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How will World Court decision affect realities on the ground?

By Chibli Mallat

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The "wall ruling," or what is officially known as "the advisory opinion" of the International Court of Justice on "the legal consequences of the construction of a wall in occupied Palestinian territory" has established five important principles by a majority of 14 judges (against one):

1. The court is competent in the matter raised by the General Assembly.
2. The separation wall violates international law.
3. Israel must immediately stop building the wall, and proceed with its dismantlement.
4. Israel must compensate those who were harmed by the wall.
5. The General Assembly and the Security Council must take the measures needed to end the legal violation established by the building of the wall.

The court, by a majority of 13, further established a sixth legal principle:

6. It is the duty of all states to abide by the ruling, refuse any recognition of the wall or assistance in perpetuating it, and it is a further duty incumbent on all parties to the Fourth Geneva Convention to ensure that Israel abide by international humanitarian law as established by the convention.

There will be little dissent internationally on the signal victory achieved for Palestinian rights, as well as the difficulty of implementing it considering the disregard of successive Israeli governments to international law since the state's inception, and the blind support of the US government. One should therefore look to ways of following up on practical measures which the Israeli government will be unable to blunt through the accomplished fact policy, or by relying on US support.

The search is on for the opinion's practical implementation in view of its likely ignorance by Israel - save for the possible destruction of parts of the wall in accordance with the request of the extremely limited obligations put upon the obligations by the decision of the Israeli High Court last week - and its systematic work to prevent any application of the ICJ ruling.

It is on this basis important for the victims of the wall, as identified by the ruling, to be effective in claiming the compensation decided by the court, and to seek ways to bring Israel to account in courts abroad. This is not easy for various reasons, including matters of immunity and the large number of claimants. Such work is by nature collective and requires a high degree of professionalism that focuses on technical details and avoids political rhetoric.

Follow-up by claimants will no doubt be at the center of international legal work in the coming months.

A first reading of the opinion opens up two significant additional possibilities. First is the confirmation by the court that the Israeli government "must ensure freedom of access to the holy places that came under its control following the 1967 war." The opinion noted some of these places lie within West Jerusalem, but the restriction to East Jerusalem will nonetheless open the way to a strengthened right of Palestinians to exercise their right of return, at least to East Jerusalem. Considering the policy of forced Judaization of the city that has proceeded

apace since 1967, this will be particularly useful for Jerusalemites, but the right of access is consecrated for all. Exiled Palestinians should be able to avail of it, and this clear acknowledgment by the ICJ is worth a closer study on the way to implement the right of return by way of freedom of movement, seen here from the perspective of "right of access to the holy places" accorded to all by the ICJ under international law.

So the opinion opens up two avenues of eminent practicality, compensation and right of access to Jerusalem, especially for Palestinian refugees. There is a third important dimension raised by the opinion, which is the court's characteristic acknowledgment of the responsibility of the Israeli state for its severe violations of international humanitarian law. This should widen the possibility for Palestinian victims to claim the civil and criminal responsibility of Israeli officials before outside judicial fora, especially European courts. This is a major development that needs careful study, for it will help constrain the travel and activities of many Israeli officials because of their egregious violations of the Fourth Geneva Convention as underlined by the ICJ.

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