

**To the Ministry of Finance**

**Recommendation**

**May 15<sup>th</sup>, 2009**

## (UNOFFICIAL ENGLISH TRANSLATION)

### 1 Introduction

The Council on Ethics recommends that the Israeli company Elbit Systems Ltd (“Elbit”) be excluded from the Government Pension Fund – Global.

Elbit supplies a surveillance system that is part of the separation barrier being built by the Israeli government in the West Bank. The construction of parts of the barrier may be considered to constitute violations of international law, and Elbit, through its supply contract, is thus helping to sustain these violations. The Council on Ethics considers the Fund’s investment in Elbit to constitute an unacceptable risk of complicity in serious violations of fundamental ethical norms.

As of 31.12.08 the Fund’s equity investments in Elbit Systems Ltd had a market value equivalent to NOK 35.8 million.

### 2 Background

#### 2.1 About the separation barrier in the West Bank

##### Declared purpose of the barrier

Since 2002, Israel has been building a barrier fencing off the West Bank. Israel’s express purpose with the barrier is to put an end to terror attacks against Israel by preventing the infiltration of terrorists from the West Bank.<sup>1</sup>

From the Israeli side it has been pointed out that the barrier does not define any national border, nor will it have any bearing on border negotiations, and that the barrier will be dismantled when it is no longer needed.<sup>2</sup>

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<sup>1</sup> On its website, the Israeli Ministry of Defence states that the sole purpose of the separation barrier is to provide security against terror attacks: *“The sole purpose of the Security Fence, as stated in the Israeli Government decision of July 23rd 2001, is to provide security. The Security Fence is a central component in Israel’s response to the horrific wave of terrorism emanating from the West Bank, resulting in suicide bombers who enter into Israel with the sole intention of killing innocent people.”*

<http://www.securityfence.mod.gov.il/Pages/ENG/purpose.htm>

<sup>2</sup> The Israeli Ministry of Defence: *“The Security Fence that is being built is intended to counter terrorism of the most brutal kind, not to dictate a border that is and remains the subject of permanent negotiations. It is our hope that by building this fence its very function will become irrelevant and that one day it will be dismantled.”* <http://www.securityfence.mod.gov.il/Pages/ENG/questions.htm>

## **Barrier construction**

Some 95% of the barrier consists of a system of fences, razor wire, patrol paths, and electronic surveillance systems. This part of the barrier is 50-100 m wide.

Approximately 5% of the barrier is made of prefabricated concrete slabs forming an eight-metre high wall.

There is a system of gates and checkpoints for traffic that is to pass the barrier. An electronic surveillance and control system is used to detect persons who attempt to cross the barrier.

## **Barrier route**

Once it is completed, the barrier will be more than 700 km long. The construction of the barrier has taken place in stages and has not yet been concluded.

As of July 2008, the UN Office for Coordination of Humanitarian Affairs reported the following:

- The projected barrier route is 726 km, which is more than twice the length of the armistice line from 1949 (the so-called “*Green Line*”).
- Once it has been completed, some 13% of the barrier will follow the Green Line, and the remaining 87% of the barrier will be inside the West Bank.
- The total area located between the barrier and the Green Line makes up nearly 10% of the West Bank area.
- Some 35 000 West Bank Palestinians reside between the barrier and the Green Line. There are also around 250 000 Palestinians in East Jerusalem living between the barrier and the Green Line, thus being separated from the rest of the West Bank.
- Approximately 125 000 Palestinian residents in the West Bank are surrounded by the barrier on three sides. Moreover, some 26 000 Palestinians who live in enclaves are completely surrounded by the barrier and only have access to the West Bank through regulated gates.

See annex 1, which is a sketch map of the West Bank indicating the separation barrier’s projected route as of July 2008. The map has been prepared by the UN agency OCHA.<sup>3</sup>

## **2.2 The role of the company Elbit Systems Ltd**

The Government Pension Fund – Global is invested in the Israeli company Elbit Systems Ltd, which produces electronic systems primarily for the defence industry.

The company supplies an electronic surveillance system called “*Torch*” for the separation barrier. *Torch* is designed to detect persons attempting to cross the barrier and to provide this information to the staff that guards it.

The Israeli Ministry of Defence provides the following information on its website:

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<sup>3</sup> See map on OCHA’s website: [http://www.ochaopt.org/documents/BarrierRouteProjections\\_July\\_2008.pdf](http://www.ochaopt.org/documents/BarrierRouteProjections_July_2008.pdf)

*“Three Israeli companies are approved by the IDF to provide intrusion detection fence, having passed its technical requirements through an extensive two year on site experiment. Of these three companies, Magal Security Systems won the contract for the central section (Salem towards Elkana) and **Elbit Systems** together with the American company, Detektion, won the contract for the northern and southern sections of Jerusalem.”*<sup>4</sup>

On its website, the Israeli Ministry of Defence also publishes a video showing the *Torch* system in use. The following is a quote from this video:

*“The IDF put Elbit System’s Torch system into operational use six months ago, after just two years of development [...]”*<sup>5</sup>

As appears from the above, Elbit is one of three companies that have delivered surveillance systems to the separation barrier. Among these three, only Elbit features in the portfolio of the Government Pension Fund – Global.

### **2.3 The separation barrier’s legitimacy**

Various authorities have pointed out that the construction of the separation barrier along its chosen route must be deemed illegal.

#### **Advisory opinion from the International Court of Justice in the Hague (ICJ)**

At the request of the UN General Assembly, the International Court of Justice (ICJ) in the Hague issued an advisory opinion in 2004 regarding the legitimacy of the construction of the separation barrier in occupied territory.

The foundation for the advisory opinion is the following question:

*“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?”*<sup>6</sup>

In its statement, the ICJ takes as a point of departure that only the parts of the barrier located in occupied territory are to be assessed. The sections of the barrier located inside Israeli territory are thus not included in the ICJ’s assessment nor are they part of the foundation for the Court’s conclusion.<sup>7</sup>

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<sup>4</sup> The Israeli Ministry of Defence: <http://www.securityfence.mod.gov.il/Pages/ENG/execution.htm#2>

<sup>5</sup> “IDF” is the acronym for the Israel Defence Forces, i.e. the Israeli armed forces. See [http://www.securityfence.mod.gov.il/Pages/ENG/masoa\\_eng.avi](http://www.securityfence.mod.gov.il/Pages/ENG/masoa_eng.avi)

<sup>6</sup> The UN General Assembly, 12 December 2003, resolution ES 10/14: <http://domino.un.org/unispal.nsf/d9d90d845776b7af85256d08006f3ae9/f953b744269b9b7485256e1500776dc!OpenDocument>

<sup>7</sup> ICJ - Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, 4 July 2004, para. 67: *“The Court notes furthermore that the request of the General Assembly concerns the legal consequences of the wall being built “in the Occupied Palestinian Territory, including in and around East Jerusalem”. As also explained below [...] some parts of the complex are being built, or are planned to be built, on the territory of Israel itself; the Court does not consider that it is called upon to examine the legal consequences arising from the construction of those parts of the wall.”* <http://www.icj-cij.org/docket/files/131/1671.pdf>

The ICJ finds that the construction of the separation barrier along the chosen route is in contravention of international law:

*“In sum, the Court finds that, from the material available to it, it is not convinced that the specific course Israel has chosen for the wall was necessary to attain its security objectives. The wall, along the route chosen, and its associated régime gravely infringe a number of rights of Palestinians residing in the territory occupied by Israel, and the infringements resulting from that route cannot be justified by military exigencies or by the requirements of security or public order.*

*The construction of such a wall accordingly constitutes breaches by Israel of various of its obligations under the applicable international humanitarian law and human rights instruments.”*<sup>8</sup>

As appears from the above, the ICJ’s assessment takes as a point of departure that the barrier and its associated control regime violate the rights of a large number of Palestinians in the West Bank. The ICJ attaches particular importance to the fact that the choice of route for the barrier, “[...] *the specific course Israel has chosen for the wall [...]*” cannot be justified by military necessity or Israeli security requirements. Moreover, the ICJ points out that the barrier itself, the choice of route, and the control regime that the barrier is part of, jointly constitute Israel’s violation: “*The wall, along the route chosen, and its associated régime gravely infringe a number of rights of Palestinians residing in the territory occupied by Israel[...]*”

At the same time, the ICJ stresses Israel’s right, and indeed duty, to protect its citizens against terror attacks.<sup>9</sup> The measures that Israel implements, however, must be legal and the right of self-defence or considerations of military necessity cannot justify the construction of the separation barrier along the chosen route.<sup>10</sup>

### **Israel’s reply to the ICJ**

Israel submitted a comprehensive written statement to the ICJ before the hearing of the case.<sup>11</sup>

Primarily, Israel argued that the matter at hand did not pertain to the ICJ’s jurisdiction and that the ICJ, even if it had the jurisdiction, should not, on various grounds, issue any opinion:

*“Israel considers that the Court does not have jurisdiction to entertain the request and that, even were it to have jurisdiction, it should not respond to the requested opinion.”*<sup>12</sup>

Secondarily, Israel argued that the ICJ, in light of the material that had been presented to the Court, would not be able to weigh Israeli security needs against the disadvantages that the separation barrier implies.<sup>13</sup>

Since Israel disputed the ICJ's jurisdiction in this case, its pleadings were not based on a presentation of substantial information:

*"[...] Israel contests the jurisdiction of the Court and is not putting forward a case based on the substance."*<sup>14</sup>

Nevertheless, Israel argued that the separation barrier is a necessary measure to protect the country against terror attacks and that the barrier's route is determined by military necessity.

### **Report from the UN's Special Rapporteur**

In January 2006 the UN's Special Rapporteur presented a report on the human rights situation in the occupied territories.<sup>15</sup>

The report points out that the barrier route evidently has been chosen also on the basis of considerations other than preventing terror attacks against Israel. According to the report, it is clear that one objective of the separation barrier is to protect illegal settlements and allow the expansion of these.<sup>16</sup>

*"The wall near Bil'in has clearly been constructed to allow for the expansion of the Modi'in settlement. The construction of the settlement of Matityahu East in the Modi'in bloc is there for all to see and provides the obvious explanation for the wall."*

The illegal settlements are being extended quite openly, and the number of Israeli settlers is increasing. With regard to the section of the separation barrier that surrounds East Jerusalem,

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<sup>8</sup> Ibid, para. 137

<sup>9</sup> Ibid, para. 141 *"The fact remains that Israel has to face numerous indiscriminate and deadly acts of violence against its civilian population. It has the right, and indeed the duty, to respond in order to protect the life of its citizens. The measures taken are bound nonetheless to remain in conformity with applicable international law."*

<sup>10</sup> Ibid, para. 142: *"In conclusion, the Court considers that Israel cannot rely on a right of self-defence or on a state of necessity in order to preclude the wrongfulness of the construction of the wall resulting from the considerations mentioned in paragraphs 122 and 137 above. The Court accordingly finds that the construction of the wall, and its associated régime, are contrary to international law."*

<sup>11</sup> Pleadings by the Israeli Ministry of Foreign Affairs: <http://www.icj-cij.org/docket/files/131/1579.pdf>

<sup>12</sup> Ibid, para. 0.5

<sup>13</sup> Ibid, para. 8.4: *"Any assessment of the military necessity of the fence would necessarily have to entail, including in respect of parts of the fence where the routing has not been finally determined:*  
*a) an assessment of the security threat faced by Israel, which would in turn require an assessment of the nature and scale of terrorist attacks, the continuing nature of the threat, and the likely nature and scale of future attacks;*  
*b) an assessment of the effectiveness of the fence to address the security threat relative to other available means. [...]"*

<sup>14</sup> Ibid, para. 8.8

<sup>15</sup> UN Economic and Social Council: Report of the Special Rapporteur on Human Rights, John Dugard, on the situation of Human Rights in the Palestinian territories occupied since 1976:  
<http://www.unhcr.org/refworld/country,,UNCHR,,PSE,4562d8cf2,42d66e330,0.html>

<sup>16</sup> Ibid, paragraph 16: *"The Special Rapporteur has repeatedly expressed the opinion that many sections of the wall appear to have been built for reasons other than security. Observations on the present visit confirmed this view. The wall near Bil'in has clearly been constructed to allow for the expansion of the Modi'in settlement. The construction of the settlement of Matityahu East in the Modi'in bloc is there for all to see and provides the obvious explanation for the wall."*

the report states that the obvious purpose of the barrier here is to reduce the number of Palestinians in the area.<sup>17</sup>

The report states that the construction of the separation barrier, combined with the expulsion of Palestinians and the expansion of illegal settlements have the purpose of annexing occupied territory and that the chosen route of the separation barrier must be seen in this context.<sup>18</sup>

### **Rulings by Israel's Supreme Court**

Various aspects of the legality of the barrier have been examined by Israel's Supreme Court in more than 100 petitions.<sup>19</sup>

Israel's Supreme Court maintains that the separation barrier as such and its chosen route, in general, are legal and do not entail disadvantages that are disproportionate to the purpose they are to serve.

However, based on rulings by Israel's Supreme Court the course of the barrier has been altered in certain areas. This is the case with sections of the barrier where the projected route has caused unreasonable inconvenience for the affected Palestinian population.

In the Supreme Court ruling *Beit Sourik Village Council vs. the Government of Israel* from 2004, the Court states that the choice of barrier route cannot be motivated by other considerations than security, and that the purpose of the barrier cannot be annexation:

*"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."*<sup>20</sup>

Israel's Supreme Court does, however, find that the construction of the barrier is motivated by military necessity and that the barrier therefore, in principle, is legal.

The Supreme Court ruling *Mara'abe vs. the Prime Minister of Israel*<sup>21</sup> from 2005 also discusses the advisory opinion of the ICJ, declaring that it is founded on an erroneous factual

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<sup>17</sup> Ibid, paragraph 16: "Even more grotesque is the suggestion that the wall around Abu Dis, Anata, Shuafat and Al-Eizariya is being constructed for security purposes when it separates Palestinian from Palestinian. Here the clear purpose of the wall is to reduce the number of Palestinians in East Jerusalem [...]"

<sup>18</sup> Ibid, paragraph 26: "The construction of the wall, the de-Palestinization of the closed zone and the expansion and construction of settlements in the closed zone make it abundantly clear that the wall is designed to be the border of the State of Israel and that the land of the closed zone will be annexed. Already, members of the Israel Defense Forces inform international representatives visiting the closed zone that it is part of Israeli territory. This is understandable as, after all, Israelis have free access to the closed zone, whereas Palestinians require special permits to enter this zone. There is clear evidence of Israel's intentions in this regard. Addressing a meeting of the Jewish community in Paris on 28 July 2005, Prime Minister Sharon stated that, thanks to the disengagement from Gaza, "Israel has gained unprecedented political achievements", including "a guarantee that the major population centres in Judea and Samaria (that is, the West Bank) will remain part of Israel in any final status agreement; and there will be no return to the 1967 borders". Then, on 30 November 2005, the Justice Minister, Tzipi Livni, acknowledged that the wall is a "political" rather than a "security" wall and that it would serve as "the future border of the State of Israel".

<sup>19</sup> Israel's Ministry of Defence: "Status Report, Legal aspects of the Security Fence", 2007, <http://seamzone.mod.gov.il/Pages/ENG/news.htm#news49>

<sup>20</sup> Beit Sourik Village Council vs. The Government of Israel, para. 27, [http://www.unhcr.org/refworld/publisher\\_ISR\\_SC...4374ac594.0.html](http://www.unhcr.org/refworld/publisher_ISR_SC...4374ac594.0.html)

<sup>21</sup> See the unabridged ruling [http://elyon1.court.gov.il/Files\\_ENG/04/570/079/A14/04079570.A14.pdf](http://elyon1.court.gov.il/Files_ENG/04/570/079/A14/04079570.A14.pdf)

basis and that it is unbalanced because the ICJ has not attributed sufficient importance to Israel's security needs.

### **3 The Council on Ethics' contact with the company**

On 17 March this year Norges Bank wrote a letter to Elbit Systems Ltd on behalf of the Council on Ethics requesting the company to clarify whether Elbit Systems Ltd, or any of its subsidiaries, delivers surveillance equipment to the separation barrier and, if so, what these deliveries consist of and whether they are ongoing.

Elbit replied to the request from NBIM in a letter dated 2 April this year, informing that it is not in a position to answer the questions posed and consequently refrains from doing so.

### **4 The Council on Ethics' assessment**

In light of the information cited in section 2.2, the Council on Ethics takes as its point of departure that Elbit delivers surveillance systems to the separation barrier. The company has been requested to explain its role regarding these deliveries, but has declined to do so. Since the construction of the barrier is still ongoing, the Council on Ethics must also presume that the company's deliveries are ongoing. Moreover, it must be presumed that the company will be involved in updates and maintenance of the surveillance system after the construction of the barrier has been completed.

To enter into the details of the many issues of international law that have been raised with regard to the construction of the separation barrier would be outside the Council on Ethics' mandate. In this context the Council will refer to the advisory opinion from the ICJ and the report from the UN Special Rapporteur, which both accept that the construction of the separation barrier along the chosen route is illegal. Israel's Supreme Court has also established that to the extent its purpose is to annex occupied territory, the separation barrier is not legal.

The Council on Ethics is aware that the Israeli government deems the barrier a necessary and temporary measure to prevent terror attacks and that the considerations regarding the necessity of the barrier must carry more weight than the considerations vis-à-vis the disadvantages it entails.

The Council on Ethics' has not made an assessment of Israel's right and duty to protect its citizens against terror attacks. A state's construction of fences or other control mechanisms on its own territory cannot, in principle, be considered illegal or unethical. Neither does the ICJ's advisory opinion concern the sections of the separation barrier that are located inside Israeli territory. Israel, however, has chosen to build a separation barrier of whose extension nearly 90% is located in areas occupied by Israel. This, and the humanitarian problems that the choice of the route causes, constitute the problematic aspects of the separation barrier.

The Council on Ethics' role is to assess companies' complicity in violations of the Ethical Guidelines of the Government Pension Fund – Global. In general, the Council on Ethics' task is to evaluate issues specifically related to companies, not possible violations committed by states or other actors. In this case, however, the Council on Ethics is faced with an assessment



of a company commissioned by its own state authorities to commit acts that must be deemed illegal.

The construction of the separation barrier in the West Bank is the biggest infrastructure project in Israel.<sup>22</sup> A series of input factors enter into the construction of the barrier, including extensive construction work and large quantities of materials such as asphalt, concrete, barbed wire, etc. Some companies that are subcontractors of such products are probably included in the portfolio of the Government Pension Fund – Global. However, the Council on Ethics does not find that all types of contribution to the construction of the separation barrier provide grounds for a recommendation to exclude companies from the Fund.

To assess a company's contribution to violations based on the sale of products that in principle are legal and generic presents several problems. The significance of a company's role in the violations must therefore be evaluated individually.

In another case, the Council has, while assessing the Fund's investment in the American company Caterpillar Inc., taken as its point of departure that there must be a strong element of complicity in the violations on the company's part in order for such participation to be considered contrary to the Fund's Ethical Guidelines. In the Caterpillar case it was deemed that the company's products also had legitimate uses for the buyer (i.e. the Israeli Army), and that the company could not be held responsible for the buyer's possible illegal use beyond this.<sup>23</sup>

A surveillance system such as *Torch*, which is what Elbit has developed and delivers, does not in itself appear to be unethical. When examining whether Elbit's *Torch* contract as part of the separation barrier can be said to constitute a serious violation of norms, the importance of its contribution to the barrier must be assessed.

To the Council on Ethics, *Torch* appears to be one of the main components of the separation barrier and its associated control regime, and Elbit is the end supplier of this system. The surveillance system, with its control and command functions, is especially designed for the separation barrier. *Torch* has no alternative areas of application, and it is obvious that Elbit is aware of where and how the system is intended to be used.

Elbit supplies a surveillance system that constitutes a functionally integral part of the separation barrier that the Israeli government is building to fence off the West Bank. The construction of the barrier is considered to be in contravention of international law, and Elbit's contract makes it an important contributor to this activity.

The Council on Ethics thus finds that the Fund's investment in Elbit represents an unacceptable risk of complicity in particularly serious violations of ethical norms and that the company should be excluded from the Fund's investment universe on these grounds.

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<sup>22</sup> Israel's Ministry of Defence, "Israel's Security Fence – Operational Aspects"  
<http://seamzone.mod.gov.il/Pages/ENG/execution.htm>

<sup>23</sup> See letter from the Council on Ethics to the Ministry of Finance dated 15 May 2006 regarding investments related to the Middle East  
<http://www.regjeringen.no/pages/1957953/Brev%20fin%20dep%20vedr%20Midtøsten%20mai06.pdf>

## 5 Recommendation

In light of the above, and in accordance with the Ethical Guidelines, point 4.4, last clause, the Council on Ethics recommends that the company Elbit Systems Ltd be excluded from the investment universe of the Government Pension Fund – Global.

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Gro Nystuen  
Chair

(sign.)

Andreas Føllesdal

(sign.)

Anne Lill Gade

(sign.)

Ola Mestad

(sign.)

Bjørn Østbø

(sign.)

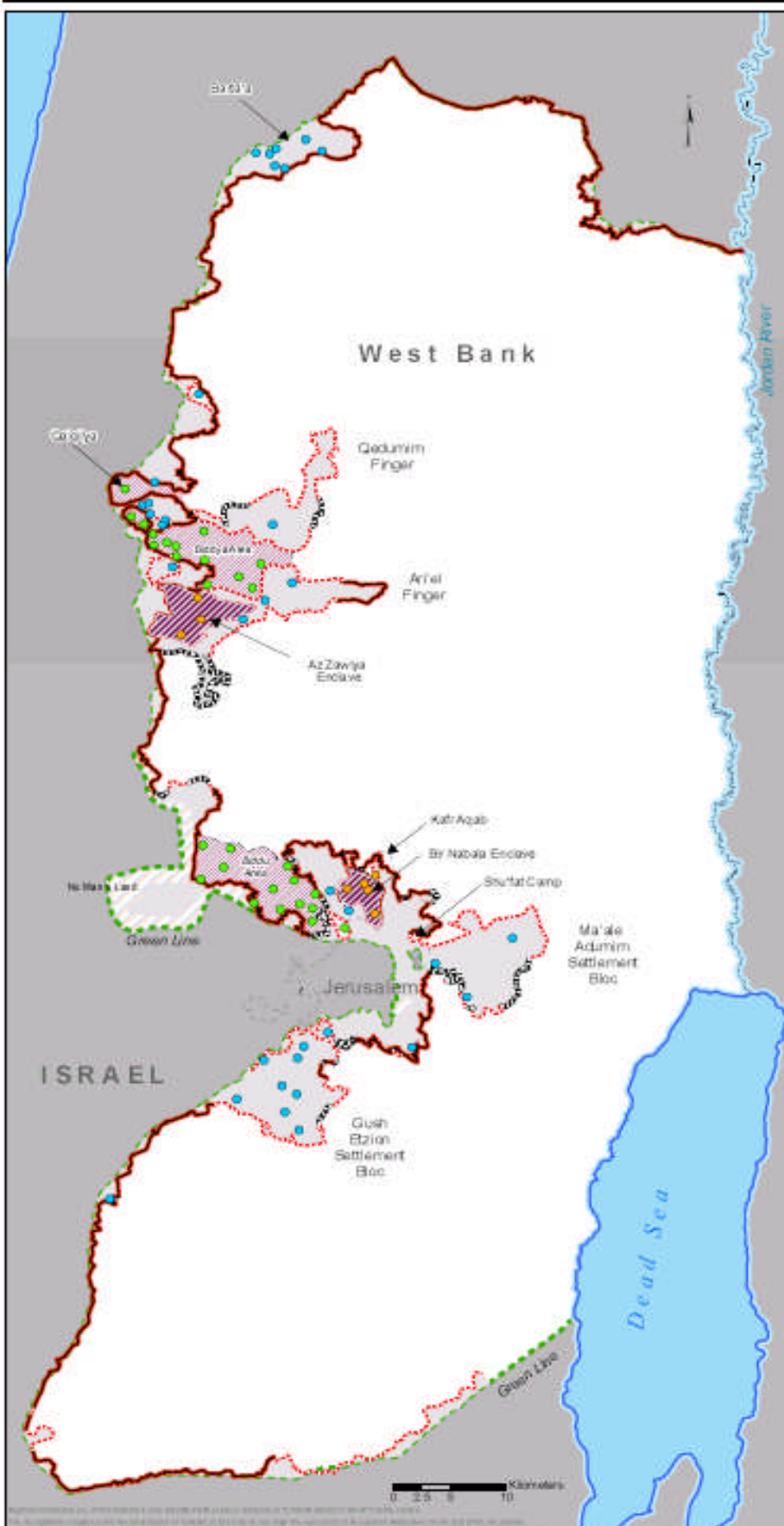
### Annex 1:

**Map of parts of Israel that shows separation barrier route projections as of July 2008.  
Cartography by the OCHA.**



# West Bank Barrier Route Projections

July 2008



## Area Affected


The Barrier's total length is 723 km, more than twice the length of the 1949 Armistice Line (Green Line) between the West Bank and Israel.


The total area located between the Barrier and the Green Line is 9.8 % of the West Bank, including East Jerusalem and No Man's Land.


When completed, approximately 13 % of the Barrier will be constructed on the Green Line or in Israel with 87 % inside the West Bank.


## Populations Affected

If the Barrier is completed based on the current route:




 Approximately 35,000 Palestinians holding West Bank ID cards in 35 communities will be located between the Barrier and the Green Line.

 The majority of the approximately 250,000 Palestinians with East Jerusalem ID cards will reside between the Barrier and the Green Line. However, Palestinian communities inside the current municipal boundary, Kafr Aqab and Shu'fat Camp, are separated from East Jerusalem by the Barrier.

 Approximately 125,000 Palestinians will be surrounded by the Barrier on three sides. These comprise 28 communities; the Bidduya and Biddu areas, and the city of Qalqilya.

 Approximately 26,000 Palestinians in 8 communities in the Az Zawiya and Bir Nabala Enclaves will be surrounded on four sides by the Barrier, with a tunnel or road connection to the rest of the West Bank.

## Barrier Route

-  Completed
-  Under construction
-  Planned

Cartography and Barrier Themes: OCHA-dPT/IMU Map December 2007  
 Base data: MoPtC (2006) updates OCHA (2006)

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