

**Wall Mitigation:**

**Implications for Donors and Implementing  
Agencies Operating in Areas Affected by  
the Separation Barrier**

**Report to the Local Aid Coordinating Committee**  
30<sup>th</sup> January 2005

LACC Secretariat Office  
*Annika Hampson*  
*Janine Abou Azzam*

*The aim of the study is to outline and clarify the issues and concerns facing donors considering undertaking mitigation projects and produce a document that will be a useful resource for donors in determining their emergency and long-term development policy in the areas affected by the Barrier. This paper was prepared by the LACC Secretariat and presented to the Humanitarian Emergency Policy Group (HEPG) on 25<sup>th</sup> January 2005.*

## **Table of Contents:**

<b>EXECUTIVE SUMMARY .....</b>	<b>2</b>
<b>INTRODUCTION.....</b>	<b>4</b>
<b>CONTEXT.....</b>	<b>4</b>
<b>RESPONSES OF DONORS AND IMPLEMENTATION AGENCIES.....</b>	<b>6</b>
HUMANITARIAN OBLIGATIONS V. POLITICAL CONCERNS .....	6
LACC RECOMMENDATIONS .....	7
THE GOVERNMENT OF ISRAEL’S OBLIGATIONS UNDER INTERNATIONAL HUMANITARIAN LAW .....	8
<b>PALESTINIAN PERSPECTIVES .....</b>	<b>9</b>
GOI’S TRANSPORT CONTIGUITY IN THE WEST BANK.....	9
<b>THE ICJ ADVISORY OPINION.....</b>	<b>11</b>
LEGAL IMPLICATIONS FOR DONORS .....	11
PRACTICAL IMPLICATIONS .....	12
<b>RECOMMENDATIONS.....</b>	<b>15</b>
<b>REFERENCES.....</b>	<b>17</b>
<b>ANNEX I - LIST OF DONORS, INTERNATIONAL ORGANISATIONS, NGO’S, PA MINISTRIES INTERVIEWED .....</b>	<b>19</b>
<b>ANNEX II – DONOR RESPONSES .....</b>	<b>22</b>
<i>Australian Agency for International Development (AusAid) .....</i>	<i>22</i>
<i>Consulate General of Belgium / Belgium Technical Corporation (BTC).....</i>	<i>22</i>
<i>Representative Office of Canada .....</i>	<i>22</i>
<i>Royal Danish Representative Office .....</i>	<i>23</i>
<i>Department for International Development, United Kingdom .....</i>	<i>23</i>
<i>European Commission Technical Assistance Office.....</i>	<i>24</i>
<i>The Italian Cooperation.....</i>	<i>24</i>
<i>Irish Representative Office .....</i>	<i>24</i>
<i>Embassy of Japan .....</i>	<i>25</i>
<i>Representative Office of Germany.....</i>	<i>25</i>
<i>Representative Office of the Kingdom of the Netherlands.....</i>	<i>25</i>
<i>Representative Office of Norway to the Palestinian Authority.....</i>	<i>26</i>
<i>Consulate General of Sweden.....</i>	<i>26</i>
<i>Swiss Development Cooperation .....</i>	<i>26</i>
<i>United Nations Development Programme.....</i>	<i>27</i>
<i>UN Relief and Works Agency for Palestine Refugees in the Near East.....</i>	<i>27</i>
<i>United Nations Children’s Fund, UNICEF .....</i>	<i>27</i>
<b>ANNEX III – SUGGESTED ELEMENTS FOR BILATERAL DEMARCHES CALLING ON THE GOI TO COMPLY WITH ITS OBLIGATIONS UNDER IHL .....</b>	<b>29</b>
<b>ANNEX IV – LIST OF REFERENCE MAPS .....</b>	<b>31</b>

## **Executive Summary**

In June 2004 the Ministry of Planning (MoP) presented its “Guidelines for Wall Mitigation”<sup>1</sup> to the LACC<sup>2</sup>. These Cabinet-approved guidelines are aimed at the donor community and include a number of mitigation measures in response to the construction of the Barrier. The recommended measures include: ensuring the integrity and capacity of the local community to maintain social, economic, infrastructure and development contacts and links; supporting Palestinian Authority (PA) strategic objectives; assisting the efforts of Palestinians to remain in their homes and on their lands, and facilitating the movement of Palestinians across the Barrier structures from either side. It prioritises such mitigation measures for areas located in the “Seam Zone” (the area between the Barrier and the 1949 Armistice Line, the “Green Line”) and those affected by the Barrier in the Jerusalem area.

Meanwhile, on 9<sup>th</sup> July the International Court of Justice (ICJ) issued an Advisory Opinion on the “*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*.” The ICJ found that the Barrier, in its present route and projection, and with the set of rules and regulations that govern its construction and operation, constituted a severe violation of International Human Rights and Humanitarian Law. The ICJ recognised three operative legal obligations for donors operating in the occupied Palestinian territory (oPt):

- 1) not to recognise the illegal situation resulting from the construction of the Barrier,
- 2) not to render aid or assistance towards maintaining the situation created by such construction, and
- 3) to take action to end the impediments to Palestinian self-determination resulting from the construction of the Barrier and to ensure Israel’s compliance with the Fourth Geneva Convention.

In trying to determine whether or not to undertake a wall mitigation<sup>3</sup> project, the PA is considering whether to adopt a traffic light system, whereby “Red Light” projects are clearly inconsistent with the ICJ Opinion, “Green Light” projects are clearly consistent with the ICJ Opinion, and “Orange Light” projects require a case-by-case review.

Perspectives within the international donor community on how to approach wall mitigation and address the implications of the ICJ Opinion are far from consistent. Some donors are strongly in favour of wall mitigation on humanitarian grounds, while others express serious concern regarding undertaking any form of wall mitigation initiative on political or legal grounds. Many donors, meanwhile, have not formulated a clear position.

During interviews with donors<sup>4</sup> currently undertaking wall mitigation projects, three recurring issues emerged. The perceived contradiction between humanitarian obligations versus political concerns; the need for a common LACC position on how to approach wall mitigation in an effective and consistent manner, and which is legally consistent with the ICJ Opinion; and the need for the donor community to consider how to ensure compliance by the Government of Israel (GoI) with its obligations under International Humanitarian Law (IHL).

---

<sup>1</sup> The PA plans to integrate these guidelines in its Medium-Term Development Plan, which will be published shortly. The legal implications of the International Court of Justice (ICJ) Opinion will also be outlined in the Medium-Term Development Plan.

<sup>2</sup> Formal LACC meeting held on 24<sup>th</sup> June 2004 in Ramallah.

<sup>3</sup> It should be noted that the phrase “wall mitigation” is used to describe activities that aim to alleviate the effects of the Barrier on Barrier-affected communities. The international community recognises and uses the terms, “Separation Barrier” and “Wall”. Within the context of this report the physical construction is consistently referred to as the Barrier.

<sup>4</sup> Interviews were conducted between 1st September and 31st October 2004.

**Wall Mitigation:  
Implications for Donors and Implementing Agencies Operating in Areas Affected by the Separation Barrier**

In conclusion, this paper outlines four suggested recommendations:

1. It should be ensured that the GoI complies with its **obligations under IHL**. This should be done at (a) the local level and, (b) at the capital level.
2. The MoP should establish a “**Clearing House**”, dedicated to evaluating wall mitigation projects. Those that are officially approved should be given MoP approval declaring them suitable for funding.
3. **LACC Recommendations** could be defined that would clarify and determine how donors could address the legal and practical implications of undertaking wall mitigation projects.
4. Donors who do not channel proposals through the MoP should include a **Project Impact Assessment** into their project cycle in order to evaluate whether or not the project would contradict the ICJ Opinion or the MoP Guidelines.

## **Introduction**

The construction of the Barrier began in June 2002, following the decision of the GoI to approve its first phase.<sup>5</sup> The GoI maintains that the Barrier is a temporary<sup>6</sup> structure that is essential to improve the security of Israel and its civilians. The Barrier consists of a combination of ditches, trenches, roads, razor wire, electronic fences and concrete blocks<sup>7</sup>. Palestinians have dubbed it the “*Apartheid Wall*” and argue that it consolidates the illegal occupation of the West Bank.

According to revised Barrier maps issued by the GoI on 30<sup>th</sup> June 2004, the Barrier is expected to extend a total of 622 km once completed. As of July 2004, 185 km of the Barrier had been built and another 75 km was under construction (please refer to Map 1). According to the United Nations, 90% of the route runs within the West Bank, east of the “Green Line”.<sup>8</sup>

The revised route<sup>9</sup> of the Barrier indicates that approximately 157,800 acres (about 11.5%) of West Bank land will lie between the Barrier and the Green Line.<sup>10</sup> This includes 38,500 acres enclosed in a series of enclaves and 119,300 acres in closed areas between the Green Line and the Barrier, excluding East Jerusalem. This land is some of the most water rich and fertile in the West Bank, as well as being home to more than 93,200 Palestinians.<sup>11</sup>

## **Context**

In its report of June 2004, “*The Annexation and Expansion Wall: Impacts and Mitigation Measures*” the PA has extensively documented the humanitarian and economic impact of the Barrier. The report highlights the impact of the Barrier on affected Palestinian communities and makes particular reference to the impact on the agricultural, education, health, infrastructure, water and welfare sectors.

As outlined in the above-mentioned report, a number of mitigation measures to offset and counter the effects of the Barrier are currently being implemented by PA ministries and agencies, Palestinian NGO’s and a number of international and multilateral institutions. These mitigation measures include: repairing infrastructure damaged by Barrier construction, land reclamation to offset the loss of agricultural land, the provision of cash and food aid, emergency health care and employment generation schemes for those whose access to the Israeli labour market has been restricted by the Barrier. To date mitigation has been

---

<sup>5</sup> The first phase of construction, officially launched on June 16, 2002, stretched approximately 126 kilometers through the northwestern governorates of Jenin, Tulkarm, Qalqiliya, and Salfit.

<sup>6</sup> The GoI’s stated position has been that the Barrier does not constitute a possible political border between Israel and a future Palestinian state. At June 16 and June 23 2003 Cabinet meetings, Prime Minister Ariel Sharon and then-Defense Minister Benjamin Ben-Eliezer reportedly reaffirmed the Wall’s security purpose. “This map does not present a border, but rather obstacles,” according to Prime Minister Sharon. (Gideon Alon, “Peres Threatens To Walk Out As Cabinet Approves Fence Plan”, Ha’aretz, June 24, 2002.)

<sup>7</sup> Depending upon location, sections will comprise some (or all) of the following elements: four-meter deep trenches on either side; a dirt path “to which access will be forbidden” where potential infiltrators would be exposed to IDF fire; a trace path to register foot prints; an electronic warning or “smart” fence; a concrete barrier topped with barbed wire; a concrete wall rising as high as eight meters; a two-lane military patrol road; and fortified guard towers placed at regular intervals. (“The Impact of Israel’s Separation Barrier on Affected West Bank Communities” report to the Humanitarian and Emergency Policy Group (HEPG) and Local Aid Coordination Committee (LACC), May 2003 page 3)

<sup>8</sup> See Report of the Secretary-General prepared pursuant to General Assembly Resolution ES-10/13, November 2003, A/ES-10/2/248.

<sup>9</sup> A press statement issued by the Quartet (US, EU, UN and Russia) following its meeting on 22<sup>nd</sup> September 2004, reiterates that “The Quartet urges positive action by the Government of Israel with respect to the route of the barrier and reiterates its view that no party should undertake unilateral actions that could prejudice issues that can only be resolved through negotiations and agreement between the parties.”

<sup>10</sup> On the 30th June 2004, the Government of Israel revised the route of the West Bank Barrier and published a new map on its seam zone website, [www.seamzone.mod.gov.il](http://www.seamzone.mod.gov.il) - the previous map was released on 23rd October 2003.

<sup>11</sup> OCHA Preliminary Analysis of the Humanitarian Implications of latest Barrier Projections, 8th July 2004.

#### Wall Mitigation:

#### Implications for Donors and Implementing Agencies Operating in Areas Affected by the Separation Barrier

approached in two ways: implementing specific wall mitigation activities and modifying existing on-going projects to address Barrier-affected areas. The MoP has categorized planned, completed and on-going mitigation projects into six sectors – agricultural, education, health, infrastructure, water and welfare sectors – and their locations have been mapped accordingly by the MoP, Geographic Center and Technical Support Unit.

Due to the extensive nature of the on-going and planned wall mitigation projects, the MoP, in June 2004, released wall mitigation guidelines for the benefit of the donor community and implementing agencies in the West Bank. The “Guidelines for Wall Mitigation” state that mitigation efforts to offset and counter the consequences of the Barrier should:

- Ensure the integrity and capacity of the local community to maintain its direct contact and links at all levels: socially, economically, infrastructure and developmentally.
- Follow PA strategic objectives which include long-term capacity building and infrastructure development as presented in the Socio-Economic Stabilization Plan, 2004-2005
- Assist Palestinians’ efforts to remain in their houses and on their lands, and
- Facilitate the movement of Palestinians across the wall apparatus from either side.

In addition, the Guidelines state that mitigation projects should pay particular reference to (a) the Seam Zone, between the Barrier and the Green Line, and (b) areas affected by the wall in the Jerusalem governorate. The MoP presented the set of Cabinet-approved guidelines to the LACC on the 24<sup>th</sup> June 2004. Donors and implementing agencies conducting wall mitigation projects were encouraged to conform to these guidelines immediately.

Meanwhile, on 9<sup>th</sup> July the ICJ issued an Advisory Opinion on the “*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*” pursuant to General Assembly Resolution ES-10/14 of 8 December 2003, which requested the ICJ to issue an opinion on the legal consequences under International Law arising from the construction of the Barrier inside the West Bank.

In its Advisory Opinion the ICJ addressed the question raised by the General Assembly Resolution; the legal consequences of construction of the Barrier in the occupied Palestinian Territory considering the rules and principals of international law, including the Fourth Geneva Convention, and the relevant Security Council and General Assembly resolutions.

The ICJ concluded that construction of the Barrier and its associated regime, are contrary to international law. In particular, it contravenes Article 49, paragraph 6, of the Fourth Geneva Convention and relevant Security Council resolutions including UNSCR 446 (1979). The Opinion states:

*“the Barrier in its present route and projection and with the set of rules and regulations that govern its construction and operation, constitute a severe violation of International Human Rights and Humanitarian Law. In particular, it interferes disproportionately with a range of fundamental rights and freedoms. In its present form, the Barrier cannot be justified under International Law. Israel is therefore under an obligation to cease the construction of the Barrier in the Occupied Territories and to restitute property requisitioned for its construction” (ICJ Opinion p.3/59).*

## **Responses of Donors and Implementation Agencies<sup>12</sup>**

During meetings with donors and implementing agencies to discuss the issue of wall mitigation, various recurring issues and concerns were raised. The divergence of opinion often reflected the different objectives and priorities of the donors.<sup>13</sup> A range of issues emerged; for a comprehensive outline of individual positions please refer to Annex II. Various re-occurring issues and concerns include:

- 1) The perceived contradiction between humanitarian obligations versus political concerns;
- 2) The need for a common LACC position on how to approach wall mitigation in an effective and consistent manner, and which is legally consistent with the ICJ Opinion;
- 3) The need for the donor community to consider how to ensure compliance by the GoI with its obligations under IHL.

### **Humanitarian Obligations v. Political Concerns**

Many donors and implementing agencies underlined their obligation to provide humanitarian relief, arguing either that there needs to be a clear separation between humanitarian and political interventions, or that directly adhering to the ICJ Opinion should be balanced against responding to the emerging needs of Barrier-affected communities.

The United Nations Relief and Works Agency for Palestine Refugees in the Near East<sup>14</sup> (UNRWA), for example, stressed its obligation to Palestinian refugees and emphasized that the ICJ Opinion is not affecting the Agency's regular relief and development programmes in the West Bank, providing education, health, social services and emergency assistance to Palestinian refugee communities. Furthermore, UNRWA underlined that the political implications of wall mitigation efforts should be addressed on a political level, while UNRWA, as a humanitarian agency, should focus on alleviating the suffering on the ground. It was stated that it would be difficult, indeed somewhat artificial, for humanitarian agencies to ignore Palestinian needs stemming from the construction of the Barrier and that political efforts must go hand-in-hand with humanitarian and development efforts.

Canada has also been active in responding to the humanitarian needs affected by the construction of the wall, where priority has been given to marginalized communities. Ireland reiterated this position, and stressed that even in light of the construction of the Barrier and the ICJ Opinion, community-based projects and poverty alleviation activities will continue to be supported by Ireland.<sup>15</sup>

On the other hand, several other donors were specifically opposed to undertaking wall mitigation projects on political or legal grounds, arguing that the Barrier and its associated regime is internationally recognised as illegal and undertaking any form of specifically wall mitigation projects could directly or indirectly consolidate its presence or contribute to its

---

<sup>12</sup> Interviews were conducted with donors and implementing agencies involved in wall mitigation projects, as listed in the MoP's "*The Annexation and Expansion Wall: Impacts and Mitigation Measures*" report. Due to political concerns some donors were reluctant to offer a position. These responses, therefore, are based on the issues raised by the donors who have offered a position.

<sup>13</sup> The different approaches of the donor community are reflected in their pursuit of legal advice following the ICJ Opinion. For example, only one donor, The Netherlands, has requested legal advice from the capital level. Most donor states have preferred to seek guidance at the local level – Ireland, Belgium, DFID (UK) and Japan stated that if legal advice were needed, each donor state would refer to their respective Consul Generals and/or local legal specialists before contacting capital officials. Others have taken different important steps, such as UNDP, who has sought legal advice from Harvard University and has held a legal training workshop for staff.

<sup>14</sup> It should be noted that UNRWA's position does not represent the opinion of all UN agencies.

<sup>15</sup> It should be noted that such an approach is in line with the MoP's Wall Mitigation Guidelines to assist Palestinians' efforts to remain on their lands, particularly targeting communities in the Seam Zone.

### Wall Mitigation:

#### Implications for Donors and Implementing Agencies Operating in Areas Affected by the Separation Barrier

permanence. Furthermore, in line with the ICJ Opinion, which states, “Israel is under an obligation to cease the construction of the Barrier in the Occupied Territories and to restitute property requisitioned for its construction”<sup>16</sup>, several donors underlined that necessity of dismantling of the Barrier and moving it to the “Green Line”.

UNICEF<sup>17</sup>, for example, stressed that it recognised the illegal status of the Barrier and is therefore unwilling to undertake any form of wall mitigation that might consolidate its presence. Temporary, emergency mitigation measures, however, to alleviate the immediate hardship created by the Barrier are being considered on a case-by-case basis. Similarly, the European Commission (EC) has decided not to fund or implement infrastructure wall mitigation projects, but stresses that it will support humanitarian efforts of a temporary nature, in addition to offering assistance in the field of advocacy and support to NGOs’ legal action against the Barrier.

Meanwhile, many donors have not formulated a clear stance on the issue, in many cases specifically appealing to the international donor community for the formulation of a common, agreed position. For example, following the ICJ Opinion Denmark has been forced to reconsider the legality of a previously approved project in the Qalqilya area. Denmark has put the project on hold and is now seeking/waiting for advice from the international donor community.

### LACC Recommendations

There have been a number of requests by donors to formulate a common LACC position on how to approach wall mitigation in an effective and consistent manner, which is legally consistent with the ICJ Opinion. Although the ICJ Opinion has not yet been directly integrated into most donor’s action plans and/or development priorities and objectives, many donors stressed that such a mechanism would be set in place in the near future.

Also, on 20<sup>th</sup> July 2004, the European Union (EU) Member States released a press statement affirming that the EU respects the ICJ Advisory Opinion as it largely coincides with the EU position on the legality of the Barrier built by Israel. The Netherlands, as the holder of the EU Presidency at that time, supported the EU Common Position and stated that any support to the illegal situation of the Barrier should be carefully considered. Many EU member states explicitly expressed their strong support for the EU Common Position. In addition, non-EU donors have expressed the need to address wall mitigation projects in a simultaneous and consistent manner and have called for the harmonization of international efforts.

With regard to defining and determining a common LACC position, one donor specifically confirmed that development assistance should be based on careful legal and political considerations and underlined by the importance of adhering to IHL. Several donors, meanwhile, specifically stressed that the international community must re-evaluate its short-term and long-term development objectives, to ensure that overall aid to the oPt is effective and efficient in the long-term – in particular, it was stressed that wall mitigation activities should not in any way prejudice or jeopardise “final status” issues.

Indeed, several donors have started to reconsider their overall strategy of development assistance to the Palestinian people. For example, Sweden has questioned its assistance to the oPt; in particular, it was noted that, in light of the continued occupation of the Palestinian territory and the construction of the Barrier, the costs of Swedish development assistance have grown dramatically. It was underlined that development assistance cannot continue to replace the lack of political action of the international donor community.<sup>18</sup> Also, Japan noted that it is hesitant to fund projects either near the Barrier or within the Seam Zone due to the possibility

---

<sup>16</sup> ICJ Advisory Opinion p.3/59, July 2004, Geneva.

<sup>17</sup> It should be noted that UNICEF’s position does not represent the opinion of all UN agencies.

<sup>18</sup> As stated in a paper by Jan Bjerninger and Johan Schaar “Reconsider Development Assistance to Palestine”.

#### Wall Mitigation:

#### Implications for Donors and Implementing Agencies Operating in Areas Affected by the Separation Barrier

of Israeli Defense Force (IDF) -inflicted damage to such projects. Other donors underlined the pivotal role of politics and the importance of ensuring vision and strategy in defining development assistance in the oPt.

#### **The Government of Israel's Obligations under International Humanitarian Law**

The majority of donors either voiced concern at the GoI's non-compliance with its obligations under IHL, or recognised their role in ensuring that that GoI comply with these obligations. Opinion on how to address this, however, is clearly divided. Some donors suggested that direct political lobbying should take place between the international donor community and the GoI at the local level - other donors reiterated that political decisions should be taken at the capital level.

Many donors recognised their role in ensuring that the GoI comply with its obligations under IHL, namely the GoI's:

1. Obligations pertaining to the illegal nature of the actions;
2. Obligation to repair the damages inflicted on the civilian population;
3. Obligation to assist the civilian population in need; and
4. Obligation to address the issue of restitution and displacement.

Several donors voiced their support in facilitating a PA-based initiative to lobby Israel to abide by its obligations and underlined that they would encourage and support the PA in requesting Israel to fund and facilitate wall mitigation efforts. For example, donors could, at the PA's request, increase support, through the MoP, for local legal initiatives aimed to secure restitution<sup>19</sup> for damage and confiscation caused by the construction of the Barrier and its associated regime.<sup>20</sup>

A number of donors suggested that the Barrier is simply another aspect of the Israeli occupation and wall mitigation projects could be understood within the framework of mitigating the occupation. It was also suggested by several donors that there should be no distinction between projects that mitigate the impact of Israel's closure regime or settlements, for example, and projects that mitigate the impact of the Barrier.

It was noted by several donors that wall mitigation measures, within the framework of overall assistance in the oPt can only be justified, or deemed acceptable, if the international community takes a political standpoint and directs efforts at ensuring that the GoI respects and complies with its obligations under IHL. This could be done at the local or capital level.

In this regard, it was noted that the ICJ Opinion had created a necessary platform for the international community to generate a strong response, stressing that the international community has the leverage to advocate and should use that position in the most effective way. For instance, it was suggested that the international community, at the local or capital level, could consider suspending their responses to needs generated as a direct result of the construction of the Barrier and its associated regime. Alternatively, it was suggested that there could be a suspension of the EU-Israel trade agreement, or ultimately the imposition of diplomatic or economic sanctions should the GoI not comply with its obligations.

---

19 The ICJ Opinion notes, "Israel is therefore under an obligation to cease the construction of the Barrier in the Occupied Territories and to restitute property requisitioned for its construction" (ICJ Opinion p.3/59). In this regard, the GA requested that the UN establish a register of damages monitoring the damage caused by the Barrier's construction and its associated regime. On 11th January 2005, the Secretary-General forwarded a letter to the President of the General Assembly regarding the establishment of a register of damage relating to Israel's construction of a Barrier in the West Bank. The letter sets out a framework for the register, the establishment of which was requested by the General Assembly in its resolution, ES-10/15, and for the next steps in its creation.

20 I.e. funding to NGOs who would then file claims in the Israeli courts for restitution.

## **Palestinian Perspectives**

In June 2004 the PA MoP presented its “Guidelines for Wall Mitigation” to the LACC<sup>21</sup>. These Cabinet-approved guidelines are aimed at the donor community and include a number of mitigation measures in response to construction of the Barrier. These Guidelines for Wall Mitigation would appear to be consistent with the ICJ Opinion.

The recommended measures include: ensuring the integrity and capacity of the local community to maintain social, economic, infrastructure and development contacts and links; supporting PA strategic objectives; assisting the efforts of Palestinians to remain in their homes and on their lands, and facilitating the movement of Palestinians across the Barrier structures from either side. It prioritises such mitigation measures for areas located in the Seam Zone and those affected by the Barrier in the Jerusalem area.

### **Case Study 1: The Welfare Association<sup>22</sup>**

The Welfare Association, a leading Palestinian non-governmental organisation supporting Palestinian society in sustainable development, is one of many Palestinian NGOs actively addressing the humanitarian crisis created by the construction of the Barrier.

Although the Welfare Association recognises that a potential outcome of wall mitigation could be to “normalise” the existence of the wall, it stresses that addressing humanitarian needs remains a primary obligation.

The organization currently is in the process of finalising a wall mitigation programme specifically focusing on the Seam Zone<sup>23</sup>. The objectives of the wall mitigation programme are twofold, fulfilling both humanitarian and Palestinian national obligations: access to health, education and social services, and ensuring that Palestinians can maintain their livelihoods and existence on their land.

Rather than focusing concern on the implications of wall mitigation, the Welfare Association emphasized that concern should revolve around the long-term political implications of the Barrier itself. These concerns include the establishment of a new de-facto border for a future Palestinian state; the transfer of people out of isolated communities and the Seam Zone; the creation of an embittered and frustrated generation, and the exacerbation of regional instability<sup>24</sup>.

The PA plans to integrate these guidelines in its Medium-Term Development Plan, which will be published in November 2004. The legal implications<sup>25</sup> of the ICJ Opinion will also be included in the Medium-Term Development Plan.

### **Gol’s Transport Contiguity in the West Bank**

Furthermore, the PA has created a special Committee to evaluate road construction and rehabilitation projects within the West Bank. This follows the Gol’s “Transport Contiguity” proposal that was presented to the World Bank on 5<sup>th</sup> September 2004. The proposal was reportedly a response by the Gol to the 23<sup>rd</sup> June 2004 World Bank report, “*Disengagement, the Palestinian Economy and Settlements*” which underlined that Palestinian economic recovery depends on drastic shift in the internal closure policy currently restricting movement

<sup>21</sup> Formal LACC meeting held on 24<sup>th</sup> June 2004, Ramallah.

<sup>22</sup> The Welfare Association’s position has been included to present an example of Palestinian NGO thinking on the issue of wall mitigation.

<sup>23</sup> This programme appears to be consistent with the MoP’s Guidelines for Wall Mitigation.

<sup>24</sup> Based on an interview with Dr. Mohammed Shadid, 22<sup>nd</sup> September 2004.

<sup>25</sup> Based on work undertaken by the Negotiations Support Unit to the PA Negotiations Affairs Department.

#### Wall Mitigation:

#### Implications for Donors and Implementing Agencies Operating in Areas Affected by the Separation Barrier

throughout the West Bank. The proposal comprises 500 km of road, mostly rehabilitating existing secondary roads, and 18 underpasses. The stated Israeli aim is to improve transport contiguity between Palestinian areas. The positive implications could include an improved road system and an improvement to the closure regime. However, the proposal also implies a separate Palestinian road network, in parallel to the already existing, yet restricted one and the wider political and humanitarian implications need to be considered.

The Committee tasked with evaluating road construction and rehabilitation projects within the West Bank was created based on a Cabinet Resolution passed on 4th October 2004. The MoP announced the creation of the Committee at the formal LACC meeting held on 19th October 2004, in Ramallah. The Committee comprises representatives from the PA MoP, Ministry of National Economy, Ministry of Public Works and Housing, Ministry of Transport, Ministry of Local government, Ministry of Finance and PECRAR, with legal advice from the Negotiations Support Unit of the Negotiations Affairs Department.

The aim of the PA Committee is to ensure that all road construction and rehabilitation projects, including those outlined by the GoI, are in accordance both with the ICJ Opinion and with Palestinian national, strategic objectives. Having reviewed the legal and humanitarian implications, the proposal was subsequently rejected and the PA has asked donors not to finance such projects. Furthermore, the PA rejected in principle the Israeli proposal for a separate road network, as it would perpetuate the settlements.<sup>26</sup>

#### **Case Study: The City of Qalqilya<sup>27</sup>**

The construction of the Barrier around the West Bank city of Qalqilya was completed in August 2003 and nearly completely encircles the city, while the one road leading into the city is controlled by an Israeli military checkpoint. Approximately 58% of the city's land (2,200 dunams were destroyed and 3,750 dunams are separated from the city) and 32% of its water resources were confiscated for the construction of the Barrier, while 8,000 olive trees were uprooted. Also, some five hundred Palestinians are located in the Seam Zone, isolated from the city between the Barrier and the Green Line.

Before the construction of the Barrier, Qalqilya had a thriving economy with strong economic ties with Israel. *"The Wall is now a reality in Qalqilya, it has shaped every aspect of life in the city, as well as in the neighbouring villages,"* said Maa'rouf Zahran, the Mayor of Qalqilya. A year after the Barrier was completed Qalqilya's economy is paralyzed. *"The Wall has had a devastating impact both on the local economy and the Palestinian economy as a whole,"* he added, noting that unemployment in Qalqilya stands at approximately 85%.

Furthermore, since 2003 some 4,000 Palestinians have left the city, which, according to the Mayor, highlights that the Barrier contributes to and exacerbates the existing closure policy in the West Bank. *"My concern is that not only is the Barrier creating a new de-facto border, but is also directly resulting in the displacement of the population,"* he said.

The Mayor is actively appealing to the international community to respond to the unfolding humanitarian crisis in Qalqilya, emphasising the need to understand local needs. *"Humanitarian efforts, aimed at alleviating the hardship and ensuring that people remain in the city, is essential,"* he maintained. Asked about the political implications of wall mitigation, the Mayor responded: *"It is philosophical to talk about aid in political terms. The farmer who can't reach his olive grove doesn't think about politics, nor does the unemployed father. People need jobs, education and hope for the future."*

<sup>26</sup> Hass, A. November 30<sup>th</sup>, 2004. "Donor Countries won't fund Israeli-planned separate roads for Palestinians", Ha'aretz Newspaper.

<sup>27</sup> Based on a field visit to Qalqilya and an interview with Mr. Maa'rouf Zahran, Mayor of Qalqilya

## **The ICJ Advisory Opinion**

### **Legal Implications for Donors**

The ICJ found the Barrier, in its present route and projection, and with the set of rules and regulations that govern its construction and operation, constitutes a violation of International Human Rights and Humanitarian Law.<sup>28</sup> The GoI, however, has refused to recognize the opinion and instead, is following its own guidelines based on its interpretation of the Israeli Supreme Court.<sup>29</sup>

The Barrier is built predominantly on occupied territory<sup>30</sup> and interferes disproportionately with a range of fundamental rights and freedoms.<sup>31</sup> In addition, the Barrier is not just a short-term measure taken during an armed conflict or occupation following a conflict. While the GoI stresses the temporary nature of the Barrier, the ICJ found that it has “long-term ramifications... and will affect lives and rights of the people in the West Bank for a considerable time to come.”<sup>32</sup> The complementary application of human rights treaties in such a case is “not only legally required, but also clearly appropriate.”<sup>33</sup>

Specifically, the ICJ found that:

- All States are under an obligation not to recognize the illegal situation resulting from the construction of the wall in the Occupied Territory, including in and around East Jerusalem;
- States are also under an obligation not to render aid or assistance in maintaining the situation created by such construction;
- It is for all States, while representing the United Nations Charter and International Law, to see to it that any impediment resulting from the construction of the wall to the exercise by the Palestinian people of its rights to self-determination is brought to an end.

These obligations cover the entire Barrier-related regime, which includes the permit system for access to the Seam Zone and permit system for access through gates in the Barrier. The ICJ Opinion states, “some elements of the Barrier route reinforce and perpetuate the existence of the settlements”<sup>34</sup> thus, by extension, the above-mentioned obligations may apply to projects that mitigate against the settlements.

The ICJ also found that all States Parties to the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12<sup>th</sup> August 1949 are under an obligation:

---

<sup>28</sup> ICJ Advisory Opinion p. 3/59, July 2004, Geneva.

<sup>29</sup> On June 30, 2004 the Israeli Supreme Court, sitting as the High Court, issued a decision in the case of *Beit Sourik Village Council vs. 1. The Government of Israel and 2. Commander of IDF Forces in the West Bank*. The Court ordered the GoI to change the planned route of the Barrier in this area and cancelled the military orders requisitioning land. This was the largest cancellation of military orders since construction of the Barrier began.

<sup>30</sup> As defined under International Law, please refer to footnote 29.

<sup>31</sup> It should be emphasised that under Article 42 Hague Regulations, a territory “is considered occupied when it is actually placed under the authority of the hostile army” – recent developments suggest that Israel has taken effective control over areas under Palestinian authority or demonstrated its capacity to exercise such effective control at any moment (ICJ Opinion p. 19/59). See also Oxford Public Interest Lawyers, “Legal Consequences of Israel's construction of a Separation Barrier in the Occupied Territories”, February 2004, para. 78. Also UN Commission of Inquiry, Commission Resolution S-5/1 of 19 October 2000, Question of the Violation of Human Rights in the Occupied Arab Territories, including Palestine, E/CN.4/2001/121, 16 March 2001.

<sup>32</sup> ICJ Advisory Opinion p. 25/59, July 2004, Geneva.

<sup>33</sup> ICJ Opinion p. 25/59, July 2004, Geneva.

<sup>34</sup> ICJ Advisory Opinion p. 38/59, July 2004, Geneva.

#### Wall Mitigation:

#### Implications for Donors and Implementing Agencies Operating in Areas Affected by the Separation Barrier

- to ensure compliance by Israel with IHL as embodied in that Convention. State Parties to the Fourth Geneva Convention are also under obligation not only to respect, but also ensure respect to the provisions of the convention.

Furthermore, the ICJ Opinion calls on all parties, including third parties facilitating political dialogue, to fully respect International Human Rights and Humanitarian Law and to base their policies on these standards.

In line with the ICJ Opinion, United Nations General Assembly Resolution A/ES-10/L.18/Rev.1 of the 20<sup>th</sup> of July 2004 confirms that:

*“all states are under an obligation not to recognise the illegal situation resulting from the construction of the wall and not render aid or assistance in maintaining the situation created by such construction; all States Parties to the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12<sup>th</sup> August 1949 have in addition the obligation, while respecting the United Nations Charter and International Law, to ensure compliance by Israel with International Humanitarian Law as embodied in that Convention.”*<sup>35</sup>

#### Practical Implications

*“I find it difficult to envisage what States are expected to do or not to do in actual practice”*  
Judge Pieter H. Kooijmans<sup>36</sup>

Following consultation with legal experts from the NSU<sup>37</sup> and the World Bank, there seems to be agreement upon the following practical implications for donors.

The ICJ recognised three operative legal obligations for donors operating in the oPt<sup>38</sup>:

1. not to recognise the illegal situation resulting from the construction of the Barrier, and
2. not to render aid or assistance on maintaining the situation created by such construction.
3. The ICJ also urges all States to take action to end the impediments to Palestinian self-determination resulting from the construction of the Barrier and to ensure Israel’s compliance with the Fourth Geneva Convention.

Thus, the following forms of wall mitigation would be considered inconsistent with the ICJ Opinion:

- Anything that amounts to a direct or implied recognition of the illegal situation resulting from the construction of the Barrier in the oPt. This would include, for example, Israeli attempts to annex Palestinian territory or denying Palestinians the right to self-determination. Importing goods manufactured in the Seam Zone and sold as if originating from Israel would also violate the obligation.

<sup>35</sup> United Nations General Assembly Resolution A/ES-10/L.18/Rev.1 of the 20<sup>th</sup> of July 2004.

<sup>36</sup> Judge Pieter H. Kooijmans stated in his dissenting opinion “I find it difficult to envisage what States are expected to do or not to do in actual practice”. See para. 1 of the Separate Opinion of Judge Kooijmans.

<sup>37</sup> In particular, the Negotiations Support Unit to the PA Negotiations Affairs Department has undertaken extensive work on this issue and many of the examples presented in this section are based on their work.

<sup>38</sup> These obligations are based in the International Law Commission’s articles on state responsibility. The ICJ states that the Barrier as constructed does constitute an internationally wrongful act; third states are under an obligation not to aid and assist the commission of an internationally unlawful act. Article 16 of the International Law Commission Articles on State Responsibility states that various specific substantive rules exist, prohibiting one State from providing assistance in the commission of certain wrongful acts by other States or even requiring third States to prevent or repress such acts.

#### Wall Mitigation:

#### Implications for Donors and Implementing Agencies Operating in Areas Affected by the Separation Barrier

- Anything that contributes to the building, servicing or operation of the Barrier. This would include, for example, supplies for its physical maintenance; support to the Barrier patrols; providing concrete or steel for use in the Barrier, or providing engineering equipment or advice or finance to assist in its construction.
- Anything else that directly and knowingly helps Israel to maintain the operation of the Barrier or maintain the situation created by the Barrier.

In trying to determine whether or not to undertake a wall mitigation project, the PA is considering whether a “traffic light” approach may be a helpful. It should be noted that the ICJ Opinion’s aim was not to impose an obligation that would exacerbate Palestinian suffering.

#### **“Green Light” Projects:** Clearly consistent with the ICJ Opinion

Projects that either, 1) directly respond to the humanitarian needs of residents and do not contribute to the permanence of the Barrier or, 2) provide aid or assistance for projects based on PA strategic objectives, but which meet the green-light criteria, could be considered “Green Light” projects.

Such projects would include, for example:

- The provision of medical services or food supplies for Palestinian residents affected by the Barrier and its associated regime.
- Aid or assistance for structures or services that assist Palestinians to remain in their homes or on their lands in the Seam Zone. This would include temporary structures. Structures of a non-transitional nature, however, could maintain the permanence of the Barrier.
- Assistance to the PA’s long-term capacity building and development needs, as presented in the socio-economic stabilisation plan and forthcoming medium-term development plan, but which are consistent with the green-light criteria.

#### **“Red Light” Projects:** Clearly inconsistent with the ICJ Opinion

Directly assisting the GoI in the building or financing or operation of the Barrier, support or assistance for border arrangements at the Barrier or recognition of Israeli sovereignty over Seam Zone areas would be incompatible with the ICJ Opinion. Such projects might be considered “Red Light” projects.

Such projects would include, for example:

- Direct assistance such as, the provision of cement, steel or other products for the construction of the Barrier, provision of security or aid for security, including equipment, engineering advice or financial support, for the construction of the Barrier; or the provision of aid or support for patrols or the physical maintenance of the Barrier.
- Support or assistance for border arrangements at the Barrier, where the Barrier is located east of the Green line, such as providing equipment or other assistance for back-to-back or cargo terminals built at the Barrier, or providing assistance for the operation of the Barrier as an immigration or custom frontier.
- Recognition of Israel’s sovereignty over the Seam Zone, such as recognising or supporting a permit system for accessing the Seam Zone; accepting goods produced in the Seam Zone sold as if originating in Israel; or accepting goods produced in settlements as if originating in Israel.

#### **“Orange light”:** Borderline projects, which require a case-by-case assessment

“Orange light” projects, do not fall into either clear category and require a case-by-case review. Projects undertaken with the intention of helping the Palestinian citizens affected by the Barrier may also give real assistance or support to the GoI in constructing, maintaining or

#### Wall Mitigation:

#### Implications for Donors and Implementing Agencies Operating in Areas Affected by the Separation Barrier

operating the Barrier. Generally, the more a project contributes to the permanence of the Barrier and its associated regime, the more likely the project would be in contradiction of the ICJ Opinion.

Such projects would include, for example:

- Providing aid or assistance for the construction of new gates in the Barrier, for instance, which might mitigate hardship but would also assist the GoI in maintaining the Barrier<sup>39</sup>.
- Helping farmers to relocate groves, crops or greenhouses from land in the planned route of the Barrier in advance of its construction<sup>40</sup>;
- Building infrastructure, such as water pipes and electricity cables, along the route of the Barrier<sup>41</sup>.
- The construction or rehabilitation of roads, tunnels, underpasses, or other passageways that accommodate the restriction created by the Barrier and its associated regime, and that direct Palestinians away from settlements are in contradiction to the ICJ Opinion. The road projects should be considered on a road-by-road basis.
  - One such example of incompatible roads is the underpass linking Qalqilya with Hubla. This is a passageway intended to create transportation contiguity where the Barrier and settlements break up territorial contiguity.
  - Another example is roads that create a separate system for Palestinians and Israelis within the oPt as these would consolidate the situation being created by the Barrier and its associated regime. They also constitute an impermissible violation of the international prohibition of apartheid and ethnic discrimination.
  - Another example is roads that are intended to replace regional roads linking Palestinian major urban areas in the West Bank (e.g., Wadi Al-Nar instead of the Bethlehem-Jerusalem road). Creating or rehabilitating roads that provide localized access rather than regional access may assist in the maintenance of the situation being created by the regime of the Wall, as well as settlements.
- Aid or assistance for industrial estates behind or adjacent to the Barrier, unless certain conditions are met<sup>42</sup>. In addition to meeting these conditions, the industrial estates should not be established on Israeli-confiscated land<sup>43</sup>.

In the absence of a special argument that the measures were urgently needed to relieve serious hardship, these actions would be incompatible with the Opinion. However, if an 'Orange Light' project is responding to an immediate humanitarian need in order to alleviate serious hardship, then the project should still be justifiable.

---

<sup>39</sup> Such a project would be inconsistent with the Opinion because it would directly assist in the building and development of the Barrier, although it would be a borderline case if the gate were necessary to gain access to, for example, a Palestinian hospital.

<sup>40</sup> Such actions would facilitate the GoI in building the Barrier. The position is arguably different if the assistance is given as Israeli bulldozers move in to flatten the trees; this would offer no real help to the GoI but try to mitigate severe hardship for Palestinians.

<sup>41</sup> Such projects could consolidate the presence of the Barrier.

<sup>42</sup> The conditions that may make aid or assistance for industrial estates consistent with the legal obligations in the ICJ Opinion are: 1) any necessary land requisitions be made pursuant to applicable PA legislation; and 2) the PA would have full civil and security jurisdiction over the area, which means the area would have to be classified as Area A pursuant to the Oslo Accords. If the Barrier is on the Green Line, and the above conditions are met, it would be permissible for the estates to be established adjacent to the Barrier since Palestinian workers would not be restricted from entering and exiting, and would not need permits.

<sup>43</sup> Aid or assistance for industrial estates built on land confiscated by the PA may be permissible where the PA has compensated the original landowners.

## **Recommendations**

### **1. Ensure GoI compliance with its obligations under IHL**

General Assembly resolution (A/ES-10/L.18/Rev.1) of 20<sup>th</sup> July 2004 demands that Israel, the occupying power, comply with its legal obligations as mentioned in the ICJ Advisory Opinion. The resolution also calls upon all States Members of the United Nations to comply with their legal obligations as mentioned in the Advisory Opinion.

The international donor community could<sup>44</sup>:

- Issue a demarche at the capital level (please see Annex III, which outlines suggested elements for a demarche).
- Encourage and support the PA in requesting the GoI to fund and facilitate wall mitigation efforts, as obliged by International Humanitarian Law.
- Request the High Contracting Parties of the Fourth Geneva Convention hold a conference.<sup>45</sup>
- Advocate for the full implementation of the ICJ Opinion and GA Resolution.
- Press the GoI dismantle the Barrier or move it to the Green Line.
- Issue public statements underlining the illegal nature of the Barrier.
- Prosecute violators on the basis of universal jurisdiction.
- Call for passage of a Security Council Resolution containing specific enforcement measures to be taken failing GoI compliance.
- Request the GoI to fund and facilitate wall mitigation efforts, as obliged by IHL.
- Present the GoI with bills for donor projects damaged by Barrier-related construction<sup>46</sup>.
- Request that the GoI restitute property requisitioned for its construction.

### **2. Ministry of Planning “Clearing House”**

A MoP “Clearing House” should be established. The mandate of the Committee already established to evaluate road construction and rehabilitation projects should be expanded to include all wall mitigation projects. The “Clearing House” would be dedicated to evaluating “orange light” wall mitigation projects, whereby the MoP approves or rejects individual projects based on agreed, PA-defined criteria.

The MoP should play a role in ensuring that projects comply with the ICJ Opinion, in addition to PA strategic objectives. Therefore the MoP should take the lead in ensuring that it is the contact point between donors and PA Ministries and Municipalities. In this regard all project proposals, from PA Ministries and Municipalities must only be channeled through the MoP, who would be responsible for declaring the project suitable for funding.

---

<sup>44</sup> These are suggestions only and do not in any way reflect a common LACC position

<sup>45</sup> The General Assembly called upon States Parties to the Fourth Geneva Convention to ensure Israel’s respect for the Convention, and invited Switzerland to conduct consultations and report to the General Assembly on the matter.

<sup>46</sup> It has been suggested that donors follow UNRWA’s practice of billing the GoI for damage to donor-funded projects. This could be extended to include the additional funding directly towards wall mitigation projects.

#### Wall Mitigation:

#### Implications for Donors and Implementing Agencies Operating in Areas Affected by the Separation Barrier

### 3. LACC Recommendations

A common LACC position should be defined, as it would facilitate a coordinated programme of mitigation measures to counter the effects of the Barrier.<sup>47</sup>

Suggested considerations in formulating a common LACC position might include:

- Agreement that only MoP-approved projects be funded.
- Ensuring agreement on the manner in which donors approach the legal and practical implications of the ICJ Opinion.
- Ensuring that the position adopts and adheres to the MoP's Guidelines.
- Ensuring that mitigation projects incorporate effective and efficient long-term strategic development objectives.

### 4. Project Impact Assessment<sup>48</sup>

Along the lines of an environment impact assessment, a Project Impact Assessment should be included into proposals to evaluate whether or not the proposal would contradict the ICJ Advisory Opinion or the Ministry of Planning's Guidelines.

---

<sup>47</sup> In May 2003, the mission to the Humanitarian and Emergency Policy Group (HEPG) recommended that "the LACC ensure that ... a coordinated programme of mitigation measures be put in place without delay." See Paragraph 47 "The Impact of Israel's Separation Barrier on Affected West Bank Communities" Report to the HEPG and LACC, May 2003.

<sup>48</sup> This would apply only to projects that are not channeled through the MoP, for example USAID projects channeled through NGOs.

## Wall Mitigation:

Implications for Donors and Implementing Agencies Operating in Areas Affected by the Separation Barrier

## References

Alon G., June 2002. Peres Threatens To Walk Out As Cabinet Approves Fence Plan, Ha'aretz Newspaper June 24, 2002.

Bjerninger J. and Schaar J. Reconsider Development Assistance to Palestine, Swedish International Development Agency, Stockholm, Sweden.

B'Tselem, August 2004. Forbidden Roads: The Discriminatory West Bank Road Regime, The Israeli Information Center for Human Rights in the Occupied Territories: B'Tselem, Jerusalem.

European Union, April 2004. EU Development Cooperation Meeting minutes, Tuesday 6<sup>th</sup> April 2004, Irish Representative Office, Ramallah.

EU, June 2004. EU HoMs Common Report on House Demolition in Rafah (May 2004) and the Obligations of the Israeli Government Under International Law (IHL), Ramallah/Jerusalem.

EU, July 2004. EU Statement on ICJ-resolution made in the General Assembly of the UN, United Nations New York, USA.

Hass, A., Sept. 2004. Israel Asks PA Donors to Fund New, Upgraded West Bank Roads, Ha'aretz Newspaper (IHT), 5<sup>th</sup> July 2004, Tel Aviv.

Hass, A. Nov. 2004. "Donor Countries won't fund Israeli-planned separate roads for Palestinians", Ha'aretz Newspaper (IHT), 30<sup>th</sup> November 2004, Tel Aviv

The Humanitarian Emergency Policy Group (HEPG), May 2003. The Impact of Israel's Separation Barrier on Affected West Bank Communities, HEPG Jerusalem.

International Commission of Jurists, July 2004. Israel's Separation Barrier – Challenges to the Rule of Law and Human Rights, Geneva, Switzerland.

International Commission of Jurists, July 2004. Press Release: Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory & Advisory Opinion, The Hague, The Netherlands.

Negotiating Support Unit, October 2004. Legal Analysis of the ICJ Opinion, Ramallah.

Oxford Public Interest Lawyers, February 2004. Legal Consequences of Israel's construction of a Separation Barrier in the Occupied Territories, Oxford, United Kingdom.

PA, Ministry of Planning (Policy Research Unit), May 2004. The Annexation and Expansion Wall: Impacts and Mitigation Measures, Ramallah.

PA, Ministry of Planning (Policy Research Unit), June 2004. Guidelines for Wall Mitigation, Ramallah.

Quartet Press Release 22<sup>nd</sup> September 2004, New York

Swedish International Development Agency, Reconsider Development Assistance to Palestine as provided to the LACC Donor Coordinator, September 2004.

Sliman, N., 2004. World Court's Ruling on Wall Speaks with Utmost Clarity, Middle East Research and Information Project (MERIP), July 2004, Washington D.C, USA.

**Wall Mitigation:**

**Implications for Donors and Implementing Agencies Operating in Areas Affected by the Separation Barrier**

United Nations, November 2003. General Assembly Resolution A/ES-10/2/248: Report of the Secretary-General prepared pursuant to General Assembly Resolution ES-10/13, Tenth Emergency Special Session, Agenda Item 5: Illegal Israeli Action in the Occupied East Jerusalem and the Rest of the Occupied Palestinian Territories, New York, USA.

United Nations, 20<sup>th</sup> July 2004. UN General Assembly Resolution A/ES-10/L.18/Rev. Tenth Emergency Special Session, Agenda Item 5: Illegal Israeli Action in the Occupied East Jerusalem and the Rest of the Occupied Palestinian Territories, New York, USA.

United Nations, December 2003. UN General Assembly Resolution A/RES/ES-10/14. Tenth Emergency Special Session, Agenda Item 5: Illegal Israeli Action in the Occupied East Jerusalem and the Rest of the Occupied Palestinian Territories, New York, USA.

United Nations Human Rights Enquiry Commission, 16<sup>th</sup> March 2001. Commission Resolution S-5/1 of 19 October 2000: Question of the Violation of Human Rights in the Occupied Arab Territories, including Palestine, E/CN.4/2001/121, New York, USA.

United Nations Office for the Co-ordination of Humanitarian Affairs (OCHA), July 2004. Preliminary Analysis of the Humanitarian Implications of Latest Barrier Projections, UNOCHA, Jerusalem

United Nations Office for the Co-ordination of Humanitarian Affairs (OCHA), September 2004. Report to the Humanitarian and Emergency Policy Group on the Humanitarian Situation in Gaza, September 2004, UNOCHA, Jerusalem

**Web-based references:**

Israel's Separation Barrier, Ministry of Defense website, [www.seamzone.mod.gov.il](http://www.seamzone.mod.gov.il)

**Annex I - List of Donors, International Organisations, NGO's, PA  
Ministries interviewed**

---

**Australian Agency for International Development, AusAID**  
Tawfic Raad, Programme Officer  
Australian Representative Office, Ramallah  
28<sup>th</sup> September 2004

**Consulate General of Belgium**  
Dr. Dani Ceuninck, Consul & International Cooperation  
Consulate General of Belgium, Jerusalem  
24<sup>th</sup> September 2004

**Belgian Technical Corporation, BTC/CTB**  
Yves Couvreur, Resident Representative  
BTC/CTB Office, Jerusalem  
9<sup>th</sup> September 2004

**Representative Office of Canada**  
Dominique Rossetti, Deputy Representative and Head of Aid  
Ra'id N. Malki, Deputy Head, Canadian Cooperation Programme  
Representative Office of Canada, Ramallah  
21<sup>st</sup> September 2004

**Royal Danish Representative Office**  
Jan Pirouz Poulsen, Deputy Head  
Royal Danish Representative Office, Ramallah.  
15<sup>th</sup> September 2004

**Department for International Development, DFID, United Kingdom**  
Khaled Hussein, Deputy Programme Manager & Office Manager  
7<sup>th</sup> September 2004

**European Commission Technical Assistance Office**  
Francis Olbrechts, Counsellor, Cooperation Coordination  
ECTAO Office, Jerusalem  
1<sup>st</sup> October 2004

**Italian Corporation**  
Dr. Antonio Aloï, Deputy  
Italian Consulate, Jerusalem  
16<sup>th</sup> September 2004

**Irish Representative Office**  
Dr. Niall Holohan, Representative of Ireland to the PA,  
Irish Representative Office, Ramallah  
13<sup>th</sup> September 2004

**Wall Mitigation:**

**Implications for Donors and Implementing Agencies Operating in Areas Affected by the Separation Barrier**

**Embassy of Japan**

Mitsohiro Osaki, Second Secretary  
Embassy of Japan, Tel Aviv  
28<sup>th</sup> September 2004

**Local Rural Development Programme**

Robert Crothers, Chief Technical Advisor  
Omar Qasrawi, Planner Infrastructure & Environment  
LRDP Office, Ramallah  
13<sup>th</sup> September 2004

**Ministry of Planning, Aid Management and Coordination Unit**

Cairo Arafat, Director General of Aid Management and Coordination  
Ministry of Planning, Ramallah  
7<sup>th</sup> September 2004

**Ministry of Planning, Policy Research Unit**

Candice Karp, Consultant  
Ministry of Planning, Ramallah  
7<sup>th</sup> September 2004

**Municipality of Qalqilya**

Maa'rouf Zahran, Mayor of Qalqilya  
Nabil Barham, Chief, Studies & Planning Dept.  
Nidal Jaloud, Public Relations Officer  
11<sup>th</sup> October 2004

**Negotiation Support Unit**

Stephanie Khoury, Legal Advisor  
Leila Hilal, Legal Advisor  
Negotiations Support Unit, Ramallah  
7<sup>th</sup> September 2004 & 8<sup>th</sup> October 2004

**Representative Office of Germany**

Angelika Pradel, Head Development Cooperation  
Representative Office of Germany  
29<sup>th</sup> October 2004

**Representative Office of the Kingdom of the Netherlands**

Maarten Gischler, First Secretary  
Representative Office of the Kingdom of the Netherlands, Ramallah  
15<sup>th</sup> September 2004

**Representative Office of Norway to the Palestinian Authority**

Nils Ragnar Kamsvåg, Representative  
Einar Landmark, Deputy Representative  
Hind Khoury, Programme Advisor  
Representative Office of Norway, Ar-Ram  
7<sup>th</sup> September & 18<sup>th</sup> October 2004

**Consulate General of Sweden**

Mats Svensson, Consul  
Consulate General of Sweden, Jerusalem  
Friday 24<sup>th</sup> September 2004

**Wall Mitigation:  
Implications for Donors and Implementing Agencies Operating in Areas Affected by the Separation Barrier**

**Swiss Agency for Development and Cooperation**

Fritz Froehlich, Deputy Country Director  
SDC Office, Jerusalem  
Friday 24<sup>th</sup> September 2004

**United Nations Development Programme, UNDP/PAPP**

Andrea Tagmanini, Deputy Special Representative  
UNDP/PAPP Office, Jerusalem  
7<sup>th</sup> September 2004

**UN Relief and Works Agency for Palestine Refugees in the Near East**

Anders Fänge, Director of UNWRA Operations, West Bank  
UNRWA, Jerusalem  
20<sup>th</sup> September 2004

**United Nations Children's Fund, UNICEF**

Tibeba Haile Salassie, Senior Programme Officer  
UNICEF, Jerusalem  
24<sup>th</sup> September 2004

**Welfare Association**

Dr. Mohammed Shadid, Deputy Managing Director - Operations  
Welfare Association, Jerusalem  
22<sup>nd</sup> September 2004

**The World Bank**

Nigel Roberts, Country Director, World Bank West Bank and Gaza  
Paul Prettitore, Legal Advisor  
World Bank, Jerusalem

## **Annex II – Donor Responses**<sup>49</sup>

Given the sensitive political nature of wall mitigation, perspectives within the international donor community on how to approach the issue are far from consistent. Some donors are strongly in favour of wall mitigation on humanitarian grounds, while others express serious concern regarding any form of wall mitigation on political grounds. A commonly held position is one of intentional ambiguity.

---

### **Australian Agency for International Development (AusAid)**

To date, AusAid is not funding or implementing any wall mitigation projects. Most of AusAid's project work focuses on Gaza and the few existing projects in the West Bank have not been affected by the construction of the Barrier.

AusAid follows an NGO-focused approach to development and, therefore, does not specifically implement projects in conjuncture with PA ministries: communication and contact with the PA has therefore been limited.

The new budget year begins in January 2005 and it is expected that the ICJ Opinion and MoP Guidelines will be integrated into AusAid's development position and priorities, although no such mechanism is in place as yet.

---

### **Consulate General of Belgium / Belgium Technical Corporation (BTC)**

Wall mitigation initiatives are not part of Belgium's development priorities, as outlined in the 2001-2006 Action Plan, and the BTC currently is not conducting any wall mitigation projects. All on-going projects were agreed upon 2–3 years ago and formulated into a 'development programme' with the PA's MoP. It was stressed that the Barrier is not expected to affect any on-going or planned projects.

Belgium underlined that it will provide support to the PA: if a PA decision were made to actively pursue and implement wall mitigation projects, Belgium would support such a decision and conduct development activities accordingly. Belgium noted, however, that all future mitigation measures must be in line with the MoP's Guidelines. It was added that if the MoP is requesting help with wall mitigation activities, it is the responsibility of the MoP to adhere to IHL.

The MoP's Guidelines are perceived as being too vague and it was suggested the Guidelines be elaborated upon to ensure that the donor community fully understands them and is able to incorporate them into their development strategy. Also, the term 'mitigation' must be clarified and it was questioned whether all development work is essentially 'mitigation' to the existing political, economic, humanitarian situation in the oPt. Furthermore, BTC stated that it would take time before the ICJ Opinion and the MoP Guidelines are to be fully integrated and have a significant effect on donor policy.

BTC has briefly discussed the ICJ Opinion with the MoP and Ministry of Local Government and it was confirmed that the ICJ Opinion and the MoP Guidelines would be considered and integrated into the 2006 Action Plan.

---

### **Representative Office of Canada**

Canada is currently implementing wall mitigation projects in areas affected by the Barrier. Canada conducts wall mitigation efforts in two different forms: Canada has effectively

---

<sup>49</sup> Interviews were conducted with donors involved in wall mitigation projects, as listed in the MoP's "The Annexation and Expansion Wall: Impacts and Mitigation Measures" report on June 2004. Due to political concerns some donors were reluctant to offer a position, hence not all donors are represented.

#### Wall Mitigation:

#### Implications for Donors and Implementing Agencies Operating in Areas Affected by the Separation Barrier

responded to direct local initiatives from Barrier-affected communities, although priority is given to areas that (a) have been marginalized and (b) are in line with Canada's development priorities. In addition, Canada is working with affected communities on a multilateral level with UNDP, UNICEF, the World Bank and PA Ministries. Most activities involve school construction and education. These projects are being implemented throughout the oPt, including the Seam Zone.

Canada has not sought legal advice from the capital level, but has confirmed that the legal elements on the ICJ Opinion would be further explored and integrated into Canada's five-year development plan.

It was noted that a creation of a 'special fund' solely for wall mitigation activities would be dangerous as such an action would consolidate the international community's commitment to mitigating the effects of the illegal Barrier. In addition, Canada suggested that the donor community should use its position of leverage in order to lobby for Israel to rise to its obligations as the 'builder' of the Barrier, as obliged but IHL – a special reference was made to raising the awareness of the Israeli public.

Following a meeting with OCHA, Canada is concerned that pursuing wall mitigation efforts could be ineffective and/or inefficient in the long run. It was stressed that the international donor community must re-evaluate its short-term and long-term development commitments.

---

#### **Royal Danish Representative Office**

Although Denmark focuses the majority of its aid efforts towards budget support and projects in the Gaza Strip, Denmark recognizes the humanitarian need for wall mitigation projects in the West Bank.

There have been direct implications of the ICJ Opinion for wall mitigation projects implemented by Denmark. In August 2003, the mayor of Qalqilya approached Denmark and requested funding for a project to rehabilitate agricultural roads and a drainage system that had been affected by the construction of the Barrier. Denmark initially agreed to fund the project, however, following the ICJ Opinion they have been forced to reconsider the legality of the projects activities. Denmark has put the project on hold and is now seeking/waiting for advice from the international donor community<sup>50</sup>.

It was stressed that the ICJ Opinion has underlined the need for donors to consider the issue of IHL. Furthermore, it was noted that the ICJ Opinion has also generated the potential for change in the Israeli position and stressed the need for the GoI to take responsibility for its actions.

Denmark appeals to the international donor community to generate a strong donor response regarding Israel's obligations in mitigation the impact of the Barrier.

---

#### **Department for International Development, United Kingdom**

DFID has no position on the issue at present and currently is not funding any specific wall mitigation projects. Should DFID be approached to fund wall mitigation projects, the projects would be assessed on a case-by-case basis, taking into consideration the implications of the ICJ Opinion and MoP Guidelines. If further legal advice were required, DFID would first refer to the UK Embassy and Consul General, and then to the capital level. As yet, such a protocol (requesting legal aid from London) has not been established.

---

<sup>50</sup> Denmark has not sought legal advice from Copenhagen. Due to the nature of the Danish budget used for wall mitigation projects, a small grants facility specifically for humanitarian projects, most funding decisions are made locally.

### **European Commission Technical Assistance Office**

Prior to the ICJ Opinion, it was not clear if the EC would or should support and implement wall mitigation projects. In particular it was unclear if the EC would or should support infrastructure programmes in affected areas. The ICJ Opinion clarified a number of divergent opinions.

To date, the EC has decided not to support and implement infrastructure projects in affected areas on the basis that such projects have a tangible effect and are not transitional. However, the EC will support other activities, in particular temporary, humanitarian efforts, as well as advocacy projects and support to NGOs' legal action.

A few on-going projects have been directly affected by the construction of the Barrier and several projects had to be cancelled as a direct result of the construction of the Barrier, e.g. a water and sewage project was halted as technically it was no longer feasible or viable to continue. At the moment, the EC is not reviewing proposals on a project-by-project basis. In addition, the EC has not put in a call for wall mitigation project proposals.

The issue of wall mitigation was discussed at the EU Development Cooperation meeting<sup>51</sup>, when it was suggested that there could be a need for common EU guidelines to be agreed upon at the EU Heads of Mission's level.

---

### **The Italian Cooperation**

The Italian Cooperation's development policy is shaped by the European Common Position. In line with the MoP's Guidelines, Italian-funded wall mitigation projects focus on the Seam Zone. Funds have been given to Italian and Palestinian NGOs to undertake wall mitigation projects, with an emphasis on defining problems and seeking creative solutions. The Italian Cooperation also supports municipalities in four governorates affected by the Barrier.

It was noted, however, that there is a high risk that funding wall mitigation could support the "canonization" of Palestinians in the Seam Zone and it was emphasized that access to the rest of the West Bank is essential. International pressure should also focus on access through gates, both into and out of the Seam Zone.

---

### **Irish Representative Office**

Ireland stressed that all EU states accepted the judgment of the ICJ Opinion. To date, and in light of the ICJ Opinion, there have been no changes to the Irish position on wall mitigation projects<sup>52</sup>. Ireland stresses that it is favourably disposed, at its own discretion to support wall mitigation projects.

Ireland strongly supports the EU common position and will look to its partners to approach the issue in a simultaneous and consistent manner. It was stressed, however, that the ICJ Opinion is not going to affect Ireland's priorities of providing funding and assistance to projects to the Palestinian people - for the sake of the local peoples and the peace process, community based projects and poverty alleviation are, and will continue to be, supported by Ireland.

However, Ireland states that building infrastructure and roads supporting the Barrier would be "a step too far". Correspondingly, it was stressed that it is not the intention of Ireland to close

---

<sup>51</sup> EU Development Cooperation Meeting, 28<sup>th</sup> September 2004

<sup>52</sup> Please refer to p. 25 of the MoP Report The Annexation and Expansion Wall: Impacts and Mitigation Measures, June 2004.

#### Wall Mitigation:

#### Implications for Donors and Implementing Agencies Operating in Areas Affected by the Separation Barrier

its eyes to Israel's responsibility. To date, Ireland has not sought legal advice from the capital level.

---

#### **Embassy of Japan**

At the moment, Japan is only funding one wall mitigation project through UNICEF – this UNICEF project is implemented oPt-wide and (although active in Barrier-affected areas) is not specifically classified as a wall mitigation project.

Japan puts great emphasis on harmonising its work with the international community and would welcome a common LACC position on wall mitigation. In the meantime, however, Japan argues that the legal status is unclear and is hesitant to support mitigation projects.

Japan is hesitant to fund projects either near the Barrier or within the Seam Zone due to the destructive nature of recent Israeli army activities and reiterates the importance of the UN register of damages requested by the UN General Assembly.

The Japanese Ministry of Foreign Affairs released a statement on 10<sup>th</sup> July 2004 stating that Japan expects Israel to act in accordance with the ICJ Opinion, and that Japan will encourage both parties to take steps to fulfill their obligations under the Road Map.

---

#### **Representative Office of Germany**

Germany is not currently implementing any wall mitigation projects and would not consider funding anything that would legitimate the Barrier east of the Green Line. Although Germany recognises Israel's right to defend itself from terrorism, it is recognised that the Barrier, in its current route and projection, is illegal and exacerbates the deteriorating economic and humanitarian situation in the West Bank.

Germany noted that the ICJ is the highest judiciary body of the UN and the ICJ Opinion, therefore, although not legally binding, is very important and will be carefully considered. In terms of determining whether or not to undertake wall mitigation projects in the future, Germany will also refer to the MoP: Germany holds regular consultations and negotiations with the MoP to determine annual commitments.

Germany underlined the importance of understanding the Guidelines in terms of the MoP's Medium-Term Development Plan. It was also underlined that there is a need for all projects, and wall mitigation projects in particular, to be regulated on a central PA level, through the MoP.

---

#### **Representative Office of the Kingdom of the Netherlands**

The Netherlands is not implementing any wall mitigation projects at the moment. Furthermore, no on-going or planned projects have been affected by the construction of the Barrier.

Following the ICJ Opinion, The Netherlands seriously considered its implications and attempts to incorporate it in the criteria for funding decisions.<sup>53</sup> However, as The Netherlands works on an 'Annual Plan' basis, the ICJ Opinion has not been fully integrated or structurally fixed into the decisions process for 2004. The Netherlands confirms that the Opinion will definitely play a part in the 2005 Annual Plan and legal advice on the ICJ Opinion has already been sought from the capital.

---

<sup>53</sup> The Netherlands follows a list on positive and negative criteria for funding projects. The criteria assesses whether the project is in line with the Dutch development policy and objectives in the oPt (for example, humanitarian aid, negotiation support and community efforts for conflict resolution) as well as PA National Development Plan objectives.

#### Wall Mitigation:

#### Implications for Donors and Implementing Agencies Operating in Areas Affected by the Separation Barrier

The Netherlands supports the common EU position that the Separation Barrier is illegal and any support to the illegal situation of the Barrier should be carefully considered. Mitigation projects must not prejudice final status issues.

Recently, IHL has been given greater emphasis in funding decisions. However, given the serious humanitarian situation in areas affected by the Barrier, the international community must consider the needs of the affected Palestinian communities and act accordingly.

---

#### **Representative Office of Norway to the Palestinian Authority**

Norway follows a principally pragmatic approach to wall mitigation activities, although wall mitigation initiatives are not part of Norway's development priorities in the Palestinian territories. Norway has, however, conducted two wall mitigation projects, both of which aim to maintain a status quo of movement and livelihood activities in the West Bank area. Norway will not conduct any long-term wall mitigation projects of a permanent non-transitional nature (such as supporting the new roads construction and rehabilitation as suggested by the GoI).

With regard to the ICJ Opinion and the MoP Guidelines, Norway has not sought legal advice from the capital level. However, the ICJ Opinion has raised a number of issues, in particular: what implications does the advisory opinion of the ICJ Opinion have for international donors' activities in the Palestinian Territory?

---

#### **Consulate General of Sweden**

Sweden does not wish to get involved in wall mitigation projects and is distancing itself from such activities. However, Sweden continues to implement projects that are in line with their development priorities, whether in Barrier-affected areas or not (e.g.: strengthening commerce in Tulkarem and Qalqilya). It was also noted that the entire West Bank is affected by the Barrier and there has been a request to clarify exactly what is and isn't wall mitigation.

Sweden noted that the Barrier is a clear obstacle to development and directing further humanitarian aid into areas affected by the Barrier does not address the issue of occupation. It was suggested that wall mitigation initiatives support the presence of Barrier and the occupation of the West Bank and can only be justified or deemed acceptable if the international community takes simultaneous and complementary a political action.

It was suggested that development assistance cannot continue to replace the lack of political action of the international donor community. Correspondingly, SIDA has started to reconsider its strategy of development assistance to the Palestinian people.<sup>54</sup>

---

#### **Swiss Development Cooperation**

As the depositary of the Geneva Conventions, the Swiss government has a clear obligation to ensure that mitigation projects do not facilitate or accommodate the Government of Israel in consolidating the illegal situation created by the Barrier. Emergency and developmental assistance is based on careful legal and political considerations and is underlined by the importance of adhering to International Humanitarian Law.

Recognising the Barrier as another aspect of the occupation, the Swiss Development Cooperation is opposed to mitigation measures which consolidate the illegal situation created

---

<sup>54</sup> In a statement by Jan Bjerninger (Head of Sida Asia Department) and Johan Schaar (Head of Sida Humanitarian Department), the role of international donor assistance to the OPT has been questioned. In particular, it was stated that in light of the continued occupation of the Palestinian Territories and the construction of the Separation Barrier, the costs for the international community and Swedish development assistance have grown dramatically due to the restrictions and other direct obstacles to development operations.

#### Wall Mitigation:

#### Implications for Donors and Implementing Agencies Operating in Areas Affected by the Separation Barrier

by the Barrier. Emphasis is placed on the importance of the pivotal role of politics and a return to vision and strategy in defining developmental assistance in the West Bank and Gaza Strip.

---

#### **United Nations Development Programme**

UNDP currently is not conducting a wall mitigation programme and is not implementing any specific wall mitigation projects. There are, however, existing projects in the vicinity of the Barrier and these may be adjusted to meet the new needs that have arisen as a direct result of its construction. Furthermore, UNDP has not been approached to establish a wall mitigation programme and has not received any requests specifically for wall mitigation projects.

UNDP continually questions its projects' legitimacy with regard to International Humanitarian Law, and has considered the ICJ Opinion and takes the Opinion seriously. Furthermore, UNDP has sought legal advice from Harvard University. Meanwhile, a workshop on IHL was held and a number of UNDP staff took part in legal training.

Should UNDP conduct a wall mitigation project it would seek legal advice at a local level, although it was noted that, as an implementing agency, it is dependent on donor considerations.

To date, the ICJ Opinion has not affected any planned or on-going projects. In the future UNDP plans to implement a job creation programme (USAID funded) and will examine the project details accordingly.

There is a perceived contradiction between the ICJ Opinion and MoP Guidelines. UNDP noted that strictly adhering to the ICJ Opinion should be balanced against responding to the needs of a community. Furthermore, it was noted that wall mitigation should be seen in the framework of the occupation: it is difficult to evaluate the political impact of wall mitigation without evaluating overall donor assistance in the oPt.

---

#### **United Nations Relief and Works Agency for Palestine Refugees in the Near East**

UNRWA stressed that the ICJ's Opinion will not affect the Agency's regular relief and development programmes in the West Bank, providing education, health, social services and emergency relief to Palestinian refugees.

It was noted that the political implications of wall mitigation should be addressed on a political level, while humanitarian agencies should focus on alleviating the suffering on the ground. It was stressed that it would be difficult, indeed somewhat artificial, for humanitarian agencies to ignore Palestinian needs stemming from the construction of the Barrier and that political efforts must go hand-in-hand with humanitarian and developmental efforts. The absence of a political will to force the GoI to abide by its obligations must not be justification for limiting operations.

One of UNRWA's main concerns is the plight of refugees in the Seam Zone. UNRWA has focused its efforts on providing services to Palestinians in the Seam Zone to assist in Palestinian efforts to remain on their land. It was emphasized, however, that UNRWA has faced ongoing difficulties in accessing the Seam Zone, which has greatly hindered the Agency's ability to work effectively.

---

#### **United Nations Children's Fund, UNICEF**

UNICEF recognises the illegal status of the Barrier and is therefore unwilling to undertake any form of wall mitigation, which might consolidate its presence. Temporary, emergency mitigation measures, however, to alleviate the immediate hardships created by the construction of the Barrier will be considered on a case-by-case basis.

#### Wall Mitigation:

#### Implications for Donors and Implementing Agencies Operating in Areas Affected by the Separation Barrier

Mitigation projects currently being implemented include remedial education to ensure that school children, who cannot reach their schools on a regular basis, complete the academic year. Building an alternative school, however, will not be considered, as this would be seen as consolidating the presence of the Barrier.

UNICEF believes that specifically defining support in written Guidelines creates a policy with regard to the Barrier, which in turn is an implicit recognition of the structure.

---

#### World Bank

In terms of the Bank's policy in light of the ICJ Opinion, the Bank will continue to take account of the PA's economic development priorities as articulated in its annual planning process, as well as the MoP's Guidelines for Wall Mitigation, while remaining cognizant of the PA's approach, which may include a screening process, to approving projects that affect the situation created by the Barrier, the Seam Zone and settlements. The PA and PLO have played prominent roles in presenting the case against the Barrier to the ICJ, and the PA is now well placed to develop an approach that properly balances the humanitarian needs of the Palestinian population with the possible long-term affects in regards to any situations considered to be illegal in light of the IJC Advisory Opinion.

---

#### Note:

With regards to the legal implications of the ICJ Opinion on donor activities in Barrier-affected areas, only one donor, **The Netherlands**, has requested legal advice from the capital level. Most donor states have preferred to seek guidance at the local level – **Ireland, Belgium, DFID (UK) and Japan** stated that if legal advice were needed, each donor state would refer to their respective Consul Generals and/or local legal specialists before contacting capital officials. Others have taken different important steps, such as **UNDP** who has sought legal advice from Harvard University and has held a legal training workshop for local staff.

### **Annex III – Suggested Elements for Bilateral Demarches Calling on the GoI to Comply with its Obligations under IHL<sup>55</sup>**

We remain deeply concerned at the GoI's non-compliance with its obligations under IHL, and recognise our role in ensuring that that GoI comply with these obligations. Under IHL, the GoI has four legal obligations:

1. Obligations pertaining to the illegal nature of the actions;
2. Obligation to repair the damages inflicted on the civilian population;
3. Obligation to assist the civilian population in need;
4. Obligation to address the issue of restitution and displacement.

General Assembly resolution (A/ES-10/L.18/Rev.1) of 20th July 2004 demands that Israel, the occupying power, comply with its legal obligations as mentioned in the ICJ Advisory Opinion.

#### **1. Obligations pertaining to the illegal nature of the actions**

The ICJ found the Barrier, in its present route and projection, and with the set of rules and regulations that govern its construction and operation, constitutes “a severe violation” of International Human Rights and Humanitarian Law. In reaching this conclusion, the Court rejected Israel's claim that the wall was a measure of self-defense pursuant to Article 51 of the UN Charter on the grounds the threat to Israel did not emanate from a foreign state, but from territory under the control of the Government of Israel.

The ICJ noted that the route of the Barrier was designed to include Israeli settlements. In doing so it found that the Israeli settlements in the Occupied Territories are illegal pursuant to Security Council Resolutions 452 (1979) and 465 (1980), as well as Article 49(6) of the Fourth Geneva Convention, which prohibits an Occupying Power from transferring parts of its own civilian population into occupied territories.

#### **2. Obligation to repair the damages inflicted on the civilian population**

The ICJ found Israel has an obligation to make reparations for damage caused by the construction of the Barrier. Reparations include the return of land and other immovable property seized, or to compensate the owners for damages if the property cannot be returned.

#### **3. Obligation to assist the civilian population in need**

While we stress our continued commitment to assist the Palestinian population in the West Bank, it is underlined that the GoI has a legal obligation to assist the civilian population in need. This entails:

1. Direct assistance: Article 39 of the Fourth Geneva Convention obliges an Occupying Power to ensure the livelihood of residents of occupied territories where security grounds prevent them from earning a living and,
2. Cooperation with the international community to ensure that we can work effectively and efficiently. While recognizing the GoI's legitimate security concerns we note that the indiscriminate application of closure measures, effectively preventing the international community to provide humanitarian relief, is unacceptable and in violation of Israel's obligations under humanitarian law.

The Israeli Authorities have installed a network of 55 gates in the Barrier and a system of special green permits to control movement through the Barrier. However, these have proved inadequate to ensure normal daily life for these Palestinians.

---

<sup>55</sup> Please note that these elements are suggestions only and are not necessarily agreed by all LACC members.

**Wall Mitigation:**

**Implications for Donors and Implementing Agencies Operating in Areas Affected by the Separation Barrier**

**4. Obligation to address the issue of restitution and displacement**

Article 52 of the Hague Regulations requires compensation to owners when property is seized for reasons of military necessity.

**Specific actions:**

1. Advocate for the full implementation of the ICJ Opinion and GA Resolution.
2. Request that the GoI dismantle the Barrier or move it completely to the Green Line.
3. Issue public statements underlining the illegal nature of the Barrier.
4. Prosecute violators on the basis of universal jurisdiction.
5. Call for passage of a Security Council Resolution containing specific enforcement measures to be taken failing GoI compliance.
6. Request the GoI to fund and facilitate wall mitigation efforts, as obliged by IHL.
7. Present the GoI with bills for donor projects damaged by Barrier-related construction.
8. Request that the GoI restitute property requisitioned for its construction.

## **Annex IV – List of Reference Maps**

**Map 1:** Projections of land and population located between the Barrier and Green Line (source: United Nations Office for the Coordination of Humanitarian Affairs, July 2004).

**Map 2:** Mitigation Measures in the Agricultural Sector (source: The Palestinian National Authority, MoP, Geographic Center and Technical Support, May 2004).

**Map 3:** Mitigation Measures in the Education Sector (source: The Palestinian Authority, Ministry of Planning, Geographic Center and Technical Support, May 2004).

**Map 4:** Mitigation Measures in the Health Sector (source: The Palestinian Authority, Ministry of Planning, Geographic Center and Technical Support, May 2004).

**Map 5:** Mitigation Measures in the Infrastructure Sector (source: The Palestinian Authority, Ministry of Planning, Geographic Center and Technical Support, May 2004).

**Map 6:** Mitigation Measures in the Water Sector (source: The Palestinian Authority, Ministry of Planning, Geographic Center and Technical Support, May 2004).

**Map 7:** Mitigation Measures in the Welfare Sector (source: The Palestinian Authority, Ministry of Planning, Geographic Center and Technical Support, May 2004).