Good Fences Make Good Neighbors

PETER BERKOWITZ

March 1, 2004 at 12:00 AM

Jerusalem

IN ISRAELI POLITICS, contentiousness is the norm and consensus is rare. This makes all the more striking the broad and deep consensus that has formed among Israelis around the conviction that the country, without delay, must complete the construction of the security fence separating it from the West Bank and the Palestinians who live there. The cause of the consensus is terror. In the old days, before September 2000, it was a mark of the country's national security challenge that almost every adult Israeli had served in the military, and every Israeli had friends and loved ones in the army. These days, the distinguishing mark of the country's national security challenge is something grimmer: Almost every Israeli knows somebody who has been wounded, maimed, or blown to bits by a suicide bomber. For Israelis, the front line is now at home, and it is this transformation of their struggle with the Palestinians that has produced an overwhelming majority--perhaps two thirds of the citizenry--in favor of the security fence.

Predictably, the international community is up in

arms. Last December, the United Nations General Assembly voted to refer the question of the legality of Israel's security fence to the International Court of Justice for an advisory opinion. Working on a greatly expedited schedule, the court set a deadline of January 30 for briefs, with oral arguments to begin on February 23. The Palestinians charge that the fence violates international law, infringes their human rights, and imposes on them grave social and economic hardship. The United States, along with many other nations, opposes the referral of the question to the court on the grounds that the court is, at this time, an inappropriate forum for the question. While the European Union is among the group that opposes involving the court, its representatives have made clear that the E.U. agrees with the Palestinians on many of their charges.

In fact, the case for Israel's security fence is clear and compelling and accounts for the dramatic convergence of Israeli opinion in support of it.

Yet as late as three years ago, almost nobody in Israel was thinking about a fence, in part because it contravenes both left-wing and right-wing views. Those who have embraced the fence from the left have been forced to relinquish their dream of Israelis and Palestinians integrating their economies, traveling daily across open borders, and living together in harmony. And those who have come to it from the right have had to abandon the ambition to maintain Israeli control over, and settlement in, all or most of the disputed territories without partition.

The catalyst for both camps has been the staggering scale of Palestinian terrorism since late September 2000. In the war launched by the Palestinians following Yasser Arafat's rejection of Prime Minister Ehud Barak's offer of a Palestinian state in all of Gaza, almost all of the West Bank, and a good portion of the Old City in Jerusalem, more than 900 Israelis have been killed and more than 6,000 have been wounded. In a country of about 6.4 million, that is the equivalent of almost 40,000 dead and a quarter of a million wounded in the United States.

RETIRED MAJOR
GENERAL Uzi Dayan,
former head of Israel's
National Security
Council, the fence's
original architect in

2001, and its foremost defender today, calls the fence "a precondition to everything." By making Israel more secure, he argues, the fence--one third of which has been built and all of which is due to be completed by the end of 2005--will advance the peace process and thereby serve the interests of Palestinians as well as Israelis. But his first priority, he emphasizes, is Israel's security, which he smoothly translates into the language of human rights. "The basic human right is to live. So before talking about human rights and disturbing the daily routine of Palestinians, which is an issue we need to remember, we need to fight terrorism effectively."

Looking over a winding stretch of the security fence not far from his home in the village of Cochav Yair, where the coastal plain turns into rolling hills and where Israel is at its narrowest, with less than 10 miles from the sea to the Green Line, the pre-1967 border based on the 1949 armistice line, Dayan tells me that "the fence is the ultimate obstacle. The only way to fight terrorism effectively is to build a fence, because you can't fight terrorism just offensively. You need a defense. And the best defense is a fence."

What makes Dayan so confident that the fence will be effective? "We built it everywhere in every place when we wanted to prevent infiltration: all along the Jordan River; in the Golan Heights; on the border from Lebanon we built it in eight months from the Mediterranean Sea to Mount Hermon. And the ultimate example is

Gaza. In the last three and a half years, not even one terrorist managed to infiltrate from Gaza and to commit a suicide bombing or a terrorist attack. And there were dozens of attempts. Very few even managed to cross the fence." In addition, Dayan points out, terrorist attacks have been dramatically reduced in those areas of the West Bank where the fence has been completed.

Although critics casually refer to it as a wall, in fact more than 95 percent of the barrier that Israel is building around the West Bank is made out of chain-link fence. Not ordinary chain-link fence, to be sure. It is electrified so that when an intruder touches it, Israeli forces are alerted. In addition, on the Palestinian or east side of the fence, the Israelis have dug an anti-vehicle trench. To the immediate west, they have placed a sandy path, which soldiers patrol looking for signs of footprints. Beyond that is a paved two-lane road for military use, and beyond the road is another fence, in some places chain link and in others barbed wire. Further back, cameras mounted on towers monitor the entire system, which is about 50 meters in width. Where there is danger of sniper fire from a Palestinian city that borders an Israeli highway, or where the space is lacking, the Israelis construct instead a concrete wall.

For Dayan, there is no question about the urgency of completing the fence. The problem, he concedes, is the route. The only serious question that divides the newly consolidated Israeli majority is how far the fence should extend into the West Bank in order to bring within its protection Israelis in the settlements.

Dayan--like much of the Israeli military establishment, a man of the left--favors a fence that sticks close to the Green Line. Although he does not regard the Green Line, which runs through villages and corresponds to no natural boundary, as sacrosanct, a security fence that roughly corresponds to it will be considerably shorter, require less time and cost to build, intrude less on Palestinian life, be easier to defend, and generate less international opprobrium than the route advocated by Prime Minister Ariel Sharon. While security was uppermost in his mind when he was designing the fence in 2001, Dayan sought to include as few Palestinians as possible on Israel's side, and to minimize hardships. He is pleased that in recent days the Sharon government has scaled back its plan for including Palestinian villages near Israel.

But Dayan stresses that all this is secondary for him: "I never buy the excuse of not building a fence because of conflict about the route of the fence. Which means I'm saying to my government: 'I'm sick and tired. I don't want to hear from you there is a problem, there is debate in the government. [Minister of Justice Yosef] Lapid thinks one way. [Minister of Defense Shaul] Mofaz says another approach. I say just build it. Decide about it. Talk to the Americans. Talk to the Palestinians. Talk among yourselves, for God's sake. But decide upon the route and build it.'"

There is harshness in Dayan's words. But there is also hope. By stopping terrorist attacks, he explains, the fence may strengthen the hand of Palestinian moderates who on their own are powerless to bring Hamas, Islamic Jihad, and the Al Aksa Martyrs Brigade under control.

MEANWHILE, the U.N. General Assembly, in the eyes of many thoughtful Israelis, has played into the hands of the extremists. When it placed the matter before the International Court of Justice, the General Assembly took the issue away from the Israeli and Palestinian negotiators charged with it under several U.N. Security Council Resolutions and agreements among the parties, including the U.S.-backed "road map." According to Daniel Taub, director of the General Legal Division at Israel's Ministry of Foreign Affairs, "there have been repeated attempts by Palestinians and the Arab group to refer issues in the conflict between us to international forums and specifically the International Court of Justice as part of a general campaign to internationalize the issues." In Taub's view, no good can come of this. In the first place, he argues, the court does not have jurisdiction: No dispute between states is supposed to come before the court without the consent of both parties. Moreover, the referral of the question of the legality of the fence shows bad faith, because the General Assembly had already passed a resolution condemning the fence as illegal.

Sitting across from Taub in his cramped office in Jerusalem, I ask him about a report of the U.N. secretary general summarizing the legal positions of the "Government of Israel" and the "Palestine Liberation Organization." Taub bristles. He tells me that the report badly misstates the Israeli legal position. Then, indignant, he reads me a passage indicating that there should be no tradeoffs between Israeli security and Palestinian freedom, that Israel must desist from any undertakings that infringe Palestinian rights or cause them hardships, even undertakings that Israel has concluded are necessary to defend itself from Palestinian acts of war.

More serious perhaps is the failure of the dossier put together by the United Nations to serve as the basis for the court's work to so much as mention Palestinian terror. A Ministry of Foreign Affairs statement that summarizes the legal position Israel adopted in its 130-page brief to the court (still confidential under court rules) minces no words:

> Neither the question referred to the Court, nor the 20-paragraph General Assembly resolution referring it, makes any reference--not a single word--to the ongoing terrorism directed daily against Israel and its citizens. Similarly the extensive dossier of 88 documents on the question provided to the Court by the United Nations is, staggeringly, totally silent on the subject of Palestinian terrorist attacks. It is devoid of any of the United Nations resolutions condemning terrorism, as well as Israel's letters to the Secretary General detailing the terror attacks it has faced.

And this silence, Israel contends, is a fatal flaw:

> It is inconceivable that the International Court of Justice should be requested to give an Advisory Opinion on the issue of Israel's security fence at the behest of the very terrorist organization which has been actively behind many of the murderous attacks which have made the fence necessary. It is even more inconceivable that the request should make no reference at all to the brutal reality of terrorism faced by Israel.

To the charge that Israel's fence is an effort to grab land by creating facts on the ground, Taub responds that a fence that was built right on top of the Green Line would be impractical, cutting through villages, running through valleys, and generally bearing no relation to security, topography, or the needs of daily life. Moreover, Taub emphasizes, the fence brings about no legal change in the status of the territories or the status of the residents, either Palestinians or Israelis who live in settlements. It is temporary, it can be moved and altogether dismantled. And it is not a border. It does not alter Israel's responsibility to protect settlements. And it does not alter ownership of the land on which it is built, which, when privately owned, becomes subject to a temporary requisition order. Israel pays compensation to the owners for use of the land and loss of profits. And Israel makes procedures available to Palestinians who wish to lodge protests against the fence's route. To date, 20 petitions have been submitted to Israel's High Court of Justice.

Further, argues Taub, it is not Israel that is trying to establish a political border but the Palestinians, who insist that, if there is to be a fence, it be built on the Green Line. The Green Line, Taub points out, was never intended to be a final legal border. U.N. resolutions, formal agreements between Israel and the Palestinians, and the road map are, he asserts, "absolutely clear" that the final determination of the border is a subject to be negotiated between the two sides. But won't the fence, whatever Israel's formal position, come to be thought of as a border by both sides to the conflict? Won't it, whatever Israel's intention, create facts on the ground? Taub is not moved. "You can't not fight terrorism--which is a precondition for entering into negotiations--and expect to receive your maximum demands from negotiations."

To the charge that the fence causes disproportional harm to the Palestinians, Taub insists that Israel recognizes genuine hardships and is taking great pains to minimize them. Planning for the route of the fence begins with the army, but before the government approves plans they must undergo an arduous process of adjustment, which involves several layers of consultation--with environmental experts, legal experts, and the local population. Alternative routes are explored, additional gates are considered, increased bus service is examined. The fence has already been moved twice in order to put Palestinian villages on the Palestinian side. And in Abu Dis, an Arab neighborhood most of which lies just beyond the Green Line, Israel is building a new kidney dialysis center for Palestinians cut off by the security fence from the old one.

Like Uzi Dayan, Taub insists that in the long run Palestinians too will benefit from the fence, for with the reduction in terrorism, Israel will need to take fewer intrusive measures in the West Bank. And to the extent that you take terrorism out of the equation, you weaken the militants and strengthen the moderates.

SHLOMO AVINERI, a distinguished political scientist at the Hebrew University of Jerusalem and former director-general of Israel's Ministry of Foreign Affairs, won't go as far as Dayan or Taub. He is a self-styled dove who was "rattled" by Camp David 2000. He considers Arafat's decision to go to war rather than accept Barak's offer a watershed moment in Israel's history, and he adamantly supports the fence. Typical of the left-leaning segment of the Israeli consensus, he wants it built as close as

possible to the Green Line. But he dismisses the idea of Palestinian moderates. "What is important," says Avineri, "is that there hasn't been a clear statement on the part of any Palestinian leader that suicide bombers are murderers. Not one."

There are, Avineri observes, Palestinian leaders who will say they would recognize Israel if it were to abide by U.N. resolutions and international law. But, he stresses, no other state is spoken of in that way. We say Bosnia or China is in breach of international law, but we do not treat its compliance with international law as a precondition for recognition of its sovereignty. Given current attitudes, and an educational system that continues to instruct children with maps of the Middle East on which Israel does not appear, Israel may have to wait a generation or more, Avineri believes, to find negotiating partners on the Palestinian side.

Khaled Abu Toameh, a prominent Arab-Israeli journalist, takes a still harsher view of the Palestinian side. To be sure, he opposes the fence because of its impact on the Palestinian people, the damage to their livelihood, the restriction of their right to move about freely, the insult to their personal dignity. But to him, the fence is only a symptom of the real problem: the Palestinian leadership.

Of course, he says, Israelis are largely indifferent to Palestinian suffering. Of course Israelis do not really understand that the "ordinary, average Palestinian is a normal person who wants to wake up in the morning, send his children to school, care for his family, go to work, and just lead a normal life. He doesn't care about other things. The

Palestinian Authority. Israel. They are not that important. What is important is not to disrupt normal life. And this fence disrupts normal life. It turns the life of many Palestinians into hell."

Nevertheless, the cause of the fence, Abu Toameh was sure, was not a desire on the part of Israeli majorities to rule over the Palestinians. If he were an Israeli Jew in these circumstances, he would favor a fence. Real responsibility for the construction of the fence, he is quite certain, lies with Yasser Arafat and the thoroughly cynical dictatorship he brought to the Palestinian people 10 years ago on the heels of the Oslo Accords.

But don't the Palestinians recognize Arafat as their legitimate leader? "Look," Abu Toameh says impatiently. "They want independence. They want their own state. But they don't want the corrupt and autocratic regime led by several hundred cronies of Arafat. They are stealing from the Palestinian people. I mean, what has the Palestinian Authority done for the Palestinian people over the last 10 years, since the signing of the Oslo accords? Basically, nothing." Nothing? "Yasser Arafat did not build one hospital. Or one school." Taken aback by his candor, I ask Abu Toameh whether he is speaking precisely. He responds sharply, "I am responsible for what I am saying. Arafat did not do anything. He did not rebuild one refugee camp. And the question is, one should ask, where did the money go? What happened? I mean, he got billions."

What is to be done? For Abu Toameh the critical first step is clear. "The Palestinian people's problem is their leadership. The Palestinian people's problem with the Israelis is a completely different issue. That could be solved in the long run. And it

will be. But in order to solve that problem, and before we solve that problem with the Israelis, we need a proper Palestinian regime, we need proper government, proper institutions, democratic institutions, we need transparency. Basically the Palestinian Authority today is run as a private business by Yasser Arafat. And some of his aides. We need to liberate the Palestinian people, but from their leadership first, and then from the occupation."

YET IN THE SHORT TERM there is no avoiding the question of the security fence and the disputed territories. One afternoon, on the way back to my hotel on Mount Scopus, I ask the cabdriver to pass by Abu Dis, where the security fence is indeed a massive wall. When I ask him, as I do all Israeli cabdrivers, what his opinion of the fence is, he surprises me by responding in heavily Arabic-accented Hebrew. My Arab-Israeli cabdriver, a rarity, tells me that he is definitely opposed to it. En route through East Jerusalem, he says that the wall in Abu Dis has separated his family from his wife's parents, who live just on the other side. A visit that used to involve a few minutes' walk now takes a half hour to 45 minutes by car.

As we approach the wall, he points out shops on Israel's side that have been forced to close and tells me of many others on the Palestinian side that have gone out of business. We drive along the towering, menacing gray structure, 24 feet in height, that has been placed down the center of what used to be a main road, and he tells me that he doesn't know what the solution is, but it can't be this.

He knows there is blame to go around. He is disgusted by Arafat's weakness and ineffectiveness. I ask him whether he is ready for peace. "Ready?" he exclaims. "I live here. I work here. I work among the Arabs. I don't care *who* you are and *what* you are. I have children and a wife. I want to live. With dignity." I ask whether most Palestinians are like him. Without hesitation he says, "Yes." He pulls into a driveway not 10 yards from the fence. And then Abu Yosef, which he explains to me is what all his friends call him, invites me into his home, where I drink coffee with his wife and four shy, wide-eyed children.

I relate this encounter to Alex Yakobson, professor of classical history at the Hebrew University of Jerusalem and a prominent Israeli public intellectual, who over the last decade has migrated from the dovish left to the pragmatic center. He listens patiently. He neither smiles nor frowns. He replies resolutely: "The fence, it is true, is not nice. It is not aesthetic. It is not convenient. I do not underestimate the genuine hardship that it is causing. But it's also not nice when a bus full of passengers is blown up and their limbs and organs--hands and legs and heads--fly for tens of meters in all directions. From a purely moral point of view, nobody's freedom of movement is more precious than somebody else's life."

That indeed is the voice of the Israeli center today. It is a voice that understands that what is not nice may be necessary and proper. It is an increasingly dominant voice in Israel. It is a voice in which anger, sadness, hardness, and humanity blend. Under the circumstances, it is the voice of reason.

Peter Berkowitz teaches at George Mason University School of Law and is a fellow at Stanford's Hoover Institution.

PETER BERKOWITZ

Peter Berkowitz is the Tad and Dianne Taube senior fellow at the Hoover Institution, Stanford University.