



ב'צֵלֶם – מִתְּחִילתוֹ שֶׁהָיָה לְיִשְׂרָאֵל מִתְּחִילתוֹ לְעִנְיַן הַזֶּה

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 alAqsa 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,

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

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. H CJ 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."

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 H CJ 7784/02, Sa'al 'Awani 'Abd al Hadi et al. v. Commander of IDF Forces in the West Bank (hereafter: *al-Hadi*), sec. 23.

In the sections that run along the Green Line, and in a few other areas, the plan calls for an additional barrier to the east, referred to as the “depth barrier.” According to the state’s response to the High Court of Justice, “it is a barrier without a fence, intended to direct movement in these areas to a number of security control points.” The primary component of the depth barrier is a deep trench with a barbed-wire fence alongside it.

In some areas, the main barrier will be joined by a wall to protect against gunfire or another kind of impeding wall. A few years ago, the IDF erected gunfire-protection walls between two communities within Israel, Bat Hefer and Matan, and the Palestinian villages that are near them, Shweikeh and Habla respectively. The company that is paving Highway No. 6 (“Trans-Israel Highway”) placed a gunfire-protection wall along the section of the highway near Qalqiliya and plans to erect a similar wall near Tulkarm. In the Jerusalem envelope area, two walls have already been erected: one alongside Road 45 (the Begin-North Road) along the section near Beit Hanina eḥBalad, 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

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.

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 barrier¹⁵

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.

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 Falamiya (600), Jayyus (2,800), Nabi Elyas (1,000), 'Isla (600), al-Mudawwar (200), 'Izbat al-Ashqar (400), Beit Amin (12,000), Sanniriya (2,600), 'Izbat Salman (600), and Mas-ha (1,800), a total of 11,600 residents.

In Jerusalem District, at this stage, we are able to identify two communities that clearly fall within this category: Rafat (1,800), and Kafr 'Aqeb (15,000) (see the discussion below), a total of 16,800 residents.

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 .

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's security system when they want to cross the barrier from either side. This dependence will increase the existing difficulties Palestinians face in going from one place to another in the West Bank.

Since the beginning of the al-Aqsa intifada, IDF restrictions have brought Palestinian movement to almost a complete halt. In some places, the army has set up checkpoints, concrete blocks, dirt piles, and trenches that block most of the roads in the West Bank, and Palestinians are not allowed to drive on many roads. In addition, the army imposes curfew on hundreds of thousands of residents. These restrictions, which affect all aspects of life of the Palestinian population, lead to numerous human rights violations, including the right to earn a living, the right to an education, and the right to obtain medical treatment.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

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

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 on 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 consequences 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

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.

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.healthinform.org).

The difficulties in moving from one place to another that will result from the barrier are also expected to impair the social and family life of hundreds of thousands of residents. In an attempt to justify the creation of one of the enclaves west of the barrier, the state argued before the High Court of Justice that it is prevented from setting the route along the Green Line between Nazlat ‘Issa, which lies in the West Bank, and Baqa al-Gharbiya, which is situated within the Green Line, because it would “break the social fabric” between the two communities.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

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.

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 *al-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,

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

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 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.

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

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. H CJ/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:

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 Metzger. Terror strikes everywhere, regardless of whether it exists in a Palestinian vicinity... If a terrorist fires from your office, don't expect that they won't fire back at him... The consideration of risk to human life is taken in the context of the discussions taking place now regarding the patrols that will operate along the fence; that is where these considerations should be taken into account, rather than the consideration about the route.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 a-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.

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

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

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.

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 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:

⁶⁶ *Ibid.*, pp. 21-22.

⁶⁷ State's response in *al-Hadi*, sec. 18.

- 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.

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*.

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

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

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 Metzger requested that the Ministry of Defense shift the route in the area of the kibbutz so that it runs along the Green Line, and thereby not harm access of residents of Qaffin, a neighboring town, to their fields, which under the original plan would be located west of the barrier. Col. Tirzah visited the area and said he was willing to grant the request. However, a few days later, he informed the kibbutz that the route could not be changed because the area contains antiquities and there was insufficient time to execute the requisite excavations.

As occupier, Israel is required to safeguard cultural and historic sites in the occupied territory. However, this reason does not justify the violation of human rights that would result from moving the route a few more kilometers within the West Bank. This conclusion is strengthened by the fact that the failure to change the route would not destroy the antiquities, but would merely delay construction work on the barrier until completion of the excavation work to protect the antiquities.

Access to religious sites

The determination of the barrier's route in the southern part of the Jerusalem envelope was part of the Cabinet's decision of August 2002. A month later, the matter was again discussed in the Cabinet following political pressure of ministers from Shas and the National Religious Party and from Jerusalem's mayor who sought, in opposition to the opinion of the minister of defense, to move the route a few hundred meters south, which would *de facto* annex Rachel's tomb into Jerusalem. The Cabinet approved the change.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

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.

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 H CJ 393/82, *Jam'iyat Iskan Al-Mualiman v. Commander of IDF Forces in Judea and Samaria*, *Piskei Din* 37 (4) 785.

Conclusions

The public debate taking place in Israel today on the separation barrier focuses primarily on the delays in the barrier's construction and the defense establishment's faulty planning for its construction. The implications of the project on the Palestinian population and the grave harm they will suffer as a result of the barrier are ignored.

Most of the violations of Palestinian rights have not yet occurred, so it is not possible at this time to determine the magnitude of the harm. However, it is clear that erection of the barrier will increase the fragmentation of the West Bank that has resulted from Israel's policy in the Occupied Territories since the beginning of the current Intifada. For the past two and a half years, the IDF has prevented almost all movement of Palestinians in the West Bank. To accomplish this, the IDF has used prolonged curfews, staffed checkpoints, concrete blocks, dirt piles, and trenches. This policy has greatly disrupted every aspect of life of the local population – the health and education systems have difficulty operating, the economy has never been worse, and social and family relations have been severed.

Erection of Stage 1 of the barrier within the West Bank will increase these disruptions and cause further harm to more than 200,000 Palestinians. The barrier will isolate Palestinian communities from other areas in the West Bank and turn them into enclaves between the barrier and the Green Line. Other communities will become enclaves east of the barrier, some due to the winding route of the barrier and some because they will be imprisoned between it and the secondary barrier that will be erected east of them. Some residents will become detached from their farmland that remains west of the barrier. The restrictions on movement of the residents will violate their right to work and earn a living, and families are liable to fall into poverty. The barrier will also lead to the violations of other rights: the right to medical treatment, the right to education, and the ability of the population to carry on with their normal lives, including maintaining a family and social life.

Israel, as the occupying force, is obliged to safeguard the human rights of the Palestinians under its control. Israel's duty to protect the life of its citizens does not release it from its obligation to protect the Palestinians' human rights. In erecting the separation barrier, Israel completely disregards this obligation, and in doing so breaches international law.

First, erecting the barrier to prevent attacks in Israel is the most extreme solution and causes the most severe harm to the Palestinian residents. Israel preferred this solution to alternative methods that would cause a lesser degree of harm. Although most of the Palestinians who perpetrated attacks in Israel entered the country through the checkpoints situated along the Green Line, and not through the open areas between the checkpoints, Israel decided to erect the barrier before it solved the problems that were found in the operation of checkpoints. Also, the IDF did not take any meaningful action in the seam area that could prevent Palestinians from entering Israel, and gave low priority to this objective as compared with other objectives, such as attacking institutions of the Palestinian Authority and protecting the settlements.

Second, even if we accept Israel's claim that it has no choice and must erect a separation barrier, Israel is required to select the route that results in the fewest human rights violations possible. It has not done this. Rather, it has selected a route that, in at least some cases, ignores human rights considerations and is based on extraneous considerations, such as perpetuation of some of the settlements, the desire to transmit a political message that erection of the barrier is not a permanent political border, the quality of life of Israeli residents, preservation of antiquities, and access of Israeli citizens to a religious site. These considerations led to the choice of a route that gravely violates human rights, without any security justification whatsoever.

Third, the decision to erect a permanent barrier in the West Bank at a cost of hundreds of millions of shekels breaches the Hague Convention, which prohibits expropriation of land in occupied territory.

The overall features of the separation-barrier project give the impression that Israel is once again relying on security arguments to establish, unilaterally, facts on the ground that will affect any future arrangement between Israel and the Palestinians. In the past, Israel used "imperative military needs" to justify expropriation of land to establish settlements and argued that the action was temporary. The settlements have for some time been facts on the ground. In the peace talks with the Palestinian, the settlements are listed as one of the issues to be discussed in negotiating the final-status agreement. In the Camp David talks that took place in July 2000, Israel's position was that some of the settlements established in the West Bank would be annexed into Israel.

It is reasonable to assume that, as in the case of the settlements, the separation barrier will become a permanent fact to support Israel's future claim to annex territories. In any event, the geographic reality being created by the erection of the barrier will impair any political solution based on recognition of the right of the Palestinian people to self-determination and the establishment of an independent and viable Palestinian state.

For these reasons, B'Tselem urges Israel's government to:

- Nullify the government and Cabinet decisions regarding the separation barrier and immediately stop all work on the barrier, including the taking of land;
- Reopen discussions on ways to cope with Palestinian attacks within Israel, and examine alternatives to erecting the separation barrier. Every decision must take into account the limitations resulting from international law and Israel's duty to respect the human rights of residents in areas under its control;
- If it is decided that there is no choice other than to build the barrier, the government must set the route to run along the Green Line or, alternatively, within Israel. Deviations from this principle should be allowed only in exceptional cases, based on only two considerations: benefit to the local Palestinian population and meeting Israel's military needs in the narrow sense of the term. In any event, any such deviation must be examined while taking into account its effects on the human rights of the residents residing near the barrier's route.