HUMAN RIGHTS WATCH

Gaza/Westbredden (22) (69)

Israel's "separation barrier" in the occupied West Bank: Human Rights and International Humanitarian Law consequences

13/5-04

A Human Rights Watch Briefing Paper , February 2004

Human Rights Watch has been monitoring Israel's construction of the separation barrier in the West Bank since early 2003, including site visits and interviews with local residents, and has maintained contact with local NGOs and intergovernmental groups concerning developments in this regard. The purpose of this briefing paper is to outline Human Rights Watch's main concerns regarding the barrier as the International Court of Justice, at the request of the United Nations General Assembly, considers the barrier's legal consequences.

Human Rights Watch takes no position on the territorial dispute that lies at the heart of the Israeli-Palestinian conflict, including any changes in land status that might accompany an eventual peace agreement. Rather, we monitor compliance of all parties with applicable international human rights and humanitarian legal standards. In that regard, Human Rights Watch considers the West Bank, Gaza Strip, and East Jerusalem to be under a continuing regime of belligerent occupation, to which the Fourth Geneva Convention of 1949 is fully applicable.[1]

Since the end of September 2000, Israeli-Palestinian hostilities have claimed some 3,500 lives and injured more than 30,000, most of them civilians. In this period Palestinian armed groups have carried out numerous suicide bombings and other attacks that targeted or caused indiscriminate harm to Israeli civilians. Human Rights Watch considers that these attacks, because of their widespread and systematic character, constitute crimes against humanity.[2]

We recognize that the government of Israel has a right and a duty to protect its civilian population from these attacks. But it is obliged to do so within the bounds of international humanitarian law. In addition, the U.N. Human Rights Committee, the body charged with monitoring compliance with the International Covenant on Civil and Political Rights (ICCPR), noted in August 2003 that the applicability of international humanitarian law to the Occupied Territories does not preclude the application of international human rights law.[3] Israel is a State Party to the ICCPR as well as numerous other human rights treaties, including *inter alia* the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; and the Convention on the Rights of the Child. Israel is also a State Party to the Geneva Conventions.

International Human Rights and Humanitarian Law Consequences

Arbitrary and Excessive Restrictions on Freedom of Movement

Israel has a long record of imposing severe and frequently arbitrary restrictions on freedom of movement, despite repeated commitments to the U.N. and the international community to ease these restraints. The internal "closure" regime has been used since 1991 to control population movements within the West Bank and Gaza; as of December 2003, some 700 movement barriers were operational in the West Bank and Gaza.[4]

Israeli authorities have argued that the separation barrier is vital to prevent suicide bombings and other attacks against civilians in Israel. Although under human rights law freedom of movement can be restricted for security reasons, the restrictions must have a clear legal basis, be limited to what is necessary, and be proportionate to the threat. As stated by the U.N. Human Rights Committee in its General Comment 27, any limits on freedom of movement cannot reverse the relation between right and restriction, between norm and exception.[5]

The barrier embodies long-term and severe restrictions on the movement that causes disproportionate harm to the lives of tens of thousands of Palestinian civilians. It effectively confines more than a hundred thousand men, women, and children in enclaves. It will institutionalize, and threatens to make permanent, a system in which all movement for large numbers of people is sharply curtailed except for a handful of permit-holders. The scope and duration of such restrictions endanger Palestinians' access to basic services like education and medical care, and in many cases to land, jobs, and other means of livelihood. The Israeli government has failed to demonstrate that it could not adopt less intrusive and less restrictive alternatives to address the security of civilians, including a barrier contiguous with the 1949 Armistice Line, commonly known as the Green Line.

While the full impact of the barrier's operation will not be clear for some time, Israel's historical record of movement controls is deeply disturbing. Human Rights Watch conducted an extensive investigation of the "closure" regime in 1996. Because these restrictions were applied so arbitrarily and so broadly, without regard to individual responsibility, we concluded that they were "not exclusively designed to address security concerns, but [were] also punitive in nature, thus amounting to collective penalties that are proscribed under international law."[6] Since the renewal of clashes in September 2000, these crippling restrictions have become even more severe and widespread. The separation barrier will institutionalize and intensify these restrictions on movement even further.

There are at least two areas in the Gaza Strip where access arrangements resemble those of the separation barrier: the enclaves of al-Mawasi and al-Siyafa. The documented experience of the residents of these enclaves may be helpful in understanding the impact of the long-term restrictions on freedom of movement caused by the West Bank separation barrier.[7] The movement restrictions have severely damaged the local economy, based on farming and fishing. For most of the period since hostilities resumed in late 2000, passage in and out of al-Mawasi has been effectively limited to a single checkpoint, and even that is sometimes completely closed for prolonged periods. When it is open, the limited hours and extensive searches severely restrict the number of residents who can actually leave or enter on a given day. Because the authorities have typically closed the checkpoint without prior notice, residents who at that moment were in nearby Rafah or Khan Yunis have sometimes been unable to return home for days at a time. At one point, in the spring of 2002, the checkpoint was closed for fifty days.[8]

In August 2003 the U.N. Human Rights Committee observed that the "additional and unjustifiably severe restrictions" caused by the construction and operation of the barrier were incompatible with Article 12 of the ICCPR, which guarantees the right to freedom of movement and limits restrictions that can be placed on that right. "The construction of a Seam Zone [i.e., the separation barrier] within the Occupied Territories should be stopped," the Human Rights Committee concluded.[9]

On October 2, 2003, the Israeli authorities extended the barrier's restrictions by declaring the West Bank area between the barrier's first phase and the Green Line a "closed military zone".[10] The declaration affects 22,000 acres of land and some 5,200 Palestinian residents. All Palestinian residents over the age of twelve were required to apply for a "permanent resident" permit from the Israeli authorities to enable them to continue to reside in their homes. Passage into the closed military zone is granted on the basis of twelve categories of entry permits, issued upon application by the Civil Administration. These permits may be single or multi-use. Individuals wishing to sleep in the zone, or bring in a vehicle or merchandise,

are required to apply for additional permits. Similar vehicular restrictions in the al-Mawasi area have greatly complicated humanitarian relief operations and agricultural production. These restrictions, moreover, are imposed in a discriminatory fashion: Israeli citizens living in the area, or other nationals of Jewish descent, are not subject to the permit regime.

Obligation to ensure the welfare of protected persons

Under customary international humanitarian law, Israel has a positive obligation to ensure the welfare of residents of the West Bank (1907 Hague Regulations on Land Warfare, Article 43). It is also obliged to ensure the passage of emergency medical services, to respect the sick, to allow the passage of foodstuffs and medical goods, and to facilitate education (Fourth Geneva Convention, Articles 16, 20, 25, 50, 55 and 59).

Construction of the separation barrier underscores Israel's failure to meet its obligations in this regard. This failure led the International Committee of the Red Cross in November 2003 to end large-scale emergency relief distributions in the West Bank. "Humanitarian aid is no longer the best way to help," the ICRC said. "It is essential that the West Bank Palestinians' basic rights under international humanitarian law are respected." Israeli closures and military operations, the ICRC argued, had turned what had begun as an emergency situation "into a long-term collapse of the local economy."[11]

On February 18, 2004, the ICRC took the unusual step of issuing a public statement expressing concern about the barrier's humanitarian impact. The statement said that the barrier, "in as far as its route deviates from the `Green Line' into occupied territory is contrary to IHL" and called on Israel "not to plan, construct or maintain this Barrier within occupied territory."[12]

Construction of the barrier to date has destroyed thousands of dunums of agricultural lands and assets such as olive and other fruit trees, made other lands and irrigation waters inaccessible, and increased transportation costs The village of Umm al-Rihan, in Jenin governorate, is one of fifteen Palestinian communities isolated between the Green Line and the separation barrier in its earliest phase; it has no clinic and one overcrowded primary school. The barrier seals the roads that once allowed relatively easy access to health care and secondary schooling.[13] In other villages waste management and drinking water quality have been affected.[14] The U.N. Office of Coordination of Humanitarian Affairs (OCHA) expressed concern in November 2003 that the barrier's path would aggravate food insecurity in the twenty-two villages of Salfit district, which already had the highest level of food insecurity in the West Bank.[15] Land confiscations for barrier construction in the Ramallah area in December 2003 and January 2004 created an enclave of nearly 16,000 acres, affecting fourteen communities with a combined population of more than 50,000 and making access to Ramallah, with its schools, health care, and markets, far more difficult. The village council of Qibya received military confiscation orders on November 12, 2003, and the next day bulldozers arrived to clear hundreds of acres and uproot hundreds of olive trees.[16] The barrier is being constructed over some of the West Bank's most fertile well-fed areas, affecting local access to water and with serious implications for longer term water use.[17] Without an urgent modification of current plans, the separation barrier will dramatically increase Palestinian impoverishment by further reducing employment, access to irrigation water, agricultural production and market access, literacy rates, access to education, and access to maternal and infant health care.

Prohibition against transfers of population and permanent changes

Israel is prohibited under international humanitarian law (Fourth Geneva Convention, Article 49 (6)) from transferring members of its own population into the Occupied Territories, and by customary international law (1907 Hague Regulations, Article 55) from making permanent changes to the West Bank that do not benefit the local inhabitants.

Israel has constructed, maintained, and expanded illegal civilian settlements in the occupied West Bank for nearly three decades. The settlements themselves violate customary as well as treaty-based international humanitarian law prohibitions against population transfer, and their maintenance and expansion have seriously affected humanitarian conditions of Palestinian communities, including access to employment, education, medical care, and water. The barrier will reinforce the serious harms caused by Israel's existing network of government-sponsored settlements and bypass roads. The complexity of the barrier's planned route in the Jerusalem area is perhaps the most obvious example of how the barrier is being constructed in a manner to incorporate and make territorially contiguous illegal government-sponsored civilian settlements in the West Bank and occupied East Jerusalem.

There is widespread debate over the permanency of the separation barrier, which has been characterized as the largest public works project in Israeli history. Much political debate in Israel has been premised on the assumption that the political impact of its construction will have a determinative impact on future Israeli-Palestinian negotiations and that the barrier will serve as a permanent boundary, particularly if Israel implements the "unilateral disengagement" plan broached recently by Prime Minister Sharon. These assumptions have been aired almost daily in the Israeli media, particularly since the prime minister's speech at the Herzliyya Institute of Policy and Strategy on December 18, 2003. In this speech, Mr. Sharon stated that the government would carry out a "unilateral security move of disengagement" based on "new security lines" established by a revised IDF deployment and the separation barrier.[18]

Public comments by officials involved with the wall's construction have also indicated that they consider the barrier to be permanent. Mr. Netzah Mashiah, director of the "seamline administration" of the Israeli Ministry of Defense, was quoted in Israel's largest circulating newspaper in May 2003 as saying, "the politicians found a formula, but I believe the fence will be the border."[19] On January 20, 2004, The *Jerusalem Post* reported him as saying that "[c]hanging the route of the fence, once built, requires the construction of an entirely new fence."[20]

Human Rights Watch does not have the technical capacity to assess the permanency of the barrier itself. The construction of the barrier has already in some areas involved changes of a permanent character, including destruction of agricultural land and uprooting of olive trees. Scores of demolition orders concerning houses in the vicinity of the barrier have been issued, and some homes and shops have been demolished.[21] Based on Israel's historical practice, it is likely that the barrier will permanently alienate land from protected persons and incorporate it into the territory of the occupying power. This alienation may be de facto or de jure. De facto alienation may arise in the case of private land seized for the barrier's construction. The legal tools used to take control of this land have been military orders specifying "requisition for military needs." These orders are notionally in effect until 2005, but are renewable indefinitely. They have been used extensively in the past to appropriate private Palestinian land for the construction of settlements: at least 47,000 dunums of land were requisitioned in this manner between 1968-1979 alone.[22]

It is also likely that, using a separate mechanism, lands separated by the barrier from their owners will be declared state lands. Jordanian Law No. 14 of 1961, in force in the West Bank, permits the sovereign to take possession of agricultural lands that lie close to places of settlement, if they have not been farmed for three consecutive years. Those farmers whose access to their farmland the barrier has compromised, or whose ability to farm has been hampered by the barrier's restrictions on vehicular access, are at great risk of having their lands expropriated in this manner. According to statements by the Israeli State Attorney's office, some forty percent of the West Bank has been declared state land. Some ninety per cent of all Israeli settlements were established on land declared state land.[23]

Conclusion

Israel's West Bank separation barrier entails serious violations of human rights and international humanitarian law. Israel's legitimate concerns for the security of its citizens must be addressed in a manner that is proportionate to the threat and that does not amount to indiscriminate and collective punishment of entire communities. The separation barrier, in its present and planned construction, imposes long-term and severe restrictions on freedom of movement, causing extensive and disproportionate harm to Palestinians and worsening conditions of access to the essentials of civilian life. The existing and planned route of the barrier appears to be designed chiefly to incorporate and make contiguous with Israel illegal civilian settlements. The separation barrier constitutes a serious further encroachment on the land and resources of the occupied West Bank, causing extensive harm to the Palestinian inhabitants and threatening to impose permanent changes to the detriment of the local population.

---

[1] See Human Rights Watch, *Center of the Storm: A Case Study of Human Rights Abuses in the Hebron District*, April 2001, pp. 19-22. For a detailed analysis on the status of the occupied territories after the Oslo Accords, see Human Rights Watch, *Israel's Closure of the West Bank and Gaza Strip* (July 1996), vol. 8, no. 3(E), pp. 10-14. (http://www.hrw.org/reports/2001/israel/)

[2] See Human Rights Watch, *Erased in a Moment: Suicide Bombing Attacks against Israeli Civilians* (October 2002).

[3] United Nations, Concluding Observations of the Human Rights Committee: Israel 21/08/2003. CCPR/CO/78/ISR. (Concluding Observations/Comments). (http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.CO.78.ISR.En?Opendocument)

[4] See UN Office of the Coordinator for Humanitarian Affairs, *West Bank Closures*, December 2003 (Map).

[5] Human Rights Committee, *General Comment 27, Freedom of movement (Art.12)*, U.N. Doc CCPR/C/21/Rev.1 /Add.9 (1999). (http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CCPR.C.21.Rev.1.Add.9,+CCPR+General+comment+27.En?OpenDocument)

[6] Human Rights Watch, *Israel's Closure of the West Bank and Gaza Strip*, p. 5. (http://www.hrw.org/reports/1996/Israel1.htm)

[7] B'Tselem *Al-Mawasi, Gaza Strip: Intolerable Life in an Isolated Enclave*, March 2003 (http://www.btselem.org/Download/2003_Al_Mwassy_Eng.pdf); Palestinian Center for Human Rights, *Suffering in Isolation*, Series Study 32, 2003. (http://www.pchrgaza.org/files/S&r/English/mawasi%20report.pdf)

[8] B'Tselem, *Al-Mawasi, Gaza Strip: Intolerable Life in an Isolated Enclave*, March 2003.

[9] United Nations, "Concluding Observations," para. 19. "Seam Zone" is a term of reference for the barrier used by the government of Israel.

[10] Israel Defense Force, *Order Regarding Security Regulations (Judea and Samaria) (No. 378), 5730-1970. Declaration Concerning Closing an Area no. S/2/03* (Seam Zone) Translated by UN OCHA. (www.reliefweb.int/.../ military%20order%20declaring%20the%20seam%20zone%20a%20closed%20area.pdf)

[11] International Committee of the Red Cross, "New Strategy for the West Bank," November 20, 2003. The U.N. World Food Programme subsequently undertook some food distribution activities in the wake of the ICRC's termination of its large-scale emergency relief program. For previous ICRC activities in the occupied territories, see ICRC "Israel and the Occupied/Autonomous Territories: Overview of Humanitarian Activities 2003," January 1, 2003. (http://www.icrc.org/Web/Eng/siteeng0.nsf/iwpList325/8B829E119CD5E20041256CA2003F5720)

[12] Press release No. 04/12, February 18, 2004. (http://www.reliefweb.int/w/rwb.nsf/0/976738D37D896BCAC1256E3E003347A4?OpenDocument)

[13] "Case Study: Umm ar Rihan," in *The Impact of Israel's Separation Barrier on Affected West Bank Communities*, report of the Humanitarian and

Emergency Policy Group [comprising the E.U., the European Commission, the governments of Norway and the U.S.,, the World Bank and the International Monetary Fund] of the Local Aid and Coordination Committee {HEPG report], May 4, 2003, p. 39. (http://domino.un.org/unispalselect.nsf/0/b45e8d8caacda74785256dbb0062e7b9?OpenDocument)

[14] Ibid, pp. 42-43.

[15] OCHA Humanitarian Update, 1 November - 15 November 2003, p.3. (http://www.reliefweb.int/hic-opt/docs/UN/OCHA/OCHAHU_1_15Nov03.pdf)

[16] OCHA Humanitarian Update, 16 December 2003 - 19 January 2004, pp. 1 and 3. (http://www.reliefweb.int/w/rwb.nsf/0/a35567da2088e7e849256e2400195707?OpenDocument)

[17] HEPG report, May 4, 2003, Annex III: "Impact of Israel's Separation Barrier on Water Management in Affected West Bank Communities."

[18] A full transcript of this speech is available in English at http://news.bbc.co.uk/2/hi/middle_east/3332941.stm (accessed January 28, 2003).

[19] Meron Rappaport, "A Wall in Their Heart," *Yedioth Ahronoth*, May 23, 2003.

[20] Matthew Gutman, "Fence Has Momentum of Its Own," *Jerusalem Post*, January 20 2004. (http://www.jpost.com/servlet/Satellite?pagename=JPost/JPArticle/ShowFull&cid=1074485522129)

[21] On house demolitions and demolition orders, see B'Tselem, *Behind the Barrier: Human Rights Violations as a Result of Israel's Separation Barrier* (March 2003), p. 24. (http://www.miftah.org/Doc/Reports/BehindtheBarriers.PDF)

[22] See Yehezkel Lein, *Land Grab: Israel's Settlement Policy in the West Bank*, B'Tselem May 2002, p. 48-50. (www.btselem.org/Download/Land_Grab_Eng.doc)

[23] Pliya Albeck, *Land in Judea and Samaria* (in Hebrew), (lecture at Bet Hapraklit on May 28, 1985, Israel Bar Association), cited in Lein, *Land Grab*, p. 51.

Related Material

Israel: West Bank Barrier Violates Human Rights
Press Release, February 23, 2004

Barrier-Related Links Compiled by Human Rights Watch
Special Focus

From: http://hrw.org/english/docs/2004/02/20/isrlpa7581.htm