

THE IMPACT OF ISRAEL'S SEPARATION BARRIER ON AFFECTED WEST BANK COMMUNITIES

**A FOLLOW-UP REPORT TO THE HUMANITARIAN AND
EMERGENCY POLICY GROUP (HEPG) AND THE LOCAL AID
COORDINATION COMMITTEE (LACC)**

Update Number 3, November 30, 2003

In accordance with a decision of the HEPG, an update of the original study of April 30, 2003 will be released every two months. This update is the third in that series. The next update will be released by January 31, 2004.

THE IMPACT OF ISRAEL'S SEPARATION BARRIER ON AFFECTED WEST BANK COMMUNITIES: ACCESS ISSUES IN "STAGE A" LOCALITIES

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NOVEMBER 30, 2003

I. BACKGROUND TO THIS UPDATE¹

1. Motivated by concerns that Palestinian livelihoods and the viability of local economies could be harmed by the construction of a separation barrier and that the barrier might negatively impact the delivery of humanitarian aid and damage assistance projects, the international donor community through the Local Aid Coordination Committee (LACC) commissioned a study² and series of follow-up reports^{3,4} of the possible socio-economic impact of the barrier on affected Palestinian communities.

¹ In addition Section I, "Background to the Update", this report includes the following sections: Section II, "Affected 'Stage A' Communities" (page 4); Section III, "Summary Findings" (page 7); Section IV, "Limitations to Access" (page 9); and Section V, "Some Legal Implications" (page 15). In mid-October, both the United Nations Security Council and General Assembly convened to discuss the Separation Barrier. The official statement of the Permanent Representative of Israel to the United Nations, Ambassador Dan Gillerman, delivered before the Security Council on October 14, and the official statement by the Permanent Observer of Palestine to the United Nations, Ambassador Nasser Al-Kidwa, delivered before the General Assembly on October 20, are attached as Annexes I and II (pages 21 and 30, respectively). In these statements the positions of both the Government of Israel and the Palestinian Authority concerning the Separation Barrier are clearly stated; their inclusion in this Update is in lieu of sections on "The Israeli Debate on the Separation 'Fence'" and "Palestinian Perspectives on the Separation 'Wall'" that appeared in previous updates. Attached to this update are the following maps: "Map of Security Fence Project" (source: IDF; page 36); "Enclaves and Closed Areas between the Wall and the Green Line" (source: OCHA); and "West Bank Closures – Jenin, Tulkarm, Qalqiliya, Salfit" (source: OCHA; pages 37-41).

² "The Impact of Israel's Separation Barrier on Affected West Bank Communities" was carried out at the request and under the direction of a Steering Group composed of members of the donors' Humanitarian and Emergency Policy Group (the European Union Presidency (HEPG chair), the European Commission, the Government of Norway, the US Government, UNSCO, and the World Bank), plus the International Monetary Fund. Released on May 4, 2003 the report focused on the impact of the initial 123 km of "Stage A" construction (officially launched on June 16, 2002; its completion was announced by the Israeli Ministry of Defense on July 31, 2003) running south from Salem Checkpoint through Jenin, Tulkarm, and Qalqiliya Governorates and Salfit District to the Israeli settlement of Elkana, and the additional 17.8 km of construction to the north and south of Jerusalem. The report is available at the following web address: <http://www.reliefweb.int/hic-opt/docs/HEPG/Wallreport.pdf>. Maps and Annex I (Economic Impact), Annex II (Social Impact), Annex III (Impact on Water Management), are available at: http://www.reliefweb.int/hic-opt/docs/HEPG/Wall_Annexes.zip.

³ The first follow-up report, "The Impact of Israel's Separation Barrier on Affected West Bank Communities: Update Number 1, July 31, 2003" examined the impact of "Stage B" construction, which

*The Impact of Israel's Separation Barrier on Affected West Bank Communities:
Follow-Up Report on Access Issues in "Stage A" Localities*

2. In focusing on the Barrier's "Stage A"⁵ alignment in the north-west West Bank, the initial study emphasized the potential impact of physical separation and isolation on residents who might be cut off from their agricultural lands, irrigation networks and water resources, as well as from West Bank workplaces, schools, health clinics and other social services. The extent and impact of such isolation was determined to depend to a significant extent upon the number and operating hours of access points and crossings, and the degree to which unimpeded movement of persons and goods is permitted.

3. Four months having passed since Stage A construction was officially declared completed, this update returns to many of the affected communities in Tulkarm and Qalqiliya Governorates to review the implementation of the access regime now in place and the social and economic consequences of its current operation.⁶

was initiated in January 2003. This 42 km stretch runs along the northern edge of Jenin Government from Salem eastward to Gilboa and the Beit She'an Valley. At present, works extend eastward from Salem past the Palestinian village of Jalbun; beyond Jalbun the future alignment is uncertain. Official IDF maps show a projected path extending 12 km southward into the Jordan Valley to the village of Taysir (located 3 km northeast of Tubas and approximately 10 km west of the Israeli settlements at Mahola and Rotm, which are 4 km west of the Jordan River), possible evidence of preparation for a second "eastern barrier" reportedly under consideration (although not yet approved nor budgeted). The effect of this second barrier, if built, would be to situate these and other Jordan River valley settlements "outside" the barrier system and, in the process, sever Palestinian population concentrations in the West Bank from the Jordan Valley. Report available at: <http://www.reliefweb.int/hic-opt/docs/HEPG/Israels' Separation Barrier -- Report to the HEPG July03.pdf>.

⁴ The second follow-up report, "The Impact of Israel's Separation Barrier on Affected West Bank Communities: Update Number 2, September 30, 2003", examined the impact of construction surrounding Jerusalem – the so-called "Jerusalem Envelope". Two sections of the Jerusalem Envelope were completed as part of the Stage A construction that began last year: an (approximately) 6 kilometer stretch north of the city from Camp Ofer to Qalandiya checkpoint and an (approximately) 12 kilometer section south of Jerusalem. Beginning on July 27, 2003, military orders were issued requisitioning land on which upwards of eighteen kilometers of barrier will be built to the east and southeast of Jerusalem; land requisitions for the Barrier north-east of Jerusalem have yet to be issued. In addition to the economic distress that might result from the severance of West Bank communities from labor and commercial markets in Jerusalem, the update also focused on potential migration issues facing individual residents. In many Palestinian families in the Jerusalem area, some members have Jerusalem residency permits and others, West Bank IDs. To the extent that movement restrictions increase as a result of the barrier, hard decisions will have to be made – either to maintain separate residences; or to live on the eastern side of the barrier, exposing Jerusalem ID holders to the possibility of no longer satisfying Israel's requirement that Jerusalem is the ID holder's place of residence (which could in turn lead to a forfeit of the right to work in Jerusalem, to educational and health facilities, to insurance, and to social welfare benefits) – or to relocate to the western side of the barrier in order to maximize employment prospects (although for a West Bank ID holder, such relocation without a Jerusalem residency permit is a violation of Israeli law). Update Number 2 is available at: http://www.reliefweb.int/hic-opt/docs/HEPG/Wall Report.Update_SEP.pdf; associated maps at: <http://www.reliefweb.int/hic-opt/docs/HEPG/maps.zip>.

⁵ In the initial report and first two updates, "Stage A" construction was referred to as "Phase I". As the Israeli Ministry of Defense speaks of lettered stages rather than numbered phases, that terminology is adopted in this and subsequent updates.

⁶ In preparing this update, mission members met with officials, businessmen, and residents in the following communities: Ar Ras, Baqa ash Sharqiya, Barta'a ash Sharqiya, Falamiya, Jayyus, Khirbet Jubara, Nazlat 'Isa, Qalqiliya, Ras at Tira, Tulkarm, and Zeita. The mission also interviewed IDF officers from the International Law Department and International Law Section.

*The Impact of Israel's Separation Barrier on Affected West Bank Communities:
Follow-Up Report on Access Issues in "Stage A" Localities*

4. In addition, in October 2003, the IDF issued a series of orders affecting the status of Palestinian residents living in the area between the Separation Barrier and the Green Line as well as the ability of Palestinians and staff of international organizations to enter and exit the area now declared a "closed military zone". This update reviews these orders as well as other legal issues surrounding the requisitioning of land for the principal Separation Barrier and any associated "depth barriers",⁷ including their potential long-term impact on the property rights of affected Palestinians.

5. Since the last update, a number of decisions have also been taken regarding the alignment of the Separation Barrier elsewhere in the West Bank. On October 1, the Israeli Government authorized the planned alignment of the Barrier from Elkana (the southern terminus of Stage A) to Camp Ofer (the northwestern end of the "Jerusalem Envelope"), and from Jerusalem south through the southern West Bank. According to press reports citing "defense establishment experts", this NIS 4.5 billion (approx. US\$1 billion) 430-km project can be completed within 18 months to two years.⁸ (The final trajectory to the northeast of Jerusalem was not included in this decision, although it appears on the IDF map of the Separation Barrier released on their website on October 23.⁹ Press reports suggest that this section has been revised several times and may be altered further.¹⁰) Should such an alignment be completed, as many as 80 percent of the Israeli settlers living in the West Bank would be located west of the Barrier,¹¹ along with

⁷ "Depth barriers" are described in a response by the Israeli State Attorney's Office (HCJ 7784/02, Sa'al 'Awani 'Abd al Hadi et al. v Commander of IDF Forces in the West Bank, sec. 22) as "a barrier without a fence, intended to direct movement in these areas to a number of security control points." See also para. 9.

⁸ For example, "A Fence Along the Settlers' Lines" (editorial), Ha'aretz, October 3, 2003; Itamar Eichner, "Fence Approved", Yedioth Ahronoth, October 2, 2003. Cost estimates also vary, increasing as the complexity of the Barrier's trajectory grew. "Initially, the fence was meant to be built along the Green Line, along a straight line, at a cost of NIS 1.5 billion. Then they calculated that the long, twisting fence will cost NIS 5 billion. Recently a treasury senior source put the cost at NIS 7.5 billion..." Nehemia Strasler, "The Bottom Line / It's all a Matter of Price," Ha'aretz, October 31, 2003. Press reports on the State Comptroller's Report issued September 30, 2003 discussed the budgetary implications of the Barrier. "In June 2003, the Defense Ministry told the State Comptroller that there is plan for the entire fence... and that the program could be completed by 2005. Its cost is estimated at between NIS 8 billion and NIS 9 billion and the rate of construction depends upon the budget granted by the Finance Ministry, according to the Defense Ministry." "Comptroller: Gov't Delaying Construction of Separation Fence", Ha'aretz, September 30, 2003.

⁹ The map can be found at www.seamzone.mod.gov.il and is attached as Map 1 (page 36) to this report. The IDF map does not indicate the Green Line; OCHA, on the basis of the IDF map, has prepared a map illustrating the degree to which the Separation Barrier extends into the West Bank (attached as Map 2, page 37).

¹⁰ Amos Herel, "Separation Fence to Include Wide Area East of Jerusalem", Ha'aretz, November 10, 2003. The article's description of "a 'minimalist' route" (that leaves Ar Ram east of the Barrier) corresponds to the IDF map released October 23.

¹¹ Estimates of settler populations that would be west of the Barrier vary. The figure of 80 percent was reported in "A Fence Along the Settlers' Lines", Ha'aretz, October 3, 2003. According to the "Report of the Secretary General prepared pursuant to General Assembly resolution ES-10/13", November 24, 2003 (Report A/ES-10/248), p. 3, "The planned route incorporates nearly 320,000 settlers, including approximately 178,000 in East Jerusalem." The 142,000 West Bank settlers, according to OCHA are located in 54 settlements, and represent "63 percent of the West Bank settlement population." See "New Wall Projections", OCHA, November 9, 2003.

*The Impact of Israel's Separation Barrier on Affected West Bank Communities:
Follow-Up Report on Access Issues in "Stage A" Localities*

approximately 17,000 West Bank Palestinians.¹² In addition, further enclaves of Palestinian communities would be created. Construction progress of this alignment and the socio-economic implications for affected Palestinian communities will be examined in future updates.

II. AFFECTED "STAGE A" COMMUNITIES

6. Stage A construction of the Separation Barrier, running from Salem checkpoint in Jenin Governorate southward along the western edge of the West Bank to Elkana settlement in Salfit District (south of Qalqiliya) – a distance of 123 km – was declared completed in July 2003. The trajectory of the constructed Barrier placed 15 Palestinian communities with a combined estimated population of approximately 13,500 between the Barrier and the Green Line, in five separate zones (Table 1).

Table 1: Communities Located between the Separation Barrier and the Green Line as a Result of "Stage A" Construction

	Locality	Governorate	Zone	Population mid-2003
1	Umm ar Rihan	Jenin	1	353
2	Khirbet 'Abdallah al Yunis	Jenin	1	133
3	Dhaher al Malih	Jenin	1	205
4	Barta'a ash Sharqiya	Jenin	1	3,404
5	Khirbet ash Sheikh Sa'eed	Jenin	1	206
6	Khirbet al Muntar al Gharbiya	Jenin	1	n.a.
7	Nazlat 'Isa	Tulkarm	2	2,366
8	Baqa ash Sharqiya	Tulkarm	2	3,869
9	Nazlat Abu Nar	Tulkarm	2	185
10	Khirbet Jubara	Tulkarm	3	309
11	'Arab Abu Furda	Qalqiliya	4	n.a.
12	'Arab ar Ramadin al Janubi	Qalqiliya	4	181
13	Ras at Tira	Qalqiliya	4	369
14	Ad Dab'a	Qalqiliya	4	251
15	'Azzun 'Atma	Qalqiliya	5	1,555
Total				13,386

Source: Population estimates from PCBS, Small Area Population, 1997-2010.

Note: PCBS population projections are not published for localities with less than 100 inhabitants. At the time of the 1997 census, the population of Khirbet al Muntar al Gharbiya was 25 persons; 'Arab Abu Furda, 77.

7. The Stage A section of the Separation Barrier also created three enclaves, in which six West Bank communities with a combined population of nearly 50,000,

¹² "Report of the Secretary General prepared pursuant to General Assembly resolution ES-10/13", November 24, 2003 (Report A/ES-10/248), p. 3.

*The Impact of Israel's Separation Barrier on Affected West Bank Communities:
Follow-Up Report on Access Issues in "Stage A" Localities*

although located on the eastern side of the Barrier, are encircled or virtually encircled by the Barrier's circuitous route; the largest enclave being the city of Qalqiliya (Table 2).

**Table 2: Communities Encircled by the Separation Barrier
as a Result of "Stage A" Construction**

	Locality	Governorate	Enclave	Population mid-2003
1	Qalqiliya	Qalqiliya	1	41,616
2	'Arab ar Ramadin ash Shamali	Qalqiliya	2	n.a.
3	An Nabi Elyas	Qalqiliya	2	1,130
4	Wadi ar Rasha	Qalqiliya	3	n.a.
5	Habla	Qalqiliya	3	5,725
6	Ras 'Atiya	Qalqiliya	3	1,488
Total				49,959

Source: Population estimates from PCBS, Small Area Population, 1997-2010.

Note: PCBS population projections are not published for localities with less than 100 inhabitants. At the time of the 1997 census, the population of 'Arab ar Ramadin ash Shamali was 51 persons; Wadi ar Rasha, 76.

8. Inhabitants of thirty-seven other West Bank communities lost land to the construction of Stage A of the Separation Barrier (Table 3). Many individuals, in addition to losing land to the Barrier's "footprint", were separated from agricultural lands, water wells, and irrigation networks located west of the Barrier. This category does not include communities west of the Barrier (identified in Table 1) or communities encircled by the Barrier (Table 2) although these two groups of communities contain residents whose land holdings are now on the other side of the Barrier.

9. In total, 58 cities, towns, and villages in the northwestern West Bank, with a combined population of over 170,000, are either between the already completed Separation Barrier and the Green Line, encircled by the completed Stage A construction, or have residents that have land holdings on the western side of the Barrier (tables 1, 2, and 3). Nine of these 58 communities, along with an additional seven localities located further within the West Bank with a combined population of over 30,000 inhabitants, also face prospective encirclement in three enclaves that would result should the "depth barriers" that have been indicated on a number of unofficial maps be built and integrated with the Stage A Barrier (Table 4).¹³

¹³ See, for example, the B'Tselem map available on their website: http://www.btselem.org/Images/Maps/Full_Fence_Map_2003_Eng.pdf. In its maps of the Separation Barrier, B'Tselem, on the basis of IDF maps presented in hearings before the High Court of Justice (see footnote 7), shows three enclaves created by the integration of the principal Barrier with the "depth barriers" (the largest being the enclave including Tulkarm city and adjacent towns and refugee camps). These "depth barriers", and the resulting enclaves, are also shown on maps produced by OCHA appended to this report (see Maps 2-6, pages 37-41). It should be noted, however, that the "depth barriers" do not appear on the map published by the Israeli Ministry of Defense on October 23 (attached as Map 1, page 36), which shows both completed and planned sections of the Barrier. Whether this is an indication that the "depth barriers" are no longer deemed necessary, and hence will not be built, could not be determined. The IDF map, it should be noted, also does

*The Impact of Israel's Separation Barrier on Affected West Bank Communities:
Follow-Up Report on Access Issues in "Stage A" Localities*

**Table 3: Communities Losing Land to the Separation Barrier
as a Result of "Stage A" Construction**

	Locality	Governorate	Population Mid-2003
1	Rummana	Jenin	3,186
2	At Tayba	Jenin	2,254
3	'Anin	Jenin	3,514
4	Tura al Gharbiya	Jenin	1,048
5	Tura ash Sharqiya	Jenin	171
6	Nazlat ash Sheikh Sa'eed	Jenin	206
7	Khirbet Mas'ud	Jenin	n.a.
8	Khirbet al Muntar ash Sharqiya	Jenin	n.a.
9	Umm Dar	Jenin	551
10	Dhaher al 'Abed	Jenin	351
11	Zabda	Jenin	785
12	'Akkaba	Tulkarm	247
13	Qaffin	Tulkarm	8,263
14	An Nazla al Wusta	Tulkarm	393
15	An Nazla al Gharbiya	Tulkarm	897
16	Zeita	Tulkarm	2,971
17	'Attil	Tulkarm	9,831
18	Deir al Ghusun	Tulkarm	8,942
19	Al Jarushiya	Tulkarm	857
20	Al Masqufa	Tulkarm	200
21	Tulkarm	Tulkarm	42,991
22	'Izbat Shufa	Tulkarm	932
23	Far'un	Tulkarm	3,016
24	Ar Ras	Tulkarm	479
25	Kafr Sur	Tulkarm	1,185
26	Kafr Jammal	Tulkarm	2,415
27	Falamya	Qalqiliya	658
28	Jayyus	Qalqiliya	3,078
29	An Nabi Elyas	Qalqiliya	1,488
30	'Isla	Qalqiliya	825
31	'Izbat Jal'ud	Qalqiliya	132
32	Al Mudawwar	Qalqiliya	206
33	'Izbat Salman	Qalqiliya	599
34	'Izbat al Ashqar	Qalqiliya	389
35	Beit Amin	Qalqiliya	1,068
36	Sanniriya	Qalqiliya	2,781
37	Mas-ha	Salfit	1,857
Total			108,776

not indicate any agricultural gates or crossing points, although both were similarly referenced in the State Attorney's filing.

*The Impact of Israel's Separation Barrier on Affected West Bank Communities:
Follow-Up Report on Access Issues in "Stage A" Localities*

Source for Table 3 (preceding page): Population estimates from PCBS, Small Area Population, 1997-2010. Note: PCBS population projections are not published for localities with less than 100 inhabitants. At the time of the 1997 census, the population of Khirbet Mas'ud was 46 persons; Khirbet al Muntar ash Sharqiya, 13.

Table 4: Communities Facing Encirclement by the Existing "Stage A" Barrier and Prospective "Depth Barriers"

	Locality	Governorate	"Depth" Enclave	Population mid-2003
1	Rummana	Jenin	1	3,186
2	At Tayba	Jenin	1	2,254
3	'Anin	Jenin	1	3,514
4	Dhafer al 'Abed	Jenin	2	351
5	Imreiha	Jenin	2	403
6	'Akkaba	Tulkarm	2	247
7	Qaffin	Tulkarm	2	8,263
8	Iktaba	Tulkarm	3	1,868
9	Nur Shams Camp	Tulkarm	3	7,460
10	Tulkarm Camp	Tulkarm	3	12,765
11	Dhinnaba	Tulkarm	3	7,974
12	Tulkarm	Tulkarm	3	42,991
13	Khirbet at Tayyah	Tulkarm	3	329
14	'Izbat Shufa	Tulkarm	3	932
15	Kafa	Tulkarm	3	329
16	Far'un	Tulkarm	3	3,016
Total				95,882
Total, excl. communities also listed in Table 3				31,328

Source: Population estimates from PCBS, Small Area Population, 1997-2010.

III. SUMMARY FINDINGS

10. The original report expressed the concern that the Separation Barrier would "isolate, fragment, and, in some cases, impoverish those Palestinians affected by its construction... [The Barrier] may severely constrain the delivery of basic social services and commercial exchange – and certainly will do so if it does not feature a sufficient number of access points for the movement of persons and goods, and if [passage] is seriously hampered." In addition, the report concluded that a Separation Barrier "could effectively isolate Palestinian communities from their economic and social means of support – further exacerbating the process of economic fragmentation associated with the current internal closure and curfew regime. The extent to which such isolation and hardship occurs will be determined largely by the final alignment... and by the degree of access provided in practice."

*The Impact of Israel's Separation Barrier on Affected West Bank Communities:
Follow-Up Report on Access Issues in "Stage A" Localities*

11. According to the IDF, 41 agricultural gates exist or are planned along the Barrier's trajectory to enable Palestinian farmers access to their lands; nine crossing points for pedestrians and vehicles will be developed that would substitute for existing checkpoints; and four checkpoints for the transfer of goods are to be created, similar to Karni in the Gaza Strip (with a fifth such checkpoint to be established "once the whole project is completed").¹⁴

12. However, Palestinian residents complain of erratic operating hours and arbitrary procedures at the gates already operational along the Stage A section. They allege that gates have remained closed for extended periods; that opening delays occur frequently; and that the brief opening times are too short to let large groups of persons pass. These delays have had significant impact on the daily routines of students, farmers, workers, and, more generally, on the livelihoods of all residents behind the Barrier.

13. The provision of basic services such as education and health faces serious restrictions due to gate policies. Teachers and students are subject to regular delays on their way to school. Emergency medical cases are particularly problematic when they require transport through the Barrier during hours that gates are closed. Villages have been cut off from water supplies located across or even too close to the Barrier, and tankered water deliveries into areas between the Barrier and the Green Line have been restricted.

14. Agricultural operations have been particularly affected. Access has been problematic for farmers; obtaining permits for farming vehicles has been difficult. As a consequence, cultivated trees and crops have perished, and produce has gone unharvested. Grazing activities similarly require continual access; otherwise flocks can grow hungry and weak. Many farmers fear they will ultimately lose title to their land if they cannot sustain its cultivation/productive use.

15. Access points that permit a predictable flow of goods and people through the structure are essential if the negative economic impact of the Barrier is to be minimized. Gates, however liberally managed, will not solve all access problems. The existence of the Barrier, in conjunction with the current internal and external closure regime, has not only separated workers from their jobsites, farmers from their fields, and entrepreneurs from their business establishments – it has also handicapped the servicing of important domestic and external markets. This economic decline due to income loss cannot be recovered merely through improved gate hours and enlightened permit policies.

16. Many Palestinians interviewed in the course of fieldwork for that report and for subsequent updates expressed their fear that families cut off by the Barrier from

¹⁴ Ministry of Defense website, "Israel's Security Fence – News Briefs – Facts & Figures", August 10, 2003. <http://www.seamzone.mod.gov.il/Pages/ENG/news.htm#news6> The exact number of gates, crossing points, and checkpoints along the Barrier is unclear. The IDF declaration proclaiming the area between the Green Line and the Barrier a "closed military zone" – "Order Concerning Security Directives (Judea and Samaria) (number 378), 1970, Declaration Concerning the Closure of Area Number s/2/03 (Seam Area)" – identified 47 "passages": forty-four gates and three checkpoints.

*The Impact of Israel's Separation Barrier on Affected West Bank Communities:
Follow-Up Report on Access Issues in "Stage A" Localities*

livelihoods and/or services might have to migrate east into the West Bank (or across the Green Line into Israel, in the case of men from border communities who have married Israeli Arab women). Such migration decisions, although small in number, appear to be increasing (in areas near the "Jerusalem envelope", some movement into areas closer to – or within – Jerusalem's municipal boundaries has occurred by individuals seeking work and by families where some or all members hold Jerusalem identity cards; this is being done in order to preserve access to social welfare services and benefits.)

17. Concerns over potential migration were heightened by the Israeli State Attorney's statements before the High Court of Justice during the period of Stage A construction, which indicated that the territory between the Green Line and the Separation Barrier would be declared a "Closed Military Area"¹⁵ – which, based on precedent during the *Intifada*, would imply restrictions on access to these areas by non-residents, possibly including medical personnel, social workers, and teachers. The October 21, 2003 declaration by the IDF that the area between the Green Line and the Separation Barrier was now, indeed, a "closed military zone" – and the subsequent confusion regarding permits and/or new identity cards – further increased the anxiety of affected residents.

IV. LIMITATIONS TO ACCESS

Gate Operation Protocols and Permits

18. Many access problems stem from the fact that gates are few in number, with limited and varying hours of operation – at times opening and closing without notice, contrary to schedule. Permission to cross often appears to be arbitrarily granted; permit policies are informally announced and vary by region.

19. Hours of operation appear particularly inconsistent. Informants from Qalqiliya and Tulkarm reported waiting as much as five hours at the gates. When gates do open (generally twice daily), it is often for 10-to-20 minutes – insufficient time for workers that need to cross the Barrier to reach fields and greenhouses.¹⁶ In Ad Dab'a the afternoon opening of the gate lasts between five and ten minutes – too short a time period for all persons to pass.¹⁷ Other gates are open considerably longer. In Baqa ash

¹⁵ Response of the State Attorney's Office before the High Court of Justice, October 14, 2002, in response to petition filed on September 11, 2002 against the planned route of the Wall (Petition 8352/02), on behalf of residents of Deir al Ghusun, Shweika, 'Attil, Farasin, Baqa ash Sharqiya, and Qaffin owning land on which the Barrier is being built. B'Tselem, in "The Separation Barrier: Update, October 2002", states: "According to the State Attorney's Office, the Closed Military Area declaration will not apply to the residents of this strip of land", *i.e.*, communities between the Wall and the Green Line. "Residents of the Palestinian enclaves, those Palestinian communities remaining west of the barrier, will not be granted any special status entitling them to enter Israel. Rather, the State Attorney's Office response states, they 'will continue to maintain their ties with the other sections of the area' by crossing at the control points." B'Tselem, "The Separation Barrier: Update, October 2002", p.2.

¹⁶ Discussion with farmers and businessmen at municipality in Qalqiliya, November 8, 2003.

¹⁷ Palestinian Monitoring Group, "Trend Analysis: Israeli Separation Wall Activity since United Nations General Assembly Resolution ES-10/13 of 21 October 2003", November 13, 2003, p. 5.

*The Impact of Israel's Separation Barrier on Affected West Bank Communities:
Follow-Up Report on Access Issues in "Stage A" Localities*

Sharqiya, the two gates are reportedly opened for 14-to-15 hours per day.¹⁸ The gate in Barta'ash Sharqiya is said to be open 24 hours a day.¹⁹ In Ras at Tira, the gate has recently opened from 7:30 a.m. until 1:00 p.m. and for an additional hour in the afternoon, whereas previously this gate had only been opened for 15 minutes at a time.²⁰

20. Access gates have also been closed for extended periods, either because of localized curfews or general closure during Israeli holidays.²¹ Gates at Jayyus and Falamiya were closed for 20 days between September 20 and October 20, the time of the olive harvest.²² Both of Qalqiliya's agricultural gates were closed for five weeks in October and November.²³ In Nazlat Isa, separated from the rest of the West Bank by two gates, occasionally only one gate opens.²⁴

21. The distance between gates makes access to land impractical – if not impossible – for some farmers; others can only access their land with great difficulty, traversing areas that no longer have agricultural roads because Barrier construction destroyed the existing road network. A 60-year old farmer from 'Azzun 'Atma reported that there are no roads to access his land, despite his permit.²⁵ In Ras at Tira, the majority of farmers have not accessed their land to the south, which is located too far from the gate; consequently, villagers on the other side of the fence have rented their greenhouses at a bargain price.²⁶ Similarly, farmers from Zeita, 'Attil, and Deir al Ghusun have reportedly leased their land at minimal rent to a livestock farmer from Ibthan (an Arab-Israeli village close to the Green Line) to grow barley and other animal fodder.²⁷

22. There appears to be little consistency in rules regarding the passage of agricultural vehicles and equipment. In areas such as in Barta Sharqiya and Ras Tireh, vehicles are allowed to cross.²⁸ In others, like Jayyus, only tractors can be brought through.²⁹ In Ar Ras, farmers are allowed to cross only to pick of olives; they can bring tractors, but no other farming equipment.³⁰ At Qalqiliya's gates, no vehicles have been allowed and the transport of fertilizers through the gates has been forbidden.³¹

¹⁸ Interview with Moayad Hussain, head of village council in Baqa'a ash Sharqiya, November 6, 2003.

¹⁹ Interview with Marwan Kapaha, member of village council in Barta ash Sharqiya, November 9, 2003

²⁰ Interview with Zahran Mranaeh, head of village council in Ras at Tira, November 10, 2003.

²¹ Due to Jewish holidays in October the gates were closed between 18 to 22 days straight (see Palestinian Monitoring Group 'Trend Analysis: Separation Wall 'Closed Zone'. Implementation of Permit System, October 2003,' October 30, 2003, p.2.

²² Interview with Abdullatif Khaled, senior groundwater engineer, Palestinian Hydrology Group (PHG), Jayyus, November 7, 2003.

²³ Discussion with farmers and businessmen at municipality in Qalqiliya, November 8, 2003

²⁴ Interview with Abu Ashraf, member of village council in Nazrat 'Isa, November 6, 2003.

²⁵ Discussion with farmers and businessmen at municipality in Qalqiliya, November 8, 2003.

²⁶ Interview with Zahran Mranaeh, head of village council in Ras at Tira, November 10, 2003.

²⁷ Discussion with farmers and residents in Zeita.

²⁸ Interview with Marwan Kapaha, member of village council in Barta ash Sharqiya, November 9, 2003 and Zahran Mranaeh, head of village council in Ras at Tira, November 10, 2003.

²⁹ Interview with Abdullatif Khaled, 'The Apartheid Wall Campaign', PENGON, Jayyus, November 7, 2003.

³⁰ Interview with Eed Yasseen, member of Ar Ras village council, November 11, 2003.

³¹ Interview with Maa'rouf Zahran, mayor of Qalqiliya, and with member of The Chamber of Commerce Qualqilya, November 8, 2003.

*The Impact of Israel's Separation Barrier on Affected West Bank Communities:
Follow-Up Report on Access Issues in "Stage A" Localities*

23. Farmers who have crossed from the east to the western side of the Barrier into the "Seam Zone" are not generally allowed to remain overnight, despite their need for continuous access to grazing and farming lands. In Jayyus, 70 families tried to stay overnight in tents to herd their sheep; on October 13, 2003, the IDF reportedly took away their IDs and threatened to destroy them if villagers did not return to their village. They returned to their village, taking their sheep with them.³² In Qalqiliya, farmers reported that they were chased away on the occasion that they tried to stay overnight on their land west of the Barrier.³³

24. With the declaration of a "closed military zone" beyond the Barrier on October 2 and the imposition of permit requirements for residents in the area between the Barrier and the Green Line and for farmers living east of the Barrier who own or work land to the west, additional uncertainty has been created by the different ways in which permit implementation has been handled.

25. During the initial stages of permit implementation, Israeli authorities issued permits in what appeared to be a random manner. According to residents, in Jayyus permits were issued without being requested, and most were for old people and for former members of the community – persons either living overseas or now deceased;³⁴ in Qalqiliya, about a third of the issued permits were for deceased people.³⁵ In other villages, like Ar Ras, people had to apply themselves.³⁶

26. While permits were issued to persons not requesting them, others – such as farmers in need of permits to access their land – did not receive them. Landowners who received permits were unable to obtain permits for their workers.³⁷ As of November 7, 70 out of 140 farmers in Ar Ras did not have permits³⁸ while in Jayyus, 600 persons out of 3,200 had not received them.³⁹ In Qalqiliya, 400 persons had received permits as of November 8, out of nearly 6,000 persons who had applied.⁴⁰ By mid-November, the number of permits issued had increased, with approximately 95 percent of residents in the closed area – but 25 percent of those living east of the Barrier who had requested access

³² Interview with Abdullatif Khaled, senior groundwater engineer, Palestinian Hydrology Group (PHG), Jayyus, November 7, 2003.

³³ Discussion with farmers and businessmen at municipality in Qalqiliya, November 8, 2003.

³⁴ Interview with Abdullatif Khaled, senior groundwater engineer, Palestinian Hydrology Group (PHG), Jayyus, November 7, 2003.

³⁵ Interview with Maa'rouf Zahran, mayor of Qalqiliya, November 8, 2003.

³⁶ Interview with Eed Yasseen, member of village council in Ar Ras, November 7, 2003.

³⁷ Palestinian Monitoring Group, "Trend Analysis: Separation Wall 'Closed Zone' – Implementation of Permit System," October, 2003, p. 2.

³⁸ Interview with Eed Yasseen, member of village council in Ar Ras, November 7, 2003.

³⁹ Interview with Abdullatif Khaled, senior groundwater engineer, Palestinian Hydrology Group (PHG), Jayyus, November 7, 2003.

⁴⁰ Interview with Maa'rouf Zahran, mayor of Qalqiliya, November 8, 2003.

*The Impact of Israel's Separation Barrier on Affected West Bank Communities:
Follow-Up Report on Access Issues in "Stage A" Localities*

to the closed zone – having received permits.⁴¹ An appreciable number of permits have apparently been denied.⁴²

27. Permits have allegedly been denied because applicants have committed driving offences; others for having been caught working illegally in Israel; still others for unspecified "security reasons".⁴³ For towns and villages east of the Barrier, proof of land title is often required for permits and access to land west of the Barrier; agricultural workers have consequently been rejected permits on the basis that they do not own land.⁴⁴

28. While most permits appear to be valid for either three or six months, some are for shorter periods (i.e., one month – Ar Ras) and others as long as one year (Barta ash Sharqiya; Jubara). Respondents repeatedly expressed fear that they would lose their land because access permits are issued with a disclaimer printed on their reverse side, which states that the "permit does not constitute evidence of legal rights including property rights or legal residency in the area".⁴⁵ Others fear that short permit expiry dates of 1-to-6 months are an indication that permits will not be continually renewed.

29. Permits are issued for passage through a specific gate number, posing cumbersome restrictions on agricultural service providers who require access to several gates. Also problematic is the relocation of the Kfar Saba checkpoint immediately south of Qalqiliya. Formerly situated on the Green Line, the checkpoint was moved eastward into the West Bank by approximately 2 km in early November. As the new location is actually east of the southern gate in the Separation Barrier into Qalqiliya, that gate, and the road Qalqiliya farmers formerly used to access their lands south of the city, is now effectively closed – since permit holders do not have permission to enter Israel.⁴⁶

Access to Services

30. The most frequently reported problems of accessing services occur in relation to education, health, and water resources. Solid waste disposal has also become difficult.

31. Several villages between the Separation Barrier and the Green Line have no primary or secondary school in their community, and students must cross the Barrier to reach their classes. As a consequence of delays at crossings and gate closures, access to education for these students is now problematic. In Ar Ras, 44 of 172 students in primary

⁴¹ Negotiations Affairs Department, Palestine Liberation Organization.

⁴² Palestinian Monitoring Group, "Trend Analysis: Israeli Separation Wall Activity since United Nations General Assembly Resolution ES-10/13 of 21 October 2003", November 13, 2003, p. 2.

⁴³ Interview with Maa'rouf Zahran, mayor of Qalqiliya, November 8, 2003; interview with Zahran Mranaeh, head of village council in Ras at Tira, November 10, 2003.

⁴⁴ Interview with Maa'rouf Zahran, mayor of Qalqiliya, November 8, 2003

⁴⁵ See OCHA, "Humanitarian Update", October 16-31, 2003, p. 4.

⁴⁶ Interview with Maa'rouf Zharan, mayor of Qalqiliya, and Qalqiliya area farmers and businessmen, November 8, 2003; see also Palestinian Monitoring Group, "Trend Analysis: Israel Separation Wall Activity since United Nations General Assembly Resolution ES-10/13 of 21 October 2003," November 13, 2003, p.2.

*The Impact of Israel's Separation Barrier on Affected West Bank Communities:
Follow-Up Report on Access Issues in "Stage A" Localities*

school must come through the Barrier every morning from their hometown of Khirbet Jubara. Another 46 students from Khirbet Jubara go to the high school in Kafr Sur. During closures or Israeli holidays, gates are not open, and these students cannot attend classes. On other days, passage through the gates is delayed, sometimes for hours (in the week prior to the mission's visit, students from Khirbet Jubara did not attend class on two days and were delayed on third day.⁴⁷) Similar delays were reported for students passing from Ras at Tira into Ras 'Atyia.⁴⁸ In Barta'a ash Sharqiya, 80 students attend schools and universities on the eastern side of the wall. The gate was being opened at 10 a.m. instead of the scheduled time of 8 a.m.⁴⁹

32. Teachers likewise have to travel through the Barrier's gates to arrive at school, and are now required to have permits in order to pass pursuant to the October 2 declarations, orders, and regulations issued further to IDF military order 378. Many teachers did not yet have the requisite permit as of mid-November⁵⁰, but were usually allowed to pass by showing their Ministry of Education ID card. Female teachers heading towards schools in Baqa ash Sharqiya and Barta'a ash Sharqiya have been denied passage for refusing to submit to physical inspection by male soldiers. As a consequence, the Baqa ash Sharqiya girls' school was not able to open for 20 days in October and November;⁵¹ reportedly, female teachers from Barta'a ash Sharqiya were turned away at the gate three times in one week before the IDF brought in female soldiers in order to search them. However, they often do not arrive before 10 a.m.⁵² For these and similar reasons, 14 out of 18 teachers at the girls' school in Nazlat 'Isa have not been able to work on more than half of the school days this year.⁵³

33. The provision of health services, already constrained by checkpoints and closures, faces greater difficulties due to the Barrier, with access to health facilities becoming increasingly difficult for people living between the Barrier and the Green Line. In Barta'a ash Sharqiya, which has only one pediatric clinic, patients typically must go to Jenin or Tulkarm. As at checkpoints elsewhere in the West Bank, ambulances have been told to wait in line at the gates; some have reportedly been turned back.⁵⁴ To reach Khirbet Jubara, ambulances must come from Tulkarm and have only been permitted to cross the checkpoint during daytime. In Nazlat 'Isa, nurses have reportedly been searched at the checkpoint, and people who needed to go to hospital have reportedly been turned back.⁵⁵ For the population of Ras at Tira, the closest medical clinics are in Ras

⁴⁷ Interview with Eed Yasseen, member of village council in Ar Ras, November 7, 2003.

⁴⁸ Interview with Zahran Mranaeh, head of village council in Ras at Tira, November 10, 2003.

⁴⁹ Interview with Marwan Kapaha, member of village council in Barta'a ash Sharqiya, November 9, 2003.

⁵⁰ In Barta'a ash Sharqiya, where the village council has applied for permits for the teachers, no response has yet been received. Interview with Marwan Kapaha, member of village council in Barta'a ash Sharqiya, November 9, 2003.

⁵¹ Interview with Moayad Hussain, head of village council in Baqa ash Sharqiya, November 6, 2003.

⁵² Interview with Marwan Kapaha, member of village council in Barta'a ash Sharqiya, November 9, 2003.

⁵³ Interview with Abu Ashraf, member of village council in Nazlat 'Isa, November 6, 2003.

⁵⁴ Interview with Marwan Kapaha, member of village council in Barta'a ash Sharqiya, November 9, 2003.

⁵⁵ Interview with Abu Ashraf, member of village council in Nazlat 'Isa, November 6, 2003.

*The Impact of Israel's Separation Barrier on Affected West Bank Communities:
Follow-Up Report on Access Issues in "Stage A" Localities*

'Atiya (approx. 1.5 km away) and Habla (4 km). Patients not present during regular gate openings have been denied passage.⁵⁶

34. Several villages, having been separated from wells, reservoirs, and water networks because of the Barrier, now face further impediments to water access because of gate procedures. Having lost regular access to a number of water wells to the west of the Barrier, Jayyus residents now purchase water for household consumption from 'Azzun; although only 4 km to the southwest, the road between the two villages is gated, making delivery erratic.⁵⁷ Villagers in Ras at Tira now depend on collected rain water and tankered water from Kafr Sur. During the two weeks prior to the mission's visit, no tankered water was allowed through the Barrier checkpoint.⁵⁸

35. In Baqa ash Sharqiya, because of limited agricultural activity resulting from reduced access to agricultural fields, water from six wells is presently not consumed and villagers fear that that the IDF will confiscate the wells on the grounds that they are no longer being used. IDF personnel have been observed examining the well sites.⁵⁹

36. At Khirbet Jubara, trucks can no longer enter the village for garbage and sewage collection; both are thrown out in the open and left to rot.⁶⁰

Impact on Social Relations

37. Permits are not issued for social purposes. Many villages in the regions examined share important relations through kinship or marriage with other villages, including Israeli Arab villages. Moreover, many of the smaller villages trace their origins from 'mother' towns in the West Bank, and maintain close relations with inhabitants of distant towns who come from the same extended families. Preserving these social relationships is becoming harder.

38. The residents of Nazlat 'Isa (a village located west of the Barrier) have social links with residents of all nearby villages, as well as with residents of Baqa al Gharbiya in Israel (directly across the Green Line), with whom there has been intermarriage. Approximately 70 men from the village have married Israeli Arab women. In accordance with prevailing custom, most of these women moved into the West Bank to live with their husband's family. Now, as a second, western barrier is under construction along the Green Line that will have the effect of placing Nazlat 'Isa, Baqa ash Sharqiya, and Nazlat Abu Nar inside an enclave, a number of these men have rented homes in Israel and plan to relocate as the new barrier nears completion. Women from these three communities who have married Israeli Arab men are reportedly facing increasing difficulty in crossing back into the West Bank to visit their families.⁶¹

⁵⁶ Interview with Zahran Mranaeh, head of village council in Ras at Tira, November 10, 2003.

⁵⁷ Interview with Abdullatif Khaled, senior groundwater engineer, Palestinian Hydrology Group (PHG), Jayyus, November 7, 2003.

⁵⁸ Interview with Zahran Mranaeh, head of village council in Ras at Tira, November 10, 2003.

⁵⁹ Interview with Moayad Hussain, head of village council in Baqa ash Sharqiya, November 6, 2003.

⁶⁰ Interview with Abu Riad, farmer in Khirbet Jubara, November 5, 2003.

⁶¹ Interview with Abu Ashraf, member of village council in Nazlat 'Isa, November 6, 2003.

V. SOME LEGAL IMPLICATIONS

The Process of Land Requisition

39. The process of requisition of land for the construction of Stage A of the Security Barrier was analyzed at length in the original Separation Barrier report of May 4, 2003.⁶² In general, little has changed in regard to the requisitioning of property, and the difficulties with the system identified in that report have not been addressed. Property continues to be requisitioned pursuant to military orders issued by the Military Commander of the West Bank (Judea and Samaria) that are generally valid until December 31, 2005, although the orders can be extended indefinitely.⁶³ The basis of the orders is military and security need, and the orders become effective on the date of signature. Land owners, in general, reportedly learn of the requisition orders only when notices are attached to their land, despite the obligation of the relevant DCO to deliver copies of the orders to land owners in the West Bank (orders delivered by the Ministry of Defense in Jerusalem specifically provide that non-delivery does not require a stay of the order.) While earlier orders detailed the appeals process, subsequent orders have failed to include the right to appeal, although affected parties can still file a petition to the High Court.⁶⁴

40. The appeals process itself remains highly problematic. Land owners can file an objection to the requisition of property with the Legal Advisor of the Military Commander of the West Bank. However, the Military Commander, who is responsible for the order requisitioning the property in the first place, can overrule any recommendation by the Legal Advisor. Since the land registration system in the West Bank is not up to date, many affected land owners may experience considerable difficulty in proving ownership. This is due partly to the restrictions on land surveys after 1967. These restrictions prevented many Palestinian owners from registering property, but did allow for the registration of "state land" – land that had been confiscated by Israeli authorities. In addition, many legal heirs did not register property in their names after the death of the land owners. The need to accompany an appeal with land documents certified by a licensed surveyor can also prove prohibitively expensive, or practically impossible given today's travel restrictions.

41. The exact number of objections, rejections, and pending cases related to the Separation Barrier is unclear. At a meeting with the mission on November 11, 2003, IDF

⁶² See footnote 2 for web addresses for the report and its annexes.

⁶³ Since the West Bank and Gaza have never been formally annexed by the state of Israel, in theory the laws applicable in those areas at the time of occupation remain in effect. In the West Bank, these can be amended pursuant to military orders issued by the Military Commander of the West Bank (Judea and Samaria). Such military orders can also be issued to establish new regulations independent of existing legislation. For further discussion, see paras. 34-45 of original report.

⁶⁴ For example, Order #03/57/C Regarding Land Confiscation, issued on September 4, 2003.

*The Impact of Israel's Separation Barrier on Affected West Bank Communities:
Follow-Up Report on Access Issues in "Stage A" Localities*

officials promised to provide such data within two days,⁶⁵ but to date this information has not been provided (as the administrator of the process, the IDF is assumed to possess the most accurate data). According to the Israeli Ministry of Foreign Affairs, over four hundred objections have been filed. No military order for the requisition of property has been cancelled after the filing of an objection, however. According to one lawyer representing many land owners, the best that can be hoped for is that the requisition will be delayed or the route of the Security Barrier moved slightly to minimize damage to the land or structures.⁶⁶ The IDF appears more willing to compromise if petitions reach the High Court.

42. According to the Ministry of Foreign Affairs, fifteen petitions have been lodged with the High Court. Of those, seven have been rejected; five have been resolved amicably by altering the route of the Security Barrier or otherwise minimizing damages; two concluded with an extension of the period for hearing objections; and one case is pending. The pending petition was filed on November 6 and challenges the construction of the Security Barrier, the depth barriers, and the declaration of the Seam Zone as a closed military area. It requests an injunction on further requisition of land and construction for purposes of the depth barriers in Stage A; the Security Barrier from Al Mutilla (in eastern Jenin Governorate) to Tayasir (Tubas District) in Stage B; and segments of the Security Barrier that extend beyond the Green Line in Stages C and D (Bethlehem and Hebron Governorates). It also requests an injunction to prevent the declarations issued pursuant to Military Order 378 from taking effect. Challenges to the legality of the construction of the Security Barrier have all been rejected by the High Court up to now.

43. Although land owners are entitled to apply for compensation, Palestinian interviewees claim that those affected have not done so, for fear that they could thereby lend legitimacy to the requisition process. However, according to IDF officials, around fifty claims have been filed, requesting roughly twenty-one million shekels in compensation. At this time, the compensation system remains unclear.⁶⁷ Military orders provide that land owners can request compensation, but no formal procedures for determination are in place. According to the IDF, land owners can seek lump sum compensation for damage to the land and structures, as well as fees for the usage of the land, with assessors from the Ministry of Defense setting the compensation scales. It remains unclear what guidelines will be in effect for determining compensation rates, however. Compensation only covers property requisitioned or damaged for the construction of the Security Barrier and the depth barriers. Owners of property damaged because owners could not access property and could not properly cultivate it are not entitled to compensation.⁶⁸

⁶⁵ Meeting with Colonel Daniel Reizner, Head of the International Department, and Major Michael Bendavid, Head of the International Law Section, November 11, 2003.

⁶⁶ Meeting with attorney Muhammad Dahleh in Jerusalem on November 13, 2003.

⁶⁷ Meeting with Colonel Daniel Reizner, Head of the International Department, and Major Michael Bendavid, Head of the International Law Section, November 11, 2003.

⁶⁸ *Ibid.*

*The Impact of Israel's Separation Barrier on Affected West Bank Communities:
Follow-Up Report on Access Issues in "Stage A" Localities*

44. The appeals process (and the available remedies) in the case of property requisitioning for the Security Barrier and depth barriers is similar to the process applicable to the seizure of property in the West Bank that eventually becomes state land.⁶⁹ Objections to such requisitions can be filed with an appeals committee, which is exempt from applying the rules of evidence required by Israeli law, and can establish its own rules of evidence and procedure. Under these rules, it falls to the land owner to prove that requisitioned land is *not* state land.⁷⁰ Most land owners are not adequately informed of impending requisitions by the Israeli authorities, with many remaining unaware of a decision until construction has begun on their land – at which time it is often too late to file an appeal. Owners must also pay a fee for an appeal, provide a map of the land drawn up by a qualified surveyor (which can cost up to NIS 500), and hire an attorney to represent them at the proceedings. In state land appeals, even if a property is found not to be state land at the time of requisitioning, the decision will not be reversed if the transaction was undertaken in good faith.⁷¹

Military Closed Area – the Seam Zone

45. On October 2, 2003, the IDF issued a declaration pursuant to Military Order 378 declaring northern parts of the area between the Green Line and the Separation Barrier (the “Seam Zone”) a closed area.⁷² This declaration explicitly provides that no person can enter the Seam Zone or remain resident in it without the issuance of a permit. Orders and regulations also issued pursuant to Military Order 378 at the same time as the declaration restrict the right of residents to remain in Seam Zone and of non-residents to travel into and out of it. These orders and regulations do not apply to Israeli citizens, permanent residents of Israel and those eligible to emigrate to Israel in accordance with the Law of Return. Palestinian residents must apply for a permit in order to retain the right to continue living in the seam zone.⁷³ However, according to IDF officials the version of the declaration relating to residents of the Seam Zone issued on October 2 was not the correct version, and mistakes in the text of the declaration will soon be remedied by amendments.⁷⁴ The intent of the IDF, it is said, was not to force residents to apply for permits, but to issue identification cards certifying their permanent residence status. These cards may not have to be renewed, and would allow residents to enter and exit through the Security Barrier without needing any type of additional permit.

46. Regardless of whether the Israeli authorities issue permits or identification cards, residents must still prove “permanent residence” to the satisfaction of the certified authority. The IDF claims that anyone who can demonstrate permanent residence will be automatically issued an identification card. As of yet, though, no definition of

⁶⁹ See original report for fuller discussion of notification procedures and appeals process.

⁷⁰ Order Regarding Government Property, Section 2C.

⁷¹ Order Regarding Government Property, Section 5.

⁷² Order Regarding Security Regulations (Judea and Samaria) (No.378), 5730-1970 Declaration Concerning Closing an Area no. S/2/03 (Seam Zone).

⁷³ Order Regarding Security Regulations (Judea and Samaria) (No.378), 5730-1970 “Regulations Regarding Permit to Permanent Resident in the Seam Zone”.

⁷⁴ This opinion was expressed at a meeting with Colonel Daniel Reizner, Head of the International Law Department, and Major Michael Bendavid, Head of the International Law Section, on November 11, 2003.

*The Impact of Israel's Separation Barrier on Affected West Bank Communities:
Follow-Up Report on Access Issues in "Stage A" Localities*

“permanent” is included in the order, and no criteria for judging permanency of residence are available. Unless explicitly addressed, this could lead to arbitrary implementation of the permit/identification card process. In areas under PA administration pursuant to the Oslo Accords (that is, Areas “A” and “B”), the IDF has said it will consider identification cards issued by the PA as sufficient to demonstrate permanent residency provided such records match those of the Israeli authorities.⁷⁵

47. The declaration currently provides that the certified authority receiving an application will either issue a permit, or transfer the application to a committee – which will in turn issue a permit or reject the application. If an application is referred to a committee, the applicant will be allowed to remain in the Seam Zone only if the committee so authorizes. There is, as yet, no set appeals process for rejected applications, although the IDF claims that the amendments to the declaration will provide for this. Applicants are obliged to provide all necessary documents for an examination of their residency request, but no list of necessary documents is included in the order. This lack of clarity could result in arbitrary application of the declaration, with residents of different areas potentially held to different standards.

48. Thus far the declaration does not set a timeframe for the validity of a permit and permits issued so far all need to be renewed at periodic intervals. This puts residents under a considerable obligation to prove permanent residence, the nature of which, as noted, has not been defined. Of greatest concern to residents is that the apparently arbitrary nature of the proceedings may result in the non-renewal of permits if an applicant spends time outside of the Seam Zone – since the decision to renew a permit is based on proving “permanent” residence on the day the permit has to be renewed. The same concerns would be applicable to renewal of identification cards.

49. Permits must also be obtained for individuals who are not residents of the Seam Zone who wish to enter or remain in it⁷⁶ – including individuals living east of the Security Barrier who own land in the Seam Zone, and the “national” staff of international organizations and NGOs (reportedly a “general permit” was issued exempting all “international” staff from this requirement).⁷⁷ According to the IDF, any individual who can prove ownership of land in the Seam Zone will be granted a temporary permit, which will need to be renewed on a periodic basis. However, proving ownership is often problematic, as indicated in para. 41 above.

⁷⁵ Meeting with Colonel Daniel Reizner, Head of the International Department, and Major Michael Bendavid, Head of the International Law Section, November 11, 2003.

⁷⁶ Order Regarding Security Regulations (Judea and Samaria) (No.378), 5730-1970 “General Permit to Enter the Seam Zone and Stay in It” and Order Regarding Security Regulations (Judea and Samaria) (No.378), 5730-1970 “Regulations Regarding Entry and Stay Permits to the Seam Zone”.

⁷⁷ Lt. Col. Daniel Beaudoin, Head, Foreign Relations Branch, Ministry of Defense Coordination of Government Affairs in the Territories, stated in his November 25, 2003 letter to Michael Keating, current chair of the donor Task Force on Project Implementation, that “concomitant to the declaration regarding the closing of the area, general permits for entry and remaining were issued to the non residents of the closed area, possessing a passport and a valid visa to Israel. These permits are not limited in time and enable free entry into the area with vehicles.” Palestinians not resident of the closed zone who are employed by international organizations may apply for permits to enter and stay in the zone; entry by vehicle would require a second permit. These permits are valid for six months and are renewable.

Potential Long-Term Effects on Property Rights

50. Both the requisitioning of property for construction of the Security Barrier and the restrictions on access to property in the Seam Zone present certain dangers for land owners. In this context it is important to note the history of previous land expropriations in the West Bank. Taking into account such past practices, and the fact that a legal framework exists in the West Bank for requisition and confiscation of property, there is considerable concern land could be *de facto* or *de jure* confiscated on a permanent basis.

51. After the occupation of the West Bank in 1967, the Israeli authorities amended existing legislation and enacted new regulations to allow for the expropriation of property. The methods used have been a) the requisitioning of property for military or security needs; b) the designation of land as "state" land; c) the declaration of land as "absentee" property; and d) the acquisition of property for "public needs". Land in the Seam Zone could possibly be requisitioned or confiscated using such approaches. The IDF has no plans to issue military orders to exempt property in the Seam Zone or other areas from requisition or confiscation. In the opinion of IDF officers interviewed, such measures are not necessary because there is no danger of the land being confiscated.⁷⁸

52. Between 1968 and 1979 Israeli military officials issued dozens of military orders for the temporary requisitioning of private land in the West Bank on grounds of urgent military necessity, to be used primarily for Israeli settlements.⁷⁹ The High Court upheld these orders on the grounds that settlements performed key defense and military functions, and did not consider them in violation of international law.⁸⁰ However, a High Court decision in 1979 ordered the dismantling of a settlement and the return of the property to its owners because the settlers themselves, in an affidavit to the High Court, stated the settlement was permanent – not temporary – in nature.⁸¹ Since then, military orders have been used to requisition property only for the construction of by-pass roads, with the concurrence of the High Court given on the grounds of security needs and that roads benefit all residents.⁸²

53. After curtailing the use of military orders, Israeli authorities applied the Ottoman Land Law of 1858 to declare private land as state land, on the grounds such land had not been cultivated for a period of three years. In such cases, owners were not entitled to compensation. The argument made by Israeli authorities was that such action was justified under international humanitarian law, which permits an occupying power to take

⁷⁸ This was stated at a meeting with Colonel Daniel Reizner, Head of the International Law Department, and Major Michael Bendavid, Head of the International Law Section, on 11 November 2003.

⁷⁹ Lein, Yehezkel "Land Grab: Israel's Settlement Policy in the West Bank", Report of B'Tselem, 2 May 2002, p. 31.

⁸⁰ HJC 258/79, Ayub et al v. Minister of Defence et al., Piskei Din 33(2) 113.

⁸¹ HJC 390/79 Dweikat et al v. Government of Israel et al., Piskei Din 34(1) 1.

⁸² HJC 2717/96, Wafa et al v. Minister of Defense et al., Piskei Din 50(2) 848; HJC 393/82, Jam'ayat Iskan al-Mu'almum v. Commander of IDF Forces, Piskei Din 37(4) 785; and HJC 6592/94, Municipality of Hebron et al v. Minister of Defense et al, Piskei Din 50(2) 617.

*The Impact of Israel's Separation Barrier on Affected West Bank Communities:
Follow-Up Report on Access Issues in "Stage A" Localities*

possession of, and manage, properties belonging to an enemy state⁸³. The High Court upheld the legality of these actions, confirming the ownership of the property by the state of Israel and rejecting appeals of Palestinian land owners against such a designation of the land at issue.⁸⁴ Individual land owners were often not personally informed of the decisions. Such measures could be invoked to confiscate land in the Seam Zone if owners do not receive access permits/identification cards, or if the system of gates renders the cultivation of agricultural land non-viable. They could also be used to take possession of land next to the Separation Barrier should such land remain inaccessible or limited in access, even if there is no military order declaring the area closed. According to the Israeli human rights organization B'Tselem, the Israel Lands Administration has never made public the amount of land registered as state land. It has been estimated that Israel has designated about forty percent of the West Bank as state land, using the Ottoman provisions.⁸⁵ Both private property and land registered as Jordanian state land have been confiscated.

54. Land in the West Bank has also been acquired pursuant to the Order Regarding Abandoned Property, which has been applied to the property of "absentees".⁸⁶ The Custodian of Government Property became responsible for managing this property until such time as the owner returned, when the land is to be restituted along with any income derived from it. In many cases, though, owners have been prevented from returning by regulations limiting their freedom of movement. It is claimed that some owners who returned through family reunification mechanisms were able to receive some compensation, though not restitution of the land itself.⁸⁷ Owners contesting the classification of their property as abandoned can file an objection with the military appeals committee. However, even in cases in which property has been wrongly classified as abandoned, its acquisition will not be nullified if the Custodian is found to have acted in good faith.⁸⁸

55. Using laws put into effect during the period of Jordanian administration of the West Bank, Israeli authorities also began expropriating property for "public needs", with certain amendments being made to the original legislation to minimize the obligation to notify owners of such a decision, and to charge the military apparatus with responsibility for dealing with appeals⁸⁹. These measures have been used primarily to acquire land for the construction of roads serving Israeli settlements, and decisions to this effect have in most instances been upheld by the High Court.⁹⁰

⁸³ Order Regarding Government Property (Judea and Samaria) (No. 59), 5727-1967.

⁸⁴ HJC 81/285, Fadil Muhamad a-Nazar et al. v. Commander of Judea and Samaria et al., Piskei Din 36 (1) 701.

⁸⁵ Lein, "Land Grab: Israel's Settlement Policy in the West Bank", p. 35.

⁸⁶ Order Regarding Abandoned Property (Private Property) (Judea and Samaria) (No. 58) 5727-1967.

⁸⁷ Lein, p. 43.

⁸⁸ Order Regarding Abandoned Property, section 10(a).

⁸⁹ Order Regarding the Lands Law (acquisition for Public Needs) (No. 321 and No. 949), 5729-1969 and 5734-1981.

⁹⁰ HCJ 393/82, Jam'ayat Iskan Al-Mu'almum v. Commander of IDF Forces, Piskei Din 37(4) 785, and HJC 6592/94, Municipality of Hebron et al. v. Minister of Defense et al., Piskei Din 50(2) 617.

**ANNEX I: STATEMENT BY THE GOVERNMENT OF ISRAEL
CONCERNING THE SEPARATION BARRIER⁹¹**

**Statement by:
Ambassador Dan Gillerman
Permanent Representative of Israel
to the United Nations**

**"The Situation in the Middle East,
Including the Palestinian Question"**

October 14, 2003

**The United Nations
New York**

Mr. President,

In a pattern that is as familiar as it is distasteful, we have gathered for yet another meeting of this Council, called to censure Israel for its measures to prevent terrorism, rather than address the terrorism itself. Members might pause to consider what message is sent to the citizens of the world by this kind of Council activity.

If we look, on the one hand, at the impressive record of the Council on counter-terrorism initiatives in recent years, and in particular Security Council resolutions 1368 and 1373, and compare it to the countless ritual debates held at the request of those determined to see this Council condemn Israel alone for its counter-terrorism measures, one cannot help but be struck by the contradiction.

What message is sent by this Council when it convenes to address Israel's measured defensive response against a terrorist training facility in which there were no casualties, but does not convene immediately to address the deliberate murder of 20 innocent civilians at a beachfront restaurant in Haifa on the eve of the holiest day in the Jewish Calendar? What message is sent when the focus of a debate is the building of a security fence by Israel to protect against terrorism, rather than the murder of hundreds of innocent civilians that made its construction inevitable?

⁹¹ On October 14, 2003, the Security Council failed to pass a draft resolution that would have had the Council decide that the construction "of a wall in the Occupied Territories... is illegal under relevant provisions of international law and must be ceased and reversed" due to the exercise of the veto by one of the Permanent Members. Ten members of the Council supported the draft; four abstained. This annex contains the statement of the Permanent Representative of Israel to the United Nations delivered during the debate of the draft resolution, in which the Government of Israel's position on the Separation Barrier is put forward.

*The Impact of Israel's Separation Barrier on Affected West Bank Communities:
Follow-Up Report on Access Issues in "Stage A" Localities*

It is a message that the victims of terrorism, at least if they are Israeli, cannot seek or find protection in this Council from the rogue regimes that continue to sponsor the deliberate murder of innocent civilians, in violation of international law and the Council's own resolutions. This is the true double standard at the United Nations and, sooner or later, it must be addressed.

Put plainly, it is simply impossible to talk about Israeli security measures without addressing robustly, forcefully and with greater vigor, the Palestinian terrorist atrocities that have made such measures necessary. It is these atrocities, encouraged and tolerated by a Palestinian leadership which has rejected every opportunity for peace, that have destroyed the lives of both Israelis and Palestinians and compelled Israel to act in defense of its citizens.

Many lies and misrepresentations have been made about Israel's security measures, but no lie is so bold and audacious as the one which pretends that Israel's actions occur in a vacuum and are not in response to years of terrorism of the most vicious and brutal kind.

Mr. President,

The decision to construct a security fence is one which Israel has arrived at with great reluctance. The arguments against it are clear. However hard Israel tries to mitigate its effects, it is likely to cause inconvenience and hardship to Palestinians and Israelis. It represents a massive expense at a time when the Israeli economy can little afford it. And it is not a perfect solution to the terrorism we are facing.

And yet, over the past three years, an overwhelming majority of Israelis from all points of the political spectrum have come to the conclusion that, along with other measures in the battle against terrorism, the security fence is a regrettable necessity. There have been three main factors that have brought us to this conclusion:

The single most important factor has been Yasser Arafat and the Palestinian Authority. Israel's policy-making over the past 10 years has been guided by the belief that measures agreed bilaterally by the two sides are preferable to unilateral measures. And indeed, we still believe that today. But 10 years and thousands of victims later, we have painfully come to the recognition that wanting someone to be a partner does not make him so.

Yasser Arafat has proved beyond a shadow of a doubt that he is incapable, unwilling and uninterested in making peace with Israel. In the choice that faces the Palestinian leadership between building a partnership with Israel or with the Palestinian terrorist groups, the terrorists have won every time.

In choosing terrorists over Israel, and Jihad over Salam, Arafat and the PA have flouted numerous Security Council resolutions, including resolutions 1373 and 1435, the provisions of the Roadmap and repeated Palestinian undertakings in our peace agreements. These documents clearly require that the Palestinian Authority dismantle the terrorist infrastructure, prevent terrorism and incitement, and bring those responsible to

*The Impact of Israel's Separation Barrier on Affected West Bank Communities:
Follow-Up Report on Access Issues in "Stage A" Localities*

justice. And yet, to this day, the Palestinian leadership continues to declare brazenly and publicly that it has no intention of fulfilling the very first clauses of the Road Map which call, inter alia, for the "dismantlement of terrorist capabilities and infrastructure". As we can see almost daily from the headlines, Yasser Arafat continues to prevent the emergence of a Palestinian leadership that will do something other than foment hatred, sponsor terrorism, or encourage and tolerate the smuggling of sophisticated weapons into the hands of murderers, while using civilians as human shields.

Indeed, while Israel has handed over territory and released hundreds of Palestinian prisoners - some of whom have murdered again - in order to build confidence, I am hard-pressed to think of a single measure the Palestinian Authority has taken to fulfill its obligations. The frequent argument that the Palestinian leadership lacks the capacity to defeat terrorism cannot explain its total failure to take any action whatsoever against it. Nor can it explain the mountain of evidence that the Palestinian leadership, under Yasser Arafat's control, has continued to support and encourage the use of terrorism to further its political goals.

Indeed, recent reports have indicated that the Palestinian Authority has launched a new campaign to arrest and summarily execute so-called collaborators with Israel. Instead of using their security personnel, numbering in the multiple tens of thousands, to bring suspected terrorists to justice, Yasser Arafat's associates have tortured, lynched and assassinated so-called Israeli collaborators. This is not a problem of capacity, it is a problem of commitment. This is not a question of capability, it is a question of willingness.

To be sure, there are, alongside the continued incitement and glorification of murder as martyrdom, occasional halfhearted condemnations of terrorist atrocities offered by the Palestinian leadership to placate the international community - but these merely condemn terrorism as a tactic, saying that it is against the interests of the Palestinian people. Were terrorism to be an effective tool, these statements imply, it would presumably be acceptable. We have yet to hear, from any Palestinian leader, the simple moral truth that deliberately killing the innocent is wrong.

For evidence of this duplicity one need look no further than the fact that the Palestinian observer at the UN occasionally offers muted criticism of terrorism but, at the same time, considers it unacceptable for a Council resolution to expressly condemn the actions of Hamas, Islamic Jihad and the Al-Aqsa Martyrs Brigade and call for their dismantlement, as required by the Road Map.

In short, had there been any concerted action by the Palestinian side to confront and prevent the terrorists - as they have repeatedly undertaken to do - the security fence might not have been necessary. But by deciding to remain passive, and even support terrorism, the current leadership has built this fence with their own hands.

The second factor that has convinced Israelis of the need to construct the fence, has been the scarcity of other options.

*The Impact of Israel's Separation Barrier on Affected West Bank Communities:
Follow-Up Report on Access Issues in "Stage A" Localities*

In its fight against terrorism, Israel has very few tools at its disposal. Having handed over control of the areas in which over 98% of Palestinians live to the Palestinian Authority in the course of the peace process, Israel has found itself with very few options when those areas become places of refuge for terrorists, and when the police and weapons which we were assured would be fighting terrorists, become part of the terrorist infrastructure.

There are no easy choices. In the horrendous situation that we are faced with, in which terrorists are operating with impunity in the heart of civilian centers, there is no perfect way in which we can obstruct the terrorists without having some impact on the lives of the Palestinians they are hiding among. Trying to find the appropriate balance between the right of Israelis to live without being blown up on buses and in restaurants and the right of Palestinians to live and move freely is a dilemma which Israel, its courts and its citizens anguish over daily.

There is no democracy that has found a perfect solution to the problem of terrorism, especially suicide terrorism, and most especially when it operates from within a society whose leadership is passively and actively supportive of its goals. Among states facing such a threat, Israel has been among the most successful, preventing over 80% of attempted terrorist attacks. But as the terrorists develop new and even more heinous means of murder, so must we devise better methods of prevention.

The construction of a security fence is one of the most effective non-violent methods of preventing the passage of terrorists and their armaments from the terrorist factories in the heart of Palestinian cities to the heart of civilian areas. We have seen this in the Gaza Strip where, since the construction of a similar fence, under an Israeli-Palestinian agreement of 1994, not a single terrorist has succeeded in penetrating into Israel from Gaza through the fence in order to execute an attack. That fence garnered no dissent from the Security Council or from the Palestinian side, and has in fact contributed to enhancing the personal security and welfare of Israeli and Palestinian communities on both sides of the fence.

Until now, there has been a stretch of some 300km across which Palestinian terrorists have been able to infiltrate Israeli population centers and murder civilians. Between Israel and Palestinian Authority areas there is no border or natural obstacles, and the distance dividing terrorists, who have emanated from Palestinian cities, and Israeli population center that have been targeted, has sometimes been less than a ten-minute walk. But in those areas of the West Bank where a fence has been constructed, a reduction in terrorist attacks is already evident.

The city of Hadera is a key example. Situated in the heart of Israel, Hadera and its surroundings have suffered a series of murderous suicide bombings coming from the West Bank. But since the construction began on the northern sector of the security fence, which shields the region of Hadera, there has been a substantial period of tranquility. This same improvement is true for other Israeli cities and communities now safeguarded by the fence.

*The Impact of Israel's Separation Barrier on Affected West Bank Communities:
Follow-Up Report on Access Issues in "Stage A" Localities*

The third factor supporting the construction of the fence has been the knowledge that it will enable Israel to markedly reduce its involvement in the daily life of Palestinians. The net effect of the construction of the security fence will be a reduction in terrorism and an overall improvement in the quality of life for both Israeli and Palestinian people. By building the fence, Israel will be able to significantly reduce the presence of its forces in Palestinian areas and further diminish the necessity for defensive action within Palestinian cities. Importantly, the fence will also enable the removal of road-blocks and check points. The result will be greater freedom of movement within the West Bank, without increasing the vulnerability to terrorism.

Moreover, it is hoped that the protection and security that the fence provides, will help create an atmosphere conducive to peaceful and fruitful negotiations. The security fence is a crucial measure in taking terrorism out of the equation. When a Palestinian leadership emerges that is ready to negotiate a political solution, the terror weapon will be less available to scuttle the efforts for peace. Could it be that those on the Palestinian side opposing the fence wish to ensure that the terrorist weapon remains a decisive factor in their arsenal? Could it be that this fence is particularly objectionable to extremists in Palestinian society, because they see it as thwarting their long-term agenda of seeking Israel's destruction?

Mr. President,

In determining the route of the fence, Israel has sought to create a barrier between those areas from which the terrorists originate and those that they seek to target. But alongside this security concern, Israel has taken into consideration other humanitarian and environmental concerns - even at the cost of increasing the risks to its civilians. The rights and interests of local populations must be weighed against the rights of civilians to protection from terrorism. Local Palestinian residents have been engaged and consulted throughout this process, with a view to providing individual solutions and ensuring access to schools, health resources and so on.

The use of public and unused lands has been of the highest priority. In the relatively limited number of circumstances where this has been impossible, dozens of agricultural gates have already been established along the route of the fence to enable farmers to continue cultivating their lands. In addition, new crossing points have been added for Israeli and Palestinian pedestrians and vehicles, and the transfer of goods.

Any private land used in building the fence is requisitioned for military purposes, in full conformity with the relevant provisions of international humanitarian and local law that specifically provide for this purpose. Indeed, there are a number of precedents where other states have made these kind of requisitions for security purposes pursuant to the applicable provisions of international humanitarian law. There is no change whatsoever in the legal status of this territory and it remains the property of the owner. Compensation matching the properties' value is provided for the use of the land and any damage to trees and crops. In addition, owners of agricultural land are also provided with compensation

*The Impact of Israel's Separation Barrier on Affected West Bank Communities:
Follow-Up Report on Access Issues in "Stage A" Localities*

for the full value of their crop yield for as long as the property will need to be used. Farmers who cultivate olive and fruit trees growing within the Security Fence Area can designate a new site to which the trees will be replanted.

All residents have the opportunity to submit objections. In numerous cases, the authorities and the complainants have reached mutual agreement regarding alterations of the path. Complainants whose concerns are not resolved also have the unprecedented opportunity to file a petition directly with the Israeli Supreme Court.

Mr. President,

In seeking to divert attention from the fact that the true architects of this fence are the Palestinian leaders who have failed to take any measures against terrorism, Palestinian representatives have used a number of emotive and pejorative terms, which are without foundation.

One) They have termed the fence a "wall", even though they are fully aware that for well over 90% of its length it is a chain-link fence. Those short sections that are actually a solid structure, are only in areas where Palestinian terrorists can, and have, shot at Israeli civilians on roads or in nearby towns. Despite blatant misrepresentations to the contrary, there is no enclosure of the West Bank and no Palestinian town or village is closed off. Passage and movement is guaranteed between Palestinian areas throughout the West Bank, and into Israel. And, as I have stated, the fence will enable a reduction of Israeli forces in Palestinian areas thereby facilitating greater freedom of movement within the West Bank and an overall improvement in the humanitarian situation for the vast majority of Palestinian residents, without enhancing the risks of terrorism. By using the term 'wall', there is a transparent attempt by some to evoke memories of dark days when solid walls were used by certain states to divide one people and prevent the flight to freedom. The comparison is both false and offensive. This fence seeks to separate two peoples who are in conflict, to prevent suicide bombers from targeting innocent civilians, and thus to create a terror free environment in which finally we can move towards a peaceful settlement, which is itself founded on the concept of separation between the Israeli and Palestinian peoples.

Two) They have charged that the construction of the fence is "racist", though what is really racism is their suggestion that one people do not have the right to protection from murderers. What is really racism is the mistreatment and persecution of Jews in Arab lands, the prohibition of entry imposed upon Jews in certain Arab countries, and the prohibition on the sale of property to Jews on punishment of death. To build a fence in order to provide security for the Jewish and Arab citizens of Israel, and ultimately advance the vision of peace between two peoples, Israeli and Palestinian, is anything but racism.

Three) Above all, they have charged that the fence is an act of de facto "annexation" and an attempt to prejudice final status negotiations - as though it were Israel and not the Palestinian leadership that walked out of those negotiations and adopted the path of

*The Impact of Israel's Separation Barrier on Affected West Bank Communities:
Follow-Up Report on Access Issues in "Stage A" Localities*

violence. The Israeli government has repeatedly made clear, and I reiterate again today, that the fence has no political significance. Israel remains committed to resolving all aspects of the conflict, including the final status of the West Bank and Gaza, through political negotiations. The sole purpose of the fence is to protect the vital security of Israeli citizens targeted by Palestinian terrorism. It does not annex territories to the State of Israel, nor does it change the status of the land, its ownership, or the legal status of the residents of these areas. The Palestinian observers' accusations in this regard, are belied by the fact that certain sections of the fence, for example near Modiin and Kibbutz Ma'aleh Hachamisha, are actually being built within sovereign Israeli territory.

In fact, not only has Israel repeatedly asserted that there is no political significance to this fence, we have demonstrated in practice and articulated in negotiations that Israel is ready and able, at tremendous cost, to adjust or dismantle a fence if it so required as part of a political settlement. In the context of its withdrawal from Southern Lebanon in May 2000, Israel moved a similar structure in order to comply with Security Council resolution 425. After having adjusted the Fence, Israel moved portions of it a further 95cm, at a cost of millions of dollars, to respond to requests by the Secretary General. Similarly, in the context of permanent status negotiations, Israel expressed a willingness to adjust the fence established in Gaza as part of the permanent territorial settlement. In both cases, Israel has proven that security fences are security fences. This fence is intended to counter terrorism of the most brutal kind, not to dictate a border that is and remains the subject of permanent status negotiations. It is our hope that by building this fence, its very function will become irrelevant and that one day it will be dismantled.

It has been suggested that in order to avoid the impression of a political motive, Israel should have constructed the fence along the so-called Green Line. On the practical level, a fence along this line would create far greater humanitarian problems, arbitrarily dividing certain villages, and separating others from access to water and other basic services on a large scale. Moreover, it would ignore the aim of the fence, which is to frustrate acts of terrorism directed against Israeli population centers. It is the terrorists who, by their murderous attacks, have dictated the route, which seeks to protect as many civilians as possible, while seeking to minimize humanitarian and environmental hardship.

Of equal importance, the so-called Green Line has never represented an international boundary. The 1949 armistice agreements specifically refer to this fact. There was never a recognized and legitimate sovereign in the West Bank. The legal status of these areas remains that of disputed territory - to be resolved through negotiations. It is this that is required by Security Council Resolutions 242 and 338, which call for the parties to start negotiations, inter alia, on "secure and recognized boundaries", and agreements reached between the parties specifically refer to the need for there to be direct negotiations to resolve this issue.

When the familiar rhetoric and misrepresentations of the Palestinian observer are peeled away, the simple truth is revealed - the fence is a response to Palestinian terror, designed

*The Impact of Israel's Separation Barrier on Affected West Bank Communities:
Follow-Up Report on Access Issues in "Stage A" Localities*

not to establish a border, but to create a terror free environment in which a border can be agreed through negotiations.

Mr. President,

Much has been said of the need to conduct the war against terrorism in accordance with international law. We agree. But international law is not a suicide pact. International law recognizes that the measure of the legitimacy of a state's actions is whether such action is proportionate to the threat. This means assessing the threat according to those attacks planned and prevented, not just those that have succeeded. In Israel's case, this has meant not just considering the hundreds of civilians killed in terrorist attacks, but those many hundreds of attacks successfully thwarted, including mega-terror attacks planned against skyscrapers, gas depots, fuel tankers and bridges.

International humanitarian law specifically allows for territory to be requisitioned for security purposes. Some who speak of international law seem to have forgotten that there is in place a significant body of established laws that provide support for the confrontation against terrorism. They also seem to have forgotten that in fighting terrorists we fight an enemy that has no respect for life or for law. Yes we must respect the rule of law. But we cannot do so by apply misconceived or blinkered interpretations that no enlightened nation would apply to itself if faced with such sustained attack, and that effectively strengthen the hands of those devoted to trampling the law as they trample innocent life.

Mr. President,

Since September 2000, nearly 6000 Israelis have been injured and over 870 have been killed in terrorist attacks. One in every 10,000 Israeli civilians has been killed in an act of terror. I would urge the members of this Council to make a simple calculation, to divide the population of their country by 10,000. That is the equivalent number of civilians lost to terror. Now consider what any state would do when faced with a continuing threat of that enormity. Were it not for diplomatic correctness, I could easily cite numerous examples of counter-terrorism activity engaged in by members of this Organization that have far exceeded Israel's actions in their scope and impact, and in far less trying circumstances. And yet, which of these States has been subject to the prolonged scrutiny that the Council has devoted to Israel?

Israel has no problem, and indeed is proud, to be held to the highest standards. But at least let us be permitted to value the lives of our civilians the way that any other democratic country would. And if you decide to call us to account, then surely some of our neighbors should be the focus of equal attention. If the Council were to devote only a fraction of the time and resources it has spent considering Israel's record to a fair examination of the destabilizing and dangerous conduct of the rogue regimes in our neighborhood, does anyone doubt the conclusions that would be drawn? If the United Nations voice is to be taken seriously, this selective treatment must end.

*The Impact of Israel's Separation Barrier on Affected West Bank Communities:
Follow-Up Report on Access Issues in "Stage A" Localities*

Mr. President,

Israel yearns for peace and has proven that it is willing to make the most painful compromises for that end. We will continue to pursue every opportunity for a peaceful settlement with a view to realizing President Bush's vision and the relevant Council resolutions. But no state can allow its citizens to be murdered in the hundreds by terrorists, with the support and toleration of the current Palestinian leadership that has virtually ceased to even masquerade as a peace partner. The fence comes to protect against terrorism, improve the overall humanitarian situation on both sides, and contribute to an atmosphere in which peace negotiations can proceed for the benefit of both peoples.

This conflict, and this debate, is not just about Palestinian rights. It is about Israeli rights as well. Dead, injured and terrorized Israelis are also a humanitarian problem, and until our neighbors and the international community are willing to seriously accept this and deal with it, we will have difficulty advancing towards a peaceful solution. It is just not enough for condemnations and expressions of sympathy to be issued in capitals or in UN speeches on the day an attack takes place, without the sustained action and public support needed to demonstrate that the international community will not tolerate the deliberate murder of innocent civilians.

Mr. President,

Those in the Palestinian leadership that have turned Palestinian victimhood, from a condition that could be resolved by peaceful settlement, to a political strategy to be immortalized in the pursuit of personal power, have a great deal to answer for. We do the peace process no service by reinforcing a sense of entitlement without affirming a sense of responsibility.

The Road Map can never succeed if we absolve the Palestinian side of its obligations to end its morally bankrupt and profoundly destructive terrorist strategy. The security fence, like other Israeli defensive measures, is a product of that strategy. And it is the abandonment of that strategy that would obviate the need for such defense measures, including the security fence itself, and pave the way for peaceful negotiations based on mutual recognition and mutual compromise.

If we confuse cause and effect, if we apply justice selectively, and if we pander to more one-sided initiatives that assert sweeping rights but ignore well-founded responsibilities, we will only encourage a strategy of terrorism and push the day of peace further into the future.

Thank you, Mr. President.

**ANNEX II: STATEMENT BY THE PALESTINE LIBERATION ORGANIZATION
CONCERNING THE SEPARATION BARRIER⁹²**

**Statement by:
Dr. Nasser Al-Kidwa, Ambassador
Permanent Observer of Palestine
to the United Nations**

Before the Resumed Tenth Emergency Special Session of the General Assembly on

**"Illegal Israeli Actions in Occupied East Jerusalem
and the Rest of the Occupied Palestinian Territory"**

October 20, 2003

**The United Nations
New York**

Mr. President,

Israel, the occupying Power, is committing an immense war crime against the Palestinian people, with the magnitude of a crime against humanity, as it builds an expansionist wall in the Occupied Palestinian Territory, including East Jerusalem. This has involved the confiscation and destruction of thousands of dunums of Palestinian land, the destruction of the livelihood of tens of thousands of protected Palestinian civilians, and the illegal, *de facto* annexation of expansive areas of the occupied Palestinian land.

With the continued building of this expansionist wall - if the international community permits the continuation of such a crime - Israel will have effectively transferred large numbers of Palestinian civilians and will have constricted the rest of the Palestinian people in several walled Bantustans with additional secondary walls inside them. It will have, of course, also effectively destroyed the existence of an independent, sovereign State of Palestine and the potential for achieving a political settlement of the Israeli-

⁹² On October 21, 2003, by a vote of 144 in favor, 4 opposed, and 12 abstentions, the United Nations General Assembly approved Resolution ES-10/13 which, in its operative paragraphs, "*Demands* that Israel stop and reverse the construction of the wall in the Occupied Palestinian Territory, including in and around Jerusalem, [which] is in contradiction to relevant provisions of international law, [and] *Requests* the Secretary-General to report on compliance with this resolution periodically..." In the Secretary-General's first report, "Report of the Secretary-General prepared pursuant to General Assembly resolution ES-10/13", dated November 24, he concluded that "Israel is not in compliance with the Assembly's demand". This annex contains the statement of the Palestinian Permanent Observer to the United Nations delivered to the General Assembly in that debate, in which the Palestinian perspective on the Separation Barrier is put forward.

*The Impact of Israel's Separation Barrier on Affected West Bank Communities:
Follow-Up Report on Access Issues in "Stage A" Localities*

Palestinian conflict in line with the two-State vision, based on Security Council resolution 242 (1967) and the armistice line of 1949, known as the line of 1967.

Mr. President,

The matter is thus of extreme importance. It is about our national existence and peace in the region. It is either the wall or the road map. It is either the wall or the peace. It is impossible to have both.

In spite of the strategic and historic importance of the matter, the Security Council has failed to exercise its primary responsibility for the maintenance of international peace and security because of the exercise of veto by one of its permanent members. The veto on 14 October prevented the Security Council from adopting a binding resolution declaring the wall illegal under relevant provisions of international law and demanding that Israel, the occupying Power, cease its construction and dismantle the existing parts. This was the second veto by the same permanent member in less than one month and its 27th veto since 1976 on draft resolutions dealing with the situation in the Occupied Palestinian Territory. The practical result of the veto is that the construction of the wall will continue with all its catastrophic results unless the General Assembly and the United Nations system do something about it.

Against that background, we, the Arab Group and the Non-Aligned Movement, called for the resumption of the tenth emergency special session (Uniting for Peace) with a view to making appropriate recommendations to the Members for collective measures. At this point, I would like to thank you, Mr. President, for your positive response to the request for the resumption of this important session. I would like to affirm here that we must do what is necessary. We must stop the wall.

Mr. President,

Israel, the occupying Power, began building the first phase of its wall in the northwest areas of the Occupied West Bank in June 2002. For several months it succeeded in avoiding any real response by the international community to this action because of the secrecy surrounding the planning of the wall and the false impression it created about compliance, albeit relative, with the armistice line. In addition, of course, with the continuation of its bloody military campaign against the Palestinian people and the continuation of its media and political campaign against the Palestinian Authority and leadership, different immediate priorities were imposed on the Palestinian side and on the international community. Under this cover, Israel, the occupying Power, actually concluded what it refers to as the first phase. It declared in April 2003 the completion of 27 kilometers of the expansionist wall and then by the end of the summer the completion of the entire first phase of about 150 kilometers.

This includes a wall with the length of eight kilometers north of Occupied East Jerusalem, a second wall to the east and a third with the length of 15 kilometers to the

*The Impact of Israel's Separation Barrier on Affected West Bank Communities:
Follow-Up Report on Access Issues in "Stage A" Localities*

south-that is north of the city of Bethlehem. The three suffocate and wreck both occupied East Jerusalem and Bethlehem.

The wall is comprised of several components, including, in some areas, concrete walls measuring 8 meters high with fortified guard towers and, in others, several fences, including electrical, containing all or most of the following: trenches, dirt paths, two-lane paved patrol roads, barbed wire, sensors, and "no-go" areas, making the width of the wall anywhere from 70 to 100 meters.

In its first phase, this expansionist wall has already resulted in the confiscation and destruction of approximately 15,000 dunums of land for just the footprint of the wall alone, which also involved the uprooting of more than 100,000 trees and the destruction of 30 kilometers of water networks. Moreover, with the wall cutting deep into the Palestinian territory, up to 6 kilometers from the armistice line, it has isolated more than 105,000 dunums of Palestinian land, the fate of which, if the wall is not removed, is their illegal, *de facto* annexation by Israel.

The confiscation of Palestinian land on which the wall has been built and that which has been isolated between the wall and the armistice line has destructively impacted the lives of more than 200,000 Palestinian civilians in 65 villages and towns on both sides of the wall, including the partial or complete separation between those civilians and their land as well as their water resources and the separation between them and the rest of the Palestinian people. In addition there are severe prohibitions on the movement of some of them, such as the complete walling of the city of Qalqilya and the control of the entry and exit to the city through one gate, open for only a few hours a day for the city's 40,000 inhabitants.

Mr. President,

On 1 October, the Israeli government adopted plans for the second phase of the expansionist wall, which dwarfs the first phase in the extent of illegal expansion and conquest of Palestinian land as well as other dangerous consequences. The phase is to begin with the establishment of the wall east of the illegal Israeli settlements of "Ariel" and "Kedumim", which is to cut more than 22 kilometers deep into the Palestinian land and, thus, the ensuing consequences can only be imagined.

If the international community would allow the implementation of this phase of such an Israeli crime, then the third and fourth phases will follow to make the length of the wall more than 500 kilometers at a cost of more than one billion dollars. After that, the establishment of the wall on the eastern side of the Palestinian territory will begin in order to isolate it from its international border with Jordan and allow for the conquest of the Jordan valley and complete the wall of the three or four Bantustans on half of the Occupied Palestinian Territory.

To restate the obvious, the expansionist conquest wall, in its parts and its entirety, is illegal. Its construction represents a violation of Article 2, paragraph 4 of the Charter of

*The Impact of Israel's Separation Barrier on Affected West Bank Communities:
Follow-Up Report on Access Issues in "Stage A" Localities*

the United Nations as well as of Article 1, paragraph 2. It violates the established principle of international law on the prohibition of the acquisition of territory by force. It violates Article 47 of the Fourth Geneva Convention, banning any annexation by the occupying Power of the whole or part of the occupied territory. It also violates Article 33 of the same Convention, prohibiting collective punishment of protected persons. And, finally, it represents a grave breach of the Convention under Article 147 as it involves extensive destruction and appropriation of property. All of this is in addition to its serious violation of relevant Security Council resolutions, including resolution 242 (1967), cornerstone of the peace process, as well as of the Oslo agreements. It is thus abundantly clear that the establishment of the expansionist conquest wall by the occupying Power is a war crime and, I reiterate, with the intensity of a crime against humanity.

Mr. President,

The establishment of this expansionist wall goes hand in hand with the Israeli settlement activities. Their nature is the same in terms of the colonization of the land, its conquest and its annexation. The wall is an immense war crime compounding the other war crime that is the Israeli settlement of our land in addition to the countless other war crimes committed by the occupying Power against the Palestinian people, the latest being the crimes committed in the refugee camp of Rafah a few days ago. This, along with other Israeli war crimes, essentially remains the responsibility of Ariel Sharon, the war criminal, and his government, the war government.

Israel, the occupying Power, has illegally transferred more than 400,000 Israeli settlers to the Occupied Palestinian Territory, including East Jerusalem, and settled them in more than 200 settlements that have been built on more than 8% of the Palestinian land, apart from the land in their vicinities and the additional land they try to control. It has established a separate infrastructure and complete network of roads for those settlers and has enabled them to exploit and abuse our natural resources and our water and to terrorize our people. Now, with the building of its expansionist wall, the occupying Power is trying to annex the Palestinian land on which half of those settlers are living while leaving enough for the expansion of the rest of the settlements and at the same time destroying the Palestinian national presence.

Israel has carried out all of this in spite of the absolute prohibition of such colonization under the Fourth Geneva Convention and Additional Protocol 1, which defines it as a war crime as does the Rome Statute of the International Criminal Court. It has carried out all of this in spite of the fact that the United Nations Security Council has reaffirmed the applicability of the Fourth Geneva Convention in 26 resolutions that request the occupying Power to comply with its provisions and some of which specifically request the cessation of settlement activities and consider the annexation of East Jerusalem to be null and void.

Mr. President,

*The Impact of Israel's Separation Barrier on Affected West Bank Communities:
Follow-Up Report on Access Issues in "Stage A" Localities*

How can these Israeli war crimes be appropriately described? Is this classic colonization? We believe it is worse than that. Is this a new apartheid system? We believe it is worse than that. It is a combination that has drawn upon these two ugly phenomena, amounting to the lowest level thinking of racist colonizers to achieve expansion, colonization and negation of the national existence of the indigenous people, all in grave breach of fundamental laws and values – of the United Nations Charter, international humanitarian law and relevant Security Council resolutions.

It is my hope that you could refer to the report of Professor John Dugard, the Special rapporteur of the Commission on Human Rights on the situation of the human rights in the Palestinian territories occupied by Israel since 1967, dated 8 September 2003, on the issue of the wall and the settlements.

Mr. President,

Israel claims that it is building the expansionist wall as a security measure to prevent suicide bombings. This is not only incredulous and illogical but it is a repetition of the same lie and pretext that has been used by Israel over the years to commit all of its crimes against the Palestinian people, particularly its expansionism and its campaign of settler colonialism. Israel could build walls on its land along the armistice line and it could raise them to 80 meters instead of 8. True, this would be a bad thing in terms of coexistence between the two sides, but no one could say that it is illegal. Indeed, Israel actually did do that to some extent around the Occupied Gaza Strip. If this were now the case with regard to the Occupied West Bank and the armistice line, then it could be possible to believe that Israel is actually building the wall as a security measure.

It is imperative to recall in this regard that, in the past, Israel repeatedly used the same meaningless security pretext before the General Assembly and the Security Council to also justify its illegal settlement activities throughout the territories occupied by it since 1967. Indeed, over the years, the General Assembly repeatedly witnessed the actual colonization of our land while the Israeli side continued repeating the argument that this was all just a "security measures".

Israel, the occupying Power, is trying to repeat the same thing, in addition to security measures there is now measures against terrorism. Naturally, we are all against terrorism and there is a clear and unwavering position by the Palestinian leadership and the Palestinian Authority in this respect. It must be clarified, however, that it is the Israeli policies and measures that led to the suicide bombings and not vice versa. In fact, this condemnable phenomenon started 27 years after the beginning of the occupation and after our people lost hope for a better future. Israel is responsible for the destruction of three Palestinian generations. It is responsible for tearing apart the very fabric of our society. It is responsible for the social ills that plague our society and specifically responsible for that ugly phenomenon. It must understand that there can be no security solution alone for that phenomenon. In all cases, and at the time when all parties have to take measures to end that phenomenon, Israel, the occupying Power, must not be allowed to abuse the battle against international terrorism and even abuse its own civilian

*The Impact of Israel's Separation Barrier on Affected West Bank Communities:
Follow-Up Report on Access Issues in "Stage A" Localities*

causalities as a cover for its illegal policies and measures and for the continuation of its occupation, settler colonialism, expansionism and the obstruction of peace.

Mr. President,

What could the General Assembly in its tenth emergency special session do to save hope and peace in the region? A clear position in line with the unanimous international opposition to the wall must be expressed in a way that could contribute to its cessation.

But, the General Assembly could also, especially in light of the dismal Israeli record of violating United Nations resolutions and even dealing with them with contempt, call on the International Court of Justice and request an advisory opinion on the obligations of the occupying Power with regard to the wall, its cessation and the dismantlement of the existing parts under relevant provisions of international law. We believe that this approach is rooted in upholding peace and complying with international law and we do hope that an advisory opinion of the Court will represent a decisive factor in the compliance by all with the provisions of international law and thus push them in the right direction towards a just peaceful settlement. We believe that peace loving nations committed to the rule of law, including international law, cannot but be supportive of this approach.

The real travesty is the indignant Israeli position against such an approach. Why would anyone be against the involvement of the principle judicial organ of the United Nations? Israel says that this will seriously harm the peace process. Can you imagine? According to this warped logic, the actual construction of the wall, the conquest of the Palestinian land, the illegal expansion are all fine for the peace process, but the advisory opinion of the ICJ seriously harms that same peace process. I wish not to comment any further because we have confidence in your judgment and in the international conscience in spite of the pressure and even threats in this regard.

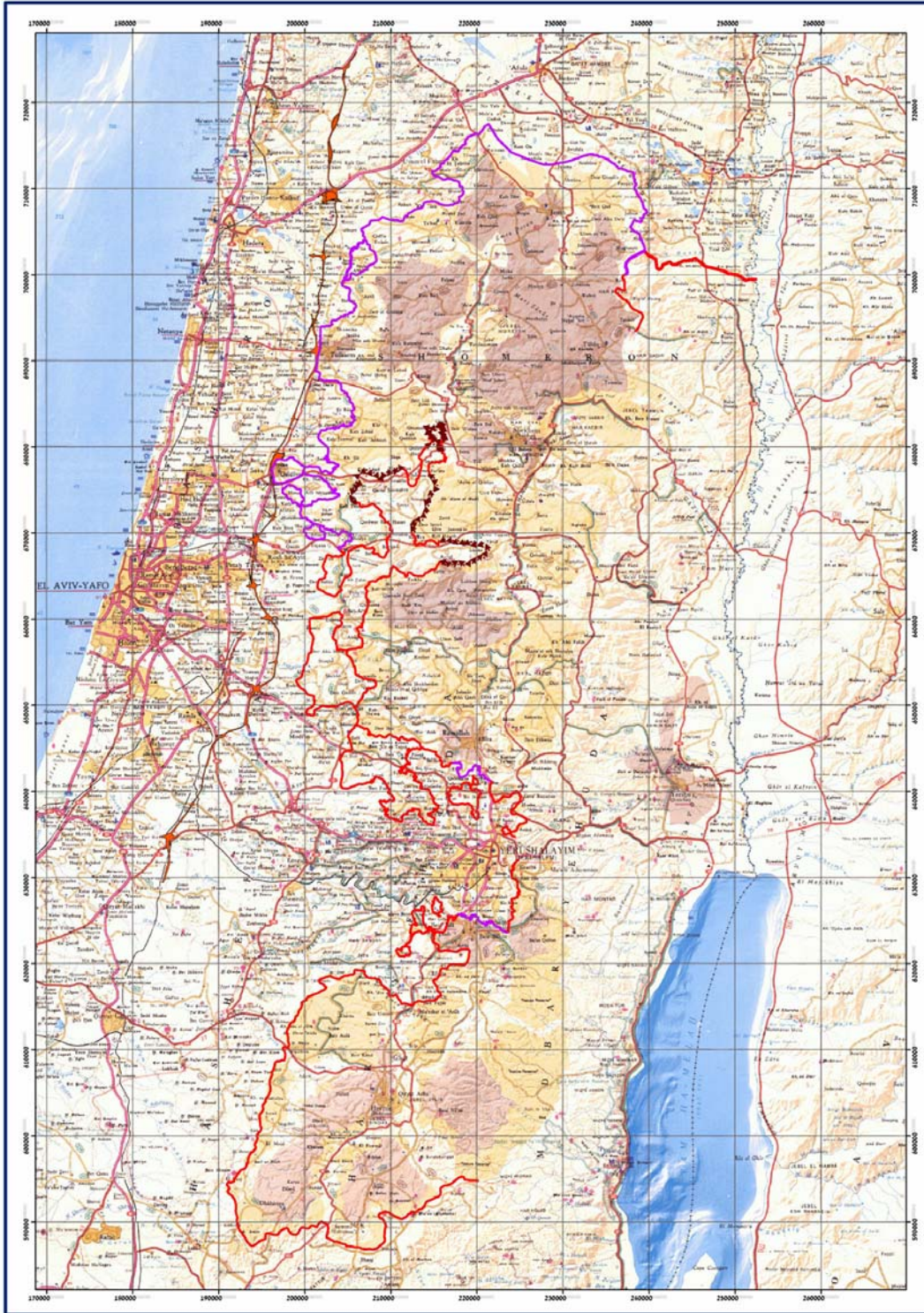
Mr. President,

Lets save hope and peace...uniting for peace.

I thank you, Mr. President.

*The Impact of Israel's Separation Barrier on Affected West Bank Communities:
Follow-Up Report on Access Issues in "Stage A" Localities*

MAP 1: "SECURITY FENCE PROJECT"

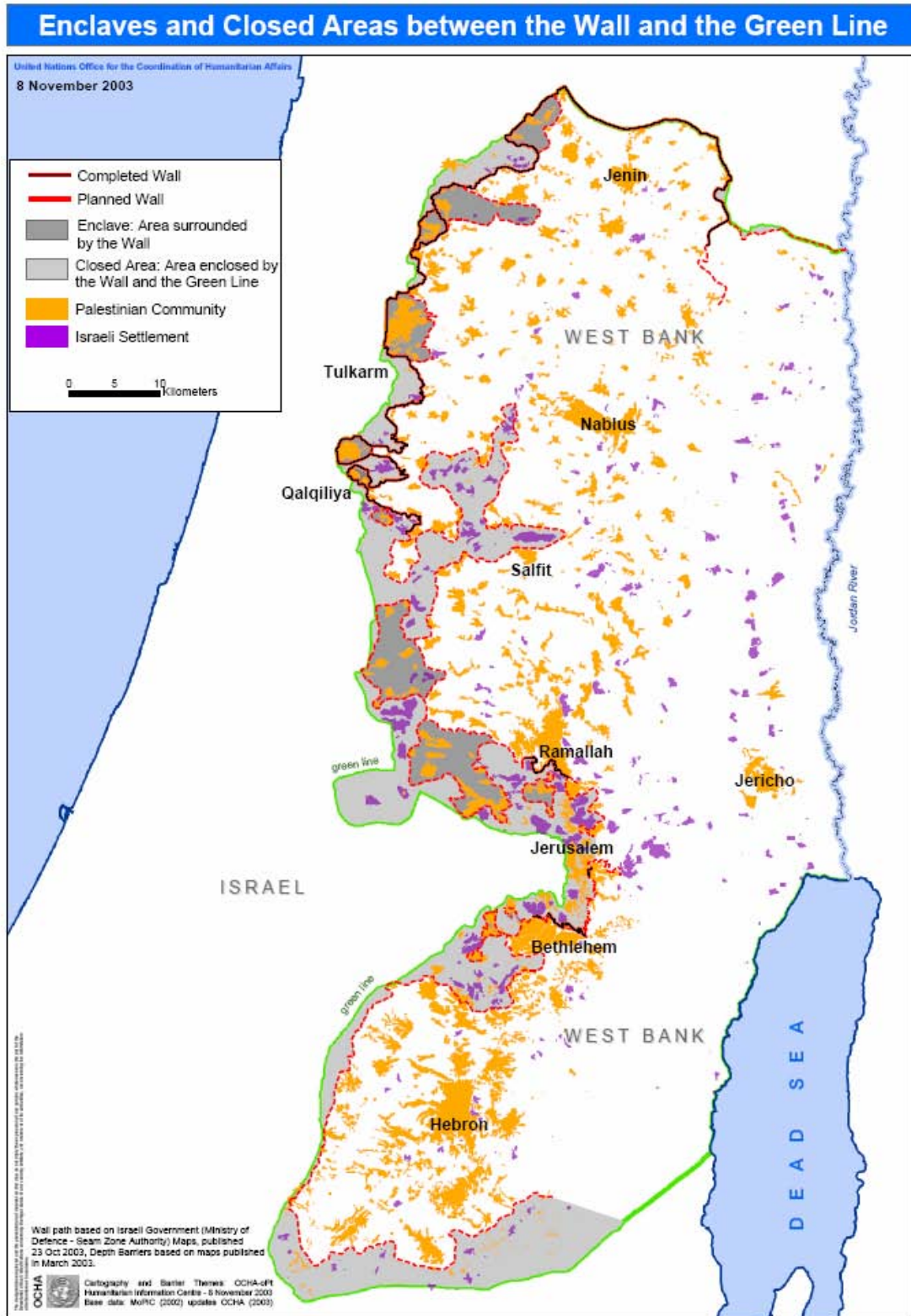


Legend: Purple – completed fence; Red – planned fence; Green – existing roads.

Source: IDF. <http://www.seamzone.mod.gov.il/Pages/ENG/route.htm>

*The Impact of Israel's Separation Barrier on Affected West Bank Communities:
Follow-Up Report on Access Issues in "Stage A" Localities*

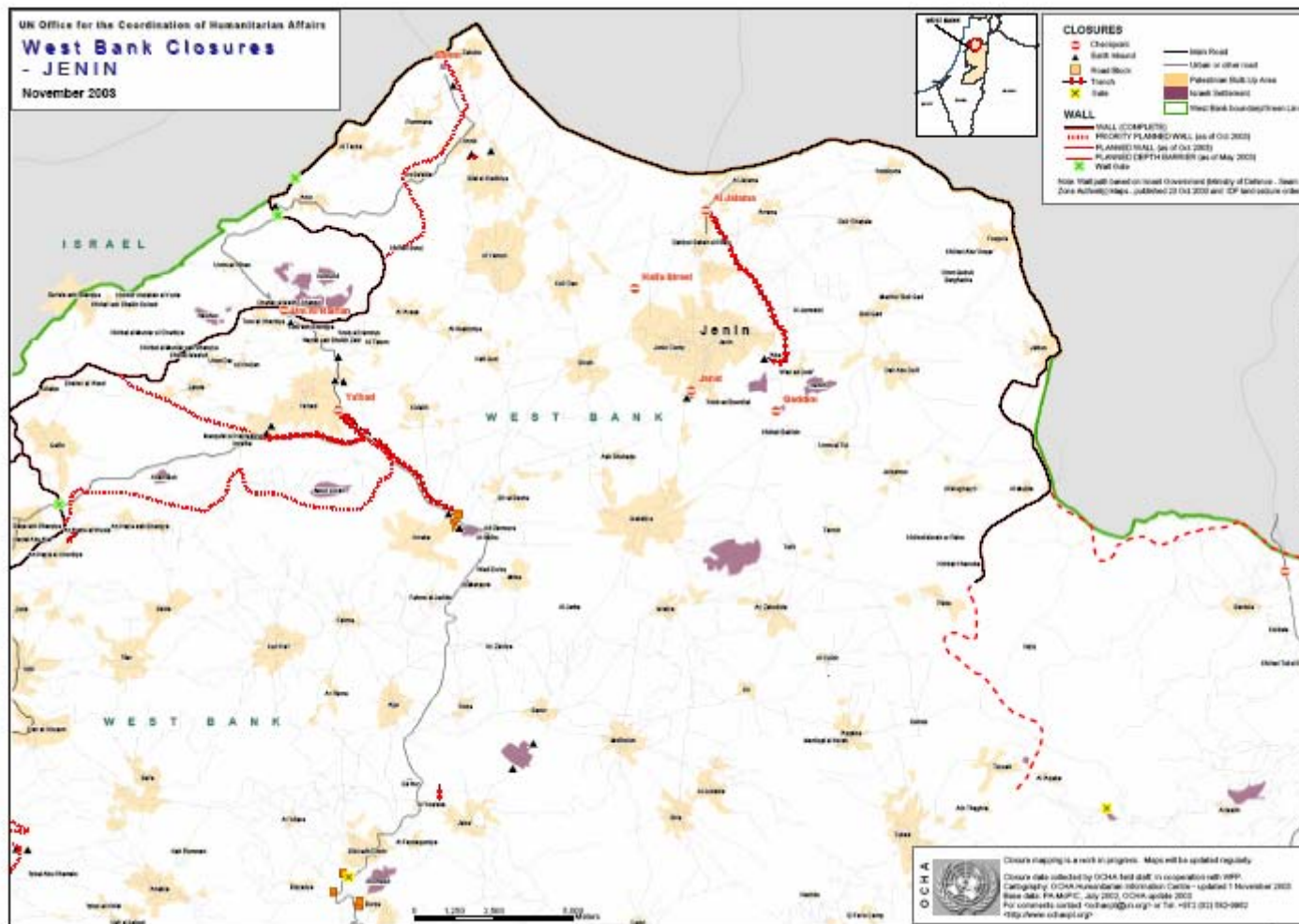
MAP 2: "ENCLAVES AND CLOSED AREAS BETWEEN THE WALL AND THE GREEN LINE"



*Source: United Nations Office for the Coordinator of Humanitarian Affairs
Occupied Palestinian Territory (OCHA oPt), November 8, 2003.*

*The Impact of Israel's Separation Barrier on Affected West Bank Communities:
Follow-Up Report on Access Issues in "Stage A" Localities*

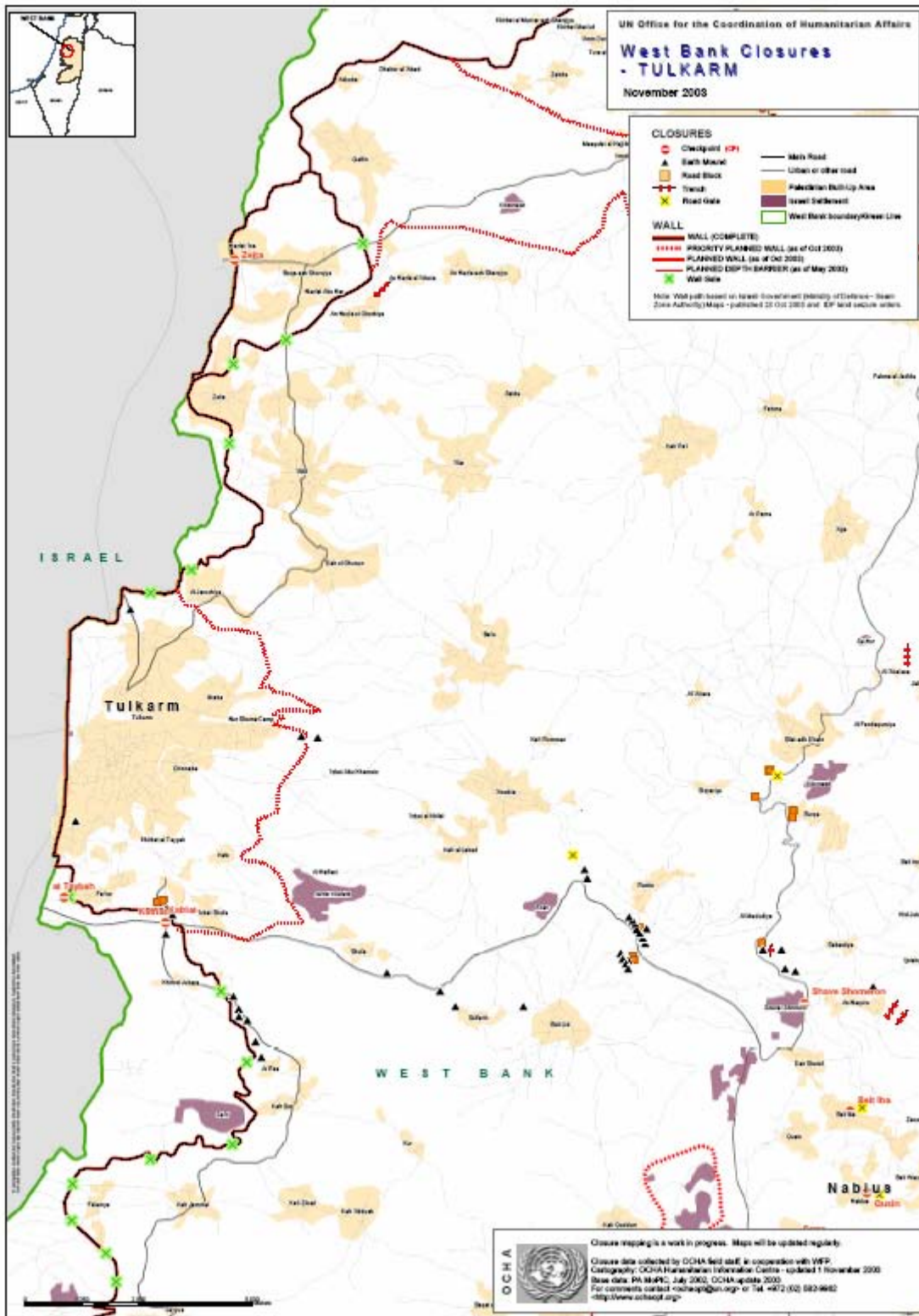
MAP 3: "WEST BANK CLOSURES – JENIN"



Source: OCHA oPt. <http://www.reliefweb.int/hic-opt/>

*The Impact of Israel's Separation Barrier on Affected West Bank Communities:
Follow-Up Report on Access Issues in "Stage A" Localities*

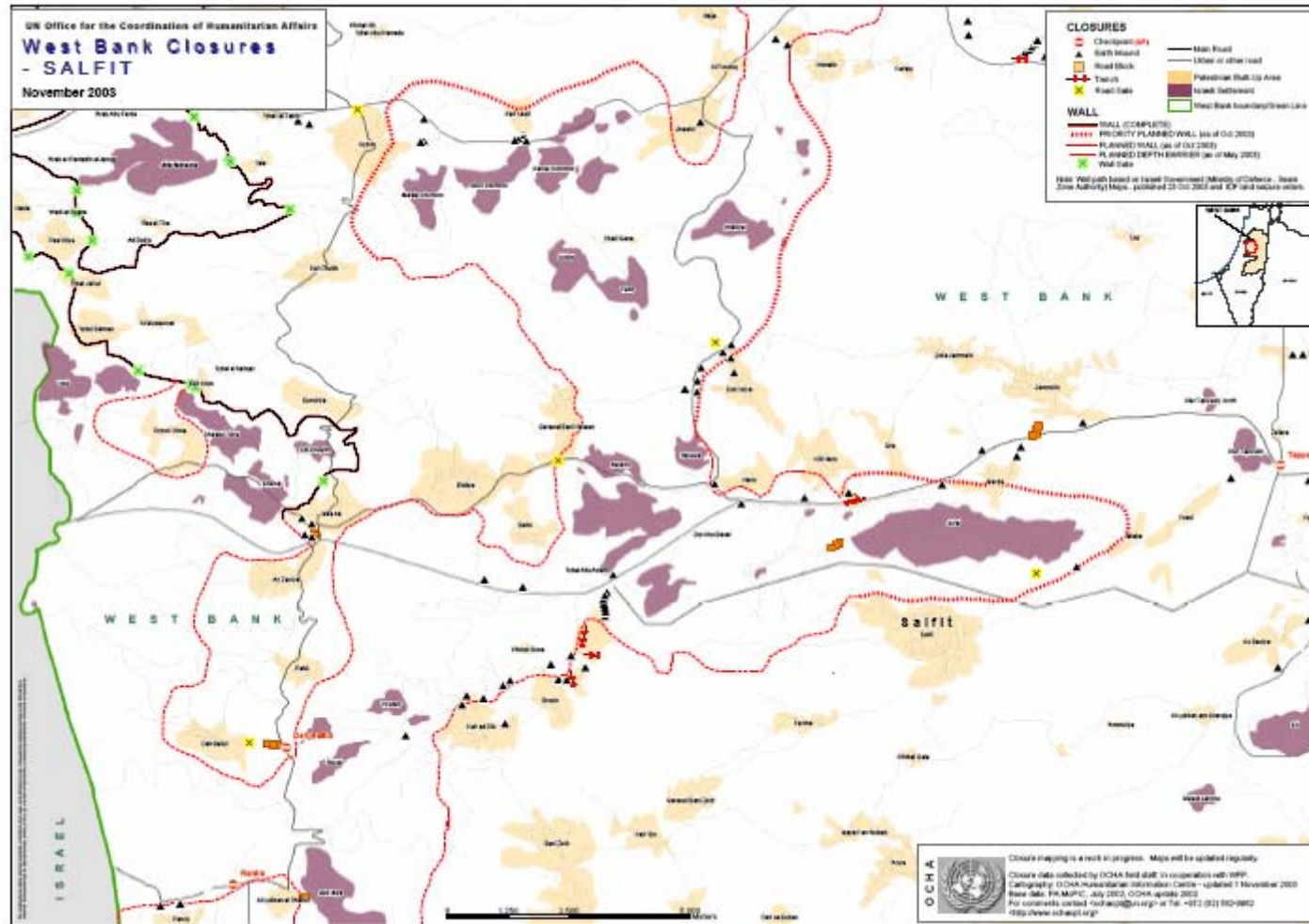
MAP 4: "WEST BANK CLOSURES – TULKARM"



Source: OCHA oPt. <http://www.reliefweb.int/hic-opt/>

*The Impact of Israel's Separation Barrier on Affected West Bank Communities:
Follow-Up Report on Access Issues in "Stage A" Localities*

MAP 6: "WEST BANK CLOSURES – SALFIT"



Source: OCHA oPt. <http://www.reliefweb.int/hic-opt/>