

Palestinian Call to the UN: Dismantle the Wall not the ICJ decision!

Palestinian grassroots Anti-Apartheid Wall Campaign - www.stopthewall.org

Summary

The Apartheid Wall runs through the West Bank annexing land, destroying livelihoods and effectively annihilating the possibility of a Palestinian state.

On 9 July 2004, after request of the UN General Assembly (GA), the International Court of Justice (ICJ) delivered its verdict on the Wall establishing the illegality of the Wall and its associated regime according to international law and the obligation for the occupation "to make reparation for all damage caused by the construction of the Wall".

After two years of complete silence regarding the Wall, the UN Secretary-General is now proposing to create a register of damage done by the Apartheid Wall.

The setting up of the register as outlined by the Secretary-General risks in effect dismantling the ICJ decision and preventing its implementation.

The Register, in its current form, is a token gesture that allows the UN to appear to implement its responsibilities and institutionalizes further its failure to engage in any meaningful efforts to implement the requirements of its own law and its highest judicial body - the dismantling of the Wall.

The Apartheid Wall is part of the Zionist ideological project of discrimination, dispossession, expulsion and destruction that aims to cleanse Palestine from as many as possible Palestinians and to force the remaining population into submission within ghettos.

This stage of the program, euphemistically promoted as the "Separation Policy", consolidates the conquest of Palestinian territory by way of colonization and redeployment of settlers from Gaza to other areas to ensure a Jewish demographic supremacy.

The International Court of Justice verdict

On 9 July 2004, after request of the UN General Assembly (GA), the International Court of Justice (ICJ) delivered its verdict on the Wall establishing:

- The illegality of the Wall and its associated regime according to international law.
- The obligation for the occupation to stop its construction, tear down the parts already built and to repeal all related orders and laws.
- The obligation for the occupation "to make reparation for all damage caused by the construction of the Wall".
- The obligation of all states not to recognize the illegal situation and not to render any aid or assistance in maintaining the situation created by it.



The Wall in and around Jerusalem destroys the lives of over 200 000 Palestinians.



This home in Nazlat Issa has been destroyed to make space for the construction of the Apartheid Wall.

Background

The Apartheid Wall

The Apartheid Wall, which runs through the West Bank, has been destroying Palestinian land and livelihoods since June 2002. Effectively annihilating the possibility of a Palestinian state, the occupation imprisons an entire population in ghettos within Gaza and parts of the West Bank.

Checkpoints control all Palestinian movement, while Occupation forces continue their incursions, killing nearly 500 Palestinians between June to November 2006 alone.

- That the UN, in particular the General Assembly and the Security Council, "should consider what further action is required" to ensure the implementation of the ICJ decision.

On 20 July 2006, the GA ratified this verdict in resolution ES-10/15. Since then, the UN has failed to take any concrete steps toward the implementation of this decision.

The Register

After two years of complete silence regarding the Wall, the UN Secretary-General is now proposing to create a register of damage done by the Apartheid Wall.

The Register: Undermining Palestinian Rights

As Palestinians, we are opposed to the UN Register, as in the current form it will not support the attainment of our rights. **The Secretary-General's vision of the UN Register is not based on the requirements of the ICJ decision or other objective criteria of human rights and international law.**

What is needed is an effort to ensure reparation for the crimes committed and to bring those responsible to justice. **The Secretary-General's terms of reference for the Register contradict both the spirit and letter of the ICJ decision, diverting the attention from the real goal: to Stop the Wall!**

The United Nations is failing to implement international law.

The UN has reneged on its duties to implement public international law in its responsibilities to Palestine:

- The UN, according to its charter, takes "primary responsibility for the maintenance of international peace and security", including in relation to Palestine.
- All High Contracting Parties of the Geneva Conventions (1949) have the duty to ensure the application of international humanitarian law in accordance with Article 1 Common which states: "The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances." In Palestine, the UN is currently failing in its obligation to ensure compliance in this regard, particularly with respect of the Fourth Geneva Convention.
- In 2004 ICJ decision mandated the UN to consider "what further action is required to bring to an end the illegal situation resulting from the construction of the wall and the associated regime, taking due account of the present Advisory Opinion." The UN has so far done nothing to bring an end to the illegal situation.



Children in Bil'in protest against their ghettoization.

The General Assembly must act in accordance with the Court's mandate, especially after the endorsement of the decision on the Wall through the General Assembly. The proposed register indicates the Secretary-General's unwillingness to do so, and the paralysis of the Security Council. The register means that, like the so-called 'Quartet', the UN is dismissing standards of public international law, propelling the conflict even further from just resolution.

In stark contrast, **almost exactly 30 years ago, the UN General Assembly passed a resolution on 9 November 1976, calling for comprehensive sanctions against the apartheid regime in South Africa** and pointing at the responsibility of multinational and transnational corporations when engaging in business with that apartheid regime. By contrast also, **the Committee against Apartheid and other General Assembly-established bodies actively sought the end to apartheid in South Africa and Namibia.**



The international community in front of the Palestinians people: the UN register forms only a small piece in global complicity wit Israel.

The register fragments the ICJ decision

The statement of the Secretary-General states clearly that "the act of registration of damage, as such, would not entail an evaluation or an assessment of the loss or damage claimed." **The Registry has no remedial purpose** and effectively contradicts the legal values expressed in the ICJ's 2004 Advisory Opinion. By deliberately failing in this essential task, the Secretary-General does more than put the onus on others to repair this omission, but obstructs that task by **seeking a UN endorsement of inadequate measures**, impeding, competing with and making more costly any civil initiative to conduct a proper register of losses and damages. **The setting up of the register will in effect dismantle the ICJ decision and prevent its implementation.**

The register is on the terms of the Occupation

In the past, registries have been set up in contexts that involve mutual political will, or imposed political acquiescence, to remedy the destructive acts of other occupations

and ethnic cleansing. Such registration, compensation and reparation of losses and damages have arisen from post-conflict situations. None of these conditions prevail in the case of the proposed Register related to the ICJ decision on the Wall.

For reasons of "sensitivity," "practicality" and "economy," the Secretary-General even proposes the **UN offices in Vienna (Austria)** as the seat for the Register of Damage. This capitulates to existing or anticipated threats and obstacles by the Occupation on the work of the register. The Secretary-General has retreated from even his January 2005 position that the Register operate in Palestine. The Register staff would need to work locally, in order to evaluate the data collected. The current Secretary-General plan envisions an **unacceptably passive and remote profile and function.**



The commercial area of Barta' (west Jenin) has been completely destroyed for the construction of the Apartheid Wall.

The Registry will be a subsidiary UN organ under the authority of the Secretary-General, with **no reference to reporting to the General Assembly or involvement of qualified UN special mechanisms** (e.g., Special Rapporteurs). Far too often, the Secretary-General, his Special Coordinator in the region and various UN organizations acting in Palestine, have eschewed public international law content and framework for their discourse and engagement in the region, complying with Zionist interests and rhetoric.

What is needed are **guaranteed independent and lawful procedures and decision-making processes in the UN system** with regard to Palestine. The Secretary-General's Register plan epitomizes and underscores that continuing failure.

Autocratic assignments

The Secretary-General clearly has indicated no transparent procedures for the set up of the Register's decision-making Board "whose members would be appointed by the Secretary-General in their personal capacity." The Register's operation would include a small secretariat composed of an executive director, as well as substantive, administrative and technical support staff." The Secretary-General also would appoint all other leadership staff, according to vague criteria.

If the arbitrarily appointed decision-making body lacked proper expertise or local specificity in the planning function, the composition and function of that ad hoc body might bring about the irrevocable loss of essential legal and material values at an early stage either by default or by design.

A Register of Palestinians without Palestinians

The Register's Board, as well as Secretariat, are to develop the criteria and procedures for the Register with the support of field experts. **At no stage does the consultation or participation of Palestinians figure as "experts" or affected community is mentioned.**

According to the existing plan, Palestinians are merely the objects of a media campaign to promote the Register and to ensure their compliance with the constrained will of the UN. The affected population figure only as statistics, and are completely alienated from the process, with no knowledge of the efficacy, truthfulness or purpose of the Register or influence over it. The Register would require Palestinian victims of the Wall to recount only a partial story of approved elements that would prohibit quantification of losses and damages, serve no accountability, preclude remedy and likely remain indefinitely on an office shelf in Vienna.

Minimizing damage calculations

The Register's methodology **disingenuously overlooks the socio-political and macroeconomic consequences of the Wall.** The damages caused by the Wall extend far beyond dunums of land lost and houses demolished. The ghettoization of an entire population brings

NO TO BANTUSTANS! STOP ISRAELI APARTHEID!



TEAR DOWN THE WALL!

www.stopthewall.org - Palestinian grassroots Anti-Apartheid Wall Campaign

with it the destruction of the economy and the impossibility of social development. It destroys social and political structures.

Further, the Registry will document only material damages resulting from construction of the Wall and the associated regime. It is thus **designed not to incorporate sufficiently the codified human rights criteria**. It is also not guaranteed that the list of documented damages will include areas affected on either side of the Wall, for example it may include only those affected inside the "seam zone".

The terms of reference will ensure that **the Registry avoids any evaluation of actual damages, losses or other values**. In fact, the Secretary-General makes clear that the decision on "when and if it would be appropriate for the office of the Register of Damage to engage in a process of verifying the fact and extent of the damage would be taken at a subsequent stage." The Registry would thereby **evade any determination of responsibility** and indefinitely postpone any potential remedy. The Registry would be reduced to **mere information gathering**: it would lack any other practical purpose.

Verification of data would require a thoughtful methodology as well as trained field personnel with local knowledge. Further passage of time will render the efforts more difficult and make an accurate evaluation of damages impossible. If the registry criteria do not include the evaluation of damages from its outset, it would **render the implementation of the ICJ decision concerning restitution effectively impossible**.

Palestine is not for sale!

*The Register, in its current form, is a **token gesture** that allows the UN to appear to implement its responsibilities and institutionalizes further its failure to engage in any meaningful efforts to implement the requirements of its own law and its highest judicial body. It makes the UN irrelevant in the face of the wrongful acts of global powers at the expense of the rights of the Palestinian people, effectively exculpating the responsible parties.*

If the UN Register is not part of the implementation of the ICJ decision, then opposition and a parallel or alternative civil society effort will be necessary. Legitimate representatives of the affected communities must be consulted in the process of developing the Registry's design and oversight.

Since the Nakba, Palestinians have been failed by the UN "registers" which have lacked fair classification and process. Over 750,000 Palestinians were expelled from their homeland in 1948 and have been waiting ever since for concrete support in their struggle and right to return. The UN "registers" have lacked fair classification and insufficient criteria processes, culminating in figures which today are almost 2 million lower than the real refugee population. Above all the UN and the international community have failed to facilitate any activities necessary for the return of the refugees to their lands and communities. After almost 60 years it is evident that the main success of UNWRA's registers and relief lies in improper registration and having reduced the political struggle of the refugees into logistical management of the humanitarian needs of the refugees.

We don't ask another massive aid and registration effort - we ask support for our struggle for Justice and Liberation.

**Palestinian grassroots
Anti-Apartheid Wall Campaign**

**www.stophthewall.org
mobilize@stophthewall.org
phone: +972-2971505 ; fax: +972-2975123**



The people in Izbet at Tabib struggle for the existence of their village slated for destruction under the Apartheid Wall project.