HCJ 2056/04

Beit Sourik Village Council
v.
1. The Government of Israel
2. Commander of the IDF Forces in the West Bank

The Supreme Court Sitting as the High Court of Justice

[February 29, 2004; March 11, 2004; March 17, 2004; March 31, 2004; April 16, 2004; April 21, 2004; May 2, 2004]

Before President A. Barak, Vice-President E. Mazza, and Justice M. Cheshin

Petition for an *Order Nisi*.
For petitioners—Mohammed Dahla
For respondents—Anar Helman, Yuval Roitman

JUDGMENT

President A. Barak

The Commander of the IDF Forces in Judea and Samaria issued orders to take possession of plots of land in the area of Judea and Samaria. The purpose of the seizure was to erect a separation fence on the land. The question before us is whether the orders and the fence are legal.

Background

1. Since 1967, Israel has been holding the areas of Judea and Samaria [hereinafter – the area] in belligerent occupation. In 1993 Israel began a political process with the PLO, and signed a number of agreements transferring control over parts of the area to the Palestinian Authority. Israel and the PLO continued political negotiations in an attempt to solve the remaining problems. The negotiations, whose final stages took place at Camp David in Maryland, USA, failed in July 2000.

From respondents' affidavit in answer to *order nisi* we learned that, a short time after the failure of the Camp David talks, the Israeli-Palestinian conflict reached new heights of violence. In September 2000, the Palestinian side began a campaign of terror against Israel and Israelis. Terror attacks take place both in the area and in Israel. They are directed against citizens and soldiers, men and women, elderly and infants, regular citizens and public figures. Terror attacks are carried out everywhere: in public transportation, in shopping centers and markets, in coffee houses and in restaurants. Terror organizations use gunfire attacks, suicide attacks, mortar fire, Katyusha rocket fire, and car bombs. From September 2000 until the beginning of April 2004, more than 780 attacks were carried out within Israel. During the same period, more than 8200 attacks were carried out in the area.

The armed conflict claimed (as of April 2004) the lives of 900 Israeli citizens and residents. More than 6000 were injured, some with serious wounds that have left them severely handicapped. The armed conflict has left many dead and wounded on the Palestinian side as well. Bereavement and pain wash over us.

In HCJ 7015/02 *Ajuri v. IDF Commander*, at 358, I described the security situation:

> Israel's fight is complex. Together with other means, the Palestinians use guided human bombs. These suicide bombers reach every place that Israelis can be found (within the boundaries of the State of Israel and in the Jewish communities in Judea and Samaria and the Gaza Strip). They sew destruction and spill blood in the cities and towns. The forces fighting against Israel are terrorists: they are not members of a regular army; they do not wear uniforms; they hide among the civilian Palestinian population in the territories, including inside holy sites; they are supported by part of the civilian population, and by their families and relatives.

2. These terror acts have caused Israel to take security precautions on several levels. The government, for example, decided to carry out various military operations, such as operation "Defensive Wall" (March 2002) and operation "Determined Path" (June 2002). The objective of these military actions was to defeat the Palestinian terrorist infrastructure and to prevent terror attacks. *See* HCJ 3239/02 *Marab v. IDF Commander in the West Bank*, at 355; HCJ 3278/02 *Center for Defense of the Individual v. IDF Commander*, at 389. These combat operations – which are not regular police operations, but embody all the characteristics of armed conflict – did not provide a sufficient answer to the immediate need to stop the terror. The Ministers' Committee on National Security considered a list of steps intended to prevent additional terror acts and to deter potential terrorists from participating in such acts. *See Ajuri*, at 359. Despite all these measures, the terror did not come to an end. The attacks

did not cease. Innocent people paid with both life and limb. This is the background behind the decision to construct the separation fence.

The Decision to Construct the Separation Fence

3. The Ministers' Committee for National Security reached a decision (on April 14, 2002) regarding deployment in the "Seamline Area" between Israel and the area. *See* HCJ 8532/02 *Ibraheem v. Commander of the IDF Forces in the West Bank*. The purpose behind the decision was "to improve and strengthen operational capability in the framework of fighting terror, and to prevent the penetration of terrorists from the area of Judea and Samaria into Israel." The IDF and the police were given the task of preventing the passage of Palestinians into the State of Israel. As a temporary solution, it was decided to erect an obstacle in the three regions found to be most vulnerable to the passage of terrorists into the Israel: the Umm El-Fahm region and the villages divided between Israel and area (Baka and Barta'a); the Qalqilya-Tulkarm region; and the Greater Jerusalem region. It was further decided to create a team of Ministers, headed by the Prime Minister, which would examine long-term solutions to prevent the infiltration of Palestinians, including terrorists, into Israel.

4. The Government of Israel held deliberations on the "Seamline Area" program (June 23, 2002). The armed services presented their proposal to erect an obstacle on the "Seamline." The government approved stage 1 of the project, which provides a solution to the operational problem of terrorist infiltration into the north of the country, the center of the country and the Jerusalem area. The obstacle that was approved begins in the area of the Salam village, adjacent to the Meggido junction, and continues until the trans-Samaria road. An additional obstacle in the Jerusalem area was also approved. The entire obstacle, as approved, is 116 km long. The government decision provided:

> (3) In the framework of stage 1 – approval of the security fences and obstacles in the "Seamline Area" and in Greater Jerusalem, for the purpose of preventing the penetration of terrorists from the area of Judea and Samaria into Israel.
>
> (4) The fence, like the other obstacles, is a security measure. Its construction does not mark a national border or any other border.
>
> ….
>
> (6) The precise and final location of the fence will be established by the Prime Minister and the Minister of Defense … the final location will be presented before the Ministers' Committee on National Security or before the government.

5. The Ministers' Committee on National Security approved (August 14, 2002) the final location of the obstacle. The Prime Minister and the Minister of Defense approved (December 2002) stage 2 of the obstacle from Salam village east to the Jordan River, 60 km long, and an extension, a few kilometers long, from Mount Avner (adjacent to El-Mouteelah village) in the Southern Gilboa range to the village of Tayseer.

6. The Ministers' Committee on National Security decided (on September 5, 2003) to construct stage 3 of the obstacle in the Greater Jerusalem area (except in the Ma'ale Adumim area). The length of this obstacle is 64 km. The government, on October 1, 2003, set out its decision regarding stages 3 and 4 of the obstacle:

> A. The Government reiterates its decision regarding the importance of the "Seamline Area" and emphasizes the security need for the obstacle in the "Seamline Area" and in "Greater Jerusalem."
>
> B. Therefore:
>
> 1. We approve the construction of the obstacle for the prevention of terror activities according to the stages and location as presented today before us by the armed forces (the map of the stages and location of the fence is on file in the government secretariat).
>
> 2. The obstacle that will be erected pursuant to this decision, like other segments of the obstacle in the "Seamline Area," is a security measure for the prevention of terror attacks and does not mark a national border or any other border.
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> 3. Local changes, either of the location of the obstacle or of its implementation, will be brought before the Minister of Defense and the Prime Minister for approval.
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> 4. The Prime Minister, the Minister of Defense, and the Finance Minister shall calculate the budget necessary for implementation of this decision as well as its financial schedule. The computation shall be brought before the government for approval.

> 5. In this framework, additional immediate security steps for the defense of Israelis in Judea and Samaria during the period of construction of the obstacle in the "Seamline Area" shall be agreed upon.
>
> 6. During the planning, every effort shall be made to minimize, to the extent possible, the disturbances to the daily lives of the Palestinians due to the construction of the obstacle.

The location of this fence, which passes through areas west of Jerusalem, stands at the heart of the dispute between the parties.

The Separation Fence

7. The "Seamline" obstacle is composed of several components. In its center stands a "smart" fence. The purpose of the fence is to alert the forces deployed along its length of any attempt at infiltration. On the fence's external side lies an anti-vehicle obstacle, composed of a trench or another means, intended to prevent vehicles from breaking through the fence by slamming up against it. There is an additional delaying fence. Near the fence a service road is paved. On the internal side of the electronic fence, there are a number of roads: a dirt road (for the purpose of discovering the tracks of those who pass the fence), a patrol road, and a road for armored vehicles, as well as an additional fence. The average width of the obstacle, in its optimal form, is 50 – 70 meters. Due to constraints, a narrower obstacle, which includes only the components supporting the electronic fence, will be constructed in specific areas. In certain cases the obstacle can reach a width of 100 meters, due to topographical conditions. In the area relevant to this petition, the width of the obstacle will not exceed 35 meters, except in places where a wider obstacle is necessary for topographical reasons. In the area relevant to this petition, the fence is not being replaced by a concrete wall. Efforts are being made to minimize the width of the area of which possession will be taken *de facto.* Various means to help prevent infiltration will be erected along the length of the obstacle. The IDF and the border police will patrol the separation fence, and will be called to locations of infiltration, in order to frustrate the infiltration and to pursue those who succeed in crossing the security fence. Hereinafter, we will refer to the entire obstacle on the "Seamline" as "the separation fence."

The Seizure Proceedings

8. Parts of the separation fence are being erected on land which is not privately owned. Other parts are being erected on private land. In such circumstances – and in light of the security necessities – an order of seizure is issued by the Commander of the IDF Forces in the area of Judea and Samaria

(respondent 2). Pursuant to standard procedure, every land owner whose land is seized will receive compensation for the use of his land. After the order of seizure is signed, it is brought to the attention of the public, and the proper liaison body of the Palestinian Authority is contacted. An announcement is relayed to the residents, and each interested party is invited to participate in a survey of the area affected by the order of seizure, in order to present the planned location of the fence. A few days after the order is issued, a survey is taken of the area, with the participation of the landowners, in order to point out the land which is about to be seized.

After the survey, a one week leave is granted to the landowners, so that they may submit an appeal to the military commander. The substance of the appeals is examined. Where it is possible, an attempt is made to reach understandings with the landowners. If the appeal is denied, leave of one additional week is given to the landowner, so that he may petition the High Court of Justice.

The Petition

9. The petition, as originally worded, attacked the orders of seizure regarding lands in the villages of Beit Sourik, Bidu, El Kabiba, Katane, Beit A'anan, Beit Likia, Beit Ajaza and Beit Daku. These lands are adjacent to the towns of Mevo Choron, Har Adar, Mevasseret Zion, and the Jerusalem neighborhoods of Ramot and Giv'at Zeev, which are located west and northwest of Jerusalem. Petitioners are the landowners and the village councils affected by the orders of seizure. They argue that the orders of seizure are illegal. As such, they should be voided or the location of the separation fence should be changed. The injury to petitioners, they argue, is severe and unbearable. Over 42,000 dunams of their lands are affected. The obstacle itself passes over 4,850 dunams, and will separate between petitioners and more than 37,000 dunams, 26,500 of which are agricultural lands that have been cultivated for many generations. Access to these agricultural lands will become difficult and even impossible. Petitioners' ability to go from place to place will depend on a bureaucratic permit regime which is labyrinthine, complex, and burdensome. Use of local water wells will not be possible. As such, access to water for crops will be hindered. Shepherding, which depends on access to these wells, will be made difficult. Tens of thousands of olive and fruit trees will be uprooted. The fence will separate villages from tens of thousands of additional trees. The livelihood of many hundreds of Palestinian families, based on agriculture, will be critically injured. Moreover, the separation fence injures not only landowners to whom the orders of seizure apply; the lives of 35,000 village residents will be disrupted. The separation fence will harm the villages' ability to develop and expand. The access roads to the urban centers of Ramallah and Bir Naballa will be blocked off. Access to medical and other services in East Jerusalem and in other places will become impossible. Ambulances will encounter difficulty in providing emergency services to residents. Children's access to schools in the

urban centers, and of students to universities, will be impaired. Petitioners argue that these injuries cannot be justified.

10. Petitioners' argument is that the orders are illegal in light of Israeli administrative law, and in light of the principles of public international law which apply to the dispute before us. First, petitioners claim that respondent lacks the authority to issue the orders of seizure. Were the route of the separation fence to pass along Israel's border, they would have no complaint. However, this is not the case. The route of the separation fence, as per the orders of seizure, passes through areas of Judea and Samaria. According to their argument, these orders alter the borders of the West Bank with no express legal authority. It is claimed that the separation fence annexes areas to Israel in violation of international law. The separation fence serves the needs of the occupying power and not the needs of the occupied area. The objective of the fence is to prevent the infiltration of terrorists into Israel; as such, the fence is not intended to serve the interests of the local population in the occupied area, or the needs of the occupying power in the occupied area. Moreover, military necessity does not require construction of the separation fence along the planned route. The security arguments guiding respondents disguise the real objective: the annexation of areas to Israel. As such, there is no legal basis for the construction of the fence, and the orders of seizure which were intended to make it possible are illegal. Second, petitioners argue that the procedure for the determination of the route of the separation fence was illegal. The orders were not published and were not brought to the knowledge of most of the affected landowners; petitioners learned of them by chance, and they were granted extensions of only a few days for the submission of appeals. Thus, they were not allowed to participate in the determination of the route of the separation fence, and their arguments were not heard.

11. Third, the separation fence violates many fundamental rights of the local inhabitants, illegally and without authority. Their right to property is violated by the very taking of possession of the lands and by the prevention of access to their lands. In addition, their freedom of movement is impeded. Their livelihoods are hurt and their freedom of occupation is restricted. Beyond the difficulties in working the land, the fence will make the trade of farm produce difficult. The fence detracts from the educational opportunities of village children, and throws local family and community life into disarray. Freedom of religion is violated, as access to holy places is prevented. Nature and landscape features are defaced. Petitioners argue that these violations are disproportionate and are not justified under the circumstances. The separation fence route reflects collective punishment, prohibited by international law. Thus, respondent neglects the obligation, set upon his shoulders by international law, to make normal and proper life possible for the inhabitants of Judea and Samaria. The security considerations guiding him cannot, they claim, justify such severe injury to the local inhabitants. This injury does not fulfill the requirements of proportionality. According to their argument, despite the language of the orders of

seizure, it is clear that the fence is not of a temporary character, and the critical wound it inflicts upon the local population far outweighs its benefits.

The Response to the Petition

12. Respondents, in their first response, argued that the orders of seizure and the route through which the separation fence passes are legal. The separation fence is a project of utmost national importance. Israel is in the midst of actual combat against a wave of terror, supported by the Palestinian population and leadership. At issue are the lives of the citizens and residents of Israel, who are threatened by terrorists who infiltrate into the territory of Israel. At issue are the lives of Israeli citizens residing in the area. The construction of the separation fence system must be completed with all possible speed. The separation fence has already proved its efficacy in areas where it has been erected. It is urgent that it also be erected in the region of petitioners' villages. Respondents claim that a number of terror attacks against Jerusalem and against route no. 443, which connects Jerusalem and the city of Modi'in, have originated in this area. The central consideration in choosing the route of the separation fence was the operational-security consideration. The purpose of the fence is to prevent the uncontrolled passage of residents of the area into Israel and into Israeli towns located in the areas. The separation fence is also intended to prevent the smuggling of arms, and to prevent the infiltration of Palestinians, which will likely to lead to the establishment of terror cells in Israel and to new recruits for existing cells. Additionally, the forces acting along the obstacle, and Israeli towns on both sides of it, must be protected. As dictated by security considerations, the area of the separation fence must have topographic command of its surroundings. This is in order to allow surveillance and to prevent attacks upon the forces guarding it. To the extent possible, a winding route must be avoided. In addition, a "security zone" is required to provide warning of possible terrorist infiltration into Israel. Thus, in appropriate places, in order to make pursuit possible in the event of infiltration, the fence must pass through the area. An additional security consideration is the fact that, due to construction of the obstacle, attempted attacks will be concentrated on Israeli towns adjacent to the fence, which also must be protected.

13. Respondents explain that, in planning the route of the separation fence, great weight was given to the interests of the residents of the area, in order to minimize, to the extent possible, the injury to them. Certain segments of the fence are brought before the State Attorney for prior examination and, if necessary, before the Attorney-General as well. An effort is being made to lay the obstacle along property that is not privately owned or agriculturally cultivated; consideration is given to the existing planning schemes of Palestinian and Israeli towns; an effort is being made to refrain from cutting lands off from their owners. In the event of such a cutoff, agricultural gateways will allow farmers access to their lands. New roads will be paved which will provide for the needs of the residents. In cases where

damage cannot be avoided, landowners will be compensated for the use of their seized lands. Efforts will be made to transfer agricultural crops instead of cutting them down. Prior to seizure of the land, the inhabitants will be granted the opportunity to appeal. Respondents assert that they are willing to change the route in order to minimize the damage. Respondents declared, in addition, that they intend to erect permanent checkpoints east of certain villages, which will be open 24 hours a day, every day of the year, and which will allow the preservation of the fabric of life in the area. It has also been decided to improve the road system between the villages involved in this petition, in order to tighten the bonds between them, and between them and Ramallah. Likewise, the possibility of paving a road to enable free and speedy passage from the villages to Ramallah is being examined. All these considerations were taken into account in the determination of the route. The appeals of local inhabitants injured by the route are currently being heard. All this, claim respondents, amounts to a proper balance between consideration for the local inhabitants and between the need to protect the lives of Israeli citizens, residents, and soldiers.

14. Respondents claim that the process of seizure was legal. The seizure was brought to the knowledge of petitioners, and they were given the opportunity to participate in a survey and to submit appeals. The contractors responsible for building the obstacle are instructed to move (as opposed to cutting down) trees wherever possible. This is the current practice regarding olive trees. Some buildings, in cooperation with landowners to the extent possible, are taken down and transferred to agreed locations. Respondents argue that the inhabitants did not always take advantage of the right to have their arguments heard.

15. Respondent's position is that the orders of seizure are legal. The power to seize land for the obstacle is a consequence of the natural right of the State of Israel to defend herself against threats from outside her borders. Likewise, security officials have the power to seize lands for combat purposes, and by the laws of belligerent occupation. Respondents do not deny the need to be considerate of the injury to the local population and to keep that injury proportionate; their claim is that they fulfill these obligations. Respondents deny the severity of the injury claimed by petitioners. The extent of the areas to be seized for the building of the fence, the injury to agricultural areas, and the injury to trees and groves, are lesser – by far – than claimed. All the villages are connected to water systems and, as such, damage to wells cannot prevent the supply of water for agricultural and other purposes. The marketing of agricultural produce will be possible even after the construction of the fence. In each village there is a medical clinic, and there is a central clinic in Bidu. A few archeological sites will find themselves beyond the fence, but these sites are neglected and not regularly visited. The educational needs of the local population will also be taken into account. Respondents also note that, in places where the separation fence causes injury to the local population, efforts are being made to minimize that injury. In light of all this, respondents argue that the petitions should be denied.

The Hearing of the Petition

16. Oral arguments were spread out over a number of hearings. During this time, the parties modified the formulation of their arguments. In light of these modifications, respondent was willing to allow changes in part of the route of the separation fence. In certain cases the route was changed *de facto*. Thus, for example, it was changed next to the town of Har Adar, and next to the village of Beit Sourik. This Court (President A. Barak, Vice-President (ret.) T. Or, and Vice-President E. Mazza) heard the petition (on February 29, 2004). The remainder of the hearing was postponed for a week in order to allow the sides to take full advantage of their right to have their arguments heard and to attempt to reach a compromise. We ordered that no work on the separation fence in the area of the petition be done until the next hearing.

The next hearing of the petition was on March 17, 2004. Petitioners submitted a motion to file additional documents, the most important of which was an affidavit prepared by members of the Council for Peace and Security, which is a registered society of Israelis with a background in security, including high ranking reserve officers, including Major General (res.) Danny Rothchild, who serves as president of the Council, Major General (res.) Avraham Adan (Bren), Commissioner (emeritus) Shaul Giv'oli, who serves as the general manager of the Council, and Colonel (res.) Yuval Dvir. The affidavit was signed by A. Adan, S. Giv'oli and Y. Dvir. The society, which sees itself as nonpartisan, was, it argued, among the first to suggest a separation fence as a solution to Israel's security needs. The affidavit included detailed and comprehensive comments regarding various segments of this route, and raised reservations about them from a security perspective. The claims in the affidavit were serious and grave. After reading them, we requested (on March 17, 2004) the comments of Respondent, The Commander of IDF Forces in the area of Judea and Samaria, Lieutenant-General Moshe Kaplinsky.

17. This Court (President A. Barak, Vice-President E. Mazza, and Justice M. Cheshin) resumed the hearing of the petition (on March 31, 2004). Just prior to reconvening, we granted (on March 23, 2004) petitioners' motion to amend their petition such that it would include additional orders issued by respondent: Tav/110/03 (concerning the area located north of the Beit Daku village in the Giv'at Ze'ev area); Tav/104/03 and Tav/105/03 (concerning areas located southeast of the town of Maccabim and south of the village of Beit Lakia). After we heard (on March 31, 2004) the parties' arguments, we decided to issue an *order nisi*, to the extent relevant to the villages and petitioners, and to narrow the application of the temporary injunction, such that it would not apply to the segment between Beit Ajaza and New Giv'on, and the segment between the Beit Chanan riverbed and the ascent to Jebel Muktam. We further decided to narrow the injunction, such that respondent would refrain from making irrevocable changes in the segment north of Har Adar, and in the segment between the villages of A-

Tira and Beit Daku. We have noted respondents' announcement that if it turns out that the building of the obstacle at these locations was illegal, proper compensation will be given to all who suffered injury. *See* our order of March 31, 2004. We continued to hear the arguments of the parties (on April 16, April 21, and May 2, 2004). Petitioners submitted an alternate route for construction of the separation fence. Additional affidavits were submitted by the Council for Peace and Security and by respondent. An opinion paper on the ecological effects of the route of the fence was submitted for our review. Pursuant to our request, detailed relief models representing the topography of the area through which the obstacle passes were submitted. The relief models showed the route of the obstacle, as set out by respondent, as well as the alternate routes proposed by petitioners. In addition, a detailed aerial photograph of these routes was submitted.

18. Members of the Council for Peace and Security moved to be joined as *amici curiae*. Pursuant to the stipulation of the parties, an additional affidavit (of April 15, 2004) submitted (by Major General (res.) D. Rothchild who serves as the president of the council, as well as by A. Adan, S. Giv'oli and Y. Dvir) was joined to the petition, without ruling that this position was identical to petitioners'. In the opinion of the council members, the separation fence must achieve three principle objectives: it must serve as an obstacle to prevent, or at least delay, the entry of terrorists into Israel; it must grant warning to the armed forces in the event of an infiltration; and it must allow control, repair, and monitoring by the mobile forces posted along it. In general, the fence must be far from the houses of the Palestinian villages, not close to them. If the fence is close to villages, it is easier to attack forces patrolling it. Building the fence in the manner set out by respondent will require the building of passages and gateways, which will engender friction; the injury to the local population and their bitterness will increase the danger to security. Such a route will make it difficult to distinguish between terrorists and innocent inhabitants. Thus, the separation fence must be distanced from the Palestinian homes, and transferred, accordingly, to the border of the area of Judea and Samaria. In their opinion, the argument that the fence must be built at a distance from Israeli towns in order to provide response time in case of infiltration, can be overcome by the reinforcement of the obstacle near Israeli towns. Distancing the planned route from Israeli towns in order to seize distant hilltops with topographical control is unnecessary, and has serious consequences for the length of the separation fence, its functionality, and for attacks on it. In an additional affidavit (from April 18, 2004), members of The Council for Peace and Security stated that the desire of the commander of the area to prevent direct flat-trajectory fire upon the separation fence causes damage from a security perspective. Due to this desire, the fence passes through areas that, though they have topographical control, are superfluous, unnecessarily injuring the local population and increasing friction with it, all without preventing fire upon the fence.

19. Petitioners, pointing to the affidavits of the Council for Peace and Security, argue that the route of the separation fence is disproportionate. It does not serve the security objectives of Israel, since

establishing the route adjacent to the houses of the Palestinians will endanger the state and her soldiers who are patrolling along the fence, as well as increasing the general danger to Israel's security. In addition, such a route is not the least injurious means, since it is possible to move the route farther away from petitioners' villages and closer to Israel. It will be possible to overcome the concern about infiltration by reinforcing the fence and its accompanying obstacles.

20. Respondent recognizes the security and military experience of those who signed the affidavit. However, he emphasizes that the responsibility for protecting the residents of Israel from security threats remains on his shoulders and on those of the security officials. The disagreement is between experts on security. Regarding such a disagreement, the opinion of the expert who is also responsible for security bears the greater weight. Respondent accepts that the border between Israel and Judea and Samaria must be taken into consideration when establishing the route of the separation fence, in order to minimize injury to residents of the area and to the fabric of their lives. He argues, however, that the border is a political border and not a security border. The security objective of the fence is not only to separate Israel from the residents of the area of Judea and Samaria, it must also ensure a security zone to allow the pursuit of terrorists who cross the separation fence before they enter Israel. The fence route must prevent direct fire by the Palestinians, it must protect the soldiers guarding the fence, and must also take topographical considerations into account. In light of all this, it is proper, under appropriate circumstances, to move the route of the separation fence within the areas of Judea and Samaria. The military commander concedes that moving the separation fence proximate to houses of Palestinians is likely to cause difficulties, but this is only one of the considerations which must be taken into account. Reinforcement of the fence adjacent to Israeli towns does not provide a solution to the danger of shooting attacks, and does not prevent infiltration into them. Likewise, such a step does not take into consideration the engineering issues of moving the route of the fence. Regarding the route of the fence itself, respondent notes that, after examining the material before him, he is willing to change part of the route. This is especially so regarding the route adjacent to the town of Har Adar and east of it, adjacent to the villages of Beit Sourik and Bidu. The remainder of the route proposed by petitioners does not provide an appropriate solution to the security needs that the fence is intended to provide.

21. Parties presented arguments regarding the environmental damage of the separation fence. Petitioners submitted, for our review, expert opinion papers (dated April 15, 2004), which warn of the ecological damage that will be caused by the separation fence. The separation fence route will damage animal habitats and will separate animal populations from vegetation, damaging the ecosystem in the area. The longer and wider the route of the fence, the more severe the damage. Therefore, it is important to attempt to shorten the route of the fence, and to avoid unnecessary curves. The building of passageways for small animals into the fence, such as pipes of 20-30 cm. diameter, should be considered. The fence will also mar virgin landscape that has remained untouched for millennia.

Respondents replied with an opinion paper prepared by an expert of the Nature and Parks Authority. It appears, from his testimony, that there will indeed be ecological damage, but the damage will be along any possible route of the fence. It would have been appropriate to maintain passageways in the separation fence for small animals, but that proposal was rejected by the security agencies and is, in any case, irrelevant to the question of the route. From the testimony it also appears that representatives of the Nature and Parks Agency are involved in the planning of the fence route, and efforts are being made to minimize ecological damage.

22. A number of residents of Mevasseret Zion, which is adjacent to the Beit Sourik village, requested to join as petitioners in this petition. They claim that the fence route should be immediately adjacent to the green line, in order to allow residents of the Beit Sourik village to work their land. In addition, they claim that the gates which will allow the passage of farmers are inefficient, that they will obstruct access to the fields, and that they will violate the farmer's dignity. Furthermore, they point out the decline of relations with the Palestinian population in the area which, as a consequence of the desire to construct the separation fence on its land, has turned from a tranquil population into a hostile one. On the opposing side, Mr. Efraim Halevy requested to join as a respondent in the petition. He argues that moving the route of the fence adjacent to the Green Line will endanger the residents of Mevasseret Zion. It will bring the route closer to the houses and schools in the community. He also points out the terrorist activity which has taken place in the past in the Beit Sourik area. Thus, the alternate route proposed by petitioners should be rejected. He claims that this position reflects the opinions of many residents of Mevasseret Zion. After reading the motions, we decided to accept them, and we considered the arguments they presented.

The Normative Framework

23. The general point of departure of all parties – which is also our point of departure – is that Israel holds the area in belligerent occupation (*occupatio bellica*). *See* HCJ 619/78 *"El Tal'ia" Weekly v. Minister of Defense*; HCJ 69/81 *Abu Ita v. Commander of the Area of Judea and Samaria*; HCJ 606/78 *Ayoob v. Minister of Defense*; HCJ 393/82 *Jam'iat Ascan Elma'almoon Eltha'aooniah Elmahduda Elmaolieh v. Commander of the IDF Forces in the Area of Judea and Samaria*. In the areas relevant to this petition, military administration, headed by the military commander, continues to apply. *Compare* HCJ 2717/96 *Wafa v. Minister of Defense* (application of the military administration in "Area C"). The authority of the military commander flows from the provisions of public international law regarding belligerent occupation. These rules are established principally in the Regulations Concerning the Laws and Customs of War on Land, The Hague, 18 October 1907 [hereinafter – the Hague Regulations]. These regulations reflect customary international law. The military commander's authority is also anchored in IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War 1949.

[hereinafter – the Fourth Geneva Convention]. The question of the application of the Fourth Geneva Convention has come up more than once in this Court. *See* HCJ 390/79 *Duikat v. Government of Israel*; HCJ 61/80 *Haetzni v. State of Israel*, at 597. The question is not before us now, since the parties agree that the humanitarian rules of the Fourth Geneva Convention apply to the issue under review. *See* HCJ 698/80 *Kawasme v. Minister of Defense*; *Jam'iyat Ascan*, at 794; *Ajuri*, at 364; HCJ 3278/02 *Center for the Defense of the Individual v. Commander of the IDF Forces in the West Bank Area*, at 396. *See also* Meir Shamgar, *The Observance of International Law in the Administered Territories*, 1 Israel Yearbook on Human Rights 262 (1971).

24. Together with the provisions of international law, "the principles of the Israeli administrative law regarding the use of governing authority" apply to the military commander. *See Jam'iyat Ascan*, at 793. Thus, the norms of substantive and procedural fairness (such as the right to have arguments heard before expropriation, seizure, or other governing actions), the obligation to act reasonably, and the norm of proportionality apply to the military commander. *See Abu Ita*, at 231; HCJ 591/88 *Taha v. Minister of Defense*, at 52; *Ajuri*, at 382; HJC 10356/02 *Hess v. Commander of the IDF Forces in the West Bank*. Indeed, "[e]very Israeli soldier carries, in his pack, the provisions of public international law regarding the laws of war and the basic provisions of Israeli administrative law." *Jam'iyat Ascan*, at 810.

25. This petition raises two separate questions. The first question: is the military commander in Judea and Samaria authorized, by the law applying to him, to construct the separation fence in Judea and Samaria? An affirmative answer to this question raises a second question concerning the location of the separation fence. Both questions were raised before us in the petition, in the response, and in the parties' arguments. The parties, however, concentrated on the second question; only a small part of the arguments before us dealt with the first question. The question of the authority to erect the fence in the area is complex and multifaceted, and it did not receive full expression in the arguments before us. Without exhausting it, we too shall occupy ourselves briefly with the first question, dealing only with the arguments raised by the parties, and will then move to focus our discussion on the second question.

Authority to Erect the Separation Fence

26. Petitioners rest their assertion that the military commander does not have authority to construct the fence on two claims. The first is that the military commander does not have the authority to order construction of the fence since his decision is founded upon political – and not military – considerations.

27. We accept that the military commander cannot order the construction of the separation fence if his reasons are political. The separation fence cannot be motivated by a desire to "annex" territories to

the state of Israel. The purpose of the separation fence cannot be to draw a political border. In *Duikat*, at 17, this Court discussed whether it is possible to seize land in order to build a Jewish civilian town, when the purpose of the building of the town is not the security needs and defense of the area (as it was in *Ayoob*), but rather based upon a Zionist perspective of settling the entire land of Israel. This question was answered by this Court in the negative. The Vice-President of this Court, Justice Landau, quoted the Prime Minister (the late Mr. Menachem Begin), regarding the right of the Jewish people to settle in Judea and Samaria. In his judgment, Justice Landau stated:

> The view regarding the right of the Jewish people, expressed in these words, is built upon Zionist ideology. However, the question before this Court is whether this ideology justifies the taking of the property of the individual in an area under control of the military administration. The answer to that depends upon the interpretation of article 52 of the Hague Regulations. It is my opinion that the needs of the army mentioned in that article cannot include, by way of any reasonable interpretation, national security needs in broad meaning of the term.

In the same spirit I wrote, in *Jam'iyat Ascan*, at 794, that

> The military commander is not permitted to take the national, economic, or social interests of his own country into account . . . even the needs of the army are the army's military needs and not the national security interest in the broad meaning of the term.

In *Jam'iyat Ascan,* we discussed whether the military commander is authorized to expand a road passing through the area. In this context I wrote, at 795:

> The military administration is not permitted to plan and execute a system of roads in an area held in belligerent occupation, if the objective is only to construct a "service road" for his own country. The planning and execution of a system of roads in an occupied territory can be done for military reasons . . . the planning and execution of a system of roads can be done for reasons of the welfare of the local population. This planning and execution cannot be done in order to serve the occupying country.

Indeed, the military commander of territory held in belligerent occupation must balance between the needs of the army on one hand, and the needs of the local inhabitants on the other. In the framework of this delicate balance, there is no room for an additional system of considerations, whether they be political considerations, the annexation of territory, or the establishment of the permanent borders of the state. This Court has emphasized time and time again that the authority of the military commander is

inherently temporary, as belligerent occupation is inherently temporary. Permanent arrangements are not the affair of the military commander. True, the belligerent occupation of the area has gone on for many years. This fact affects the scope of the military commander's authority. *See Jam'iyat Ascan*, at 800. The passage of time, however, cannot extend the authority of the military commander and allow him to take into account considerations beyond the proper administration of the area under belligerent occupation.

28. We examined petitioners' arguments, and have come to the conclusion, based upon the facts before us, that the fence is motivated by security concerns. As we have seen in the government decisions concerning the construction of the fence, the government has emphasized, numerous times, that "the fence, like the additional obstacles, is a security measure. Its construction does not express a political border, or any other border." (decision of June 23, 2002). "The obstacle that will be erected pursuant to this decision, like other segments of the obstacle in the "Seamline Area," is a security measure for the prevention of terror attacks and does not mark a national border or any other border." (decision of October 1, 2003).

29. The Commander of the IDF Forces in the area of Judea and Samaria (respondent no. 2), Major General M. Kaplinsky, submitted an affidavit to the Court. In his affidavit he stated that "the objective of the security fence is to help contend with the threat of Palestinian terror. Specifically, the fence is intended to prevent the unchecked passage of inhabitants of the area into Israel and their infiltration into Israeli towns located in the area. Based on this security consideration we determined the topographic route of the fence." (affidavit of April 15, sections 22-23). The commander of the area detailed his considerations for the choice of the route. He noted the necessity that the fence pass through territory that topographically controls its surroundings, that, in order to allow surveillance of it, its route be as flat as possible, and that a "security zone" be established which will delay infiltration into Israel. These are security considerations *par excellence*. In an additional affidavit, Major General Kaplinsky testified that "it is not a permanent fence, but rather a temporary fence erected for security needs." (affidavit of April 19, 2004, section 4). We have no reason not to give this testimony less than full weight, and we have no reason not to believe the sincerity of the military commander.

30. Petitioners, by pointing to the route of the fence, attempt to prove that the construction of the fence is not motivated by security considerations, but by political ones. They argue that if the fence was primarily motivated by security considerations, it would be constructed on the "Green Line," that is to say, on the armistice line between Israel and Jordan after the War of Independence. We cannot accept this argument. The opposite is the case: it is the security perspective – and not the political one – which must examine the route on its security merits alone, without regard for the location of the Green Line. The members of the Council for Peace and Security, whose affidavits were brought before us by

agreement of the parties, do not recommend following the Green Line. They do not even argue that the considerations of the military commander are political. Rather, they dispute the proper route of the separation fence based on security considerations themselves.

31. We set aside seven sessions for the hearing of the petition. We heard the explanations of officers and workers who handled the details of the fence. During our hearing of the petition, the route of the fence was altered in several locations. Respondents were open to our suggestions. Thus, for example, adjacent to the town of Har Adar, they agreed to move the fence passing north of the town to the security zone closer to it, and distance it from the lands of the adjacent village of El Kabiba. We have no reason to assume that the objective is political rather than security-based. Indeed, petitioners did not carry the burden and did not persuade us that the considerations behind the construction of the separation fence are political rather than security-based. Similarly, petitioners did not carry their burden, and did not persuade us that the considerations of the Commander of the IDF Forces in the area, in choosing the route of the separation fence, are not military considerations, and that he has not acted to fulfill them in good faith, according to his best military understanding.

32. Petitioner second argument is that the construction of the fence in the area is based, in a large part, on the seizure of land privately owned by local inhabitants, that this seizure is illegal, and that therefore the military commander's authority has no to construct the obstacle. We cannot accept this argument. We found no defect in the process of issuing the orders of seizure, or in the process of granting the opportunity to appeal them. Regarding the central question raised before us, our opinion is that the military commander is authorized – by the international law applicable to an area under belligerent occupation – to take possession of land, if this is necessary for the needs of the army. *See* articles 23(g) and 52 of the Hague Convention; article 53 of the Fourth Geneva Convention. He must, of course, provide compensation for his use of the land. *See* HCJ 606/78 *Ayoob v. Minster of Defense*; HCJ 401/88 *Abu Rian v. Commander of the IDF Forces in the Area of Judea and Samaria; Timraz.* Indeed, on the basis of the provisions of the Hague Convention and the Geneva Convention, this Court has recognized the legality of land and house seizure for various military needs, including the construction of military facilities (HCJ 834/78 *Salama v. Minister of Defense*), the paving of detour roads (HCJ 202/81 *Tabib v. Minister of Defense; Wafa*), the building of fences around outposts (*Timraz*), the temporary housing of soldiers (HCJ 290/89 *Jora v. Commander of IDF Forces in Judea and Samaria*), the ensuring of unimpaired traffic on the roads of the area (Abu *Rian*), the construction of civilian administration offices (HCJ 1987/90 *Shadid v. Commander of IDF Forces in the Area of Judea and Samaria*), the seizing of buildings for the deployment of a military force, (HCJ 8286/00 *Association for Civil Rights in Israel v. Commander of the IDF Forces in the Area of Judea and Samaria*). Of course, regarding all these acts, the military commander must consider the needs of the local population. Assuming that this condition is met, there is no doubt that the military commander is

authorized to take possession of land in areas under his control. The construction of the separation fence falls within this framework. The infringement of property rights is insufficient, in and of itself, to take away the authority to build it. It is permitted, by the international law applicable to an area under belligerent occupation, to take possession of an individual's land in order to erect the separation fence upon it, on the condition that this is necessitated by military needs. To the extent that construction of the fence is a military necessity, it is permitted, therefore, by international law. Indeed, the obstacle is intended to take the place of combat military operations, by physically blocking terrorist infiltration into Israeli population centers. The building of the obstacle, to the extent it is done out of military necessity, is within the authority of the military commander. Of course, the route of the separation fence must take the needs of the local population into account. That issue, however, concerns the route of the fence and not the authority to erect it. After reaching this conclusion, we must now contend with the second question before us – the question that constituted the main part of the arguments before us. This question is the legality of the location and route of the separation fence. We will now turn to this question.

The Route of the Separation Fence

33. The focus of this petition is the legality of the route chosen for construction of the separation fence. This question stands on its own, and it requires a straightforward, real answer. It is not sufficient that the fence be motivated by security considerations, as opposed to political considerations. The military commander is not at liberty to pursue, in the area held by him in belligerent occupation, every activity which is primarily motivated by security considerations. The discretion of the military commander is restricted by the normative system in which he acts, and which is the source of his authority. Indeed, the military commander is not the sovereign in the occupied territory. *See* Oppenheim, *The Legal Relations Between an Occupying Power and the Inhabitants*, 33 Law Q. Rev., 363, 364 (1917); Y. Dinstein, The Law of War 210 (1983). He must act within the law which establishes his authority in a situation of belligerent occupation. What is the content of this law?

34. The law of belligerent occupation recognizes the authority of the military commander to maintain security in the area and to protect the security of his country and her citizens. However, it imposes conditions on the use of this authority. This authority must be properly balanced against the rights, needs, and interests of the local population:

> The law of war usually creates a delicate balance between two poles: military necessity on one hand, and humanitarian considerations on the other.

Dinstein, *Legislative Authority in the Administered Territories*, 2 Iyunei Mishpat 505, 509 (1973)

This Court has emphasized, in its case law since the Six Day War, that "together with the right to administer comes the obligation to provide for the well being of the population." HCJ 337/71 *Al-jamaya Al-masihiye L'alararchi Elmakdasa v. Minister of Defense*, at 581 (Sussman, D.P.).

> The obligations and rights of a military administration are defined, on one hand, by its own military needs and, on the other, by the need to ensure, to the extent possible, the normal daily life of the local population.

HCJ 256/72 *Jerusalem District Electric Company v. Defense Minister*, at 138 (Landau, J.).

> This doctrine … does not have to result in the restriction of the power to tax, *if this power is necessary for the well being of the area and due to its needs*, since a proper balance between those considerations and the needs of the ruling army is a central and constant consideration of a military administration.

Abu Ita, at 270 (Shamgar, V.P.) (emphasis in the original).

In *J'mayat Ascan*, at 794, I myself similarly wrote, more than twenty years ago, that:

> The Hague Regulations revolve around two central axes: one – the ensuring of the legitimate security interests of the holder of a territory held in belligerent occupation; the other – the ensuring of the needs of the local population in the territory held in belligerent occupation.

In HCJ 72/86 *Zaloom v. The IDF Commander for the Area of Judea and Samaria*, at 532, I held:

> In using their authority, respondents must consider, on one hand, security considerations and, on the other hand, the interests of the civilian population. They must attain a balance between these different considerations.

See also Marab, at 365. Similarly:

> The obligation of the military administration, defined in regulation 43 of the Hague Regulations, is to preserve the order and the public life of the local population, but to do so while properly balancing between the interests of the population in the territory, and the military and security needs of soldiers and citizens located in the territory.

HCJ 2977/91 *Thaj v. Minister of Defense*, at 474 (Levin, J.).

> The Hague Convention authorizes the military commander to act in two central areas: one – ensuring the legitimate security interest of the holder of the territory, and the other – providing for the needs of the local population in the territory held in belligerent occupation …. The first need is military and the second is civilian-humanitarian. The first focuses upon the security of the military forces holding the area, and the second focuses upon the responsibility for ensuring the well being of the residents. In the latter area the military commander is responsible not only for the maintenance of the order and security of the inhabitants, but also for the protection of their rights, especially their constitutional human rights. The concern for human rights stands at the center of the humanitarian considerations which the military commander must take into account.

Hess, at paragraph 8 (Procaccia, J.).

35. This approach of this Court is well anchored in the humanitarian law of public international law. This is set forth in Regulation 46 of the Hague Regulations and Article 46 of the Fourth Geneva Convention. Regulation 46 of the Hague Regulations provides:

> Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected. Private property cannot be confiscated.

Article 27 of the Fourth Geneva Convention provides:

> Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof …. However, the Parties to the conflict may take such measures of control and security in regard to protected persons as may be necessary as a result of the war.

These rules are founded upon a recognition of the value of man and the sanctity of his life. *See Physicians for Human Rights*, at para. 11. Interpreting Article 27 of the Fourth Geneva Convention, Pictet writes:

> Article 27 . . . occupies a key position among the articles of the Convention. It is the basis of the Convention, proclaiming as it does the principles on which the whole "Geneva Law" is

> founded. It proclaims the principle of respect for the human person and the inviolable character of the basic rights of individual men and women . . . the right of respect for the person must be understood in its widest sense: it covers all the rights of the individual, that is, the rights and qualities which are inseparable from the human being by the very fact of his existence and his mental and physical powers, it includes, in particular, the right to physical, moral and intellectual integrity – one essential attribute of the human person.

The rules in Regulation 46 of the Hague Regulations and in Article 27 of the Fourth Geneva Convention cast a double obligation upon the military commander: he must refrain from actions that injure the local inhabitants. This is his "negative" obligation. He must take the legally required actions in order to ensure that the local inhabitants shall not be injured. This is his "positive" obligation. *See Physicians for Human Rights.* In addition to these fundamental provisions, there are additional provisions that deal with specifics, such as the seizure of land. *See* Regulation 23(g) and 52 of the Hague Regulations; Article 53 of the Fourth Geneva Convention. These provisions create a single tapestry of norms that recognizes both human rights and the needs of the local population as well recognizing security needs from the perspective of the military commander. Between these conflicting norms, a proper balance must be found. What is that balance?

Proportionality

36. The problem of balancing between security and liberty is not specific to the discretion of a military commander of an area under belligerent occupation. It is a general problem in the law, both domestic and international. Its solution is universal. It is found deep in the general principles of law, including reasonableness and good faith. *See* B. Cheng, General Principles of Law as Applied By International Courts and Tribunals (1987); T. Meron, Human Rights and Humanitarian Norms as Customary Law (1989); S. Rosenne, The Perplexities of Modern International Law 63 (2002). One of those foundational principles which balance between the legitimate objective and the means of achieving it is the principle of proportionality. According to it, the liberty of the individual can be limited (in this case, the liberty of the local inhabitants under belligerent occupation), on the condition that the restriction is proportionate. This approach crosses through all branches of law. In the framework of the petition before us, its importance is twofold: first, it is a basic principle in international law in general and specifically in the law of belligerent occupation; second, it is a central standard in Israeli administrative law which applies to the area under belligerent occupation. We shall now briefly discuss each of these.

37. Proportionality is recognized today as a general principle of international law. *See* Meron, at 65; R. Higgins, Problems and Process: International Law and How We Use It 219 (1994); Delbruck,

Proportionality, 3 Encyclopedia of Public International Law 1140, 1144 (1997). Proportionality plays a central role in the law regarding armed conflict. During such conflicts, there is frequently a need to balance between military needs and humanitarian considerations. *See* Gardam, *Proportionality and Force in International Law*, 87 Am. J. Int'l L. 391 (1993); Garden, *Legal Restraints on Security Council Military Enforcement Action*, 17 Mich. J. Int'l L. 285 (1996); Dinstein, *Military Necessity*, 3 Encyclopedia of Public International Law 395 (1997); Medenica, *Protocol I and Operation Allied Force: Did NATO Abide by Principles of Proportionality ?*, 23 Loy. L. A. Int'l & Comp. L. Rev. 329 (2001); Roberts, *The Laws of War in the War on Terror*, 32 Isr. Yearbook of Hum. Rights. 1999 (2002). Proportionality is a standard for balancing. Pictet writes:

> In modern terms, the conduct of hostilities, and, at all times the maintenance of public order, must not treat with disrespect the irreducible demands of humanitarian law.
>
> From the foregoing principle springs the Principle of Humanitarian Law (or that of the law of war):
>
> Belligerents shall not inflict harm on their adversaries out of proportion with the object of warfare, which is to destroy or weaken the strength of the enemy.

J. S. Pictet, Developments and Principles of International Humanitarian Law 62 (1985). Similarly, Fenrick has stated:

> [T]here is a requirement for a subordinate rule to perform the balancing function between military and humanitarian requirements. This rule is the rule of proportionality.

Fenrick, *The Rule of Proportionality and Protocol I in Conventional Warfare*, 98 Military L. Rev. 91, 94 (1982). Gasser repeats the same idea:

> International humanitarian law takes into account losses and damage as incidental consequences of (lawful) military operations … The criterion is the principle of proportionality.

Gasser, *Protection of the Civilian Population*, The Handbook of Humanitarian Law in Armed Conflicts 220 (D. Fleck ed., 1995).

38. Proportionality is not only a general principle of international law. Proportionality is also a general principle of Israeli administrative law. *See* Segal, *The Cause of Action of Disproportionality in*

Administrative Law, HaPraklit 50 (1990); Zamir, *The Administrative Law of Israel Compared to the Administrative Law of Germany*, 2 Mishpat U'Mimshal 109, 130 (1994). At first a principle of our case law, then a constitutional principle, enshrined in article 8 of the Basic Law: Human Dignity and Freedom, it is today one of the basic values of the Israeli administrative law. *See* HCJ 987/94 *Euronet Golden Lines (1992) Ltd. v. Minister of Communications*, at 435; HCJ 3477/95 *Ben-Atiyah v. Minister of Education, Culture & Sports*; HCJ 1255/94 *Bezeq v. Minister of Communications*, at 687; HCJ 3643/97 *Stamka v. Minister of Interior*; HCJ 4644/00 *Tavori v. The Second Authority for Television and Radio;* HCJ 9232/01 *"Koach" Israeli Union of Organizations for the Defense of Animals v. The Attorney-General*, at 261; D. Dorner, *Proportionality*, *in* 2 The Berenson Book 281 (A. Barak & C. Berenson eds., 1999). The principle of proportionality applies to every act of the Israeli administrative authorities. It also applies to the use of the military commander's authority pursuant to the law of belligerent occupation.

39. Indeed, both international law and the fundamental principles of Israeli administrative law recognize proportionality as a standard for balancing between the authority of the military commander in the area and the needs of the local population. Indeed, the principle of proportionality as a standard restricting the power of the military commander is a common thread running through our case law. *See* Segal, *Security Authority, Administrative Proportionality and Judicial Review*, 1 Iyunei Mishpat 477 (1993). Thus, for example, this Court examined, by use of the standard of proportionality, the authority of the military commander regarding "an order assigning a place of residence." *See Ajuri;* HCJ 9552/03 *Abed v. Commander of the IDF Forces in the West Bank*; HCJ 9586/03 *Sualmeh v. Commander of the IDF Forces in the Judea and Samaria Region*. The standard of proportionality was likewise used to examine his authority to surround towns and position checkpoints on the access roads to and from them, in order to frustrate terror. *See* HCJ 2847/03 *Alauna v. Commander of the IDF Forces in Judea and Samaria*; HCJ 2410/03 *Elarja v. Commander of the IDF Forces in Judea and Samaria*. The same applied to injury to the property of residents due to combat activities of the IDF (HCJ 9252/00 *El Saka v. State of Israel*); the establishment of entry routes for Israelis into the area and its declaration as "closed military territory" (HCJ 9293/01 *Barakeh v. Minister of Defense*); the means employed to protect the safety of worshippers and their access to holy places (*Hess*); the demolition of houses for operational needs (HCJ 4219/02 *Joosin v. Commander of the IDF Forces in the Gaza Strip*); such demolition for deterrence purposes (HCJ 5510/92 *Turkman v. Defense Minister*, at 219; HCJ 1730/96 *Sabih v. Commander of the IDF Forces in the Area of Judea and Samaria*, at 364; HCJ 893/04 *Farj v. Commander of the IDF Forcers in the West Bank*); the living conditions of detained suspects in the area (HCJ 3278/02 *Center for Defense of the Individual v. Commander of the IDF Forces in the West Bank Area*; HCJ 5591/02 *Yassin v. Commander of Kziot Military Camp*); the authority to arrest for investigation purposes and the denial of a meeting between a detainee and an attorney (*Marab*); the siege of those hiding in holy places (HCJ 3451/02 *Almandi v. Minister of Defence*, at 36); and the

regulation of the recording and identification of residents of the area (HCJ 2271/98 *Abed v. Interior Minister*).

The Meaning of Proportionality and its Elements

40. According to the principle of proportionality, the decision of an administrative body is legal only if the means used to realize the governmental objective is of proper proportion. The principle of proportionality focuses, therefore, on the relationship between the objective whose achievement is being attempted, and the means used to achieve it. This principle is a general one. It requires application. As such, both in international law, which deals with different national systems – from both the common law family (such as Canada) and the continental family (such as Germany) – as well as in domestic Israeli law, three subtests grant specific content to the principle of proportionality. *See* J. Schwarze, European Administrative Law 687 (1992); N. Emiliou, The Principle of Proportionality in European Law; A Comparative Study (1996); The Principle of Proportionality in the Laws of Europe (1999).

41. The first subtest is that the objective must be related to the means. The means that the administrative body uses must be constructed to achieve the precise objective which the administrative body is trying to achieve. The means used by the administrative body must rationally lead to the realization of the objective. This is the "appropriate means" or "rational means" test. According to the second subtest, the means used by the administrative body must injure the individual to the least extent possible. In the spectrum of means which can be used to achieve the objective, the least injurious means must be used. This is the "least injurious means" test. The third test requires that the damage caused to the individual by the means used by the administrative body in order to achieve its objectives must be of proper proportion to the gain brought about by that means. That is the "proportionate means" test (or proportionality "in the narrow sense.") The test of proportionality "in the narrow sense" is commonly applied with "absolute values," by directly comparing the advantage of the administrative act with the damage that results from it. However, it is also possible to apply the test of proportionality in the narrow sense in a "relative manner." According to this approach, the administrative act is tested vis-à-vis an alternate act, whose benefit will be somewhat smaller than that of the former one. The original administrative act is disproportionate in the narrow sense if a certain reduction in the advantage gained by the original act – by employing alternate means, for example – ensures a substantial reduction in the injury caused by the administrative act.

42. It is possible to say that the means used by an administrative authority are proportionate only if all three subtests are satisfied. Satisfaction of one or two of these subtests is insufficient. All three of them must be satisfied simultaneously. Not infrequently, there are a number of ways that the

requirement of proportionality can be satisfied. In these situations a "zone of proportionality" must be recognized (similar to a "zone of reasonableness.") Any means chosen by the administrative body that is within the zone of proportionality is proportionate. *See Ben-Atiyah*, at 13; HCJ 4769/95 *Menachem v. Minister of Transportation*, at 258.

43. This principle of proportionality also applies to the exercise of authority by the military commander in an area under belligerent occupation. Thus, for example, in *Ajuri*, the question arose whether restricting the area in which one can live – in that case, the transfer of local inhabitants from the area of Judea and Samaria to the Gaza Strip – was proportionate. Regarding the proportionality test, as applied in that case, I wrote:

> Like the use of any other means, the means of restricting the area in which one can live must be also be used proportionately. The individual's offense must be proportionate to the means employed by the authorities … an appropriate link is necessary between the objective of preventing danger from the person whose living area is restricted, and the danger if this means is not employed … it is necessary that the injury caused by the means employed be minimal; it is also necessary that the means of restricting the living area be of proper proportion to the security benefit to the area.

Id., at 373.

The Proportionality of the Route of the Separation Fence

44. The principle of proportionality applies to our examination of the legality of the separation fence. This approach is accepted by respondents. It is reflected in the government decision (of October 1, 2003) that "during the planning, every effort shall be made to minimize, to the extent possible, the disturbance to the daily lives of the Palestinians due to the construction of the obstacle." The argument that the damage caused by the separation fence route is proportionate was the central argument of respondents. Indeed, our point of departure is that the separation fence is intended to realize a security objective which the military commander is authorized to achieve. The key question regarding the route of the fence is: is the route of the separation fence proportionate? The proportionality of the separation fence must be decided by the three following questions, which reflect the three subtests of proportionality. First, does the route pass the "appropriate means" test (or the "rational means" test)? The question is whether there is a rational connection between the route of the fence and the goal of the construction of the separation fence. Second, does it pass the test of the "least injurious" means? The question is whether, among the various routes which would achieve the objective of the separation fence, is the chosen one the least injurious. Third, does it pass the test of proportionality in the narrow

sense? The question is whether the separation fence route, as set out by the military commander, injures the local inhabitants to the extent that there is no proper proportion between this injury and the security benefit of the fence. According to the "relative" examination of this test, the separation fence will be found disproportionate if an alternate route for the fence is suggested that has a smaller security advantage than the route chosen by respondent, but which will cause significantly less damage than that original route.

The Scope of Judicial Review

45. Before we examine the proportionality of the route of the separation fence, it is appropriate that we define the character of our examination. Our point of departure is the assumption, which petitioners did not manage to negate, that the government decision to construct the separation fence is motivated by security, and not a political, considerations. As such, we work under the assumption – which the petitioners also did not succeed in negating – that the considerations of the military commander based the route of the fence on military considerations that, to the best of his knowledge, are capable of realizing this security objective. In addition, we assume – and this issue was not even disputed in the case before us – that the military commander is of the opinion that the injury to local inhabitants is proportionate. On the basis of this factual foundation, there are two questions before us. The first question is whether the route of the separation fence, as determined by the military commander, is well-founded from a military standpoint. Is there another route for the separation fence which better achieves the security objective? This constitutes a central component of proportionality. If the chosen route is not well-founded from the military standpoint, then there is no rational connection between the objective which the fence is intended to achieve and the chosen route (the first subtest); if there is a route which better achieves the objective, we must examine whether this alternative route inflicts a lesser injury (the second subtest). The second question is whether the route of the fence is proportionate. Both these questions are important for the examination of proportionality. However, they also raise separate problems regarding the scope of judicial review. My colleague Justice M. Cheshin has correctly noted:

> Different subjects require, in and of themselves, different methods of intervention. Indeed, acts of state and acts of war do not change their character just because they are subject to the review of the judiciary, and the character of the acts, according to the nature of things, imprints its mark on the methods of intervention.

HCJ 1730/96 *Sabih v. Commander of IDF forces in the Area of Judea and Samaria*, at 369. We shall examine, therefore, the scope of intervention for each of the two questions before us, separately.

The Military Nature of the Route of the Separation Fence

46. The first question deals with the military character of the route. It examines whether the route chosen by the military commander for the separation fence achieves its stated objectives, and whether there is no route which achieves this objective better. It raises problems within the realm of military expertise. We, Justices of the Supreme Court, are not experts in military affairs. We shall not examine whether the military commander's military opinion corresponds to ours – to the extent that we have a opinion regarding the military character of the route. So we act in all questions which are matters of professional expertise, and so we act in military affairs as well. All we can determine is whether a reasonable military commander would have set out the route as this military commander did. President Shamgar dealt with this idea, noting:

> It is obvious, that a court cannot "slip into the shoes" of the deciding military official … In order to substitute the discretion of the commander with the discretion of the Court, we examine the question whether, in light of all of the facts, the employment of the means can be viewed as reasonable.

HCJ 1005/89 *Aga v. Commander of the IDF Forces in the Gaza Strip Area*, at 539. Similarly, in *Ajuri*, I wrote:

> The Supreme Court, sitting as the High Court of Justice, reviews the legality of the military commander's discretion. Our point of departure is that the military commander, and those who obey his orders, are civil servants holding public positions. In exercising judicial review, we do not turn ourselves into experts in security affairs. We do not substitute the security considerations of the military commander with our own security considerations. We take no position regarding the way security affairs are run. Our task is to guard the borders and to maintain the boundaries of the military commander's discretion …. It is true, that "the security of the state" is not a "magic word" which makes judicial review disappear. Thus, we shall not be deterred from reviewing the decisions of the military commander … simply because of the important security considerations anchoring his decision. However, we shall not substitute the discretion of the commander with our own discretion. We shall check the legality of the discretion of the military commander and ensure that his decisions fall within the "zone of reasonableness."

Id., at 375; *see also* HCJ 619/78 *"Al Tal'ia" Weekly v. Defense Minister*, at 512; *Jam'iat Ascan*, at 809; *Barake*, at 16.

47. The petition before us is exceptional in that opinions were submitted by the Council for Peace and Security. These opinions deal with the military aspect of the separation fence. They were given by experts in the military and security fields, whose expertise was also recognized by the commander of the area. We stand, therefore, before contradictory military opinions regarding the military aspects of the route of the separation fence. These opinions are based upon contradictory military views. Thus, for example, it is the view of the military commander that the separation fence must be distanced from the houses of Jewish towns, in order to ensure a security zone which will allow pursuit after terrorists who have succeeded in passing the separation fence, and that topographically controlling territory must be included in the route of the fence. In order to achieve these objectives, there is no escaping the need to build the separation fence proximate to the houses of the local inhabitants. In contrast, the view of military experts of the Council for Peace and Security is that the separation fence must be distanced from the houses of local inhabitants, since proximity to them endangers security. Topographically controlling territory can be held without including it in the route of the fence. In this state of affairs, are we at liberty to adopt the opinion of the Council for Peace and Security? Our answer is negative. At the foundation of this approach is our long-held view that we must grant special weight to the military opinion of the official who is responsible for security. Vice-President M. Landau J. dealt with this point in a case where the Court stood before two expert opinions, that of the Major General serving as Coordinator of IDF Activity in the Territories and that of a reserve Major General. Thus wrote the Court:

> In such a dispute regarding military-professional questions, in which the Court has no well founded knowledge of its own, the witness of respondents, who speaks for those actually responsible for the preservation of security in the administered territories and within the Green Line, shall benefit from the assumption that his professional reasons are sincere reasons. Very convincing evidence is necessary in order to negate this assumption.

HCJ 258/79 *Amira v. Defense Minister*, 92.

Justice Vitkon wrote similarly in *Duikat*, in which the Court stood before a contrast between the expert opinion of the serving Chief of the General Staff regarding the security of the area, and the expert opinion of a former Chief of the General Staff. The Court ruled, in that case, as follows:

> In security issues, where the petitioner relies on the opinion of an expert in security affairs, and the respondent relies on the opinion of a person who is both an expert and also responsible for the security of the state, it natural that we will grant special weight to the opinion of the latter.

HCJ 390/79 *Duikat v. Government of Israel*.

Therefore, in our examination of the contrasting military considerations in this case, we give special weight to the fact that the commander of the area is responsible for security. Having employed this approach, we are of the opinion – the details of which we shall explain below – that petitioners have not carried their burden, and have not convinced us that we should prefer the professional expert opinion of members of the Council for Peace and Security over the security stance of the commander of the area. We are dealing with two military approaches. Each of them has military advantages and disadvantages. In this state of affairs, we must place the expert opinion of the military commander at the foundation of our decision.

The Proportionality of the Route of the Separation Fence

48. The second question examines the proportionality of the route of the separation fence, as determined by the military commander. This question raises no problems in the military field; rather, it relates to the severity of the injury caused to the local inhabitants by the route decided upon by the military commander. In the framework of this question we are dealing not with military considerations, but rather with humanitarian considerations. The question is not the proportionality of different military considerations. The question is the proportionality between the military consideration and the humanitarian consideration. The question is not whether to prefer the military approach of the military commander or that of the experts of the Council for Peace and Security. The question is whether the route of the separation fence, according to the approach of the military commander, is proportionate. The standard for this question is not the subjective standard of the military commander. The question is not whether the military commander believed, in good faith, that the injury is proportionate. The standard is objective. The question is whether, by legal standards, the route of the separation fence passes the tests of proportionality. This is a legal question, the expertise for which is held by the Court. I dealt with this issue in *Physicians for Human Rights*, stating:

> Judicial review does not examine the wisdom of the decision to engage in military activity. In exercising judicial review, we examine the legality of the military activity. Therefore, we assume that the military activity that took place in Rafah was necessary from a military standpoint. The question before us is whether this military activity satisfies the national and international standards that determine the legality of that activity. The fact that the activity is necessary on the military plane, does not mean that it is lawful on the legal plane. Indeed, we do not substitute our discretion for that of the military commander's, as far as it concerns military considerations. That is his expertise. We examine the results on the plane of the humanitarian law. That is our expertise.

Id, paragraph 9.

From the General to the Specific

This oversight applies to the case before us. The military commander is the expert regarding the military quality of the separation fence route. We are experts regarding its humanitarian aspects. The military commander determines where, on hill and plain, the separation fence will be erected. That is his expertise. We examine whether this route's harm to the local residents is proportional. That is our expertise.

49. The key question before us is whether the route of the separation fence is proportionate. The question is: is the injury caused to local inhabitants by the separation fence proportionate, or is it is possible to satisfy the central security considerations while establishing a fence route whose injury to the local inhabitants is lesser and, as such, proportionate? The separation fence which is the subject of this petition is approximately forty kilometers long. Its proportionality varies according to local conditions. We shall examine its proportionality according to the various orders that were issued for the construction of different parts of the fence. We shall examine the legality of the orders along the route of the fence from west to east (See the appendix to this decision for a map of the region.) This route starts east of the town of Maccabim and the Beit Sira village. It continues south to the town of Mevo Choron, and from there continues east to Jerusalem. The route of the fence continues to wind, and it divides between Israeli towns and Palestinian villages adjacent to it. It climbs Jebel Muktam in order to ensure Israeli control of it. As such, it passes the villages of Beit Likia, Beit Anan, and Chirbet Abu A-Lahm. After that, it advances east, separating Ma'aleh HaChamisha and Har Adar from the villages of Katane, El Kabiba, and Bidu. The fence continues and circles the village of Beit Sourik, climbing northward until it reaches route 443, which is a major traffic route connecting Jerusalem to the center of the country. In its final part, it separates the villages Bidu, Beit Ajaza, and Beit Daku from Har Shmuel, New Giv'on, and Giv'at Ze'ev.

Order no. Tav/105/03

50. This order concerns the route beginning east of the town of Maccabim and west of the village of Beit Sira, and ending northeast of the town of Mevo Choron. This segment was not the subject of substantial dispute by the parties. Respondent informed us that the north tip of the route, which is subject to this order, as well as the southern tip, were changed (see map submitted to us by the parties,

of March 31 2004). Thus, the injury to the cultivated lands proximate to it was reduced. Petitioners raised no arguments regarding the route itself, and the village of Beit Sira was not joined as a petitioner. Members of the Council for Peace and Security did not mention this order in their affidavits. In light of all this, to the extent that it relates to this order, the petition is denied,.

Order Tav/104/03; Order Tav/103/03; Order Tav/84/03 (The Western Part of the Order)

51. These orders apply to more than ten kilometers of the fence route. This segment of the route surrounds the high mountain range of Jebel Muktam. This ridge topographically controls its immediate and general surroundings. It towers over route 443 which passes north of it, connecting Jerusalem to Modi'in. The route of the obstacle passes from southwest of the village of Beit Likia, southwest of the village of Beit Anan, and west of the village of Chirbet Abu A-Lahm. Respondent explains that the objective of this route is to keep the mountain area under Israeli control. This will ensure an advantage for the armed forces, who will topographically control the area of the fence, and it will decrease the capability of others to attack those traveling on route 443.

52. Petitioners painted a severe picture of how the fence route will damage the villages along it. As far as the Beit Anan village (population: 5500) is concerned, 6000 dunams of village land will be affected by the fact that the obstacle passes over them. 7500 dunams of land will end up beyond the fence (6000 dunams of which are cultivated land). Ninety percent of the cultivated land seized and affected is planted with olive and fruit trees. 18,000 trees will be uprooted. 70,000 trees will be separated from their owners. The livelihood of hundreds of families will be hurt. This damage is especially severe in light of the high unemployment rate in that area (approaching 75%). As far as the Beit Likia village is concerned (population: 8000), 2100 dunams will be affected by the route of the obstacle. Five thousand dunams will end up beyond the fence (3000 dunams of which are cultivated land).

53. Respondents dispute this presentation of the facts. They argue that the extent of damage is less than that described by petitioners. As for the village of Beit Anan, 410 dunams (as opposed to 600) will be seized, and 1245 cultivated dunams will end up on the other side of the obstacle (as opposed to 6000). Respondents further argue that 3500 trees will be uprooted (as opposed to 18,000). However, even according to respondent, the damage to the villages is great, despite certain changes which respondents made during the hearing of the petition in order to relieve the situation of the local inhabitants.

54. Petitioners attached the affidavit of the Council for Peace and Security (signed by Major General (res.) D. Rothchild, Major General (res.) A. Adan (Bren), Commissioner (ret.) S. Giv'oli, and

Colonel (res.) Y. Dvir), which relates to this segment. According to the affidavit, the seizure of Jebel Muktam does not fit the principles set out for the building of the fence. Effective light weapon fire from Jebel Muktam upon route 443 or upon any Israeli town is not possible. Moving the obstacle three kilometers south, adjacent to the Green Line, will place it upon topographically controlling territory that is easy to defend. They argue that not every controlling hill is necessary for the defense of the separation fence. Jebel Muktam is one example of that. Moreover, the current route will necessitate the construction and maintenance of agricultural gates, which will create superfluous and dangerous friction with the local population, embittered by the damage inflicted upon them. Petitioners presented two alternate proposals for the route in this area. One passes next to the border of the area of Judea and Samaria. This route greatly reduces the damage to the villages of Beit Likia and Beit Anan. The route of the other proposal passes near the Green Line, south of the route of the first proposal. This route does not affect the lands of these villages or the lands of the village of Chirbet Abu A-Lahm.

55. Respondent stated, in his response to the affidavit of members of the Council for Peace and Security, that it was not his intention to change the route of the fence that goes through this area. He claims that IDF forces' control of Jebel Muktam is a matter of decisive military importance. It is not just another topographically controlling hill, but rather a mountain looking out over the entire area. He reiterated his stance that the current route will decrease the possibility of attack on travelers on route 443, and that erecting the obstacle upon the mountain will prevent its taking by terrorists. Respondent surveyed the relevant area, and came to the conclusion that the route proposed by petitioners is considerably topographically inferior, and will endanger the forces that will patrol along the fence. In order to reduce the injury to the local inhabitants, the military commander decided that agricultural gates be built. One daytime gate will be built south of Beit Likia. Another daytime gate will be built three kilometers from it (as the crow flies), north of Beit Anan. Specific requests by farmers will be examined on their merits. Owners of land seized will be compensated, and olive trees will be transferred rather than uprooted. The route has even taken into consideration buildings built illegally by Palestinian inhabitants in the area, since there was not enough time to take the legal steps necessary for their demolition. We were further informed that it was decided, during the survey which took place onsite with the participation of petitioners' counsel, to make a local correction in the route of the obstacle, adjacent to the village of Chirbet Abu A-Lahm, which will distance the obstacle from the houses of the village. We originally prohibited (on February 29, 2004) works to erect the separation fence in the part of the route to which the abovementioned orders apply. During the hearing (on March 31, 2004), we ordered the cancellation of the temporary injunction with respect to the segment between the Beit Chanan riverbed and the ascent to Jebel Muktam.

56. From a military standpoint, there is a dispute between experts regarding the route that will realize the security objective. As we have noted, this places a heavy burden on petitioners, who ask that

we prefer the opinion of the experts of the Council for Peace and Security over the approach of the military commander. The petitioners have not carried this burden. We cannot – as those who are not experts in military affairs – determine whether military considerations justify laying the separation fence north of Jebel Muktam (as per the stance of the military commander) or whether there is no need for the separation fence to include it (as per the stance of petitioners' and the Council for Peace and Security). Thus, we cannot take any position regarding whether the considerations of the military commander, who wishes to hold topographically controlling hills and thus prevent "flat-trajectory" fire, are correct, militarily speaking, or not. In this state of affairs, there is no justification for our interference in the route of the separation fence from a military perspective.

57. Is the injury to the local inhabitants by the separation fence in this segment, according to the route determined by respondent, proportionate? Our answer to this question necessitates examination of the route's proportionality, using the three subtests. The first subtest examines whether there is a rational connection between the objective of the separation fence and its established route. Our answer is that such a rational connection exists. We are aware that the members of the Council for Peace and Security claim, in their expert opinion, that such a connection does not exist, and that the route proposed by them is the one that satisfies the "rational connection" test. As we stated, we cannot accept this position. By our very ruling that the route of the fence passes the test of military rationality, we have also held that it realizes the military objective of the separation fence.

58. The second subtest examines whether it is possible to attain the security objectives of the separation fence in a way that causes less injury to the local inhabitants. There is no doubt – and the issue is not even disputed – that the route suggested by the members of the Council for Peace and Security causes less injury to the local inhabitants than the injury caused by the route determined by the military commander. The question is whether the former route satisfies the security objective of the security fence to the same extent as the route set out by the military commander. We cannot answer this question in the affirmative. The position of the military commander is that the route of the separation fence, as proposed by members of the Council for Peace and Security, grants less security than his proposed route. By our very determination that we shall not intervene in that position, we have also determined that there is no alternate route that fulfills, to a similar extent, the security needs while causing lesser injury to the local inhabitants. In this state of affairs, our conclusion is that the second subtest of proportionality, regarding the issue before us, is satisfied.

59. The third subtest examines whether the injury caused to the local inhabitants by the construction of the separation fence stands in proper proportion to the security benefit from the the security fence in its chosen route. This is the proportionate means test (or proportionality "in the narrow sense"). Concerning this topic, Professor Y. Zamir wrote:

> The third element is proportionality itself. According to this element, it is insufficient that the administrative authority chose the proper and most moderate means for achieving the objective; it must also weigh the benefit reaped by the public against the damage that will be caused to the citizen by this means under the circumstances of the case at hand. It must ask itself if, under these circumstances, there is a proper proportion between the benefit to the public and the damage to the citizen. The proportion between the benefit and the damage – and it is also possible to say the proportion between means and objective – must be proportionate.

Zamir, *id.*, at 131.

This subtest weighs the costs against the benefits. *See Stamka*, at 776. According to this subtest, a decision of an administrative authority must reach a reasonable balance between communal needs and the damage done to the individual. The objective of the examination is to determine whether the severity of the damage to the individual and the reasons brought to justify it stand in proper proportion to each other. This judgment is made against the background of the general normative structure of the legal system, which recognizes human rights and the necessity of ensuring the provision of the needs and welfare of the local inhabitants, and which preserves "family honour and rights" (Regulation 46 of the Hague Regulations). All these are protected in the framework of the humanitarian provisions of the Hague Regulations and the Geneva Convention. The question before us is: does the severity of the injury to local inhabitants, by the construction of the separation fence along the route determined by the military commander, stand in reasonable (proper) proportion to the security benefit from the construction of the fence along that route?

60. Our answer is that there relationship between the injury to the local inhabitants and the security benefit from the construction of the separation fence along the route, as determined by the military commander, is not proportionate. The route undermines 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. This approach is based on the fact that the route which the military commander established for the security fence – which separates the local inhabitants from their agricultural lands – injures the local inhabitants in a severe and acute way, while violating their rights under humanitarian international law. Here are the facts: more than 13,000 farmers (falahin) are cut off from thousands of dunams of their land and from tens of thousands of trees which are their livelihood, and which are located on the other side of the separation fence. No attempt was made to seek out and provide them with substitute land, despite our oft repeated proposals on that matter. The separation is not hermetic: the military commander announced that two gates will be constructed, from each of the two villages, to its lands,

with a system of licensing. This state of affairs injures the farmers severely, as access to their lands (early in the morning, in the afternoon, and in the evening), will be subject to restrictions inherent to a system of licensing. Such a system will result in long lines for the passage of the farmers themselves; it will make the passage of vehicles (which themselves require licensing and examination) difficult, and will distance the farmer from his lands (since only two daytime gates are planned for the entire length of this segment of the route). As a result, the life of the farmer will change completely in comparison to his previous life. The route of the separation fence severely violates their right of property and their freedom of movement. Their livelihood is severely impaired. The difficult reality of life from which they have suffered (due, for example, to high unemployment in that area) will only become more severe.

61. These injuries are not proportionate. They can be substantially decreased by an alternate route, either the route presented by the experts of the Council for Peace and Security, or another route set out by the military commander. Such an alternate route exists. It is not a figment of the imagination. It was presented before us. It is based on military control of Jebel Muktam, without "pulling" the separation fence to that mountain. Indeed, one must not forget that, even after the construction of the separation fence, the military commander will continue to control the area east of it. In the opinion of the military commander – which we assume to be correct, as the basis of our review – he will provide less security in that area. However, the security advantage reaped from the route as determined by the military commander, in comparison to the proposed route, does not stand in any reasonable proportion to the injury to the local inhabitants caused by this route. Indeed, the real question in the "relative" examination of the third proportionality subtest is not the choice between constructing a separation fence which brings security but injures the local inhabitants, or not constructing a separation fence, and not injuring the local inhabitants. The real question is whether the security benefit reaped by the acceptance of the military commander's position (that the separation fence should surround Jebel Muktam) is proportionate to the additional injury resulting from his position (with the fence separating local inhabitants from their lands). Our answer to this question is that the military commander's choice of the route of the separation fence is disproportionate. The gap between the security provided by the military commander's approach and the security provided by the alternate route is minute, as compared to the large difference between a fence that separates the local inhabitants from their lands, and a fence which does not separate the two (or which creates a separation which is smaller and possible to live with). Indeed, we accept that security needs are likely to necessitate an injury to the lands of the local inhabitants and to their ability to use them. International humanitarian law on one hand, however, and the basic principles of Israeli administrative law on the other, require making every possible effort to ensure that injury will be proportionate. Where construction of the separation fence demands that inhabitants be separated from their lands, access to these lands must be ensured, in order to minimize the damage to the extent possible.

62. We have reached the conclusion that the route of the separation fence, which separates the villages of Beit Likia and Beit Anan from the lands which provide the villagers with their livelihood, is not proportionate. This determination affects order Tav/103/03, which applies directly to the territory of the mountain itself, and leads to its annulment. This determination also affects order Tav/104/03 which applies to the route west of it, which turns in towards the village of Beit Likia, in order to reach the mountain. The same goes for the western part of order Tav/84/03, which descends from the mountain in a southeasterly direction. The eastern part of the latter order was not a matter of significant dispute between the parties, but as a result of the annulment of the aforementioned orders, it should be examined anew.

Order no. Tav/107/30 (Until the Hill Northeast of Har Adar)

63. This order applies to the part of the fence route which begins south of the village of Katane and ends up east of the town of Har Adar. Its length is about four and one half kilometers. It separates between Har Adar and the villages of Katane (population: approximately 1000), El Kabiba (population: 2000), Bidu (population: 7500) and Beit Sourik (population: 3500). Petitioners argue that the route of this segment of the fence will cause direct injury to 300 dunams of the village of Katane. 5700 dunams of the lands of the village will end up on the other side of the fence (4000 of them cultivated lands). They further argue that 200 dunams of the land of the village of El Kabiba will be directly injured by the fence passing through them. 2500 dunams will end up on the other side of the fence (of which 1500 dunams are cultivated land). Indeed, then, the separation fence causes severe injury to the local inhabitants. The fence cuts the residents of the villages off from their lands, and makes their access to it – access upon which the livelihood of many depends – difficult. Study of the map attached by respondents (response of March 10 2004) reveals that along this part of the route, two gates will be built. One gate can only be used by pedestrian traffic. It is located at the western edge of this part of the route (south of the village of Katane). A second gate is a daytime gate located south of the hill which topographically controls the town of Har Adar from the northwest, and west of the village of Bidu. Respondent argues that the gates will allow the passage of farmers to their lands. Compensation will be paid to those whose lands are seized. Thus a proper balance will be struck between security needs and the needs of the local population.

64. After submission of the petition and examination of the arguments raised in it, respondents changed the route of the separation fence in this area. This part of the route, which passes north of Har Adar, will be closer to the security systems already existing in that town. Respondents stated that, as a result of this correction, the solution to security problems will be an inferior one, but they will reduce the injury to the local population and provide a reasonable level of security. Petitioners, however, claim

that these changes are insufficient. The stance of the Council for Peace and Security, as per its first affidavit (signed by Major General (res.) Avraham Adan (Bren), Commissioner (res.) Shaul Giv'oli and Colonel (res.) Yuval Dvir), is that the separation fence should be integrated into the existing fence of the town of Har Adar. Moving the fence to a location adjacent to the village of Katane (west of Har Adar) will cause severe injury to the local inhabitants and will suffer all of the same aforementioned problems of a fence proximate to houses of Palestinians. Placing the fence side by side with the existing security systems west of Har Adar will not increase the danger of fire upon Har Adar. That is since it is already possible to fire upon it from the adjacent villages. Moreover, the current route, which passes next to Palestinian buildings, will endanger the forces patrolling along it, and will increase the concerns regarding false alarms.

65. The military commander argued, in response, that it is impossible to make a change in the route in the area of the village of Katane. From the operational standpoint, the proposal will allow terrorists free access all the way to the houses at the western edge of Har Adar. Nor can a change be made in the route from the engineering standpoint, since the patrol road that must pass along the fence will be so steep that it will not allow movement of vehicles there. Regarding the part of the route which passes north of Har Adar, respondent agrees that it will be possible to integrate it with the existing defense perimeter of Har Adar (partially, in the area of the pumping facility of the town). Respondents are not prepared to make any additional changes to the remainder of the route in this segment. The military commander argues, in addition, that the proposal of the Council for Peace and Security regarding the part of the route which passes east of Har Adar cannot be accepted. That proposal would leave a hill located northeast of the town, which topographically controls it and the surroundings, outside of the defended area. Nonetheless, he testified that, after meetings with petitioners and members of the Council for Peace and Security, it was decided that slight changes would be made in the segment which passes alongside the northeast hill. As a result, the obstacle will be distanced further from the road and from the homes of the local inhabitants in the area (see para. 60 of military commander's affidavit of April 15 2004). Respondent also stated that order of seizure Tav/37/04, which amends the route accordingly, has already been issued. In our decision (of March 31 2004) we held that respondents shall refrain from making irreversible changes in the segment north of Har Adar.

66. From the military standpoint, there is a dispute between the military commander (who wishes to distance the separation fence from Har Adar) and the experts of the Council for Peace and Security (who wish to bring the fence closer to Har Adar). In this disagreement on military issues – and according to our approach, which gives great weight to the position of the military commander responsible for the security of the area – we accept the security stance of the military commander. Against this background, the question arises: is this part of the route of the separation fence proportionate?

67. Like the previous order we considered, this order before us also passes the two first subtests of proportionality (rational connection; the least injurious means). The key question here concerns the third subtest (proportionality in the narrow sense). Here too, as in the case of the previous order, the injury by the separation fence to the lives of more than 3000 farmers in the villages of Katane and El-Kabiba is severe. The rights guaranteed them by the Hague Regulations and the Fourth Geneva Convention are violated. The delicate balance between the military commander's obligation to provide security and his obligation to provide for the local inhabitants is breached. The fence separates between the inhabitants of Katane and El-Kabiba and their lands east and west of Har Adar, while instituting a licensing regime for passage from one side of the fence to the other. As a result, the farmer's way of life is impinged upon most severely. The regime of licensing and gates, as set out by the military commander, does not solve this problem. The difficulties we mentioned regarding the previous order apply here as well. As we have seen, it is possible to lessen this damage substantially if the route of the separation fence passing east and west of Har Adar is changed, reducing the area of agricultural lands lying beyond the fence. The security advantage (in comparison to the possible alternate route) which the military commander wishes to achieve is not proportionate to the severe injury to the farmers (according to the route proposed by the military commander). On this issue, attempts to find an appropriate solution were made during the hearing of the petition. These attempts must continue, in order to find a route which will fulfill the demands of proportionality. As a result of such a route, it may be that there will be no escaping some level of injury to the inhabitants of Katane and El-Kabiba, which should be reduced to the extent possible. As such, since the parties must continue to discuss this issue, we have not seen fit to make a final order regarding Tav/107/03.

The Eastern Tip of Order no. Tav/107/03 and Order no. Tav/108/03

68. This order applies to the five and a half kilometer long segment of the route of the obstacle which passes west and southeast of the villages of Beit Sourik (population: 3500) and Bidu (population: 7500). A study of this part of the route, as published in the original order, reveals that the injury to these villages is great. From petitioners' data – which was not negated by respondents – it appears that 500 dunams of the lands of the village of Beit Sourik will be directly damaged by the positioning of the obstacle. 6000 additional dunams will remain beyond it (5000 dunams of which are cultivated land), including three greenhouses. Ten thousand trees will be uprooted and the inhabitants of the villages will be cut off from 25,000 thousand olive trees, 25,000 fruit trees and 5400 fig trees, as will as from many other agricultural crops. These numbers do not capture the severity of the damage. We must take into consideration the total consequences of the obstacle for the way of life in this area. The original route as determined in the order leaves the village of Beit Sourik bordered tightly by the obstacle on its west, south, and east sides. This is a veritable chokehold, which will severely stifle daily life. The fate of the

village of Bidu is not much better. The obstacle surrounds the village from the east and the south, and impinges upon lands west of it. From a study of the map attached by the respondents (to their response of March 10, 2004) it appears that, on this segment of the route, one seasonal gate will be established south of the village of Beit Sourik. In addition, a checkpoint will be positioned on the road leading eastward from Bidu.

69. In addition to the parties' arguments before us, a number of residents of the town of Mevasseret Zion, south of the village of Beit Sourik, asked to present their position. They pointed out the good neighborly relations between Israelis and Palestinians in the area and expressed concern that the route of the fence, which separates the Palestinian inhabitants from their lands, will put those relations to an end. They argue that the Palestinians' access to their lands will be subject to a series of hindrances and violations of their dignity, and that this access will even be prevented completely. On the other hand, Mr. Efraim Halevi asked to present his position, which represents the opinion of other residents of the town of Mevasseret Tzion. He argues that moving the route of the fence southward, such that it approaches Mevasseret Tzion, will endanger its residents.

70. As with the previous orders, here too we take the route of the separation fence determined by the military commander as the basis of our examination. We do so, since we grant great weight to the stance of the official who is responsible for security. The question which arises before us is: is the damage caused to the local inhabitants by this part of the separation fence route proportionate? Here too, the first two subtests of the principle of proportionality are satisfied. Our doubt relates to the satisfaction of the third subtest. On this issue, the fact is that the damage from the segment of the route before us is most severe. The military commander himself is aware of that. During the hearing of the petition, a number of changes in the route were made in order to ease the situation of the local inhabitants. He mentioned that these changes provide an inferior solution to security problems, but will allow the injury to the local inhabitants to be reduced, and will allow a reasonable level of security. However, even after these changes, the injury is still very severe. The rights of the local inhabitants are violated. Their way of life is completely undermined. The obligations of the military commander, pursuant to the humanitarian law enshrined in the Hague Regulations and the Fourth Geneva Convention, are not being satisfied.

71. The Council for Peace and Security proposed an alternate route, whose injury to the agricultural lands is much smaller. It is proposed that the separation fence be distanced both from the east of the village of Beit Sourik and from its west. Thus, the damage to the agricultural lands will be substantially reduced. We are convinced that the security advantage achieved by the route, as determined by the military commander, in comparison with the alternate route, is in no way proportionate to the additional injury to the lives of the local inhabitants caused by this order. There is no escaping the conclusion

that, for reasons of proportionality, this order before us must be annulled. The military commander must consider the issue again. He must create an arrangement which will avoid this severe injury to the local inhabitants, even at the cost of a certain reduction of the security demands. The proposals of the Council for Peace and Security – whose expertise is recognized by the military commander – may be considered. Other routes, of course, may be considered. This is the military commander's affair, subject to the condition that the location of the route free the village of Beit Sourik (and to a lesser extent, the village of Bidu) from the current chokehold and allow the inhabitants of the villages access to the majority of their agricultural lands.

Order no. Tav/109/103

72. This order applies to the route of the separation fence east of the villages of Bidu, Beit Ajaza and Beit Daku. Its length is approximately five kilometers. As we take notice of its southern tip, its central part, and its northern part, different parts of it raise different problems. The southern tip of the order directly continues from the route of order no. Tav/108/03, to the area passing west of the town of Har Shmuel. This part of the fence passes east of the village of Bidu, and it is the direct continuation of the part of the separation fence considered by us in the framework of order no. Tav/108/03. The fate of this part of order no. Tav/109/03 is the same fate as that of order no. Tav/108/03. As such, the separation fence will be moved eastward, so that the inhabitants of the village of Bidu will be able to continue the agricultural cultivation of the part of their lands east of this part of the fence.

73. The central part of the separation fence in this order passes west of the town of Har Shmuel and east of the village of Bidu, until it reaches New Giv'on, which is east of it, and the village of Beit Ajaza which is west of it. The separation fence separates these two towns. The route causes injury to the agricultural lands of the village of Bidu and to the access to them. The route also impinges upon the lands of the village of Beit Ajaza. We were informed that 350 dunams of the lands of this village will be damaged by the construction of the obstacle. 2400 dunams of the lands of the village will be beyond it (2000 dunams of it cultivated land). In addition, the route cuts off the access roads that connect the villages to the urban center of Ramallah and to East Jerusalem In the affidavit of the Council for Peace and Security (of April 4 2004) it was mentioned that the current route will allow the local inhabitants to reach Ramallah only via a long and difficult road. Petitioners proposed that the route of the fence pass adjacent to the town of Har Shmuel, to the road connecting the Ramot neighborhood to Giv'at Ze'ev, and to the southern part of the town of New Giv'on. Thus, free access to the agricultural lands in the area will be possible. Petitioners also proposed pressing the route up against the western part of New Giv'on, and thus distancing it a bit from the village of Beit Ajaza.

74. The route proposed by petitioners is unacceptable to respondent. He argues that it does not take

into account the palpable threat of weapons fire upon Israeli towns and upon the road connecting Ramot with Giv'at Ze'ev. Neither does it consider the need to establish a security zone which will increase the preparation time available to the armed forces in the event of an infiltration. Respondent argues that pushing the separation fence up against the Israeli towns will substantially endanger those towns. The military commander is aware of this, and therefore testified before us that a gate will be established at that location in order to allow the inhabitants' passage to their lands. East of the village of Bidu, a permanent checkpoint will be established, which will be open 24 hours a day, 365 days a year, in order to allow the preservation of the existing fabric of life in the area and ease the access to the villages. It was further decided to take steps which will improve the roads connecting the villages to one another, in order to allow the continued relations between these villages, and between them and Ramallah. In addition, respondent is examining the possibility of paving a road which will allow free and fast access from the villages to the direction of Ramallah. In his affidavit (of April 20 2004), respondent testified (paragraph 22 of the affidavit) that, until the completion of said road, he will not prevent passage of the inhabitants of the villages in this petition to the direction of Ramallah; rather, access toward the city will be allowed, according to the current arrangements.

75. According to our approach, great weight must be given to the military stance of the commander of the area. Petitioners did not carry their burden and did not convince us that we should prefer petitioners' military stance (supported in part by the expert opinion of members of the Society for Peace and Security) over the stance of the commander of the area. We assume, therefore, that the position of the commander of the area, as expressed in this part of order no. *Tav/109/03*, is correct, and it forms the basis for our examination.

76. Is the damage caused to the local inhabitants by this part of the route of the separation fence proportionate? Like the orders we considered up to this point, the question is: is the security advantage gained from the route, as determined by the commander of the area, compared to other possible alternate routes, proportionate to the additional injury to the local inhabitants caused by this route, compared to the alternate routes? Here, as well, the picture we have already dealt with reappears. The route of the fence, as determined by the military commander, separates local inhabitants from their lands. The proposed licensing regime cannot substantially solve the difficulties raised by this segment of the fence. All this constitutes a severe violation of the rights of the local inhabitants. The humanitarian provisions of the Hague Regulations and of the Fourth Geneva Convention are not satisfied. The delicate balance between the security of the area and the lives of the local inhabitants, for which the commander of the area is responsible, is upset. There is no escaping, therefore, the annulment of the order, to the extent that it applies to the central part of the fence. The military commander must consider alternatives which, even if they result in a lower level of security, will cause a substantial (even if not complete) reduction of the damage to the lives of the local inhabitants.

77. We shall now turn to the northern part of order no. Tav/109/03. The route of the gate at this part begins in the territory separating New Giv'on from the village of Beit Ajaza. It continues northwest to the eastern part of the village of Beit Daku. In our decision (of March 31 2004), we determined that respondents shall refrain from making irreversible changes in the segment between Beit Tira and North Beit Daku. There is no dispute between the parties regarding the part of the fence which separates New Giv'on and Beit Ajaza. This part of the fence is legal. The dispute arises regarding the part of the separation fence which lies beyond it.

78. Petitioners argue that this part of the route of the separation fence severely injures the local inhabitants of the village of Beit Daku. The data in their arguments show that 300 dunams of village lands will be directly damaged by the passage of the obstacle through them. 4000 dunams will remain beyond the obstacle (2500 of them cultivated). The affidavit submitted by the Council for Peace and Security states that the route of the obstacle should be moved a few hundred meters northeast of the planned location, in order to reduce the effect on local inhabitants. Petitioners presented two alternate routes for the obstacle in this segment. One route passes through the area intended for expansion of the town of Giv'at Ze'ev known by the nickname of "The Gazelles' Basin," where a new neighborhood is already being built. A second alternate route draws the obstacle closer to its present route, northeast of it.

79. Respondent objects to the route proposed by petitioners and by the Society for Peace and Security. He explains that there is great importance to the control of a high hill located east of the village of Beit Daku. This hill topographically controls New Giv'on, Giv'at Ze'ev and "The Gazelles' Basin." The route of the fence was planned such that it would not obstruct the road connecting the villages of Beit Daku and Beit Ajaza. In addition, the route passes over ridges of the hill which are of relatively moderate gradient, whereas the other ridges which descend from it are steep. In respondent's opinion, moving the fence northwest of its current route will allow terrorist activity from the high hill, and thus endanger the Israeli towns and the army forces patrolling along the obstacle. In addition, the fact that the route proposed by petitioners is steeper raises complex engineering problems, whose solution will demand multiple bends in the route that will seriously damage the crops located at the foot of the hill.

80. As with other segments of the separation fence, here too we begin from the assumption that the military-security considerations of the military commander are reasonable, and that there is no justification for our intervention. The question before us, therefore, is: is the route of the separation fence, which actualizes these considerations, proportionate? The main difficulty is the severe injury to the local inhabitants of Beit Daku. The fence separates them from considerable parts (4000 dunams,

2500 of which are cultivated) of their lands. Thus, a disproportionate injury is caused to the lives of the people in this location. We accept – due to the military character of the consideration – that the high hill east of the village of Daku must be under IDF control. We also accept that "The Gazelles' Basin" is a part of Giv'at Ze'ev and needs defense just like the rest of that town. Despite all that, we are of the opinion that the military commander must map out an alternate arrangement – one that will both satisfy the majority of the security considerations and also mitigate, to the extent possible, the separation of the local inhabitants of the village of Daku from their agricultural lands. Such alternate routes were presented before us. We shall not take any stand whatsoever regarding a particular alternate route. The military commander must determine an alternative which will, provide a fitting, if not ideal, solution for the security considerations, and also allow proportionate access of Beit Daku villagers to their lands.

Order no. Tav/110/03

81. This order continues the route of the separation fence northwest of Beit Daku. This part starts out adjacent to the east part of the village of A-Tira, and ends up at route 443, east of Beit Horon. The village of A-Tira is not a party to the petition before us, and we will not deal with its inhabitants. As far as it affects the lands of Beit Daku, this order must go the way of Tav/109/03, which we have already discussed.

Overview of the Proportionality of the Injury Caused by the Orders

82. Having completed the examination of the proportionality of each order separately, it is appropriate that we lift our gaze and look out over the proportionality of the entire route of the part of the separation fence which is the subject of this petition. The length of the part of the separation fence to which these orders apply is approximately forty kilometers. It causes injury to the lives of 35,000 local inhabitants. 4000 dunams of their lands are taken up by the route of the fence itself, and thousands of olive trees growing along the route itself are uprooted. The fence separates the eight villages in which the local inhabitants live from more than 30,000 dunams of their lands. The great majority of these lands are cultivated, and they include tens of thousands of olive trees, fruit trees and other agricultural crops. The licensing regime which the military commander wishes to establish cannot prevent or substantially decrease the extent of the severe injury to the local farmers. Access to the lands depends upon the possibility of crossing the gates, which are very distant from each other and not always open. Security checks, which are likely to prevent the passage of vehicles and which will naturally cause long lines and many hours of waiting, will be performed at the gates. These do not go hand in hand with the farmer's ability to work his land. There will inevitably be areas where the security fence will have to separate the local inhabitants from their lands. In these areas, the commander should allow passage which will reduce, to the extent possible, the injury to the farmers.

83. During the hearings, we asked respondent whether it would be possible to compensate petitioners by offering them other lands in exchange for the lands that were taken to build the fence and the lands that they will be separated from. We did not receive a satisfactory answer. This petition concerns farmers that make their living from the land. Taking petitioners' lands obligates the respondent, under the circumstances, to attempt to find other lands in exchange for the lands taken from the petitioners. Monetary compensation may only be offered if there are no substitute lands.

84. The injury caused by the separation fence is not restricted to the lands of the inhabitants and to their access to these lands . The injury is of far wider a scope. It strikes across the fabric of life of the entire population. In many locations, the separation fence passes right by their homes. In certain places (like Beit Sourik), the separation fence surrounds the village from the west, the south and the east. The fence directly affects the links between the local inhabitants and the urban centers (Bir Nabbala and Ramallah). This link is difficult even without the separation fence. This difficulty is multiplied sevenfold by the construction of the fence.

85. The task of the military commander is not easy. He must delicately balance between security needs and the needs of the local inhabitants. We were impressed by the sincere desire of the military commander to find this balance, and his willingness to change the original plan in order to reach a more proportionate solution. We found no stubbornness on his part. Despite all this, we are of the opinion that the balance determined by the military commander is not proportionate. There is no escaping, therefore, a renewed examination of the route of the fence, according to the standards of proportionality that we have set out.

Epilogue

86. Our task is difficult. We are members of Israeli society. Although we are sometimes in an ivory tower, that tower is in the heart of Jerusalem, which is not infrequently hit by ruthless terror. We are aware of the killing and destruction wrought by the terror against the state and its citizens. As any other Israelis, we too recognize the need to defend the country and its citizens against the wounds inflicted by terror. We are aware that in the short term, this judgment will not make the state's struggle against those rising up against it easier. But we are judges. When we sit in judgment, we are subject to judgment. We act according to our best conscience and understanding. Regarding the state's struggle against the terror that rises up against it, we are convinced that at the end of the day, a struggle according to the law will strengthen her power and her spirit. There is no security without law. Satisfying the provisions of the law is an aspect of national security. I discussed this point in HCJ 5100/94 *The Public Committee against Torture in Israel v. The Government of Israel*, at 845:

> We are aware that this decision does make it easier to deal with that reality. This is the destiny of a democracy—she does not see all means as acceptable, and the ways of her enemies are not always open before her. A democracy must sometimes fight with one arm tied behind her back. Even so, a democracy has the upper hand. The rule of law and individual liberties constitute an important aspect of her security stance. At the end of the day, they strengthen her spirit and this strength allows her to overcome her difficulties.

That goes for this case as well. Only a separation fence built on a base of law will grant security to the state and its citizens. Only a separation route based on the path of law, will lead the state to the security so yearned for.

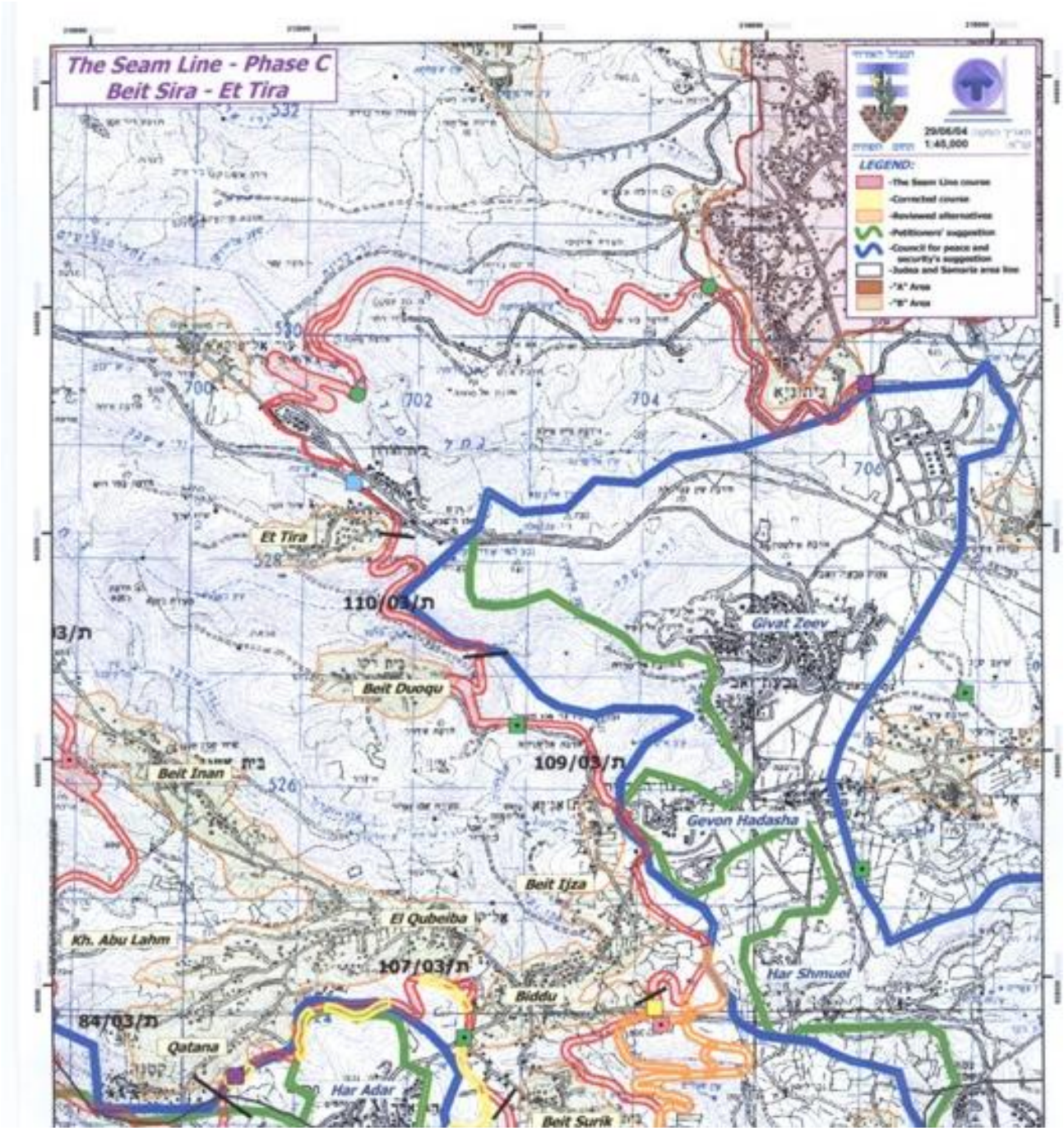
The result is that we reject the petition against order no. Tav/105/03. We accept the petition against orders Tav/104/03, Tav/103/03, Tav/84/03 (western part), Tav/107/03, Tav/108/03, Tav/109/03, and Tav/110/03 (to the extent that it applies to the lands of Beit Daku), meaning that these orders are nullified, since their injury to the local inhabitants is disproportionate.

Respondents will pay 20,000 NIS in petitioners' costs.

Vice President E. Mazza
I concur.

Justice M. Cheshin
I concur.

Held, as stated in the opinion of President A. Barak.
June 30, 2004


The Seam Line - Phase C
Beit Sira - Et Tira
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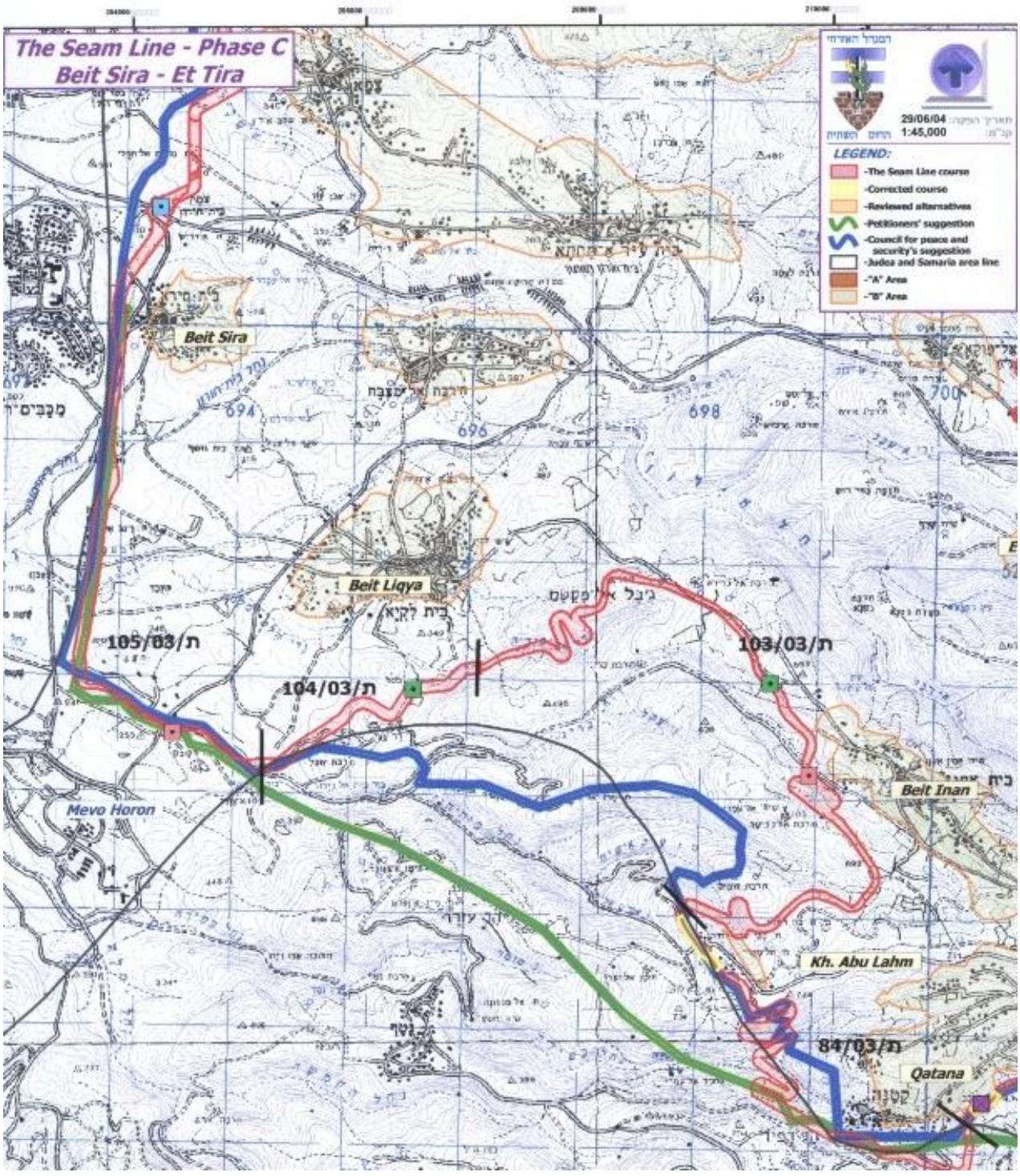
Beit Duqqu
Beit Inan
Givat Zeev
Gevon Hadasha
Beit Ijza
El Qubeiba
Kh. Abu Lahm
Biddu
Har Shmuel
Qatana
Har Adar
Beit Surik
110/03/ת
109/03/ת
107/03/ת
84/03/ת


The Seam Line - Phase C
Beit Sira - Et Tira
29/06/04
1:45,000
LEGEND:
-The Seam Line course
-Corrected course
-Reviewed alternatives
-Petitioners' suggestion
-Council for peace and security's suggestion
-Judea and Samaria area line
-"A" Area
-"B" Area
Beit Sira
Beit Liqya
Mevo Horon
Beit Inan
Kh. Abu Lahm
Qatana
105/03/ת
104/03/ת
103/03/ת
84/03/ת