

International Court of Justice

2004 9 July - General List No. 131

**LEGAL CONSEQUENCES OF THE CONSTRUCTION OF A WALL
IN THE OCCUPIED PALESTINIAN TERRITORY**

The Court,

3) Replies in the following manner to the question put by the General Assembly:

A. By fourteen votes to one,

The construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated régime, **are contrary to international law**;

B. By fourteen votes to one,

Israel is under an **obligation to terminate its breaches of international law**; it is under an obligation to cease forthwith the works of construction of the wall being built in the Occupied Palestinian Territory, including in and around East Jerusalem, to dismantle forthwith the structure therein situated, and to repeal or render ineffective forthwith all legislative and regulatory acts relating thereto, in accordance with paragraph 151 of this Opinion;

C. By fourteen votes to one,

Israel is under an **obligation to make reparation for all damage** caused by the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem;

D. By thirteen votes to two,

All States are under an obligation not to recognize the illegal situation resulting from the construction of the wall and **not to render aid or assistance in maintaining the situation** created by such construction.



With the construction of the Partition Wall the State of Israel has **annexed** a total of **47%** of the West Bank:

- **17,9 %** of the West Bank land
- **29,1 %** of the Jordan Valley land

for the construction of illegal settlements (international law prohibits the establishment of settlements in occupied territories)

Israel envisages the construction of **16 intersections** with bridges (safe motorways for the Israelis) and of tunnels (controlled passage points for the Palestinians guarded by the Israeli occupying forces).

A study prepared by the cartographer *Khalil Tufakji* indicates that the Palestinian citizens of Jerusalem, who once owned all the land of the city, now have only 14% of this land because Israel **seized 35% of East Jerusalem** land and decreed that **40% of the surface be classified as parks**.

Source : <http://stopthewall.org/analysisandfeatures/843.shtml>

UN Resolutions

194 - 11 December 1948

Resolves that the refugees wishing to **return to their homes** and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that **compensation should be paid** for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible.

3236 - 22 November 1974

... Recognizing that the Palestinian people is entitled to self-determination in accordance with the Charter of the United Nations, ...

1. Reaffirms the inalienable rights of the Palestinian people in Palestine, including:
 - (a) The **right to self-determination** without external interference ;
 - (b) The right to **national independence and sovereignty** ;
2. Reaffirms also the **inalienable right of the Palestinians to return** to their homes and property from which they have been displaced and uprooted, and calls for their return.

Universal Declaration of Human Rights

Adopted by the UN General Assembly in its **resolution 217A (III)** on 10 December 1948

Article 13

1. Everyone has the **right to freedom of movement and residence** within the borders of each state.
2. Everyone has the **right to leave** any country, including his own, **and to return to his country**.



The UNRWA has dealt with Palestinian refugees in **59 camps** for the past 56 years.
Distribution of the refugees

Gaza	952'295
Westbank	682'657
Lebanon	399'152
Syria	421'737
Jordan	1'776'669
Total	4'232'510

Source : <http://www.un.org/unrwa/refugees/wheredo.html>

Universal Declaration of Human Rights Adopted by the UN General Assembly in its **resolution 217A (III)** on 10 December 1948

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6

Everyone has **the right to recognition everywhere** as a person before the law.

Geneva Convention, 1949

Part II - General protection of prisoners of war

Article 12

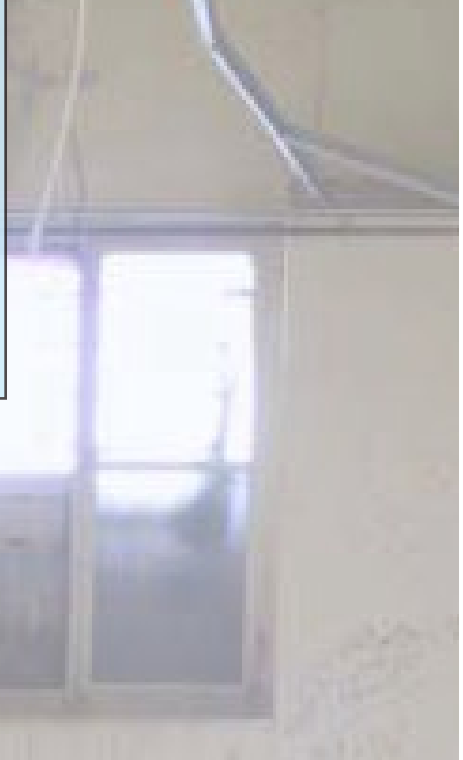
Prisoners of war are in the hands of the enemy Power, but not of the individuals or military units who have captured them. Irrespective of the individual responsibilities that may exist, **the Detaining Power is responsible for the treatment** given them.

Article 13

Prisoners of war must **at all times be humanely treated**. Any unlawful act or omission by the Detaining Power causing death or seriously endangering the health of a prisoner of war in its custody is prohibited, and will be regarded as a serious breach of the present Convention. In particular, no prisoner of war may be subjected to physical mutilation or to medical or scientific experiments of any kind [that] are not justified by the medical, dental or hospital treatment of the prisoner concerned and carried out in his interest.

Likewise, prisoners of war must at all times be **protected, particularly against acts of violence or intimidation** and against insults and public curiosity.

Measures of reprisal against prisoners of war are **prohibited**.



As of April 2006 **9'300** Palestinians were **incarcerated** in Israeli prisons of which :

- **315 minors** between 12 and 18 years of age,
- 117 women of which 22 are married,
- 369 of the prisoners are between 18 and 20 years old,
- **1200** prisoners are **seriously ill** and require significant daily medical care,
- 189 prisoners died between 1987 and 2001,
- **78 prisoners have simply disappeared !**

Source : *Said Atabel*, UN Human Rights session April, 2006

In 2002 1'700 Palestinians were being held in administrative custody, also known as internment, a term covering also individual imprisonment, **without charges being brought against them or a legal trial**.

Source : <http://www.paix-en-palestine.org/arti/pr1700pal.htm>

A person can remain 32 days without seeing a lawyer. Only Israeli lawyers can plead for military jurisdictions with the number of lawyers available for this purpose being very small and their access to the camps limited.

Estimate: **20% of the Palestian population** has, at one time or another, been **arrested**.

Source : *FIDH* report 365 July, 2003 <http://www.fidh.org/magmoyen/rapport/2003/ps365a.pdf>