

Sharon's Wall Ruled Illegal

by Dean Andromidas

The fight for the creation of a Palestinian State, and regional peace, won a great moral victory on July 9, 2004. The International Court of Justice, in the Hague, ruled that Ariel Sharon's Berlin Wall on the West Bank is a violation of international law and must be dismantled as soon as possible.

The ruling—"Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory"—was passed almost unanimously.

The judgment states that according to the material before them, the court "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 régime, gravely infringe a number of rights of Palestinians residing in the territory occupied by Israel, and the infringements resulting from the 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 its various obligations under the applicable international humanitarian law and human rights instruments. . . .

"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 come under its control."

The court ruled that the wall, therefore, is contrary to international law, and Israel is obligated to cease, forthwith, the construction of the wall now being built on the West Bank and around East Jerusalem. Israel is also obligated to make reparation for the damage caused to the Palestinians whose land was seized, houses were destroyed, businesses damaged, and whose agricultural holdings were seized or destroyed. Furthermore all States are under obligation not to recognize the illegal situation caused by the construction of the wall, and are under an obligation not to render any aid or assistance in maintaining the situation created by such construction.

The Court expressed the view that the UN, especially the General Assembly and the Security Council, should take required action to bring an end to this illegal situation. They

concluded with an appeal for the UN as a whole to redouble its efforts to bring the Israeli-Palestinian conflict to a speedy conclusion, thereby establishing a just and lasting peace in the region.

"This is an excellent decision," Palestinian President Yasser Arafat declared after hearing the Court's decision. "We thank the court in the Hague. This is a victory for the Palestinian people and for all the free peoples of the world."

Sharon reacted to the ruling with a combination of demagoguery, xenophobia, and sophistry. He said the ruling was part of "the evil winds blowing against Israel in the world. What happened in The Hague was not a wind, it was a storm."

Sharon and all his cronies keep repeating the false statement that the ruling prevents Israel from defending itself from terror.

The ruling does not declare the wall, as such, illegal: only its route. The ruling gives Israel the right to build a wall, along its 1967 border, the so-called "green line," but not on "Occupied Palestinian Territory." The court declared that Israel has the right and duty to defend itself, but must respect international law. Pro-peace activists, including part of the Israeli military-security establishment, see Sharon's wall, not as a "security" wall, but as a "political" wall, whose aim is to create a new *de facto* border deep inside the West Bank.

Another piece of sophistry was expressed by Sharon groupie, American lawyer Alan Dershowitz, who, in a commentary in the *Jerusalem Post*, referred to the ICJ as dominated by judges from "totalitarian states." One wonders if he considers Germany, France, United Kingdom, the Netherlands, Japan, etc., as totalitarian states.

"Non Binding," But Morally Binding

The ICJ ruling is an "advisory opinion" on behalf of the UN General Assembly and is therefore "non binding" and, in itself, will not force Israel to remove the wall. Israel has already announced it will ignore the judgment.

The ICJ is part of the Charter of the United Nations and is its principal judicial organ. It has its origins in the Permanent Court of International Justice founded in 1922. It also functions as the judicial advisor to the UN General Assembly and the UN Security Council.

Besides the conclusions cited above, the ICJ's ruling went beyond the expectations of the Palestinians, and broke new ground in the legal and diplomatic fight for peace in the region.

First, the ICJ accepted jurisdiction for the case in the face of opposition from the Bush Administration, Israel, and also the European Union—despite its official opposition to the wall.

In taking up the case, the ICJ gave legal weight to General Assembly resolution ES-10/14, adopted at the end of last year by its Tenth Emergency Special Session. This session had been convened under the provisions of Resolution 377A, the famous "Uniting for Peace" resolution, by which the session



The black line shows Israel's wall, as completed or under construction in December 2003. The outermost gray line to the north, west, and south is the post-1948 armistice line, the so-called Green Line, recognized internationally as the legal border. The additional territories were seized by Israel during the June 1967 war. Other gray lines show plans to extend the wall—either approved by the government, or recommended by the Army. Dashed lines show extensions demanded by settler organizations. The dark gray areas and triangles are Israeli settlements. The Jordan River is on the far right.

was called following a deadlock in the Security Council, when the United States alone vetoed a Security Council resolution

calling for an end to the construction of Sharon's wall on Palestinian Occupied Territory. Part of the resolution requested this "advisory opinion."

The court dismissed all arguments voiced by the Bush Administration and Israel, including alleged claims that an ICJ judgement would unfairly influence ongoing peace negotiations under the Bush Administration's Road Map for a Middle East peace. This is important because these are among the same arguments that have been put forward by the Bush Administration to justify vetoing almost every Security Council resolution that seeks to put pressure on the Sharon government.

Although several justices, in separate opinions, expressed reservations on certain aspects of the acceptance of jurisdiction, only one justice saw them problematic enough to vote against the ruling. The latter was Justice Buergenthal (United States), who in a four-page "separate opinion," asserted that the court should have used its "discretionary" powers to refuse the case, on grounds that it did not possess enough information to come to its far-reaching conclusions. The 14 other justices disagreed with Judge Buergenthal on this issue as well.

Another important point was made in a "separate opinion" of Judge Elaraby, who emphasised the historic nature of the court's ruling, pointing out that no UN resolution or decision regarding the Palestine question was ever brought before the ICJ to test it against international law until this present ruling. Elaraby also pointed out that the responsibility of the United Nations to the territory of Palestine goes back to the old Palestinian Mandate under the League of Nations, in which the territory of Palestine was designated a "sacred trust of civilization" which cannot be abrogated until an independent Palestinian State is constituted.

Secondly, the ruling is a test of violations of international law, before a judicial tribunal, which the Israelis have been committing for almost four decades.

One of the most important of these violations is the Israeli settlements on the West Bank, about which the ruling states: "The Court concludes that the Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem) have been established in breach of international law." Since the wall is on the Palestinian side of the Green Line, they ruled its construction "a *fait accompli* on the grounds that it could well become permanent, in which case, and notwithstanding the formal characterization of the wall by Israel, it would be tantamount to de facto annexation." This ruling gives further legal weight to the 1967 border; anything outside of this border, i.e. the territory of the West Bank and Gaza, is considered "militarily occupied," and therefore Israel cannot claim any sovereign rights in this territory, and must conform with the Geneva Conventions.

The judgment clearly stated that Israel has the right of self-defense, but the court took exception to Israel's claim that its conflict with the Palestinians was part of the so-called international war on terror. The court ruled that Israel cannot,



A section of Sharon's 25-foot-high separation wall, the subject of the World Court case, in Qalqiliya City, Israel. "According to B'Tselem, the total length of the main and secondary barriers will be 659 kilometers upon completion, affecting 237,000 acres of land—7,000 of which has been expropriated—and disrupting the lives of 875,000 Palestinians in 206 communities. This is 38% of the Palestinian West Bank population."

as Sharon has constantly asserted, invoke the Security Council Resolutions 1368 and 1373, passed after the September 11, 2001 attacks, since the attacks on Israel originate in areas Israel itself controls.

In its call for all states to take action to end Israel's violation of international law, the court went even further than the Palestinians expected. Only two voted against this part of the ruling. One was Judge Buergenthal, and the other was Judge Peter Hendrik Kooijmans, who opposed it on the grounds that such a ruling was not formally requested by the General Assembly. Thirteen other judges found such a ruling totally appropriate.

Will This Ruling Stop the Wall?

While this ruling will not stop Sharon, nonetheless the Palestinians and the Arab league will take the judgment to the General Assembly in order to have it affirmed. If a resolution is presented to the Security Council, it will be vetoed by the United States and most likely by Great Britain. Therefore Palestinians are expected to hold off on such a move while trying to gain more support, especially from the European Union, and the other permanent members of the Security Council, including China, Russia, and France.

There has been considerable speculation that it could be used to slap economic sanctions on Israel. In fact, certain aspects of the ICJ's ruling cite the precedent of its own ruling in 1970 on the case of Namibia, in which it ruled that South

Africa's occupation was illegal, opening the way to economic sanctions. South Africa had claimed that it held mandatory powers. Although the United States would veto such a move, the ruling would serve to give legal weight to such a request.

What is clear is that this ruling cannot be dismissed, and it will not go away. Israeli commentator Ben Kaspit, in the Israeli daily *Ma'ariv*, July 11, lamented that "this decision will go down in history, carefully filed, as a norm in international discourse that does us a great deal of harm. No American veto in the world can change that; it is ethical, humane, public and international harm. It could really take off in Europe, for example. In the steady trickle of harm, it could ruin what is left of Israel's reputation."

On July 30th, ten days before the ICJ ruling, the Israeli Supreme Court made a landmark ruling calling for the rerouting of a 30-40 kilometer section of the wall because of its negative impact on the Palestinian population. This

Israeli ruling shows that some people in Israel feel under pressure to at least make a pretense of taking the ICJ ruling into consideration. That this case was even brought before the Israeli court, in a joint appeal involving both Palestinians and Israelis living in the affected neighborhood, demonstrates that the Israeli government is under pressure. The case was also supported by the Israeli Council for Peace and Security, which comprises nearly 1,000 reserve and retired military and security officials.

The Israeli Court, which always acts with legal ambiguity when it comes to the occupied territories, did not rule on the illegality of the wall, nor did it challenge the fact that it is built beyond the Green Line. Although Sharon and the army claimed they would abide by the decision, the wall, which will be almost 500 miles long, is a lot longer than the 40 kilometers in question. Furthermore, the revised maps presented to the government show the wall being extended to encompass the settlement of Ariel, a move that would not only mean the seizure of many square kilometers of Palestinian land, but would almost cut the West Bank in half.

At the end of the day, it is the United States that can act "to ensure compliance by Israel" in the decision of the court. The Bush Administration has made it clear it will not act on the decision of the court. Presidential candidate Sen. John Kerry has also announced that he will not act on the Court's ruling.