



INTERNATIONAL COMMISSION OF JURISTS

Commission internationale de juristes - Comisión Internacional de Juristas

" dedicated since 1952 to the primacy, coherence and implementation of international law and principles that advance human rights "

United Nations Commission on Human Rights

60th Session 2004

Agenda Item 8:

Question of the Violation of Human Rights in the Occupied Arab Territories, including Palestine

24 March 2004

Oral Intervention of the International Commission of Jurists (ICJ)

Mr. Chairperson,

Last year, this Commission in its resolution 2003/7 on "Israeli settlements in the occupied Arab territories" expressed "its grave concern at the construction of the so-called security fence in the Palestinian territories, including in and around East Jerusalem [and] urge[d] the Government of Israel [...] to stop the construction of the so-called security fence in the Palestinian territories, including in and around East Jerusalem, and other illegal activities, such as confiscation of land or demolition of houses, that it entails".¹

Despite such an unequivocal call, Israeli authorities continued constructing the barrier inside the Palestinian Occupied Territory and applying its accompanying legal regime applicable solely to Palestinians and consisting of a restrictive system of permits and passages through a small number of gates.

Israel has justified construction of this invasive barrier by claiming it is necessary to ensure the security of Israelis.² The ICJ unequivocally condemns attacks conducted by Palestinian armed groups against Israeli civilians. Such acts are plainly prohibited under international law. Indeed, Israel has the right and the duty to protect the security of its citizens in its territory. It must however do so in accordance with international law, including international human rights and humanitarian law.

It is clear from numerous reports of United Nations agencies³ and of the Special Rapporteur for Human Rights in the Occupied Palestinian Territories⁴ that the construction of such barrier gravely undermines the

¹ Commission on Human Rights resolution 2003/7, Israeli settlements in the occupied Arab territories adopted on 15 April 2004, op 2 (e) and op 3 (d).

² See: Ministry of defence on the seam Zone, Israel's security fence website: <http://www.seamzone.mod.gov.il/Pages/ENG/purpose.htm>. It reads under the heading "purpose": the sole purpose of the Security Fence, as stated in the Israeli Government decision of July 23rd 2001, is to provide security. The Security Fence is a central component in Israel's response to the horrific wave of terrorism emanating from the West Bank, resulting in suicide bombers who enter into Israel with the sole intention of killing innocent people. See also: Summary legal position of the Government of Israel in the Report of the Secretary-General prepared pursuant to General Assembly resolution ES-10/13, UN Doc. A/ES-10/248, 24 November 2003, pp 8-9.

³ See numerous reports of OCHA and UNRWA. See also Report of 30 April 2003 of the Mission to the Humanitarian and Emergency Policy Group (HEPG) of the Local Aid Coordination Committee (LACC) – The Impact of Israel's Separation Barrier on Affected West Bank Communities, Follow-up Report of 31 July 2003 to the Humanitarian and Emergency Policy Group (HEPG) and the Local Aid Coordination Committee (LACC) – The Impact of Israel's Separation Barrier on Affected West Bank Communities, Follow-up Report of 30 September 2003 to the Humanitarian and Emergency Policy Group (HEPG) and the Local Aid Coordination Committee (LACC) – The Impact of Israel's Separation Barrier on Affected West Bank Communities, Follow-up Report of 30 November 2003 to the Humanitarian and Emergency Policy Group (HEPG) and the Local Aid Coordination Committee (LACC) – The Impact of Israel's Separation Barrier on Affected West Bank Communities.

enjoyment of the most fundamental human rights by the Palestinian population and is in violation of international humanitarian law.

International human rights and international humanitarian law are concurrently applicable to the Gaza Strip and the West Bank, including East Jerusalem, which have been under Israeli military occupation since 1967. This understanding has been affirmed *inter alia* by the UN treaty bodies⁵ and by the Special Rapporteur for Human Rights in the Occupied Palestinian Territories⁶. The *de jure* applicability of the Fourth Geneva Convention to these territories has been recognized by the High Contracting Parties to the Geneva Conventions,⁷ and repeatedly affirmed through resolutions of the United Nations Security Council and General Assembly and by the International Committee of the Red Cross.⁸

The impact of the separation barrier on the human rights of the Palestinian people is especially severe in respect of the freedom of movement, right to property, due process of law, and the right to privacy, family and home as enshrined in the International Covenant on Civil and Political Rights (ICCPR) and in customary law. The barrier also undermines the right to work, the right to an adequate standard of living, including the right to food, the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the right to education as enshrined in the International Covenant on Economic, Social and Cultural Rights (ICESCR). The construction of the barrier has brought about and continues to bring about the destruction of large amounts of property. Restrictions on Palestinians' right to movement has also resulted in further violations of other fundamental rights, including the rights to work, food, health, and education. Palestinians have been unable to access their agricultural land, employment, markets, clinics, schools, and social and religious communities.

While international human rights law may allow for the restriction of certain of rights, any such restrictions must be strictly necessary to protect national security in a democratic society, proportionate to the interest to be protected and consistent with other fundamental rights. However, the separation barrier cannot be justified as a non-discriminatory, necessary and proportionate measure to protect national security. It isolates Palestinians not merely from Israelis but from each other. Most significantly, it has been constructed not on Israeli territory, but on the West Bank. The sweeping movement restrictions it imposes are disproportionate and discriminatory as they target only Palestinian civilians.

The construction of the separation barrier gravely breaches international humanitarian law. Article 23 (g) of the Hague Regulations prohibits the destruction or seizure of enemy's property, unless it is imperatively demanded by military necessity. Article 53 of the Fourth Geneva Convention expands this principle.⁹ Article 55 of The Hague Regulations states that the occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country.

The overarching principle of the Fourth Geneva Convention is embodied in Article 27, which proclaims the principle of respect for the human person and the inviolable character of the basic rights of individuals. While certain rights may be restricted for security measures, what is essential is that such measures do not

⁴ See: E/CN.4/2004/6, 8 September 2003 and E/CN.4/2004/6/Add.1, 27 February 2004.

⁵ See Human Rights Committee, General Comment No. 29: States of Emergency (article 4), CCPR/C/21/Rev.1/Add.11, 31 August 2001, § 3; Human Rights Committee, Concluding Observations: Israel, CCPR/C/79/Add.3, 18 August 1998, § 10, and CCPR/CO/78/ISR, 21 August 2003, § 11; Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel, E/C.12/1/Add.90, 23 May 2003, § 15 and 31 and E/C.12/1/Add.69, 31 August 2001, § 11 and 12.

⁶ See: E/CN.4/2004/6, 8 September 2003, § 2.

⁷ Conference of High Contracting Parties to the Fourth Geneva Convention Geneva, Declaration, 5 December 2001.

⁸ See: Conference of High Contracting Parties to the Fourth Geneva Convention: Statement by the International Committee of the Red Cross, Geneva, 5 December 2001, available at <http://www.icrc.org/web/eng/siteeng0.nsf/iwpList325/D86C9E662022D64E41256C6800366D55#2>

⁹ It reads: "Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations".

affect the fundamental rights of the persons concerned. In particular, measures taken to address security concerns must be in accordance with international humanitarian law, and must allow for a quick return to normal civilian life.

The separation barrier represents a violation of the Palestinian right to self-determination as affirmed in Article 1(1) common to the ICCPR and the ICESCR. It is highly problematic that the separation barrier does not follow the route of the Green Line but rather, snakes across the West Bank ensuring that most of the illegal Israeli settlements in the OPT will be on the Israeli side. The route of the barrier has been planned to encompass the Israeli settlements in the Occupied Territories, in which the majority of Israeli settlers live. Such settlements are illegal under international law, as reaffirmed by this Commission.¹⁰ The construction of the separation barrier will isolate Palestinian people both from East Jerusalem and what remains of the West Bank, not to mention the Gaza Strip. Coupled with the settlements and Israeli-only by-pass roads, it will prevent the emergence of a viable independent Palestinian State.

Finally, the construction of a separation barrier clearly undermines any effort to obtain peace in the region through a just and durable solution. It is incumbent on the international community to condemn the construction of the so-called security fence and to act to stop and reverse the construction already underway.

Mr Chairperson,

The International Commission of Jurists urges the Commission to:

- Call upon all parties, whether Israeli and Palestinian to observe all relevant principles and provisions of international human rights and humanitarian law, including by desisting from the targeting of civilians;
- Condemn the construction of a separation barrier by Israel as a violation of international human rights and international humanitarian law which seriously hinders the enjoyment of human rights
- Call on Israel to stop the construction of the separation barrier on Palestinian land and to dismantle sections already built.

¹⁰ Article 49 of the 4th Geneva Convention according to which “[t]he Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies”.