



**Lawyers for Palestinian Human Rights' briefing on the
International Court of Justice Advisory Opinion on the
Separation Barrier**

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About Lawyers for Palestinian Human Rights (LPHR)

LPHR is a lawyer-based charity in the UK that works on projects to protect and promote Palestinian human rights. We distinctly provide a legal and human rights perspective on issues affecting Palestinians. Our trustees include leading human rights lawyers, Sir Geoffrey Bindman QC and Tessa Gregory.

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1. 10 years to this day, on 9 July 2004, the International Court of Justice (**the ICJ/Court**) issued a non-binding Advisory Opinion concerning the legal aspects of Israel's construction of a barrier (**the Wall**) separating part of the occupied West Bank and East Jerusalem from Israel. The Court's Advisory Opinion made clear findings that the construction of the Wall and its associated regime are contrary to international law, and that the Israeli settlements established on the West Bank, including East Jerusalem, are in breach of international law.
2. With the Wall's construction continuing despite the ICJ's ruling, it is worthwhile highlighting central aspects of the Court's findings and some key facts which underscore the powerfully adverse impact of the Wall on the human rights of Palestinians.
3. The ICJ case was concerned with the legality of the actual route of the Wall, rather than whether Israel has the right under international law to build a 'security barrier' to protect its sovereign territory and inhabitants. Had Israel's building of the Wall been on its own territory along the 1949 Armistice "Green Line" – the line that is internationally recognised as the Israeli border pending a final negotiated settlement of the Israel-Palestine problem - the question of whether it was within the bounds of applicable international law would not have arisen, and there would have been no ICJ case.
4. After considering certain fears expressed to it that the route of the wall would prejudice the future frontier between Israel and Palestine, the Court observed that considers that *"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."* (para. 121 of ICJ ruling)
5. The Court further noted that the route chosen for the wall gave expression in loco to the illegal measures taken by Israel with regard to Jerusalem that entailed further alterations to the demographic composition of the Occupied Palestinian Territory, the Court concluded that the construction of the wall, along with measures taken previously, *"severely impeded the exercise by the Palestinian people of its right to self-determination, and was thus a breach of Israel's obligation to respect that right"*. (para. 122 of the ICJ ruling)
6. The Court recognised that the Wall comes with a regime of restrictive measures affecting the Palestinian population (paras. 85, 133, 142 of ICJ ruling). In the Court's view, the Wall along the route chosen, and its associated regime, *"gravely infringe a number of rights of Palestinians residing in the territory occupied by Israel."* (para. 137 of the ICJ ruling)



7. The Israeli human rights organisation, B'Tselem, has also highlighted the adverse human rights impact of the Wall, whilst also giving its view on what it considers to be the "major aim" for the construction of the Wall: *"In setting the Barrier's route, Israeli officials almost entirely disregarded the severe infringement of Palestinian human rights. The route was based on irrelevant considerations completely unrelated to the security of Israeli civilians. A major aim in planning the route was de facto annexation of part of the West Bank: when the Barrier is completed, 9.5 percent of the West Bank, containing 60 settlements, will be situated on its western, "Israeli" side. Israeli politicians already consider the Barrier's route as Israel's future border."*
8. Apart from the significant issue of the Wall's exact route, Israel's [claim](#) that "[t]he fence is a non-violent security measure and it saves lives" is not supported by the facts or the law. The ICJ was not convinced that the specific course that Israel has chosen for the Wall was necessary to attain its security objectives. After weighing all the arguments, including arguments that Israel chose not to plead before the ICJ, the Court concluded that *"the infringements resulting from that route cannot be justified by military exigencies or by the requirements of national security or public order."* (para. 137 of the ICJ ruling)
9. The Wall has resulted in widespread property destruction and it has taken lives. Palestinian civilians have lost their lives as a consequence of the security administered by Israel in connection with the Wall. On 19 March - in an incident documented by [LPHR](#) - Israeli soldiers killed a 14 year old Palestinian boy, Yousef al-Shawamrah, with live ammunition after he crossed the Wall in order to pick wild fruit plants.
10. The scale of adverse humanitarian consequences for Palestinians caused by the construction of the Wall can be quickly determined by reference to the following key facts taken from the [United Nations Office for the Coordination of Humanitarian Affairs](#):
 - The Barrier consists of concrete walls, fences, ditches, razor wire, groomed sand paths, an electronic monitoring system, patrol roads, and a buffer zone.
 - The Barrier's total length (constructed and projected) is approximately 712 km, more than twice the length of the 1949 Armistice ("Green") Line.
 - Approximately 62% of the Barrier's approved route is complete, a further 10% is under construction and 28% is planned but not yet constructed.
 - Some 85% of the Barrier's route runs inside the West Bank, rather than along the Green Line; if completed as planned, the Barrier will isolate 9.4% of the West Bank, including East Jerusalem.



- Nearly half of the Israeli settlements in the West Bank (71 out of 150) and over 85% of the settler population are located in the area between the Green Line and the Barrier's route.
 - Around 11,000 Palestinians living in 32 communities located between the Barrier and the Green Line, depend on the granting of permits or special arrangements to live in their own homes.
 - In 2013, a rerouting of a section the Barrier near Tulkarm was completed, allowing 350 people in the Khirbet Jubara community free access to the rest of the West Bank.
 - Palestinians with West Bank ID cards who are granted special permits can enter East Jerusalem through four of the 14 Barrier checkpoints around the city.
 - Approximately 150 Palestinian communities have land located behind the Barrier, forcing residents to seek special permits or 'prior coordination' to access it.
 - Access to agricultural land through the Barrier is channelled through 74 gates, the majority of which (52) only open during the olive harvest (October-December).
 - Despite the presence of the Barrier, between January and March 2013 at least 14,000 Palestinians without the required permits smuggled themselves every day into Israel to look for employment (PCBS).
 - The Barrier also adversely affects urban centres, particularly East Jerusalem, where it has transformed the geography, economy and social life of Palestinian residents.
11. The substantial freedom of movement restrictions, leading to a range of human rights impacts, encountered on a daily basis by Palestinians due to the imposition of the Wall predominantly on occupied territory by the occupying power, is a stark reminder of the substantial adverse consequences that can result when a state chooses to deliberately defy international law.
12. The 2004 Advisory Opinion by the ICJ can be viewed as a symbolic marker for measuring Israel's compliance with, and respect for, international law. The ICJ's ruling calls at paragraph 163 for Israel "*to dismantle forthwith the structure*" of the Wall. Despite this authoritative call, Israel has continued to unlawfully construct the Wall beyond the Green Line. Further, Israel's courts have not enforced the ICJ's ruling on this point.
13. Ten years on, the onus primarily remains on Israel to end its serious violation of international law in relation to its construction and maintenance of the Wall, by fully complying with the findings of the world's principal legal forum. As long as this remains the case, the international community must also continually consider whether it is doing enough to persuade Israel to meet its fundamental international legal obligations.