The West Bank Barrier Debate: Concept, Construction and Consequence

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Debate over the construction of the West Bank separation barrier has been ongoing and acrimonious since its inception in June 2002, when the Israeli government announced its intention to erect a fence to control strictly Palestinian entry into Israel and thereby impede terrorist activity directed against the citizens of the Jewish state. Strikes by Palestinian terrorists groups, most notably the fundamentalist Hamas and Islamic Jihad, had reached unparalleled levels against the civilian population following the commencement of the Palestinian uprising against Israel, the Al Aqsa Intifada, in the fall of 2000.

The international response to this decision was, for the most part, unsympathetic to Israel, despite the mounting death toll. Legitimate Israeli security concerns were eclipsed by focus on the effect of the barrier on the human rights of Palestinians, whose movement, access to services, and ability to support themselves would be restricted, in some cases severely. Concern also grew that the location of the barrier, for much of its length running inside the West Bank, was designed to prejudge the outcome of peace negotiations between Israel and the Palestinians by creating a territorial *fait accompli*, integrating West Bank areas on the Israeli side of the barrier into the Jewish state. In less circumspect terms, many saw it as a land grab. Hence the barrier's reference to the International Court of Justice (ICJ), which on 9 July 2004 found this military curtain a violation of international law, Israel's security considerations being judged insufficient to justify this construction within occupied territory.

Others are better able to discuss the complexities of the Court's decision. My exposure comes from practical experience as Canada's Ambassador to Israel from 1999 to 2003, years that saw the collapse at Camp David, the launching of the second Palestinian Intifada, the terrorist onslaught, the Israeli reaction, the initial construction of the barrier, and its early consequences on the ground. I will go beyond the ICJ decision to examine the multifaceted influence of the barrier on the security and political landscape of today.

I THE TERROR MOVEMENT AND ISRAELI SECURITY

Barrier construction has been ongoing since 2002 and is largely complete in the north and around Jerusalem. For the most part, it is

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composed of an electronic fence, supplemented by barbed wire and trenches, on average about seventy meters wide. In some areas, a concrete wall of up to eight metres in height replaces the fence. For the majority of its length, the route runs within the West Bank, the remainder along what is called 'the Green Line.' This latter was the cease-fire line established in 1948 with the end of fighting between Israelis and Arabs, formalized by the armistice agreements in Rhodes the following year. East of the line Jordanian writ ran for nineteen years; to the west was the state of Israel. In the 1967 Six Day War, Israel took control of the West Bank and has since ruled that territory and its Palestinian population, despite numerous efforts to resolve the Israeli/Palestinian conflict under the rubric: 'the exchange of land for peace'. Today most Palestinians, excluding those who continue to reject the very idea of a Jewish state (for instance those in Hamas and Islamic Jihad), see the West Bank, along with the Gaza Strip, as the territorial base of their future state. These two areas together compose twenty-two per cent of the original post World War I British Mandate of Palestine, while the remaining seventy-eight per cent has been Israeli since 1948, following the British withdrawal and the ensuing war between Israelis and Arabs. The population within the entirety of the former British Mandate territory, however, is split virtually evenly between Arabs and Jews.

Following 1967, the territory of the West Bank, in Israeli minds, became a defensive asset, providing what was called 'strategic depth.' On the right of the political spectrum, the West Bank was also vitally important because it had been the centre of the ancient land of Israel and had to be reclaimed. With these interests, the Israeli minimum became a West Bank divided between the Jewish state and any emerging Palestinian entity. This would enable optimum defensive positions and ensure the retention of Jewish religious and historic sites and the majority of Israeli settlements, which came to be located there. These latter were the result of government-sponsored programs moving Jewish settlers to strategically populate the centre of their ancient Biblical state. Settlement throughout the West Bank became official government policy, after the nationalist revisionist Menachem Begin came to power as Prime Minister in 1977. Today, excluding Jerusalem, there are some 200,000 Israelis in the West Bank, living uneasily beside almost 2.5 million Palestinians.

The initial impetus for a separation barrier on the Green Line, and beyond it, came from the Israeli left in the summer of the year 2000, following the collapse of the Oslo Process and the Camp David meetings held between Yasser Arafat, then Israeli Labour Prime Minister Ehud Barak, and the outgoing American President Bill Clinton. One of the barrier proposal's early proponents was the reserve Brigadier General Danny Rothschild, who had, in the early 1990s, run the Israel Defense Forces military administration in the West Bank. As

he was of the Israeli left, his preoccupation was less with territorial acquisition than the seeming impossibility of Israel negotiating disengagement with the Palestinians, when Barak's flexibility had been rejected by Arafat.[1]

In a conversation of some two hours, General Rothschild explained to me the reasons behind his advocacy of a separation barrier. He focused heavily on security questions but he was most emphatic when arguing that, if Israel could not negotiate a border with the Palestinians, one would have to be imposed unilaterally, thereby forcing the creation of a Palestinian state. This would give Israelis the ability to pursue their own destiny without the crippling weight of occupation and the soon to be realized demographic threat of a Palestinian majority ruled over by Israel in the territory stretching from the Jordan River to the Mediterranean.

In the winter of 2002, the barrier concept began to percolate in the public mind, as the toll of Israeli terror victims rose, with fear spreading throughout Israeli cities and towns and the security forces seemingly helpless in coping with the blind commitment of Palestinian extremists, about whom Arafat seemed unwilling or unable to do anything. This change in mood toward the idea of a barrier among Israelis, who were no longer willing to see family and friends killed and maimed, caused a certain ideological discomfort to many on the Israeli right, including Ariel Sharon. While security came first, to accept the construction of a barrier as a means of assuring normality was to jeopardize his and his colleagues long held goal of a Jewish State reaching to the Jordan River. The barrier would divide the ancient land of Israel. In the minds of the followers of the revisionist Zionist Ze'ev Jabotinsky and of the religious nationalists, who believed a greater Israel was their God-given right, such a paradigm shift was traumatic.

Prime Minister Sharon, for his part, was less convinced by the argument of Divine Providence than by his innate pragmatism, coupled with concern that Israel could no longer control a hostile Palestinian population of some four million within its own bosom. He spoke often of the 'painful concessions' Israel would have to make to ensure a stable and predictable environment for his fellow citizens, painful because he had shared the hope for a greater Israel and had done his best to bring it to fruition. His assertions about concessions were therefore treated with considerable skepticism, if not cynicism, not only by Palestinians and other Arabs but by the broader international community and indeed many Israelis themselves.[2]

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1 Discussion with the author, Tel Aviv (Summer 2002).

2 For a particularly scathing dismissal of the Prime Minister's intentions see Baruch Kimmerling, *Politicide: Ariel Sharon's War Against the Palestinians*

The Prime Minister's hesitation to buy into the barrier proposal stemmed from the effect that a decision to build would have on his government and coalition, both of which were unstable and under threat. His reluctance may have also come from his earlier belief that the Kingdom of Jordan, across the river, was the only proper home for a Palestinian state, given that its Palestinian population was already demographically dominant. Yet Sharon, although radical, had sprung from the Labour Zionist movement. That pragmatism is most likely to have facilitated a gradual paradigm shift. By the mid-nineties, the Prime Minister had begun to muse in public about the inevitability of a Palestinian state in the West Bank, about which he subsequently became progressively more transparent. He reluctantly came to accept that a solution to the future of those Palestinians living west of the Jordan River had to be found on that turf, within the West Bank. As he pondered what to do, his commitment to the security of Israelis and a democratic Jewish state meant the triumph of practicality over dogma.

I met Ariel Sharon many times during my most recent tour in Israel, but I understood him best when I heard him address the nation at the annual Holocaust Memorial Day, following his accession to power in 2001. Jews must be self-reliant and realistic in a hostile world the Prime Minister stressed. Israelis could count only on the force they themselves could muster to ensure their own survival; other values must take second place. This *reale politique* is what has dominated the Prime Minister's thinking throughout his career, from his invasion of Egypt during the Yom Kippur war of 1973 to the ill-fated drive to Beirut in 1982. As Prime Minister, this sense of realism has been accompanied, according to many of his critics, by a growing political maturity and wisdom.

Israeli Foreign Ministry statistics[3] contrasting terror actions before and after the barrier's construction lend substance to Israeli claims that the barrier has been effective in dramatically reducing the number of terror incidents. The fourth year of the Intifada, 2004, when construction was well advanced saw a drop of forty-five per cent in the number of Israelis killed: 117 compared to 214 in 2003. There was a similar drop of forty-one per cent in the number of those wounded. In 2003, twelve large scale attacks were successful along the proposed northern route of the fence, resulting in 74 dead and 374 wounded, while in 2004 only two such attacks succeeded resulting in 14 dead and 106 wounded. These figures were also attributable to the increasing effectiveness of the security services generally but Palestinian militants

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(New York: Verso, 2003).

3 Israel Ministry of Foreign Affairs, 'Summary of Terrorist Activity 2004' (5 January 2005), online: <http://www.mfa.gov.il/MFA/MFAArchive/2000_2009/2005/Summary%20of%20Terrorist%20Activity%202004>.

tried to overcome the effect of the barrier by moving many of their operations to the southern part of the West Bank, where there had been no construction. Extremists also began to use minors and women exploiting their more innocent appearance, augmented by western dress and hairstyles.

Security considerations aside, sympathetic analysts[4] also argue that the barrier may also have positive political effects by short-circuiting the deadlock on a two state solution, furthering the debate within Israel about the legitimacy of Jewish settlements, providing a new and important incentive for Palestinians to return to the negotiating table and serving as a provisional border, thereby helping the parties focus on final status issues. Ehud Olmert, a longstanding major figure in the governing Likud party has, for instance, begun to argue that all settlements east of the barrier should be evacuated. These we will deal with at greater length, following an examination of the effect of barrier construction on the Palestinians.

II THE BARRIER AND THE PALESTINIAN REALITY

Nowhere has the outcry against the barrier been as strong as when it is seen to affect deleteriously the social and economic position of the Palestinians. As a direct consequence of its routing, there are new restrictions on Palestinian movement. In October 2003 the Israel Defense Forces declared the swath of land between the barrier in the northern section of the West Bank and the Green Line, a closed military zone, to be called the Seam. Today over 100,000 persons in six communities are living in enclaves almost completely hemmed in by the barrier. Qalqiliya used to be a vibrant town of some 41,000 persons, where Israelis from neighboring communities used to visit, shop, and eat, prior to the Intifada's outbreak. Israeli visits necessarily stopped prior to the erection of the barrier but the situation since has become much more severe with the town now cut off from its West Bank hinterland. There has been an exodus of population and many small businesses have closed. The only road in and out is guarded by Israeli checkpoints, with watchtowers and cameras ensuring surveillance.

Palestinian residents of the Seam over the age of 12 require a residence authorization and those who wish to enter or leave require a further permit from the Israeli administration. Not only do they need permission to leave, they require a permit to remain on their land, even if they and their antecedents were born there. West Bankers from outside the Seam require one of twelve purpose-specific documents to

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[4] David Makovsky, 'How to Build a Fence' *Foreign Affairs* 83:2 (March/April 2004) 50.

enter. Farmers have to provide documents indicating the applicant's rights to the land,[5] often a difficult undertaking given the vagaries of Ottoman law under which the property was most likely acquired.

Farmers have difficulty getting to their fields and marketing their produce, although farming is a primary source of income in the Palestinian communities situated along the route, an area that is one of the most fertile in the West Bank. The farming sector therefore has been subject to a dramatic shock in any already difficult economic situation. The barrier, because of the restrictions on movement it imposes, also seriously reduces the access of the rural population to hospitals and other services in nearby cities and affects education because many teachers come from outside the communities in which they work.[6] Social and family ties are hampered. Staying the night in the Seam area, bringing a vehicle and transporting merchandise in, require separate permits. According to the human rights monitoring group B'Tselem, the authorities reject about twenty-five per cent of entry permit applications.[7] There are also complaints that Israeli management of the permit system is problematic, creating further impediments to movement.

According to Palestinian sources, approximately 3,670 acres of land were confiscated and 102,000 olive trees were destroyed in the course of construction in the north.[8] Some farmers allege that building contractors uprooted and stole olive trees, their being of value because, while they take five to ten years to yield an initial crop, they bear fruit for centuries. Within the Seam there is evidence that both homes and commercial premises are being demolished because they were built without permits—for better or worse a common practice among Palestinians, often imposed by cost and bureaucratic red tape. In

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5 *Ibid*

6 For a detailed study concerning the village of Umm ar Rihan see *The Impact of Israel's Separation Barrier on Affected West Bank Communities*: *Report of the Mission to the Humanitarian and Emergency Policy Group and the Local Aid and Co-ordination Committee* (4 May 2003) at 13, online: United Nations Information System on the Questioin of Palestine (UNISPAL) <http://domino.un.org/UNISPAL.NSF/9a798adbf322aff38525617b006d88d7/084e7278b1a3491385256d1d0065bc42/$FILE/Wallreport.pdf>.

7 The Israeli Information Center for Human Rights in the Occupied Territories, *Not All it Seems—Preventing Palestinians Access to Their Lands West of the Separation Barrier in the Tulkarm-Qalqiliya Area* (June 2004) at 10, online: B'Tselem <http://www.btselem.org/Download/200406_Qalqiliya_Tulkarm_Barrier_Eng.pdf>.

8 M. Barghouti *et al.*, *Health and Segregation: the Impact of the Separation Wall on Access to Health Care Services* (Ramallah: Health, Development, Information and Policy Institute, 2004) at 23.

addition there are freezes on local construction.[9]

The barrier situation in East Jerusalem is particularly noteworthy because of the political, symbolic and pure physical weight attached to it. In the eastern part of the city, the barricade consists of a series of distinctly unappealing eight metre concrete walls that run for the most part, but by no means always, along Jerusalem's Israeli-defined municipal boundaries, within which some 200,000 Palestinians live. From my own observation, it is difficult to describe the separation of even Jerusalem Arab neighborhoods within themselves as other than soul destroying. Images of young children twisting themselves through chinks in the barrier to get to and from school leave a strong aftertaste. The great majority of Israelis have never witnessed this situation, nor would they want to, because it would be too uncomfortable, making this a case of willful denial.

An additional 400,000 non and former Jerusalemite Palestinians reside in village communities with twenty kilometres of the city centre and are bound to it by a myriad of economic, social, political and human ties. Arab East Jerusalem has always been the geographic and spiritual focus of their lives. These are examples:

- Some Arab East Jerusalem residents have moved to West Bank suburbs because they could not get permits to build within municipal boundaries.
- Children in the suburbs go to schools in East Jerusalem, a number of which are concentrated in the Old City.
- Young adult Arab Jerusalemites study in the West Bank town of Abu Dis, where Al Quds University is located.
- Suburban residents receive their medical treatment at the Al Moqassad, Augusta Victoria, and Saint John's Ophthalmic hospitals, all of them within the post-1967 Israeli boundaries.
- Many suburban residents work and shop in East Jerusalem.
- In some cases Palestinian areas within the municipal boundaries have been walled off from the rest of the city.
- A recent interpretation of Israeli regulations allows the state to confiscate property in the eastern part of the city, belonging to Palestinians residing outside the wall, although this is under challenge.

Those Palestinians affected by the barrier see the fabric of their life

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[9] Discussions with the author, Ramallah (Winter 2003)

disrupted in a severe and arbitrary way, having to navigate a labyrinthine maze to travel even the shortest distance. Indeed this argument was found to have some merit by Israel's High Court of Justice, to which Palestinians brought their case, in its judgment of 30 June 2004. The High Court instructed the government to re-route the barrier in certain instances along a forty kilometre stretch northwest of Jerusalem, based on the principle of proportionality between security requirements and humanitarian considerations. In one specific instance for example: 'The route disrupts the delicate balance between the obligation of the military commander to preserve security and his obligation to provide for the needs of the local inhabitants. … [The route] injures the local inhabitants in a severe and acute way, while violating their rights under humanitarian international law.'[10] The Court's decision went beyond what the government had anticipated but nevertheless gave 'great weight' to the defence establishment's opinion regarding the necessary route.

The changes prescribed by the High Court were accepted by the government, although this did little to effect broader resolution of the overall quality of life predicament, as the current situation, for example in Jerusalem, makes clear. Nor did the Court's decision significantly mitigate Palestinian or international criticism, reflected in General Assembly resolution L18 of 20 July 2004, which overwhelmingly endorsed the ICJ decision that the very construction of the fence in what was deemed 'occupied territory' constituted a violation of international law. The Palestinians in particular ridiculed the Israeli Court's findings, as at best cosmetic and at worst a cover for a broader political agenda. They took great satisfaction from the symbolism of the ICJ decision, although it brought them no relief.

III THE POLITICAL IMPACT

The High Court asserted that the barrier could not be used to define a political border,[11] underlining what I think was its unspoken concern that routing had been designed to define Israel's ultimate frontiers. The barrier separates the Seam to the west from areas of dense Palestinian habitation to the east. This ensures 'quality of life' settlements, which hold the majority of West Bank settlers, are included on the Israeli side. These particular settlements were developed to populate the West Bank in areas close to the Green Line, to 'thicken' the Israeli presence in the occupied territories adjacent to Israel proper through the construction of bedroom communities, serving Jerusalem, Tel Aviv, and other towns

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[10] *Beit Sourik Village Council v. The Government of Israel, Commander of the IDF Forces in the West Bank* (2004), H.C.J. 2056/04 at para. 60, online: <http://62.90.71.124/eng/home/index.html>.

[11] *Ibid*. at para. 27

along the coast. Housing was made available at considerable cost advantage to comparable structures in Israel itself; mortgages were made hugely attractive; infrastructure and development construction was funded by the state. These inducements ensured the growth of these communities in an attempt to blur the Green Line.

Ariel Sharon was the father of the settlement movement. In his autobiography the Prime Minister makes clear that on becoming Minister of Agriculture in 1977 he devoted himself completely to the settlement movement: 'Over the next four years I managed to establish sixty four settlements in Samaria and Judea,' the biblical names for what is today the West Bank. He lauded those Israelis who moved to these towns, particularly those in the scriptural heartland deep inside Palestinian territory: '… living near places like Shechem or Shiloh or Bethel, with their rich spiritual and historical associations, held a meaning for them that translated into joy as well as into utter determination.'[12] Sharon's commitment, and that of successive Likud governments, has been to establish a Jewish presence throughout the West Bank, sometimes for alleged military purposes, although few argue now that isolated outposts makes any contribution to Israel's defence needs in the twenty-first century. Whether of deemed military value or not, enclaves of whatever kind were meant to create a permanent presence reflecting the Jewish return to their ancient homeland.

In October 2004, the Peace Now movement calculated that building and infrastructure activity continued apace at 474 settlement sites in the West Bank and Gaza, including over fifty where ongoing building reaches beyond already generous municipal boundaries. There were about 3,700 housing units under construction in the occupied territories, while infrastructure was being put in place for more.[13] There is little doubt, within Israel or without, that this is part of a policy to divide the West Bank, with Palestinians ultimately controlling a central core, containing the bulk of their people, divided however into non-contiguous cantons. Critics such as Henry Seigman refer to these envisioned Palestinian cantons as being nothing more than 'Bantustans.'[14] Seigman continues: 'Despite the abuse and violent rhetoric they direct at Sharon, most leaders of the settlement movement understand that Sharon's unilateral disengagement from Gaza is really

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12 Ariel Sharon, *Warrior: The Autobiography of Ariel Sharon* (New York: Touchstone, 2001) at 366

13 Americans for Peace Now, 'Middle East Peace Report' 6:13 (4 October 2004), online: <http://www.peacenow.org/mepr.asp?rid=&scrollaction=4>.

14 Henry Siegman, 'Sharon and the Future of Palestine' *The New York Review of Books*, 51:19 (2 December 2004).

intended to assure Israel's permanent control of the West Bank.'[15] This last observation is in my view somewhat overdrawn but there is no doubt in my mind, after nine years residence in Israel on three separate tours of duty and as a witness to both Intifadas, that a non-contiguous Palestinian entity comprising around fifty per cent of the West Bank is firmly planted in the mind of the present Israeli government. The remainder would be incorporated into Israel proper.

Numerous, albeit necessarily speculative, maps pieced together from various bits of privately and publicly available information project just that. There is no means of verifying definitively where the government sits on precise boundaries at this point, because official decisions have not been made and the government, in any event, has every interest in opaqueness, given the opposition such disclosures would generate, most importantly in the United States. Although the Prime Minister is adamant that Israel must control the West Bank high ground leading east to, and including, the Jordan River embankment, he is less certain about precisely where the barrier would be constructed as it snakes into the West Bank core to protect ideological settlements. But his intent remains clear that some eighty per cent of the settlers will end up on the Israeli side of the barrier.

The barrier's route meanders. When complete it will be more than 600 kilometres long, virtually twice the length of the Green Line because the route is drawn around settlement enclaves so as to include them in Israeli territory. The barrier is said to be one of the largest, if not the largest, and most complex construction projects in Israel's history with an estimated final cost of USD 1.5 billion.[16] It will be the Sharon government's most visible legacy by far, not only as a physical structure but a monument to the Prime Minister's commitment. The settlements and the barrier enjoy a rich complementarity, even as the government downplays the link. According to one of Israel's most respected journalists Aluf Benn: 'Sharon and his cabinet associates know their attempts to downplay the fence's impact ("This is not a political fence"; "It won't influence a future agreement") constitute, in the best case, rhetorical sleight of hand and, in the worse case, public deception. … All future negotiations about the partitioning of Eretz Israel will take the borders demarcated by the fence as a starting point for discussions.'[17]

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15 *Ibid.*

16 Mazal Mualem, 'The Fence starts to look like a frontier' *Ha'aretz* (1 May 2003).

17 Aluf Benn, 'Sharon can sit on the fence no more' *Ha'aretz* (28 September 2003).

IV SUMMING UP

This construction, as seen in retrospect, had an inevitability about it. Given the random and wanton murder of Israelis during the Intifada a defensive barrier was bound to be built because any government has a primary obligation to ensure the security of its citizens. It would have been naïve at best to expect an Israeli government, particularly one on the right, to build strictly along the Green Line as this would be interpreted as a willingness to relinquish all of the West Bank in advance of negotiations. Once a commitment to build within the West Bank had been taken, by the very nature of the enterprise Palestinians were going to suffer, although they might have suffered less given a more sensitive hand. In determining the route it was only logical that final border questions would bear heavily on decision makers. Yet according to Yuval Diskin, the new director of the Shin Bet, Israel's internal security service, who has been intimately involved in security questions throughout the Intifada, security measures alone will not end terrorism. What is needed is a long-term diplomatic process leading to a final status agreement.[18]

One can only hope that the present optimism that pervades the accession of Mahmoud Abbas as President of the Palestinian Authority will create the circumstances where such negotiations, difficult as they will be, commence. For this to happen there will have to be determination, forbearance and concern for the dignity of the other, on all sides. Without this, tragedy will continue to engulf the region, barrier or no barrier.

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[18] Editorial, 'Mr. Shin Bet' *Ha'aretz* (11 February 2005).