

DOCUMENTS AND SOURCE MATERIAL

INTERNATIONAL

A1. UNITED NATIONS RELIEF AND WORKS AGENCY (UNRWA) AND UNITED NATIONS OFFICE FOR THE COORDINATION OF HUMANITARIAN AFFAIRS (UNOCHA), "RAFAH HUMANITARIAN NEEDS ASSESSMENT," GAZA, 6 JUNE 2004 (EXCERPTS).

The two UN bodies were requested by the Humanitarian Emergency Policy Group to conduct a joint assessment of Rafah's humanitarian needs in March 2004, but the report—which as originally prepared covered the period from January 2003 to February 2004—was delayed to take into account the further destruction from the May 2004 IDF operations in the camp. The data for the needs assessment were supplied by the Rafah Municipality and all the UN agencies and NGOs operating in Rafah. The report warns that the figures should be considered provisional, because "field assessments are still being finalized, especially in the infrastructure sector" and "IDF incursions and demolitions continued into June." What follows is the twenty-one-page report's executive summary and the section "Background: Humanitarian Crisis in Rafah." Footnotes have been omitted for space. The full report is available online at www.un.org/unrwa.

Executive Summary

Objectives of the assessment

- To assess the humanitarian needs arising from the IDF incursions and house demolitions in Rafah—including the recent incursions in May 2004—and from economic decline and poverty;
- To outline the response of aid agencies to humanitarian needs in Rafah, including an assessment of current shortfalls in assistance;
- To evaluate the sustainability of humanitarian assistance under current conditions.

Shelter Needs

- During May 2004, 298 buildings were demolished in Rafah and almost 3,800 people were made homeless. A further 270 residential buildings housing 502 families were damaged during the May incursions.

- The incursions which took place in May were larger in scale than any other month since September 2000. However, a total of 1,497 buildings have been destroyed in Rafah as a result of IDF activities since September 2000, and 15,009 individuals have been made homeless. 82.5% of these homeless people are refugees.
- 2,041 homes in Rafah have been registered as damaged or in need of repairs as a result of IDF activities since September 2000.
- After the demolition of buildings in May, UNRWA established transit centers in central Rafah to accommodate people who had been made homeless. The relatively slow movement out of these centers is of serious concern, as it indicates that housing alternatives have reached capacity.

Response

- The Palestinian Ministry of Housing has carried out 4,000 repairs of homes in Rafah in September 2000; in the same period, UNRWA has assisted 510 families eligible for assistance in repairing their homes.
- UNRWA distributes rental support every three months to 2,061 families in Rafah; UNRWA seeks to extend this support to an additional 560 families made homeless in May.
- A total of 232 new housing units have been built to accommodate the homeless in Rafah by UNRWA and the Ministry of Housing (30 remain unoccupied because of their proximity to an IDF base). A further 261 buildings are under construction and 168 are planned. UNRWA has spent, or is in the process of spending, \$12,106,474 on re-housing in Rafah.

Unmet needs, sustainability of response

- Rafah was crowded before September 2000. Because of extensive demolitions, availability of accommodation for rent in Rafah is now very limited.
- UNRWA estimates that even if no further demolitions occur in Rafah, and if all current or planned housing schemes are completed, 1,691 of the families eligible for UNRWA housing will remain homeless unless additional

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funding and land is available to re-house them.

- Re-housing a family in Rafah costs approximately \$20,000. If all the remaining homeless families were to be re-housed, the cost would be approximately \$44,760,000. UNRWA estimates the unfunded shortfall for re-housing eligible refugee families alone to be \$35,055,272.
- Finding new plots for homes in the Rafah area is difficult. Space is limited and much existing space is in areas affected by military violence.
- With accommodation so scarce in Rafah, the alternative for housing homeless families is either in school buildings or tent villages. The latter option risks severe sanitation and health problems and community dislocation.

Food

Needs

- Over the past twelve months levels of food insecurity in Rafah have almost doubled. According to the World Food Program, 66% of the population of Rafah (109,254 individuals) is food insecure, compared with 35% in 2003. Another 17% is in danger of becoming food insecure should the current conditions continue.
- Rafah is one of the most food insecure areas of the occupied Palestinian territories.
- Rafah is particularly restricted by Israeli closure measures, and Palestinians living there are consequently isolated from sources of employment and income.

Response

- Of Rafah's population of 166,700, 149,370 (89.6%) receive some food aid on a regular basis.
- 16,500 families also receive cash assistance, to enhance their capacity to purchase food and other necessary goods.
- In response to the May incursions, UNRWA supplied daily meals to affected families in Rafah.

Unmet needs, implementation problems

- While tight closure is maintained around Rafah and the entire Gaza Strip, and access to agricultural land and fishing are restricted, a large proportion of Rafah's population will remain food insecure.
- Due to funding shortfalls, UNRWA food aid to "new poor" beneficiaries in 2003

was only able to provide 40% of recipients' daily calorific needs instead of 67% as originally planned.

- Repeated closure of the Karni terminal and tightening of security measures has significantly reduced the volume of foodstuffs brought in through the terminal. This is expected to result in higher food prices on imported goods.

Health

- In the aftermath of the May incursions, public health degenerated as a consequence of damage to water and sewage networks and overcrowded facilities.
- Rafah secondary healthcare facilities are operating at maximum capacity. There are 3.3 hospital beds for every 10,000 people in Rafah. The Palestinian national average is 13.8 beds per 10,000.
- Support by healthcare facilities elsewhere in the Gaza Strip is frequently limited by movement restrictions imposed by IDF.

Infrastructure

- The poor state of Rafah's infrastructure caused public health problems even before recent demolitions occurred.
- Additional damage during IDF incursions in May to water and electricity lines, roads and public buildings compounds problems caused by weak infrastructure.
- Due to the repeated incursions and ensuing destruction, there are limited funds for upgrading and developing the existing networks. All available funds are channeled into immediate repair work, leaving little for long-term infrastructure development.

Psycho-social

- The population of Rafah has suffered stress and trauma from repeated incursions. Psycho-social assistance helps to support Palestinians who have been subjected to violence, and is important for the long-term well-being and rehabilitation of the community.
- The number of locally trained professionals required to assess needs and provide intervention in the psycho-social sector is insufficient.
- Funding from donors has been particularly short in this sector.

Conclusions

Public health risks, food insecurity, and damage to infrastructure are becoming

increasingly severe problems for the people of Rafah. Successive incursions have resulted in the severe degradation of community resources. However, homelessness is the most pressing humanitarian issue. Land for rehousing and funds remain in short supply, so if further demolitions occur the homeless may be forced to live in tent villages. This risks severe sanitation and health problems and even greater community dislocation.

In this context, Israel's apparent escalation of its demolition operation in Rafah is a source of grave concern to humanitarian agencies. During 2002, an average of 15 homes were destroyed or damaged beyond repair every month in Rafah. In 2003, the rate of home demolition increased to an average of more than 47 homes a month. So far this year, Israel has demolished an average 100 homes per month in Rafah.

BACKGROUND: Humanitarian crisis in Rafah

A humanitarian crisis is facing the city of Rafah. Land clearance and demolitions are the major cause of the crisis. Widespread poverty compounds the situation.

Demolition of homes

Most of the 15,009 Palestinians made homeless by demolitions are living in temporary accommodation or with family and friends, in conditions that are cramped and often unsanitary.

Four years of conflict and closure have eroded the ability of Rafah's population to cope with the effects of IDF incursions. Each new wave of homeless people adds pressure to stretched public services and community support structures and places heavy strains on the community as a whole. Space to rehouse the 710 families made homeless in May is nearly saturated. On 6 June, 539 people were still living in two of the three school buildings set up as transit centers in central Rafah. Usually such transit centers house people for only a few days following incursions. The slow movement out of the transit centers is of serious concern, as it indicates that options for temporary shelter have reached capacity. UNRWA has established showers and central kitchens in the centers. It is likely that homeless persons will remain in the centers for some time.

Poverty and Unemployment

The problems facing Palestinians made homeless in Rafah are compounded by

widespread poverty and unemployment. Three-quarters of Gaza's population live in poverty, and 90% of Rafah's population are refugees. Closures and access problems for Rafah's residents contribute to the poor economic situation:

- In 2002, approximately 4,474 Palestinians from Rafah earned incomes in Israel. However, Palestinians from Rafah with work permits to Israel often find it impossible to travel north through Abu-Holi checkpoint and Erez crossing to access their jobs. No Palestinian worker has been permitted to pass through Erez since 22 March 2004.
- Since September 2000, approximately 1,840 acres of agricultural land in Rafah District was seized by Israeli forces or leveled.
- The Rafah District is divided up by Israeli military infrastructure into sections, some of which are closed to each other and to the sea. This is most evident in the al-Mawasi area inside the Gush Katif block, where fertile agricultural lands are inaccessible to non-residents of al-Mawasi.
- In 2001, 400 of the district's residents were registered as fishermen. Israel has banned fishing off the al-Mawasi coast since October 2003.
- Commercial goods traveling to and from Israel must pass through Karni terminal, which is frequently closed. Restrictions on commercial links with Egypt have increased since September 2000. New security measures introduced in early June at Karni—including the laying of 150 cement blocks—will slow loading and off-loading on the Palestinian side and reduce the volume of goods entering and leaving Gaza.

A2. WORLD BANK, "DISENGAGEMENT, THE PALESTINIAN ECONOMY, AND THE SETTLEMENTS," WASHINGTON, DC, 23 JUNE 2004 (EXCERPTS).

This comprehensive forty-two-page report was prepared at the request of the Palestinian Authority and the Israeli government and had the cooperation of both. The World Bank team also included one representative each from the United Nations Special Coordinator's Office (UNSCO), the United Nations Development Program (UNDP), and the European Commission. Reproduced below is the section assessing the economic benefits of Israel's Gaza

disengagement plan. Footnotes have been omitted for space. The full report is available online at www.worldbank.org/mna.

***The Economic Benefits of Disengagement—Of Itself; Very Limited
The Plan and Closure***

12. The Disengagement Plan would restore internal mobility in Gaza and ease movement in part of the West Bank. The evacuation of the settlements and redeployment of the army along the Philadelphi Route and outside the Gaza “envelope” would result in free movement throughout Gaza. In the northern West Bank, evacuation of the four settlements would provide “Palestinian territorial contiguity” in a limited area. . . . In addition, the Plan proposes that Israel and the donors should “help improve the transportation infrastructure in Judea and Samaria, with the goal of providing continuous transport for Palestinians . . . to facilitate economic and commercial activity” (see *The Modified Disengagement Plan*, Annex 1).

13. A disengagement of this type would benefit the Palestinian economy in two ways—reduced internal closures, and the transfer of settlement land and assets. These benefits may be quite modest, however:

- **Internal mobility** in Gaza would be greatly improved by the opening of the Erez-Rafah main road and by access into security areas that are currently prohibited (such as the al-Mawasi area that lies between the Gush Katif settlements and the sea). In the *northern West Bank* local mobility should also improve, but a more general easing of closure inside the West Bank will not automatically follow. The Plan indicates that “Israel will work to reduce the number of checkpoints throughout the West Bank,” but progress would depend on [Government of Israel’s] security calculus. The additional Palestinian transport infrastructure called for under the Plan is intended to connect areas behind the Separation Barrier and to avoid settlements. Construction would take time, however, and could prove controversial from a donor perspective.
- **The settlements and military installations** in Gaza sit on 55–75 square kilometers of land (see paragraph 58), much of which is well-watered and of good arable quality. The economic potential of these areas will be lim-

ited, though, unless Gaza’s border trade regime changes. The four *West Bank* settlements are small dormitory communities without appreciable productive output. . . .

14. The Disengagement Plan does not incorporate a change in border trade regimes. Israel will “monitor and supervise the outer envelope on land, will have exclusive control of the Gaza airspace, and will continue its military activity along the Gaza Strip’s coastline.” Evacuation of the Egyptian border area would be considered “later on,” depending on “the security reality”—and could lead to the establishment of a Gaza airport and seaport. Thus today’s Gaza and West Bank border trade regimes would, for now, remain in force. These regimes are highly restrictive and rely on laborious “back-to-back” offloading/reloading methods. Only a fraction of pre-crisis exports (and a rather larger fraction of previous imports) pass through the borders today.

In the Short Run, Little Economic Benefit

15. With internal closures only partly eased and with the external border regime unchanged, disengagement would not deliver significant economic benefits. To illustrate this, the Bank compared the more predictable effects of the Disengagement Plan with the status quo scenario described in paragraph 6. Using the same assumptions on labor flows (declining) and on donor assistance (relatively stable), we incorporated free internal movement in Gaza and an easing of local restrictions in the northern West Bank. We also assumed modest agricultural and industrial output from the settlement areas. No significant private investment response was factored in, however, given the current political situation and border trade regime.

16. Under such assumptions, the probability of further Palestinian economic decline does not change. The differences between the disengagement and status quo scenarios are negligible. . . . High population growth and the reduction in work in Israel would result in a cumulative real GDP per capita decline of about 12% by 2006; real GDI per capita would drop by some 22%. At 56% and 34% respectively, poverty and unemployment levels would essentially remain the same as under the status quo scenario.

17. A step-by-step withdrawal could further reduce these aggregates. The uncertainties and potential delays associated

with a gradual withdrawal might exacerbate conflict, and this could lead to additional economic damage. In Rafah, damage to housing and roads alone this May has been estimated at around \$22 million, or 2% of Gaza's 2003 GDP.

18. A disengagement process in which labor flows are cut abruptly, the external envelope of Gaza is further restricted to trade, or electricity/water supplies are terminated would seriously worsen Palestinian economic, humanitarian, and social prospects. Such possibilities were aired in the political debate preceding the Israeli Cabinet vote of June 6. The Plan, however, indicates that Israel will continue to supply electricity and water, admit workers, and remit Palestinian taxes collected on the PA's behalf. Any sudden terminations would create economic shocks that would be very hard to counter.

19. An additional \$1.5 billion in donor assistance over three years under these conditions would increase per capita GDP, but would no more than offset otherwise declining personal incomes. The Bank modeled the impact of disbursement increases of c. \$500 million per annum in 2004–6. This would boost real GDP per capita by 7% by 2006, but as a result of the decline in work in Israel, real per capita GDI would be unchanged from 2003. Poverty and unemployment would remain stuck at levels similar to those of today. This outcome makes it difficult to justify such extra outlays, other than on humanitarian grounds.

20. If the Erez Industrial Estate closes, this will represent a further serious setback for the Gaza economy. On June 8, Israeli Minister of Industry and Trade Olmert announced that Israeli factories would be evacuated from Erez, leaving its future in doubt. Erez has been closed most of the time since mid-January, having come under attack by Palestinian militants from within Gaza. Until recently, Erez employed about 4,900 Palestinians, who between them would have supported at least 3% of the Gaza population (without accounting for significant indirect employment generated by the estate). About 100 of the 200 businesses in Erez are Palestinian owned. The Disengagement Plan proposes that Erez be “transferred to an agreed-upon Palestinian or international body.”

21. Erez offered several attractions for Palestinian investors. These included, first, access to the Israeli market; second, di-

rect interaction with Israeli businessmen; and third, a lack of environmental or regulatory oversight (as compared with the Gaza Industrial Estate (GIE), which is run by the PA). In time some of the businesses could transfer to the GIE, but GIE products have only limited entry to Israel (exports through Karni were suspended for 24 days in May 2004, for example). The immediate issue is whether output from Erez will continue to be given direct access to Israel—irrespective of who takes over the management of the estate.

22. It is essential that the PA take steps to prevent a further erosion in Palestinian-Israeli economic cooperation. As described below (paragraph 38), Palestinian economic revival will depend to a significant extent on rebuilding links with Israeli businesses. The Palestinian attacks on the Erez crossing and Erez Industrial Zone challenge this concept. Unless the PA is prepared to confront such violence, the willingness of both Israeli and Palestinian entrepreneurs to work together on-site could disappear. Commenting on Minister Olmert's decision, the President of the Israeli Manufacturers Association said “we should be clear that if we retreat from the model of economic cooperation with the Palestinians, it reflects a serious crisis. This decision represents one of the most serious crises in the peace process.”

A3. INTERNATIONAL COURT OF JUSTICE, “LEGAL CONSEQUENCES OF THE CONSTRUCTION OF A WALL IN THE OCCUPIED PALESTINIAN TERRITORY,” THE HAGUE, 9 JULY 2004 (EXCERPTS).

On 8 December 2003, the UN General Assembly passed a resolution asking the International Court of Justice (ICJ) at the Hague to render an “advisory opinion” on the legality of Israel's separation wall in the occupied territories after a Security Council draft resolution condemning the wall had been vetoed by the United States on 9 October. The ICJ initiated proceedings on 10 December; receiving written and oral statements over the next two months. Israel's statement focused on challenging the ICJ, while the United States and a number of European states also questioned the appropriateness of the court's rendering an opinion on a political matter. Almost a fourth of the court's sixty-four-page ruling was taken up with addressing these challenges on grounds of law and precedent. The fifteen-member court ruled unanimously that it

bad jurisdiction to hear the case, but there was one dissenting voice (the American judge, Thomas Buergenthal) as to whether the ICJ should comply with the request to give an advisory opinion.

At the end of six months of hearings and deliberations, the court voted on the five questions put to it by the General Assembly pertaining to the legality of the wall. The vote (paragraph 63) was fourteen to one (with Judge Buergenthal dissenting; see Doc. D3) on four of the five questions, as follows: (1) that the "construction of the wall being built by Israel, the occupying power, in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated regime, are contrary to international law"; (2) that Israel must dismantle the structure forthwith (as in para. 151 reproduced below); (3) that Israel is under an obligation to make reparation for all damage (as in para. 153 below); and (4) that "The United Nations, and especially the General Assembly and the Security Council, should consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall and the associated regime, taking due account of the present Advisory Opinion." Concerning the question of whether all UN member states had an "obligation not to recognize the illegal situation resulting from the wall's construction" (see para. 159 below), Judge Kooijmans of Holland joined Judge Buergenthal in his dissent, making the vote 13-to-2. The full text of the opinion is available online at www.icj-cij.org.

134. To sum up, the Court is of the opinion that the construction of the wall and its associated regime impede the liberty of movement of the inhabitants of the Occupied Palestinian Territory (with the exception of Israeli citizens and those assimilated thereto) as guaranteed under Article 12, paragraph 1, of the International Covenant on Civil and Political Rights. They also impede the exercise by the persons concerned of the right to work, to health, to education, and to an adequate standard of living as proclaimed in the International Covenant on Economic, Social, and Cultural Rights and in the United Nations Convention on the Rights of the Child. Lastly, the construction of the wall and its associated regime, by contributing to the demographic changes referred to in paragraphs 122 and 133 above, contravene Article 49, paragraph 6, of the

Fourth Geneva Convention and the Security Council resolutions cited in paragraph 120 above. . . .

137. To sum up, the Court, from the material available to it, is not convinced that the specific course Israel has chosen for the wall was necessary to attain its security objectives. The wall, along the route chosen, and its associated regime gravely infringe a number of rights of Palestinians residing in the territory occupied by Israel, and the infringements resulting from that route cannot be justified by military exigencies or by the requirements of national security or public order. The construction of such a wall accordingly constitutes breaches by Israel of various of its obligations under the applicable international humanitarian law and human rights instruments. . . .

141. The fact remains that Israel has to face numerous indiscriminate and deadly acts of violence against its civilian population. It has the right, and indeed the duty, to respond in order to protect the life of its citizens. The measures taken are bound nonetheless to remain in conformity with applicable international law.

142. In conclusion, the Court considers that Israel cannot rely on a right of self-defence or on a state of necessity in order to preclude the wrongfulness of the construction of the wall resulting from the considerations mentioned in paragraphs 122 and 137 above. The Court accordingly finds that the construction of the wall, and its associated regime, are contrary to international law. . . .

148. The Court will now examine the legal consequences resulting from the violations of international law by Israel by distinguishing between, on the one hand, those arising for Israel and, on the other, those arising for other States and, where appropriate, for the United Nations. The Court will begin by examining the legal consequences of those violations for Israel.

149. The Court notes that Israel is first obliged to comply with the international obligations it has breached by the construction of the wall in the Occupied Palestinian Territory (see paragraphs 114–137 above). Consequently, Israel is bound to comply with its obligation to respect the right of the Palestinian people to self-determination and its obligations under international humanitarian law and international human rights law. Furthermore, it must ensure freedom of access to the Holy Places that came under its control following the 1967 War (see paragraph 129 above).

150. The Court observes that Israel also has an obligation to put an end to the violation of its international obligations flowing from the construction of the wall in the Occupied Palestinian Territory. . . .

151. Israel accordingly has the obligation to cease forthwith the works of construction of the wall being built by it in the Occupied Palestinian Territory, including in and around East Jerusalem. Moreover, in view of the Court's finding (see paragraph 143 above) that Israel's violations of its international obligations stem from the construction of the wall and from its associated regime, cessation of those violations entails the dismantling forthwith of those parts of that structure situated within the Occupied Palestinian Territory, including in and around East Jerusalem. All legislative and regulatory acts adopted with a view to its construction, and to the establishment of its associated regime, must forthwith be repealed or rendered ineffective, except in-so-far as such acts, by providing for compensation or other forms of reparation for the Palestinian population, may continue to be relevant for compliance by Israel with the obligations referred to in paragraph 153 below.

152. Moreover, given that the construction of the wall in the Occupied Palestinian Territory has, *inter alia*, entailed the requisition and destruction of homes, businesses, and agricultural holdings, the Court finds further that Israel has the obligation to make reparation for the damage caused to all the natural or legal persons concerned. The Court would recall that the essential forms of reparation in customary law were laid down by the Permanent Court of International Justice. . . .

153. Israel is accordingly under an obligation to return the land, orchards, olive groves, and other immovable property seized from any natural or legal person for purposes of construction of the wall in the Occupied Palestinian Territory. In the event that such restitution should prove to be materially impossible, Israel has an obligation to compensate the persons in question for the damage suffered. The Court considers that Israel also has an obligation to compensate, in accordance with the applicable rules of international law, all natural or legal persons having suffered any form of material damage as a result of the wall's construction.

154. The Court will now consider the legal consequences of the internationally wrongful acts flowing from Israel's construction of the wall as regards other States. . . .

159. Given the character and the importance of the rights and obligations involved, the Court is of the view that all States are under an obligation not to recognize the illegal situation resulting from the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem. They are also under an obligation not to render aid or assistance in maintaining the situation created by such construction. It is also for all States, while respecting the United Nations Charter and international law, to see to it that any impediment, resulting from the construction of the wall, to the exercise by the Palestinian people of its right to self-determination is brought to an end. In addition, all the States parties to the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 are under an obligation, while respecting the United Nations Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention.

160. Finally, the Court is of the view that the United Nations, and especially the General Assembly and the Security Council, should consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall and the associated regime, taking due account of the present Advisory Opinion.

ARAB

B. PALESTINIAN COUNCIL SPECIAL COMMITTEE, REPORT ON THE POLITICAL AND SECURITY SITUATION IN THE PALESTINIAN TERRITORIES, RAMALLAH, 24 JULY 2004 (EXCERPTS).

In late spring and early summer 2004, Sharon's disengagement plan moved forward as the security situation particularly in Gaza steadily declined and Arafat ignored Palestinian and international calls to consolidate the Palestinian security services and reassert control over the territories. In light of the deterioration and growing uncertainty, the Palestinian Council (PC) formed on 7 July a special committee (comprising Arafat loyalists and "reformers") to study the political and security situation in the occupied territories and draft a report assessing current conditions, how they got that way, and how they could be improved. Between 12 and 18 July, the committee interviewed dozens of Palestinian officials and citizens in the West

Bank and Gaza, including Prime Minister Ahmad Qurai'. The committee issued its eighteen-page report around 19 July, during a sharp upswing in intra-Palestinian violence that prompted Qurai's resignation on 17 July. The PC endorsed the report's recommendations after a heated debate on 21 July. The report, which was not made public, was leaked to the U.S. Department of Commerce's Foreign Broadcast Information Service, which translated and published it through its online service, World News Connection, on 27 July.

Reproduced below are the committee's observations and recommendations and selections from the long appendix summarizing the committee's hearings with Palestinian figures. The excerpts were selected to reflect the opinions of the main groups interviewed: citizens and key public figures, representatives of the national and Islamist factions, members of NGOs and the press, officials in the security forces, and PM Qurai' as an official voice of the PA.

Observations and Recommendations

After studying all that was said at the briefing sessions, the members of the Special Committee agreed on the following:

1. The Special Committee believes in the seriousness of the tragic situation imposed on the Gaza Strip. This situation threatens the entire homeland under the current political circumstances, in which our national project and just cause are facing extremely difficult and complicated challenges. The most prominent manifestations of these challenges lie in the continuation of all types of occupation crimes represented in incursions, assassinations, leveling of land, closures, and arrests in all parts of the homeland; and the continued construction of the racial wall in spite of the International Court of Justice historic decision, which condemned and rejected it and called for its removal. Challenges are also posed by the continuation of Sharon's unilateral policy, which is based on canceling the Palestinian role in the political process and ignoring the legal and political terms of reference of the peace process, starting with the relevant UN resolutions, down to the agreements signed with the Palestinians, and ending with the termination of the road map plan.

2. There is almost unanimity that the present government has not implemented its ministerial program according to which it won the PLC confidence. It did not exercise

its powers as stated in the Basic Law. It failed to shoulder its responsibility toward controlling the domestic situation and improving the citizens' security. The Special Committee believes that the government did not follow up the issue of putting the domestic political situation in order. It did not give serious attention to national dialogue. This is in addition to its failure to extend financial and relief aid to those harmed by the Israeli incursions and the racial wall.

3. The Special Committee commends all the stands expressed to the committee about support for the Palestinian people's steadfastness and adherence to the right of resistance against occupation and aggression as guaranteed by international laws and charters. In this regard, the Special Committee supports the demands made by citizens, national and civil society institutions, representatives of political parties and factions, and government and security officials against the negative results of some forms of resistance (firing mortars and rockets) that adversely reflect on the homeland and the citizens and lead to heavy destruction as a result of the criminal Israeli reactions. These forms of resistance also reflect negatively on our cause in world public opinion.

4. The Special Committee found that the main reason for the chaos in security performance, the inefficiency of the security services, and the violations and encroachments committed, is the absence of a clear political decision that defines the security services' current and permanent tasks; the absence of a legal authority that defines their jurisdictions, responsibilities, and the methods of cooperation and coordination among them; and the absence of an authority that defines the powers, rights, and commitments of the heads of services and their administrative and financial terms of reference and the way to hold them accountable. The Special Committee discovered that the National Security Council did not carry out the tasks for which it was formed and it did not exercise its powers to enforce respect for the supremacy of the law, the unity of services and security performance, and the provision of security for the citizens.

5. The Special Committee agreed that there is a unanimous popular demand that the PLC should shoulder its responsibilities and better perform its duties in accordance with the powers entrusted to it in the Basic Law. In spite of the sharp criticism leveled at the performance of the PLC and its members by several speakers to the Special

Committee, all emphasized that the PLC has authority and responsibility toward the citizens' affairs and the present and future of the Palestinian homeland.

6. The Special Committee noted that there is popular demand and support for the idea of placing the issue of reform at the top of the list of priorities of the president, the PLC, the government, the political parties, and the national and civil society organizations. The committee members found that the reform document adopted by the PLC [in May 2002; see Doc. B3 in *JPS* 124] enjoyed large support, considering it the basis for efforts in this regard because it contained clauses on elections, political partnership, political diversity, social justice, equal citizenship rights, the supremacy of the law, the principle of accountability, and fight against corruption. The Special Committee members share the belief that the only way to control the national march on the internal and external levels lies in continuing the reform process.

Based on all the above, the Special Committee presents the following recommendations to the PLC for discussion and the adoption of the necessary decisions:

1. We ask President Yasir Arafat to use his powers as president of the National Authority to issue instructions for an immediate halt to all serious practices taking place in the southern governorates by some commanders and personnel of the security services and armed men. These practices have terrorized the citizens, spread chaos, and harmed the higher interests of our people and homeland.

2. We ask the president of the National Authority to accept the resignation of the government and to form a new government that is capable of shouldering its responsibilities in order to confront the present and future challenges. The PLC demands that the program of the new government should be based on the adoption of the necessary and immediate measures to hold general elections. It should also be based on securing political partnership, social justice, and equal citizenship rights in accordance with the provisions of the law and the principle of accountability and combat of corruption.

3. The PLC should exercise its powers in legislation, scrutiny, and accountability, using all authorized means and mechanisms. The committee stresses the need to implement the principles contained in the reform document and link it to an implementation timetable, especially with regard to the elec-

tions. Commitment to the reform document should be considered the basis on which confidence is granted to any future Palestinian government.

The PLC must bravely review the reasons for its failure to perform its tasks. The Special Committee recommends that the PLC ask the PLC presidency to submit a report on the mechanisms the PLC uses for the implementation of its decisions. The report should be submitted to the PLC within a month from today in order to be discussed during several special sessions.

***Summary of the Briefing Sessions
Held by the Special Committee
Citizens and Popular Key Figures in
Gaza***

The Special Committee [on 12 July 2004] held a hearing for citizens and popular key figures from the eastern and northern parts of the southern governorates. The session was interrupted by several phone calls from citizens besieged in Bayt Hanun and its neighborhoods.

The conferees expressed in a moving, brave, and clear manner the extent of the citizens' suffering as a result of the prevailing situation and the absence of individual and collective security. The conferees heaped their wrath, particularly upon the PLC and its members, due to their relinquishment of their basic duty to protect the citizens. One of them expressed this by saying, "we did not elect the cabinet or ministers and we did not elect the commanders of the security services, but we elected you and you alone are responsible for what is happening." The PLC members were also accused of seeking ministerial posts and personal interests, ignoring the interests of the people and citizens. The conferees expressed their willingness to strongly support the PLC if it shoulders its responsibilities and works for the achievement of the masses' interests and for the alleviation of their suffering. The proceedings, which lasted about three hours, in addition to the points mentioned above, can be summed up as follows:

1. There was emphasis that the occupation, aggression, and the criminal Israeli policies against our people and homeland are primarily responsible for the deterioration of the situation.

2. There was emphasis on the legitimate and legal right to resist occupation and aggression, considering resistance the only way to confront and defeat occupation and aggression.

3. Speakers stressed the need to put the Palestinian house in order, stop the violations and corruption, implement the principle of equal citizenship and political participation, and provide security for the citizens.

4. They said the Authority, government, and security services are responsible for the deterioration of the political, security, and economic situation. The conferees noted total government absence, ineffectiveness, and failure to adopt or implement the necessary decisions to address the situation.

5. The seriousness of national dialogue was doubted and the political factions were held responsible for the failure to reach a national agreement and a unified political program. All were accused of seeking personal gains and of imposing their methods and viewpoints on others regardless of the interests and suffering of the people.

6. They stressed the need to reassess the feasibility of some of the means that are being used, particularly the rockets, mortars, and shells, which proved their futility and increased the Palestinian people's suffering.

7. There was strong condemnation of the failure of the government and the concerned ministers to extend aid to Bayt Hanun and its environs following the criminal Israeli incursion [see Quarterly Update]. The area suffered from shortages in strategic supplies, medical preparedness, medicine, and relief and rescue efforts, which were confined to the heroic individual efforts of doctors, nurses, and rescuers in spite of the difficult circumstances.

Representatives of National and Islamic Factions

The Special Committee held a closed meeting with representatives of the national and Islamic factions, forces, and parties on 13 July 2004. At the outset of the meeting, the chairman of the Special Committee asked the conferees to concentrate on proposals and solutions rather than the known positions of organizations and factions. As a result of the conferees' discussions and the Special Committee's questions and queries, the representatives of the factions and organizations agreed that occupation, aggression, and the criminal Israeli Government policy of escalating incursions, assassinations, killing, destruction, arrest, and siege were responsible for the deterioration of the situation. Also there was agreement by all on the legitimacy of resistance. The conferees held the present government responsible for

its failure to adopt a clear political position and its failure to issue and implement decisions. They noted complete government absence during the serious events, which are wreaking havoc on our people and their national cause and economic conditions.

The conferees agreed that there is a pressing need to reach an agreement and a national program (completing the points of difference in the August 2002 document [a draft national unity platform discussion of which was suspended soon after Israel's assassination of Hamas military leader Salah Shihada on 27 July 2002; see Quarterly Update in *JPS* 126]). All emphasized that the basis for supporting the resistance and the Palestinian people's steadfastness lies in putting the domestic house in order; securing political participation and equal citizenship rights; stopping the encroachments, violations, and corruption; and embarking on a serious implementation of reforms (the reform document adopted by the PLC).

There were also clear and key differences in the views of the representatives of factions and organizations. These were categorized in three groups:

1. One group of factions and organizations believe that all the agreed upon issues should not prevent an immediate agreement among all to embark quickly on a reevaluation of the situation and to stop some forms of resistance (sparing civilians, rockets, work within the Green Line). They called for concentration on all forms of resistance against the occupation army and settlers in the occupied Palestinian territories. They also called for intensifying popular resistance, represented in demonstrations, sit-ins, and protests.

2. Another group proposed that it is necessary to consider the reasons for the problems we are facing and the measures required to put the house in order, guarantee political participation and equal citizenship rights, and put an end to corruption when reevaluating all forms and means of resistance.

3. A third group stressed that the forms of resistance at this stage are subject to a reevaluation on the basis of an internal decision by the concerned factions. They said the issue can be discussed if aggression stops and occupation ends. They added that discussing the issue of the means and forms of resistance under the continuation of occupation, aggression, and incursions could be an attempt to undermine the resistance and its deterrent ability. . . .

Representatives of NGOs, Journalists, and Others

The Special Committee held a session on 14 July 2004 to listen to the representatives of the national and civil societies and a number of journalists, media men, and researchers. The conferees' remarks and ideas can be summed as follows:

1. Holding all parties—the presidency, government, PLC, factions, and national organizations—responsible for the deterioration of the situation in a manner that portends danger. They all have failed to shoulder their leadership, executive, and supervisory responsibilities.

2. The conferees concentrated on the principal responsibility of the PLC members. Some speakers accused them—whether those in the cabinet or those selling positions outside it—of being part of the existing corruption. Nevertheless, the conferees stressed that there is no alternative to adherence to the PLC in matters related to the spread of violence and armed militias, which terrorize all. The conferees stressed the importance of the PLC's initiative (to form the Special Committee) and to shoulder its responsibilities based on its legitimacy and its being the last remaining hope. They stressed their willingness to support the PLC if it faces up to its responsibilities and works for the implementation of reforms (the [202] reform document adopted by the PLC) and for the enforcement of public order and the rule of the law.

3. All speakers agreed that the present government is a large part of the general problem due to its absence and failure to carry out its duty. They called for withdrawing confidence from the government due to its inability to abide by what came in its ministerial program, on whose basis it won confidence, particularly with regard to security for the citizens and reforms.

4. The speakers stressed the futility of the current national dialogue due to the self-interests of the factions and political organizations at the expense of the Palestinian people's interests. The conferees asked all factions and organizations to work selflessly and sincerely to reach an agreement on a national program that supports our steadfastness and puts an end to some forms of resistance which add to our people's suffering.

5. All called for organizing the work, responsibilities, and jurisdictions of the security services and for stopping their violations and encroachments. They also called for sub-

jecting them to the decision of the political leadership.

6. The speakers stressed that reform is first a Palestinian need and demand regardless of the statements issued abroad about it. Most of them wondered about the reason for accepting the imposed reform at the expense of the reform that is required nationally.

PA General Intelligence Head Amin al-Hindi

The Special Committee held a meeting on 15 July 2004 with Maj. Gen. Amin al-Hindi, head of the General Intelligence Department, and some of his aides. In his presentation, Hindi said the main reason for the security services' inability to perform their duties is the absence of the institution and bylaws regulating their work. These could have subjected all violators to prosecution. He said that no decision was made on the principle of accountability and there was no questioning by any side. He added that in the absence of structures and the failure to allocate budgets for the services, the commanders acted individually and did what others (council leaders) were not doing. They looked for powers and implemented the decisions made by the Military Security Council whether or not these fall within our specialization. Hindi pointed out the following:

1. Disguised unemployment impacts on the security services and inflation in the number of personnel and the need to distribute the available funds among this large number. He added that a large number of people working in the services have specializations unsuitable for security work. He said public welfare dictates that every service must be entitled by the law and bylaws to choose its personnel and deal with them within the framework of an administrative and professional plan.

2. The internal situation and the ambiguity of terms of reference impact the work of the services. He stressed that the Intelligence Department answers to the president while the financial and administrative affairs have other terms of reference. There is no independence for the heads of services in appointments, promotions, awards, or penalties.

3. Members of the security services cannot protect themselves. They sometimes depend on the protection of the tribe or family due to the services' inability to protect them. This causes some sort of chaos.

4. Specialization of the security services is important. It is not my job to perform police tasks, for example. The weakness of courts and prosecutors sometimes forces us to release criminals and collaborators on bail. Investigators are threatened by the families of the security and criminal detainees.

5. The security plan presented by the security services did not see the light because all failed to abide by it and because of disagreement and selfishness. My mission is supposedly the implementation of political decisions about security affairs. Responsibility falls on the shoulders of the person who makes the political decision.

In his replies to the Special Committee questions, Hindi said:

1. There is an important issue related to dependence. The president's instructions are sent to a large number of security officials (sometimes 10) for implementation, but might not be implemented by any of them.

2. Most violations are by the security services, the Authority personnel, and some Fatah elements. These include land violations. Hindi warned that failure to secure regular salaries for the services forced some personnel to look for private sources of income.

3. Hindi said the siege imposed on the president plays a role in this regard.

4. The chaotic use of weapons on the pretext of resistance, and the tunnels, whose smuggled goods are sold in the market with the aim of doing business and making profit, created major chaos that could no longer be controlled. It is well known that most of the resistance men are from the Authority or the security services. There might be some insinuations to do so. Also there was no insistence on the implementation of decisions. Occupation and aggression undoubtedly play a role, but I cannot deny our own role. Before the intifada, the security role witnessed violations, breaches, and blackmail.

5. We presented a bill organizing the work, duties, and powers of the security services and the rights of their personnel. It was referred to the Fatwa and Legislation Department. It has not yet seen the light.

6. The General Intelligence Department and the Preventive Security Service reached a formula for cooperation and understanding about their powers in the external and internal fields, and this is the best in the field of security. It exists. The reason for this is that we cannot sit in our offices and watch the collapse of order and increase in crimes and violations.

7. The outside performance of the Intelligence Department is excellent and achieves a high percentage of the tasks entrusted to it. The situation is different internally because the department exerts efforts in tasks outside its jurisdiction. For example, we are supposed to be responsible for parties and factions, but other services interfere. Why do we have an executive military force? Intelligence work does not depend on muscles but on science and reason. . . .

10. Entrusting civilian tasks to us creates problems and dissatisfaction. The police should be the basis for the relationship with the citizens.

11. Yes, if the National Security Council issues a decision, I will implement it.

12. We contacted the factions after Sharon's plan was announced and we agreed with the security services to be prepared. The Egyptian initiative focuses on rehabilitating and restructuring the services. If this happens, we will be able to do something and the people will support us because they are interested in the initiative as it serves their interests while others have other interests. Regarding Hamas, there was welcome and a desire for cooperation.

13. There can be no action without friction. If things are dealt with, preparedness will be there and we will confront anyone who tries to provoke the Israelis into coming to our country. I am demanding this not only from Hamas and Islamic Jihad, but Fatah in the first place. I think Fatah will stand by our side and will not give a cover to anyone.

14. We do not feel there is political protection. The person in my department is not sure that I can protect him.

15. We do not have a regular operational budget. We need to send letters and requests to the president and there is no regularity. . . .

PM Ahmad Qurai'

The Special Committee held a meeting Saturday afternoon, 17 July, to listen to the prime minister. In his presentation, the prime minister indicated the following: . . .

7. The prime minister said reform is a basic issue and that the national Palestinian committee appointed for this purpose has been activated so that there will be participation by the government and the civil society organizations. He said the ministerial reform committee held two meetings and adopted decisions on the recommendations made by the national committee. He added that the ministerial committee made efforts

to build the institution of the Council of Ministers (because there was nothing) and establish a public administration in charge of keeping the minutes of meetings, following up cabinet decisions, and preparing job descriptions for 18 ministries (he said this is the most prominent feature in the reform). He said the ministries absorbed large numbers of people due to unemployment. He said the required number of civil servants will be absorbed and will find a way to absorb the remaining ones through consultations with the PLC. . . .

10. In the political field, he stressed that the government will continue its efforts. He said that the situation is difficult and that there is an innovation called unilateral withdrawal and this provides an opportunity and a danger. He said the government welcomes the departure of occupation and dismantling of settlements so that work can be successful although there is danger that this might be a mere political maneuver. If they withdraw, he said, we will ask for the same in the West Bank. He added: We raised this issue with all delegations and with the Quartet. We presented all our fears and commitments and we are prepared to shoulder our responsibilities. The final-status issues are the basis for any negotiations and the date is 2005. We cannot deal with the issue of an interim state at present. We spoke about the wall, settlement activity, and the infrastructure of settlements and the surrounding areas. These double the size of settlements. . . .

The Special Committee members then directed their questions and queries to the prime minister, who answered them as follows: . . .

2. We inherited chaos from the previous governments, which did nothing about it. We diagnosed the problem and tried to use all our powers and the provisions of the basic law. The problem is deeply rooted. Some of you held the government responsible only three weeks after its formation.

3. I did not say there was a breakthrough. I said we worked, tried, and will try. I understand that a breakthrough takes place in negotiations in accordance with a specific timetable about the permanent status. We begin today and end in 2005 in accordance with the road map plan. We said the contacts were good and they were beneficial. On the international and internal level, the Israelis refuse to implement a cease-fire. They exploit and destroy on the pretext that they are victims. There are some on the street who still say no to a cease-fire. We called

for negotiations and for stopping assassinations, killings, destruction, and siege (he referred to the president's siege) and these are parts of the reform process. This is the breakthrough package, but there are other parties which did not accept this as a result of the current situation. The security situation is bad and it was so in the past. One of the reasons is the fact that the road map was not implemented. We and the brother president tried to work on the internal level. Therefore, the National Security Council was formed. Having a prime minister with powers is not the basic issue. The basic issue is achieving security for citizens, homeland, and institutions. What we succeeded in doing was diagnosing the problem and the solution lies in unifying the services. Each should be led by a person who has powers so that he can rebuild his service and restore the people's confidence. Neither I nor you created the street phenomenon. We must work in cooperation with all. . . .

6. There is no political vacuum and Gaza is in the heart. The government did not fail to carry out its duty. It gave Gaza what it could although that was less than what it needed—emergency and unemployment fund. We tried to draw up a plan and there is a plan. In order to ensure the regularity of aid, we set up funds (disasters and unemployment) for it. We did not interrupt their work. They went on strike, demonstrated, and attacked. There are basic problems and we tried to deal with them. There is a plan for the work of the ministries and a quarterly follow-up report.

ISRAEL

C1. ISRAELI HIGH COURT, RULING ON THE SEPARATION FENCE, JERUSALEM, 30 JUNE 2004 (EXCERPTS).

The case was brought before the High Court on 29 February by villagers from Bayt Surik, Biddu, al-Kabiba, Ka'ane, Bayt Anan, Bayt Laqia, Bayt Ajaza, and Bayt Daku challenging the seizure of their lands and the disproportionate hardship caused by the wall's route; the defendants ("respondents") were the Government of Israel and the military commander of the West Bank. Unlike the International Court of Justice at the Hague, the High Court was not called upon to consider the wall as a whole, but only a 40-km stretch (out of the 832-km total length) northwest of Jerusalem. The court ruled without deliberation in favor of Israel's right to build the wall on West

Bank lands and the security nature of the project. Most of the opinion concerned the legality of the specific route. The court considered six separate orders pertaining to different segments of the wall and ruled that disproportionate hardship was caused to the inhabitants along about 30 km. For these segments, the court ordered the military commander to "consider alternatives which, even if they result in a lower level of security, will cause a substantial (even if not complete) reduction of the damage to the lives of the local inhabitants" (para. 76). In compliance with the order, the IDF on 8 July finalized a proposal for a new path for the wall in the Bayt Surik area, but Prime Minister Sharon and Defense Minister Mofaz had not formally approved it by the end of the quarter. The full text of the court ruling can be found on the High Court's Web site at www.court.gov.il.

Authority to Erect the Separation Fence...

28. We examined petitioners' arguments, and have come to the conclusion, based upon the facts before us, that the Fence is motivated by security concerns. As we have seen in the government decisions concerning the construction of the Fence, the government has emphasized, numerous times, that "the Fence, like the additional obstacles, is a security measure. Its construction does not express a political border, or any other border" (decision of June 23, 2002). "The obstacle that will be erected pursuant to this decision, like other segments of the obstacle in the "Seam Area," is a security measure for the prevention of terror attacks and does not mark a national border or any other border." (decision of October 1, 2003)...

The Route of the Separation Fence...

34. The law of belligerent occupation recognizes the authority of the military commander to maintain security in the area and to protect the security of his country and her citizens. However, it imposes conditions on the use of this authority. This authority must be properly balanced against the rights, needs, and interests of the local population...

The Proportionality of the Route of the Separation Fence

44. The principle of proportionality applies to our examination of the legality of the Separation Fence. This approach is accepted by respondents. It is reflected in the government decision (of October 1, 2003)

that "during the planning, every effort shall be made to minimize, to the extent possible, the disturbance to the daily lives of the Palestinians due to the construction of the obstacle." The argument that the damage caused by the Separation Fence route is proportionate was the central argument of respondents. Indeed, our point of departure is that the Separation Fence is intended to realize a security objective that the military commander is authorized to achieve. The key question regarding the route of the Fence is: is the route of the Separation Fence proportionate?...

The Military Nature of the Route of the Separation Fence

46. The first question deals with the military character of the route. It examines whether the route chosen by the military commander for the Separation Fence achieves its stated objectives, and whether there is no route that achieves this objective better. It raises issues within the realm of military expertise. We, Justices of the Supreme Court, are not experts in military affairs. We will not examine whether the military commander's military opinion corresponds to ours—to the extent that we have an opinion regarding the military character of the route...

47. The petition before us is exceptional in that opinions were submitted by the Council for Peace and Security [a body of high-ranking Israeli reserve officers called to give testimony, which challenged some of the security claims made by the military government—Ed.]. These opinions deal with the military aspect of the Separation Fence. They were given by experts in the military and security fields, whose expertise was also recognized by the commander of the area. We stand, therefore, before contradictory military opinions regarding the military aspects of the route of the Separation Fence. These opinions are based upon contradictory military views... In this state of affairs, are we at liberty to adopt the opinion of the Council for Peace and Security? Our answer is negative. At the foundation of this approach is our long-held view that we must grant special weight to the military opinion of the official who is responsible for security...

Order Tav/104/03; Order Tav/103/03; Order Tav/84/03 [This order concerns the 10-km segment affecting the villages of Bayt Laqia, Bayt Anan, and

Khirbet Abu al-Lahm. Paragraphs 51–56 lay out the petitioners' case and the military commander's response—Ed.] . . .

57. Is the injury to the local inhabitants by the Separation Fence in this segment, according to the route determined by respondent, proportionate? Our answer to this question necessitates examination of the route's proportionality, using the three subtests. The first subtest examines whether there is a rational connection between the objective of the Separation Fence and its established route. Our answer is that such a rational connection exists. . . .

58. The second subtest examines whether it is possible to attain the security objectives of the Separation Fence in a way that causes less injury to the local inhabitants. There is no doubt—and the issue is not even disputed—that the route suggested by the members of the Council for Peace and Security causes less injury to the local inhabitants than the injury caused by the route determined by the military commander. The question is whether the former route satisfies the security objective of the security Fence to the same extent as the route set out by the military commander. We cannot answer this question in the affirmative. The position of the military commander is that the route of the Separation Fence, as proposed by members of the Council for Peace and Security, grants less security than his proposed route. By our very determination that we shall not intervene in that position, we have also determined that there is no alternate route that fulfills, to a similar extent, the security needs while causing lesser injury to the local inhabitants. In this state of affairs, our conclusion is that the second subtest of proportionality, regarding the issue before us, is satisfied.

59. The third subtest examines whether the injury caused to the local inhabitants by the construction of the Separation Fence stands in proper proportion to the security benefit from the Security Fence in its chosen route. . . .

60. Our answer is that there relationship between the injury to the local inhabitants and the security benefit from the construction of the Separation Fence along the route, as determined by the military commander, is not proportionate. The route disrupts the delicate balance between the obligation of the military commander to preserve security and his obligation to provide for the needs of the local inhabitants. This approach is based on the fact that the route which the

military commander established for the Security Fence—which separates the local inhabitants from their agricultural lands—injures the local inhabitants in a severe and acute way, while violating their rights under humanitarian international law. . . . [There follows a detailed description of the wall's consequences for the petitioners—Ed.] As a result, the life of the farmer will change completely in comparison to his previous life. The route of the Separation Fence severely violates their right of property and their freedom of movement. Their livelihood is severely impaired. The difficult reality of life from which they have suffered (due, for example, to high unemployment in that area) will only become more severe.

61. These injuries are not proportionate. They can be substantially decreased by an alternate route, either the route presented by the experts of the Council for Peace and Security, or another route set out by the military commander. Such an alternate route exists. . . . In the opinion of the military commander—which we assume to be correct, as the basis of our review—he will provide less security in that area. However, the security advantage reaped from the route as determined by the military commander, in comparison to the proposed route, does not stand in any reasonable proportion to the injury to the local inhabitants caused by this route. . . . The gap between the security provided by the military commander's approach and the security provided by the alternate route is minute, as compared to the large difference between a Fence that separates the local inhabitants from their lands, and a Fence which does not separate the two (or which creates a separation which is smaller and possible to live with). Indeed, we accept that security needs are likely to necessitate an injury to the lands of the local inhabitants and to their ability to use them. International humanitarian law on one hand, however, and the basic principles of Israeli administrative law on the other, require making every possible effort to ensure that injury will be proportionate. Where construction of the Separation Fence demands that inhabitants be separated from their lands, access to these lands must be ensured, in order to minimize the damage to the extent possible. . . .

Overview of the Proportionality of the Injury Caused by the Orders

82. Having completed the examination of the proportionality of each order separately,

it is appropriate that we lift our gaze and look out over the proportionality of the entire route of the part of the Separation Fence which is the subject of this petition. The length of the part of the Separation Fence to which these orders apply is approximately forty kilometers. It causes injury to the lives of 35,000 local inhabitants. 4,000 dunams of their lands are taken up by the route of the Fence itself, and thousands of olive trees growing along the route itself are uprooted. The Fence separates the eight villages in which the local inhabitants live from more than 30,000 dunams of their lands. The great majority of these lands are cultivated, and they include tens of thousands of olive trees, fruit trees and other agricultural crops. The licensing regime which the military commander wishes to establish cannot prevent or substantially decrease the extent of the severe injury to the local farmers. Access to the lands depends upon the possibility of crossing the gates, which are very distant from each other and not always open. Security checks, which are likely to prevent the passage of vehicles and which will naturally cause long lines and many hours of waiting, will be performed at the gates. These do not go hand in hand with the farmer's ability to work his land. There will inevitably be areas where the Security Fence will have to separate the local inhabitants from their lands. In these areas, the commander should allow passage which will reduce, to the extent possible, the injury to the farmers.

83. During the hearings, we asked respondent whether it would be possible to compensate petitioners by offering them other lands in exchange for the lands that were taken to build the Fence and the lands that they will be separated from. We did not receive a satisfactory answer. This petition concerns farmers that make their living from the land. Taking petitioners' lands obligates the respondent, under the circumstances, to attempt to find other lands in exchange for the lands taken from the petitioners. Monetary compensation may only be offered if there are no substitute lands.

84. The injury caused by the Separation Fence is not restricted to the lands of the inhabitants or to their access to these lands. The injury is of far wider scope. It is the fabric of life of the entire population. In many locations, the Separation Fence passes right by their homes. In certain places (like Bayt Sourik), the Separation Fence surrounds the village from the west, the south and the

east. The Fence directly impedes the access of the local inhabitants to the urban centers (Bir Nabbala and Ramallah). This access is impeded even without the Separation Fence. This difficulty is increased sevenfold by the construction of the Fence.

85. The task of the military commander is not easy. He must delicately balance security needs with the needs of the local inhabitants. We were impressed by the sincere desire of the military commander to find this balance, and his willingness to change the original plan in order to reach a more proportionate solution. We found no stubbornness on his part. Despite all this, we are of the opinion that the balance determined by the military commander is not proportionate. There is no escaping, therefore, a renewed examination of the route of the Fence, according to the standards of proportionality that we have set out.

C2. JEWISH PEOPLE POLICY PLANNING INSTITUTE, "THE JEWISH PEOPLE 2004: BETWEEN THRIVING AND DECLINE," JERUSALEM, JULY 2004 (EXCERPTS).

The fifty-six-page report, a summary of a book by the same name, presents the findings of "a systematic assessment of the current state of world Jewish affairs" carried out by a team of seventeen experts headed by Professor Sergio DellaPergola of Hebrew University. The study was commissioned by the Jewish People Policy Planning Institute (JPPPI), a think tank established in February 2002 by the Jewish Agency for Israel; former U.S. Middle East envoy Dennis Ross is the chairman of the JPPPI's board. According to the Jewish weekly Forward (30 July), the report was presented to Prime Minister Sharon and his cabinet on 27 June and debated there, with the prime minister promising to set up a task force to implement its recommendations. A recurring theme throughout the report is the need for greater coordination among Diaspora groups as well as between Israel and the Diaspora, with more weight given to the latter in Israeli policy formation. The report is divided into three sections: a comprehensive evaluation of internal and external trends affecting the Jewish people in the present and near future; a survey of Jewish communities on a country-by-country basis; and "Recommendations for a Strategic Agenda." The full report is available online at www.jpppi.org.il.

The Jewish People: A Comprehensive Evaluation

B. The Impact of External Environment
Critical Events and Trends

2. Geopolitical Shifts

...

- The new world order, with the U.S. as the leader in the war on global terror, increases the political influence of U.S. Jewry and strengthens Israel strategically, but at the same time creates a tri-lateral (U.S.-Israel-Jewish) axis hated by large sections of the developing world.
- The expansion and consolidation of the European Union creates new opportunities for the political integration, social mobility and cultural expression of European Jewry—particularly those from Eastern Europe, subsequent to accession in May 1, 2004. It also poses a double challenge: the need to build an effective pan-European Jewish community organization and leadership, and the need to find an appropriate mode of discourse at the institutional level in the EU.
- Arab control of oil resources hampers U.S. global influence and may detrimentally affect American-Israeli relations.
- A large Islamic country, Pakistan, already holds nuclear capabilities. The effort to obtain nuclear weapons persists in Iran, and other countries, as well as on the part of terrorist groups. Israel is an obvious target of unconventional threats, as well as the U.S. and its large Jewish population.
- The events of 9/11, and the recurring impact of al-Qaeda, demonstrate that fewer can kill more.
- The fall of Saddam Hussein's regime and the American occupation of Iraq removes a danger on the Eastern front and strengthens Israel's strategic position. The long-term consequences of American occupation (in terms of actual or perceived success/failure) are not yet clear.
- The accelerated increase in economic and political power that is taking place in China, and, to some extent, India, occurs in societies virtually free of a Jewish presence and uninfluenced by biblical images of the Jewish people.

3. Arab-Israeli conflict

- Seemingly permanent turmoil in the Middle East continuously polarizes at-

ention in a dynamic world, tarnishing Israel's image and international standing, and adding pressure on Diaspora Jews.

- Escalation of the conflict with the Palestinians engenders new modes of violence that are difficult to effectively confront. The consequences project not only on political values, but on basic human outlook as well.
- The weakening of the capacity for an Arab conventional attack is counter-balanced by the proliferation of non-conventional weapons.
- The U.S.'s pro-Israel leanings antagonize other countries, including some in the West, thus generating hostility against Jewish communities. . . .

10. Anti-Semitism and the emergence of new forms of Judeophobia

- Modern anti-Semitism perpetuates classic antisemitic rhetoric, and continues to attack Jewish symbols and targets.
- A number of new antisemitic arguments and motifs have appeared: 1) denial of Israel's right to exist, ostensibly because of its "racist/colonialist character" and its "murderous attack on the Palestinians"; 2) delegitimation of the right of the Jewish people to a sovereign political framework; 3) denial of the Shoah.
- The flag bearers are Moslem fundamentalists, the extreme and less extreme left, and the extreme right. A coalition of these disparate groups demonstrated at the Durban conference against racism how opposing interests can coalesce around an anti-Israeli agenda.
- Some supporters of the anti-global movement view globalization as a manifestation of Jewish dominance on world affairs.
- The media's often limited, and frequently unilateral, reporting from the Middle East promotes a biased and oversimplified impression of a very complex conflict.
- A small-scale, but significant, development is virulent anti-Israelism with some anti-Semitic overtones among some academic circles. . . .
- One important result of the new manifestations of anti-Semitism and Israel-linked Judeophobia is that the organized Jewish community, together with Israel, mobilizes against the new trend.

- Greater awareness in western societies of the symbolic and practical implications of the Shoah translates into official governmental initiatives to incorporate the Jewish people into the mainstream of collective memory.
- Empirical observations to date tend to validate the notion that anti-Semitism motivates an increase in Jewish identity and solidarity, rather than stimulating denial. However, the potential for “flight” and distancing from Jewish identity exists. . . .

Opportunities and Challenges

The forces of the external world pose both opportunities for, and threats to, the Jewish people.

Among the opportunities are:

- Most Jews currently find themselves living in the most powerful countries and cities in the developed world, combining wealth, military might, technological sophistication, and political freedom. Jews in Diaspora communities are well suited, in terms of education, income, and position in key global industries, to defend Jewish interests. The Jewish people have at their disposal an enormous array of resources that can be mobilized to support Jewish identity and culture and defend Jewish communities against external threats.
- Globalization can enhance Jewish solidarity across Diaspora communities, and between them and Israel. Through networking, Diaspora communities can also become more effective.
- Traditional indications of anti-Semitism in North America continue to be weak.
- Western Jews continue to find themselves and their cultural attributes welcome. This can invigorate Jewish culture through innovation and creativity.
- Jews are well represented at the center of political and economic decision-making. They are also able to yield influence, although affected by global trends.
- The technological aspects of globalization can be harnessed to promote Jewish interests and cultural vitality, as well as a global and interdependent Jewish community.
- The defeat of Iraq and the war on terror in the short term improves Israel's strategic position. But the dangers and challenges arising from these factors are formidable:

- A weakening in the power of the American hegemony, or in the West in general, or an increase in the manifestation of anti-Americanism, or a rift between the United States and Europe, would bode ill for the Jewish people and Israel. The outcome in Iraq may play a role here. . . .
- The increase of Moslem and Arab populations in Western Europe and North America poses challenges to the sociopolitical efficacy of Diaspora Jewry in defending Israel and related interests.
- The campaign to undermine the legitimacy of Israel is escalating, not only by Moslem radicals but by other segments of the Moslem and Arab world and by liberal factions in the West. One outcome of the campaign might be to alienate left-liberal Jews. This could weaken the links between Israel and Diaspora Jews. The new anti-Semitism demoralizes Diaspora Jews while the continuation of terrorist attacks may have similar effects in Israel. . . .

C. Major Internal Trends Within the Jewish People

2. Unity and Division

. . .

Since World War II, the organizational structure of the Jewish people in the Diaspora has become more cohesive. In most communities (Australia and the U.S. being exceptions), there is a clearly defined hierarchical structure with fewer central, yet more powerful, representative organizations and a chief rabbi. Even the U.S. Jewish community, with its strong local organizational infrastructure, is becoming more effective at the national level, with a select number of representative organizations such as the Conference of Presidents, AIPAC, and the UJC [United Jewish Communities].

However, at the international level, the Jewish community is less unified. There are a plethora of international Jewish organizations, yet no one body that can speak for the Jewish People globally. Indeed, it may be argued that the global dispersion of the Jewish people creates diversities of interests and perspectives, and also conflicts of interest, thus precluding a strong global structure. One case in point is the different assessment of preferred strategies and objectives in the highly delicate issue of reparations to Shoah survivors, including

insurance policies, Swiss banks accounts, etc. . . .

3. Numbers and Security

Jews in the Diaspora have moved on the defensive since the second Palestinian insurgency, or intifada. A contradiction frequently emerges due to the gaps between Israeli action aimed at defending essential security interests and the basic values of western societies. The bias of a large part of the world media, coupled by the ineffectiveness of Israeli advocacy efforts, have not only caused Israel to be relentlessly attacked in the press, but have also pinpointed the Jewish people, in general, given their general support of Israel, as a "cause" of the Middle-Eastern conflict. In Europe, recent public opinion polls reveal that Israel is considered to be a "danger to world peace." . . .

5. Israel-Diaspora Interactions

E. The Institutional and Organizational Dimension

The Jewish people constitute a fluid, voluntary and self-organizing system that consist of some central, and many local and sectorial, institutions.

There are few organizations that view the Jewish people from a global perspective. Two prominent examples are the Jewish Agency, as the global platform of the Jewish people, and the World Jewish Congress (with its network of affiliates in Europe, Latin America, and the FSU) as a political instrument. Neither they nor any other organization, however, represent the Jewish people in its totality. Many international Jewish institutions, such as Bnei Brith, Keren Hayesod, WIZO, HIAS, the Conference on Material Jewish Claims against Germany, and the World Jewish Restitution Organization (WJRO) are concerned with particular issues and spheres of activity.

A number of large American organizations have a global focus, e.g. the UJC, the Conference of Presidents of Major Jewish Organizations, AIPAC, ADL, the Joint Distribution Committee, the American Jewish Committee, Hillel, and Hadassah. Similarly there are both Israeli-based organizations that are concerned with the Diaspora (focusing on Jewish and Zionist education, *aliyah*, religious life, philanthropy) and Diaspora-based institutions that are focused on support for, and interest in, Israel. Interestingly enough, with the formation of the UJC, an Overseas Needs Assessment and Disbursement

Committee (ONAD) was established. Thus, Israel's once separated and privileged status was downgraded and became part of a generic "overseas" rubric.

While there is significant cross-fertilization, a common global Jewish agenda that unites all these organizations and their activities is lacking. Some key issues, such as support for Israel and its representation in the media, anti-Semitism, the revival of Jewish life in the former Soviet Union and Eastern Europe, and the distribution of reparations and restitution funding, are of common concern to world Jewry. Organizations in the Diaspora, however, tend to focus on problems such as Jewish continuity, Jewish education, assimilation, and welfare services that are often common in most communities, but essentially local in scope.

The religious organizations are among the most focused and globally oriented. The Orthodox Union, Habad, Reform, and Conservative movements aim to propagate their respective religious styles and messages throughout the larger Jewish community.

Efforts have been made to address the model of the Israel-Diaspora connection, which has traditionally been parochial in nature, based to a large extent on unidirectional philanthropy rather than true partnership. Some attempts have been made to revise this model and develop a greater sense of mutuality in which contributions from all sides complement each other. The first successful example of partnership—Project Renewal in the early 1980s—has since been superseded by Partnership 2000. This partnership is based on the establishment of a network of sister communities in the Diaspora and Israel. Other significant examples include People to People, the Israel Experience, and Birthright.

On a regional level, the lack of an effective pan-European Jewish lobby and umbrella organization (other than the European Jewish Congress and the European Council of Jewish Communities) is of great concern, particularly in an era in which an expanded European Union is interested in playing an increasingly visible role in Middle-Eastern affairs and combating anti-Semitism. . . .

Strategic Assets, Critical Choice, and Strategic Agenda

B. Critical Choice

The one most critically acute choice facing Israel and the Jewish people involves the policies that should be adopted with respect to the conflict with the

Palestinians. This issue and its linkages have far-reaching implications, both directly and indirectly, for values related to the Promised Land, the Jewish character of the state of Israel, its security, and the security of the Jewish people as a whole. It also impacts on their moral and realpolitical standing.

The Palestinian issue often leads to tough dilemmas that can result in tragic consequences and can call into question the basis of our value system. It is a quandary with profound uncertainties. The inherent instability of the region virtually precludes easy, clear-cut and stable “solutions.” Against a background of a gauntlet of diverse dogmatic opinions in Israel that emanate from the “left” and “right,” and in the face of Palestinian realities, outstanding creative thinking and democratic determination are essential in crafting and implementing promising policy options.

Israel is on the “front line,” and her future essence and territory are at stake. The Israeli-Arab dispute, however, carries important implications for all Jews, wherever they reside. Therefore, innovative measures are necessary in involving the Jewish people as a whole in this critical choice, while at the same time maintaining Israel’s prerogative to make its own choices.

C. Strategic Agenda

2. Fortifying the security and Jewish uniqueness of Israel

Israel is a strong country, in terms of its spiritual and social resources and hard power. However, its long-term security is precarious because of persistent hostility from Arab and other states that deny the right of the Jewish state to exist, the proliferation of mass killing weapons, and the rise of fundamentalist Islam. Therefore, ensuring its security is crucial and demands a sustained effort by Jews in Israel and all over the world.

These efforts are imperative not only because of the inherent importance of Israel as a Jewish state, and the increasingly growing proportion of the Jewish people living there, but also because—unthinkable as it may be—if Israel should fall, the survival of the Jewish people is doubtful.

However, at stake is not only the existence of the State of Israel but its Jewish uniqueness, the dilution of which would be a tragedy, both in terms of its Jewish values and the long-term existence and thriving of the Jewish people as a whole. Therefore, fortification of the Jewish essence of Israel is

critical. Since the Jewish nature of Israel is not guaranteed, all the more strenuous efforts are needed in order to preserve and deepen it.

Demographic trends in Israel move in an ominous direction, both in the country as a whole, and in the Negev and the Galilee in particular. Despite the fact that the language of Israel is Hebrew, the Bible plays a pivotal role in education, interfaith marriages are marginal, and so on, there is a real danger that the country’s Jewish cultural essence is being diluted.

Five policy directions illustrate the need for firm decisions and action:

- An awareness of the dangers to the very existence of Israel and its Jewish character is crucial, and should be transmitted to the next generation of Jews in the various communities. Should these dangers realize, there will be dire consequences for the Jewish people. In order to forge a strong commitment to Israel and its national character, it is essential to understand the potential hazards that face the state of Israel.
- *Aliyah* is not just a traditional Jewish commandment and Zionist value, but also continues to be an existential necessity. Therefore, even Jewish communities that are not in danger, especially the U.S., should be encouraged to participate in a pan-Jewish Mega Project that involves a large-scale movement to Israel. In addition, new modes of part-time residency in Israel should be developed, and steps should be taken to prevent any possible rifts in the communities from which *aliyah* takes place.
- Money that is given to Israel by Jews should be spent on ensuring the long-term future of the Jewish people rather than meeting current needs.
- When making decisions regarding the future of the borders of Israel, demographic factors should be taken into account, as well as other implications for the Jewish nature of Israel. . . .

9. Revising and strengthening Israel-Diaspora relations

The establishment of the state of Israel is a turning point in the history of the Jews. It will take generations for the relations between Israel and the Diaspora to evolve and reach a dynamic balance. This, however, does not justify the absence of serious discussion on that relationship.

It is, first and foremost, Israel's duty to take more seriously the ideal of being the core state of the Jewish people. This not only involves greater efforts in strengthening Jewish communities worldwide, but also means that during the decision-making process, the overall impact of any policy on Diaspora communities, and on the future of the Jewish people as a whole, should be seriously taken into account.

It may now be time to further institutionalize the value of Israel's ambition to be the democratic state of the Jewish people as a whole, and not only of its citizens. To begin with, Israel should grant a formal consultative status to a global Jewish body—based on existing organizations such as the Jewish Agency and the World Jewish Congress—that would be involved in any Israeli decision-making processes that bear relevance to the Jewish people and their future.

Diaspora Jewish communities also bear a heavy responsibility for revising and strengthening relations with Israel. This involves even greater efforts to fortify the security of Israel and its Jewish uniqueness, by supporting *aliyah*, for example. But the emphasis should be placed on partnerships, such as mutual projects that work to bolster Jerusalem as the spiritual center of the Jewish people, on acting strategically against anti-Semitism, and on implementing the various policy directions proposed in this chapter.

However, what is most important is a sense of joint responsibility for the future of the Jewish people and Judaism as a whole, without any hint of patronizing. Competition for centrality in the Jewish people is legitimate and can spur creativity, but what is most important is intensive cooperation and a shared recognition of the importance, both of the Diaspora and Israeli communities, for the future of the Jewish people in all their main locations.

10. Crafting a geopolitical grand-policy

The establishment of a Jewish state has placed the Jewish people squarely in the realm of global geopolitics. This is particularly true since Israel carries a lot of "hard" power and the Jewish community in the U.S. has a lot of "soft" power. Never before has the Jewish people had so much power.

Israel and the Jewish people, however, are targets of various forms of hostility and violence. This situation calls for novel policy directions. Thus:

- The dilemmas posed by the fact that Israel depends on Western support, while its ability to thrive in the long term depends on reaching an agreement with Islam, should be recognized. A Jewish grand strategy with respect to Islam and Islamic organizations is therefore urgently needed. Together with the crafting of this strategy, efforts should be made to achieve at least quasi-stabilization in the Israeli-Palestinian conflict.
- Shifts in global power structures require Jewish efforts in building bridges. Israel's international relations and standing with countries that are becoming major global actors, such as China and India, need to be improved, as well as with other new regional global actors, such as the European Union.
- Coping with anti-Semitism requires a more differentiated and multi-dimensional strategy, with special attention allotted to the more virulent forms.
- The Jewish people should adopt a high moral ground and disseminate Prophetic values in their global actions. At the same time, the realpolitical requirements must be satisfied in order to ensure survival. The dilemmas inherent in these often conflicting aims, given the current situation in the world and in the Middle East, require a more explicit moral discourse, as well as better long-term statecraft, which stands in contrast to the prevalence of often very superficial treatments and *ad hoc* reactive decisions.
- Because of the likelihood of continuous global instability and violent turmoil in the Middle East, consolidation and increase of the "hard" and "soft" powers held by the Jewish people is of critical importance. Thus, European Jewry should seek ways to accrue more soft power.

UNITED STATES

D1. TOP-RANKING RETIRED U.S. DIPLOMATS AND MILITARY COMMANDERS, STATEMENT ON CURRENT U.S. POLICIES, 16 JUNE 2004.

The twenty-seven signatories of the Diplomats and Military Commanders for Change initiative include a former director of the CIA; a former chairman of the president's Foreign Intelligence

Advisory Committee; several former chairmen of the Joint Chiefs of Staff; a former commander in chief of the U.S. Central Command; a former director of the U.S. Information Agency; and several former secretaries of defense. The text of the initiative is available online at www.diplomatsforbanage.com.

The undersigned have held positions of responsibility for the planning and execution of American foreign and defense policy. Collectively, we have served every president since Harry S. Truman. Some of us are Democrats, some are Republicans or Independents, many voted for George W. Bush. But we all believe that current Administration policies have failed in the primary responsibilities of preserving national security and providing world leadership. Serious issues are at stake. We need a change.

From the outset, President George W. Bush adopted an overbearing approach to America's role in the world, relying upon military might and righteousness, insensitive to the concerns of traditional friends and allies, and disdainful of the United Nations. Instead of building upon America's great economic and moral strength to lead other nations in a coordinated campaign to address the causes of terrorism and to stifle its resources, the Administration, motivated more by ideology than by reasoned analysis, struck out on its own. It led the United States into an ill-planned and costly war from which exit is uncertain. It justified the invasion of Iraq by manipulation of uncertain intelligence about weapons of mass destruction, and by a cynical campaign to persuade the public that Saddam Hussein was linked to al-Qaeda and the attacks of September 11. The evidence did not support this argument.

Our security has been weakened. While American airmen and women, marines, soldiers and sailors have performed gallantly, our armed forces were not prepared for military occupation and nation building. Public opinion polls throughout the world report hostility toward us. Muslim youth are turning to anti-American terrorism. Never in the two and a quarter centuries of our history has the United States been so isolated among the nations, so broadly feared and distrusted. No loyal American would question our ultimate right to act alone in our national interest; but responsible leadership would not turn to unilateral military action before diplomacy had been thoroughly explored.

The United States suffers from close identification with autocratic regimes in the Muslim world, and from the perception of unquestioning support for the policies and actions of the present Israeli Government. To enhance credibility with Islamic peoples we must pursue courageous, energetic, and balanced efforts to establish peace between Israelis and Palestinians, and policies that encourage responsible democratic reforms.

We face profound challenges in the 21st Century: proliferation of weapons of mass destruction, unequal distribution of wealth and the fruits of globalization, terrorism, environmental degradation, population growth in the developing world, HIV/AIDS, ethnic and religious confrontations. Such problems cannot be resolved by military force, nor by the sole remaining superpower alone; they demand patient, coordinated global effort under the leadership of the United States.

The Bush Administration has shown that it does not grasp these circumstances of the new era, and is not able to rise to the responsibilities of world leadership in either style or substance. It is time for a change.

**D2. INTERNATIONAL COURT OF JUSTICE (ICJ)
JUDGE THOMAS BUERGENTHAL, DISSENTING
OPINION TO THE ICJ'S FINDINGS ON ISRAEL'S
SEPARATION WALL, THE HAGUE, 9 JULY 2004
(EXCERPTS).**

Judge Buergenthal, the only American sitting on the fifteen-member ICJ, was the only dissenter on the four questions concerning the legality of the wall and Israel's obligations flowing from the ruling. His minority opinion was carried on the ICJ Web site at www.icj-cij.org.

1. Since I believe that the Court should have exercised its discretion and declined to render the requested advisory opinion, I dissent from its decision to hear the case. My negative votes with regard to the remaining items of the *dispositif* should not be seen as reflecting my view that the construction of the wall by Israel on the Occupied Palestinian Territory does not raise serious questions as a matter of international law. I believe it does, and there is much in the Opinion with which I agree. However, I am compelled to vote against the Court's findings on the merits because the Court did not have before it the requisite factual bases for its sweeping findings; it should therefore have declined to hear the case. . . .

2. I share the Court's conclusion that international humanitarian law, including

the Fourth Geneva Convention, and international human rights law are applicable to the Occupied Palestinian Territory and must there be faithfully complied with by Israel. I accept that the wall is causing deplorable suffering to many Palestinians living in that territory. In this connection, I agree that the means used to defend against terrorism must conform to all applicable rules of international law and that a State which is the victim of terrorism may not defend itself against this scourge by resorting to measures international law prohibits.

3. It may well be, and I am prepared to assume it, that on a thorough analysis of all relevant facts, a finding could well be made that some or even all segments of the wall being constructed by Israel on the Occupied Palestinian Territory violate international law (see para. 10 below). But to reach that conclusion with regard to the wall as a whole without having before it or seeking to ascertain all relevant facts bearing directly on issues of Israel's legitimate right of self-defence, military necessity, and security needs, given the repeated deadly terrorist attacks in and upon Israel proper coming from the Occupied Palestinian Territory to which Israel has been and continues to be subjected, cannot be justified as a matter of law. The nature of these cross-Green Line attacks and their impact on Israel and its population are never really seriously examined by the Court, and the dossier provided the Court by the United Nations on which the Court to a large extent bases its findings barely touches on that subject. I am not suggesting that such an examination would relieve Israel of the charge that the wall it is building violates international law, either in whole or in part, only that without this examination the findings made are not legally well founded. In my view, the humanitarian needs of the Palestinian people would have been better served had the Court taken these considerations into account, for that would have given the Opinion the credibility I believe it lacks. . . .

9. Paragraph 6 of Article 49 of the Fourth Geneva Convention also does not admit for exceptions on grounds of military or security exigencies. It provides that "the Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies." I agree that this provision applies to the Israeli settlements in the West Bank and that their existence violates Article 49, paragraph 6. It follows that the segments of the wall being built by Israel to protect

the settlements are *ipso facto* in violation of international humanitarian law. Moreover, given the demonstrable great hardship to which the affected Palestinian population is being subjected in and around the enclaves created by those segments of the wall, I seriously doubt that the wall would here satisfy the proportionality requirement to qualify as a legitimate measure of self-defence.

D3. 9/11 COMMISSION REPORT, EXCERPTS TOUCHING ON THE ROLE OF U.S. POLICY TOWARD ISRAEL IN THE 9/11 ATTACKS, WASHINGTON, DC, 28 JULY 2004.

The bipartisan commission's 565-page report was issued after many months of investigating, reviewing documents, interviewing hundreds of individuals, and hearing testimony. Much of the material concerning the actual planning of the attacks comes from captured al-Qa'ida operatives, and particularly from the man identified in the report as the "principal architect of the 9/11 attacks," Khalid Shaykh Muhammad (KSM), a Kuwaiti national raised in Pakistan who earned a degree in mechanical engineering in the United States. The report notes (p. 147) that according "to his own account, KSM's animus toward the United States stemmed not from his experiences there as a student, but rather from his violent disagreement with U.S. foreign policy favoring Israel."

The following brief excerpts touch upon the importance attached to U.S. policy toward Israel in generating the attacks. The references are both in the narrative body of the report and in the more prescriptive chapter "What to Do? A Global Strategy," where the commission offers suggestions on how the United States can "Prevent the Continued Growth of Islamist Terrorism"; the paragraph excerpted from this forty-page chapter is the only reference to the impact of U.S. policy with regard to Israel. The excerpts appear respectively on pp. 250, 362, and 376-77 of the report. The full report is available from the U.S. Government Printing Office online at www.gpoaccess.gov/911.

According to KSM, Bin Ladin had been urging him to advance the date of the attacks. In 2000, for instance, KSM remembers Bin Ladin pushing him to launch the attacks amid the controversy after then-Israeli opposition party leader Ariel Sharon's visit to the Temple Mount in Jerusalem. KSM claims Bin Ladin told him it would be enough for

the hijackers simply to down planes rather than crash them into specific targets. KSM says he resisted the pressure.

KSM claims to have faced similar pressure twice more in 2001. According to him, Bin Ladin wanted the operation carried out on May 12, 2001, seven months to the day after the *Cole* bombing. KSM adds that the 9/11 attacks had originally been envisioned for May 2001. The second time he was urged to launch the attacks early was in June or July 2001, supposedly after Bin Ladin learned from the media that Sharon would be visiting the White House. On both occasions KSM resisted, asserting that the hijacking teams were not ready. . . .

As we mentioned in chapter 2, Usama Bin Ladin and other Islamist terrorist leaders draw on a long tradition of extreme intolerance within one stream of Islam (a minority tradition), from at least Ibn Taimiyyah, through the founders of Wahhabism, through the Muslim Brotherhood, to Sayyid Qutb. That stream is motivated by religion and does not distinguish politics from religion, thus distorting both. It is further fed by grievances stressed by Bin Ladin and widely felt throughout the Muslim world—against the U.S. military presence in the Middle East, policies perceived as anti-Arab and anti-Muslim, and support of Israel. Bin Ladin and Islamist terrorists mean exactly what they say: to them America is the font of all evil, the “head of the snake,” and it must be converted or destroyed. . . .

Recommendation: The U.S. government must define what the message is, what it stands for. We should offer an example of moral leadership in the world, committed to treat people humanely, abide by the rule of law, and be generous and caring to our neighbors. America and Muslim friends can agree on respect for human dignity and opportunity. . . .

American foreign policy is part of the message. America’s policy choices have consequences. Right or wrong, it is simply a fact that American policy regarding the Israeli-Palestinian conflict and American actions in Iraq are dominant staples of popular commentary across the Arab and Muslim world. That does not mean U.S. choices have been wrong. It means those choices must be integrated with America’s message of opportunity to the Arab and Muslim world. Neither Israel nor the new Iraq will be safer if worldwide Islamist terrorism grows stronger.

The United States must do more to communicate its message. Reflecting on Bin

Ladin’s success in reaching Muslim audiences, Richard Holbrooke wondered, “How can a man in a cave outcommunicate the world’s leading communications society?” Deputy Secretary of State Richard Armitage worried to us that Americans have been “exporting our fears and our anger,” not our vision of opportunity and hope.

D4. RALPH NADER, LETTER TO ANTI-DEFAMATION LEAGUE DIRECTOR ABRAHAM FOXMAN CONCERNING U.S. POLICY IN THE PALESTINIAN-ISRAELI CONFLICT, WASHINGTON, DC, 5 AUGUST 2004.

In a 28 June 2004 talk on the Muslim vote in the 2004 elections, Ralph Nader stated, “It is time for the U.S. government to stand up and think for itself. What has been happening over the years is a predictable routine from the head of the Israeli government. The Israeli puppeteer travels to Washington. The Israeli puppeteer meets with the puppet in the White House, then moves down Pennsylvania Avenue and meets with the puppets in Congress, and then takes back billions of taxpayer dollars. It is time for the Washington puppet show to be replaced by the Washington peace show. In that, we will enhance the freedom and security of the Palestinian and Israeli people, peoples around the world, and the American people here and abroad.”

These remarks, delivered at the Rayburn House Office Building, elicited a letter from Abraham Foxman, National Director of the Anti-Defamation League (ADL), which stated, “[T]here is a line between thoughtful, reasoned, constructive disagreements and offensive hyperbole. Indeed, one may disagree with America’s Middle East approach, but to assert that U.S. policy in such a complex and volatile region is the product of wholesale manipulation by a foreign government fails to take into account important U.S. interests that are involved. Moreover, the image of the Jewish state as a “puppeteer” controlling the powerful U.S. Congress feeds into many age-old stereotypes which have no place in legitimate public discourse.”

The following is Nader’s reply to Mr. Foxman. It is available online at www.votenader.com.

Dear Mr. Foxman,

How nice to hear your views. Years ago, fresh out of law school, I was reading your clear writings against bigotry and discrimination. Your charter has always been to

advance civil liberties and free speech in our country by and for all ethnic and religious groups. These days all freedom-loving people have much work to do.

As you know there is far more freedom in the media, in town squares and among citizens, soldiers, elected representatives and academicians in Israel to debate and discuss the Israeli-Palestinian conflict than there is in the United States. Israelis of all backgrounds have made this point.

Do you agree and if so, what is your explanation for such a difference? About half of the Israeli people over the years have disagreed with the present Israeli government's policies toward the Palestinian people. Included in this number is the broad and deep Israeli peace movement which mobilized about 120,000 people in a Tel Aviv square recently.

Do you agree with their policies and strategy for a peaceful settlement between Israelis and Palestinians? Or do you agree with the House Resolution 460 in Congress signed by 407 members of the House to support the Prime Minister's proposal? See attachment re the omission of any reference to a viable Palestinian state—generally considered by both Israelis and Palestinians, including those who have worked out accords together, to be a *sine qua non* for a settlement of this resolvable conflict—a point supported by over two-thirds of Americans of the Jewish faith. Would such a reasonable resolution ever pass the Congress? For more information on the growing pro-peace movements among the American Jewish Community see: Ester Kaplan, "The Jewish Divide on Israel," *The Nation*, June 24, 2004.

Enclosed is the "Courage to Refuse—Combatant's Letter" signed by hundreds of reserve combat officials and soldiers of the Israeli Defense Forces. It is posted on their web at: www.seruv.org.il/defaulteng.asp. One highlight of their statement needs careful consideration: "We shall not continue to fight beyond the 1967 borders in order to dominate, expel, starve and humiliate an entire people. We hereby declare that we shall continue serving in the Israel Defense Forces in any mission that serves Israel's defense. **The missions of occupation and oppression do not serve this purpose—and we shall take no part in them**" (Emphasis in original). Do you agree with these patriotic, front line soldiers' observation that Israel is dominating, expelling, starving, and humiliating an entire people—the Palestinian

people—and that in their words "the Territories are not Israel?"

What is your view of Rabbi Lerner's Tikkun's call for peace, along with the proposals of Jewish Voice for Peace, the Progressive Jewish Alliance, and Americans for Peace Now? As between the present Israeli government's position on this conflict and the position of these groups, which do you favor and why?

Do you share the views in the open letter signed by 400 rabbis, including leaders of some of the largest congregations in our country, sent this March by Rabbis for Human Rights of North America to Ariel Sharon protesting Israel's house-demolition policy?

Have you ever disagreed with the Israeli government's treatment of the Palestinian people in any way, shape or manner in the occupied territories? Do you think that these Semitic peoples have ever suffered from bigotry and devastation by their occupiers in the occupied West Bank, Gaza, or inside Israel? If you want a reference here, check the website of the great Israeli human rights group B'Tselem.

Since you are a man of many opinions, with a specialty focused on the Semitic peoples, explain the United States' support over the decades of authoritarian or dictatorial regimes, in the greater Middle East, over their own people which is fomenting resistance by fundamentalists.

These questions have all occurred to you years ago, no doubt. So it would be helpful to receive your views.

As for the metaphors—puppeteer and puppets—the Romans had a phrase for the obvious—*res ipsa loquitur*. The Israelis have a joke for the obvious—that the United States is the second state of Israel.

How often, if ever, has the United States—either the Congress or the White House—pursued a course of action, since 1956, that contradicted the Israeli government's position? You do read *Ha'Aretz*, don't you? You know of the group Rabbis for Justice.

To end the hostilities which have taken so many precious lives of innocent children, women and men—with far more such losses on the Palestinian side—the occupying military power with a massive preponderance of force has a responsibility to take the initiative. In a recent presentation in Chicago, former Israeli Prime Minister Ehud Barak made the point explicitly—Israel should take the initiative itself unilaterally and start

disengaging from the West Bank and Gaza and not keep looking for the right Palestinian Authority. Amram Mitzna, the Labor Party's candidate for Prime Minister in the 2003 election, went ever further in showing how peace can be pursued through unilateral withdrawal. Do you concur with these positions?

Citizen groups are in awe of AIPAC's ditto machine on Capitol Hill as are many members of Congress who, against their private judgment, resign themselves to sign on the dotted line. AIPAC is such an effective demonstration of civic action—which is their right—that Muslim Americans are studying it in order to learn how to advance a more balanced Congressional deliberation in the interests of the American people.

Finally, treat yourself to a recent column on February 5, 2004 in the *New York Times*, by Thomas Friedman, an author on Middle East affairs, who has been critical of both the Israeli and Palestinian leadership. Mr. Friedman writes:

Mr. Sharon has the Palestinian leader Yasir Arafat under house arrest in his office in Ramallah, and he's had George Bush under house arrest in the Oval Office. Mr. Sharon has Mr. Arafat surrounded by tanks, and Mr. Bush surrounded by Jewish and Christian pro-Israel lobbyists, by a vice president, Dick Cheney, who's ready to do whatever Mr. Sharon dictates, and by political handlers telling the president not to put any pressure on Israel in an election year—all conspiring to make sure the president does nothing.

These are the words of a double Pulitzer Prize winner.

Do you agree with Mr. Friedman's characterization? Sounds like a puppeteer-puppet relationship, doesn't it? Others who are close to this phenomenon have made similar judgments in Israel and in the United States.

Keep after bigotry and once in a while help out the Arab Semites when they are struggling against bigotry, discrimination, profiling, and race-based hostility in their beloved adopted country—the U.S.A. This would be in accord with your organization's inclusive title.



Palestinian boys play soccer at the construction site of Israel's separation wall near the West Bank village of Biddu, 30 June 2004. (Ammar Award/Reuters)

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