 90.

des personnes susceptibles de les observer et d'informer les autorités de tout déplacement suspect. Auprès de ces personnes, les terroristes ne trouveront ni logement, ni assistance, ni matériel. Ce sont là des questions simples sur lesquelles il serait vain de s'attarder[74].

Dans ce cas, les juges n'ont par ailleurs constaté aucune contradiction entre l'obligation, en vertu du droit humanitaire, de faire en sorte que la saisie de terres privées soit temporaire et ne lèse pas les droits de son propriétaire, et le fait que les colonies permanentes, notamment les infrastructures matérielles, étaient installées sur des terres saisies[75].

L'argument selon lequel les colonies répondent à des impératifs militaires a pu être facilement adopté sous les gouvernements Ma'arach, qui ont agi selon le plan Alon. Toutefois, dans les milieux d'extrême droite tels que le Gush Emunim, cet argument a été jugé irrecevable. Ils envisageaient les colonies dans une optique religieuse et celles-ci n'étaient donc pas justifiées pour des raisons de sécurité ou définies –à des fins purement formelles- comme des communautés temporaires. Après l'arrivée au pouvoir du Likoud en 1977, cette conception a gagné du terrain. Ni le Gush Emunim, ni certaines sections du gouvernement dirigé par le Likoud n'étaient disposés à justifier la création des colonies par des considérations de sécurité tout en définissant –quoique de façon formelle- ces colonies comme des établissements temporaires. Cette approche soutenue par certains ministres du gouvernement du Likoud formé en 1977, a finalement abouti à la décision concernant Elon Moreh. A la suite de la décision de la Cour à ce sujet, on a mis fin à la politique consistant à saisir des terres privées pour y installer des colonies.

La pétition d'*Elon Moreh* a été soumise à la Cour suprême en juin 1979 par plusieurs résidents du village de Rujeib, au sud-est de Naplouse. Cette pétition demandait à la Cour d'annuler un ordre donné par le commandant des FAI dans la région pour réquisitionner environ 5000 dunams[76]. Les terres concernées par cet ordre de saisie étaient destinées à accueillir une colonie appelée Elon Moreh. Les travaux de construction des infrastructures nécessaires ont commencé le jour même où l'ordre a été donné. La réponse de l'Etat, comme d'habitude jusqu'à ce cas, a été que la colonie répondait à des impératifs militaires et qu'en conséquence, les ordres de réquisition étaient légaux. Mais à la différence de cas précédents, des colons qui avaient l'intention de vivre à Elon Moreh ont signé eux aussi la pétition. Dans une déclaration écrite soumise à la Cour, un des dirigeants du Gush Emunim, Menachem Felix, a expliqué comment il envisageait les objectifs de la saisie :

Fonder des ordres de réquisition sur des motifs de sécurité au sens technique, étroit du terme plutôt que sur leur portée fondamentale et complète comme elle est expliquée plus haut ne peut se concevoir qu'ainsi : la colonie est temporaire et remplaçable. Nous rejetons catégoriquement cette conclusion effrayante. Elle est incompatible avec la décision du gouvernement concernant notre installation à cet endroit. Dans tous nos contacts et sur la base des nombreuses promesses que nous avons reçues des ministères du gouvernement et surtout du Premier ministre en personne - et l'ordre de saisie en question a été donné sur son intervention personnelle- chacun voit dans Elon Moreh une colonie juive non moins permanente que Deganya ou Netanya[77].

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[74] *Bet El*, p. 119.

[75] Voir en particulier la décision du Juge Ben Porat au sujet de *Bet El.*

[76] HCJ 390/79, *Dweikat* et al. *contre le Gouvernement israélien, Piskei Din* 34 1) (ci-après *Elon Moreh*).

[77] *Elon Moreh,* p. 21-22. Deganya et Netanya sont respectivement un kibboutz et une ville situés à l'intérieur de la Ligne verte.

Chaim Bar Lev, ancien chef d'état-major de l'armée, a également contesté l'argument selon lequel la création d'Elon Moreh répondait à un impératif militaire. Dans une déclaration écrite soumise à la Cour au nom des pétitionnaires, Bar Lev a déclaré que «autant que je sache en tant que militaire de carrière, Elon Moreh ne contribue pas à la sécurité d'Israël»[78].

A la lumière de ces deux déclarations, qui ont invalidé l'argument de la nécessité militaire, et d'après de nombreuses données fournies à la Cour sur les pressions que le Gush Emunim a exercées sur le gouvernement pour qu'il approuve le maintien de la colonie, la Cour suprême a ordonné aux FAI de la démanteler et d'en rendre les terres à leurs propriétaires. Le résultat immédiat de cette décision a été qu'un autre site a été trouvé pour la colonie d'Elon Moreh. Mais au delà de cette décision, on a vu un changement radical en ce qui concerne les instruments juridiques utilisés jusque là par Israël pour créer et agrandir les colonies.

Depuis *Elon Moreh*, on n'a pas recouru à des ordres de saisie militaire pour créer et agrandir des colonies. Toutefois, ce procédé est à nouveau largement utilisé depuis 1994 pour construire des rocades. Cela s'est fait dans le cadre des plans préparant le redéploiement des forces des FAI dans les Territoires occupés à la suite des Accords d'Oslo entre Israël et l'Autorité palestinienne.

L'un des principaux éléments de ce plan a été la construction d'un vaste réseau de rocades destinées à répondre aux quatre besoins clés définis par le ministère de la Défense pour faciliter le déplacement des civils israéliens dans les Territoires occupés : leur permettre de voyager dans les Territoires occupés sans passer par les centres de population palestinienne; permettre aux Israéliens de traverser la Ligne verte par le plus court chemin; maintenir «un tissu social interne» dans les blocs de colonies israéliennes, et empêcher les Palestiniens de passer par les colonies[79]. Selon un examen effectué par le Contrôleur des comptes de l'Etat, entre août 1994 et septembre 1996, l'armée a donné des ordres de réquisition dans le cadre de ce plan pour 4386 dunams de terres privées, en vue de la construction de dix-sept rocades[80].

Dans un cas, des résidents palestiniens ont adressé une pétition à la Cour suprême contre des ordres de réquisition visant leurs terres. Ils ont notamment soutenu que la construction des rocades pour les colonies ne pouvait pas être considérée comme répondant à un impératif militaire. La Cour a rejeté la pétition, acceptant l'argument de l'Etat selon lequel la construction des routes répondait à des «besoins de sécurité vitaux»[81].

Lorsque l'Intifada d'Al-Aqsa a commencé vers la fin de 2000, une nouvelle vague de réquisitions a débuté sous la forme d'ordonnances militaires. Des terres privées ont été saisies pour construire de nouvelles rocades et remplacer des routes ou d'autres rocades qui n'étaient plus sûres[82]. Les nouvelles routes étaient censées répondre aux besoins des colons qui, depuis le début de la

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[78] *Elon Moreh*, p. 24.

[79] Contrôleur des comptes de l'Etat, rapport annuel 48 (en hébreu), Jérusalem, 1998, p. 1032-1033.

[80] Contrôleur des comptes de l'Etat, rapport annuel 48, p. 1036. D'autres rocades incluses dans ce plan ont été construites sur des terres saisies sur des ordres d'expropriation dans l'intérêt public, méthode évoquée plus loin.

[81] HCJ 2717/96, *Wafa* et al. *contre le Ministre de la Défense* et al. *Piskei Din* 50 2) 848.

[82] Par exemple, voir un rapport sur la réquisition de quelque trois cents dunams de terres dans les environs d'al-Khadr le 5 septembre 2001 (ARIJ, *Une nouvelle ordonnance militaire pour saisir 300 dunams dans le village d'al-Khader*, septembre 2001, www.poica.org).

nouvelle Intifada, étaient fréquemment attaqués par des Palestiniens lorsqu'ils voyageaient par la route. Selon un rapport de presse, huit nouvelles rocades en sont actuellement à divers stades de construction, pour un coût total de 228 millions de nouveaux schekels[83].

B. TERRES DECLAREES «PROPRIETES DOMANIALES»

La nécessité de faire face au nombre croissant de pétitions soumises à la Cour suprême de justice, ajoutée –comme en témoigne l'affaire d'Elon Moreh- au fait que la Cour peut contrecarrer la création d'une colonie, a amené les colons et les partis d'extrême droite à faire pression sur le gouvernement pour qu'il trouve un autre moyen de saisir des terres en Cisjordanie. La solution trouvée a consisté à manipuler la Loi foncière ottomane de 1858 (ci-après appelée loi foncière)[84]. Par cette méthode, environ quarante pour cent de la superficie de la Cisjordanie ont été déclarés «propriétés domaniales». Selon Pliya Albeck, ancien chef du Département civil du Bureau du procureur général, environ 90 pour cent des colonies ont été créées sur des terres déclarées propriétés domaniales[85].

L'argument juridique invoqué par Israël pour engager cette procédure repose sur deux articles clés de la réglementation de La Haye de 1907. Le premier, l'article 47, exige de l'occupant qu'il respecte les lois en vigueur dans le territoire occupé. Les éléments essentiels du droit foncier ont été repris par la législation du mandat britannique et ultérieurement par la législation jordanienne et ils étaient par conséquent en vigueur en 1967 au moment de l'occupation israélienne. Le second fondement juridique est l'article 55, qui autorise une puissance occupante à gérer les propriétés du pays occupé (dans le territoire occupé) et à en tirer profit, tout en préservant la valeur et l'intégrité desdites propriétés[86]. Israël a invoqué cette clause pour décrire la création des colonies comme une action légale consistant à réaliser des profits tout en maintenant les propriétés de l'Etat jordanien[87].

L'utilisation de propriétés domaniales pour créer et agrandir des colonies, à la différence de l'utilisation de terres privées saisies sous des prétextes de sécurité militaire, a permis à la Cour suprême d'esquiver le problème. Les pétitions signées par des Palestiniens pour dénoncer la déclaration de terres comme propriétés domaniales et contre l'existence de la Commission d'appel (voir plus loin) ont été rejetées par la Cour suprême qui a affirmé la légalité des mécanismes utilisés[88]. Après avoir reconnu le droit de l'Etat sur ces terres, la Cour suprême a refusé de reconnaître le droit des Palestiniens à s'opposer à leur utilisation, prétendant qu'ils ne pouvaient prouver qu'ils étaient personnellement lésés. Etant donné que l'on n'a jamais soumis à la Cour suprême de pétitions contestant la légalité des règlements en vertu de la réglementation de La Haye, la Cour suprême n'a jamais eu à se prononcer à ce sujet.

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[83] Ze'ev Schiff, «La folle marche des rocades», *Ha'aretz»,* 15 février 2002. Les routes revêtues sont la route Teqoa-Noqedim (rocade de Za'tara), la route menant à l'entrée nord d'Efrat, celle qui dessert Eli-Zahav et la route trans-samaritaine, la route Ari'el-Yatma, la rocade près de Negohot, la rocade d'Auja, la route contournant Ya'bad par l'ouest et la route Qedar-Ma'ale Aduminim.

[84] Cette loi était en vigueur en Israël jusqu'à son remplacement en 1970 par une loi différente adoptée par la Knesset, la loi foncière 5729-1969.

[85] Pliya Albeck, *Les terres de Judée et de Samarie,* (en hébreu), (texte d'une conférence donnée à Bet Hapraklit le 28 mai 1985, Ordre des avocats israéliens), p.5.

[86] Pour de plus amples détails sur les dispositions auxquelles est soumise la puissance occupante concernant les propriétés domaniales dans un territoire occupé, voir Dinstein, *Les lois de la guerre*, p. 230-231.

[87] Albeck, *Les terres de Judée et de Samarie,* p.8 et 9 ; Eyal Zamir, *Les propriétés domaniales en Judée et en Samarie-examen juridique,* n° 12 (en hébreu) (Jérusalem : Jerusalem Institute for Israel Studies, 1985), p. 42.

[88] Voir par exemple HCJ 81/285, *Fadil Muhammad a-Nazar et al. contre le Commandant de Judée et de Samarie* et al., *Pikei Din* 36 1) 701.

Le droit foncier ottoman

Le droit foncier ottoman définit cinq types de possession ou de propriété des terres[89].

Le *mulk* s'applique aux terres totalement privées. La proportion des terres de Cisjordanie relevant de cette catégorie est négligeable et celles-ci se trouvent surtout dans les zones urbaines construites[90]. Les terres soumises au *wakf* se subdivisent en deux sous-catégories : celles destinées à des activités religieuses ou culturelle et celles qui sont utilisées à d'autres fins, et qui sont protégées des risques de confiscation en vertu des lois de l'Islam[91].

D'une façon générale, Israël s'est abstenu de prendre le contrôle de ces deux types de terre.

Les terres *miri* sont situées à proximité de lieux de colonisation et se prêtent à l'agriculture. Un particulier peut acquérir ce type de terre en la détenant et en la travaillant pendant dix années consécutives[92]. Si un propriétaire de cette catégorie néglige totalement de cultiver sa terre pendant trois années consécutives pour des raisons autres que celles reconnues par la loi (par exemple s'il est appelé sous les drapeaux, ou si la terre est mise en jachère pour des raisons techniques), la terre est alors considérée comme *makhlul*. En pareil cas, l'Etat peut en prendre possession ou en transférer les droits à une autre personne. Cette disposition du droit foncier se justifie par le fait d'offrir une incitation en assurant que la plus grande superficie de terre possible est exploitée, donnant des produits agricoles qui peuvent ensuite être taxés[93].

Une terre *mawat* («morte») est une terre qui se trouve à une demie-heure à pied d'une colonie, ou une terre «où le bruit le plus fort fait par une personne à l'endroit le plus proche de la colonie sera inaudible»[94]. D'après la définition officielle, cette terre devrait être vide et non utilisée par qui que ce soit. Dans ce cas, l'Etat est tenu de s'assurer qu'elle ne fait l'objet d'aucune activité illégale[95]. La terre *matruka* est à usage public, le «public» étant constitué par les habitants d'un village particulier, comme dans le cas des pâturages ou des cimetières, ou par tous les habitants du pays, comme dans le cas des routes[96].

Une autre forme de propriété, connue sous le nom de *musha'a*, existe parallèlement aux autres types mentionnés plus haut dans de nombreuse parties de la Cisjordanie. Selon cette formule, les terres appartiennent collectivement aux habitants de chaque village. Chaque famille est responsable de l'exploitation d'une certaine partie de la terre durant une période fixe, après quoi on procède à une rotation des parcelles[97]. Bien que cette méthode n'ait pas été reconnue par le droit foncier, ni dans la législation britannique ou jordanienne qui l'a absorbé, elle continue à être pratiquée.

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[89] *Les lois relatives à la planification, la construction et aux terres en Judée et en Samarie,* éd. Maj. Aharon Mishnayot (bureau du procureur général aux forces armées et administration civile de Judée et de Samarie) (en hébreu), p. 425.

[90] Kenneth Stein, *La question foncière en Palestine, 1917-1939*, Chapel Hill, University of North Carolina Press, 1984, p. 11.

[91] Raja Shehade, *Le droit foncier-Questions relatives aux colonies et aux terres sous occupation militaire israélienne*, Jérusalem, Passia, 1983, p. 15-16.

[92] Section 78, *Le droit foncier ottoman* dans *Les lois relatives à la planification, à la construction et aux terres*, p. 528.

[93] Schehade, *Droit foncier*, p. 22-23.

[94] Section 6. Droit foncier ottoman, dans *Les lois relatives à la planification, à la construction et aux terres*, p. 427.

[95] Zamir, *Droit foncier en Judée et en Samarie*, p. 18.

[96] *Ibid.*, p. 16.

[97] Stein, *La question foncière en Palestine*, p.14-15.

Politique suivie

La déclaration de terres comme propriétés domaniales en Cisjordanie s'est fondée sur l'ordonnance relative aux propriétés domaniales (Judée et Samarie) (n° 59), 5727-1967, qui autorisait la personne désignée par le Commandant des FAI dans la région à prendre possession des propriétés appartenant à un «Etat ennemi» et à les gérer à sa guise[98]. Cet ordonnance, qui date de peu après le début de l'occupation, a été utilisée jusqu'en 1979 pour prendre le contrôle de terres enregistrées au nom de l'Etat jordanien. Des études initiales ont révélé que ces terres couvraient une superficie d'environ 527.000 dunam[99]. Un autre examen des titres de propriété turcs et britanniques durant les cinq premières années d'occupation ont révélé que 160.000 dunams supplémentaires pouvaient être considérées comme des propriétés domaniales enregistrées.

En conséquence, jusqu'en 1979, le Conservateur des propriétés domaniales (ci-après appelé «le conservateur») a estimé qu'une superficie de 687 000 dunams, représentant environ treize pour cent de la superficie totale de la Cisjordanie constituaient des propriétés domaniales[100]. Les gouvernements dirigés par le Parti travailliste jusqu'en 1977 ont utilisé une partie de ces terres pour créer des colonies dans les limites des frontières définies par le plan Alon. Cette zone incluait des terres achetées par des Juifs (des particuliers ou des «institutions nationales») avant 1948. Après la guerre de 1948, ces terres étaient détenues et gérées par le Conservateur jordanien des propriétés ennemies conformément aux règles fixées par une ordonnance de 1939[101]. Selon une estimation, la superficie totale de ces terres serait d'environ 25 000 dunams. Dans l'ensemble, elles sont surtout concentrées à Gush Ezyon, au sud de Ramallah et autour de Tulkarm. Il existe également des parcelles plus petites à Jérusalem et Gaza[102].

En décembre 1979, après l'affaire d'*Elon Moreh,* le Conservateur a commencé, sous l'égide du Département civil du Bureau du Procureur général, à réaliser une étude détaillée de tous les registres actuellement disponibles dans les bureaux régionaux des Services du cadastre jordaniens. De plus, l'administration civile a lancé un projet visant à dresser systématiquement la carte de toutes les terres cultivées en utilisant des photographies aériennes prises régulièrement. Cette double étude a abouti au repérage et à la délimitation des terres que l'Etat avait le droit de saisir en vertu du droit foncier ottoman et des lois jordaniennes qui s'en sont inspirées[103].

— Les terres *miri* non cultivées pendant au moins trois années consécutives et devenaient donc *makhkul.*

— Les terres *miri* cultivées depuis moins de dix ans (au plus) de sorte que le cultivateur n'avait pas encore fait valoir ses droits de propriété.

— Les terres considérées comme *mawat* du fait de leur éloignement du village le plus proche.

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[98] Ordre concernant les propriétés domaniales (Judée et Samarie) (n° 59), 5727-1967, dans *Les lois relatives à la planification, à la construction et aux terres*, p. 520-523.

[99] Meron Benvenisti et Shlomo Khayat, *Atlas de la Cisjordanie et de Gaza,* p. 60.

[100] *Ibid.,* p. 61.

[101] Pour de plus amples détails sur le statut juridique de cette terre, voir Zamir et Benvenisti, *«Terres juives».*

[102] *Ibid*., p. 27.

[103] Le droit foncier ottoman a été intégré à la législation jordanienne sous la forme d'un certain nombre de lois adoptées au fil des ans. Toutefois, la loi déterminant quelle terre doit être considérée comme propriété domaniale est la loi n° 14 de 1961 — loi sur la protection des propriétés domaniales, dans *Les lois relatives à la planification, à la construction et aux terres*, p. 501-502.

Au cours de ces enquêtes, le Conservateur a estimé qu'environ un million et demi de dunams de terres[104], soit quelque vingt-six pour cent de la superficie de la Cisjordanie, appartenaient à une de ces catégories. Après le stade du repérage, les terres ont été déclarées propriétés domaniales, ce qui s'est fait en plusieurs temps. Tout d'abord, les décisions et documents relatifs aux terres destinées à être enregistrées comme propriétés domaniales ont été transmis pour examen au Bureau du Procureur général en vue de décider si les terres pouvaient recevoir ce statut. En cas de décision positive, le Conservateur commençait à intervenir, transmettant le dossier au bureau de district responsable de la zone dans laquelle se trouvaient les terres. Le représentant du Conservateur dans ce bureau convoquait les *mukhtars* des villages proches de la terre déclarée propriété domaniale, les emmenait sur place et leur montrait les limites de la zone considérée comme propriété domaniale par le Conservateur[105]. Celui-ci chargeait ainsi les *mukhtars* d'informer ceux qui risquaient d'être lésés par sa décision de prendre possession d'une zone donnée.

Une fois la déclaration faite, ceux qui risquent d'être lésés par l'enregistrement avaient quarante-cinq jours pour faire appel devant une commission militaire[106].

Environ 800 000 dunams de terres ont été déclarés et enregistrés entre 1980 et 1984[107]. Par la suite, le rythme des déclarations a diminué, en raison de changements intervenus dans la composition du gouvernement après les élections (voir chapitre 1) mais aussi et surtout parce qu'à ce stade, les colonies s'étaient assuré d'énormes réserves de terres pour l'avenir prévisible. A plusieurs reprises, B'Tselem a demandé des informations à l'Administration foncière d'Israël concernant la superficie des terres actuellement enregistrées comme propriétés domaniales, mais n'a pas reçu de réponse.

La déclaration de centaines de milliers de dunams comme propriétés domaniales dans les Territoires occupés a été rendue possible essentiellement par le fait que beaucoup de terres n'étaient pas enregistrées au *tabu* (cadastre). Bien que le droit foncier ottoman ait rendu obligatoire l'inscription au cadastre de chaque parcelle, à l'époque, de nombreux habitants n'ont pas respecté cette règle. Cela tenait au désir de préserver le système de propriété collective (*musha'a*), à la volonté de se soustraire à l'impôt et à la crainte d'être mobilisé dans l'armée turque[108]. Les registres qui ont survécu à cette période sont vagues et ne permettent guère d'identifier une parcelle particulière. Ce n'est qu'en 1928, sous le mandat britannique, qu'a été introduit un processus systématique de levé de terrain pour l'ensemble des terres et d'enregistrement de la propriété avec des numéros d'identification pour les parcelles. Le processus de régularisation s'est poursuivi avec une lenteur extrême durant la période de souveraineté jordanienne sur la Cisjordanie. Au moment où Israël a occupé la Cisjordanie, le processus de réglementation avait été achevé pour environ un tiers de la superficie, en particulier dans la région de Jenine et dans la vallée du Jourdain[109]. Dans les zones où l'enregistrement n'avait pas été achevé, le droit de propriété a continué à s'exercer au fil des ans en fonction de la possession de la terre et de la reconnaissance mutuelle du lien existant entre chaque personne et une parcelle donnée.

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[104] Benvenisti et Khayat, *Atlas de la Cisjordanie et de Gaza*, p. 61.

[105] Zamir, *Les propriétés domaniales en Judée et en Samarie*, p. 33.

[106] Ordonnance relative aux Commissions d'appel (Judée et Samarie) (n° 172), 5727-1967, dans *Les lois relatives à la planification, à la construction et aux terres*, p. 536-541.

[107] Benvenisti et Khayat, *Atlas de la Cisjordanie et de Gaza*, p. 61.

[108] Stein, *La question foncière en Palestine*, p. 21.

[109] Zamir, *les propriétés domaniales en Judée et en Samarie*, p. 27.

Au début de l'occupation de la Cisjordanie par Israël, une ordonnance militaire a mis fin au processus de régularisation et d'enregistrement des droits des habitants de la Cisjordanie sur leurs terres[110]. Israël a justifié ce retard en prétendant qu'il fallait éviter de léser les personnes qui avaient quitté les lieux pendant la guerre et qui n'étaient donc pas en mesure de s'opposer à l'enregistrement de leur terre au nom de quelqu'un d'autre[111]. Toutefois, pour permettre à Israël de continuer à enregistrer les terres comme propriétés domaniales, il a été décidé que l'ordonnance ne s'appliquerait pas à l'enregistrement des terres au nom du Conservateur, et le processus de déclaration s'est accéléré sur la base de la loi jordanienne de 1964[112]. De plus, une autre ordonnance militaire a créé un cadastre spécial pour l'enregistrement des transactions foncières, les registres étant tenus par le Conservateur. Il s'agissait de permettre le transfert des droits d'usage des terres déclarées propriétés domaniales à un des organismes chargés des questions de colonisation, à savoir au ministère du logement ou à l'Organisation sioniste mondiale[113].

La Commission d'appel

La Commission d'appel militaire comprend trois membres nommés par le commandant, dont l'un doit avoir une formation juridique[114]. Lorsque cette commission entend des appels de Palestiniens à l'encontre d'une décision du Conservateur, elle part du principe que la charge de la preuve incombe toujours à la personne qui prétend qu'une certaine terre n'est *pas* propriété domaniale : «Si le Conservateur a confirmé, par un document écrit et signé, qu'une propriété donnée appartient au domaine public, celle-ci sera considérée comme propriété domaniale jusqu'à preuve du contraire»[115]. Si la Commission décide de rejeter un appel, ou si un appel n'a pas été présenté à temps, le processus est mené à bien et la terre est enregistrée au nom du Conservateur.

Il est extrêmement rare que la Commission d'appel annule le processus de déclaration et d'enregistrement de la terre d'un Palestinien comme propriété domaniale. Dans la plupart des cas, elle ne fait qu'entériner les décisions de l'administration militaire. La commission étant le seul organisme auprès duquel il peut être fait appel des décisions du Conservateur, son existence a permis aux autorités israéliennes de poursuivre le processus de déclaration de terres comme propriétés domaniales d'une part, tout en affirmant d'autre part que ce processus faisait l'objet d'un contrôle juridique.

Le premier obstacle auquel se sont heurtés les Palestiniens qui s'efforçaient d'empêcher que leurs terres soient enregistrées comme propriétés domaniales tenait à leur ignorance de la procédure. Les informations fournies par les *mukhtars* concernant la zone déclarée étaient souvent vagues parce que ceux-ci ne recevaient eux-mêmes que des informations partielles du Conservateur. Ce manque de clarté tenait aussi à ce qu'ayant été nommés par des militaires, les *mukhtars* avaient souvent des relations difficiles avec les habitants et préféraient souvent ne pas agir comme porte-parole des Israéliens pour faire connaître leurs décisions. En conséquence, c'est seulement lorsque la construction des colonies a commencé que les habitants ont été informés que leurs terres avaient été

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[110] ordonnance relative à la réglementation des terres et de l'eau (Judée et Samarie) (n° 291) 5729-1968, dans *Les lois relatives à la planification, à la construction et aux terres*, p. 542-543.

[111] Zamir, *Les propriétés domaniales en Judée et en Samarie*, p. 27. En ce qui concerne le degré de sincérité de cette justification, voir la Section C sur les propriétaires absents, dans le présent chapitre.

[112] Loi sur l'enregistrement des biens immobiliers précédemment non enregistrés, n° 6 pour 1964, dans *Les lois relatives à la planification, à la construction et aux terres*, p. 503.

[113] ordonnance relative à l'enregistrement des transactions portant sur certaines terres (Judée et Samarie) (n° 569), 5735-1974, dans *La législation en Judée et en Samarie,* ed. Zvi Preisler (en hébreu), Jérusalem, Ketubim, 1987, p. 105.

[114] Section 2 de l'ordonnance relative aux Commissions d'appel (Judée et Samarie) (n° 172), 5728-1967.

[115] Section 2 C de l'ordonnance relative aux propriétés domaniales, dans *Les lois relatives à la planification, à la construction et aux terres*, p. 522.

déclarées propriétés domaniales[116]. Etant donné que les travaux de construction commençaient généralement des mois, voire des années après la date de déclaration, les propriétaires des terres ne pouvaient pas s'adresser à la commission d'appel parce que le délai de quarante-cinq jours était écoulé depuis longtemps.

Le cas du *hamula* (clan) de Makhamara témoigne de ce problème. Quatre familles du *hamula* de Makhamara possédaient conjointement quelque 280 dunams de terres près de Yatta (district d'Hébron), au sud-ouest de la colonie de Ma'on. Les familles avaient exploité ces terres régulièrement pendant des années. A la fin de 1997, un colon de la colonie de Suseya est arrivé sur la parcelle et y a installé une caravane. Il s'est mis à menacer avec des armes à feu les membres du *hamula* , les empêchant de se rendre sur leur terres pour les cultiver. Après que la famille a porté plainte, au commissariat de Hébron, contre le colon qui s'était introduit illégalement sur leurs terres, un greffier représentant le Conservateur a informé les plaignants que la zone dans laquelle vivait le colon de Suseya avait été déclarée propriété domaniale en 1982. Pour sa part, le Conseil régional du Mt. Hébron a ajouté que la terre en question appartenait au conseil en vertu du contrat d'autorisation qu'il avait conclu avec l'Organisation sioniste mondiale en décembre 1983.

Le *hamula* de Makhamara, représenté par l'Association de défense des droits civils d'Israël, a protesté contre la Commission d'appel[117]. Le Conservateur a répondu que «conformément aux photos aériennes détenues par le défendeur (à savoir le Conservateur), les travaux de préparation des sols et de culture ont eu lieu plusieurs années auparavant dans une zone très rocheuse, de telle sorte que les auteurs du recours ne peuvent faire valoir aucun droit»[118]. Le Conservateur a précisé en outre que la zone dans laquelle le colon de Suseya avait installé sa caravane «avait été transférée à l'Organisation sioniste mondiale dans le cadre d'un accord et en conséquence, le défendeur fait savoir que les auteurs du recours ont laissé passer la date limite pour faire appel»[119]. La Commission d'appel est toujours saisie de ce cas[120].

Les Palestiniens qui sont informés de la déclaration à temps pour faire appel se heurtent à un autre obstacle qui les empêche de s'adresser à la Commission d'appel. La procédure est extrêmement coûteuse et implique le paiement d'une redevance lors de la soumission de l'appel[121], un levé de terrain précis effectué par un spécialiste sur les terres que le requérant revendique comme siennes[122], et les services d'un avocat pour préparer une déclaration écrite et représenter l'intéressé devant la Commission[123].

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[116] Depuis 1983, les *mukhtars* sont la seule source d'information pour les habitants parce que le Conservateur a cessé de joindre une carte à l'ordre de déclaration définissant les limites de la zone à laquelle s'applique l'ordonnance. Voir Raja Shehade, *Le droit de l'occupant, Israël et la Cisjordanie* (Washington Institute for Palestine Studies, 1988), p. 30.

[117] Appel 13/200, *Isma'il Alyan et al. contre le Conservateur des propriétés domaniales en Judée et en Samarie.*

[118] Paragraphe 2 de la réponse du Conservateur, *ibid.*

[119] Paragraphe 2 de la réponse modifiée du Conservateur, *ibid.*

[120] Récemment, les colons de Suseya ont également pris le contrôle d'autres terres à l'ouest de leur colonie, prétendant qu'il s'agissait de propriétés domaniales. Des Palestiniens vivent sur ces terres, surtout dans des baraquements et des grottes et ils pratiquent diverses cultures et l'élevage. En septembre 2001, ils ont fait appel devant la Cour suprême, demandant que les colons soient expulsés de leurs terres et qu'eux-mêmes soient à les cultiver en toute tranquillité. L'Etat n'a pas encore répondu à cette pétition (HCJ 7530/01, *'Ali Khalil Musalem Sharitih et al. contre l'Administration civile en Judée et en Samarie* et al.*).*

[121] Section 3 D) des dispositions concernant les modalités juridiques des appels soumis aux Commissions d'appel (Judée et Samarie), 5747-1987, dans *Les lois relatives à la planification, à la construction et aux terres,* p. 567.

[122] *Ibid*., section7.

[123] *Ibid.*, section 3 C).

Ceux qui surmontent ces obstacles et font appel à temps de la décision du Conservateur devant la Commission ont de grandes difficultés à prouver leurs droits sur des terres déclarées propriétés domaniales. Etant donné que les déclarations concernent généralement des zones où ni les Britanniques ni les Jordaniens n'enregistraient les terres, les audiences de la Commission d'appel portent inévitablement sur la possession et la mise en culture comme base du droit à la terre. Le requérant est tenu de prouver à la Commission que la terre en question a été possédée et cultivée depuis dix années consécutives pour pouvoir faire valoir ses droits de propriété. Pour que l'appel aboutisse, les éléments de preuve fournis par les Palestiniens doivent contredire les photographies aériennes prises périodiquement par le Conservateur et qui indiquent que les activités agricoles ont cessé à un certain stade[124]. Des reçus pour le paiement de la taxe foncière, provenant des autorités jordaniennes ou de l'Administration civile, peuvent constituer un commencement de preuve dans les différends opposant deux particuliers, «mais ne constituent pas une preuve à l'encontre de l'Etat et ne portent pas atteinte à ses droits»[125].

De nombreux Palestiniens ont en fait cessé ou réduit leurs activités agricoles en partie du fait des politiques suivies par Israël dans deux domaines clé : l'eau et le marché du travail. L'un des principaux aspects de la politique d'Israël en matière d'eau consiste à rejeter toutes les demandes soumises par les Palestiniens qui souhaiteraient être autorisés à forer un puits, ce qui a entravé le développement agricole[126].

En ce qui concerne le marché du travail, Israël a encouragé l'intégration des Palestiniens à son propre marché. Cela est devenu très intéressant pour eux car les salaires sont beaucoup plus élevés qu'en Cisjordanie, ce qui a poussé de nombreux Palestiniens à abandonner l'agriculture[127].

Même si un requérant palestinien fournit les preuves requises par la Commission et convainc ses membres qu'il est effectivement propriétaire de la terre en question, la Commission peut encore rejeter son appel. Cela tient au fait que l'audience a parfois lieu après que le Conservateur a déjà signé des contrats d'autorisation avec l'un des organes chargés des questions de colonisation et après le démarrage de travaux en vue de la création d'une colonie. En conséquence, pour éviter d'aller à l'encontre d'une situation de fait, la Section 5 de l'Ordre concernant les propriétés domaniales (No.59) inclut la disposition suivante :

Aucune transaction effectuée de bonne foi par le Conservateur et une autre personne sur toute propriété dont le Conservateur estimait, à la date de la transaction, qu'elle était propriété domaniale, ne peut être annulée et elle restera valide même s'il est prouvé que la propriété n'avait pas ce statut alors[128].

Comme les décisions de la Commission d'appel ne sont ni publiées ni accessibles au public, B'Tselem n'a pas été en mesure de procéder à un examen systématique pour déterminer combien de fois cette disposition a été appliquée concernant des terres déclarées propriétés domaniales.

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[124] En ce qui concerne la question de la vérification d'un "degré raisonnable d'activité agricole» à la lumière des décisions du géomètre expert et de la Cour suprême, voir Avraham Sochovolsky, Elyahu Cohen et Avi Ehrlich, *La Judée et la Samarie-Les droits fonciers et la loi en Israël* (en hébreu) (Tel Aviv : Bursi, 1986), p. 29-35.

[125] *Ibid.*, p. 37.

[126] B'Tselem, *La recherche d'une solution-Résoudre la crise de l'eau en Cisjordanie et dans les Territoires occupés et sa résolution dans l'accord sur le statut final* (note d'information, juillet 2000), p. 42.

[127] B'Tselem, *Les bâtisseurs de Sion-Violations des droits humains des Palestiniens des Territoires occupés travaillant en Israël et dans les colonies*, septembre 1999, chap. 1.

[128] Section 5 de l'ordonnance relative aux propriétés domaniales, dans *Les lois relatives à la planification, à la construction et aux terres*, p. 522.

Toutefois, l'argument de la bonne foi a été invoqué par Israël pour approuver de nouvelles constructions dans les colonies, même dans des cas où le processus d'enregistrement des terres n'a pas été achevé. C'est ainsi que depuis 1984, des travaux de construction dans trois nouveaux quartiers de la colonie de Giv'at Ze'ev (Moreshet Binyamin A, B et C) ont commencé avant que la totalité des terres sur lesquelles étaient aménagés ces quartiers n'ait été déclarée propriété domaniale, et sans que des contrats d'autorisation n'aient été signés avec le Conservateur[129]. Malgré cela, et bien que l'Administration civile n'ait pas approuvé le plan préliminaire de ces quartiers, le conseil de planification du Conseil régional de Mate Binyamin a accordé des permis de travaux d'aménagement et de construction privée sur les trois chantiers. Lorsque cette situation est apparue à un stade précoce, le chef du Département civil du ministère de la Justice, Pliya Albeck, a formulé un avis juridique dans lequel il est dit : «malgré des défauts, des questions et des doutes, il semblerait souhaitable de poursuivre la construction de la Phase A de Moreshet Binyamin parce que les maisons ont été construites de bonne foi par des résidents ayant reçu des permis de construire, mais aussi parce que l'absence d'objections nous porte à croire que les terres ont été acquises légalement»[130].

Les autres problèmes concernant la Commission d'appel militaire portent sur la place de cette commission dans la hiérarchie militaire et son mode de fonctionnement. Tout d'abord, celle-ci dépend totalement de l'organisme sur lequel elle est censée exercer un contrôle quasi-judiciaire, à savoir l'administration militaire ou le Commandant des FAI dans la région. Ainsi, le même organe qui donne des ordres de saisie de terres est aussi le principal organe législatif qui a créé la Commission, et le seul habilité à nommer ou renvoyer ses membres[131].

De plus, l'ordonnance relative aux commissions d'appel stipule que leurs décisions sont de simples «recommandations» tandis que la décision finale incombe au commandant de la région, qui a toute latitude pour les accepter ou les rejeter, sans que cette décision ne soit soumise à aucun critère public[132]. Ce rapport entre le judiciaire et l'organe qu'il contrôle constitue une grave violation de l'indépendance de la Commission d'appel.

Par ailleurs, la Commission d'appel n'est pas soumise aux règles de procédures judiciaires ou aux règles habituelles d'administration de la preuve en vigueur en Israël ou dans tout autre système juridique. Selon une des sections de l'ordonnance, «la Commission d'appel n'est pas liée par les règles d'administration de la preuve et les procédures judiciaires, en dehors de celles fixées par cet ordonnance, et elle déterminer ses procédures»[133]. Ces dispositions sont tout à fait contraires au principe de transparence et d'équité de la procédure judiciaire.

Ces problèmes liés au fonctionnement de la Commission sont particulièrement graves dans la mesure où l'existence d'un organe quasi-judiciaire comme la Commission d'appel empêche la soumission de pétitions à la Cour suprême. L'une des conditions d'intervention de cette dernière est l'absence d'autre formule de réparation. L'existence d'une formule de réparation n'empêche pas totalement la Cour suprême d'intervenir, mais elle l'y incite beaucoup moins[134].

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[129] Contrôleur des comptes de l'Etat, rapport annuel 43 (en hébreu), Jérusalem, avril 1993, p. 911-914. Pour un autre exemple de création de colonie dans la vallée du Jourdain avant l'enregistrement de la terre au nom du Conservateur, voir Contrôleur des comptes de l'Etat, *Rapport annuel 37* (en hébreu), Jérusalem, 1987, p. 1205.

[130] *Ibid.*, p. 911.

[131] Sections 1 et 2 de l'ordonnance relative aux commissions d'appel (Judée et Samarie) (n° 172), 5728-1967, dans *Les lois relatives à la planification, à la construction et aux terres*, p. 536.

[132] *Ibid.*, section 6.

[133] *Ibid.*, section 8 A).

[134] Hofnung, *La sécurité de l'Etat et la primauté du droit,* p. 308.

C. BIENS DES ABSENTS

D'après l'ordonnance relative aux biens vacants[135], tout bien dont le propriétaire et le détenteur a quitté la Cisjordanie durant ou après la guerre de1967 est défini comme bien vacant et attribué au Conservateur responsable de ce type de biens au nom du Commandant des FAI dans la région. Le Conservateur est habilité à prendre possession du bien et à le gérer comme il l'entend[136]. Selon l'ordonnance, le Conservateur, au nom du Commandant des FAI dans la région, peut classer le bien dans la catégorie des «biens vacants» lorsque son propriétaire ou possesseur est inconnu[137]. Une autre ordonnance adoptée par Israël à ce sujet a élargi la définition des termes «biens vacants» pour y inclure les biens appartenant à une personne qui réside dans un pays ennemi, ou à une société contrôlée par des résidents d'un pays ennemi[138].

Du point de vue juridique, le Conservateur d'un bien vacant en devient le tuteur au nom du propriétaire qui a quitté la Cisjordanie. Il est chargé de protéger le bien en attendant le retour de son propriétaire. En outre, le Conservateur doit alors lui restituer non seulement le bien proprement dit, mais aussi les profits qu'il en a tirés[139]. Toutefois, d'une façon générale, Israël a interdit le retour des réfugiés en Cisjordanie et n'a donc pas été saisi de nombreuses demandes de restitution de biens vacants.

Des exceptions à cette règle se sont produites lorsque des Palestiniens sont retournés chez eux grâce à des permis visant à réunir les familles et ont exigé que le Conservateur leur restitue leur bien. Un examen effectué par le Contrôleur des comptes de l'Etat montre que, du moins jusqu'en 1985, celui-ci restituait généralement les fonds accumulés pour le compte des absents (dans les cas où leurs droits étaient bien établis) mais à leur valeur nominale et sans compensation ni intérêt, malgré les taux d'inflation élevés enregistrés en Israël durant la première moitié des années 80[140].

L'administration israélienne a combiné la fonction de Conservateur des biens vacants et celle de Conservateur des propriétés domaniales, pour créer une fonction unique de Conservateur des biens vacants en Judée et en Samarie. Comme le Conservateur des propriétés domaniales est aussi le Conservateur des biens vacants, les règles fondamentales applicables aux procédures de saisie et de gestion sont similaires dans les deux cas. En conséquence, une personne qui prétend qu'un bien lui appartenant a été injustement enregistré comme bien vacant peut s'adresser à la Commission d'appel militaire. La charge de la preuve incombe à l'intéressé[141].

Comme pour le processus de déclaration de terres comme propriétés domaniales, si le Conservateur a effectué une transaction portant sur un bien vacant et s'il apparaît ultérieurement que celui-ci ne pouvait légitimement pas avoir ce statut, la transaction n'est pas annulée s'il est prouvé que le Conservateur l'a effectuée de bonne foi[142]. On peut citer, pour montrer comment cette disposition est appliquée, le cas où le Conservateur a signé un accord d'autorisation avec l'Organisation sioniste mondiale concernant soixante-dix dunams prévus pour la création de la colonie de Bet Horon. Le propriétaire des terres, qui habitait en Cisjordanie à l'époque, a communiqué ses objections à la

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[135] Ordonnance relative aux biens vacants (propriété privée) (Judée et Samarie) (n° 58), 5727-1967, dans *Les lois relatives à la planification, à la construction et aux terres,* p. 515-519.

[136] *Ibid.*, section 8, p. 516.

[137] *Ibid.*, section 4 C), p. 516.

[138] Ordonnance relative aux biens vacants (propriété privée) (dispositions supplémentaires) (Judée et Samarie) (n° 150), 5727-1967, dans *Les lois relatives à la planification, à la construction et aux terres,* p. 534-535.

[139] *Ibid.*, sections 7 et 8, p. 516.

[140] Contrôleur des comptes de l'Etat, rapport annuel 37, p. 1189.

[141] Section 10 D) de l'ordonnance relative aux biens vacants, dans *Les lois relatives à la planification, à la construction et aux terres*, p. 517.

[142] *Ibid.*, section 10 A).

Commission d'appel, arguant de sa qualité de propriétaire des terres sur lesquelles la colonie était construite. Dans sa décision, la Commission d'appel a déclaré que même s'il ne faisait pas de doute que la terre appartenait bien au plaignant palestinien et qu'il n'avait pas quitté son domicile, la transaction était légitime parce qu'elle avait été effectuée «de bonne foi»[143].

Cette pratique, qui a lésé des propriétaires palestiniens décrétés «absents» sans avoir quitté la région, s'ajoute à la politique générale d'Israël qui est d'empêcher le retour des réfugiés qui ont quitté leur domicile en raison de la guerre. Compte tenu de cette réalité, la thèse d'Israël selon laquelle toutes les procédures de transaction foncière ont été suspendues «dans le but d'empêcher que les intérêts des absents soient lésés» ne peut être considérée autrement que comme une justification cynique destinée à faciliter le processus d'accaparement des terres.

Un rapport du Contrôleur des comptes de l'Etat montre que durant les premières années d'occupation, l'Administration civile a enregistré quelque 430 000 dunams de terres et environ 11 000 bâtiments comme biens vacant[144]. Etant donné qu'une part importante de ces terres n'était pas exploitée, celle-ci ont été déclarées ultérieurement propriétés domaniales. Les zones restantes continuent à être définies comme biens vacants et ont été louées par le Conservateur –aussi bien à des parents des absents qu'aux organismes spécialisés pour y créer des colonies[145].

D. EXPROPRIATION DANS L'INTERET PUBLIC

L'expropriation de terres en Cisjordanie (en dehors de Jérusalem-Est) s'effectue en vertu des dispositions d'une loi jordanienne qui définit les phases requises pour l'expropriation de terres et les organismes chargé de l'examen[146]. D'après cette loi, un organisme public (autorité locale, organisme de développement, etc.) intéressé par l'expropriation d'une terre privée doit faire part de son intention dans le Journal officiel. Si le propriétaire de la terre ne fait pas appel auprès du tribunal dans les quinze jours, sa demande est examinée par le Conseil ministériel qui détermine si l'objectif déclaré du demandeur sert en fait l'intérêt public et décide s'il convient d'acheter la terre ou d'en acquérir les droits d'usage pour une période donnée. La décision doit être approuvée par le Roi, et elle est publiée au Journal officiel. Le Bureau du cadastre est ensuite chargé de transmettre des copies de la décision aux propriétaires de la terre, et l'organisme demandeur doit engager des négociations avec eux au sujet du montant de l'indemnisation[147]. D'après la Section 12 de la loi, les phases de notification et de négociation peuvent être omises dans des cas urgents si le Conseil ministériel «est convaincu qu'il est justifié pour certaines raisons que l'intéressé prenne immédiatement possession de la terre».

Israël a modifié deux fois, par des ordonnances militaires, cette loi pour l'adapter à ses besoins[148]. Le premier avenant, en 1969, a transféré les pouvoirs du Conseil ministériel et du Roi à l'«autorité compétente» au nom du Commandant de la région, qui est devenue ultérieurement le directeur adjoint de l'Administration civile[149]. De plus, l'ordonnance a supprimé l'obligation prévue par la loi jordanienne, de publier les décisions au Journal officiel et de les communiquer au propriétaire des terres. En vertu de cette ordonnance, l'organisme légalement chargé d'examiner les

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[143] Appel 16/84, *Albina contre le Conservateur des propriétés domaniales en Judée et en Samarie.*

[144] Contrôleur des comptes de l'Etat, rapport annuel 37.

[145] Benvenisti, *Lexique de la Judée et de la Samarie*, p. 52.

[146] Droit foncier-acquisition dans l'intérêt public, loi n° 2 pour 1953, *Les lois relatives à la planification, à la construction et aux terres*, p. 439-446.

[147] Cette procédure est décrite en détail aux sections 5-9 du Droit foncier-acquisition dans l'intérêt public.

[148] Ordonnance relative au droit foncier (acquisition dans l'intérêt public) (n° 321 et n° 949), 5729-1969 et 5743-1981 dans *Les lois relatives à la planification, à la construction et aux terres*, p. 545-547.

[149] Zamir, *Les propriétés domaniales en Judée et en Samarie*, p. 33.

appels concernant des expropriations n'est plus le tribunal local, comme le stipulait la loi jordanienne, mais la Commission d'appel militaire. La possession et la gestion des terres expropriées ont été transférées au Conservateur des propriétés domaniales et des biens vacants en Judée et en Samarie.

Jusqu'en 1981, c'est-à-dire pendant une douzaine d'années après le premier avenant, aucune autre procédure n'a été établie pour autoriser la publication des décisions d'expropriation ou la notification des personnes lésées par ces décisions. En 1981, un deuxième avenant a été adopté à la suite d'une pétition soumise à la Cour suprême par des résidents palestiniens qui ont affirmé n'avoir appris une décision d'expropriation qu'après que des tracteurs ont commencé à labourer leur terre[150]. Selon cet avenant, l' «autorité compétente» doit publier ses décisions dans le Recueil de proclamations et informer le propriétaire personnellement ou par l'intermédiaire du *mukhtar* de son village.

Dans la pratique, la plupart des notifications données aux propriétaires, aussi bien avant qu'après le second avenant sont transmises par l'intermédiaire des *mukhtars*. Comme on l'a vu, leur statut auprès de la population palestinienne laisse à désirer et ils préfèrent souvent s'abstenir de donner ces informations[151]. Pour sa part, Israël a choisi d'effectuer la plupart des expropriations sur la base de la Section 12 de la loi jordanienne, qui n'était prévue que pour des cas urgents.

Cette section dispense les autorités de certaines obligations relatives aux propriétaires terriens lésés et empêche également la Cour suprême d'intervenir[152].

La loi jordanienne stipule expressément que l'expropriation de terres n'est autorisée que lorsqu'elle répond à l'intérêt public, de telle sorte qu'Israël ne l'a guère utilisée pour confisquer des terres en vue d'y créer des colonies. Une exception à cette règle est le cas de Ma'ale Adummim, colonie créée en 1975 sur quelque 30 000 dunams de terres palestiniennes expropriées[153].

Toutefois, Israël a abondamment utilisé cette loi pour prendre le contrôle de terres afin de construire un vaste réseau de routes desservant les colonies, les reliant entre elles et avec Israël et dans la plupart des cas, contournant délibérément les communautés palestiniennes. Ces expropriations ont été confirmées par la Cour suprême qui a jugé recevable l'argument de l'Etat selon lequel les routes en question répondaient également aux besoins de transport de la population palestinienne. Dans une décision relative à l'expropriation de terres pour la construction d'une route reliant à Israël un nouveau quartier de la colonie de Qarne Shomeron en contournant la ville de Qalqiliya. Le Juge Shilo a conclu qu'en fait, «une route est une installation neutre». Il a ajouté :

Il est vrai qu'une partie de la route qui fait l'objet de cette pétition ne passe pas loin de Ras, qui se trouve à la limite de la zone où l'on prévoit d'installer une communauté juive appelée Zavta (Qarne Shomeron C) et que le même tronçon –dans la mesure où il fait partie de la route régionale continuant vers l'est- a pour but de permettre d'accéder par l'ouest à la communauté de Zavta. Ce tronçon raccourcit et améliore toutefois la route desservant le village de Habla et plusieurs petits villages des environs»[154].

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[150] HCJ 202/81, *Tabib* et al. *contre le Ministre de la Défense, Piskei Din* 36 (2) 622 (ci-après *Tabib*).

[151] Halabi *et al. L'aliénation des terres en Cisjordanie*, p. 33.

[152] *Ibid.*, p. 34.

[153] Paragraphe 3 de la réponse de l'Etat dans HCJ 3125/98, *'Abd Al-'Aziz Muhammed'Ayad et al. contre le Commandant des FAI en Judée et en Samarie* (ci-après *Ma'ale Adummim*).

[154] *Tabib*, p. 627.

Dans la plupart des cas, l'argument selon lequel les rocades étaient censées desservir tous les résidents locaux, notamment les Palestiniens, s'est révélé fallacieux. Israël a néanmoins continué à invoquer cet argument pour toutes les pétitions soumises à la Cour suprême par des Palestiniens dénonçant l'expropriation de leurs terres et dans la plupart des cas, la Cour a accepté cet argument[155].

B'Tselem ne dispose d'aucune estimation de la superficie des terres dont les FAI ont pris le contrôle en utilisant la loi jordanienne sur l'expropriation. D'après le Contrôleur des comptes de l'Etat, les actions des FAI en Cisjordanie en prévision de l'application des Accords d'Oslo B (voir plus loin) ont impliqué l'expropriation de terres privées en vertu de cette loi pour construire douze rocades[156]. Le chapitre 8 du présent rapport donne un compte-rendu détaillé des expropriations qui ont eu lieu récemment pour construire des routes dans les environs de la colonie d'Ari'el.

Expropriations à Jérusalem-Est [157]

L'instrument juridique utilisé par Israël pour prendre le contrôle de terrains à Jérusalem-Est afin d'y créer des colonies est une Ordonnance contraignante de 1943 intégrée à la législation israélienne[158].

Cette ordonnance est similaire, quoique non identique, à la loi jordanienne relative à l'acquisition de terres dans l'intérêt public telle qu'elle est appliquée dans le reste de la Cisjordanie. L'Ordonnance contraignante habilite le ministre des finances à délivrer des ordres d'expropriation pour des terres privées lorsque l'intérêt public le justifie. A la différence de la loi jordanienne, cette ordonnance accorde au ministre des finances toute latitude pour déterminer en quoi consiste l'intérêt public («tout besoin reconnu par le ministre comme servant l'intérêt public»). Comme en application de la loi jordanienne, les propriétaires ont droit à une indemnisation sur la base des prix du marché.

Depuis 1968, Israël a exproprié environ 24 500 dunams de terres - soit plus d'un tiers de celles qui ont été annexées à Jérusalem[159]. Il est difficile de calculer un chiffre exact, mais la plupart des terres expropriées étaient certainement des propriétés privées appartenant à des Palestiniens[160], et une faible proportion seulement consistait en propriétés domaniales, en terres de type *wakf* ou en terres appartenant à des Juifs avant 1948[161]. Dans leur grande majorité, les terres expropriées ont servi à la création de douze colonies juives, appelées «quartiers» selon la terminologie israélienne.

Bien que les terres expropriées soient destinées exclusivement à la population juive, le gouvernement israélien et des membres du ministère de Jérusalem ont prétendu à plusieurs reprises - selon les principes des déclarations similaires concernant des expropriations dans le reste de la Cisjordanie-que les expropriations de terres répondaient aux intérêts de tous les habitants de la ville «aussi bien juifs qu'arabes»[162]. Ces assertions sont démenties par de nombreuses décisions et déclarations officielles et officieuses reflétant le désir qu'a Israël de «judaïser» Jérusalem-Est, dans le

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[155] Par exemple, voir HCJ 393/82, *Jam'ayat Iskan Al-Mu'almun contre le Commandant des FAI, Piskei Din* 37 4) 785 et HCJ 6592/94.

[156] Contrôleur des comptes de l'Etat, rapport annuel 48, p. 1036.

[157] Pour de plus amples détails à ce sujet, voir B'Tselem, *Une politique de discrimination.*

[158] Ordonnance relative aux terres (acquisition dans l'intérêt public), 1943.

[159] Ir Shalem, *Jérusalem-Est- aménagement prévu* (en hébreu) (Jérusalem, novembre 1999), p. 4.

[160] B'Tselem, *Une politique de discrimination*, p. 57.

[161] Les terres appartenant à des Juifs se trouvaient essentiellement dans le quartier juif de la Vieille ville; comme on l'a vu, elles étaient considérées comme propriétés domaniales puisqu'elles étaient détenues et gérées par le Conservateur jordanien des biens ennemis (Zamir et Benvenisti, *Les terres juives,* p. 87-98).

[162] Pour des exemples de déclarations de ce genre, voir B'Tselem, *Une politique de discrimination*, p. 60-61.

but d'empêcher tout compromis futur concernant cette terre[163]. Une pétition soumise à la Cour suprême en 1994 contre l'expropriation de terres dans le sud de Jérusalem pour créer la colonie de Har Homa affirmait que le projet était discriminatoire à l'encontre des Palestiniens de la ville. La Cour suprême a rejeté cette pétition au motif que «la question de la population de la zone n'est pas d'actualité»[164].

E. ACQUISITION DE TERRES SUR LE MARCHE LIBRE

Les gouvernement dirigés par le Ma'arach ont préféré limiter aux institutions gouvernementales la prise de contrôle de terres dans les territoires occupés. Une ordonnance militaire de 1967 a imposé d'importantes restrictions aux transactions foncières en Cisjordanie sans l'autorisation écrite du commandant de la région[165]. En conséquence, jusqu'à la fin des années 70, le seul organisme intervenant dans l'achat de terres à des Palestiniens pour créer des colonies était le Fonds juif international par l'intermédiaire de *Himanuta,* une société crée à cette fin[166].

Après l'arrivée du Likoud au pouvoir, cette politique a été inversée, l'acquisition de terres en Cisjordanie étant désormais encouragée. Officiellement, ce changement s'est traduit par une décision de la Commission ministérielle pour les colonies en avril 1982, accordant son accord de principe à la création de colonies à titre d'«initiative privée»[167]. Cette autorisation reflétait la volonté qu'avait le gouvernement de permettre à des Juifs d'acheter des terres et de s'installer dans toute la Cisjordanie, notamment là où les terres ne pouvaient pas être déclarées propriétés domaniales parce qu'elles étaient enregistrées au nom de leur propriétaire et détenues conformément aux dispositions du droit foncier ottoman[168].

Le ministre adjoint de l'Agriculture du deuxième gouvernement du Likoud, Michael Dekel a été chargé de la question des «implantations privées». Il travaillait sous le contrôle étroit -bien qu'informel- d'Ariel Sharon, alors ministre de la Défense[169].

En adoptant plusieurs ordonnances militaires, Israël a modifié la législation foncière jordanienne pour l'adapter aux besoins des chefs d'entreprise israéliens. C'est ainsi que le pouvoir qu'avaient, en vertu du droit jordanien, les commissions judiciaires locales d'enregistrer les transactions foncières a été confié au Conservateur au nom du Commandant militaire[170]. Comme les Palestiniens on toujours considéré la vente de terres à des Israéliens comme un acte de trahison, une ordonnance a fait passer de cinq ans (comme le prévoyait la loi jordanienne) à quinze ans la durée de validité des pouvoirs irrévocables du Procureur[171]. Cet avenant a permis d'exécuter les transactions foncières tout en reportant l'enregistrement pendant une période plus longue, ce qui évitait de mettre en danger la vie du vendeur palestinien en révélant son identité[172].

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[163] *Ibid.*, p. 44-55.

[164] HCJ 5601/94, '*Odeh A'ida Abu Tier et al. contre le Premier ministre et al., Takdin Elyon* 94 4) 246.

[165] ordonnance relative aux transactions foncières (Judée et Samarie) (n° 25), 5727-1967 dans *Les lois relatives à la planification, à la construction et aux terres*, p. 513-514.

[166] Gazit, *Des idiots pris au piège*, p. 244-245.

[167] *Ibid.*

[168] Hofnung, *Sécurité de l'Etat et primauté du droit*, p. 311.

[169] *Ibid.*

[170] Ordonnance relative au droit foncier (Judée et Samarie) (n° 450), 5732-1971.

[171] Ordonnance relative à la loi modifiant les dispositions en matière immobilière (Judée et Samarie) (n° 811), 5740-1979, dans *Les lois relatives à la planification, à la construction et aux terres*, p. 554.

[172] Shedade, *Le droit de l'occupant*, p. 40.

La participation d'entrepreneurs privés au transfert de terres à des Juifs s'est accompagnée de fraudes, faux en écritures et divers délits de la part aussi bien d'Israéliens que de Palestiniens[173]. Ces actes délictueux ont été rendus possibles notamment par le caractère relativement vague de l'enregistrement des titres de propriété dans la plus grande partie de la Cisjordanie[174]. De plus, la décision du gouvernement d'autoriser la création de colonies à titre privé a entraîné un accroissement de la demande de terres en Cisjordanie, en particulier dans les zones proches de la Ligne verte (dont les Israéliens disent couramment qu'elle se trouve «à cinq minutes de Kfar Saba»). Les prix des terrains dans ces zones ont flambé, ce qui a fortement incité divers intermédiaires israéliens à acheter des terres palestiniennes[175].

En conséquence de ces actes frauduleux, dans bien des cas, des Palestiniens n'ont appris que leur terre avait été vendue à des Israéliens que lorsque des tracteurs sont arrivés pour préparer le sol en vue de la création d'une colonie. Pour leur part, de nombreux Israéliens ont été incités à acheter à des intermédiaires israéliens des terrains en Cisjordanie pour découvrir après coup que leurs titres de propriété n'étaient que des chiffons de papier. Ce phénomène a cessé en 1985, lorsque la police a commencé à enquêter sur des centaines de cas de transactions foncières frauduleuses. Plusieurs suspects ont été arrêtés, notamment des hauts fonctionnaires[176].

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[173] Albeck, *Les terres de Judée et de Samarie,* p. 12-16.

[174] Voir Section B du présent chapitre pour de plus amples détails.

[175] Benvenisti : *Lexique de la Judée et de la Samarie,* p. 139.

[176] Hofnung, *Sécurité de l'Etat et primauté du droit,* p. 312-313.

CHAPITRE 4

LA POLITIQUE D'ANNEXION ET LES AUTORITES LOCALES

A. LA POLITIQUE D'ANNEXION

Avec la bénédiction de la Cour suprême, le gouvernement, la Knesset et les commandants des FAI ont modifié la législation israélienne et militaire dans le but de permettre l'annexion *de facto* des colonies dans l'Etat d'Israël, tout en évitant les problèmes que causerait une annexion *de jure*, en particulier sur la scène internationale[177]. Cette annexion a distingué entre les colons juifs et les résidents palestiniens, qui ont continué à vivre sous un régime militaire. Faire pratiquement oublier l'existence de la Ligne verte dans la vie quotidienne des Juifs habitant en Cisjordanie n'a pas peu contribué au succès de la politique israélienne de transfert de population vers les colonies.

Il en est résulté la création de deux types –personnel et territorial- d'enclaves du droit civil israélien dans les Territoires occupés. Les enclaves personnelles sont importantes en ce sens que tout citoyen israélien, et en fait tout Juif (voir plus loin) des territoires occupés est soumis, où qu'il se trouve, au droit civil israélien pratiquement à tous égards, et non au droit militaire en vigueur dans ces territoires. Cette situation a été perpétuée par les Accords d'Oslo d'une façon qui déniait à l'Autorité palestinienne tout pouvoir sur des Israéliens dans les Territoires occupés, notamment sur ceux qui y entraient[178].

La création des enclaves a commencé au début de l'occupation. Le gouvernement et la Knesset ont imposé le droit israélien aux colons en particulier et aux citoyens israéliens des territoires occupés en général. Initialement, on appliqué des réglementations exceptionnelles adoptées en juillet 1967 par le ministre de la Défense[179]. D'après ces réglementations, les citoyens israéliens qui commettent un délit dans les territoires sont jugés par des tribunaux civils israéliens. Bien qu'elles n'aient pas interdit que des Israéliens soient jugés par des tribunaux des territoires occupés, ces réglementations ont effectivement limité le pouvoir du commandement militaire et des tribunaux locaux, accordant pour la première fois aux citoyens israéliens un statut d'extraterritorialité dans les Territoires occupés.

En 1969, la ministre de la Justice a adopté des réglementations autorisant les tribunaux civils israéliens à être saisis de toute affaire civile opposant des colons (et des Israéliens en général) à des Palestiniens, ou des colons entres eux[180]. Ces tribunaux opèrent naturellement conformément au droit israélien plutôt qu'au droit local théoriquement en vigueur dans les Territoires occupés. Les tribunaux locaux se sont vu effectivement –quoique non officiellement- refuser le droit de juger des colons.

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[177] Des passages entiers de ce chapitre sont inspirés du rapport de B'Tselem, *Vers l'annexion : les violations des droits de l'homme résultant de la création et de l'expansion de la colonie de Ma'ale Adumim* (note d'information, juin 1999), p. 15-20. Pour une étude approfondie de cette question réalisée à la fin des années 80, voir Eyal Benvenisti, *Dualisme juridique : l'absorption des territoires occupés dans l'Etat d'Israël* (Jérusalem : Projet de base de données sur la Cisjordanie, 1989).

[178] Accord sur la Bande de Gaza et la région de Jéricho (Oslo1), 4 mai 1994, article 1 26); accord intérimaire israélo-palestinien sur la Cisjordanie et la Bande de Gaza (Oslo 2), 28 septembre 1995, annexe IV.

[179] Réglementations d'exception (Délits commis dans les territoires administrés-juridiction et assistance juridique), 5727-1967. En 1977, la nouvelle appellation est devenue «Judée et Samarie, Bande de Gaza, Hauteurs du Golan, Sinaï et Sinaï du Sud».

[180] Règles de procédure civile (transmission des documents concernant les Territoires occupés), 5730-1969, *Kovetz Takkanot* 2482, p.458. Les tribunaux du travail ont fait l'objet d'une ordonnance similaire (*Kovetz Takkanot* 2482, p. 460).

La Knesset a périodiquement élargi le statut des réglementations d'exception citées plus haut[181]. En 1984, elle a imposé des lois supplémentaires aux colons israéliens, notamment en matière de service militaire, l'Ordonnance relative à l'impôt sur le revenu, le recensement de population, l'assurance nationale, etc. La loi a également autorisé le ministre de la Justice à ajouter d'autres lois à cette liste, avec l'accord de la Commission de la Constitution, de la loi et de la justice de la Knesset[182].

La loi israélienne est imposée non seulement aux habitants israéliens des Territoires occupés, mais aussi aux Juifs qui s'installent dans les colonies, même s'ils ne sont pas ressortissants israéliens :

> «Aux fins des textes législatifs énumérés dans l'addendum, l'expression «résident israélien» ou toute autre expression concernant la domiciliation, la résidence ou la présence en Israël comme indiqué ici est considérée comme incluant les personnes dont le lieu de résidence se trouve dans la région et qui ont la nationalité israélienne, ou qui ont le droit d'immigrer en Israël conformément à la loi du retour, 5710-1950, et qui entreraient dans cette catégorie si leur lieu de résidence se trouvait en Israël.» [183]

On a créé les enclaves territoriales en imposant le droit civil israélien aux autorités juives locales mises en place en Cisjordanie. En 1988, la Knesset a chargé le gouvernement d'imposer la Loi sur les villes et zones de développement aux «autorités locales et aux citoyens israéliens» dans les Territoires occupés[184]. C'était la première fois que la Knesset imposait une de ses lois sur les colonies en termes territoriaux, plutôt que simplement aux colons en tant que particuliers, comme cela avait été le cas précédemment. Ces dernières années, la Knesset a adopté plusieurs lois relatives aux autorités locales et à leur élection qui s'appliquent directement aux colonies[185].

Sous la forme d'une série d'ordonnances militaires publiées par le Commandant des FAI en Cisjordanie, la législation militaire constitue un instrument des plus efficaces pour appliquer la politique d'Israël consistant à imposer sa propre loi aux colonies et aux colons tout en les séparant des Palestiniens et de leurs communautés. Dans certains cas, ces ordonnances ont constitué une renonciation par le commandant militaire à ses pouvoirs dans les colonies en faveur des autorités civiles israéliennes, aussi bien dans les colonies qu'en Israël. La plupart des ordonnances ont été libellées de telle manière qu'il n'est pas absolument évident qu'elles sont applicables uniquement aux colonies et non aux communautés ou aux résidents palestiniens. Leur adoption *de facto* s'est faite au moyen d'un appendice ou d'un addendum à l'ordonnance indiquant en détail les communautés auxquelles elles s'appliquent, quelquefois seulement pour des questions de principe. Comme on le verra dans la dernière partie du présent chapitre, une part importante de cette législation militaire se réfère aux colonies en tant qu'autorités locales, et contribue largement au processus par lequel ces colonies ont été transformées en enclaves soumises au droit israélien (voir plus loin).

L'ensemble complexe de lois, réglementations et ordonnances finit par donner une idée assez claire de l'annexion. A tous égards ou presque, les colons vivent comme les citoyens israéliens vivent en Israël, bien que la région où ils habitent soit placée sous régime militaire. Les colons élisent leur conseil local ou régional, participent aux élections à la Knesset, paient des impôts, et cotisent à l'Assurance nationale et à la sécurité sociale, et ils jouissent de tous les droits sociaux garantis par Israël à ses ressortissants. S'ils sont soupçonnés d'avoir commis un délit, ils sont arrêtés par la police civile et jugés par des tribunaux civils conformément aux lois en vigueur en Israël.

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[181] Modification et extension de la validité des réglementations d'exception (Judée et Samarie, Bande de Gaza, Sinaï et Sinaï du Sud- juridiction et assistance juridique) loi 5744-1984, Section 6.

[182] *Ibid.*, section 6B B).

[183] *Ibid*., section 6B A).

[184] Loi sur le développement des villes et des régions, 5748-1988, section 3 A).

[185] Conseils régionaux (date des élections générales) (avenant) loi 5747-1997; avenant de l'ordonnance relative aux autorités locales (n° 21), loi 5757-1997; autorités locales (élections spéciales) (avenants législatifs) loi 5758-1998.

B. STRUCTURE DE L'ADMINISTRATION LOCALE

Le droit israélien reconnaît trois types d'entités municipales par l'intermédiaire desquelles opèrent les autorités locales : les municipalités, les conseils locaux et les conseils régionaux. Les autorités locales jouent un rôle de premier plan dans la vie quotidienne des Israéliens, aussi bien à l'intérieur de la ligne verte que dans les Territoires occupés parce qu'elles sont chargées de fournir toutes sortes de services vitaux (éducation, santé, protection sociale, culture, urbanisme, eau et assainissement, parcs, entretien, etc.). Durant les années 90, les dépenses de l'administration locale représentaient environ trente pour cent du montant total des dépenses publiques en Israël[186].

Les deux principales ordonnances militaires accordant aux autorités juives locales le statut d'enclaves territoriales en vertu du droit israélien ont été adoptées en 1979 : l'Ordonnance relative à la gestion des conseils régionaux (No.783), et l'Ordonnance relative à la gestion des Conseils locaux (No.892). A quelques exceptions près, ces ordonnances s'inspirent de la loi israélienne relative aux autorités locales dans des domaines tels que les élections, la composition des conseils, les budgets, la planification et la construction, l'éducation et les tribunaux de première instance. L'addendum à ces ordonnances précise les noms des autorités locales auxquelles celles-ci s'appliquent, c'est-à-dire les noms des colonies. Leur liste est mise à jour chaque fois qu'une nouvelle colonie est créée et qu'une colonie particulière change de statut (une communauté relevant d'un conseil régional devenant un conseil local distinct, ou un conseil local devenant une municipalité).

Du fait que les termes «conseils locaux» et «conseils régionaux» ne faisaient pas partie de la loi jordanienne régissant le statut des communautés palestiniennes, leur utilisation dans le contexte des colonies n'a pas causé de difficultés juridiques. Le problème s'est posé lorsqu'il a été décidé d'accorder le statut de municipalité aux plus grandes colonies (la première concernée ayant été Ma'ale Adummim). Théoriquement, le commandement militaire aurait dû prendre cette mesure conformément à la Loi jordanienne sur les municipalités de 1955 (No.29)[187]. Si tel avait été le cas, les colonies auraient été tenues de fonctionner conformément au droit jordanien, et l'administration israélienne aurait été contrainte de les traiter selon les mêmes normes que celles appliquées dans les municipalités palestiniennes (avant leur transfert à l'Autorité palestinienne), par exemple pour l'affectation des ressources, le niveau de services, la déclaration des zones d'aménagement, les hypothèques pour les résidents pouvant en bénéficier, les élections au conseil municipal, etc.

Pour éviter cette situation, qu'Israël jugeait peu souhaitable, le Commandant des FAI en Cisjordanie a donné l'ordre de modifier l'Ordonnance relative à la gestion des conseils locaux (No.892). D'après cet avenant, les colonies définies comme municipalités continueraient à être soumises à l'Ordonnance relative aux conseils locaux et non à la loi municipale jordanienne : «Le Commandant des FAI dans la région est habilité, sur la recommandation du Contrôleur, à déclarer par ordonnance qu'un conseil local donné aura le nom de « municipalité»[188].

Pour certaines questions, les autorités locales d'Israël sont soumises au ministère de l'Intérieur qui est chargé de s'assurer de leur bon fonctionnement. Chaque autorité locale appartient à un district particulier, dont un service du ministère est responsable. La supervision des autorités locales en Cisjordanie (y compris des autorités locales palestiniennes) est assurée par le Responsable des Affaires internes de l'Administration civile; depuis de nombreuses années, un Contrôleur des communautés israéliennes opérait dans ce cadre et était responsable uniquement des colonies. Au début de 1996, probablement dans le cadre du processus d'annexion *de facto*, le service du Contrôleur des

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[186] Contrôleur des comptes de l'Etat, rapport annuel 49 (en hébreu), Jérusalem, avril 1999, p. 343.

[187] La raison en est que, comme on l'a vu, sauf si elle est modifiée par ordonnance militaire, la loi en vigueur en Cisjordanie est la loi jordanienne en vigueur jusqu'en 1967. Voir B'Tselem, *Vers l'annexion*, p. 18-19.

[188] Ordonnance relative à la gestion des conseils locaux (Judée et Samarie) (n° 892) 5741-1981; statuts des conseils locaux (avenant n° 68), 14 juillet 1991, section 140C.

communautés israéliennes a été transféré de l'Administration civile pour être placé sous l'autorité directe du ministère de l'Intérieur, acquérant un statut similaire à celui des services responsables des différents districts en Israël même[189].

Les conseils locaux et les municipalités constituent des mécanismes municipaux indépendants gérant les affaires de communautés distinctes, selon la définition de la loi, tandis que les conseils régionaux incluent un certain nombre de communautés dans le cadre d'un système de gouvernement à deux niveaux. Le niveau supérieur est celui du conseil tandis que le niveau inférieur inclut les communautés relevant de la zone ou du domaine de compétence du conseil, et qui sont gérées dans certains domaines par une commission locale. Le partage des responsabilités entre le conseil régional et le commissions locales n'est pas clairement défini par la loi et il varie donc d'une communauté ou d'un conseil régional à l'autre. Toutefois, les commissions locales ne peuvent pas prendre de décisions contraires à celles du conseil; dans certains domaines, comme l'adoption des budgets, elles doivent obtenir l'autorisation du conseil régional[190].

Jusqu'à une date récente, le champ d'activité du conseil régional se limitait généralement à un rôle d'intermédiaire entre les communautés et le gouvernement central, tandis que la plupart des services municipaux étaient assurés par les commissions locales. mais au début des années qutre-vingt-dix, à mesure que le cadre coopératif s'est affaibli, le conseil régional s'est renforcé et a fini par être considéré comme directement responsable de la gestion des affaires de la communauté, comme la municipalité ou le conseil local[191].

Sur la recommandation du responsable chargé du district pertinent, le ministre de l'intérieur est habilité à modifier le statut des communautés et des autorités locales (en transformant un groupe de communautés en un conseil régional distinct, retirant une communauté donnée d'un conseil régional et en en faisant un conseil local, ou transformant un conseil local en municipalité). Si une communauté acquiert le statut de conseil local, elle peut obtenir directement des financements du ministère de l'Intérieur. De plus, le conseil local reçoit des pouvoirs considérables, tels que le celui de créer une commission de planification locale habilitée à délivrer des permis de construire. Le passage du statut de conseil local à celui de municipalité se répercute généralement sue le niveau des financements reçus du ministère.

Dans le cas des colonies de Cisjordanie, la recommandation de mettre en place un type quelconque d'autorité locale est soumise au ministre de l'intérieur par le Contrôleur des communautés israéliennes, tandis que la décision du ministre est mise en oeuvre officiellement au moyen d'une ordonnance militaire signée par le Commandant des FAI en Cisjordanie.

En vertu d'une loi adoptée en 1992, le ministre n'est pas autorisé à accorder le statut de conseil local aux communautés comptant moins de 3000 habitants, ni celui de municipalité aux collectivités de moins de 20 000 habitants. La loi laisse toutefois au ministre toute latitude pour en décider autrement «si des raisons particulières les justifient»[192]. A la fin de 2001, quatre des quatorze conseils locaux de la Cisjordanie comptaient moins de 3.000 habitants et deux des municipalités, moins de 20 000 (voir Tableau 3 ci-dessous).

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[189] Pour une critique des activités du contrôleur des communautés israéliennes en Judée et en Samarie, voir le rapport 52A du Contrôleur des comptes de l'Etat, (en hébreu), Jérusalem, 2001, p. 163-180.

[190] Audit de la division des autorités locales, ministère de l'intérieur, rapport d'audit spécial sur les conseils régionaux, 1998 (en hébreu), Jérusalem, août 1998, p. 9-11.

[191] *Ibid.*

[192] Dispositions concernant l'économie nationale (avenants à la législation visant à réaliser les objectifs budgétaires), loi 5793-1992, section 18.

Le nombre d'autorités locales existant actuellement et servant de cadre à la gestion des colonies en Cisjordanie est le suivant : trois municipalités, quatorze conseils locaux et six conseils régionaux, comprenant 106 petites colonies. De plus, douze colonies ont été créées dans des zones annexées par Israël en 1967 et relèvent de la municipalité de Jérusalem.

Tableau 3

Autorités locales en Cisjordanie

Nom de l'autorité locale	Statut municipal*	Nombre d'habitants**
Oranit	Conseil local	5100
Alfe Menashe	Conseil local	4600
Elqana	Conseil local	3000
Efraaat	Conseil local	6400
Ari'el	Municipalité	15600
Bet El	Conseil local	4100
Bet Arye	Conseil local	2400
Betaar Illit	Municipalité	15800
Arvot Hayarden	Conseil régional (18)	3000
Giv'at Ze'ev	Conseil local	10300
Gush Ezyon	Conseil régional (14)	9600
Har Adar	Conseil local	1400
Mt. Hebron	Conseil régional (12)	4100
Megillot	Conseil régional (5)	900
Modi'in Illit	Conseil local	16400
Mate Bibyamin	Conseil régional (27)	27200
Ma'ale Adummim	Municipalité	24900
Ma'ale Efrayim	Conseil local	1500

* Les nombres entre parenthèses indiquent le nombre de colonies (selon le nombre de commissions locales reconnues par le ministère de l'Intérieur) inclus dans chaque conseil régional.

** Chiffres du bureau central de statistique pour la fin de 2000.

Nom de l'autorité locale	Statut municipal*	Nombre d'habitants**
Immanu'el	Conseil local	3000
Qedumim	Conseil local	2700
Qiryat Arba	Conseil local	6400
Qarne Shomeron	Conseil local	5900
Shomeron	Conseil régional (30)	17400

C. SIGNIFICATION DES LIMITES MUNICIPALES

Les limites municipales des autorités locales, c'est-à-dire leur aire de juridiction, sont indiquées sur une carte signée par le Commandant des FAI en Cisjordanie et jointe à l'Ordonnance relative aux Conseils locaux (n° 892) ou à l'Ordonnance relative aux Conseils régionaux (n° 783), selon le cas. Les limites des colonies constituant les conseils régionaux, également, sont indiquées sur les cartes signées par le Commandant des FAI en Cisjordanie. Dans ce cas, la carte définit non pas l'aire de juridiction, mais «l'aire communautaire» (voir photos 1 à 4).

Les zones correspondant à ces aires de juridiction ou aires communautaires comprennent toutes les terres dont Israël a pris le contrôle au fil des ans selon les méthodes décrites plus haut au chapitre 3. En conséquence, les limites de la plupart des entités locales juives de Cisjordanie sont tortueuses et incluent des zones discontinues (voir la carte jointe au présent rapport, ainsi que le chapitre 7 ci-après).

Il est interdit aux Palestiniens d'entrer dans les aires de juridiction ou les aires communautaires des colonies sans autorisation spéciale. Dans une ordonnance de 1996, le Commandant des FAI en Cisjordanie a déclaré que toutes les zones des colonies étaient des «zones militaires fermées», prétendant …»que cela est nécessaire pour des raisons de sécurité et compte tenu de la situation particulière actuelle, et de la nécessité de prendre immédiatement des mesures exceptionnelles…»[193]. L'ordonnance précise que «les dispositions de cette déclaration ne s'appliquent pas aux Israéliens».

La définition du terme «Israëlien» dans l'ordonnance est révélatrice du système de séparation institué par Israël en Cisjordanie :

> ««Israélien» : résident d'Israël, personne dont le lieu de résidence se situe dans la région et qui est ressortissant israélien ou a été autorisé à immigrer en Israël conformément à la Loi du retour 5710-1950 telle qu'elle est en vigueur en Israël, ainsi qu'une personne qui n'est pas résidente de la région et qui est titulaire d'un visa d'entée valide en Israël».

Cette définition du terme «Israélien» crée une situation dans laquelle l'entrée dans une zone «fermée pour des raisons militaires» est autorisée aux citoyens israéliens, aux Juifs du monde entier et

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* Les nombres entre parenthèses indiquent le nombre de colonies (selon le nombre de commissions locales reconnues par le ministère de l'Intérieur) inclus dans chaque conseil régional.

** Chiffres du bureau central de statistique pour la fin de 2000.

[193] La raison en est que, comme on l'a vu, sauf si elle est modifiée par ordonnance militaire, la loi en vigueur en Cisjordanie est la loi jordanienne en vigueur jusqu'en 1967. Voir B'Tselem, *Vers l'annexion*, p. 18-19.

à toute personne entrant en Israël en qualité de touriste (avec un visa d'entrée valide»). Il en résulte que seuls les résidents palestiniens locaux ont besoin d'une autorisation spéciale du Commandant de la région pour entrer dans la zone des colonies.

Les aires de juridiction des Conseils régionaux en Cisjordanie comprennent d'immenses étendues vides (environ trent-cinq pour cent de la superficie de la Cisjordanie) qui ne font partie du territoire d'aucune colonie. Ces zones constituent des réserves de terres en vue du futur développement des colonies, ou de la création de zones industrielles (voir chapitre7); Diverses zones des aires de juridiction des conseils régionaux de Cisjordanie sont définies comme «zones de tir» et les FAI les utilisent pour y faire des manœuvres militaires. D'autres zones sont considérées comme des «réserves naturelles» où toute forme de développement est interdite.

Le degré de contrôle que les colons et l'Administration exercent sur ces zones est variable, et les Palestiniens en utilisent encore une partie pour pratiquer des cultures ou l'élevage. Cette situation résulte de la politique d'Israël consistant à déclarer propriétés domaniales de grandes étendues de terres, sans en informer toujours les personnes qui habitent sur ces terres ou les exploitent. En conséquence, l'expansion d'une colonie dans l'aire de juridiction du conseil régional dont elle relève entraîne quelquefois l'éviction de Palestiniens de leur terre[194].

Le Conseil régional d'Arvot Hayarden (d'une superficie de près de 900.000 dunams) par exemple, exerce un maximum de contrôle sur ces zones, à la fois parce que la population palestinienne y est peu nombreuse et que certaines de ces terres sont cultivées par les colons. A l'inverse, le Conseil régional du Mt. Hébron, n'exerce pratiquement aucun contrôle sur ces terres. Ainsi, lors des tentatives faites ces dernières années par des colons pour développer les colonies dans ce conseil régional, il est apparu que les zones reconnues comme relevant de l'aire de juridiction du conseil était utilisée par des Palestiniens comme habitat ou pour des activités agricoles et pastorales.

[194] Pour une critique des activités du ontrôleur des communautés israéliennes en Judée et en Samarie, voir le rapport 52A du contrôleur des comptes de l'Etat (en hébreu), Jérusalem, 2001, p. 163-180.

CHAPITRE 5

AVANTAGES ET INCITATIONS FINANCIERES

Un des moyens utilisés par Israël pour justifier les colonies de peuplement, bien qu'elles soient interdites par la quatrième Convention de Genève, consiste à soutenir que l'Etat ne transfère pas ses citoyens vers le territoire occupé. Israël prétend que chaque citoyen décide librement et de manière privée de s'installer dans la colonie de peuplement.

En réalité, tous les gouvernements israéliens ont toutefois appliqué une politique résolue et systématique d'encouragement des citoyens israéliens à quitter Israël pour s'installer en Cisjordanie. Comme le démontre le présent chapitre, un des principaux outils utilisés pour mettre en œuvre cette politique consiste à offrir des avantages et des incitations financiers non négligeables. Aux fins de la présente analyse, une distinction sera faite entre deux types d'avantages et d'incitations octroyés par le gouvernement : le soutien accordé directement aux citoyens en définissant les colonies de peuplement comme « zones prioritaires nationales », et l'appui donné aux autorités locales de la Cisjordanie, c'est-à-dire aux colonies de peuplement, selon des modalités qui favorisent celles-ci par rapport aux autorités locales sur le territoire d'Israël.

L'analyse du présent chapitre n'a pas pour but d'examiner le «poids» que font peser les colonies de peuplement sur le budget national ni d'estimer le montant total investi par le gouvernement dans les Territoires occupés. Le rapport décrira plutôt les composantes de la politique du gouvernement qui influent sur le *niveau de vie* de chaque citoyen et qui peuvent dès lors constituer une incitation à migrer vers la Cisjordanie. Le rapport n'examinera donc pas les autres formes d'investissements financiers, notamment la sécurité, les autres dépenses militaires ou la construction de routes. Dans une certaine mesure, ces investissements constituent en effet une condition préalable de l'existence même des colonies de peuplement plutôt qu'une composante de l'amélioration du niveau de vie.[2] De plus, compte tenu de la réalité unique dans laquelle s'inscrivent les colonies de peuplement (actes de violence commis par les Palestiniens, construction de routes après le redéploiement, etc.), il est difficile de comparer ces investissements avec ceux réalisés sur le territoire d'Israël.

A. Les colonies de peuplement en tant que zones prioritaires nationales

Un des principaux outils utilisés pour acheminer les ressources vers les habitants des colonies de peuplement est la définition de la plupart des colonies de peuplement de Cisjordanie comme «zones de développement» (selon l'expression appliquée jusqu'en 1992 y compris) ou comme «zones prioritaires nationales». Cette définition a été appliquée non seulement aux colonies de peuplement (en Cisjordanie et dans la bande de Gaza) mais aussi à diverses communautés sur le territoire d'Israël, en particulier en Galilée et dans le Néguev. La carte actuelle des zones prioritaires nationales et les incitations et avantages qui s'y rapportent ont été définis en 1998 par un comité de directeurs généraux dirigé par Avigdor Lieberman, à l'époque directeur général du cabinet du Premier ministre, et ont été

[2] Pour des données comparatives concernant la construction de nouvelles routes en Cisjordanie et dans la bande de Gaza au cours des années 1990, voir Adva Center, *Government Funding of the Israeli Settlement in Judea, Gaza and the Golan Heights in the 1990s: Local Authorities, Residential Construction and the Construction of Roads* (en hébreu), janvier 2002, p. 58 à 62 ; pour des données pour les années 2001-2202, voir Ze'ev Schift, «The March of Stupidity on the Bypass Roads»; *Ha'aretz*, 15 février 2002.

approuvés par le gouvernement dirigé par Binyamin Netanyahu.[3] Cette carte, qui remplaçait la carte précédente établie en 1992 sous le gouvernement de Yitzak Rabin,[4] est restée d'application sous le gouvernement d'Ehud Barak (1999-2001) et sous le gouvernement actuel, dirigé par Ariel Sharon.

La carte des zones prioritaires nationales avait pour but, comme l'a défini le comité des directeurs généraux à partir de 1998, «d'encourager la génération qui réside dans ces zones, d'encourager la première installation de nouveaux immigrants et d'encourager la migration de vétérans vers les zones prioritaires». D'après le comité, «la carte des zones prioritaires nationales est principalement basée sur des critères géographiques», en partant de l'idée que «l'éventail des possibilités qui s'offrent aux citoyens qui résident dans les zones périphériques est à maints égards limité au regard ce même éventail dans le centre.»[5]

Bien que les considérations géographiques puissent expliquer l'inclusion dans la carte des zones prioritaires du Néguev et de la Galilée, elles ne peuvent expliquer l'inclusion de la plupart des colonies de peuplement de la Cisjordanie, dont un grand nombre jouxtent ou avoisinent Jérusalem et les agglomérations de la zone métropolitaine de Tel Aviv, où travaillent de nombreux habitants des colonies de peuplement (sauf peut-être les colonies de peuplement de la vallée du Jourdain).[6] Il semblerait donc que le facteur qui détermine l'inclusion de la plupart des colonies de peuplement dans la carte ne soit pas les «possibilités limitées» dont disposent les colons en raison de l'éloignement par rapport au centre d'Israël mais bien le souhait d'encourager les citoyens israéliens à aller s'installer en Cisjordanie pour des raisons politiques. Le comité avait certainement raison de souligner que la carte des zones prioritaires nationales est basée «principalement» (c'est-à-dire pas uniquement) sur des considérations géographiques.

Les avantages et les incitations dont bénéficient les zones prioritaires sont accordés par six ministères du gouvernement: logement et construction; infrastructure nationale (par l'intermédiaire de l'Administration des domaines d'Israël); éducation; commerce et industrie; travail et affaires sociales; et finances (par l'impôt sur le revenu).[7] Le niveau des incitations varie d'après le classement de chaque colonie de peuplement en zone prioritaire de catégorie A ou B. Ce classement est indiqué séparément pour chaque avantage. Il s'ensuit que certaines colonies de peuplement sont classées A, B ou pas de priorité selon le ministère et l'avantage concernés.

Le *Ministère de la construction et du logement* fournit une aide généreuse à ceux qui achètent un nouvel appartement ou qui construisent leur propre logement dans des zones prioritaires nationales. Dans les zones définies comme zones prioritaires A, le ministère accorde un prêt de 60 000 ILS, dont la moitié est convertie en subvention après quinze ans. Dans les zones prioritaires B, ce prêt s'élève à 50 000 ILS, dont 20 000 ILS sont convertis en subvention à l'issue de la même période. Il faut noter que les règles fixées par le comité des directeurs généraux stipulent que la composante de subvention n'est pas censée être accordée dans les communautés riches et bien établies qui figurent sur la carte;[8] cette composante est toutefois accordée dans toutes les colonies de peuplement de Cisjordanie, y compris celles qui sont prospères. Le ministère contribue par ailleurs aux coûts de développement au

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[3] Cabinet du premier ministre, division de la coordination, du suivi et du contrôle, *Zones prioritaires nationales* (en hébreu), Jérusalem, 26 avril 1998.

[4] Cabinet du premier ministre, *Zones prioritaires nationales* (en hébreu), Jérusalem, 30 novembre 1992.

[5] *Zones prioritaires nationales*, 1998, p. 4. «Vétérans» par opposition aux «nouveaux immigrants» *[traduction]*.

[6] Pour une analyse détaillée de la dispersion géographique des colonies de peuplement, voir chap. 7 ci-après.

[7] Les données relatives aux avantages qui figurent dans cette partie du chapitre sont basées sur *Zones prioritaires nationales*, 1998, sauf indication contraire.

[8] D'après le comité, les communautés prospères sont celles qui font partie du groupe de classes 7 à 10 dans la hiérarchie socio-économique du Bureau central de la statistique.

moyen d'une subvention qui couvre jusqu'à cinquante pour cent des dépenses, selon la catégorie de communauté et le type de dépense. Il est important de relever que ces avantages sont accordés en sus des «prêts d'admissibilité» accordés par le ministère partout en Israël en fonction de critères personnels.

L'*Administration israélienne des terres*, qui relève du Ministère de l'infrastructure nationale, accorde des réductions de 69 et de 49 pour cent (respectivement pour les zones prioritaires A et B) sur la valeur du terrain en paiement de loyers à bail pour la construction résidentielle et une réduction de 69 pour cent sur les loyers à bail pour les terrains à usage industriel et touristique.

Le *Ministère de l'éducation* accorde une série d'incitations pour les enseignants qui travaillent dans des zones prioritaires A, notamment sous forme de promotions et d'ajout de quatre années d'ancienneté, d'exonération partielle de la cotisation du travailleur au fonds de formation en cours d'emploi, de participation aux frais de loyer et aux frais de déplacement, et de remboursement de 75 pour cent des minervals payés par les enseignants aux établissements d'enseignement supérieur.[9] Les zones B n'apparaissent pas sur la carte des avantages du ministère. Pour les parents dans les zones A, le Ministère de l'éducation accorde une réduction de 90 pour cent sur les droits de scolarité dans les jardins d'enfants préscolaires. Cette réduction est également prévue dans les colonies de peuplement figurant sur la carte et définies comme prospères (voir ci-dessus), contrairement à la politique appliquée en Israël aux communautés qui ont le même profil. En outre, le Ministère de l'éducation prend à sa charge tous les frais de transport des élèves qui fréquentent l'école dans les colonies de peuplement, que celles-ci figurent ou non sur la carte des zones prioritaires.

Le *Ministère de l'industrie et du commerce* accorde aux «entreprises agréées» au sens de la loi sur l'encouragement des investissements en moyens de production, c'est-à-dire à celles qui ont droit aux aides publiques, des subventions s'élevant à 30 pour cent dans les zones prioritaires A (20 pour cent en vertu de la loi et 10 pour cent à titre de subvention administrative), et 23 pour cent dans les zones prioritaires B (10 pour cent en vertu de la loi et 13 pour cent à titre de subvention administrative).[10] Toute entreprise agréée conformément à la loi bénéficie d'avantages en matière d'impôt sur le revenu, tant pour l'impôt des sociétés que pour l'impôt sur le revenu des personnes physiques qui travaillent dans l'entreprise. En outre, les industries situées dans des zones prioritaires C ont droit, pour la recherche-développement, à des subventions majorées qui peuvent atteindre 60 pour cent des coûts de chaque projet. Le Ministère de l'industrie et du commerce prend également à sa charge une part importante des prix des terrains. Il faut noter que, dans les années 1990, le ministère a créé dix nouvelles zones industrielles en Cisjordanie, la plupart dans la zone des six conseils régionaux, à un coût moyen d'environ 20 millions d'ILS par zone.[11] Les entreprises établies dans ces zones industrielles appartiennent à des Israéliens et certains occupent des Palestiniens.[12]

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[9] Pour une comparaison des avantages accordés pour les colonies de peuplement dans le domaine de l'éducation avec ceux qui sont accordés pour les communautés arabes et les villes de développement, voir Adva Center, *Statut de priorité nationale dans le domaine de l'éducation — Communautés arabes. Villes et colonies de peuplement de développement* (en hébreu), février 1999.

[10] Loi sur l'encouragement des investissements en moyens de production, 519-1950. Cette loi a été modifiée en 1990. En 1980, la loi sur l'encouragement des investissements en capital dans le secteur agricole, 5741-1980, a été ajoutée.

[11] «Sha'ar Binyamin» entre Pesagot et Ofra; «Emek Shilo près de Shilo; «Baron» près de Qedumin; le zoning industriel Gush Ézyon près d'Éfrat; le zoning industriel Misher Adummin; le zoning industriel Ma'ale Efrayin; le zoning industriel Immanu'el; le zoning industriel Qiryat Arba; le zoning industriel Barkan près d'Ari'el; et le zoning industriel Shim'a dans le sud des monts Hébron.

[12] Pour plus de détails sur cet aspect, voir Shlomo Tzezana, «White Elephants in Judea, Samaria and Gaza», *Ma'ariv*, 30 novembre 2001.

Le *Ministère du travail et des affaires sociales* fournit aux travailleurs sociaux des zones prioritaires A un ensemble d'avantages presque identique à celui offert par le Ministère de l'éducation aux enseignants (promotion et ancienneté, financement des droits de scolarité dans l'enseignement supérieur, etc.). En ce qui concerne les zones prioritaires B, le ministère accorde aux travailleurs sociaux trois années d'ancienneté, 75 pour cent de remboursement des frais de déplacement, et le financement à hauteur de 75 pour cent de la cotisation du travailleur au fonds de formation en cours d'emploi.

Le *Ministère des finances*, par l'intermédiaire de la Commission de l'impôt sur le revenu, accorde aux habitants de certaines localités en Israël des réductions sur le paiement de l'impôt sur le revenu à des taux de 5 à 20 pour cent. Cet avantage n'est pas lié à la carte des zones prioritaires nationales établie par le comité des directeurs généraux. Le ministre des finances fixe librement les réductions au moyen d'ordonnances qui indiquent les communautés qui bénéficieront des avantages et le niveau de la réduction. La plupart des colonies de peuplement bénéficient d'une réduction de 7 pour cent de l'impôt sur le revenu.[13]

Diagramme 5

Colonies de peuplement en Cisjordanie[*], par niveau de priorité

[13] Dans le graphique qui suit, cet avantage est inclus dans les zones prioritaires C et B.

Diagramme 6

Colons en Cisjordanie*, par niveau de priorité

B. Incitations pour les autorités locales

Une part importante des services que les citoyens israéliens reçoivent de l'Etat est fournie par l'intermédiaire des autorités locales: municipalités, conseils locaux, et conseils régionaux. Ces services concernent des domaines divers et variés. Certains sont fournis de manière autonome par l'autorité locale, d'autres sont assurés en coopération avec divers ministères du gouvernement. La première catégorie comprend notamment l'entretien des systèmes d'égouts et de distribution d'eau, l'exécution de services de nettoyage, l'assainissement et la surveillance vétérinaire, l'élaboration d'avant-projets locaux et l'octroi des permis de bâtir, l'entretien des bâtiments publics, des routes et des parcs publics, et la perception des taxes municipales. Les services fournis en coopération avec des ministères du gouvernement sont notamment: l'entretien des bâtiments scolaires, la gestion de jardins d'enfants préscolaires, les activités culturelles, l'entretien des musées, des bibliothèques et des infrastructures sportives, la gestion des dispensaires familiaux, la thérapie et le soutien pour les jeunes et les familles en détresse, le soutien aux conseils religieux, etc.

Les sources de financement pour ces services peuvent être classées en deux catégories.[14] La première comprend les revenus mobilisés par l'autorité locale elle-même: taxes municipales, prélèvements, droits, paiements des comités locaux (dans le cas des conseils régionaux), paiements pour les services offerts aux habitants (services d'ingénierie, surveillance vétérinaire, utilisation des bibliothèques, services médicaux, etc.), droits de scolarité, contribution des habitants aux coûts des travaux de développement, etc.

[14] Pour une analyse exhaustive du financement des pouvoirs locaux, voir Aryeh Hecht, *L'usurpation des systèmes de financement des autorités locales* (en hébreu), Jérusalem, Institut de recherche politique Floresheimer, 1977.

La seconde source de financement est l'Etat, qui transfère de l'argent aux autorités locales en utilisant deux méthodes. La première est la participation au financement direct de certains services déterminés, en particulier par le Ministère de l'éducation et le Ministère du travail et des affaires sociales (ci-après: «contributions affectées»). La seconde forme est l'octroi de subventions générales par le Ministère de l'intérieur pour les opérations de routine de l'autorité locale. Le Ministère de l'intérieur accorde également à certaines autorités locales des subventions ponctuelles qui leur permettent de répondre à des «besoins spéciaux» (absorption d'immigrants, encouragement à l'installation de jeunes, lutte contre les inondations, réduction des déficits, etc.). Bien que divers critères existent pour l'attribution de ces subventions, le Ministère de l'intérieur jouit d'une grande liberté dans ce domaine.

Un des mécanismes utilisés par l'Etat pour favoriser les autorités locales en Cisjordanie par rapport à celles qui sont situées sur le territoire d'Israël est l'acheminement de fonds par l'intermédiaire de la Division des colonies de peuplement de l'Organisation sioniste mondiale (ci-après: «la Division»). Comme indiqué ci-dessus, l'unique but de la Division est d'établir des colonies de peuplement dans les Territoires occupés en 1967 et de soutenir la poursuite du développement de ces colonies de peuplement. La majeure partie des ressources financières apportées par la Division est transférée aux colons par l'intermédiaire des autorités locales, dans le cadre tant du budget ordinaire que du budget spécial. Ce qu'il y a de particulier à la Division, c'est que son budget est prélevé entièrement sur le budget de l'Etat mais que les règles, procédures et lois qui s'appliquent aux ministères gouvernementaux (et surtout la loi essentielle: celle sur le budget) ne s'appliquent pas à la Division, qui n'est pas un organisme gouvernemental. Le montant annuel du budget de la Division, qui est transféré par l'intermédiaire du Ministère de l'agriculture,15 variait de 153 à 194 ILS entre 1992 et 1998.16

En 1999, le Contrôleur général d'Israël a publié un rapport spécial sur le fonctionnement de la Division. D'après ce rapport, la Division avait, depuis le début de 1997, étendu ses domaines de soutien aux colonies de peuplement au-delà du logement et de l'agriculture, suite à une initiative similaire de l'Agence juive concernant les communautés soutenues par celle-ci sur le territoire d'Israël. Les sphères nouvelles concernent notamment les activités sociales, éducatives et communales, l'aide à la construction de bâtiments publics, l'octroi de subventions aux chefs d'entreprises, l'assistance aux institutions religieuses juives, le financement des transports, l'organisation d'expositions etc. D'après le rapport du Contrôleur général, cet élargissement servait d'outil pour favoriser les colonies de peuplement par rapport aux communautés situées sur le territoire d'Israël:

La Division a étendu ses activités et ses responsabilités en s'inspirant du principe de l'égalité de l'aide pour les communautés des deux côtés de la Ligne verte. Simultanément, toutefois, la Division a interprété le principe de l'égalité de manière souple; dans certains cas, elle a étendu ses activités à des sphères qui vont plus loin que celles des activités de l'Agence juive et, dans d'autres, elle a renforcé son aide au-delà des normes d'assistance fixées par l'Agence juive pour les communautés qu'elle aide en deçà de la Ligne verte. La Division a donc instauré un traitement privilégié (ce que n'avait pas décidé le gouvernement) pour les colonies de peuplement en Judée, en Samarie, à Gaza et dans le Golan par rapport aux autres communautés.[17]

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[15] Jusqu'en 1998, les fonds transférés à la Division étaient inscrits au budget du Ministère de l'agriculture sous la rubrique «La Division», sans expliquer de quelle division il s'agissait ni à quelles fins cet argent était consacré (Aryeh Caspi, *Ha'aretz*, 25 juin 1999). C'est un autre exemple de l'absence générale de transparence qui caractérise de nombreux autres aspects qui ont trait aux colonies de peuplement (voir l'introduction du présent rapport).

[16] Contrôleur général d'Israël, *Rapport d'un contrôle des aides publiques pour le développement des nouvelles colonies de peuplement dans les régions de Judée, de Samarie, de Gaza et du Golan* (en hébreu) (Jérusalem, mai 1999).

[17] *Ibid.*, p. 20.

Une autre raison de ce traitement préférentiel, d'après le rapport du Contrôleur général, est que, «puisque tant les ministères gouvernementaux que la Division s'emploient à aider les colons dans les mêmes régions, et parfois dans les mêmes buts, un «double soutien» est parfois apporté aux colons».[18]

La Direction de la vérification des comptes du Ministère de l'intérieur publie un rapport annuel qui présente le résumé des données financières pour toutes les autorités locales en Israël et dans les colonies de peuplement. Nous présentons ci-dessous des chiffres qui se basent sur le rapport le plus récent, qui concerne l'année 2000.[19] Ces chiffres donnent la ventilation des sources de revenu des autorités locales (israéliennes) en Cisjordanie pour cette année et comparent ces chiffres avec les chiffres parallèles pour les autorités locales sur le territoire d'Israël. Il faut souligner que l'intifada al-Aqsa n'a pas augmenté le niveau du financement de l'Etat pour les autorités locales de Cisjordanie en 2000: les budgets pour ces autorités ont été approuvés en 1999, avant le déclenchement de ces événements.

Avant d'examiner ces chiffres, il convient de clarifier un certain nombre de questions méthodologiques. Premièrement, la taille des populations varie d'un endroit à l'autre, ce qui a une incidence essentielle sur le niveau des budgets. Les chiffres présentés ci-après sont dès lors des chiffres par habitant et non les chiffres du montant total affecté à l'autorité. Deuxièmement, les chiffres présentés ici concernent le budget habituel des autorités (le «budget ordinaire», en termes comptables), et n'incluent *pas* le revenu du «budget spécial» affecté aux investissements non récurrents (généralement en infrastructures physiques), parce qu'il n'existe pas de moyen de comparer ce revenu pour les différentes autorités locales au cours d'un même exercice. Troisièmement, l'analyse ci-dessous ne concerne pas les données financières pour les municipalités, parce qu'il n'existe que deux autorités locales en Cisjordanie qui ont ce statut (Ma'ale Adummim et Ari'el),[20], de sorte qu'une comparaison avec les moyennes nationales pourrait ne pas être représentative.

Un examen des tableaux 4 et 5 et des diagrammes qui les accompagnent montre que les transferts financiers par habitant du gouvernement aux autorités locales de Cisjordanie sont sensiblement plus élevés que la moyenne pour les autorités locales sur le territoire d'Israël. L'écart entre les deux est particulièrement évident dans le cas des subventions générales, qui sont particulièrement importantes du point de vue des autorités locales; contrairement aux contributions affectées, les autorités peuvent utiliser les fonds des subventions librement, même si le budget global est soumis à l'approbation du conseil de l'autorité locale et du Ministère de l'intérieur.

Les subventions générales accordées par le gouvernement pour les conseils locaux en Cisjordanie en 2000 s'élevaient en moyenne à 2 224 ILS par habitant, contre 1 336 ILS en moyenne par habitant pour les conseils locaux en Israël, soit 65 pour cent de plus. La hauteur des subventions par habitant n'était inférieure à la moyenne israélienne que dans quatre des quinze conseils locaux de Cisjordanie seulement, tandis que dans cinq de ces conseils, ce niveau était supérieur de 100 pour cent ou plus à la moyenne. L'écart en faveur des conseils locaux en Cisjordanie peut aussi se voir dans le contexte des contributions affectées par les ministères gouvernementaux. Alors que la moyenne de cet investissement dans les conseils locaux en Israël s'élève à 1 100 ILS par habitant, ce même investissement dans les conseils locaux de Cisjordanie atteint près de 1 500 ILS par habitant, soit 36 pour cent de plus.

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[18] *Ibid.*, p. 17.

[19] Ministère de l'intérieur, Direction de la vérification des comptes des autorités locales, rapport de 2000 des données financières contrôlées pour les autorités locales, rapport n° 6 (en hébreu) (Jérusalem, septembre 2001).

[20] A la fin de 2001, la colonie de peuplement de Betar Illit a également obtenu le statut de municipalité.

Il est intéressant de noter que le statut préférentiel dont jouissent les conseils locaux en Cisjordanie sur le plan du transfert de fonds gouvernementaux n'est pas allé de pair avec une diminution de la participation des habitants au revenu du conseil par rapport à la moyenne en Israël. Une des raisons en est la capacité économique élevée qui caractérise en moyenne les conseils locaux de Cisjordanie par rapport à ceux d'Israël. C'est ainsi que le revenu autofinancé pour les autorités locales de Cisjordanie atteint au total quelque 2 300 ILS par habitant, alors que le chiffre moyen sur le territoire d'Israël est d'environ 1 700 ILS par habitant. La combinaison du traitement préférentiel par le gouvernement et du taux plus élevé de participation des habitants produit un panier total de revenus qui est plus élevé de 45 pour cent en Cisjordanie qu'en Israël.

Tableau 4

Revenu par habitant dans les conseils locaux de Cisjordanie (en ILS)

Nom du conseil	Revenu autofinancé	Contributions affectées	Subventions générales	Revenu total par habitant
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
Qedumin	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
Revenu moyen dans les conseils locaux de Cisjordanie	**2 266**	**1 489**	**2 224**	**5 995**
Revenu moyen dans les conseils locaux en Israël	**1 683**	**1 100**	**1 336**	**4 119**

Diagramme 7

Revenu par habitant dans les conseils locaux (en ILS)

Pour les conseils régionaux, la situation est similaire, mais non identique, à celle des conseils locaux. Dans le cas des conseils régionaux, l'écart des subventions générales est encore plus prononcé que dans le cas des conseils locaux. Alors que la moyenne pour les conseils régionaux en Israël est d'environ 1 500 ILS par habitant, cette moyenne pour la Cisjordanie est d'à peu près 4 000 ILS, soit quelque 165 pour cent de plus. Dans l'ensemble des six conseils régionaux de Cisjordanie, le niveau des subventions est supérieur à la moyenne israélienne; le niveau le plus élevé est celui du conseil régional de Megillot, où les subventions atteignent environ 7 500 ILS par habitant. En ce qui concerne les contributions affectées provenant des ministères gouvernementaux, l'écart est d'environ 65 pour cent en faveur des conseils régionaux de Cisjordanie.

Quant au revenu autofinancé, la situation dans les conseils régionaux diffère quelque peu de celle dans les conseils locaux. Dans les conseils régionaux en Israël, la contribution des habitants au revenu du conseil est en moyenne supérieure de 50 pour cent à celle des habitants des conseils régionaux en Cisjordanie. Cela étant, l'écart énorme des transferts de l'Etat en faveur des conseils en Cisjordanie signifie que le panier global du revenu par habitant reste en moyenne supérieur de quelque 40 pour cent dans ces conseils par rapport aux conseils régionaux en Israël.

Tableau 5

Revenu par habitant dans les conseils régionaux de Cisjordanie (en ILS)

Nom du conseil	Revenu autofinancé	Contributions affectées	Subventions générales	Revenu par habitant
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
Mont Hébron	1 768	3 354	4 884	10 007
Shomeron	1 887	2 471	2 421	6 780
Revenu moyen dans les conseils régionaux de Cisjordanie	**2 207**	**3 232**	**4 006**	**9 452**
Revenu moyen dans les conseils régionaux en Israël	**3 333**	**1 952**	**1 498**	**6 783**

Diagramme 8
Revenu par habitant dans les conseils régionaux (en ILS)

L'étendue des écarts dans le volume des ressources financières transférées aux autorités locales par l'Etat peut se voir en comparant les transferts au profit de certaines autorités locales des deux côtés de la Ligne verte. Afin de garantir que cette comparaison soit juste et révélatrice, on a pris soin de comparer des autorités locales ayant des profils similaires du point de vue de la taille de la population, de la distance par rapport au centre du pays, et de la situation socio-économique des habitants.[21] Les résultats de cette comparaison figurent au tableau 6 ci-dessous.

[21] Cette variable se reflète dans la hiérarchisation de la capacité économique des habitants de chaque autorité (sur une échelle de 1 à 10), telle qu'elle est calculée par le Bureau central de la statistique en combinant diverses données comme le revenu, la taille des unités de logement, le nombre de véhicules par famille, etc.

Tableau 6

Comparaison entre les autorités locales en Cisjordanie et en Israël (en ILS)

Nom de l'autorité locale	Nombre d'habitants	Niveau socio-économique	Subvention de l'Etat par habitant*	Nom de l'autorité locale	Nombre d'habitants	Niveau socio-économique	Subvention de l'Etat par habitant*
C.R.** Arvot Hayarden	4 400	6	8 550	C.R. Ramat Hanegev	4 900	7	1 710
C.R. Mont Hébron	4 300	5	8 240	C.R. Yoav	4 300	5	4 740
C.R. Mate Binyamin	26 300	5	4 380	C.R. Mate Yehuda	29 300	5	2 790
C.L.** Qedumin	2 700	6	4 860	C.L. Yavni'el	2 700	6	3 620
C.L. Efrat	6 300	7	3 250	C.L. Bnei Ayish	6 400	6	2 110
C.L. Qiryat Arba	5 700	4	5 960	C.L. Mizpe Ramon	5 300	3	4 180
C.L. Alfe Menashe	4 600	9	2 900	C.L. Ramat Yeshai	4 600	9	1 570

* Ces chiffres comprennent à la fois les contributions affectées et les subventions générales.
** C.R. = conseil régional; C.L. = conseil local

Une étude réalisée par le Centre Adva donne une image détaillée du système utilisé pour financer les activités des autorités locales juives en Cisjordanie, dans la bande de Gaza et sur les hauteurs du Golan (considérées comme une seule unité) au cours des années 1990 (1990 à 1999).[22] L'étude compare les données pour ce groupe, tant en ce qui concerne les chiffres moyens pour Israël que pour les groupes spéciaux d'autorités, notamment les villes de développement. Bien que cette étude inclue des autorités supplémentaires en plus de celles qui sont présentées ci-dessus, ses conclusions sont similaires pour l'essentiel.[23]

[22] Centre Adva, *Government Funding of the Israeli Settlement in Judea, Samaria, Gaza and the Golan Heights in the 1990s.*

[23] Les autorités supplémentaires sont le conseil régional de Hof" Azza, le conseil régional de Ramat Hagolan, et le conseil local de Katzrin.

Tableau 7

Moyenne du revenu municipal sur plusieurs années, 1990-1999 (en ILS)

	Budget total	Revenu autofinancé	Financement par l'Etat[***]
Cisjordanie, Gaza et Golan	5 428	1 732	3 679
Villes de développement[**]	4 176	1 925	2 308
Israël	3 807	2 348	1 458

[*] Ces chiffres concernent les trois types de conseils locaux et sont actualisés sur base de l'indice des prix pour 2000.
[***] Ce groupe se compose de 25 communautés définies comme «colonies de peuplement de développement» par le Bureau central de la statistique.
[***] Ces chiffres comprennent à la fois les contributions affectées et les subventions générales.

La recherche montre que le gouvernement israélien n'a cessé tout au long des années 1990 de favoriser les autorités locales dans les Territoires occupés et sur les hauteurs du Golan par rapport aux autorités locales en Israël. Les transferts financiers par habitant ont été supérieurs de 150 pour cent. Le tableau ci-dessus montre que ces transferts ont été quelque 60 pour cent plus élevés que ceux à destination des villes de développement, qui font manifestement partie des zones vers lesquelles le gouvernement s'efforce d'attirer des habitants (voir l'analyse de la carte des zones prioritaires nationales ci-dessus). Suite à la contribution considérable de l'Etat, les habitants des autorités locales dans les Territoires occupés ont été invités à financer de manière autonome (par le revenu autofinancé) 25 pour cent de moins que la moyenne nationale, et 10 pour cent de moins que la moyenne pour les villes de développement. Au total, le budget par habitant dont disposent les autorités locales dans les Territoires occupés était supérieur de plus de 40 pour cent à la moyenne nationale tout au long des années 1990, et supérieur de 30 pour cent environ à la moyenne pour les villes de développement.

CHAPITRE 6

LE SYSTEME D'AMENAGEMENT DU TERRITOIRE

Le système d'aménagement du territoire en Cisjordanie appliqué par l'administration civile a un effet décisif sur la carte de la Cisjordanie. Comme d'autres mécanismes mis en place dans les Territoires occupés, le système d'aménagement du territoire suit deux voies distinctes: l'une pour les Juifs et l'autre pour les Palestiniens. Le système est extrêmement efficace, s'agissant d'établir et d'étendre les colonies de peuplement, mais il agit aussi avec diligence pour empêcher l'extension des villes et des villages palestiniens.

L'importance intrinsèque de tout système d'aménagement du territoire est la suivante: il est chargé de déterminer l'utilisation des terres dont dispose un public déterminé conformément aux besoins, perceptions et intérêts de ce public pris globalement et des individus qui le composent. Le document qui détaille les décisions prises en vertu de ce système dans toute localité est le plan d'ensemble, qui fixe la superficie, l'emplacement et l'appartenance zonale de chaque unité de terrain (habitations, industrie, commerce, institutions publiques, route, zone publique ouverte etc.). Le système israélien d'aménagement du territoire en Cisjordanie utilise ses compétences pour promouvoir les intérêts du gouvernement israélien en place plutôt que le bien de la population locale.

Sur le plan juridique, le fonctionnement du système d'aménagement du territoire en Cisjordanie s'appuie sur la législation jordanienne d'application dans la région à l'époque de l'occupation, principalement sur la loi n° 79 sur la planification des villes, des villages et des constructions, adoptée en 1966.[24] Cette loi définit trois types de plan d'ensemble, chacun subordonné au suivant sous une forme hiérarchique et selon un niveau croissant de détails: un plan d'ensemble régional, un plan d'ensemble général/local, et un plan détaillé. Ces plans sont censés être établis et approuvés par un système institutionnel qui correspond à chaque niveau: le conseil suprême de planification, les comités de planification de district, et les comités de planification locaux.[25] Aux fins de la loi, les conseils de village et les municipalités font office de conseils locaux d'aménagement du territoire, comme c'est habituellement le cas en Israël également.[26] La loi contient également diverses dispositions relatives au processus de consultation de tous les organes compétents lors de l'établissement des plans d'ensemble, à la publication de ces plans et à leur dépôt pour examen par le public, à l'audition des objections, etc.

La loi jordanienne sur l'aménagement du territoire a été modifiée par Israël par l'ordonnance militaire n° 418, promulguée en 1971 et modifiée plusieurs fois au fil des ans.[27] Cette ordonnance a apporté des modifications radicales au système d'aménagement du territoire en Cisjordanie. Ces changements servaient presque exclusivement les intérêts de l'administration israélienne et des colons tout en réduisant au minimum la représentation palestinienne dans les comités de planification ainsi que l'influence palestinienne en matière d'aménagement du territoire.

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[24] *Lois relatives à l'aménagement du territoire, aux constructions et aux terrains*, p. 43 à 158.

[25] Dans le cas des villes ou des petits villages, la loi permet d'unifier les deux derniers stades sous la forme d'un «plan d'ensemble général/détaillé» (loi n° 79 relative à l'aménagement des villes, des villages et des constructions, article 22).

[26] Pour une comparaison des lois et de la structure institutionnelle du système de planification en Israël, voir Dennis Goldman, *Introduction aux lois sur l'aménagement du territoire et la construction* (en hébreu), Jérusalem, Université hébraïque de Jérusalem, 2000.

[27] Ordonnance n° 418 relative à la loi sur l'aménagement des villes, des villages et des constructions, 5731-1971, dans *Lois relatives à l'aménagement du territoire, aux constructions et aux terrains*, p. 239 à 350.

Suite à la signature des accords provisoires en 1995 et au redéploiement des forces armées israéliennes au cours des années qui suivirent, les compétences en matière d'aménagement du territoire dans les zones A et B ont été transférées à l'Autorité palestinienne. Les compétences d'aménagement pour la zone C, qui couvre depuis 2000 quelque 60 pour cent de la Cisjordanie, sont restées inchangées. Actuellement, un très faible pourcentage de la population palestinienne de la Cisjordanie vit dans la zone C, mais le système militaire d'aménagement du territoire continue d'exercer une influence directe sur la vie de dizaines de milliers de Palestiniens, principalement dans la zone B, et une influence indirecte sur tous les Palestiniens habitant en Cisjordanie.

A. Restrictions frappant la construction dans les communautés palestiniennes

Un des principaux changements apportés par Israël à la loi jordanienne a été le transfert au commandant des forces armées israéliennes dans la région de toutes les compétences conférées par la loi jordanienne au ministre de l'intérieur.[28] Il s'ensuit que la plupart des responsables jordaniens et palestiniens ont été remplacés par des Israéliens, dont la plupart étaient des officiers des forces armées israéliennes ou des représentants des colons. Le Conseil suprême de l'aménagement du territoire est devenu une unité de l'administration civile relevant directement du fonctionnaire responsable des affaires intérieures.

De plus, Israël a supprimé les comités de planification de district (qui étaient chargés d'établir les plans d'ensemble locaux généraux) ainsi que les compétences de planification des conseils de village (dans le contexte de l'aménagement détaillé). Ces compétences ont été transférées au Bureau central du plan, un organe technique et professionnel opérant parallèlement au Conseil suprême de l'aménagement du territoire. Par conséquent, les seules compétences qui sont restées aux mains des Palestiniens étaient les compétences de planification des conseils municipaux (aux fins des plans détaillés); même ces compétences ont été réduites par divers moyens.[29]

Au fil des ans, le principal outil utilisé par Israël pour limiter la construction par la population palestinienne en dehors des limites des municipalités a consisté simplement à ne pas établir de plans d'aménagement. Comme l'administration jordanienne, l'administration israélienne s'est abstenue d'établir des plans d'ensemble régionaux actualisés pour la Cisjordanie. Il s'ensuit que, jusqu'au transfert des compétences à l'Autorité palestinienne (et, jusqu'ici, dans la zone C), les deux plans d'aménagement régionaux établis dans les années 1940 par le mandat britannique restent d'application, l'un dans le nord, l'autre dans le sud de la Cisjordanie.[30]

Les plans d'ensemble établis sous le régime du mandat étaient déjà une référence tout à fait déraisonnable pour l'aménagement urbain pendant les premières années de l'occupation, et ils le sont encore davantage aujourd'hui.[31] Une de raisons principales est l'écart, qui s'est creusé au fil des ans, entre la taille de la population sur laquelle se fondaient les plans d'aménagement établis sous le régime du mandat et la taille réelle de cette population. Les zones dans lesquelles ces plans autorisaient la construction, généralement au voisinage de zones bâties existantes, ont été rapidement exploitées, tandis que la majeure partie de la région de la Cisjordanie est restée classée comme «zones agricoles» ou «réserves naturelles», où la construction est interdite.

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[28] *Ibid.*, art. 2, par. 1.

[29] *Ibid.*, art. 2, par. 2, point 3.

[30] Le Jerusalem District Outline Regional planning Scheme RJ/5, approuvé en 1942, et le *Samaria Regional Planning Scheme S15*, déposé en 1945 mais qui n'a jamais reçu l'approbation finale.

[31] Pour plus de détails sur cette question, voir un avis relatif à l'aménagement rédigé par Bimkom, *Villages de la zone C sans plan d'ensemble d'aménagement* (en hébreu), Avis sur l'aménagement, juin 2001 (non publié).

Par ailleurs, les plans d'ensemble britanniques ne répondent pas aux besoins d'aménagement de la population palestinienne. En effet, ils prévoient quatre utilisation des terres seulement: agriculture, construction, réserve naturelle et réserve côtière. Cette répartition ignore les nombreuses affectations des terres qui sont comprises, par exemple, dans les plans d'ensemble des districts applicables sur le territoire d'Israël (zone industrielle, zone touristique, zone de carrières, etc.). Qui plus est, ces plans fixent à 1 000 m^2 la superficie minimum pour la construction d'une unité d'habitation, sans possibilité de subdiviser cette superficie en unités plus petites (parcellisation).

Au début des années 1990, le Bureau central de l'aménagement du territoire, de l'administration civile, a établi des plans d'ensemble partiels spéciaux pour quelque 400 villages de Cisjordanie. Ces plans devaient jouer le rôle des plans détaillés requis par la loi jordanienne. Toutefois, au lieu d'autoriser le développement des villages, ces plans étaient en fait des plans de démarcation. Pour les établir, des photographies aériennes ont été prises de chaque village et une ligne schématique a ensuite été ajoutée autour de la zone habitée. La construction sur des terrains situés en dehors de ce périmètre a été interdite. L'idée que suggèrent ces plans de démarcation est que la construction dans les villages palestiniens est censée avoir lieu selon la méthode du «remplissage», c'est-à-dire en comblant les espaces libres à l'intérieur de la zone de démarcation au moyen de constructions en hauteur et au prix d'une augmentation progressive de la densité de la population.[32]

Les demandes introduites par le passé auprès de l'administration civile par des habitants palestiniens (et encore aujourd'hui dans le cas de la zone C) en vue de construire sur des terrains privés situés en dehors de la zone délimitée par ces plans sont presque toujours rejetées. Ces rejets se fondent à la fois sur les plans de démarcation (le terrain est situé en dehors de la zone du plan) et sur les plans d'ensemble établis sous le régime du mandat (la zone est une zone agricole ou une réserve naturelle). Par exemple, entre 1996 et 1999, l'administration civile n'a délivré que 79 permis de bâtir. [33] L'administration civile donne l'ordre de démolir les maisons construites sans permis.[34]

Dans certaines parties de la Cisjordanie, en particulier le long de la zone de collines à l'ouest, les limites des zones A ou B sont presque identiques à la limite de la zone bâtie de communautés palestiniennes, c'est-à-dire à la limite des plans de démarcation (voir la carte jointe au présent rapport ainsi que le chapitre 7 ci-dessous). Bien que la plupart des habitants de ces zones vivent dans les zones A et B, la majeure partie des terres disponibles pour la construction au périmètre des villages se situe en zone C. Par conséquent, même si les compétences en matière d'aménagement et de construction ont été transférées ostensiblement à l'Autorité palestinienne, ce transfert est vide de sens dans un grand nombre de cas.

L'utilisation des plans d'ensemble comme outil pour limiter la construction par les Palestiniens et pour promouvoir la construction des colonies de peuplement est également très répandue à Jérusalem-Est, malgré les différences de mécanisme juridique et institutionnel imposées à cette zone par rapport au reste de la Cisjordanie. Immédiatement après l'annexion de Jérusalem-Est en 1967 et contrairement au reste de la Cisjordanie, tous les plans d'ensemble jordaniens applicables à la région ont été déclarés nuls et l'on a créé, sur le plan de l'aménagement, un vide qui n'a été comblé que progressivement. Pendant les dix premières années qui ont suivi l'annexion, des permis de construire ont été délivrés ponctuellement dans des zones extrêmement limitées de la ville.[35]

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[32] B'Tselem, *Demolishing Peace*, p. 11.

[33] Amnesty International, *Demolition and Dispossession: The Destruction of Palestinians' Homes*. MDE 15/059/1999 (décembre 1999).

[34] Pour plus de détails concernant le nombre de maisons démolies dans ce contexte, voir B'Tselem, *Demolishing Peace*; Amnesty International, *Demoliton and Dispossession*.

[35] Shalem, *East Jerusalem —Planning Situation*, p. 5.

Au début des années 1980, la municipalité de Jérusalem a décidé d'établir un plan d'ensemble pour tous les quartiers palestiniens de Jérusalem-Est. La plupart de ces plans sont aujourd'hui établis; une minorité d'entre eux sont encore en phase d'établissement et d'approbation. La caractéristique la plus frappante de ces plans d'ensemble est la quantité extraordinaire de terres (40 pour cent environ) qui sont définies comme «paysage libre», dans lequel toute forme de construction est interdite. Les plans approuvés jusqu'à la fin de 1999 montrent que seuls 11 pour cent de la zone de Jérusalem-Est, *à l'exclusion des terrains expropriés*, sont disponibles à la construction pour la population palestinienne. Comme c'était le cas dans le reste de la Cisjordanie dans le contexte des plans de démarcation, cette construction est principalement autorisée à l'intérieur des zones bâties existantes.[36]

B. Le système d'aménagement du territoire pour les colonies de peuplement

Le même système juridique et institutionnel compétent pour l'aménagement du territoire dans les zones palestiniennes est également compétent pour l'aménagement du territoire dans les colonies de peuplement. Toutefois, les critères appliqués dans les deux cas sont diamétralement opposés. S'agissant des institutions, les plans d'ensemble pour les colonies de peuplement sont examinés et approuvés par le sous-comité pour les colonies de peuplement, qui est un des nombreux sous-comités qui relèvent du Conseil suprême de l'aménagement du territoire.

L'ordonnance qui a modifié la loi jordanienne a habilité le commandant des forces armées israéliennes dans la Région à rendre des ordonnances instituant, pour des zones déterminées, des «comités spéciaux d'aménagement du territoire» «qui auront les mêmes compétences que le comité local d'aménagement du territoire… [et] que le comité d'aménagement de district».[37] Cette disposition a été utilisée par l'administration israélienne pour qualifier les autorités locales juives de Cisjordanie de comités spéciaux d'aménagement du territoire, habilités à établir et à soumettre (au Conseil suprême de l'aménagement du territoire) des plans d'ensemble détaillés et des plans d'ensemble généraux locaux et à délivrer des permis de bâtir aux habitants sur base de ces plans. Aucun conseil de village palestinien n'a jamais été qualifié de comité spécial d'aménagement du territoire aux fins de cette loi.

Les limites municipales de chaque autorité locale juive (c'est-à-dire la zone qui relève de sa juridiction) telles que fixées dans les ordonnances rendues par le commandant des forces armées israéliennes, font office de «zones d'aménagement» pour chaque comité spécial d'aménagement du territoire, et la compétence du comité englobe cette zone. Dans le cas des conseils régionaux, la zone d'aménagement se limite aux «zones des communautés» comprises dans ces conseils, autrement dit, elles n'incluent pas les réserves de terres à l'intérieur de la zone du conseil qui n'ont pas été rattachées à une colonie de peuplement précise (pour une analyse plus détaillée, voir le chapitre 7 ci-après).

Les autorités juives locales, dans leur fonction de comités d'aménagement locaux et de district pour les colonies de peuplement, opèrent en coordination et en coopération avec les diverses institutions du système militaire et gouvernemental dans un processus constant d'expansion et de croissance. La première condition pour soumettre des plans d'ensemble à l'approbation du Conseil suprême de l'aménagement du territoire est que la zone qui en fait l'objet se trouve dans la zone qui relève de la juridiction de l'autorité locale. Si ce n'est pas le cas, l'administration civile intervient pour réaménager les limites administratives afin de les adapter à ce nouveau plan d'ensemble. Par exemple, le parquet du procureur de la République a décrit la manière dont le dernier plan d'ensemble pour la colonie de peuplement de Ma'ale Adummim (contre lequel une requête a été introduite devant la Cour suprême) a été soumis pour approbation:

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[36] *Ibid*.

[37] Art. 2A de l'arrêté d'exécution de la loi sur l'aménagement des villes, des villages et des constructions.

> «Au début de 1990, le chef du conseil de Ma'ale Adummim a pris contact avec l'administration civile et lui a demandé d'étendre la zone qui relève de la juridiction de la communauté en y ajoutant quelque 18 000 dunams supplémentaires… Les zones que Ma'ale Adummim demandait de rattacher à la zone relevant de sa juridiction faisaient à l'époque partie de la zone qui relève de la juridiction du conseil régional de Mate Binyamin et du conseil régional de Gush Ezyon… Le 16 octobre 1991, après les travaux sur ce sujet effectués par le quartier général, le répondant n° 1 [le commandant des forces armées israéliennes en Cisjordanie] a signé des règlements relatifs aux conseils locaux (remplacement de la carte) … selon lesquels la zone qui relève de la juridiction de la communauté a été augmentée de 13 500 dunams environ.»[38]

Une autre difficulté résulte de l'établissement de colonies de peuplement dans des zones définies comme zones agricoles ou comme réserves naturelles dans les plans d'ensemble régionaux sous le régime du mandat. Cette difficulté a été contournée en veillant à ce que la quasi-totalité des plans d'ensemble locaux généraux pour les colonies de peuplement soit introduite auprès du Conseil suprême de l'aménagement du territoire comme «modification du plan d'ensemble régional S-15 ou RJ-5». Cela permet au système militaire d'aménagement du territoire d'autoriser l'établissement de nouvelles colonies de peuplement et l'extension de colonies existantes sans toutefois renoncer à appliquer les plans d'ensemble du régime du mandat, qui sont effectivement utilisés pour limiter l'extension des communautés palestiniennes.

En soi, la flexibilité du système d'aménagement du territoire n'est pas critiquable, que ce soit sur le plan de la modification des zones qui relèvent de la juridiction des autorités locales juives ou sur le plan de la modification de la répartition des zones de terres dans les colonies de peuplement par rapport aux plans d'ensemble du régime du mandat britannique. Ce qui est critiquable, toutefois, c'est le contraste entre cette flexibilité et l'application stricte et littérale de la loi par Israël en ce qui concerne l'aménagement du territoire et le développement dans les communautés palestiniennes, où Israël n'hésite pas à abuser du système d'aménagement pour servir ses fins propres.

Les autorités locales juives élaborent leurs plans d'ensemble en coopération avec l'organisme chargé de l'établissement des colonies de peuplement: le Ministère du logement et de la construction, et la Division des colonies de peuplement de l'Organisation sioniste mondiale; ces organismes continuent à accompagner la colonie de peuplement après son établissement. Un de ces deux organismes figure dans chaque plan sous la dénomination «organe qui soumet le plan» en tant qu'organisme habilité par le Dépositaire des biens de l'Etat à aménager les terres, et/ou sous la dénomination «exécuteur».

Lorsque le plan a été soumis au sous-comité des colonies de peuplement du Conseil suprême de l'aménagement du territoire et que cet organisme accorde une approbation provisoire, celle-ci est publiée dans la presse (y compris la presse de langue arabe dans les Territoires occupés) et les plans sont déposés pour examen par le public pendant plusieurs semaines. Les personnes qui estiment être lésées par les décisions prises dans le plan, y compris les habitants palestiniens, ont le droit de soumettre des objections au comité du contentieux du Conseil suprême de l'aménagement du territoire.

En pratique, la capacité des habitants palestiniens à formuler *effectivement* des objections à l'encontre des plans d'ensemble pour les colonies de peuplement est extrêmement limitée. La principale raison en est que la plupart des motifs qui pourraient amener le comité du contentieux à accepter une objection au plan d'ensemble pour une colonie de peuplement sont déjà résolus avant que le plan ne soit soumis au public pour examen. La question de la propriété des terres, par exemple, est réglée pendant le processus de réquisition des terres. Même si un habitant palestinien n'apprend que

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[38] Paragraphe 9 de la réponse du Procureur général dans HCJ 3125/98, *Abd Al-'Aziz Muhammed Iyad et al. c. Commandant des forces armées israéliennes en Judée et en Samarie* et al.

ses terres sont destinées à l'extension d'une colonie de peuplement que lorsque le plan d'ensemble est publié, il aura presque certainement manqué le délai d'introduction d'un recours contre cette décision devant le comité des recours (en ce qui concerne les terres).

De même, tout conflit potentiel entre le plan d'ensemble pour la colonie de peuplement et les besoins et les attentes des communautés palestiniennes en matière de développement est «résolu» par le système militaire de planification par le biais des plans de démarcation approuvés par Israël dans les années 1990 ainsi que par les dispositions restrictives en matière de répartition des zones incluses dans les plans d'ensemble établis sous le régime du mandat britannique. La capacité des habitants palestiniens à formuler effectivement des objections à l'encontre des plans d'ensemble pour les colonies de peuplement est également influencée par des aspects techniques, notamment les difficultés auxquelles ils se heurtent pour se rendre dans les bureaux de l'administration civile pour y examiner les plans d'ensemble, les difficultés à accéder aux terres visées par le plan pour préparer une objection, les coûts élevés qu'entraîne l'introduction d'une objection, les difficultés à participer effectivement à une audition qui se déroule en hébreu, etc.

CHAPITRE 7

ANALYSE DE LA CARTE DE LA CISJORDANIE

La carte de la Jordanie annexée au présent rapport montre la transformation radicale de la région suite à 35 ans d'occupation israélienne:[39] l'établissement de douzaines de colonies de peuplement qui couvrent des superficies énormes et sont reliées entre elles et à Israël par de vastes réseaux routiers. Le caractère d'enclaves israéliennes des colonies de peuplement, séparées de la population palestinienne et proches d'elle, est une source importante de violation des droits humains des Palestiniens.

Pour analyser la répartition géographique des colonies de peuplement et leur incidence sur les habitants palestiniens, le présent rapport subdivise la Cisjordanie en quatre zones (voir la carte 2). Il faut souligner que cette subdivision a uniquement pour but de faciliter l'analyse et ne correspond à aucun élément juridique ou administratif concret. Chaque zone comprend des colonies de peuplement qui ont en commun certaines similitudes sur le plan de la topographie, de la proximité par rapport à des communautés palestiniennes et aux routes principales, de l'infrastructure économique, de la composition de la population, de la distance par rapport à la Ligne verte, etc. Ces caractéristiques influent elles-mêmes sur les circonstances et la gravité de la violation des droits humains de la population palestinienne.[40]

Trois des quatre zones sont des bandes de terre longitudinales qui s'étendent du nord au sud à travers la Cisjordanie tout en excluant la région de Jérusalem, qui forme un groupe distinct:

1. *la bande est* — comprend la vallée du Jourdain et les rivages nord de la mer Morte (à l'extérieur de la Ligne verte) ainsi que les flancs est de la chaîne montagneuse qui parcourt toute la Cisjordanie du nord au sud.

2. *la bande montagneuse* — la zone des sommets de la chaîne montagneuse et de leurs abords. Cette zone est également connue sous le nom de ligne de partage des eaux ou de zone montagneuse.

3. *la bande des collines de l'ouest* — comprend les flancs ouest de la chaîne montagneuse et s'étend vers la Ligne verte à l'ouest.

4. *la zone métropolitaine de Jérusalem* — cette zone correspond à un vaste rayon autour de Jérusalem. Bien que, du point de vue géographique, elle se situe principalement dans la bande montagneuse, elle présente des caractéristiques uniques qui demandent une attention particulière.

Zones marquées sur la carte et sources d'informations

Zone bâtie

Les zones bâties dans les colonies de peuplement et les communautés palestiniennes (voir carte 1) englobent toutes les zones dans lesquelles des constructions quelconques ont été érigées: bâtiments résidentiels, commerciaux, industriels et agricoles (dénommées ci-après «zones construites»), en

[39] B'Tslem, *Settlements in West Bank – Built-up Areas and Land Reserves*, mai 2002.

[40] En outre, tout classement analytique étant par définition fondé sur le principe de la généralisation, il ne faut pas en déduire que chaque colonie de peuplement comprise dans une catégorie déterminée présente toutes les caractéristiques de ce groupe; à certains égards, une colonie de peuplement déterminée qui fait partie d'un groupe peut avoir certaines caractéristiques d'un groupe différent.

excluant les zones agricoles ouvertes. La principale source des informations indiquées dans ce secteur de la carte est une carte au 1:150 000e établie par le Département d'Etat des Etats-Unis dans le cadre de l'application de l'accord de Sharm-el-Sheikh, elle-même basée sur une photo satellite de la Cisjordanie datant de novembre 2000. Une autre source d'informations est constituée par les données du mouvement «La paix maintenant» relatives aux postes avancés des forces armées israéliennes établis au cours de deux dernières années, ainsi que des informations provenant de l'Institut de recherche appliquée de Jérusalem (IRAJ) au sujet de l'expansion intervenue jusqu'en avril 2001.[41]

Limites municipales

La limite municipale de chaque colonie de peuplement est la zone qui relève de la juridiction du comité ou du conseil local correspondant au statut de chaque colonie (voir chapitre 4). Cette zone constitue également la zone d'aménagement des comités spéciaux d'aménagement du territoire. Autrement dit, c'est la zone à l'intérieur de laquelle les autorités locales (juives) sont habilitées à soumettre un plan d'ensemble pour approbation au Conseil suprême de l'aménagement du territoire et à délivrer des permis de bâtir pour l'extension de la colonie de peuplement (voir chapitre 6).

Dans la plupart des cas, ces informations se fondent sur la carte de la zone de juridiction/de la zone communautaire qui accompagne l'ordonnance militaire signée par le commandant des forces armées israéliennes en Cisjordanie par laquelle est déclaré l'établissement de la colonie de peuplement ou la révision de ses limites (voir carte 3). Pour certaines colonies de peuplement, les limites municipales indiquées se fondent sur les limites qui apparaissent sur les plans d'ensemble pour chaque colonie. Les plans d'ensemble concernent généralement toute la zone municipale de chaque colonie. Il peut toutefois exister des cas où les limites municipales comprennent des zones pour lesquelles aucun aménagement n'a été fait jusqu'à présent et qui s'étendent au-delà de la limite indiquée sur cette carte.

Une des raisons de l'absence d'uniformité dans les sources d'informations est liée aux difficultés auxquelles B'Tselem s'est heurté pour obtenir les cartes concernées de l'administration civile (voir l'analyse dans l'introduction). Une autre raison est que, pour certaines colonies de peuplement, aucune carte n'a été tracée à ce jour qui délimite la superficie révisée de la colonie, de sorte que la seule limite est celle qui figure sur le plan d'ensemble de la colonie. Pour quatre colonies de peuplement, B'Tselem n'a pas pu obtenir d'informations concernant les limites municipales.[42]

Conseils régionaux

La zone des conseils régionaux correspond aux zones qui relèvent de la juridiction des conseils régionaux situés au-delà des limites municipales d'une colonie de peuplement déterminée (voir carte 3). Ces zones comprennent l'ensemble des terres dont Israël a pris le contrôle pendant les années d'occupation (à l'exception des terres comprises dans les zones A et B), en utilisant les méthodes décrites au chapitre 3. Ces terres sont destinées à servir de réserves pour l'extension future des colonies de peuplement ou pour établir de nouvelles zones industrielles similaires à celles créées ces dernières années. Comme relevé au chapitre 4, bien que ces terres aient été déclarées terres d'Etat, une partie d'entre elles sont actuellement utilisées par les Palestiniens comme terres de culture ou comme pâturages.

Comme c'est le cas pour les limites municipales de chaque colonie de peuplement, la source d'informations pour ces limites est constituée par les cartes qui accompagnent les ordonnances militaires déclarant l'établissement de chaque conseil régional. Les cartes qui montrent la zone qui relève de la juridiction des conseils régionaux, telle qu'elles ont été transmises à B'Tselem par l'administration civile, sont les cartes originales publiées lors de la déclaration instituant chaque

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[41] Voir le site Internet de La paix maintenant (www.peacenow.org.il) et le site Internet de l'IRAJ (www.arij.org).

[42] Ces colonies de peuplement sont Telem, Adura, Pene Hever et Har Adar.

conseil. D'après l'administration civile, «l'administration civile ne possède pas actuellement de cartes actualisées pour les autorités régionales en Judée et en Samarie».[43] Afin de représenter autant que possible la situation actualisée, nous avons effacé de la carte présentée dans le présent rapport les zones qui figurent sur les cartes originales et qui sont situées à l'intérieur de la zone qui relève de la juridiction des conseils régionaux mais qui ont été transférées à l'Autorité palestinienne dans le cadre des accords d'Oslo.

Zones A, B, C

La carte indique également la répartition des compétences entre Israël et l'Autorité palestinienne suite à l'application des accords d'Oslo signés entre 1993 et 2000: la zone A, dans laquelle l'Autorité palestinienne est compétente pour la plupart des affaires intérieures, y compris la sécurité et la construction; la zone B, où les forces armées israéliennes ont le contrôle de la sécurité et ont le droit d'entrer librement, tandis que l'Autorité palestinienne a le contrôle des affaires civiles; la zone C, où Israël contrôle à la fois les questions de sécurité et l'aménagement du territoire et la construction (voir carte 5). Le tableau 8 ci-dessous résume la subdivision de la Cisjordanie entre ces trois zones, telle que fixée suite au deuxième redéploiement, en mars 2000, après l'accord de Sharm el-Sheikh.

Tableau 8

Régions de la Cisjordanie selon les accords d'Oslo*

Région	**Milliers de dunams**	**Superficie de la Cisjordanie** (en pourcentage)
Zone A	1 008	18,2
Zone B	1 207	21,8
Zone C	3 3203	60
Total	5 538	100

* Après le deuxième redéploiement (mars 2000) suite à l'accord de Sharm el-Sheikh
** La superficie de la Cisjordanie visée ici ne comprend pas Jérusalem-Est, le no man's land et la superficie proportionnelle de la mer Morte (sur base de l'accord de Sharm el-Sheikh).
Source: IRAJ (www.arij.org).

A. La bande est

La bande est comprend la vallée du Jourdain et la côte nord de la mer Morte ainsi que les flancs est de la chaîne montagneuse et une partie du désert de Judée. Cette zone est comprise entre le Jourdain à l'est, la Ligne verte à proximité de Bet She'an au nord, et la Ligne verte du nord de 'Ein Gedi vers le sud. La limite ouest de cette zone est moins clairement définie que ci-dessus, mais peut être définie comme le point où le climat aride caractéristique de cette bande de terre cède le pas au climat semi-aride, soit à l'altitude approximative de quatre cents mètres.[44]

Cette zone présente des conditions géographiques extrêmes caractérisées par des températures élevées, des précipitations rares (100 à 300 mm par an) et, dans la partie ouest de la zone, une topographie extrêmement accidentée. En raison de ces conditions, seul un nombre limité de communautés palestiniennes se sont créées dans cette zone. La population palestinienne est relativement clairsemée et vit dans trois régions: la ville de Jéricho et la zone d'Auja au nord de

[43] Lettre du 31 décembre 2001 du capitaine Peter Lerner, porte-parole de l'administration civile, au procureur Sharon Tal, du Centre d'action religieuse d'Israël, qui a fait fonction de conseiller juridique pour B'Tselem.

[44] Elisha Efrat, *Judée et Samarie: avant-projet de planification physique et régionale* (en hébreu), Jérusalem, ministère de l'intérieur, 1970, p. 27.

Jéricho, qui sont passées sous le contrôle de l'Autorité palestinienne (zone A) en 1994; les villages de la région de Jiftlik (Marj An-Na'aja, Zubeidat, Qarawa Al-Foqa); et un certain nombre de villages dans le nord de la vallée du Jourdain, notamment Bardala et 'Ein el-Beida. Il n'existe pas de communautés palestiniennes permanentes dans les zones du désert de Judée et de la mer Morte.

La vallée du Jourdain a été la première zone où des colonies de peuplement ont été établies sur la base du projet esquissé par le plan Alon (voir le chapitre 1), parce que ce plan recommandait d'éviter l'implantation dans des zones à forte densité de population palestinienne. Une autre raison était qu'une partie importante des terres dans cette région était déjà enregistrée comme terres d'Etat sous l'administration jordanienne, de sorte que le processus de saisie était relativement simple et facile (voir le chapitre 3). Les zones agricoles palestiniennes peu importantes (limitées aux régions ci-dessus) ont également facilité la déclaration par Israël de terres supplémentaires comme terres d'Etat depuis 1979, tant dans la vallée du Jourdain que sur les rivages de la mer Morte et sur les flancs de la chaîne montagneuse.

Il s'ensuit que la plupart des réserves de terres qu'Israël détient en Cisjordanie et qui sont enregistrées au nom du Dépositaire des biens de l'Etat et des biens abandonnés se situent dans cette bande et sont comprises dans la zone qui relève de la juridiction de deux conseils régionaux: Arvot Hayarden et Megillot. Dans le cas d'Arvot Hayarden, une certaine fraction des terres est exploitée à des fins agricoles par les colons, mais les terres sont inutilisées à Megillot. Ces deux conseils régionaux diffèrent des autres conseils régionaux en Cisjordanie en ce que les zones qui relèvent de leur juridiction sont contiguës et ont des limites régulières et droites qui coïncident avec les limites de la bande de terre de l'est. Le contrôle sur ces réserves de terres a permis à Israël d'établir des colonies de peuplement dans les zones de la vallée du Jourdain et de la mer Morte sur le modèle des colonies de peuplement coopératives (kibboutz, moshavim et moshavims coopératifs, ainsi qu'un certain nombre d'implantations militaires israéliennes avancées dans les Territoires occupés). Sur le plan économique, ces colonies de peuplement vivent principalement de l'agriculture, exception faite de Ma'ale Efrayim, une colonie de peuplement urbaine.

La plupart des colonies de peuplement dans la bande est ont été établies au nord de Jéricho, dans la zone qui relève de la juridiction du conseil régional d'Arvot Hayarden. Du point de vue de leur répartition géographique, ces colonies de peuplement peuvent se subdiviser en deux chapelets parallèles qui s'étendent le long de l'axe nord-sud: l'un le long de la route n° 90, aussi appelée «route de la vallée du Jourdain», et l'autre plus à l'ouest, le long des routes n°s 508 et 578, qui jouxte la ligne isohypse du niveau de la mer. Le premier chapelet de colonies de peuplement comprend Mehola, Shademot Mehola, Hemndat, Argamen, Mesu'a, Yafit, Peaz'el, Tomer, Gigal, Netiv Hagedud, Niran, Yitav, No'omi, et Zuri et Elisha, deux implantations militaires israéliennes avancées dans les Territoires occupés. Le second chapelet comprend les colonies de peuplement de Ro'i, Beqa'ot, Hmara, Mehora, Gittit et Ma'ale Efrayim ainsi que les implantations militaires israéliennes avancées de Maskiyyot et Rotem. Au sud de Jéricho et le long de la côte de la mer Morte, dans la zone qui relève de la juridiction du conseil régional de Megillot, on trouve les colonies de peuplement de Vered Yeriho, Bet Ha'arava, Almog, Qalya et Mizpe Shalem ainsi que les implantations militaires israéliennes avancées de 'Ein Hogla et d'Avenat.

Les zones de juridiction de la plupart des colonies de peuplement de ce chapelet s'étendent sur de vastes superficies qui atteignent deux à sept fois la zone bâtie de la colonie. Les limites de Peza'el, Yafit, Tomer, Gilgal et Netiv Hagedud (1 000 habitants au total) sont contiguës et créent un bloc unique de plus de 16 000 dunams au cœur de la bande est, soit une superficie équivalant à dix fois la zone bâtie actuelle de ces colonies de peuplement.[45] Toutefois, contrairement aux autres zones, les plans d'ensemble pour les colonies de peuplement de cette bande définissent la plupart de ces zones comme des zones de terres agricoles; seule une faible proportion est désignée comme zone à bâtir. Ma'ale Efrayim (1 500 habitants) forme à cet égard une exception: d'après son plan d'ensemble, il est

[45] Les chiffres entre parenthèses dans la présente analyse concernent le nombre estimatif d'habitants dans chaque colonie de peuplement fin 2001, sauf indication contraire.

prévu que cette colonie de peuplement aura une superficie bâtie huit fois supérieure à la superficie existante.[46] De grandes superficies de terres cultivées par les colons s'étendent au-delà des limites municipales de toute colonie et sont situées dans les zones du conseil régional d'Arvot Hayarden qui doivent encore être rattachées à une colonie de peuplement quelconque.

Dans cette bande, la principale violation des droits humains des Palestiniens résulte, en particulier, de la limitation des possibilités de développement économique et de l'agriculture. Dans une mesure moindre, les possibilités de développement urbain sont elles aussi réduites.

Lors de la déclaration de l'établissement du conseil régional d'Arvot Hayarden, Binyamin Ben-Eliezer, qui commandait à l'époque les forces armées israéliennes en Cisjordanie, a signé la carte qui délimite la zone relevant de la juridiction de ce conseil, à savoir la totalité de la vallée du Jourdain à l'exception des communautés palestiniennes citées ci-dessus.[47] La conséquence directe de cette déclaration a été que les Palestiniens étaient empêchés d'utiliser ces terres ou d'étendre leurs activités agricoles.

Comme le démontrent les colonies de peuplement situées le long de la vallée du Jourdain, et malgré les conditions climatiques rigoureuses, la terre dans cette zone permet le développement de diverses branches de l'agriculture par l'utilisation de techniques d'irrigation. Le fait que l'agriculture palestinienne ne s'est pas davantage développée dans cette région avant 1967 est dû à l'absence du savoir-faire et des ressources qui auraient permis l'exploitation des nappes d'eau souterraines. Pendant les années 1960, l'administration jordanienne a lancé un vaste projet visant à acheminer l'eau par des canaux de la rivière Yarmuk vers l'ensemble de la Cisjordanie. Ce projet a été interrompu après l'occupation par les Israéliens.[48] On peut trouver des éléments de preuve complémentaires dans une publication de la Division de l'aménagement du territoire, du Ministère de l'intérieur. Cette publication date de 1970 et est antérieure au début de la vague de nouvelles colonies de peuplement. Elle analyse la géographie de la Cisjordanie et recommande le développement des colonies de peuplement palestiniennes dans la vallée du Jourdain, «à assortir de projets régionaux de développement, en particulier dans le domaine de l'irrigation et de l'aménagement du terrain».[49]

Le fait que les colonies de peuplement de la vallée du Jourdain dépendent de l'agriculture qui, comme indiqué, dépend elle-même d'une irrigation massive prive les habitants palestiniens de la possibilité de profiter d'une grande partie des ressources en eau de la région. Il existe tout au long de la bande est plusieurs nappes d'eau souterraines qui font partie d'un système plus vaste connu sous le nom d'«aquifère montagneux».[50] Aux termes de l'accord provisoire entre Israël et l'Autorité palestinienne, Israël est autorisé à prélever 40 millions de litres cubes par an dans ces nappes à l'usage des colonies de peuplement de la région, soit quelque 40 pour cent de l'eau renouvelable annuellement dans ces nappes (la recharge annuelle).[51] La consommation d'eau de la population des colonies de peuplement juives dans la vallée du Jourdain (moins de 5 000 habitants) est équivalente à 75 pour cent de la consommation d'eau totale de toute la population palestinienne de la Cisjordanie (environ 2 millions d'habitants) pour l'usage domestique et urbain. Cet écart est particulièrement choquant au

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[46] Plan d'ensemble local de Ma'ale Efrayim, n° 310.

[47] Ordonnance relative à la gestion des conseils régionaux (modification n° 2), Judée et Samarie, n° 806, 5740-1979, carte de la zone du conseil régional de Biq'at Hayarden, 30 septembre 1979.

[48] Ce plan était connu sous le nom de canal Ghor ouest. Pour plus de détails sur ce projet, voir Micha Bar, *Coopération et régimes dans les bassins hydrologiques internationaux — la fonction des normes* (en hébreu) (thèse de doctorat à l'université hébraïque de Jérusalem, 1998).

[49] Elisha Efrat, *Judée et Samarie*, p. 71.

[50] Pour plus de détails concernant les caractéristiques de l'aquifère, voir B'Tselem, *Thirsty for a Solution*.

[51] Accord provisoire israélo-palestinien concernant la Cisjordanie et la bande de Gaza, Washington, 28 septembre 1995, Protocole relatif aux affaires civiles, art. 40, annexe 10. Cet accord indique que la recharge naturelle des nappes est de 172 millions de litres cubes par an, un chiffre en contradiction avec l'estimation de la plupart des experts, qui situent la recharge naturelle à environ 100 millions de litres cubes par an. Voir *Thirsty for a Solution*, p. 30.

regard du manque aigu d'eau auquel est confrontée la population palestinienne en général et la population rurale en particulier.[52]

Tout comme l'inclusion de la vallée du Jourdain dans la zone relevant de la juridiction du conseil régional d'Arvot Hayarden prive la population palestinienne de la possibilité de développement agricole, l'inclusion de la mer Morte et du désert de Judée dans la zone relevant de la juridiction du conseil régional de Megillot la prive de possibilités précieuses de développement industriel et touristique. Il importe se souligner dans ce contexte que la mer Morte est un phénomène naturel sans équivalent. Israël se livre à une exploitation intensive de cette ressource, en particulier dans la partie sud, à l'intérieur de la Ligne verte, tant pour son industrie chimique (Dead Sea Works) que pour le tourisme. Ces deux activités économiques génèrent de nombreux emplois et d'importantes recettes en devises.

L'enclave passée sous le contrôle de l'Autorité palestinienne en 1994 comprend la ville de Jéricho (17 000 habitants) et la région d'Auja (3 400 habitants). Ces deux parties sont reliées entre elles par un étroit couloir entouré de toutes parts de colonies de peuplement, d'implantations militaires israéliennes avancées dans les Territoires occupés et de bases des forces armées israéliennes, ce qui exclut toute possibilité d'extension urbaine importante au-delà des limites de l'enclave. La région d'Auja est bloquée au nord par la colonie de peuplement de Niran (60 habitants) et à l'ouest par la colonie de peuplement de Yitav (110 habitants) ainsi que par la base militaire adjacente. Le couloir qui relie la région d'Auja à la ville de Jéricho est bloqué à l'est par la colonie de peuplement de No'omi (130 habitants) et l'implantation militaire israélienne avancée de Zuri, et à l'ouest par deux bases des forces armées israéliennes. La ville de Jéricho elle-même est bloquée à l'ouest par la limite de la zone relevant de la juridiction de Merhav Adummim (à l'intérieur de la zone métropolitaine de Jérusalem – voir ci-dessous), tandis que la zone A au sud de la ville est bloquée par la colonie de peuplement de Bet Ha'arava (55 habitants) et par l'implantation militaire israélienne avancée de 'Ein Hogla. Le camp de réfugiés d'Aqbat Jaber (5 400 habitants), à la limite sud-ouest de Jéricho, est bloqué presque entièrement par la colonie de peuplement de Vered Yeriho (160 habitants).

Au total, les limites municipales des colonies de peuplement de la bande forment une superficie d'environ 76 000 dunams, dont 15 000 environ sont des zones bâties qui comptent 5 400 habitants. Comme indiqué plus haut, contrairement aux trois autres zones, la plupart des zones sous-développées à l'intérieur des limites des colonies de peuplement sont utilisées à des fins agricoles ou réservées à cet usage pour l'avenir. Les zones des conseils régionaux en dehors des limites municipales représentent une superficie d'environ 1 203 000 dunams; dans le cas du conseil régional d'Arvot Hayarden, une partie de cette superficie est cultivée par les colons.

B. La bande montagneuse

La seconde bande s'étend sur toute la longueur de la Cisjordanie dans les sommets de la chaîne montagneuse, le long de la ligne de partage des eaux. Les limites nord et sud de la bande sont constituées par la Ligne verte. Les limites est et ouest ne sont pas claires. A l'est, la limite est fixée sur la ligne isohypse des 400 mètres, qui forme la limite ouest de la bande est, tandis que la limite ouest correspond à l'altitude comprise entre 400 et 500 mètres. Du point de vue climatique, il s'agit d'une région relativement froide avec d'assez fortes précipitations. Sa topographie limite toutefois fortement les possibilités d'exploitation agricole.

Cette bande comprend les six villes palestiniennes les plus importantes et les plus peuplées de Cisjordanie: Djénine, Naplouse, Ramallah, Jérusalem-Est, Bethléem, et Hébron, qui sont entourées de douzaines d'agglomérations et de villages de petite et moyenne taille. Par conséquent, et conformément aux principes du plan Alon, les gouvernements Ma'arach (1969-1977) se sont

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[52] Pour plus détails sur le manque d'eau, voir B'Tselem, *Not Even a Drop — The Water Crisis in Palestinian Villages Without a Water* Network, feuillet d'information, juillet 2001.

généralement abstenus d'établir des colonies de peuplement dans cette zone. La vague d'installations de colonies de peuplement dans cette zone a dès lors débuté après l'arrivée au pouvoir du Likoud et, en particulier, après 1979, lorsque la procédure de déclaration de terres comme terres d'Etat a commencé. La plupart de ces colonies de peuplement ont été créées par la Division des colonies de peuplement de l'Organisation sioniste mondiale et leur gestion a été transférée à Gush Emunim (ou à un des autres mouvements pour l'implantation des colonies de peuplement), qui était chargé de les peupler de colons. Il s'ensuit que la colonie de peuplement communautaire est de loin la forme la plus courante de colonie de peuplement dans la bande montagneuse.

Contrairement aux colonies de peuplement coopératives et urbaines, les colonies de peuplement communautaires n'ont généralement aucune assise économique locale. La plupart des colonies ne cultivent pas la terre et la plupart des habitants travaillent dans des centres urbains sur le territoire d'Israël. Cela s'explique par la topographie locale et la densité de la population palestinienne dans cette région, qui empêchent Israël de prendre le contrôle de vastes étendues de terres et de les affecter à l'exploitation agricole. Par ailleurs, l'accent est moins mis sur le travail agricole dans l'idéologie de Gush Emunim que dans les mouvements des kibboutz et du moshav.

Sur le plan administratif, les terres sous contrôle israélien sont réparties entre quatre conseils régionaux (Shomeron, Mate Binyamin, Gush Ezyon et Mont Hébron). Les zones qui relèvent de la juridiction de ces conseils s'étendent à l'ouest jusque dans les collines de l'ouest et la région de Jérusalem. D'autres terres dont Israël a pris le contrôle dans cette bande font partie des zones relevant de la juridiction d'un certain nombre de conseils locaux.

La répartition des colonies de peuplement dans la bande montagneuse est similaire à celle de la bande est: les colonies de peuplement sont disposées en deux chapelets parallèles. Le premier chapelet occupe une position centrale et s'étend sur toute la longueur de la Cisjordanie, en longeant ou en jouxtant la route n° 60, qui est la grand-route qui relie les six principales villes palestiniennes de Cisjordanie. Du nord au sud (en excluant la zone métropolitaine de Jérusalem), ce chapelet comprend les colonies de peuplement de Gannim, Kaddim, Sa-Nur, Homesh, Shave Shomron, Qedumim, Yizhar, Tapuah, Rehelim, Eli, Ma'ale Levona, Shilo, Ofra, Bet El, Pesagot, Karme Zur, Qiryat Arba', Bet Haggai, Otni'el et Shim'a. Il faut y ajotuter Elon Moreh, Har Brakha et Itamar, qui jouxtent la route n° 57, principale branche de la route n° 60 qui contourne la ville de Naplouse à l'est.

Le second chapelet de colonies de peuplement dans cette bande se situe à l'est de la route n° 60 et de la ligne de partage des eaux. Au nord de la zone métropolitaine de Jérusalem, ce chapelet court le long de la route n° 458 (encore appelée route Alon); il comprend Migdalim, Kohav Hashahar, Rimonim et Ma'ale Mikhmas; au sud de la zone métropolitaine, le chapelet s'étend le long de la route n° 356, de l'angle sud-est de Bethléem à travers la Ligne verte; cette zone comprend Teqo'a, Noqedim, Ma'ale Amos, Mezad, Pene Hever, Carmel, Ma'on, Susiya, Shani et Mezadot Yehuda.

La disposition des colonies de peuplement le long de la route n° 60 traduit l'objectif d'Israël, qui consiste à contrôler la principale artère de transport de la population palestinienne en créant des blocages qui empêchent l'extension des constructions palestiniennes en direction de la route et à empêcher la fusion des communautés palestiniennes situées de part et d'autre de celle-ci. Cet objectif, déjà réalisé en partie, est énoncé explicitement comme suit dans le Plan des cent mille:

La majorité de la population arabe est concentrée dans cette bande, dans des communautés urbaines et rurales. La route de crête [la route n° 60] est essentiellement une artère pour le trafic local arabe. Une colonie de peuplement juive le long de cette route créera un obstacle psychologique à l'extension vers la crête et peut aussi limiter l'extension incontrôlée de la colonie de peuplement arabe.[53]

Dans la plupart des cas, ces colonies de peuplement sont isolées et occupent des sections relativement courtes de la route. Israël a toutefois réussi en plusieurs endroits à créer un bloc de colonies de peuplement qui contrôle une section plus importante de la route n° 60. Un exemple est celui du bloc Shilo – Eli – Ma'ale Levona (3 900 habitants au total), dont les limites municipales s'étendent sur environ 7 700 dunams autour de la route (voir carte 9). Un autre exemple est celui de la colonie de peuplement de Shim'a (300 habitants), située le long de la route à l'extrémité sud de la Cisjordanie. Bien que cette colonie de peuplement ait une superficie bâtie relativement limitée (265 dunams, y compris une implantation avancée au sud), ses limites englobent une superficie de pas moins de 10 600 dunams, soit quarante fois la zone bâtie (voir carte 10).[54]

En raison de la situation de ces colonies de peuplement sur ou le long de la route n° 60, les accords d'Oslo ont déclaré que la majeure partie de cette route resterait sous contrôle direct d'Israël, autrement dit, elle a été définie comme zone C. La présence de citoyens israéliens en divers points répartis sur une longue section qui traverse des zones palestiniennes à forte densité de population a entraîné une importante présence militaire pour protéger ces citoyens.

Pendant les périodes de violence croissante contre les colons, Israël a réagi en imposant des restrictions rigoureuses à la liberté de mouvement de la population palestinienne le long de cette artère essentielle. Ces restrictions ont perturbé tous les aspects de la vie quotidienne pour quelque deux millions de Palestiniens et porté gravement atteinte au droit à la santé, à l'emploi, à la vie de famille et à l'éducation.[55]

Peu après le début de l'intifada al-Aqsa, Israël a bloqué les routes d'accès entre les communautés palestiniennes de la zone montagneuse et la route n° 60, soit par des barrages routiers physiques (tas de terre, blocs de béton ou tranchées), soit en mettant en place des postes de contrôle tenus par des militaires des forces armées israéliennes qui empêchent le passage des véhicules palestiniens. Selon des sources israéliennes officielles, le blocage de ces routes est *également* destiné à prévenir les actes de terrorisme à l'intérieur d'Israël, mais ces mêmes sources ne nient pas qu'un des principaux buts de cette politique est de garantir la sécurité des colons.[56] Le rapport entre la présence de colons et les limitations de la libre circulation est encore plus manifeste dans les agglomérations de Hawara (5 100 habitants) et de Silat Adh-Dhahr (5 500 habitants), respectivement situés dans les districts de Naplouse et de Djénine. Depuis le début de l'intifada al-Aqsa, les forces armées israéliennes ont réagi en imposant de longues périodes de couvre-feu à ces agglomérations afin de garantir la libre circulation des colons qui vivent dans les colonies de peuplement voisines.[57]

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[53] Ministère de l'agriculture et division des colonies de peuplement de l'organisation sioniste mondiale, *Master Plan for Sttlement for Samaria and Judea, Development Plan for the Area for 1983-1986*, p. 22.

[54] Un autre exemple notable de ce phénomène est Gush Ezyon dans la zone métropolitaine de Jérusalem, analysé plus loin dans ce chapitre.

[55] Pour plus de détails sur les répercussions humaines des limitations de la libre circulation, voir B'Tselem, *Civilians under Siege*, p. 9 et 10.

[56] Voir notamment la réaction du porte-parole des forces armées israéliennes au rapport *Civilians under Siege* de B'Tselem.

[57] B'Tselem, *Civilians under Siege*, p. 9 et 10.

De plus, certaines des colonies le long de la route n° 60 bloquent le développement urbain des six principales villes palestiniennes, du moins dans certaines directions. Bethléem et Jérusalem-Est sont principalement affectés par les colonies de peuplement dans la zone métropolitaine de Jérusalem, dont le présent rapport traite plus loin.

La ville d'Hébron (140 000 habitants) est bloquée à l'est par la colonie de peuplement de Qiryat Arba (6 400 habitants), et au sud par celle de Bet Haggai (400 habitants) et par l'implantation militaire israélienne avancée d'Aner. Au cœur même d'Hébron, il existe un certain nombre de colonies de peuplement juives éparpillées qui comptent ensemble environ 400 habitants. Dans les accords d'Oslo, la présence de ces colonies de peuplement a eu pour effet que le reste de toute une bande de terre à l'est de la ville est passé sous contrôle israélien (zone H2). Les colonies de peuplement au cœur d'Hébron portent gravement atteinte non seulement au développement urbain de la ville mais aussi à la capacité des habitants de mener une vie normale. La cause principale en est la violence systématique exercée à l'encontre des habitants par les colons qui vivent dans ces zones.[58] Depuis le début de l'intifada actuelle, et moins souvent auparavant, les forces armées israéliennes ont imposé de longues périodes de couvre-feu aux 30 000 Palestiniens qui vivent dans la zone H2, dans le but de permettre aux colons de la ville de continuer autant que possible de vaquer à leurs occupations habituelles.

Le développement de Ramallah et d'al-Bira (53 800 habitants) vers le nord-est est entièrement bloqué par la colonie de peuplement de Bet El (4 100 habitans) et par la grande base des forces armées israéliennes au sud de la colonie de peuplement, qui abrite le siège de l'administration civile. La présence des Israéliens rompt aussi la contiguïté territoriale entre Ramallah et les villages d'Ein Yabrud et de Beitin (5 400 habitants au total). La colonie de peuplement de P'sagot (1 100 habitants) commence à proximité des dernières maisons de Ramallah du côté est. P'sagot est une enclave de fait à l'intérieur de la ville, qu'elle domine sur le plan topographique, et empêche l'extension de Ramallah dans cette direction (voir photo 5).[59]

La zone urbaine de Naplouse, qui comprend 8 villages et 2 camps de réfugiés qui sont entièrement contigus avec la ville (158 000 au total), est entourée presque de toutes parts par des colonies de peuplement qui bloquent le développement de la région (voir carte 7). Les colonies de peuplement de Har Brakha puis de Yizhar (1 100 habitants au total) se situent au sud de la ville proprement dite. A l'ouest, on trouve les colonies de peuplement de Qedumim et de Shave Shomron (3 300 habitants au total). A l'est, adjacents aux camps de réfugiés d'Askar et de Balata (26 600 habitants au total), s'étendent les colonies de peuplement d'Elon Moreh et d'Itamar (1 600 habitants au total). Les limites municipales de la colonie de peuplement d'Itamar (540 habitants) s'étendent selon une diagonale sud-est sur une superficie de 7 000 dunams – quatorze fois la zone bâtie actuelle, qui comprend également un certain nombre de nouvelles implantations avancées.[60] Cette vaste zone bloque entièrement le développement de l'agglomération de Beit Furiq (9 100 habitants) vers le sud. En outre, les habitants de ces colonies de peuplement se sont, au fil des ans, livrés à des actes de violence contre les Palestiniens locaux. Les autorités israéliennes ont manqué à leur devoir de faire respecter la loi par les délinquants.[61]

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[58] Voir notamment B'Tselem, *Impossible Coexistence: Human Rights in Hebron since the Massacre at the Cave of the Patriarchs*, feuillet d'information, septembre1995.

[59] Voir les remarques relatives au développement urbain de Ramallah dans l'analyse de la zone métropolitaine de Jérusalem ci-dessous.

[60] Plan d'ensemble n°163/3, Itamar.

[61] Voir note de bas de page 67.

Deux colonies de peuplement, Gannim et Kaddim (300 habitants au total), entourent Djénine (41 900 habitants). Ces colonies dominent la ville du côté est (du point de vue topographique) et coupent la plus grande superficie de territoire contigu passé sous contrôle palestinien (zone A). D'après le plan d'ensemble, on compte que ces colonies de peuplement atteindront à terme cinq fois leur taille actuelle et s'étendront des faubourgs sud de Djénine jusqu'au village d'Umm At-Tut à l'est de la ville.[62]

L'incidence sur la population palestinienne des colonies de peuplement le long de la seconde chaîne de la bande montagneuse est moins directe que dans le cas des colonies de peuplement situées le long de la route n° 60. En effet, les premières se situent à l'est des centres de population palestiniens. Comme c'est le cas pour la bande est, l'incidence principale est la confiscation de terres qui, s'il n'y avait pas eu les colonies de peuplement, auraient pu être utilisées pour le développement de l'économie palestinienne et pour le développement urbain à l'est des centres de population sur la crête montagneuse. Certaines de ces colonies de peuplement ont, à l'intérieur de leurs limites municipales, d'importantes réserves de terres. La confiscation par Israël de vastes étendues de terrain dans cette région tire parti de la rareté des communautés palestiniennes et de la situation topographique, qui ont rendu difficile l'exercice d'activités agricoles de quelqu'ampleur par les Palestiniens dans ces zones.

Les limites municipales des colonies de peuplement dans la bande montagneuse couvrent environ 62 000 dunams, peuplés de quelque 34 000 colons. De cette superficie, 17 000 dunams environ sont des terres bâties. Par conséquent, les potentialités d'extension des colonies de peuplement dans ces zones représentent environ 45 600 dunams, soit quelque 270 pour cent. De plus, 409 000 dunams environ relèvent de la juridiction des quatre conseils régionaux précités mais n'ont été rattachés à aucune colonie de peuplement. Ils constituent des réserves pour l'avenir.

C. Les collines de l'ouest

Cette bande s'étend le long de l'axe nord-sud, entre la limite ouest de la bande montagneuse (isohypses des 400-500 mètres) et la Ligne verte. Sa largeur varie de 10 à 20 kilomètres. Sur le plan topographique, cette zone se caractérise par des pentes douces descendant vers la plaine côtière. L'inclinaison des pentes dans cette région est plus faible que du côté est de la crête montagneuse, c'est-à-dire la bande est.

Tulkarm et Qalqiliya, les deux villes palestiniennes dans cette bande, se situent toutes deux dans le nord de celle-ci. La bande entière comprend toutefois des agglomérations de taille moyenne comme Ya'bad, Anabta, Azzun, Biddya et Salfit dans le nord, et Surif, Tarqumiya, Dura et Dahariya dans le sud, ainsi que des douzaines de villages plus petits. Cette bande abrite les terres les plus fertiles de Cisjordanie et a donc été le site du développement de l'agriculture dans de nombreux secteurs (olives, vergers, serres et plantes de grande culture).

A l'instar de la zone montagneuse, la plupart des colonies de peuplement dans les collines de l'ouest ont été fondées dans les années 1980 suite, en particulier, au plan Sharon. Sur le plan municipal, les zones des colonies de peuplement dans cette bande se répartissent entre trois conseils régionaux (Shomron, Mate Binyamin et Mont Hébron), et entre plusieurs conseils locaux et une municipalité (Ari'el).

La principale caractéristique de la zone des collines ouest au nord de la zone métropolitaine de Jérusalem qui attire les Israéliens et a entraîné un rythme de croissance assez rapide est sa proximité par rapport aux principaux centres urbains sur la plaine côtière d'Israël. Dans le plan de développement pour 1983-1986 (le «plan des cent mille»), cette bande a été définie comme «zone de forte demande» en raison des temps de trajet courts (20 à 30 minutes) vers les centres d'emploi sur le

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[62] Plan d'ensemble 168/1, Merhav Kaddim et plan 138/2, Merhav Gannim.

territoire d'Israël.[63] Dans la région au sud de la zone métropolitaine de Jérusalem, seuls des colonies isolées ont été établies. Les principales formes d'implantation dans cette bande sont des colonies urbaines et des colonies rurales ordinaires. La majeure partie de la population appartient à la classe moyenne et certains sont des Juifs laïcs sans affiliation politique particulière. La population comprend aussi des Juifs ultra-orthodoxes, généralement de catégorie socio-économique inférieure.

La forme la plus répandue de dispersion géographique des colonies de peuplement dans les deux premières bandes est le chapelet le long des principaux axes routiers nord-sud, alors que la forme principale dans les collines de l'ouest est celle de colonies de peuplement qui s'étendent d'est en ouest le long des routes latitudinales qui se raccordent principalement à la route n° 60 et dont la plupart on été construites ou modernisées par Israël. Une autre caractéristique dans plusieurs secteurs de cette bande est la contiguïté des limites des colonies de peuplement, qui forment ainsi des zones urbaines contiguës ou quasi contiguës (ou «blocs») contrôlées par les colonies de peuplement.

Au nord de cette bande, le long de la route n° 596, se trouvent les colonies de peuplement d'Hinanit, Tal-Menashe (Hinanit B), Shaqed et Rehan (1 100 habitants au total). Les trois premières comprennent divers sites bâtis (notamment une zone industrielle) et leurs plans d'ensemble trahissent une volonté d'étendre ces colonies de peuplement pour créer un bloc compact et contigu de plus de 9 900 dunams environ – neuf fois la zone bâtie actuelle (voir photo 1).[64] Plus au sud, jouxtant la route n° 585, on trouve les colonies de peuplement d'Hermesh et de Mevo Dotan (600 habitants au toal). Il est prévu que Mevo Dotan s'étendra sur une superficie d'environ 3 000 dunams – dix fois la zone bâtie actuelle.[65] Le long de la route n° 57 (de Tulkarem à Naplouse), on trouve Enav et Avne Hefez (1 300 habitants au total). Un peu plus loin vers le sud, près de la Ligne verte, se trouve la colonie de peuplement de Sal'it (410 habitants).

La zone comprise entre la route n° 55 (de Qalqiliya à Naplouse) et l'autoroute transsamarienne (la route n° 5 qui va de Rosh Ha'ayin à la vallée du Jourdain) est la zone la plus recherchée des collines ouest, parce qu'elle se situe parallèlement à la région de Tel Aviv-Herzliya, à quelques milles à peine de celle-ci. Dans l'angle nord-est de cette zone, à proximité de la route n° 55, on trouve les colonies de peuplement de Qarne Shomron, Ma'ale Shomron, Immanuel, Yaqir et Nofim (10 700 habitants au total). Les limites municipales de ces cinq colonies de peuplement créent une zone urbaine presque contiguë qui s'étend sur quelque 13 000 dunams, soit près de quatre fois la zone bâtie.

Dans la même zone, on trouve un grand groupe de colonies de peuplement en forme d'entonnoir qui s'étend de Tapuah sur la route n° 60 (à l'extrémité de l'entonnoir) à la Ligne verte (à l'ouverture de l'entonnoir). Ce groupe comprend Ari'el, Revava, Netifim, Barqan, Ez Efrayim, Elqana, Sha'are Tiqva, Oranit, Alfe Menashe, Zufin, Ale Zahav et Padu'el (35 900 habitants au total). Dans l'ensemble, les aires de juridiction de ces colonies de peuplement ne sont pas contiguës et sont entrecoupées de communautés palestiniennes définies comme zone B ainsi que de terres agricoles définies comme zone C (voir carte 8). Au centre de l'entonnoir se trouve la colonie de peuplement d'Ari'el, qui est analysée au chapitre 8.

Au sud de la Transsamarienne, le long de la route n° 465, s'étendent (d'est en ouest) les colonies de peuplement d'Ateret, Halamish, Ofarim et Bet Arye (4 300 habitants au total). Celle d'Ofarim (690 habitants) est exceptionnelle par la taille: ses limites municipales englobent une superficie de plus de 6 000 dunams, soit quatorze fois la zone bâtie actuelle. Entre la route n° 465 et la limite nord de la zone métropolitaine de Jérusalem, on trouve Nahli'el, Talmon et Dolev (2 400 habitants au total) à l'est, dont les limites créent un bloc supplémentaire qui s'étend du nord au sud sur

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[63] Plan directeur pour les colonies de peuplement en Samarie et en Judée, p. 19.

[64] Plan détaillé Hinanit, n°s 101, 101/2, 101/3 et Plan détaillé Shaqed, n°s 103, 103/2, 103/4.

[65] Plan d'ensemble n° 104, Mevo Dotan.

une superficie de quelque 7 700 dunams, soit près de sept fois la zone bâtie actuelle. Parallèlement à ce bloc, à l'ouest et jouxtant la Ligne verte, se trouve un autre bloc de colonies de peuplement composé de Na'aleh, Nili, Hashmona'im, Modi'in Illit, Menora, et Mevo Horon (21 500 habitants au total).

Au sud de la zone métropolitaine de Jérusalem, le long de la route n° 35 (l'autoroute transjudéenne), à l'intérieur de la zone juridictionnelle du conseil régional du Mont Hébron, s'étendent les colonies de peuplement de Telem et Adora (370 habitants au total). Plus au sud, on trouve l'implantation militaire israélienne avancée de Negohot et les colonies de peuplement d'Eshkolot et de Tenne (730 habitants au total). Les limites municipales de ces deux dernières colonies de peuplement forment une superficie de quelque 15 300 dunams, soit plus de trente fois leur superficie bâtie actuelle (voir carte 10).

Outre qu'elles limitent les possibilités de développement urbain et économique par la confiscation de terres, la principale incidence sur les Palestiniens des colonies de peuplement dans cette bande est la solution de continuité qu'elles créent dans les communautés palestiniennes situées le long de cette bande. Cette interruption est la plus manifeste dans les zones fortement recherchées. Suite au transfert de pouvoirs à l'Autorité palestinienne en vertu des accords d'Oslo, la situation a entraîné la création de plus de 50 enclaves de zone B et d'un plus petit nombre d'enclaves de zone A, toutes entourées de zone C, qui reste entièrement sous le contrôle d'Israël. Dans la plupart des cas, les limites de la zone A et de la zone B coïncident presque parfaitement avec la bordure de la zone bâtie de la communauté palestinienne (par exemple, dans les villages d'Azzun, Biddya, Az-Zawiya, Masha, Deir Balut, Rantis, Abud, et Qibya). Comme exposé au chapitre 6, cette situation a pour conséquence que, bien que les compétences en matière de planification et de construction dans les zones A et B aient été officiellement transférées à l'Autorité palestinienne, Israël continue de limiter autant que possible les constructions palestiniennes dans les zones non bâties qui appartiennent à ces communautés et à leurs habitants.

Ce phénomène, bien que manifeste, est moins accusé au sud de la zone métropolitaine de Jérusalem en raison du faible nombre de colonies de peuplement dans cette zone. Par exemple, l'emplacement des colonies de peuplement de Telem et Adora rompt la contiguïté territoriale qui, sans elles, aurait pu être créée entre le bloc de zone B comprenant les agglomérations de Beit Surif et Tarqumiya et le territoire de zone B au sud de la route n° 35, qui comprend l'agglomération de Dura. En outre, les deux colonies de peuplement empêchent la contiguïté avec la zone A, dans laquelle se situe Hébron.

Une autre conséquence de l'emplacement de certaines colonies de peuplement dans cette zone situées littéralement sur la Ligne verte est qu'elle gomme cette ligne en tant que frontière reconnue entre le territoire souverain de l'Etat d'Israël et la Cisjordanie. Dans certaines régions, la Ligne verte traverse une zone urbaine à cheval sur les deux côtés. C'est ainsi que le bloc de colonies de peuplement d'Hashmona'im – Modi'in Illit – et de Matitiyahu jouxte la Ligne verte, ce qui crée un bloc urbain contigu avec les communautés du conseil régional d'Hevel Modi'in (Shilat, Lapid et Kefar Ruth), qui ont été établies dans la zone qui, jusqu'en 1967, séparait Israël de la Jordanie et a été annexée par la suite à l'Etat d'Israël (voir le chapitre 1). Dans le cas des colonies de peuplement d'Oranit et de Shani, la Ligne verte traverse la zone bâtie. Ce phénomène est encore plus accusé dans la région de Jérusalem, comme on le verra plus loin.

Les limites municipales des colonies de peuplement dans la bande des collines ouest forment une superficie de quelque 109 800 dunams où habitent 85 000 colons environ. Moins de 30 pour cent de ces terres (30 900 dunams) sont bâtis. Par conséquent, la superficie potentielle d'extension de ces colonies de peuplement est actuellement de 80 000 dunams environ, ce qui représente un taux de croissance de quelque 260 pour cent. De plus, l'aire de juridiction des trois conseils régionaux précités s'étend au total sur 264 000 environ, qui n'ont pas été rattachés à une colonie de peuplement et constituent des réserves de terres pour l'avenir.

D. La zone métropolitaine de Jérusalem

Depuis la guerre de 1967, Israël s'est employé activement à créer des faits physiques nouveaux (colonies de peuplement et routes) à l'intérieur d'un large périmètre dont le centre est Jérusalem-Ouest. Ces activités ont eu pour conséquence la création d'une vaste zone métropolitaine constituée de trois bandes de terres: des faubourgs de Ramallah au nord au bloc de colonies de peuplement au sud-ouest de Bethléem au sud; et de la bordure de Ma'ale Adummim à l'est à Bet Shemesh, sur le territoire israélien proprement dit, à l'ouest.

Le concept de «zone métropolitaine» désigne une situation dans laquelle une zone géographique déterminée constitue, sur le plan urbain et fonctionnel, une seule unité composée de sous-unités coordonnées. La zone métropolitaine de Jérusalem a été crée dans le but avoué de servir ses habitants juifs israéliens tout en portant préjudice à ses habitants palestiniens. L'idée de planifier la zone de Jérusalem en tant que zone métropolitaine a pris corps en 1994 sous la forme d'un plan directeur d'aménagement établi pour le gouvernement par l'Institut d'études israéliennes à Jérusalem. Ce plan directeur propose des lignes directrices pour le développement de cette zone jusqu'en 2010.[66] Bien que ce plan n'ait pas force de loi, il a, selon les services du procureur de la République, servi de base pour la planification de l'extension de Ma'ale Adummim vers l'ouest.[67]

Certaines des colonies de peuplement qu'Israël a créées dans cette région ont été établies dans la zone qui relève de la juridiction de la municipalité de Jérusalem (ci-après: «municipalité de Jérusalem»), tandis que d'autres ont été établies en dehors de cette zone (ci-après: «Grand Jérusalem»).

La municipalité de Jérusalem couvre une superficie d'environ 70 000 dunams en Cisjordanie, qui a été annexée à la municipalité de Jérusalem suite à une décision de la Knesset en 1967 et dans laquelle la loi israélienne a été imposée de manière officielle et explicite, et pas simplement de facto. Neuf pour cent environ de cette superficie (plus ou moins 6 000 dunams) faisaient partie du Jérusalem-Est jordanien, et les 21 pour cent restants appartenaient aux 28 villages de la région.[68] Les colonies de peuplement dans cette région sont ressenties par la majorité du public en Israël et par le gouvernement comme faisant partie intégrante de l'Etat d'Israël et leur développement s'est poursuivi de manière intensive depuis le début de l'occupation. Ces colonies de peuplement abritent aujourd'hui une population d'environ 175 000 habitants, soit un peu moins que l'ensemble des autres colonies.

Plus d'un tiers de la superficie annexée à Jérusalem en 1967 a été exproprié au cours des années qui ont suivi et utilisé pour l'établissement de 12 colonies de peuplement: Neve Ya'aqov, Pisgat Ze'ev, Colline française, Ramat Eshkol, Ma'alot Dafna, Ramot Alon, Ramat Shlomo (Rekhes Shu'afat), le quartier juif (dans la vieille ville), Talpiot-Est,[69] Giv'at Hamatos, Har Homa (voir photo 7) et Gilo. Il faut y ajouter la zone industrielle et l'aéroport d'Atarot. Plusieurs de ces colonies de peuplement (Ramot Eshkol, Ma'alot Dafna, Ramot et Talpiot-Est) forment une continuité territoriale totale avec Jérusalem-Ouest, tandis que le reste est entrecoupé de zones palestiniennes. La municipalité de Jérusalem est un exemple notable de la suppression de toute indication de la Ligne verte au moyen d'un développement urbain contigu.

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[66] Institut d'études israéliennes de Jérusalem, *La zone métropolitaine de Jérusalem — Un plan directeur d'aménagement et d'urbanisme* (en hébreu), Jérusalem, 1994.

[67] Réponse de l'État dans HCI 98/3125, «*Abd Al-Azziz Muhammed 'Ayad et al. c. Commandant des forces armées israéliennes en Judée et en Samarie*» (ci-après: «*Ma'ale Adummim*»), paragraphes 83 à 85 (voir note de bas de page 153 ci-dessus).

[68] B'Tselem, *A Policy of Discrimination*, p. 17.

[69] Dans ce contexte, Talpiot-Est constitue une exception, étant située des deux côtés de la frontière qui, de 1949 à 1967, séparait la zone démilitarisée contrôlée par Israël de la zone démilitarisée contrôlée par la Jordanie.

Le principal préjudice causé à la population palestinienne par l'établissement des colonies de peuplement dans la municipalité de Jérusalem est l'expropriation massive de terres dont la plupart étaient des propriétés privées palestiniennes, comme indiqué au chapitre 3. Comme pour la plupart des colonies de peuplement dans les trois bandes géographiques, ces colonies limitent fortement la capacité de développement urbain dans les quartiers et les villages annexés à Jérusalem. Les plans d'ensemble approuvés pour les quartiers palestiniens dans la zone annexée jusque fin 1999 montrent que 11 pour cent environ de la superficie restante après l'expropriation sont disponibles pour des constructions palestiniennes. Quelque 40 pour cent des zones planifiées à l'intérieur de ces quartiers sont définis comme «zones de paysage libre», où toute construction est interdite.[70]

Dans certains cas, les colonies de peuplement dans la municipalité de Jérusalem créent des divisions entre des zones palestiniennes et empêchent leur extension naturelle et la création d'un territoire contigu. Par exemple, la Colline française empêche de relier Sheikh Jarah et Wadi Joz d'un côté et Isawiya et Shu'afat de l'autre. De même, Giv'at Hamatos et Har Homa interrompent la contiguïté territoriale entre Beit Safafa et le sud de Sur Baher.

Un problème supplémentaire est la séparation physique entre les zones palestiniennes de la municipalité de Jérusalem et le reste de la Cisjordanie, suite au bouclage général imposé par Israël en Cisjordanie en 1993. Depuis, il est interdit aux Palestiniens de pénétrer à Jérusalem sans autorisation spéciale.[71] Cette mesure a porté gravement atteinte au droit à la libre circulation et aux autres droits connexes, en ce qu'elle entrave les déplacements entre les parties sud et nord de la Cisjordanie, dont l'itinéraire principal passe par Jérusalem. Cette mesure a dérouté tout le trafic vers la route Wadi An-Nar à l'est de la ville, ce qui allonge fortement les temps de trajet.

Le Grand Jérusalem comprend quatre blocs de colonies de peuplement qui sont entièrement reliées à la municipalité de Jérusalem et à l'ouest de la ville.[72] La principale composante, qui est aussi une condition essentielle de l'existence de la zone métropolitaine, est la présence d'un réseau complexe et sophistiqué de routes qui permet de se déplacer rapidement entre toutes les parties de la zone métropolitaine et le centre. Ce réseau permet à la partie ouest de la ville de servir de base pour l'emploi et de centre pour divers services (santé, éducation, loisirs, etc.) pour les habitants juifs de toute la zone métropolitaine. Les colonies de peuplement du Grand Jérusalem offrent quant à elles des solutions de logement peu coûteuses pour les habitants de la municipalité de Jérusalem. De plus, on voit apparaître une tendance nouvelle: les colonies du Grand Jérusalem offrent divers services aux habitants de la municipalité de Jérusalem.

Un des blocs de colonies de peuplement est situé au nord-ouest de la zone qui relève de la juridiction de Jérusalem. Il comprend les colonies de Giv'on, Giv'on Hahadasha et Bet Horon (2 000 habitants au total), qui font partie du conseil régional Mate Binyamin, et de Giv'at Ze'ev (10 300 habitants), qui est un conseil local. Les limites de ces colonies de peuplement se touchent, formant un doigt allongé qui se relie à la colonie de peuplement de Ramot à l'intérieur de la municipalité de Jérusalem, créant ainsi un territoire presque entièrement contigu. Un peu plus au sud se trouve le conseil local d'Har Hadar (1 400 habitants) (voir photo 8), qui fait partie du même système. Ce bloc de colonies de peuplement dépend actuellement de la route n° 443 et dépendra à l'avenir de la route n° 45, en construction. Ces routes relient la région de Modi'in à l'autoroute Jérusalem-Tel Aviv ainsi qu'à la ville de Jérusalem.

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[70] Shalem, *East Jerusalem – Planning Situation*, p. 5.

[71] Pour plus de détail à cet égard, voir: B'Tselem, *Divide and Rule: Prohibition on Passage between the Gaza Strip and the West Bank*, feuillet d'information, mai 1998, p. 5 et 6.

[72] Le présent rapport ne traite pas des parties ouest de la zone métropolitaine, puisque ces parties se situent sur le territoire souverain d'Israël et qu'elles sortent dès lors du sujet du rapport.

Un second bloc de colonies de peuplement s'étend au nord-est des limites de Jérusalem et comprend Kokhav Ya'akov, Tel Zion, Geva Binyamin (Adam) et la zone industrielle de Sha'ar Binyamin, tous situés dans la zone du conseil régional de Mate Binyamin (2 700 habitants au total). A quelques kilomètres au nord de Kokhav Ya'akov, on trouve les colonies de peuplement de P'sagot et de Bet El, qui font partie de la bande montagneuse par la composition de leur population et le type d'implantation mais qui, par la distance, pourraient aussi être considérées comme faisant partie de la zone métropolitaine de Jérusalem. Les limites de ces colonies de peuplement forment une longue chaîne qui relie cette zone à la colonie de peuplement de Pisgat Ze'ev à l'intérieur des limites de Jérusalem.

La principale influence de ces deux blocs au nord de la zone métropolitaine est qu'ils créent une barrière qui sépare les villages palestiniens qui les entourent. Les principaux villages de cette région sont Al-Qibiya, Al-Judeira, Beit Iksa et Beit Duqqu à l'ouest (5 600 habitants au total), et A-Ram, Hizma, Jab'a et Mukhmas au sud (30 100 habitants), ainsi que les villages et les quartiers qui font partie de la municipalité de Jérusalem (principalement Kafr Aqab, Beit Hanina, Isawiya et le camp de réfugiés de Shu'afa). En outre, Kokhav Ya'akov et la base militaire voisine de Giv'at Ze'ev (base Ofer) empêchent l'extension de Ramallah, respectivement vers le sud-est et le sud-ouest.

Le troisième bloc de colonies de peuplement se situe à l'est de la limite est de Jérusalem. Sa principale composante est la colonie de peuplement de Ma'ale Adummim (24 900 habitants), la plus grande de Cisjordanie (en dehors de la municipalité de Jérusalem), qui comprend la zone industrielle de Mishor Adummim. Dans ce bloc, au nord de la route qui relie Jérusalem à la mer Morte, on trouve un groupe de colonies de peuplement communautaires qui relèvent du conseil régional de Mate Binyamin: Mizpe Yeriho, Kefar Adummim (qui comprend Alon et Nofe Perat) et Almon (3 600 habitants au total), ainsi que deux grandes bases militaires. Au sud-est de Ma'ale Adummim se trouve la colonie de peuplement de Qedar (450 habitants), qui relève du conseil régional de Gush Ezyon (voir photo 12). Les limites de Ma'ale Adummim se relient à celles de ce groupe de colonies de peuplement, créant ainsi au centre de la Cisjordanie un bloc contigu s'étendant sur quelque 69 500 dunams, de la limite de la municipalité de Jérusalem aux faubourgs ouest de Jéricho. Cette zone est près de 15 fois plus grande que la zone bâtie actuelle dans ces colonies de peuplement.

Ce bloc de colonies de peuplement coupe la connexion territoriale entre le sud et le nord de la Cisjordanie. A cet égard, le danger le plus concret est que, si Ma'ale Adummim est étendu vers l'ouest comme le prévoit son plan d'ensemble, la route Wadi An-Nar, qui est la principale route restante qui permet aux Palestiniens de se rendre de Bethléem à Ramallah, sera bloquée. Comme signalé plus haut, l'entrée à Jérusalem a déjà été interdite aux Palestiniens.

La création de la colonie de peuplement de Ma'ale Adummim a entraîné d'importantes violations des droits de l'homme pour la population palestinienne. La zone d'environ 30 000 dunams comprise initialement dans la zone qui relève de la juridiction de Ma'ale Adummim était composée de terres dont même Israël reconnaît qu'elles constituaient une propriété privée palestinienne, et a été dès lors expropriée par des ordres d'expropriation.[73] En 1998, suite à la modification du plan d'ensemble de Ma'ale Adummim appelant l'extension de Ma'ale Adummim vers l'ouest,[74] la population bédouine (la tribu Jahalin) qui vivait dans cette région a été expulsée.[75] L'extension de Ma'ale Adummim vers l'ouest limite notablement les possibilités de développement des villages voisins: Abu Dis, Anata, Az-Za'im et Al-Azariya (27 700 habitants au total).

Le quatrième bloc se situe dans la partie sud de la zone métropolitaine, à l'ouest et au sud de Bethléem. Ce bloc comprend la municipalité de Betar Illit (15 800 habitants), le conseil local d'Efrat

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[73] *Ma'ale Adummim*, paragraphe 3. Le recours à l'expropriation à des fins publiques en vue d'établir une colonie de peuplement est apparemment inhabituelle; dans la plupart des cas, Israël a préféré déclarer les terres terres d'État.

[74] Plan d'ensemble local de Ma'ale Adummim, n° 4/420.

[75] Pour plus de détails à ce sujet, voir B'Tselem, *On the Way to Annexation*, p. 23 à 35.

(6 400 habitants), ainsi qu'un certain nombre de colonies de peuplement plus petites qui relèvent du conseil régional de Gush Ezyon: Har Gilo, Alon Shevut, El'azar, Neve Daniel, Rosh Zurim, Kfar Ezyon, Bat Ayin, et l'implantation militaire israélienne avancée de Geva'ot (6 100 habitants au total). Ce bloc est plus éloigné de la municipalité de Jérusalem, dont il est coupé par Bethléem et les villages palestiniens environnants. Toutefois, ce bloc fait fonctionnellement partie de la zone métropolitaine grâce à la route des tunnels (une section de la route n° 60), qui permet de se déplacer rapidement vers et depuis Jérusalem tout en évitant les zones à population palestinienne (voir photo 13).

Ce bloc présente un grand nombre des caractéristiques mentionnées dans l'analyse des types de colonies de peuplement et de la population des colons. On y trouve la plupart des types de colonies de peuplement: Gush Ezyon est repris dans le plan d'ensemble Alon, et des kibboutz ont été créés là qui pratiquent l'agriculture, entre autres (El'azar et Neve Daniel). Cette zone compte aussi une des plus grandes colonies de peuplement ultra-orthodoxes (Betar Illit). Parce qu'elle est assez proche à la fois de la Ligne verte et de l'autoroute Jérusalem-Tel Aviv, la colonie de peuplement de Gush Ezyon est une région très recherchée qui a également attiré des colons des classes moyennes qui s'efforcent d'améliorer leur niveau de vie.

S'agissant des répercussions de ce bloc de colonies de peuplement sur la population palestinienne, on y retrouve plusieurs des principaux phénomènes relevés dans d'autres zones, du blocage du développement urbain à la restriction de la libre circulation. L'aire de juridiction de la colonie de peuplement d'Efrat s'étend en diagonale vers le nord-est sur une superficie d'environ 6 500 dunams. La pointe de cette zone touche la limite sud de la zone A à proximité de Bethléem (Al-Khader et le camp de réfugiés d'Ad-Duheisha – 16 000 habitants au total), suit presque fidèlement cette limite et interdit tout développement urbain dans cette direction. L'agglomération de Nahalin (5 500 habitants) est devenue dans les faits une enclave palestinienne entourée de colonies de peuplement, ce qui supprime toute possibilité de développement urbain.[76] A l'instar des colonies de peuplement des collines de l'ouest, les colonies de ce bloc créent également un obstacle qui sépare les villages et les agglomérations de la région de Bethléem de la ville d'Hébron et de ses environs. Tout comme les colonies de peuplement de la bande montagneuse, certaines des colonies de cette zone se situent le long de la route n° 60, créant un bloc qui contrôle une large section de cette route. Il s'ensuit que les forces armées israéliennes limitent strictement les déplacements des Palestiniens sur cette route, comme elles le font dans les zones des colonies de peuplement de la bande montagneuse.

Au total, les limites municipales des colonies de peuplement dans la zone métropolitaine de Jérusalem couvrent quelque 129 700 dunams et ces colonies abritent quelque 247 600 habitants. De ces terres, 34 600 dunams environ sont des zones bâties. Par conséquent, les possibilités d'extension des colonies de cette bande sont d'environ 95 000 dunams, soit un taux de croissance de quelque 275 pour cent. Contrairement aux autres zones, la majeure partie des terres dont Israël a pris le contrôle au fil des ans dans la zone métropolitaine de Jérusalem a été rattachée à l'une des colonies de peuplement, ce qui réduit la superficie qui relève des deux conseils régionaux de cette région à quelque 90 000 dunams.

Conclusions

Lors des discussions relatives à l'accord sur le statut définitif, un discours est apparu dans le public israélien autour de la question des «pourcentages de terres» : les pourcentages transférés ou à transférer aux Palestiniens, et les pourcentages restant ou qui resteront aux mains des Israéliens.

Comme nous avons tenté de le montrer dans ce chapitre et sur la carte qui accompagne le présent rapport, l'emplacement de chaque zone contrôlée par les colonies de peuplement — et pas uniquement sa taille — forme une variable essentielle du point de vue de la violation des droits de l'homme en général et, en particulier, des possibilités d'exercer le droit à l'autodétermination. On ne

[76] Ces colonies de peuplement sont Betar Illit au nord, Neve Daniel à l'est, Rosh Zurim au sud et Geva'ot à l'ouest.

peut pas, par exemple, mettre sur le même pied du point du vue de la valeur les deux pour cent de la superficie de la Cisjordanie qui se situent dans le désert de Judée et le quart de pour cent de terres comprises dans la zone qui relève de la juridiction de la colonie de peuplement d'Ari'el. La présence permanente d'Israéliens à Ari'el oblige Israël à contrôler un long couloir (la Transsamarienne) qui mène à la colonie de peuplement. Ce couloir s'étend de la Ligne verte presque jusqu'à la route n° 60 et interrompt la contiguïté du territoire palestinien dans le nord de la Cisjordanie, qui est une zone à forte densité de population. De même, la zone qui relève de la juridiction de Ma'ale Adummim occupe à peine 0,8 pour cent de la superficie de la Cisjordanie. Pourtant, le contrôle permanent de cette zone par Israël coupe la Cisjordanie en deux parties presque entièrement séparées.

Comme le montre le présent chapitre, outre la violation du droit humanitaire international qui découle de l'existence des colonies, la répartition géographique de celles-ci a été la source de nombreuses violations des doits de l'homme en droit international:

5. La manière dont sont réparties les colonies de peuplement, y compris les zones de juridiction qui s'y rattachent, sur la plupart des régions de Cisjordanie crée des obstacles qui empêchent de maintenir une quelconque contiguïté territoriale entre les communautés palestiniennes. Ce phénomène supprime la possibilité d'établir un Etat palestinien indépendant et viable, conformément au cadre convenu par toutes les parties concernées pour l'exercice du droit à l'autodétermination de la population palestinienne.

6. L'accès aux vastes superficies dont Israël s'est emparé au fil des ans et qui ont été ajoutées aux zones relevant de la juridiction des conseils régionaux est refusé aux habitants palestiniens lorsqu'une ordonnance militaire est prise qui déclare ces terres zone militaire fermée. Cette interdiction limite radicalement les possibilités dont disposent les Palestiniens en matière de développement économique en général et d'agriculture en particulier. Dans la bande est, les colonies de peuplement privent les habitants palestiniens de l'utilisation d'une part importante des ressources en eau de la région. Ces incidences constituent une violation du droit de tous les peuples à jouir librement de leurs ressources naturelles.

7. La situation géographique de certaines des colonies de peuplement, qui entourent, voire jouxtent des villes et agglomérations palestiniennes, limitent les possibilités de développement urbain des communautés palestiniennes et les annulent complètement dans certains cas. Ce phénomène a une incidence négative, dont l'ampleur et les circonstances varient selon le cas, sur le droit d'amélioration permanente du niveau de vie en général, et sur le droit au logement en particulier.

8. L'implantation de certaines des colonies le long de routes essentielles qui, avant l'installation des colonies de peuplement, desservaient la population palestinienne, a entraîné l'application par Israël d'entraves radicales à la libre circulation de cette population dans le but de garantir la sécurité et la libre circulation des colons. Ces restrictions ont une incidence négative sur une série de droits, notamment le droit au travail et aux moyens de subsistance, le droit à la santé et le droit à l'éducation.

Le tableau n° 9 résume les données citées dans le présent chapitre en ce qui concerne l'étendue des zones sous le contrôle des colonies de peuplement. Une des principales conclusions qui ressortent de ce tableau est l'immensité de l'étendue des terres (près de 2 millions de dunams) comprises dans les zones qui relèvent de la juridiction des six conseils régionaux et qui ne sont pas incluses dans les limites municipales des colonies de peuplement qui composent les conseils régionaux.

Il est probable que des faits nouveaux dans l'arène politique dicteront l'avenir de ces régions. Pour l'instant, il n'existe pas de plan opérationnel connu qui concerne celles-ci. Si le rythme de construction et d'extension des colonies de peuplement qui a marqué les années 1990 se maintient dans les années qui viennent, ces zones pourraient être utilisées comme réserves de terres pour l'établissement de colonies de peuplement et de zones industrielles nouvelles, et/ou pour l'extension des colonies de peuplement existantes. Si Israël accepte le redéploiement de ses forces, y compris le passage de zones supplémentaires sous le contrôle de l'Autorité palestinienne, il sera plus facile de transférer ces zones aux conseils régionaux que de transférer des zones comprises dans les limites municipales d'une colonie de peuplement déterminée

Tableau 9

Superficie des colonies de peuplement (milliers de dunams)

Région	Zone bâtie	Zones municipales non bâties	Réserves de terres*	Superficie totale sous contrôle des colonies de peuplement
Bande est	14,8	61,1	1 203	1 279
Bande montagneuse	16,9	45,3	409,4	472
Bande des collines ouest	30,9	78,9	265,2	375
Zone métropolitaine de Jérusalem**	34,3	95,1	90,6	220
Total	96,9	280,8	1 968,2	2 346
Total en pourcentage de la superficie de la Cisjordanie*	1,7 %	5,1 %	35,1 %	41,9 %

* A l'intérieur de la zone relevant de la juridiction des conseils régionaux.

** Y compris le Grand Jérusalem et la municipalité de Jérusalem. La «zone juridictionnelle» des colonies de peuplement à l'intérieur de la municipalité de Jérusalem est calculée selon la superficie attribuée par le Bureau central de la statistique pour chaque «quartier» en tant de donnée statistique locale (Institut d'études israéliennes de Jérusalem, *Annuaire statistique de Jérusalem*, tableau 4/A).

*** Sur un total d'environ 5 608 dunams, qui comprend les zones annexées à Jérusalem. Ce calcul n'inclut pas le no man's land et la superficie correspondante de la mer Morte.

CHAPITRE 8

ETUDE DE CAS: LA COLONIE DE PEUPLEMENT D'ARI'EL

Ari'el est une des plus grandes colonies de peuplement établies par Israël en Cisjordanie, tant par la population que par la superficie. Sur le plan géographique, Ari'el est situé au cœur de la Cisjordanie. Quelques kilomètres seulement séparent la bordure est de la colonie de peuplement de la route n° 60 qui, comme déjà mentionné, forme l'épine dorsale de la crête montagneuse. Toutefois, Ari'el est une colonie laïque et urbaine qui attire des colons du centre du pays (des Israéliens de longue date et des nouveaux immigrants de l'ex-Union soviétique). En règle générale, les colons qui viennent à Ari'el espèrent y trouver un logement peu coûteux et un meilleur niveau de vie.

En raison de ces caractéristiques, Ari'el est considéré par une part importante du public juif en Israël comme «une ville israélienne comme les autres», oubliant ainsi qu'Ari'el est en réalité une colonie de peuplement située dans les Territoires occupés. Cette façon de voir semble avoir influencé la position d'Israël au sujet de ses frontières futures lors des négociations avec l'Autorité palestinienne. Les reportages dans les médias semblent indiquer que toutes les propositions formulées par Israël lors de la conférence de Camp David de juillet 2000 et de la conférence de Taba de janvier 2001 comprenaient l'annexion d'Ari'el à l'Etat d'Israël alors que, comme indiqué ci-dessus, une distance considérable sépare Ari'el de la Ligne verte.[77]

Le présent chapitre a pour but d'analyser en profondeur l'incidence et les répercussions de la colonie de peuplement d'Ari'el sur les communautés palestiniennes qui l'entourent et leurs habitants.

A. Contexte historique

L'idée d'établir une grande colonie de peuplement urbaine au «cœur de la Samarie» a été émise pour la première fois en 1973 par un groupe de futurs colons composé de travailleurs du secteur aéronautique. Cette proposition a été soumise à Moshe Dayan, à l'époque ministre de la défense. Dayan était en principe favorable à l'idée, mais il s'est avéré impossible de réaliser les projets parce que l'implantation proposée par le groupe était incompatible avec le plan Alon, adopté de manière informelle par le gouvernement Ma'arach.[78]

Après l'arrivée au pouvoir du Likoud en 1977, un changement est intervenu dans la politique du gouvernement et des initiatives ont été déployées pour installer des colonies dans toute la Cisjordanie. Le plan Drobless, qui a guidé les activités du gouvernement et de l'Organisation sioniste mondiale, a proposé l'établissement d'une grande colonie de peuplement sur la Transsamarienne (la route n° 505 sur la carte), en partie pour des raisons stratégiques et militaires.[79] Vu l'approche sympathisante du gouvernement, le groupe de candidats colons qui avaient pris contact avec Dayan en s'intitulant «groupe de Tel Aviv» s'est réuni à nouveau et a renouvelé son initiative. En octobre 1977, le comité ministériel pour les colonies de peuplement a approuvé l'établissement d'une colonie de peuplement du nom d'Heres (nom qui fut modifié par la suite en Ari'el) sur un site au sud du village d'Haris. Les membres du groupe ont reçu par la suite l'autorisation de s'installer à cet endroit.[80]

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[77] Voir notamment une interview avec Shlomo Ben-Ami, ministre des affaires étrangères (à l'époque des négociations): Ari Shavit, «The Day Peace Died», *Ha'aretz Supplement*, 14 septembre 2001.

[78] Esther Levine, *Ari'el — Capitale de la Samarie* (en hébreu), Philadelphie, 1990, p. 14.

[79] Matitiyahu Drobless, *The Settlement in Judea and Samaria*.

[80] Esther Levine, *Ari'el — Capitale de la Samarie*, p. 44.

Les quarante premiers colons sont arrivés sur le site approuvé le 17 août 1978. Sur instructions d'Ariel Sharon, ministre de l'agriculture à l'époque, le site a été défini comme base militaire et comportait initialement quelque 100 bâtiments provisoires. Peu après, l'Autorité des constructions rurales du Ministère de la construction et du logement a commencé à ériger des logements permanents.[81] Outre l'exécution de la construction et de l'infrastructure, l'équipe du Ministère de la construction et du logement a également travaillé en coopération avec le groupe de Tel Aviv dans toutes les questions qui ont trait à l'administration et à l'organisation de la nouvelle colonie de peuplement. En 1981, Ari'el a été déclaré conseil local et a commencé à fonctionner de manière autonome.

Grâce à l'aide généreuse du gouvernement, la colonie de peuplement s'est rapidement développée. Dans les années 1980 et 1990, de nombreuses institutions officielles ont été créées à Ari'el, notamment des écoles primaires et secondaires, une faculté universitaire, un conseil religieux, un tribunal municipal, un poste de police etc. En 1996, avec le soutien du Ministère de l'industrie et du commerce, une zone industrielle supplémentaire a été créée à Ari'el en plus de la zone industrielle de Barqan.[82]

Après le début de la vague d'immigration en provenance de l'ex-Union soviétique au début des années 1990, des milliers d'immigrants ont été orientés vers Ari'el, ce qui a fortement accru la population de la colonie de peuplement. En juin 1998, suite à cette croissance, le commandant Uzi Dayan du commandement central a signé une ordonnance modifiant le statut d'Ari'el de conseil local en celui de municipalité. Le Bureau central de la statistique estime qu'en septembre 2001, Ari'el comptait 15 900 habitants, dont 40 pour cent environ étaient des immigrants de l'ex-Union soviétique. En outre, quelque 6 000 étudiants fréquentaient la faculté universitaire d'Ari'el, dont certains habitaient dans la colonie de peuplement de manière temporaire.

B. Le contexte géographique

Comme indiqué ci-dessus, Ari'el se situe au centre de la Samarie, à mi-chemin entre Naplouse et Ramallah, et à l'ouest de la ligne de partage des eaux (les sommets de la crête montagneuse qui traverse la Cisjordanie). Sur le plan du réseau routier, Ari'el jouxte un croisement important entre la route n° 5 (la Transsamarienne) qui s'étend d'ouest en est et la route n° 60, qui traverse la Cisjordanie dans sa longueur, du nord au sud.

Ari'el est entouré de toutes parts de villes et de villages palestiniens. Au sud se trouve la ville de Salfit (9 000 habitants),[83] qui fait office de centre gouvernemental, administratif et commercial pour tous les villages palestiniens des environs. Au nord d'Ari'el, à courte distance, on trouve quatre villages: Haris (2 600 habitants), Kifl Haris (2 700 habitants), Qira (900 habitants) et Marda (1 900 habitants); un peu plus loin au nord se trouvent Jamma'in (5 100 habitants), Zeita-Jamma'in (1 700 habitants) et Deir Istiya (3 300 habitants). A l'est d'Ari'el sont situés les villages d'Iskaka (900 habitants) puis de Yasuf (1 500 habitants), et sur la limite ouest de la zone qui relève de la juridiction d'Ari'el s'étendent les villages de Brukin (3 100 habitants) et de Kafr Ad-Dik (4 400 habitants).

A l'est et à l'ouest d'Ari'el, intercalés entre les villages palestiniens ci-dessus, on trouve un certain nombre de colonies de peuplement. Il s'agit à l'est, sur la route n° 60, de Tapuah (350 habitants) et de Rehelim (population inconnue), qui font partie de la bande montagneuse. A l'ouest d'Ari'el se situent de nombreuses colonies de peuplement disposées en forme d'entonnoir (voir

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[81] Lettre d'Ariel Sharon au Ministère de la construction et du logement, du 21 juillet 1978, et procès-verbal d'une réunion du 2 septembre 1979 (*in Ari'el — Capital of Samaria*, p. 140 et p. 157).

[82] Pour plus de détail sur les institutions et les dates d'inauguration, voir le site Internet de la municipalité d'Ari'el, http://www.Ari'el.muni.il.

[83] Sauf indication contraire, les chiffres entre parenthèses sont le nombre estimatif d'habitants à la fin de 2001.

chapitre 7) qui constituent la zone très prisée des collines de l'ouest. Les colonies de peuplement les plus proches d'Ari'el sont Barqan (1 300 habitants), Revava (550 habitants) et Qiryat Netafim (300 habitants).

C. Prendre le contrôle de terres

La recherche effectuée par B'Tselem montre que la majeure partie des terres comprises dans la zone qui relève de la juridiction d'Ari'el a, au fil des ans, été déclarée et enregistrée comme terres d'Etat (voir chapitre 3).[84] Bien qu'il ne soit pas possible de reconstituer avec précision la situation antérieure à la fondation de la colonie de peuplement, la recherche montre qu'une part non négligeable de ces terres, en particulier la zone sur laquelle Ari'el est aujourd'hui construite, était jadis une terre non cultivée, rocailleuse, utilisée par les villageois comme pâture pour leurs troupeaux. Comme le montrent les témoignages recueillis au cours de cette recherche, Israël a toutefois exproprié également des terres qui étaient cultivées par des Palestiniens en les déclarant terres d'Etat, et ces terres ont été intégrées dans la zone relevant de la juridiction d'Ari'el.

Dans d'autres cas, Israël a pris le contrôle de terres cultivées – dont il a reconnu qu'il s'agissait de biens privés palestiniens – dans le but d'étendre le réseau de routes reliant Ari'el à Israël et aux colonies de peuplement voisines (voir ci-dessous l'analyse relative à la Transsamarienne et à la route n° 447). Dans ces cas, les commandants militaires ont signé des ordonnances d'expropriation.

Le produit agricole des plantes cultivées sur ces terres était utilisé par les propriétaires à la fois pour leur consommation propre et pour la commercialisation. La prise de contrôle de ces terres a privé ces familles d'une source importante, voire unique dans certains cas, de moyens de subsistance et a fortement réduit leur niveau de vie.

D. Limites municipales

Les limites municipales d'Ari'el ont été revues plusieurs fois depuis son établissement. La révision la plus récente a été faite en juin 1999 par une ordonnance signée par Moshe Ya'alon, commandant à l'époque du commandement central, accompagnée d'une carte représentant une superficie totale de quelque 13 800 dunams dans la zone de la colonie de peuplement. De cette superficie, 3 000 dunams étaient des terrains bâtis ou en cours de construction, soit 22 pour cent de la zone totale relevant de la juridiction d'Ari'el. Cette zone s'étend sur environ 11 km d'est en ouest et sa plus grande largeur est de 2,5 km. La longueur de cette zone est exceptionnelle, même par rapport aux grandes villes israéliennes de population comparable.

Les limites municipales d'Ari'el sont irrégulières et indentées. Il existe à l'intérieur de la colonie de peuplement des terres cultivées par des Palestiniens (essentiellement des oliveraies), qu'Israël n'a pas pu déclarer terres d'Etat. Cette situation a aussi créé des «îlots» ou des «péninsules» de propriétés palestiniennes à l'intérieur de la zone relevant de la juridiction d'Ari'el, qui entoure les terres palestiniennes de trois côtés. L'inverse est également vrai: il existe des cas où des parties de la zone relevant de la juridiction d'Ari'el sont entourées de terres agricoles palestiniennes. Ces phénomènes existent également ailleurs en Cisjordanie.[85]

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[84] Cette recherche était basée sur les témoignages d'habitants des villages palestiniens qui jouxtent Ari'el et sur des renseignements communiqués par la municipalité de Salfit. B'Tselem a demandé à l'administration israélienne des terres et à la municipalité d'Ari'el de fournir des renseignements permettant de clarifier le statut des terres qui forment la zone relevant de la juridiction d'Ari'el, mais n'a reçu aucune réponse.

[85] Pour l'analyse de ce phénomène dans le cas de Ma'ale Adummim, voir B'Tselem, *The Slope of Annexation*, p. 33 et 34.

Ces îlots palestiniens à l'intérieur de la partie non bâtie de la zone de juridiction seront apparemment supprimés et annexés de fait à Ari'el, à mesure que la zone qui entoure l'îlot est bâtie et peuplée. On trouve déjà un exemple d'une telle annexion dans le cas d'un îlot palestinien de grande taille situé au sud de la principale zone bâtie d'Ari'el (voir la coordonnée D-6 de la photo 20). La carte de la zone relevant de la juridiction d'Ari'el qui est jointe à l'ordonnance militaire présente cette zone comme étant constituée de terres palestiniennes privées, mais la municipalité d'Ari'el a construit une route de sécurité qui entoure cette zone et l'annexe ainsi de fait à la colonie de peuplement. En outre, les plans d'ensemble de la municipalité – contrairement à la carte de la zone de juridiction annexée à l'ordonnance militaire – ignorent complètement cet îlot. La zone y apparaît comme faisant partie intégrante d'Ari'el.

E. Extension urbaine

Le diagramme 9 donne une représentation graphique du développement urbain d'Ari'el dans le temps, tel qu'il ressort des plans d'ensemble de la colonie de peuplement. L'examen de ce diagramme révèle l'intention manifeste des planificateurs de maximaliser la dispersion le long de l'axe est-ouest en enfonçant des «coins» à chaque extrémité de la zone de juridiction et en remplissant progressivement les espaces libres restants à l'intérieur de ces limites. Par conséquent, après la consolidation du groupe initial de colons environ au centre de l'actuelle zone de juridiction, la superficie occupée aujourd'hui par le collège d'Ari'el à l'extrémité est de cette zone a été développée. Ce n'est que dans les années qui ont suivi que l'espace entre la zone centrale et la bordure est s'est progressivement comblé. De même, au milieu des années 1990, les travaux de construction d'une nouvelle zone industrielle à l'extrémité ouest d'Ari'el ont commencé. Le quartier résidentiel suivant dont la construction est prévue (voir la dernière photo du diagramme) se situe entre ce nouveau complexe industriel et la bordure ouest de la zone bâtie actuelle.

La zone bâtie actuelle a une longueur d'environ 5 km (du collège à la route d'accès à Ari'el), tandis que sa largeur ne dépasse pas 700 mètres environ. Du point de vue de l'aménagement urbain, cette configuration est totalement déraisonnable et illogique. Les pratiques d'aménagement modernes préconisent la plus grande compacité urbaine possible, ce qui permet aux habitants d'atteindre à pied le plus de quartiers possible de la communauté.

Le caractère déraisonnable de cette configuration du point de vue de l'urbanisme est encore accentué par le fait que la zone qui relève de la juridiction d'Ari'el comprend de vastes superficies adjacentes au site d'origine de la colonie de peuplement (principalement vers le sud) qui auraient pu être utilisées pour l'extension. La conclusion à tirer de cette situation est que le système d'aménagement israélien se fondait non pas sur des considérations urbanistiques mais bien sur des considérations étrangères à l'urbanisme, comme on le verra ci-dessous. L'une de ces considérations consistait à créer une barrière aussi longue que possible séparant les communautés palestiniennes des deux côtés de la Transsamarienne et interrompant la contiguïté territoriale de cette région.

F. Préjudice porté au développement de Salfit

La situation géographique d'Ari'el empêche la création d'un espace urbain contigu qui, sans cela, aurait pu se créer par l'extension de Salfit vers le nord et le nord-est, reliant ainsi Salfit à Haris, Kifl Haris, Qira, Marda et Iskaka. La politique d'Israël a pour conséquence que les limites d'Ari'el forment une sorte de barrière physique qui fait obstacle à ce processus et bloque presque totalement le développement urbain de Salfit. Salfit compte actuellement quelque 9 000 habitants et le taux de croissance annuel est d'environ 3,5 pour cent. D'après Samir Masri, l'ingénieur municipal, le manque de terres qui se prêtent à la construction s'aggrave chaque année et se traduit déjà par un manque de logements et par la décision de nombreux habitants jeunes de quitter la ville.[86]

Etant donné les caractéristiques topographiques et hydrologiques de la zone de Salfit, la seule direction raisonnable d'extension est le nord. Les zones situées au sud, au sud-est et au sud-ouest de Salfit sont montagneuses est extrêmement escarpées. Préparer ces zones pour la construction nécessiterait des ressources financières et techniques énormes et pourrait occasionner des dommages irrémédiables au paysage. La zone à l'ouest de Salfit est riche en réserves d'eau souterraines et couvre en très grande partie les besoins en eau des habitants (voir ci-dessous). Elle est également exploitée par Israël. La construction dans cette zone porterait atteinte à ces réserves ainsi qu'aux cultures actuellement pratiquées dans cette région. Les caractéristiques topographiques de la zone située à l'est de Salfit conviennent certes pour la construction, mais elle est actuellement exploitée de manière intensive par les habitants de la ville qui y cultivent des milliers d'oliviers, qui constituent leur principale source de revenus. Quinze pour cent environ de la zone qui relève de la juridiction de Salfit (dont la bordure est correspond à la limite de la zone A) sont actuellement ouverts à la construction, mais la moitié environ de cette zone appartient à un petit nombre d'habitants de Salfit et n'est donc pas constructible.[87]

L'influence négative d'Ari'el sur les habitants de Salfit ne se limite pas uniquement à la question des terres et du manque de logements. Elle comprend aussi des aspects comme la pollution des sources d'eau souterraines qui desservent Salfit. La majeure partie des eaux usées produites par Ari'el s'écoule dans le lit d'une rivière à l'entrée ouest de la colonie de peuplement puis s'écoule vers le sud-ouest (voir photo 20). Ces eaux usées, qui s'infiltrent dans le sol et se mêlent à l'eau de source emmagasinée dans l'aquifère, passent à quelques mètres à peine d'une station de pompage qui fournit la majeure partie de l'eau utilisée pour la consommation domestique par les habitants de Salfit (voir photo 18). D'après Salah Afani, l'ingénieur-hydraulicien de Salfit, ce flux d'eaux usées pollue l'eau et il doit parfois ordonner à la municipalité d'interrompre le pompage lorsque les inspections de routine révèlent la présence de niveaux élevés de pollution.

G. Le réseau routier régional

Comme mentionné plus haut, la ville de Salfit fait office de centre administratif et commercial pour les villages de la région et, en particulier, pour les villages situés au nord: Haris, Kifl Haris, Qira, Marda, Jamma'in, Zeita-Jamma'in et Deir Istiya. La présence d'Ari'el limite fortement les voies d'accès et d'issue de Salfit.

Jusqu'à ce qu'éclate l'intifada al-Aqsa, la principale route d'accès à Salfit était l'embranchement qui part de la route d'accès à Ari'el, vire à l'ouest puis mène à Salfit au sud (voir photo 20). Depuis le début de l'intifada, les forces armées israéliennes ont bloqué l'accès à cette route

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[86] Ces renseignements ont été communiqués à B'Tselem lors d'une visite de Salfit organisée par l'organisation le 31 décembre 2001.

[87] Ces renseignements ont été communiqués à B'Tselem par les autorités municipales de Salfit.

au moyen de blocs de béton et de tas de terre. Si l'extension prévue d'Ari'el vers l'ouest se réalise (voir diagramme 9), cette route traversera la zone bâtie d'Ari'el et la circulation palestinienne le long de cette artère sera totalement interdite.

Le volume limité de trafic qui passe actuellement entre Salfit et les villages au nord à lieu à l'est, par une route de terre qui commence à la route n° 60 au sud de la colonie de peuplement de Tapuah et qui se dirige vers l'ouest en passant par les villages de Yasuf et d'Iskaka. Bien que l'entrée de cette route soit également bloquée depuis le début de l'intifada, les habitants palestiniens se rendent au barrage routier (à l'est de Yasuf), le contournent à pied, puis poursuivent vers Salfit (voir photo 17). Même sans les barrages actuels, cette route est longue et ne convient pas comme artère principale de trafic entre Salfit et les villages au nord. Toutefois, comme indiqué plus haut, c'est la situation qui se produira probablement si Ari'el est étendu vers l'ouest comme prévu.

Par exemple, la route qui va de la sortie sud de Kifl Haris à l'entrée ouest de Salfit, qu'empruntaient les habitants de ces communautés jusqu'au début de l'intifada, à une longueur d'environ 3 500 mètres. L'autre route possible, par contre, contraint les habitants à gagner la route n° 60 et à traverser les villages de Yasuf et d'Iskaka, soit une distance d'environ 20 kilomètres.

Les nombreuses restrictions qui frappent la circulation des Palestiniens et le réseau routier minimal dont ils disposent sont particulièrement frappantes au regard des ressources énormes investies par Israël pour répondre aux besoins en matière de transports des colons en général et des habitants d'Ari'el en particulier. Cet aspect est clairement illustré par deux routes construites récemment à proximité d'Ari'el qui ont gravement préjudicié la population palestinienne.

Le premier exemple est le nouveau tracé de l'autoroute transsamarienne qui relie Ari'el et les colonies de peuplement adjacentes à Tel Aviv et à sa zone métropolitaine. L'ancienne Transsamarienne (la route n° 505) traverse les villages de Mas-ha et de Biddya, et Israël a dès lors décidé de construire une nouvelle route à quelques centaines de mètres au sud afin de contourner ces villages, et de transformer la route en autoroute à quatre bandes de circulation. Pour construire cette route, Israël a exproprié d'importantes superficies de terres appartenant à des habitants palestiniens de la région et occasionné d'importants dommages à l'environnement en coupant en deux toutes les collines situées sur le tracé de la route. Depuis le début de l'intifada, les forces armées israéliennes ont, dans le cadre de la politique de «dégagement» du territoire, déraciné de nombreux oliviers des deux côtés de cette route afin de diminuer les dangers auxquels sont confrontés les colons qui l'empruntent (voir les coordonnées C-3, C-4, C-5, B-6 de la photo 20).[88]

Un autre exemple est celui de la route n° 447, qui doit être achevée sous peu. Cette route relie la bordure est d'Ari'el à la route n° 60 à proximité de la colonie de peuplement de Revava (voir photo 21). Aux fins de cette construction, quelque 75 dunams de terres appartenant aux habitants d'Iskaka et de Salfit ont été expropriés et plus d'un millier d'oliviers déracinés, dont la plupart étaient extrêmement anciens et très productifs. Cette route est censée desservir le bloc de colonies de peuplement composé d'Eli, Shilo (y compris Shevut Rahel) et Ma'ale Levona, et raccourcira de quelques minutes le trajet vers Ari'el. Les Palestiniens dont les terres ont été expropriées ont adressé une requête au tribunal de grande instance en vue de tenter d'empêcher la construction de la route. Le tribunal a rejeté la requête sans motiver en détail ce rejet. La décision laconique du juge Matza indique simplement: «En ce qui concerne cette question, nous sommes arrivés à la conclusion que le tribunal n'est pas compétent pour intervenir dans la décision des défendeurs».[89]

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[88] Pour plus détails sur cette politique et son application dans la bande de Gaza, voir B'Tselem, *A Policy of Destruction: House Demolitions and Destruction of Agricultural Land in the Gaza Strip*, feuillet d'information, février 2002.

[89] HCJ 00/1451, *Talab 'Abd Al-Hadi et al. c. Conseil suprême de l'aménagement du territoire et Commandant des forces armées israéliennes en Judée et en Samarie.*

Diagramme 9

Croissance incrémentielle d'Ari'el : dates du plan d'ensemble

CONCLUSIONS

Israël a mis en place dans les Territoires occupés un régime de séparation fondé sur la discrimination, appliquant deux systèmes de droit distincts dans la même région et faisant varier les droits des personnes en fonction de leur nationalité. Ce régime est le seul en son genre dans le monde et rappelle les régimes répugnants du passé, notamment le régime de l'apartheid en Afrique du Sud.

La discrimination dont sont victimes les Palestiniens est manifeste dans la quasi-totalité des domaines d'activité des autorités d'occupation, depuis les méthodes utilisées par Israël pour s'emparer des terres sur lesquelles les colonies sont créées jusqu'aux institutions d'aménagement du territoire distinctes pour les Palestiniens et les Israéliens, en passant par l'application de la législation israélienne aux colons et aux colonies de peuplement alors que la population palestinienne reste soumise à la législation militaire.

Israël a, au titre de ce régime, dérobé aux Palestiniens des milliers de dunams de terres. Israël a utilisé ces terres pour y établir des douzaines de colonies de peuplement en Cisjordanie et les peupler de centaines de milliers de citoyens israéliens. La répartition même des colonies de peuplement sur de vastes superficies de la Cisjordanie crée en soi de nombreuses violations des droits juridiques des Palestiniens. Comme l'a démontré le présent rapport, le changement radical qu'Israël a apporté à la carte de la Cisjordanie supprime toute possibilité réelle d'établissement d'un Etat palestinien indépendant et viable dans le cadre du droit des Palestiniens à l'autodétermination.

Les colons jouissent en revanche de tous les droits dont disposent les citoyens israéliens à l'intérieur de la Ligne verte et, dans certains cas, se voient accorder des droits supplémentaires. Les efforts considérables qu'Israël a déployés dans l'opération des colonies de peuplement – sur le plan financier, juridique et administratif – ont fait de ces colonies des enclaves civiles dans une région dominée par le régime militaire, dans lesquelles les colons jouissent d'un statut préférentiel. Pour pérenniser cette situation, qui est illégale au départ, Israël a continué de violer les droits des Palestiniens.

Un aspect particulièrement manifeste est la manière dont Israël manipule les outils législatifs pour donner à l'opération des colonies de peuplement une impression de légalité. Lorsque la législation jordanienne servait les fins israéliennes, Israël l'a observée en soutenant que le droit international l'oblige à respecter la législation en vigueur avant l'occupation. En pratique, cette législation a été utilisée avec cynisme et partialité. Par contre, lorsque la législation jordanienne contrecarrait les plans d'Israël, elle a été modifiée sans ambages par la législation militaire, et Israël a adopté des règles nouvelles pour servir ses intérêts. Pour le faire, Israël a foulé aux pieds de nombreuses restrictions et interdictions établies dans les conventions internationales auxquelles il est partie et qui étaient destinées à limiter les violations des droits de l'homme et à protéger les populations vivant sous l'occupation.

La responsabilité pour les violations des droits de l'homme qui résultent de l'existence des colonies de peuplement incombe en tout premier lieu à tous les gouvernements israéliens qui se sont succédé depuis le début de l'occupation. C'est le gouvernement qui a pris l'initiative de la création des colonies de peuplement, qui leur a fourni une aide politique, organisationnelle et économique, et qui a encouragé la poursuite de leur extension. Les juges de la Cour suprême israélienne partagent cette responsabilité: dans leurs décisions, ils ont conféré à l'opération des colonies de peuplement un cachet de légalité en approuvant des actes illicites du gouvernement et des forces armées israéliennes dans certains cas, et en refusant dans d'autres d'intervenir pour empêcher les préjudices infligés aux habitants palestiniens.

Depuis le début de l'intifada al-Aqsa, les colons n'ont cessé d'être la cible d'attaques de la part des Palestiniens. Il s'ensuit que certains colons ont voulu retourner vivre en Israël et ont demandé au gouvernement de leur fournir une aide à la réinstallation. Malgré la responsabilité des autorités

résultant des politiques qu'elles appliquent depuis longtemps aux colonies de peuplement, l'Etat a refusé d'accorder toute aide aux colons pour leur permettre de regagner Israël si cette réinstallation ne s'inscrivait pas dans le cadre d'un règlement politique.[90] Ce refus fait des colons qui souhaitent partir des otages de la politique illégale appliquée par l'Etat d'Israël.

Les colonies de peuplement étaient illégales dès le départ et leur présence a entraîné des violations des droits de l'homme. B'Tselem exige dès lors que le gouvernement israélien prenne des mesures pour démanteler toutes les colonies de peuplement. Ce démantèlement doit s'effectuer dans le respect des droits humains des colons et donner lieu, notamment, à une indemnisation.

Il va de soi que l'évacuation de toutes les colonies de peuplement est une tâche complexe qui prendra du temps. Il existe toutefois des mesures intermédiaires qui peuvent être prises immédiatement en vue de réduire au minimum les violations des droits de l'homme et les infractions au droit international. Le gouvernement israélien doit notamment prendre les mesures suivantes:

9. cesser toute nouvelle construction dans les colonies de peuplement, qu'il s'agisse de la construction de colonies de peuplement nouvelles ou de l'extension des colonies de peuplement existantes;

10. geler la planification et la construction de nouvelles routes de contournement et mettre fin aux expropriations et à la confiscation de terres à cette fin;

11. restituer aux communautés palestiniennes toutes les zones non bâties à l'intérieur des limites municipales des colonies de peuplement et des conseils régionaux;

12. supprimer les comités spéciaux d'aménagement du territoire dans les colonies de peuplement et, par voie de conséquence, les compétences des autorités locales en matière d'établissement de plans d'ensemble et de délivrance de permis de bâtir;

13. mettre fin à la politique d'incitations qui encourage les citoyens israéliens à s'installer dans les colonies de peuplement et réorienter ces ressources en vue d'encourager les colons à s'installer dans des zones situées à l'intérieur des frontières de l'Etat d'Israël.

[90] MK Anat Maor a soumis à la Knesset une proposition de loi qui prévoit l'indemnisation des colons qui décident de quitter les colonies de peuplement. La Knesset a rejeté cette proposition de loi (proposition de loi sur l'indemnisation des habitants évacués de Judée, de Samarie, de la bande de Gaza et des hauteurs du Golan, 5760-1999, 4 juillet 2001).

ANNEXE 13

B'TSELEM (CENTRE D'INFORMATION ISRAELIEN SUR LES DROITS DE L'HOMME DANS LES TERRITOIRES OCCUPES), DERRIERE LA BARRIERE : LES VIOLATIONS DES DROITS DE L'HOMME DUES A LA BARRIERE DE SEPARATION D'ISRAËL, AVRIL 2003,

EXPOSE DU PROBLEME

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INTRODUCTION

En juin 2002, le Gouvernement israélien a décidé d'édifier une barrière de séparation près de la Ligne verte, afin d'enrayer les infiltrations
en Israël de Palestiniens venus de Cisjordanie. Cette décision a été prise suite à l'augmentation sans précédent du nombre des attentats palestiniens commis contre des Israéliens depuis le déclenchement de l'Intifada d'al-Aqsa, en particulier au cours du premier semestre 2002. Le Gouvernement a décidé que cette barrière serait installée tout le long de la limite entre Israël et la Cisjordanie. A ce jour, cependant, il n'a ordonné sa construction que sur environ 190 kilomètres. Selon le Ministère de la défense, les 145 premiers kilomètres (première phase) de la barrière sont censés être mis en service d'ici à juillet 2003.

L'essentiel du tracé de la barrière ne longe pas la Ligne verte, mais passe à travers la Cisjordanie. Dans les tronçons construits le long de la Ligne verte, Israël prévoit de construire également une barrière secondaire quelques kilomètres plus à l'est de la barrière principale. Dans plusieurs zones, le tracé « en boucle » de la barrière forme une sorte de lacet qui encercle des villages palestiniens. La barrière séparera de nombreux villages palestiniens et transformera certains d'entre eux en enclaves isolées. En de nombreux endroits, elle séparera les villages des terres arables qui appartiennent à leurs habitants. B'Tselem estime que la barrière risque de porter un préjudice direct à au moins 210 000 habitants palestiniens de soixante-sept villages, petites villes et agglomérations.

Dans le présent document, nous allons analyser les répercussions de la barrière proposée sur la population palestinienne et le coût humain qu'implique sa construction selon le tracé prévu. Nous examinerons également la question de la légalité de la barrière - telle qu'elle est actuellement prévue - au regard du droit international. Le but de ce document est d'appeler l'attention sur les violations des droits de l'homme et les transgressions du droit international qu'implique le fait que le tracé de la barrière s'enfonce à l'intérieur de la Cisjordanie. Etant donné que la construction de la première phase de la barrière n'est pas encore achevée, et que les travaux relatifs aux autres phases n'ont pas encore commencé, il reste possible d'empêcher de telles violations.

RAPPEL DES FAITS

L'ELABORATION DU PROJET DE BARRIERE

L'idée d'édifier une barrière qui permettrait de séparer physiquement la Cisjordanie et Israël afin d'enrayer les infiltrations de Palestiniens en Israël avait déjà été avancée depuis de nombreuses années sous diverses formes. Cette barrière était censée être construite dans ce que l'on appelle la « zone de séparation hermétique » (*seam zone*), une bande de territoires qui s'étend le long des deux côtés de la Ligne verte.

En mars 1996, le Gouvernement a décidé d'installer des postes de contrôle le long de la zone-tampon (semblables à celui de Erez, dans la bande de Gaza), par lesquels les Palestiniens devraient obligatoirement passer pour entrer en Israël. Les autres voies d'accès ont été bloquées. Suite à cette décision, le Ministère de la sécurité publique a ordonné en 1997 l'affectation d'unités spéciales de la police des frontières à la surveillance le long de la zone de séparation hermétique. Ces unités étaient chargées d'enrayer les infiltrations de Palestiniens en Israël. Ces décisions n'ont été appliquées que

partiellement.[91] Après le déclenchement de l'Intifada d'al-Aqsa, fin septembre 2000, le Gouvernement a pris un certain nombre de décisions qui ont finalement abouti au plan actuel de barrière de séparation.

En novembre 2000, le Premier Ministre d'alors, Ehud Barak, a approuvé le plan de construction d' «une barrière visant à empêcher le passage des véhicules motorisés» arrivant de l'extrémité nord-ouest de la Cisjordanie pour se rendre dans la zone de Latrun. De nombreux mois se sont ensuite écoulés avant que le plan ne commence à être appliqué. En juin 2001, le Premier Ministre Ariel Sharon a constitué un Comité directeur - à la tête duquel il a placé Uzi Dayan, Directeur du Conseil national de sécurité - chargé d'élaborer une série de mesures censées enrayer les infiltrations palestiniennes en Israël à travers la zone de séparation hermétique. Le 18 juillet 2001, le Comité ministériel pour les questions de sécurité (ci-après dénommé le Cabinet) a approuvé les recommandations du Comité directeur.

Aux termes des décisions du Cabinet, les Forces de défense israéliennes sont chargées de la protection du côté est de la zone de séparation hermétique, sous les ordres d'une « Direction des opérations » responsable de la coordination des activités, la police des frontières étant chargée de la protection du côté ouest. L'armée et la police ont reçu pour instruction de coordonner pleinement leurs activités, et leurs effectifs dans la zone de séparation hermétique seront fortement renforcés. Le Cabinet a également décidé l'application de la décision de novembre 2000 relative à la barrière contre les véhicules motorisés ainsi que la construction d'une barrière pour empêcher le passage des piétons dans certaines parties de territoire considérées comme zones à haut risque.[92]

L'édification de la barrière qui a pour but est d'empêcher le passage des véhicules à moteur a commencé après la décision de juin 2001. A ce jour, le Département des travaux publics et le Département des constructions du Ministère de la défense ont achevé l'installation d'un garde-fou de sécurité métallique le long du tronçon retenu, qui s'étend de l'extrémité nord-ouest de la Cisjordanie à la zone de Latrun. En avril 2002, soit quelque neuf mois après la décision du Cabinet, le Gouvernement n'avait encore pratiquement pris aucune mesure pour appliquer sa décision en ce qui concerne la barrière censée empêcher les piétons d'entrer en Israël.

Le 14 avril 2002, le Cabinet s'est de nouveau penché sur la question. Cette fois-ci, il a décidé de construire une barrière permanente dans la zone de séparation hermétique afin d' « améliorer et renforcer l'état de préparation et les capacités opérationnelles [d'Israël] lui permettant de faire face au terrorisme ». Il a de plus ordonné qu'une commission ministérielle dirigée par le Premier Ministre suive de près l'application de cette décision. Il a enfin décidé d'entamer immédiatement la construction d'une barrière temporaire dans trois secteurs : à l'est de Umm el-Fahm, autour de Tulkarm et à Jérusalem.[93] Une « Administration de la zone de séparation hermétique » a été créée pour mettre en œuvre cette décision ; le Directeur général du Ministère de la défense a été placé à la tête de ce nouvel organisme.

Quelques jours plus tard, les Forces de défense israéliennes ont pris le contrôle de terres appartenant à des Palestiniens à différents endroits au nord-ouest de la Cisjordanie, afin d'édifier la barrière temporaire ; elles ont commencé à déraciner des arbres et à niveler le terrain le long du tracé prévu. Mais la décision de construire la barrière temporaire n'a pas été appliquée. Dans le secteur situé au sud de Tulkarm, les travaux ont été arrêtés après le nivellement du terrain et l'arrachage des arbres, et certaines des ordonnances d'expropriation ont été annulées. Quelques semaines après, les Forces de

[91] Vérificateur aux comptes de l'Etat, Rapport d'audit sur la zone de séparation hermétique (en hébreu), Rapport n°2 (Jérusalem, juillet 2002), pp.10-12.

[92] *Ibid.*, pp.13-18.

[93] Décision 64/B, section E.

défense israéliennes ont pris le contrôle d'autres terres et ont entamé les travaux de construction de la barrière permanente selon un tracé différent.[94]

Début juin 2002, l'Administration de la zone de séparation hermétique a apporté la touche finale au plan de construction de la première phase de la barrière permanente, laquelle devait être érigée depuis l'extrémité nord-ouest de la Cisjordanie, près du village de Sallem, jusqu'à la colonie de peuplement israélienne de Elqana, au sud. Il était de surcroît prévu de construire une barrière autour de Jérusalem (barrière ci-après dénommée l' «enveloppe de Jérusalem»). Le plan relatif à cette barrière comprenait une proposition concrète d'édification de tronçons au nord et au sud de la ville.

Le 23 juin 2002, le Gouvernement a approuvé le plan dans son principe. Dans sa décision, il a indiqué : « Le tracé définitif sera arrêté par le Premier Ministre et le Ministre de la défense. » Il a également stipulé qu'en cas de divergence d'opinion quant à ce tracé, ce serait au Cabinet qu'il appartiendrait de résoudre la question.[95]

Le Cabinet s'est réuni le 14 août 2002 afin d'examiner le tracé proposé par l'Administration de la zone de séparation hermétique. Au cours de cette réunion, il a approuvé le tracé définitif de la première phase de la barrière, qui s'étendrait sur 116 kilomètres, dont 96 kilomètres entre Sallem et Elqana et 20 pour l'enveloppe de Jérusalem (uniquement pour les tronçons nord et sud). Pour différentes raisons (voir Partie 3), la longueur du tracé de la première phase a été augmentée depuis la décision du cabinet; elle est à présent d'environ 145 kilomètres.[96]

Les travaux d'infrastructure et de construction ont commencé le long de la majeure partie du tracé approuvé, mais seul un tronçon de 10 kilomètres proche de Umm el-Fahm a été achevé.[97] Le Ministère de la défense estime que la première phase de la barrière sera terminée d'ici à juillet 2003.[98] En janvier 2003, le Ministère de la défense a entamé les travaux d'infrastructure le long d'un nouveau tronçon de 45 kilomètres, de Sallem en direction est jusqu'à Faqu'a, qui ne figurait pas dans la décision du Cabinet d'août 2002.[99]

Les éléments constitutifs de la barrière

Le principal élément constitutif de la barrière est une clôture équipée de détecteurs électroniques destinés à alerter les Forces de défense israéliennes en cas de tentative d'infiltration. Une « route de service » a été construite tout le long du côté est de la clôture ; elle est bordée d'une clôture de fils de fer barbelés. A l'est de cette route « a été creusé un fossé ou [ont été installés] d'autres moyens ayant pour but d'empêcher des véhicules à moteur de venir s'écraser contre la clôture ou de passer à travers. »[100] Le plan prévoit la construction de trois routes à l'ouest de la clôture : « une route de dépistage permettant de détecter les empreintes de pieds de toute personne ayant franchi la clôture, une

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[94] Les habitants des villages ayant subi un préjudice du fait de la construction de la clôture temporaire au sud de Tulkarm ont formé une requête auprès de la Haute Cour de Justice. Celle-ci a rejeté leur requête. HCJ 3771/02, affaire *Kafr a-Ras et consorts* contre *Commandant des Forces de défense israéliennes en Judée et Samarie et consorts.*

[95] Décision gouvernementale 2077.

[96] Chiffre basé sur une mesure numérique effectuée par B'Tselem.

[97] Felix Frisch, « Israel Plans : Tax to be imposed on Palestinians who enter Israel »,

Ynet, 4 mars 2003.

[98] Lettre du porte-parole du Ministère de la défense à B'Tselem, datée du 12 février 2003.

[99] Amos Harel, « Construction of the Separation Fence Begins between Gilboa Villages and the West Bank », *Ha'aretz,* 28 janvier 2003.

[100] Les informations relatives aux éléments constitutifs de la barrière sont basées sur la réponse de l'Etat dans HCJ 7784/02, affaire *Sa'al `Awani `Abd al-Hadi et consorts* contre *Commandant des Forces de défense israéliennes en Cisjordanie* (ci-après dénommée affaire al-Hadi), section 23.

route de patrouille et une route pour les véhicules blindés. ». Une autre clôture de fils de fer barbelés sera construite le long de cette dernière route.

La largeur moyenne de l'ouvrage est de soixante mètres. Du fait des contraintes topographiques, la barrière édifiée dans certaines zones sera plus étroite et ne comprendra pas tous les éléments qui viennent normalement s'ajouter à la clôture électronique. Toutefois, comme l'a indiqué l'Etat à la Haute Cour de Justice, « dans certains cas, la barrière atteindra une largeur de cent mètres à cause des conditions topographiques ».

S'agissant des tronçons installés le long de la Ligne verte, de même que dans quelques autres zones, le plan prévoit la construction d'une barrière supplémentaire à l'est, à laquelle il se réfère sous la dénomination de « barrière avancée ». Selon la réponse de l'Etat à la Haute Cour de Justice, « il s'agit d'une barrière sans clôture, dont le but est d'orienter les déplacements dans ces zones vers un certain nombre de postes de contrôle de sécurité. » L'élément constitutif le plus important de cette barrière avancée est une tranchée profonde bordée d'une clôture de fils de fer barbelés.

Dans certaines zones, la barrière principale sera complétée par un mur de protection contre les tirs ou par un autre type de mur de protection. Il y a quelques années, les Forces de défense israéliennes avaient construit, sur territoire israélien, des murs de protection contre les tirs entre deux communautés, Bat Hefer et Matan, ainsi que dans les villages palestiniens voisins, Shweikeh et Habla. La société chargée de l'asphaltage de l'autoroute n°6 (dite « Trans-Israel Highway ») avait construit un mur de protection contre les tirs le long d'un tronçon de l'autoroute près de Qalqiliya et elle prévoit de faire de même près de Tulkarm. Dans la zone de l'enveloppe de Jérusalem, deux murs ont déjà été édifiés : l'un le long de la route n°45 (la route Begin-Nord), sur le tronçon proche de Beit Hanina el-Balad et de Bir Nabala, l'autre près de Abu Dis, sur le côté est de la frontière de Jérusalem. Un autre mur est prévu près de la tombe de Rachel, dans la partie sud de l'enveloppe de Jérusalem.

Le plan de construction de la barrière prévoit différents postes de contrôle pour les personnes et les marchandises. L'une des cartes que l'Etat a produites devant la Haute Cour de Justice comporte l'indication de cinq postes de contrôle principaux le long du tracé de la barrière pour la première phase (à l'exclusion de l'enveloppe de Jérusalem). Elle comprend également 26 postes de contrôle dits « agricoles » (voir ci-dessous), dont cinq situés le long de la barrière avancée.

Selon les estimations auxquelles l'Administration de la zone de séparation hermétique a procédé en juin 2002, le coût total de la première phase de la barrière, qui selon le tracé initial s'étend sur 116 kilomètres, est de près de 942 millions de nouveaux Shekels israéliens (NIS), soit 8,1 millions par kilomètre.[101] Le Directeur général du Ministère de la défense, Amos Yaron, a cependant estimé récemment le coût de la barrière à environ 10 millions de NIS par kilomètre.[102]

Le tracé de la barrière et son emplacement par rapport aux villes et villages situés dans la zone

B'Tselem a réclamé au Ministère de la défense une copie de la carte indiquant le tracé de la barrière de séparation. Cette demande a été rejetée. Le porte-parole du Ministère a répondu que « la publication de la carte n'avait pas été autorisée ».[103] Dans sa réponse à B'Tselem, le fonctionnaire du Ministère de la défense chargé de l'application de la Loi sur la liberté d'information a déclaré qu'il n'était « pas possible de fournir d'autres informations que celles publiées dans les médias ».[104] Ce manque de transparence en ce qui concerne le tracé constitue une violation flagrante des règles de bonne gestion et fait obstacle au débat public sur un projet à long terme dont la mise en œuvre sera lourde de conséquences et va coûter des centaines de millions de Shekels. Le refus de l'Etat de produire la carte

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[101] Vérificateur aux comptes de l'Etat, *Rapport d'audit sur la zone de séparation hermétique*, p.30.

[102] Frisch, « Israel Plans ».

[103] Lettre du porte-parole du Ministère de la défense, Rachel Nidak-Ashkenazi, datée du 2 janvier 2003.

[104] Lettre de A. Barak, Assistant principal chargé des réponses aux demandes publiques.

est particulièrement surprenant dans la mesure où les travaux d'infrastructure et de construction le long de la plupart des sections du tracé approuvé ont déjà commencé ; or, dès que les travaux de construction ont commencé, l'emplacement de la barrière devient tout de suite évident.

L'Etat ayant refusé de fournir la carte, le tracé de la barrière indiqué sur la carte ci-jointe est basé sur les ordonnances d'expropriation remises aux Palestiniens, sur les cartes que le Bureau du Procureur de l'Etat a produites devant la Haute Cour de Justice, et sur les observations physiques dans les zones où la barrière est en cours de construction.

La carte ne comprend pas le tracé de l'enveloppe de Jérusalem car sauf pour deux tronçons de relativement petite taille près de Kafr`Aqeb, au nord de la ville et près de la tombe de Rachel au sud, les Palestiniens n'ont pas reçu d'ordonnances d'expropriation. En ce qui concerne le tracé de la barrière dans les parties est et nord-ouest de l'enveloppe de Jérusalem, il est difficile de déterminer si une décision a été prise ou non. Les implications du tracé le long de l'enveloppe de Jérusalem risquent d'avoir une très large portée, à la fois à cause de l'importance de la population palestinienne vivant dans cette zone et de sa grande dépendance de Jérusalem-Est, dont elle sera séparée après l'édification de la barrière.

La carte n'indique pas non plus le tracé de la partie nord, qui s'étend sur 45 kilomètres de Sallem à Faqu'a, car le Gouvernement a refusé de fournir quelque information que ce soit à ce sujet. Les observations physiques des travaux dans cette zone auxquelles a procédé B'Tselem montrent que le tracé passe très près de la Ligne verte. Il semble donc que dans cette zone-là, le tracé sera tel qu'un grand nombre de Palestiniens, ou une grande partie de leurs terres arables, se retrouveront au sud de la barrière.

Le tracé de la barrière passe à l'intérieur de la Cisjordanie, où il s'enfonce, en certains endroits, sur une profondeur de six à sept kilomètres. La superficie de la zone comprise entre la barrière principale et la Ligne verte le long du tracé entre Sallem et Elqana est de 96 500 dunams, dont 7 200 sur lesquels sont construit les bâtiments de dix colonies de peuplement. La zone des cinq enclaves située à l'est de la barrière (voir ci-dessous) s'étend sur 65 200 autres dunams. La barrière empiétera sur 161 700 dunams, soit 2,9 pour cent du territoire de la Cisjordanie.

Dans certaines zones, le tracé « en boucle » de la barrière et la barrière avancée créent des enclaves de communautés palestiniennes, et dans d'autres zones ils séparent les habitants palestiniens de leurs terres. B'Tselem estime que la barrière portera directement préjudice à au moins 210 000 Palestiniens vivant dans 67 villages, villes et agglomérations.

Les enclaves palestiniennes situées à l'ouest de la barrière[105]

Le tracé de la barrière crée cinq enclaves de communautés palestiniennes situées entre la barrière principale et la Ligne verte. Ces enclaves, décrites ci-après du nord au sud, seront séparées du reste de la Cisjordanie et séparées les unes des autres. Treize communautés, comptant au total 11 700 habitants, relèveront de cette catégorie.

La première enclave, à l'ouest de Djénine, comprend Barta'a a-Sharqiya (3 200), Umm a-Rihan (400), Khirbat `Abdallah al-Yunis (100), Khirbat a-Sheikh Sa'ad (200) et Khirbat Dhaher al-Malah (200), soit au total 4 100 habitants.[106]

[105] Bien que certains villages et villes soient situés au nord ou au sud de la barrière, nous nous référons, par souci de simplification, aux communautés qui se trouvent entre la barrière et la Ligne verte sous la dénomination commune de « communautés situées à l'ouest de la barrière ».

[106] Les chiffres indiqués entre parenthèses correspondent aux estimations démographiques pour fin 2002 effectuées par le Bureau central palestinien des statistiques sur la base du recensement de 1997.

La deuxième enclave, à l'est du village arabo-israélien de Baqa al-Gharbiya, comprend Nazlat`Issa (2 300), Baqa a-Sharqiya (3 700) et Nazlat Abu Nar (200), soit au total 6 200 habitants.

Khirbet Jubara, située au sud de Tulkarm et qui compte 300 habitants, est la troisième enclave.

La quatrième enclave, proche de la colonie de peuplement de Alfe Menashe, au sud de Qalqiliya, comprend Ras a-Tira (300), Khirbet a-Dab'a (200) et Arab a-Ramadeen al-Janubi (200), soit un total de 700 habitants.

La cinquième enclave comprend des territoires voisins de Bethléem au nord de cette ville (400), près de la tombe de Rachel.

Les enclaves palestiniennes à l'est de la barrière

Le tracé « en boucle » de la barrière, de même que la fermeture hermétique de certaines zones à cause de la construction de la barrière avancée, va créer cinq enclaves à l'est de la barrière principale. Comme elle le fait pour les enclaves situées sur son côté ouest, la barrière séparera ces enclaves du reste de la Cisjordanie et les séparera les unes des autres. Dix-neuf communautés sont ainsi touchées ; elles comptent au total 128 500 habitants.

Deux enclaves seront créées entre la barrière principale et les tranchées de la barrière avancée. La première, dans le district de Djénine, comprend Rummana (3 000), A-Tayba (2 100) et `Anin (3 300), soit au total 8 400 habitants. La seconde, de taille plus importante, comprend Shweikeh et Tulkarm (41 000), le camp de réfugiés de Tulkarm (12 100), Iktaba (1 800), Dennabeh (7 600), le camp de réfugiés de Nur Shams (7 000), Khirbet a-Tayyah (300), Kafa (300),`Izbat Shufa (900) et Far'un (2 900), soit au total 73 900 habitants.

La troisième enclave sera créée par l'encerclement hermétique de Qalqiliya (38 200).

La quatrième enclave, au sud de Qalqiliya, sera entourée sur trois côtés par la barrière principale. Cette enclave comprend Habla (5 300), Ras `Atiya (1 400) et `Izbat Jalud (100), et elle compte au total 6 800 habitants.

La cinquième enclave, quelques kilomètres plus au sud, comprend `Azzun `Atma (1 500) (voir plus loin l'étude du cas de ce village).

Les communautés séparées de leurs terres arables

Les habitants de douzaines de communautés palestiniennes situées à l'est de la barrière principale ou de la barrière avancée seront séparés d'une importante partie de leurs terres arables, qui resteront du côté ouest de la barrière. Cette séparation leur portera un préjudice supplémentaire, puisqu'ils ont déjà perdu les terres qui ont été saisies pour construire la barrière elle-même. Le nombre d'habitants qui seront directement affectés par cette séparation due à l'emplacement de la barrière dépend du nombre de Palestiniens qui possèdent des terres de l'autre côté de la barrière.[107] Trente-six communautés sont concernées, pour un total de
72 200 habitants.

Dans le district de Djénine, les communautés touchées sont Zabda (800), `Araqa (2000), al-Khuljan (400), Nazlat a-Sheik Saa'eed (700), Tura a-Gharbiya (1 000), Tura a-Sharquiya (200), Khirbet Mas'ud (5), Khirbet Mentar (50), Umm Dar (500) et Dhaher al-`Abed (300), soit au total 6000 habitants.

[107] Cette catégorie ne comprend pas les communautés situées dans les enclaves précédemment mentionnées, encore que certaines d'entre elles comptent des habitants qui vont se retrouver séparés de leurs terres arables puisque celles-ci vont rester à l'est de l'enclave.

Les communautés du district de Tulkarm sont `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) et Kafr Jammal (2 300), soit au total 37 600 habitants.

Dans le district de Qalqiliya, les communautés sont Falamya (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) et Mas-ha (1 800), soit un total de 11 600 habitants.

Dans le district de Jérusalem, nous sommes en mesure, à ce stade, de citer deux communautés qui relèvent manifestement de cette catégorie : Rafat (1 800) et Kafr`Aqeb (15 000) (voir plus loin l'étude de ces cas), pour un total de 16 800 habitants.

Les colonies de peuplement israéliennes

Dix colonies de peuplement, dans lesquelles vivent au total 19 000 habitants, vont se retrouver du côté ouest de la barrière. Il s'agit, du nord au sud, de 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) et Elqana (3 000).[108]

A Jérusalem-Est, ce sont au total treize colonies de peuplement dans lesquelles habitent 173 000 personnes qui vont être incluses dans l'enveloppe de Jérusalem : 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), le quartier juif de la vieille ville (2 300), Talpiot-Est (12 800), Givat Hamatos (800), Har Homa (données non disponibles) et Gilo (27 600).[109]

Les atteintes aux droits de l'homme

L'édification de la barrière à l'intérieur de la Cisjordanie risque d'avoir pour effet, pour des centaines de milliers de Palestiniens, des violations de bon nombre de leurs droits de l'homme, depuis leur droit à la propriété jusqu'à leur droit de recevoir un traitement médical.

La plupart de ces violations découlent de l'impact prévu de l'atteinte à la liberté de mouvement des habitants. Leur gravité dépend par conséquent des dispositions qu'Israël prendra en ce qui concerne le passage d'un côté à l'autre de la barrière. Une violation qui, elle, ne découle pas des restrictions à la liberté de mouvement est déjà patente, ou va se produire prochainement : celle du droit à la propriété des personnes auxquelles appartiennent les terres le long desquelles sera construite la barrière.

Les atteintes au droit à la liberté de mouvement

Toute personne a le droit de circuler librement et de choisir sa résidence à l'intérieur d'un Etat.

Déclaration universelle des droits de l'homme, article 13, alinéa 1.

Quiconque se trouve légalement sur le territoire d'un Etat a le droit d'y circuler librement et d'y choisir librement sa résidence.

Pacte international relatif aux droits civils et politiques, article 12, alinéa 1.

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[108] Bureau central des statistiques, Liste des colonies de peuplement ; leurs populations, leurs limites cadastrales - 12 décembre 2001.

[109] Ces chiffres correspondent à la situation de fin 2000. *Annuaire statistique 2002 de Jérusalem*, tableau C/13.

La bande de terre située entre la barrière et la Ligne verte, et aussi, apparemment, celle qui se trouve entre la barrière et les limites de la municipalité de Jérusalem, seront déclarées « Zone militaire de séparation hermétique ». D'après la réponse de l'Etat à la Haute Cour de Justice, cette déclaration ne s'appliquera pas aux résidents locaux.[110] Si l'on se fonde sur cette déclaration, les habitants des enclaves situées à l'ouest de la barrière ne seront pas obligés d'obtenir un permis spécial pour traverser la barrière. Des fonctionnaires de l'administration civile ont cependant annoncé à plusieurs reprises que des permis de passage permanents seront délivrés aux habitants des enclaves. Les autres habitants de la Cisjordanie ne seront généralement pas autorisés à pénétrer dans ces enclaves, et ce quel que soit le motif qu'ils invoquent, à moins qu'ils n'aient obtenu un permis spécial.

L'Etat a fait savoir que les Palestiniens qui vivent à l'est de la barrière et sont propriétaires de terres situées à l'ouest de celle-ci devront se présenter à des postes de contrôle « agricoles » et produire les « permis spéciaux » qui leur auront été délivrés.[111] L'Etat a promis que « des dispositions raisonnables seront prises pour le passage d'un côté à l'autre de la barrière, en tenant compte de la nécessité d'autoriser le passage des exploitants agricoles et de leur matériel, ainsi que le transport des produits récoltés sur les terres cultivées vers les terres situées à l'est de la barrière. »[112] Mais hormis cet engagement d'ordre général, il n'a pas fourni d'autre précision quant aux dispositions qu'il entend prendre.

L'Etat n'a pas encore examiné les mesures qu'il a l'intention d'appliquer aux déplacements des habitants des enclaves situées à l'est de la barrière principale ou aux habitants de la Cisjordanie qui souhaitent se rendre dans ces enclaves. Il est donc difficile de savoir s'ils auront besoin de permis de déplacement spéciaux. Il est clair que les déplacements aller et retour entre les enclaves et d'autres zones de la Cisjordanie ne seront autorisés qu'à condition que les intéressés passent par les postes de contrôle spécialement créés à cet effet.

L'Etat a fait savoir à la Haute Cour de Justice qu'en construisant la première phase de la barrière, à l'exclusion de l'enveloppe de Jérusalem, il installerait cinq postes de contrôle principaux et vingt-six postes de contrôle agricoles. La première phase devrait être achevée d'ici à juillet 2003. Selon le chef de l'Administration de la zone de séparation hermétique, Nezach Mashiach, le budget 2003 ne prévoit pas suffisamment de fonds pour la construction des cinq postes de contrôle principaux.[113]

Quelles que soient les dispositions adoptées pour la traversée de la barrière, il est clair que des centaines de milliers de Palestiniens dépendront du système de sécurité israélien lorsqu'ils voudront passer d'un côté à l'autre de la barrière. Cette dépendance accroîtra les difficultés auxquels ils se heurtent déjà pour se déplacer à l'intérieur de la Cisjordanie.

Depuis le début de l'Intifada d'al-Aqsa, les restrictions imposées par les Forces de défense israéliennes ont quasiment empêché tout déplacement des Palestiniens. A certains endroits, ces forces ont créé des postes de contrôle, installé des blocs de béton, aménagé des remblais et creusé des tranchées qui bloquent la plupart des routes en Cisjordanie, et nombreuses sont les routes sur lesquelles les Palestiniens ne sont pas autorisés à conduire un véhicule. Qui plus est, les Forces de défense israéliennes imposent un couvre-feu à des centaines de milliers

[110] Réponse de l'Etat, affaire *al-Hadi*, section 22.

[111] *Ibid*.

[112] *Ibid*., section 35.

[113] Akiva Eldar, « The Great Failure of the Separation Fence », *Ha'aretz*, 31 octobre 2002.

d'habitants. Ces restrictions, qui ont un impact sur tous les aspects de la vie de la population palestinienne, ont entraîné de nombreuses violations des droits de l'homme, y compris le droit de gagner sa vie, le droit à l'éducation et le droit de recevoir un traitement médical.[114]

L'expérience prouve que les atteintes à la liberté de mouvement des Palestiniens font partie intégrante de la politique israélienne dans les Territoires occupés. De telles restrictions ne sont pas seulement imposées pour des motifs de sécurité. Elles sont également utilisées à des fins que le droit international interdit et sont fondées sur des considérations tout à fait étrangères aux raisons officiellement invoquées. Par exemple, Israël a souvent imposé des restrictions collectives à la liberté de mouvement pour sanctionner la population d'une localité donnée parce qu'un attentat contre des civils ou des militaires israéliens avait été attribué à un ou plusieurs habitants de cette localité. Les autorités israéliennes restreignent également régulièrement les déplacements des Palestiniens en partie parce que c'est là la méthode la plus facile et la moins onéreuse à utiliser pendant les périodes de vacances ou d'élections en Israël.[115] Cette expérience fait craindre que les postes de contrôle situés le long de la barrière ne soient fermés pendant de longues périodes et que le passage des Palestiniens ne soit totalement interdit.

L'installation de postes de contrôle le long de la barrière risque de poser des problèmes. Actuellement, le passage à ces postes de contrôle dépend de la bonne volonté des militaires, qui n'agissent pas sur la base de règles claires connues des Palestiniens. Les militaires ont contraint des Palestiniens à attendre des heures avant de les autoriser à traverser, ont confisqué leurs cartes d'identité, leurs clés de voiture et même leurs véhicules. Dans de nombreux cas, ils les ont humiliés et parfois même battus.

Certains des habitants palestiniens de ces zones, si ce n'est tous, devront obtenir un « permis spécial » auprès des autorités israéliennes pour pouvoir passer de l'autre côté de la barrière. Dans le passé, Israël a tiré avantage de cette obligation, pour les Palestiniens, d'obtenir des permis, en ne leur octroyant des permis d'entrée ou des permis pour se rendre à l'étranger qu'à la condition qu'ils collaborent avec le Service de sécurité général. Les formalités d'obtention des permis entraînent un harcèlement sans répit des habitants et sont fondées sur des critères arbitraires. Les Palestiniens se voient souvent refuser des permis sans que les motifs de cette décision leur soient communiqués. Il est arrivé plus d'une fois qu'ils reçoivent un permis après intervention des organisations de défense des droits de l'homme ou d'autres organismes, ce qui est très révélateur de l'arbitraire qui préside au refus des demandes.[116]

Il semble donc évident que la promesse de l'Etat de construire des postes de contrôle principaux et des postes de contrôle « agricoles » le long de la barrière ne suffira pas à empêcher qu'il soit porté préjudice aux Palestiniens. La politique israélienne en matière de liberté de mouvement des Palestiniens est telle qu'il est très incertain que les Palestiniens soient effectivement autorisés à traverser la barrière.

Pour les habitants des enclaves, la barrière va créer une situation assez semblable à celle dans laquelle se trouvent les habitants de al-Mawasi, dans la bande de Gaza.[117] Al-Mawasi est une enclave palestinienne qui compte 5 000 habitants et est située à l'ouest des colonies de peuplement de Gush

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[114] Sur ce sujet, voir les rapports de B'Tselem intitulés : *No Way Out – Medical Implications of Israel's Siege Policy* (juin 2001), et *Civilians Under Siege – Restrictions on Freedom of Movement as Collective Punishment* (janvier 2001). Pour d'autres exemples, voir le bulletin de B'Tselem sur le site web www.btselem.org.

[115] *Ibid*. Voir aussi les rapports de B'Tselem intitulés : *Builders of Zion : Human Rights Violations of Palestinians from the Occupied Territories Working in Israel and the Settlements* (septembre 1999) ; *Divide and Rule – Prohibition on Passage between the Gaza Strip and the West Bank* (mai 1998) ; *Without Limits : Human Rights Violations under Closure* (avril 1996).

[116] Voir les rapports de B'Tselem intitulés : *Bureaucratic Harassment : Abuse and Maltreatment During Operational Activities in the West Bank in the First Year of the Declaration of Principles* (septembre 1994) ; *Collaborators in the Occupied Territories during the Intifada – Human Rights Abuses and Violations* (janvier 1994).

[117] Voir B'tselem, *al-Mawasi, Gaza Strip : Impossible Life in an Isolated Enclave* (mars 2003).

Qatif. Depuis le début de l'Intifada d'al-Aqsa, les Forces de défense israéliennes ont imposé aux habitants de cette enclave de sévères restrictions qui rendent leur vie insupportable. La plupart des déplacements, dans les deux sens, entre cette enclave et les autres zones de la bande de Gaza se font par le poste de contrôle de Tufakh, près de Khan Yunis. En général, l'entrée dans al-Mawasi est interdite aux personnes qui n'habitent pas dans cette localité, à moins qu'elles ne disposent d'un permis spécial délivré par les Forces de défense israéliennes. Ce poste de contrôle n'est ouvert que huit heures par jour, et seules les personnes auxquelles les Forces de défense israéliennes ont remis un numéro et une carte magnétique peuvent le traverser. Les hommes de moins de quarante ans n'ont absolument pas le droit d'entrer dans la zone. Les personnes qui souhaitent traverser doivent patienter en longues files d'attente et subir de stricts contrôles de la part des militaires. Le poste de contrôle est parfois fermé pendant de longues périodes sans avertissement préalable. En pareil cas, les habitants qui quittent leur domicile le matin n'ont pas la possibilité d'y revenir ; ils doivent rester à Khan Yunis où ils dépendent alors, jusqu'à la réouverture du poste de contrôle, des capacités d'accueil et de la générosité de leurs concitoyens.

Les atteintes au droit au travail et au droit à un niveau de vie suffisant

Les Etats parties au présent Pacte reconnaissent le droit au travail, qui comprend le droit qu'a toute personne d'obtenir la possibilité de gagner sa vie par un travail librement choisi ou accepté, et prendront des mesures appropriées pour sauvegarder ce droit.

Pacte international relatif aux droits économiques, sociaux et culturels, article 6, alinéa 1.

Les Etats parties au présent Pacte reconnaissent le droit de toute personne à un niveau de vie suffisant pour elle-même et sa famille, y compris une nourriture, un vêtement et un logement suffisants, ainsi qu'à une amélioration constante de ses conditions d'existence.

Pacte international relatif aux droits économiques, sociaux et culturels, article 11, alinéa 1.

Il faut s'attendre à ce que la barrière prévue sépare des dizaines de milliers de Palestiniens de leur lieu de travail. Même si elle n'aboutit pas à un isolement total, il va manifestement réduire la capacité de nombreux habitants à travailler et à gagner suffisamment d'argent pour bénéficier d'un niveau de vie minimum.

Les terres agricoles des habitants des enclaves créées à l'ouest de la barrière vont pour la plupart se retrouver aussi à l'ouest. Bien qu'il ne faille donc pas s'attendre à ce que la barrière rende plus difficile leur accès pour leurs exploitants, la capacité de ces derniers à vendre leurs produits ailleurs en Cisjordanie devrait s'en trouver réduite. A supposer même que les postes de contrôle fonctionnent, il y a de fortes chances pour que les procédures et formalités de passage accroissent les frais de transport et diminuent le bénéfice des exploitants (voir plus loin l'étude du cas d'`Azzun`Atma). Il est très probable que la production agricole sera touchée du fait de l'irrégularité de l'offre des moyens de production et des équipements (tels que les semences, les engrais, les machines et les pièces de rechange), car les Palestiniens qui habitent dans les autres zones de la Cisjordanie ne seront généralement pas autorisés à pénétrer dans ces enclaves.

Des milliers de Palestiniens habitant à l'est de la barrière seront séparés de leurs terres situées côté ouest. Par exemple, les habitants de Qaffin, qui se trouve au nord de Tulkarm, seront séparés de 6 000 dunams de terres [600 ha], soit 60% de leurs terres agricoles. Sur ces terres sont plantés des milliers d'oliviers exploités. Les habitants de a-Ras et Kafr Sur, au sud de Tulkarm, seront séparés, respectivement, de 75% et 50% de leurs terres agricoles, sur lesquelles se trouvent des oliviers et des champs exploités.

L'agriculture est une source de revenus de première importance pour les communautés qui seront affectées par la barrière. Les zones concernées figurent parmi les plus productives de Cisjordanie et l'eau douce y est abondante. Le préjudice porté au secteur agricole dans ces zones aura de graves conséquences pour la population locale. Le Bureau central palestinien des statistiques ne publie pas de

données pour chacune des communautés, si bien qu'il est difficile de mesurer l'importance de l'agriculture pour le niveau de vie des habitants des communautés qui seront touchées. Il est toutefois possible de se faire une idée de l'importance de ce secteur en comparant les données relatives aux trois districts dans lesquels se situent ces communautés – Djénine, Tulkarm et Qalqiliya – avec celles relatives au reste de la Cisjordanie.

Le pourcentage des terres utilisées à des fins d'exploitation agricole dans ces districts est le plus élevé de Cisjordanie : 59% à Tulkarm, 50% à Djénine et 46% à Qalqiliya, contre une moyenne de 24,5% pour l'ensemble de la Cisjordanie. La superficie des terres cultivées dans les trois districts en question est de 950 m² par personne, contre 625 m² pour l'ensemble de la Cisjordanie. S'agissant de la productivité, l'activité agricole génère en moyenne, dans les trois districts, 442 $ par dunam et par an contre 350 $ pour l'ensemble de la Cisjordanie.[118]

En ce qui concerne l'emploi, 25%, en moyenne, de la main-d'œuvre de ces districts était employée dans l'agriculture en 2001, contre 12% pour l'ensemble de la Cisjordanie. Bien que les trois districts en question comptent 25% de la population de la Cisjordanie, ils représentent 43% des emplois dans le secteur agricole.[119] Si l'on inclut la bande de Gaza, les trois districts comptent pour 15% de la population des Territoires occupés, alors qu'au cours de la période 2000-2001 ils ont contribué pour 28% à la valeur de la production agricole dans lesdits Territoires.[120]

Les atteintes à la liberté de mouvement devraient également porter préjudice aux personnes qui travaillent dans les secteurs autres que celui de l'agriculture, et dont le lieu de travail se situe en dehors de leur communauté. La barrière transformera Tulkarm et Qalqiliya en enclaves détachées des villages voisins qui jusqu'à présent avaient quotidiennement recours aux services dispensés dans ces deux agglomérations. La plupart des personnes touchées seront les habitants qui travaillent pour l'Autorité palestinienne dans les bureaux de district et qui vivent dans les villages de la périphérie, ou qui, à l'inverse, vivent à Tulkarm ou Qalqiliya et travaillent dans l'un de ces villages. Même si l'Autorité palestinienne tient compte de cette situation et continue de verser leurs salaires, comme elle l'a fait en pareil cas depuis le début de l'Intifada d'al-Aqsa, leur droit au travail, en tant que droit distinct de celui à un niveau de vie décent, risque d'être gravement affecté.

Ce problème est encore exacerbé dans les villages situés près de l'enveloppe de Jérusalem (si une barrière contiguë est effectivement construite) car contrairement à ce qui se passe au nord, la plupart des habitants ne travaillent pas dans l'agriculture mais dépendent directement ou indirectement d'un emploi à Jérusalem-Est.

L'atteinte à la capacité de dizaines de milliers de Palestiniens à travailler et gagner leur vie est encore plus grave si l'on prend en considération les difficultés économiques accrues auxquels sont confrontés les Palestiniens depuis le début de l'Intifada d'al-Aqsa. Au cours du premier semestre 2002, le chômage réel (qui inclut les personnes ayant abandonné la recherche d'un emploi) en Cisjordanie a atteint 50% de la main-d'œuvre. Ces dernières années, le chômage dans les trois districts du nord (Djénine, Tulkarm et Qalqiliya) a été nettement plus élevé que la moyenne pour l'ensemble de la Cisjordanie. Le pourcentage des personnes vivant au-dessous du seuil de pauvreté (défini comme une consommation par personne de moins de deux dollars par jour) a atteint 55%.[121] la réduction des sources d'emploi et de revenus après l'édification de la barrière risque de faire passer d'autres milliers de familles palestiniennes au-dessous du seuil de pauvreté.

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[118] Ces chiffres sont ceux correspondant à l'an 2000 et ils sont tirés de la publication du Bureau central palestinien des statistiques intitulée *Land Use Statistics in the Palestinian Territories* (www.pcbs.org).

[119] PCBS, *Labor Force Survey Annual Report for 2001*.

[120] PCBS, *Agricultural Statistics, 2000/2001*.

[121] Coordinateur spécial des Nations Unies dans les Territoires occupés (UNSCO), *The Impact of Closure and Other Mobility Restriction on Palestinian Productive Activities*, 1er janvier-30 juin 2002.

LES AUTRES EFFETS PREJUDICIABLES AUX CONDITIONS DE VIE

Les Etats parties au présent Pacte reconnaissent le droit qu'a toute personne de jouir du meilleur état de santé physique et mentale qu'elle soit capable d'atteindre.

Pacte international relatif aux droits économiques, sociaux et culturels, article 12, aliéna 1.

Les Etats parties au présent Pacte reconnaissent le droit de toute personne à l'éducation. Ils conviennent que l'éducation doit viser au plein épanouissement de la personnalité humaine et du sens de sa dignité et renforcer le respect des droits de l'homme et des libertés fondamentales.

Pacte international relatif aux droits économiques, sociaux et culturels, article 13, alinéa 1.

La barrière de séparation risque de nuire, à un degré ou à un autre, aux conditions de vie des habitants des communautés voisines. Les habitants probablement les plus touchés sont ceux qui vivent dans les enclaves situées à l'ouest de la barrière. Mais de nombreux habitants de villages situés du côté est, qui dépendent des services fournis dans l'une des trois principales agglomérations (Tulkarm, Qalqiliya et Jérusalem-Est) seront eux aussi affectés dans la mesure où ils se retrouveront isolés du reste de la Cisjordanie.

La baisse prévue du niveau des services de santé fournis aux habitants pose un problème particulier. Neuf des villages qui deviendront des enclaves à l'ouest de la barrière ne disposent pas de centre médical (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 et Arab a-Ramadeen al-Janubi). D'autres communautés dispensent des soins médicaux de base et préventifs, mais au-delà de ce niveau de technicité elles s'en remettent aux services médicaux disponibles dans les hôpitaux des trois agglomérations.[122]

La barrière aura également des effets préjudiciables en matière d'éducation. De nombreux enseignants qui habitent à Tulkarm ou Qalqiliya travaillent dans des écoles des villages voisins et ils risquent d'éprouver des difficultés pour se rendre dans leurs établissements. Depuis la deuxième année de l'Intifada d'al-Aqsa, le Ministère palestinien de l'éducation a affecté les enseignants aux divers établissements en fonction de leur lieu de résidence, et il va sans doute faire de même après l'édification de la barrière. De plus, les atteintes à la liberté de mouvement touchent les étudiants des collèges et des universités de Jérusalem-Est, Qalqiliya et Tulkarm, établissements qui desservent l'ensemble de la région.

Les difficultés de déplacement d'un endroit à un autre qui vont résulter de l'édification de la barrière devraient également porter atteinte à la vie sociale et familiale de centaines de milliers d'habitants. Dans une tentative de justification de la création de l'une des enclaves à l'ouest de la barrière, l'Etat a fait valoir devant la Haute Cour de Justice qu'il ne peut pas construire la barrière le long de la Ligne verte entre Nazlat `Issa, qui est situé en Cisjordanie, et Baqa al-Gharbiya, qui se trouve « du côté intérieur » par rapport à la Ligne verte, car cela risquerait de « déchirer le tissu social » entre les deux communautés.[123] Sans entrer dans les détails de l'affaire portée devant la Haute Cour, la déclaration de l'Etat montre que celui-ci est parfaitement conscient des dommages que la barrière va faire subir aux relations entre les habitants qui vivent de part et d'autre de la barrière.

Les atteintes au droit à la propriété

[122] Ces informations sont basées sur la « Carte des services de santé » dressée par le Ministère palestinien de la santé (www.healthinforum.org).

[123] Réponse de l'Etat, affaire *al-Hadi*, section 31.

Toute personne, aussi bien seule qu'en collectivité, a droit à la propriété.
Déclaration universelle des droits de l'homme, article 17.

La propriété privée ne peut pas être confisquée.
Règlement annexé à la Convention de La Haye de 1907 concernant les lois et coutumes de la guerre sur terre, article 46, paragraphe 2.

Pour ériger la barrière, Israël a pris le contrôle de vastes zones le long du tracé prévu. La largeur moyenne de la barrière étant de soixante mètres, les Forces de défense israéliennes ont saisi une superficie totale de 11 400 dunams afin de construire les 190 premiers kilomètres de la barrière. La plupart de ces terres appartiennent à des personnes privées palestiniennes; on y trouve des vergers, des champs cultivés et des serres.

L'instrument juridique retenu pour prendre le contrôle des terres en question est une série d'ordonnances de « réquisition justifiée par des impératifs militaires ». La plupart de ces ordonnances sont applicables jusqu'à fin 2005, mais elles peuvent, légalement, être prolongées indéfiniment.[124] Les habitants qui se prévalent d'un droit à la propriété sur des terres saisies peuvent réclamer une indemnisation aux Forces de défense israéliennes, « en échange » de l'utilisation de leur bien. Sur recommandation de l'Autorité palestinienne, la plupart des propriétaires terriens dont les terres ont été confisquées ont refusé d'accepter quelque indemnisation que ce soit, de manière à ne pas légitimer sous une forme ou une autre les actes d'Israël.

Après avoir reçu l'ordonnance de réquisition, les habitants peuvent saisir le conseiller juridique pour la Judée et la Samarie. Si leur recours est rejeté, ils peuvent former une requête auprès de la Haute Cour de Justice. A ce jour, les Palestiniens ont formé des douzaines de recours et de requêtes. Tous ont été rejetés.

La législation stipule que les ordonnances de réquisition ne transfèrent pas la propriété des terres à Israël. Toutefois, la durée illimitée de la réquisition, de même que l'ampleur des ressources investies par Israël dans l'édification de la barrière, portent à conclure que cette mesure équivaut en réalité à une expropriation déguisée. Dans le passé, Israël avait utilisé des ordonnances de « réquisition justifiée par des impératifs militaires » pour prendre le contrôle de terres palestiniennes afin d'y établir des colonies de peuplement. Ces terres n'ont jamais été rendues à leurs propriétaires. Il est devenu évident, aujourd'hui, qu'Israël n'avait pas l'intention de prendre temporairement le contrôle de ces terres, mais de se les approprier de manière permanente.[125]

Outre la violation incontestable des droits à la propriété des personnes qui possèdent les terres le long desquelles sera édifiée la barrière, il sera également porté atteinte, dans une certaine mesure et en fonction du degré de restriction à leur liberté de mouvement, au droit à la propriété des personnes auxquelles appartiennent des dizaines de milliers de dunams situés à l'ouest de la barrière. Comme il leur sera difficile de se rendre sur leurs terres, les propriétaires risquent d'arrêter ou de réduire les activités agricoles auxquelles ils s'y livraient. Dès lors, la violation de leur droit à la propriété deviendrait d'autant plus patente que depuis le début des années 1980, Israël a déclaré « terres d'Etat » les terres situées en Cisjordanie qui ne figurent pas au registre foncier et qui n'ont pas été cultivées pendant trois années consécutives ; en pareil cas, Israël peut s'approprier ces terres.[126] Le fait que la

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[124] En ce qui concerne les terres qui relèvent de la juridiction de Jérusalem, Israël les saisit en s'appuyant sur la Loi d'urgence relative à la réquisition des terres, 5710 – 1949. S'il existe un certain nombre de différences entre les procédures en vigueur dans la zone de Jérusalem et celles applicables au reste de la Cisjordanie, elles ne sont pas significatives.

[125] Pour un examen plus détaillé de cette question, voir B'Tselem : *Land Grab : Israel's Settlement Policy in the West Bank*, mai 2002.

[126] Voir *Land Grab*, pp. 51-58.

plupart des terres situées à l'ouest de la barrière ne figurent pas au registre foncier ne peut que laisser craindre qu'Israël n'en prenne à terme le contrôle, à un moment ou à un autre.

La violation du droit à la propriété telle que l'a commise Israël ne se limite pas au déni de la possession des terres par leurs propriétaires. Après la confiscation des terres en question, des contractants nivellent le terrain en déracinant les cultures, y compris dans les champs cultivés, en rasant les serres et surtout en déracinant les oliviers. Le Bureau du Procureur général de l'Etat a fait savoir à la Haute Cour de Justice que « s'agissant des arbres, le contractant [chargé des travaux d'infrastructure] a pour instruction de transporter les objets d'un endroit à un autre lorsque cela est faisable (ce qui est régulièrement fait pour les oliviers). Cela nécessite des travaux de préparation, par exemple l'ébranchage de l'arbre avant sa transplantation. L'arbre est ensuite transporté à l'endroit dont il a été convenu – dans la mesure du possible – avec le propriétaire. »[127] Dans la pratique, cependant, le problème est souvent résolu différemment.

B'Tselem a pris note des témoignages de plusieurs Palestiniens qui habitent à Qaffin et Far'un et dont les terres plantées d'oliviers ont été saisies pour construire la barrière.[128] Selon ces témoignages, les contractants n'ont pas contacté les habitants, et les militaires chargés de surveiller le chantier n'ont pas autorisé l'accès des habitants pour leur permettre d'emporter ailleurs leurs oliviers abattus. Dans certains cas, des Palestiniens se sont rendus sur leurs terres après le départ des militaires et des ouvriers, et ils ont constaté que leurs oliviers abattus avaient été volés.

Ce vol d'oliviers par les contractants chargés des travaux d'infrastructure a également été prouvé par les informations parues dans *Yediot Aharonot*.[129] Dans le cadre de leurs recherches pour rédiger leur article, les journalistes ont contacté l'un des contractants et lui ont dit qu'ils étaient intéressés par l'achat des arbres qui avaient été abattus. Le PDG de la société a proposé aux journalistes « autant d'arbres qu'ils voulaient » à un prix d' « environ 1 000 NIS » l'arbre.

Les journalistes se sont entretenus avec le chef de chantier et lui ont dit qu'ils étaient d'accord pour acheter les arbres. Dans leur article, ils ont indiqué que le fonctionnaire compétent de l'Administration civile était au courant de la vente des arbres à laquelle il coopérait. Ce fonctionnaire a fourni aux journalistes le permis nécessaire pour emmener les arbres en Israël.

En réponse à une question de B'Tselem sur la politique adoptée par le Ministère de la défense en ce qui concerne le vol des oliviers, le porte-parole du Ministère a déclaré, le 2 janvier 2003 : « le Ministère de la défense est en train d'enquêter sur cette question, mais ses recherches ne sont pas encore terminées ».

ETUDE DE CAS : `AZZUN`ATMA

`Azzun`Atma est un village palestinien de 1 500 habitants situé à dix kilomètres au sud-est de Qalqiliya.[130] Juste à l'est du village se trouve la colonie de peuplement de Sha'are Tiqwa, qui s'étend sur 2,5 kilomètres et rompt la continuité territoriale entre `Azzun`Atma et deux villages voisins, Beit Amin et Sanniriya. Du fait de la décision de placer Sha'are Tiqwa à l'ouest de la barrière, `Azzun`Atma va se retrouver entouré de tous côtés par la barrière et se transformer en enclave. De plus, certaines maisons du village, dans lesquelles habitent soixante-dix personnes, sont situées au sud

[127] Réponse de l'Etat, affaire *al-Hadi*, section 27.

[128] Ces témoignages ont été reçus en février 2003 par Najib Abu Rokaya.

[129] Dani Abbaba, Meron Rappoport et Oron Meiri, « Olive Booty », *Yediot Aharot, Seven Days* [Supplément hebdomadaire], 22 novembre 2002.

[130] Les informations fournies dans cette partie du document ont été recueillies le 3 février 2003 lors d'une visite au village même et dans ses environs.

de la route n°505 (l'ancienne « Trans-Israël »). Les responsables israéliens de la défense ne voulant pas toucher à la principale artère de circulation vers Israël, utilisée par les colons de Sha'are Tiqwa, la barrière passera au nord de la route, séparant ainsi ces habitants des autres habitants du village.

Certains habitants de `Azzun`Atma travaillaient auparavant en Israël, mais depuis le déclenchement de l'Intifada actuelle, la plupart des habitants du village vivent de l'agriculture. `Azzun`Atma est connu comme l'un des plus importants centres de production de légumes de Cisjordanie. Dix camions chargés de légumes quittent chaque jour le village pour se rendre au marché : un en Israël et les neuf autres en Cisjordanie.

On trouve à l'ouest du village plus de 4 000 dunams de terres agricoles appartenant à des habitants d'`Azzun`Atma, Beit Amin et Sanniriya. Quelques centaines de dunams de ces terres (au sud de la route n° 505) resteront à l'ouest de la barrière. Les villageois de `Azzun`Atma possèdent un millier de dunams de terres à l'est du village ; ces terres seront situées à l'est de la barrière. Sur la plupart d'entre elles, les habitants ont construit des serres dans lesquelles ils cultivent des légumes (notamment des tomates, des carottes, des concombres, des choux, des choux-fleurs, des aubergines et des haricots). La barrière de séparation risque de réduire dans des proportions importantes leur capacité à cultiver leurs terres et à commercialiser leurs produits en Cisjordanie.

Les deux écoles du village devront elles aussi faire face à des difficultés en raison de l'édification de la barrière. L'école élémentaire accueille 325 élèves, et seulement deux de ses dix-huit enseignants habitent dans le village. Les autres vivent dans des villages voisins et à Qalqiliya. Deux cent cinquante élèves fréquentent l'autre école, qui est à la fois un collège et un lycée ; la moitié de ces élèves vient de Beit Amin. Ils devront traverser la barrière tous les jours pour aller suivre leurs cours. Sur les seize enseignants de cette école, il n'y en a que trois qui vivent au village. Les autres habitent les villages voisins.[131]

`Azzun`Atma dispose d'un centre médical géré par l'Autorité palestinienne, qui dispense des soins médicaux de base.[132] Le personnel du centre comprend une infirmière qui vient trois fois par semaine de Qalqiliya, et un médecin qui vient une fois par semaine de Habla. Ce centre dessert également les habitants de Beit Amin, `Izbat Salman, al Mudawwar et `Izbat Jalud, villages dans lesquels aucun traitement médical n'est disponible et qui vont se retrouver de l'autre côté de la barrière. Pour les services médicaux autres que le petit nombre de ceux dispensés par le centre, les habitants de `Azzun`Atma ont recours à l'hôpital de Qalqiliya. Depuis le déclenchement de l'Intifada, l'accès à Qalqiliya est devenu difficile, si bien que les habitants utilisent également les hôpitaux de Naplouse.

Une fois la barrière construite, Qalqiliya deviendra une enclave, ce qui va rendre particulièrement difficile tout déplacement entre cette ville et `Azzun`Atma. Les Palestiniens souhaitant se rendre de `Azzun`Atma à Qalqiliya et vice versa devront traverser quatre fois la barrière, deux fois dans chaque sens.

ETUDE DE CAS : KAFR `AQEB

[131] Pour plus de détails sur cette école, voir l'encadré consacré à la démolition des maisons.

[132] Le Ministère de la santé de l'Autorité palestinienne classe ce centre au niveau 2, ce qui signifie qu'il dispense des soins à la mère et à l'enfant, qu'il procède à des vaccinations, qu'il fournit des traitements relevant de la médecine générale et qu'il pratique des prises de sang pour des examens (www.healthinform.org).

Kafr `Aqeb est une communauté palestinienne qui se trouve au nord de l'aéroport de Atarot, lui-même situé à Jérusalem-Nord[133]. La limite de la municipalité de Jérusalem fixée après l'annexion des terres de la Cisjordanie en 1967 passe entre les maisons des habitants de la communauté. De ce fait, une partie de Kafr `Aqeb se trouve dans la zone de juridiction de Jérusalem. Examinons les effets de la barrière sur la partie de cette communauté dépendante de Jérusalem. Selon l'Annuaire statistique de Jérusalem, Kafr `Aqeb comptait 10 500 habitants à la fin de 2000.[134]

Les habitants de Kafr `Aqeb, tout comme d'autres habitants de Jérusalem-Est, bénéficient du statut de résidents permanents en Israël et possèdent des cartes d'identité israéliennes. Ils paient leurs impôts fonciers et leurs autres impôts (tels que l'impôt sur le revenu, la TVA et les cotisations à l'assurance maladie) à la municipalité de Jérusalem, mais ne reçoivent pratiquement aucun service des pouvoirs publics. Le village n'a pas de services sociaux, pas de centre médical de la sécurité sociale et le courrier n'est pas distribué au domicile des habitants. Seule la rue principale est éclairée. Les maisons ne sont pas reliées au réseau municipal d'approvisionnement en eau, mais au réseau de Ramallah, lequel n'est pas en mesure de fournir de l'eau tous les jours.

En août 2002, le Cabinet a approuvé la construction de la deuxième phase de la barrière, qui incluait également la partie nord de l'enveloppe de Jérusalem. Le tracé de la barrière passe au sud de Kafr `Aqeb, à plusieurs mètres des dernières maisons du village, et s'étend de la base militaire de Ofer, à l'ouest du village, jusqu'au poste de contrôle de Qalandiya à l'est, sur une distance de 3,8 kilomètres. Contrairement au tronçon de la barrière situé dans la partie nord de la Cisjordanie, le tronçon prévu dans cette zone aura une largeur de 25 à 60 mètres. Selon la déclaration du Bureau du Procureur général de l'Etat devant la Haute Cour de Justice, Israël prévoit d'édifier une barrière avancée entre Kafr `Aqeb et Ramallah, mais B'Tselem n'a pas d'information précise sur son tracé.[135] La barrière principale, selon le tracé décidé par le Cabinet, risque d'entraîner de graves violations des droits de l'homme des habitants du village.

La violation la plus significative de toutes découle de la séparation prévue de la zone d'avec les autres parties de Jérusalem. Du fait de leur statut de résidents permanents en Israël, les habitants de Kafr `Aqeb ne sont pas soumis aux restrictions à la liberté de mouvement imposées aux habitants des Territoires occupés. Ils peuvent se déplacer librement à l'intérieur d'Israël et traverser la barrière par les postes de contrôle. A ce sujet, le Bureau du Procureur de l'Etat a déclaré : « Il importe de bien comprendre que l'enveloppe de Jérusalem n'est qu'une barrière de sécurité, et qu'elle ne modifie en rien les statuts, droits et/ou obligations actuels. »[136] Il a ajouté : « La population locale recevra des permis spéciaux afin de lui permettre de se rendre librement à Jérusalem et d'en revenir de même, sous réserve des mesures de sécurité en vigueur. » Or, en dépit des promesses de l'Etat, l'expérience vécue par les habitants ces deux dernières années en matière de liberté de mouvement ne va pas sans soulever de graves préoccupations, car elle laisse à penser qu'Israël ne fera pas ce qu'il a dit.

Le poste de contrôle de Qalandiya est situé au sud du village, à trois kilomètres à l'intérieur de la zone de juridiction de Jérusalem, et les habitants doivent le traverser chaque fois qu'ils souhaitent pénétrer dans la ville ou revenir chez eux. La très grande majorité des habitants travaille dans d'autres zones de Jérusalem ; ces habitants doivent passer par le centre de contrôle pour se rendre à leur lieu de travail. Les habitants de Kafr `Aqeb doivent également aller à Jérusalem pour y recevoir un traitement médical

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[133] Une partie des informations relatives à Kafr `Aqeb et présentées dans cette section a été recouvrée lors d'une visite de B'Tselem au village le 24 janvier 2003. Un certain nombre de précisions ont également été apportées par un membre du comité du village, Samih Abu Ramila.

[134] *Jerusalem Statistical Yearbook*, 2002, Tableau C/13. Le comité du village estime la population actuelle à 15 000 personnes.

[135] Dans sa réponse, le Bureau du Procureur général a déclaré qu' « une barrière supplémentaire, à laquelle il est fait référence sous la dénomination de barrière avancée, est prévue dans la zone comprise entre le camp de Ofer et Pesagot. » Voir Comm. App./2597, affaire *Comité du développement de Kafr `Aqeb et consorts* contre *Ministère de la défense et consorts (*ci-après dénommée affaire du Comité du développement de Kafr `Aqeb), réponse de l'Etat, section 33/c.

[136] *Ibid.*, section 43.

ou d'autres services.[137] L'existence des postes de contrôle retarde, et parfois même entrave le passage des habitants de Kafr `Aqeb qui vont à Jérusalem et en reviennent. Chaque fois que les Forces de défense israéliennes imposent une fermeture hermétique, que ce soit en raison d'une alerte en prévision d'une attaque contre des Israéliens, à cause d'une incursion des Forces de défense israéliennes à Ramallah, ou lorsqu'il y a des élections à la Knesset, le poste de contrôle est fermé, et les habitants ne peuvent pas se rendre dans les autres parties de Jérusalem.

Lorsque le poste de contrôle n'est pas fermé, il n'est ouvert que de 06h00 à 18h00. Récemment, il est resté ouvert jusqu'à 21h00. Quand il ferme, les habitants de Kafr `Aqeb sont coupés de Jérusalem, sauf en cas d'urgence. Juste avant l'ouverture ou la fermeture du poste de contrôle, de longues files de piétons se forment et l'attente est alors d'une heure ou plus. Les habitants qui se trouvent dans un véhicule doivent même attendre encore plus longtemps parce que le poste de contrôle est situé sur la route principale au nord de Ramallah, empruntée chaque jour par des douzaines de camions. Les habitants de Kafr `Aqeb se plaignent de ce que les fouilles corporelles soient parfois excessives et humiliantes.

Après avoir passé le poste de contrôle de Qalandiya, les habitants de Kafr `Aqeb doivent ensuite passer celui de a-Ram, situé sur la route principale, à Beit Hanina. Ce poste reste ouvert même lorsqu'une fermeture hermétique est imposée aux Territoires occupés, mais les habitants doivent attendre en longues files avant de pouvoir traverser. Depuis peu, avec la construction de la route n°45 (la route Begin-Nord), les habitants ont une autre possibilité de passer le poste de a-Ram. Mais le long de cette nouvelle route, il y a aussi un poste de contrôle qui retarde l'entrée dans la ville.

Du fait des difficultés que pose le passage des postes de contrôle, de nombreux habitants du village qui travaillaient à Jérusalem ont été licenciés parce qu'ils étaient absents de leur poste de travail ou fréquemment en retard. Les quelques marchands du village ont souffert de la baisse de la demande due aux mauvaises conditions économiques et aux livraisons irrégulières des marchandises.

L'édification de la barrière au sud du village va à coup sûr pérenniser, voire aggraver la situation actuelle. Les habitants sont à présent tenus de produire une carte d'identité lorsqu'ils arrivent au poste de contrôle, mais lorsque la barrière sera construite, ils devront avoir reçu un « permis spécial » pour pouvoir traverser et entrer dans Jérusalem.

Les habitants du village qui, à cause des problèmes créés par la barrière, décident de déménager ailleurs dans les Territoires occupés afin d'y vivre ou d'y travailler risquent de perdre leur statut de résidents permanents, y compris le droit de retourner vivre dans leur village. Cela est dû à la politique qu'Israël a appliquée avec le plus de rigueur en 1996-1999 et qui consiste à révoquer le statut de ceux des habitants de Jérusalem-Est qui, pour reprendre le terme de fonctionnaires israéliens, ont transféré leur « centre de vie » dans une zone extérieure à la ville.[138]

La confiscation de terres par Israël pour construire la barrière
et la séparation des habitants de leurs champs ont porté un autre coup encore aux habitants de Kafr `Aqeb. A cet égard, la situation de ce village est semblable à celle des villages de la partie nord de la Cisjordanie. Etant donné que la largeur moyenne de la barrière, dans la zone de Kafr `Aqeb, est de 40 mètres, le Ministère de la défense a pris le contrôle de 150 dunams. La plus grande partie de cette zone est la propriété privée de quarante-six familles qui vivent dans le village, et une autre partie appartient à des habitants d'un village voisin, Rafat. La barrière va séparer les habitants de 105 parcelles de terrain situées sur son côté sud-ouest, qui appartiennent à 85 familles. Environ la moitié de ces

[137] Les habitants du village, représentés par Daniel Zeidman, ont saisi la Haute Cour de Justice afin de faire modifier les formalités de passage au poste de contrôle de Qalandiya. Leur requête est en cours d'examen. HCJ/1745, affaire *Administration communautaire pour le développement de Beit Hanina et consorts* contre *Commandant du Commandement central*.

[138] B'Tselem et HaMoked : Centre pour la défense de la personne (*Center for the Defense of the Individual*) , *The Silent Deportation – Revocation of Residency Status of Palestinians in East Jerusalem* (avril 1997).

parcelles sont cultivées et utilisées pour produire des légumes. Pour certaines familles, la commercialisation de leurs produits est leur unique source de revenus.

De plus, d'après l'ONG Bimkom, le tracé retenu pour la barrière va faire obstacle au développement urbain du village, comme cela ressort des deux avant-projets d'aménagement que la municipalité de Jérusalem-Est est en train de promouvoir pour le village.[139] Les principales réserves foncières de Kafr `Aqeb susceptibles d'être bâties se situent au sud-ouest du village – zone qui va se retrouver de l'autre côté de la barrière de séparation. Les possibilités de développement vont donc s'en trouver réduites et la communauté ne sera pas en mesure de satisfaire les futurs besoins des habitants dans le domaine du logement, dans celui du commerce et dans le domaine social.

Le tracé actuel risque également de mettre en péril la vie des habitants qui résident près de la barrière. Les patrouilles militaires passant sur la route construite à leur intention peuvent devenir la cible d'attaques lancées par des Palestiniens armés, qui utiliseront les domiciles des habitants, avec ou sans leur consentement, pour tirer sur ces patrouilles. Les occupants des maisons en paieront le prix si les Forces de défense israéliennes répliquent, et il y a des chances que leurs maisons soient détruites.[140]

Lors d'une des auditions qui ont eu lieu dans le cadre de l'examen de la requête formée par les habitants de Kafr `Aqeb contre la réquisition de leurs terres, le Colonel Dani Tirzah, chargé de la planification du tracé de la barrière pour l'Administration de la zone de séparation hermétique, a été invité à dire s'il pensait que la construction de la barrière si près des maisons risquait de mettre en danger la vie des habitants, et à indiquer si cet aspect avait été pris en considération. Il a répondu :

> « La situation est semblable à celle que l'on a connue au kibboutz Metzer. La terreur frappe partout, que ce soit ou non à proximité des Palestiniens… Si un terroriste tire depuis votre bureau, ne vous attendez pas à ce que nous nous abstenions de répliquer… La prise en compte du risque pour la vie humaine se fait dans le cadre des discussions en cours au sujet des patrouilles le long de la clôture ; c'est à ce niveau-là que de tels risques devraient être pris en compte, et non dans le cadre des considérations relatives au tracé. »[141]

Autre risque pour la vie des Palestiniens qui habitent près du tracé de la barrière : la proximité des patrouilles des Forces de défense israéliennes par rapport aux maisons situées dans le village. Les règles relatives à l'ouverture du feu autorisent également les tirs mortels dans les cas où la vie des militaires n'est pas menacée. Depuis le début de l'Intifada d'al-Aqsa, des centaines de Palestiniens innocents ont été tués ou blessés par des tirs des Forces de défense israéliennes.[142] Les déplacements de civils à proximité des patrouilles des Forces de défense israéliennes, le long de la barrière, et surtout la nuit, risquent de faire davantage de victimes encore parmi des innocents. La gravité de ce danger dépend des directives données aux soldats en ce qui concerne l'ouverture du feu.

LA DEMOLITION DE MAISONS DANS LES ENCLAVES

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[139] Bimkom, *Opinion on the Plan Regarding the Separation Barrier in Kafr `Aqeb* (mars 2003). L'organisation non gouvernementale « Bimkom – Planificateurs pour les droits de l'homme » a été fondée en 1999 par des planificateurs, des géographes, des architectes et des défenseurs des droits de l'homme afin de promouvoir les droits, dans le domaine de la planification, des populations défavorisées en Israël et dans les Territoires occupés.

[140] Début janvier, les Forces de défense israéliennes ont détruit une maison à Kafr `Aqeb, depuis laquelle, prétendent-elles, des Palestiniens avaient tiré sur leurs soldats de faction au poste de contrôle de Qalandiya.

[141] Compte rendu de la session du Tribunal de première instance de Tel-Aviv, 20 novembre 2002, *Comité du développement de Kafr `Aqeb*.

[142] Voir B'Tselem, *Trigger Happy* : *Unjustified Shooting and the Open-Fire Regulations during the al-Aqsa Intifada* (mai 2002).

Dès le début de la construction de la barrière, l'Administration civile a commencé à édicter des ordonnances de démolition et à détruire des bâtiments dans les communautés palestiniennes proches du tracé de la barrière. Le prétexte officiellement avancé à l'appui de cette politique est l'absence de permis de construire. L'Administration civile a édicté quelque 280 ordonnances de démolition dans ces communautés.

La plupart de ces ordonnances concernent des bâtiments situés dans des enclaves situées à l'ouest du tracé de la barrière. A Nazlat `Issa (2 300 habitants), 170 ordonnances de démolition ont été édictées (concernant onze habitations et, pour le reste, des bâtiments commerciaux). Le 21 janvier 2003, l'Administration civile a détruit soixante boutiques dans le marché situé près du village arabo-palestinien de Baqa a-Gharbiya. A Bart'a a-Sharqiya (3 200 habitants), dans le district de Djénine, l'Administration civile a édicté ces derniers mois 72 ordonnances de démolition (12 habitations, 56 boutiques, 3 ateliers de couture et un autre atelier). En décembre 2002, les habitants de `Azzun `Atma (1 500 personnes) ont reçu vingt ordonnances de démolition, dont 18 pour des habitations et deux pour des structures utilisées comme toilettes et lavabos pour le lycée du village. A Umm a-Rihan et Dhaher al-Malah (qui comptent au total 600 habitants), dans le district de Djénine, neuf ordonnances de démolition ont été édictées (8 habitations et une école).

Des ordonnances de démolition ont également été reçues dans des communautés dont il est prévu qu'elles deviennent des enclaves situées à l'est de la barrière. A `Izbat Jalud (100 habitants), dans le district de Qalqiliya, des ordonnances de démolition ont été édictées pour trois bâtiments (deux habitations et une mosquée). A a-Taybeh (2 100 habitants), dans le district de Djénine, des ordonnances ont été reçues pour démolir trois habitations; l'une d'entre elles vient effectivement d'être détruite.

Le phénomène de la construction ostensiblement illégale d'habitations dans toute la Cisjordanie résulte de la politique qu'Israël applique depuis longtemps, qui consiste à refuser d'accorder des permis de construire en dehors des zones déjà bâties dans les villes et les villages. Ce refus s'appuie sur des cadastres aujourd'hui dépassés, hérités de l'époque du mandat britannique, qui classaient la plupart des terres cisjordaniennes en zone agricole. Dans la zone C (qui représente environ 60% de la Cisjordanie), cette politique est restée en vigueur même après les Accords d'Oslo. Pour satisfaire les besoins d'une population croissante et pour gagner leur vie, les habitants de certaines zones n'ont pas d'autre choix que de construire sans permis.[143] La vague actuelle d'ordonnances de démolition constitue une autre forme de pressions et de conditions de précarité que les autorités israéliennes imposent et continueront d'imposer aux Palestiniens qui vivent près du tracé de la barrière.

Les atteintes aux droits de l'homme – la transgression du droit international

Au début de l'Intifada d'al-Aqsa, Israël a défini la situation dans les Territoires occupés comme « un conflit armé sans guerre (*armed conflict short of war*) », et a décidé que les dispositions du droit international applicables en l'espèce étaient les lois de la guerre.[144] La Cour suprême a récemment condamné cette position.[145] Israël s'est prévalu de cette position pour justifier les violations des droits de l'homme des Palestiniens résultant de la construction de la barrière de séparation, comme il l'a d'ailleurs fait depuis le début de l'Intifada actuelle.

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[143] Voir B'Tselem, *Demolishing Peace* : *Israel's Policy of Mass Demolition of Palestinian Houses in the West Bank* (septembre 1997).

[144] Depuis le début de l'Intifada actuelle, Israël a fait valoir cet argument devant la Haute Cour de Justice et devant les instances internationales. L'Etat a récemment précisé sa position dans sa réponse au sujet de la politique d' « assassinat ». Voir affaire *Comité public contre la torture en Israël et consorts* contre *Gouvernement d'Israël et consorts*, Réponse supplémentaire du Bureau du Procureur de l'Etat, sections 7-58.

[145] HCJ/7015, 7019/02, affaire *Ajuri* contre *Commandant des Forces de défense israéliennes en Cisjordanie et consorts*.

De nombreuses organisations et de nombreux juristes, en Israël comme à l'étranger, n'acceptent pas la façon dont Israël définit la situation actuelle. Même après le transfert à l'Autorité palestinienne d'une partie de la Cisjordanie et de la bande de Gaza, Israël continue d'occuper ces zones. Les combats qui ont actuellement lieu dans les Territoires occupés ne justifient pas une définition aussi lourde de conséquences, consistant à assimiler de tels événements à une guerre, et n'autorisent pas Israël à ignorer ses devoirs d'occupant. Les devoirs en question impliquent qu'Israël protège la population civile et qu'il assure sa sécurité et son bien-être. Le Comité international de la Croix-Rouge, chargé de l'application des Conventions de Genève, a déclaré que « même avec les violences actuelles », Israël reste la puissance occupante dans les Territoires occupés et doit par conséquent respecter les dispositions de la Quatrième Convention de Genève ainsi que les autres règles relatives à l'occupation.[146]

L'application des lois de l'occupation n'a aucunement pour effet de vider de leur substance les lois internationales relatives aux droits de l'homme, qui continuent à avoir force obligatoire pour Israël eu égard aux mesures qu'il prend dans les Territoires occupés. Les comités des Nations Unies chargés de la mise en œuvre de ces lois ont catégoriquement déclaré qu'Israël doit respecter les dispositions des conventions des droits de l'homme dans l'ensemble des territoires placés sous son contrôle, y compris la Cisjordanie et la bande de Gaza, et que cette obligation s'applique également à la situation créée après le déclenchement de l'Intifada d'al-Aqsa.[147]

Le droit international ne garantit pas une protection absolue contre les atteintes aux droits de l'homme. Il existe des circonstances dans lesquelles le non-respect de certains de ces droits est légal, que ce soit parce que la situation est définie comme un «conflit armé sans guerre» ou comme une occupation. Cependant, les violations des droits de l'homme ne sont légales que si un certain nombre de conditions, définies par le droit international, sont réunies. Aussi, même si l'on accepte la définition qu'Israël donne de la situation qui prévaut dans les Territoires occupés, cet Etat n'a pas le droit de faire tout ce qu'il veut, sans limite d'aucune sorte, dans ces territoires. Même en situation de guerre, et aussi dure que soit n'importe quelle guerre, les Etats sont tenus d'agir en conformité avec le droit international. Il y a déjà relativement longtemps que les juristes et les tribunaux internationaux ont rejeté l'assertion selon laquelle, en temps de guerre, les nécessités de l'action militaire l'emportent sur toute autre considération. Tout ce qui est fait doit l'être conformément au droit, et les parties impliquées dans un conflit armé ne sont pas libres de choisir n'importe quelle méthode ou moyen de faire la guerre qui leur vient à l'esprit.[148]

LE DEVOIR DE PRISE EN CONSIDERATION DES AUTRES SOLUTIONS POSSIBLES

Les atteintes aux droits de l'homme ne sont pas justifiées lorsqu'il existe d'autres possibilités de parvenir au même objectif sans pour autant violer ces droits. Ce principe est fermement consacré par le droit humanitaire international, qui prend en compte les situations de guerre et d'occupation,[149] par la

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[146] Comité des Etats contractants à la Quatrième Convention de Genève – Déclaration du Comité international de la Croix-Rouge, Genève, 5 décembre 2001, section 2.

[147] Observations finales du Comité sur les droits économiques, sociaux et culturels : Israël, 31 août 2001, E/C/12/1.Add69 ; Conclusions et Recommandations du Comité contre la torture, Israël, 23 novembre 2001, CAT/C/XXVII/Concl.5 ; Observations finales du Comité des droits de l'enfant : Israël, 9 octobre 2002, CRC/C/Add195.

[148] L.C. Green, *The Contemporary Law of Armed Conflict* (Manchester University Press, 2000), 123.

[149] Voir par exemple l'article 57, alinéa 3, du Premier Protocole additionnel aux Conventions de Genève, 1977.

législation internationale relative aux droits de l'homme[150] et par les décisions de la Cour suprême d'Israël.[151]

Dans l'une des réponses qu'il a faites à la Haute Cour de Justice au sujet de l'édification de la barrière, l'Etat a déclaré : « Il s'agit d'une mesure qui a été décidée parce qu'il n'y avait pas d'autre option et parce que l'adoption préalable de diverses autres mesures n'avait pas permis de faire reculer la vague de terrorisme. »[152] L'Etat n'a toutefois précisé ni dans sa réponse ni dans ses autres déclarations sur ce sujet devant la Haute Cour, quelles avaient été ces « autres mesures » et pourquoi elles avaient échoué.

Une étude réalisée par le Vérificateur aux comptes de l'Etat montre qu'il existe au moins deux autres mesures susceptibles de constituer des alternatives valables à la construction de la barrière de séparation. Or l'Etat n'a pas cherché à déterminer l'efficacité de ces deux autres solutions, alors qu'elles impliqueraient de bien moindres violations des droits de l'homme des Palestiniens que celles provoquées par la construction de la barrière.

L'EFFICACITE DES POSTES DE CONTROLE INSTALLES SUR LA LIGNE VERTE

La décision d'édifier une barrière séparant Israël de la Cisjordanie afin d'empêcher les attentats sur territoire israélien est fondée sur l'hypothèse selon laquelle les auteurs de ces attentats pénètrent en Israël en passant par les zones ouvertes situées entre les postes de contrôle et non par les postes eux-mêmes, où les militaires contrôlent ostensiblement toute personne entrant en Israël. Selon le rapport du Vérificateur aux comptes de l'Etat sur la zone de séparation hermétique, publié en juillet 2002, cette hypothèse n'est pas étayée par des arguments suffisamment précis.

Il existe le long de la Ligne verte trente-deux postes de contrôle par lesquels il est possible d'entrer en Israël. Trente d'entre eux sont tenus par les Forces de défense israéliennes, et les deux autres par les Forces de police israéliennes. En ce qui concerne les attentats perpétrés en Israël depuis le début de l'Intifada actuelle, le Vérificateur aux comptes de l'Etat conclut que : « Les documents des Forces de défense israéliennes montrent que la plupart des auteurs d'attentats suicide ou d'attentats au véhicule piégé ont traversé la zone de séparation hermétique pour entrer en Israël par les postes de contrôle, où ils ont été mal contrôlés et parfois même contrôlés de façon bâclée.[153]

Le rapport du Vérificateur aux comptes de l'Etat souligne les insuffisances les plus criantes constatées aux postes de contrôle. Le Vérificateur écrit que : « Les postes de contrôle n'ont ni commandement qui leur soit propre ni liste des tâches remises par le quartier général de la brigade chargé des affectations à ces postes et de la coordination des procédures de fonctionnement des différents postes », et que « les postes de contrôle ne disposent pas des équipements et infrastructures adéquats pour pouvoir procéder à des contrôles de sécurité des véhicules, des personnes et des marchandises. » Dans ses conclusions, il cite un document des Forces de défense israéliennes sur les postes de contrôle, dans lequel il est indiqué que « Les postes de contrôle actuellement en place dans la zone de séparation hermétique ne sont pas organisés pour contrôler véritablement les véhicules, le fret et les personnes, et il conviendrait d'améliorer d'urgence les inspections effectuées à ces postes en affectant à ceux-ci du personnel permanent et compétent capable de contrôler les véhicules, en utilisant des moyens technologiques et en institutionnalisant les points de passage.»[154]

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[150] Sur le droit à la santé, voir par exemple la section 29 de l'Observation générale n°15 du Comité des Nations Unies sur les droits économiques, sociaux et culturels, 2000.

[151] Voir par exemple HCJ 6055/95, affaire *Sagy Tsemach et consorts* contre *Ministre de la défense et consorts, Piskei Din* 53 (5) 241.

[152] Réponse de l'Etat, affaire *Ajuri*, section 58.

[153] Rapport du Vérificateur aux comptes de l'Etat, p.35.

[154] *Ibid.*, p.36.

Les conclusions du Vérificateur aux comptes de l'Etat ont été publiées en juillet 2002 ; la décision du Gouvernement d'édifier la barrière avait été prise un mois plus tôt. Le Gouvernement n'est pas revenu sur cette décision après la publication des conclusions du Vérificateur, et il semble qu'il n'ait pas non plus modifié quoi que ce soit d'important dans ce qu'il avait arrêté, ne serait-ce que pour résoudre quelques-uns des problèmes mis en exergue par le Vérificateur. L'Etat a au contraire préféré une option encore plus extrême qui implique de nombreuses violations des droits de l'homme. En décidant de retenir la solution de l'édification de la barrière, Israël n'a pas respecté son obligation légale d'appliquer d'autres options avant d'adopter un moyen qui aboutit à des violations des droits de l'homme particulièrement graves.

Qui plus est, l'édification de la barrière va accroître le nombre de postes de contrôle entre Israël et la Cisjordanie. Selon un document soumis à la Haute Cour de Justice par le Bureau du Procureur de l'Etat, cinq postes de contrôle « principaux » et vingt-six postes de contrôle « agricoles » sont censés être construits le long de la barrière pour la seule première phase. Si l'Etat n'améliore pas l'efficacité des postes de contrôle, il est possible qu'il se crée alors une situation paradoxale, dans laquelle la barrière accroîtrait les risques d'attentats en Israël. Si les responsables de la défense prévoient de pallier les insuffisances aux postes de contrôle, dans le cadre de leur projet de barrière, en ajoutant des dispositifs d'inspection sophistiqués et en affectant à ces postes un personnel qualifié, ces améliorations pourraient avoir lieu immédiatement, que le projet de barrière soit ou non mené à bien. Sans doute est-ce à l'absence de lien entre le problème et la solution proposée que le Premier Ministre Ariel Sharon a fait allusion lorsqu'il a déclaré : « L'idée [de construire la barrière] est une idée populiste qui vise des objectifs politiques. »[155]

LA SURVEILLANCE DE LA ZONE DE SEPARATION HERMETIQUE

Le Vérificateur aux comptes de l'Etat a également étudié le déploiement, le long de la zone de séparation hermétique, des Forces de défense israéliennes chargées d'empêcher les Palestiniens sans permis de pénétrer en Israël en passant par les zones ouvertes, comme le Cabinet le leur en a donné l'ordre dans sa décision de juillet 2001. La modification de la façon dont sont déployées ces forces constituerait, au même titre que l'amélioration du fonctionnement - pour l'heure déficient - des postes de contrôle, une autre solution permettant de réduire le degré de violation des droits de l'homme par rapport à la situation que risque de créer la construction de la barrière.

Selon le rapport du Vérificateur aux comptes de l'Etat, les Forces de défense israéliennes ont élaboré un « nouveau concept » d'intervention dans les Territoires occupés, qui a été approuvé par le Chef d'Etat-major général en janvier 2002. Suite à cette décision, elles se sont redéployées d'une certaine façon dans la zone de séparation hermétique et le « Commandement spécial » créé en juillet 2001 pour coordonner leurs activités dans cette zone a été dissous. La responsabilité de la surveillance de la zone de séparation hermétique a été répartie entre les commandants de brigade de chaque secteur. Les principales mesures et les moyens les plus importants qu'implique le nouveau modèle ont été réorientés vers d'autres objectifs :

> Le nouveau concept [d'intervention] des Forces de défense israéliennes en Judée et Samarie a conduit à une réorientation des responsabilités de la plupart des forces présentes dans la zone de séparation hermétique, qui ont été chargées de surveiller les routes empruntées par les véhicules israéliens, d'assurer une sécurité permanente à proximité des communautés israéliennes en Judée et Samarie, et de contrer les activités terroristes dans ces deux mêmes régions, principalement dans les villes palestiniennes. Les opérations des Forces de défense israéliennes n'avaient pas pour objectif premier d'empêcher les passages de personnes et de

[155] Amit Ben-Aroya, « Sharon to Seam Area Police : The Separation Fence is a Populist Idea », *Ha'aretz*, 12 avril 2002.

> véhicules venant de Judée et de Samarie et se rendant en Israël par des endroits autres que les postes de contrôle désignés. C'est ce qui ressortait des ordres donnés par les forces compétentes dans la zone de séparation hermétique, et aussi des directives opérationnelles données aux brigades affectées dans la zone. Des documents des Forces de défense israéliennes révèlent que c'étaient en réalité les combats loin à l'intérieur du territoire de l'Autorité palestinienne qui étaient prioritaires, et non la zone de séparation hermétique…
>
> L'application du nouveau concept des Forces de défense israéliennes dans la zone de séparation hermétique a eu des effets à la fois directs et indirects sur la capacité de mise en œuvre du plan prévu pour la zone de séparation hermétique, parmi lesquels: la réduction importante des activités visant à empêcher les Palestiniens de passer de Judée et Samarie en Israël ; une présence moins marquée des Forces de défense israéliennes dans les territoires inhabités le long de la zone de séparation hermétique ; une coordination et une coopération moins étroites entre les Forces de défense et les Forces de police israéliennes…
>
> Au moment où a été effectué cet audit, les postes d'observation censés couvrir une grande partie de la zone de séparation hermétique n'avaient pas encore été installés. Les Forces de défense israéliennes ne disposaient pas des moyens technologiques nécessaires pour localiser les personnes qui tentaient de s'infiltrer; les patrouilles des Forces de défense israéliennes ne pouvaient pas atteindre suffisamment rapidement les endroits où elles devaient se rendre ; la communication entre les Forces de défense et les Forces de police israéliennes était limitée, ce qui ferait obstacle à toute utilisation efficace de ces forces.[156]

Il ressort de ce qui précède que de nombreux moyens permettraient de résoudre plus raisonnablement la question de l'entrée des Palestiniens en Israël par les zones ouvertes. Ces moyens sont notamment une présence importante des forces de sécurité, des patrouilles, des postes d'observation et une étroite coordination entre les Forces de défense et les Forces de police israéliennes. Mais les Forces de défenses israéliennes ont décidé de ne pas examiner ces options à cause de l'entrée en vigueur de la nouvelle politique, qui accorde une priorité moins élevée à la protection de la zone de séparation hermétique. Elles ont au contraire préféré investir dans d'autres activités, par exemple les attaques contre des personnes suspectées de commettre des actes d'agression contre Israël, les attaques contre l'infrastructure de l'Autorité palestinienne et la protection des colonies de peuplement.

Le fait que la nouvelle politique des Forces de défense israéliennes ait pour conséquence une insuffisance des effectifs militaires chargés de la surveillance de la zone de séparation hermétique ne libère en rien Israël de son devoir de choisir des options qui entraînent des violations moins graves des droits de l'homme. S'il est effectivement urgent de bloquer l'entrée des Palestiniens en Israël, comme le prétend l'Etat, ce caractère d'urgence devrait se refléter dans l'affectation des ressources nécessaires. Si au contraire, les responsables de la défense ne considèrent pas cette tâche comme hautement prioritaire, l'Etat ne saurait justifier les graves violations des droits de l'homme qu'elle entraîne.

La détermination du tracé : considérations légitimes contre considérations dépourvues de toute pertinence

A supposer même que l'on accepte l'assertion de l'Etat selon laquelle la barrière de séparation est la seule façon d'empêcher les Palestiniens de pénétrer en Israël afin d'y commettre des attentats, Israël n'en a pas moins le devoir de déterminer le tracé de la barrière de manière à ce qu'elle porte atteinte le moins possible aux droits de l'homme. L'examen des considérations prises en compte par les décideurs politiques israéliens pour déterminer le tracé de la première phase de la barrière révèle que le facteur « droits de l'homme » n'a pas été décisif. Ce sont d'autres motifs n'ayant absolument rien à voir avec les droits de l'homme qui ont prévalu dans la décision relative au tracé.

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[156] *Ibid*., pp.21-22.

Les déclarations d'ordre général quant aux raisons à l'origine de la détermination du tracé de la barrière sont insuffisantes. Israël doit fournir des justifications séparées pour chaque tronçon constituant une source de violations des droits de l'homme.

Dans sa réponse à la Haute Cour de Justice, Israël a déclaré que « les considérations opérationnelles ont été les principales considérations prises en compte pour le choix du tracé de la barrière. »[157] Ces considérations comprennent trois éléments principaux :

1) La topographie – Selon Israël, « le choix du tracé topographique de la barrière découle de facteurs sécuritaires. La barrière doit passer le plus possible à travers des zones d'où le territoire avoisinant peut être contrôlé, de manière à empêcher toute attaque contre les forces qui opèrent le long du tracé et à permettre aux Forces de défense israéliennes de se servir de postes d'observation d'où elles puissent surplomber les deux côtés de la clôture. »

2) La zone de sécurité – « Il est à craindre que la barrière ne permette pas de bloquer toutes les infiltrations, et que les forces de sécurité ne soient pas en mesure d'arriver à temps pour s'opposer au passage d'attaquants potentiels. Une zone de sécurité géographique est nécessaire pour permettre aux troupes de combat d'aller rechercher les terroristes en Judée et en Samarie avant même qu'ils ne puissent pénétrer en Israël et se fondre parmi la population. »

3) L'inclusion du maximum de colonies de peuplement possible à l'ouest de la barrière – « Il est à craindre [également] que l'édification de la barrière ne canalise ces attaques vers ces communautés ; c'est la raison pour laquelle il a été décidé de faire passer la clôture à l'est de ces colonies de peuplement afin de les protéger et de protéger leurs voies d'accès. »[158]

A première vue, les deux premiers éléments semblent légitimes. B'Tselem ne dispose cependant pas des instruments nécessaires pour évaluer dans quelle mesure ils ont été pris en compte dans la détermination du tracé de la barrière. Il est évident que l'inclusion des colonies de peuplement à l'ouest de la barrière n'est pas un impératif militaire justifiant de graves violations des droits de l'homme. Cette considération et d'autres encore, tout aussi illégitimes (voir ci-dessous) a conduit au choix d'un tracé qui viole gravement les droits de l'homme sans aucune justification fondée sur des impératifs de sécurité, et qui est contraire au droit international.

LA PERPETUATION DES COLONIES DE PEUPLEMENT

Selon le droit humanitaire international, les colonies de peuplement d'Israël dans les Territoires occupés sont illégales. La Quatrième Convention de Genève interdit à un Etat occupant de transférer tout ou partie d'une population de son territoire vers le territoire occupé, et les Règles de La Haye interdisent tout changement permanent dans le territoire occupé. La transgression de ces interdictions a entraîné des violations croissantes des droits de l'homme des habitants des Territoires occupés, au premier chef pour protéger les colons contre des attaques palestiniennes.[159]

Puisque l'existence même des colonies de peuplement est contraire au droit international, Israël doit les démanteler. Il est évident que le transfert des colons dans des zones situées à l'intérieur du territoire israélien permettra à ceux-ci de bénéficier d'une protection comparable – si ce n'est meilleure – à celle qui leur serait offerte en incluant leurs colonies de peuplement à l'ouest de la

[157] Réponse de l'Etat, affaire *al-Hadi*, section 18.

[158] Ibid., sections 18-19.

[159] Pour un examen de la question des violations des droits de l'homme imputables à l'emplacement des colonies de peuplement, voir B'Tselem, *Land Grab*.

barrière. Cette solution permettrait en outre d'éviter que n'aient lieu de nouvelles violations des droits de l'homme des Palestiniens.

Même si Israël ne démantèle pas les colonies de peuplement, l'assertion selon laquelle la seule solution permettant de les défendre consiste à les placer à l'ouest de la barrière est sans fondement. La plupart des colonies de peuplement vont se retrouver à l'est de la barrière. Pour les protéger, le Ministère de la défense a décidé de mettre sur pied « un nouveau système de protection comprenant une clôture électronique permettant de donner l'alerte [en cas d'infiltration], ainsi qu'une salle de contrôle centrale dotée du personnel nécessaire »,[160] et de créer des « zones de sécurité spéciales » autour des colonies de peuplement concernées, dans lesquelles la protection serait renforcée.[161] Les mêmes mesures peuvent être prises pour les colonies de peuplement qui, selon le projet actuel, se retrouveront à l'ouest de la barrière. Ces dispositions constitueraient une solution raisonnable au problème des menaces qui pèsent sur la sécurité des colonies de peuplement concernées et permettraient de réduire dans des proportions significatives les violations des droits des Palestiniens qui seront commises si la barrière est édifiée sur des terres situées à l'intérieur de la Cisjordanie.

L'existence de ces deux solutions, qu'Israël a choisi d'ignorer, laisse à penser que le motif réel de la décision prise par le Cabinet au sujet du tracé de la barrière n'était pas d'apporter un maximum de protection aux colons. En fait, il s'agissait surtout de créer sur le terrain une situation de fait accompli qui perpétuerait l'existence des colonies de peuplement et faciliterait leur future annexion à Israël.

LES CONSIDERATIONS LIEES AUX INTERETS DES PARTIS POLITIQUES

L'idée de la construction d'une barrière tout le long de la « zone de séparation hermétique » s'est heurtée à une vive opposition, en particulier de la part des hommes politiques de droite et des responsables des colonies de peuplement. Leur principal argument était qu'une telle barrière aurait toutes les chances de devenir rapidement la frontière politique entre Israël et le futur Etat palestinien. De plus, l'édification d'une barrière d'une telle taille selon un tracé qui suit la Ligne verte représenterait un succès politique pour les Palestiniens, car cela reviendrait à reconnaître la Ligne verte comme point de départ approprié pour des discussions sur la frontière entre Israël et la Cisjordanie.[162] Selon les propres termes de Israel Harel, éditorialiste de *Ha'aretz* et ancien Chef du Conseil YESHA :

> Environ deux mois après que les forces de défense israéliennes ont recouvré une bonne part de leur capacité de dissuasion grâce aux combats de l'Opération « Bouclier de défense », le Gouvernement israélien, dirigé par Ariel Sharon, a offert une victoire stratégique à Arafat. Trente-cinq ans exactement après la guerre des six jours, et après deux ans d'un terrorisme brutal et permanent, le Gouvernement israélien a décidé de ne pas céder aux pressions relativement molles de l'opinion publique – et de dirigeants actuels et passés des forces de défense – en faveur d'une ligne de séparation et de sécurité coïncidant en gros avec les lignes de cessez-le-feu de 1949.[163]

En réponse à ces objections et à ces critiques, des ministres du Gouvernement israélien, en particulier le Ministre de la défense, ont déclaré à de nombreuses reprises que la barrière qui serait construite le serait uniquement pour des raisons de sécurité, et qu'elle ne constituerait en aucune manière une

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[160] Alex Fishman et Yuval Karni, « Forty Settlements to be Surrounded by Electronic Fence », *Ynet*, 9 juillet 2002.

[161] Amos Harel, « Security areas in settlements will include observation posts and patrols », *Ha'aretz*, 26 décembre 2002.

[162] Le Conseil YESHA a par la suite apporté son soutien à l'édification de la barrière selon un tracé passant à l'est du tracé actuel et incluant un nombre plus important de colonies de peuplement sur son côté ouest. Voir Nadav Shargai, *Ha'aretz*, 4 février 2003.

[163] « Sharon Grants Victory to Arafat », *Ha'aretz*, 13 juin 2002.

frontière politique. L'un des moyens auxquels le Gouvernement a apparemment eu recours pour convaincre les opposants au projet qu'il ne s'agit pas d'une frontière politique est la détermination du tracé de la barrière de façon telle que ce tracé ne coïncide pas avec la Ligne verte.

L'un des exemples qu'il est possible de citer à cet égard est un article du quotidien *Ha'aretz* dont les auteurs écrivent: « [le Ministre de la défense] Ben Eliezer a donné pour instruction à l'Administration de la zone de séparation hermétique d'édifier la clôture de séparation selon un tracé qui ne puisse pas être interprété comme assimilable à une frontière politique, mais comme un instrument censé accroître la sécurité. »[164] Le Ministre de l'éducation, Limor Livnat, a déclaré lors d'une réunion du Cabinet que l'un des « principes qui devraient guider la construction de la clôture est qu'il s'agit d'une clôture de sécurité qui n'a pas à être considérée comme une frontière politique. »[165] Dans un document qu'il a soumis au Premier Ministre, le Ministre de l'intérieur Eli Yishai a suggéré que « le tracé de la clôture ne coïncide pas avec la Ligne verte, et qu'il en soit au contraire le plus éloigné possible de manière à ce que la clôture soit vraiment une clôture de séparation visant à améliorer la sécurité, et non une ligne de séparation politique. »[166]

Ces déclarations ne font que renforcer les préoccupations quant au fait que la décision relative à l'emplacement de la barrière n'a pas été prise uniquement sur la base de considérations purement militaires et de sécurité, mais a été entachée de considérations politiques. Il est fort possible que dans certaines zones, une barrière installée le long de la Ligne verte, voire même à l'intérieur du territoire israélien, n'apporte pas moins de sécurité qu'une barrière édifiée selon le tracé choisi, mais cette solution a été rejetée en raison du coût politique qu'elle impliquait.

LA QUALITE DE VIE DES HABITANTS D'ISRAËL

Le tracé de la barrière, en ce qui concerne la première phase et tel que le Cabinet l'a approuvé en août 2002, transforme Qalqiliya, Habla et Ras `Atiya en enclaves (voir carte). Ce tracé a été déterminé de manière à ce que la colonie de peuplement de Alfe Menashe se retrouve à l'ouest de la barrière. Mais il laisse à l'est la route n°55 qui relie Alfe Menashe à Jérusalem. Pour garantir un accès à Israël aux habitants de cette colonie de peuplement, les responsables de la défense ont décidé de construire une nouvelle route qui reliera Alfe Menashe à Israël en passant par Matan, ville située sur territoire israélien.[167]

La population de Matan (2 500 habitants) s'est vivement opposée à ce tracé. Elle a prétendu qu'il porterait gravement atteinte à sa qualité de vie. Sa principale préoccupation était que la nouvelle route risquait de créer des embouteillages au centre-ville et d'empiéter sur certaines de ses zones de verdure. En outre, selon les représentants des habitants, le tracé reliera Habla et Qalqiliya et constituera de ce fait une menace pour la sécurité des communautés israéliennes voisines. Pour faire modifier le tracé prévu, les habitants ont créé un comité chargé de défendre leurs intérêts, qui a organisé des manifestations et mis sur pied des visites guidées de la zone à l'intention des responsables militaires et politiques.[168]

Les pressions se sont succédées. Les autorités ont modifié le tracé. La route n° 55 continuera d'être utilisée comme artère principale pour l'accès à Alfe Menashe et aux colonies de peuplement voisines

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[164] Amnon Barzilai et Zvi Zarhiya, « Work on Erecting the Seam-Line Fence Begins », *Ha'aretz*, 11 juin 2002.

[165] Diana Bahor, « Separation Fence : All the Objections », Ynet, 4 juillet 2002.

[166] Mazal Mualem, « SHAS : Include more Communities West of the Fence », *Ha'aretz*, 4 juillet 2002.

[167] Mazal Mualem, « The Battle against the Large Qalqiliya », *Ha'aretz*, 27 août 2002.

[168] Les activités de ce comité sont décrites sur le site web de la ville, www.matan.muni.il.

(Qarne Shomron, Ma'ale Shomron et Immanu'el). Suite à ce changement, Habla et Ras `Atiya (6 700 habitants) deviendront des enclaves isolées de Qalqiliya, la ville dans laquelle leurs habitants viennent recevoir des services. Habla ne se trouve qu'à deux cents mètres de Qalqiliya. Après la construction de la barrière, les habitants devront faire vingt kilomètres pour se rendre de l'une à l'autre de ces deux agglomérations, à supposer qu'ils soient autorisés à conduire un véhicule sur cette route.

Du point de vue du droit international, la qualité de vie des habitants israéliens ne saurait être prise en considération comme un facteur pertinent lorsque l'on décide des mesures applicables dans un territoire occupé. Elle ne peut assurément pas justifier une violation des droits de l'homme de milliers de Palestiniens.

LA SAUVEGARDE DES SITES ARCHEOLOGIQUES

Les représentants de l'Etat ont reconnu que la volonté de protéger des sites archéologiques a été prise en compte dans la détermination du tracé de la barrière. Par exemple :

- Dans un témoignage devant un Tribunal, le colonel Dani Tirzah, fonctionnaire de l'Administration de la zone de séparation hermétique, chargé de définir le tracé de la barrière, a déclaré que plusieurs facteurs pouvaient justifier des changements dans l'emplacement précis de la barrière, notamment les « facteurs archéologiques ».[169]
- Des articles de presse relatent qu'après la détermination du tracé, l'Administration de la zone de séparation hermétique a appris l'existence d'une dizaine de sites archéologiques situés sous le tracé proposé. Afin de protéger ces richesses archéologiques, elle a pris des mesures distinctes selon les caractéristiques propres à chaque site. La modification du tracé de la barrière a été l'une de ces mesures.[170]
- Dans l'une de ses réponses à la Haute Cour de Justice, le Bureau du Procureur de l'Etat a déclaré qu'il avait été décidé de déplacer de quelques kilomètres plus à l'est le tracé de la barrière dans une zone située au nord de Shweikeh, dans le district de Tulkarm, afin « de protéger des sites archéologiques ».[171]
- Des membres du kibboutz Metzer ont demandé au Ministère de la défense de modifier le tracé de la barrière dans la zone du kibboutz pour lui faire suivre la Ligne verte, afin qu'il n'entrave pas l'accès des habitants de Qaffin, une ville voisine, à leurs champs, qui selon le projet initial se retrouveraient à l'ouest de la barrière. Le colonel Tirzah s'est rendu dans cette zone et a déclaré qu'il était prêt à accéder à cette demande. Mais quelques jours plus tard il a fait savoir au kibboutz que le tracé ne pouvait pas être modifié parce que la zone contenait des sites archéologiques et parce que l'on ne disposait pas de suffisamment de temps pour procéder aux fouilles nécessaires.

En sa qualité d'occupant, Israël est certes tenu de sauvegarder les sites culturels et historiques dans le territoire qu'il occupe, mais ce motif ne justifie en rien la violation des droits de l'homme à laquelle aboutirait le déplacement du tracé de quelques kilomètres plus loin vers l'intérieur de la Cisjordanie. Cela est d'autant plus vrai que ne pas modifier le tracé n'aurait pas pour effet de détruire les sites archéologiques, mais seulement de retarder les travaux de construction de la barrière jusqu'à ce que soient achevées les fouilles nécessaires à la protection des sites.

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[169] Compte rendu de l'audition qui a eu lieu le 20 novembre 2002 devant le Tribunal de première instance de Tel-Aviv, affaire *Comité du développement de Kafr `Aqeb*.

[170] Mazal Mualem, « Route Restraints cause Movement of Fence based on Past Communities », *Ha'aretz*, 17 octobre 2003.

[171] Réponse de l'Etat, affaire *al-Hadi*, section 30.

L'ACCES AUX SITES RELIGIEUX

La détermination du tracé de la barrière dans la partie sud de l'enveloppe de Jérusalem faisait partie de la décision prise par le Cabinet en août 2002. Un mois plus tard, la question a de nouveau été examinée par le Cabinet à la suite de pressions politiques exercées par des Ministres du parti Shas et du Parti religieux national, ainsi que par le Maire de Jérusalem, qui contre l'avis du Ministre de la défense, souhaitaient déplacer le tracé de quelques centaines de mètres plus au sud, ce qui serait revenu à annexer *de facto* la tombe de Rachel à Jérusalem. Le Cabinet a approuvé ce changement.[172]

La tombe de Rachel se trouve à l'extrémité nord de Bethléem, à cinq cents mètres au sud du poste de contrôle qui sépare Bethléem de la limite de juridiction de Jérusalem (le poste de contrôle n° 300). Bien qu'aux termes de l'Accord intérimaire, Bethléem soit incluse dans la zone A, les terres situées entre la tombe de Rachel et le poste de contrôle sont définies comme constituant la zone C et restent par conséquent sous le contrôle total d'Israël. La tombe de Rachel est un site sacré pour le judaïsme et de nombreux Juifs s'y rendent pour prier. Depuis le déclenchement de l'Intifada, le site a été fréquemment fermé aux visiteurs à cause des attaques palestiniennes contre les civils et les militaires israéliens qui s'y trouvaient.

Outre la modification du tracé, il a été décidé de construire au sud de la tombe de Rachel un mur de huit mètres de haut sur quelques centaines de mètres en direction de l'ouest. Si cette décision est appliquée, 35 immeubles de plusieurs étages, dans lesquels vivent 400 Palestiniens, et des douzaines de boutiques se retrouveront au nord de ce mur, ce qui les isolera de Bethléem. Comme dans le cas des habitants des enclaves situées à l'ouest de la barrière dans la partie nord de la Cisjordanie, les habitants de cette banlieue de Bethléem ne sont pas censés recevoir le statut de résidents israéliens, et ils n'auront donc pas le droit de pénétrer dans Jérusalem.

Selon le droit international, l'entrée des Israéliens dans les Territoires occupés afin qu'ils puissent y travailler et la garantie de leur liberté de mouvement ne constituent pas des raisons valables pour légitimer la politique israélienne dans les Territoires occupés. Cela est encore plus vrai si cette politique entraîne de graves violations des droits de l'homme de centaines de résidents locaux.

L'EXPROPRIATION ILLEGALE DES TERRES

La prise de contrôle de terres privées palestiniennes pour édifier la barrière de séparation est un autre aspect illégal de cette construction. Pour la justifier, Israël s'appuie sur l'article 23 alinéa g) du Règlement annexé à la Convention de La Haye de 1907 concernant les lois et coutumes de la guerre sur terre, qui appartient à la Section II de la Convention et est intitulé « Des hostilités ».[173] Le recours à un article tiré de cette partie du Règlement est basé sur la perception, par Israël, de la situation actuelle dans les Territoires occupés comme un « conflit armé », c'est-à-dire comme si l'occupation avait pris fin. Or selon l'article 23, alinéa g), une armée ne peut « détruire ou saisir des propriétés ennemies, sauf dans les cas où ces destructions ou ces saisies seraient impérieusement commandées par les nécessités de la guerre ». L'Etat fait valoir que la saisie des terres est manifestement justifiée par des impératifs militaires, et que par conséquent les mesures prises en l'espèce sont légales.

Le Bureau du Procureur général de l'Etat a veillé à mentionner dans sa réponse à la Haute Cour de Justice qu'Israël ne prend le contrôle de ces terres qu'à titre temporaire. Les ordonnances de réquisition édictées pour permettre l'édification de la barrière stipulaient d'ailleurs clairement qu'elles n'étaient valables que jusqu'à fin 2005. Or la législation militaire n'empêche nullement une

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[172] Nadav Shargai et collaborateurs, « *De Facto* Annexation of Rachel's Tomb into Jerusalem Approved », *Ha 'aretz*, 12 septembre 2002.

[173] Réponse de l'Etat, affaire *al-Hadi*, sections 46 et 47.

prolongation illimitée de la validité de telles ordonnances; d'ailleurs Israël a déjà prolongé indéfiniment de telles ordonnances dans le cas de terres saisies pour créer de nouvelles colonies de peuplement et construire des routes de contournement.

Dans la réponse de l'Etat à la requête formée par les habitants de
Fafr `Aqeb contre la réquisition de leurs terres afin d'y construire la barrière (voir plus haut), le Bureau du Procureur général de l'Etat a admis que les ordonnances de saisie temporaires étaient également utilisées pour édifier des structures permanentes et que ces ordonnances pouvaient être prolongées indéfiniment :

> Rien n'empêche l'Etat de saisir des terres sur la base d'ordonnances de réquisition temporaires, même si ces saisies ont pour but d'édifier des structures qui, elles, ne sont pas forcément de nature temporaire. Par exemple, en Judée et en Samarie, des ordonnances de réquisition temporaires ont été utilisées pour construire des structures permanentes de toutes sortes, telles que des routes de contournement et des colonies de peuplement…
>
> Sur territoire israélien, également, des ordonnances de réquisition temporaires (édictées conformément à l'Accord sur la réquisition des terres (Ordonnance d'urgence), 5715-1955) ont été utilisées pour construire l'aéroport de Sde Dov, dont tout le monde s'accordera à reconnaître qu'il s'agit d'une installation permanente. Cette réquisition temporaire a été suivie d'une expropriation légale des terres, en application de l'Ordonnance sur les terres (Acquisition à des fins d'utilité publique) de 1943.[174]

[174] Réponse de l'Etat, affaire *Comité du développement de Kafr`Aqeb*.

La nature permanente de la barrière, ainsi que l'expérience passée des saisies « temporaires » de terres par Israël, portent à conclure que cette « prise de contrôle des terres » est en fait une expropriation. L'article 46 du Règlement de La Haye, qui figure lui aussi dans la section de ce Règlement relative à un territoire occupé, stipule sans équivoque que : « La propriété privée ne peut pas être confisquée ».[175] L'expropriation des terres est d'ailleurs illégale même si l'on accepte l'argument d'Israël selon lequel la construction de la barrière selon le tracé proposé est la seule façon d'enrayer les infiltrations de Palestiniens en Israël pour y commettre des attentats.

Conclusions

Le débat public actuellement ouvert en Israël au sujet de la barrière de séparation est avant tout axé sur les retards dans l'édification de cette barrière et sur la responsabilité des responsables militaires dans les erreurs de planification commises en la matière. Les implications du projet pour la population palestinienne et les graves dommages qu'il lui fera subir sont ignorés.

La plupart des violations des droits des Palestiniens n'ont pas encore été commises, si bien qu'il est impossible, pour le moment, de déterminer l'ampleur du préjudice en la matière. Il n'en est pas moins clair que l'édification de la barrière va encore accroître la fragmentation de la Cisjordanie imputable à la politique qu'Israël applique dans les Territoires occupés depuis le début de l'Intifada actuelle. Depuis deux ans et demi, les Forces de défense israéliennes entravent pratiquement tous les déplacements des Palestiniens en Cisjordanie. Pour ce faire, elles ont utilisé des couvre-feux prolongés, des postes de contrôle pourvus de personnel, des blocs de béton, des remblais et des tranchées. Cette politique a gravement perturbé tous les aspects de la vie de la population locale – les systèmes d'enseignement et de santé ont du mal à fonctionner, la situation économique est pire que jamais, et les relations sociales et familiales sont devenues beaucoup plus difficiles.

L'édification de la première phase de la barrière en Cisjordanie aggravera ces perturbations et entraînera des dommages supplémentaires pour plus de 200 000 Palestiniens. La barrière va isoler des communautés palestiniennes des autres zones de la Cisjordanie et les transformer en enclaves coincées entre la barrière et la Ligne verte. D'autres communautés deviendront des enclaves situées à l'est de la barrière, soit du fait des lacets que fera le tracé de la barrière soit parce qu'elles se retrouveront emprisonnées entre la barrière principale et la barrière secondaire construite sur leur côté est. Certains habitants seront séparés de leurs terres agricoles parce que celles-ci se retrouveront à l'ouest de la barrière. Les atteintes à la liberté de mouvement des habitants violeront leur droit au travail et leur droit de gagner leur vie, et des familles entières risquent de passer au-dessous du seuil de pauvreté. La barrière va également entraîner des violations d'autres droits : le droit à un traitement médical, le droit à l'éducation, et la capacité de la population à continuer de mener une vie normale, y compris en préservant sa vie sociale et familiale.

En tant que puissance occupante, Israël est tenu de sauvegarder les droits de l'homme des Palestiniens qui se trouvent sous son contrôle. Son devoir de protéger la vie de ses citoyens ne le libère pas pour autant de son obligation de protéger les droits de l'homme des Palestiniens. En construisant la barrière de séparation, Israël montre le peu de cas qu'il fait de cette obligation, et ce faisant il transgresse le droit international.

[175] Sur ce point, le Juge Aharon Barak a considéré que bien qu'il n'existe pas, dans la Convention de La Haye, de disposition explicite à ce sujet, l'interdiction de l'expropriation de biens privés ne s'applique qu'aux terres saisies pour des motifs d'ordre militaire et ne peut être imposée pour répondre à des besoins de la population locale et se conformer à la législation locale (voir HCJ 393/82, affaire *Jam'iyyat Iskan Al-Mualiman* contre *Commandant des Forces de défense israéliennes en Judée et Samarie, Piskei Din* 37 (4) 785.

Premièrement, la construction de la barrière pour empêcher les attentats en Israël est la solution la plus extrême et elle fait subir de graves préjudices aux habitants palestiniens. Israël a préféré cette solution à d'autres qui auraient provoqué des dommages moindres. Bien que la plupart des Palestiniens ayant commis des attentats en Israël aient pénétré dans le pays par les postes de contrôle situés le long de la Ligne verte et non en traversant les zones ouvertes entre ces postes, Israël a décidé d'édifier la barrière avant d'avoir résolu les problèmes de fonctionnement de ces postes de contrôle. De plus, dans la zone de séparation hermétique, les Forces de défense israéliennes n'ont pris aucune mesure pour enrayer les infiltrations de Palestiniens en Israël, et elles n'ont accordé qu'une faible priorité à cet objectif par rapport à d'autres, tels que les attaques contre les institutions de l'Autorité palestinienne et la protection des colonies de peuplement.

Deuxièmement, à supposer que l'on accepte l'argument d'Israël selon lequel il n'avait pas d'autre choix que de construire la barrière, ce pays n'en était pas moins tenu de retenir un tracé minimisant les éventuelles violations des droits de l'homme. Or il ne l'a pas fait. Il a au contraire choisi un tracé qui, du moins dans certains cas, dénote d'un mépris complet pour les considérations relatives aux droits de l'homme et qui est en réalité basé sur des considérations n'ayant rien à voir avec les motifs invoqués, telles que la perpétuation de certaines colonies de peuplement, la volonté de faire passer le message politique selon lequel la barrière n'est pas une frontière politique permanente, la qualité de vie des résidents israéliens, la préservation des sites archéologiques et l'accès des citoyens israéliens à un site religieux. Ces considérations ont conduit au choix d'un tracé qui viole gravement les droits de l'homme, sans que cela soit justifié d'une façon ou d'une autre par des impératifs de sécurité.

Troisièmement, la décision de construire une barrière permanente en Cisjordanie pour un coût de centaines de millions de Shekels viole la Convention de La Haye, qui interdit l'expropriation des terres dans un territoire occupé.

Les caractéristiques générales du projet de barrière de séparation donnent l'impression qu'Israël s'appuie une fois de plus sur des arguments liés aux impératifs de sécurité pour créer sur le terrain, de façon unilatérale, un fait accompli qui aura des effets sur tout accord futur entre Israël et les Palestiniens. Dans le passé, Israël a utilisé l'argument des « impératifs d'ordre militaire » pour justifier l'expropriation de terres afin d'y créer des colonies de peuplement et a fait valoir que ces mesures étaient temporaires. Les colonies de peuplement ont pendant longtemps été construites sur la base du fait accompli. Dans les négociations de paix avec les Palestiniens, elles figurent sur la liste des questions à examiner en vue de la conclusion du futur accord sur le statut définitif. Lors des discussions de Camp David, en juillet 2000, la position d'Israël était qu'il entendait annexer certaines des colonies de peuplement créées en Cisjordanie.

Il semble raisonnable de supposer qu'en ce qui concerne les colonies de peuplement, la barrière de séparation deviendra un fait permanent qui sera utilisé à l'appui d'une future demande d'Israël d'annexer des territoires. De toute façon, la situation géographique créée par l'édification de la barrière fera obstacle à toute solution politique basée sur la reconnaissance du droit du peuple palestinien à l'autodétermination et à la création d'un Etat palestinien indépendant et viable.

Pour les raisons susmentionnées, B'Tselem demande instamment au Gouvernement israélien :

- D'annuler ses décisions et celles du Cabinet relatives à la barrière de séparation et de mettre fin immédiatement aux activités de construction de la barrière, y compris la saisie des terres ;

- De rouvrir des discussions sur les moyens de faire face aux attentats palestiniens en Israël, et de rechercher d'autres solutions que celle de l'édification de la barrière de séparation. Toute décision devra tenir compte des limites qu'impose le droit international et du devoir d'Israël de respecter les droits de l'homme des habitants des zones dont il a le contrôle ;

- Qu'au cas où il n'existerait aucune autre solution que celle consistant à édifier la barrière, le Gouvernement en fasse passer le tracé le long de la Ligne verte ou, à défaut, à l'intérieur du territoire israélien. Des dérogations à ce principe ne devraient être autorisées que dans des cas exceptionnels, sur la base de deux considérations seulement: le bien-être de la population palestinienne locale et les impératifs militaires d'Israël au sens le plus strict du terme. De toute façon, toute dérogation devra être étudiée en tenant compte de ses effets sur les droits de l'homme des habitants qui vivent près du tracé de la barrière.

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COUR INTERNATIONALE DE JUSTICE

CONSÉQUENCES JURIDIQUES DE L'ÉDIFICATION D'UN MUR DANS LE TERRITOIRE PALESTINIEN OCCUPÉ

REQUÊTE POUR AVIS CONSULTATIF

EXPOSÉ ÉCRIT DE LA PALESTINE

VOLUME II

Troisième partie

(Annexe 14)

30 janvier 2004

[Traduction du Greffe]

ANNEXE 14

MME CATHERINE BERTINI, ENVOYEE HUMANITAIRE PERSONNELLE DU SECRETAIRE GENERAL, RAPPORT DE MISSION, 11-19 AOUT 2002

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A. INTRODUCTION

1. En réponse à une demande que lui a adressée le Premier Ministre d'Israël en vue de satisfaire les besoins humanitaires générés par l'actuel conflit israélo-palestinien, et devant les préoccupations exprimées par le Quatuor quant à la détérioration rapide de la crise humanitaire, le Secrétaire général a désigné Mme Catherine Bertini, le 7 août 2002, pour être son envoyée humanitaire personnelle. Il lui a donné pour instruction de se rendre dans la région afin d'évaluer la nature et l'ampleur de la crise humanitaire, d'étudier les besoins humanitaires à la lumière des récents événements, de déterminer quelles sont les actions à entreprendre pour réagir à la situation humanitaire actuelle et pour empêcher qu'elle n'empire, et de définir les responsabilités respectives de l'ensemble des intervenants eu égard aux besoins humanitaires. Il lui a demandé de lui soumettre un rapport dans lequel elle lui ferait part de ses observations et recommandations, et par son intermédiaire, de le communiquer au Quatuor.

2. Accompagnée d'une équipe restreinte, Mme Bertini s'est rendue dans la région du 12 au 19 août. La mission a bénéficié du soutien efficace du bureau du coordinateur spécial des Nations Unies (UNSCO). L'Office de secours et de travaux des Nations Unies pour les réfugiés de Palestine dans le Proche-Orient (UNRWA) a lui aussi apporté un important appui. Dans le cadre de la mission, Mme Bertini a eu la possibilité de s'entretenir avec les principaux dirigeants de l'Etat d'Israël et de l'Autorité palestinienne, dont le premier ministre M. Sharon, le ministre des affaires étrangères M. Peres et le ministre de la défense M. Ben-Eliezer, ainsi que le

président Arafat, le ministre des collectivités locales M. Erekat, le ministre des affaires sociales M. Al-Wazeer et le ministre de la santé M. Zahnoun. Elle s'est rendue à la fois en Cisjordanie et à Gaza où elle a rencontré un large éventail de dirigeants locaux, de groupes de femmes, de jeunes, d'hommes d'affaires, d'exploitants agricoles et de responsables syndicaux, ainsi que des Palestiniens ordinaires aussi bien à leur domicile que sur leur lieu de travail. Mme Bertini s'est également entretenue avec les représentants des institutions du système des Nations Unies, d'ONG, du CICR et de donateurs. On trouvera l'itinéraire détaillé de la mission en annexe A.

B. APERCU GENERAL

3. La Mission a conclu que la Cisjordanie et la bande de Gaza sont confrontées à une grave crise humanitaire. Cette crise n'est pas vraiment une crise humanitaire «traditionnelle», telle que celles que provoquent les famines ou la sécheresse; en fait, elle est inextricablement liée au conflit en cours et plus particulièrement aux mesures imposées par Israël en réaction aux attentats-suicide et autres contre des cibles civiles et militaires israéliennes. A moins que la situation n'évolue positivement, la qualité de vie des Palestiniens va continuer à se détériorer et la crise humanitaire va rapidement échapper à tout contrôle. Si au contraire le contexte général s'améliore suffisamment pour permettre une libre circulation des personnes, des biens et des services, la crise humanitaire se dissipera rapidement.

4. La situation actuelle peut être qualifiée de situation de crise de l'accès et de la mobilité. Les Palestiniens sont soumis à divers bouclages, couvre-feux, barrages routiers et restrictions qui ont provoqué un quasi-effondrement de l'économie palestinienne, une hausse du chômage, une recrudescence de la pauvreté, un ralentissement des activités économiques, un accès limité aux services essentiels (comme l'eau, les soins médicaux, l'éducation, les services d'urgence) et une dépendance croissante de l'aide humanitaire. Les restrictions frappent pratiquement tous les secteurs d'activité, empêchant totalement la plupart des Palestiniens de poursuivre un semblant de vie normale et les confrontant quotidiennement à des épreuves, des privations et des atteintes à la dignité humaine.

5. Les restrictions à l'accès et à la mobilité constituent un obstacle de taille à toute entrée ou sortie de Jérusalem, de Gaza et de Cisjordanie et rendent très difficiles les voyages à l'étranger. A quelques rares exceptions près, les Palestiniens ne peuvent plus travailler en Israël. Dans la bande de Gaza et en Cisjordanie, ils font l'objet de restrictions très nombreuses et très diverses qui empêchent ou limitent leurs déplacements et les confinent généralement dans leur village ou leur ville, voire même, souvent, à leur domicile, pendant de longues périodes. Les possibilités de gagner sa vie, d'avoir accès aux services de base et de mener des activités quotidiennes normales ont été considérablement réduites.

6. La mission a suivi l'évolution de différents indicateurs de l'aggravation de la crise humanitaire. Elle a notamment constaté le manque d'argent pour l'achat de biens essentiels, la détérioration des services de santé et des réseaux d'assainissement, et la dépendance croissante de l'aide alimentaire. Aujourd'hui, alors que les niveaux de malnutrition sont de plus en plus élevés, quelque 1,5 millions de Palestiniens, sur une population totale de 3,3 millions de personnes, reçoivent une aide alimentaire directe, soit plus de cinq fois plus qu'il y a deux ans. Selon les estimations, le taux de chômage général a atteint 50 %, et deux bons tiers de la population vivent à présent au-dessous du seuil de pauvreté. Les dispositifs mis en place pour faire face à cette situation, qui consistent le plus souvent à avoir recours à l'emprunt ou à puiser dans l'épargne, fonctionnent de moins en moins au fur et à mesure de la dégradation de l'économie.

7. Cette aggravation de la crise humanitaire est largement reconnue par toutes les parties prenantes dans la région. Les autorités israéliennes ont assoupli certains contrôles en délivrant un plus grand nombre d'autorisations de travail en Israël. L'Autorité palestinienne, les institutions du système des Nations Unies, les ONG, le CICR et les donateurs ne sont guère enclins à réorienter vers le secours les ressources croissantes dont ils disposent et qui jusqu'à présent étaient consacrées au développement. Or, si les conditions actuelles persistent, la proportion des activités et des ressources affectées à l'aide humanitaire directe va devoir augmenter de manière significative.

8. La mission a obtenu plusieurs engagements de la part des autorités israéliennes en ce qui concerne la suppression de certaines des contraintes dont la levée est la plus urgente. Il s'agit entre autres de l'engagement de ramener à trente minutes au maximum la durée de la fouille de toutes les ambulances aux postes de contrôle, de la mise sur pied de dispositifs permettant de faciliter le passage des postes de contrôle par les Palestiniens qui ont besoin de services médicaux d'urgence, et d'un approvisionnement en eau régulier et ininterrompu des villes et villages palestiniens. Auparavant, Israël s'était déjà engagé à améliorer la situation aux postes de contrôle, notamment en y déployant des soldats plus expérimentés, et à appliquer pleinement le principe d'une zone de pêche de 12 milles au large des côtes de la bande de Gaza. Ces cinq mesures, si elles sont appliquées, sauveront des vies, représenteront un secours très attendu et apporteront une lueur d'espoir alors même que l'avenir apparaît de plus en plus compromis. Leur application efficace et sans retard est absolument cruciale.

C. OBSERVATIONS

I. Une crise de l'accès et de la mobilité

Les bouclages et les couvre-feux imposés à titre de mesures de sécurité

9. En étudiant les effets du bouclage et des couvre-feux sur la population palestinienne, il importe de garder présent à l'esprit le fait que le Gouvernement israélien affirme que toutes les restrictions qu'il a imposées aux Palestiniens et à d'autres personnes sont indispensables dans la mesure où elles ont pour but de protéger sa propre population civile contre de nouvelles attaques terroristes. Le Gouvernement israélien considère également que les bouclages et les couvre-feux très stricts qu'il impose aussi bien à l'intérieur qu'à l'extérieur de son propre territoire ont dans la pratique permis d'éviter un nombre important d'attentats à l'intérieur d'Israël. Lors de leurs entretiens avec les membres de la mission, des responsables gouvernementaux israéliens ont expliqué que l'expérience montre que toute levée des restrictions à la liberté de circulation a pour effet immédiat des tentatives de préparation ou de perpétration d'attentats contre des cibles militaires ou civiles israéliennes. Le Gouvernement israélien justifie également les restrictions à la liberté de circulation des ambulances en citant des cas dans lesquels, affirme-t-il, des ambulances ont été utilisées pour transporter des explosifs et des hommes armés. Tout en reconnaissant l'impact du système actuel sur la population palestinienne, de même que le fait que ce système risque d'avoir pour conséquence une augmentation de la violence à moyen et long terme, les dirigeants israéliens considèrent que la principale de leurs priorités, aujourd'hui, est d'empêcher tout attentat contre leur population.

10. Inversement, les Palestiniens avec lesquels les membres de la mission se sont entretenus sont intimement persuadés qu'il est difficile de discerner quelque objectif de sécurité que ce soit dans un grand nombre des restrictions qui leur sont imposées. Plusieurs Palestiniens, dont des membres de l'Autorité palestinienne, des hommes d'affaires et des citoyens ordinaires, considèrent que ces mesures sont en fait appliquées pour sanctionner et humilier la population palestinienne dans son ensemble. Certains d'entre eux ont expliqué que les mesures imposées par le Gouvernement israélien ont pour but de «casser les reins» des Palestiniens afin de mieux préparer

la conclusion d'un accord politique qui sans cela serait inacceptable pour eux. Les exemples les plus fréquemment cités à cet égard sont : les nombreux postes de contrôle que l'on peut en fait facilement contourner à pied et avec des bagages légers au vu et au su des soldats des Forces de défense israéliennes (FDI); le système dit «back-to-back» de transfert obligatoire du fret d'un camion à l'autre en Cisjordanie, qui, selon les déclarations des Palestiniens, ne donne souvent lieu à aucun contrôle; les retards excessifs ou les refus de passage pour les fournitures et services essentiels, tels que les ambulances ou les camions-citernes qui transportent de l'eau; la poursuite de la destruction des infrastructures civiles; et les couvre-feux prolongés qui empêchent des populations entières de quitter leur domicile.

11. Chez les représentants locaux des pays donateurs, la Mission a constaté un degré élevé de scepticisme quant à la nécessité d'imposer un large éventail de restrictions à des fins de sécurité. Ces représentants ont mentionné plusieurs zones dans lesquelles les arguments sécuritaires avancés par Israël pour justifier des restrictions d'ordre général ne semblent pas fondés sur des problèmes de sécurité réels ou ne donnent pas lieu à l'application de procédures de sécurité efficaces, et ce même lorsque des donateurs sont prêts à contribuer à leur financement. Les représentants des donateurs considèrent en outre qu'il existe une contradiction entre les appels israéliens en faveur d'une aide internationale accrue à la population palestinienne et les dures contraintes fréquemment imposées aux fournisseurs d'assistance, notamment en ce qui concerne les déplacements du personnel international et le transport des fournitures essentielles. Certains donateurs se sont par ailleurs déclarés préoccupés par le fait que les militaires des FDI chargés de gérer le système actuel de bouclage ne sont apparemment encouragés à alléger ni la pression exercée sur la population palestinienne ni les contraintes qui pèsent sur ceux qui tentent de venir en aide à cette population.

12. La mission n'a pas reçu pour mandat d'évaluer les mesures prises par le Gouvernement israélien sur la base de leur utilité ou de leur efficacité en matière de sécurité. Elle a été chargée d'examiner la situation humanitaire en Cisjordanie et dans la bande de Gaza. Il existe un consensus entre l'ensemble des parties concernées pour reconnaître que le système actuel des bouclages et des couvre-feux a un impact dévastateur sur la population palestinienne, tant en ce qui concerne sa situation économique que sa situation humanitaire, et le présent rapport confirme ce point de vue. Dès lors, c'est au Gouvernement israélien qu'il incombe de minimiser le plus possible ces effets négatifs sur les civils palestiniens tout en sauvegardant la sécurité de sa propre population civile. Si l'on veut parvenir à un juste équilibre entre ces intérêts parfois contradictoires, il importe d'examiner avec soin et de façon régulière la nécessité, l'efficacité et la proportionnalité de toutes les mesures prises pour assurer la sécurité. De plus, le problème du décalage entre d'un côté la politique israélienne officielle, qui a pour objectif de faire subir le moins de préjudices possible aux civils et de faciliter au maximum les activités d'assistance, et de l'autre la mise en œuvre de cette politique sur le terrain, doit impérativement être résolu. Il faut reconnaître que la misère sociale et économique du peuple palestinien est un obstacle sérieux à la mise en place d'une paix et d'une sécurité durables. La détérioration considérable des conditions de vie contribue à déstabiliser l'environnement politique et augmente le sentiment de désespoir que les extrémistes savent si bien exploiter.

Le système des bouclages et des couvre-feux

Les bouclages

13. Israël impose des «bouclages» depuis que la situation a commencé à se détériorer fin septembre 2000. Il existe trois types de restrictions sous forme de bouclage : le bouclage intérieur en Cisjordanie et dans la bande de Gaza, le bouclage de la frontière entre Israël et le Territoire palestinien occupé, et le bouclage des frontières internationales entre d'un côté le Territoire occupé et de l'autre la Jordanie et l'Egypte. Israël a régulièrement rendu plus strictes les conditions de chacun de ces types de bouclage, surtout depuis les violents événements de mars et avril 2002, imposant ainsi, selon la Banque mondiale, les entraves à la libre circulation les plus graves et les

plus longues depuis 1967. L'application nettement plus stricte des mesures déjà en vigueur et l'augmentation des contrôles aux points de passage, sur les routes et aux frontières ont confiné les Palestiniens dans des zones de plus en plus étroites.

14. Les FDI occupent actuellement des positions qui encerclent la plupart des villes palestiniennes et elles ont mis en place un réseau serré de postes de contrôle et de barrages routiers, avec des tranchées, des remblais et des blocs de béton. Le nombre de postes de contrôle gardés par des militaires est variable mais en général on peut l'estimer à environ cent vingt au total, dont quatre-vingt à quatre-vingt dix pour la seule Cisjordanie. On trouvera en annexe B une carte récente indiquant l'emplacement des postes de contrôle installés en Cisjordanie. Le nombre de barrages routiers supplémentaires non gardés est estimé à environ deux cents. Le niveau de bouclage intérieur n'est pas le même dans l'ensemble du Territoire palestinien occupé. Les zones généralement les plus touchées en Cisjordanie sont le croissant Tulkarm/Djénine/Qalqiliya au nord-ouest, Naplouse, Ramallah/Al-Bireh en Cisjordanie centrale et Jericho, Bethléem et Hébron au sud. A Gaza les bouclages intérieurs affectent plus particulièrement les déplacements nord-sud, créant parfois trois enclaves à demi isolées (la ville de Gaza, la zone de Jalabalia et Rafah/Khan Yunis. Les transports extérieurs et intérieurs de marchandises ont de surcroît été rendus plus difficiles par l'instauration, en mai 2002, du système «back-to-back» en Cisjordanie, qui consiste à faire décharger les marchandises des camions qui arrivent pour les faire recharger ensuite dans des camions locaux, ce transfert ayant lieu à huit postes de contrôle situés à proximité des principales villes palestiniennes. Auparavant, ce système n'était applicable qu'aux transports de marchandises d'Israël vers la Cisjordanie et Gaza.

Les couvre-feux

15. Outre les bouclages entre différents centres urbains, Israël a imposé des couvre-feux dans la plupart des villes et autres agglomérations de Cisjordanie (et dans certaines zones de la bande de Gaza), qui à un certain moment, selon les estimations de l'UNSCO, ont affecté quelque six cent mille personnes. Les couvre-feux sont souvent en vigueur 24 heures sur 24 et ne sont levés que périodiquement, ce qui fait que certains endroits de Cisjordanie sont placés sous couvre-feu 90 % du temps. Pendant le couvre-feu, les gens ne sont pas autorisés à quitter leur domicile et les soldats des FDI ont pour instruction de tirer et tuer toute personne qui viole le couvre-feu. Outre les ambulances, qui ont généralement le droit de travailler pendant les couvre-feux, un nombre minimum de permis a été délivré aux employés municipaux chargés des réparations urgentes. Mais à l'exception de certains camps de réfugiés et d'autres zones dans lesquelles il y a moins de chances que les FDI patrouillent, toute la population civile reste pour l'essentiel confinée à domicile pendant les couvre-feux, et toutes les activités économiques s'arrêtent.

16. Dans certains cas, ces périodes de couvre-feu peuvent durer jusqu'à plus d'une semaine sans interruption. Par exemple, lorsque la mission s'est rendue à Naplouse le 17 août, le couvre-feu y avait été levé pour la première fois depuis le vendredi 9 août. Des couvre-feux sont également régulièrement imposés aux villages les plus importants, par exemple le couvre-feu décrété à Beit Furik, un village situé près de Naplouse, environ une heure après le départ de la mission, vers 12 heures.

17. L'un des facteurs qui rendent les couvre-feux particulièrement perturbants et dangereux pour la population civile est la nature imprévisible de leurs levées et le manque d'informations fiables en ce qui concerne les moments précis auxquels ils débutent et prennent fin. Les annonces des FDI ne sont souvent pas entendues dans toutes les zones placées sous couvre-feu et les

habitants sont obligés de se fier à la presse ou à des sources officieuses (par exemple les boulangeries, qui reçoivent souvent notification préalable des couvre-feux) pour savoir quand les couvre-feux seront levés et pendant combien de temps.

18. A la mi-août 2002, cinquante-cinq localités cisjordaniennes, au total, se trouvaient encore sous couvre-feu complet ou partiel. Mais le système des couvre-feux a été récemment assoupli dans plusieurs villes. Les couvre-feux ont été entièrement levés à Qalqiliya et Hébron; à Djénine, Ramallah et Bethléem, le couvre-feu a été levé durant 12 heures tous les jours, sauf le vendredi. Tulkarm et Naplouse restent toutefois soumises à des couvre-feux très stricts, avec des levées sporadiques de quelques heures, espacées de plusieurs jours. A Naplouse, le couvre-feu n'a été levé, au total, que durant 52 heures sur soixante deux jours.

Les effets sur la circulation des personnes, des biens et de l'argent

19. Du fait de ces entraves à la liberté de circulation, la plupart des Palestiniens restent confinés à leur ville ou à leur village, sans possibilité d'accès à d'autres zones pour y travailler, y suivre un enseignement, y acheter des marchandises, y recevoir des soins médicaux ou à toute autre fin. Depuis mai 2002, les Palestiniens de Cisjordanie ne peuvent se déplacer d'une ville à une autre ou d'un village à une ville que s'ils disposent d'une autorisation délivrée par les autorités israéliennes, qui leur permet de circuler entre 05h00 et 19h00. De plus, les Palestiniens ne peuvent plus se rendre de Cisjordanie ou de la bande de Gaza en Israël ou à Jérusalem-Est sans permis spéciaux. Ces permis restent en grande partie inaccessibles aux Palestiniens ordinaires et ne sont chaque fois délivrés que pour un mois. Même les Palestiniens qui bénéficient d'un permis spécial n'ont pas le droit de conduire leur propre véhicule pour pénétrer en territoire israélien ou à Jérusalem-Est : il leur faut obtenir des permis de conduire séparés, qui ne sont plus disponibles. Pour tous les Palestiniens, le temps nécessaire pour se rendre d'un endroit à un autre a augmenté de façon exponentielle, et les déplacements sur de courtes distances nécessitent aujourd'hui, dans bien des cas, plusieurs heures de plus qu'auparavant.

20. Les sorties des villages pour se rendre dans les champs des alentours sont devenues de plus en plus difficiles. Les FDI ont détruit ou bloqué de nombreux chemins que les exploitants agricoles empruntaient pour aller travailler dans leurs champs. La mission, par exemple, a dû contourner plusieurs tranchées et remblais pour aller voir des plantations d'oliviers près de Beit Furik. Autre facteur qui fait obstacle à l'accès aux zones agricoles : les actes de violence des colons. Les exploitants agricoles qui travaillent dans les champs et les vergers proches des colonies de peuplement (lesquelles sont la plupart du temps construites au sommet ou à proximité des sommets des collines et dominent des zones de vaste superficie) ou qui passent près des chemins de contournement ont été la cible de jets de pierres ou de tirs d'armes à feu. De vastes étendues de terres agricoles leur sont devenues inaccessibles.

21. En Cisjordanie et dans la bande de Gaza, le transport des marchandises, y compris l'eau, les matières premières, les légumes, les fruits et autres produits, est devenu de plus en plus contraignant voire même, dans certains cas, impossible. Les distances à parcourir, le temps et le coût des transports commerciaux n'ont cessé d'augmenter. Les postes de contrôle et les barrages routiers qui font obstacle au transit obligent les camions palestiniens à emprunter des chemins peu carrossables, ce qui allonge considérablement la durée de transport et accroît les frais d'entretien des véhicules. A l'exception de certains véhicules de transport de produits alimentaires et des véhicules municipaux, les camions n'ont généralement accès à aucune zone placée sous couvre-feu.

22. Les membres de la Mission se sont entretenus avec les présidents-directeurs généraux de deux sociétés de transport au sujet des difficultés auxquelles ils sont quotidiennement confrontés. L'un d'entre eux a déclaré que depuis quelque temps il consacre l'essentiel de son temps à s'occuper de problèmes logistiques. Les frais de stockage et d'entretien de sa société ont doublé car il a fallu construire des entrepôts supplémentaires et pour la plupart des livraisons les camions sont contraints d'emprunter des chemins en mauvais état. La moitié des membres de son personnel dort actuellement dans les locaux de la société parce que les bouclages intérieurs empêchent ces employés de rentrer à leur domicile le soir ou parce que le temps qui leur était nécessaire pour se rendre à leur poste de travail et en revenir a augmenté dans d'énormes proportions, passant dans certains cas de 20 minutes à plus de trois heures. L'autre chef d'entreprise a expliqué que des équipements sophistiqués ont parfois dû être livrés dans des endroits éloignés à dos d'homme ou à dos d'âne.

23. Certaines mesures prises ces derniers mois par Israël ont eu pour conséquence d'améliorer quelque peu les conditions de transport des marchandises à Gaza ainsi que l'accès d'un petit nombre de personnes en Israël. Le poste réservé au passage des marchandises d'Israël vers Gaza, qui est installé à Karni, a été rouvert pour un volume limité de fret transporté en conteneurs. A l'intérieur de la bande de Gaza, le poste de contrôle de Abu Houli qui entravait les déplacements des personnes et des marchandises depuis mai 2002 est désormais ouvert plus fréquemment. Une autre mesure prise par Israël a été l'annonce de l'extension à 12 milles de la zone de pêche au large de Gaza, mais cette mesure n'est pas encore entrée en vigueur.

24. Le Gouvernement israélien a également augmenté le nombre des permis de travail pouvant être délivrés aux ouvriers palestiniens, notamment ceux venant de Gaza pour travailler en Israël. Selon l'UNRWA, environ huit mille ouvriers palestiniens, en moyenne, ont récemment reçu des permis d'entrée journaliers, contre une moyenne de deux mille à trois mille permis au cours du premier semestre 2002. De plus, Israël a augmenté le nombre des permis d'accès aux zones industrielles proches de Gaza et de Cisjordanie. Selon les autorités israéliennes, Israël a l'intention d'augmenter également le nombre des permis pour la zone industrielle de Erez en le portant prochainement de trois mille à sept mille. Les autorités israéliennes ont également déclaré que cinq mille permis supplémentaires avaient été octroyés à des commerçants, et trois mille autres à des personnes qui travaillent dans des colonies de peuplement. Israël a prévu d'augmenter progressivement le nombre total des permis délivrés, en fonction de l'évolution de la situation en matière de sécurité. Le nombre moyen de permis accordés avant septembre 2000 aux travailleurs palestiniens en Israël était de 55 000.

La perte de l'accès à l'emploi et aux revenus

25. Ces vingt-trois derniers mois, le système des bouclages et des couvre-feux a eu un impact cumulatif dévastateur sur l'économie palestinienne. L'effet le plus significatif de cet effondrement de l'économie sur la situation humanitaire a été la chute brutale des niveaux de revenu et du pouvoir d'achat.

Le chômage et la chute de la production

26. La détérioration de l'économie est en grande partie imputable à la hausse rapide du chômage dans le secteur privé. D'après les estimations de la Banque mondiale, au cours du dernier trimestre 2000, une centaine de milliers de postes de travail ont été perdus en Israël, dont ceux occupés par des dizaines de milliers de travailleurs employés en Israël sans permis. En Cisjordanie et dans la bande de Gaza, soixante mille autres postes ont eux aussi été supprimés avant la fin de 2001, la demande s'étant effondrée et les entreprises ayant licencié leur personnel. Outre la

baisse du nombre des permis d'entrée en Israël, le resserrement des modalités de passage des postes de contrôle sur les routes menant en Israël et aux colonies de peuplement a dissuadé se rendre à leur travail le très grand nombre d'ouvriers et d'employés sans permis qui, selon la Banque mondiale, représentaient plus de la moitié des Palestiniens travaillant en Israël avant septembre 2000. La diminution des sommes envoyées à leurs familles par les travailleurs palestiniens en Israël, dont les salaires étaient nettement plus élevés qu'en Cisjordanie et dans la bande de Gaza, a considérablement réduit le pouvoir d'achat et le volume de l'emploi en Cisjordanie et à Gaza. Un autre facteur encore, concomitant, est venu s'ajouter à ces suppressions de postes de travail : depuis septembre 2000, cent vingt mille personnes ont atteint l'âge de travailler.

27. La Banque mondiale a estimé que le chômage allait atteindre 26 % d'ici à fin 2001, contre 10 % fin 2000. Selon de récentes estimations de l'UNSCO, les taux de chômage généraux ont doublé depuis lors, atteignant 50 % au cours du deuxième trimestre 2002. De plus, un pourcentage élevé de la main-d'œuvre est composé de journaliers, et ceux-ci sont privés de leurs revenus pendant les périodes de couvre-feu.

28. Le système des bouclages et des couvre-feux a également eu pour effet un arrêt quasi-total des activités de production dans les principaux centres cisjordaniens de production manufacturière, de construction, de commerce et de fourniture de services privés et publics de Cisjordanie, qui, selon les estimations de l'UNSCO, comptent pour au moins 75 % des biens et services produits en Cisjordanie. L'UNSCO estime également que les pertes de revenus à ce jour, pour la seule année 2002, se sont élevées à près de un milliard de dollars, et depuis septembre 2000 à 3,3 milliards de dollars. Le graphique joint en annexe C montre bien la corrélation directe qui existe entre le revenu par habitant et le nombre annuel des jours de bouclage depuis 1994.

29. L'impact des récents événements sur la production agricole, qui est une source de revenu primaire et secondaire pour une grande partie de la population rurale, a lui aussi été particulièrement grave. Outre les destructions physiques estimées à 167 millions de dollars et les importantes pénuries d'eau, les bouclages ont empêché les exploitants agricoles de tailler et de récolter, mais aussi de traiter et commercialiser un large éventail de produits cultivés. La récolte des oranges à Gaza, par exemple, a été presque entièrement perdue parce qu'aucune exportation n'était autorisée, jusqu'au moment où les oranges n'ont plus été vendables. L'effondrement général du secteur agricole aurait également eu un important impact sur la sécurité alimentaire. Comme cela est indiqué au paragraphe 54, le niveau de malnutrition grave est déjà légèrement plus élevé dans les zones rurales que dans les zones urbaines.

Des niveaux de pauvreté croissants

30. Le niveau de pauvreté en Cisjordanie et à Gaza a considérablement augmenté ces deux dernières années. En septembre 2000, la Banque mondiale estimait que 21 % de la population vivait au-dessous du seuil de pauvreté (défini comme une consommation de moins de deux dollars par personne et par jour). En janvier 2001, le taux de pauvreté avait augmenté de 33 %. Les données recouvrées par le bureau central palestinien des statistiques (PCBS selon son sigle anglais) pour janvier et février 2002 laissent à penser que ce taux a doublé depuis, pour atteindre 66,5 % (57,8 % en Cisjordanie et 84,6 % à Gaza).

31. Alors que les taux de pauvreté ont été multipliés par trois, il n'y a eu aucune baisse générale des prix. En dépit d'une augmentation de la demande globale, l'offre a diminué dans de nombreuses zones à cause des perturbations du marché dues aux restrictions d'accès. De plus, la

structure des prix, tant en Cisjordanie qu'à Gaza, reste fortement influencée par les prix pratiqués en Israël, du fait d'un environnement dans lequel les prix restent élevés mais où les revenus se sont effondrés.

La perte de l'accès aux soins de base et aux services permettant de satisfaire les besoins fondamentaux

32. Du point de vue humanitaire, la conséquence la plus dévastatrice du système des bouclages est le fait que des pans entiers de la population civile ne sont plus en mesure d'accéder aux services essentiels et qu'on ne les leur fournit plus. Cette situation est en partie imputable à la perte de revenus qu'a subie un très grand nombre de personnes. Une proportion croissante de la population n'est tout simplement plus capable de se permettre de payer pour recevoir les services de base et satisfaire ses besoins les plus fondamentaux. Les bouclages ont également un impact plus direct sur l'accès aux services de base. Ils empêchent physiquement les personnes qui ont besoin de certains services d'y avoir accès, par exemple les personnes atteintes de maladies chroniques et qui ne peuvent pas se rendre dans les villes et agglomérations où elles pourraient bénéficier du traitement adéquat. Dans le même temps, la population civile est souvent coupée des fournitures et services essentiels qui ne parviennent pas jusqu'à elle : par exemple, certains malades qui ont besoin de médicaments, ou des villages qui durant les mois d'été dépendent entièrement des camions–citernes transporteurs d'eau. Les services les plus touchés ont été les soins de santé, l'enseignement, l'approvisionnement en produits alimentaires, l'approvisionnement en eau et les réseaux d'assainissement.

La santé

33. Les restrictions d'accès continuent à empêcher les Palestiniens qui ont besoin d'un traitement médical de se rendre là où on pourrait le leur dispenser. Cela est plus particulièrement le cas pour les populations placées sous couvre-feu et pour les plus de 60 % de la population de Cisjordanie qui habitent dans des zones rurales. Ces personnes ont besoin de se rendre dans les hôpitaux et dans les centres de soins de santé secondaires et tertiaires situés dans les villes et agglomérations, afin d'y recevoir aussi bien des soins d'urgence qu'un traitement régulier, par exemple une dialyse ou une chimiothérapie. De nombreux hôpitaux ont fait état d'une baisse très marquée de la fréquentation de leurs services. Par exemple, l'hôpital St Luc de Naplouse a connu une baisse de fréquentation de 49 % dans son service de médecine générale, de 73 % dans ses services spécialisés et de 53 % en chirurgie. L'UNRWA a signalé des baisses de fréquentation des services de prévention, et notamment une baisse de 52 % du nombre de femmes souhaitant recevoir des soins postnatals. Selon le ministère de la santé, les programmes de santé scolaire ont connu une baisse de fréquentation de 60 %. Le personnel médical a également été confronté à de graves difficultés pour se rendre à son lieu de travail, d'où des taux d'absentéisme qui dans certaines zones ont atteint 40 %.

34. On a signalé de nombreux cas de retards importants et de refus de passage aux postes de contrôle pour les ambulances et les personnes nécessitant des soins médicaux d'urgence. Aux différents postes de contrôle qu'elle a traversés, la mission a pu voir de longues files de véhicules dans lesquelles se trouvaient des ambulances. Selon l'union des comités palestiniens de secours médical (UPMRC selon son sigle anglais), ces retards et refus de passage ont eu pour conséquence la naissance de trente-neuf enfants aux postes de contrôle. B'Tselem a apporté les preuves de nombreux cas dans lesquels les FDI avaient empêché des personnes malades ou blessées de passer les postes de contrôle, ce qui à plusieurs reprises a provoqué leur décès. La société palestinienne du Croissant-Rouge (PCRS selon son sigle anglais) et l'UPMRC ont fait état de plus de six cent cas de refus de passage à des ambulances. Il arrive fréquemment que des ambulances ne puissent pas se rendre dans des zones reculées parce qu'elles doivent attendre jusqu'à plusieurs heures à chaque

poste de contrôle. Les malades sont souvent contraints de quitter l'ambulance, font ensuite l'objet de fouilles extrêmement inquisitrices et doivent marcher pour passer le poste de contrôle; et ces mesures s'appliquent tout aussi bien aux femmes enceintes.

35. Pour atténuer les effets des bouclages, le Ministère de la santé et les autres fournisseurs de soins de santé ont tenté de décentraliser au maximum les services spécialisés, par exemple en créant des centres de soins mobiles ou en augmentant le nombre des appareils de dialyse disponibles et en les redéployant vers les zones plus reculées. Certaines de ces mesures ont permis d'améliorer l'accès à plusieurs zones de Cisjordanie et de la bande de Gaza, mais elles sont également très onéreuses et ne sauraient être maintenues à long terme. Les postes de contrôle ont également fait obstacle aux déplacements de ces centres de soins mobiles. Un représentant d'une importante ONG médicale internationale a déclaré à la mission qu'une fois parvenues aux postes de contrôle, leurs équipes doivent rebrousser chemin dans la moitié des cas. Lorsqu'elles sont autorisées à passer, le personnel médical est souvent contraint de porter lui-même les équipements pour traverser la zone du poste. Depuis mars 2002, les bouclages intérieurs ont pratiquement cloué sur place les centres de soins mobiles créés par l'UNRWA.

36. L'importation et la distribution des fournitures médicales continuent à être entravées, aussi bien à l'entrée en Israël qu'à l'entrée dans le Territoire palestinien occupé, en Cisjordanie comme à Gaza. Certaines matières premières indispensables aux sociétés de produits pharmaceutiques ont été interdites d'accès. Les fournitures médicales et autres fournitures pour l'aide humanitaire sont considérablement retardées aux points d'entrée en Israël, en Jordanie et en Egypte. Le responsable de l'UPMRC a indiqué à la Mission que deux des ambulances de son organisation avaient été retenues à la frontière pendant plus de sept mois. Des équipements médicaux venus de Suède et d'une valeur de 20 000 dollars avaient été renvoyés après que l'entrée leur avait été refusée. Le Ministre de la santé de l'Autorité palestinienne a déclaré que trente nouvelles ambulances attendaient en Jordanie et en Egypte l'autorisation d'entrée des autorités israéliennes. En Cisjordanie, contrairement aux assurances que lui avait données le coordinateur des activités gouvernementales dans les territoires, selon lesquelles les services essentiels, tels que les services de santé, ne seraient pas entravés, le ministère de la santé avait été contraint de solliciter l'appui des institutions du système des Nations Unies et des ONG internationales pour transporter des fournitures médicales depuis ses entrepôts centraux jusqu'à des zones reculées parce que les employés palestiniens du ministère s'étaient vu refuser l'accès à ces zones.

37. Un exemple illustre bien les difficultés auxquelles se heurtent les habitants des villages : celui d'un homme qui a contacté la mission à Beit Furik afin de lui demander de l'aide. Ses deux filles, gravement malades, avaient besoin d'urgence de produits laitiers spéciaux venant de Naplouse et de médicaments venant de Tel-Aviv . Du fait des bouclages intérieurs, il n'avait pas le droit d'aller à Naplouse, pourtant distante de moins de 10 kilomètres de son domicile, pour y acheter le lait nécessaire. Il ne pouvait plus non plus commander les médicaments indispensables afin de les faire venir d'Israël. La mission a demandé à un membre du personnel international des Nations Unies (un fonctionnaire du PAM) d'acheter le lait et de revenir à Beit Furik dans l'après-midi même. Ce fonctionnaire était accompagné du chef de l'antenne locale des comités palestiniens de secours agricole (PARC selon leur sigle anglais). Après avoir attendu deux heures, lors de leur retour, au poste de contrôle situé juste à l'entrée de Beit Furik, le fonctionnaire des Nations Unies a reçu l'autorisation de passer mais le Palestinien s'est vu refuser l'accès à son village où un couvre-feu avait été décrété entre-temps.

38. Les professionnels de la santé sont de plus en plus préoccupés par l'insuffisance des stocks de vaccins et des campagnes de vaccination. Ces campagnes n'ont lieu que par intermittence. Les restrictions d'accès et la très nette augmentation du nombre des accouchements

à domicile ont également eu des effets sur les vaccinations contre l'hépatite B et les tests de phénylcétonurie (PKU) qui ont pour but le dépistage de deux maladies pour lesquelles le moment du diagnostic et du traitement est crucial si l'on veut pouvoir éviter toute arriération mentale de l'enfant. Les tests PKU devraient être pratiqués dans les sept jours après la naissance. Avec le système des bouclages, il est devenu fréquent que les nouveau-nés ne soient plus du tout soumis à ces tests, ou que la transmission de ces tests et de leurs résultats entre les patients, les laboratoires et les centres de soins soit perturbée. Les vaccinations contre l'hépatite B doivent se faire par injection de trois doses : la première à la naissance, la deuxième un mois plus tard et la troisième six mois plus tard.

39. Le manque de revenus est aujourd'hui de plus en plus fréquemment cité comme l'une des principales raisons pour lesquelles les familles n'ont plus accès aux soins médicaux. Une étude réalisée il y a plus d'un an par le PCBS a montré que c'était pour des raisons d'ordre financier qu'un tiers des familles ne pouvaient pas obtenir les soins médicaux dont elles avaient besoin. Dans une enquête effectuée par le PCBS en juillet 2002, 76,5 % des ménages se trouvant dans l'incapacité d'accéder aux services de santé ont cité le manque de ressources comme principale cause de cette situation. L'UNRWA a fait état d'une augmentation de 18,6 % du nombre des réfugiés ayant recours à ses centres de soins de santé gratuits en Cisjordanie, ce qui montre que les gens n'ont pas d'autre choix ou que les réfugiés ne peuvent plus se permettre de payer des soins médicaux privés.

L'éducation

40. Les bouclages intérieurs ont eu de très importants effets négatifs en matière d'éducation, en raison, surtout, des restrictions à la liberté de déplacement des enseignants et des élèves. L'UNICEF estime qu'au cours de l'année scolaire 2001/2002, plus de six cent mille (61 %) des neuf cent quatre-vingt six mille enfants de Cisjordanie et de Gaza se sont retrouvés dans l'incapacité d'aller régulièrement à l'école. Le nombre des heures de cours a également été réduit du fait de la forte augmentation du nombre d'enseignants absents. Les écoles de l'UNRWA à Gaza ont connu des difficultés particulières, puisque environ un millier d'enseignant employés par l'office habitent dans les zones situées au sud de la bande de Gaza, lesquelles sont isolées par intermittence. Au cours d'une visite au «parlement des enfants» dans la ville de Gaza, la mission a été informée, par les enfants eux-mêmes, que c'était la première fois depuis septembre 2000 que les «délégués» des parties sud de Gaza avaient la possibilité de venir participer aux «débats». Le programme d'enseignement de l'UNRWA en Cisjordanie, qui comprend quatre-vingt quinze écoles, a lui aussi été gravement touché au cours de l'année scolaire 2001/2002, avec 72 571 jours/professeur perdus (total des journées d'absence d'un professeur, pour l'ensemble du corps enseignant), contre cinq mille cinq cent quatre-vingt cinq l'année scolaire précédente. En avril 2002, 76 % des enseignants ont été absents et 66 % des journées scolaires ont été perdues. Plusieurs écoles de l'UNRWA ont subi des dommages car elles ont été la cible de tirs ou ont été utilisées comme camps de détention provisoires.

41. Aucun examen organisé sur une base commune à l'ensemble des écoles n'a pu avoir lieu dans l'enseignement primaire à la fin de l'année scolaire 2001/2002, et les examens de l'année précédente ont révélé une nette détérioration des résultats des élèves, notamment en lecture et en calcul. Le taux général de réussite a baissé de plus de 20 % aussi bien en mathématiques qu'en langue arabe. Compte tenu des importantes perturbations subies pendant l'année scolaire 2001/2002, il est très probable que la situation se soit encore détériorée dans ce domaine. Le nombre des abandons de scolarité au cours la prochaine année scolaire est également source de graves préoccupations. Les obstacles à l'accès à l'éducation et le taux élevé du chômage des adultes risquent de contraindre de nombreux enfants à quitter l'école et à travailler pour compléter le revenu familial. Avant septembre 2000, le pourcentage des 10-14 ans qui exerçaient une activité

rémunérée en Cisjordanie était de 0,6 %. Ce pourcentage risque de devoir être multiplié plusieurs fois compte tenu des circonstances actuelles.

L'alimentation

42. L'accès à la nourriture est devenu de plus en plus difficile car la capacité des familles à acheter des aliments a été fortement réduite. Cette situation est essentiellement due au manque d'argent pour acheter les vivres nécessaires, mais on signale aussi des pénuries de certains produits alimentaires dues aux perturbations du marché. Lors d'une enquête récemment réalisée par l'Université Johns Hopkins et autres et financée par l'USAID [1], plus de la moitié des Palestiniens qui ont répondu ont déclaré qu'ils avaient dû réduire leur consommation alimentaire. Les premiers motifs cités pour justifier une telle décision étaient le manque d'argent (65 %) et les couvre-feux (33 %). Cinquante-trois pour cent des ménages ont déclaré qu'ils avaient dû emprunter de l'argent pour se procurer des vivres (88,8 % à Bethléem). Environ 17 % des ménages ont été contraints de vendre des biens pour acheter ne serait-ce que du pain, des pommes de terre et du riz. Les ménages achètent par ailleurs moins de produits alimentaires plus onéreux que les autres, tels que de la viande, le poisson ou le poulet.

43. Selon les résultats de cette même enquête, les perturbations massives qu'a subi le marché ont eu pour conséquence des pénuries d'aliments à haute teneur en protéines tels que le poisson, le poulet et les produits laitiers, chez les grossistes et les détaillants de Cisjordanie et de Gaza. Cinquante-deux pour cent des grossistes et 48,3 % des détaillants ont également fait état d'une pénurie de préparations pour nourrissons. En Cisjordanie, les personnes qui ont répondu à l'enquête ont déclaré que les pénuries alimentaires étaient provoquées par une combinaison de facteurs : les bouclages de routes, les postes de contrôle, les couvre-feux et les incursions des FDI. Les pénuries signalées au nord de Gaza étaient principalement dues aux bouclages de la frontière entre Israël et la Cisjordanie, alors que celles sévissant dans les zones centrale et sud étaient à peu près imputables à parts égales aux bouclages de la frontière et aux bouclages intérieurs.

L'eau et les systèmes d'assainissement

44. Les services d'approvisionnement en eau et les services d'assainissement nécessaires à la satisfaction des besoins quotidiens des habitants et au maintien de leur santé ont été frappés de plein fouet par le système de bouclage, et ce sous diverses formes. L'impact le plus direct concerne l'approvisionnement en eau et le rejet des déchets solides. La collecte et le rejet ou la destruction des déchets solides ont été rendus particulièrement difficiles dans les zones où les bennes à ordures ne pouvaient pas se déplacer librement, y compris dans les villes et autres agglomérations soumises à un couvre-feu prolongé et dans les zones où plusieurs villages sont desservis par un petit nombre de bennes. La collecte et la destruction des déchets solides ont de même été problématiques dans la bande de Gaza où l'accès à la décharge de la ville de Gaza, située au sud de la voie de contournement menant à la colonie de peuplement de Netzarim, est resté impossible pendant de longues périodes. Du fait des restrictions imposées aux bennes à ordures, les déchets solides sont souvent jetés à même le sol, dans des zones habitées.

45. Du point de vue humanitaire, les graves pénuries d'eau qu'ont connues de nombreuses zones rurales dans toute la Cisjordanie sont potentiellement catastrophiques. [2] On estime à environ trois cent le nombre des localités qui, surtout pendant les mois d'été, lorsque les citernes sont à sec, dépendent en très grande partie de l'eau apportée par des camions-citernes municipaux et privés. Ces camions-citernes font l'objet de sévères restrictions de liberté de circulation du fait de l'existence des nombreux postes de contrôle et barrages routiers installés dans toute la Cisjordanie. Dans certains cas, ils n'ont pas le droit d'accéder aux villages pendant plusieurs jours.

Il leur est également interdit de procéder au remplissage dans les zones urbaines pendant le couvre-feu. Les résultats préliminaires d'une enquête que le groupe palestinien d'hydrologie est en train de réaliser sur l'approvisionnement en eau et les services d'assainissement montrent que vingt-quatre des vingt-sept villages étudiés ont connu des difficultés dans ce domaine à cause des couvre-feux et des bouclages. Ils révèlent également que des maladies liées à l'approvisionnement en eau et à l'assainissement ont été contractées dans douze des vingt-sept villages.

46. Lorsque la Mission s'est rendue à Beit Furik, village situé à moins de 10 kilomètres au sud-est de Naplouse, aucun camion-citerne n'y était venu depuis neuf jours consécutifs, car les camions n'avaient pas reçu l'autorisation d'entrer dans cette localité [3]. Avant cette période, seule une petite partie de l'eau nécessaire (il aurait fallu entre trente et cinquante camions par jour) était livrée. Selon les déclarations des villageois, les tentatives qui ont eu lieu pour atteindre les sources dans les zones avoisinantes ont été stoppées par les patrouilles des FDI, et il est même arrivé que les villageois soient contraints de jeter l'eau qu'ils venaient de puiser. L'insuffisance de l'approvisionnement en eau dans le village a déjà eu pour conséquence la perte de milliers de poulets, de moutons et de produits agricoles.

47. Autre cause de la pénurie d'eau dans certaines zones rurales : les agissements des colons israéliens. Selon le groupe palestinien d'hydrologie, ces colons ont une fois coupé les tuyaux d'arrivée d'eau desservant sept villages avoisinants. Des preuves d'autres cas d'interférence des colons israéliens dans l'approvisionnement en eau des villages cisjordaniens ont été apportées par B'Tselem.

48. A cause de l'augmentation des frais de transport et du bouclage des routes, le prix moyen de l'eau transportée par camion-citerne est aujourd'hui nettement plus élevé qu'auparavant; il a même augmenté de 80 % en certains endroits de Cisjordanie. Il est dès lors devenu bien plus difficile, pour les familles, de satisfaire leurs besoins domestiques de base et leurs besoins vitaux. Les zones urbaines continuent elles aussi à connaître des pénuries d'eau. Dans certains cas, les municipalités ne sont pas en mesure d'importer les pièces détachées pour les pompes des puits, et des pompes sont arrêtées faute de carburant.

L'importance de la prochaine récolte d'olives

49. Au cours de la visite de la mission en Cisjordanie, l'un des principaux problèmes cités par les exploitants agricoles, les pouvoirs publics locaux et les représentants des ONG a été le risque de perdre la récolte d'olives qui doit commencer en octobre. Les récoltes d'olives suivent un cycle de deux ans et l'on s'attendait à ce que celle de cette année soit particulièrement rentable. Mais vu les circonstances actuelles, de nombreux exploitants agricoles ne pourront ni cueillir leurs olives ni produire et commercialiser l'huile qu'ils en tireront.

50. Comme dans la plupart des autres secteurs d'emploi et de production, la principale contrainte est celle de l'accès. Les exploitants ne peuvent pas se rendre dans leurs champs à cause du blocage des routes — même les chemins de terre ont été creusés, remblayés, bouleversés par les FDI —, des menaces et des actes de violence des colons voisins, et des nouvelles modalités d'octroi des permis qui dans certains cas sont nécessaires pour pouvoir se rendre dans les champs situés de l'autre côté d'une route de contournement. Une fois les olives cueillies, elles sont généralement transportées vers la presse à olives la plus proche, dans les villages voisins, idéalement le même jour que celui de la cueillette afin d'éviter toute montée du niveau d'acidité qui les rendrait impropres à la production d'huile. Après que l'huile a été produite, les exploitants doivent se rendre dans les villes et les villages pour la vendre, et les commerçants pour l'acheter.

51. Si le système des bouclages en Cisjordanie n'est pas radicalement modifié dans des proportions importantes avant octobre, la circulation des personnes et des équipements nécessaires à la récolte sera tellement entravée que l'essentiel du revenu que les exploitants agricoles tirent de leur production d'huile d'olive sera perdu. Cette production représente un quart des activités du secteur agricole palestinien. De plus, le nombre des personnes qui dépendent de la production agricole en tant que source de revenus a considérablement augmenté car les ouvriers ont perdu leur emploi en Israël et dans les colonies de peuplement. Sans le revenu tiré de la vente de l'huile d'olive, une grande partie de la population rurale pourra encore moins se permettre qu'auparavant d'acheter les biens et services de base dont elle a besoin ou de rembourser sa dette croissante.

II. La situation humanitaire

52. Avant de décrire brièvement les principaux indicateurs de la crise humanitaire qui est en train de s'aggraver rapidement, il convient de faire observer que dans une grande partie de la Cisjordanie et dans une moindre mesure à Gaza, la population avait auparavant atteint un niveau de vie comparable à celui d'autres pays à revenu moyen; elle bénéficiait par exemple d'un système de soins de santé sophistiqué et son taux d'alphabétisation était de 98 %. L'économie palestinienne avait également amorcé une reprise en 1998, qui a été brutalement interrompue en septembre 2000. L'aide financière des donateurs depuis 1993 s'était élevée, au total, à 4,4 milliards de dollars, soit un des niveaux d'aide officielle au développement, par habitant, les plus élevés au monde (195 dollars par personne et par an). La valeur de cet énorme effort collectif risque de s'évaporer si la situation ne s'améliore pas dans un proche avenir.

Les indicateurs d'une aggravation rapide de la crise humanitaire

L'expansion de la malnutrition

53. Les résultats préliminaires de l'évaluation nutritionnelle à laquelle se sont livrés l'Université Johns Hopkins et autres révèlent une augmentation substantielle du nombre d'enfants atteints de malnutrition ces deux dernières années : 22,5 % des enfants de moins de cinq ans souffrent de malnutrition grave (9,3 %) ou chronique (13,2 %) [4], alors que selon les enquêtes du PCBS, le niveau de la malnutrition grave, en 2000, était de 1,4 % et celui de la malnutrition chronique de 6,2 %.

54. Les taux préliminaires sont particulièrement élevés à Gaza, où l'enquête a montré que 13,2 % des enfants souffrent de malnutrition grave, soit plus de trois fois le taux de la Cisjordanie (4,3 %). Le taux de la malnutrition chronique à Gaza (17,5 %) est cinq fois plus élevé qu'en Cisjordanie (3,5 %). Les zones non urbanisées ont des taux de malnutrition grave plus élevés que les autres, ce qui laisse à penser que les zones traditionnelles de production agricole sont confrontées à de graves problèmes de sécurité alimentaire. La malnutrition chronique, en revanche, est plus fréquente dans les zones urbaines.

La détérioration de l'état de santé de la population

55. Compte tenu des difficultés auxquelles se heurte la population pour avoir accès aux services de santé et aux médicaments, il faut s'attendre à une hausse régulière des taux de mortalité et de propagation des maladies. Autre source de préoccupation croissante : la fréquence accrue de maladies telles que la diarrhée et les maladies transmises par les insectes, dues à la contamination des eaux, au manque de possibilités de destruction des ordures et à la réduction de la couverture des

programmes de vaccination, notamment ceux destinés aux enfants de moins de cinq ans. Par exemple, quelque six cent cas de shigellose (diarrhées avec selles sanguinolentes) ont été enregistrés dans le Gouvernorat de Naplouse depuis juillet 2002.

56. L'enquête de l'Université Johns Hopkins a montré que le taux d'anémie, chez les enfants palestiniens de moins de cinq ans, a atteint 19,7 % (20,9 % en Cisjordanie et 18,9 % à Gaza). L'anémie est provoquée par des carences en fer, en acide folique et en protéines alimentaires; elle peut avoir des effets négatifs sur la croissance de l'enfant et l'empêcher de suivre correctement un enseignement; elle est également responsable de la naissance de nourrissons de poids trop faible, d'accouchements prématurés et d'une baisse des capacités immunitaires contre les maladies infectieuses.

57. Le manque d'accès aux services de santé a également pour conséquence une augmentation des taux de mortalité infantile et maternelle, encore qu'en la matière l'on ne dispose pas des chiffres totaux exacts. Selon l'UNRWA, le taux de mortinatalité, en Cisjordanie, a augmenté de 31 % entre septembre 2000 et décembre 2001. D'après le Fonds des Nations Unies pour la population (FNUAP), le nombre des accouchements de femmes à leur domicile, sans l'aide d'un professionnel de la santé, est passé de trois à trente pour cent, et le pourcentage des naissances assistées par un(e) professionnel(le) ayant reçu une formation dans ce domaine a baissé de 97,4 % à 67 %.

L'épuisement des moyens jusqu'à présent utilisés pour faire face à la situation

58. Une analyse des moyens utilisés ces 23 derniers mois par les ménages palestiniens pour faire face aux bouclages prolongés et à la baisse de leurs revenus montre que la crise humanitaire a toutes les chances de s'aggraver rapidement dans un proche avenir. Il devient de plus en plus probable que cette situation aura des effets à long terme sur la capacité de la population à entrer de nouveau dans un processus de développement. Les enquêtes réalisées au printemps 2001 par l'Université Bir Zeit et le PCBS, de même que l'enquête à laquelle se sont livrés l'Université Johns Hopkins et autres en été 2002 montrent que la plupart des stratégies adoptées pour faire face aux circonstances ne peuvent pas rester viables et qu'elles auront de graves répercussions à long terme sur la capacité des ménages à pourvoir à leurs propres besoins. Ces stratégies atteignent leurs limites intrinsèques ou ont pour effet une baisse de la capacité de production des ménages. Dans les deux enquêtes, environ la moitié des personnes qui ont répondu ont déclaré qu'elles avaient dû emprunter de l'argent pour acheter des vivres. La plupart de ces emprunts se font de façon informelle, auprès des membres de la famille et des commerçants et boutiquiers locaux. Au printemps 2001, cinq pour cent seulement des personnes concernées avaient emprunté à des banques ou d'autres établissements financiers. Environ 17 % des ménages avaient été contraints de vendre des éléments de leur patrimoine pour acheter de la nourriture (2002) et quelque 20 % avaient dû vendre des bijoux ou d'autres effets personnels (2001).

59. Les récentes enquêtes menées dans des villages cisjordaniens par Oxfam et ses partenaires, ainsi que les entretiens que les membres de la mission ont pu avoir aussi bien en Cisjordanie qu'à Gaza montrent que les réseaux de soutien qui ont permis aux ménages de faire face à leurs difficultés ont commencé à se déliter. De plus en plus de gens ont épuisé leur épargne. Les détaillants, y compris les boutiquiers et les fournisseurs d'eau, ne sont plus en mesure de faire crédit aux familles pauvres, ce qui prive la population de fournitures essentielles et dans bien des cas des moyens de gagner sa vie. De plus en plus pauvres eux-mêmes, les amis et la famille ne peuvent plus se permettre d'aider les autres membres vulnérables de leur communauté, dont la dette a augmenté. Le manque d'argent a également réduit la capacité des exploitants agricoles à acheter les fournitures de base, y compris les semences et l'eau.

III. L'intervention et la coordination humanitaires

La récente expansion des activités d'assistance

60. Depuis septembre 2000, les activités d'assistance ont pris une plus grande ampleur, tant en ce qui concerne leur champ d'application que leur échelle, pour tenter de résoudre le problème de la vulnérabilité croissante d'un pourcentage sans cesse plus élevé de la population. Selon les estimations, 1,8 million de Palestiniens reçoivent actuellement une aide alimentaire et d'autres formes d'aide d'urgence fournies par un large éventail de sources, au nombre desquelles les organismes de bienfaisance locaux. Ce nombre représente presque 55 % de la population totale du Territoire palestinien occupé (3,3 millions de personnes) et en ce qui concerne l'aide alimentaire directe, un apport cinq fois plus important que celui d'il y a deux ans. Les principaux fournisseurs de cette assistance et de ces services de base sont entre autres :

— l'Autorité palestinienne, en particulier ses Ministères de la santé, de l'éducation et des affaires sociales, ainsi que les municipalités;

— l'UNRWA, deuxième plus important fournisseur de services sociaux après l'Autorité palestinienne, dont les activités sont surtout axées sur l'aide aux réfugiés;

— les autres institutions du système des Nations Unies, dont le PAM, le PNUD, le FNUAP et l'UNICEF;

— le Comité international de la Croix-Rouge (CICR) et la Société palestinienne du Croissant-Rouge (PCRS);

— les ONG palestiniennes, qui par exemple fournissent une importante proportion des services de santé;

— les ONG internationales, qui ont progressivement renforcé leur présence depuis septembre 2000.

61. Les donateurs ont ajusté leurs programmes afin de tenir compte du caractère d'urgence de la situation et ils ont augmenté leur budget de soutien à l'Autorité palestinienne, financé des créations d'emploi et des programmes d'aide sociale, et accru leurs contributions à d'autres programmes de secours d'urgence. En 2001, plus de 80 % de leurs décaissements ont été affectés au soutien budgétaire et aux secours d'urgence, contre moins de 10 % l'année précédente. Dans le même temps, le soutien aux infrastructures orientées vers la croissance et aux projets d'acquisition de compétences a nettement diminué.

62. Etant donné que les causes premières de cette crise humanitaire sont la perte de revenus et l'impossibilité d'avoir accès aux services et fournitures essentiels, l'intervention en situation d'urgence a été axée sur quatre grands domaines : l'aide alimentaire, l'aide en espèces, la création d'emplois et les mesures d'urgence pour fournir les services de première nécessité, en particulier dans les secteurs de la santé et de l'éducation.

L'aide alimentaire

63. L'UNRWA a apporté une aide humanitaire (en produits alimentaires et en espèces) à un total de deux cent seize mille familles de réfugiés pauvres (neuf cent quatre-vingt dix mille personnes), ce qui représente 67 % de la population des réfugiés et une multiplication par neuf du nombre des cas de précarité traités par l'Office par rapport à l'an 2000. De même, le

programme alimentaire mondial a porté le nombre de ses bénéficiaires d'environ cent cinquante mille personnes avant septembre 2000 à cinq cent mille aujourd'hui. Cela signifie que presque 1,5 million de personnes (ou 45 % de la population totale) reçoivent actuellement d'une source ou d'une autre une aide alimentaire directe. Le PAM et le CICR, qui fournissent eux aussi une aide alimentaire directe, s'occupent de la population non réfugiée alors que les programmes de l'UNRWA s'adressent essentiellement aux réfugiés.

64. Le PAM a l'intention de distribuer, d'ici à fin 2002, 70 340 tonnes d'aide alimentaire, dont 61 250 tonnes de farine de blé (49 000) et de riz (12 250). L'aide alimentaire d'urgence du PAM est essentiellement constituée de farine et de riz. Comme l'économie palestinienne dépend fortement des céréales importées d'Israël, le PAM et l'UNRWA ne craignent pas que ces aides découragent la production alimentaire locale.

65. Le CICR fournit une aide alimentaire à un total de trois cent mille bénéficiaires, sous une forme directe, en puisant dans les stocks du PAM et en distribuant les produits à trente mille familles dans les villages bouclés de Cisjordanie (et aussi, mais de façon ponctuelle, dans la bande de Gaza). Il a par ailleurs lancé un programme de tickets d'alimentation le 13 août 2002. Ce programme apporte une aide à cent vingt mille personnes dans les neuf plus grands centres urbains de Cisjordanie. Chaque famille recevra des tickets d'alimentation d'une valeur pouvant aller jusqu'à 90 dollars par mois, qu'elle échangera contre de la nourriture et des articles non alimentaires de première nécessité dans des magasins préalablement sélectionnés, ce qui permettra de donner un nouvel élan au commerce local. La liste des articles, telle qu'elle a été approuvée, contient des produits que l'on doit se procurer auprès des collectivités rurales (par exemple des primeurs et de l'huile d'olive).

L'aide en espèces

66. L'aide directe en espèces représente encore une petite partie de l'ensemble des activités d'assistance. Pour 2001, le budget de l'aide sociale du ministère des affaires sociales (MOSA selon son sigle anglais) prévoyait 47 millions de dollars d'aide en espèces pour quarante cinq mille familles. Mais par manque de fonds, le MOSA a pris plusieurs mois de retard dans ces paiements. L'UNRWA a besoin de presque 20 millions de dollars en 2002 pour apporter une aide en espèces à plusieurs milliers de familles démunies à Gaza et en Cisjordanie (voir également le paragraphe 63 ci-dessus). Des ONG ont également été utilisées par les donateurs pour distribuer l'aide en espèces aux familles pauvres.

67. Une autre forme d'aide financière a été fournie par l'intermédiaire du programme de micro-crédit et de micro-entreprises de l'UNRWA, qui accorde des prêts aux propriétaires de petites entreprises et aux créateurs de micro-entreprises. Ce programme a été gravement touché depuis septembre 2000. En 2001, le montant total de ses prêts s'est élevé à 52 % seulement de celui de l'année précédente. Qui plus est, bon nombre de ses clients se sont retrouvés dans l'incapacité de rembourser leur emprunt.

Les programmes de création d'emplois

68. Les programmes d'urgence de l'UNRWA pour la création d'emplois, qui ont besoin de quelque 56 millions de dollars en 2002, sont destinés à des travailleurs recrutés directement par l'Office et indirectement dans le cadre de projets communautaires et sur la base de contrats dans le secteur privé. Des ONG ont également joué un rôle efficace et croissant dans la création

d'emplois, par exemple dans le cadre du projet «ONG palestiniennes» de la Banque mondiale et par l'intermédiaire des comités palestiniens de secours agricole (PARC), qui ont fait œuvre de pionnier dans les zones rurales.

La fourniture des services d'urgence

69. Les deux principaux fournisseurs de services en Cisjordanie et dans la bande de Gaza — l'Autorité palestinienne et l'UNRWA — ont essayé de maintenir dans la mesure du possible le même niveau de services qu'auparavant. Pour desservir certaines zones coupées de tout service essentiel, ils ont dû adopter, de même que d'autres fournisseurs de services, des mesures inhabituelles, telles que la stratégie de «décentralisation» qu'a suivie le ministère de la santé, et qui a pour but d'accorder davantage d'autonomie aux responsables locaux de la santé, de redéployer l'équipement de santé vers les villes de plus petite taille et vers les zones rurales, et de créer des centres de soins mobiles. L'UNRWA a adopté des stratégies similaires et a par exemple recruté un grand nombre d'enseignants supplémentaires dans les zones reculées. Ces mesures n'ont pas permis de compenser la chute brutale du niveau de fourniture des services due aux restrictions d'accès et à la diminution des ressources disponibles. De ce fait, à une importante augmentation de la demande en soins de santé sont malencontreusement venues répondre des coupes sombres dans les fournitures et les ressources disponibles, et ce en dépit des efforts déployés par les organisations internationales, les ONG et les donateurs. Dans les villages, l'approvisionnement d'urgence en eau, qui dépend des camions-citernes locaux, n'a généralement pas pu être assuré.

Les restrictions d'accès et les autres contraintes opérationnelles auxquelles se heurtent les activités d'assistance

70. Depuis septembre 2000, il est devenu de plus en plus difficile, pour les organisations humanitaires et les fournisseurs de services internationaux et palestiniens, d'apporter une assistance à la population palestinienne. Au moment même où les besoins à satisfaire d'urgence se sont multipliés, ces organisations se retrouvent confrontées à un nombre sans cesse accru de restrictions d'accès et autres contraintes opérationnelles qui rendent de plus en plus difficiles les efforts qu'elles déploient pour répondre à ces besoins. Ces contraintes ont eu pour effet une importante augmentation des frais de fonctionnement au fur et à mesure que du personnel international a dû être déployé et que d'autres coûts sont eux aussi montés en flèche. Elles ont également eu un impact disproportionné sur les organisations qui emploient un grand nombre de Palestiniens, en particulier les ministères de l'Autorité palestinienne, l'UNRWA et les ONG palestiniennes. Les organisations dans lesquelles la proportion de personnel international est plus importante parviennent à travailler relativement plus facilement que les autres mais elles n'en sont pas moins confrontées elles aussi à d'énormes obstacles.

Les permis octroyés au personnel palestinien

71. Les restrictions entrées en vigueur en septembre 2000 touchent très durement le personnel palestinien des Nations Unies, des autres organisations humanitaires et de l'Autorité palestinienne. Les membres de ce personnel sont soumis aux mêmes contraintes que les autres Palestiniens, y compris l'obligation de détenir un permis pour entrer en Israël ou à Jérusalem-Est lorsqu'ils viennent de Cisjordanie ou de la bande de Gaza et, dans de nombreux cas, il leur faut aussi des permis pour se déplacer à l'intérieur même de la Cisjordanie et de la bande de Gaza. L'UNRWA, qui au total emploie 11 000 Palestiniens dans le Territoire palestinien occupé, a besoin de 383 permis pour ses employés qui viennent de Cisjordanie afin de travailler à son bureau de terrain à Jérusalem. Après des années pendant lesquelles seul un petit nombre de ces permis était refusé pour des raisons de sécurité, l'UNRWA a éprouvé de grandes difficultés pour obtenir des permis durant la majeure partie de l'année 2002. Les choses se sont un peu décantées à la mi-août,

et l'Office a reçu 140 permis supplémentaires, grâce auxquels les membres de son personnel local habitant la Cisjordanie ont pu se rendre à leurs postes de travail à Jérusalem. A ce jour l'Office a reçu un total de 247 permis sur les 383 qui lui sont nécessaires pour assurer le fonctionnement normal de ses activités en Cisjordanie. Des permis ont également été délivrés à plusieurs ONG internationales, permettant à certains membres de leur personnel occupant des postes clés de travailler à Jérusalem. Mais ils ne sont valables que pour un mois (au lieu de trois mois avant septembre 2000) et leurs détenteurs ne sont pas autorisés à se rendre en Israël ou à Jérusalem-Est à bord de leur propre véhicule. De plus, le temps que leur prennent leurs déplacements et les coûts que ceux-ci impliquent ont augmenté de façon exponentielle.

72. A Gaza, les 36 permis que le personnel local de l'UNRWA avait reçus pour pouvoir entrer en Israël (et en Cisjordanie) ont tous été révoqués après septembre 2000. L'UNRWA doit à présent demander des permis d'entrée valables un jour, qui ne sont accordés que dans des circonstances exceptionnelles. Aucune autorisation de conduire un véhicule n'est délivrée à ce type de personnel, qui doit avoir recours aux chauffeurs internationaux. De plus, 765 membres du personnel de terrain et 26 pour cent des membres du personnel du bureau de Gaza ont été touchés par les bouclages intérieurs dans la bande de Gaza et la plupart du temps ils ne sont pas en mesure de se présenter à leur lieu d'affectation normal. Ces restrictions ont été quelque peu assouplies depuis l'ouverture de la route côtière et du point de passage de Gush Qatif.

Restrictions générales à la circulation du personnel et des fournitures et équipements humanitaires

73. La liberté de circulation des véhicules et du personnel des Nations Unies et des autres organisations humanitaires continue à être entravée par les postes de contrôle et les barrages routiers auxquels les véhicules doivent attendre longtemps et se voient parfois refuser le droit de passage. L'accès des convois humanitaires et des équipes médicales (y compris les ambulances) à des zones sous couvre-feu est fréquemment refusé. De plus, des membres du personnel des Nations Unies et d'autres organisations humanitaires ont été victimes de maltraitance, de harcèlement physique, d'arrestations et d'actes de violence à des postes de contrôle et ailleurs en Cisjordanie. Le personnel des Nations Unies, y compris le personnel international qui ne bénéficie pas du statut diplomatique, continue à faire l'objet d'une fouille complète de ses véhicules et de ses bagages au point de passage de Erez, entre Gaza et Israël. Lorsque la mission est revenue de Gaza en Israël, l'un de ses trois véhicules a été fouillé et retenu au point de passage de Erez. Cet incident est survenu en dépit des autorisations écrites que les autorités israéliennes avaient accordées pour l'ensemble des véhicules de la mission.

74. Les camions des organisations humanitaires n'ont le droit de pénétrer en Cisjordanie et d'y circuler qu'avec l'autorisation préalable du bureau du coordinateur de district des FDI (DCO) et uniquement s'ils sont conduits par un chauffeur international. Les camions de l'UNRWA ne peuvent pas circuler entre les entrepôts de l'Office à Jérusalem et ses programmes en Cisjordanie sans être conduits par des chauffeurs internationaux et sans que les personnes qui se trouvent à leur bord ne détiennent des cartes d'identité de Jérusalem. Le PAM a dû mobiliser une flotte de huit camions conduits par des chauffeurs internationaux, avec à leur bord des équipes d'appui détachées de l'Agence suédoise pour les secours d'urgence. Cet arrangement de courte durée a été prolongé jusqu'en octobre 2002 afin de permettre au PAM de transporter ses vivres et d'aider les autres organisations qui ne disposent ni de camions internationaux ni de chauffeurs eux aussi internationaux. A la mi-août 2002, le PAM a par exemple mis sa flotte de huit camions à la disposition du ministère de la santé afin de transporter 26 tonnes de matériel médical de l'entrepôt central du ministère, situé à Ramallah, jusqu'à Tulkarm et Bethléem.

75. Les cargos chargés d'équipements pour l'aide humanitaire et d'autres marchandises destinées aux organisations humanitaires et à l'Autorité palestinienne continuent à être considérablement retardés, et dans certains cas se voient refuser l'entrée en Israël ou dans le Territoire palestinien occupé. Ces retards sont particulièrement importants au port de Ashdod, où la durée moyenne de transit, pour un porte-conteneurs, est de plus de deux semaines, et au pont Allenby, le principal point d'entrée lorsque l'on vient de Jordanie. Dans de nombreux cas, les frais occasionnés par les dépassements de délais et les frais de stockage à payer pendant que les cargaisons étaient inspectées avant que leur débarquement ne soit autorisé ont été supérieurs à la valeur des marchandises importées.

76. Une autre contrainte qui pèse sur les activités de plusieurs institutions du système des Nations Unies et des ONG internationales est le fait qu'Israël a refusé d'accorder des visas d'entrée au personnel ou au contractants d'origine arabe ou ressortissants d'un pays arabe. Au fur et à mesure qu'elles renforcent leur présence, les organisations humanitaires internationales ont besoin, d'urgence, d'un personnel arabophone. Même les fonctionnaires des Nations Unies ont fait l'objet de ces restrictions. Dans certains cas, les ressortissants de pays arabes reçoivent des visas d'entrée mais ils n'ont le droit de se rendre ni en Cisjordanie ni dans la bande de Gaza.

77. L'Union européenne détient les preuves de 19 cas constatés depuis juin 2001, dont 13 depuis fin mars 2002, où des consultants et experts internationaux recrutés pour des opérations de secours et des projets de développement se sont vus refuser l'entrée en Israël à l'aéroport Ben Gurion ou au pont Allenby. Dans le cas le plus récent, trois Italiens spécialistes de l'aide humanitaire ont été refoulés à l'aéroport Ben Gurion, le 5 août 2002, alors qu'ils avaient préparé leur voyage avec l'ambassade d'Israël à Rome. On leur avait déjà refusé l'entrée en Israël le 13 juillet 2002.

Le décalage entre la politique israélienne et sa mise en oeuvre

78. L'un des problèmes régulièrement mentionnés par les donateurs, les institutions du système des Nations Unies et les autres organisations humanitaires est l'existence d'un important décalage entre la politique officielle israélienne et son application sur le terrain. La mission a soulevé cette question avec les autorités israéliennes, et ce au plus haut niveau .

79. En principe, le Gouvernement israélien a accepté, à plusieurs occasions, de faciliter les activités de tous les fournisseurs d'assistance internationaux et de minimiser les effets négatifs de ses mesures de sécurité sur la population civile. Cela impliquait des engagements et des politiques autorisant le libre accès du personnel et des équipements de ces organisations, de même que l'amélioration de la situation aux postes de contrôle, y compris le passage des Palestiniens ayant besoin d'un traitement médical. Comme nous l'avons déjà indiqué ci-dessus, le Coordinateur des activités gouvernementales dans les territoires a à de nombreuses reprises donné des assurances selon lesquelles les services essentiels tels que les services de santé ne seraient pas entravés.

80. Or, en dépit de ces assurances et engagements, il n'y a eu que peu d'améliorations sur le terrain ces 23 derniers mois. Au contraire, au fur et à mesure que le conflit s'est intensifié, de nouvelles contraintes sont venues s'ajouter aux premières et de nombreuses mesures de restriction déjà en vigueur ont été rendues plus rigoureuses encore. L'entrée du personnel international en Israël est devenue extrêmement difficile, comme le prouvent les multiples refoulements de travailleurs humanitaires sous contrat avec les Nations Unies. Une autre préoccupation, encore plus grave, concerne le problème de l'accès et des déplacements en Cisjordanie et à Gaza, qui ont

été décrits ci-dessus. Même le personnel international se voit fréquemment intimer l'ordre de faire demi-tour par les soldats des FDI de faction aux postes de contrôle, et ce malgré les autorisations préalablement accordées par les autorités israéliennes.

81. Un problème persistant depuis septembre 2000 est le manque de coopération des FDI, notamment au niveau opérationnel et de la part des soldats et sous-officiers affectés sur le terrain. Il est bien connu, et il a également été reconnu par les autorités israéliennes, que de nombreux soldats affectés aux postes de contrôle sont relativement inexpérimentés et n'ont que peu de formation en ce qui concerne l'interaction avec la population civile ou le personnel humanitaire. Dans de récents rapports, le Gouvernement a recommandé que des mesures urgentes soient prises pour affecter davantage de réservistes expérimentés aux postes de contrôle afin de faire baisser les niveaux de harcèlement auxquels l'on est aujourd'hui parvenu, de même que le nombre des incidents violents. Une autre question préoccupante soulevée par les institutions du système des Nations Unies et par les donateurs est le fait que leur interlocuteur habituel, le cureau du coordinateur des activités gouvernementales dans les territoires, bien que faisant partie, techniquement, des FDI, n'est pas en mesure d'assurer l'application efficace, par le personnel opérationnel des FDI, de la plupart des mesures qu'il a accepté de prendre.

La capacité de l'Autorité palestinienne à fournir des services

82. Tout au long de la crise actuelle, l'Autorité palestinienne, en particulier ses ministères de la santé, de l'éducation et des affaires sociales, de même que les municipalités, se sont efforcés de continuer à fournir un niveau minimum de services en dépit des dommages subis par leurs infrastructures et des graves obstacles à la liberté de circulation de leur personnel et de leurs fournitures et équipements. Pourtant l'Autorité palestinienne est confrontée à une grave crise budgétaire depuis septembre 2000. Ses besoins mensuels, pour un budget d'austérité, sont de 90 millions de dollars, dont 55 millions pour payer les salaires. Malgré les généreuses contributions des membres de l'UE et des membres de la Ligue arabe, et malgré ses propres recettes mensuelles, qui s'élèvent à environ 15 millions de dollars, l'Autorité palestinienne enregistre aujourd'hui un déficit budgétaire mensuel de 30 à 40 millions de dollars et elle est tout juste en mesure de payer les salaires de ses fonctionnaires et les frais de fonctionnement de ses services. Cela a déjà eu pour conséquence une nette diminution de la fourniture des services, y compris l'aide en espèces aux familles démunies.

83. L'une des principales causes de ce déficit budgétaire est le fait qu'Israël, qui actuellement recouvre chaque mois quelque 30 millions de dollars d'impôts (TVA, droits de douane et impôts sur les achats) au nom de l'Autorité palestinienne, retient les sommes ainsi perçues, au motif que ces sommes, si elles étaient reversées comme prévu, risqueraient d'être utilisées à des fins de corruption et pour financer le terrorisme. Israël a récemment accepté de reverser trois tranches de 15 millions de dollars chacune. Comme les transferts avaient été suspendus par Israël depuis décembre 2000, le montant total des fonds retenus par le Gouvernement israélien est estimé par le FMI à plus de 600 millions de dollars.

84. Une autre conséquence de l'effondrement complet de l'Autorité palestinienne serait la perte d'emploi de quelque 120 000 fonctionnaires. Bien que ce n'ait pas été là son objectif premier, le soutien budgétaire à l'Autorité palestinienne a dans les faits constitué le plus important système d'aide d'urgence à l'emploi. Une baisse importante du nombre ou du montant des salaires gouvernementaux aurait pour effet de relever dans d'importantes proportions les niveaux de pauvreté et de vulnérabilité, notamment à Gaza.

85. Il ressort de récents comptes rendus des médias et des entretiens avec les institutions du système des Nations Unies que la loi et l'ordre ne sont plus du tout respectés dans le Territoire palestinien occupé. La plupart des policiers palestiniens en uniforme ont arrêté de patrouiller dans les rues. Etant donné que les FDI ne sont pas engagées dans des activités régulières de contrôle du respect de la loi, un vide s'est créé, ce qui a déjà eu pour conséquence une augmentation de la criminalité économique. Comme nous l'avons constaté dans le cadre de bien d'autres crises, une nouvelle aggravation de la situation dans le domaine de l'ordre public et du respect de la loi exacerbera les conditions humanitaires des plus vulnérables et nuira gravement à la capacité qu'a la communauté internationale de les aider.

86. Un nouvel affaiblissement ou un effondrement complet de l'Autorité palestinienne aurait donc un impact majeur sur la situation humanitaire. Dans plusieurs zones critiques, les services essentiels tels que la santé, l'éducation, l'eau, l'électricité et l'ordre public ne pourront plus être assurés, d'où un déséquilibre auquel les autres fournisseurs d'assistance ne seront pas en mesure de remédier. La perte de revenus d'un important pourcentage de la population ne fera qu'accroître la pauvreté, avec toutes les conséquences que cela impliquera et qui sont décrites ailleurs dans le présent rapport. Enfin, l'impact de cette situation sur la construction de la nation et le processus de paix aura des conséquences indirectes et potentiellement de très large portée sur la situation humanitaire – conséquences qu'il est encore difficile de prévoir.

Le rôle central de l'UNRWA et le soutien du Gouvernement israélien

87. En tant que deuxième plus important fournisseur de services après l'Autorité palestinienne, l'UNRWA a joué un rôle crucial dans la crise actuelle, en répondant aux besoins urgents de centaines de milliers de réfugiés dans le Territoire palestinien occupé. Son mandat implique un champ d'intervention portant au total sur 1,5 million de réfugiés dans le Territoire palestinien occupé, dont 42 pour cent vivent dans des camps de réfugiés. Les services de santé et d'éducation comptent normalement pour 70 pour cent du budget de l'Office et grâce à eux les niveaux d'alphabétisation, de santé et les autres indicateurs du développement humain sont élevés chez ces réfugiés. La plupart des réfugiés étaient devenus autonomes avant la crise actuelle, et seulement 7,4 pour cent de la population réfugiée dans le territoire occupé recevaient des vivres ou d'autres aides directes de l'UNRWA.

88. La mission a trouvé encourageant d'apprendre que le Gouvernement israélien reconnaît pleinement et soutient le rôle important et positif de l'UNRWA. Le premier ministre Sharon et le ministre des affaires étrangères Peres ont tous les deux souligné l'importance de l'UNRWA et assuré la mission de leur plein appui à ses activités. Ils ont plus particulièrement déconseillé toute création de nouvelles organisations ou structures des Nations Unies et encouragé la mission à trouver les moyens de renforcer celles qui existent déjà.

Les formes d'aide appropriées

89. Etant donné que la situation actuelle n'est pas une crise humanitaire traditionnelle, il faudrait procéder à une analyse plus approfondie et à une planification stratégique plus détaillée si l'on veut pouvoir déterminer quels sont les types d'assistance les plus appropriés. L'un des messages les plus cohérents qui aient été transmis à la mission par presque tous les Palestiniens avec lesquels se sont entretenus ses membres est le fait qu'ils préféreraient que l'on ne leur fasse pas la charité. Un grand nombre d'entre eux ont expliqué qu'ils voulaient des emplois et non des aides et une dépendance. Certains Palestiniens se sont déclarés préoccupés par le fait qu'une

augmentation de l'aide alimentaire directe risque de priver les gens de tout espoir et de leur faire perdre leur sens de la dignité. D'autres formes d'assistance, en particulier les possibilités à offrir en matière d'emploi et d'éducation, leur semblent susceptibles d'avoir l'effet opposé.

90. D'aucuns se sont toutefois déclarés favorables à l'aide alimentaire, par exemple un groupe de femmes à Rafah, l'une des zones les plus pauvres de la bande de Gaza. La mission a également appris que de nombreux enfants de Rafah gardent leur déjeuner de camp d'été pour le donner aux membres de leur famille qui ont un urgent besoin de vivres. Invitées à dire pourquoi leurs familles n'avaient pas suffisamment à manger, les femmes ont répondu que la plupart de leurs maris avaient perdu leur emploi et qu'elles ne pouvaient plus se permettre d'acheter les produits alimentaires proposés sur le marché.

91. Comme nous l'avons suggéré dans les recommandations exposées dans la partie E du présent rapport, l'un des principaux défis qu'il va falloir relever pour mener à bien les futures activités d'assistance va consister à trouver un juste équilibre entre les différentes formes d'aide. D'un côté, la plupart des personnes appauvries par les récents événements souhaitent ardemment qu'on leur donne la possibilité de subvenir elles-mêmes à leurs besoins au lieu de recevoir des aides. De l'autre, il existe des besoins urgents, y compris en matière de nutrition, chez les familles dont les réseaux de soutien et les dispositifs utilisés pour faire face à la situation se sont disloqués. Certains de ces besoins pourraient être satisfaits par des distributions de tickets d'alimentation permettant aux familles démunies d'acheter les vivres et autres articles disponibles sur le marché. Dans d'autres cas, il faudra trouver le moyen de rendre disponibles les articles qui pour l'instant ne peuvent ni parvenir chez les détaillants ni être vendus aux clients à cause du système des bouclages.

92. Des discussions ont actuellement lieu entre la Banque mondiale, les donateurs et les institutions du système des Nations Unies au sujet du juste équilibre auquel il faudrait parvenir entre les trois principales formes d'intervention qui contribueront à la résolution du problème de la chute brutale du pouvoir d'achat : l'aide alimentaire, l'aide en espèces et les programmes de création d'emplois. Un examen complet des programmes de création d'emplois est en cours; il sera achevé en septembre 2002. Cet examen facilitera l'élaboration d'une stratégie globale qui tiendra compte des facteurs susmentionnés.

93. Une caractéristique supplémentaire et assez particulière de la situation actuelle est le fait qu'en septembre 2000 le Territoire palestinien occupé faisait l'objet d'une intense action internationale d'aide au développement. Il y a avait donc sur place, à cette même date, une communauté et des dispositifs importants d'aide au développement, sous l'égide de la Banque mondiale et de plusieurs donateurs bilatéraux majeurs. Même dans la situation actuelle, les intervenants en faveur du développement et l'Autorité palestinienne font tout leur possible pour poursuivre leurs activités d'aide au développement tout en assurant dans le même temps la fourniture d'une aide d'urgence et un soutien budgétaire suffisant. La recherche de l'équilibre le plus judicieux entre l'aide au développement et l'aide d'urgence a représenté un défi majeur pour la communauté des donateurs et pour les organisations internationales actives dans la région. Ce défi est étroitement lié à la question consistant à déterminer quels types d'aide sont les plus appropriés et les plus efficaces dans les circonstances actuelles.

94. Des représentants des ONG palestiniennes et internationales ainsi que des fonctionnaires de l'Autorité palestinienne se sont déclarés préoccupés par le risque que les structures palestiniennes, les dispositions utilisées pour faire face à la situation et les organisations mises en place pendant de nombreuses années ne soient remplacées ou affaiblies par l'accroissement de

l'aide internationale. Les ONG palestiniennes et le réseau communautaire palestinien, très efficaces, ainsi que le marché local, les mécanismes de crédit et la production alimentaire locale ont été cités comme des structures qu'il importe de sauvegarder et renforcer.

La coordination

95. De nombreux organes de coordination ont été créés pour regrouper les institutions du système des Nations Unies, l'UNRWA, l'UNSCO, la Banque mondiale, les donateurs et les ONG internationales et nationales, ainsi qu'Israël et l'Autorité palestinienne. L'activité de ces entités était restée essentiellement axée, en tout cas tout récemment encore, sur l'aide au développement, mais celle-ci a marqué le pas du fait de l'intensification du conflit. Des efforts considérables ont été déployés pour réorienter les capacités existantes et prendre de nouvelles dispositions afin de remédier à la crise humanitaire qui se profilait. Mais les progrès accomplis jusqu'à présent ont été inégaux et l'action dans ce domaine manque encore de cohérence.

96. Sur le terrain, chacun s'accorde à dire, et c'est une opinion que partage également la mission, qu'il ne faut pas créer de nouvelles institutions. Il faut plutôt renforcer la coordination pour faire en sorte :

— que les besoins humanitaires soient rapidement identifiés et satisfaits;

— que tous les intervenants dans l'aide humanitaire participent aux mécanismes de coordination;

— que les capacités actuelles en matière de recouvrement, de compilation et d'analyse d'informations soient renforcées;

— qu'il n'y ait pas de séparation artificielle entre la planification et les activités humanitaires et de développement;

— qu'il y ait une bonne cohérence entre l'aide aux réfugiés et l'aide aux autres personnes démunies, et que l'on se base pour cela sur les besoins des populations concernées.

97. La volatilité de la situation et la nature des principaux intervenants sur le terrain sont très particulières et ne se prêtent pas à l'adoption des solutions traditionnelles en matière de coordination de l'aide humanitaire. L'UNRWA est la principale institution du système des Nations Unies dispensatrice d'une aide humanitaire aux réfugiés. Les autres institutions, notamment le PAM, sont devenues plus actives ces dernières années. L'UNSCO a une tâche de coordination, à l'origine davantage axée sur les relations avec les milieux politiques et les donateurs. Les ONG internationales sont en train de renforcer leur présence tandis que l'Autorité palestinienne et les ONG palestiniennes continuent à constituer les principaux circuits de distribution de l'aide. Le CICR a lancé un programme d'aide à grande échelle qui vient s'ajouter à ses activités de protection traditionnelles. Les donateurs et la Banque mondiale jouent un rôle de premier plan dans les instances de coordination et dans les consultations.

98. La mission a engagé d'intenses consultations sur la question de la coordination avec chacun des intervenants susmentionnés. Elle a constaté que bien qu'il n'y ait pas de consensus général quant à la structure la plus appropriée, tout le monde s'accorde à dire que la coordination humanitaire, surtout dans la phase actuelle d'aide d'urgence, devrait être améliorée. Ses recommandations sur ce point sont exposées dans la partie E.

IV. Le droit humanitaire international et la protection des civils

Les obligations qu'impose le droit humanitaire international

99. La mission a été invitée à définir clairement les responsabilités de toutes les parties eu égard aux besoins humanitaires.

L'applicabilité de la quatrième convention de Genève

100. Les obligations d'Israël dans le Territoire palestinien occupé sont définies par la convention de Genève relative à la protection des personnes civiles en temps de guerre (12 août 1949) (quatrième convention de Genève), à laquelle Israël est une Haute partie contractante. Les habitants palestiniens du territoire occupé sont des «personnes protégées» au sens où l'entend la convention et Israël, qui aujourd'hui contrôle entièrement le territoire occupé, est considéré comme «la puissance occupante». Bien que le Gouvernement israélien n'ait pas accepté l'applicabilité *de jure* de la quatrième convention de Genève à l'ensemble du territoire occupé depuis 1967, il a déclaré qu'il s'était engagé à respecter les «dispositions humanitaires» de cette convention. Toutes les autres hautes parties contractantes, de même que le Comité international de la Croix-Rouge, sont d'avis que la quatrième convention de Genève s'applique bel et bien *de jure* au Territoire palestinien occupé. L'Assemblée générale et le Conseil de sécurité ont tous deux déclaré eux aussi, à de nombreuses reprises, que la quatrième convention de Genève est applicable au Territoire palestinien occupé.

Les obligations en matière de secours

101. La quatrième convention de Genève comprend des dispositions détaillées relatives à l'obligation de la puissance occupante d'assurer le bien-être de la population civile. Israël a la ferme obligation d'assurer, dans toute la mesure des moyens dont il dispose, un approvisionnement suffisant en vivres, médicaments et autres articles de première nécessité pour la population qui vit sous son occupation. Il a également un certain nombre d'obligations en ce qui concerne le libre passage des chargements de matériel de secours, y compris les fournitures médicales, les vivres et autres articles destinés aux groupes vulnérables. Par ailleurs, la quatrième convention de Genève stipule clairement que les secours fournis par d'autres sources, y compris d'autres Etats et des organisations humanitaires, n'exonèrent aucunement Israël de son obligation d'assurer un approvisionnement suffisant en vivres, médicaments et autres articles de première nécessité.

102. Tant le CICR que certains donateurs ont insisté pour que l'assistance extérieure ne soit pas considérée comme relevant Israël de ses obligations fondamentales en sa qualité de puissance occupante. Par exemple, le CICR a déclaré que «ni le fait que le CICR ait lancé une opération de secours pour satisfaire des besoins humanitaires urgents, ni les préoccupations légitimes des autorités en ce qui concerne la sécurité n'exonèrent la puissance occupante de son devoir d'assurer un approvisionnement suffisant pour la vie quotidienne de la population.» Certains représentants de donateurs ont affirmé que leur pays n'a pas à supporter ce qu'il considère comme la charge financière de l'occupation israélienne et du système actuel des bouclages. Ils se sont également déclarés préoccupés par le fait que la fourniture de l'aide humanitaire risque de contribuer à un allégement de la pression exercée sur Israël afin qu'il reconsidère ses politiques actuelles.

La sécurité et la protection des civils

103. Plusieurs Palestiniens avec lesquels se sont entretenus les membres de la mission ont réclamé un accroissement des effectifs internationaux affectés en Cisjordanie et dans la bande de Gaza afin d'assurer une meilleure protection de la population civile contre les violations du droit

humanitaire international et des droits de l'homme. Ils ont cité la présence de bénévoles internationaux comme l'un des facteurs qui ont souvent contribué de façon importante à leur sécurité et à leur protection.

104. Les Nations Unies n'ont aujourd'hui qu'une capacité limitée de contribuer à assurer la sécurité et la protection des civils, puisque la présence permanente de leur personnel international se limite à Jérusalem, Gaza et Djénine. Il convient de rappeler dans ce contexte qu'à la fin des années 1980, le Secrétaire général avait décidé de déployer du personnel supplémentaire de l'UNRWA avec un mandat spécifique de protection. [5] Jusqu'à la signature des accords d'Oslo, les membres de ce personnel «ont contribué à résoudre des situations tendues, à éviter que des groupes vulnérables ne soient maltraités, à réduire les ingérences dans les déplacements des ambulances et à faciliter l'approvisionnement en vivres et en matériel médical pendant les couvre-feux». Ils ont également aidé le commissaire général à rendre compte régulièrement au Secrétaire général des problèmes de sécurité. Le Secrétaire général a ensuite rendu compte à son tour au Conseil de sécurité, conformément à la Résolution 681 (1990) adopté par celui-ci. L'UNRWA a récemment déployé un petit nombre de «fonctionnaires chargés de l'appui aux opérations», qui exercent un certain nombre de ces fonctions de protection, en particulier en facilitant l'accès des activités d'assistance de l'Office. Ils ne semblent cependant pas avoir un mandat de protection spécifique et leurs activités sont limitées à l'UNRWA et concernent donc essentiellement les réfugiés.

D. LES ENGAGEMENTS PRIS PAR ISRAËL

I. Les résultats immédiats de la mission

105. Le Gouvernement israélien a pris les engagements suivants devant la mission :

1) les ambulances palestiniennes n'auront pas à attendre plus de 30 minutes aux postes de contrôle;

2) des dispositifs efficaces seront institués afin de s'assurer que les Palestiniens qui ont besoin de services médicaux d'urgence (par exemple dans les cas d'accouchement, de dialyse, de chimiothérapie) puissent passer rapidement les postes de contrôle;

3) les problèmes relatifs à l'approvisionnement en eau des villes et villages palestiniens seront résolus de manière à s'assurer que l'eau est livrée tous les jours en quantité suffisante par les camions–citernes palestiniens;

4) Israël fera tout son possible pour faciliter les activités d'assistance des organisations internationales, en particulier celles de l'UNRWA;

5) Israël accepte de réexaminer et de renforcer les dispositifs de liaison entre les organisations internationales et les FDI afin de faciliter les activités d'assistance.

II. Les engagements précédents d'Israël

106. Par le passé, à d'autres occasions, le Gouvernement israélien avait pris les engagements suivants, réaffirmés devant la mission :

1) Israël améliorera la situation aux postes de contrôle, notamment en y affectant des membres plus expérimentés des FDI;

2) la zone de pêche située au large de la bande de Gaza est de 12 milles nautiques pour les bateaux de pêche palestiniens. Il faut que cette politique soit pleinement appliquée.

107. Les autres domaines dans lesquels Israël a promis de prendre des mesures sont la nécessité de permettre aux exploitants d'oliviers d'avoir accès à leurs champs, l'augmentation des volumes de marchandises autorisés à traverser le point de passage commercial de Karni, l'augmentation du nombre des permis de travail pour les Palestiniens employés en Israël (y compris ceux qui travaillent de nuit), la résolution de la question des retards aux ports et aux frontières terrestres pour l'entrée des fournitures et équipements de l'aide humanitaire, la résolution du problème des refus des visas d'entrée et de sortie pour les employés des organisations humanitaires, et l'amélioration des modalités d'accès pour les membres du personnel de l'ONU.

108. Chacun des engagements pris par le Gouvernement israélien devant la mission ou à d'autres occasions antérieures devant les représentants des Nations Unies et d'autres organisations devrait être pleinement respecté et donner lieu à une mise en œuvre efficace et rapide sur le terrain. Il faudrait en outre résorber le décalage actuel entre la politique officielle d'Israël et son application.

E. RECOMMANDATIONS

I. Les mesures que devrait prendre le Gouvernement israélien

La sécurité

109. Dans le présent rapport, la nécessité, pour le Gouvernement israélien, de protéger sa population civile contre de nouveaux attentats commis par des groupes palestiniens est parfaitement admise, mais en reconnaissant aussi que tout devrait être mis en œuvre pour minimiser les effets négatifs des mesures de sécurité sur le bien-être et la survie de la population palestinienne.

L'accès de la population aux services de base

110. *Santé :* Outre les engagements pris en ce qui concerne le passage des patients et des ambulances aux postes de contrôle, Israël devrait garantir : i) le libre accès de toutes les personnes qui ont besoin de services médicaux aux zones dans lesquelles ceux-ci peuvent leur être dispensés; ii) la libre circulation de toutes les fournitures médicales, telles que les médicaments, les vaccins et les autres équipements médicaux, afin qu'elles puissent entrer dans le Territoire palestinien occupé ou être transportées d'un point à un autre à l'intérieur de ce territoire, y compris lorsqu'elles sont importées ou transportées par l'Autorité palestinienne ou des ONG palestiniennes; iii) l'adoption de toutes les mesures nécessaires pour ramener le temps d'attente des ambulances au minimum absolu requis pour des raisons de sécurité, si possible même au-dessous du maximum de 30 minutes qui a été convenu.

111. *Education* : Israël devrait veiller à ce que tous les élèves, étudiants et enseignants aient librement accès aux écoles et aux universités partout en Cisjordanie et dans la bande de Gaza. Il devrait en particulier prendre toutes les mesures nécessaires à la protection des enfants contre toute exposition au conflit militaire lorsqu'ils vont à l'école ou en reviennent.

112. *Eau et assainissement* : En sus des engagements pris en ce qui concerne les déplacements des camions-citernes qui transportent l'eau, Israël devrait : i) garantir le libre accès des communautés rurales aux autres sources d'eau auxquelles elles ont le droit de s'approvisionner, et ii) protéger de manière adéquate les communautés rurales et les infrastructures d'approvisionnement en eau et d'assainissement.

L'accès de la population à l'emploi et aux revenus

113. Israël devrait autoriser la libre circulation des personnes et des biens afin de permettre les échanges commerciaux, l'exploitation des zones agricoles et les autres formes d'activité économique à l'intérieur du Territoire palestinien occupé. La libre circulation des travailleurs et des camions palestiniens, en particulier, devrait être considérée comme un objectif prioritaire, incluant notamment un réexamen complet du système de transbordement d'un camion à l'autre («back-to-back») à l'intérieur de la Cisjordanie.

114. Les opérations de transbordement au point de passage commercial de Karni et aux autres points de passage entre Israël et la bande de Gaza devraient être rationalisées et développées de manière à laisser entrer et sortir de la bande de Gaza, dans les quantités et avec la rapidité requises, tous les produits, fournitures et équipements commerciaux et humanitaires.

115. Israël devrait augmenter progressivement le nombre des permis délivrés aux ouvriers et employés palestiniens afin de leur permettre d'aller travailler en Israël et dans les colonies de peuplement israéliennes.

116. Israël devrait prendre des mesures immédiates permettant aux exploitants agricoles de procéder à la récolte de leurs olives et de produire puis commercialiser l'huile obtenue. Il devrait en particulier fournir une protection appropriée aux communautés rurales et autoriser le libre accès des exploitants agricoles à leurs champs.

L'accès des organisations humanitaires

117. Outre les engagements d'ordre général ayant pour but de faciliter les activités des fournisseurs de l'aide humanitaire, Israël devrait : i) accélérer les procédures d'importation des fournitures et équipements de l'aide humanitaire à tous les points d'entrée internationaux, y compris pour les fournitures destinées à l'Autorité palestinienne et aux ONG palestiniennes; ii) garantir le libre accès des employés des organisations humanitaires en Cisjordanie et dans la bande de Gaza, notamment des employés internationaux de ces organisations qui sont d'origine arabe; iii) garantir la libre entrée de tous les employés des organisations humanitaires, y compris les membres palestiniens du personnel des Nations Unies et des ONG, et des fournitures et équipements destinés à l'aide humanitaire, en Cisjordanie et dans la bande de Gaza, et leur libre circulation à l'intérieur de ces territoires; iv) améliorer l'accès des employés des organisations humanitaires et des fournitures destinées à l'aide humanitaire aux zones placées sous couvre-feu; v) veiller à ce que les privilèges et immunités de l'ensemble des personnels et des biens des Nations Unies soient pleinement respectés.

Les transferts de fonds à l'Autorité palestinienne

118. Afin d'éviter que la situation humanitaire décrite dans le présent rapport ne se détériore, Israël devrait d'urgence accélérer le transfert des fonds qu'il détient au nom de l'Autorité palestinienne.

II. Les mesures que devrait prendre l'Autorité palestinienne

Les dispositions visant à empêcher que les activités et équipements d'assistance ne soient détournés à des fins illégales

119. L'Autorité palestinienne devrait s'assurer, en utilisant pour ce faire tous les moyens dont elle dispose, que ses fournitures, ses équipements et ses actifs, y compris les ambulances et les autres moyens lui permettant de fournir des services, ne sont pas utilisés à des fins illégales ou de contrebande. Elle devrait poursuivre en justice et faire condamner tout membre de son personnel et toute autre personne suspectés d'être impliqués dans des activités délictueuses.

Le plan de gestion d'urgence

120. L'Autorité palestinienne devrait établir, en étroite consultation avec l'ensemble des parties impliquées, un plan d'urgence permettant de faire en sorte que toutes les ressources disponibles soient utilisées en fonction de priorités définies de manière judicieuse, efficace et transparente.

III. Les activités d'assistance

La mission d'évaluation technique

121. Compte tenu de l'aggravation de la crise humanitaire, il faudrait déployer le plus rapidement possible, de préférence au cours de la deuxième quinzaine du mois de septembre ou début octobre, une mission inter-institutions des Nations Unies chargée d'une évaluation technique. Cette mission devrait être dirigée par le bureau pour la coordination des affaires humanitaires (OCHA), à haut niveau, et comprendre des représentants des principales organisations de terrain actives dans la région. La mission devrait évaluer les besoins et l'aide nécessaire aussi bien pour les réfugiés que pour les personnes démunies mais qui ne sont pas des réfugiés, sur une base sectorielle, et proposer les mesures spécifiques indispensables à la résolution du problème de la hausse des taux de malnutrition et d'anémie (par exemple les modifications de l'assortiment alimentaire auxquelles il conviendrait de procéder, le développement des programmes de tickets d'alimentation existants, l'alimentation scolaire et l'enrichissement en fer). Elle devrait faire des recommandations en ce qui concerne la planification des interventions humanitaires d'urgence, repérer les insuffisances et déterminer quelles sont les autres ressources nécessaires. L'OCHA devrait ensuite soigneusement examiner cette évaluation afin de s'assurer que toute ressource supplémentaire éventuellement réclamée ne l'est que pour l'application de mesures vraiment indispensables à la satisfaction des besoins actuels.

122. Travaillant en étroite consultation avec l'UNSCO, la Banque mondiale, les ONG palestiniennes et internationales, de même qu'avec les ministères compétents de l'Autorité palestinienne, la mission d'évaluation technique devrait également faire des propositions spécifiques sur la façon dont les dispositifs de coordination pourraient être renforcés. Ces propositions devraient aussi inclure une suggestion de mécanisme de coordination à haut niveau et au niveau du terrain avec les FDI, qui viendrait s'ajouter aux dispositions dont il a déjà été convenu avec le Coordinateur des activités gouvernementales dans les territoires.

Le soutien aux dispositifs locaux

123. Les fournisseurs de l'aide internationale devraient en général se fixer pour objectifs de protéger et renforcer les structures palestiniennes existantes ainsi que les dispositifs adoptés pour faire face à la crise, et de limiter la dépendance directe de la population vis-à-vis de l'assistance internationale. Pour ce faire :

— les activités d'assistance devraient éviter de perturber les mécanismes du marché et la production locale. Dans la mesure du possible, les fournitures destinées à l'aide devraient être achetées en Cisjordanie et dans la bande de Gaza, par exemple en ce qui concerne l'huile d'olive produite localement;

— l'aide alimentaire directe devrait être limitée aux cas particulièrement difficiles et à un nombre restreint d'autres domaines d'intervention, par exemple l'alimentation scolaire. Il faudrait également envisager une expansion des programmes de création d'emplois, d'aide en espèces et de micro-crédit;

— après une première évaluation, l'on pourrait également étudier la possibilité d'étendre à d'autres zones de Cisjordanie et de la bande de Gaza les programmes du CICR ou les autres programmes de tickets d'alimentation;

— il conviendrait d'envisager l'adoption de mesures d'urgence permettant d'apporter une aide financière directe aux familles des zones rurales, afin d'éviter qu'elles ne continuent à devoir vendre leurs biens et afin qu'elles puissent avoir accès aux fournitures de base;

— les ONG palestiniennes devraient être incluses de manière efficace dans les dispositifs de coordination, et d'une façon générale leurs activités devraient être protégées et soutenues.

L'assistance fournie à l'Autorité palestinienne et aux ONG palestiniennes

124. Les institutions du système des Nations Unies et les donateurs devraient continuer à aider l'Autorité palestinienne et les ONG palestiniennes à importer les fournitures essentielles, y compris les vaccins, les ambulances et les autres équipements médicaux, et à dispenser les services essentiels. Les donateurs devraient continuer à apporter un soutien budgétaire à l'Autorité palestinienne.

Le renforcement temporaire des effectifs internationaux

125. Sous réserve du plein appui de la communauté des donateurs, il conviendrait de déployer temporairement du personnel international supplémentaire dans le Territoire palestinien occupé afin de faciliter l'accès à ce territoire et d'y renforcer les capacités de protection. Il faudrait alors veiller avec un soin particulier à ne retirer à aucun employé palestinien des fonctions qu'il peut en fait continuer à exercer. Pour renforcer la protection des civils, on pourrait envisager de déployer du personnel international à certains endroits au sud de la bande de Gaza et en Cisjordanie (par exemple à Ramallah, Naplouse et Hébron).

Le suivi des engagements

126. L'UNSCO devrait mettre sur pied des dispositifs permettant un contrôle complet et un suivi approprié du respect par Israël et l'Autorité palestinienne des engagements qu'ils ont pris devant les Nations Unies en ce qui concerne l'adoption de mesures visant à faciliter les activités d'assistance. Chaque fois que cela s'avère possible, il faudrait adopter une approche commune face à toute nouvelle restriction susceptible d'entraver la fourniture de l'assistance.

La coordination

127. Il existe actuellement un large éventail de groupes, réunions et instances de discussion entre donateurs, institutions du système des Nations Unies et ONG. La mission ne les a pas évalués en détail, mais elle suggère qu'ils fassent l'objet d'un futur examen. Pour renforcer la coordination de l'aide humanitaire, notamment celle apportée aux réfugiés, la mission recommande que l'UNRWA, en sa qualité de principale institution active sur le terrain dans la région, préside un groupe de haut niveau chargé de la coordination pratique de l'aide humanitaire. L'OCHA devrait assurer le secrétariat de ce groupe. Les groupes de travail sectoriels et les salles de direction des opérations déjà en place et dirigés par les institutions du système des Nations Unies et les ONG devraient être renforcés et travailler en étroite liaison avec ce groupe.

Le financement des activités de l'UNRWA et des autres organisations humanitaires

128. L'UNRWA, qui joue un rôle crucial dans la crise actuelle et qui bénéficie du plein appui aussi bien du Gouvernement israélien que de l'Autorité palestinienne, est confronté à un grave déficit financier de 90 millions de dollars (52 pour cent) par rapport à la somme demandée dans son appel d'urgence de 2002. Les donateurs devraient accroître leurs contributions d'urgence afin de s'assurer que l'Office puisse mettre en œuvre ses programmes d'assistance.

129. Plusieurs autres institutions du système des Nations Unies et organisations humanitaires, qui ont développé leurs programmes depuis septembre 2000, souffrent elles aussi d'un grave sous-financement et devraient être soutenues. On trouvera en Annexe D un aperçu général de la situation financière actuelle des principales institutions du système des Nations Unies actives dans la région.

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ANNEXE A

ITINERAIRE DE LA MISSION
12-19 AOUT 2002

Lundi 12 août :

— arrivée à Tel-Aviv;

— entretien avec le ministre des affaires étrangères, M. Peres.

Mardi 13 août :

— réunion d'information de l'UNSCO;

— réunion d'information de l'UNRWA;

— réunion inter-institutions des Nations Unies;

— entretien avec le Coordinateur adjoint pour les territoires, M. Kamil Abu Rokon, et visite de la zone industrielle de Eretz et du point de passage des marchandises à Karni;

— entretien avec les membres de l'organe de coordination des ONG internationales (AIDA);

— entretien avec le chef de la délégation du CICR;

— entretien avec le chef de l'USAID.

Mercredi 14 août :

— visite du camp de El Am'ari ainsi que de l'école et de la clinique de l'UNRWA à Ramallah;

— entretien avec le président Arafat et le ministre des collectivités locales, M. Erekat, à Ramallah;

— entretien avec le Dr Hanan Ashrawi, membre du Conseil législatif palestinien;

— entretien avec le Dr Mustafa Barghouti, chef de l'union des comités palestiniens de secours médical.

— entretien avec le ministre du commerce, M. Al Masri;

— visite du centre pour femmes de l'UNRWA et de la zone industrielle de Beitounia;

— entretien avec l'ambassadeur des Etats-Unis en Israël.

Jeudi 15 août :

— entretien avec le ministre des affaires sociales, M. Al-Wazeer, le ministre de la santé, M. Zahnoun et le ministre des fournitures, M. Ali Shaheen, au siège de l'UNSCO, à Gaza;

— visite du terminal de Karni (côté palestinien).

— visite du centre de soins de santé et du centre du programme d'aide aux femmes, à Jabaliya;

— visite à des familles particulièrement démunies, à Jabaliya.

Vendredi 16 août :

— visite au Parlement des enfants à l'école élémentaire El Mutasem de la ville de Gaza;

— visite de la zone de Toufah, du Centre du programme d'aide aux femmes de Shabwa et entretiens avec des familles;

— visite du camp de Rafah, bloc «O»;

— visite du projet de relogement de l'UNRWA;

— entretien avec le comité de coordination de l'aide locale, à Jérusalem;

— entretien avec le représentant de la Commission européenne et chef adjoint du bureau de représentation danois (le Danemark assurant la présidence de l'UE).

Samedi 17 août :

— le commissaire général de l'UNRWA, M. Peter Hansen, se joint à la délégation;

— visite à Beit Furik; entretien avec le maire, M. Atef Abu Akram et avec les membres du conseil municipal; entretiens avec des propriétaires de boutiques, des familles et des exploitants agricoles; réunion d'information du comité palestinien de secours agricole (PARC); visite du programme «vivres contre travail» et du programme de mise en valeur de terres incultes du PAM;

— visite du camp de réfugiés de Balata, à Naplouse;

— entretien avec le maire de Naplouse, M. Ghassan Shakaa;

— visite de la vieille ville de Naplouse;

— déjeuner avec des hommes d'affaires et des universitaires, à Naplouse;

— entretien avec un groupe de travailleurs palestiniens et un groupe d'aide d'urgence aux femmes; réunion d'information sur le Centre de conseil par téléphone .

Dimanche 18 août :

— entretien avec le ministre de la défense M. Ben Eliezer;

— entretien avec le ministre des affaires étrangères M. Peres;

— entretien avec le premier ministre, M. Sharon.

Lundi 19 août :

— visite à Bethléem; entretiens avec des commerçants, des habitants et des ecclésiastiques;

— départ de Tel-Aviv.

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ANNEXE B

CARTE INDIQUANT L'EMPLACEMENT DES POSTES DE CONTROLE EN CISJORDANIE

[Carte manquante dans l'original]

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ANNEXE C

CORRELATION ENTRE CROISSANCE ECONOMIQUE ET BOUCLAGES

ANNEXE D

FINANCEMENT DES APPELS D'URGENCE DES INSTITUTIONS DU SYSTEME DES NATIONS UNIES

UNRWA

Appel d'urgence de 2002 : L'UNRWA a reçu pour environ 82,5 millions de dollars d'annonces de contributions, à comparer à ses besoins totaux de 172,9 millions dont il avait informé les donateurs dans son appel d'urgence de 2002, soit un déficit de 90 millions de dollars, ou 52 pour cent. Ce déficit se fait cruellement sentir dans les programmes d'urgence de l'Office pour la création d'emplois, l'aide alimentaire et les secours directs. Le programme d'urgence pour la création d'emplois enregistre un déficit d'environ 40 millions de dollars, ce qui représente 72 pour cent de la somme dont il aurait besoin. Le déficit du programme d'aide alimentaire d'urgence est d'environ 15 millions de dollars, soit 57 pour cent de la somme nécessaire, et le déficit du programme d'éducation d'urgence s'élève à quelque 3 millions de dollars, ou 41 pour cent de la somme demandée. Et sur un total d'annonces de 82,5 millions de dollars, seuls 46,9 millions de dollars ont été reçus.

Le programme ordinaire : En sus de l'appel d'urgence de 2002, les programmes ordinaires de l'UNRWA qui permettent d'aider plus de quatre millions de réfugiés au Liban, en République arabe syrienne, en Jordanie ainsi qu'en Cisjordanie et à Gaza enregistrent un déficit de 24,9 millions de dollars. Les besoins inscrits au budget de l'UNRWA pour 2002 sont de 301,8 millions de dollars alors que les recettes inscrites au budget pour la même année s'élèvent à 276,9 millions de dollars. A ce jour, l'Office a reçu 184,5 millions de dollars alors que les annonces de contributions se sont élevées à 271,3 millions de dollars, ce qui laisse un déficit de 86,8 millions de dollars d'annonces de donateurs non suivies d'effet. En revanche, le calcul de l'écart de financement pour les projets d'investissement en 2002 fait ressortir un excédent de 40 millions de dollars.

Autres institutions du système des Nations Unies :

Institution	Besoins de financement (dollars des Etats-Unis)	Montants reçus (dollars des Etats-Unis)	Déficit (%)
PAM	18 200 000	2 300 000	87
FNUAP	3 600 000	0	100
OMS	2 500 000	900 000	64
UNICEF	1 800 000	2 500 000	0

Dans certains cas, les besoins d'urgence susmentionnés viennent s'ajouter aux programmes ordinaires des institutions dans le Territoire palestinien occupé. D'autres institutions, comme le PNUD, ont besoin d'un financement supplémentaire mais n'ont pas lancé d'appels d'urgence séparés.

[1] Résultats préliminaires de l'évaluation nutritionnelle et du système de surveillance par réseau sentinelle pour la Cisjordanie et Gaza, 5 août 2002.

[2] Même dans des circonstances normales, les réserves d'eau renouvelables dans le Territoire palestinien occupé (115 mètres cubes par personne et par an) sont parmi les plus faibles au monde.

[3] Cette information a été communiquée à la mission par le maire du village et a été confirmée par le personnel international des Nations Unies.

[4] La malnutrition grave, ou émaciation, reflète une nutrition insuffisante pendant une brève période immédiatement avant l'enquête. La malnutrition chronique, ou insuffisance staturale, est le signe d'un état de sous-alimentation de longue durée et risque d'entraîner de graves retards de croissance et de développement.

[5] Voir le rapport que le Secrétaire général a soumis au Conseil de sécurité conformément à la Résolution 672 du 31 octobre 1990 (S/21919).

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