

# "מרחב התפר"

## Israel's Security Fence



PURPOSE | OPERATIONAL CONCEPT | ROUTE | HUMANITARIAN CONCERNS | EXECUTION ASPECTS | Q & A | NEWS BRIEFS

### EXECUTION ASPECTS



Paving a road in the Salem Elkana area - first stage

#### ▣ Execution of the Security Fence project

Execution of the Security Fence project requires treatment and consideration of various aspects:

- [Legal Framework](#)
- [Infrastructure](#)
- [Tenders](#)
- [Land issues](#)
- [Environmental considerations](#)

The entire southern route of the fence from Elkana is being examined in line with the recommendations of the Supreme Court given in its ruling dated June 30th 2004, namely the proper balance between security considerations and humanitarian considerations.



Paving a road in the Salem Elkana area

#### ▣ Legal Framework

Since its birth, the State of Israel has been the target of significant threats to its existence which have been manifested in many ways, including terrorism.

The citizens of Israel have had to live for many years with the reality of suicide terrorism, where bombers blow themselves up in city centers, to an intensity and frequency unprecedented elsewhere around the world. The immediate challenge faced by Israel's security system is, on one hand, the urgent need to act in order to halt the attacks, this being part of the basic responsibility of every state to ensure the security of its citizens. On the other hand, the state must carry out these operations pursuant to the law and within the framework of the rule of law in a democratic state.

In one of his rulings (H.C 3451/02, Almadani v. IDF Commander in Judea and Samaria, 56(3) P.D 30, 34-35.), Judge Aharon Barak, President of the Israel Supreme Court said: "Israel is in a difficult war against rampant terrorism. It is acting on the basis of its right to self-defense... This armed conflict is not undertaken in a normative vacuum. It is undertaken according to the rules of international law, which establish the principles and rules for armed conflicts. The saying that 'when the cannons speak, the Muses are silent' is incorrect... The reason underlying this approach is not merely pragmatic, the result of political and normative reality. The reason underlying this approach is much deeper. It is an expression of the difference between a democratic State fighting for its survival and the battle of terrorists rising up against it. The state is fighting for the law and for the law's protection. The terrorists are fighting against and in defiance of the law. The armed conflict against terrorism is an armed conflict of the law against those who seek to destroy it... But in addition, the State of Israel is a State



Casting a concrete beam



Earth Work



Earth Work



Intrusion detection fence



Jalameh Crossing Point for transfer of goods

Origin: "Bamahana"

Click to enlarge



whose values are Jewish and democratic. Here we have established a State that preserves law that achieves its national goals and the vision of generations, and that does so while recognizing and realizing human rights in general and human dignity in particular. Between these two there are harmony and accord, not conflict and estrangement."

In a book titled **Judgements of the Israel Supreme Court: Fighting Terrorism within the Law**, Judge Aharon Barak said: "Democratic nations should conduct the struggle against terrorism with a proper balance between two conflicting values and principles. On one hand, we must consider the values and principles relating to the security of the state and its citizens. Human rights are not a stage for national destruction: they cannot justify undermining national security in every case and in all circumstances. Similarly, a constitution is not a prescription for national suicide. But on the other hand, we must consider the values and principles relating to human dignity and freedom. National security cannot justify undermining human rights in every case and under all circumstances. National Security does not grant an unlimited license to harm the individual.

The synthesis between national security and individual freedom reflects the rich and fertile character of the principle of rule of law in particular, and of democracy in general. It is within the framework of this approach that the courts in Israel have made their decisions concerning the state's armed conflict against the terrorism that plagues it. Our Supreme Court- which in Israel serves as the court of first instance for complaints against the executive branch- opens its doors to anyone with a complaint about the activities of a public authority. Even if the terrorist activities occur outside Israel or the terrorists are being detained outside Israel, we recognize our authority to hear the issue.

We have recognized the power of the state to protect its security and the security of its citizens on the one hand; on the other hand, we have emphasized that the rights of every individual must be preserved, including the rights of the individual suspected of being a terrorist. The balancing point between the conflicting values and principles is not constant. But rather differs from case to case and from issue to issue. The damage to national security caused by a given terrorist act and the nation's response to that act affect the way the freedom and dignity of the individual are protected.

Any balance that is struck between security and freedom will impose certain limitations on both. A proper balance will not be achieved when human rights are fully protected, as if there were no terrorism. Similarly, a proper balance will not be achieved when national security is afforded full protection, as if there were no human rights. The balance and compromise are the price of democracy. Only a strong, safe, and stable democracy may afford and protect human rights, and only a democracy built on the foundations of human rights can have security. A delicate and sensitive balance is necessary. That is the price of democracy. It is expensive but worthwhile. It strengthens the state. It gives it a reason to its flight." In this legal framework the construction of the Security Fence should be examined. The Security Fence issue stood in all its complexity before the Supreme Court and its judgment on the Beit Sourik petition is a model test case.

The Court accepted the State's claim that the fence was built for reasons of national security. Those reasons could justify taking possession of plots of land in the West Bank. However, even with the authority to build the Fence, the IDF commander still has a legal duty to balance properly between security considerations and humanitarian ones. This duty relates to the question of proportionality, to which the Court devoted the bulk of its discussion. The Court held that the legal duty of proportionality is found in both Israeli administrative law and public international law.

The Court accepted the IDF Commander's position regarding the



Jalameh Crossing Point for transfer of goods

Origin: "Bamahana"

[Click to enlarge](#)



Agricultural gate

security aims of the Fence, rejecting the contrary position of the Council for Peace and Security (a private organization composed of retired military commanders that submitted a brief on the appropriate security aims, and hence the proper path, of the Fence). The court did so because the IDF Commander is accountable to the general public, while the Council is not. The Court ruled, however, that the IDF Commander did not exercise his discretion proportionately. Although he took account of the grave security considerations at stake, he did not take adequate account of the Fence's infringement on the lives of 35,000 local inhabitants. Building the Fence requires seizing thousands of dunams of land. The Fence's current path would separate landowners from tens of thousands of dunams of land, and the planned regime of authorizations to access that land would not substantially reduce the harm. The Fence's current path would generally burden the entire way of life in petitioners' villages. Both petitioners and the Council offered alternative paths. Respondents claimed that those paths would exact substantial costs in terms of national security. The Court held that this reduction in security must be endured for the sake of humanitarian considerations. The additional margin of security achieved by the current path of the Fence is not equal to the current path's additional infringement on the local inhabitants' rights and interests. The current balance between security considerations and humanitarian considerations is disproportionate. The Court ruled that the IDF Commander should reduce the infringement upon the local inhabitants, even if it cannot be totally avoided, by altering the path of the Fence in most areas complained of in the petition.

Given this reasoning, the Court accepted the petition with regard to six of the orders (Order No. 104/03, 103/03, 84/03 (the Western part), 108/03, 109/03, 110/03 (the part concerning Beit Daku village)). Those orders are void due to disproportionality. The petition was denied with regard to one order (Order No. 105/03) concerning the western part of the path. The last order (107/03), concerning Har Adar village, was returned to respondents for further consideration in light of the principles developed in the judgment.

According to the principle of proportionality the entire route of the planned Fence was reviewed and changed.

#### **The Judgment on the Fence Surrounding Alfei Menashe - HCJ 7957/04**

An expanded panel of nine justices of the Supreme Court of Israel handed down its unanimous judgment today (September 15 2005) in a petition dealing with the legality of the security fence in the area of Alfei Menashe. Alfei Menashe is an Israeli community in Samaria, southeast of the Palestinian town of Qalqiliya, approximately 4 km beyond the Green Line. The security fence by Alfei Menashe was built in August 2003, and surrounds Alfei Menashe and five Palestinian villages, creating an "enclave" which "brings" them over to the "Israeli" side of the fence. The enclave is part of the "seamline area" - the area between the fence and the Green Line. The IDF issued "permanent resident cards" to the residents of the villages, which allow them to live in the enclave and travel from it to the rest of the West Bank and back, through a number of gates in the fence. Palestinians who are not residents of the villages are allowed to enter the enclave if they hold permits from IDF forces. The petition was submitted by residents of the villages, with support from the village council heads, and by the Association for Civil Rights in Israel. The petitioners argue that the fence is not legal, and that it should be dismantled and rebuilt on the Green Line. In any case, they contend, there is no justification for including the villages in the enclave. In the petition, which relies upon the Advisory Opinion of the International Court of Justice at the Hague, it is argued that the state is not authorized to erect the fence, due to a lack of security related

necessity and due to the creation of de facto annexation of the enclave territory to the State of Israel. It is also contended that the fence does not satisfy standards of proportionality which were set in the judgment of the Supreme Court of Israel in The Beit Sourik Case (HCJ 2056/04). That is due to the fact that the enclave causes great injury to the residents of the villages. **The state responded that there is a security need for the fence at Alfei Menashe**, and that there is no justification to dismantle it or change its route. **The state did not deny the injury to the Palestinian residents, but claimed a series of improvements in infrastructure and logistics, intended to ease the injury to the residents of the villages, to the extent possible.** In light of these improvements, the state is of the opinion that the fence route balances appropriately between the rights of the residents and the security needs, and that that balance is proportionate.

In the decision, the Court examined the extent to which the Advisory Opinion of the International Court of Justice at the Hague affects the approach of the Supreme Court of Israel regarding the legality of the fence according to international law. The Court expansively discussed the Advisory Opinion, which found that the construction of the fence (the "wall" in its terminology) and the legal regime which accompany it violate international law, as most of the fence passes through the West Bank. The Court found that the normative basis upon which the ICJ and the Supreme Court of Israel in The Beit Sourik Case based their decisions was a common one. Despite a common normative basis, the courts reached different conclusions. The difference in legal conclusions stems primarily from the difference in the factual bases upon which each court decided. The ICJ based its judgment upon the factual basis regarding the injury to the rights of the Palestinian residents, without dealing with the factual basis regarding Israel's security-military need to erect the fence. In contrast, in The Beit Sourik Case, an extensive factual basis was laid before the Court, regarding both the impingement upon the human rights of the local residents and the security-military needs. This comprehensive factual basis allowed the Court to decide that certain segments of the fence violate rules of international law, and that others do not violate those rules. The other difference regards the intensity of the impingement upon the rights of the local residents, as the information relayed to the ICJ contained imprecise information. As a result of the factual basis before the ICJ, full weight was placed on the rights violation side of the scales; no weight was given to the security-military needs; therefore, there was also no discussion of the question of the impingement's proportionality, or of the margin of appreciation. The difference between the ways each court holds proceedings also contributed to the difference between the results. The case before the ICJ regarded the entire fence route. That did not allow particular and separate analysis of the various segments of the fence. The method of the Supreme Court of Israel is different. The Beit Sourik Case dealt with one segment of the fence (40 km long). In other petitions pending before the Court, other segments are being examined. Up until now, about 90 petitions have been submitted; half of them have come to a close, mostly by agreement by the parties after alterations to the fence route; the others will be decided after this judgment. Regarding the effect of the Advisory Opinion upon the approach of the Supreme Court of Israel regarding the legality of the fence, it was held that the Court shall grant full weight to the rules of international law, as developed and interpreted by the ICJ, which is the highest judicial body in international law. In contrast, the ICJ's conclusion, based upon a different factual basis, is not res judicata and does not obligate the Supreme Court of Israel to determine that all segments of the fence violate international law.

The Court proceeded to a specific examination of the fence at Alfei

Menashe. **The Court was convinced that the reason behind the decision to erect the fence was not a political one. The decision to erect the fence at Alfei Menashe, which was made in June 2002, was made in light of the severe terrorism situation which has plagued Israel since September 2000. Security-military considerations prevented building the fence on the Green Line. The Court reached the conclusion that the reason behind building the fence is the security consideration of preventing infiltration by terrorists into Israel and into Israeli communities in the Judea and Samaria area.** The separation fence is a central security component in the fight against terrorism. The fence is inherently temporary. The decision to construct the fence at the Alfei Menashe enclave was therefore within the framework of the military commander's authority. However, the Court was not convinced that the route of the fence is proportionate. The judgment discusses at length the effect of the fence on the daily life of the residents of the villages in the enclave. Its effect on central components of the fabric of life was examined: education, health, employment, movement, and social connections. The Court held that the fence makes the lives of the enclave residents very difficult. It creates a chokehold around the villages. It severely injures the entire fabric of life. Against this background, the Court examined the question whether the injury to the residents of the villages in the enclave is proportionate. The Court rejected the petitioners' argument, by which the state can make due with a fence on the Green Line. **The Court determined that constructing the fence on the Green Line would leave Alfei Menashe on the eastern side of the fence, vulnerable to terrorist attacks. Any route of the fence must take into account the need to provide security to the Israeli residents of Alfei Menashe.** However, the Court found that the present route, which incorporates five villages into the enclave, seems strange. The Court was not convinced that there is a security-military reason to include in the enclave the three villages in its southwest part, instead of keeping them beyond the fence. The fact that a planning scheme has been submitted, by which Alfei Menashe will develop toward the southwest part of the enclave, is not a consideration which is to be taken into account. The northern and northwestern part of the enclave, through which runs highway 55 connecting Alfei Menashe to Israel and which includes two additional villages, is also strange. In this context, the Court mentioned the statement of Colonel (res.) Dan Tirza (head of the administration dealing with the planning of the obstacle route in the seamline area), that the location of highway 55 causes security problems and should be viewed as temporary. In this state of affairs, the Court was not convinced that it is necessary, for security-military reasons, to preserve the present northwest route of the enclave. If the route is changed, it will have the additional effect of removing the two fences which separate Qalqiliya and the town of Habla, south of it, thus reconnecting them as one urban bloc. The Court stated that the necessary effort had not been made to find an alternate route which can ensure security and cause less injury to the residents of the villages; nor had such a route been examined in detail. **The Court ordered the state to reconsider the existing route, and to examine the possibility of removing the enclave villages - all of them, or some of them - from the "Israeli" side of the fence.** As such an alteration cannot be done in one day, the state must consider setting timetables and various sub phases capable of ensuring that the changes in the route are made within a reasonable period.

Thus, the Court issued an order absolute, in the following sense: the state must, within a reasonable period, reconsider the various alternatives for the fence route at Alfei Menashe, while examining security alternatives which injure the daily lives of the residents of the Palestinian villages in the enclave to a lesser extent.

## ▣ Infrastructure

The Security Fence is the biggest Infrastructure project in Israel and as such it uses a lot of the existing infrastructure resources in the State of Israel.

Parameter	Unit	Quantity per 1 km	Total Quantity for 225 km
Digging	M <sup>3</sup>	45,000	10,500,000
Filling	M <sup>3</sup>	40,000	9,000,000
Bedding	M <sup>3</sup>	6,000	1,500,00
Asphalt	M <sup>2</sup>	5,000	1,125,000
Beam	M	1,000	225,000
Pole	unit	300	67,500
Anchor post	unit	300	67,500
Detector post	unit	40	90,000
Wire fence	M <sup>2</sup>	2,500	600,000
Barbed wire	M	12,000	3,000,000
Engineering construction equipment	day		75,000



Earth Work

The Security Fence project is carried out efficiently and in the fastest manner possible.

Its execution should be checked vis-a-vis the following milestones:

April 2002- Government decision to nominate the M.O.D as the organ to carry out the project.

June 2002- Government approval of the route of Stage A (with reservations).

August 2002- Final approval of Stage A. Planned completion date: July 2003

December 2002- Government decision on stage B. Salem towards Beit Shean- through the Jezreel Valley and the Gilboa Mountains. Planned completion date: December 2003.

August 2003- Government decision on 68 km around Jerusalem.

October 2003- Government decision on the route from Elkana towards Carmel (Um Daraj).

30 June 2004- Israel's Supreme Court ruling calling for better balance between security and humanitarian considerations was followed by an intensive reassessment of the route and the necessary changes were made.

20 February 2005- Government approval of the new route.

## ▣ Tenders

According to the Israeli law tenders for infrastructure works were publicly published with a high rate of response from approved contractors.

The route was divided into sub sections allocating each winning contractor to one or more lots according to his proven performance. In case of failure to comply with the requirements listing strict time table and number of engineering equipment on spot, the contractor was replaced by other “stand by” contractors as part of the tender provisions. Today, 22 infrastructure contractors take part in the infrastructure stage (digging, filling, paving asphalt patrol road etc).

#### Intrusion detection fence

Three Israeli companies are approved by the IDF to provide intrusion detection fence, having passed its technical requirements through an extensive two year on site experiment. Of these three companies, Magal Security Systems won the contract for the central section (Salem towards Elkana) and Elbit Systems together with the American company, Detektion, won the contract for the northern and southern sections of Jerusalem.

#### Observation Systems

Procurement of the various observation systems, required by the IDF with varying performance requirements (range, all weather, day/night) was handled according to the MOD's procurement regulations. These include Ortek's, Elbit Systems Ltd. subsidiary, electro optical cameras, IAI's Tamam Division, Plug- in Optronic Payload-POP, Controp's electro optical scanning radar (Spider), and others. Advanced technological systems including Video Motion Detection systems are under consideration and the procurement of tactical aerostats is in progress.

#### ▣ Land Issues

Israel's Supreme Court has already determined that, in the context of self defence, Israel can employ a variety of measures to prevent and deter potential terrorists from carrying out their plans. The Security Fence, which was planned in accordance with accepted legal principles, is one of these preventive measures undertaken in accordance with Israel's inherent right of self-defense and according to article 51 of the UN Declaration.

It is a step taken reluctantly and only after other steps were tried which did not succeed in stopping the terrorism that targets the citizens of Israel. It should be noted that terrorism has been defined by the international community and Amnesty as a crime against humanity. As such, the State of Israel not only has the right but also the obligation to do everything in its power to lessen the impact and scope of terrorism on the citizens of Israel.

Under international law, the authority exists to seize private land when the seizure is “imperatively demanded” by the necessities of self – defence (according to Article 23(g) of the 1907 Hague Regulations which set the basic rules of the Laws of Armed Combat according to international law). It should be noted that this is a recognized exception to the serious ban upon a seizure of private property. Furthermore, this authority has been recognized in a significant number of decisions by Israel's Supreme Court over the years. Additionally, a military commander has the authority to seize property, in accordance with the laws of armed combat, in situations when the military aim is to protect the State of Israel and not only to protect the local residents of the territories.

The Supreme Court has already dealt with a number of appeals regarding the Security Fence and determined that Israel's security authorities were reasonable in the approach they took and the balance

of interests they applied.

In each and every case, before any seizure of property is ordered, the necessity of that act is closely examined by the highest level authorities. After a seizure order has been given, affected residents have seven days to submit objections to military or civil authorities. In all cases objections are handled in an organized procedure carefully examined on their merits.

#### Procedure of filing such an appeal

Upon receiving notice, the landowners have one week in which to file an appeal to the military authorities and the civil administration.

If the objection is rejected there exists an additional period of at least seven days before any work may begin to allow an appeal to be submitted to Israel's High Court of Justice, prior to the execution of the planned work.

In recent months objections have been filed with regard to the path of the Security Fence. In a number of cases, following the filing of appeals to the High Court of Justice, the authorities and the complainants reached agreement regarding alterations of the path and mutual understandings regarding other local considerations. For example, in one case a compromise was arrived at so as to avoid damage to a water reservoir that served farmers in the area between Zayta and Atil. In another case a detailed compromise was reached with the Armenian Patriarch with regard to the use of church-owned lands in the Security Fence surrounding Jerusalem.

It is not always feasible to avoid negatively affecting the interests of the residents. However, owners of seized property are offered compensation in accordance with the law for the use of the land.

#### ▣ Environmental considerations

It should be noted that landscape architects were part of the planning team and their recommendations were taken into account in the decision making process concerning the route , in order to minimize damage to the landscape and its vegetation.

The area of the Security Fence is abundant with olive trees, vital for the Palestinian farmers's living.

A built- in mechanism in the construction work provides for the uprooting and relocation of these trees to areas where they can continue to grow and be cultivated and, at the same time not leaving the area barren.

This same humanitarian and "green" thinking is reflected in a special operation conducted in an area where a unique plant grows. Thousands of Iris bulbs were dug from the planned Security Fence and replanted outside it in order to preserve the beauty of the Iris.

Attention has been paid to water reservoirs, wells and pipes and accordingly, rusty pipes have been replaced by new ones and laid down underneath the Security Fence so that they will not be damaged. Special attention has been paid to the restoration of the area and once earthwork has been completed, restoration activity took place in order to restore the area to its former state, as much as possible.

#### Archaeological Sites

The most prominent of these sites is an old Egyptian city near Shuweike. During the planning process 15 archaeological sites were discovered and the manner in which they were treated depended on the

professional instructions given by the Archaeological Authority. Accordingly, in some sites the route was changed and in others, rescue excavations were conducted.



Olive grove



Archaeological site



Water drainage

**This page was last updated on 15.09.2005**

Copyright © 2003, The State of Israel. All Rights Reserved.