



BRIEFING No. 5

SADAKA صدقة

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THE INTERNATIONAL COURT OF JUSTICE ON THE WALL

By Dr. David Morrison

On 7 July 2004, the International Court of Justice declared Israel's construction of the Wall in the West Bank (including East Jerusalem) to be "contrary to international law" [\[1\]](#).

The Court went on to order Israel to "cease forthwith the works of construction of the wall" and "dismantle forthwith the structure" already built. It also called on Israel to "make reparations" for the "requisition and destruction of homes, businesses and agricultural holdings" and "to return the land, orchards, olive groves, and other immovable property seized" to construct the wall.

Israel has thumbed its nose at this ruling and continued to build the Wall – and the international community hasn't forced Israel to comply with the ruling.

Security fence?

Israel's initial justification for building the Wall was that it was a security fence, designed to protect Israeli citizens from attack by Palestinians from the West Bank. If the Wall had followed the Green Line – the border between Israel and the Palestinian West Bank – this justification might have some credibility. But, it doesn't. Instead, 86% of its projected route is inside the West Bank (including East Jerusalem) and its circuitous route was chosen so that it encircles 80 Jewish settlements, physically connecting them to Israel. These settlements contain some 385,000 Jewish settlers, that is, nearly 80% of the total (about 500,000) in occupied Palestine.

As currently projected, the Wall will be 725 km long, when complete. By contrast, a security fence built on the Green Line would have been less than half the length – and cost a great deal less to build.

Despite Israel's initial protestations to the contrary, it has always been clear that the Wall was intended as the border fence for an expanded Israeli state, with as many Jewish settlements as possible included within the new border.

In recent years, Israeli ministers have given up pretending otherwise. For example, former Foreign Minister, Tzipi Livni, stated publicly that the Wall will serve as "the future border of the state of Israel" (Ha'aretz, 1 December 2005, [\[2\]](#)). And Prime Minister Olmert told Ha'aretz on 10 March 2006: "I believe that in four years' time Israel will be disengaged from the vast majority of the Palestinian population, within new borders, with the route of the fence ... adjusted to the new line of the permanent borders" [\[3\]](#).

Lives of Palestinians severely disrupted

The construction of the Wall has severely disrupted the lives of Palestinians residing in its vicinity. See, for example, *The Humanitarian Impact of the Barrier* [\[4\]](#) and *West Bank Barrier Route Projections* [\[5\]](#) by UN Office for the Coordination of Humanitarian Affairs.

For example, Israel has declared the area between the Wall and the Green Line to be 'closed' by military order and most Palestinians who live there are required to have 'permanent resident' permits to continue to live in their own

THE INTERNATIONAL COURT OF JUSTICE ON THE WALL

homes. This restriction is discriminatory, since it doesn't apply to Israeli citizens or to any person of Jewish origin, who, under the Law of Return, has a right to live in Israel.

Because of the Wall, Palestinians living in this 'closed' zone have become physically separated from the rest of the West Bank, where health and education services are generally located. As a result, children, patients and workers have to pass through checkpoints to reach schools, medical facilities and workplaces and to maintain family and social relations. Passage through the Wall is at the discretion of individual Israeli soldiers and is often refused, regardless of the purpose of the journey.

In addition, tens of thousands of Palestinians who reside to the east of the Wall have been isolated from farms, grazing lands and water resources located on the west side. In the northern West Bank, these Palestinians need 'visitor' permits to cross the Wall to reach their farms and wells located in the closed area. According to the UN Office for the Coordination of Humanitarian Affairs, less than 20 percent of those who used to farm their lands in these areas before the Wall was constructed are now granted permits. Even if granted, permits are not always issued to the most appropriate person, leaving older family members unable to effectively carry out the work, while the more able-bodied remain idle at home.

For the minority granted permits, access is through a limited number of designated gates. Along the total length of the



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Barrier, there are 64 gates currently open on a daily, weekly and/or seasonal basis. The irregular placement of the gates and the restrictive opening times severely curtail the time available for farming with negative impact on rural livelihoods.

From these examples, it is clear that large numbers of Palestinians, who live in the vicinity of the Wall, have suffered terribly because of its construction.

The legal process

On 8 December 2003, the UN General Assembly passed resolution ES-10/14 requesting the International Court of Justice (ICJ) to give an 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 INTERNATIONAL COURT OF JUSTICE ON THE WALL

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? ” [\[6\]](#)

Resolution ES-10/14 was passed by 90 votes to 8 (with 74 abstentions) with the Israel and the US opposing. All the EU states, including Ireland, abstained.

(Each UN member has a vote in the General Assembly and the permanent members of the Security Council – China, France, Russia, the UK and the US – do not have a veto. So, the US cannot bloc General Assembly resolutions on behalf of Israel by wielding a veto, as it often does in the Security Council. However, General Assembly resolutions are not binding on UN members.)

The Court agreed to the request and delivered the Advisory Opinion, entitled *Legal consequences of the construction of a wall in the Occupied Palestinian Territory* [\[1\]](#) on 9 July 2004. The key points of the Opinion are:

A. The construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated régime, are contrary to international law;

B. Israel is under an obligation to terminate its breaches of international law; it is under an obligation to cease forthwith the works of construction of the wall being built in the Occupied Palestinian Territory, including in and around East Jerusalem, to dismantle forthwith the structure therein situated, and to repeal or render ineffective forthwith all legislative and regulatory acts relating thereto, in accordance with paragraph 151 of this Opinion;

C. Israel is under an obligation to make reparation for all damage caused by the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem;

D. All States are under an obligation not to recognize the illegal situation resulting from the construction of the wall and not to render aid or assistance in maintaining the situation created by such construction; all States parties to the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 have in addition the obligation, while respecting the United Nations Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention;

Israel categorically refused to comply with any of these obligations and has continued to build the Wall. It has maintained this recalcitrant stance despite a near unanimous demand by the international community that it complies. In resolution ES-10/15, passed on 20 July 2004, the UN General Assembly demanded that “Israel, the occupying Power, comply with its legal obligations ” as laid down by the Court [\[7\]](#). This resolution was passed by 150 votes to 6. Ireland, and all other EU states, supported it. Only Australia, Israel, Marshall Islands, Micronesia, Palau and the United States opposed (representing only 5% of the world ’s population).



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