

{AUGUST 28 2004}

AN OFFICER IN COURT

When I came out of the beautiful Supreme Court building, I was feeling depressed. I had listened for hours to proceedings on a number of applications concerning the separation wall. I was especially interested in the part of the wall that is threatening to ruin the lives of the residents of a-Ram. There, it will be remembered, the planned wall runs the full length of the Jerusalem-Ramallah road, which passes through a-Ram. The strip along the middle of the road will be displaced by an 8-meter high concrete wall that will cut off most of the town's inhabitants from their work places, schools, hospitals and even cemetery.

Up to now, the building of this wall has been held up by the Supreme Court's temporary injunction. This has now been lifted, and next week the cranes will start erecting the concrete slabs that have been lying on the ground along the road. They will shut out the world beyond.

At a certain stage, the three judges – headed by Chief Justice Aharon Barak – called the lawyers of the two sides to approach the bench and explain the map to them. The attorneys, including a military lawyer in uniform, came forward. But not they alone. With them was a civilian who is no lawyer – a kippah-wearing settler called Danny Tirza, the chief of the Ministry of Defense wall-construction department.

This Tirza became famous last month, when the Supreme Court announced that the government must change the path of the wall. On leaving the courtroom, Tirza went straight up to the TV cameras and declared that from now on the Supreme Court will bear the responsibility for every Jew murdered. This impertinent remark caused a public uproar and Tirza was officially rebuked by his bosses.

That did not hinder him from approaching the bench now and lecturing the judges at length about the necessity of building the wall at once. It did not occur to anyone to invite the mayor of a-Ram, Sirhan Salameh, who was sitting in the first row, to put his case. A settler – yes. A local Palestinian – no.

What happened next was even more disturbing. At the request of the government

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attorneys, a senior commander of the Border Police, a Druze as it happens, was asked to explain to the judges why a delay in the building of the wall will result in the murder of Jews. Indeed, just a few days ago a “terrorist” was found hiding in a mosque in a-Ram. (May God forgive me for having a twisted mind, but this story aroused my suspicions from the first moment. This arrest, just a few days before the court hearing, came at a moment just too convenient for the security services.)

Generally, only lawyers may address the Supreme Court. It is quite unusual for anyone else to be allowed to speak there. The officer’s long speech, without the opportunity of a rebuttal, is even more unusual. It shows that even in the 57th year since the founding of the State of Israel, military officers enjoy a special standing in the Supreme Court.

The officer’s message was quite simple: delay in the building of the wall can facilitate terrorist attacks. That is to say, if the court causes more hold-ups, it will be responsible for the consequences. Indirectly, in a more sophisticated way, this officer repeated the crude blackmail of Tirza the settler.

The final result: the court caved in under the pressure and withdrew the delaying order. I was sad but not surprised, I am sorry to say.

True, the Supreme Court is an oasis in the Israeli landscape. Even architecturally. While not very impressive from the outside, it is beautiful inside. Unlike the pompous, monumental style that is common to most superior court buildings in the world, our Supreme Court is a human-sized, airy building, with open spaces and interior courtyards reminiscent of the Alhambra in Granada. There are interesting plays of light and shadow. It is surrounded by a lovely garden, open to all. The halls, too, are convenient and pleasant. Security checks are minimal and unusually polite.

More importantly, the court is also a political oasis. At a time when democracy is degenerating, the government cynical and the Knesset behaving irresponsibly, the Supreme Court is the last fortress. Since Israel does not have a constitution, the Supreme Court has taken upon itself the task of blocking laws that contravene the basic values of Israeli democracy. As attested by public opinion polls, the court enjoys the highest prestige among public institutions (with politicians and the media at the bottom.)

If so, then what happened this time?

Aharon Barak once explained to me his basic guiding principle: The court has no army of its own. It cannot use force to make its decisions stick. It is completely dependent on the trust and support of the general public. Therefore, it cannot go too far beyond what the public can stomach.

In security matters, the situation is even more delicate. True, the days are gone when

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the court automatically stood at attention when an army officer appeared before it. But it is still possible to impress the court unduly with security arguments. Aharon Barak himself is a Holocaust survivor: as a child he was spirited out of the Warsaw ghetto, hidden under sacks of potatoes in a cart. His receptivity to security arguments is especially high.

Against this background, it is worth comparing the “advisory opinion” of the International Court of Justice in The Hague with the decision of the Supreme Court in Jerusalem. The Hague judges decided, to put it simply, that Israel does have the right to build a wall, but only on its own land, bounded by the pre-1967 Green Line. It has no right to build it on occupied land, the more so when its intention is to annex settlements that are themselves illegal under international law.

The Israeli court went through all kinds of contortions and decided that “exaggerated” harm to the Palestinian population must be avoided, but it accepted the right of Israel to build the wall on Palestinian territory if this is necessary for “security reasons” – namely, to protect Israeli settlements. Thus the court confirmed, indirectly, that it considers the settlements legal.

That creates a delicate situation. In the course of the hearing, Barak suggested that both sides – the government and the Palestinian applicants – submit written opinions about the decision of the International Court. “It is impossible to avoid dealing with it any longer,” he said. Clearly, he is in a dilemma: as a judge and renowned professor of law, Barak has a high international standing, which he is loath to put at risk. Therefore, he is interested in avoiding a clash between his court and the Hague judges.

The decision about the a-Ram wall has an interesting aspect that has drawn little attention. The restraining order was temporary, and so is the decision to suspend it. Barak announced that he is allowing the government to start building the wall, but that, if the court decides in the end that this path of the wall is illegal, it will be necessary to take it apart and move it somewhere else.

Thus, for the first time, it was spelled out that the wall is, in reality, a temporary structure. The crane that puts the pre-fabricated concrete slabs in place can, with the same ease, raise them up again and take them away.

This may not be much comfort for the inhabitants of a-Ram, whose lives and businesses are in the meantime being ruined, but it is encouraging nevertheless. It repeats what we have been saying at all our demonstrations: that this monstrosity resembles the Berlin wall. Much as the German wall suddenly crumbled, this one, too, will come down.

This was tested yesterday, at a demonstration in Abu-Dis, not far from a-Ram. Israelis and Palestinians came to meet Arun Gandhi, the grandson of the legendary

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Mahatma. Abu Ala, the Palestinian Prime Minister, himself a resident of Abu-Dis, delivered the main speech. Later, we approached the wall and hit it symbolically with a hammer. When my turn came, I noticed that even with such a small hammer it was possible to break off little chunks. A really big hammer could open a hole.

More importantly, during one of the speeches we saw that we had lost the attention of our audience. All heads were turned to something going on behind us. There, in an incredibly daring exploit, one of the demonstrators climbed the steep wall, in spite of its smooth surface, using only his bare hands and heels. After reaching the top he threw a rope down, and a number of other followed him up and unfurled a Palestinian flag.

So it can be done. Not by a pregnant woman on her way to hospital, not by children on their way to school, nor by a family on its way to visit relatives, but a trained suicide bomber can cross the wall at night. There go the security arguments.

By the way, the Berlin wall was smashed and the debris sold as souvenirs to foreign and local tourists. A really sharp operator would now be applying for a concession to sell off chunks when this wall's time comes.