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**UNITED NATIONS INTERNATIONAL MEETING ON THE IMPACT OF THE  
CONSTRUCTION OF THE WALL IN THE OCCUPIED PALESTINIAN  
TERRITORY INCLUDING IN AND AROUND EAST JERUSALEM**

United Nations Office at Geneva

15 and 16 April 2004

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**I. INTRODUCTION**

**A. Organization of the Meeting**

The United Nations International Meeting on the Impact of the Construction of the Wall in the Occupied Palestinian Territory, including in and around East Jerusalem, was convened by the Committee on the Exercise of the Inalienable Rights of the Palestinian People as mandated by General Assembly resolutions 58/18 and 58/19 of 3 December 2003. The Meeting was held in Geneva from 15 to 16 April 2004.

**B. Participation**

The Meeting was attended by representatives of 66 Governments, the Holy See, Palestine, five intergovernmental organizations, the International Committee of the Red Cross (ICRC), the Inter-Parliamentary Union, 12 United Nations bodies, as well as representatives of 29 civil society organizations (NGOs). Fourteen experts made presentations in three plenary meetings.

The Committee on the Exercise of the Inalienable Rights of the Palestinian People was represented by a delegation comprising Paul Badji (Senegal), Chairman; Orlando Requeijo Gual (Cuba), Vice-Chairman; Rawan A.G. Farhâdi (Afghanistan), Vice-Chairman; Victor Camilleri (Malta), Rapporteur; and Nasser Al-Kidwa (Palestine).

Invitations to participate in the Meeting were extended to eminent personalities, internationally renowned experts, including Israelis and Palestinians, representatives of the Member States of the United Nations and Observers, parliamentarians, representatives of the United Nations system and other intergovernmental organizations, the academic community, representatives of civil society organizations, as well as the media. A number of experts were invited to make presentations at the Meeting.

The following Governments were represented at the Meeting: Algeria, Azerbaijan, Armenia, Australia, Bahrain, Bangladesh, Barbados, Belgium, Bosnia and Herzegovina, Brazil, Brunei Darussalam, Bulgaria, China, Croatia, Cuba, Cyprus, Democratic People's Republic of Korea, Egypt, Finland, France, Germany, Hungary, India, Indonesia, Ireland, Jordan, Kenya, Lebanon, Luxembourg, Madagascar, Malaysia, Malta, Mauritania, Mexico, Morocco, Myanmar, Namibia, Netherlands, Oman, Pakistan, Panama, Paraguay, Peru, Philippines, Portugal, Qatar, Republic of Korea, Romania, Russian Federation, Saudi Arabia, Senegal, Serbia and Montenegro, Sri Lanka, Sudan, Switzerland, Syrian Arab Republic, Thailand, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Arab Emirates, Uruguay, Uzbekistan, Viet Nam and Yemen.

The following organizations, agencies and other entities of the United Nations system participated in the Meeting: Food and Agriculture Organization of the United Nations (FAO); International Labour Organization (ILO); Office for the Coordination of Humanitarian Affairs (OCHA); United Nations Conference on Trade and Development (UNCTAD); United Nations Development Programme (UNDP); United Nations Environment Programme (UNEP); United Nations Human Settlements Programme (UN-Habitat); Office of the United Nations High Commissioner for Refugees (UNHCR); Office of the United Nations High Commissioner for Human Rights (UNHCHR); United Nations Relief and Works Agency for Palestine Refugees (UNRWA); World Food Programme (WFP); World Health Organization (WHO).

The following intergovernmental organizations were represented at the Meeting: African Union (AU), Council of the European Union, the European Commission, the League of Arab States (LAS) and the Organization of the Islamic Conference (OIC).

The following civil society organizations participated as observers in the Meeting: Afro-Asian Peoples' Solidarity Organization (AAPSO); Association of World Citizens; Association France-Palestine Solidarité (AFPS); Association internationale des universités du troisième âge (AIUTA); Comité The following civil society organizations participated as observers in the Meeting: Afro-Asian Peoples' Solidarity Organization (AAPSO); Association of World Citizens; Association France-Palestine Solidarité (AFPS); Association internationale des universités du troisième âge (AIUTA); Comité international pour le respect et l'application de la Charte Africaine des droits de l'homme; Comité pour une Paix Juste au Proche-Orient; Commission of the Churches on International Affairs of the World Council of Churches (WCC); European Coordinating Committee for NGOs on the Question of Palestine (ECCP); European Parliament; Federación de Asociaciones de Defensa y Promoción de los Derechos Humanos; Greek National Youth Council; Health, Development, Information and Policy Institute (HDIP); Human Rights Advocates; International Centre for Migration and Health (ICMH); International Commission of Jurists (ICJ); International Institute for Sustainable Development (IISD); International Mandate; International Young Catholic Students; Islamic Relief; Labour Middle East Council; Middle East Peace Foundation; NAJDEH Soziale Hilfsorganisation für die Palästinenser e.V.; Neda Institute for Scientific Political Research; Netherlands Palestine Committee; Oxford Public Interest Lawyers, University of Oxford (OXPIL); Palestinian Independent Commission for Citizens' Rights; School of Oriental and African Studies of the University of London (SOAS); World Federation of Democratic Youth; and World Vision International.

The following dignitaries and experts presented papers: Mustafa Barghouti, President, Health, Development, Information and Policy Institute; Dalit Baum, Coalition of Women for a Just Peace; Victor de Currea-Lugo, Legal Analyst, Palestinian Environmental NGO Network (PENGON); Hussein H. Hassouna, Ambassador of the League of Arab States to the United States; Nicholas Howen, Secretary General, International Commission of Jurists; Fatina Jaouni, Director, Department of Permanent Status Issues, Palestinian Authority Ministry of Planning; Nabeel Kassis, PA Minister of Planning; John B. Quigley, Professor of International Law, Moritz College of Law, Ohio State University; Ben Saul, Coordinator, Oxford Public Interest Lawyers (OXPIL), University of Oxford; Iain Scobbie, Professor of International Law, School of Oriental and African Studies, University of London; Michael Sfard, Lawyer for HaMoked, Center for the Defence of the Individual; Jean Ziegler, Special Rapporteur of the Commission on Human Rights on the right to food.

### C. Agenda

The Meeting aimed at mobilizing the international community against the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem, that the Government of Israel continued despite a broad opposition by the world community. The Committee was of the view that the far-reaching humanitarian, political, economic and social implications of the construction of the wall warranted further attention of all actors of the international community. The Meeting was to provide an opportunity to detail the impact of the wall on the situation on the ground, assess the scope of the project and its profound effect on the Palestinian population, and discuss the Palestinian and Israeli reaction to it, as well as the response of the international community.

At the opening session and during the course of the three plenary discussions, the participants addressed the following issues:

- (a) The construction of the wall: devastating the lives and future of the Palestinian population;
- (b) The construction of the wall: violating international law;
- (c) The construction of the wall: rendering the two-State solution physically impossible.

### D. Opening of the Meeting

At the opening session, a statement was made on behalf of the Secretary-General of the United Nations by his representative Sergei Ordzhonikidze, Director-General of the United Nations Office at Geneva. Statements were also made by Paul Badji, Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People; Nasser Al-Kidwa, Permanent Observer of Palestine to the United Nations. Fatina Jaouni, Director of the Permanent Status Issues Department in the Palestinian Authority Ministry of Planning, made a presentation. The representatives of Viet Nam, Malaysia (on behalf of the Non-Aligned Movement), the Syrian Arab Republic, Mexico, Bangladesh, Algeria, Pakistan, Egypt, India, Namibia, Morocco, the Democratic People's Republic of Korea, Indonesia and the Russian Federation also took the floor, as did speakers for the Organization of the Islamic Conference and the League of Arab States.

In his message, **Kofi Annan**, Secretary-General of the United Nations, said the situation in the Occupied Palestinian Territory and Israel was grave, as violence continued unabated, with extrajudicial assassinations, suicide bombings, and threats of even more aggressive retaliation. He expressed concern over the Palestinian humanitarian plight – the appalling conditions in which many ordinary Palestinians lived – and over the safety and stability of an already volatile region.

The Secretary-General pointed out that he had repeatedly expressed his concerns over the route of the barrier, and over its actual and potential impact on the humanitarian situation of Palestinian civilians, particularly those who might be placed between the barrier and the Green Line and thus be deprived of full access to lands, livelihoods and services, as well as over the implications for a future Palestinian State. He drew attention to the

detailed report on the barrier that he had issued in November 2003, and stressed that he closely followed the situation, awaiting the outcome of the deliberations by the International Court of Justice.

The Secretary-General urged the parties to return to the negotiating table, expressing his belief that attempts by either side to achieve political goals or security through measures that injured the other were ultimately bound to fail, even if they seemed to produce short-term gains. He reiterated his belief that over the long term, the only real hope lay in realizing the vision, widely supported by the international community, of two States – Israel and Palestine – living side by side in peace, within secure and recognized borders. The Secretary-General stressed that it remained incumbent on all concerned, himself included, to do everything in their power to see that the parties implemented the Quartet's Road Map, which both have accepted, and to resume meaningful movement towards a comprehensive, just and lasting settlement of the question of Palestine, based on Security Council resolutions 242 (1967), 338 (1973), 1397 (2002) and 1515 (2003).

**Paul Badji**, Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People, said that the very specific subject of the Meeting had to be put in proper context, taking into account the plight of the Palestinian people that for decades had been a story of oppression and despair. Palestinians living under occupation had been relentlessly forced into a ghetto-like existence, seeing their dream of living a normal life in an independent State of their own slipping farther away. Violence had continued unabated, claiming lives on both sides. In a new and far-reaching development, the Israeli Cabinet had decided to build a wall, ostensibly to ensure Israel's security, more specifically to protect it against acts of violence committed by Palestinians. The construction of this illegal structure, standing on Palestinian land annexed by force for this purpose and, in many sections, running deep inside the West Bank, made the creation of a real and viable Palestinian State "a very unlikely proposition". The international community had expressed opposition to the building of the wall, as contradicting international law. The Committee, in particular, was extremely disturbed by the alarming socio-economic and humanitarian consequences of the construction of the wall.

Mr. Badji said that the level of violence and bitterness between Palestinians and Israelis was at a very dangerous point. Military raids and the use of disproportionate force had become a frequent occurrence and the continued practice of extrajudicial killings, including the recent assassination of the Hamas spiritual leader Sheikh Ahmed Yassin, was a gross violation of international humanitarian law. Mr. Badji stressed that the Committee had repeatedly condemned acts of violence, including suicide bombings. These horrific terrorist acts, taking aim at innocent civilians, could never be justified. They harmed the cause of peace and undermined chances for the establishment of a Palestinian State. They also took the two peoples further apart. Mr. Badji lamented the growing death toll that since the start of the intifada had reached over 3,200 Palestinians and almost 1,000 Israelis. He emphasized the particular vulnerability of Palestinian women and children, citing the statistics that from September 2000 to February 2004, Israeli soldiers had killed some 200 Palestinian women, and close to 500 children and teenagers, half of them under the age of fifteen.

Mr. Badji drew attention to the continued dependence of Palestinians, especially those living in refugee camps, on international assistance. Their plight had been further exacerbated by the restrictions imposed by the Israeli authorities on the movement by international humanitarian workers who had been frequently prevented from carrying out their vitally important duties. The occupying Power must fully and unconditionally comply with norms of international law and ensure that the basic needs of the Palestinian population, including access to food, are met. So far, Israel had failed to meet these obligations.

Mr. Badji reiterated the long-maintained position of the Committee that the United Nations had permanent responsibility with respect to all aspects of the question of Palestine until the matter was resolved in a satisfactory manner, and its belief that the pursuit of a comprehensive, just and lasting peace in the Middle East could be achieved through the implementation of the Quartet's Road Map, based on United Nations resolutions. The international community's role in reawakening the peace process, he stressed, was as critical and as urgent as ever.

Mr. Badji said the primary goal of the Meeting was to put in sharp focus the magnitude of the problem facing the Palestinian people and the dangers to the peace process posed by the construction of the wall. It was also intended to contribute to promoting a renewed and sustained dialogue between the Israelis and the Palestinians. Mr. Badji expressed hope that the Meeting would also sensitize international public opinion to ways in which the international community could steer the parties out of the present stalemate and towards realizing the vision of two States that would live in peace and security.

**Nasser Al-Kidwa**, Permanent Observer of Palestine to the United Nations in New York, said the Meeting should be valued as an important event given the fact that the construction of the wall posed a central threat to efforts to achieve peace in the Middle East. There has been a common international position that the wall contradicted international law, that it was destroying the life and future of the Palestinian people and was making the two-State solution practically impossible.

Mr. Al-Kidwa clarified that the wall was in fact a regime comprising complex physical structures such as towers, walls, electric fences, trenches, dirt mounds, with a combined width of 30 to 60 metres, and administrative arrangements and practices, among them the so-called closed zones. He pointed out the clear correlation of the wall and its route with the existing illegal settlements in the Occupied Palestinian Territory as well as with water resources there. This made the wall a major colonial project representing a grave war crime against Palestinian people. Mr. Al-Kidwa expressed appreciation for the position of the international community, as expressed in United Nations resolutions and reports on the matter, and in particular the States and organizations that had participated, actively and positively, in the proceedings of the International Court of Justice. He also expressed his confidence in the Court and his belief that the Court would issue an advisory opinion based on international law, and that the opinion would then have to be implemented, to be pursued and transformed into a specific political and practical position, first by the requesting organ of the advisory opinion (i.e. the General Assembly), and then other organs of the United Nations, in accordance with their rights and duties under the Charter of the United Nations.

Referring to the exchange of letters between the United States of America and Israel the day before as a regrettable negative and dangerous development, Mr. Al-Kidwa pointed out that it clearly contradicted international law and violated the principle of achieving a final settlement through negotiations, especially with regard to final status issues, as well as the need to avoid pre-empting the results of those negotiations, either through actions on the ground or through political positions. It undermined the Road Map, the Quartet and the US role as a mediator or the co-sponsor of the peace process. Mr. Al-Kidwa stressed that what was being proposed for Gaza still meant that there would be no international borders, no Palestinian sovereignty on the airspace or territorial waters and, worse still, that Israel would maintain the right to repeated attacks inside Gaza, practically transforming Gaza into a big prison and amounting to another collective punishment for more than 1.2 million Palestinians.

Speaking about Israel's right to defend itself, Mr. Al-Kidwa pointed out that Israel was not a passive, law-abiding State that was subject to external military attacks, but an occupying Power that had been consistently violating all relevant provisions of international law, particularly the Fourth Geneva Convention, and had transformed its occupation into an active colonial phenomenon, negating the national existence and the rights of the Palestinian people. The right to self-defence became words used to justify the illegal use of disproportionate force against the Palestinian people, and to continue killing, injuring Palestinians and destroying their homes, their villages, their towns, their refugee camps. It was obvious that the Palestinian people needed the support of the international community, the protection of international law and the participation of the United Nations. Mr. Al-Kidwa said that despite recent negative development he hoped there would be a resumption of peace efforts leading to the two States living side-by-side in peace, community and prosperity.

A PowerPoint presentation, prepared by the PA Ministry of Planning and introduced by **Fatima Jaouni**, Director of the Permanent Status Issues Department in the Ministry, described the nature and the route of the wall and its effects on the local and regional level, focusing primarily on the territorial impact. It showed how the wall significantly deviated from the Green Line. The presentation illustrated how the wall incorporated Israeli

settlements, including areas reserved for future settlement expansion. Israeli military authorities declared the areas between the wall and the Green Line closed zones, imposing serious restrictions on the Palestinian population there. The wall, as planned at the moment, would separate the northern Palestinian population centres in the West Bank from the southern ones, and, most importantly, it would isolate East Jerusalem from the rest of the West Bank. East Jerusalem would also have no room for future development, being closed from all sides by the wall, the construction of which had started from the north, east and south of the city. The presentation illustrated how the wall in Jerusalem deviated from the Green Line, weaving in and out of Palestinian neighbourhoods, separating Palestinians from Palestinians and creating enclaves.

A representative of **Viet Nam** said the Palestinian-Israel conflict was one of the most protracted in modern history. The Middle East had gone through five wars with disastrous aftermaths, with innocent citizens of the countries in the region becoming victims. The United Nations Security Council and the General Assembly had adopted many resolutions aimed at ending the conflict; the international community – the League of Arab States, the Non-Aligned Movement, the Organization of the Islamic Conference and others - undertook numerous peace initiatives. It was regrettable that the outcomes of such initiatives and efforts had fallen short of our expectations. Consequently, people in the region continued to live in fear. As a nation that suffered untold sacrifices and hardships for more than 30 years in its struggle for national independence and national reunification, the Vietnamese people understood what the Palestinian people was grappling with in its struggle for their legitimate national rights. Viet Nam fully supported the Palestinian people's struggle for their fundamental rights, the right to self-determination and the right to establish an independent Palestinian State in their homeland. Viet Nam was of a view that because of the current complicated situation in the region it was imperative to stop violence, resume talks and restart the peace process. It welcomed and supported initiatives and efforts by the international community and the parties concerned to remove obstacles and resume peace talks with a view to reaching a just and lasting solution to the Palestine-Israel conflict on the basis of Security Council resolutions 242 (1967), 338 (1973), 1397 (2002) and 1515 (2003), as well as agreements reached by all parties concerned.

A representative of **the Organization of the Islamic Conference** said the Meeting reflected the commitment and determination of the international community to continue its work to enable the Palestinian people to recover their national inalienable rights, enshrined in many resolutions. It was seeing Israel violating all international resolutions and conventions and, despite international indignation and condemnation, continuing its encirclement of the Palestinian people and subjecting it to daily military actions, humiliation and harassment. Various special United Nations rapporteurs, among others, had condemned these actions. The construction of the wall, devouring Palestinian land, was one of the latest examples of Israeli attempts at illegal territorial expansion. The construction of the wall violated two central principles of international law, namely, the prohibition of acquisition of territory by force and the principle of the right of peoples to self-determination. In addition, there was a whole range of civic, economic, cultural and social rights being flouted, including the right to life, to access to health care, the right to movement, the right to work, the right to respect of privacy and family life, among others. There is no doubt that the construction of the wall within the Occupied Territory, by force and based on confiscation of Palestinian land and expansion of illegal settlements, was a grave violation of the Charter of the United Nations and the Fourth Geneva Convention. It was also an obstacle to the peace process because it undermined the essential elements of the Road Map. This apartheid wall only encouraged hatred and discouraged security for both parties; security could only come through the construction of peace, respect for the rights of the Palestinian people, for the fundamental principles of international law, for United Nations resolutions, and through the end of the occupation.

A representative of **Malaysia**, speaking on behalf of the Non-Aligned Movement, said the Movement fully supported the important work undertaken by the Committee, as an organ of the General Assembly mandated to deal with the question of Palestine. The Movement was committed to assisting the Committee in its continuing efforts to support all initiatives aimed at resolving the question of Palestine in all its aspects until the inalienable rights of the Palestinian people were fully realized. In this respect, the meeting was an important and timely initiative. At the two special sessions of the General Assembly in 2003, the Non-Aligned Movement had unequivocally stated its position on the Israeli wall: that it was illegal, that it must be dismantled, and that its further construction should be immediately discontinued. The representative of Malaysia reiterated the position of the Movement as follows: the wall, sections of which were constructed deep inside the Occupied Palestinian Territory, departed from the Armistice Line of 1949, and was therefore illegal under international law; the wall violated the Fourth Geneva Convention in that it involved the illegal de facto annexation of massive areas of Palestinian land and resources, and further depredation of human rights among Palestinians, resulting in dire humanitarian consequences for an already deprived people. The wall presented a major obstacle to the implementation of the Road Map and to the two-State solution. What the Non-Aligned Movement was saying all along, was confirmed by the conclusions and observations in the report by the Secretary-General of 24 November 2003. The main beneficiaries of the wall were Israeli settlers: 54 settlements and 143,000 settlers, or 53 per cent of the West Bank settlement population, would find themselves on the Israeli side of the wall. The Special Rapporteur on the situation of human rights in the Palestinian territories, John Dugard, had stated that the construction of the wall violated important norms of international humanitarian law, which prohibited the annexation of occupied territory, the establishment of settlements, confiscation of private land and the forcible transfer of people. He warned that the wall might create a new generation of refugees and displaced persons. Serious efforts should be undertaken to achieve a two-State solution that would ensure the creation of a sovereign, independent and viable State of Palestine. The Non-Aligned Movement remained fearful of the inevitable damaging and dangerous consequences if the wall were to continue along its planned route.

A representative of **the League of Arab States** said the wall constructed by Israel in the Palestinian Territory was a racist wall, crowning all other Israeli initiatives aimed at annexing the Palestinian territory in one way or another. Israel had grown accustomed since 1948 to imposing faits accomplis on the international community under the flimsiest of pretexts. Israel, by establishing this wall, de facto and by force, annexed huge areas of Palestinian land, deprived Palestinians of their resources and destroyed any hope that a sovereign and viable Palestinian State could be established. Israel thus ran counter to the Charter of the United Nations which prohibited the resort to the use of force and approved the right to self-determination. It violated international humanitarian law, particularly the Fourth Geneva Convention, which constituted a war crime. It also violated the civil, economic, political, social and cultural rights of the Palestinian people. The construction of the wall, without a doubt, changed the demographic composition of the occupied population by dislocating Palestinians and also by isolating them from the rest of the population by creating bantustans, reminiscent of the apartheid practices of the former South African regime, prohibited by the Convention against racial discrimination. It was also depriving Palestinian workers of their livelihoods. There was no choice but to condemn the building of this wall, and urge Israel to stop the construction and destroy the parts that had been already built. Israel should also return to the negotiating table without any procrastination.

A representative of **the Syrian Arab Republic** said the path taken by the wall away from the 1967 line and deep inside the Palestinian land clearly showed the true intentions of Israel to establish facts on the ground, from which to plan further expansion in accordance with Prime Minister Sharon's "colonial mindset", as he described it in his memoirs. It would put the Palestinian people in enclaves, making impossible the establishment of an independent and viable Palestinian State. Israel was de facto annexing large parts of the West Bank through the construction of the wall and was thus violating the most basic principles of international law, which prohibited annexation of land by force, as well as violating the provisions of Security Council resolution 242 (1967), which was the basis of the Middle East peace process. Some 600,000 Palestinians, or more than a quarter of the West Bank population, would be displaced and dispossessed because of the wall and Israel would fill the land with new settlers, in violation of the Fourth Geneva Convention. The path of the wall showed that Israel was trying to entrench its annexation of East Jerusalem in violation of Security Council resolution 478 (1980), which declared that annexation null and void. Israel, through the construction of the wall, wanted to pre-empt the conclusions of the peace negotiations by establishing facts on the ground and by the de facto annexation of a large group of settlements established in the Occupied Palestinian Territory, where more than 200,000 settlers lived. Those practices constituted war crimes and the international community must act to stop them. The Israeli Government was a Government of war which wanted to kill the peace process. While justifying its

actions by a desire to fight terrorism and provide security, it was actually terrorizing the Palestinian population. The Syrian Arab Republic regretted deeply and deplored the fact that one of the co-sponsors of the peace process recently had vetoed a draft Security Council resolution, tabled by Syria on behalf of the Arab countries and co-sponsored by Malaysia, Guinea and Pakistan on 14 October 2003 in document S/2003/980. The failure of the Security Council to act in the matter had had a negative effect on the deteriorating situation in the region and diminished the chances of reaching peace. The construction of the wall would only lead to further violence and confrontation, and to repression and oppression of the Palestinians. It was a stumbling block on the path to peace.

A representative of **Mexico** said that on the Middle East conflict, and in particular on the Israeli-Palestinian conflict, Mexico had maintained a position that had been consistent, balanced and, above all, attached to the international legal order, in particular to full compliance with international humanitarian law. Mexico considered that a peaceful solution in the Middle East, including the question of Palestine, required recognition, on the one hand, of the right of the Palestinian people to self-determination and to constitute itself as a sovereign State, and on the other hand, of the right of all the countries in the region to live in peace within secure and internationally recognized borders. The legal basis for the resolution of the conflict was contained in Security Council resolutions 242 (1967), 338 (1973) and 1397 (2002), which were enforceable and were binding. In this conflict, both in the Security Council and in the General Assembly, Mexico supported draft resolutions that considered the construction of the wall in the Occupied Territory as illegal. Mexico also supported the request for an advisory opinion from the International Court of Justice. Mexico condemned violence in the Middle East, because it undermined the peace efforts, and requested, once again, that the Government of Israel and the Palestinian Authority denounce violence and prevent its escalation. Mexico particularly condemned all terrorist acts, whatever their motivation. Mexico maintained the position of denouncing the expansion of Israeli settlements and their unquestionable illegality and of the need to dismantle them. It also denounced and condemned the disproportionate use of force, extrajudicial executions, collective punishment, demolitions, deportations and threats against the President of the Palestinian Authority. Mexico paid special attention to the full applicability in all circumstances of the Fourth Geneva Convention in the territories occupied by Israel. Israel must assume full responsibility in accordance with international humanitarian law. Mexico fully supported the efforts made by the Secretary-General in the Middle East, as well as the Road Map and the vision of two States contained in resolutions 1397 (2002) and 1515 (2003), the framework of the 1991 Madrid conference and the need to resolve the problem of the Palestinian refugees, including their right to return. In this respect, Mexico considered that Israel's plan to withdraw unilaterally from the Gaza Strip and some parts of the West Bank should be construed only as a first step in the implementation of the peace plan contained in the Quartet's Road Map, and reiterated its strong conviction in accordance with the fundamental principles of the international law that the occupation of territories by force did not grant any right whatsoever. Mexico appealed to the international community to intensify its efforts to re-launch the peace process in the Middle East.

A representative of **Bangladesh** said a just and lasting peace in the Middle East must be based on the fundamental principles of the Charter of the United Nations and general international law; the forcible occupation of Palestinian territory was illegal, as was the attempted annexation of territory through the use of force. The construction of the wall undermined the application of these fundamental principles and represented the move by Israel to annex and permanently occupy the Palestinian Territory. The construction of the wall represented a breach of the Fourth Geneva Convention. It effectively deprived the Palestinian people of enjoyment of their property, access to employment and livelihood, and access to natural resources necessary for human survival. The construction of the wall negated the inalienable rights of the Palestinian people, affirmed in a number of resolutions, including the right of the Palestinian refugees to return to their native land. The just and viable peace in the Middle East could not be achieved until the legitimate rights of the Palestinian people were recognized and Israel ended the occupation. The situation in the Occupied Palestinian Territory called for immediate international intervention. The international community and, in particular, countries that were in a position to exert influence on Israel, must make all efforts to stop Israel from continuing with atrocities and the construction of the wall. Furthermore, that wall that had already been constructed must be dismantled. Bangladesh reaffirmed its total support for the legitimate and inalienable right of the Palestinian people to a sovereign and independent homeland and called for immediate resumption of the peace process.

A representative of **Algeria** said the separation wall was nothing new, as Israel for four decades had experimented with different approaches and had never renounced its policies based on exclusion, separation and rejection of the Palestinian entity. The latest step was this "apartheid wall," the new violation of the international law that involved annexation of the territory, which aimed to imprison 300,000 people in 81 enclaves, who would face the bureaucratic labyrinth if they wanted to get permits. This ugly wall, twice the height of the Berlin wall, was illegal since it was a continuation of illegal policies, that is of occupation and annexation of territory by force. In the unanimous view of lawyers who had spoken before the International Court of Justice, it was a clear violation of human rights and international humanitarian law because it involved a series of violations: the principle of collective punishment and an entire people being imprisoned, wrongful expropriation by an occupying Power, demolition of houses as well as violations of social rights, such as the right to education, to health care, to work, to social protection care and freedom of movement. The results of the first stage of this apartheid wall were catastrophic for the Palestinian population. The gradual "strangling" of the population by the presence of the wall was another form of violence, along with curfews and harassment at checkpoints, and part of Israel's insidious war on the Palestinian economy. For years the international community had observed the methodical destruction of the economic fabric of the Occupied Palestinian Territory, where agriculture was the main factor. The destruction of the farmland and uprooting of over a million trees over the past two years had affected the employment opportunities for the population. The damage to the agricultural sector during the second intifada was estimated at over US\$800 million, with \$200 million due to uprooting of trees, some of which were over 100 years old and had historical and cultural significance as well. More than 16,000 hectares of land had been confiscated in the first phase of the construction of the wall. The construction of the wall threatened social ties and the rural way of life. A forced move to salaried work would only increase Palestinians' dependence. Algeria joined Malaysia in supporting the work of the Committee.

A representative of **Pakistan** said the construction of the wall by Israel, justified by security needs, was in direct contravention of international humanitarian law, the Charter of the United Nations and the Fourth Geneva Convention. It was aimed at the annexation of Palestinian land and the further suffocation of the Palestinian people. If the wall were being built just for security, it would have followed the Green Line. However, the construction of the wall on Palestinian territory would result in de facto confiscation of large tracts of Palestinian land. The wall had grave political, economic and social implications for the Palestinian people and the future State of Palestine. It violated the right to self-determination of the Palestinian people, as sanctified by United Nations resolutions. Special Rapporteur John Dugard had pointed out that the amputation of the Palestinian territory by the wall seriously interfered with the right to self-determination of the Palestinian people as it substantially reduced the size of the self-determination unit within which that right was to be exercised. It also restricted the freedom of movement of Palestinians and hindered access to education and health care as well as access to commerce, agriculture and water in the West Bank. The construction of the separation wall by Israel had no justification whatsoever under international law, as the Fourth Geneva Convention did not allow the occupying Power to permanently annex all or part of the Occupied Territory. In the past, the Security Council had declared Israel's annexation of Palestinian land, including East Jerusalem, "null and void." By application of the same rationale, the international community must forcefully reject the illegal construction of the separation wall. Israel should be urged to immediately discontinue the construction of the separation barrier and commit itself to the Road Map.

A representative of **Egypt** said Israel's construction of the separation wall was a flagrant violation of its contractual obligations under international humanitarian law and the Fourth Geneva Convention, which applied to all of the Occupied Palestinian Territory, including East Jerusalem. It was also obvious that the political, economic and social implications of the wall for the Palestinian people would be negative. The international community had not shouldered its responsibility under article 1 of the Fourth Geneva Convention which committed it to respect the provisions of the Convention and

ensure that everyone else did. Moreover, under articles 146 to 148 of the Convention, all measures should be taken to punish flagrant violations of the Convention. Among the basic rights being violated were the rights to access to health care and education. International law also forbade annexation of the occupied land. One could not take as a pretext the right to self-defence, because international law was very specific in stipulating the framework for such practices under control of the Security Council. The Egyptian delegation appealed to the international community to shoulder its contractual and legal obligations and step up its commitments given those serious violations of international law and human rights. The Meeting should mobilize the will of the international community to achieve that objective and to affirm the values of civilization, facing the choice between a world with respect for justice and truth, governed by law and respect for the international community, and a world governed by the law of the jungle.

A representative of **India** said the Meeting was taking place against the backdrop of the deteriorating security situation in the Middle East. India's consistent and unwavering support of the Palestinian cause included support of resolutions 242 (1967), 338 (1973), 1397 (2002) and 1515 (2003) that envisaged withdrawal from the Occupied Territory and the establishment of two States, Israel and Palestine, living within secure and recognized borders. India also complemented various efforts by the international community, such as the Quartet's Road Map and the Arab peace plan initiated by Saudi Arabia, to stabilize the situation on the ground and initiate negotiations towards a long-lasting political solution. India believed there was no military solution to that political problem and renewed its call to put an end to the vicious cycle of violence and counter-violence. The wall in the Occupied Territory would add to the hardships and suffering of the Palestinians, as it had added to complexities and uncertainties.

A representative of **Namibia** said that his country, as a member of the Non-Aligned Movement, aligned itself with the statement made by the representative of Malaysia, who spoke on behalf of the Non-Aligned Movement. The escalation of the deadly conflict in the Middle East was caused and aggravated by the continued illegal occupation of the Palestinian Territory by Israel. Under the pretext of security for its people and the so-called "war on terrorism", the Israeli Government was constructing the separation wall in the Occupied Palestinian Territory, including in and around East Jerusalem. The construction of the wall was a departure from the Green Line and had gone deep inside the Palestinian Territory in violation of the relevant provision of the Charter of the United Nations and international law. By erecting this wall, Israel was prejudicing the final peace negotiations for a two-State solution as envisaged in the Road Map. If completed, the wall would place hundreds of thousands of Palestinians on the Israeli side of the wall, which would pose not only additional security concerns, but also demographic problems. What was more appalling was that Israel's illegal activities and unilateral actions, which should be roundly condemned by the international community, were carried out with the blessing of some powerful countries who were also acting as brokers of the peace process. It had to be asked how these countries could be honest brokers if they were openly siding with Israel. Having experienced the brutality of the apartheid regime of South Africa, the Namibian people shared a great deal of solidarity with the Palestinian people in their quest for the exercise of their inalienable right to self-determination, including the right of return of Palestine refugees to their homeland. The case of Namibia had been in the International Court of Justice since the 1950s, and it was only in 1971 that the Court had ruled the occupation of Namibia by apartheid South Africa illegal. This ruling had not only political, legal and moral impact at the national and international level, but it also emerged as the turning point in the struggle of the Namibian people for freedom and independence. This pronouncement by the Court enhanced the legitimacy of the struggle against occupation and yielded a wide range of international support and solidarity with the people of Namibia. It was the fervent hope of Namibia that the same support would be accorded to the Palestinian people. It was worth mentioning, however, that it was because of the intensification of the struggle within Namibia itself, coupled with political and diplomatic pressure at the international level, that the apartheid colonialism in Namibia had been brought to an end, and Namibia had finally gained independence in 1990 through a democratic process provided by the United Nations. The parallel was made to emphasize that a joint and intensified effort must be made by the Palestinian people and, in particular, by the international community, to exert more pressure on Israel and compel it to reverse its illegal activities in the Occupied Palestinian Territory and adhere to the provisions of international law, fulfil its obligations under the Charter of the United Nations, and withdraw unconditionally from the Occupied Palestinian Territory. This would pave the way for a permanent settlement via a two-State solution. In conclusion, the representative of Namibia reaffirmed his country's unwavering support for the just cause of the Palestinian people.

A representative of **Morocco** said that her country was deeply concerned about the consequences of the building of the separation wall by the occupying Israeli forces in the Occupied Palestinian Territory. The building was illegal from the point of view of international law and a violation of the Fourth Geneva Convention, since it implied the acquisition by force of Palestinian land and resources, displacement of the civilian population and therefore an absolute denial of the most elementary human rights of the Palestinian people. The illegal building of the wall by Israel would undeniably be prejudicial to the peace process in the Middle East and to all the steps undertaken to ensure that stability and security existed in the region. It undermined the vision of an independent Palestinian State and constituted a major obstacle to the Road Map. Morocco reaffirmed in this respect that the just and lasting solution to the Middle East problems could only be attained on the basis of international legality and not through a policy of fait accompli and unilateral measures imposed by the Israeli occupying forces. Morocco called for firm commitment on the part of the international community to promote the gradual and irreversible implementation of the Road Map, so as to guarantee to the Palestinian people recognition of their legitimate rights, first and foremost, to the establishment of an independent viable State with its capital in Al-Quds Al-Sharif and with secure, internationally recognized borders, living alongside Israel. Morocco reiterated its attachment to the resumption of the negotiating process, the only way to put an end to the conflict and interrupt the vicious circle of violence and counter-violence. It supported and encouraged any sincere initiative able to contribute to building a just and durable peace through the building of bridges to bring people closer together instead of separation walls between peoples and regions.

A representative of **the Democratic People's Republic of Korea** said that his delegation viewed the large-scale construction by Israel of the so-called security wall in the self-governed area of the Palestinian Authority as the most serious issue in the conflict between Arab countries and Israel. It was causing great concern not only among the countries in the region but in the rest of the world as well. The construction of the wall by Israel under the pretext of combating terrorism was totally illegal. First, it violated international law, creating artificial divisions of one nation. Due to this separation and a formulation of the so-called closed zones, the Palestinian people could hardly make their way to their farmland and would be deprived of their right to residence in their own territory. Second, it also violated human rights, destroying entire lives of the Palestinian people. The wall would reduce the cultivated land and strictly restrict the Palestinians from their education, culture and traditions, separating Palestinians from Palestinians. It was also an unfortunate tragedy that the illegal behaviour was backed by some countries, ignoring the voice of the international community. That kind of behaviour should be summarily condemned and all the problems in the region should be solved without further delay. The Democratic People's Republic of Korea supported the initiative of Palestine and other Arab countries at the United Nations to put the question to the International Court of Justice and strongly demanded that Israel immediately stop the construction of the illegal wall in the Palestinian Territory, including in and around East Jerusalem.

A representative of **Indonesia** said his country remained deeply concerned about the situation in the Occupied Territory, going from crisis to crisis, which were becoming only bigger and more unmanageable. While in the past such crises had culminated in inter-State wars, current international concern increasingly focused on a wide-scale societal collapse and attrition in the territories. That concern was motivated entirely by the hard facts of the deteriorating situation on the ground and could not be dismissed simply as political posturing. Various regional and international forums had over the years taken up the issue annually and conveyed the concern of the international community, and on occasion even adopted recommendations, all to no effect. As the situation unfolded, the aggression, not to mention the occupation, continued. One recent example of aggression was the killing of Sheikh Yassin the month before which had prompted the General Assembly to hold a special session. Indonesia deplored this act, which clearly violated international law and ethics and could not but aggravate the situation in the territories. Indonesia seconded the view taken by the Non-Aligned

Movement that the wall was illegal; it must be dismantled and its construction halted. Indonesia was also convinced of its thoroughly damaging consequences on future negotiations and the securing of the peace by making the creation of an independent, viable and contiguous Palestinian State more difficult. The building of the wall already was creating huge difficulties and preventing Palestinian people from earning a living. The further isolation the wall imposed on the Occupied Palestinian Territory could only result in greater poverty for the population. Terrorism could not be a justifying reason for building the wall. The Indonesian delegation submitted that a solution must be found without delay to break the current pattern of Israeli expansionist tactics. Such a solution must perforce be linked to peace talks and therefore efforts must resume to reopen such talks.

A representative of the **Russian Federation** said it was unfortunate that the violence between Israelis and Palestinians had continued, going to extremes in the past three years. The reasons for the situation were clear to the international community: continuing occupation of the Palestinian lands, the impossibility for the Palestinian people for this and other reasons to realize their natural right to self-determination and to create their own sovereign State. Unless those key issues were resolved, the seedbed of tension in the Middle East would lead to further confrontation and it was hard to imagine sustainable development and prosperity for Palestinians, Israelis and other people in the region. Peace could not be established contrary to the will of the people and the use of force would only lead to a deadlock. Israelis should come to realize that the occupation of Palestinian lands was damaging for Israel and did not improve its security, while Palestinians should realize that terrorism only discredited their righteous demands and delayed the prospect of their gaining real sovereignty. On 21 October 2003, the General Assembly had adopted resolution ES-10/13 condemning Israel's actions. Russia, like most States Members of the United Nations had voted for the resolution, guided by the assumption that the priority task was the implementation of the Road Map drawn up by the Quartet of international mediators and accepted by both parties. Russia thought that Israelis and Palestinians should both give up actions that contradicted the letter and spirit of the programme of action, endorsed by the entire international community and currently without an alternative. The building of a security barrier had been twice discussed in the Security Council the previous year, at which time Russia had voted in favour of condemning the construction of the wall, which was a counterproductive step undermining the efforts to overcome the Israeli-Palestinian confrontation. It was not necessary to use the entire arsenal of political means to secure implementation of the decisions which had already been taken, that is to stop building the barrier and start implementing the Road Map. Russia, as a co-sponsor of the Middle East peace process and a Quartet participant had prepared a written statement putting forth its position on the building of the wall to the International Court of Justice. That document pointed out the adverse effects of building the security fence in the Palestinian Territory on a political settlement. At the same time, it noted that whatever the Court's response to the request from the General Assembly, it was important that its decision should not create any additional difficulties for the negotiating process and the continuation of efforts to normalize the situation. Russia was convinced that bilateral talks between Israel and the Palestinian Authority, aimed at an early resumption of the implementation of the Road Map, were the sole effective means for achieving a peaceful and just settlement of the Palestinian-Israeli conflict. The Road Map was an adequate response to the situation. Without going into details that could change, the main target was a gradual advance to peace and the creation of a Palestinian State coexisting with Israel in peace and security, through negotiations and concerted reciprocating steps that remained fully significant. The general shape for such a settlement had been outlined by the Security Council in its resolutions 242 (1967), 338 (1973), 1397 (2002) and 1515 (2003). Once reached, the two States, Israel and Palestine, would coexist in safe and internationally recognized borders. As for the ultimate status of the Palestinian Territory in the hotbed of the Palestine-Israeli conflict – borders, the future of Jewish settlements, the fate of Palestinian refugees and their progeny, the problem of the Holy Places of Judaism, Christianity and Islam and the status of Jerusalem – those issues, as stated in the Road Map, should be resolved through concerted, just and realistic methods, taking into account the political and religious problems of both parties. Informal plans for an Israeli-Palestinian settlement, having emerged after the Road Map was presented, including the Geneva Accords, contained many specific proposals concerning the ultimate status of the Palestinian Territory that could be used in negotiations between the parties, with the Road Map proposing the start of such talks.

The Permanent Representative of Senegal to the United Nations Office at Geneva, **Ousmane Camara**, a member of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories, read out a message from the Special Committee's President which stated that the Meeting was a crucial step that would allow the international community to assess the dangerous developments since the time Israeli authorities had laid down the first stone to build the wall. The international community should be able to study this issue in order to find a reasonable solution and present some sensible recommendations to the authorities concerned. The Special Committee had submitted a report in November 2003 to the United Nations General Assembly, in which it explained the situation with the construction of the wall. In its report, the Special Committee, like other international organs, underlined that the wall did not follow the Armistice Lines of 1949, but crossed the West Bank, separating 95,000 Palestinians living in 27 villages and towns from the rest of the West Bank. The Special Committee estimated that about 200,000 inhabitants of the West Bank, distributed over 65 villages and towns, would be directly affected by the existence of the wall. It created pockets that isolated whole towns; supplies of drinking water were disrupted; many agricultural lands were destroyed. This endangered the livelihoods of tens of thousands of Palestinians and endangered economic life and social and economic services. The Special Committee had underlined that the most fertile land was being destroyed in the first phase of the project. According to Palestinian sources, the wall would result in the annexation of 55 per cent of the West Bank, including the Jordan Valley, as well as areas rich in water. The wall would contain 98 per cent of Jewish colonies and more than 400,000 Palestinians, half of whom did not enjoy the status of Israeli residents. Some 50 Palestinian enclaves and islands were appearing, disrupting the territorial integrity of the land that constituted a future Palestinian State.

Since its creation in 1968, the Special Committee had not been allowed to visit the Occupied Palestinian Territory yet it was still pursuing dialogue with the State of Israel. In view of the gravity of the situation, the time had come for the Special Committee to be allowed to visit the occupied territories to view the human rights situation first-hand and to hear the opinions and the views of the Israeli Government on this issue. The Committee studied the submission by the Secretary-General to the International Court of Justice, as well as recent reports issued by the United Nations Relief and Works Agency which addressed the effects of the wall in Jerusalem and how it affected the refugee population. The Special Committee also shared the opinion of the Special Rapporteur when he said the wall interfered with the right of the Palestinian people to self-determination. Violence in the occupied territories would not end unless violence by the Israeli military ceased. The Special Committee encouraged the international community to redouble its efforts to ensure the effective implementation of the Road Map.

**George Khoury**, of the Programme of Assistance to the Palestinian People of the United Nations Development Programme in Jerusalem, made a presentation highlighting the impact of the wall on certain aspects of Palestinian life and the response of UNDP through the Programme of assistance to the Palestinian people. If completed, 14.9 per cent of Palestinians would be trapped between the wall and the Green Line, 22.6 per cent of Palestinians would be separated from their land by the wall, 13.5 per cent of the West Bank would lie between the wall and the Green Line, and 43.5 per cent of the West Bank would be de facto annexed by Israel. Already severe economic and social conditions in the communities affected by the wall would deteriorate even further due to the construction.

Once completed, the wall would negatively affect the education of 170,000 students. Due to accessibility problems, 2,898 students from three governorates would not be able to complete their 2003-2004 scholastic year. An increase in student drop-out rates was already evident, especially among female students. Classrooms in 96 per cent of the schools affected by the wall would be overcrowded, as the number of schools would become insufficient (in the Northern Governorates, only four communities out of the 14 isolated in enclaves west of the wall had schools). The wall already seriously affected access to health care for 152,229 people (both isolated between the wall and the Green Line and isolated in enclaves). The number of health care centres was insufficient as 114,652 out of 152,229 isolated people (19,108 families) had no access whatsoever to hospitals or



any major health centres, and 73 per cent of existing health centres were inadequately equipped. The wall had a severe impact on natural resources. To date, 103,678 trees had been uprooted, 18,745 dunums of agricultural land destroyed and 35,700 meters of irrigation networks damaged along the route of the wall. Thirty one artesian wells had been isolated from their owners and beneficiaries. Access to thousands of acres of agricultural land was restricted or completely prohibited. Farmers were becoming unable to market agricultural produce. On average, the costs of agricultural production had increased by 38 per cent. The basic municipal infrastructure suffered from serious deficiencies. In the Northern Governorates, 40 per cent of the communities affected by the wall had no water networks and depended on alternative sources, which were costly and often did not meet health standards. Existing networks required serious maintenance. The majority of affected communities lacked any garbage disposal schemes, either burning their garbage or disposing of it in open fields surrounding the community. Inadequate and deteriorated road networks required expansion and needed serious maintenance.

In response to those challenges, UNDP had launched a comprehensive intervention programme designed to address the emergency humanitarian and developmental needs of the communities most affected by the construction of the separation wall. Objectives of UNDP/PAPP intervention included alleviating social and economic hardships and improving the livelihoods of Palestinians living in locations most affected by the construction of the wall. Project developmental outputs included: to discourage the migration or displacement of the Palestinian population isolated by the separation wall; to decrease the levels of poverty in affected communities; to provide the population of the isolated communities with access to basic health, educational and municipal infrastructure services; to improve sustainable food security for affected communities through land development and strengthening agricultural infrastructure; and to build the capacities of the local authorities and civil society institutions to better respond to the emerging needs of the population.

## II. SUMMARY OF THE PLENARIES

### Plenary I

#### **The Construction of the Wall: Devastating the Lives and Future of the Palestinian Population**

The first plenary, entitled "The Construction of the Wall: Devastating the Lives and Future of the Palestinian Population," comprised presentations by four experts, who looked at the scope of the construction and the humanitarian aspect of its impact on the Palestinian people, Palestinian and Israeli voices raised against the wall, and the reaction of the international community. The session was chaired by Ambassador Rawan Farhâdi of Afghanistan.

**Nabeel Kassis**, Minister of Planning of the Palestinian Authority, addressing the humanitarian impact of Israel's separation wall, said that while it was presented by the Government of Israel as a response to a security threat, it was in fact an overt plan of expansion into and annexation of Palestinian territory. Its immediate effect was to add to the existing measures undertaken within the Israeli policy of closure established throughout the Occupied Palestinian Territory to control the movement of Palestinians and expand Israel's authority. The physical wall complex was integrated into a larger system of barriers and obstacles that in the past three and a half years of the intifada had created severe hardships for the Palestinian people across the West Bank, including East Jerusalem, and the Gaza Strip. The separation wall had added to the difficulties already faced by the health, education, agriculture and social welfare sectors, as well as by private businesses. While agricultural gates existed or were planned along the wall, their management and operation had rendered them unreliable. Shortcomings in the operation of the gates, a presumably simple procedure, seemed more an act of malice than one of ineptitude. Palestinians forced to travel through these gates complained of "erratic operating hours" and "arbitrary procedures." As a result, the delays associated with travel through the gates had had a significant impact on the daily routines of students, farmers, workers, and, more generally, on the livelihoods of all inhabitants behind the separation wall. An even greater problem existed for those residing between the Green Line and the wall. The establishment of the closed zone and an accompanying permit system required Palestinians residing there to obtain permits to live in their own homes, remain on their land and to travel. Palestinians not residing in the closed zone but whose land, business or work was situated inside the closed zone were also required to obtain permits. Distribution of permits by Israeli authorities had been inconsistent, unpredictable and unreliable, and they had only been provided for periods of one, three, six or 12 months.

As a result of the actual or planned construction from the village of Jalboun to Mas-ha and in the "Jerusalem Envelope", 26 primary health-care clinics had been or would be wedged between the Green Line and the separation wall, or isolated by the depth barriers. The wall's planned trajectory south and to the west of Bethlehem and encompassing the Hebron Governorate would ensure that 10 Ministry of Health clinics, one UNRWA clinic and NGO clinics would be isolated between the Green Line and the separation wall. Where the wall had been completed, it was found that it was creating the fragmentation of local health-care networks and referral systems and increasing inaccessibility to rapid and effective emergency care. Mitigation against the negative consequences of the separation wall had been considered by the Ministry of Health, in addition to local and international health NGOs, largely building upon the lessons learned by the health sector throughout three-and-a half years of intifada.

Turning to education, Mr. Kassis said the Palestinian Authority Ministry of Education had been struggling trying to facilitate school operation when students and teachers faced limited and unpredictable access to schools in areas impacted by the separation wall. In the Jerusalem Governorate, access problems were exacerbated by the existence of a separate blue ID card, and schools within the municipal boundary were now obliged to find 152 teachers who held such an ID. Moreover, once the construction of the Jerusalem Envelope was completed, a teacher living in Al-Ram, for example, whose school was located in Al-Jib literally across the street, would be obliged to cross the separation wall twice. To offset the impacts of the separation wall on education, the Ministry of Education was using several approaches, including reorganization of the teachers' work locations, with some 15,000 out of approximately 34,000 teachers in the Palestinian school system transferred to areas closer to their places of residence. Another measure involved the provision of study sheets for the students to lessen the damage done by time spent away from the classroom. Nevertheless, movement restrictions created by the separation wall led to disruption of the academic year.

In the agricultural sector, Mr. Kassis said the Palestinian Authority Ministry of Agriculture had estimated that, as a result of the construction of the separation wall, losses in agricultural production would total \$28 million per year. Movement restrictions would adversely affect market prices, while land requisitions would reduce pasture and range land. Obtaining permits for farm vehicles remained difficult. Access for farmers remained the greatest problem, resulting in considerable losses of produce and adding fears that farmers would ultimately lose title to their land if they could not sustain its cultivation and productive use. The Ministry of Agriculture was attempting to offset the agricultural impacts of the separation wall by providing cash aid to affected farmers, while local and international NGOs sought to maximize available plots of land for future use through land reclamation. As in all other sectors, these mitigation strategies required donor funds for their implementation. These funds, while welcome, represented an opportunity lost, supporting emergency humanitarian relief instead of being used for development.

Speaking of water use and management, Mr. Kassis pointed out that the construction of the wall from Zububa to Mas-ha had isolated 32 groundwater wells between the Green Line and the separation wall and generated concerns that the loss of land in the area of recharge for the West Bank's western aquifer, shared with Israel, might reduce Palestinian allocations and deal a serious blow to the West Bank's water resources. The construction of the wall also damaged the water infrastructure, with the Palestinian Agricultural Relief Committee estimating that more than 30,000



meters of irrigation networks and water pipelines had been destroyed. Planned construction of the separation wall in the south-west and southern West Bank based on the October 2003 map would not affect wells, although local springs in the "Gush Etzion" settlement block would be isolated between the Green Line and the future separation wall. Mitigation of the impact of the wall had been limited to reconstruction of damaged water infrastructure systems or to upgrading existing systems to cope with new demands, as the creation of new wells was forbidden without the approval of the occupying Power.

Mr. Kassis further said that the construction of the wall would make the Palestinian private sector less competitive and that trade and investment would suffer as a direct result. While the exact economic impact of the wall had yet to be quantified, the private sector was under no illusion as to the wall's devastating consequences for economic enterprise across the West Bank, specifically in agricultural, stone and marble, tourism, and manufacturing activities. Individual cases of hardship had increased as a result of the wall's presence in the West Bank. The World Food Programme was currently distributing food packages to approximately 25,000 beneficiaries as part of its "Food for work" and "Food for training" programmes in villages across the Occupied Palestinian Territory. Mr. Kassis further said that the construction of the wall would make the Palestinian private sector less competitive and that trade and investment would suffer as a direct result. While the exact economic impact of the wall had yet to be quantified, the private sector was under no illusion as to the wall's devastating consequences for economic enterprise across the West Bank, specifically in agricultural, stone and marble, tourism, and manufacturing activities. Individual cases of hardship had increased as a result of the wall's presence in the West Bank. The World Food Programme was currently distributing food packages to approximately 25,000 beneficiaries as part of its "Food for work" and "Food for training" programmes in villages across the Occupied Palestinian Territory. While access to the Israeli labour market steadily diminished throughout the intifada, access was totally lost for those residing in the Qalqilya, Tulkarm and Jenin governorates upon completion of the separation wall there. This had led to population displacement across the Green Line of those possessing Israeli IDs and seeking employment opportunities. The construction of the wall had also led to restrictions on social activities, changes to employment and loss of family income that was sufficient to deal with needs. According to the Palestinian Bureau of Statistics statistics, the income in 52.7 per cent of households surveyed in the localities affected by the separation wall was not sufficient to meet household needs, as opposed to just 15.1 per cent prior to the construction of the wall.

Mr. Kassis stressed that despite the Palestinian Authority demand that the Government of Israel moved any wall constructed beyond the Green Line, there were still Palestinian children separated from their schools, Palestinian women separated from their birthing facilities and Palestinian farmers separated from their land. On the humanitarian level, Israel's separation wall represented a complete rejection of the collective right of the Palestinian people to live with dignity and with access to basic human rights. The factual presentation might mask a strong emotion and deep resentment that Palestinians had not only regarding the construction of the wall, but also regarding the way the matter had been dealt with in general. Despite the strong condemnation of the wall by the General Assembly, the humanitarian impact of the wall was being dealt with as if it were a natural catastrophe, an act of God, when it was a wanton act of man, an aggression that must be stopped, and that could be stopped if the international community put sufficient resolve behind its efforts to confront what was potentially harmful to world peace. The plans of the Government of Israel in relation to the separation wall were not security plans, but plans for annexation of the Palestinian land and territorial expansion. What we were dealing with was not just an appeasement, which was an act of omission, but a collusion, which was an act of commission. All nations were called upon to deal with this issue with a great sense of responsibility, since what was at stake was not only Middle East peace, but also world peace.

**Mustafa Barghouti**, President of the Health, Development, Information and Policy Institute and Chairman of the Union of Palestinian Medical Relief Committees, said the recent declaration by President Bush and Prime Minister Sharon reminded the international community that the building of the wall was part of a long-running strategy aimed at destroying the possibility of coexistence and aimed at annexation of all of Palestine by the Israeli Government. To put things in perspective, Mr. Barghouti said that in 1947 Palestinians had been given the right to establish an independent State over 45 per cent of historic Palestine, by the same United Nations resolution that gave Israel its legitimacy. But Israel was established over 78 per cent of the land of Palestine. In 1988, Palestinians had accepted a very painful and terrible compromise, agreeing to have a State on the West Bank and Gaza Strip, or only 22 per cent of historic land of Palestine, thinking that this would bring peace to the region. To their great surprise this was not accepted by Israel. Prime Minister Barak, in his plan of 2000, would still annex a big part of the West Bank, including huge settlements areas, and that was the reason why the Camp David negotiations had failed. And as if that annexation were not enough, Prime Minister Sharon had come up with his own plan, the same plan that was unfortunately endorsed yesterday. That plan would turn the Palestinian Territory into cantons, bantustans and simply ghettos. It would annex more than 50 per cent of the remaining land of Palestine, which would kill the opportunity and possibility of a two-State solution.

Mr. Barghouti used a PowerPoint presentation to provide statistics and information on the socio-economic effects of the construction of the wall. He stressed that the wall was just one instrument used by Israel in its strategy, the checkpoints being another. In the first year of the intifada there were 120; then Mitchell came and they numbered 240; then Tenet came with his plan and there were 330 checkpoints; then there was Zinni's visit, and it they numbered 420; then there was the Road Map and the number became 763, showing that there was no connection between peace efforts and the situation on the ground. The pictures showed that the wall now built was not just a wall, but also an instrument of constant destruction of people's ability to live. This was not a wall for security, but a wall to force Palestinians to leave, a wall used practically for ethnic cleansing. It was destroying the ability of people to study, to receive health care and to live in peace.

More than 800,000 Palestinians would be affected as a result of the construction of the wall, Mr. Barghouti said. Moreover, some 249,000 Palestinian residents had been cut off completely from the West Bank as a result of the wall. To see the future of the wall, it was enough to see what was going on in the Gaza Strip, which the Israeli Government was transforming into a prison. In the south of the Strip since 2001, Israel had engaged in a process of destruction of homes to allow for the construction of the wall and today the Israeli army was destroying five to six houses on a daily basis and was destroying any possibility of a Palestinian State.

Mr. Barghouti said that the declaration made in Washington on 14 April violated international law and United Nations resolutions and also assaulted international legitimacy, since not only did it legitimize illegal settlements, it also legitimized the annexation of land by force. It had destroyed the Road Map and if the possibility and potential of a two-State solution was destroyed, if the Palestinian State could not be established, the Palestinians would be left with just one option: a binational democratic State in which everybody should live equally. All of this proved once again that the Palestinian-Israeli conflict was not a negotiations dispute; it had never been a negotiations dispute. It was a struggle of people for national liberation, for freedom and self-determination, for their right to dignity and right to control their own life.

**Jean Ziegler**, Special Rapporteur of the Commission on Human Rights, on the right to food, briefed the meeting on the report he had submitted to the

Commission on his visit to the Occupied Palestinian Territory, which had been undertaken to determine whether there was compliance with the right to food since 1967. As a preliminary remark, Mr. Ziegler said that he was the first official rapporteur of the Commission on Human Rights to be received by the Israeli authorities. Until then, the Government of Israel had refused to accept a visit from a rapporteur, and even the United Nations High Commissioner for Human Rights had not been able to go to Israel. Mr. Ziegler said that behind the “visible tragedy” caused by individual terrorism from the resistance and state terrorism on the part of the Government of Israel, there was an “invisible tragedy,” or humanitarian crisis, which was gradually destroying Palestinian society. FAO, UNICEF and World Bank figures suggested that 65 per cent of households in the Occupied Palestinian Territory ate only once a day; 68 per cent of the entire Palestinian population depended on international assistance; 22 per cent of children under five years of age were seriously undernourished and 15.6 per cent of children under the age of five suffered from serious anaemia, to such an extent that their cerebral development was called into question. The humanitarian crisis was extremely serious and was worsening. Those figures, the Special Rapporteur said, while relating to an old agricultural society and extremely fertile areas, were comparable to figures reflecting the situation in Chad and Bangladesh, where there were problems with climate, soil policies and land erosion. In the Occupied Palestinian Territory, Here the humanitarian crisis was forced onto people living on very fertile land.

While researching for his report, the Special Rapporteur met with Israeli officials and travelled to Tel Aviv to speak with the military generals responsible for the occupied Territory; none of the figures he presented were questioned by the generals yet they said they could not do anything about the situation. The occupation was a direct cause of the destruction of the once-flourishing Palestinian economy, and a direct cause of the humanitarian crisis. The Palestinian land was constantly being eaten away, not just for settlement expansion, but also to create security zones around them. Collective punishment was illegal and, more importantly, inhumane. As far as the wall was concerned, Mr. Ziegler said he had little to add to what had already been said in previous presentations. If the wall were completed, it would make it completely impossible for the Palestinian sovereign State, in those conditions and in those five bantustans cut off from each other, to be able to meet the requirements of the Commission on Human Rights concerning the right to food.

In conclusion, Mr. Ziegler pointed out that as a Special Rapporteur he was not a United Nations official and was completely independent. As a professor and as a citizen, he thus raised the question of what to do with the Israeli Government, which, to quote Ambassador Mohammad Dembri, a key figure in the human rights community in Geneva, had put itself outside the law, not accepting and not applying the relevant resolutions, thus becoming an outlaw. As a European, he stressed that 67 per cent of Israeli exports went to 15 EU countries and that there was an association agreement between Israel and the EU. Mr. Ziegler said that on his return from the Occupied Palestinian Territory, he wrote to the President of the European Commission, saying there was an ongoing, voluntary, serious breach of the human right to food, and hadn’t been many other breaches of human rights as well; he also asked why the association agreement hadn’t been suspended, when its text mentioned the obligation of the State partner to respect human rights on the territory under its control.

**Dalit Baum**, a peace activist with the Coalition of Women for a Just Peace, based in Tel Aviv, said the women’s peace movement was comprised of many different groups engaged in many different actions. The Coalition consisted of nine organizations, bringing together thousands of women and men, dedicated to equality, social justice and peace inside Israel, bringing an end to the occupation and the oppression of the Palestinian people, bringing women and women’s issues to the negotiations table and to the forefront of the discussions, uprooting racism and militarization from the Israeli society. Ms. Baum gave a multimedia presentation of her movement’s activities which described the wall as just one part of an elaborate system of dissection of the Palestinian people. That system also included checkpoints, and its main part was gates because that was where the population movement could be controlled, where a permit could or could not be given to a person, which was the beginning of total control over Palestinian lives.

In further describing Palestinian society over the previous few years, Ms. Baum said it was astonishing how Palestinians had been able to sustain themselves in the face of growing poverty and oppression. The main reason for that was a strong system of mutual help and an extended family support system. That system was currently threatened by the construction of the wall. Traditionally, women were the ones who not only took care of the children, disabled, elderly and the ill, but also organized locally to sustain their communities and villages. And currently they were organizing to confront the wall.

Ms. Baum said a growing number of Israelis from all sectors of society, opposed the construction of the wall and added that her movement was a grassroots, non-partisan movement. Several demonstrations had taken place throughout the region and in many cases unarmed protesters had been shot by Israeli soldiers with live fire.

During the question and answer session that followed, Silas C. Cerqueira of Portugal, representing the Afro-Asian People’s Solidarity Organization (AAPSO) asked what the future of the Occupied Territory was in view of the declarations made on 14 April and the position of the United States Government as a co-sponsor of the Road Map, and what civil society could do about it. He also criticized the EU for keeping silent in that meeting, after abstaining in the General Assembly on the issue of the wall. In response, Nabeel Kassis, Minister of Planning of the Palestinian Authority said the Palestinian Authority did not have to accept the statement made by the United States as an authoritative statement on international law. It was committed to the United Nations resolutions and although that statement was more than disappointing, it did not diminish resolve of Palestinians to continue working to end the occupation and establish an independent State.

Mr. Barghouti agreed that things had changed since the previous day and drew attention to the role of the Quartet and its members’ reaction to the United States action, and to the state of the Road Map in the new circumstances. He added that the peace process was not a goal in itself; it was a means to achieve peace and should not be a substitute for peace. Stressing that the time was over for trying to equate between the oppressed and the oppressor, the occupier and the occupied, he said it was the Palestinians’ right to demand a strong stand in defence of international law because at stake was not only the future of the Israelis and Palestinians, but the value of international rules and regulations and justice. Perhaps the time had come to declare sanctions against Israel, not only for occupying the Palestinian Territory but also for destroying any potential for peaceful process and for having created an apartheid system.

Ms. Baum, stressing that in her response to a question she was speaking for herself and not on behalf of any organization, said that to Israeli peace activists it had been obvious for a long time that no American president or any international organization would come and save them from what was going on in the Occupied Palestinian Territory and Israel. Therefore it was their obligation to organize internally and find new allies within Israel to reach a new social treaty for pulling out of the Occupied Territory and to think of new solutions for a Jewish State. It was very hard for Israelis because they knew that a big change was necessary. The role of the peace camp was to build coalitions within the Israeli society and to try and reach public opinion to show the connection between what Israelis were doing to Palestinians and what was happening within Israeli society: the economics

of Israeli society, the racism inside of Israeli society, the oppression of other minorities within Israeli society, and so on. To effect real change, real pressure from the outside was needed and it was also the role of the Israelis to ask for that, she added.

Professor John Quigley of Ohio State University said the letter of Mr. Bush to Mr. Sharon was very troubling on a number of issues, in particular the issue of displaced Palestinians and the question of borders. The statement had also directly mentioned the wall and suggested that as long as it was characterized as a security barrier and was not permanent, it was permissible to proceed with its construction, saying nothing negative about it. Mr. Quigley also raised the question of the legal responsibility of the United States as in international law, a State that assists an illegal act is itself responsible. Article 16 of the Draft Articles on State Responsibility, drafted by the International Law Commission states: "A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if that State does so with knowledge of the circumstances of the internationally wrongful act and the act would be internationally wrongful if committed by that State." Mr. Quigley said that the United States was putting itself close to the line where its own legal responsibility could be in question.

## Plenary II

### The Construction of the Wall – Violating International Law

The second plenary, entitled "The Construction of the Wall – Violating International Law," comprised presentations by six experts on the following sub-themes: application of international law; annexation of Palestinian land: the wall, settlements, occupied East Jerusalem; violations of the inalienable rights of the Palestinian people; violations of international humanitarian law and human rights law. Ambassador Orlando Requeijo Gual of Cuba served as Chairman and moderated a discussion and a question-and-answer session.

The Secretary-General of the International Commission of Jurists (ICJ), **Nick Howen**, said it was particularly appropriate to discuss the human rights implications of the separation barrier when the United Nations Commission on Human Rights was meeting in the same building. For the International Commission of Jurists this was part of 30 years of work for the respect of international human rights and humanitarian law in the Occupied Territory. It was the then Secretary General of the ICJ, Niall MacDermot, who stressed in 1979 speaking about the Occupied Territory: "As a non-governmental organization devoted to the promotion of the rule of law, we are a non-political organisation, though we are well aware that most of what we do or say is likely to have political repercussions. However, we seek to address problems as jurists, from a standpoint of legal norms." The separation barrier was clearly an issue of intense political debate, and an issue to which legal norms clearly applied. The ICJ recognized that Israel clearly had the right and the duty to protect the security of its citizens and to defend its territory. At the same time, the construction of the barrier, even if undertaken as an anti-terrorism measure did not exist in a legal vacuum or legal no man's land. It was also a legal issue and more specifically a human rights issue of major proportion. Moreover, its political legitimacy should flow from complying with the rule of law. Mr. Howen focused on two aspects: first, whether or not human rights law applied, as Israel had contested it; and second, fundamental human rights concerns caused by the barrier.

In 1979, this Committee convened to clarify the applicable law in the Occupied Territory. In its reports, the Committee referred to the position of the ICJ confirming the applicability de jure of the Fourth Geneva Convention to the Gaza Strip and the West Bank. Twenty five years later, it was necessary to reiterate some basic principles of humanitarian law and human rights law, to put beyond doubt the questions that had been raised on this issue. Firstly, Israel asserted that the Fourth Geneva Convention de jure did not apply to the Occupied Territory and rejected the applicability of international human rights treaties. In this respect, the statement made by the ICJ in 1979 remained valid. Israel was bound as a High Contracting Party by the Geneva Conventions of 12 August 1949, and in this situation especially by the Fourth Convention on the protection of civilians. Israel was also bound by international humanitarian law, as it had become customary international law, binding on all States regardless of whether they ratified a treaty. This had been recognized by the Israeli Supreme Court sitting as a High Court in the occupied territories. When it came to human rights law, Israel was a party to all major United Nations human rights treaties and covenants. Israel continued to contend that human rights treaties did not apply in the occupied territories and were meant to protect civilians in time of peace. This position was not supported by international law, and unfortunately and very worryingly, other states were now presenting the same argument in the context of the war against terrorism. There was today ample authority both at the universal, as well as on the regional level that human rights treaties applied wherever a State "exercised jurisdiction" and that this determination was based on the test as to whether a State "exercised effective (not necessarily sovereign) control over a territory". Thus, human rights treaties applied extraterritorially to a State if it exercised the effective control. The Human Rights Committee, the authoritative interpreter of the International Covenant on Civil and Political Rights (ICCPR), has held the Covenant applicable relating to acts committed outside the national territory in a number of individual complaints considered, and in a range of concluding observations on countries. More specifically, the Committee said the Covenant applied to cases of belligerent occupation.

Mr. Howen said that it was very clear that human rights law did not cease to apply in times of armed conflict or occupation and that they were not swept aside by the laws of war. On the contrary, what the jurisprudence there showed was that human rights law was particularly important in a situation of prolonged occupation. The International Court of Justice has authoritatively affirmed in its nuclear weapons case, that human rights treaties, such as the ICCPR, did protect in times of war. Under certain circumstances the content of a specific right (here the right to life) may, however, have to be interpreted in light of the applicable *lex specialis*, in this case, the law of armed conflict, which are designed to regulate the conduct of hostilities. As a matter of legal position, and as a matter of common sense, the Geneva Conventions and human rights law applied. Human rights obligations of Israel, beyond any doubt, applied extraterritorially in the Occupied Territory.

Pointing out that Israel justified the construction of the barrier by referring to the necessity to ensure the security of Israeli citizens from terrorism, Mr. Howen stressed that the ICJ unequivocally condemned attacks by Palestinian armed groups against Israeli civilians. Such attacks were prohibited by international law, and human rights law gives Governments both the right and duty to protect the security of the people under its jurisdiction. However, the fight against terrorist acts – even if based on Security Council resolutions – did not suddenly cancel out international human rights and humanitarian law norms. Irrespective of whether one invoked the law of self-defence or resolution 1373 (2001), Israel remained bound by international law, as the Commission on Human Rights, by the Security Council, and others.

International human rights law did say that States would sometimes have to take exceptional measures to meet a security threat and that States could suspend some rights when facing an emergency that threatened the life of the nation. The derogation provisions in the ICCPR were crafted by States themselves, which obviously had a keen sense of their national security interests and the need to balance these with their human rights obligations. For this reason, article 4 put a heavy burden on States to justify why every exceptional measure was temporary, necessary and proportionate to meet the security threat. Every measure applied in relation to the security barrier must therefore be justified by the State in a step-by-step approach. The response of a State to a security threat, including terrorist acts, must be an extension of the rule of law, not an abrogation of the rule of law. The law was not being left behind in dealing with terrorism because the States had long ago created the regime which regulated how the States could and should respond to security threats. Terrorism was another national security threat – a very serious, very severe threat – that had to be dealt with in the framework of this regime.

Mr. Howen said that the separation barrier was a profound human rights issue, affecting a wide spectrum of rights, both civil and political, as well as economic, social and cultural. The range of the rights affected by the barrier in the parts already constructed was indicative of the human rights dimension of the barrier. At the core of the human rights concerns were the restrictions on the freedom of movement and the right to residence, since many other human rights violations flowed from these restrictions. The barrier severely limited both the right to seek where to live as well as the liberty of movement within the whole territory. The construction of the separation barrier in its current form and course failed the necessity and proportionality tests, essential to showing that it was a legitimate response to a security threat.

The ICJ said that there were five broad overriding observations applicable to the barrier. First, the barrier was not only a structure that separated Israelis from Palestinians; it also separated Palestinian communities from each other. It created enclaves on the eastern side of the barrier, destroying the social and economic fabric of society, tearing apart homogenous communities. Secondly, it was not a neutral mutual physical separation barrier but a highly restrictive legal regime that regulated its operation. It severely affected the property rights of Palestinians, the use of and access to land, access to remedies, residency status and the freedom of movement of people and goods across the barrier. Thirdly, this legal regime was inherently discriminatory, since it applied indiscriminately to Palestinians because of their origin. Fourthly, the barrier's course was largely located within the Occupied Territory and it clearly would encompass the majority of Israeli settlements. It was largely this choice of the route within the Occupied Territory and the inclusion of settlements – which were considered illegal under international law – that led to severe restrictions on movement and to the separation of Palestinian communities from each other. Finally, it was the severity and the sweeping nature of movement restrictions that made the measure disproportionate.

Mr. Howen, without enumerating specific human rights violations due to the lack of time, said that the range of economic, social and cultural rights violations must not be taken individually. It was the magnitude of the violations in toto that showed the lack of proportionality. The barrier constituted a serious violation of international human rights law and an internationally wrongful act that required Israel to cease the construction of the barrier on the Occupied Territory and to dismantle what had been built so far. Moreover, Israel was under an obligation to reconstitute property and land to the owners in such a state that allowed the use of land according to its previous purpose. Finally, Mr. Howen pointed out that third States were under an obligation not to aid and assist in the commission of this international intentional unlawful act. Mr. Howen also referred to his paper distributed at the meeting that dealt with other aspects of the problem.

**Michael Sfard**, a lawyer for HaMoked Centre for the Defence of the Individual in Tel Aviv, said that the question of the legality of the construction of the separation wall in the Occupied Palestinian Territory was not a very difficult one. The legal consequences were enormous and very harsh, and there was a large number of arguments in the field of international law that could be put forth to show that the construction of the wall was illegal. The wall could be said to be illegal because it was actually a unilateral de facto annexation of the occupied land. As Mr. Howen said, it was also a forceful violation of international human rights law. The construction of the wall was also a violation of international humanitarian law on different levels and aspects. It was also problematic in the sense that the military authorities lacked powers to undertake such a project.

Mr. Sfard said that his presentation would focus on one line of argument that was going to be discussed in a petition to Israel's High Court of Justice regarding the legality of the construction of the separation wall or barrier or fence. The presentation would be based on three assumptions. First, that a State had the right, if it chose, to fence itself in, to build a barrier around itself, as long as it was built on its own territory. That assumption might seem simple, but it was very important in legal matters, because it showed that there was an alternative to the wall as it was built, and it was not a matter of no wall, but a wall or fence on the Green Line; what could be called the Green Line option. Mr. Sfard stressed that while personally he didn't like the idea of a wall around his country, legally he would not have any arguments against the wall constructed on Israeli soil.

Second, Israel occupied the West Bank and the Gaza Strip in a way that did invoke the international humanitarian law of belligerent occupation. In this respect, Mr. Sfard pointed out that Counsel for the Israeli Government recently had begun expressing the view that at least in some parts of the Occupied Palestinian Territory there was no belligerent occupation. Most notably, this view had been mentioned by the Israeli Government's Counsel in the High Court of Justice cases regarding the legality of the assassination policy. There, the Government had noted that area "A" and perhaps even area "B" were no longer under occupation. Mr. Sfard said that while this was a fundamental mistake in the legal analysis of the law of belligerent occupation, there was simply no doubt that Israel was in effective control of areas "A" and "B", where it could arrest or assassinate anyone it wanted. The fact that there was no constant presence of military personnel in every inch of areas "A" and "B" did not mean in international humanitarian law terms that there was no occupation. There was an occupation and a very cruel one as well.

Third, the wall violated the basic human rights of Palestinian civilians, mainly the right to property, freedom of movement, the right to education, to health, to communal life, to work and to welfare, to quality, to respect, to dignity; this was only a partial list. However, the basic documents of international humanitarian law permitted infringement of basic right in certain circumstances and to a certain extent, due to military necessity. The fact that the construction of the wall violated fundamental human rights did not yet mean it was illegal.

The next question was whether the State of Israel had any justification in violating the rights of Palestinians, whether it had an authority as an occupying Power to construct such a project. Pointing out that the Fourth Geneva Convention and The Hague regulations not only declared the rights of protected persons but also enabled violation of those rights in certain circumstances, Mr. Sfard said that the heart of the legal problem was whether there was a military necessity that justified the construction of the wall. International humanitarian law invested a belligerent occupier with two types of powers. First, a managerial, administrative power; a power to restore security, order and public life. It was not only a right, but also a duty to furnish civil life in an occupied territory. This set of powers made an occupying military a kind of temporary government, a temporary administrative authority in an occupied territory. The second set of powers had to do with the general powers of a military, as a military that sometimes faced violent activity had a duty to protect its soldiers and civilians. A military had the power to kill, invade, destroy, and so on; those were very dramatic powers, but also those that a military was given.

When Israel was claiming security as justification for building the wall, the question that could be asked was whose security. If it was the security of Israel, there was the option of building the wall on the Israeli side of the Green Line. The principle of proportionality, one of the most fundamental principles of international humanitarian law, said that if there was an alternative that produced the same results, while violating fewer human rights, then that alternative must be taken. But it was not the security of Israel that forced planners of the wall to choose the route that they had chosen. And all other justifications for the wall were illegal since they related to Israeli settlements, the mere existence of which was illegal. But even assuming that the security of the settlements was a legitimate justification, then again there was an alternative: the wall could be wrapped around the settlements. Instead of putting hundreds of thousands of Palestinians in enclaves, a few settlers could be placed in enclaves.

It was clear, Mr. Sfard concluded, that the construction of the security wall on any level, in any aspect and from any angle one examined the issue, was illegal. It violated human rights and it violated international humanitarian law. Israel was violating its own duties as an occupying Power to maintain civil life in the occupied territories.

Ending his presentation, Mr. Sfard noted that as an Israeli, he was particularly disturbed by one issue regarding the construction of the wall: the enclaves in the seam zone, or the security zones, or closed areas; everything there had five or six names. These areas, caught between the wall and the Green Line, had been already described in the Meeting and, in this context, the Second World War, South Africa, etc. were mentioned. Mr. Sfard stressed that, as a rule, he would be very cautious in using such analogies, because they tended to be counter-effective. However, if one looked at the legal framework that had been construed for the closed areas, it was apartheid. The petition that HaMoked Centre for the Defence of the Individual in Tel Aviv, had filed with the High Court of Justice mentioned the word apartheid, because it was important that Israelis knew where their country was

headed. Explaining that, Mr. Sfar said that the enclaves had been declared by the military to be closed military zones and all those living therein needed a permit, even if they had lived there for generations. However, this declaration did not apply to Israelis, who were defined in the declarations as not just citizens or residents of Israel, but also all those who had a right of return to Israel. This meant that any Jew from any point in the world could freely come and live there, while a Palestinian, who was born there and whose forefathers had lived there for generations, needed a permit. Mr. Sfar expressed hope that the legal institutions of Israel would be able to do away with this legal racism, and that Israel would not need the International Court of Justice to deal with the matter and that Israelis would be able to handle it themselves.

In his presentation, **Iain Scobbie** of the School of Oriental and African Studies of the University of London indicated that he would examine the right to private property in the occupied territories. Property was only one aspect that international law brought to bear on this issue. There also could be grounds to argue that the cumulative impact of the construction of the wall on the livelihood of Palestinians amounted to inhumane treatment and, therefore, a grave breach of the Fourth Geneva Convention. The important thing about grave breaches of the Geneva Conventions was that they entailed individual criminal responsibility.

In 1977, the United States Department of State issued an opinion, which held that Israeli settlements in the Occupied Palestinian Territory were illegal and regardless of what President Bush had said on 14 April that position remained correct as a matter of law. In its opinion, the State Department referred to the resources in the territory, including publicly owned land, stating that it could only be used for the purposes of the occupation or for the direct benefit of the indigenous inhabitants of the occupied territories. What was said about the settlements was equally true about the wall, the question being how it was made necessary by the military needs of the occupying army and even more, how it could be seen as a direct benefit for Palestinians.

The State Department opinion of 1977 dealt with public property and made no mention of private property that was seized for the construction project implemented by the occupying Power. In the pleadings before the International Court of Justice, private property rights were mentioned, while the rights to publicly owned property were not. The States concentrated on the violations of human rights law and violations of those parts of international humanitarian law that dealt with the protection of individuals, rather than property rights as such. The protection of property was actually the oldest codified part of the law of belligerent occupation simply because when States drafted the Hague Regulations in 1907, they did not anticipate that belligerent occupants would treat populations of the occupied territories inhumanely. They were more concerned with soldiers stealing items rather than soldiers abusing people. The Hague Regulations had the status of customary international law and Israel's High Court therefore repeatedly recognized that they applied to the Occupied Palestinian Territory. Article 46 of the Hague Regulations provided that privately owned property must be respected and could not be confiscated. This entailed that it prohibited the divestment of property rights without recompense. Israel had claimed it would compensate people for any losses sustained by the construction of the wall, including seizure of their land. Israel also claimed that the ownership of the land upon which the wall had been built did not change; therefore, at least on a very technical level, it did not fall foul of the prohibition on confiscation in Article 46. This article, however, was the controlling principle for the treatment of private property, so any interference with private property really had to find an express justification in some other provision of the Hague Regulations. Such justification could only be provided by Article 52, which provided in part that requisitions should not be demanded from municipalities or individuals except for the needs of the army of occupation. And this could not justify land requisitions for the purposes of the construction of the wall.

Israel had expressed a claim that the wall was a measure taken to protect its own domestic civilian population, as a barrier against the infiltration of suicide bombers into Israeli population centres. It was not built for the needs of the army of occupation. Furthermore, in the "Elon Moreh" case before the Israel High Court, the Court ruled that the needs of the army of occupation mentioned in Article 52 of The Hague Regulations could not include national security needs in their broad sense. So, the very use of privately owned land to build the wall simply could not be seen as remotely lawful under the law of belligerent occupation.

Turning to publicly owned land, Mr. Scobbie said that this seemed to be less of an issue. However, with reports that school grounds and playgrounds were now under the wall, one could assume that publicly owned land was used for the construction of the wall. The law of belligerent occupation did not deal with publicly owned land very well, although it gave occupants very restricted rights in their use of publicly owned immovable property. The fundamental rule here was Article 55 of the Hague Regulations, which stated that the occupying State should only be regarded as an administrator and usufructuary (or trustee) of all public building, real estate and so on, and should safeguard the properties and administer them in accordance with the rules of trusteeship on a temporary basis. So, the rights that flow to the occupant of the public land did not allow it to appropriate or acquire title to that land. The occupant could not destroy the land or fundamentally alter its title. In another case, Israel's High Court in interpreting Article 55, said that Israel had a duty to preserve and safeguard property on publicly owned land and one could be wondering if that duty could be fulfilled by creating a wall.

In October 2003, Israel claimed in the General Assembly that the construction of the wall was consistent with its right under Article 51 of the Charter of the United Nations and its inherent right of self-defence; that the land requisitions were proportionate to Israeli deaths and injuries; and that compensation was available to the people whose property had been damaged. It must be doubted whether self-defence, in terms of Article 51 of the Charter, was an operative concept, given the state of a continuing belligerent occupation. It seemed that in terms of self-defence, the time for its application would appear to be long past. Leaving this issue to one side, Israel's arguments should be addressed on their own terms. It justified its requisition of land for the construction of the wall on Article 23 (g) of The Hague Regulations, which prohibited destroying or seizing the enemy's property, unless such destruction or seizure was imperatively demanded by the necessities of war. However, this Article applied to land before it was occupied, and it was not relevant whatsoever in the case of continuing occupation.

In conclusion, Mr. Scobbie referred to article 53 of the Fourth Geneva Convention, mentioned by Mr. Sfar. This article allowed for the destruction of the property by an occupying Power where it was rendered absolutely necessary by military operations. The Convention did not contain a definition of what was meant by "military operation". However, an indication may be seen in the Additional Protocol I of 1977, in particular in article 51.1. In its Commentary, the International Committee of the Red Cross (ICRC) referred to military operations as all the movements and activities carried out by armed forces related to hostilities, so that military activity effectively boiled down to fighting. Even if the wall could be seen as part of military operations, it still could not be justified under article 53 of the Fourth Geneva Convention, as Mr. Sfar pointed out, because it was not absolutely necessary: Israel could have gone to the Green Line and fenced in the settlements. It did not have to build the wall, and therefore all the actions that it had taken to seize the land to do this, were unlawful.

**Ben Saul**, Coordinator of Oxford Public Interest Lawyers at Oxford University, stressing that he endorsed much of what had already been said by his colleagues in the Meeting, said that it was unusual to find so many lawyers in agreement on an issue like this one. It reflected the extent of international consensus on the illegality of the wall. States that objected to the jurisdiction and admissibility of the ICJ opinion, for the most part, accepted that in substantive terms the wall did violate the provisions of human rights and humanitarian law, and their objection was solely targeted at jurisdiction, rather than the substantive matter of violations.

Mr. Saul said that his organization undertook pro bono work on issues of public interest. His presentation was based on the opinion commissioned by the Association for Human Rights in Israel, which had a number of petitions in the Israeli Supreme Court, and was written in February 2004. Mr. Saul said he would concentrate on a number of aspects of human rights law and international humanitarian law that had not yet been covered in detail by his colleagues.

First, he addressed the source of authority in humanitarian law for building something like a security barrier. In the Fourth Geneva Convention, article

27 allows the occupying power to take such measures of control and security in regard to protected persons, in other words, civilians, as may be necessary as a result of war. In its Commentary the ICRC stated that first the fundamental rights of protected persons must not be affected by any security measures taken under this provision, and second that, although restrictions on freedom of movement were permissible, freedom of movement must not be suspended or restricted in a general manner. In other words, it was not permissible to take restrictive measures that suspended freedom of movement of the entire population or very large portions of it. In principle, States had wide discretion under article 27 in determining what sort of security measures should be taken, and indeed what sort of security measures were necessary and proportionate. But as Mr. Howen said, although there were questions of political judgement, they also involved legal analysis and legal standards, and any use of the security power under article 27 must comply with certain conditions. One such condition, already mentioned, was that security measures would be necessary as a result of war. Clearly, the hostilities ended long time ago, and that is why there was a long state of occupation, but to the extent that the security barrier departed from the Green Line to encompass and encircle Israeli civilian settlements, protecting those settlements, was not a matter or a measure necessary as a result of the war. Indeed, it was a measure taken to protect an unlawful objective, that is, the construction of civilian settlements whose unlawfulness is well established in international law (articles 49 and 55 of the Fourth Geneva Convention). Furthermore, under article 47 of the Convention, protected persons may not be deprived of their rights by any agreement concluded between the occupying Power and the authorities of the occupied territories, in other words, representatives of the Palestinian people. Israel often said that the Oslo Accords never dealt with the question of the lawfulness of the settlements or dismantlement of the settlements, but under article 47 it was not lawful under international humanitarian law for any agreement, present or future, to decide that settlements were lawful in international humanitarian law. Israel also argued that settlement activities were supervised by the Supreme Court. However, the Israeli courts had consistently refused to assess the lawfulness of the settlements; the Israeli Supreme Court had said that the settlements were an issue of sensitive international policy and controversial negotiations between the sides, and a political matter that the Court was not bound to make a decision on. This illustrated that Israeli courts did not provide effective legal remedy as required under the International Covenant on Civil and Political Rights for violations of human rights flowing from settlement activities. Secondly, to the extent that the wall followed the Green Line – and parts of it did – then under article 27 it was arguable that the security powers referred to in the Fourth Geneva Convention could be used to build the wall along the Green Line, as Mr. Sfar had already mentioned. But even if the use of security power as justification was a legitimate and lawful, it would still have to comply with additional conditions of lawfulness under humanitarian law, and those were the conditions of proportionality and necessity. Speaking of proportionality, Mr. Saul said that all were well aware of the very extensive and debilitating impact of the wall on Palestinian civilians, the numerous violations of human rights and the various violations of specific provisions in humanitarian law, which dealt with such issues as the right of access to medical services. The extensive detrimental impact of the wall on the Palestinian people demonstrated that the wall was clearly not proportionate to the military needs of Israel. The question of necessity was a little more difficult because it was a matter of political judgement and courts often gave a wide margin of discretion to States to deal with decisions about military necessity. An important consideration here was whether it was likely to prevent future attacks, and OXPIL's argument was that the wall would not be necessary if it was fundamentally incapable of fulfilling its stated security purpose. A number of considerations cast doubt on the need for a wall. Firstly, Israel referred to the decline in suicide attacks from Gaza as a direct result of the wall built there. However, the Gaza wall operated on a system of hermetic sealing; it was not open in the same way as the West Bank wall. Secondly, if the barrier was designed to prevent suicide bombings, it was not clear why Israel had included within this area hundreds of thousands of Palestinians from which potential suicide bombers or terrorists or militants could enter Israel. It was clear that the wall was not there just to protect Israel from Palestinian militants. Thirdly, and very importantly, Israel had not demonstrated that less intrusive or restrictive measures would fail to effectively control a militant attack on Israel. And, indeed, in mid-2002 the Israeli State Comptroller strongly criticized the inadequacy of the Israeli Army checkpoint procedures and searches, and suggested that most terrorist attacks on Israel itself were a result of persons slipping through the checkpoints and not crossing the open areas that the wall now covered. Fourthly, Israel routinely criticised the Palestinian Authority for failing to prevent attacks and ensuring security, yet Israel had constantly and violently raided the institutional capacity of the Palestinian Authority to respond to security threats by destroying police stations and downgrading security services.

Mr. Saul said he would like to emphasize another breakthrough point in international humanitarian law. First, it was argued that the wall amounted to a form of prohibited collective punishment under Regulation 50 of The Hague Regulations and article 33 of the Fourth Geneva Convention. By deliberately separating Palestinian communities and subjecting Palestinians as a group to unprecedented measures of physical control and criminal suspicion, the barrier exhibited the characteristics of collective security measures aimed at punishing and deterring the Palestinian community as a whole for the acts of a very small number of anticipated and suspected terrorists. Second, the wall amounted to a forcible transfer of civilians in the occupied territories which is prohibited under article 49 of the Fourth Geneva Convention and considered a war crime under article 147. Turning to the human rights law, Mr. Saul said Mr. Howen had already dealt with the question of derogating from human rights, in other words, suspending them in their entirety. He, in turn, would like to deal with the other way of restricting human rights, which was permissible limitation or restriction on human rights within the human rights treaties themselves. The Covenant on Economic, Social and Cultural Rights had general provisions allowing States to limit rights solely for the purpose of promoting the general welfare in democratic societies. The Covenant on Civil and Political Rights, by contrast, had no general provisions, but dealt with the justifiability of limiting rights in individual rights provisions. But their general wording was quite similar, and rights could only be limited to protect public security, order, health or public morality in a democratic society. Restriction on freedom of movement, such as the wall, was permissible if it pursued a legitimate aim of protecting public order in a society as a whole. But the caveat that the restrictions must be necessary in a democratic society was vitally important when considering limitations in occupied territories. Although Israel proper was a democratic society, the Palestinian people in the occupied territories clearly did not participate in the political life of the Israeli democracy; they could not vote there. OXPIL was simply saying that when it came to restricting the rights of those excluded from the political system, the threshold of justification was higher; a stronger argument had to be made to justify limitations like those imposed by the wall. Secondly, OXPIL was saying that given the already severely degraded state of the Palestinian economy and the severely high unemployment rate in the Occupied Territory, any further restrictions on rights must have stronger justifications than in ordinary society and in an ordinarily functioning economy.

The case that the wall was discriminatory because it solely targeted Palestinians had already been well made. It was well worth pointing out that militant Israeli settler in the Occupied Palestinian Territory had been condemned by the Security Council for launching attacks on Palestinian civilians, and it therefore made one wonder why Israel had not taken any measures to protect the Palestinians. The wall was clearly discriminatory in that it was only built to protect one part of the population.

In conclusion Mr. Saul stated that under international human rights treaties persons governed by, under the effective control or power of the State, must be guaranteed an effective remedy in either a tribunal or judicial setting. It was the OXPIL that Palestinians did not have a right of effective remedy in the Israeli courts. Settlement activities were not examined in Israeli courts. The military tribunals, to which Palestinians could appeal on the requisition of property for the wall, were part of the same military authority that issued the orders in the first place, and so could not be considered an independent and impartial tribunal as required under article 14 of the ICCPR. There was little redress for the unjustifiable violations, which made them so much worse.

**John Quigley**, Professor of International Law at the Moritz College of Law of Ohio State University, said that with respect to the point made by Mr. Howen on the territorial applicability of the human rights treaties in the case of belligerent occupation, he would like to add that this point had been

made by the three Committees that monitored the three Conventions to which Israel was a party: the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Rights of a Child. In each case, the Committee had insisted that Israel provide information about how it was applying this convention in the occupied territories, and in each case Israel had refused to submit such information because the convention was not applicable. When the Convention on the Right of a Child was drafted about 15 years ago, the original draft had a provision on territorial applicability, which stated that the Convention would apply in a territory of a State party, and a number of experts objected to that language precisely because there were concerns about the applicability in the case of belligerent occupation. As a result, the language was changed to read “within Jurisdiction” rather than “within territory”. On the issue of derogation from any of the rights, Mr. Quigley said there were specific requirements on how this could be done, and one was the requirement to specify in advance the specific right from which the was a derogation. Obviously, Israel had never filed such a document, because its position was that the conventions were not applicable at all in the West Bank. But the fact that it was not derogated meant that it was not open to Israel to make an argument based on derogation.

With respect to humanitarian law, Mr. Quigley said his only comment would be on Article 43 in the 1907 Hague Regulations, to which Mr. Sfard had referred. It was an extremely important provision, perhaps the most important provision related to belligerent occupation, requiring an occupant to maintain l'ordre et la vie publics in the occupied territories. The important point here was that the translation into English in 1920 was “public order and safety”, which reads as if it gave a power to the occupant to do things in derogation of the rights of the population. The French version reads as if the occupant has the obligation to protect the population, which is the exact opposite of the English version. The text of the convention specified that it was drafted in the French language and only in the French language. The English version quoted everywhere was a mistranslation.

With regard to the issue of possible justifications for the wall, Mr. Quigley said it had not been fully argued before the ICJ because Israel did not make an argument on the merits, making instead an argument on why the Court should not hear the case. It was made somewhat more directly in the courts of Israel, but even there it was rather general. Some indication of the justification may, however, be gleaned from the papers filed by Israel with the ICJ, where the main subject matter was terrorism. Before the General Assembly, Israel invoked Article 51 of the Charter of the United Nations and the inherent right of self-defence, relevant when a State was using military force, as the basis for the construction of the wall. Article 51 specified that when a State took an action in self-defence it must immediately report to the Security Council, so that the Council could determine whether it was an appropriate use of force and perhaps decide whether measures were necessary under Chapter VII. This was probably the first time ever a Member State was making a reference to Article 51 before the General Assembly, which was the wrong forum for it. The ICJ in the Nicaragua case made it clear that the requirement of reporting to the Security Council was quite critical and indicated whether a State was actually making an Article 51 claim.

In Mr. Quigley's opinion the argument that Israel was making was actually an argument that could only be made under the concept of necessity, as that concept appeared in international law. It seemed that Israel was making an argument that the wall was necessary for protecting Israel's status as temporary occupant. In effect, it meant the protection of Israeli settlers, which was not valid since settlements themselves were illegitimate. Israel also seemed to be making an argument that the wall was necessary for protecting Israeli civilians in Israel. What Israel was in effect saying to the ICJ, was: “We are perhaps violating the laws of belligerent occupation. We are perhaps violating human rights law. But we have this problem of suicide bombing in Israel, and that justifies it.” Were Israel to expressly make this argument, it would fall under the concept, as it existed in the law of State responsibility and defined most precisely in article 25 of the draft articles of the International Law Commission, of the responsibility of States for internationally wrongful acts. This article specified certain conditions for the invocation of necessity that Israel would have to meet. The first factor was that it was the only way for a State to protect itself. Other speakers had mentioned that the wall was not a particularly effective way of doing that. This was a factual issue about the wall – whether it would actually prevent suicide bombings, and others have convincingly shown that there was no reason to believe that would be the case. In fact, by degrading the life of Palestinians in the occupied territories it could even result in an increase in suicide bombings. Second, the act must not seriously impair an essential interest of the State or States toward which the obligation exists. Obligations in human rights law and the law of belligerent occupation, under humanitarian law, extended to the international community as a whole. And, clearly, the construction of the wall did seriously impair the essential interest because of the way it affected the life of the Palestinian population.

Article 25 had two further criteria and Israel did not qualify on those. Obligations in human rights law and the law of belligerent occupation had their own specific grounds on which a State might take action that would otherwise violate and, as was mentioned in this Meeting, they did not apply. In monitoring Israel's compliance with its obligations under the International Covenant on Civil and Political Rights, the Human Rights Committee said that the necessity may not be invoked by Israel with regards to the provision on inhumane treatment. The situation of a State contributing to the situation of necessity w Article 25 had two further criteria and Israel did not qualify on those. Obligations in human rights law and the law of belligerent occupation had their own specific grounds on which a State might take action that would otherwise violate and, as was mentioned in this Meeting, they did not apply. In monitoring Israel's compliance with its obligations under the International Covenant on Civil and Political Rights, the Human Rights Committee said that the necessity may not be invoked by Israel with regards to the provision on inhumane treatment. The situation of a State contributing to the situation of necessity was addressed most directly by the Committee on the Rights of the Child when it was assessing Israel's compliance with the Convention on the Rights of the Child. In October 2002, it issued a concluding observation after conducting a periodic review of Israel, and it said something specifically about suicide bombings that would be relevant here. Talking about the deliberate and indiscriminate targeting and killing of Israeli civilians, including children, by Palestinian suicide bombers, the Committee said the illegal occupation of Palestinian territory, the bombing of civilian areas, extrajudicial killings, the disproportionate use of force by the Israeli Defence Forces, the demolition of homes, the destruction of infrastructure, mobility restrictions and the daily humiliations of Palestinians continued to contribute to the cycle of violence. The illegality of the occupation had been noted by many United Nations bodies, and Mr. Quigley mentioned that the occupation had been illegal since the very beginning, when Israel tried to justify its actions in 1967 by false claims about Egypt in the Security Council.

**Ghassan Hanina**, the Deputy Speaker of the Palestinian Legislative Council in Ramallah, said he was speaking on behalf of the first Palestinian institution democratically elected under international supervision – the Palestinian Legislative Council, and as a member and chairman of several civil society organizations. Previous speakers had described in much detail how schools and pupils had been separated from one another and many had been deprived of the opportunity to continue with their studies; and farmers had been separated from their lands, which seriously hindered their livelihood. He stressed that the wall further made life more complicated for the Palestinian people, already greatly suffering from Israeli checkpoints, being denied, among other things, access to hospitals. The situation had become even more difficult given the fact that the gates to enclaved areas were only open during set hours during the day. Women were particularly affected – several women had died at checkpoints while in labour. And many doctors had not been able to get to the areas within the wall to immunize children. Even garbage could not be collected, which further added to health risks.

Mr. Hanina singled out the effect that restrictions on movement had on the democratic process. Members of the Palestinian Legislative Council were unable to move freely within their constituent areas in order to serve their electorate. They were also often unable to attend Council meetings in Ramallah and Gaza. Palestinians had also been deprived of the opportunity to travel abroad, and even the parliamentarians needed a permit from the occupying forces. A plane trip from Ramallah to Geneva is four hours, but it now took several days. At the political and legal level, much had been said to the effect that the wall was an illegal move. Israel, with the assistance of the United States, was assassinating the peace process and assassinating the Road Map, which originally had been an American project, because everything that was on the agenda for final status negotiations would be predetermined. There would be nothing to negotiate between Israelis and Palestinians, unless the US and Israel had a plan for another basis



for negotiations, with the elimination of the Palestinians from the picture and negotiating on their behalf.

In the follow-up discussion, a member of a non-governmental organization, citing as an example the sophisticated legal systems of apartheid South Africa and fascist Portugal, asked whether it was possible to legalize that which was illegal, and whether international law could be changed. He further asked about the right of peoples to armed resistance. Another member of a non-governmental organization wondered about the role of the Israeli Supreme Court in international law.

Michael Sfard, a lawyer for Hamoked Centre, said that to a large extent international law was framed on consent and customs. There were things that could not be legalized, issues under *jus cogens*, the most fundamental norms, such as the prohibition of slavery. But apart from that, international law could be changed by State practices. What happened in Washington the previous day was in that respect important, as it represented State practice. It was therefore important for the international community to resist the building of the wall and to look for changes in the law. International humanitarian law applied to two types of status, combatants and civilians, yet Israel was attempting to form a third category — illegal combatants. Turning to the issue of enforcement, he said he could not think of any international tribunal that could have jurisdiction over the question of the wall and to his recollection the only enforcement mechanism that he could think of that might deal with the matter was the Security Council. And in the Security Council, the United States had veto power.

Mr. Scobbie said further that among those rules of international law that did not allow for derogation was the principle that territory could not be gained through annexation that followed the use of force. The States had the power and responsibility to enforce the laws of war. Any claimed annexation brought with it the duty of non-recognition by other States and could not be validated by actions of third States.

Mr. Quigley said the right to resistance was a very complicated issue, and one that had not been decided in any definitive way in international law. On the one hand, the law of belligerent occupation assumed that the belligerent occupant may do what was necessary to maintain its position as belligerent occupant. On the other hand, the population has the right to resist the belligerent occupant. These two principles contradicted each other, the former being the older one, and the right to resist and the right to self-determination being the more recent ones.

Mr. Saul said that since this was not a contentious case within the jurisdiction of the Court, there was no recourse to Security Council enforcement of any decision. However, as the Representative of Namibia said so eloquently earlier in the Meeting, these advisory opinions had a very powerful persuasive force among the States and could really assist a people affected by a serious illegality like this one. Apart from judicial enforcement, there were different kinds of enforcement, for example, the one demonstrated by the daily work of the ICRC in the Occupied Palestinian Territory. Also, under the law of State responsibility, any State that thought that the wall constituted damage and danger to an international community's interests or values could impose proportional lawful countermeasures against Israel: economic sanctions, withdrawal of diplomatic recognition, etc.

### **Plenary III**

#### **The Construction of the Wall : Rendering the Two-State Solution Physically Impossible**

At the third plenary session, entitled "The Construction of the Wall: Rendering the Two-State Solution Physically Impossible", presentations were heard by four experts on the following sub-themes: the state of the political process; upholding the Road Map — the role of the Quartet; the contribution of Member States and intergovernmental organizations to the debate on the issue; the response of civil society. Ambassador Victor Camilleri of Malta chaired that plenary session.

**Bahia Amra**, Representative of the Palestinian Health, Development, Information and Policy Institute in Ramallah, said that for more than 50 years, Palestinian people had been suffering from occupation by living in their country without freedom. The occupation was more than the wall and it caused Palestinian suffering on a daily basis. The wall had divided Palestinians from other Palestinians, not just Palestinians from Israelis. Giving Abu Dis and East Jerusalem as examples, Ms. Amra described how very difficult it was now for health care professionals to move about the area without unhindered access; all movements were controlled by the Israeli authorities. This had seriously affected health care, among other things. There were no hospitals in Abu Dis and only one school. Difficulties were also encountered in the area of education; children were also seriously affected by the measures taken by the Israeli authorities because of the wall. Many children had to jump over the wall in the past to go to school, but now it was impossible to jump over the wall since it was much higher. The only alternative was to go through checkpoints, where the wait could take hours. Water facilities and the economic situation in general were also affected.

Since 1993, the Palestinian people had begun to develop their State as a result of the Oslo Accords but now there were many more difficulties that they faced because of the wall. The wall and occupation were illegal and there was no hope for a two-State solution with the existence of the wall. Ms. Amra said Israel did not want to provide Palestinians with a chance to build their own state; Palestinians had the potential to do so but unfortunately were prevented from doing so. If the United Nations turned from speaking to taking action, much could be achieved. Ms. Amra called for the end of the occupation of Palestinian lands. Support was needed from the international community as a whole and from the European Union. Because of the wall, Palestinians needed to work harder to protect their own people.

**Hussein H. Hassouna**, Ambassador of the League of Arab States to the United States, recalled the Beirut Arab League Summit of 2002, when the Member States earnestly attempted to change the political dynamics of the conflict by unanimously adopting the "Arab Peace Initiative" as a framework for a comprehensive settlement in the region. He said the Arab League had remained attached to that peace initiative, which was complementary to the Quartet's Road Map and the two-State vision. The upcoming Arab League Summit would have to address the new great challenge to the prospects of peace in the Middle East, namely, the latest attempt by the present Israeli Government to consolidate its occupation of Palestinian territory in the West Bank including East Jerusalem. These goals were to be achieved through securing the blessing of Washington for Israel's so-called unilateral initiative, which should be called bi-lateral initiative, while concurrently continuing the construction of the separation wall, in spite of the world's outcry and strong opposition.

The Arab League strongly supported the two General Assembly resolutions on the issue of the wall and took part in the oral hearing before the Court, thus underlying the importance it attached to the proceedings. In the view of the Arab League, the request by the General Assembly for an advisory opinion on the case of the wall underlined the United Nations recognition of the importance of the rule of law in the solution of the Palestinian problem. Israel's consent to the jurisdiction of the International Court of Justice was not required, since the Court was not requested to address a dispute of an essentially bilateral character. The legal questions involved in the request were located in a broader frame of reference than the settlement of a particular bilateral dispute. They embraced a broad range of questions relating to the functioning of the United Nations and the international legal order in general.

As to the alleged detrimental consequence of an opinion of the Court for the peace process between Israelis and Palestinians, Mr. Hassouna stressed that one could not accept that a clarification of the law could put an obstacle to a negotiated settlement, since there had been cases before the Court where such clarification proved helpful for the parties to a controversy to find a compromise on that basis. In reality, it was the wall which stood as an obstacle to a freely negotiated solution according to the Road Map, not an opinion given by the Court.

For those considerations, the Court should clearly declare the substantive grounds for the illegality of the wall, which stemmed from the fundamental rules and principles of the Charter of the United Nations, international humanitarian law and international human rights law. In the first place, the construction of the wall violated the Charter principles of prohibition of the use of force and the right to self-determination. In essence, it fundamentally affected the demographic structure of the Occupied Palestinian Territory, leading to its fragmentation and bantustanization. It made Palestinian life burdensome, even impossible, and forced Palestinian to leave their homes while entrenching the position of the unlawful Israeli settlements. That was why the wall profoundly affected the right of the Palestinian people to self-determination, which included the right to remain in

the place where they had lived for centuries. That was why it constituted a change in status, a de facto annexation that was contrary to the prohibition of acquiring territory by force.

Mr. Hassouna said the wall constituted a further violation of international humanitarian law, in particular the law of belligerent occupation, which prohibited an occupying Power from destroying private property. And while the right of a party to a conflict to take measures for the protection of its own population living in its territories was certainly recognized, the wall whose route strikingly deviated from the Green Line into the Occupied Palestinian Territory was therefore undeniably in contravention of international humanitarian law. In addition, the construction of the wall entailed a gross violation of the internationally guaranteed human rights of the Palestinian population, embodied in international human rights treaties, as well as in the corresponding rules of customary international law, in particular the Covenant of Civil and Political Rights, the Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child. Under those established rules, no security considerations may serve as a reason for limiting human rights, when the measures affected the life and rights of an entire population in total disproportion to the perceived security threat. A determination by the ICJ that the construction of the wall was illegal under international law entailed a series of concrete legal consequences. Israel must stop its construction immediately, provide reparation through restitution of land and compensation for other damages. Other States were obliged as parties under the Fourth Geneva Convention to take measures to ensure that the breach ceased and that reparations were provided. No State may recognize the de facto situation unlawfully brought about by the construction of the wall, and all States were further obliged to prosecute offenders of an act that constituted a grave breach of the Fourth Geneva Convention. As for the United Nations, its main political organs would have to pay due respect to the determination made by the Court, and reinforce their efforts to achieve a lasting and peaceful solution to the question of Palestine based on the rule of law.

In conclusion, Mr. Hassouna said an objective assessment of the impact of the construction of the wall was that it constituted a serious breach of international legality; it was provoking a Palestinian humanitarian tragedy; it was breeding intense resentment towards Israel among Palestinians and abolishing their trust in Israel's intentions; and it was destroying the prospects for developing long-term security and peace for Israel. In short, that single wall was undermining all efforts for achieving a two-State solution of the Palestinian-Israeli conflict. Mr. Hassouna insisted that it was time for the international community to rise up to the challenge and show its determination to prevent such far reaching consequences. This role must be assumed by the United Nations as guardian of international legitimacy, the Arab League as guardian of Arab legitimacy, and all other intergovernmental and non-governmental organizations and civil society committed to the mission of peace.

**Mossi Raz**, Director of Palestinian-Israeli Peace Coalition, said he fully supported almost everything said over the past two days, especially the illegality of the wall and the violations of human rights because of the route of the wall. Mr. Raz stressed he was against the occupation, settlements and targeted assassination, but he supported the construction of the fence on the Green Line. The political reason was the fact that it was the first time in the history of Israel when the two-State solution was recognized, as were the borders between these two States – the borders of 1967. Mr. Raz said this was not how he wanted to see his country in the long run, but in the short-term it was probably the best solution, and it was supported by Jordanian Foreign Minister Marwan Muasher, and by the Palestinian Prime Minister Abu Ala. Israel constructed a fence on the border with Lebanon, and it was not mentioned in the Meeting because that was not a problem. The same with the Golan Heights, and with the border with Jordan. The Palestinian problem is not due to the barrier itself, but to the route of the barrier, which was a crime. The second major reason for supporting the construction of the barrier on the Green Line was that it provided opposition to all and any violence. If the fence prevented even 30 per cent of the attacks, it would already be a lot. The fact was that many people were alive today, not only on the Israeli side but on the Palestinian side as well, was because it interrupted the cycle of violence. If one valued life, all life, one could not ignore the fact that in the past six months there was less violence, many fewer casualties on both sides, because of the fence. The fence was not a solution; the solution would be a peace treaty between Israel and the Palestinians, creating a Palestinian state. Unfortunately, the fact was that Israeli society at the moment did not support this just solution. And many Israelis did not support the fence –because they understood that it was the end of the dream of greater Israel, it was the recognition of the two-State solution and of the 1967 borders.

Speaking of the role of civil society in both nations, Mr. Raz stressed that it was very important. It was due to the fact that the difference between the Oslo Accords and the Road Map was that the Oslo Accords were violated by two sides – Israelis and Palestinians – and the Road Map was being violated by six sides – Israel, Palestinians and the four members of the Quartet. Mr. Raz called on the international community to join the efforts of bilateral agreements for a peaceful settlement.

**Victor de Correa-Lugo**, legal analyst at the Palestinian Environmental NGO Network (PENGON), started his presentation by presenting the Anti-Apartheid Wall Campaign. The Campaign, a part of the Palestinian struggle against the occupation, was a national grass-roots movement coordinated by PENGON, and rooted in the communities affected by the wall. Its name did not simply invoke the similarity with the apartheid situation that existed in South Africa, but sought to demonstrate that the wall broke the International Convention on the Suppression and Punishment of the Crime of Apartheid. The legal definition of apartheid included measures “designed to divide the population along racial lines by the creation of separate reserves or ghettos for members of a racial group or groups”. The Campaign called for the end of the construction of the wall, the dismantling of all its parts, the return of confiscated land, the compensation of damages and the restitution of land.

During the past one and a half years, the Campaign has succeeded in organizing three campaign emergency centres, which, along with the Campaign's coordinating office, have supported tens of communities in their struggle to defend their lands and homes from confiscation and destruction. It succeeded in organizing tens of demonstrations on local and national levels, and organizing a permanent camp on the de facto annexed or confiscated lands in Jayyous, probably the clearest example of the Israeli policy and its results. It succeeded in producing and disseminating numerous publications, maps and information materials, including the book *Stop the Wall in Palestine: Facts, Testimonies, Analysis and Call to Action*; assisting hundreds of journalists and representatives of international organizations; and creating a web site ( <http://www.stophthewall.org> ). The Campaign's international advocacy, including its proposal to commemorate 9 November as the “Day against the Wall”, has created great awareness of the issue.

Turning to the role of civil society, Mr. Correa-Lugo centred his presentation on the question of human rights, international NGOs and the international community, three components that any civil society depended on. Speaking of enforcement and the applicability of international law to “negotiations” and “peace processes,” he wondered why in almost all the peace proposals and agreements (Oslo Accords, the Road Map, and the Geneva Initiative), human rights and international law were excluded. The Campaign believed in human rights as an international language, which implied the belief that the United Nations was based on the acceptance of this universal language. Saying that for some Palestinians it was better to talk about the Geneva Convention rather than the Geneva Initiative, he stressed that the priority was to guarantee the right to life and the right to freedom.

The debate also was not just about one State or two States. An integral part of the debate for Palestinians in the Occupied Territory and Palestinians in Israel was what kind of State. A look at the map of the wall showed that the two-State solution became impossible, as it seemed that no real pressure on Israel to stop the wall would take place. With the wall, the Palestinian people would not have a State. Without territorial contiguity, without ties with third countries, without land or water, without any possibility of developing its own economy, and with Palestinians living in ghettos, it was impossible to talk about any Palestinian State.

Mr. Correa-Lugo stressed that any wall built within Israeli territory would be legal, but not necessarily its consequences. In the case of the Berlin wall,

no one discussed its legality, but its human rights consequences, and the same was with the wall between the United States and Mexico. The path may be legal but its consequences were indeed terrible. No wall, whatever its path, was acceptable. In addition, the one-State solution would fail if such a State would not guarantee the same rights to everyone, as was happening now in Israel where non-Jews did not enjoy the same rights. In the long term, a one-State solution would have to answer questions related to real democracy and the full applicability of human rights. The basis and nature of Israel was, unfortunately, the central problem when discussing the prospects of a one-State solution.

After the fatal blow to the Geneva Convention in the Afghanistan war and in Guantanamo, and the denial of a United Nations role by the United States during the Iraq war, what was at stake, in addition to the legality of the Wall, was the international system itself. If the Israeli message and actions of eradicating a Palestinian State continued to be accepted internationally, it was going to be very difficult to speak again in terms of human rights as universal principles that were recognized by decent societies and that would help bring justice to the Palestinian people.

Mr. Currea-Lugo turned to the role of international non-governmental organizations within the conflict and especially to the issue of the humanitarian aid provided in relation to the impact of the wall on the communities. Why did international NGOs provide food and non-food aid to the communities when the biggest problem was human rights violations? What should the role of international NGOs in the Occupied Palestinian Territory be? They confronted a tragedy and injustice, which was not the so-called classic humanitarian emergency where a lack of material goods called for assistance in the strict sense of the word. Persons and institutions with experience in other conflicts recognized that the solutions needed in that conflict went beyond. The Bertini report, the most famous United Nations report about the humanitarian situation in Palestinian Territory said, "The crisis is not a 'traditional' humanitarian crisis. (It) is inextricably linked to the ongoing conflict and particularly to the measures imposed by Israel... if the overall environment improves sufficiently to enable a free flow of people, goods and services, the humanitarian crisis will rapidly dissipate". For instance, vulnerability in the Occupied Palestinian Territory was based on lack of access to the distribution systems of food and the employment possibilities that guaranteed the capacity of Palestinians to buy food. As Mr. Ziegler said yesterday, these were a hungry people living in a fertile land.

Mr. Currea-Lugo expressed the opinion that most of the international NGOs had replaced the occupying Power in its duties and were then imposing on themselves a form of silence. In fact, their primary preoccupation must not be the distribution of food but advocacy against the daily and systematic violations of human rights carried out by the Israeli Government. The humanitarian agenda on behalf of the Palestinian people went beyond food distribution and included those tortured in Israeli prisons and the killings of civilians. Palestinians did not need the so-called "classical humanitarian aid"; it was easier to convert the Palestinian struggle into a food-aid solution. It was easier to distribute food than demand that Israel respect the farmer's access to the land. It was easier to distribute safe water than discuss on the political level the Israeli military and Government control of the water resources. The step of replacing human rights with an undefined minimum of humanitarian aid was clearly wrong and was not a contribution to the Palestinian people. This wrong step was made possible due to the mistaken notion of neutrality. It was possible to talk about neutrality between two combatants, but not between a combatant and his victim. As the ICRC itself said, silence had a limit.

Regarding the role of the so-called international community in the legal process concerning the wall, Mr. Currea-Lugo wondered why most of the international community took a step back and refused to take part in the public hearings in the International Court of Justice in February. The Campaign placed hope in the power of law when it received news of the United Nations General Assembly resolution adopted in October 2003. Because of Israel's refusal to accept the terms of the resolution, the Assembly took the next step and requested an Advisory Opinion from the International Court of Justice. Then, Israel claimed that the Court did not have jurisdiction to study the legality of the wall, which Israel called a political rather than legal question. The United States, Israel's unconditional ally, took a similar position and led a boycott. Regarding the role of the so-called international community in the legal process concerning the wall, Mr. Currea-Lugo wondered why most of the international community took a step back and refused to take part in the public hearings in the International Court of Justice in February. The Campaign placed hope in the power of law when it received news of the United Nations General Assembly resolution adopted in October 2003. Because of Israel's refusal to accept the terms of the resolution, the Assembly took the next step and requested an Advisory Opinion from the International Court of Justice. Then, Israel claimed that the Court did not have jurisdiction to study the legality of the wall, which Israel called a political rather than legal question. The United States, Israel's unconditional ally, took a similar position and led a boycott against the ICJ.

All the contracting parties of the Geneva Convention, including Israel, must ensure the application of international humanitarian law. Since the wall was illegal, all States that signed the Geneva Convention had the legal responsibility to stop the wall's construction and its impact on the civilian population. But to our surprise, the European Union joined in on the argument that the debate was political and not legal, supporting the Israeli voice that affirmed that the Court was not legally competent to examine the wall. That it was political was not in question, but rather that political nature of occupation did not place it outside the law. One could not say that war crimes were not legal matters but rather political ones, since wars were political issues. Denying war crimes and the crimes against humanity that accompanied the construction of the wall was a position that the Government of Israel was expected to take. But if the rest of the so-called international community—including the European Union—agreed with this opinion, then it denied that there was any expropriation of land and that there were any other serious violations of the rights to freedom of movement, property, health, education and work, as had been clearly exposed. The universality of human rights would then disappear.

In conclusion, Mr. Currea-Lugo stressed that first, any kind of agreement or accord, even if signed by the Palestinian Authority, even if supported by the international community or the United Nations itself, could not erase or disregard international law. Without human rights, without a minimum of possibilities to build justice, it was almost impossible to talk about civil society. Second, the international NGOs had to combine the demand of the duties of the occupying Power and the applicability of international law. The NGOs, according to their own humanitarian principles, deserved another and better role, while the international community could not be limited to only providing Palestinians with painkillers and this only when the Israeli Government permitted. Third, Palestinian civil society existed, but its survival depended on the genuine support and action by the international community-based on international rules and such institutions as the International Court of Justice. The wrong message that could be sent by the international community was, "Palestinians, rights do not exist in your case, only politics".

During the question-and-answer session that followed, a representative of a non-governmental organization said he could not support the position of Mr. Raz on the building of a wall on the Green Line since it was not an internationally recognized border. The Palestinian Authority and civil society, as well as a number of countries, had supported sending a protection force to the region, which would depend on the blessing of the United Nations. In that regard, he asked to what extent it was possible for resolutions to be imposed on Israel in the form of sending in a protective force.

Dalit Baum, a peace activist with the Coalition of Women for a Just Peace and one of the speakers in a previous plenary, drew attention to the recent news that a 17-year-old Palestinian, Hussein Mahmud Awad, had been shot dead by the Israeli Army during a peaceful demonstration against the wall in the village of Beituniya. She called on participants, when back in their countries, to demand an explanation for the killing as a demonstration of their commitment to finding a solution to the problem.

Another non-governmental organization delegate wondered if the two-State solution was a United Nations platform or if it was now a one-State solution. He added that Mr. Raz's statement revealed the difficulties encountered by the Israeli population in its understanding of the situation, and stressed that it was unrealistic to expect that it would shed its predominantly colonial outlook by itself. He further said that the Meeting discussion about a real wall, as it existed at the moment, and not an imaginary one on the Green Line, and disputed the opinion that Palestinian violence had subsided because of the wall, saying that it decreased because of the increase in Israeli violence. Other speakers said it was not appropriate to put Syrians, Lebanese and Jordanians on the same footing as Palestinians. The suffering of the Palestinian people was not just because of the wall, it began with the dispersion of the Palestinian people all over the world; and even the passport carried by Palestinian people was not an internationally

recognized document. The recognition of a Palestinian State should provide measures that took into consideration international law.

In response to the questions and comments raised, Mr. Raz strongly condemned the killing of the Palestinian youth and said that in a way the Meeting was not about an existing wall, since most of it was not built yet. He further reiterated that the building of a wall on the Green Line was not illegal; moreover, such a wall would make a two-State solution much more possible, as moving even one settler was more problematic than moving 600 kilometres of a wall. He said Jerusalem was a special case where it was impossible to build the wall on the Green Line, and it was a terrible crime to build a wall in Abu Dis. However, in the rest of the Occupied Territory it was still possible; the route could be changed, as indeed had already been done. He asked how a wall on the Green Line could affect so terribly the lives of the Palestinians. The suffering of the Palestinians was caused by the occupation in general, and settlements, restriction of movement and so on, in particular. Mr. Raz said that Israel ended its occupation of the Sinai and South Lebanon, although it took time and effort; he was therefore optimistic that the Israeli occupation of the West Bank and Gaza Strip and Golan Heights would end too. He understood there was no Israeli majority in favour of this, and did not suggest that Palestinians and the international community had to wait for such a majority to appear. He stressed that concerted international effort, including clever pressure on Israel, would be necessary to make it happen.

Mr. Currea-Lugo said that while it was possible to argue about the percentage of the wall completed, for many Palestinians the wall was a 100 per cent reality. He further stressed that the overwhelming majority of the wall was not on the Green Line. Moreover, the Green Line was not an internationally recognized border, so why not then propose building the wall on the lines of the United Nations Plan of Partition. The war crime was not an issue of numbers, but one of intention, the fact and the resources, as the ICRC was clear about. Mr. Hassouna said there were many arguments on the legalities of the wall and referred to the provisions of the International Criminal Court statute, which said the Israeli settlements were a war crime and, therefore, the wall surrounding the settlements were also a war crime. He stressed the importance of public opinion which could change policies and governments. Speaking of the importance of the position taken by world leaders, Mr. Hassouna gave as an example what the Pope had said about the wall, namely "we need bridges and not walls". Speaking about the protection force – an issue raised by one of the speakers – he said there had been attempts in the past in the Security Council to establish a peacekeeping force in the Occupied Territory yet resolutions had not been adopted owing to a United States veto since Israel did not want an international force presence, but wanted its hand free to impose a military solution. In the final analysis, what was needed was the political will of the international community and of Member States that could only come about as a result of a comprehensive, diplomatic, civil society, public media campaign. Ms. Amra added that more than 200 villages were totally isolated because of the wall and called on all people in the region, including civil society in Israel, to challenge their governments and to work together to raise awareness.

A representative of the Syrian Arab Republic said the Golan Heights was still under occupation and United Nations resolutions had yet to be implemented by Israel, including its withdrawal from all territories which it occupied. If Israel really loved peace, it could withdraw and return to the pre-1967 borders. Israel did not understand the language of international law. When it withdrew from Lebanon it did so not because it wanted to comply with international law and Security Council resolution 425 (1978), but because of the pressure of resistance. The Syrian Arab Republic was committed to international law and legality and was committed to the armistice and hoped the international community would apply pressure on Israel. The suffering of the Syrian people in the Golan was comparable to the Palestinian people's suffering.

Mr. Raz acknowledged that Israel had occupied the Golan for 37 years now, and said he hoped that Israelis and Syrians would accept the initiative of the Arab League.

### III. Closing session

Closing statements were made by Nasser Al-Kidwa, Permanent Observer of Palestine to the United Nations, and Paul Badji, Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People.

Victor Camilleri, Rapporteur of the Committee, introduced the Final Document of the International Meeting (see annex).

**Nasser Al-Kidwa**, Permanent Observer of Palestine to the United Nations Headquarters in New York, expressed his delegation's appreciation to the panellists and participants for their exchange of views and said he felt all the main points had been well covered. The wall presented the biggest threat to peace in the Middle East, destroying the lives and future of the Palestinian people, and made the two-State solution practically impossible; it constituted a war crime and, thus, should be stopped and removed. On the issue of the route of the wall, Palestine had indicated that Israel could have built a wall on its own territory and Palestine would not have challenged the legality of that move, although it still would not have agreed to it as a good idea for a peaceful solution, as it would endanger future cooperation between the two peoples.

On the issue of violence, Mr. Al-Kidwa said the whole conflict was essentially one of foreign belligerent occupation that was transformed into colonialism aimed at negating the existence and national rights of the Palestinian people. There had been over the years systematic organized Israeli oppressive measures against the Palestinian people, including collective punishment, house demolitions, deportations, bone breaking etc, well before the latest intifada. The first suicide bombing came 27 years after the beginning of the occupation. Nonetheless, Palestine had a clear policy against targeting civilians in Israel, which should be distinguished from the right of the Palestinians to resist the occupation and to defend themselves against attacks by the occupying army. On the issue of enforcement, the emergency special session of the General Assembly, as well as the work of the International Committee of the Red Cross, were good examples of concerted action to resolve the problem. All of the above depended on the determination of States to enforce international law, including the Fourth Geneva Convention, which was the only way to achieve results.

The recent declarations by the United States and Israel had violated international law, the basis of the Middle East peace process and brought an end to the Road Map, making the work of the Quartet extremely difficult, if not impossible. The Palestinian position was clear: these declarations were not acceptable. Moreover, declarations would not have any impact on international law or on the rights of the Palestinian people as recognized by the international community. Palestinians believed that it was time for the international community to look for alternatives to the Road Map, and maybe for alternative mechanisms to that of the Quartet.

**Paul Badji**, Chairman of the Committee on the Inalienable Rights of the Palestinian People, said that in taking the initiative in organizing the Meeting, the Committee wanted to draw the attention of all the members of the international community to the grave event and the fait accompli imposed by Israel in the illegal construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem. It was another among many grave acts committed by Israel, the occupying Power, and the Security Council, the General Assembly and the International Court of Justice had all been seized on the issue. He said he felt the Meeting was necessary and came at an appropriate time, during the sixtieth session of the Commission on Human Rights, since the situation in the Occupied Palestinian Territory was characterized by grave violations of human rights.

The Chairman said the meeting had met its objectives in allowing the participants to expose the dangers that the wall posed in legal, political, humanitarian and economic terms for the Palestinian people as it sought to establish its free and independent State. At the legal level, the Meeting reaffirmed the applicability of international law to the situation that came about because of the construction of the wall. This, in itself, was a violation of international humanitarian law and human rights instruments, as well as of the inalienable rights of the Palestinian people. Particular attention was accorded to the issue of annexation of the Palestinian land and Israel's settlement policies, in particular in and around East Jerusalem. At the political level, all the statements in the Meeting underlined the multiple harmful effects of the wall, which jeopardized the Armistice Line of 1949 and violated the letter and the spirit of the Road Map. It was predetermining the results of the negotiations on the final settlement by creating a new reality on the ground and a de facto annexation of the Palestinian territory. The continuation of this project would compromise the chances of establish a viable Palestinian State and consequently make the two-State solution impossible, thus endangering the stability of the entire region. On the humanitarian

level, many statements underlined that the construction of the wall involved confiscation of Palestinian land and additional restrictions on the freedom of movement in the West Bank, resulting in incalculable sufferings for Palestinian families, exacerbated by further restrictions on the operations of the international humanitarian agencies. On the economic level, the construction of the wall resulted in confiscation of Palestinian land, fragmentation of the Palestinian economy and disruption of economic links among the Palestinians, as well as destruction of water sources, increasing impoverishment of the Palestinian population and further weakening of the already weak Palestinian economy.

In conclusion, Mr. Badji said the international community should take prompt action to bring Israel to terminate the building of the wall, to dismantle the segments of the wall that had already been built, and to resume negotiations with the Palestinian Authority. The search for peace and security had to take place within the framework of the Road Map and the Quartet had to make every effort to make it happen.

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## **Annex I**

### **Final document**

1. The United Nations International Meeting on the Impact of the Construction of the Wall in the Occupied Palestinian Territory, including in and around East Jerusalem, was held on 15 and 16 April 2004, at the United Nations Office at Geneva, under the auspices of the Committee on the Exercise of the Inalienable Rights of the Palestinian People. Participants in the Meeting included eminent personalities, internationally renowned experts, including Israelis and Palestinians, representatives of the States Members of the United Nations and of Observer missions, parliamentarians, representatives of the United Nations system and other intergovernmental organizations, the academic community, representatives of civil society organizations, as well as the media.
2. The Meeting was held at a time, when, despite a broad opposition by the world community, the Government of Israel continued to build the wall in the Occupied Palestinian Territory. In light of this situation, the Committee was of the view that the far-reaching humanitarian, economic and political implications of the construction of the wall warranted the further attention of all actors of the international community.
3. In the course of the Meeting, the participants underlined the complexity of the project, which included not just one prominent element but an elaborate regime combining physical structures, such as concrete walls, barbed wire fences, ditches, other obstacles, as well as patrol roads, hi-tech surveillance equipment and administrative and practical measures, including the establishment of closed zones. Speakers expressed their dismay at the scope of the project, its devastating immediate and longer-term effects on the Palestinian population and the destructive consequences for the political process. They also discussed Palestinian and Israeli reactions as well as the response of the international community.
4. The participants in the Meeting welcomed the adoption by the General Assembly of resolution ES-10/13 and highlighted its demand that Israel stop and reverse the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem, in departure from the Armistice Line of 1949 and in contradiction to the relevant provisions of international law. Noting that Israel has not adhered to that demand and had continued the construction of the wall, many speakers expressed their appreciation for the important report of the Secretary-General submitted in November 2003 in accordance with the resolution. They further stressed the importance of resolution ES-10/14 in which the Assembly had requested an advisory opinion by the International Court of Justice on the legal consequences arising from the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem. The participants expressed confidence that the Court would issue, in due course, an advisory opinion that would uphold international law. They called upon the international community, but in particular the occupying Power, to adhere to the upcoming advisory opinion of the Court and to take all the necessary steps to restore international legitimacy.
5. The political consequences of the construction of the wall were at the centre of the discussion. The participants were of the opinion that the construction had multiple negative effects on the political situation. The wall was viewed as a direct and dangerous challenge to the internationally recognized 1949 Armistice Demarcation Line (Green Line); it violated the letter and the spirit of the Road Map; and it predetermined the outcome of any future permanent status negotiations by creating new facts on the ground. Many speakers saw in it a de facto annexation of the Palestinian land. The participants agreed that, if not stopped and reversed immediately, the construction of the wall would destroy chances for the establishment of a viable and contiguous Palestinian State, thereby making the two-State solution physically impossible to implement and further endangering prospects for peace and security in the region.
6. The participants expressed deep concern over the dangerous current and potential humanitarian consequences of the construction of the wall, noting that it would bring further dispossession for a significant number of Palestinians. With this project, the occupying Power had added further constraints to the already severely limited freedom of movement in the West Bank, increasing the suffering of thousands of Palestinian families. Some participants noted with concern that the construction might also lead to a forced displacement of Palestinians in their own land. Combined with the tight regime of closures and curfews, the wall seriously impeded the international community's emergency aid and humanitarian relief work.
7. The participants also noted that by destroying, confiscating and putting Palestinian agricultural lands and water sources off-limits in the process of the wall construction, Israel had dealt another devastating blow to the Palestinian economy, which was on the verge of collapse after three years of destruction and restrictions imposed by the occupying Power. It was observed that the construction had also caused considerable economic disruption by severing the long-established economic links between and within Palestinian communities, as well as between the Occupied Palestinian Territory and Israel. The wall had greatly limited the Palestinians' access to health care, education, employment and food. The participants expressed their alarm at the fact that the continuation of the project might bring to a halt most of the Palestinian economic activity, further delay the achievement of economic viability by the Palestinians and increase their dependence on donor assistance.
8. The participants further noted that the protracted and complete lack of dialogue between the parties necessitated active involvement of the international community. They expressed concern over the increasingly unilateralist approach favoured by the Israeli Government and emphasized that such positions should be rejected by the international community. They urged the Quartet to reinstate its role as the main international broker and facilitator of the political process and to reassert its commitment to the strict adherence to international law. They called on the Quartet to work closely with the parties and other international and regional actors to save and implement the Road Map in order to achieve a comprehensive, just and lasting settlement of the conflict based on Security Council resolutions 242 (1967), 338 (1973), 1397 (2002) and 1515 (2003). The participants agreed that the setting up of an effective international monitoring and implementation mechanism was essential for any progress on the ground.
9. The participants reaffirmed the permanent responsibility of the United Nations with respect to all the aspects of the question of Palestine, until it is resolved in conformity with relevant United Nations resolutions and norms of international law, and until the inalienable rights of the Palestinian people were fully realized.
10. The participants also expressed gratitude to the Director-General of the United Nations Office at Geneva for hosting the Meeting and for the assistance and support extended to the Committee and the United Nations Secretariat in its preparation.

*Geneva, 16 April 2004*

