

The Jerusalem Institute for Israel Studies
The Teddy Kollek Center for Jerusalem Studies

A Fence Around Jerusalem

The Construction of the Security Fence Around Jerusalem

*General background and implications for the city and
its metropolitan area*

Kobi Michael and Amnon Ramon

2004

Introduction

In April 2002, following a lengthy series of brutal terrorist attacks, the Ministerial Committee for National Security (hereafter: the Security Cabinet), headed by Prime Minister Ariel Sharon, decided to establish a security fence between Israel and the West Bank.¹ Two months later, the government authorized the route of the fence as proposed by the security establishment, between Sallem, in the northwest area of the West Bank, and Kafr Kassem, as well as two sections in the Jerusalem area. Three major sections have been completed since work began in August 2002: the central section between Sallem and Elkana, constituting the main part of the fence; the northeastern section, in the Mount Gilboa region, between Sallem and Kibbutz Tirat Zvi; and two sections in the south and north of Jerusalem. In addition, parts of the obstacle were built east of Jerusalem.

Both the decision-making process with regard to the fence and the geographic reality and the political consciousness it has created reflect the problematic and complex nature of decisions concerning national security in Israel. More specifically, this enormous project will have far-reaching consequences for the mutual relations between Israelis and Palestinians and between Israel and the Palestinian Authority, in the shadow of the ongoing violent confrontation between the sides.

The initial conception and incipient planning of the fence date back to the second government of Yitzhak Rabin, when Moshe Shahal, the Minister of Interior Security, initiated planning for the “seam zone.” However, the security situation between 1995 and 2002 did not generate massive public and political pressure to

¹ In this document the terms “security fence,” “seam zone,” “obstacle” (the official terminology of the security establishment), and “separation/disengagement fence,” which is commonly used by the Israeli media, will be used alternatively. In the international media the prevalent term is “wall.” It should be emphasized that the Israeli security establishment also uses several terms interchangeably, as can be seen, for example, on the official Israeli websites relating to the fence project. The Defense Ministry’s site is called “The Seam Zone” in Hebrew and “The Security Fence” in English.

See: www.seamzone.mod.gov.il/Pages/ENG/default.htm.

build a fence. Consequently, the Israeli governments in this period found no justification to embark on such a project, not least because of their concern that a fence would effectively determine the eastern border between sovereign Israel and the West Bank. By the summer of 2002, however, the fence project was virtually forced on the government, as the public demanded an adequate response to Palestinian terrorism which had brought about a severe deterioration of the security situation and left Israelis feeling highly vulnerable and deeply insecure in every sense.

Although the fence originated as a “security necessity,” the planners, who came from the security establishment, were compelled to consider numerous “civilian” aspects (including domestic and external political pressure). The vast complexity of the project meant that the planners were unable to anticipate all the implications, consequences, and ramifications of the fence and its operational regime in many “civilian” and security spheres. These inherent difficulties were often compounded due to the absence of clear guidance by the political level, which, subjected to contradictory domestic and international pressures, found it difficult to decide the route of the fence. At the same time, it needs to be emphasized that the security establishment was the only planning and operational body in Israel capable of coping with a project on this scale within a reasonable period.

Another result of the complexity of this “national project” was “conceptual confusion” that characterized the process. From the outset, a number of terms have been used to describe the project, each representing a different rationale. In part, the conceptual confusion appears to reflect an inherent tension between considerations of a strictly security character (as in the terms “security fence” or “separation fence”) and political-state considerations, both internal and external, which bring about a blurring of the separation boundary (as in the term “seam zone”). Indeed, as will be seen later, in present-day Israel it is all but impossible to differentiate between “pure” security considerations (within the Green Line and for the settlements in Judea and Samaria) and domestic and external political and state-policy considerations.

Particularly acute problems in planning and building the fence have arisen in and around Jerusalem, one of the most complex and complicated cities in the world. The major difficulty lies in the fact that in many cases the fence in the Jerusalem area does not separate Jewish and Arab populations, but instead cuts off

Arabs living in the West Bank from Arabs living within the municipal boundaries of Jerusalem, despite the close family, social, and economic ties that bind the two groups.

In light of the fact that the Jerusalem fence project is the most significant Israeli undertaking in the city since 1967, the Jerusalem Institute for Israel Studies decided, in the spring of 2003, to examine the consequences and implications of the route of the fence around Jerusalem. In this connection, a special research team (consisting of Israel Kimhi, Maya Choshen, Amnon Ramon, and Kobi Michael) was established to study the tangled issue.

The present document is the first in a series of planned research papers on the subject of the separation fence and Metropolitan Jerusalem. Its aims are to analyze the decision-making process underlying the fence and its route, with the focus on mapping and elucidating the main problems that have already arisen and that are likely to arise in the future. In the concluding section of the paper we set forth three possible sequences of events in the situation of a fence around Jerusalem. Finally, we offer initial operative recommendations, which will be further developed in the next stage, following an in-depth examination of the problems set forth in the paper. We hope the paper will assist the policy makers at the various levels to cope with this complex issue and will also shed light on the subject for lay readers who want to learn more about one of the monumental developments in the history of Jerusalem since 1967.

We are grateful to Israel Kimhi and Maya Choshen, our dedicated partners on the research team, and to the interviewees and participants in the discussions conducted by the think tank of the Jerusalem Institute for Israel Studies: Shalom Goldstein, political adviser to the mayor of Jerusalem for East Jerusalem affairs; attorney Daniel Seidemann; senior officers of the Border Police; Major Gil Limon from the military legal adviser's office of Judea and Samaria; Colonel (res.) Danny Tirza, a senior planner of the fence in Central Command's "Keshet Tzva'im" Directorate; and to Israelis and Palestinians who agreed to be interviewed on condition of anonymity. Special thanks to the members of the Jerusalem Institute think tank (particularly Prof. Ruth Lapidot, who made important comments about the legal section) and to Ora Achimeir and Prof. Yaakov Bar-Siman-Tov, the directors of the Jerusalem Institute, who oversaw the study and supported it from

its inception. We are especially grateful to Ms. Hamutal Appel for her work in editing the manuscript and seeing it through the printing process; to the Hebrew editor, Shlomo Arad; to the photographers Nati Shohat and Yossi Zamir (Flash 90); to the English translator and editor, Ralph Mandel; and to Yair Assaf-Shapira and Vered Shatil, for preparing the maps.

Kobi Michael and Amnon Ramon

November 2004

Chapter One: The Decision-Making Process

A. Evolution of a concept: Obstacle, security fence, separation fence, or seam zone?

Already in 1992-1993, as stabbing attacks on Israelis by Palestinians became rampant, Israel placed controls on the entry of Palestinians from the West Bank and the Gaza Strip into its territory. However, since early 1995 and the onset of the large-scale terrorist attacks that accompanied the Oslo process, Israel had to consider the creation of a physical obstacle to block the entry of terrorists from the West Bank. At the same time, concern that such an obstacle would predetermine the limit of Israel's concessions to the Palestinians has led the political echelon to downplay its political implications. The relentless terrorist attacks, Israel's inability to set a final policy goal and decide the route of the eastern border, together with international pressure on Israel to avoid unilaterally "biting off" parts of the West Bank, prevented systematic thinking and planning in regard to the fence and generated "conceptual confusion" reflecting different approaches that are in part self-contradictory.²

The separation fence is being planned and built as a security necessity that will stop potential terrorists and channel and systematize the entry of Palestinians into Israel, while denying entry to individuals on security or criminal grounds ("shabahim" — illegally present — as such persons are known in the security jargon). However, it is obvious that the fence will have an enormous impact on the relations between Israel and the Palestinian Authority/state in any future scenario. Indeed, pressure exerted by Israeli public opinion and by the Israeli media in response to surging Palestinian terrorism "coerced" the political level to establish a physical obstacle between Israel and the Palestinian Authority, which for the first time clearly separated the West Bank and Israel and the two peoples. This is

² For an extensive discussion of the historical and conceptual aspects of Israeli disengagement from the "Palestinian entity," see: Dan Schueftan, *Disengagement: Israel and the Palestinian Entity*, Zmora-Bitan and the University of Haifa, 1999 (Hebrew), pp. 21-26, 46-52.

a major departure from Israeli policy since 1967, which allowed the free movement of the residents of the territories into Israel, and from the Israeli effort (mainly since 1977) to blur the border by means of the settlement project.

Incontestably, the fence, once completed, will shape not only a new geographic reality but also a new consciousness stemming from the radically different political, social, and economic situation that will actuate the relations between Israel and the Palestinians in the West Bank and around Jerusalem. In addition, the fence will be of great consequence for relations between the Arabs in Israel and the Palestinians in the territories, and will reduce significantly the ability of the latter to migrate to Israel.

B. The decision-making process

At the beginning of 1995, the wave of suicide bombings which began in late 1994, during the Oslo process, and extensive Palestinian criminal activity — theft of cars and of agricultural implements — led to the formulation of the “seam zone” plan. The term referred to a geographic strip (340 kilometers long, including the Jerusalem area, and ranging in width from a few kilometers to 20 kilometers) along both sides of the Green Line, which would be utilized to preempt and prevent terrorist and criminal activity originating from the West Bank.

On January 31, 1995, ten days after a terrorist attack at the soldiers’ hitchhiking station at Beit Lid junction, the Cabinet instructed the Finance Minister and the Interior Security Minister to set up teams in order to examine ways and means to bring about a separation between the population of sovereign Israel and the Palestinian population in the West Bank and the Gaza Strip, and to consider the economic and security implications of such a separation.³ The decision led to the establishment of a committee headed by Interior Security Minister Moshe Shahal, which drew up a plan based on three principles: Palestinians would be allowed to enter Israel through official crossing points after obtaining an entry permit and undergoing a security check by the Israel Police; the volume of vehicular traffic

³ State Comptroller, 48th Annual Report, for 1997, and the Accounts of Fiscal 1996, pp. 1020-1021.

into Israel from the territories would be reduced and a system introduced to ensure the entry of goods and merchandise in a controlled manner through the official crossing points; and potential infiltrators and vehicles would be prevented (as far as possible) from entering Israel outside these points. The committee recommended the introduction of permanent and continuous routine-security measures (known as *batash* in the military Hebrew acronym) between the crossing points, this under the responsibility of the Israel Defense Forces (IDF), and the construction of an obstacle on the access routes to prevent infiltration.

In the Jerusalem region the committee recommended the deployment of police and Border Police forces to supervise and oversee those entering the city. More specifically, the committee recommended the creation of six crossing points for goods, vehicles, and people seeking to enter the city from the West Bank. In addition, the committee said, access routes traversing Jerusalem's area of jurisdiction should be blocked in order to ensure that traffic passed solely through the official crossing points.

The director of budgets in the Finance Ministry estimated the overall cost of the plan at approximately NIS 2 billion. Concurrent with the Shahal Committee, a committee headed by David Brodet (a former director-general of the Finance Ministry) examined the plan's economic aspects. Other plans were put forward by Central Command headquarters and by a committee chaired by the deputy chief of staff, but none of them became operative.⁴

On March 3, 1996, the day on which a suicide bomber blew up a bus on the number 18 line in Jerusalem during a spate of terrorist attacks, the government reiterated its resolution of January 1995 to bring about a separation between Israel and the territories. The new resolution stated that in order to control and supervise the entry of vehicles, pedestrians, and goods, orderly crossing points would be established in the seam zone (modeled on the Erez checkpoint at the entrance to the Gaza Strip), with alternative routes of entry to be blocked. In the wake of this decision, a plan to protect the seam zone was drawn up by the Planning Branch of the General Staff and another plan was prepared by the anti-terrorism unit in the

⁴ Ibid, pp. 1021-1022.

Prime Minister's Office (which was established at the beginning of March 1996).⁵ In 1997, the Interior Security Ministry decided to deploy Border Police units, which operate within the framework of the Israel Police, along the seam zone. In addition, special units were formed to fight crime in the seam zone.⁶

However, the government decisions and the plans prepared by the various committees were largely unimplemented and failed to meet expectations. In July 1996, Yitzhak Mordechai, the Defense Minister in the new government of Benjamin Netanyahu, declared that he opposed the Rabin government's separation plan. The plan was put on hold.⁷ The State Comptroller's Report for 1997 stated: "Dealing with the seam zone amounted to no more than making decisions to establish committees, which were asked to prepare operative plans, usually in the wake of terrorist attacks." The report added: "The IDF does not have a concrete response for the three paramount problems relating to the seam zone (hostile terrorist activity, criminal activity, illegally present individuals)." Moreover: "In the absence of a decision to implement the plans that were submitted, the IDF cannot provide a response that meets the scope and severity of the security and criminal threats involving the seam zone. In the opinion of the State Comptroller, the absence of systemic and thorough activity by the security forces, as described in the Report, accords hostile and criminal elements freedom of operation to carry out their actions within the State of Israel."⁸ As will be seen later, this description by the State Comptroller in 1998 of decisions that were made under the pressure of terrorist attacks is equally apt for the subsequent process of decision-making about the fence.

⁵ Ibid, pp. 1022-1023.

⁶ State Comptroller, Report on the Seam Zone, Report No. 2 (July 2002), pp. 10-12. The report also appeared in: State Comptroller, Annual Report 54A for 2003, pp.75-79; hereafter: Seam Zone Report.

⁷ *Haaretz*, Feb. 24, 2004, p. A-4 (all references are to the Hebrew edition of the daily paper).

⁸ State Comptroller, 48th Annual Report, for 1997, and the Accounts of Fiscal 1996, p. 1031. According to Shalom Goldstein, the political adviser to the mayor of Jerusalem for East Jerusalem affairs, the situation described in the State Comptroller's Report applies equally to the activity of the Palestinian Authority in East Jerusalem, contrary to the interim agreements between Israel and the Palestinian Authority.

With the eruption of the second Intifada at the end of September 2000, terrorist attacks in Israel escalated rapidly, to a scale previously unknown. According to data of the Shin Bet (General Security Service), between the end of September 2000 and the beginning of July 2002, 83 suicide bombers infiltrated Israel from the territories (only one of them from the Gaza Strip).⁹ The terrorist attacks heightened public pressure on the government and the security establishment to seal the porous seam zone.

In November 2000, the Prime Minister, Ehud Barak, approved a plan to build an obstacle against vehicles in the Mei Ami-Latrun area and to deploy a number of Border Police companies for routine-security purposes along the obstacle, at a total cost of NIS 100 million. However, in May 2001 the Finance Ministry allocated only NIS 15 million for the plan and its implementation was postponed.¹⁰

In the meantime, the suicide bombings continued and public pressure for a separation fence intensified. Against this backdrop, MK Haim Ramon, a ranking figure in the Labor Party, established the Movement for Unilateral Separation. In June 2001, Prime Minister Ariel Sharon, leading a national unity government (and in the past a bitter foe of the fence concept), ordered the creation of a steering committee under Major General (res.) Uzi Dayan, the head of the National Security Council (NSC), to coordinate and supervise the plan to prevent Palestinian infiltration via the seam zone. In the wake of the Prime Minister's guideline, the NSC, in conjunction with the IDF and the Israel Police, formulated the Seam Zone Plan, which was approved by the Security Cabinet on July 18, 2001. Under this plan, the IDF was to be responsible for securing the eastern side of the seam zone by means of a "mission command" which would coordinate the activity, while the Border Police would be responsible for the western side. The two bodies were to coordinate their operations and the number of troops to be deployed in the seam zone would be increased significantly. Another decision was to create an antipersonnel obstacle in selected areas where the risk level was deemed to be

⁹ Seam Zone Report, p. 12.

¹⁰ Ibid, p. 13. According to Colonel (res.) Danny Tirza (head of Keshet Tzva'im Directorate and one of the chief planners of the fence), work on the anti-vehicle obstacle began in November 2000, with the Defense Ministry executing a plan drawn up by the Interior Security Ministry.

higher. This decision was effectively the inception of the separation fence. The Security Cabinet's resolution stipulated that the NSC would coordinate planning of the project and identify the aspects necessitating the decision of the political level.¹¹

Construction of the anti-vehicle obstacle began after the decision of July 2001. The Public Works Department and the Defense Ministry's construction branch installed a safety railing and a metal frame from the northwestern extremity of the West Bank to the Latrun area. Until April 2002 hardly any work was done on the antipersonnel obstacle.

On April 14, 2002, the Security Cabinet, cognizant of the need to boost the country's defensive capability in the face of terrorism — in addition to the offensive campaign then under way in the West Bank, known as Operation Defensive Shield — decided to establish a permanent obstacle in the seam zone. A ministerial panel chaired by the Prime Minister was to examine the implementation of the decision. The Security Cabinet also decided to establish immediately a temporary obstacle in three sectors: east of Umm al-Fahm, around Tul Karm, and in Jerusalem.¹² To put the decision into practice, the Seam Zone Administration was established under the director-general of the Defense Ministry, Major General (res.) Amos Yaron. In addition, the IDF set up a special team under the Deputy Chief of Staff, which formulated the comprehensive operational concept and the other implications of building the fence.¹³

At the beginning of June 2002, the IDF completed the formulation of the plan to build the first section of the permanent obstacle — between the northwestern extremity of the West Bank, at the village of Sallem (northeast of Jenin), and the

¹¹ Ibid, p. 16.

¹² Security Cabinet decision 64/B, Section E, cited in a position paper issued by B'Tselem: "Behind the Obstacle — Human Rights Violations as a Result of Israel's Separation Obstacle," March 2003, pp. 6-7 (English version; hereafter: B'Tselem Report).

¹³ The division of authority between the various bodies that are engaged in planning the route of the fence is not always clear. The Seam Zone Administration is described as an operational body, whereas the Keshet Tzva'im Directorate, which is attached to Central Command, deals with the planning aspects of the route.

settlement of Elkana — based on an order of priorities worked out by the security establishment. The plan included the establishment of a continuous obstacle around Jerusalem (hereafter: the Jerusalem Envelope) and an operative proposal to build its first two sections, in the north and south of the city.

Following numerous discussions of proposals and counter-proposals on the subject, Prime Minister Sharon accepted the proposal of the Defense Minister, Binyamin Ben-Eliezer, for the route of the first section of the separation fence, from Sallem in the north to Kafer Kassem in the south, covering 110 kilometers.¹⁴

On June 23, 2002, the government approved the Seam Zone Administration's plan for the implementation of the first sections of the fence. This followed an unprecedented surge of terrorist attacks against Israeli civilians (Palestinian terrorism claimed 131 Israeli lives in March 2002 alone).¹⁵

The decision stemmed first and foremost from pressure “from below” on the politicians “to take action.” In the light of the politicians' impotence and in the absence of any other “answer” to Palestinian terrorism, the fence seemed to be a “panacea” and an “electoral asset.” Yet no coherent conception existed concerning the essence of the fence, its geographic features, and its function/operation as part of a comprehensive security approach based on a national security conception and a long-term vision of Israel's national interests.

On the sensitive question of the route of the fence, the government decided: “The precise and final route will be determined by the Prime Minister and the Minister of Defense.” Any disagreements at lower levels would be brought to the Security Cabinet for a final decision.¹⁶ Thus an accelerated decision-making process was created in which a tiny panel — the Prime Minister, the Defense Minister, and the Interior Security Minister, together with representatives of the IDF and the Defense Ministry (who propose alternatives to the Prime Minister) — is almost

¹⁴ *Haaretz*, Feb. 24, 2004, p. A-4.

¹⁵ This figure was cited by Major General (res.) Uzi Dayan, who at the time was head of the NSC, in a conference held at the Hebrew University of Jerusalem on March 28, 2004.

¹⁶ Government Decision 2007, B'Tselem Report, p. 7.

alone¹⁷ deciding the route of the fence, without in-depth discussion or control by the civilian level.¹⁸ In August 2002, the NSC, which according to the decision of the Security Cabinet and the Prime Minister was to coordinate the staff work and supervise the construction of the fence, unilaterally dissociated itself from the seam zone plan, on the grounds that it was “not an operational body.”¹⁹ In practice, then, as in other sensitive spheres, nearly all the planning and work on the fence has been left to the security establishment, under the considerable influence of the army. There is a noticeable absence of comprehensive and ongoing control and oversight by the civilian establishment, whose task it is to examine the far-reaching implications of Israel’s largest infrastructure project for national security and the state’s interests. This situation was criticized by the State Comptroller, who noted “the National Security Council’s dissociating itself from the ministerial committee’s decisions” and the absence of a clear policy decision about which body is in charge of the fence project. The Comptroller remarked further “that it merits examination whether the overall systemic handling of the plan’s components — including political, legal, economic, informational, demographic, and other civilian spheres — should be concentrated in the hands of the security establishment or entrusted to a

¹⁷ The fence route was sent to the Cabinet ministers for their perusal and comments and was also discussed by the Knesset’s Foreign Affairs and Defense Committee, but in practice the influence of the Prime Minister and the Defense Minister was apparently dominant. According to the adviser on East Jerusalem affairs to the mayor of Jerusalem, representatives of the NSC and of Keshet Tzva’im consulted with the mayor and with officials of the Jerusalem Municipality and heard out the city’s field units concerning the route of the obstacle in the Jerusalem area. The mayor’s position was conveyed to the Prime Minister and the Defense Minister and in several cases influenced the route of the fence, the adviser noted.

¹⁸ On July 14, 2003, the Likud faction in the Knesset decided to suspend the transfer of NIS 745 million earmarked for the construction of the fence. In the discussion, MK Michael Eitan stated: “No one has told us what the route is, whether the fence fits into the road map policy, or whether such an expensive fence is necessary. None of us knows anything, including the ministers. The route gets changed but no one is consulted” (Zvi Zrahiya and Mazal Mualem, “Likud Knesset faction delays fund transfer for separation fence,” *Haaretz*, July 15, 2003).

¹⁹ Seam Zone Report, p. 72.

different body.”²⁰ Speaking at a meeting of the Knesset’s Control Committee, the Comptroller observed that the work was proceeding without long-term planning and without “a systemic vision, which is essential to achieve the plan’s goals.”²¹

C. Route of the fence: General features

On August 14, 2002, the Security Cabinet met to discuss the route proposed by the Seam Zone Administration and approved the final route for the obstacle’s first phase (codenamed by the IDF “Another Way A”). The route covers 118 kilometers, made up of 96 kilometers between Sallem and Elkana and 22.4 kilometers in two sections around Jerusalem: in the north from the IDF’s Ofer Camp to Qalandiya checkpoint, and in the south from the “tunnels road” (which begins adjacent to the Palestinian village of Beit Jalla) to the Etzion Bloc of settlements to Khirbet Mazmuriya (east of the new Har Homa neighborhood).²² Subsequently, during the work, the stretch of fence between Sallem and Elkana somehow became longer, now standing at 138 kilometers, and the two sections of the Jerusalem Envelope totaled 24 kilometers.²³ By the end of July 2003, in accordance with the timetable and despite the hard winter of 2002-2003, work was completed on 123 kilometers along the Sallem-Elkana route and on 17.8 kilometers of the two Jerusalem sections.²⁴ At the end of February 2004, as the International Court at The Hague began deliberations on the fence, the army began to dismantle the section of the fence that had been built east of Baka al-Sharqiya (the security establishment said this had nothing to do with the convening of the court at The Hague). Instead of

²⁰ Ibid, p. 76.

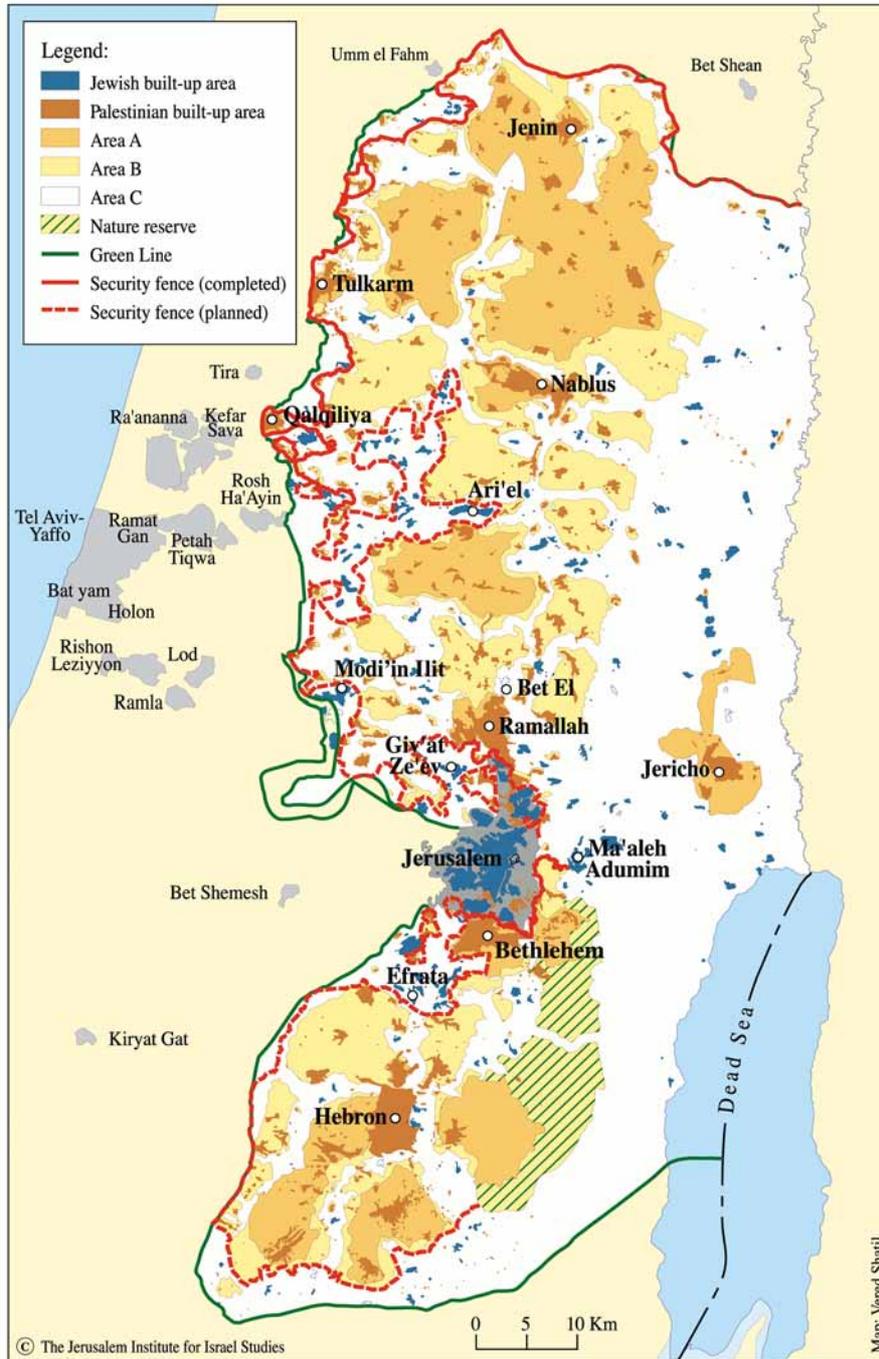
²¹ Zvi Zrahiya, “[State Comptroller] Goldberg criticizes government: ‘This isn’t the way to build a fence,’” *Haaretz*, Nov. 11, 2003.

²² See maps, pp. XX and XX; and: Mazal Mualem, “If Sharon wanted a fence,” *Haaretz*, May 30, 2003.

²³ Seam Zone Report, p. 76.

²⁴ See www.seamzone.mod.gov.il/Pages/ENG/news.htm#news5. It should be noted that there are discrepancies between the data in the State Comptroller’s Report and the official Seam Zone Fence website.

Illustration 1: Route of the security fence (separation fence)



the dismantled section, a new fence was built adjacent to the Green Line, which separates Baka al-Sharqiya, which is in the West Bank, from Baka al-Garbiya, which is in Israel.²⁵

In December 2002, the Prime Minister and the Defense Minister approved the second stage of the obstacle (“Another Way B”). This section of the fence follows a route that “envelopes” the communities of the Mount Gilboa region from Sallem to the outskirts of Beit She’an, covering another 42 kilometers and lying very close to the Green Line.²⁶ Construction of the fence from Sallem eastward to Mount Avner (in the Gilboa region), covering 38.5 kilometers, began in January 2003 and was completed in February 2004. The section from Mount Avner to the Jordan River is expected to be completed at the end of 2004.²⁷

The third and fourth stages of the fence, from Elkana southward to Jerusalem, and from Jerusalem to Umm Darj, west of the Dead Sea, were approved in principle by the government on October 1, 2003. The section from Elkana to Ofer Camp, north of Jerusalem, is in advanced planning stages, with work here having begun

²⁵ See: www.seamzone.mod.gov.il/Pages/ENG/news.htm#news16. According to the State Attorney’s Office and “reliable sources” in the Defense Ministry, additional changes may be implemented at this section of the fence. See: Arnon Regular, “New route will halt commerce at Barta’a,” *Haaretz*, Feb. 25, 2004; and see the section below on the debate about the fence in Israel and internationally.

²⁶ See www.seamzone.mod.gov.il/Pages/ENG/route.htm; and Amos Harel, “Construction of separation fence begins between Gilboa villages and West Bank,” *Haaretz*, Jan. 28, 2003.

²⁷ According to Colonel (res.) Danny Tirza, the government did not approve the route of “Another Way B” until October 2003. Implementation was delayed due to budgetary difficulties caused by the opposition of the chairman of the Knesset’s subcommittee for the defense budget, MK Uri Ariel (National Union). There was serious disagreement among the various bodies involved about whether to “stretch” the fence southward from Mount Avner toward the village of Thaisir, in the West Bank, or to “stretch” it along a route next to the Green Line to the Jordan River. The Justice Ministry objected to the route from Mount Avner southward (in the West Bank). Two routes appear in the government decision of October 2003, but at a later stage it was decided not to implement the route to Thaisir.

in the middle of November 2003 near the village of Rantis, though it is being held up in several places due to petitions to the High Court of Justice.²⁸

This section of the fence has become the focus of a fierce debate in both Israel and the international community because of pressure being exerted by the settlers and the right-wing parties to include the large settlements of Ariel, Emmanuel, and Kedumim (which are located about 20 kilometers east of the Green Line) and Karnei Shomron on the western — “Israeli” — side of the fence. On the other side, left-wing groups, including organizations that oppose the occupation and human rights groups, have led acts of protest and resistance to the fence and its route, involving occasional clashes with the security forces. The Prime Minister, the Cabinet, and the security establishment were subjected to contradictory pressures: the settlers and the right-wing parties demanded that tens of thousands of settlers not be “abandoned,” while the United States and the international community adamantly rejected Israel’s “annexation” of territory and urged that the fence be located on the “Israeli side” of the Green Line. The provisional solution that was found in this case, after the Security Cabinet and the Cabinet plenum examined various alternatives, was to build four “fingers” of fence around the four settlements, unconnected to the main fence. In addition, each settlement will be enclosed within its own separate fence. The deviation of the route toward the Ariel enclave lengthens the fence by about 100 kilometers in a hilly area where construction will be extremely difficult.²⁹ In the meantime, implementation of this stage has apparently been postponed until 2005.³⁰ Reports at the beginning of April 2004 suggested that according to the “new blueprint,” Ariel and Emmanuel will be encircled by a “local fence” and that there will be no breach in the main

²⁸ According to a lecture delivered by the director-general of the Defense Ministry, Amos Yaron, in a conference on the decision-making process regarding the fence, held at the Hebrew University on March 28, 2004 (hereafter: Yaron, HU conference). For a detailed discussion, see pp. 22-24.

²⁹ Amir Rapaport, “First publication: The route of the separation fence,” *Ma’ariv*, October 24, 2003.

³⁰ Amnon Bazilai, “Security establishment: More budgets for fence, roads and ambulances,” *Haaretz*, Feb. 9, 2004.

fence in the region of the settlements. That is, the fence will follow a continuous route, while the four settlements will be enclosed separately.³¹

Another contentious subject between Israel and the United States was the Israeli “annexation” of territories east of Ben Gurion International Airport, close to Highway 443, which connects the Modi’in area via Ma’aleh Beit Horon to north Jerusalem. Washington objected to this plan and dispatched a special envoy to examine Israel’s argument that the annexed areas are vital to protect air traffic to and from Israel’s major airport. However, the Americans were apparently not persuaded.³²

The plan was to build a double fence east of the airport, in order to hamper potential attacks on planes. Under this plan, the Palestinian villages in this area would have been “imprisoned” between two fences — one abutting the Green Line and the other 9 kilometers east thereof.³³

However, at the end of February 2004 the coordinator of the fence project, Brigadier General Eran Ophir (head of logistics in the IDF’s Technological and Logistics Directorate), stated that the idea of building deep obstacles to protect Ben Gurion Airport and the Modi’in-Jerusalem highway (Highway 443) was being shelved “because of concern about trapping tens of thousands of Palestinians.”³⁴ A ruling by the High Court of Justice at the end of June 2004 (see below) apparently brought about the annulment of the plan to create enclaves around the airport and Highway 443.

In the Jerusalem region (which we will consider in detail below), the fence will more or less run along the boundary of the city’s area of jurisdiction as set shortly after the Six Day War (at the end of June 1967). However, two areas — Shuafat refugee camp (adjacent to the Pisgat Ze’ev neighborhood) and Kafr Aqeb village (in the north of the city) — will be “excluded” and again find themselves

³¹ According to an editorial in *Haaretz*, April 4, 2004.

³² Aluf Benn, “US to examine necessity of fence in airport area,” *Haaretz*, Sept. 24, 2003.

³³ See note 30, above.

³⁴ See note 31, above. The obstacle in the region of Highway 443 will be discussed later.

on the “Palestinian side” of the fence. As noted, the fence around Jerusalem is singular, because in many places it does not separate Jewish and Arab areas but instead cuts off the Arab neighborhoods of East Jerusalem from the Arab neighborhoods and villages in the West Bank, which are under the civilian control of the Palestinian Authority. Large-scale deviations from the boundary of municipal annexation were planned for the area immediately north of Jerusalem in order to enable Israeli control of the northern access road to the city (Highway 443 and the planned Highway 45) and the incorporation of Givat Ze’ev and the surrounding Jewish settlements. As noted, at the end of February 2004 it was announced that the plan to build deep obstacles around Highway 443 was being scrapped. To the east of the city, the political level has not yet made a final decision about whether to include the city of Ma’aleh Adumim and the other settlements in the area (Kedar, Mishor Adumim, Kfar Adumim, Adam, and others) within the “Israeli” area of the fence. Colonel Tirza said in early March 2004 that at this stage no fence or wall will be built along a 2.3 kilometer stretch of the Jerusalem-Ma’aleh Adumim road.³⁵

Planning of the section of the fence from Jerusalem southward to the settlement of Carmel and to Umm Draij, east of the Dead Sea, has not yet been completed and construction has not begun. According to the preliminary plan, there will be a large-scale deviation from the Green Line in this area around the Etzion Bloc, and the settlements there (including the town of Efrat) will effectively be co-opted to the Jerusalem region. The plan stipulates that in the area of southern Mount Hebron the settlements of Eshkolot, Tene, and Susya will end up on the “Israeli side” of the fence. Construction of this section is scheduled for 2005; in the meantime, the residents of the Jewish communities close to the Green Line are complaining about widespread infiltration and robberies committed by Palestinians who have targeted this area following the completion of the sections of the fence further north.

The route approved by the full Cabinet, from Elkana to Carmel and Umm Draij, is about 530 kilometers long — 200 kilometers longer than the Green Line itself.³⁶

³⁵ Amnon Barzilai: “Official in charge of route: We won’t build eastern fence,” *Haaretz*, March 10, 2004. The question of the Ma’aleh Adumim enclave will be discussed later.

³⁶ See note 28, above.

Various statements made by Prime Minister Sharon indicate the existence of plans to establish a “separation obstacle” on the eastern slopes of the Samaria and Judea hills as well. This would cut off the area controlled by the Palestinian Authority from the Jordan Rift Valley and the Judean Desert, which will remain under Israeli sovereignty. However, detailed planning of this part of the obstacle has apparently not yet begun. It should be emphasized that the United States (and the entire international community) is vigorously opposed to the Prime Minister’s declarations and intentions concerning the eastern fence, which in Washington’s opinion will turn the West Bank into a virtual prison enclosed by a fence on all sides. In early March 2004, Colonel (res.) Tirza stated: “Israel will not build a separation fence in the eastern part of the West Bank because of the political damage liable to accrue.”³⁷

*D. The legal constraints*³⁸

The bulk of the seam zone obstacle is being built in the Judea and Samaria Region (JSR), with only small sections earmarked for the municipal area of Jerusalem, which Israel considers part of its sovereign territory. These entities are subject to a different legal system, different legislation, and different regulations. JSR was captured by Israel in June 1967 and since then has been under a regime of “military occupation,” or “**belligerent occupation**,” as it is known in legal terminology. It is administered by the Military Commander — the major general in charge of the territorial command — according to the rules of international law that apply to

³⁷ See note 36, above.

³⁸ This complex subject deserves more extensive treatment. Within the present framework, we will describe in brief the major developments and their implications. The Jerusalem Institute for Israel Studies plans to publish a separate study, which will address the legal aspects of the fence’s construction. Our description of the main points of the security establishment’s position is based on a lecture by Major Gil Limon from the military legal adviser’s office of Judea and Samaria, at a conference on the subject held at the Jerusalem Institute for Israel Studies on September 24, 2003. Another lecture delivered by Major Limon was recently published as a booklet, “The Separation Zone: A Multidisciplinary View” (edited by Frances Raday and Yuval Shany), by the Concord Research Center at the Law School of the College of Management (Tel Aviv 2004), pp. 70-74.

“occupied territories.” The regulations for administering such territories are set forth in the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 1949 (third chapter), and in the Hague Regulations of 1907, especially the highly detailed third chapter.

In practice, the legal system presently in effect in JSR is “nourished” by four sources:

- (a) The laws that existed before the Israeli occupation (i.e., the Jordanian laws)
- (b) Israel’s security legislation (promulgated by the Military Governor).
- (c) Israeli administrative law (such as the right to be heard by the High Court of Justice).
- (d) The laws relating to occupation in international law.

Israel, citing the acts of hostility and the armed confrontation that has existed in the territories since September 2000, maintains that from a certain point of view the rules of warfare are also in effect there. The Supreme Court has endorsed this position, but it is unlikely to be accepted by legal experts abroad. Indeed, it was not accepted in the opinion rendered by the International Court of Justice in The Hague on July 9, 2004.

Under the Israeli approach, the authority of the Military Commander of the region — who under international law is the ruler in Judea and Samaria — derives principally from two branches of the law: the “laws of belligerent occupation” and the “laws of warfare,” which have been increasingly invoked as hostilities have intensified in the past three and a half years. The third element of influence is Israeli administrative law (the right to a hearing by the High Court of Justice).

The situation in JSR is highly unusual. It has been defined, in legal terms, by the Judge Advocate General’s Corps as “**armed conflict short of war**,” in the course of which the military commander wields powers stemming from the laws of warfare. According to this approach, the construction of the fence can be seen as a type of use of force which under the laws of warfare and the laws relating to occupation is justified as self-defense — the right that accrues to Israel to protect itself against threats originating in the administered area. The use of force derives from the “laws of belligerent occupation” and is part of the general authority

possessed by the military commander, as explicitly cited in Article 43 of the Hague Regulations: “to restore, and ensure, as far as possible, public order and safety” in the administered area. According to the opinion rendered by the court in The Hague in July 2004, only the laws of occupation apply to the territories, and self-defense is permitted only against an attack from the outside by a foreign state.

Generally speaking, it can be said that the construction of the obstacle entails the use of two powers that adversely affect two cardinal rights of the Palestinians. One is the power to requisition land in order to build the physical obstacle; the other is restrictions on movement deriving from the fact that large sections of the obstacle are located deep inside the administered area. However, it is important to emphasize that according to the Judge Advocate General’s Corps, these rights (of the Palestinians) are neither absolute in the given situation nor inalienable: they can be abridged if security needs so require.

Israel’s authority, as wielded through the military commander for the purpose of constructing the obstacle, does not transfer ownership of the land to the state. The land continues to be owned privately, with the army abrogating to itself solely the right to use it temporarily. The condition of military need — restricting the seizure of land solely for military purposes — significantly affects the army’s ability to seize all the land it requires to build the obstacle. Indeed, this restriction defines the considerations that are relevant in regard to the physical and infrastructure aspects of planning the route of the obstacle. Considerations that are not directly related to the security of the region or to threats Israel faces from the region are held to be irrelevant and nonviable, and therefore may not be invoked in requisitioning land for the construction of the obstacle.

According to the Israeli approach, international law grants the Military Commander’s powers vis-à-vis the local population as well as obligations. “Seizure orders” are published for the local population as part of a procedure known in Israeli administrative law as the “**right to a hearing**,” with the aim of getting feedback from those who are adversely affected, thus ensuring that the state and the Military Commander have all the pertinent information for deciding on land seizures, including information which was not known when the route of the obstacle was planned. In many cases, new information, which became available after the publication of requisition orders, brought about changes in the route and thus

reduced the damage to the local population. The major problem facing the Israeli judicial system is finding the proper balance between self-defense and the right to life of Israelis, and the property rights and freedom of movement of the Palestinians.

The same two rights — use of land and freedom of movement — are also infringed in cases where sections of the obstacle are built in Israeli territory, including Jerusalem. In such cases, the security establishment must ensure that the abridgment of these rights does not violate the country's Basic Laws (specifically, the Basic Law on Human Dignity and Freedom). Such infringements must meet the “test of proportionality” — not exceeding what is necessitated by security needs (in practical terms, the state must be able to defend its actions against petitions to the High Court of Justice).

The case of Jerusalem has several distinctive features. First, there is the problem of the East Jerusalem population, who carry Israeli ID cards but reside outside the Jerusalem area of jurisdiction, in Judea and Samaria. They have a singular legal status — permanent residents of Israel who are not citizens and reside outside the territory of the state. From the strictly legal point of view, no obligation exists to find the easiest or the shortest way for this group to enter Jerusalem, as their entry into Jerusalem constitutes a passage between two separate legal entities. At the same time, the Israeli authorities understand the importance of enabling this passage. The planners of the fence have stated that they took this necessity into account in planning the route of the obstacle and in its construction, with considerable attention being paid to the crossing points and terminals.

Also problematic is the status of the East Jerusalem residents who live within the Jerusalem area of jurisdiction (to which Israel has applied its sovereignty) but will find themselves on the “Palestinian side” of the obstacle (notably Shuafat refugee camp and Kafr Aqeb). Clearly Israel has a greater commitment toward this group than it does toward residents of East Jerusalem who live outside the city in Judea and Samaria.

Yet another distinctive trait of the Jerusalem area involves the boundaries of responsibility between the police and the IDF. Previous government decisions stipulated that the IDF is responsible for security in the territories outside the State of Israel — the West Bank and the Gaza Strip — and the police are responsible for security within Israel. The singularity of Jerusalem, obliging coordination between

security within Israel — in the Jerusalem area of jurisdiction — and perimeter security in the Jerusalem Envelope in the West Bank, necessitated a change in the sectors of responsibility between the two bodies. Thus, in the new situation the police will have operational responsibility for the Jerusalem Envelope, part of which lies outside the city's municipal boundaries. At the same time, it is important to emphasize that from the legal aspect all the police forces operating in JSR are subordinate to the Military Commander (the head of Central Command).

The state's legal position, as presented by the Judge Advocate General's Corps, is being contested in a series of petitions to the High Court of Justice (some of which were still pending at this writing)³⁹ dealing with local matters such as the route of the fence in certain sections, the hours in which the crossing points will be open, cases in which the fence cuts through villages and infringes freedom of movement, and instances in which farmers are cut off from fields that constitute the source of their livelihood. The court hearings on these petitions are causing serious delays in many parts of the Jerusalem Envelope. Indeed, these delays prompted some politicians (including MK Yuval Steinitz [Likud], chairman of the Knesset's Foreign Affairs and Defense Committee) to complain about "foot-dragging" by the High Court.⁴⁰

At the end of February 2004, the High Court ordered a one-week suspension of work on the fence in northwest Jerusalem, between the Jewish suburb of Mevasseret Tzion and the Palestinian villages of Beit Sourik, Bidu, and others. The order was issued in response to a petition to the court filed by the residents of

³⁹ A first, limited, hearing on two petitions against land seizure orders issued by the IDF commander in JSR for the construction of the seam zone obstacle was held in HCJ [High Court of Justice] 8172/02, **Ibrahim and others v. Commander of IDF forces in the West Bank** and in HCJ 8532/02, **Salameh v. Commander of IDF forces in West Bank and others**. In the judgment handed down by Justice Dorit Beinisch, on October 14, 2002 (unpublished), the Supreme Court chose not to intervene in the considerations of the security establishment, after the state, in its response, described the efforts that were being made to minimize the damage that the obstacle will cause the residents of the region. As will be seen, in the past few months additional petitions have been submitted and are pending before the High Court.

⁴⁰ Gideon Alon, "Steinitz: High Court wrong in acceding to Arab petitions against fence," *Haaretz*, March 26, 2004.

the Palestinian villages together with 30 residents of Mevasseret Tzion and a few from Har Adar, a nearby settlement just across the Green Line (another 200 local Jews signaled their support by signing a petition protesting the route of the fence in the Mevasseret Tzion area). The petitioners' lawyers argued that the route of the fence was illegal and severely affected the villagers' right to property. "There is no justification for the mortal blow to the livelihood of the villagers and for cutting them off from 7,000 of the 8,000 dunams [4 dunams=1 acre] of the farmlands they own," the petition stated. In its response the state said: "The concern is that the obstacle will not prevent all infiltrations, and therefore a security zone is needed to enable hot pursuit of terrorists."⁴¹ In a hearing held on March 11, 2004, the President of the Supreme Court, Justice Aharon Barak, took the unusual step of calling on the head of Central Command, Major General Moshe Kaplinsky, to behave in the controversy over the route of the fence in the Bidu-Beit Sourik area "not as head of a territorial command but as a military governor." He urged the general to invoke humanitarian considerations in order to minimize the damage to the Palestinian residents in the Jerusalem area.⁴² At the hearing the petitioners from Mevasseret Tzion presented an affidavit from the Council for Peace and Security, an organization that includes many former senior members of the security establishment, arguing against the route of the fence. The High Court recommended that the representatives of the security establishment heed the advice of the retired generals and gave all the sides an extension in order to reach a compromise.⁴³ The High Court petitions caused delays in the construction of the fence between Elkana

⁴¹ Yuval Yoaz and Gideon Alon, "High Court suspends work on fence in northwest Jerusalem for a week," *Haaretz*, March 1, 2004. The director-general of the Defense Ministry, Major General (res.) Amos Yaron, was implicitly critical of the High Court delays: see Yaron, HU conference.

⁴² Amir Rapaport, Ilil Shahar and Shmuel Mittelman, "Mofaz to Powell: It's important for [US] to support disengagement," *Ma'ariv*, March 12, 2004. See also: HCJ 10356/02, **Yoav Hess v. Commander of IDF forces in West Bank** (not yet published), which deals with the legality of the actions taken and the discretion exercised by the Military Commander of JSR in connection with land seizures and the demolition of some homes along the "worshippers' path" to the Tomb of the Patriarchs in Hebron.

⁴³ Lily Galili, "Brig. Gen. Shaul and attorney Mohammed in the same jeep," *Haaretz*, March 19, 2004.

and Jerusalem and in the Jerusalem Envelope, with the result that these sections may not be completed by the end of 2004.⁴⁴

More comprehensive criticism of the planned route of the fence was voiced in February 2004, shortly before the start of the hearings on the subject at the International Court in The Hague. In a petition to the Supreme Court, the Center for the Defense of the Individual assailed the decision of principle to build the fence deep inside the West Bank.⁴⁵ The petitioners argue that “a colossal construction project such as that of the separation wall, the effects of which on the occupied civilian population, on the economy of the occupied territories and on all aspects of civilian life conducted therein, are far-reaching and long-term... violates the principles of international law and is categorically prohibited by the laws of belligerent occupation, **insofar as its route runs inside the occupied territory** and materially modifies the fabric of civilian life in the occupied territory, isolating in fact considerable portions of the occupied population, creating hermetic enclaves and constituting a de-facto annexation of parts of the occupied land” (emphasis in the original). The center added: “The physical injury to the inhabitants of the enclaves goes hand in hand with the corruption of the law designed to administer the seam zone... The web of the Declaration and the Orders has spun, in the seam zone, a legal **apartheid**, which is intolerable, illegal and immoral. In other words, the discriminatory and oppressive topographical structure stands upon a shameful normative infrastructure, unprecedented in Israeli law” (emphasis in the original).

Additional petitions were filed at the end of January 2004 by the Association for Civil Rights in Israel (ACRI). These deal with the regime of permits in the seam zone between the separation fence and the 1949 armistice line, and call for the crossing points to be open 24 hours a day.⁴⁶

⁴⁴ Yuval Yoaz, “Affidavit to High Court: Part of the fence route has no security benefit,” *Haaretz*, March 18, 2004. See also pp. 22-24.

⁴⁵ From HCJ 9961/03, **Center for the Defense of the Individual v. Government of Israel and others**, which is quoted on the center’s website: www.hamoked.org.il/news_main_en.asp?id=25. All citations here are from this source.

⁴⁶ The petitions are summarized in English at www.acri.org.il/english-acri/engine/

More limited criticism of the legal methods resorted to by the state for seizing land for military purposes (in this case, for building parts of the fence in Israeli territory) was voiced in early December 2003 by Judge Daniel Ernst of Tel Aviv Magistrate's Court, who acted as a one-person panel concerning appeals against "emergency land seizures" for building the fence.⁴⁷ He found the mechanism for setting compensation and the amount of compensation being offered by the state for land requisitioned for security purposes (for a three-year period) relating to the fence — in the amount of NIS 12,000 per dunam, 5 percent of the value of the land — to be inappropriate and unworthy and to constitute a constitutional infringement of the landowners' property title. Judge Ernst also criticized the state's invoking of the Emergency Land Seizure Law, 1949, which enables it to seize land during an emergency for up to three years. "The state is burying its head in the sand and ignoring the need to carry out appropriate actions in good time," he wrote, because in three years the fence will have to be removed immediately, possibly contradicting security needs. To obviate a constitutional vacuum, Judge Ernst noted, the state should act speedily to formulate new legislation as a permanent solution, including a mechanism to set proper compensation for land expropriation.

A dramatic development in the judicial sphere, which will have a major impact on the route of the fence, occurred on June 30, 2004, when the High Court of Justice handed down its judgment in a petition submitted by residents of the villages of Beit Sourik, Bidu, and others (with the assistance of the Council for Peace and Security) in regard to the route in northwest Jerusalem.⁴⁸

The justices — Supreme Court President Aharon Barak, Eliahu Mazza, and Mishael Cheshin — disqualified 30 kilometers of the 40 kilometers between

story.asp?id=155 and *www.acri.org.ill/english-acri/engine/story.asp?id=158*. The full texts in Hebrew appear at *www.acri.org.ill/hebrew-acri/engine/story.asp?id=791* and *www.acri.org.ill/hebrew-acri/engine/story.asp?id=775*.

⁴⁷ Asaf Bergerfreund, "Judge: Compensation for fence appropriations inappropriate," *Haaretz*, Dec. 5, 2003. The citations here are from this source.

⁴⁸ HCJ 2056/04; published in English translation on the Internet site of the Supreme Court, at *http://62.90.71.124/eng/verdict/framesetSrch.html*. All citations from the judgment are from this source.

Maccabim and Givat Ze'ev, and ruled that the state must present an alternative route. The judgment includes three key points:

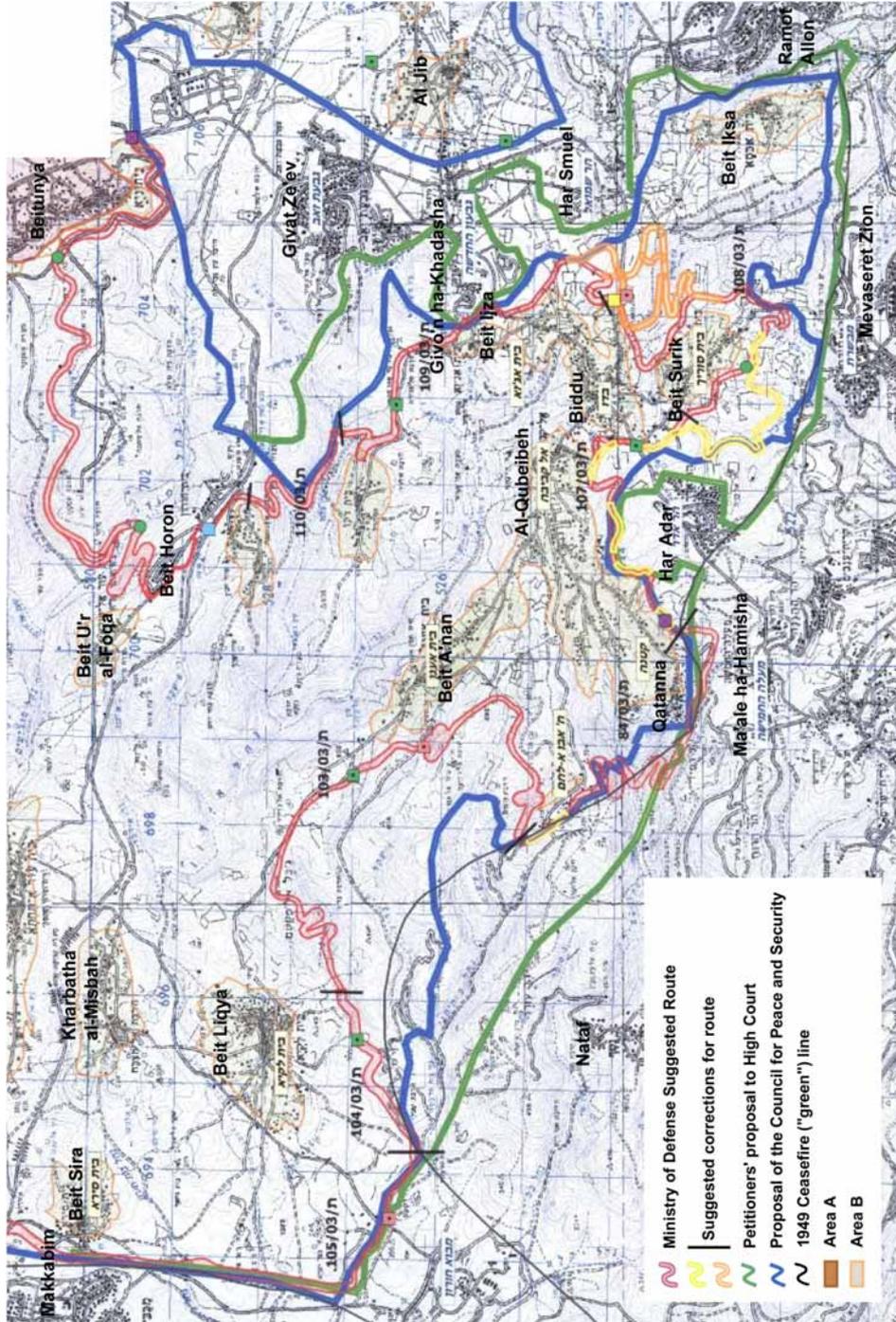
- 1) The security establishment and the army have the authority to construct the fence (even across the Green Line) for military reasons, but not for political reasons (i.e., in order to “annex” territories to Israel). This point sides with the position taken by the state and is of considerable importance in the context of the debate in the international community and in Israel over the route of the fence, which is “chewing off” areas of the West Bank.
- 2) The Military Commander of the region is obliged to strike a balance between security considerations and the rights of the residents, and must choose a “proportionate” route which balances between the two, even if it accords a lower level of security than a different possible route.
- 3) The majority of the route presented by the security establishment between Maccabim and Givat Ze'ev is not “proportionate,” because it impinges excessively on the rights of the local residents.

In par. 82 of the judgment, Justice Barak sums up the court's position:

Having completed the examination of the proportionality of each order separately, it is appropriate that we lift our gaze and look out over the proportionality of the entire route of the part of the Separation Fence which is the subject of this petition. The length of the part of the Separation Fence to which these orders apply is approximately forty kilometers. It causes injury to the lives of 35,000 local inhabitants. 4000 dunams of their lands are taken up by the route of the Fence itself, and thousands of olive trees growing along the route itself are uprooted. The Fence separates the eight villages in which the local inhabitants live from more than 30,000 dunams of their lands. The great majority of these lands are cultivated, and they include tens of thousands of olive trees, fruit trees and other agricultural crops. The licensing regime which the military commander wishes to establish cannot prevent or substantially decrease the extent of the severe injury to the local farmers.

In par. 84 Justice Barak elaborates on this and emphasizes the harm that will be done to the Palestinians' fabric of life:

Illustration 2: Planned route of the security fence and alternatives, as presented to the Supreme Court



Source: Supreme Court website: http://62.90.71.124/files_eng/04/560/020/a28/04020560.a28.pdf

preferred target, especially for multiple-victim suicide bombings. The great ease with which residents of the territories — including terrorists — entered the city necessitated the formulation of security plan based on an obstacle concept to deny access to unwanted individuals. The major component of the obstacle around Jerusalem is a security fence, which in areas of urban density takes the form of a wall. The underlying logic of the obstacle and the concept of its operation are similar to those in the rest of the seam zone.

Three main elements underline the security concept of the seam zone, including the Jerusalem Envelope:

1. Intelligence — The fence's electronic devices and the activity of the security forces on both sides of it will create an infrastructure and methods by which to collect intelligence and prevent terrorist activity.
2. Territorial prevention — In the absence of precise intelligence information needed to thwart terrorist activity, the characteristics of the operational activity in the territory on both sides of the fence will disrupt the terrorists' operational capability.
3. Infrastructure activity — Geographical molding of the territory to “drain” and channel terrorists into arenas where they can be more effectively neutralized.

The security establishment's basic aim in building the obstacle around Jerusalem is to address a number of cardinal threats:

1. To prevent free and uncontrolled passage of Palestinians from the West Bank to Jerusalem and other densely populated areas of Israel.
2. To prevent the smuggling of explosives for terrorist use in the urban space of Jerusalem and/or in other locales in Israel.
3. To prevent booby-trapped cars from being smuggled into the urban space with the use of Israeli license plates and other means of deception.
4. To prevent, as far as possible, shooting from the Palestinian side at densely populated Jewish areas (this is one of the reasons for the walled sections of the obstacle).

The injury caused by the Separation Fence is not restricted to the lands of the inhabitants or to their access to these lands. The injury is of far wider scope. It is the fabric of life of the entire population. In many locations, the Separation Fence passes right by their homes. In certain places (like Beit Sourik), the Separation Fence surrounds the village from the west, the south and the east. The Fence directly impedes the access of the local inhabitants to the urban centers (Bir Nabbala and Ramallah). This access is impeded even without the Separation Fence. This difficulty is increased sevenfold by the construction of the Fence.

In conclusion (par. 85), the judgment asserts:

The task of the military commander is not easy. He must delicately balance security needs with the needs of the local inhabitants. We were impressed by the sincere desire of the military commander to find this balance, and his willingness to change the original plan in order to reach a more proportionate solution. We found no stubbornness on his part. Despite all this, we are of the opinion that the balance determined by the military commander is not proportionate. There is no escaping, therefore, a renewed examination of the route of the Fence, according to the standards of proportionality that we have set out.

In the light of this, it is entirely clear that the criteria laid down by the High Court of Justice will deeply affect the future route of the fence and may even bring about changes in sections of the fence that have already been built.

Underlying the judgment is the approach of Justice Barak to the effect that “There is no security without law” and that “Only a Separation Fence built on a base of law will grant security to the state and its citizens.”

E. The debate in Israel

The building of the separation fence is the largest construction and infrastructure project in Israel’s history. Its cost is NIS 10.5 million per kilometer, and building the entire planned 600 kilometers (twice the length of the Green Line) will cost NIS 7 billion (by comparison, the security fence along the northern border is just

70 kilometers long).⁴⁹ Some 13 million cubic meters of earth were displaced in half a year on the first section of this vast and unprecedented engineering feat (as compared with 9.5 million cubic meters on the Trans-Israel Highway in five years).⁵⁰

Yet despite the immense importance, far-reaching consequences, and massive cost of the project, it did not generate significant discussion in Israel until late in 2003, when the United Nations General Assembly decided to refer the subject to the International Court of Justice at The Hague and US pressure began to mount against the chosen route of the fence. Until then the discussion in Israel had focused mainly on whether certain settlements would be on its western or eastern side. According to the official declarations, the route of the obstacle is a function of security considerations, though archaeological and environmental considerations were also taken into account, as was the desire to cause minimal damage to the “fabric of life” of the Palestinian population. However, an examination of the first section of the obstacle — between Sallem and Elkana (which has already been completed) — and its planned continuation shows that a major consideration in deciding the route was to ensure that settlements close to the Green Line and more distant relatively large settlements (such as Alfei Menashe and Elkana) would be on the western side of the fence; “humanitarian” considerations relating to the Palestinians were shunted aside.

According to B’Tselem, ACRI, and other human rights organizations, and much of the Israeli left, the fact that the obstacle is cutting into the West Bank and the injustices it is causing will only intensify Palestinian hate for Israel, encourage Islamic radicalization and terrorism, and make any future political settlement highly problematic. These groups argue that the fence is not separating Israelis from Palestinians but is cutting Palestinians off from other Palestinians. It is separating farmers from their land, the ill from their physicians, and schoolchildren from their schools. The fence is not solving any security problem but is creating enclaves

⁴⁹ According to a different estimate, the cost of the fence will be NIS 10 billion. The Finance Ministry considered imposing a special tax (for example, on diesel oil) to underwrite part of the project. See note 31, above.

⁵⁰ Mazal Mualem, “27 kilometers of a different fence,” *Haaretz*, May 9, 2003.

of Palestinian villages that resemble vast human lockups, which will become centers of hatred and ferment which will only increase the number of those taking part in terrorism against Israel.⁵¹ Overall, this view is today accepted by most of the leaders of Meretz and the Labor Party. They want the fence to be built along the Green Line (or as close to it as possible) as part of an agreed Israeli-Palestinian settlement or as a unilateral Israeli move against terrorist infiltration of Israel. It should be emphasized that the first section of the fence, from Sallem to Elkana (most of which lies inside the West Bank, and in certain stretches is six to seven kilometers east of the Green Line), was approved during the tenure of Binyamin Ben-Eliezer, then the leader of the Labor Party, as Defense Minister.

Attorney Daniel Seidemann, who represents several of the High Court petitioners against the route of the fence in Jerusalem, and various left-wing groups find a similarity between the route of the fence slicing into the West Bank, Prime Minister Sharon's disengagement plan — under which the settlement blocs in the West Bank that are relatively close to the Green Line would be “annexed” to Israel (concurrent with the evacuation of the settlements in the Gaza Strip and northern Samaria) — and previous ideas broached by Sharon about a long-term interim settlement between Israel and the Palestinians. The right-wing camp and the settlers are of course opposed to the fence because of its political implications. They deplore Israel's separation from most of the historic heartland of Judea and Samaria and the “abandonment” of the isolated settlements located “deep in the territory” to the east of the planned route of the obstacle.

At the same time, the majority of the Likud party's leaders and cabinet ministers (including some who previously opposed the fence) finally decided to support the construction of the fence along the current route, and object to any change that might leave one or another settlement on its eastern side. The fence, they maintain,

⁵¹ See, for example, the advertisement published by ACRI in the Jerusalem weekly *Kol Ha'ir* on January 30, 2004, headlined: “Separation fence or human lockup?” At the end of March 2004, the director-general of the Defense Ministry stated that the majority of the enclaves would be eliminated when the fences on their eastern sides were opened toward the urban centers of the West Bank, and would be closed only in a state of emergency. See Yaron, HU conference.

is essential to protect Israel from suicide bombers. Prime Minister Sharon's commitment to complete the construction of the fence along the route decided by the government (with the inclusion of the settlement blocs) made it possible for two senior Likud figures, Finance Minister Benjamin Netanyahu and Education Minister Limor Livnat, to support Sharon's disengagement plan after his return from a visit to Washington in April 2004. In a Cabinet meeting on April 18, 2004, the Prime Minister promised that the evacuation of settlements in the Gaza Strip and the West Bank would begin only after the separation fence was fully in place.⁵²

Among Israelis in general, a large majority favors the building of the fence in principle. According to the monthly Peace Index for October 2003, compiled by the Tami Steinmetz Center at Tel Aviv University, 83 percent of the country's adult population supports the separation fence, with only 12 percent opposed.⁵³ The compilers of the index, Ephraim Yaar and Tamar Herman, note that the lowest level of support for the fence is found among people who voted for Meretz and the National Union (60 percent and 64 percent, respectively), though each set of voters of course offered radically different reasons for their opposition. Among all respondents, 63 percent said they believe the fence can reduce terrorism significantly and another 19 percent thought it would prevent or reduce terrorism. In regard to the route, a clear majority (63 percent) thought it should be set according to the government's considerations; while only 19 percent said it should follow the Green Line (4 percent were against the fence in principle and 14 percent had no opinion).

Among Israel's Arab population, a clear majority (63 percent) opposed the building of the fence in principle, as compared with 29 percent in favor. Nearly half (49 percent) did not believe that physical means such as a fence can prevent or even significantly reduce terrorism, as against 25 percent who held that the fence will reduce terrorism and 17 percent that it will prevent such acts. In regard

⁵² Jonathan Lis, "Sharon to ministers: Evacuation of settlements only after fence completed," *Haaretz*, April 19, 2004.

⁵³ Ephraim Yaar and Tamar Herman, "Peace Index, October 2003: Two-thirds of Jews fear: Control of territories will lead to binational state," *Haaretz*, Nov. 4, 2003. All the data that follow are from this source.

to the route, 44 percent thought it should follow the Green Line and only 13 percent that it should be decided according to the government's considerations.⁵⁴

The findings of the Peace Index for February 2004 (when the deliberations at The Hague took place)⁵⁵ were little different from the previous October. The new element is the Jewish public's unwavering support for the fence almost irrespective of the suffering it is inflicting on the Palestinians by cutting them off from their fields and causing difficulties of access in the West Bank. Thus, only 31 percent believe that this suffering should be taken into account in deciding the route of the fence, as against 64 percent who think this is a secondary consideration, if not altogether negligible. Asked about protests against the fence or its route, as manifested in demonstrations by Israeli and Palestinian activists (including the group called "Anarchists Against the Fence") which began in early 2004, a large majority of the Israeli public (71 percent) supports the right of protest, provided it is done by legal means; 26 percent oppose such protest, even if it is legal; and 4 percent have no opinion. Fully 92 percent oppose illegal protests against the fence.

Public groups such as Fence for Life and the Public Council for Building the Security Fence are acting as lobbies for a "fence now" in order to stop Palestinian terrorism without waiting for general agreement about the route. On the other side, organizations such as *Ta' ayush*—*Arab-Jewish Partnership*, *Yesh Gvul* ("There is a Limit"), *Gush Shalom* ("Peace Bloc") and international peace activists are against a route that deviates from the Green Line or oppose the fence as such. One of the most active of the protest groups is Anarchists Against the Fence, whose demonstrations have in some cases ended in violence.⁵⁶

⁵⁴ More recently (from the beginning of 2004), it would appear that the deliberations at The Hague, international pressure (mainly by the United States), and the humanitarian problems that have arisen in connection with the first section of the fence have heightened public consciousness in Israel about its route.

⁵⁵ Ephraim Yaar and Tamar Herman, "Two of every three Jews think the suffering caused by the fence is secondary or negligible," *Haaretz*, March 9, 2004, p. B-3.

⁵⁶ This group, which numbers several dozen activists, has been one of the most vociferous and most consistent in its opposition to the fence. Its members do not balk at actively engaging Israeli soldiers and Border Police. On December 26, 2003, one of the group's members, Gil Na'amati, an Israeli Jew, was shot and seriously wounded by Israeli forces

The official Israeli position emphasizes terrorism as the prime reason that forced Israel to build the fence and cites Israel's right and duty to defend itself, while blurring the question of the route and its political implications.⁵⁷

Hovering in the background of the public debate is the feeling that there is no real alternative to the fence in the struggle against Palestinian terrorism and the demographic threat. The sense is that, given its limited political maneuverability, the present Israeli government cannot "abandon" settlements that are relatively close to the Green Line, build the fence closer to that line, or agree to a meaningful Israeli "concession" involving the Palestinian neighborhoods in East Jerusalem. Among broad swaths of Israeli public opinion one can discern a longing for a fence that would make it possible for Israel to "disengage" from Palestinian terrorism and from the severe problems entailed in Israel's presence in the territories and the warfare there.

Incipient indications of official Israeli agreement to change the route of the fence (including sections already built) were apparent in January-February 2004.⁵⁸ The new approach apparently had several causes: international pressure (mainly by the United States) ahead of the deliberations of the International Court of Justice (ICJ) at The Hague in late February (see below); the petitions of principle that were submitted to the High Court of Justice by the Center for the Defense of the Individual and by ACRI; pressure by the State Attorney's Office on the bodies in charge of building the fence in practice; and the serious humanitarian difficulties that cropped up in operating the first section of the fence, between Sallem and Elkana.

in a demonstration. The event generated wide reverberations and apparently intensified Palestinian protests against the fence (especially by villagers in the Bidu-Beit Sourik area, near Jerusalem, and in other areas along the Elkana-Jerusalem route). See the editorial "Anarchists are not marked for death," *Haaretz*, April 15, 2004, and the article by Aviv Lavie in *Haaretz Magazine*, "The war of the fence," April 16, 2004.

⁵⁷ As, for example, on the website of the Israeli Foreign Ministry:
<http://securityfence.mfa.gov.il>.

⁵⁸ See: Aluf Benn, "Prime Minister admits: Fence harms Palestinian life," *Haaretz*, Jan. 19, 2004.

The preparations for the ICJ deliberations and the Israeli High Court of Justice hearings revealed confusion and conflicting viewpoints within the Israeli government. The Minister of Justice, Yosef Lapid, who took part in a number of the Cabinet sessions in which the security establishment route was approved, called for the route's revision in order to strengthen the Israeli position at the ICJ and formulated a proposal of his own.⁵⁹ Defense Minister Shaul Mofaz and other Likud ministers objected to any changes in the government-approved route, and the State Attorney (who was then also the acting Attorney General) submitted to the government an opinion concerning legal difficulties that would arise in defending the route of certain sections of the fence (especially those that cut deeply into the West Bank) in the High Court of Justice.⁶⁰

These developments led to an official declaration by attorney Malchiel Balas, the state's representative in a High Court hearing (February 9, 2004), that the government was now rethinking and reconsidering the planned route of the fence as decided on in October 2003 and that changes might even be made in sections of the fence that had already been built (as noted earlier, changes had already been decided at Baka al Sharqiya, and also at the village of Khirbet Jabara). Attorney Balas added: "Also under consideration is a change in the seam zone regime [referring to the area between the fence and the Green Line] with the aim of facilitating as far as possible the lives of the Palestinians who reside there." He also noted: "We are drawing lessons from the experience that has been accumulated in the sections where the fence is already built — everything is dynamic..." Prior to the hearing, a representative of the State Attorney's Office told *Haaretz* explicitly that the state was examining the possibility of moving the fence westward, toward the Green Line, thus eliminating some of the Palestinian enclaves, and that the fence would not be built along the route decided on by the government in October 2003. However, the changes in question are point-specific and no extensive staff work has been undertaken about the possibility of moving all or part of the fence

⁵⁹ Mazal Mualem, "Shinui's map for separation fence: No enclaves, 200 kilometers shorter," *Haaretz*, Jan. 16, 2004.

⁶⁰ See note 58, above, and: Aluf Benn, "Why didn't they ask Arbel earlier?," *Haaretz*, Jan. 19, 2004.

that has already been built westward.⁶¹ In the meantime, on the day the ICJ hearings opened, work began (as noted above) on dismantling an eight-kilometer stretch of the fence east of Baka al Sharqiya, which had separated that West Bank village from the Tul Karm District of the Palestinian Authority. This move was criticized in a Cabinet meeting by Finance Minister Netanyahu and Foreign Minister Silvan Shalom.⁶²

Also critical of the route of the fence was the head of the National Security Council, Major General (res.) Giora Eiland. Speaking at an open international conference on “Security Policy” held in Munich on February 8, 2004, Eiland termed the fence “essential, legitimate, and temporary,” but acknowledged that the planners had failed to forecast the full scale of its impact on the lives of innocent Palestinians. He added that Israel was obliged to study the full implications of the fence and to take effective steps to improve the situation, including changes in the original route in several sections.⁶³

These developments were accompanied by a certain shift in public consciousness about the route of the fence, as individuals and bodies identified with the establishment no longer hesitated to criticize the route decided by the government.⁶⁴

In March 2004, as noted above, the Council for Peace and Security (whose members, former senior officers in the IDF and the security establishment, are for the most part identified with the Labor Party and the political positions of the

⁶¹ Yuval Yoaz, “State tells High Court parts of fence may be moved westward,” *Haaretz*, Feb. 10, 2004. The daily *Ma’ariv* carried reports about the possibility that the double fences in the area of Highway 443 might be eliminated — see: Amir Rapaport, “Highway 443 likely to be outside fence,” *Ma’ariv*, Feb. 29, 2004.

⁶² Aluf Benn and Amnon Barzilai, “Israel to US: Double fence in enclave and part of Ariel fence won’t be built in 2004,” *Haaretz*, Feb. 22, 2004.

⁶³ Amir Oren, “Fence route mistaken and will be corrected,” *Haaretz*, Feb. 2, 2004; Aluf Benn, “The oops-we-made-a-mistake government,” *Haaretz*, Feb. 12, 2004.

⁶⁴ See, for example, the article by Avraham Bendor (Shalom), a former head of the Shin Bet security service, under the headline “The bad fence,” *Haaretz*, Nov. 28, 2003, and an editorial in the same paper headlined “Cleavage and annexation fence,” Jan. 18, 2004.

moderate left in Israel) submitted an affidavit to the High Court of Justice stating its opposition to the route decided by the government and the defense authorities. The council argued that there was no security value in having the fence run adjacent to homes of Palestinians (around Beit Sourik, for example) and added that “the IDF is trying to seize hills, contrary to the principles of the Defense Ministry itself.”⁶⁵

F. The debate in the international arena (including the International Court of Justice at The Hague)

The Palestinian Authority is of course adamantly opposed to the fence; the subject was high on the agenda of the first meeting between the Israeli and Palestinian Prime Ministers, Ariel Sharon and Mahmoud Abbas (Abu Mazen) at the end of May 2003. Since the formation of the new Palestinian government, under Prime Minister Ahmed Qureia (Abu Ala), the Palestinians have set conditions for resuming negotiations with Israel, including a halt to the construction of the fence and a building freeze in the settlements. They maintain that Israel is taking unilateral steps that are contrary to both the Oslo accords and the “road map” (including significant “gnawing” of territory from the West Bank), is infringing individual rights (by expropriating land, preventing access to farmland, blocking the right to employment and education, and more), and is cutting off the West Bank from the “Arabs inside” (the Arabs in Israel). Overall, the Palestinians are claiming that Israel is effectively locking them in and that this will only intensify Palestinian hostility and resistance.⁶⁶ Among many Palestinians the fence, and particularly the wall in Jerusalem (in the Abu Dis area), is generating despair, frustration, and hopelessness regarding the future. One reason for this feeling is the Palestinians’ belief that the fence, especially in the Jerusalem area, is an irreversible act that will preclude any future political settlement between the sides. Nevertheless, Abu

⁶⁵ Yuval Yoaz, “Affidavit to High Court: Part of fence route has no security benefit,” *Haaretz*, March 18, 2004.

⁶⁶ Riad Malki, “The Depth of the Wall,” *Palestine-Israel Journal*, vol. 9, no. 3, 2002, pp. 45-50.

Ala has told *Ma'ariv* that he is ready to agree to the building of a fence along the Green Line.⁶⁷

Despite its firm opposition, the Palestinian Authority did not take the lead in organizing local demonstrations and mass events against the fence, an omission for which it was sharply criticized by Palestinian public opinion.⁶⁸ However, by means of a large-scale diplomatic and information effort, in which it was aided by Arab states (especially Jordan, which fears Palestinian immigration) and the Arab League, the Palestinian Authority succeeded in mobilizing broad international opposition to the fence. This culminated in the passage of a resolution by the United Nations General Assembly referring the issue to the ICJ (see below). The General Assembly also declared that the fence is illegal and that Israel must dismantle it.

The Palestinians' contentions struck a responsive chord in many countries; a fence along a route that sliced into the West Bank found no backing by any meaningful body in the international arena. Opposition is particularly acute within the European Union, where the fence has been described as a "new Berlin Wall" which is creating an "apartheid regime" in the territories. It is considered one of Israel's harshest methods to suppress the Palestinians and a move that will thwart any possible future political settlement. The security considerations adduced by Israel failed to impress the decision-makers in Europe; for their own reasons (including their traditional stance vis-à-vis the Israeli-Palestinian conflict and their opposition to American hegemony in the conflict) they preferred to support the Arab-Palestinian position. The governments of Russia and Japan, as well as many other governments, have also deplored the fence.

The US Administration under President George W. Bush condemned the fence project, which American spokesmen often refer to as "the wall," using the

⁶⁷ Ben Caspit interview with Abu Ala, Sabbath Supplement, *Ma'ariv*, Dec. 12, 2003.

⁶⁸ In early 2004, not long before the start of the deliberations at the International Court of Justice in The Hague, the Palestinian Authority became more involved in organizing demonstrations and public events against the fence. See: Arnon Regular, "Fence may bring about change in patterns of Intifada," *Haaretz*, Feb. 27, 2004.

Palestinian term. The American approach, although more understanding of Israel's security needs, views a fence that encroaches into the West Bank as a major impediment to the implementation of the road map and the establishment of a Palestinian state. At one stage, the Administration also announced that it would deduct the expenses Israel is incurring in building the fence and in settlement construction from the amount of the loan guarantees it promised Israel.⁶⁹ Israeli efforts to obtain American consent to the annexation of Ariel or areas across the Green Line near Ben Gurion Airport (from which the airport could be threatened) have been unsuccessful. On the other hand, President Bush, in a statement he made on April 14, 2004, during Prime Minister Sharon's visit to Washington, declared that the separation fence, which he called the "barrier," was part of the security means Israel was adopting. "The barrier," he emphasized "should, as your government has stated, be a security, rather than political, barrier... temporary rather than permanent, and, therefore, not prejudice any final status issues, including final borders."⁷⁰

Bush reiterated this in a letter he conveyed to Sharon within the framework of the visit. However, it remains unclear whether these remarks represent a meaningful change in the US position and can be construed as explicit American agreement to the inclusion of Ariel and other settlement blocs on the "Israeli side" of the obstacle.

The UN General Assembly has condemned the building of the fence (or the "wall," in its parlance) on several occasions. On December 8, 2003, in the wake of a report drawn up by Secretary-General Kofi Annan, it decided to refer the subject to the ICJ in The Hague. Although the court's opinion has no binding effect⁷¹ and the subject will be referred back to UN institutions for further discussion, the ruling is liable to have serious international consequences from the Israeli point of

⁶⁹ Aluf Benn, "Sharon delays fence approval: Addition of Ariel will be deducted from loan guarantees," *Haaretz*, Sept. 17, 2003.

⁷⁰ Aluf Benn and Nathan Guttman, "Bush assures Sharon: Future permanent border to take into account 'Israeli settlement blocs' in territories," *Haaretz*, April 15, 2004, p. A-2.

⁷¹ The court is also under no obligation to decide on the subject even if it has the jurisdiction to do so.

view.⁷² International pressure against the fence seems to be mounting. Israeli information policy is unable to cope with the pressure⁷³ and its prospects for success appear poor, mainly because the fence slashes into the West Bank, cutting into areas which, according to international consensus, are meant to be part of the Palestinian state.⁷⁴

Nevertheless, on the eve of the oral deliberations at The Hague, Israel scored an important achievement when 30 countries (including the United States, Japan, Britain, and the EU) each submitted a memorandum to the ICJ declaring their opposition (largely on procedural grounds) to the court's addressing the issue of the fence. These countries accepted the Israeli argument that the ICJ is not the proper place to air a dispute which is fundamentally political, not least because of their own concern about a possible legal precedent that might be detrimental to their interests in the future. However, it is important to emphasize that they all object strenuously to the route of the fence and in some cases said so specifically in their letters to the court.

The court itself convened February 23-25, 2004, and heard arguments by representatives of the Palestinian Authority, several Arab states (Saudi Arabia, Jordan, Sudan, and Algeria), some Third World countries (South Africa, Bangladesh, Belize, Cuba, Indonesia, Madagascar, Malaysia, and Senegal), and representatives of the Arab League and the Conference of Islamic States. Israel

⁷² According to *Haaretz*, Alan Baker, the legal adviser to the Israeli Foreign Ministry, cited in this connection, the opinion delivered by the international court in 1971, which rejected the legality of South African rule in Namibia. Although this was only a recommendation, it served as the basis for the imposition of international sanctions against the apartheid regime and led to the independence of Namibia in 1990. See: Aluf Benn, "Separation fence to Hague court; concern in Israel that court will not be fair," *Haaretz*, Dec. 9, 2003, p. A-2.

⁷³ See: Ze'ev Schiff, "Separation fence — Israeli defeat," *Haaretz*, Dec. 5, 2003, p. B-1.

⁷⁴ In the Israeli domestic arena, too, the security authorities have made no discernible attempt to provide full and systematic information about the fence and its route. A good example is the official map on the Defense Ministry's website of the seam zone (see note 1, above), which is less than helpful concerning the route. It bears noting that the texts on the website are in Hebrew and English but not in Arabic.

did not send a representative to the court, making do with a memorandum rejecting the ICJ's authority to discuss the fence, on the grounds that the subject should be clarified within the framework of political negotiations and not in a courtroom.⁷⁵ However, international interest focused largely on the struggle for world media attention outside the court between families of terror victims from Israel and Palestinian and Arab demonstrators.

The ICJ issued its opinion on the legality of the fence on July 9, 2004.⁷⁶ The panel of judges declared that Israel “has the obligation to cease forthwith the works of construction of the wall being built by it in the Occupied Palestinian Territory” and that this “entails the dismantling forthwith of those parts of that structure situated within the Occupied Palestinian Territory, including in and around East Jerusalem” and the repeal of all legislation and regulations relating to the wall's construction (par. 151). The vote was 14-1, the only dissenting vote being cast by Judge Thomas Buergenthal, a Jew, from the United States. Judge Buergenthal was also critical of Israel's actions but argued that the court did not have at its disposal a sufficient factual basis for its sweeping findings and that the court would have done better to refrain from taking up the subject in the first place.

The court ruled also that Israel has the obligation to make reparation to the residents for the damage done by the construction of the fence and to return the lands, orchards, olive groves and other immovable property which was seized as part of the construction project. “In the event that such restitution should prove to be materially impossible, Israel has an obligation to compensate the persons in question for the damage suffered” (pars. 152, 153).

⁷⁵ Israel also argued that even if the court believes it possesses the jurisdiction to decide on the subject, it should refrain from exercising it.

⁷⁶ “Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory — Advisory Opinion of 9 July 2004.” The text is at the court's website: www.icj-cij.org/icjwww/idocket/imwp/imwpframe.htm. In the present framework we will offer a brief summary of the opinion and its implications. As noted above, the Jerusalem Institute for Israel Studies plans to publish a separate study dealing with the legal aspects of the construction of the fence, including the opinion rendered by the ICJ.

The court held that certain of the obligations violated by Israel are legally defined as *erga omnes* (“relating to all”). It follows, the court wrote, that it is incumbent on all states “not to recognize the illegal situation resulting from the construction of the wall in the Occupied Palestinian Territory.” By the same token, they must not contribute to the situation that has been created and ensure “that any impediment, resulting from the construction of the wall, to the exercise by the Palestinian people of its right to self-determination is brought to an end.” Moreover, all states that are parties to the Geneva Convention “are under an obligation... to ensure compliance by Israel with international humanitarian law” (pars. 155, 159).

On July 20, 2004, the United Nations General Assembly adopted a Palestinian motion calling on Israel to obey the ICJ’s advisory opinion. The decision was passed by a huge majority of 150 member-states in favor, ten abstentions and six opposed (including the United States, Australia and Micronesia). To Israel’s chagrin, all the member-states of the European Union, including the new members from Eastern Europe) supported the Palestinian motion. Although the resolution is not binding, it shows the scale of the international opposition to the fence. The Israeli assumption is that if the subject is referred to the Security Council, with the addition of a request for sanctions against Israel, the United States will veto the motion. The basis for the assumption is declarations by senior officials of the Administration and the a resolution adopted by the House of Representatives on July 15, 2004, by an overwhelming majority of 360 for and 45 against, deploring the ICJ’s decision and supporting Israel’s right to build the fence. Secretary of State Colin Powell termed the court’s decision “illegitimate” and expressed support for Israel’s right to self-defence.⁷⁷

The initial Israeli reaction to the ICJ’s opinion was total rejection and a declaration that Israel is committed solely to the ruling of the Supreme Court in Jerusalem, which was discussed above. However, the judicial authorities in Israel, after studying the opinion and examining its implications in the international arena, advised the political level of the need to take seriously the international court’s opinion and act accordingly. After appointing a committee of senior jurists to

⁷⁷ See: Shlomo Shamir, “Powell: Israel has proved that the fence reduces terrorism,” *Haaretz*, July 11, 2004.

examine the subject, the Attorney General, Menachem (Meni) Mazuz, submitted a legal opinion to the Prime Minister in which he stated, “It would be difficult to overestimate the negative implications of the court’s decision.” He urged the Prime Minister to complete the correction of the route as soon as possible and to anchor the amended route in a new government decision, which would make reference to international law. The Attorney General was backed by the report of the team of jurists, which warned that the ICJ’s decision “creates a new judicial reality, which is liable to act as a pretext to hasten actions against Israel in international forums, to the point of sanctions.”⁷⁸ This approach was seconded by Supreme Court President Aharon Barak, who noted in one of the court hearings about the fence, “At some stage, we will have to address the verdict of the court in The Hague.”⁷⁹

It would appear, then, that the ICJ’s decision, combined with the judgment of the High Court of Justice and the developments that occurred in their wake, ultimately brought about a certain change in the Israeli position concerning the route of the fence, entailing its construction closer to the Green Line. However, these pressures are being counteracted by massive pressure exerted by the leaders of the settlers and the political elements that support them (including those in the Likud, the ruling party) to stick to the planned route of the fence, which “annexes” the settlements that are relatively close to the Green Line. Further compounding the situation is the political plight of the Prime Minister, who is fighting for the support of his colleagues in the Likud so that he can implement his plan to disengage from the Gaza Strip and northern Samaria.

⁷⁸ See: Aluf Benn, “Hague and Jerusalem, from flagship project to oppressive burden,” *Haaretz*, July 11, 2004; Yuval Yaaz, “Mazuz warns: Hague court decision will lead to sanctions,” *Haaretz*, Aug. 20, 2004; *Haaretz* editorial, “A new legal reality for the fence,” Aug. 22, 2004.

⁷⁹ *Ibid.*

Chapter Two: The Obstacle around Jerusalem ("Jerusalem Envelope")

A. Background: Planning of the obstacle in the Jerusalem area and the question of the route

The violent confrontation that erupted, at the initiative of various Palestinian elements, on September 28, 2000 — the day after Ariel Sharon, then the leader of the opposition, visited the Temple Mount — began under the sign of Jerusalem. The Palestinians, with good reason from their point of view, called their uprising "Al-Aqsa Intifada." From the outset, Jerusalem was a preferred target for suicide bombings and other forms of terrorism. The Palestinian terrorist organizations are adept at exploiting the city's double vulnerability: because of its centrality in Israeli and world consciousness and the large concentration of world media representatives there, and because of its comparatively "convenient" geographical location, adjacent to Palestinian urban areas. In addition, terrorists from outside the city can draw on an infrastructure of local elements — based on physical access, shared economic and employment relations, and family ties — between the Palestinians in Jerusalem and the West Bank. Moreover, Jerusalem can act as a "corridor" for smuggling in terrorists who perpetrate attacks elsewhere in the country, such as the suicide bomber who entered via the Abu Dis area in order to carry out an attack on a Haifa bus on March 5, 2003.

According to a comprehensive study conducted by Ami Pedatzur and Gadi Faran, from the University of Haifa, an average of 50 terrorist attacks a year were perpetrated in Jerusalem between 2000 and mid-2003, as compared with a yearly average of 11 attacks between 1967 and 1999. The database of terrorist events compiled by the National Security Studies Center at the same university shows that terrorist attacks inflicted 1,995 casualties — 277 killed and 1,718 wounded — in Jerusalem from the beginning of the present Intifada until February 2004, as compared with 1,390 casualties (249 killed, 1,141 wounded) in the entire 32-year period from 1967 to 1999. From 2000 to 2003, nearly a quarter (22 percent) of all the terrorist attacks in Israel were perpetrated in and around Jerusalem (as compared with 9 percent and 2.5 percent in and around Tel Aviv and Haifa, respectively).

According to figures published in *Haaretz* about terrorist attacks in Jerusalem⁸⁰ — to which must be added the attacks at Cafe Hillel, on the no. 19 bus, and the murder of George Khoury in the French Hill neighborhood (all of which took place after August 21, 2003, when the figures were published) — 185 people were killed in the city and many hundreds wounded. Of course, the table does not show the numberless would-be terrorist attacks that were thwarted.⁸¹

The harsh situation reflected by these data engendered a public feeling of helplessness that was translated into public pressure on policy-makers (at both the local and national levels) and on the security establishment (including the police) to take action. This feeling of pressure dominated the decisions by the various authorities concerning the character and goals of the obstacle and its route. The decision-making process at the political level was heavily influenced by the operational methods utilized by the security forces in dealing with the security threats.

Incipient indications of a move toward separation in and around Jerusalem were visible from the start of the wave of terrorist attacks perpetrated in the city in the wake of the Oslo process, long before the official decision to build the obstacle in the Jerusalem area was made.⁸² The security forces set up checkpoints and obstacles in the form of earth ramparts near the municipal boundary along the roads leading to the city (and within the city) in order to prevent the entry of vehicles carrying terrorists, and afterward of suicide bombers, from the territories. Thus, for example, within the municipal area of Jerusalem a checkpoint was established to supervise and control the exit of residents of the Ras Khamis neighborhood, adjacent to the Pisgat Ze'ev neighborhood, to Moshe Dayan Avenue,

⁸⁰ Jonathan Lis, *Haaretz*, Aug. 21, 2003.

⁸¹ A report in *Haaretz* in February 2004 quotes data cited by Major General (res.) Uzi Dayan, according to which 198 people were killed in terrorist attacks in Jerusalem, of a total of 934 Israelis who were killed in such attacks since the start of the Intifada (21 percent of those killed). See: Amnon Barzilai, "Uzi Dayan: We recommended a fence already in July 2001 — why isn't it built yet?", *Haaretz*, Feb. 24, 2004.

⁸² According to attorney Daniel Seidemann, orders were issued as early as June 1996 to seize land between checkpoint 300 (on the main road from Jerusalem to Bethlehem) and Khirbet Mazmuriya in order to build a "patrol road." This expropriation enabled construction of the obstacle in this area to go ahead beginning in the summer of 2002.

and another checkpoint was placed at A-Tur, on the “*kohanim* route” along the eastern slope of the Mount of Olives.⁸³ Checkpoints of a more permanent character were installed next to the police station at Ras al Amud⁸⁴ and in north Jerusalem (A-Ram and Qalandiya checkpoints). The decisions to create these checkpoints were made by the field commanders of the police, the Border Police, and the IDF as an operational necessity to preempt terrorism. They were not part of an orderly decision-making process, and no serious thought was given to the long-term implications of the “separation” that was being created on the ground. The Jerusalem Municipality, at the time under Mayor Ehud Olmert, constantly pressed for the checkpoints to be moved to the edge of the municipal area of jurisdiction.⁸⁵ Thus, for example, the checkpoint at Ras al Amud was moved to the Abu Dis intersection (at the edge of the municipal boundary), though the checkpoints at Qalandiya and at A-Ram remained within the city.⁸⁶ Numerous discussions were also held about who would be responsible for the checkpoints and for security overall in the Jerusalem area (the police and the Border Police or the IDF’s Judea-Samaria Division).⁸⁷

⁸³ According to attorney Seidemann, some of the checkpoints were legalized retroactively by means of orders signed by the Chief of Staff based on the Defense (Emergency) Regulations of the British Mandate period.

⁸⁴ There had been a security point at the site since 1987, to protect visitors to the Jewish cemetery on the Mount of Olives.

⁸⁵ According to Shalom Goldstein, the political adviser to the mayor for East Jerusalem affairs, the municipality’s representatives were aware of the implications of these developments (such as the locations of the checkpoints) and alerted the state political level.

⁸⁶ “To the best of my knowledge of the subject, there were no demographic considerations at that stage, only security considerations. At first the task of planning was assigned to the Border Police, who were supposed to present plans for the Jerusalem Envelope on a rational military basis following an analysis of the features on the ground... The operational concept of the fence zone, as it exists today, developed in the course of [dynamic] movement...” (Interview with Shalom Goldstein, January 14, 2004).

⁸⁷ State Comptroller, Annual Report 48 for 1997 and the Accounts of Fiscal 1996, p. 1030. Speaking at the conference on the fence at the Hebrew University on March 28, 2004, Ephraim Halevy, the former head of the National Security Council, stated that too much discussion was devoted to the question of the division of responsibility between the IDF and the police, rather than to the route of the fence and other crucial issues.

In the north and south of Jerusalem, the initial thrust toward separation became full-fledged physical partition following the completion of the two sections of the obstacle between Ofer Camp and Atarot in the north, and between the “tunnels road” and Khirbet Mazmuriya in the south. The general complexity entailed by the obstacle in Jerusalem and the concrete difficulties involved in its planning and building led Prime Minister Sharon to establish a team to conceptualize the subject. Under the chairmanship of the Deputy Prime Minister, Ehud Olmert, a number of subcommittees were formed on specific subjects: on security, led by the head of Central Command; on housing issues in and around Jerusalem, co-chaired by the director-general of the Housing Ministry and the director of the Israel Lands Administration; on illegal building, led by the director-general of the Justice Ministry; and on transportation, under the director-general of the Transportation Ministry. The technical coordinator of the subcommittees was Moni Ben Ari from the Jerusalem Municipality. However, owing to the senior level of the teams and their chairmen, with their overburdened agendas, discussions were held at the level of principle only. As a result, the Olmert team had only limited influence on the planning of the fence and its route. Both the full team and the subcommittees addressed mainly the implications of the fence on the specific spheres in question. The full team convened only three times, though the subcommittees held more meetings. Their contribution can be seen primarily in the form of interdepartmental coordination, in planning the route of the fence in the Jerusalem region, in relation to construction for the Jewish and Arab population, planning of land reserves, and examining the impact of the fence route. Three subcommittees dealt with transportation — one with the connection between the network of roads in Judea and Samaria and the roads in Jerusalem, another with public transportation in Jerusalem, and the third with the master plan for transportation in the city. As noted, in general the subcommittees’ influence on the route of the fence was limited; its main contribution was confined to examining the effect the route of the fence will have on transportation and infrastructure in Jerusalem.

The political level was presented with three main alternatives for the eastern route of the fence: one that would follow the municipal boundary, plus Ma’aleh Adumim (built-up area only); a second that included Ma’aleh Adumim and Mishor Adumim, Kfar Adumim, and Almon; and a third that would also incorporate — in addition to the areas of the second alternative — Geva Binyamin (Adam) and Tel Tzion (Kohav Yaakov). Two different concepts underlay the three options, one

emphasizing the defense of the city (in addition to the built-up area of Ma'aleh Adumim), the second emphasizing Israeli control throughout the metropolitan space. The policy-making level, facing serious political constraints both domestic and international, has refrained (as of this writing) from deciding on this question. Even when the government finally reached a decision about the eastern route of the fence in the Jerusalem area — in the wake of the blowing up of a no. 2 bus on August 19, 2003 — according to which it would run adjacent to the municipal boundary, a “breach” of 2.3 kilometers was left along the Jerusalem-Ma'aleh Adumim road, at Al Za'im.

In several places it was decided to “co-opt” to Jerusalem territories that lay outside the city's area of jurisdiction. The decisions in some cases stemmed from considerations of security and topography, and in others from a desire not to harm the fabric of life of communities and Palestinian neighborhoods that would have been split by the obstacle. Frequently, external pressure (notably by the Vatican and the United States) or domestic pressure in the form of petitions to the High Court of Justice produced changes in the route.

The most striking example in this regard is Tsur Baher, where it was recently decided (in the wake of pressure by the residents and petitions to the High Court) to move the obstacle eastward in order to include most of the village on the “Israeli side” of the fence (including a large part of the village's farmlands and homes located in Area A, which is under Palestinian civilian control). Another example is the “co-option” to Jerusalem of some Christian churches and institutions in the Al Azariya area and the enabling of access for pilgrims to the tomb of Lazarus and the Franciscan Church of St. Lazarus, which lie on the “Palestinian” side of the obstacle.

In principle, the political level is avoiding any “concessions” of territory within the Jerusalem area of jurisdiction. However, there are two exceptions: Shuafat refugee camp, which is officially administered by UNRWA, the United Nations relief organization, was relegated to the “Palestinian” side (see discussion below); and Kafr Aqeb, in northern Jerusalem, which will also now be outside the city limits (due to topographical conditions, which do not allow the obstacle to pass between Kafr Aqeb and south Ramallah, and because of urban density that guarantees a high level of friction with the security forces and could constitute a serious tactical problem for the army).

It is already apparent that the obstacle will have a major impact on the functioning of Metropolitan Jerusalem. The open-borders policy, which was introduced by Moshe Dayan after the Six Day War, permitting free passage of people and goods between the West Bank, East Jerusalem, and Israel (within the Green Line), spawned an intricate web of connections and ties. Palestinian terrorism severely reduced Israel's readiness to continue with this policy and led to the creation of the obstacle between Jerusalem and the West Bank. It is abundantly clear that the dynamic reality fomented by Dayan will change because of the obstacle. A new political, social, and economic reality will emerge in Jerusalem and will also certainly bring about a radically different consciousness within both Palestinian and Jewish society.

If the fence is built along the government-approved route, including full Israeli control of the major access roads to the city (Highway 443 in the northwest and the tunnels road to the Etzion Bloc — Highway 60 — in the southwest), the result will be Israeli hegemony in the “public domain” in the Jerusalem area (on the main roads to the city) and a quasi-“autonomous” Palestinian regime in the villages and neighborhoods of the metropolitan area. If the Ma’aleh Adumim enclave is incorporated into the “Israeli sphere,” the question of the connection between the Palestinian blocs in the Bethlehem and Ramallah regions will arise in all its acuity.⁸⁸

B. Declared considerations and rationale of the route of the fence around Jerusalem⁸⁹

As noted above, the centrality of Jerusalem and its sensitivity in the Israeli public consciousness and internationally, and the large presence in the city of major international media outlets, prompted the terrorist organizations to choose it as a

⁸⁸ The security establishment is apparently aware of this problem and is working on a plan to resolve it.

⁸⁹ The description of the rationale and the information in this chapter are based largely on a lecture delivered by Colonel (res.) Danny Tirza in a conference on the fence around Jerusalem held at the Jerusalem Institute on September 24, 2003. He made a similar presentation at a second conference on the subject at the Jerusalem Institute for Israel Studies, on December 31, 2003.

5. To prevent the entry of “unauthorized persons” into Israel, whether for work, criminal purposes,⁹⁰ or for marriage and family unification without permits. According to the security establishment, some of the Palestinians who enter Israel illegally do so in order to establish and train terrorist cells consisting of East Jerusalem residents and Israeli Arabs.

The route of the fence affects the Palestinians’ “fabric of life.” The security establishment, according to its official declarations, seeks to avert this outcome as far as possible (an example is the agreements reached with Al Quds University concerning the institution’s soccer field and with the residents of Swahara/Abu Maghir about passage there). The planners say that they are aware of the complex web of constraints and problems concerning the route of the obstacle in this highly sensitive and complicated area. Indeed, in January 2004 the Defense Ministry set up a committee, headed by Brigadier General (res.) Baruch Spiegel, which is trying to map the problematic sections along the entire seam zone obstacle, including Jerusalem, with the aim of resolving some of the severe humanitarian problems that are troubling the Palestinian population.⁹¹

⁹⁰ In this connection it should be noted that since the establishment of the fence in northern Samaria the police have reported a decrease of more than 40 percent in property theft in the Sharon area. This is corroborated by a senior source in the Border Police with regard to the Jerusalem area. The source notes a decline in crime and in the number of *shabahim* (people illegally present) in Jerusalem, though many still succeed in entering the city. According to this source, a close correlation exists between the number of *shabahim* and the level of crime in the city; police data show that an extremely high proportion of the crimes in Jerusalem are committed by these illegal individuals. The Border Police source cites a decrease of 35 percent in the crime rate in Jerusalem and notes that in the view of the security authorities, completion of the fence will lower the crime rate further and upgrade the level of personal security in Jerusalem. The most striking feature of this criminal activity is the large industry of forgeries. According to the source, the rampant crime affects the Arabs of East Jerusalem themselves. Progress in building the fence has so far made it possible to block known access points of *shabahim* from the West Bank into Jerusalem, forcing them to assay more remote crossing points, where the fence does not yet exist. The distance and the effort required are reducing the number of *shabahim*, and many give up or despair of the attempt to infiltrate into Jerusalem (interview, October 8, 2003).

⁹¹ Amira Lamm and Gidi Weitz, interview with Defense Minister Shaul Mofaz, *Yedioth Ahronoth*, January 30, 2004.

C. Distinctive features of Metropolitan Jerusalem

1. Cutting off Jerusalem from the West Bank

Expanded Jerusalem (in the boundaries created after the Six Day War) is an important center that provides services to a broad periphery and the seat of numerous financial, economic, educational, and cultural institutions (including many international aid institutions) that provide services for all the residents of the territories. Salient examples of this interdependence are Al Muqassed and Augusta Victoria hospitals, which serve the Palestinian population around Jerusalem and in the center and south of the West Bank. True, in recent years, with the rise of Ramallah, the importance of East Jerusalem as an economic, political, and cultural center for the Palestinians has declined. Nevertheless, East Jerusalem remains very important, certainly at the symbolic level. Geographically, the Jerusalem region also connects the northern and southern parts of the West Bank.

2. Political and religious sensitivity

It is this sensitivity that makes Jerusalem the vortex of the Israeli-Palestinian conflict and a focus of world attention. Jerusalem's centrality in the conflict has also made it a crux of dispute in the public-political discourse in Israel. In this connection, it is especially important to mention the Temple Mount/Haram A-Sharif, which is a magnet for pilgrims and a potent religious symbol for Muslim believers in the territories, in Israel, and throughout the world. This is equally true of the Holy Places of the Christian communities and the hundreds of millions of Christian believers around the world. The question of freedom of access to the Holy Places for these believers becomes crucial in the situation of a fence that cuts off Jerusalem from the West Bank (and in the Christian case, cutting off Jerusalem from Bethlehem). For Christians, the problem is especially acute because of the existence of Holy Places and religious institutions close to the fence route in the Al Azariya area, adjacent to checkpoint 300 on the way to Bethlehem, and in north Jerusalem. Since construction of the fence began, many Christian bodies from around the world, with the backing of governments and international organizations, have urged the security establishment to include churches, monasteries, and various other assets within "Israeli" Jerusalem and to ease restrictions for Christian residents

and pilgrims.⁹² Such appeals reflect the concerns of the Christian bodies that their institutions will be cut off from Jerusalem and their preference for Israeli rule over the instability that exists in the territories under the Palestinian Authority.⁹³

3. Urban continuity between Jerusalem and the surrounding Palestinian localities

In the period since the city's unification, there has been continuous building in some areas between the city's eastern neighborhoods and the surrounding urban and rural Palestinian settlements. This is especially the case between the eastern neighborhoods of Wadi Kadoum and A-Sheikh, which lie within Jerusalem, and Abu Dis and Al Azariya, located east of the municipal boundary. Another case is between Aqeb and Semiramis, in the city, and Ramallah and El Bireh to the north. There is a particularly dense and continuous area of building between A-Ram and the Dehiyat Al Barid neighborhood, outside Jerusalem, and Beit Hanina and Neveh Yaakov, within the city. In some cases the density is such that physical separation can only be achieved by means of a wall, rather than a fence-based obstacle. These areas of high density are seriously hampering the building of the obstacle and also render unfeasible the "delay time" which security experts say is needed in the case of infiltration by hostile elements.

4. Topography

The topography of Jerusalem (especially its eastern periphery) is extremely problematic, characterized by steep slopes and sheer drops (as in the Kidron Valley and other valleys). The basic features of the city's topography dictate settlement in the high areas, with the lower regions left largely open and vacant. The terrain features pose serious operational problems. Operational considerations call for

⁹² See: Akiva Eldar, "Senior Congressman to Bush: Fence threatens to stifle Christian life," *Haaretz*, April 29, 2004.

⁹³ See the report by Ilil Shahar in *Ma'ariv*, Nov. 11, 2003, on the request by the Papal Nuncio in Israel, Msgr. Pietro Sambì, to the Foreign Ministry and to the Defense Ministry to include the Christian institutions within the "Israeli area." This subject is further discussed in the section on the route of the Jerusalem Envelope obstacle.

security presence in dominant areas, which in the case of Jerusalem are the city's highly populated sections. Another possibility is to split the obstacle into a number of secondary obstacles, pursuant to topography — leading, in certain cases, to infringements of property and restrictions on freedom of movement for the Palestinian population.

5. Socioeconomic constraints

The organization of the Palestinian society in Jerusalem, especially its rural part, is traditional, involving complex and diverse family-clan kinship structures. This, in turn, has implications for the Palestinian society and economy in East Jerusalem and its connections with the West Bank. Economically, East Jerusalem is a transitional area between the West Bank and Israel within the Green Line. This special status is liable to be severely downgraded by the “truncating” of the area by means of the obstacle and the restrictions that will be imposed on the passage of people and goods between the West Bank and Jerusalem. Similarly, the system of social and religious services also crosses borders, for the Palestinians in Jerusalem and in the West Bank alike. The fence will inevitably have an adverse effect on the functioning of these socioeconomic systems, though the planners have declared that their aim is to minimize the damage as far as possible. Moreover, many Palestinians who work in Jerusalem (physicians, nurses, teachers, and so on) reside outside the city. Their job access will become more difficult and more expensive. The places that employ them may have to draw more heavily on the residents of East Jerusalem and on holders of entry and work permits for Jerusalem.

6. Freedom of movement

The Arab population of East Jerusalem enjoys freedom of movement within the city and outside it into the West Bank. Tens of thousands of holders of Israeli ID cards who live in the Palestinian localities around the city — A-Ram, A-Za'im, Al Azariya, and elsewhere)⁹⁴ will find themselves on the “other side” of the separation

⁹⁴ Estimates of their number range from 50,000 to 100,000. According to the Civil Administration, there are about 90,000 people in this category.

fence and outside the municipal area of Jerusalem, in the West Bank. The result will be a radical change for the worse because of the fence.

7. Demography

The building of the fence along the planned route will affect the size of the Palestinian population in the city. Holders of Israeli ID cards currently living outside the city may want to return to the “Israeli side” of the fence — especially those who are living in rented lodgings (as distinct from home owners who invested in purchasing or building). A large-scale re-entry of Palestinians into the city could change the demographic balance to the “disadvantage” of the Jewish population, contrary to the declared policy of every Israeli government since 1967. Therefore, a number of Israeli spokespersons say, everything possible must be done to reduce the motivation of these Palestinians to move into the city by facilitating access by means of crossing points and terminals. It is important to note that there are no accurate statistics exist about the number of Palestinians who live in and around Jerusalem, only estimates.⁹⁵ A discussion of the demographic factor points to the tension between the various considerations regarding the route of the obstacle in the Jerusalem area.

8. Separation of infrastructures

A key question is whether the fence will, in certain places, make it necessary to separate the infrastructure systems of Jerusalem from those of the surrounding neighborhoods and communities. For example, in the Al Azariya-Abu Dis area the water and sewage systems are linked on both sides of the fence. The separation and subsequent joint maintenance of the infrastructure systems is liable to be extremely problematic because of the uncertainty about which government will be in charge of the Palestinian neighborhoods and localities outside Jerusalem and in the light of the acute situation of the Palestinian Authority. If Israeli bodies

⁹⁵ Nevertheless, the Israeli and Palestinian numbers are very close, based on the latest report by the Palestinian Central Bureau of Statistics, which puts the number of Palestinians holding Israeli ID cards at 253,000.

continue to manage and maintain the systems, the service providers will require coordination and security from both the Israeli security establishment and the Palestinians.

9. Geography and transportation

The Jerusalem area is an important transition zone connecting the southern region of the West Bank (Judea) with the northern region (Samaria) and with the Jericho region. In the existing road system it is almost impossible to travel from the south to the north of the West Bank without traversing Jerusalem, except through the Kidron Valley (Wadi Nar). Free and uncontrolled passage through the city poses a grave security risk. The challenge facing the planners of the fence is to prevent uncontrolled and unnecessary passage of Palestinians through Jerusalem but at the same time to ensure a viable transportation link between the two sections of the West Bank. The ring road planned for the eastern boundary of Jerusalem by the municipality and the government is intended to be a major artery connecting the northern and southern sections of the West Bank without necessitating entry into Jerusalem. The major questions are how this road will integrate with the separation fence and when its construction will be completed — it has not yet been approved completely and construction has not yet begun. Its central section is still in the planning stage and it could be ten years or more before the road becomes functional.⁹⁶ Another important question is how the separation fence will integrate with the network of roads leading to the Jewish settlements outside Jerusalem (such as the Zaatra bypass to the settlement of Nokdim, and others). Nor is it clear how the continuation of Highway 45, to Ma'aleh Adumim — intended to be the main west-east artery (together with Highway 1) — will be implemented, or what the implications will be in terms of transportation and other aspects. Already today changes are taking place: Highway 22, which continues from the Begin North freeway in Jerusalem toward Hizma and Jericho, will now have priority and in the meantime will replace Highway 45, which was truncated by the separation fence.

⁹⁶ In the meantime, according to the mayor's adviser for East Jerusalem affairs, a "temporary" road is planned east of Al Za'im, which will serve the Palestinian population.

10. The Israeli settlements outside the fence in Judea-Samaria

The city of Ma'aleh Adumim and the smaller Israeli settlements in Judea-Samaria near Jerusalem are liable to find themselves on the "Palestinian" side of the separation fence (not inside the same fence that encircles Jerusalem) and suffer economically and psychologically by ostensibly being "cut off" from Jerusalem.⁹⁷

Passing through checkpoints day in and day out on the way to and from Jerusalem — where most residents of these settlements work and obtain the services they need — is also liable to prove daunting.

11. Conclusions

The route and the new reality that are emerging as the construction of the Jerusalem Envelope obstacle progresses are not, in every case, consistent with the implications of the constraints described above. Indeed, the facts on the ground show that these constraints had little or no influence on the decisions of the security establishment concerning the obstacle. Yet, at the same time, as the obstacle reveals the problems of commutation and other difficulties of the Palestinian population, the security establishment appears to be increasingly aware of the Jerusalem-specific constraints.

A critical examination of the security considerations underlying the obstacle must take into account three possible developments for which the present route and rationale of the fence are irrelevant:

- ❖ **Palestinian use of flat-trajectory weapons** — The possibility that the Palestinians will make use of "fence-bypass weapons," such as Qassam rockets and upgraded mortars (a possibility suggested by the chief of the Shin Bet, Avi Dichter, at a meeting of the Knesset's Foreign Affairs and Defense Committee near the end of February 2004).⁹⁸

⁹⁷ See, for example, the reaction of residents of the Israeli settlement of Hermesh and of the Palestinian village of Baka al Sharqiya, which were left on the "Palestinian side" of the fence: Daniel Ben Simon, "Hosni and Nava on the way to The Hague," *Haaretz*, Jan. 30, 2004, p. B-5.

⁹⁸ Gideon Alon, "Dichter: Artillery weapons in Gaza will lead to broad Israeli operation," *Haaretz*, Feb. 25, 2004.

- ❖ **Recruiting the international media in the “war of the fence”** — The possibility that the fence, especially in the Jerusalem area, will in time (perhaps after a period of relative calm) become a preferred locus, from the Palestinians’ point of view, for violent clashes with the security forces on both sides of the obstacle, involving stones, Molotov cocktails, attacks on the cameras mounted on the walled sections, and so forth. Another possibility is to hold “protest demonstrations” with the participation of international organizations. With full media coverage, such events could develop into mass marches seeking to damage or even topple the fence. As a result, security forces in the Jerusalem Envelope and along the fence will be beefed up, generating even greater friction with the Palestinians. The worldwide media images will exacerbate the image of Israeli brutality in the face of the weakness of the “suppressed” Palestinian population (and thereby possibly creating the ultimate expression of the “power of weakness” vis-à-vis the “weakness of power”). The large-scale deployment of forces to guard the fence and the crossing points in and around Jerusalem will be a heavy burden on the defense budget and indeed on the entire state budget.
- ❖ **“Translation” of frustration into violence and even assistance to terrorists** — It is not clear how the new geopolitical situation will affect the “behavior” of some or all of the Palestinians in Jerusalem over the long term. It is important to emphasize that during the present confrontation Jerusalem Palestinians have rarely been involved in terrorism. In the Israeli perception, this population group benefits from its Israeli-Jerusalem status and will want to continue doing so. Nevertheless, there might be increased readiness to assist terrorists, and newly formed Jerusalem-based terrorist cells might decide to take an active part in attacks against the background of the East Jerusalem “pressure cooker.”⁹⁹

⁹⁹ These issues are discussed more extensively in the section on possible future scenarios.

Chapter Three: Features of the Obstacle

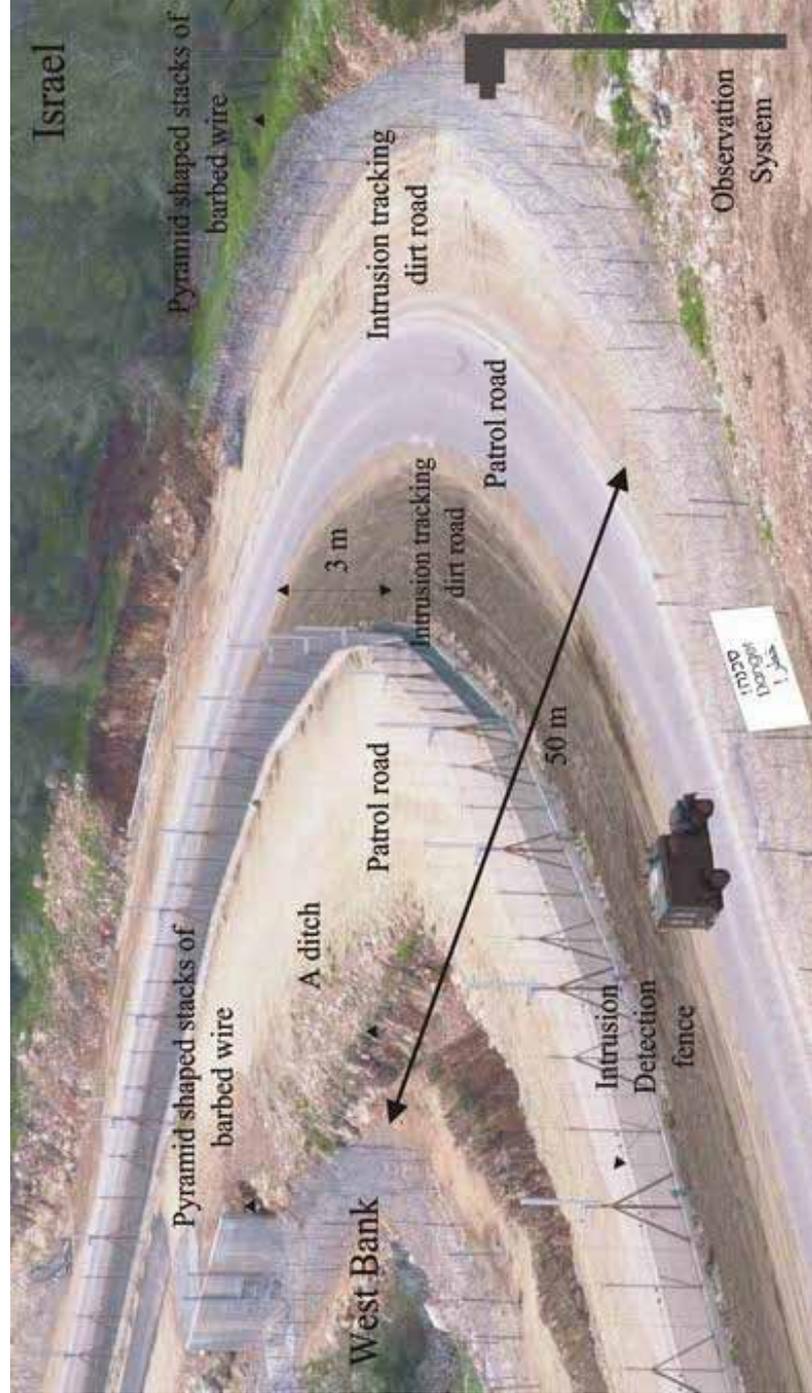
The seam zone obstacle, including the Jerusalem Envelope, consists of more than a fence. According to its planners, the obstacle is a complex system of infrastructures, means and methods, personnel, and patterns of operation, and not only a physical entity. Concretely, it is 40 to 70 meters wide, depending on topography and other conditions. Its structure possesses several key elements and is operated on the basis of a comprehensive security concept. The central element is the physical barrier itself, in the form of a wall or a fence. In Jerusalem, topographical features and densely built-up areas necessitate more use of walled sections than elsewhere in the seam zone. However, the main element is still an “intrusion detection fence.” Its purpose is to delay any attempt to cross the obstacle and to activate an effective warning system that will alert a military force that will proceed rapidly to the site of the attempted intrusion.

The obstacle creates a closed military zone delimited by a “concertina fence” (stacks of coiled razor wire) at each of its extremities. Anyone who crosses this fence, which marks the perimeter of the obstacle, is meant to know that he has entered a prohibited military zone. The concertina fence, which is an integral part of the obstacle itself, is 2.1 meters high and pyramid-shaped, with a broad base and a narrower top section (see Illustration 3).

Another component of the system is intended to prevent the entry of vehicles into the protected zone. In most cases this is a ditch about 3.5 meters deep and 4 meters wide. Where the terrain rules out a ditch an impassable step-terrace or cliff will be built.

A more sophisticated aspect of the obstacle is a “smart” electronic fence. Touching, cutting, shaking, climbing, and entering the electronic space of the indicative fence will trigger an alarm. This electronic component defines with high accuracy the site of any event that matches the characteristics described. In addition, the fence is connected to a system of cameras that will identify and document the events on the ground so as to enable command and control even before troops are dispatched to the site. Using advanced technologies, all available information will be transmitted to regional command and control centers, enabling quick identification and the rapid and effective deployment of forces to the area.

Illustration 3: Typical cross-section of the security fence



Source: Ministry of Defense website: www.securityfence.mod.gov.il

On the Israeli side there is an “intrusion tracking dirt road” with an abutting patrol road to allow rapid operational movement of forces along the fence. The obstacle space will be delimited by a maintenance road on the shoulders of which is a pyramid-shaped concertina fence like the one on the Palestinian side.

The geographic space created by the obstacle will necessitate a special security regime and distinctive rules of operational behavior, including area-specific rules of engagement. At the same time, the obstacle, particularly in densely populated urban areas, requires careful planning of crossing points and terminals for the quick, efficient, and safe passage of people, vehicles, and goods.

The plan calls for two large terminals for Jerusalem: one to the north of Atarot Airport, in the north of the city; the other south of Khirbet Mazmuriya in the southeast. These major crossing points — the recommendation is that they be administered by the Airports Authority, like the Karni terminal in the Gaza Strip — will be used for the passage of people, vehicles, and cargo. In addition, in Palestinian areas where the daily routine involves frequent crossing to the “Israeli side” of the obstacle there will be gates for vehicles and pedestrians and special “agricultural gates” so that those on the “Palestinian side” of the fence can access farmlands on the “Israeli side” with relative convenience. As of this writing, construction has not yet begun on either the large terminals or the access points (this subject is discussed further in the section on terminals and crossing points).

The more significant challenge from the point of view of the security establishment is the internal crossing points (the “checkpoints,” in the current parlance). Specifically, these are checkpoints located between the areas of the Palestinian Authority and Jerusalem, which are used by Palestinians who want to get from one Palestinian locality to another or from one neighborhood to another in the city. These checkpoints have a high potential for friction and the planners’ declared aspiration is to create an infrastructure enabling a more “comfortable” security check for Palestinians. At present, Palestinians endure long delays at the checkpoints and receive a very low “level of service” — yet the level of the security checks is also substandard. The security establishment apparently recognizes the fact that this contact between the soldiers and the Palestinian population is problematic and does not serve the overall operational concept. Major General Amos Yadlin, the commander of the IDF colleges, devoted an entire day to visiting checkpoints for a first-hand look. After studying the subject in depth, he reached

an unequivocal conclusion as to the negative results produced by the high level of friction at the checkpoints combined with the low “level of service” to the Palestinian population. Among other reasons, Yadlin ascribed this state of affairs to the low level of the soldiers who man the checkpoints. “The soldiers at the checkpoints are not Ph.D.s,” he stated.¹⁰⁰ The promised change in the “level of service” at the checkpoints may well be disbelieved by the Palestinians in Metropolitan Jerusalem, in the light of their melancholy experience in the past three and a half years.

The features of the security fence and its “operational rationale” show clearly that it is shaping a reality and a political consciousness of segregation. The extensive infrastructure work is effectively creating a “territorial obstacle.” Whereas a “**fence**” is generally perceived as geographically small, the security fence is essentially “**territorial**” in terms of geography and conception, and therefore the description of the obstacle as a “**seam zone**” is very apt. It is in fact a geographical area in which a special security regime will prevail, and where the seam zone coincides with a dense urban area it becomes extremely problematic in terms of Palestinian commutation. In these conditions, the seam zone is liable to become a site of constant friction between the security forces and the Palestinian population.

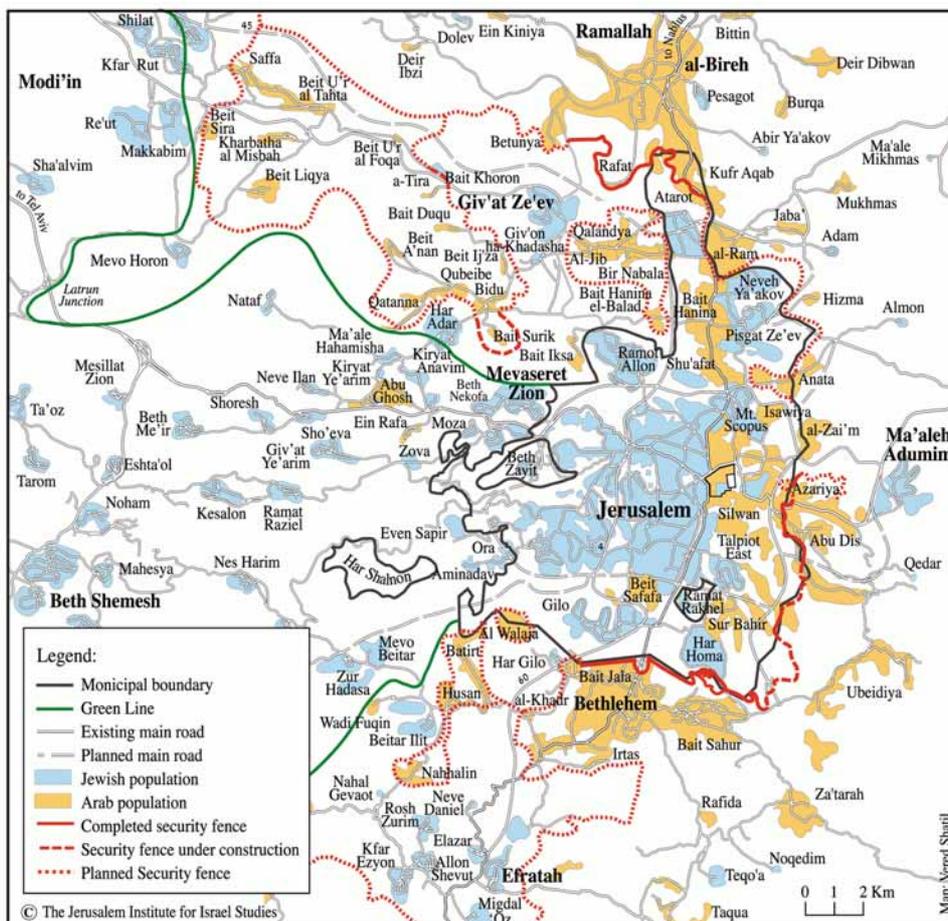
In parts of south and north Jerusalem where a fence and a seam zone already exist, a routine of operational activity has emerged under the responsibility of the Border Police. Official responsibility for the seam zone in the Jerusalem Envelope was transferred to the Israel Police, and more specifically to the Border Police, in early January 2004. Additional units will be deployed for the fence when it is completed. Coordination and cooperation between the Border Police and the IDF has improved, though is still often deficient. A recent example of problems of coordination involving the Jerusalem District police and the Border Police, and the IDF territorial brigade in Ramallah, was an incident at the end of February 2004 near Beit Sourik-Bidu, in which two Palestinians were killed during a demonstration against the fence.¹⁰¹

¹⁰⁰ Published on the Hebrew-language Internet site of the daily *Ma'ariv*:
<http://images.maariv.co.il/channels/0/ART/637/391.html>.

¹⁰¹ Amos Harel, “Even after Hague deliberations, fence issue will remain on the agenda,” *Haaretz*, Feb. 27, 2004.

Chapter Four: Route of the Fence around Jerusalem

Illustration 4: Route of the security fence in the Jerusalem area



The route of the obstacle to the north of Highway 443 — around the villages and neighborhoods south of Ramallah (south of Bituniya and Rafath) — was dictated by the Israeli desire to control the northern access route to Jerusalem (Highway 443 and the planned Highway 45) and to include on the “Israel side” of the fence Givat Ze’ev and the surrounding Jewish settlements (Givon, Givon Hahadasha,

Har Shmuel, and Nebi Samwil), as well as the important observation point north of the highway near Khirbet Isqelan (south of Ein Ariq), which overlooks Modi'in and Ben Gurion International Airport. The result of this decision was the creation of two enclaves, which have since been canceled (as of March 2004), at least for the time being, following sharp domestic and international criticism.

The first and smaller enclave encompassed five villages with a total population of 11,500 (Qalandiya, Al Judira, Al-Jib, Bir Naballah, and Beit Hanina Al Balad). Under the original plan, this bloc would have become a Palestinian enclave within "Israeli" territory within an "internal" fence. It would be connected by means of a narrow corridor and a tunnel (under Highway 443) to the Palestinian bloc of communities south of Ramallah. Although the villages would be under Israeli security control, their residents would be citizens of the Palestinian Authority or state.

The second and larger enclave (under the original plan) would have encompassed 15 villages¹⁰² with a total population of about 45,000. This bloc, too, would be a Palestinian enclave within "Israeli" territory, surrounded by an "internal" fence and connected by means of a subterranean passage (under Highway 443) to the Palestinian bloc of settlements west of Ramallah. In this case, too, the villages would be under Israeli security control, though the residents would be citizens of the Palestinian Authority or state.

At the end of February 2004, concurrent with the deliberations in The Hague, Brigadier General Eran Ophir, who is coordinating the construction of the fence, announced that it had been decided to suspend the construction of the deep obstacles to protect Ben Gurion Airport and the Modi'in-Jerusalem road (Highway 443) "because of concern at imprisoning tens of thousands of Palestinians."¹⁰³

¹⁰² Beit Ur al Foqa, Beit Ur al Tahta, Khirbet al Masbah, Beit Sira, Beit Liqiya, A-Tira, Beit Duku, Beit Ijza, Bidu, Beit Sourik, Kubeiba, Ktana, Khirayeb Umm a-Lehem, and Beit Aanan.

¹⁰³ Amnon Barzilai, "Fence route shortened to 640 kilometers," *Haaretz*, Feb. 25, 2004. In early April 2004, Colonel (res.) Danny Tirza also confirmed that the security establishment had decided to do away with all the enclaves that were supposed to be created in the Jerusalem region, including the two northern ones. However, it is not yet clear how Israeli interests in this area will be safeguarded following the elimination of the enclaves.

The village of Beit Iksa (population: 1,200), which overlooks the main road from Jerusalem to Tel Aviv (Highway 1) will, along with Nebi Samuel and Har Shmuel, be effectively annexed to the “Israeli side” of the fence.

From Ofer Camp/Rafath the obstacle (this section of which already exists) continues eastward to Atarot Airport until the Qalandiya checkpoint. A serious problem here is that the southern and western parts of Kafr Aqeb and the Semiramis neighborhood will remain north of the obstacle even though the neighborhood and this part of the village (11,000 residents) lie within the municipal boundary of Jerusalem and most of its residents carry Israeli ID cards (permanent residents of Israel). This route was apparently chosen due to terrain conditions and dense urban building, which ruled out the possibility of building the obstacle between Aqeb and Ramallah. Unlike the situation in the West Bank, the obstacle in this area is between 25 and 60 meters wide. The State Attorney’s Office has told the Supreme Court that Israel also plans to build a depth obstacle between Aqeb and Ramallah, but no information is available about its exact route.

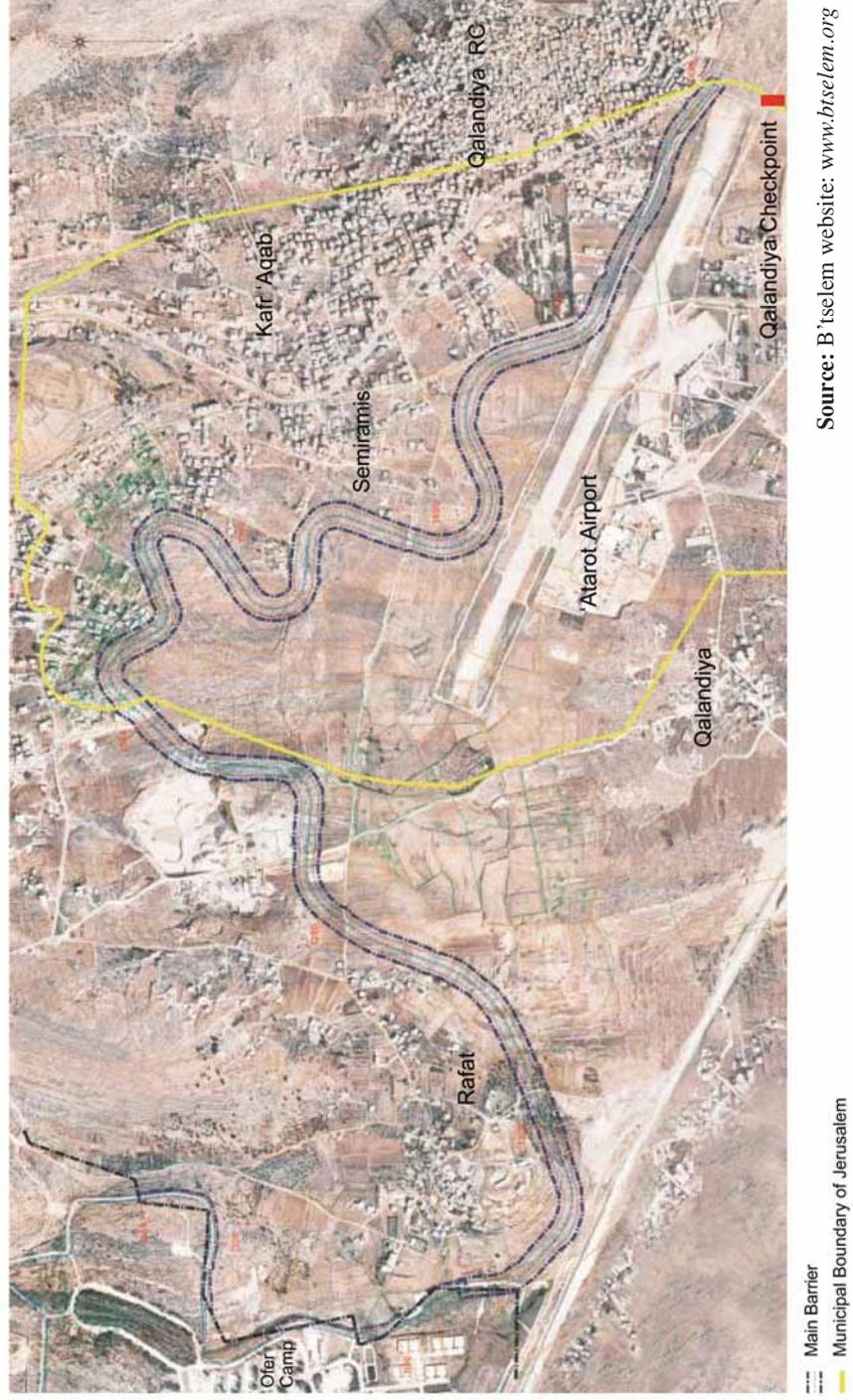
The large terminal connecting Jerusalem to the northern West Bank is to be built north of the airport.

The eastern area

From Qalandiya checkpoint the obstacle proceeds south to Neve Yaakov. This section will include a wall to be built in the middle of the Jerusalem-Ramallah road, separating Israeli and Palestinian traffic and leaving the large town of A-Ram and most of Dehiyat al Barid neighborhood on the “Palestinian” side of the obstacle. Here the obstacle will have a highly deleterious effect on the large commercial center of A-Ram, which had developed considerably until the present confrontation.

In the area of Neve Yaakov and Pisgat Ze’ev, the obstacle will encompass the planned ultra-Orthodox neighborhood of Geva, to be located northeast of Neve Yaakov, outside the Jerusalem municipal boundary. In contrast, the route of the obstacle will exclude Shuafat refugee camp and part of the new Anata neighborhood (Dehiyat al Salam — the Peace Neighborhood) from the area of jurisdiction (both areas are currently within the city limits). If it is decided to enlarge the Ma’aleh Adumim enclave to encompass the settlements of Almon and Adam (Geva

Illustration 5: The security fence in the Kafr Aqeb area (aerial photo)



Binyamin) and Sha'ar Binyamin industrial zone, Anata and Hizma will become Palestinian enclaves within Israeli territory, connected to Jaba and A-Ram by a narrow corridor.

Owing to the failure of the political level to decide on whether to include the Ma'aleh Adumim enclave on the "Israeli side" of the fence, no obstacle will be built, at this stage, between south Anata and Al Za'im. Different alternatives have been put forward with regard to the size of the proposed enclave; the maximalist version includes the entire area of jurisdiction of Ma'aleh Adumim and the plan for its expansion (Plan E1) together with Kedar, Mishor Adumim industrial zone, Kfar Adumim and the settlements of Nofei Prat, Almon, Adam (Geva Binyamin) Sha'ar Binyamin industrial zone, Kohav Yaakov, and Tel Tzion.

Even though this alternative does not entail the annexation of a large number of Palestinians to Jerusalem (most of the area is sparsely populated by Bedouin), the area in question is very large, its size recalling the mooted Ariel "panhandle." The Ma'aleh Adumim plan, if approved, will almost certainly generate fierce opposition by the United States. Nor is there agreement in the security establishment and the police that this is the preferred alternative.¹⁰⁴ On the other hand, it is clear that building the fence west of Ma'aleh Adumim will have serious consequences for the city and its ties with Jerusalem.

The section of the obstacle from Al Za'im southward via Al Azariya and Abu Dis to the Tsur Baher-Umm Tuba area more or less tracks the municipal boundary. The route here is extremely problematic, as it cuts arbitrarily through villages and neighborhoods which have grown since 1967 and today extend across both sides of the municipal boundary.

The southern area

From Tsur Baher-Umm Tuba the obstacle proceeds southward to the area of Khirbet Mazmuriya. A problem arose in the southeast corner of the obstacle, regarding the village of Nu'man (or Khamlet Nu'man, next to Khirbet Mazmuriya), whose 200

¹⁰⁴ Amos Harel, "Separation fence east of Jerusalem: From A-Ram to Wadi Kelt," *Haaretz*, Nov. 10, 2003, pp. A-1, A-10.

residents do not hold Israeli ID cards even though the village is located within the Jerusalem area of jurisdiction. Here, too, at the planned site of the large southern terminal (between the southern West Bank and the Jerusalem area and the northern West Bank), work was held up because of petitions to the High Court of Justice by local residents.

From Khirbet Mazmuriya the obstacle turns west (a stretch that has been completed) until the entrance to the tunnels road (Highway 60). The problematic area here — where work was suspended in the wake of High Court petitions — is the area of Rachel's Tomb. The route of the fence in this area was changed under pressure by cabinet ministers from the National Religious Party and Shas, and by Ehud Olmert, the mayor of Jerusalem at the time, who demanded that Rachel's Tomb (which lies about 500 meters south of checkpoint 300, in the municipal area of Bethlehem) be included within the "Israeli" area of the obstacle. The Security Cabinet decided to move the route a few hundred yards to the south and annex Rachel's Tomb to Jerusalem.¹⁰⁵ International pressure was brought to bear on Israel by various churches, which own land in the area of checkpoint 300 and the nearby tomb. The local Armenian community, for example, succeeded in preventing the building of the obstacle around their monastery near the Al Aeda refugee camp, thanks to pressure exerted by the Armenian community in the United States on members of Congress. A number of Catholic bodies and the Greek Orthodox Patriarchate have hired lawyers to ensure that their properties are also included on the "Israeli side" of the fence.

Another problem in this area is the Bir Una neighborhood, part of which is within Jerusalem and some of whose residents carry Israeli ID cards, though the neighborhood itself lies south of the obstacle, on the "Palestinian side" and all the access roads to it originate in the Beit Jalla area, which is in Area A, under the control of the Palestinian Authority.¹⁰⁶

¹⁰⁵ Nadav Shragai et al., "Annexation in practice of Rachel's Tomb to Jerusalem approved," *Haaretz*, Sept. 12, 2002. It should be emphasized that the size of the Rachel's Tomb enclave underwent several changes in the planning of the route. The matter is still pending in the High Court of Justice.

¹⁰⁶ In the opinion of the adviser to the mayor of Jerusalem for East Jerusalem affairs, this

From the entry to the tunnels road the obstacle is intended to continue westward and encircle Mount Gilo, which will in practice be co-opted to the “Israeli side” of the fence. The village of Walaja, with a population of 1,500 (nearly all of them residents of the territories), which includes the neighborhood of Ein Jawiza, which lies within the municipal area of Jerusalem,¹⁰⁷ will be linked to Beit Jalla via a corridor road 150 meters wide. The Jewish settlement on Mount Gilo will be connected to the Walaja bypass road by means of an interchange.

Another Palestinian enclave which in the original plan was supposed to be under Israeli security control consists of Batir, Husan, and Nahalin. These villages will be “connected” to the Al Khader-Bethlehem area by means of a subterranean passage under Highway 60. From there the obstacle will continue toward the Etzion Bloc, in practice co-opting to the “Israeli area” of the fence Betar Illit and the settlements of the Etzion Bloc (including the town of Efrat).

is not a serious problem, because the residents’ “center of life” is in Beit Jalla and not Jerusalem. The only service they receive from the Jerusalem Municipality is their water supply, and in practice there are only about 15 families holding Israeli ID cards, while all the other families have ID cards of the territories.

¹⁰⁷ Danny Rubinstein, “You’re putting us in a cage anyway, so maybe you’ll add us to the zoo,” *Haaretz*, Jan. 4, 2004, p. B-3.

Chapter Five: Impact of the Fence on the Palestinian Population in Metropolitan Jerusalem

As noted, the separation fence around Jerusalem is the most significant Israeli step since 1967 in terms of changing the status and the daily routine of the residents of East Jerusalem (whose number is estimated today at about 220,000).¹⁰⁸ Until the building of the fence the municipal boundary of Jerusalem had little effect on their day-to-day life and freedom of movement. The boundary existed only on the map and was not manifested on the ground. The residents of East Jerusalem enjoyed full freedom of movement into West Jerusalem and in the West Bank, and over the years since 1967 had become an important economic and social link between Israelis and residents of the territories.

The separation fence, especially to the east and north of Jerusalem, will make life very difficult for everyone who lives in East Jerusalem and the adjacent suburbs, and will have a significant impact on the status and economy of the entire city. The fence will split villages and neighborhoods, such as Abu Dis and A-Ram, and in some cases will separate members of the same family or *hamula* (clan). Unlike most of the separation fence, the obstacle in Jerusalem will divide not only Jews from Arabs but also cut off the Arab neighborhoods of East Jerusalem from the neighborhoods and villages outside the city's area of jurisdiction. The critical question in this connection is the functioning of the crossing points and their operational regime.

Moreover, as noted above, various difficulties, as well as restrictions imposed by the Israeli authorities, have greatly limited Arab residential construction within Jerusalem. As a result, many Arab residents of the city who hold Israeli ID cards

¹⁰⁸ According to the official data, the Arab population of Jerusalem at the end of 2002 was 221,800. See: Maya Choshen, *Jerusalem: Facts and Trends 2002/3*, Jerusalem Institute for Israel Studies, 2003, p. 7.

chose to establish their homes on the other side of the municipal boundary, where the Israeli Civil Administration is more accommodating in terms of granting construction permits and sometimes even looks the other way at extensive Palestinian construction. The result is that continuous urban blocs have been created on both sides of the boundary and that Jerusalem residents who carry Israeli ID cards and “residents of the territories” are living in the same suburbs outside the city’s area of jurisdiction (in A-Ram and Al Azariya, for example). In some cases, some members of the same family or clan live in the city while others live outside. The “Jerusalemites” who reside outside the city are heavily dependent on Jerusalem in their everyday life and for the services they need. Thus, many children living outside the city attend schools in East Jerusalem, the residents turn to hospitals in East Jerusalem for medical services, and many hold jobs that are part of the Israeli labor market (including in the Jerusalem Municipality). Conversely, many students who reside in East Jerusalem attend Al Quds University, most of which is located in Abu Dis (outside the municipal area), and the cheaper shopping centers in Al Azariya and A-Ram rely on Jerusalem buyers.

Many Palestinians who live in areas that have been sundered by the fence have asked the Defense Ministry and the IDF to change the route of the obstacle to encompass them within Israeli territory or to exclude them but allow them unimpeded access to families, land, and the center of their life. One striking example in this connection became known in the wake of requests made by residents of Tsur Baher, from which it emerged that 750 of the village’s residents, who hold Israeli ID cards, reside in a neighborhood outside the city to the east of the village. The fence, they maintained, would split the village, which constitutes one social unit.¹⁰⁹ They asked for the route of the fence to be changed so it would run west of the village, thus leaving the entire neighborhood outside the fence and excluded from “Israeli” Jerusalem. Told that this option was completely unacceptable to the political level, they then requested that the possibility be examined of moving the fence eastward to encompass the homes of the residents outside the municipal area. The land in question, they said, had been incorporated into the village since the British Mandate period, as they could show by means of maps and other

¹⁰⁹ See: Lily Galili, “Head in the West Bank, feet in Jerusalem,” *Haaretz*, Aug. 23, 2003.

documents. The security establishment recently acceded to this request and shifted the route of the fence eastward, encompassing most of the village on the “Israeli side.”

Already now, the closures and checkpoints that impeded the entry of residents of the territories to Jerusalem, combined with the fence, have brought about increased migration by Palestinians holding Israeli ID cards into the city, driving up rental costs. If the regime at the crossing points to the city will be relatively convenient, West Bank Palestinians can be expected to move into the homes being vacated around Jerusalem by those who have taken up residence inside the city.¹¹⁰

The following is a brief survey of the major difficulties that the planned route of the fence is creating and of its impact on the way of life of the Palestinian residents of Jerusalem and the surrounding area, proceeding from north to south:

In the enclaves northwest of Jerusalem (if the original plan of the obstacle is followed), it is unclear how the two Palestinian enclaves (55,000 residents who will effectively be under Israeli security control) will function. The critical questions involve the villagers’ access to their “center of life” in and around Ramallah (such as clinics and hospitals) and to the Jerusalem region. As noted, a few thousand residents¹¹¹ in these villages (such as Bir Naballah and Qalandiya) hold Israeli ID cards, and the question is how they will be able to reach Jerusalem.¹¹²

In some places (such as Beit Ijza and Givon Hahadasha) Palestinian and Israeli settlements abut one another and the fence will pass between the yards of Palestinian and Israeli homes. A few thousands residents in the two enclaves hold ID cards of the territories but work in East Jerusalem and in nearby Jewish settlements, such as Givat Ze’ev and Har Adar, and it is not clear how they will be able to get to their jobs on a regular basis. As noted, these difficulties were among the factors that led

¹¹⁰ See: Danny Rubinstein, “\$500 a month for a small basement flat — the main thing is to live in Jerusalem,” *Haaretz*, Nov. 23, 2003.

¹¹¹ One estimate speaks of 7,000 residents.

¹¹² According to OCHA (the UN’s Office for the Coordination of Humanitarian Affairs) in East Jerusalem, about 60 percent of the residents of Qalandiya (some 700 people) hold Israeli ID cards, as do a quarter of the residents of Bir Naballah (about 1,500 people). See: www.reliefweb.int/hicopt/docs/UN/OCHA/English_update_15dec03.pdf.

to the suspension or cancellation of the plans for the two enclaves in March 2004. In these conditions, however, it remains unclear how Israel will be able to secure Highway 443 or the Jewish settlements around Givat Ze'ev.

Similarly, it is not clear how the residents of the village of Beit Iksa, which will effectively be co-opted to the "Israeli side," will be able to access the enclaves of Palestinian villages and the Ramallah area.¹¹³ The village is being co-opted to Jerusalem because of its dominant location some 700 meters from Highway 1, the main road from Tel Aviv to Jerusalem.

The neighborhoods of Kafr Aqeb and Semiramis and the western part of Qalandiya refugee camp — where most of the residents (about 80 percent of a total of 10,000)¹¹⁴ hold Israeli ID cards — will suffer a serious blow by being cut off from the rest of Jerusalem, where many of the residents work and obtain educational, health, welfare, and other services. Because of their status as permanent residents, they are not subject to the restrictions on movement like the other residents of the territories and they can travel inside Israel and cross checkpoints. In this connection, the State Attorney's Office told the High Court of Justice: "It should be understood that the Jerusalem Envelope is solely a security barrier, and it does not alter the status, rights, and/or obligations [of the residents] as they currently exist." The State Attorney's Office added: "The local population will be issued special permits to enable them free movement to and from Jerusalem, subject to security arrangements."¹¹⁵ The residents, however, say that the severe difficulties they have encountered in the past three years at Qalandiya checkpoint (which is located three kilometers south of Kafr Aqeb, within the Jerusalem area of jurisdiction) raise concerns about whether the state's promises will be fulfilled.¹¹⁶ It is also patently obvious that the obstacle will be detrimental to the urban development of Kafr Aqeb, as can be seen from the two master plans that the Jerusalem Municipality is promoting for the village. The main land reserves for

¹¹³ See: Lily Galili, "Sabri Aarib, settler in Givon Hahadasha," *Haaretz*, Jan. 30, 2004.

¹¹⁴ According to other estimates, these neighborhoods have a total population of between 15,000 and 20,000 people.

¹¹⁵ Comm. App./2597, Kafr Aqeb development committee et al. V. Ministry of Defense et al., state's response, sec. 43, quoted in B'Tselem Report, p. 21.

¹¹⁶ B'Tselem Report, p. 21.

building, which lie east of the village, and other land to the southwest will remain on the other — the “Israeli” — side of the obstacle. “As a result, the possibility of development will be diminished and the community will not be able to meet the residents’ future housing, commercial, and social needs.”¹¹⁷

As it is, the Jerusalem Municipality encounters problems in providing municipal services to Kafr Aqeb. For example, the IDF prohibits municipal garbage trucks to enter the northern neighborhoods (on the other side of Qalandiya checkpoint). As a result, garbage collection is done by a subcontractor, representing an extra expense for the municipality. The municipality is trying to cope with the security constraints. Recently, the Health Ministry, in coordination with the municipality, opened a mother-and-child health center in the village, and efforts are being made to improve the local municipal schools.¹¹⁸ Many of the residents continue to pay tax to the Jerusalem Municipality despite the low level of services they receive from it and indeed from all Israeli authorities. Fewer residents of the village are now employed in Israel, and their salaries have been cut.¹¹⁹ This situation will almost certainly become even more acute after the completion of the fence unless the arrangements at the crossing points and the terminal are improved.

At A-Ram and Dehiyat al Barid the obstacle is especially problematic because of the wall that will divide the Jerusalem-Ramallah road and separate Palestinian and Israeli traffic. This wall will “photograph badly” in the world media and some will want to exploit this to embarrass Israel by drawing negative associations between a wall that separates populations and repressive regimes from the past (indeed, such analogies were already raised in connection with the wall in Abu Dis). In addition, water and sewage infrastructures belonging to the municipality and serving residents on both sides of the wall exist in the area where the fence is planned. Their relocation will be very costly.

¹¹⁷ B’Tselem Report, p. 22, and Appendix, “Planning Opinion regarding the Separation Barrier in Kafr Aqeb,” drawn up by Bimkom, Planners for Building Rights, pp. 37-41. [English edition]

¹¹⁸ Interview with Shalom Goldstein, adviser to the mayor on East Jerusalem affairs (Jan. 15, 2004).

¹¹⁹ According to a number of the residents, who have gone to court against the arrangements at the Qalandiya checkpoint.

Problems of access to Jerusalem similar to those of Kafr Aqeb are liable to arise for residents of A-Ram who hold Israeli ID cards (their number is estimated to be in the tens of thousands) but will find themselves on the “Palestinian” side of the obstacle. A large portion of them work in Jerusalem and many of the children and teenagers attend schools in the city.

By the same token, the commercial center of A-Ram, which was thriving until the second Intifada, will encounter serious problems due to the access restrictions imposed on clients from Jerusalem, and potential customers from around the city will also have difficulty reaching the site. Another problem in this area is the existence of a number of Christian and international institutions (mainly at Dehiyat al Barid) which provide services in Jerusalem and will be consigned to the eastern — “Palestinian” — side of the fence. Such institutions will face severe operational constraints after the fence is completed.

As noted, if Ma’aleh Adumim and the surrounding settlements are co-opted to Jerusalem, Hizma, Anata, Shuafat refugee camp, and the Peace Neighborhood (New Anata) will become Palestinian “enclaves” connected by a narrow corridor to the village of Jeba and to A-Ram. Shuafat refugee camp, New Anata, and Ras Hamis, which were previously within the Jerusalem area of jurisdiction, will now be outside the fence, on the “Palestinian” side. Officially, Israel maintains that it does not bear responsibility for the camp, as it is administered by UNWRA. However, it appears that the serious problems in the refugee camp (severe overcrowding, substandard services, and the general rejection of Israeli rule), together with concern about operational complexity involving constant friction between the security forces and the population, and demographic fears (Israel’s desire to reduce the Palestinian population in Jerusalem by a further 25,000 people — those who live in these three neighborhoods,¹²⁰ most of whom hold Israeli ID cards) led to the decision to “forgo” these neighborhoods.

¹²⁰ According to UNRWA and estimates by attorney Daniel Seidemann, who represents the residents of the three neighborhoods, the population of Ras Hamis is about 3,500 and of Shuafat refugee camp about 17,000 (12,000 within the bounds of the statutory camp, 5,000 on the fringes), while 4,000-5,000 live in the Dehiat al-Salam neighborhood of Anata. There are probably a few thousand residents of the territories holding Palestinian ID cards who live in the refugee camp (*shabahim*).

This development will seriously affect people who work in Jerusalem and obtain various services there, in education, health, and welfare. Thus, high-school students attend Jerusalem schools and the neighborhoods receive services from the Jerusalem Municipality (such as the water supply), even though most do not pay municipal tax or their water bills.

The residents of the three neighborhoods recently went to court to request that they remain on the Israeli side of the obstacle. They also proposed an alternative route for the fence, which in their view better meets security considerations. Their central argument, as presented in court by attorney Seidemann, is that the real reason they are being excluded from the Jerusalem area of jurisdiction is demographic and unrelated to security.

In the A-Za'im area there will be a breach in the fence due to the absence of a government decision, due to political difficulties, about the Ma'aleh Adumim enclave. The situation of the village of A-Za'im is especially problematic: it lies outside the Jerusalem area of jurisdiction but many of its 2,000 residents hold Israeli ID cards. If the Ma'aleh Adumim enclave is co-opted to the city, A-Za'im, which dominates the main road to Ma'aleh Adumim and to the Jordan Rift Valley and has many vacant homes (including large apartment buildings), will probably also be consigned to the "Israeli side." It is not yet clear how the village will be connected to the northern part of Al Azariya (indeed, it may be more fitting to connect it to A-Tur, where most of A-Za'im's residents originally come from).

In the Al Azariya-Abu Dis area, serious problems have arisen because Holy Places (including, notably, the tomb of Lazarus), important churches, and church property are located in the obstacle area. The churches and the state bodies that support them (such as the Vatican) have brought pressure to bear on Israel to ensure that, as far as possible, their sites will be on the "Israeli" side of the fence and will not be cut off from Jerusalem. The churches have also requested a special passage to enable free movement for pilgrims from Jerusalem to the churches in Al Azariya and to the tomb of Lazarus.

As in A-Ram, the fence will seriously disrupt business at the commercial center near Al Azariya (along the old road to Ma'aleh Adumim and Jericho), which will no longer be accessible by potential customers from Jerusalem or by Israelis from the Ma'aleh Adumim area. This will be devastating, coming on top of the

economic blow the center has already suffered since the start of the confrontation. Problems of access to Jerusalem are likely to arise for residents of Al Azariya who hold Israeli ID cards (about a quarter of the town's population of 16,000). There are also signs of public organizing against the fence and against Qalandiya checkpoint in the town.

The town of Abu Dis, where several institutions of the Palestinian "state-in-the-making" were established during the period of the Oslo process, will be split by a fence and (in the densely built-up urban areas) a wall. The historic old road to Jericho will cease to function as a main access route to Jerusalem. This section of the obstacle is acutely problematic because of the wall that is slicing the town between the yards of homes and is rending the fabric of life on both sides. The wall blocks the view of the gilded Dome of the Rock on the Temple Mount/Haram a-Sharif, and many of the townspeople are complaining that they are being cut off physically and emotionally from both their mosque and from their center of life in Jerusalem. The feeling of segregation and encirclement is heightened by the checkpoint which restricts the exit of the residents of both Abu Dis and Al Azariya eastward, toward Ma'aleh Adumim. About 15 percent of the residents of Abu Dis (1,500 out of 11,000) hold Israeli ID cards.

Owing to important archaeological finds made in this area — a Byzantine monastery — the route of the obstacle was changed. Difficulties also arose in connection with a section of the obstacle that crosses the grounds of Al Quds University, whose president is Prof. Sari Nusseibeh (part of the campus lies on Jewish-owned land). On the "Israeli" side of Abu Dis, within the Jerusalem area of jurisdiction, plans exist to build a Jewish neighborhood ("Kidmat Zion") on land that was purchased by Jews before 1948 and sold in part to the Jewish-American businessman Irwin Moskowitz. At the beginning of May 2004, Jewish settlers moved into two buildings in the Israeli part of Abu Dis, in a project organized by the Ateret Kohanim association.¹²¹

¹²¹ Arnon Regular, "Settlement in Abu Dis completes continuous Jewish stretch in East Jerusalem," *Haaretz*, May 4, 2004.

In Jabel Mukaber, Umm Lison, Arab a-Sawahara, and Tsur Baher the obstacle splits villages and separates families and clans. The villages in this area have grown enormously since 1967, spreading eastward, outside the Jerusalem municipal boundary. A striking example of this process is the expansion eastward of the village of Arab a-Sawahara into the area of Khirbet Jib a-Rom, creating a situation in which two villages — Arab a-Sawahara al Gharbiya (western section) and Arab a-Sawahara Sharqiya (eastern section) — are almost physically connected. Both villages are populated by Bedouin from the same families or clans. About a third of the residents of Arab a-Sawahara al Sharqiya (1,600 of 5,000) hold Israeli ID cards. An acute problem has arisen around the village of Sheikh Sa'ad. The village itself is outside Jerusalem, but its sole access road is from within the city.¹²² In fact, from the point of view of the Bedouin here, the entire area from Jabel Mukaber to Sawahara al Sharqiya and Sheikh Sa'ad constitutes one large village which is now split arbitrarily and artificially by the separation fence.¹²³

In the southeast “corner” of the obstacle, a few hundred meters from Beit Sahur, within the Jerusalem area of jurisdiction, lies the village of Khirbet Mazmuriya (Khallet a-Nu'man). The Israeli authorities consider most of the population of 150-200 residents of the territories, rather than Jerusalem. The villagers say they have been living there since the 1930s but that in 1967 they were mistakenly recorded as residents of the territories because the *mukhtar* (headman) of their clan resided in the neighboring village of Umm Tal'a, which is outside Jerusalem. Since 1967 the villagers have made several requests to the Interior Ministry to be granted Jerusalem residency status and be issued Israeli ID cards, but have been turned down on each occasion.¹²⁴ The official Israeli position is that many of them belong to the T'amreh tribe, which settled at the site after

¹²² On the problems faced by the village and the policy of the Israeli authorities toward it, see: B'Tselem Report, “Facing the Abyss: The Isolation of Sheikh Sa'ad Village — Before and After the Separation Barrier,” February 2004.

¹²³ The different character of Tsur Baher (a rural-farming population, of *fellah* origin), as compared with the Bedouin villages, also hampered cooperation between them in the struggle against the fence.

¹²⁴ B'Tselem Report, “Nu'man, East Jerusalem: Life Under the Threat of Expulsion,” September 2003, p. 5.

1967 and built homes illegally, and therefore were not recognized as residents of Jerusalem.¹²⁵ Be that as it may, the people of the hamlet are considered *shabahim* (illegally present) by the Israeli authorities, and every encounter with the IDF or the Border Police is fraught with the risk of detention or expulsion. On the other hand, the residents are dependent on services that originate in Beit Sahur, which has Area A status (including schools run by the Palestinian Authority). The question, then, in the wake of the obstacle, is how they will be able to go on receiving these services and earn a living. The problem is especially acute because of the plan to build the large southern terminal of Jerusalem in the Khirbet Mazmuriya area,¹²⁶ making it impossible to consign the homes in Khallet Nu'man to the "Palestinian side" of the obstacle. After the villagers petitioned the High Court of Justice, the police informed them that until the court decides their case, they will refrain "from removing them from their houses on grounds of illegal stay in Israel."¹²⁷

On the other hand, the cemetery of the village of Al Khas, which lies outside the municipal annexation area, is on the Israeli side of the fence. The High Court ordered work on the fence suspended in this area in the wake of the residents' petition against the route of the fence, which cuts them off from their olive groves and from the cemetery. The Defense Ministry agreed to modify the route and in fact moved the obstacle a few dozen meters. However, after work was resumed (March 2004), it became clear that the fence would still cut off the villagers from their crops. They petitioned the High Court again and obtained another order stopping work.¹²⁸

The issue of the enclave at Rachel's Tomb has also been placed before the Supreme Court. As noted above, Rachel's Tomb was co-opted to the Israeli side of the fence

¹²⁵ Letter from director-general of Jerusalem Municipality, Eitan Meir, to Yehezkel Lein, B'Tselem Report, September 7, 2003, *ibid.*, p. 29.

¹²⁶ According to attorney Daniel Seidemann and B'Tselem, the area is designated for the building of another stage of the Har Homa residential project (Har Homa C).

¹²⁷ Letter from Chief Superintendent Shmulik Ben Ruby, spokesman of the Jerusalem District police, to Yehezkel Lein, B'Tselem Report, *ibid.*, p. 27.

¹²⁸ Arnon Regular, "High Court suspends work on kilometer of Jerusalem Envelope," *Haaretz*, March 7, 2004.

under pressure of cabinet ministers from the National Religious Party and Shas, and of the then-Mayor of Jerusalem, Ehud Olmert. A number of changes have been made in the planned size of the area and in the number of Palestinian homes that will be included in the Israeli enclave around the tomb. However, despite agreements reached between the security establishment and the Palestinians the matter is still pending in the High Court.

This area is especially sensitive due to church lands that lie between Bethlehem and Jerusalem, the proximity of Al Aeda refugee camp, and the need to ensure an orderly passage for pilgrims and tourists between Bethlehem and Jerusalem on the historic road that connects the two cities, with all the attendant political implications.

The village of Walaja has also become an enclave surrounded by a fence. The origins of the village are within Israel, on the northern slopes of the Refa'im Valley, below Moshav Aminadav. In the wake of the 1948 war, the villagers moved to the other side of the valley and built their homes on land they owned on the southern slopes, below Mount Gilo (Ras Beit Jalla). After 1967 the village expanded, encroaching into areas within Jerusalem (though the municipality did not provide services to the village and did not collect tax from the residents). Because of Israel's desire to co-opt to Jerusalem the towering and dominant Mount Gilo ridge (elevation: 923 meters) and the Jewish settlement on its peak, and to control the tunnels road (Highway 60) to the Etzion Bloc, Walaja has become a kind of fenced-in Palestinian enclave within Israeli territory. Under the original plan, a special passage was supposed to be built, connecting the village's 1,600 inhabitants, who are considered residents of the territories (they do not have Israeli ID cards), to Beit Jalla.¹²⁹ However, following the decision in March 2004 to cancel the enclaves, it was decided to build a road connecting Walaja with Beit Jalla.

Israel's desire to place the Etzion Bloc settlements on the "Israeli side" of the fence effectively created an enclave of three Palestinian villages — Batir, Husan, and Nahalin — with a total population of about 12,000. Following the security establishment's decision to cancel the enclaves, it now appears likely that the three

¹²⁹ Danny Rubinstein (note 110, above) cites a figure of 2,000 residents.

villages will be connected to the Al Khader area and western Bethlehem by means of a subterranean passage under Highway 60.

As for the village of Wadi Fukhin (1,000 residents, all of them “residents of the territories”), which lies between Tzur Hadassah (in Israel) and Betar Illit (in the West Bank) and was abandoned in the wake of an Israeli reprisal raid in 1953 and resettled after 1967, it is still not clear whether it will be co-opted to the “Israeli side” of the fence or “moved” to Judea and Samaria.

Chapter Six: Terminals and Crossing Points

The fencing in of Jerusalem, physically separating the city from the surrounding metropolitan area, has immediately disrupted the Palestinians' way of life and is likely to have an adverse effect on the economy of the entire city. To address these problems and minimize the damage, terminals and crossing points will be built. According to the existing plan, two large terminals will be built on the Israeli side of the fence, in the north and south of the city, similar to Karni terminal in the Gaza Strip. The southern terminal will be located by Khirbet Mazmuriya, the northern one to the north of Atarot Airport. The terminals are intended to incorporate lessons learned from the operation of Karni in the past few years, with the emphasis on high-quality security control — in contrast to the substandard situation today at the improvised terminal adjacent to Ofer Camp and Betuniya, which uses the “back to back” method. In addition to the two large terminals, gates and crossing points will serve pedestrians and vehicles. The crossing points are also intended

Illustration 6: Qalandiya checkpoint



for everyday use —getting to work or school, visiting family, accessing farmland, and so on.

The large terminals will be operated by the Airports Authority. The idea has been raised of having the other access points operated by civilian firms, in the hope that they will serve the “users” efficiently and “cordially,” in contrast to the methods of the security forces. Manifestly, the question of who operates the crossing points and the “level of service” at them is critical, in the light of the many complaints about the existing checkpoints (especially Qalandiya) and the Palestinians’ mistrust of Israeli promises to facilitate passage.

Clearly, the number of gates and their regime will be of crucial importance for operating the obstacle in the Jerusalem region. In this connection the security establishment is confronted with two contradictory tendencies: to have few crossing points with high-quality checks which meet security needs; or a larger number of such access points offering relatively quick passage, in order to reduce the harm to Palestinian commutation and diminish the level of friction with the security forces.¹³⁰ The Jerusalem Municipality apparently wants more crossing points. Currently, five are planned: two in the south, two in the north, one in the east, and a “humanitarian wicket” in the Abu Dis-Al Azariya area.¹³¹

In practice, since the completion of the obstacle from Sallem to Elkana and sections of the obstacle in Jerusalem (including the “wall” in Abu Dis), no appropriate arrangements have been found for the daily passage of the Palestinian population. In many cases Palestinian children have been prevented from attending school, Palestinian farmers have been denied access to their fields, and others have been unable to get to their jobs in Israel or in the areas of the Palestinian Authority.¹³²

The smooth and ongoing operation of the system of gates and crossing points requires a large allocation of forces and resources, and the IDF is finding it difficult to meet the commitments it undertook in this connection. Senior officials of the

¹³⁰ According to Colonel (res.) Tirza, the security establishment wishes to maintain “maximum fabric of life” with the “necessary minimum of crossing points.”

¹³¹ Yossi Saidov, “If it’s good for the Jews, it’s good for the Arabs,” *Kol Ha’ir*, Jan. 9, 2004, p. 29.

¹³² See, e.g.: Lily Galili, “One day, 11 permits,” *Haaretz*, Feb. 13, 2004.

security establishment, including the Defense Minister, maintain that they are aware of the problems and are seeking ways to relieve the Palestinians' plight. However, in the light of the developments in the past few months, the situation appears to be far from resolution (not least because of the question of resources).¹³³

Illustration 7: The wall in the Abu Dis area



¹³³ In an interview with Amiram Lam and Gidi Weitz in the weekly magazine of *Yedioth Ahronoth*, on January 30, 2004, Defense Minister Shaul Mofaz admits that the security establishment has not yet overcome all the problems and reports the establishment of a special team, headed by Brigadier General (res.) Baruch Spiegel, which is examining the subject in depth with regard to the entire fence. Three months earlier (Oct. 24, 2003), Mofaz told Channel 2 Weekend News that he is “certain that the fence does not affect the Palestinian fabric of life.” In the past few months the security establishment has been working to organize regular transportation for schoolchildren between the two sides of the fence and to adjust the hours during which the gates are open to meet the needs of the population.

Construction has not yet begun on the two large terminals in the north and south of Jerusalem. This project will entail extensive infrastructure work (including the building of suitable roads to the terminals) and extensive land allocations. Until the terminals are built and operating, the Palestinians will continue to find it difficult to organize the orderly transfer of industrial and agricultural products and produce from the territories into Israel, and vice versa. In the absence of cargo terminals, the Palestinians are using methods that are insufficiently supervised in terms of both security and the inspection of produce. An example is the improvised cargo terminal south of Betuniya, near Ofer Camp, where an estimated 200 trucks a day load and unload cargo using the “back to back” method.¹³⁴ The other crossing points also require planning and large-scale infrastructure work (access roads, parking lots, terminals for taxicabs, buses, and minibuses, and other features).

To sum up, the Jerusalem Envelope obstacle is generating serious problems for the commutation needs and economy of the Palestinians, for which no answers have yet been found. There are glaring disparities between the declarations and intentions of senior security establishment officials and planners and the day-to-day reality. If the security establishment fails to make the necessary adjustments and improvements, the question of the crossing points will become acute when the Jerusalem Envelope obstacle is fully in place. The long lines and overcrowding at the “temporary” gates will be a magnet for the international media, and the Palestinians’ economic situation will deteriorate even further. Recently, a committee chaired by the head of the Judea-Samaria Civil Administration submitted recommendations to provide alternative services to the residents of the West Bank instead of the services they now obtain in Jerusalem. Among the recommendations: additional ambulances, assistance for the establishment of a dialysis institute and an obstetrics ward in Al Azariya, upgrading and coordinating the transportation network between the West Bank and Jerusalem, and other ideas along the same lines.

Another question that has to be considered is how the crossing points (such as the separation of residents of the territories, East Jerusalem, and Israelis) will look and be perceived when photographed by the international media.

¹³⁴ Estimate of Colonel Tirza.

Chapter Seven: Construction of the Obstacle — Aspects of Policy, Geography, and Demography

In connection with the Jerusalem Envelope, one of the options presented by the security establishment to the political level was to use the separation fence as a means to reorganize the urban space, and more specifically to alter the demographic balance, by excluding Arab neighborhoods previously within the city's area of jurisdiction, which would be demarcated anew by the fence.¹³⁵

Rejecting these recommendations, the political level instructed the planners to track the municipal boundary, with the exception of Kafr Aqeb and Shuafat refugee camp, as described above. This decision stemmed from internal Israeli political reasons: the refusal by Israeli public opinion to countenance any significant “concessions” in Jerusalem and the need for an absolute majority in the Knesset to amend the law that sets the municipal boundaries of Jerusalem. At the same time, this approach reflected a disregard of the demographic forecasts,¹³⁶ the looming humanitarian problems, and legal and international implications.

We cannot rule out the possibility that the political level decided on this course in order to retain “bargaining chips” for future negotiations with the Palestinians. Indeed, Deputy Prime Minister Ehud Olmert recently told Palestinian Television

¹³⁵ The political adviser to the mayor of Jerusalem on East Jerusalem affairs speaks of a process in which, parallel to the progress in building the fence, as its route becomes clear to the city's Arab residents, Arabs living on the “Palestinian side” of the fence will increasingly move to the “Israeli side.” This could also ensue if the fence pushes Palestinian “end neighborhoods” outside. The Israeli goal of creating a solid Jewish majority in the city would thus be defeated.

¹³⁶ In 2020, according to these forecasts, within the present municipal boundary Arabs will constitute 38 percent of the city's population — or 40 percent, according to more updated projections. See: Maya Choshen, note 111, above, p. 24.

frankly that the fence is not being built along the route of the Green Line because Israel wants to “hold onto” such bargaining chips for future talks.¹³⁷

On another occasion, Olmert said he favors forgoing Arab “end neighborhoods” in the Jerusalem area within the framework of his ideas for unilateral Israeli steps.¹³⁸

As noted, the building of the Jerusalem Envelope obstacle is the most significant Israeli act toward finalizing the municipal boundaries of Jerusalem since the unification of the city in June 1967. However, despite the enormous implications of the project, no in-depth examination has as yet been made about its influence on the life of the Arab residents on both sides of the fence¹³⁹ and on the functioning of the surrounding city and metropolitan area. Thus, on the assumption that the proposed route will become reality, a thorough and comprehensive examination of cardinal issues is needed. The following discussion addresses a number of these issues:

1. How will the obstacle affect the way of life of the Arab population and the demographic balance in Jerusalem?

Since the city’s unification, Israel has sought to preserve a clear-cut Jewish majority that will constitute demographic affirmation of Israeli control of Jerusalem. However, experts dealing with the future of Jerusalem maintain, on the basis of population projections, that the demographic balance in the city is “detrimental” to the Israeli interest, with the latest studies indicating that by 2020 Arabs will constitute 40 percent of the city’s population.¹⁴⁰

¹³⁷ Palestinian Television interview with Ehud Olmert, broadcast as a report by Suleiman Shafi, Channel 2 News, Jan. 14, 2004.

¹³⁸ See: Nahum Barnea, interview with Ehud Olmert, posted Dec. 5, 2003, on Y-Net (the Internet site of *Yedioth Ahronoth*): www.ynet.co.il/articles/0,7304,L-2831596,00.html.

¹³⁹ With the exception of a study coordinated by the Judea-Samaria Civil Administration (involving several bodies, including the Jerusalem Municipality) and an internal paper prepared by the Jerusalem Municipality about the effect of the fence on municipal services.

¹⁴⁰ See note 111, above. According to Israel Kimhi, from the Jerusalem Institute for Israel

According to this approach, the prime Israeli interest is to incorporate as few Arabs as possible within “Israeli” Jerusalem, since an Arab population level of 40 to 50 percent is liable to endanger Israeli control not only in the eastern part of the city but in the western part as well.¹⁴¹

To date, however, domestic political considerations have dictated that the fence will follow a route that leaves the majority of the Arab population on the “Israeli side.” It needs to be asked whether, given the vast planning and budget effort, which is subjecting Israel to mounting criticism in the international arena, it would not have been right to go one step further and try to “remove” from Israeli Jerusalem additional groups of Palestinians.

This approach could be based on the fact that the municipal boundary has already been breached in two places: about 11,000 Palestinians have been excluded from Jerusalem in the Kafr Aqeb area and another 20,000 around Shuafat refugee camp. Thus, it is argued, a different route would have enabled the exclusion of several Arab neighborhoods from “Israeli Jerusalem,” reducing the city’s Palestinian population by 100,000 people and helping to strengthen Jerusalem’s status as a city with a solid Jewish majority and as the capital of Israel.

It is important to emphasize that by leaving most of the Palestinian population inside the city, Israel will have to ensure the allocation of the land and infrastructure reserves that will be required to meet its development and natural growth. The experience gleaned since 1967 shows that the Israeli authorities find it difficult to make available the required resources over time, so that the gap in the level of services between the western city and the eastern city remains constant.

In addition, consigning Arab neighborhoods to the “Palestinian side” of the fence could have resolved some of the serious humanitarian problems caused by

Studies, if 90,000 Jerusalem Palestinians who hold Israeli ID cards in fact live outside the city, then the city’s Palestinian population is less than is usually thought, totaling only 160,000. This estimate is shared by Shalom Goldstein of the Jerusalem Municipality. This figure (if it is correct) changes radically the population balance within the city.

¹⁴¹ Shlomo Hasson, “Whither Jerusalem? — The Jerusalem Question after Camp David and the Second Intifada,” in: Amnon Ramon (ed.), *The Jerusalem Lexicon*, Jerusalem Institute for Israel Studies, 2003, p. 425.

splitting neighborhoods and villages in East Jerusalem (such as at Tsur Baher and the Sawahara villages).

On the other hand, it is clear that many East Jerusalem residents who will find themselves cut off from Jerusalem and from their sources of livelihood (entailing, above all, the loss of social-security allowances from Israel's National Insurance Institute) will not welcome Israel's disengagement moves, especially in the light of their unilateral character and the uncertainty about who will rule on the "Palestinian" side of the fence.

2. How will the obstacle affect the Arab population of East Jerusalem?

From the Palestinians' point of view, the obstacle, with its fences and enclaves, is the culmination of the restrictions Israel has imposed on their movement between Jerusalem and the territories since the Gulf War of 1991. Indeed, even at this early stage, the existence of a fence appears to be inducing many residents of East Jerusalem (who hold Israeli ID cards) to return to the city from rented accommodations outside the Jerusalem area of jurisdiction for fear of losing their rights. (A similar process of a return to East Jerusalem by residents of the city concerned about the possible loss of their rights occurred at the end of the 1980s, triggered by investigations undertaken by the National Insurance Institute and the Interior Ministry.) The question is how this process dovetails with the Israeli policy of maintaining the demographic balance (at a ratio of 70:30) between Jews and Arabs in Jerusalem.

It can be assumed that Palestinians holding Israeli ID cards, who now live outside or adjacent to Jerusalem and will want to avoid the ordeals of the terminals, crossing points, and checkpoints, will move back to the city and leave their present housing. If this becomes a large-scale phenomenon, prices of the evacuated homes can be expected to show a significant decline. Driven by market forces, residents of the territories might buy or rent these homes in order to improve their living standards and move closer to Metropolitan Jerusalem. The result will be an increase in the overall Palestinian population around Jerusalem on **both** sides of the fence. Here, too, the key question will involve the character of the regime at the crossing points between Jerusalem and the West Bank, and Israel should ready itself in advance for increased pressure and greater friction at the crossing points, the checkpoints and the control points along the obstacle.

3. How will the obstacle affect the residents' "East Jerusalem identity"?

Will it reinforce the "Israeli aspect" of their identity? Or will the fact that they are cut off from the territories and have to negotiate a network of fences and checkpoints that seriously impede movement between the West Bank and Jerusalem intensify hostility toward the Israeli authorities (leading even to organizing terrorist activity), just as it will heighten friction with the Israeli security forces? Will the obstacle turn the eastern city into a "pressure cooker" as increased migration further aggravates overcrowding, economic activity declines, and interaction with the security forces is exacerbated?

Will cutting off East Jerusalem from the West Bank drive up prices in the city (currently, for example, there is a large disparity in the cost of food between the West Bank and western Jerusalem)? What consequences will price rises have, given that income level is likely to decrease? What social implications will these processes have for East Jerusalem, which is already suffering from cleavage and from a serious leadership crisis? Alternatively, is it possible that we will see a more moderate approach by the city's Palestinian population, which will want to preserve the benefits it enjoys as compared with the residents of the territories?

What "humanitarian" price will the Palestinians pay because of the construction of the obstacle in the south, east, and north of Jerusalem? Above all, how will the villages and neighborhoods that will be split by the obstacle east of the city be able to function? How will the Palestinian labor market perform — both Palestinians holding Israeli ID cards who live outside Jerusalem and work in the city, and those with Palestinian ID cards who have worked in Jerusalem for years?

Various Palestinian institutions in the Jerusalem area provide services to the population between Hebron and Ramallah and perhaps even beyond. Notable examples are Muqassed and Augusta Victoria hospitals. It is not clear how Palestinians living in the areas of the Palestinian Authority will be able to reach the hospitals. Yet to survive, the hospitals depend on the continued arrival of patients (especially childbearing). A steep decline in the number of patients could have serious economic consequences for the hospitals (notwithstanding reports of support for Al Muqassed from international organizations and from the Lutheran Church for Augusta Victoria). Another example is private schools and schools run by churches and other institutions in Jerusalem in which the students — and in many cases the teachers (their number is estimated to be in the hundreds) — are from

the areas of the Palestinian Authority. The security establishment will have to enable both groups to continue to get to the schools without interference, or the schools will have to draw more heavily on staff and students from East Jerusalem.

A particularly sensitive humanitarian problem is burial. Family burial plots located on the “Israeli side” in Jerusalem also serve Palestinian families from the areas of the Palestinian Authority. Conversely, a few cemeteries outside Jerusalem serve the city.

Demographic data on the Palestinian labor market show that for many years the center of employment of tens of thousands of Palestinians living in the urban space of Jerusalem has been in the city (merchants, clerks, teachers, the tourist industry, and other jobs). They arrive in Jerusalem in the morning and return home at the end of the workday. Among them are holders of Israeli and Palestinian ID cards whose ability to get to work on a regular basis will be severely disrupted if they are delayed at checkpoints and crossing points.¹⁴²

What will be the fate of thousands of Jerusalem residents who will find themselves no longer on the “Israeli side” of the fence (in Kafr Aqeb, Shuafat refugee camp, and Bir Una) and of tens of thousands of holders of Israeli ID cards who reside outside the city’s area of jurisdiction (in A-Ram, Qalandiya refugee camp, A-Za’im, Anata, and elsewhere)? What about the thousands of residents of the territories who are spouses of Palestinians who hold Israeli ID cards and are living in the city without an Israeli permit? What will be the international implications if Israel expels these people from the city?

What effect will the obstacle have on the “invisible border” between the Palestinian and Jewish neighborhoods of Jerusalem? Will there be a “blocking border” or a “breathing border” in the city? How will it affect relations between Jews and Palestinians in the city?

¹⁴² According to Shalom Goldstein, from the Jerusalem Municipality, these and other humanitarian problems can be addressed by establishing a municipal civilian coordination mechanism that will function in coordination with the relevant security bodies in and around the city (interview, Jan. 15, 2004).

4. Operative aspects

Will the obstacle be effective in preventing terrorism, especially given the continuous built-up urban areas in northern and eastern Jerusalem and the possible firing of Qassam rockets and upgraded mortars over the wall (around Abu Dis, for example)? How will Israel deal with demonstrations and marches and with damage done to the fence and the walls, as well as to the cameras that will be installed on them?

What will be the division of authority between the IDF, the police, and the Border Police along the obstacle and on both sides of it?¹⁴³

How will the security bodies cope with intensive friction involving a large civilian population in the capital of Israel and within the country's borders? Is there a danger of "militarization" in East Jerusalem, in the sense of military reactions against a civilian population?

Would it be proper to "privatize" certain components of the obstacle by entrusting them to civilian bodies in order to reduce friction with the Palestinians and improve the level of "service" to them? What would be the economic aspects of such "privatization" (in terms of creating and operating the obstacle)? Would a high level of "service" at the crossing points offset some of the problematic aspects of the obstacle, especially in dense urban areas (such as Abu Dis)?

As for the regime at the terminals and crossing points: To what degree will security needs make it necessary to separate the five main population groups that will cross the checkpoints — Jewish Israelis living in the territories, foreigners visiting or residing in the city, Arabs holding Israeli ID cards living outside Jerusalem, Palestinian residents of Jerusalem, and Arab residents of the territories — and what impression will this separation, entailing separate lanes for different groups,

¹⁴³ In July 2003, *Haaretz* reported that the IDF Central Command and the Israel Police had reached agreement on transferring security responsibility in some sections of the Jerusalem Envelope to the Border Police (which is part of the Israel Police) in order to minimize the possibility of confrontation between soldiers and the civilian population — many of whom carry Israeli ID cards — and to concentrate security on the ground in one body. See: Amos Harel, "IDF transfers responsibility for areas around capital to police," *Haaretz*, July 15, 2003.

create internationally? How will the large passageways for goods and merchandise between Jerusalem and the West Bank function?

The primary and paramount purpose of the crossing points is to prevent all forms of terrorist activity and block the entry of unauthorized individuals to the “Israeli side.” This requires ongoing day-to-day checking and questioning of those using the crossing points — activity with the potential to generate a high level of friction with Palestinians and others (holders of foreign passports). The Palestinians’ daily dependence on the crossing points, combined with the need for high-quality security checking and a superior level of “service” at the sites will necessitate the development of efficient mechanisms to handle exceptional cases, — another possible cause of tension and friction. To upgrade efficiency at the crossing points, a system to extract and assimilate lessons based on ongoing experience will have to be developed. With changes and adjustments in the checking and questioning procedures likely to arise in the first months after the crossing points become operational, the organizational capability of the body that operates them will be of crucial importance. It follows that the “service providers” at the crossing points will need to be veteran professionals. Militantly inclined soldiers or Border Police are liable to heighten friction with the Palestinians, as are reserve troops who are called up briefly and are unfamiliar with the dilemmas of service at the crossing points.

The crossing points are part of the broader totality of the obstacle. Accordingly, coordination will be essential between the units that will operate its various components: the crossing points unit, the Border Police, the IDF, and municipal bodies.

5. International aspects and Israel’s international standing

How will freedom of access to the Holy Places in Jerusalem — above all, the Temple Mount/Haram a-Sharif — be ensured? Will this entail organized and coordinated transportation?

How will international institutions that deal in part with Jerusalem affairs and are located on the “Palestinian side” of the obstacle be able to function?

Jerusalem’s unique religious and historic status is a universal heritage which rivets the attention of the world’s religious communities and of the international

community. They attach great importance to freedom of access to the Holy Places, freedom of religious worship, and freedom of activity for international organizations dealing with Jerusalem. From this point of view, Jerusalem is different from all other locales along the seam zone. By sophisticated use of the media, Palestinian groups will be able to exploit the international sensitivity vis-à-vis Jerusalem in order to focus world attention on the city. By the same token, they are also liable to foment provocations to generate media coverage showing that Israel is undermining the city's unique religious and historical status, in the hope of generating greater international pressure on Israel to revise the regime at the crossing points and make changes in operating the obstacle. Israeli refusal could prompt action by international institutions, including political and economic sanctions.

6. What effect will the obstacle have on the possible renewal of political negotiations?

The Palestinians, backed by the international community, are likely to demand the dismantlement of the fence as a prior condition for resuming talks. From their point of view, the very existence of the Jerusalem fence makes the renewal of the political process a nonstarter. If so, it will be necessary to take into account the possible implications that dismantling the fence in Jerusalem will have on the fate of the obstacle as a whole.

7. What will be the impact on Metropolitan Jerusalem?

How will the obstacle affect the Jewish communities lying outside the Jerusalem area of jurisdiction on the "Israeli" side of the obstacle (e.g., Givat Ze'ev) and those on the "Palestinian" side?

What effect will it have on Jewish migration from Jerusalem to settlements in Judea and Samaria and within the Green Line? What impact will it have on the future development of Jerusalem and on the land reserves needed for the Jewish population?

Another thorny issue in this connection involves the land reserves for the Jewish population in Jerusalem. Geographic and demographic projections show that within 10 to 15 years these reserves will be nearly depleted. According to the

experts, the major and most convenient remaining land for residential purposes lies between Ma'aleh Adumim and Jerusalem — the area known as E1. A plan that was drawn up for the future population of Ma'aleh Adumim included infrastructures and services such as a university, a hotel and tourism center, a park, an industrial zone of one million square meters, a cemetery, and even a refuse dump.¹⁴⁴

Moreover, Jerusalem's main industrial zone, Mishor Adumim, with an area of more than 5,000 dunams (1,250 acres), is located in this area; and, of course, Ma'aleh Adumim itself (population: 27,500) has land reserves that are vital for Jerusalem's future development. These data are cited by those who advocate co-opting all or part of this area to Jerusalem.

8. How will Metropolitan Jerusalem function amid a network of obstacles and fences that will slice up the area?

Following a period of 19 years, from 1948 to 1967, when it was an “end city” or “border city,” Jerusalem grew after the Six Day War and now achieved metropolitan status. Its population stands at nearly 700,000, and hundreds of thousands more people from the surrounding metropolitan area enter the city every day. Much of the city's economic importance has to do with this metropolitan area that the city serves. As recently as ten years ago, 30 percent of the Bethlehem workforce was employed in Jerusalem. The city was the economic linchpin of large sections of the surrounding area, such as Abu Dis and Al Azariya. As noted, commercial activity in Al Azariya came to a standstill after the town was cut off from Jerusalem.

Overall, the Palestinian economy has suffered a devastating blow and ultimately this will affect the economy of the entire city. To a certain extent, Jerusalem could again become an “end city,” with the Israeli “achievement” being the widening of the historic Jerusalem corridor by the annexation of Highway 443, the northern access road to the city (if Israel in fact retains control of this road).

¹⁴⁴ Lecture by Shmuel Groag, an architect and town planner, on planning in East Jerusalem and the West Bank as an instrument of political and economic control, which can be accessed on the website of “Bimkom,” Planners for Planning Rights: <http://www.bimkom.org/publicationView.asp?publicationId=39> (in Hebrew).

The obstacle will sever the connection between the city and the metropolitan area to the east, south, and north, leaving only the connection to the west. Metropolitan Jerusalem will not easily function in a space crisscrossed by checkpoints and obstacles that will play havoc with the economy. This situation will be further aggravated by an expected steep decline in tourism. Tourists don't like being stopped at checkpoints and don't like to see police and other carriers of weapons wherever they turn. The general appearance of the city and the atmosphere prevailing in and around it will be disastrous to its status as a magnet for tourists.

9. How will Jerusalem's severance from the surrounding Arab area affect the city's economy and especially the economy of the Arab population?

The metropolitan area of Jerusalem is fundamentally an Arab space: 78 percent of the population is non-Jewish. No attempt to sever Jerusalem from its surroundings will eliminate either the attachment of the city's Palestinians to the larger Arab surroundings or the attachment of the residents of the metropolitan area to Jerusalem. The barrier that will be created by the separation fence will be ruinous for these mutual attachments and will disrupt the ties between the two Palestinian populations. It is therefore crucial that the crossing points and their operational regime help regulate the pressures, lower the level of friction, and enable the continuation of the reciprocal relations between the city and the metropolitan area. If not, the resulting pressure is liable to erupt into dangerous violence.

Already now, the Al Azariya-Abu Dis bloc, whose economy was formerly dependent on East Jerusalem and Ma'aleh Adumim, appears to be forging economic ties with the Bethlehem region instead.

For the Christian community and for the tourism industry, the separation of Jerusalem from Bethlehem is intolerable. Nor is it clear how the many Palestinian and foreign institutions which provide services to the residents of the territories will be able to function.

It is still not clear how the obstacle will affect the eastern ring road and the possibilities of movement between the northern and southern sections of the West Bank. The road is still in the planning stages and it is not clear when it will become operational (planning and building could take more than 10 years). In its absence,

it is not clear how the southern terminal will function, as it currently lacks convenient access roads.

What implications will the reshaping of the urban space by the obstacle have for routine municipal life? Will the anticipated increase in the city's Arab population require additional resources for education, infrastructures, and law enforcement?

10. How will the obstacle affect Israeli law enforcement in East Jerusalem?

Already now, the Israeli establishment is having a hard time enforcing the law in East Jerusalem. Even more seriously, the law-enforcement agencies are reducing their presence and even refraining from entering some areas in the eastern part of the city.¹⁴⁵

The question is whether the new reality will create an opportunity to improve law enforcement in East Jerusalem and reduce the crime level in the neighborhoods there.

11. What impact will the crossing points and their operational regime have on the city's economy and on its image?

What effect will the obstacle have on the economic situation of the Arab population in Jerusalem?

Along with the problematic consequences the obstacle will have for the city's Arab population, some prospect also looms for new economic possibilities. Thus, one view is that the existence of the obstacle will lead to a significant decrease in the number of *shabahim* (people illegally present) in Jerusalem, making available more jobs for the Arabs in East Jerusalem. Israeli personnel, including police officers, who are in daily contact with the Palestinian population in East Jerusalem, point to the incipient development of small-scale commerce based on notions stores

¹⁴⁵ In a conversation, representatives of the Jerusalem police emphasized the gap which they say exists between the situation as it is perceived by the Israeli public and depicted in the Israeli media (absence of law enforcement in East Jerusalem) and the reality, in which the various police units enforce their authority wherever needed.

which import merchandise from Arab states and through them also very cheap goods from the Far East. This development, they say, attests to an effort by the local population to cope with the economic implications of their severance from the Bethlehem area.

According to Border Police personnel who are in charge of security in the Jerusalem Envelope region and are familiar with the Palestinian population and its way of life, if the Arabs in Jerusalem are convinced that the change is permanent and irreversible — in other words, that the Palestinian Authority will be permanently excluded — the obstacle will probably not harm them economically and may even cause an improvement in their economic situation.

However, these appraisals may be over-optimistic and are probably unsound economically. They ignore the consequences of the restrictions that will be imposed on the movement of people and goods between East Jerusalem and the West Bank and Jordan.

Another possibility that cannot be ruled out is the development of an “underground economy” nourished by smuggling from the Palestinian territories around Jerusalem into the city. If so, how will this affect the economic regime in Jerusalem? What will be the implications (from Israel’s point of view) of the functioning of the Palestinian Authority under circumstances in which it is cut off from the important economic and cultural center of Jerusalem? How will the obstacle affect the Palestinian economy and its interaction with the Israeli economy? What effect will the obstacle have on the image of Jerusalem in both the Israeli and the Palestinian society and on its status as a “world city”? These and other questions arise even before construction of the fence has been fully completed and before its concrete implications on the ground can be examined.

Chapter Eight: Conclusions, Scenario and Three Possible Sequences of Events

The fence is shaping a new geographical space but at the same time is creating a new political space and consciousness which affects the daily routine of the Palestinian population and its perception of its place and its future in the area. One way to examine the probable implications of the existence of a fence around Jerusalem for the Palestinian population is by adducing possible scenarios and likely sequences of events. In this section we will set forth one of the most plausible scenarios, in our opinion, followed by three possible sequences of events which could arise depending on how Israel handles the scenario.

We are aware that these three possibilities are far from exhaustive. We know that other possible sequences are feasible and that a broad range of possibilities exists. Here, however, for the convenience of the discussion, we have chosen to describe three main sequences of events, which we believe to be the most meaningful and most probable.

Possible scenario

An analysis of the implications the route of the fence around Jerusalem will have for Palestinian commutation in the city and in the metropolitan area indicates that it will seriously impede the movement of the Palestinians in the area and their entrance into Jerusalem for ongoing needs.

Our evaluation, based on an examination of only the beginning of the process, is that many Palestinian holders of Israeli ID cards whose main occupation lies in Jerusalem but who reside outside the city are opting to move back to the city (mainly those who live in rented housing and do not own property outside the city). They want to avoid the delays and the grinding daily friction with the security forces at the various checkpoints. This could become a full-fledged trend and significantly increase population density in the city's Arab sections.

The Arab residential areas of Jerusalem already suffer from infrastructure neglect. The municipal services and the education system in particular are unable to meet the needs of the population. Further population growth and overcrowding without a significant expansion and improvement of the existing infrastructures will only aggravate the Palestinians' distress.

Any aggravation of the socioeconomic situation of the Palestinians in Jerusalem will unavoidably heighten the already existing tension and frustration. This situation is liable to exacerbate the friction between the Palestinians and the municipal and law-enforcement authorities and with the security forces, spawning possible unrest and adversely affecting personal security and the quality of life throughout the city. The poverty level is also liable to rise, with consequences for the general economy of the city.

Concurrently, as Palestinians migrate to Jerusalem in growing numbers, the homes they lived in before the fence was built become vacant. As a result, the value of the vacated properties will fall sharply, making them more attractive to weaker populations among the Palestinians (who hold Palestinian ID cards) that want to improve their housing conditions and live closer to Jerusalem.

At the end of this process the Palestinian population in Metropolitan Jerusalem on both sides of the fence will increase. This, combined with growing socioeconomic distress, mounting friction with the security forces due to the fence regime, and a natural attachment between the two segments of the same population, will bring growing pressure to bear on the separation fence. These conditions are liable to produce violent, high-profile protest by the Palestinian population, which, encouraged and backed by the Palestinian Authority, will try to damage the fence physically and focus the attention of the international media and world public opinion on the issue.¹⁴⁶

¹⁴⁶ A scenario along these lines was described to us in personal interviews with Palestinian businessmen from East Jerusalem. This possible trend is further reinforced by the highly publicized protest led by MKs Issam Makhoul, Ahmed Tibi (both from Hadash), and others, in which they called on the Palestinians to rebel and physically thwart the building of the fence.

For a report (in Hebrew), see: <http://images.maariv.co.il/channels/1/ART/644/056.html>.

Once the entire fence is completed, the Jerusalem area will be the ideal setting for such protest demonstrations. Under these conditions, the Palestinian Authority might try to worsen the situation for Israel by backing the protests and supporting efforts to disrupt orderly life in Jerusalem.

Three possible sequences of events

Israeli policy can influence the scenario described above and impact on the demographic and political trends that are emerging as the construction of the fence progresses.

Israeli policy is manifested in the following elements:

- (A) Deciding the route of the fence.
- (B) The attitude toward the restrictions the fence imposes on the Palestinians and the price they have to pay for its construction, such as the seizure of farmland and cutting off farmers from their fields or groves (Israel's intention to expropriate land from the villages of Beit Sourik and Bidu, adjacent to the Jerusalem suburb of Mevasseret Tzion, triggered violent protests at Bidu).
- (C) The character of the regime at the crossing points — The level of the "service" the Palestinians will receive and their ability to maintain a reasonable way of life.
- (D) The Israeli attitude toward the Palestinian population in East Jerusalem — The quality of municipal services, mode of law enforcement, and infrastructure development.

So far we have considered the implications of Israeli policy as it is manifested in the first three elements. We turn now to examine the fourth element and in this connection we will consider three possible sequences of events.

Sequence I: "Business as usual" — Israel refrains from concrete intervention in the lives of the residents of East Jerusalem and restricts their entry into West Jerusalem and Israel, such as by setting up checkpoints and fences between the two parts of the city. In this case, if Israel persists in not allocating the resources needed to improve the quality of life of the Palestinians in East Jerusalem, their

sense of despair is liable to be intensified. They will find it difficult to maintain “political neutrality” in the sense of dissociating themselves from and not intervening actively in the national and political struggle of the Palestinians who remain on the “Palestinian side” of the fence.

This sequence of events could cause the “Palestinization” of the East Jerusalem population, which will convert the pressure and frustration of their depressed quality of life into a heightened sense of Palestinian national identity and view Jerusalem as the main arena for the national-religious struggle against Israeli rule (including violence and assistance to terrorists).

Sequence II: Israel chooses to intervene and “cultivate” the East Jerusalem Palestinians by investing resources and enhancing their quality of life. Israel has the possibility to intervene in the process and try to moderate the difficulties and restrictions that are imposed on the Palestinian population so as to increase their sense of belonging in the city’s urban and social space. This is a budget-intensive move entailing major investments in physical and human infrastructures. This policy might help bring about the “Israelization” of the Palestinians, in the sense of imbuing them with the feeling that they belong to “Israeli Jerusalem.” Although no one expects such a policy to cause the “Zionization” of the Palestinians, it has the potential to shape a community with a distinct and singular identity and which, moreover, prefers a reasonable mode of life in more tenable conditions of civil and economic security in Jerusalem to the corruption and governmental instability of the Palestinian Authority. This sequence of events could partially sever East Jerusalem from the nearby areas of the West Bank. However, it requires a large-scale Israeli investment — a doubtful proposition given the serious budgetary problems in Israel.

Sequence III: Collapse of the fence and of its security rationale. With a Palestinian population existing in conditions of severe distress and under the influence of the Palestinian Authority with the aid and active participation of international bodies, deliberate and well-orchestrated unrest is liable to develop along the Jerusalem fence between Palestinians and “internationals” and the Israeli security forces. Ensuing provocations might prompt violent responses by the security forces in the presence of the international media. Bloody consequences could follow, generating massive international pressure on Israel. The situation would cause a

high rate of attrition within the security forces, which will have to make a prolonged, intensive effort calling for increasing numbers of troops (imposing another heavy burden on the state budget). The intensive friction could become a “war of the fence” which will exact a heavy price from Israel but not give the residents of Jerusalem the security they seek. In an extreme sequence of events, the hostilities are liable to spill over into Jerusalem itself, with mass disturbances and confrontations between civilians on the two sides and between Palestinians and Israeli security forces.

Possible consequences and implications

An analysis of the scenario and the three sequences indicate that any security quiet Israel will obtain by building the obstacle will be limited and short-lived.

As we saw, the construction of the obstacle is the largest infrastructure project ever undertaken in Israel, one which is certain to create a new political, social, and economic environment, with far-reaching implications for the daily routine of both Jews and Palestinians in Jerusalem and the metropolitan area. Israel must therefore formulate a policy that will meet the complex challenges of the new geographic and political situation.

Indeed, separating East Jerusalem from the West Bank (following the very strong ties and attachments that have existed between them since 1967) entails a prodigious Israeli investment which will effectively annex East Jerusalem to the State of Israel by raising the level of the infrastructure and services in the eastern part of the city.

Conclusions and initial ideas for further research

In this paper we described the decision-making process in connection with the fence, explained the security rationale that guided the planners, and portrayed the route that was chosen and the main problems and stumbling blocks that are likely to arise. The complexity and importance of the subject call for an in-depth examination and far more thorough research. However, we decided to make available to the decision-makers and to the interested lay public — which is not yet familiar with this crucial issue — a preliminary study that sets forth the central questions that require further research and clarification.

As noted above, the Jerusalem Institute for Israel Studies intends to conduct a systematic, ongoing study that will consider the major questions arising from this paper and propose methods and alternatives with which the government and the municipal level can address the far-reaching consequences of the separation fence in the Jerusalem area.

An initial analysis of the decision-making processes and of the main features of the route of the fence shows that many of the problems and challenges relating to the way of life of the Palestinians on both sides of the fence remain without sufficient responses. Some of the problems might be resolved by various “local” changes in the route of the fence or by upgrading the “quality of service.” However, other issues raised in this paper are liable to develop from “humanitarian” stumbling blocks into major security and political problems.

During the months in which we collected material, conducted interviews, and wrote the paper, we could not shake off the feeling that, once again, despite the critical importance and far-reaching implications of the subject, the usual practice of taking hasty action was followed. The scale of Palestinian terrorism, which abruptly disrupted the routine of Israelis in general and of the residents of Jerusalem in particular, generated public pressure which became political pressure and effectively forced the government to build the fence. The government was pushed into acting before undertaking an in-depth examination of most of the consequences of the geographic change that is “cleaving” the country. The security establishment became the driving force of the project. Thus, once again “security” considerations appear to be the dominant factor, with “civil” considerations neglected and only becoming apparent after work got under way.

The guiding security consideration was reduced to the military/operative formative/interpretive conceptual system. This overshadowed other dimensions of the project, which at first glance were not perceived as relevant to security, though later it became apparent that they are in fact crucial from the security point of view.

The construction of the fence obstacle in the Jerusalem region could have been a one-time opportunity to reshape Jerusalem as the capital of Israel and as a city with a solid Jewish majority. However, such a political and state vision took second place to the security approach (not least because of the indecision and lack of direction shown by the political level), and the historic opportunity was not

grasped. It is our hope that this initial paper will enhance understanding of the complexity of the fence project in the Jerusalem area and will assist the policy- and decision-makers to alter their perspective concerning the most important Israeli act in Jerusalem since June 1967.

On security and peace and on their interrelation

Underlying the conception adduced by the security establishment fence planners — “security will bring peace” — is the assumption that the construction of the fence will produce security, calm, or to a decline in the level of violence, and generate more convenient conditions for renewing the political process. As part of an agreed political settlement, say representatives of the security establishment, it will definitely be possible to change the route of the fence in accordance with the agreements between the sides.

This assumption conflicts with another political concept (“peace will bring security”), which calls for lowering the level of violence and improving the feeling of security without building a fence along the present route (which will only heighten hostility and hate) as basic conditions that will pave the way for a political settlement or a peace agreement. Even if we accept the argument that this approach is currently not viable (due to the lack of a negotiating partner, according to the present Israeli government), an initial analysis of the findings and scenarios described above shows that the present route of the fence around Jerusalem is shaping a reality that is liable to be conflictual and in many senses “intolerable” for the Palestinian population on both sides of the obstacle. The result could be to radicalize the Palestinians, who are caught up in despair and hopelessness in the face of the walls and fences, which are viewed as destroying any possibility of a peaceful solution of the conflict. This radicalization could, as noted above, be translated into “controlled violence” and perhaps even terrorism, which, in turn, will oblige Israel to toughen the security regime — the fence regime. As the situation escalates, the Israeli side is liable to conclude that changes in the route of the fence or moderation of the fence regime constitute “capitulation” to Palestinian violence. Any such “capitulation” is anathema in terms of the security concept. In other words, the route of the fence and its operational regime in the conditions of the existing security concept are liable to foment a situation that will intensify the lack of security and the feeling of insecurity.

One small consolation is that according to both of the above approaches the fence in the Jerusalem area is “temporary” and does not reflect the final-status settlement that will be worked out in Israeli-Palestinian negotiations. However, experience teaches that in the Middle East the “temporary” is liable to become the entrenched reality for many years.

*Chapter Nine: Initial Recommendations*¹⁴⁷

The following preliminary recommendations are based on an initial analysis of the possible implications of the building of the Jerusalem obstacle. They will be developed and elaborated as part of the continuing research on the subject. The planners of the fence, to whom the recommendations were conveyed for their prior perusal, say that many of them are already in the process of being examined and implemented.

The following are the main recommendations:

1. Emphasis on the regime of the crossing points and on facilitating passage in every possible sense without compromising security. The main target population that should benefit from the easing of the regime is Palestinians holding Israeli ID cards. This requires the proper allocation of personnel and technological resources to operate the crossing points and an efficient system of transportation to access them.
2. Immediate building of roads that will solve local problems, such as a road to connect Sheikh Sa'ad with Sawahara A-Sharqiya, as the present access road will be blocked by the fence.
3. Quick approval and building of the eastern ring road, with a supreme effort to open it with all possible speed. According to Colonel (res.) Tirza, the budget for building the road's northern section was authorized in 2004, and the southern section is expected to open in 2007.
4. A southern terminal should not be built at Khirbet Mazmuriya without the existence of convenient access roads; in the meantime, a temporary terminal can be established at checkpoint 300 on the road to Bethlehem.
5. More crossing points at critical junctures, such as on the main axis of the Al Azariya-Ras Al Amud road, the historic main road in the region. This natural

¹⁴⁷ The recommendations were formulated primarily by Israel Kimhi from the Jerusalem Institute for Israel Studies.

passageway was blocked because of a security need, though the situation might be resolvable by means of alternative routes.

6. The idea of a main crossing point for the residents of Al Azariya and Abu Dis via the narrow road leading to A-Tur and Augusta Victoria is untenable because the proposed site is not fit to serve as the main entrance to East Jerusalem from the east.
7. An opening is needed to Shuafat refugee camp (if it is excluded from the city's area of jurisdiction) in order to allow the entry of children who attend schools in Jerusalem and of holders of Israeli ID cards who work in the city or want to obtain services there. An alternative, or parallel, solution could be to add classrooms in the camp enabling all educational services to be provided there without teachers and pupils having to leave the camp.
8. Assistance should be given to establish advanced medical clinics in Abu Dis or in Al Azariya in order to obviate visits to hospitals in the city for minor illnesses and simple treatments.
9. Thought should be given to establishing organized taxi and bus terminals on both sides of the main crossing points in order to ease the flow of traffic.
10. The idea of busing children to school in vehicles operated by Israeli companies merits consideration.
11. Authorization should be given to establish an ambulance service whose drivers will be given security clearance to enable their quick identification and passage at checkpoints.
12. A coordinating directorate should be set up for all the humanitarian aspects related to passage from one side of the fence to the other. All the necessary information about bearers of Israeli ID cards, individuals who are denied entry, and so on should be efficiently computerized in order to simplify the security checks and access procedures involving humanitarian problems.