

22 March 2020

Security Expert Opinion for Petition regarding Security Barrier Route in the Qaffin Area in the Judea and Samaria Area

I, the undersigned, Colonel (Reserves) Shaul Arieli, have been asked by HaMoked: Center for the Defence of the Individual to provide a professional opinion in the field of security with respect to the possibility of relocating the security barrier in the Qaffin section, within the Judea and Samaria Area, and aligning it with the Green Line. I am providing this expert opinion in lieu of a court testimony, and I hereby declare that I am fully aware that for purposes of the provisions respecting perjury under the Criminal Code, this expert opinion bearing my signature is deemed as testimony under oath.

The bottom line of my opinion is as follows:

I believe relocating the security barrier to a route that is based on the Green Line will attain the security goals in full, whilst removing the injury to residents of Qaffin, Akkabahand Nazlat 'Isa (see proposed barrier route marked in blue on Map No. 1). Moreover, a security barrier along the Green Line provides better solutions for some of the security needs compared to the existing route.

Relevant professional experience

1. Commander of the North Gaza Brigade at the time a security barrier was built in the Gaza Strip.
2. Head of Keshet Zva'im B Administration in the IDF Central Command.
3. Deputy Military Secretary to Defense Ministers Yitzhak Mordechai, Moshe Arens and Ehud Barak.
4. Head of the Negotiations Administration at the Prime Minister's Office during Ehud Barak's term
5. Senior consultant for Elbit Systems regarding the seam zone in Israel and homeland security internationally.
6. Represented the Council for Peace and Security as amicus curiae in several court petitions regarding the security barrier.
7. Author of the books *Wall of Folly* and *Going for All Leaving with Nothing*.
8. Expert on Israeli borders, and barriers in Israel and around the world.
9. Guest lecturer at the Interdisciplinary Center Herzliya and the Hebrew University of Jerusalem.

Address

14 Kehilat Yasi St., Tel Aviv, Postal Code: 6970113

Education

1. B.A. in Political Science from Tel Aviv University
2. MBA in Business Management from Recanati School of Business, Tel Aviv University
3. Military course credentials: Company Commander, Battalion Commander, Brigade Commander, Advanced Systems
4. Ph.D. in Geography and Environmental Studies from Haifa University

General

1. The Supreme Court has generally recognized the construction of a barrier in the seam zone, holding as early as in the Alfei Menashe case that “according to the factual basis before us, the reason for erecting the fence is a security reason”.¹ At the same time, the Supreme Court did establish that it was necessary to examine whether the barrier, the governmental measure selected, met the tests of proportionality, and instituted three subtests for this purpose. In this opinion, I shall primarily address the first two subtests of proportionality.

The first subtest of proportionality

2. The supreme court defines the *appropriate means* test as follows: “According to the first subtest, there must be a correlation between safeguarding national security and public safety and the seizure of the land and erection of the fence.”²
3. I shall administer this test according to the goals and objectives for the construction of the security barrier, as set by the defense establishment and listed on the website of the Ministry of Defense and in affidavits submitted by the IDF in various petitions against the route of the security barrier to the Supreme Court sitting as the High Court of Justice.
4. **The goal** was defined as follows: **The “seam zone” was construed as a component of counterterrorism measures, to reduce the capacity of Palestinian terrorists to infiltrate Israel from the territories of the Palestinian Authority**.³
5. The defense establishment initially believed an intermittent barrier backed by monitoring and observation capacities would suffice, **“For topographic reasons, and due to the relative distance from Palestinian and Israeli populations, the military commander estimates entry into Israel can be prevented with security and observation measures”**. However, the defense establishment did pledge that, “inasmuch as a security need for building a full fence arises... a full fence will be built”.⁴
6. Staff work undertaken in 2002 by the defense establishment resulted in the following unequivocal conclusion: “The seam zone plan, the principles of which had been designed by the National Security Council, has been re-evaluated by the defense establishment, arriving at the foundational principle later adopted by the Prime Minister that an intermittent barrier would not meet the objective of preventing infiltration by illegal aliens and terrorists, and a route must be planned for a contiguous barrier”.⁵
7. A contiguous barrier should meet the **operational concept** for achieving the goal, as written by the defense establishment: **“Defense along both sides of the seam zone, under full IDF responsibility through maintenance efforts based on the barrier, along with operations in its rear at a distance that provides space to intercept threats, as well as parameter security efforts based on long-range penetration deep inside Area A and all the way to the barrier”**.

¹ [7957/04 Zaharan Yunis Muhammad Mara'abe v. The Prime Minister of Israel](#), Takdin Elyon 2005 (3)3333 (English translation by Supreme Court).

² [HCJ 2056/04 Beit Sourik Village Council v. The Government of Israel](#), IsrSC 58(5) 807. (hereinafter: **Beit Sourik**) (English translation by Supreme Court).

³ From Ministry of Defense seam zone website (Hebrew).

⁴ Ibid.

⁵ Ibid.

8. In conclusion, it can be established that the barrier built as part of the “seam zone” meets this subtest, with respect to the ability to perform effective security control of transit by terrorists into the State of Israel and Jerusalem, in order to protect the lives and safety of Israeli residents.
9. *As such, in the absence of peace negotiations or an agreement, and given concerns over unpredictable escalations, it is necessary to maintain a contiguous security barrier between Israel and the Judea and Samaria Area.*

The second subtest of proportionality

10. The test of **the less injurious measure** - The Supreme Court stated that “*the question was whether, among the various routes of the separation fence that could achieve the goal, the one that was selected is the least injurious.*” With respect to this test, I believe that:

The bottom line of my opinion is that relocating the security barrier to a route that is based on the Green Line will attain the security goals in full, whilst removing the injury to residents of Qaffin, Akkabah and Nazlat ‘Isa (see proposed barrier route marked blue on Map No. 1).

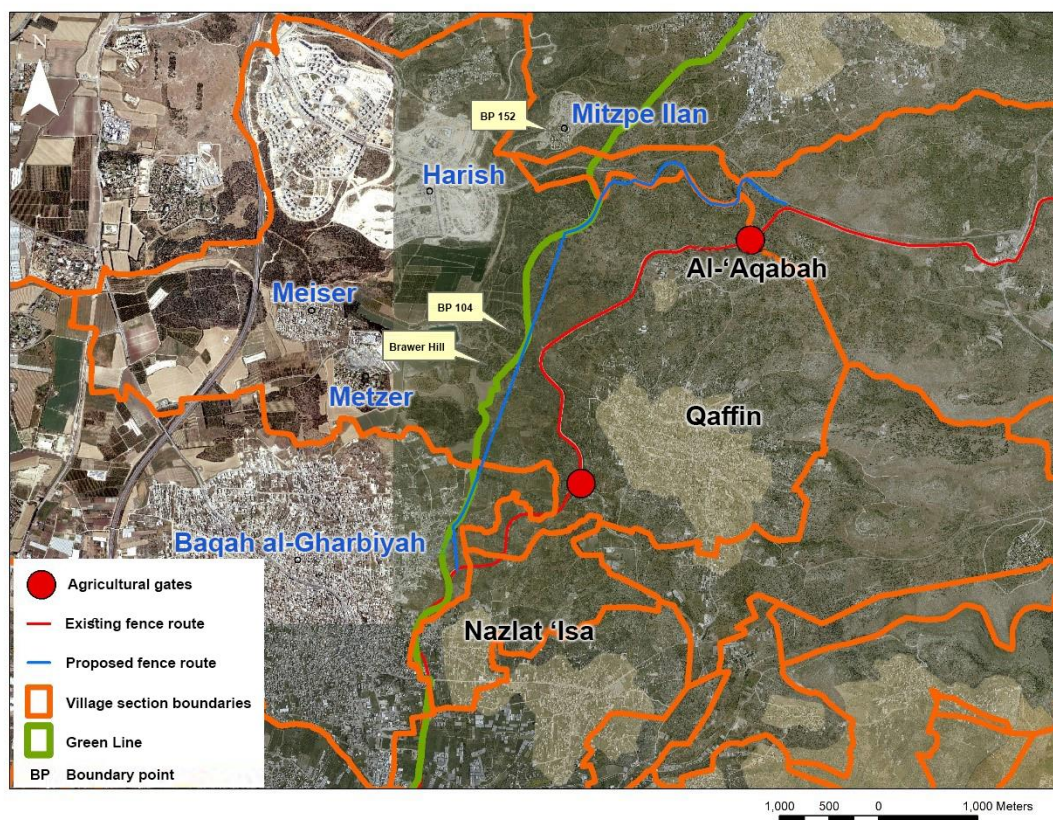
Moreover, a security barrier along the Green Line provides better security solutions to some of the needs compared to the existing route.

11. To perform the second subtest, I will compare the solution offered by the existing barrier to the various threats and the solution offered for these threats by a barrier based on the Green Line, according to the criteria developed by the defense establishment itself, in the section on the operational response to threats in the seam zone.
12. **In this document, I will use the following terms:**

The existing barrier = the barrier that was constructed.

The proposed barrier = a barrier on a route aligned with the Green Line with three eastwardly corrections that penetrate into the Judea and Samaria Area to varying degrees, as marked on Map No. 1 below. The three corrections that divert the route away from the Green Line were made as a result of the topographic analysis required for placing the barrier on a route that meets security needs, primarily, dominating terrain in terms of fields of fire, observation and security for troops operating along it.

Map No. 1 - General map of existing and proposed barriers



13. The defense establishment developed and released the following principles for determining the route of the security barrier.⁶ When comparing the existing barrier to the proposed barrier, I will address the relevant principles among them:

14. **First criterion - Solution for operational mission: contiguity**

15. This criterion relates to the continuity of operational activity on either side of the Green Line, based on the different elements of the operation and coordination between forces operating in the different sectors - beginning with the Green Line and ending in Area A, which is under the responsibility of the Palestinian Authority. The fulfillment of this criterion is unrelated to the barrier's route. All forces operating along the barrier within the State of Israel and within the Judea and Samaria Area are subordinate to the military commander. It is noted and stressed that *security forces operate on both sides of the barrier everywhere in the Judea and Samaria Area*, and altering the route of the barrier will not limit IDF activity east of it, in Areas C, B, or A, in the same operational format used today.

16. **Second criterion - The seam zone and pursuit (observation and domination)**

17. This criterion is pivotal for the examination of the route of the barrier. It is related to *the time and space factor* during effective pursuit by security forces to apprehend persons who have crossed without authorization or to prevent such crossing. In other words, the barrier system must give security forces the time they need to apprehend infiltrators or stop individuals seeking to infiltrate before they reach their destination.

⁶ Ministry of Defense seam zone website (Hebrew).

18. Providing security forces with the time they require is achieved through three main physical elements (which are unrelated to intelligence information):
- **The barrier itself** - The more complex the barrier (height, width, elements that pose difficulty, etc.), the longer it takes to cross it.
 - **Early detection** - A system of land (permanent or mobile) and aerial observations, for night and day, and the electronic sensors on the barrier itself provide early monitoring and detection of suspected infiltrators. The denser the observation system, and the more natural and sparser the space under observation is (for instance, urbanized terrain versus non-urbanized terrain, forested areas versus open fields, etc.), the better the detection ability.
 - **Pursuit space after barrier crossing** - The longer the distance from the barrier to the destination and the less navigable (land cover, gradient, natural obstacles, etc.), the longer it takes to traverse it.
19. I turn now to assessing the two routes according to this criterion and in relation to the security purpose (see Map No. 1):

- **The barrier itself** – Generally, there is no difference between the existing and proposed barriers in terms of their contribution to providing security forces with enough time, as the two are the same type of barrier. However, it is important to note that the *defense establishment has been working for several years towards replacing segments of the barrier that use fencing with a wall*. A wall presents a more complex barrier that takes longer to cross (the portion of wall barrier has risen over these years from 3% to 25% of the total built barrier). In other words, relocating the barrier to the Green Line, and building it as a wall, will give security forces more time to prevent infiltration or apprehend infiltrators than the current barrier offers.
- **Early detection** - Under a working premise that both cases would feature a similar observation system, the fact that the terrain east of the existing barrier is saturated with construction, greenhouses, etc. (see Maps Nos. 2 and 3), compared to the structure-free space east of the Green Line and the existing barrier (see Map. No. 1 and Figure No. 1), it is possible to determine that ability of early detection of suspected infiltrators, before they reach the barrier, would be superior with the proposed barrier based on the route of the Green Line compared to the ability available with the existing barrier, which is adjacent to the built-up area of the Palestinian villages.

It is important to add and stress, as stated in paragraph 5, that the defense establishment was of the opinion that “For topographic reasons, and due to the relative distance from Palestinian and Israeli populations, the military commander estimates entry into Israel can be prevented with security and observation measures”. The villages of Qaffin and Akkabah are located at distances of 700 and 1700 meters, respectively, from the Green Line. In other words, these distances can meet the need for early detection of potential infiltrators. Once again, the security barrier based on the Green Line offers security advantages in terms of early detection over the existing barrier.

- **Pursuit space** - In this regard, the existing barrier does allow for a larger pursuit space. However, attention must be given to the capacity to achieve the security purpose at the expense of impinging on the rights of protected persons. The proposed barrier will be located 900 meters away from the kibbutz community of Metzger and 300 meters from Mitzpe Ilan. These distances are much larger than prevalent

distances throughout Judea and Samaria between the barrier and communities in the Judea and Samaria Area or inside Israel (dozens of settlements or Israeli communities are located within a mere several dozen meters from the barrier, such as Mezadot Yehuda; Sansana; Eshkolot; Ariel, Maccabim, Bat Hefer and more). Additionally, both communities are located on high hills, and the space is covered in vegetation that impedes penetration by infiltrators following barrier crossing.

Map No. 2 - The built-up area of the village of Akkabah



Map No. 3 - The built-up area of the village of Qaffin

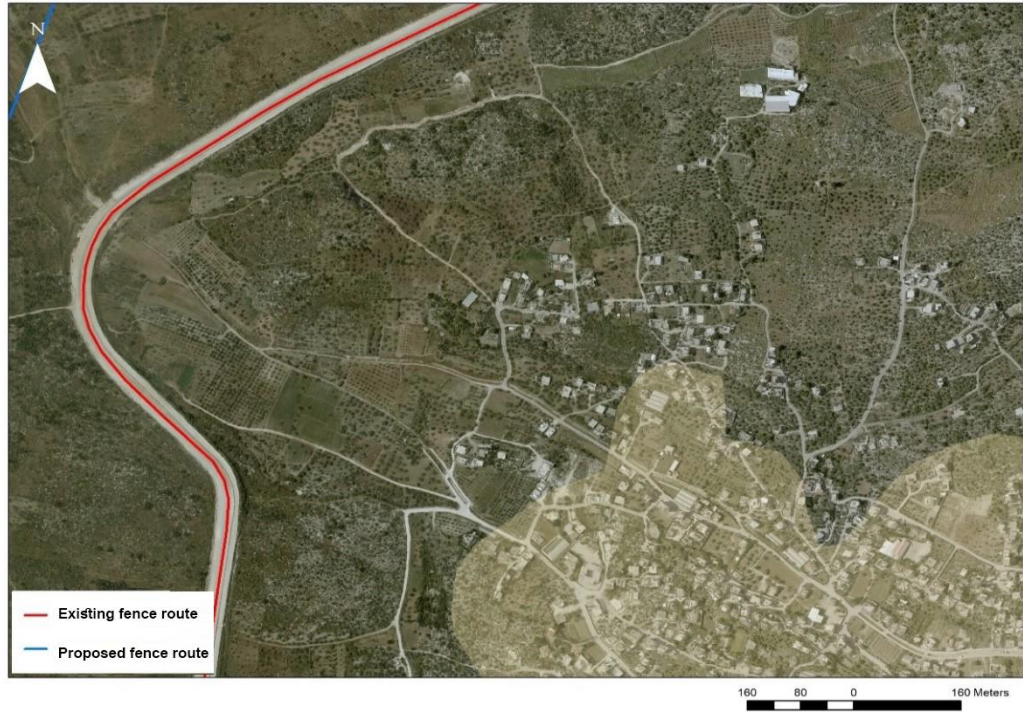


Figure No. 1 - Space between existing barrier and Green Line



20. *To conclude this major criterion, the proposed barrier along the route of the Green Line offers operational advantages over the existing barrier in terms of time and space, both with respect to the barrier (wall versus fence) and with respect to early detection, and it continues to fully and optimally meet the requirements of space for pursuit.*

21. **Third criterion - Security for troops operating along the barrier**

22. This criterion has two major manifestations on the ground, in addition to bulletproofing vehicles and protective gear for soldiers:

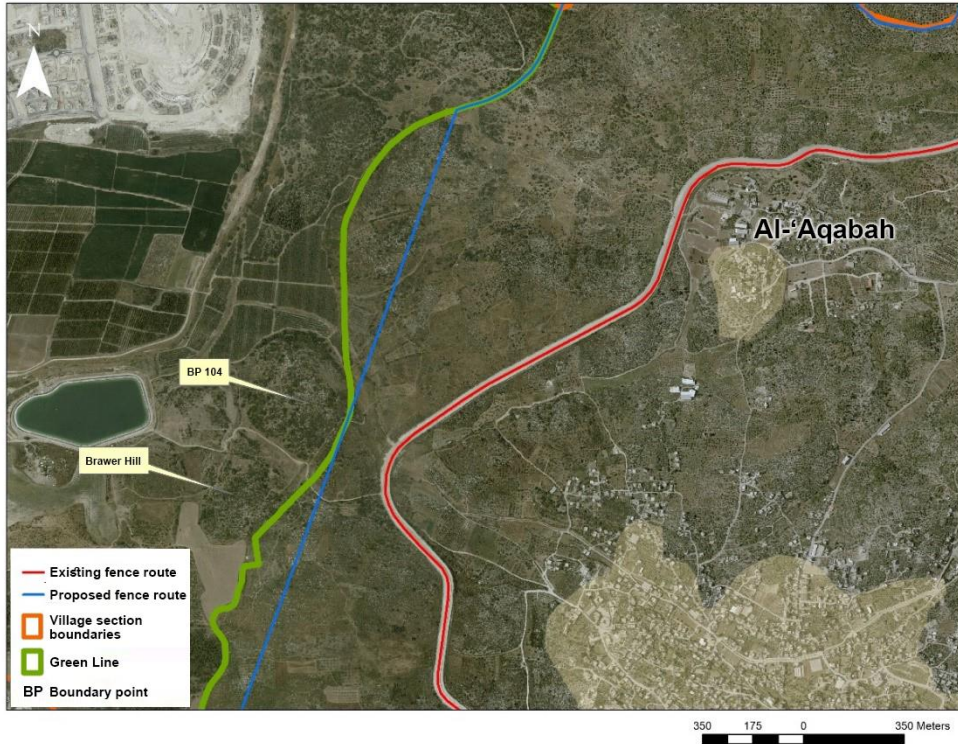
- **Dominating terrain** – A barrier route that dominates areas to the east in terms of observation and fields of fire, and terrains that dominate the route of the barrier to the west make it difficult for infiltrators or terrorists to surprise patrols and harm them.
- **Urbanized terrain** - The closer the built-up area is to the barrier and the denser it is, the more difficult it is to identify potential terrorists, and the easier it is to surprise and harm patrols.

23. A comparison between the proposed barrier and the existing one:

24. **Dominating terrain** - The existing route runs at an average height of 80 meters above sea level, while the proposed route, along the Green Line, is about 35 meters **higher**. The space in question features two prominent **hills west of the Green Line**,

which completely dominate the space between Qaffin and Akkabah and the Green Line (see Maps No. 4 and 5 and Figures No. 2 and 3).

Map No. 4 - Hills within Green Line dominating the Qaffin space, north



Map No. 5 - Hills within Green Line dominating the Qaffin space, south

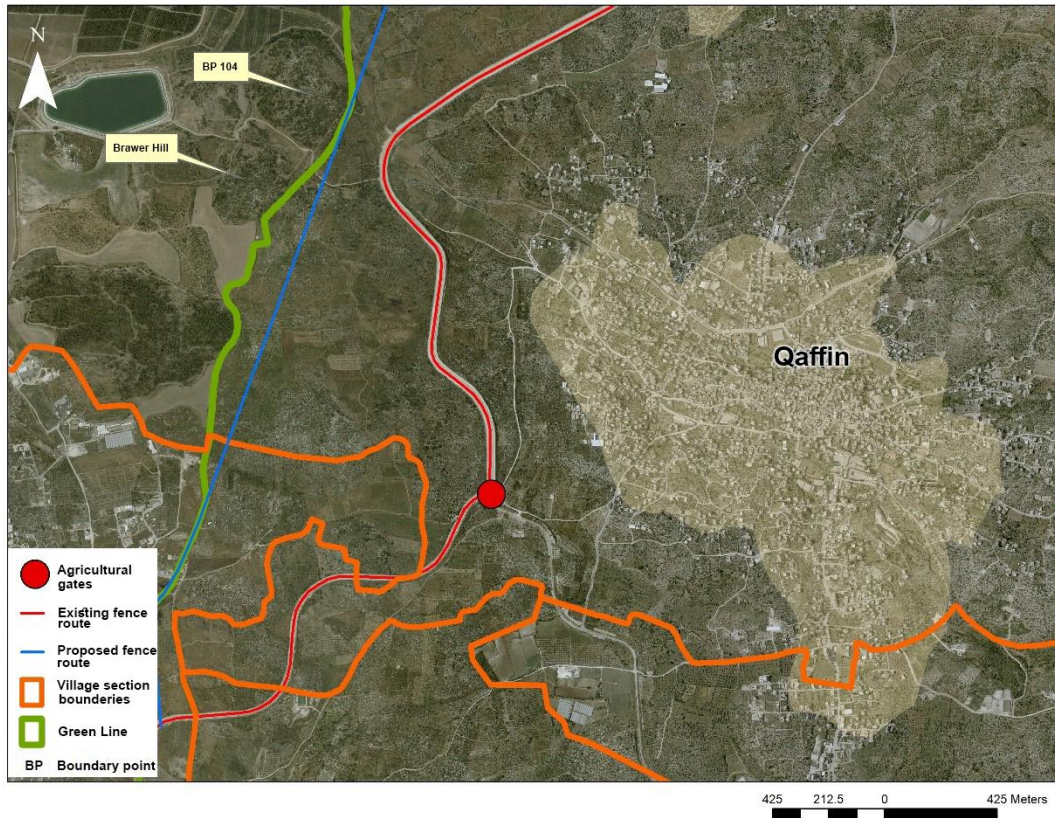


Figure No. 2 - View of ridge on the Green Line from the west



Figure No. 3 - View eastward from the ridge on the Green Line



25. The forested hill between Metzger and the Green Line is 104 meters high. The topographic importance of this hill in the 1949 Armistice was addressed by Professor

Moshe Brawer, whose book *The Borders of Israel*,⁷ features the following paragraph on page 151:

One of the localized issues that arose around the final location of the line focused on the populated areas it traversed. The denser the population and the more widespread the land utilization, the more issues arose as a result of this border and the greater the need to insert localized corrections [it should be recalled that the village of Qaffin had already **lost fully 56 percent** of its lands, which remained inside Israel as part of the armistice signed between Israel and Jordan on April 3, 1949. The Israeli communities - Kibbutz Metzger and the town of Harish - were built on these lands⁸ SA]. However, in this field too, military considerations were clearly preferred. In other words, where a localized correction, even a small one, eliminated or reduced a military advantage... the party whose advantage was to suffer refused to accept the correction. So, for instance, a 20-meter diversion of the armistice line along 150 meters near the village of Qaffin would have prevented the dissection of a grove that provided income for two families. **However, such a correction would have meant one of the parties would lose the top of a hill overlooking several square kilometers.**

Israel insisted on controlling this hill, which was left in its territory and provides domination in observation and fields of fire over the entire space, all the way to Qaffin (See Maps no. 4 and 5 and Figures No. 3 and 4). It was, therefore, perplexing to discover that the route of the existing barrier was not established based on this dominating terrain, but rather on the eastern slopes of the hill ridge located west of this dominating hill/ridge, on inferior terrain, in a manner that is concealed from the dominating terrains inside Israel and prevents observation and fields of fire coverage both routinely and in the course of an incident. In other words, the terrain that provides domination of the Qaffin expanse in observation and fields of fire was replaced with a route located on inferior terrain, completely contradicting the operational concept established by the defense establishment itself. Relocating the existing barrier to the proposed route will provide the security advantages required for the operation of patrols.

26. This was not the first time the selection of inferior terrain for the route of the barrier over dominating terrain has raised questions. The judgment given in the Bil'in case, for example, included the following remarks in relation to a similar route chosen for motivations other than security: "[I]t seems that due to the desire to ensure the future construction of the eastern neighborhood [in Modi'in Illit] [...] the current route of the fence also leads one to wonder about the security advantage it provides. It is uncontroversial that the route passes mostly through territory which is topographically inferior [and therefore] **endangers the forces patrolling the route. Against the background of the security outlook presented to us in many other cases, according to which it is important from a security standpoint to construct the fence on topographically-controlling territory, the current route leads one to wonder.**"⁹

⁷ Moshe Brawer, *The Borders of Israel* (Yavne Publishing, 1988) (Hebrew).

⁸ See, Shaul Arieli, "Geographic, Historic and Political Aspects in the Determination of Borders in Inter-State Conflicts - the Israeli-Palestinian Case", Ph.D. Thesis, University of Haifa, Faculty of Social Sciences, Geography and Environmental Studies Program, March 2016. p. 86 (Hebrew).

⁹ [HCJ 8414/05 Ahmad 'Issa 'Abdallah Yasin, Bil'in Village Council Chairman v. The Government of Israel and the Military Commander in the West Bank](#), TakSC(3) 3557 (Translation by the Supreme Court).

Figure No. 4 - View eastward towards Qaffin from the ridge on the Green Line



27. **Urbanized terrain** - As the barrier was built in close proximity to residents' homes and the area of their daily activities (see Maps No. 2 and 3), it is reasonable to assume that during a security escalation in the Judea and Samaria Area, this degree of proximity would allow any terrorist to freely fire at patrolling troops from a nearby home while concealed and sheltered. An expected, immediate response to such fire would almost inevitably involve harm to "uninvolved Palestinian civilians" and would further escalate the violence. Additionally, if there is an escalation, the proximity of the built-up area to the barrier could create hundreds of false alarms that would wear down the forces alerted to the area, and induce unnecessary IDF activity against innocents who harbor no terrorist intentions.

28. *To conclude this criterion, the proposed barrier is far superior to the existing one in terms of security for the troops operating along it with respect to both aspects: dominating terrain and proximity to urbanized terrain.*

29. **Fourth criterion - Avoiding, to the extent possible, separating land from its owners**

30. The harm the existing barrier inflicts on the villages is extremely severe. Over 3,000 dunams of agricultural land, accounting for 60% of Qaffin farmland and 80% of Akkabah farmland, were left west of the barrier. As emerges from the petition, the functional arrangements the farmers were promised in order to cultivate their lands have not been implemented, and the financial damage they suffer is particularly severe.

31. These functional arrangements, that form part of the permit regime, require the operation of two agricultural gates, 408 and 436 (see Map No. 1) As is known, agricultural gates are a security Achilles' heel, as the IDF itself has declared: "***Any point of passage increases the risk of terrorist infiltration into Israel and acts as a***

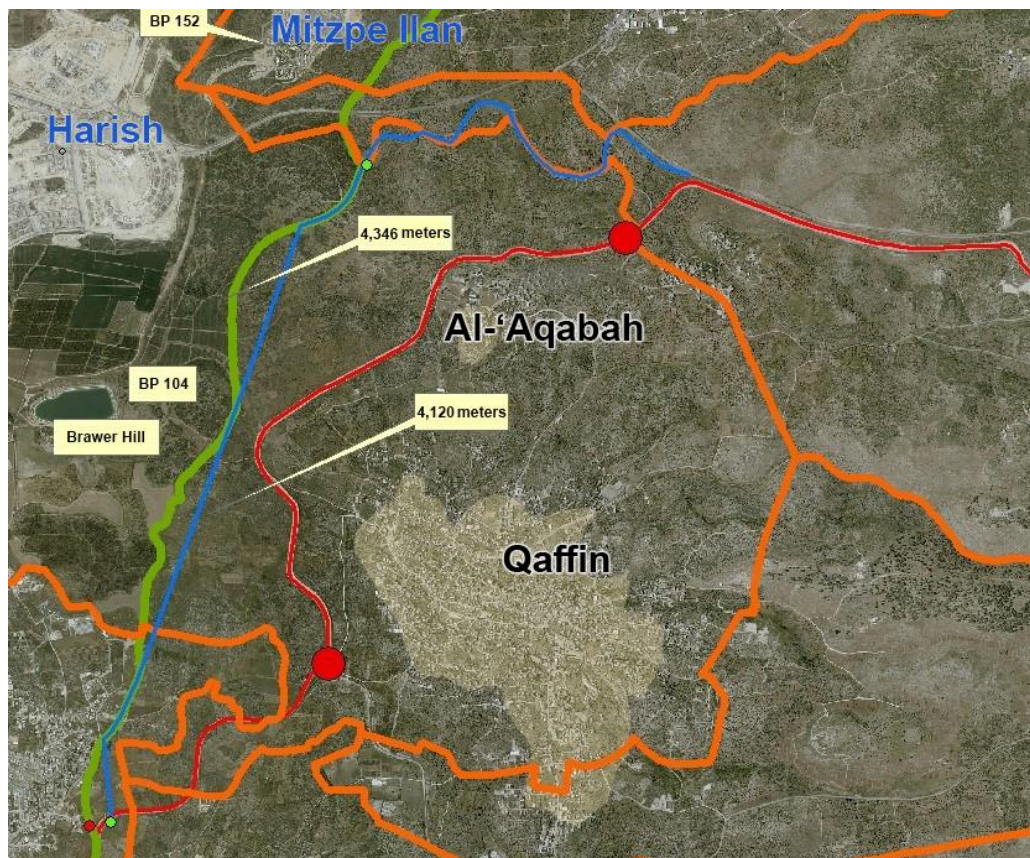
point of friction that increases the risk to the security forces put in charge of the crossing point”¹⁰

32. By changing the route of the barrier to one based on the Green Line, nearly all of the lands would be located east of the barrier, which would allow unhindered cultivation. ‘Only’ 335 dunams would be left west of the barrier. ***The number of agricultural gates could be reduced, and their use could be greatly diminished as the area left on the west side of the barrier would be reduced by 95%.***

33. **Fifth Criteria - Long term simplification of operation and maintenance**

34. Reducing the length of the existing barrier along the Green Line would reduce associated costs. Reducing the number of agricultural gates would cut daily operation costs and save valuable IDF soldier manpower. “Straightening” some of the bends in the Green Line, as suggested with the Green Line based route, would provide greater security for routine IDF patrols, and especially when troops are called to the area (see Map No. 6).

Map No. 6 - Proposed barrier



35. **Table - comparing existing barrier to proposed barrier**

¹⁰ HCJ 4289/05 **Bir Nabala Local Council v. Government of Israel** paragraph 44 of the judgment of President Aharon Barak (reported in Nevo, November 26, 2006) (Hebrew).

No.	Criterion	Existing barrier	Proposed barrier	Preferable route
1	“Solution for operational mission: contiguity”	+	+	Proposed barrier (Wall)
2	“The seam zone and pursuit (observation and control)” The barrier itself Early detection Pursuit space	- - +	+ + +	Proposed barrier
3	“Security for troops operating along the barrier” Dominating terrain Urbanized terrain	- -	+ +	Proposed barrier
4	“Avoiding, to the extent possible, separating land from its owners”	-	+	Proposed barrier
5	“Long term simplification of operation and maintenance”	-	+	Proposed barrier

Conclusion

36. A comparison between the route of the existing barrier and the route of the proposed barrier, along the Green Line, leads to the definitive conclusion that the proposed barrier:

- ***Fully fulfills the security purpose.***
- ***Improves the security response*** in terms of: barrier crossing, early detection, dominating terrain in observation and fields of fire, proximity to urbanized terrain, security of troops operating along the barrier, reduction of barrier length, reduction in the number of agricultural gates, drastic reduction of permits for village residents, reduction of barrier and agricultural gate maintenance costs.
- ***Significantly decreases harm to protected persons*** by: transferring nearly all agricultural areas to the east side of the barrier, reducing the number of permits required, revoking seizure orders for construction of the existing barrier, which was built on agricultural land.

37. I also wish to note:

38. Firstly, the study conducted by Yossi Chen (former district head with the ISA and ISA comptroller) as part of the geography M.A. program at the University of Haifa in 2007, "Separation Fence - Barrier or Border? Connection and Relationship to Green Line", in which he reaches identical conclusions with respect to the Qaffin segment of the security barrier:

*Several remaining issues with the existing route can be identified: First, the olive trees belonging to the village are still separated from it, and farmers utilize a small gate installed for them in order to cross, or use the Bart'a gate to the north. Travel through this gate (on foot or on donkey) is time consuming. Second, in terms of security, **the Green Line is located on a superior route by every security parameter** - height, domination, shorter, more direct line and forested hills located along the route of the fence in this segment.*

Chen concludes by highlighting:

*The diversion [of the existing barrier] from the Green Line offers no security advantage. On the contrary, **the fence is located on the worst route topographically and tactically** - the lowest terrain in the area, under a string of forested hills and on a bend. The fence denies Qaffin residents access to cultivated lands (mostly olives).*

39. Secondly, this route of the existing barrier, approved by the Government of Israel in June 2002 and October 2003, was not included in the substantive changes the defense establishment made to the route of the barrier to achieve the required balance between security and humanitarian considerations, which were approved by the Government of Israel in February 2005, as stated in the Ministry of Defense seam zone website:

On June 30, 2004, the Supreme Court delivered its judgment in the petition filed by residents of Beit Sourik with respect to the barrier west of Jerusalem (30 of 40 km).¹¹ The HCJ accepted the petition due to failure to meet the test of proportionality, ruling that the defense establishment must present an

¹¹ **Beit Sourik**, supra note 2.

alternative route. The planned route was reexamined according to the criteria established in this ruling. This was followed by the insertion of the required changes into the entire plan rather than only the segment discussed by the HCJ, in order to give humanitarian considerations their due weight against security considerations.¹² A government resolution from February 2005 reduced the size of the seam zone and rescinded the plan to build the eastern barrier.¹³

40. Thirdly, this route did not receive the required change despite the scathing criticism by the Brodet Commission appointed to examine Israel's defense budget, which released its findings in May 2007 (paragraph 93). Addressing the security barrier, the Commission noted:

"The conduct around the construction of the fence is another example of deficient, wasteful thinking and practices. The Commission was not convinced that the fence construction process included in-depth analysis and consideration of the full spectrum of security and financial factors. The Commission saw no cost-efficiency analysis or a thorough examination... The military perceived itself as a subcontractor carrying out orders to build a fence... The military does not see the fence as its own project... The military saw itself as a subcontractor implementing orders to build a fence without clarifying for itself the significance of the expenditure and the cost of maintenance, which would amount to hundreds of millions of shekels every year. The military... has not internalized that such a large expense would impact its own budget as well".

Date

Colonel (reserves) Dr. Shaul Arieli

¹² In an interview conducted with departing GOC Central Command Major General Caplanski, journalist Nahum Barnea asked him: "What was your biggest mistake with the fence"? Caplanski responded: "I think the greatest mistake we made was that we didn't take the fabric of life of Palestinians into consideration in the first place". "The Supreme Court knew better than you", Barnea charged. " The Supreme Court put a mirror in front of my eyes", Caplanski said, "it taught me a thing or two about proportionality. I accept that...". Yediot Aharonoth, February 28, 2005.

¹³ Government Resolution No. 3283. Ministry of Defense website, www.mod.gov.il, seam zone (Hebrew).

Annex - figures

41. Existing barrier

- Length - some 6 km
- Easterly penetration past Green Line - 200 to 1,600 meters.
- Agricultural gates - Gate 436 for residents of Qaffin, gate 408 for residents of Akkabah.
- 'Enclave' area – Over 3,200 dunams of farmland belonging to the villages.
- Jewish communities (settlements) - none in enclave area.
- Distance of Palestinian communities from barrier - Nazlat 'Isa, several meters, Qaffin 200-300 meters, Akkabah - dozens of meters.
- Distance of Israeli communities from the barrier - Baqa al-Gharbiya - several meters, Metzger - 1,250 meters, Mitzpeh Ilan 1,400 meters.
- Average barrier height - 80 meters above sea level.

42. Proposed barrier along Green Line route

- Length - some 4.6 km (parallel to Green Line).
- Easterly penetration past Green Line - several dozen meters.
- Agricultural gates - ?
- Area - 335 dunams of village farmland.
- Jewish communities (settlements) - none.
- Distance of Palestinian communities from proposed barrier - Nazlat 'Isa, several meters, Qaffin 700 meters, Akkabah- 1,700 meters.
- Distance of Israeli communities from the barrier - Baqa al-Gharbiya - several meters, Metzger - 900 meters, Mitzpeh Ilan 300 meters.
- Average barrier height - 120 meters above sea level.