

In Defense of the Fence  
February 28, 2004

I would like to start this morning with a short multiple-choice exam:

The first question -- Israel is currently building

- a) A barrier
- b) A wall
- c) A fence

Second question -- This fence can best be characterized as

- a) A land grab
- b) An act of apartheid
- c) An anti-terror device.

And the final question -- Israel

- a) Has a right to build this fence to protect its citizens
- b) Is engaged in an illegal act
- c) Has an obligation to build the fence to protect its citizens.

You may now put down your pens and pencils.

The matter currently before the International Court of Justice at the Hague this week centers on the preceding questions. It is that simple. Yet since we are talking about the Middle East and Israel, and Jews are involved, it becomes much more complex.

The Court has been asked by the U.N. General Assembly to provide advice on the "legal consequences" of Israel's security fence. The Palestinians know that they can depend on an automatic majority in any international forum, with the Moslem and Arab countries automatically voting on their behalf, coupled with the rest of the world which is intimidated into going along with them. In November, U.N. Secretary General Kofi Annan issued a report detailing the harm the fence does to Palestinians. A December General Assembly resolution already declared that the fence is illegal.

The late Abba Eban, who once served as Israel's Ambassador to the United Nations said a number of years ago, that the United Nations would easily agree to pass a resolution that the world is flat, if it were introduced by one of the Arab nations.

Israel is not officially attending the hearings or formally presenting its case, for it rejects the court's authority in this matter. The Court singles out Israel, although it has never ruled on the dispute between India and Pakistan over Kashmir or the conflict between Greece and Turkey over Cyprus (in both cases similar fences have been built), or any of the dozens of other international border disputes.

Its position is supported by the United States as well as the European Union. In addition to the court not being the proper forum for this issue, one can legitimately question how unbiased the court is. One of the judges, a former official of the Egyptian foreign ministry, has already stated, before hearing any arguments, that Israel's position is

groundless and that Israel should be convicted so that sanctions can be imposed against her. He has refused to recuse himself from the proceedings, and his colleagues have defended his right to rule on this case.

Clearly, no court has the authority to determine how Israel, a sovereign nation, should protect its citizens. As a result, instead of participating in the farce at the Hague, Israel has sent representatives to make its case in the court of public opinion. It reminds me of Natan Sharansky's words to the Soviet court about to determine his fate. He knew that the Soviet court had already determined his fate before hearing the case against him. He stood up and, after delivering a message of encouragement to his wife and supporters, concluded, "As for you, the Russian court which has already made up its mind about this case, to you, I have nothing to say."

I have toured the fence, on several occasions over the past two years, both from the ground and by helicopter. The planned 450-mile barrier is a combination of ditches, watch posts and concrete walls. In fact, despite the foreboding images you have seen, although there are high concrete barriers in some places, this constitutes less than 3 % of the demarcation. Most of the fence, more than 97% of it consists of a chain-link system equipped with monitoring sensors and surveillance equipment, which means that if anyone gets through, an alarm goes off so that pursuit of terrorists can begin at once.

Most people do not realize how open and easily accessible it is for Palestinians to enter Israeli territory. The reason so many terrorists can infiltrate Israel is because all they have to do is walk a few miles and they are in the middle of Israeli population centers. To put things in perspective, just imagine that there was a hostile enemy population living in Potomac Village, and we were living right here without any barriers or physical constraints separating us. Without the fence, that is the situation.

People also seem to overlook the fact that Israel did not begin building the fence until hundreds of its citizens were indiscriminately attacked by terrorists sent on thousands of missions by the Palestinian forces. I cannot help but think that if the world really cared about justice and the rights of the innocent, there should have been outrage over the loss of Israeli lives. Perhaps Israel would not have had to take this defensive, preventive action if the international community would have condemned the attacks against its people.

Last Sunday, on the first day of the trial, as if to make Israel's case, a terrorist bomber blew himself up taking the lives of eight Israelis and forever altering the lives of at least 50 others. The number 14 bus is a bus I have taken many times. The site of the explosion, right near Liberty Park is a place I often traversed. Visiting the site immediately after the explosion, N.Y. Congressman Jerrold Nadler said, "If this were happening to the U.S the B-52s would already be on their way."

So while nations who brutally repress and oppress their own people go unchallenged, and have thechutzpah to press their case against Israel, part of the equation that is of course

ignored is amazing restraint of Israel in the face of such brutality. The other part omitted by Israel's accusers is concern for the human rights and lives of Israelis.

Kofi Annan's report does not describe a single terrorist act against Israelis. The violation of human rights by suicide bombing, starting with the right to life, falls within the category of the gravest violations in international law -- crimes against humanity. It is time for us to press the case that the Palestinians are the ones, in the words of Anne Bayefsky, an international lawyer, and member of the Geneva based UN Watch, who are engaged in attempts of ethnic cleansing and genocide. She boldly writes, their "intent is to ethnically cleanse the area of Jews, a fact already accomplished in neighboring Arab states, and most other Arab and Muslim countries."

She cites the Child Rights Convention guaranteeing the child's right to education and to the development of respect for different civilizations and tolerance among all peoples, and contends that the right of Palestinian children to such an education is violated by Palestinian media, schools, textbooks and summer camps, which encourage Palestinian children to hate, and to harm their neighbors. Palestinian rights to work and freedom of movement are limited or infringed, she writes, "not by Israel's fence, but by the terrorists who live and operate among them." She explains, "If a hostage in an armed robbery is killed by police, the law states that the robber caused the death of the hostage, not the police. Palestinian civilians are hostage to the terrorists among them. Israel's actions, like the police officer's, fulfill its legal duties to protect and end violent and illegal behavior."

We are entitled to ask, what kind of justice is there in a world which indicts the party who is trying to protect its citizens from being killed rather than the murderers? When did it become a crime to prevent terrorists from reaching one's cities? The International Court of Justice ignores the very reason that brought about the creation of the anti-terrorist fence. The I.C.J. can either become another weapon in the terrorists' arsenal, or it can reject the gross abuse of the rule of law and the denial of the equal value of the human rights of Israelis.

Attacks have been already been reduced from 59 in a one-month period last year to three in the same period this year. Captured infiltrators have confirmed that they were blocked by the fence and had to make their way to an unfenced area to the south to penetrate the Israeli border. Israeli cities that have been subjected to a large number of terrorist attacks in the past, such as Kfar Sava, Netanya and Hadera, and Afula have been attack free since the fence was erected to protect them.

Far from being a barrier to peace, the security fence is the opposite. Under the current situation, Hamas and Islamic Jihad can hold the peace process hostage by initiating attacks every time progress seems possible. The fence, however, would block that obstructionist strategy. By taking terrorism off the table, both sides have greater flexibility for serious negotiations.

I have not addressed all the issues raised by the fence. Suffice it so say that the fence does not stand on occupied Palestinian land, nor does it affect the final status, for the land

itself is a matter of dispute and Israel has not annexed any territory around the fence. Israel has already provided openings to minimize the disruption to Palestinian lives, and has clearly stated the fence can be moved, and even taken down once an agreement is reached.

The United States, like most countries, has a fence on its borders. Charles Krauthammer pointed out in a recent column that if the United States has built a fence on its borders to keep Mexicans from taking American jobs, then Israel is within its rights to build a fence to keep Palestinians from taking the lives of its citizens.

And so, now, for the final exam question – True or False: The right to life should supercede the right to not be inconvenienced by a fence. And remember – How you answer this question may reflect your values and priorities. It may reveal whether as in the Jewish tradition, life is the supreme value. Hopefully, the International Court of Justice will be guided by the values we cherish and uphold.

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