



LAWYERS FOR SOCIAL RESPONSIBILITY

NEWSLETTER

*Working for Peace
Through Law*

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www.peacelawyers.ca

Greetings to All!

by Bev Delong, Lawyers for Social Responsibility

Our struggle for peace has been much harder faced with a US government which regularly disregards its international law obligations. Despite these difficulties, we continue our work knowing that we work with a fine group of colleagues in the U.S. and, indeed, lawyers around the world who remain hopeful that a nuclear weapons-free world and a more lawful world order are real options for the future. Here is a quick update on our recent activities:

- In early February, on behalf of the International Association of Lawyers Against Nuclear Arms, I circulated the International Appeal against the Pre-emptive Use of Force to numerous professors of international law at Canadian universities to seek their signatures. The Appeal was drafted by former ICJ Judge Christopher Weeramantry, Peter Weiss, John Burroughs and Alyn Ware. It was signed within a 10-day period by 350 lawyers and jurists from 40 countries (including 20 Canadians). This document was circulated among key Canadian Parliamentarians and officials.
- With other members of the Canadian Network to Abolish Nuclear Weapons (CNANW), we organized a second Round Table on NPT Reporting (see report below).
- We provided a briefing on the legal implications of current U.S. nuclear weapons policy to a NDP study session chaired by Jack Layton and Alexa McDonough.
- We briefed a Liberal Parliamentarian concerning the lawfulness of the proposed U.S./U.K. attack on Iraq to prepare him to speak in the House of Commons.
- We gave key Parliamentarians and officials a statement by the International Commission of Jurists calling for adherence to international law during the unlawful invasion of Iraq.
- We provided a statement of concerns about Canadian participation in missile defence to the appropriate Ministers and to key Parliamentarians (see page 5).
- We participated in a Consultation on Non-Proliferation, Arms Control and Disarmament between Government and civil society.

We will continue to seek meetings with Parliamentarians to press our concerns. As a member group in CNANW, we will participate in briefings with key Department of National Defence and Foreign Affairs officials to encourage their efforts towards nuclear disarmament.

Please help us by sharing this newsletter and our website with your friends. We welcome your comments on peace law developments as contributions to the newsletter. We hope to continue with your active moral and financial support. Your contribution of time and money would be deeply appreciated.

With best wishes to all,

Bev Delong,
National President

Roundtable on NPT Reporting

The Canadian Network to Abolish Nuclear Weapons has joined with the Government of Canada in hosting two Round Tables to consider the obligations entailed by the reporting requirement agreed to by all states present at the NPT Review Conference in 2000. We have discussed what would be appropriate content to evidence compliance with the NPT, a depository for the reports, whether a standardized format should be encouraged and methods of engaging more states in the reporting process.

At the June 2003 meeting, Sarah Estabrooks of Project Ploughshares noted an increase in states reporting over the past two years. Most critically, there is a high level of reporting from states that possess nuclear weapons or nuclear power plants.

The Report of the Round Table is available online at:

www.abolishnuclearweapons.org

Dr. El Baradei speaks out!

“UNLESS WE ARE MOVING STEADILY toward nuclear disarmament, I’m afraid that the alternative is that we’ll have scores of countries with nuclear weapons and that’s an absolute recipe for self-destruction,” International Atomic Energy Agency (IAEA) chief Mohamed El Baradei told reporters. (Reuters, September 30, 2003)

“Double standards are being used here. The US government insists that other countries do not possess nuclear weapons. On the other hand they are perfecting their own arsenal. I do not think that corresponds with the treaty they signed.”

He [Dr. El Baradei] warned of the risk of a new nuclear arms race. “Nuclear weapons are more prized than ever. Today, there is serious talk of deploying nuclear weapons. Dictators want to survive too.” (Agence France Presse, Aug. 27, 2003)

Pushing the Government for Peace Policies

by Bev DeLong

The Government of Canada hosted a Consultation in August, 2003 to discuss Canadian policy on weapons of mass destruction. Participants included officials, academics, and representatives of peace organizations. The latter individuals pressed the government to reconsider its participation in the NATO Nuclear Planning Group, for that group is determined to maintain its nuclear weapons despite the legal obligation on all NATO states arising from the Non-Proliferation Treaty to pursue disarmament. That Group also strategies for the possible use of these weapons despite their unlawful character under international law.

Peace reps also pressed officials to clarify NATO’s nuclear weapons policy since the US has recently moved to a strategy allowing use of nuclear weapons against chemical and biological weapons, against seven named states and in the event of “surprising military developments”. Many view this new strategy to be unlawful under international law. The officials advised that Canada has fought against changes in policy and that NATO’s policy remains that set out in the 1999 Alliance Strategic Concept.

Participants also questioned the government’s attempt to participate in talks on ground-based missile defence, noting that information from US sources on this program indicates it is only part of a larger plan of action which would involve weapons in space. How can Canada participate when Canada’s own policy calls for no weapons in space?

President of ICC talks to Canadians

by Tara Ashtakala

The new President of the International Criminal Court recently gave an address in Ottawa, co-sponsored by McGill University and the Department of Justice. Philippe Kirsch has had a long and distinguished career with the Department of Foreign Affairs and International Trade: among many posts related to international justice and security, he served as Ambassador and Deputy Permanent Representative of Canada to the United Nations and as Ambassador and Agent for Canada to the International Court of Justice. In June 1998, Mr. Kirsch Chaired the Committee that negotiated the final text for the ICC Statute, and was elected to the Presidency of the Court earlier this year.

Mr. Kirsch first spoke about the history leading up to the creation of the International Criminal Court. The creation of the ICC was a major development, part of a broader momentum

towards seeking true international justice that emerged in the last decade.

The primary responsibility for the punishment of serious crimes is always with national legal systems; however, what became clear in brutal civil wars of the 1990s was that domestic courts are not always able to hold accountable those who perpetrate genocide, war crimes or crimes against humanity, because they are subject to politics, ethnic tensions and other influences. It became clear that the world, and especially the victims of crimes committed by States, needed an international criminal justice system.

The idea of an international criminal court is not new—it goes back to time of the League of Nations. Again, in 1950, the International Law Commission said that a permanent criminal court would be possible and useful following the prosecutions of the war crimes committed by the Axis powers

in the Second World War. But the Cold War prevented such a development, and so the world was forced to sit back and watch as genocides occurred again in the 1970s, this time in Cambodia and Vietnam.

In the 1990s, tragedy inspired new hope: the UN Security Council established ad hoc tribunals in Yugoslavia and Rwanda. These showed that international justice was a real possibility.

However, it soon became apparent what the shortcomings of such arrangements were. This type of tribunal had jurisdiction in only certain situations; they offered no deterrence effect because they were not retroactive; and the slow pace of prosecutions often meant the loss of critical evidence.

Finally, the international community in 1998 decided it was time for an international permanent criminal court that would be proactive and prospective, not focused on specific geographic jurisdictions or events.

The ICC is the first court created by States and not for only certain States. It prosecutes only the most serious crimes committed after 1 July 2002 (the date of its entry into force). It is subject to complementarity, where national systems are either unable or unwilling to punish these crimes.

The institutional foundations of the Court are now in place. The Office of the Prosecutor has received over 600 communications regarding allegations of crimes from all over the world. Many of these are not within the competence of the Court, either because: they do not meet the definition of crimes under the Rome Statute; or they were committed before the date of entry into force; or the State involved is not a party to the ICC.

However, the situation in the Democratic Republic of Congo meets the criteria of a State unable to prosecute war crimes, so crimes from the DRC are considered by the ICC to be priority.

The Court faces internal challenges as well. The credibility of the ICC is established by both the equity and the efficiency of its procedures and of its structures. The Court must respect the highest standards of justice; it must provide for the exercise of the rights of both parties: the accused and the State parties.

Efficiency in trials and internal functioning is also critical. The real challenge in this regard stems from the fact that international criminal law is unique compared to other areas of international public law: seriousness of crimes, complexity of case, number of victims, access to territory being dangerous.

The ICC is the first institution that has a *Chambre preliminaire*—it gives power to the Prosecutor to carry out an investigation on his own. When the ICC is seized of a case (that is, because a State is unwilling or unable to prosecute it itself), the *Chambre preliminaire* is charged with doing all the basic investigating and evidence-gathering.

However, the support of States is necessary in the collection of evidence, gathering of witnesses and the execution of arrests, since the Court does not have enforcement powers. The ICC thus needs to find its relations with

other international actors, especially States. In this regard, educational projects have been developed for students, lawyers, judges, etc.

The victims, too, have a big role in this unprecedented vehicle for justice. But the efficiency of the Court requires ensuring that the number of victims and their consequent needs do not slow down the Court to the point that it is no longer effective.

The ICC is determined to be transparent; part of this involves staying attentive to public opinion. But, Mr. Kirsch warned, the ICC is not the answer to all the world's problems.

At the same time, though, public opinion should not be swayed by the inaccurate perceptions of the Court that are being promoted by its opponents. While Mr. Kirsch diplomatically refrained from naming particular countries, he did say that contrary to the pronouncements in some quarters, politically-motivated prosecutions are not a problem; if there is an issue raised, it is a matter of perception. The Rome Statute is replete with safeguards to protect the truly innocent against false accusations.

In concluding, Mr. Kirsch reflected on how far we have come in such a short time. Fifteen years ago, the idea of a permanent international criminal court could be dismissed as a dream. Even after the ICC was created, naysayers thought it would take 20 years, even optimists said we wouldn't have a Court before a decade. Instead, just four years after 120 countries committed to real international justice said 'yes' in Rome, we finally had the ICC.

Canada was one of the main catalysts for the achievement of this milestone in the human rights of the world's citizens. Mr. Kirsch came back to Ottawa in his new role to tell Canadians that now was not the time to let support wane. Now, more than ever, the ICC needs practical, moral and political support to be truly successful.

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A Test of Canada's Commitments

by Tara Ashtakala

For the past three years, Canada has spearheaded the Responsibility to Protect (R2P) initiative, leading the international community in trying to establish the criteria by which armed force should be used against sovereign nation-States to halt gross violations of human rights and humanitarian law. Unfortunately, during this time, several major crises which could have served as a litmus test for this proposed new world order appeared to have completely fallen off the radar of Canada and the other countries on the Commission.

However, one conflict in Africa in particular is offering in plain view the chance for Canada to practice what it has preached regarding the duty to protect civilians, namely: the obligations it has undertaken in the NEPAD, the promises it made to war-affected children at the Winnipeg Conference and its leadership in R2P. A civil war in Uganda is threatening the most vulnerable of all civilians: children. UNICEF reports that upward of 30 children are kidnapped nightly, turned into warriors or, in the case of the girls, forced to become sex slaves. As Lloyd Axworthy writes in a recent article, there is "a desperate cry for help from the local peace committee for some form of intervention from the international community to help stop the killings, abductions and violations".

In the spring of 2002, spurred on by the worldwide campaign of counterterrorism, the Ugandan army launched Operation Iron Fist, attacking rebel bases in Sudan. The result has been a disaster for the people of the region. The rebels began a brutal campaign of retaliation, murdering, kidnapping and attacking unprotected villages and humanitarian convoys. The displaced persons' camps have swelled to over 800,000 people, representing two-thirds of the region's population. The camps lack security, face shortages of food and medicines and have become the target of incessant raids. The situation is one of deepening starvation and exploitation by both sides in the war. Efforts to find a negotiated settlement have fallen through, leaving people in the area with little hope for an end to the carnage.

Canada has issued various calls for restraint and an end to the fighting, but has not expended any real diplomatic capital or offered significant assistance. A detailed plan of action for Canadian involvement had been prepared by Stephen Owen, MP in a report to the Canadian International Development Agency before he became a member of the cabinet, but it has never been acted upon.

Ottawa has to decide whether it will remain preoccupied with massaging relations with Washington or whether it will resume its leadership in international human security and undertake a distinctive role in trying to secure peace and stability for a nation that has far too long suffered from the ravages of war and the neglect of the world.

A Remarkable Achievement: The International Criminal Bar

The Canadian Council of Criminal Defence Lawyers advised on July 1, 2003 of the formation of the International Criminal Bar as the organization created to represent counsel who will be practising before the ICC and encourage work on matters such as ethics for counsel and disciplinary proceedings, professional training, and eligibility for appointment by the court.

Elise Groulx from Montreal was elected as its first

President. The ICB arose out of an assembly held March 21-22, 2003 of over 400 lawyers, bars, and interested organizations from over 50 countries on all continents that adopted a Constitution and Code of Conduct for Counsel *representing the collaborative work of lawyers from many different geographic regions and legal systems*...

For further information, please visit www.bip-icb.org

America's hidden battlefield toll

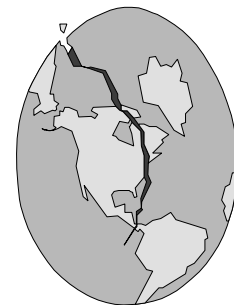
THE OBSERVER

SUNDAY SEPTEMBER 14, 2003

JASON BURKE IN LONDON AND
PAUL HARRIS IN NEW YORK

"The true scale of American casualties in Iraq is revealed by new figures obtained by The Observer, which show more than 6,000 American servicemen have been evacuated for medical reasons since the beginning of the war, including more than 1,500 American soldiers who have been wounded, many seriously. The figures will shock many Americans, who believe that casualties in the war in Iraq have been light.

"Three US soldiers were killed last week, bringing the number of combat dead since hostilities in Iraq were declared officially over on 1 May to 68. A similar number have died in accidents. It is military police policy to announce that a soldier has been wounded only if they were involved in an incident that involved a death. Critics of the policy say it hides the true extent of the casualties." (Underlining is ours)



International Red Cross Conference

by Tara Ashtakala

The International Red Cross Movement has played a major role in exposing the human costs of using weapons. Every four years, the International Committee of the Red Cross and national Red Cross Societies and their International Federation meet with the States parties to the Geneva Conventions, to guide the direction of the policies of the international community with respect to, among other humanitarian issues, the means and methods of armed conflict. This year, the 28th International Conference of the Red Cross and Red Crescent will take place in Geneva from 2 to 6 December. The main theme of the Conference is “Protecting Human Dignity”. Its objective is that Conference members should accept the twofold responsibility underpinning the results of the Conference:

- to respect the law, and
- to reduce the risks related to, and vulnerability to the effects of, armed conflicts, disasters and disease.

Several of the workshops planned for the Conference will address issues related to arms control and weapons of mass destruction, as well as specific challenges to the general application of the laws of war. These include: **International humanitarian law and the challenges of contemporary armed conflicts; Small arms and light weapons—humanitarian issues; Domestic implementation of the Statute of the International Criminal Court** and, a particularly timely discussion on **Biotechnology, weapons and humanity**. Developments in biotechnology have the potential to benefit people worldwide, yet they may also be put to hostile uses as weapons of war or weapons which spread terror. The ICRC initiative on Biotechnology, Weapons and Humanity was prompted by the need to reduce the risk that biotechnology will be used to the detriment of humanity. It is intended to promote serious reflection on the risks, rules and responsibilities related to advances in

this area.

The ICRC considers this issue so serious to humanitarian law that it called a meeting of government and independent experts in Montreux, Switzerland, to discuss issues in the fields of biotechnology, biological weapons, international law, ethics and social responsibility. The Committee has launched a worldwide appeal to governments, the scientific community, the military, industry and civil society to explore the applications and implications of this field of science.

It is hoped that by the end of the Conference, governments will pledge to at least formally how they can make the world a safer place with respect to existing and potential biotechnological weapons, either through the strengthening of existing arms control agreements that regulate their own use, like the Biological Weapons Convention, or via the creation of new, more targeted measures aimed at ensuring that such armaments do not fall into unintended hands.

LSR Speaks out on Missile Defense

The following letter was sent on May 28, 2003 to key officials and all members of the House Standing Committee on Foreign Affairs.

Dear Sirs and Mesdames,

Re: Canadian participation in missile defence

..... we are extremely concerned about the proposal made by certain members of the Cabinet to enter into discussions with the American Government on collaborating to develop a missile defence system. This position contradicts earlier statements made by the Liberal Government, and conveys the impression that this ven-

ture is being considered out of some mistaken sense that this country is obligated to somehow compensate the United States for our non-participation in the invasion and occupation of Iraq. Clearly, the position of the Government of Canada in not participating in an unprovoked and unjustified attack on a member of the international community was fully in accord with international law – as you have been told by a number of other organizations and legal experts – and we would therefore reject any argument that Canada is required to appease the U.S., militarily or otherwise, as a result.

While professing to render the world a more secure and law-abiding place by ridding it of weapons of mass

destruction, the current US administration is actually putting the international community at greater peril by its numerous actions in direct contradiction of the international rules of arms control, as illustrated by:

- the actions taken by the United States to discourage the start of negotiations on an agreement to eliminate nuclear weapons, whereas such negotiations are legally required under the Non-Proliferation Treaty, to which the U.S. is a signatory;
- the failure of Washington to ratify the Comprehensive Test Ban Treaty;
- the stated intention of the United States to develop nuclear weapons of

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smaller yield and size, but of equally harmful nature; it is the opinion of numerous disarmament experts that the use of such “bunker-busters” would be unlawful and would convey the impression that nuclear weapons are acceptable weapons of war;

- the recent statements of U.S. policy revealing a willingness to use nuclear weapons in response to chemical and biological attacks, which would be a clear breach of international humanitarian law;

- the failure of the U.S. to endorse the Ottawa Treaty (concerning the prohibition of antipersonnel landmines) and the American military’s continued use of cluster bombs and other ordnance that increase the amount of explosive remnants of war which kill and maim innocent civilians and peacekeepers long after conflict has ended.

Lawyers for Social Responsibility believes that a stable peace in the world demands a rules-based system by which nations mold their behaviour and interactions. Since Confederation, our nation has conducted itself in the world in an exemplary fashion, a fact in which every Canadian takes pride. In the interest of preserving Canada’s reputation and work to date in building an international legal framework, in striving for good relations with all states internationally and in striving for reductions in nuclear arms, we seek your response to serious questions about the missile defence program:

- What would be the liability of the Government of Canada for damage resulting from radioactive debris falling to earth after an interception (should they ever build that technical capacity?)

- Is there a risk of damage to Canadian commercial satellite capability due to material debris or electronic damage due to interceptions? What will be the effect of debris on space travel or astronomical research? What is Canada’s liability for causing these problems?

- What will be the cost to the public purse of our participation in missile defence? If there is no cost, what will we “owe” the U.S. in upcoming trade discussions? Will that debt ever be repaid?

It is our view that this program will serve to encourage the maintenance of nuclear arsenals, if not their further growth, in breach of the Non-Proliferation Treaty. The clear determination of Canada to continue its research on weapons to be used in space places this country in potential breach of our own stated policy of keeping outer space a weapons-free zone.

Canada’s support is being sought for this program due to perceived high esteem our country and its people enjoy within the international community. This Government should not permit the good reputation and trust accorded to Canadians to be used to justify such a boldly illegal, expensive and militaristic activity. Missile defence imperils arms control achievements to date and will shatter hopes of further reductions in the world’s nuclear arsenals. This program, through its global collection of data but extremely limited sharing of information, will build an international atmosphere of paranoia and distrust.

In these times of heightened vulnerability, we need to call for an international system which supports democratization, prevents war and builds peace through global political and economic ties. The solution to increasing threats to world security lies in building trust through diplomatic negotiations and aid, not through a technological fix. To respond to the threat of nuclear proliferation, in particular, the first step must be taken by the nuclear weapons states themselves, who must **comply with their obligations under international law and negotiate an agreement on the elimination of nuclear weapons.** Rather than participate in joint ventures that try to enforce peace through militarism and consequently create more hostility towards its closest ally, Canada should use its experience and laurels as a peace-maker to assist the United States in building its own reputation and credibility as a law-abiding and respected member of the international community.

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Further Reading



“Arms Control Abandoned: The Case of Biological Weapons,”
by Nicole Deller and John Burroughs, summer 2003 World Policy Journal,
(includes some discussion of nuclear weapons) at
www.lcnp.org/disarmament/WPJbiows.pdf

“2002 [U.S.] Nuclear Posture Review: Strategic and Legal Implications,”
by Charles J. Moxley, Jr., LCNP board member and author of Nuclear
Weapons and International Law in the Post-Cold War World, Austin &
Winfield, 2000 (follow link from LCNP home page, www.lcnp.org)

Legality of Israel's Segregation Wall put to ICJ

by Tara Ashtakala

The Question:

On 8 December 2003, the General Assembly of the United Nations, in its 10th emergency special session, adopted resolution A/RES/ES-10/14 (A/ES-10/L.16) requesting the International Court of Justice (ICJ) to issue an advisory opinion on the legal consequences of Israel's construction of a separation wall in the West Bank.

The question put to the ICJ reads as follows: "What are the legal consequences arising from the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, as described in the report of the Secretary-General, considering the rules and principles of international law, including the Fourth Geneva Convention of 1949, and relevant Security Council and General Assembly resolutions?"¹

Nature of an Advisory Opinion:

All of the principal organs of the United Nations, including the Security Council and General Assembly, as well as the Specialized Agencies, have standing to submit requests for advisory opinions. The Security Council and General Assembly can request an advisory opinion on any legal question, while the other organizations may request them only on matters arising within the scope of their activities.² Advisory opinions do not involve parties, so Israel will not be called as a respondent; however, it will be invited to file written statements with the Court. The other party in this case, the Palestinian authority, is a non-State entity, so the ICJ could set a precedent in inviting it to participate. The Court's advisory opinions have no binding effect as such; however, their authority derives from the fact that the Court is a recognized source of international law and is the judicial organ of the United Nations, which has representation from all nations. As Bekker argues, "this non-binding character does not mean that

advisory opinions are without legal effect, because the legal reasoning embodied in them reflects the Court's authoritative views on important issues of international law and in arriving at them, the Court follows essentially the same rules and procedures that govern its binding judgments delivered in contentious cases submitted to it by sovereign states".³ The Court has given 24 advisory opinions on a diverse range of questions: admission to United Nations membership; reparation for injuries suffered in the service of the United Nations; territorial status of South-West Africa (Namibia) and Western Sahara; expenses of certain United Nations operations; the status of human rights rapporteurs; and the legality of the threat or use of nuclear weapons.

Background to current question before the Court:

The UN Special Rapporteur of the Commission on Human Rights concluded, in a report released on 8 September 2003, that the "evidence strongly suggests that Israel is determined to create facts on the ground amounting to de facto annexation," which the report characterized as "conquest in international law, ... prohibited by the Charter of the United Nations and the [1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War]."⁴ When the Israeli Cabinet approved an extension of the barrier that would encircle Jewish settlements deep inside the West Bank, a vote was sought at the Security Council to condemn this action, but as usual was vetoed by the US.

The General Assembly succeeded in passing a similar resolution demanding that Israel halt its construction activities and dismantle the existing parts of the Barrier, and expressing concern at the path of construction departing from the "Green Line,"⁵ thereby disrupting the lives of thousands of protected civilians and resulting in the de facto annexation of large areas of territory. Resolution ES-10/13 was adopted by a vote of 144-4 on

October 21, 2003. One month later, on 28 November, the Secretary General reported that Israel had not complied with that resolution. The report added that in present circumstances the construction cannot be seen "as anything but a deeply counterproductive act," particularly in the midst of the "Road Map" peace process, which seeks a two-State solution with Israel and Palestine living side by side in peace by 2005. Recognizing the need for urgent action, the Assembly pursued the least confrontational route possible to put pressure on Israel by addressing the issue in the framework of the existing, recognized international legal structure and posing a valid question for consideration by a competent international court.

The results of the vote showed 90 States in favour of the resolution; eight voted against, comprised of the usual expected responses (US and Israel), as well as several nations which have recently landed in the good books of the US by supporting its action in Iraq, including Australia and Federated States of Micronesia. There were 74 abstentions, including members of the EU and the Russian Federation (members of the "Quartet") and Canada.

Israel's representative saw the vote as a victory. He said that more than half the Assembly membership had not voted for the "biased resolution," rejecting it in one way or another. He claimed that the resolution presented for adoption failed to reflect the reality on the ground nor help the Israeli and Palestinian peoples move closer to peaceful settlement. The request for an advisory opinion constituted, in Israel's opinion, a harmful, divisive, illegal and diversionary tactic. Among those voting for and against the measure, he said there was a clear distinction between "tyrannical dictatorships and corrupt regimes" on one side, and those with "enlightened regimes" on the other. Israel regarded the vote as a "moral victory for the enlightened, civilized world over the dark forces of tyranny and corruption." It was an interesting

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choice of words, given that many of the countries supporting the Resolution are non-white, with thousands of years of civilization behind them, many of which are democracies: India, China, most of Africa, most of South-East Asia, most of the Caribbean. Indeed, the representative of Senegal said that those comments were unfortunate, especially regarding the classification of those voting in favour as tyrannies and those voting against as democratic.

Gilbert Laurin of Canada explained why his delegation had abstained in the vote. Canada felt that, while an advisory opinion from the ICJ might be instructive, the request at “this time, in such a highly-charged environment, was not a useful step.” He said that, the Assembly had already made its decision on Israel’s construction of the barrier in October. He did not mention that Israel had not taken any action to respect or even address the decision, which was the reason for the General Assembly asking an international court of law to take up the matter. Mr. Laurin said that the conflict needed to be solved through negotiation, he said, stressing that a “unilateral” decision by another body would not lead to peace. The ICJ is a multilateral institution. This stance seems to be a departure from the government’s previous statements supporting the international rule of law and international legal institutions as a way of resolving international disputes without resorting to violence. It should be remembered that Canada voiced its support for Security Council Resolution 1443, a decision imposed by only 15 members of the international community, to force Iraq to cooperate in revealing its alleged weapons of mass destruction; there was no room for negotiation.

Applicable Law:

Israel argues that the appropriation of Palestinian property is legal as per Art. 23 of the 1907 Hague Regulations on Land Warfare, which is part of customary international humanitarian law forbidding destruction or seizure of the enemy’s property “unless such destruction or seizure be imperatively demanded by the necessities of war.” However, article 46 of the Regulations requires that private

property be respected and cannot be confiscated; furthermore, article 55 says an occupier is regarded as an administrator and user of real property and agricultural land in the occupied territory and therefore must safeguard such properties; its also prohibits Israel from making permanent changes to the West Bank that do not benefit the local inhabitants. Finally, article 43 accords Israel a positive obligation to ensure the welfare of residents of the West Bank.

The Fourth Geneva Convention on the protection of civilians living under Occupation, which Israel claims does not apply to Palestine, obliges the Occupier to ensure the passage of emergency medical services, to respect the sick, to allow the passage of foodstuffs and medical goods, and to facilitate education (Articles 16, 20, 25, 50, 55 and 59). Art. 53 prohibits the destruction by the Occupying Power of real or personal property, except where such destruction is rendered absolutely necessary by military operations. Not a single part of the barrier is being built on Israeli land; it is all within the Green Line. Israel says this is to allow the Israeli Defence Force to track down anyone who had succeeded in crossing the wall before they entered Israel; however, the inconsistent path of the wall contradicts this – in some areas, it is near to the Green Line, while in others, it is not. The Government has not expressed any concern or measures to contain those Palestinians living in the area between the wall and the Green Line, thus raising questions as to whether the appropriation of West Bank land for the wall is really justified by military necessity. The wall could have been built on Israeli soil to achieve the same purposes; instead, the result is that the people under Israeli occupation are paying for the security of their occupiers, again contrary to the Fourth Geneva Convention.

Israel has also ratified numerous human rights treaties that commit it to uphold rights to freedom of movement, and access to education, healthcare, work, and water, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child).

In August the U.N. Human Rights Committee said that “in the current circumstances, the provisions of the [ICCPR] apply to the benefit of the population of the Occupied Territories, for all conduct by [Israeli] authorities or agents in those territories that affect the enjoyment of rights enshrined in the Covenant and fall within the ambit of State responsibility of Israel under the principles of public international law.” Only Jewish settlers and other citizens of Israel are free to cross the barrier, while Palestinians will require permission to do so, even though it is entirely on their land. Israelis living in illegal Jewish settlements in the zone will receive automatic residence rights but more than 10,000 Palestinians must now apply for permission to continue living in at least 15 villages affected. In Qualqilya, for example, the wall surrounds the town; it has only one entry and exit point and is severed from farmland and wells.⁶

Characteristics of the wall:

Israel calls the wall a “fence;” the structure being built is made of concrete and will reach a maximum height of 8 metres; it will be surrounded by a trace path to register footprints of those who try to cross it, a trench up to four metres deep, electrified fencing and razor wire to deter those who do attempt, thermal imaging, video cameras, and “no-go” areas of varying width on either side. According to current Israeli plans, the completed wall will stretch 600-650 km (372-404 miles), annexing 98% of the Jewish settlement population and between 45-55% of the West Bank.⁷ Compare this to the Berlin wall, which had an average height of 3.5 metres and a length of 155 km.

¹ What’s new at International Court of Justice, www.icj-cij.org

² Charter of the United Nations, at Art. 96(2).

³ Bekker, Pieter. “The UN General Assembly Requests a World Court Advisory Opinion On Israel’s Separation Barrier”. American Society for International Law: Insights, Dec 2003. <http://www.asil.org/insights/>

⁴ Report of the Special Rapporteur of the Commission on Human Rights, John Dugard, on the situation of human rights in the Palestinian territories occupied by Israel since 1967, UN Doc. E/CN.4/2004/6

⁵ The boundary between Israel and land in the West Bank occupied by Israel since 1967.

⁶ CBC News online, 17 June 2002, www.cbc.ca/.

⁷ Human Rights Watch, “Israel: West Bank Barrier Endangers Basic Rights,” 1 October 2003; www.hrw.org.