



الأمم المتحدة  
الجمعية العامة  
مجلس الأمن



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مجلس الأمن  
السنة الأربعون

الجمعية العامة  
الدورة الأربعون  
قضية فلسطين

رسالة مؤرخة في ٥ شباط/فبراير ١٩٨٥ موجهة  
الى الأمين العام من رئيس اللجنة المعنية  
بممارسة الشعب الفلسطيني لحقوقه غير  
القابلة للتصرف

بصفتي رئيس اللجنة المعنية بممارسة الشعب الفلسطيني لحقوقه غير القابلة للتصرف،  
أود أن أوجه انتباهكم الى مثال آخر على تكثيف السياسة المرسومة من جانب حكومة اسرائيل  
لضم الأراضي المحتلة في الضفة الغربية .

ووفقا لما جاء في صحيفة " جيروزاليم بوست " وصحيفة " هاآرتز " بتاريخ ٢٠ كانون الأول /  
ديسمبر ١٩٨٤ ، نشرت السلطات القائمة بالاحتلال في الآونة الأخيرة خطة لانشاء شبكة طرق  
وطنية لكامل منطقة الضفة الغربية المحتلة .

وثمة دراسة أعدتها مؤخرا هيئة " القانون في خدمة الانسان " - وهي فرع للجنة الحقوقيين  
الدولية في الضفة الغربية ولها صفة المنظمة غير الحكومية ذات المركز الاستشاري لدى المجلس  
الاقتصادي والاجتماعي - تقدم تحليلا دقيقا للمشروع وهي مرفقة طيه لعامكم ( انظر المرفق ) (١) .

ووفقا لهذه الدراسة فان المشروع المسمى " خطة الطرق رقم ٥٠ " ، تنص على انشاء  
٥٥٥ كم من الطرق الجديدة في الضفة الغربية بتشكيل شبكة تمتد من الشرق الى الغرب  
( بالمقارنة بشبكة الشمال - الجنوب الحالية ) ومن ثم ستزيد بدرجة كبيرة ادماج شبكة طرق  
الضفة الغربية في شبكة طرق اسرائيل .

(١) المرفق متوفر بالانكليزية فقط .

ويقدّر ان انشاء هذه الطرق الجديدة سيستتبع قيام السلطات العسكرية بالاستيلاء على ٧٨ .٠٠٠ دونم (٢) من أراضي الفلسطينيين الخاصة ، وتسوية مناطق كبيرة من الأراضي الزراعية ، فضلا عن مخيمات اللاجئين ، باستخدام الجرافات . وستقتضي الخطة أيضا تدمير العديد من المباني والمرافق ( مشاريع الري وغيرها من المشاريع ، والمساكن الخاصة ، والمدارس ، والمصانع ) .

وتشير الدراسة الى أنه ابتداءً من عام ١٩٧٠ صادرت الحكومة الاسرائيلية بالفعل آلاف الدونمات من الأراضي المحتلة بغرض انشاء طرق تربط المنطقة باسرائيل من الشرق الى الغرب .

وتذكر الدراسة ان الخطة عرضت ، لدراستها من الناحية القانونية على محكمة العدل العليا في اسرائيل التي هي ، بموجب النظام الحالي المفروض على الضفة الغربية ، أعلى محكمة للاستئناف بشأن أنشطة السلطات العسكرية . ورفضت المحكمة الاستئناف ، وذكرت في رأيها ان الخطة من صالح السكان المحليين .

الا أن الدراسة تشير الى أن النظام المقترح لن يخدم أيًا من البلاد والمدن الفلسطينية الرئيسية الواقعة في الضفة الغربية والتي يبلغ عددها ٢٠ ، بل سيطوقها مؤديا بذلك الى عزلها عن الأراضي البلدية المخصصة للتعمير أو عن الأراضي المستخدمة في الزراعة الآن والتي تعتمد عليها هذه البلاد . ولم يحدث قط أن استشير سكان الأراضي ، التي ستمر من خلالها الطرق المقترحة ، بشأن هذه الخطة .

وتخلص الدراسة الى أن الخطة لا بد ، لهذا السبب ، أن ينظر اليها على أنها أهم خطوة في الآونة الأخيرة نحو ضم اسرائيل نهائيا للضفة الغربية فضلا عن كونها تهديدا ماديا مباشرا للأراضي والمجتمعات ومورد رزق السكان الفلسطينيين، ومن ثم تخدم غرض تشجيع هجرتهم . وتخلص الدراسة الى الحضر على توجيه طلب الى محكمة العدل الدولية لاستصدار فتوى بأن الخطة الجديدة انتهاك للقانون الدولي .

وباسم اللجنة المعنية بممارسة الشعب الفلسطيني لحقوقه غير القابلة للتصرف أود ، في ضوء ما تقدم ، أن أعرب عن بالغ القلق ازاء هذه الخطوة الجديدة التي اتخذتها حكومة اسرائيل في سبيل ضم الضفة الغربية والتي ترى اللجنة فيها انتهاكا خطيرا وجديدا لحقوق الفلسطينيين ، بكل ما يترتب عليه من آثار وخيمة لمستقبل الأراضي المحتلة وللجهود الدولية الرامية الى تيسير التوصل الى حل سلمي للقضية .

(٢) الدونم الواحد يساوي ١٠٠٠ م<sup>٢</sup> تقريبا .

واسمحوا لي ، ياسيادة الأمين العام ، أن اذكر مرة أخرى بأن كلا من الجمعية العامة ومجلس الأمن قد أدان مرارا وتكرارا التدابير التي اتخذتها اسرائيل لتغيير الطابع المادى للأراضي المحتلة أو التكوين الديموغرافي لها أو هيكلها المؤسسي أو وضعها . وقد أعلن مجلس الأمن بصفة خاصة ، بالقرار ٤٦٥ ( ١٩٨٠ ) ، أن هذه التدابير ليس لها صحة قانونية وانها انتهاك صارخ لاتفاقية جنيف الرابعة ، فضلا عن أنها تشكل عقبة خطيرة أمام تحقيق سلم شامل وعادل ودائم في الشرق الأوسط ، وطلب الى اسرائيل أن تلغيها .

وختاما أود أن أطلب تعميم هذه الرسالة ، والدراسة المرفقة بها ، بوصفها وثيقة من وثائق الجمعية العامة ، تحت البند المعنون " قضية فلسطين " ومن وثائق مجلس الأمن .

(توقيع) ماسمبا ساري  
رئيس اللجنة المعنية بممارسة  
الشعب الفلسطيني لحقوقه غير  
القابلة للتصرف

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ANNEX

ISRAELI PROPOSED ROAD PLAN FOR THE WEST BANK

A Question for the International  
Court of Justice



AZIZ SHEHADEH  
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Attorneys at Law

Including Report of Assessment of Damage  
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WEST BANK AFFILIATE OF THE INTERNATIONAL COMMISSION OF JURISTS - GENEVA

November, 1984

/...

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THE ISRAELI ROAD PLAN FOR THE WEST BANK -  
A QUESTION FOR THE INTERNATIONAL COURT OF JUSTICE?

In 1967 Israel occupied the West Bank of Jordan as a result of belligerent activities. It has been in occupation of this area for 18 years. The status of Israel in the West Bank continues to be that of a military occupier. The policy which Israel practices towards the West Bank is that of de facto annexation with the aim (which has been repeatedly declared by Israeli government officials including Israeli prime ministers) of eventually annexing the West Bank which it considers as part of the enlarged Land of Israel.

In pursuance of its declared policy, the military government - which is the authority in control of the occupied territories - has been following a policy of acquisition of land which has resulted according to the latest estimates in the assumption of effective control over 40% of the entire land area of the West Bank. The land thus acquired is used exclusively for the Jewish settlers in the area.

As to lands which have not been acquired, Israel has been pursuing a policy intended to limit the use of the land not acquired for Jewish settlers with the aim of restricting the growth of the Palestinian population in the West Bank.

International law is clear on the point that it is the duty of the occupying power to safeguard the interest of the local population. International law regards as illegal any action carried out by the occupying power which is not for the benefit of the local population or which is not absolutely essential for the protection of the security of the forces of the occupying power.

The most important recent development in the furtherance of Israel's policy of eventually annexing the occupied territory - by restricting the growth of the local population through preventing them using their agricultural land, existing installations and resources such as wells and irrigation schemes, and from expanding their towns and villages - is the Road Plan Number 50, which provides for a national road grid for the entire area of the West Bank.

This road plan was published in February 1984. The plan has already been implemented in part and restrictions are already being imposed on the granting of building licences which contravene the plan. Permission to upgrade the Fara'a irrigation scheme, which waters over 16,000 dunums of land, by installing pipes to reduce loss of water through evaporation, is being withheld because the entire irrigation scheme will have to be destroyed when the existing road, alongside which the present canals run, is widened in accordance with the plan.

The plan has already been the subject of judicial review before the Israeli High Court of Justice which, under the present system imposed on the West Bank, is the court of last resort for

appeals against the activities of the military authority. This court has held that:

"Once the commanding officer decided to prepare an all embracing road-plan one cannot see this as an illegal act, especially since in the opinion of the court, this was done in the interest of the local population."

This paper will consider whether the plan is indeed a legal plan and will propose a course for further legal challenge of this plan to prevent its implementation.

However, before starting with the legal flaws in the plan under local and international law, a brief factual descriptive background will be given.

The roads that existed in the West Bank in 1967 ran from the North to the South along the center of the region with access roads running laterally away from this central backbone. Ninety-three percent of these roads were paved. In 1970 the Israeli government started creating east-west links with the Jordan Valley. The Trans-Judea and Trans-Samaria roads were built for which thousands of dunums of Palestinian land was expropriated, oft often without providing the population with the right to submit any objections to the building of these roads. The Likud government abandoned the north-south strategy and stressed integration of the West Bank road system into the Israeli system. The road plan number 50 reflects this new thinking.

The publication of the road plan in February 1984 has caused general alarm amongst the residents of the West Bank. This is due to the extensive damage which the plan will cause to agriculture and industry. It is also due to the fact that the way the roads have been designed means that Palestinian towns and villages will be greatly restricted in their development with many roads creating tight rings around their existing boundaries or cutting into the urban centers, thus preventing further expansion beyond the roads.

A thorough survey has been made of the part of road number 57 which passes from Tulkarem to Anabta and from Talluza to Ghor Al Fara'. The road surveyed constitutes 3.3% of the entire proposed roads. The damage which will be caused to buildings, agriculture, installations, irrigation schemes, etc. both in the path of the road and in the area for the setback on both sides of the road was determined with great detail. The tables appended to this study list these damages. Reports from assessors are also appended estimating the amount of financial loss which will be caused by these two roads.

#### ONE: IS THE PLAN IN ACCORDANCE WITH LOCAL LAW?

In the High Court case no.393/82 where the road plan was discussed (before the plan was actually published) it was

acknowledged by the military authorities that the plan was done in cooperation with Israel. The regulations published with the plan indicate that the plan is the work of the Ministry of Housing and Construction - Department of Public Works, Ministry of Defence - Department of National Security Office of Planning of General Services, and the Civilian Administration of Judea and Samaria - Department of Planning. The plan is entitled "A Regional Partial Outline Plan for Roads." It is clear that the plan is the work of Israeli ministries and officials and that it considers the West Bank area as a part of Israel for which this road plan applies.

When notice of the publication of the plan was published in the local newspaper in the West Bank, the plan was described as the work of the Higher Town Planning Council. The notice stated that publication is carried out in accordance with article 16 of the Jordanian Town and Village Planning Law of 1966. It is clear that the reference to the Jordanian law is only an attempt to present the map as being formally in accordance with local law. Article 16 of the Jordanian law to which reference is made, does not deal with road plans at all but with regional plans within which roads are only one of several other matters that a regional plan must deal with.

The military authorities have in the past published the regional plan (referred to as the RJ5) in which roads were not included. In fact Jordanian law has no provision for the creation of a single road plan for the entire area. There are laws in the Jordanian legislation which deal with roads. The road plan has not been consistent with these laws. Whereas Jordanian law allows for the construction of three kinds of roads namely main roads of 50 meters width, secondary roads of 40 meters width, and agricultural roads of 30 meters width (Jordanian law number 29 of 1957 as amended by military order 810), the road plan creates four kinds of roads: fast roads of 120 meters width, main roads of 100 meters width, regional roads of 60 meters width and local roads of 40 meters width. Restrictions on building along each side of the road have been imposed as follows:

- 150 meters from each side of the road on a fast road;
- 120 meters from each side of the road on a main road;
- 100 meters from each side of the road on a regional road;
- 75 meters on each side of the road of a main local road.

The article in Jordanian law by virtue of which the road plan is presumed to be published refers (as has been mentioned above) to regional plans. The law states the various steps which the Higher Town Planning Council must fulfill before finalising a regional plan. These include thorough surveys of the topography, demography, ownership of lands, public facilities, public installations including agricultural, industrial and housing projects and many other matters of public concern for the benefit of the local population. The plan must deal with such matters as the



proposed development of towns and villages, industrial zones, public places, etc. The road plan not only does not take these into consideration but, as the survey appended to this study shows, will destroy altogether many of these public facilities that lie in its course or alongside it. The law also imposes on the planning authority the duty within a period not later than two years from the decision to declare an area a planning zone, to place the plan at the offices of the district planning authority to enable the public to inspect it. This has not been done.

The constitution of the Higher Town Planning Council according to Jordanian law must include the head of the Engineering Union, the Attorney General, the head of the Housing Institute, etc. Military Order 418 has amended the Jordanian Planning Law whereby representatives of the local population and of indigenous institutions who could safeguard the public's interest have been excluded. The Council is now only composed of military officials and judging from the plans that it has already issued the interest it seeks to fulfill is that of the Jewish settlers and that of Israel by creating plans for the area which further Israel's illegal policy of de facto annexation of the occupied area to Israel. At the same time and as has been acknowledged before the court by the military authority, the plan was prepared in cooperation with Israel. The cost of the road plan will be covered, as the military authority informed the High Court, in part from the regular taxes which are collected from the local population, and in part from Israeli sources.

The objections concerning the road plan from the point of view of international law will be discussed next.

## TWO: IS THE PLAN IN ACCORDANCE WITH INTERNATIONAL LAW?

The position that the court held in case number 392/82 was that the Hague regulations are applicable to the West Bank but not the Geneva Conventions. This being so the following principles were accepted:

1. The occupying power must act according to the dictates of the local law;
2. The two considerations which guide the behaviour of an occupying power are those of the security of its forces and the interest of the local population;
3. The military authority is of a temporary nature since the military occupation is of a temporary nature;
4. The military authority is not authorized to weigh the national, economic, or social interests of its own state.

The court also held that:

1. "When determining the range of authority of the military authority one ought to take into account the distinction between a short term military government and a long term one";
2. To ensure growth and development there is a need for basic

investments which entail permanent changes which must also continue after the end of the military occupation. This the court held is permitted if these changes are reasonably necessary to fulfill the needs of the local population;

3. These basic investments may entail planning and cooperation with partners from without the area. Such partners may be the state of the military government itself;

4. The court is willing to accept that the commanding officer acts honestly. Conclusive evidence is necessary in order to contradict this.

5. As to the prohibition against the military commander weighing the national, economic and social interests of his own state (which the court accepted), the court qualified this by adding that he is not authorized to do so in so far as these interests have no influence on the occupying state's security interest or on the interest of the local population. By implication therefore the court held that he can do so if the interests do have such influence.

The court's factual findings were that the plan, although prepared in cooperation with Israel, is for the benefit of the local population. On the question of the security justification of the road plan, the court expressed its surprise (in fact as it stated, its "suspicion") that the military government did not argue before it that the plan is justifiable on security grounds despite the fact that in a similar case, where the same road plan was the subject of a High Court petition before the same court, the same military government attempted to justify the plan on the basis of its security need. The court held: "This military need was not mentioned at all. This approach is suspicious. The military government is the same, if it presents itself in front of this court in SCJ 202/81 and if it presents itself in the present case. How is it possible that what is said to one set of judges of this court is not said to us? It is suspicious." Despite its suspicion, the court refused to let this influence its final decision.

#### Critique of the Court's Findings:

Many legal scholars have argued for the applicability of the Fourth Geneva Convention of 1949 to the occupation by Israel of the West Bank. The official position followed by most countries of the world is that the Geneva Convention indeed applies to Israel's occupation of the West Bank. Yet still even if we were to confine our discussion to the legality of the plan in relation to the Hague Regulations we can reach the same conclusion. According to the Hague Regulations the two overriding considerations are the security of the armed forces of the occupying power and the benefit of the local population. Are these two requirements met in this case and is the plan therefore in accordance with the law?

Before discussing these two requirements it is necessary to address ourselves to the other matters which the court has stated in its decision. The court has found that provision must be made for the fact that the occupation is a long term one. Even if one is to take into consideration the length of a military occupation, the two overriding considerations mentioned above must continue to be the determining yardstick by which the legality of an act is determined.

However the court has not only imposed on its own account this added consideration of the length of the occupation; it has also held that the longevity of the occupation will necessitate long term investments. The need for this does indeed follow from the first premise. If the first premise is accepted then the second will have to be accepted also. However the court has also added that these basic investments may entail planning and cooperation with partners who may be the state of the military government itself. Such a position is open to serious challenge.

International law imposes on the occupying force the need to safeguard the interest of the local population. This may be (indeed will very likely be) contrary to the interest of the occupying state. The court's ruling that long term investments (which must in all cases be for the interest of the local population) may be in cooperation with the state of the military government whose interests will be contradictory to those of the occupied state, as is evident by Israel's declared policy over the West Bank, cannot be accepted. This is especially so when only the state of the military government is consulted (indeed, is the author of the entire plan as has already been mentioned) while the local population, for whose supposed interest and benefit the whole plan must be made, is not consulted at any stage in the planning or preparation of the plan.

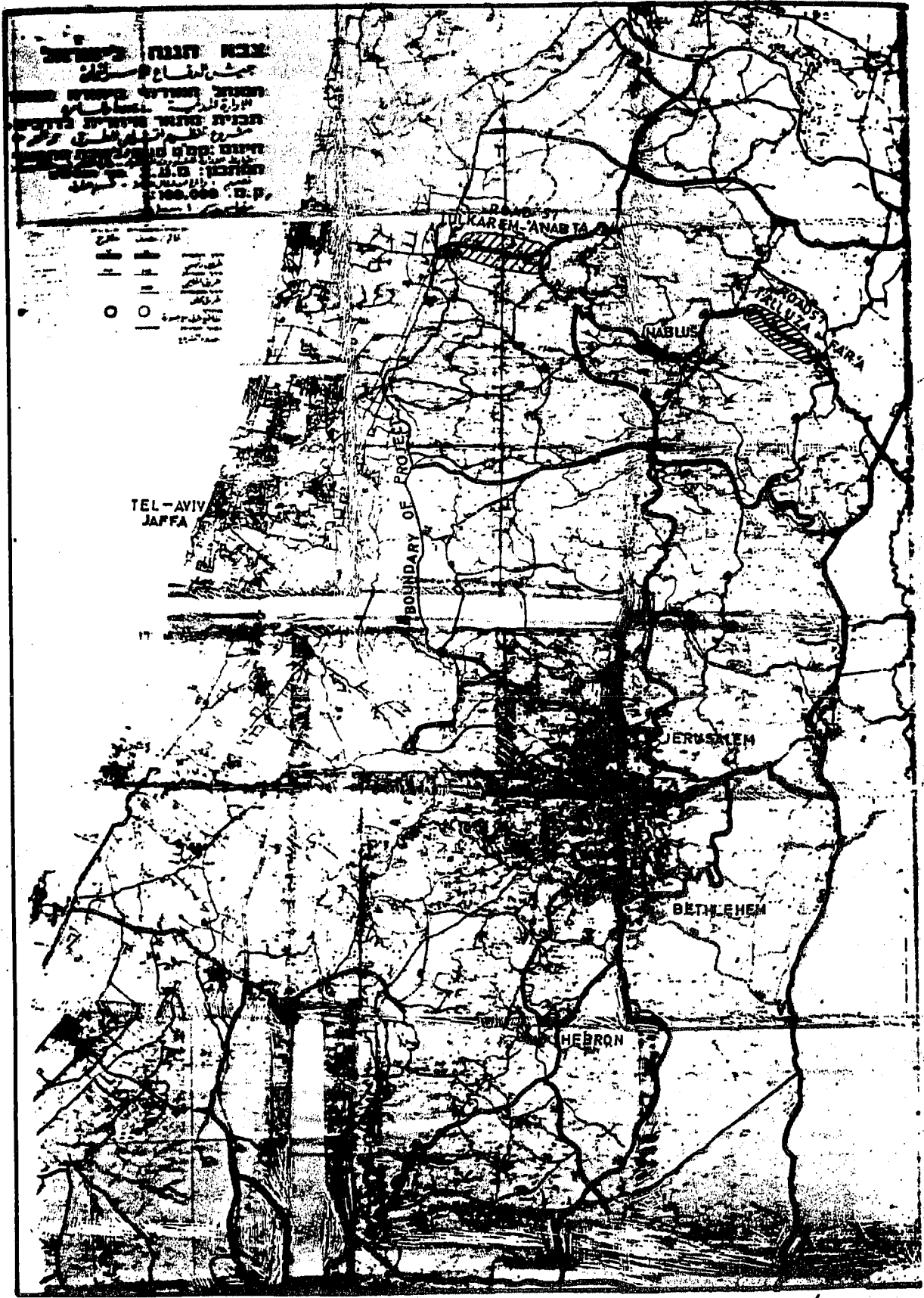
Another finding of the court as far as the law is concerned is subject to challenge. The court has ruled that the prohibition against the military authority weighing the national, economic or social interest of its own state is not absolute as mentioned above. This qualification is a serious error, since the prohibition imposed by international law is mandatory.

We return now to the consideration of the two main elements that must be taken into account when assessing the legality of an action taken by an occupying force, namely the security of the army and the interest of the local population.

We do not propose here to discuss the security aspect because the military authorities themselves have not based their justification of the plan on the security aspects. This can only mean that such a justification is not seriously considered by the military authorities. Otherwise, it is reasonable to assume, they would at least have argued this before the court hearing a challenge of the road plan. This they did not do.

# MAP 1 PROPOSED ROAD NETWORK

نقشه ۱



This is a photograph of the proposed road map as published at the offices of the District Planning Departments. The position of the 20 kilometers of road that were surveyed as appearing in Map 2 have been circled. English translation of the main cities were added.

The following is a translation into English of the Hebrew and Arabic writing that appears on the map:

**ISRAEL DEFENCE ARMY**

Civilian Administration - Judea and Samaria









Proposed Regional Plan for Roads No. 50

Officer in charge of the Interior-Planning Department in the District of Judea and Samaria

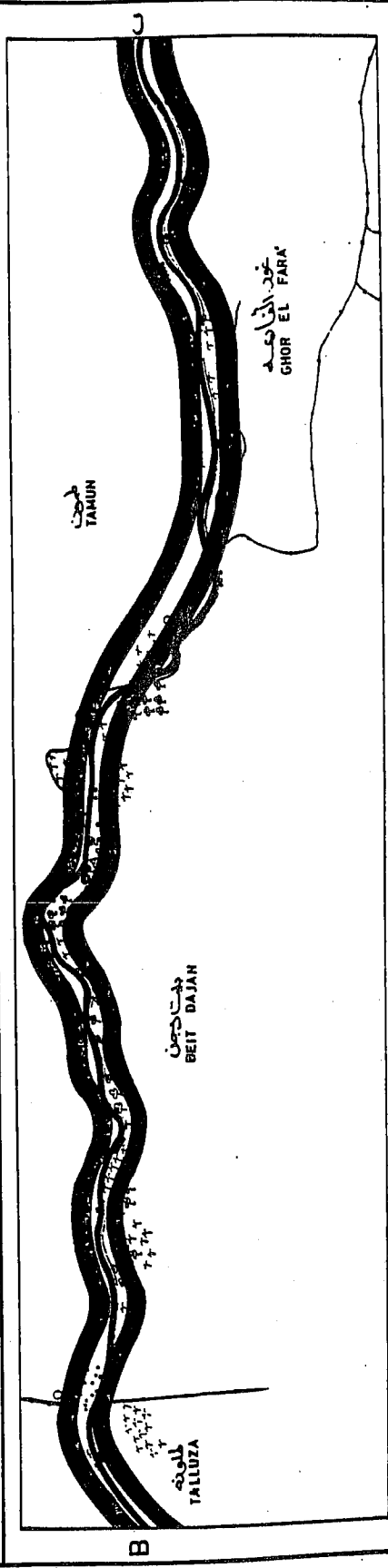
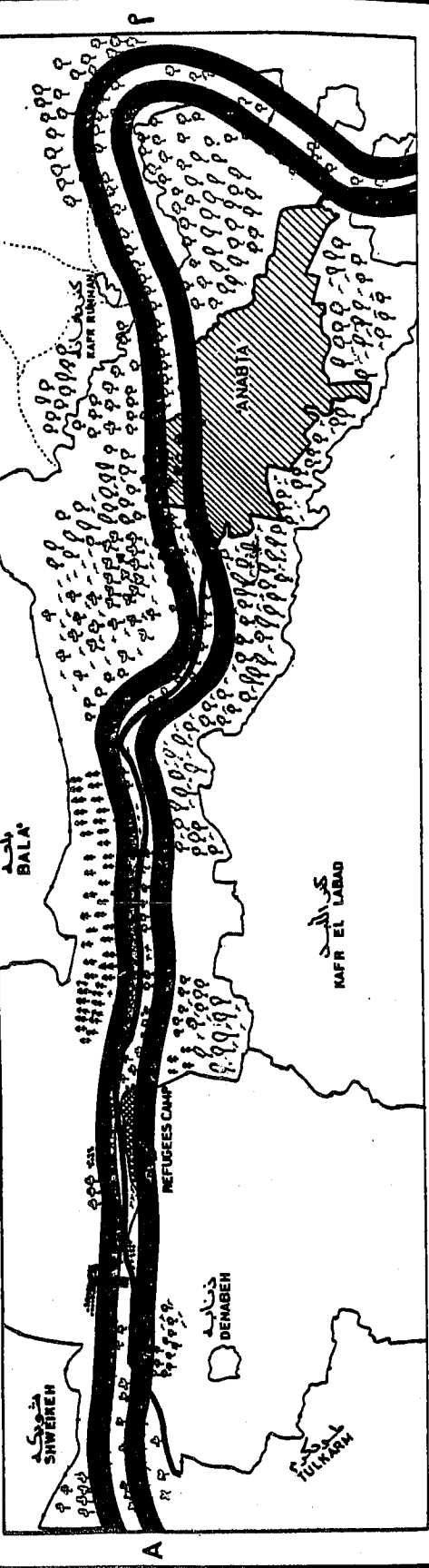
Prepared by Department of Public Works - Road Section

Scale: 1:100,000

KEY

	Existing/ Approved	Proposed
Main Road		
District Road		
Local Road		
Intersection with bridges		
Boundary of Project		

A: PART OF ROAD 57 FROM TULKAREM TO 'ANABIA MAP 2  
 B: PART OF ROAD 57 FROM TALLUZA TO GHOR EL FARAH



المقياس  
 0 0.5 KM

KEY

موزة BANANA	مزارع الحمضيات CITRUS ORCHARDS	مناطق الغابات FORESTS	مباني موجودة EXISTING BUILDINGS	مباني مقترحة PROPOSED BUILDINGS	شارع مقترح PROPOSED ROAD	حدود البلدية MUNICIPAL BOUNDARIES
مزرعة نخيل PLANT NURSERY	مياه عذبة CULTIVATED AREAS	الآبار الحرفية ARTISAN WELL	السدود RESERVOIR	البيوت المائية IRRIGATION PONDS	المخاريط ALMONDS	الزيتون OLIVES
	القنوات WATER CANAL				الطاحنة WHEAT MILL	المدرسة SCHOOL

معدود: دار المساحة والاسماء - رام الله  
 COMPILED BY SURVEY AND ENGINEERING CENTRE - RAMALLAH

As to the second basic consideration namely the interest of the local population, the following can be said.

The court has held that it is willing to accept that the commanding officer acts honestly. In other words the burden of proving that it is otherwise lies on the party claiming this. The commanding officer in this case acted through the Higher Town Planning Council. As has already been discussed the military authority has amended the local law to exclude the participation in the creation of a plan even of this magnitude of any local person, official or body whatsoever. Other matters concerning the interest of the local population which the planning authority must, according to Jordanian law, take into consideration in creating a regional plan were disregarded completely. Indeed no claim has been made that any participation of or even consultation with any other local body has been sought. On the face of it therefore, the qualification and motivation of the authors of the plan are suspect. A plan presumed to be done for the benefit of the local population should at least have been presented to the local public during the planning stage for comments, suggestions, additions or amendments. This was not done at all. The court has held, and it is indeed the law, that the actions of the military authority must be in accordance with the local law which can only be amended if such amendment is justifiable under international law. Since the plan was done not in accordance with the Jordanian planning law as it existed on 5 June 1967 but as amended subsequently by Israel (without legal justification), it cannot be said that the plan was carried out in accordance with the law in force in the occupied territory.

Despite the fact that the local population neither participated nor was consulted at any stage in the preparation of the plan, is the plan as it now stands for the benefit of the local population?

In supporting their claim that the plan is for the benefit of the local population, the military authorities cited the increase in the number of cars over the past few years. There is no doubt that this is true. But it does not necessarily follow that such an increase necessitates the replacement and expansion of existing roads to the extent proposed. As has already been mentioned above, the West Bank is served by a network of roads running from south to north, 93% of which are paved. That the increase in the number of cars should necessitate a comprehensive change in the road plan from the existing north-south direction to east-west and an increase of thousands of kilometers more of roads, cannot simply be substantiated by citing an increase in the number of cars.

But even if it were unquestionably the case that the present West Bank road system is (as the Israeli High Court has said) ageing and needs modernization, why could the proposed roads not be planned to cause the least amount of damage? A thorough survey was made by certified surveyors of two kinds of proposed

roads, an inter-urban road and a road passing through an agricultural area as shown in Map 2. The parts of these two roads that have been surveyed constitute only 3.3% of the entire area of the roads mentioned in the road plan (Map 1). It was found that the damage that will be caused by the 20 kilometers of road that were surveyed amounted to damage to 1568 dunums\* of land cultivated with citrus, olives, almonds, etc. as well as the destruction of 36 houses (excluding the destruction of part of the Nur Shams Refugee Camp), the destruction of the entire Fara'a irrigation schemes (note that the regulations do not allow placing pipes below the road) which gives water to slightly over 16,000 dunums of land, the destruction of an entire refugee camp along with the destruction on the way of many installations. All of this damage is only in the actual path. That to be caused by the setback is also as extensive. The tables appended to this list the full extent of the damage, which amounts to over ten million Jordanian dinars (approximately \$27,000,000).

The survey that was carried out concerned the road passing through the town of Anabta. It shows how the proposed road will pass through the town's municipal land causing a restriction of the possibility of the town's development to the north. When it is considered that this town is surrounded from the east and west by agricultural lands on which the town depends for its livelihood and by another village in the south, the seriousness of the restriction on the town's expansion can be appreciated. The case of Anabta is not unique. The case of the village of Ibdia is more tragic. Most of the town's buildings are in the form of a ribbon along both sides of the existing road which the plan proposes will be widened. The widening of the road will cause most of the existing town to disappear if all the houses along the road are demolished. What should be noted is that in no case were any of the cities or towns through which the proposed roads will pass consulted about the path of any road.

It is clear from Map 2 Section A that the road 57 from Tulkarem to Anabta curves at a certain point. Thereafter the road causes extensive damage in its path. From an inspection of the area it seems quite possible that the road could have been allowed to proceed in a straight line instead of curving. It would then have been possible to avoid much of the damage that the proposed road will be causing. One wonders whether the Israeli planners who prepared the road plan were trying at all to reduce the damage that the roads they were planning would cause to the Palestinian inhabitants of the occupied territory. The evidence proves that this was not at all the case.

\* A dunum is approximately 1000 square meters



THREE: THE POSSIBILITY OF AN ADVISORY OPINION ON THE PROPOSED ROAD PLAN

The question of the lawfulness of the road plan is a question of law appropriate for consideration by the International Court of Justice.

In ruling on the legality of the road plan, the Israeli High Court gave its own interpretations of international law, as already discussed above. The world court will be asked to consider whether or not this interpretation offered by the Israeli Court is in conformity with customary international law.

In defending the road plan, Israel is putting forward factual claims that these roads are a necessary long term investment which are ultimately for the benefit of the local population. Whether or not this is so is a question of fact which would have to be considered alongside the question of law. In its Advisory Opinion on the Western Sahara the International Court of Justice emphasized that "a mixed question of law and fact is nonetheless a legal question" for the purpose of giving an advisory opinion (1975 ICJ Report 12 at paragraph 17).

The determination of the legality of the road plan, although a significant question in its own right, will also contribute to the clarification of the more general question of what customary international law allows an occupier in a long term occupation. The judicial basis of this decision will be applicable also to other activities of Israel in the West Bank. This will assist many countries in arriving at a clearer position as regards Israeli policies in the occupied territories.

The decision to request the International Court for an advisory opinion is a political one to be taken by the General Assembly or the Security Council after a full consideration of the political advantages and disadvantages of such a course. Any resolution requesting such an opinion requires a two-thirds majority vote in the General Assembly and nine affirmative votes, including the concurring votes of the permanent members, in the Security Council.

Many resolutions have been passed by the General Assembly of the United Nations denouncing Israel's policy in the occupied territories. The debate in the U.N. has become sterile. The Road plan if implemented will cause extensive damage to the Palestinian population in the West Bank and will create substantial physical changes in the area. A U.N. resolution denouncing the legality of the plan will be of little practical effect because it will be dismissed by Israel as the expression of a political opinion on a matter of law. If however the International Court of Justice gives its opinion on the matter this will provide a solid judicial opinion that cannot be so easily dismissed by Israel.

The present composition of the world court is more representative of world opinion. Recent success such as in the Namibia

case and the case of Nicaragua are encouraging. In the latter case, the court has made a preliminary order holding that pending the court's final decision, the United States should desist from any action endangering access to or from Nicaraguan ports and from any activity that jeopardises the right to sovereignty and political independence of the republic of Nicaragua.

If the road plan should come before the world court, a preliminary order should be sought ordering Israel to desist from implementing the plan pending the court's final decision.

An advisory opinion from the International Court of Justice that the new Israeli plan for West Bank roads violates international law could play an important role in resisting Israel's illegal policies towards the occupied areas.

REPORT OF THE DAMAGE TO AGRICULTURE  
CAUSED BY THE PROPOSED ROAD PLAN NO. 50  
IN THE 20 KILOMETERS SURVEYED SHOWN IN MAP. 2

by Amid Wahid Masri \*

This report assesses the damage that will be caused by the part of Road 57 as planned by Road Plan No. 50 from Tulkarem to Anabta and from the area of Talluza to that of Ghor Al-Fara'. Each of these samples is 10 kilometers in length.

Only the damage caused to agriculture has been assessed. The following criteria were used for assessment:

I. Criteria used to assess the value of land

- a. Price which nearby land fetched in the last 12 months before the assessment.
- b. Income generated by each dunum - if cultivated or otherwise used.
- c. Offers made by purchasers of the land within the last 12 months.
- d. Proximity to source of water.

Cultivated areas close to Ghor Al-Fara' irrigation scheme, for example, were estimated at 1000 Jordanian dinars per dunum. This value is double if the area is planted with citrus or banana. I have not considered the decrease in the value of land due to partition. But it must be remembered that dividing cultivated land by the road will diminish the productivity of the land because having land on two sides of a road makes farming more complicated and expensive.

II. Criteria used to assess value of artesian wells

- a. Discharge of water per hour.
- b. Area of land irrigated by well.
- c. Depth of well.
- d. Size and type of engine.
- e. Size and type of pumps.

\*Amid Wahid Masri has degrees in Agriculture and Dairy Farm Management from Britain and the United States. He is presently managing with his father a farm of 250 dunums including a dairy farm.

### III. Criteria used for assessing value of other agricultural installations

The proposed road will damage along its path several irrigation ponds, nurseries, etc. In arriving at an assessment of the value of nurseries, the size of the land in which the nursery is built, the type and quality of the structures used and the income generated were all taken into consideration. The price of the land over which the nursery is built was also included in the estimate. Thus one nursery in Block 8534 in the Tulkarem - Anabta section is built over 10 dunums and its structures are of metal bars. The estimated value of this nursery is 20,000 Jordanian dinars.

In arriving at an estimate of the value of irrigation ponds and water reservoirs, the size of the receptacle was taken into consideration, the amount of water it holds, the material from which it is constructed as well as the area of land it serves.

The proposed road from Talluza to Ghor Al-Fara' will destroy the Ghor Al-Fara' irrigation scheme. This project was completed in 1956 and irrigates slightly over 16,000 dunums of land. The total annual discharge of water from the spring is around 15 million cubic meters. This figure was arrived at by measuring the water flow in 10 meters cubic meters. Plans were completed and the funds collected for installing pipes to minimize loss of water by evaporation, but the military authorities have withheld permission to implement this.

The destruction of the irrigation scheme will not only affect the 16,000 dunums which are irrigated by it, but will destroy the nurseries also because they depend on the low saline content of its water. Water from the artesian wells in the area is highly saline. The spring water is used by the farmers for drinking, irrigation and for their livestock. It is not possible to estimate in monetary terms the loss of the Ghor Al-Fara' irrigation scheme.

**TABLE A - Damage to be caused by the part of Road 57 shown on Map 2 Section A passing from Anabta to Tulkarim**

Houses: One Floor	13
Two-Floors	5
Citrus Groves	233 dunums*
Almond Orchards	294 dunums
Olive Fields	11 dunums
Cultivated Land	213 dunums
Olive & Almond Orchards	106 dunums
Nur Shams Refugee Camp	42 dunums
Sports Field	10 dunums
Stone-cutting Factory	1
Water Pump	1

\*A dunum is 1,000 square meters.

TABLE B - Damage to be caused by the setbacks in the part of Road 57 shown on Map 2 Section A passing from Anabta to Tulkarom

Houses: One Floor	49
Two Floors	19
Citrus Groves	350 dunums*
Almond Orchards	668 dunums
Olive Fields	94 dunums
Cultivated Fields	464 dunums
Olive & Almond Orchards	557 dunums
Cultivated & Forested Lands	43 dunums
Forested Land	123 dunums
Artesian Well	1
School	1
Land with houses belonging to Nurshams Refugee Camp	84 dunums
Sport Field	7 dunums

\*A dunum is 1,000 square meters.

TABLE C - Showing details of blocks of land in which is situated the damage to be caused by proposed Road 57 from Tulkarem to Anabta as shown on Map 2 Section A.

Block of Land Number	Houses One Floor Two Floors	Citrus Groves (dunums)	Nut Trees (dunums)	Olives (dunums)	Culti- vated Land (dunums)	Nuts & Olives (dunums)	Miscellaneous Installations
8544						93	
8563			65				
8523			58		20		
8505		72					
8522			33		18		
8487	6				9		
8524			9				Stone-cutting factory
8513			1		29		
8514	3		53		26		
8516			58				
8534			12		30	13	Nursery & water pump
8515			5		35		
8526					23		
8538		16					
8531	4	35					Sport field
8533					23		
8530		31		11			
8506		76					
8488							42 dunums of land on which are sited houses belonging to Nurshams Refugee Camp
TOTALS	13	233	294	11	213	106	

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TABLE D - Showing details of the land in which is situated the damage to be caused by the setback imposed by the proposed Road 57 from Tulkarem to Anabta in Map 2 Section A.

Block of Land Number	Houses		Citrus Groves (dunums)	Nut Trees (dunums)	Olive Groves (dunums)	Culti- vated Land (dunums)	Nuts & Olives (dunums)	Culti- vated & Forested (dunums)	Forest (dunums)	Miscellaneous Installations
	One Floor	Two Floor								
8498	6	4	10	15	14	11				
8486	14	7		2		20	100	10		
8544										
8549				187						
8523			150			97				
8505			150			10	78			
8522						54				
8487	20	5	2		18		78			
8524							59			
8528	1									
8514				110		31	138			
8516										
8534				37		11				
8515			15			70			18	
8526		1				58			74	
8520										
8519										
8540					6		3			
8538					56					
8537										
8531	5			19						
8533				65						
8529				21						
8530	3	1					70	33		
8513			23			102				
8518										6
8517										25
8506				13			31			
<b>TOTALS</b>	<b>49</b>	<b>19</b>	<b>350</b>	<b>668</b>	<b>94</b>	<b>464</b>	<b>557</b>	<b>43</b>	<b>123</b>	

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TABLE E - Estimate of financial damage to agriculture to be caused by the part of the proposed Road 57 and its setbacks from Tulkaem to Anabta as shown on Map 2 Section A.

Block of Land Number	Number of Dunums	Average Value per Dunum in JD*	Miscellaneous Installations		
			Total Value in JD	Wells	Nurseries
8544	93	1,500	139,500	--	--
8543	65	1,000	65,000	--	--
8523	78	5,000	390,000	--	--
8505	72	20,000	1,440,000	--	--
8522	51	5,000	255,000	--	--
8487	9	20,000	180,000	--	--
8524	9	5,000	45,000	--	--
8513	30	12,000	360,000	--	--
8514	79	10,000	790,000	--	--
8516	58	5,000	290,000	--	--
8534	55	7,000	385,000	50,000	20,000
8515	43	5,000	215,000	--	--
8526	23	7,000	161,000	--	--
8538	16	1,000	16,000	--	--
8531	35	10,000	350,000	--	--
8533	23	10,000	230,000	--	--
8530	42	10,000	420,000	--	--
8506	76	30,000	2,280,000	--	--
8528	--	3,000	--	--	--
<b>Total</b>	<b>857</b>		<b>8,011,500</b>	<b>50,000</b>	<b>20,000</b>

TOTAL LOSS: 8,081,500 Jordanian Dinars\*

\*1 Jordanian dinar is approximately equivalent to \$2.50 at the time of writing.

TABLE F -- Damage to be caused by the part of the Road 57 shown on Map 2 Section B passing from Talluza to Ghor Al-Fará

Houses: One Floor	10
Two Floors	8
Citrus Groves	265 dunums
Cultivated Fields	219 dunums
Olive Groves	3 dunums
Banana Groves	16 dunums
Miscellaneous Installations	3 Irrigation Ponds 1 Wheat Mill
Length of canal running along the road	9,200 meters

**TABLE G - Damage to be caused by the setback in the part of Road 57 shown on Map 2 Section B passing from Talluza to Ghor Al-Fará**

<b>Houses: One Floor</b>	<b>25</b>
<b>Two Floors</b>	<b>6</b>
<b>Citrus Groves</b>	<b>394 dunums</b>
<b>Cultivated Fields</b>	<b>479 dunums</b>
<b>Olive Groves</b>	<b>3 dunums</b>
<b>Banana Groves</b>	<b>83 dunums</b>
<b>Miscellaneous Installations</b>	<b>2 Cement Irrigation Ponds</b>
	<b>1 Artesian Well</b>
	<b>2 Water Pumps</b>
	<b>1 Dam at entrance to Canal</b>
	<b>1 Natural Spring</b>
<b>The length of Al-Fará Canal in the setback</b>	<b>800 meters</b>
<b>The length of Al-Amara Canal (which branches from Al-Fará) in the setback</b>	<b>1,700 meters</b>
	<b>Total: 2,500 meters</b>

TABLE H - Showing details of blocks of lands in which is situated the damage to be caused from proposed Road 57 from Talluza to Ghor Al-Farā as shown in Map 2 Section B

Block of Land Number	Houses		Citrus Groves (dunums)	Cultivated Land (dunums)	Olive Groves (dunums)	Banana Orchards (dunums)	Rainfed (dunums)	Miscellaneous Installations
	One Floor	Two Floors						
Beit-Dajan 1				12				
Beit-Dajan 2	2		28	33			32	
Beit-Dajan 3			44	13				
Beit-Dajan 4	4	1	78	9				Irrigation Pond
Beit-Dajan 5	1		11	64				
Talluza 16			10	7	1			
Talluza 25				26				Wheat Mill
Al-Farā 24096		1		9	2	16		Irrigation Pond
Al-Farā 24097	3		84					
Al-Farā 24080			2	22			8	
Al-Farā 24095			8	24				
<b>TOTALS</b>	<b>10</b>	<b>2</b>	<b>265</b>	<b>219</b>	<b>3</b>	<b>16</b>	<b>40</b>	

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TABLE I - Showing details of the land in which is situated the damage to be caused by the setback imposed by the proposed Road 57 from Talluza to Chor Al-Fara as shown in Map 2 Section B.

Block of Land Number	Houses		Citrus Groves (dunums)	Cultivated Land (dunums)	Olive Groves (dunums)	Banana Orchards (dunums)	Rainfed (dunums)	Miscellaneous Installations
	One Floor	Two Floors						
Beit-Dajan 1				92			10	Irrigation Pond
Beit-Dajan 2				14			147	
Beit-Dajan 3	1		26	104				
Beit-Dajan 4	9	1	142	17				
Beit-Dajan 5	10	2	82	63		12		Well, Water Pump
Beit-Dajan 6	5	2		5		3		
Talluza 16			21	17	3			Irrigation Pond
Talluza 25				67				
Al-Farā 24097			79					
Al-Farā 24096	1		30	22		68	24	Cement Irrig. Pond Cement Irrig. Pond and Water Pump
Al-Farā 24080				73				
Al-Farā 24095			14	5				
<b>TOTALS</b>	<b>25</b>	<b>6</b>	<b>394</b>	<b>479</b>	<b>3</b>	<b>83</b>	<b>181</b>	

TABLE J - Estimate of financial damage to agriculture to be caused by the part of the proposed Road 57 and its setbacks from Talluza to Ghor Al-Farâ as shown on Map 2 Section B.

Block of Land Number	Cultivated Land (dunums)	Price per Dunum (in JD*)	Total Value (in JD)	Trees (dunums)	Price per Dunum (in JD)	Total Value (in JD)	Pasture and Rainfed (dunums)	Price per Dunum (in JD)	Total Value (in JD)	Miscellaneous Installations	Value (in JD)
Beit Dajan 1	12	1,000	12,000	--	2,000						
Beit Dajan 2	33	1,000	33,000	28	2,000	56,000	32	500	16,000		
Beit Dajan 3	13	1,000	13,000	44	2,000	88,000					
Beit Dajan 4	9	1,000	9,000	78	2,000	156,000				Water Reservoir	1,000
Beit Dajan 5	64	1,000	64,000	11	2,000	22,000					
Beit Dajan 6	--	1,000	--	--	2,000	--					
Talluza 16	7	1,000	7,000	10	2,000	20,000					
Talluza 25	26	1,000	26,000		2,000					Wheat Mill	50,000
Al-Farâ 24096	9	1,000	9,000	--	2,000	--				Water Pond	6,000
Al-Farâ 24097	--	1,000	--	84	2,000	168,000					
Al-Farâ 24080	22	1,000	22,000	2	2,000	4,000	8	500	4,000		
Al-Farâ 24095	24	1,000	24,000	8	2,000	16,000					
<b>Totals</b>	<b>219</b>		<b>219,000</b>	<b>265</b>		<b>530,000</b>	<b>40</b>		<b>20,000</b>		<b>57,000</b>

TOTAL LOSS: 826,000 Jordanian Dinars\*

\*1 Jordanian dinar is approximately equivalent to \$2.50 at the time of writing.

REPORT OF THE DAMAGE CAUSED TO  
NON-AGRICULTURAL INSTALLATIONS BY THE  
PROPOSED ROAD PLAN NO. 50 IN THE 20  
KILOMETERS SURVEYED SHOWN ON MAP 2

by Tawfiq Farah Jabbarin\*

This report is divided into two parts. In the first part the damage caused to non-agricultural installations caused by the part of Road 57 from Tulkarem to Anabta is calculated. The second part deals with the damage to the part of the same road from Talluza to Al-Fara'. The areas surveyed are indicated on Map 2.

**PART ONE: The Tulkarem - Anabta Road**

Falling within the path of the proposed road are 13 one-floor houses, five two-floor houses, one stone-cutting factory and about 42 dunums of land over which the Nur Shams refugee camp is built. In the area of the setback fall 49 one-floor houses, 19 two-floor houses, one school and about 48 dunums of land on which the Nur Shams refugee camp is built.

Except for the refugee camp which is under the supervision of the United Nations Works and Relief Agency, most of the houses in the area surveyed fall within the Nablus district zoning area. The average area of each house is 150 square meters for each floor. The average cost per square meter of building is 100 Jordanian dinars.

This assessment is arrived at by taking into consideration the cost of the licence, the survey, digging the foundations, the building in stone, the installations, etc. The average price charged by engineers, contractors and various technicians in the West Bank for such works have been taken fully into consideration in arriving at my assessment.

It must be noted that no water or sewer system serves these houses. This means that each house digs its own well and cesspool. The average cost of both is estimated at 400 Jordanian dinars.

These same criteria were used in arriving at the assessment mentioned in part two of this report.

\*Tawfiq Farah Jabbarin is an engineer specialized in Town Planning and Development. He has an office in Ramallah and practical experience in the cost of construction generally.

A. Assessment of the value of the buildings falling within the path of the proposed road:

	Number of Houses	Average Area Built on in Square Meters	Cost Per Square Meters, Floorspace	Value in JD
1 Floor:	13	150	100	195,000
2 Floors:	5 (10 floors)	150	100	150,000

The total number of cesspools and wells is 18 (13+5); their total cost is estimated at JD 7200.

The total damage amounts to JD 352,200 (195,000 + 150,000 + 7,200)

The houses in the Nur Shams Refugee Camp are all cramped with no public areas, parks or main roads. Between the houses are narrow lanes. This being so the average built up area is 70% of the total area. The total area is 42 dunums. Taking into consideration the inferior quality of housing in the camp the estimate for each square meter is JD 45.

The built-up area in the camp is 29,400 square meters which is estimated at JD 1,323,000.

B. Assessment of the value of the buildings falling within the area of the setback:

	Number of Houses	Average Area Built on in Square Meters	Cost per Square Meter; Floorspace	Value in JD
1 Floor:	49	150	100	735,000
2 Floors:	19 (38 floors)	150	100	750,000

The total number of cesspools and wells is 68 (49+19); their total cost is estimated at JD 27,200.

The total damage amounts to JD 1,332,200 (735,000 + 570,000 + 27,200)

Falling within the path of the proposed road is a stone cutting factory estimated at JD 150,000.

Falling within the area of setback is a High School which is estimated at JD 100,000.

The built-up area in the camp lands falling in the area of the setback is 58,800 square meters. This is estimated at JD 2,646,000.

PART TWO: The Talluza - Fara' Road

Falling within the proposed road are 10 one-floor houses and 8 two-floor houses and one wheat mill.



In the area of the setback there are 25 one-floor houses and 6 two-floor houses and the village of Ain Shibli.

The same criteria described in Part One were used here to arrive at the estimations:

Within the path of the proposed street is situated a Wheat Mill. It is one of three such Mills in the entire West Bank. It is estimated at JD 100,000.

A. Assessment of the value of the buildings falling within the path of the proposed road:

	Number of Houses	Average Area Built On	Cost per Square Meter	Value in JD
1 Floor:	10	150	100	150,000
2 Floors:	8 (16 floors)	150	100	240,000

The total number of cesspools and wells is 18 (8+10). Their total cost is estimated at JD 7200.

The total damage amounts to JD 397,200 (150,000 + 240,000 + 7,200)

B. Assessment of value of the building falling within the area of the setback:

	Number of Houses	Average Area Built On	Cost per Square Meter	Value in JD
1 Floor:	25	150	100	375,000
2 Floors:	6 (12 floors)	150	100	180,000

The total number of cesspools and wells is 31 (25 + 6). Their total cost is estimated at JD 12,400.

Within the path of the road and the area of the setback fall around 30 clay houses which are estimated at JD 12,000.

The total damage amounts to JD 579,400 (375,000 + 180,000 + 12,400 + 12,000).

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