



# INTERNATIONAL COMMISSION OF JURISTS

Commission internationale de juristes - Comisión Internacional de Juristas

" dedicated since 1952 to the primacy, coherence and implementation of international law and principles that advance human rights "

United Nations Commission on Human Rights

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Agenda Item 8:

Question of the Violation of Human Rights in the Occupied Arab Territories, including Palestine

23 March 2005

## **Oral Intervention of the International Commission of Jurists (ICJ)**

(delivered by Ian Seiderman)

Mr. Chairman,

Israel has continued to undertake sweeping measures in the name of national security which carry dire consequences for the human rights of Palestinians. These practices, denounced by the Special Rapporteur and other human rights bodies, include enactment of the *Nationality and Entry Into Israel Law*, excessive use of force, indiscriminate killing of civilians, house demolitions, and the continuing construction of the Wall in the Occupied Palestinian Territory.

The International Commission of Jurists unequivocally condemns attacks conducted by Palestinian armed groups against Israeli civilians. Such acts are clearly prohibited by international law, and the perpetrators must be held criminally accountable.

While Israel has the right and the duty to protect the security of its citizens in its territory, it must do so in accordance with international law, in particular international human rights and humanitarian law.

Human rights law takes into account security concerns and allows states to take to reasonable means to confront legitimate threats. But any derogation or restriction of rights may not be discriminatory. Rather, it must be strictly necessary, proportionate, consistent with others rights guaranteed under international law, and the least intrusive means must be selected to meet the threat. Similarly, international humanitarian law takes into account military exigencies in certain circumstances.

Over the past year, the Israeli authorities have continued the construction of a Wall in the Occupied Palestinian Territory. The Wall, which has been defended as a security measure, is built largely within the Occupied Palestinian Territory and will encompass the majority of Israeli settlements. It creates enclaves in which Palestinians are trapped and a restrictive system of permits and passages through a small number of gates.

In July 2004, the International Court of Justice issued its Advisory Opinion, declaring the construction of the Wall to be unlawful. The Court is the principle judicial organ of the UN and its

determinations on matters of law should be the framework applied by the Commission in addressing the human rights situation in the Occupied Palestinian Territory. The Advisory Opinion reaffirmed that Israel is fully responsible under both international human rights and humanitarian law in respect to territory in which it exercises effective control, including the Occupied Palestinian Territory. The Court also declared that the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, have been established in breach of international law. Israel is therefore obliged to cease the building of settlements and to dismantle those in existence and not to perpetrate their existence.

According to the Court, "the construction of the wall and its associated régime create a 'fait accompli' on the ground that could well become permanent, in which case, and notwithstanding the formal characterization of the wall by Israel, it would be tantamount to de facto annexation." The Court emphasized that Israel has a duty to repeal all legislative and regulatory acts adopted with a view to construction of the wall and the establishment its associated regime, to dismantle those parts already built, to restitute land already confiscated for its construction to its owners, and to compensate those affected by its construction to date.

The Advisory Opinion also lays out for the international community its own obligations: "all States are under an obligation not to recognize the illegal situation resulting from the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem. They are also under an obligation not to render aid or assistance in maintaining the situation created by such construction.... All the States parties to the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 are under an obligation, while respecting the United Nations Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention."

Mr. Chairperson, the Advisory Opinion is a powerful assertion that the Wall as constructed is a violation of international law. It acutely and adversely impacts the rights of the Palestinian population. As the Court's opinion demonstrates, any measure taken in the name of security, even when taken in the fight against terrorist acts, must be conducted as an extension, not an abrogation, of the rule of law. The ICJ believes that security and lasting peace are only possible when the rule of law is respected.

It is time for Israel to demonstrate that it is prepared to abide by international human rights and humanitarian law and to fully implement the decision of the Court.

Mr. Chairperson,

The International Commission of Jurists urges the Commission to:

- Call upon all parties, whether Israeli or Palestinians, to observe all relevant obligations under international human rights and humanitarian law, including by desisting from the targeting of civilians.
- Call on Israel to implement the Advisory Opinion of the International Court of Justice. The Commission should itself use the Opinion as a benchmark in its assessment of the Wall and its associated regime.

Thank you.