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Cover photo: the Wall in Qalandya area, West Bank (JCToradi, 2009).

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The Legality of the Wall Built by Israel in the West Bank

Background Briefing on the event of the 10 year anniversary of the ICJ decision on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory

January 2015

The following report deals with issues arising from the Wall built by Israel since 2002 in the occupied Palestinian territory. It discusses the negative impact of the Wall on the life of Palestinians and their protected rights. It further examines the question of its legality, analysing the conflicting decisions of the International Court of Justice and the Israeli Supreme Court. In addition to three case studies, the potential involvement of the international community in protecting Palestinian human rights is also highlighted.

1. The Construction of the Wall and its Impact on Palestinian Life

In 2002 Israel began to build a wall in the West Bank. Apart from concrete walls, the construction of the barrier consists of fences, ditches, razor wire, groomed sand paths, an electronic monitoring system, patrol roads, and a buffer zone (hereinafter: 'the Wall').¹ According to Israel, the Wall and its related policies are required in order to prevent attacks in Israel and against Israeli settlements by Palestinian militants crossing from the West Bank. The total length of the Wall, including the sections already constructed and those pending construction, is about 700 kilometers. Thus far, more than 60 percent of the Wall has been completed, and a further 10 percent is under construction. Only 15 percent of the Wall is built on the territory of Israel itself or on the Green Line which separates Israel's territory and the West Bank and which is the internationally recognised border. 85 percent of the route is within the occupied West Bank.²

While Israel contends that the Wall is a temporary security measure,³ it is built around the Israeli settlements in the West Bank which are unlawful under international law.⁴ In order to surround these settlements, its route cuts deeper – in some cases a few kilometers and even 22 kilometers in the case of the Israeli settlement of 'Ariel' (Salfit Governorate) – into the West Bank. Upon completion of the Wall, 9.5 percent of the West Bank in which 70 settlements are located will be on the west side (the 'Israeli' side) of the Wall, disconnected from the rest of the occupied territory and annexed to Israel's territory.⁵ Thus, from the chosen route and from statements made by Israeli politicians,⁶ the motivation behind the Wall, in whole or in part, appears to be the creation of facts on the ground, i.e., a permanent physical border that will annex these settlements to Israel.

The construction of the Wall has caused severe damage to the living conditions and protected rights of Palestinians in the West Bank, as well as widespread displacement of Palestinian families and communities. 88 percent of the Wall is built on private Palestinian land that was seized for this purpose, and wherever the

¹ Office for the Coordination of Humanitarian Affairs (OCHA), The Humanitarian Impact of the Barrier, Fact-sheet, July 2013.

² B'tselem, *The Separation Barrier*, 1 January 2011, available at http://www.btselem.org/separation_barrier/map; OCHA, *Special Focus: Barrier Update*, July 2011, available at http://www.ochaopt.org/documents/ocha_opt_barrier_update_july_2011_english.pdf.

³ See HCJ 7957/04 *Mara 'abe v Prime Minister of Israel* (judgment of 15.9.2005), para 3.

⁴ Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, 1949, art 49.

⁵ B'tselem, *supra*, note 2; OCHA, *supra*, note 1.

⁶ B'tselem, Arrested Development: The Long Term Impact of Israel's Separation Barrier in the West Bank, October 2012, pp. 7-8, available at http://www.btselem.org/download/201210_arrested_development_eng.pdf>.

Wall has been completed, the access to Palestinian land is severely restricted.⁷ The Wall cuts off Palestinian towns and villages from the rest of the West Bank, and at times divides the same town into two parts. Palestinians are now separated from their agricultural land, family and friends, workplaces, health facilities and schools, religious sites and water wells. In the territory that is 'locked' between the Green Line and the Wall – in the so-called 'Seam Zone' – a permit regime was introduced whereby the residence, presence and movement of Palestinians within this area, and between this area and the rest of the West Bank, are restricted. Movement and access must be approved by Israeli authorities and is only possible through gates and crowded checkpoints with limited opening hours. About 11,000 Palestinians are now subject to this regime.⁸ Israeli settlers are, however, subject to a different regime, and are free to move within the Seam Zone and to access Israel from this area.⁹

The Wall was also built in the area of Jerusalem, disconnecting a number of Palestinian villages in the Jerusalem periphery from East Jerusalem, and the city from the rest of the West Bank. Many Palestinians who hold an Israeli-issued Jerusalem ID document, following the annexation of East Jerusalem by Israel in 1967, now find themselves outside the city, and can only receive governmental services and access Jerusalem, including its holy sites, through gates and checkpoints.¹⁰

Not only is the Wall unlawful in and of itself, but it creates an associated unlawful regime of checkpoints, roads, gates and other restrictions which displace Palestinians and facilitate the establishment of settlements. The construction of the Wall must be seen in the context of the annexation of East Jerusalem and settlement activity. Settlements in East Jerusalem and in the rest of the West Bank are the principal beneficiaries of the Wall, and approximately half of the 500,000 settler population will be included on the west side of the Wall.¹¹ The Wall has further divided the West Bank, already fragmented by Israeli settlements, into Palestinian enclaves and disrupted its territorial continuity. In addition, many Palestinians have been forced to move from their place of residence due to the damage caused by the Wall to their livelihood. The Wall undermines the substantive elements of the Palestinian right to self-determination (territory and permanent population), and impedes any future implementation of a two-state solution to the Israeli-Palestinian conflict by unilaterally altering the *status quo* and changing territorial boundaries.

⁷ *Ibid*, p. 14.

⁸ OCHA, *supra*, note 1.

⁹ Mara abe, supra, note 3, para 38; Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, ICJ Reports, 2004, p. 136 ('Wall advisory opinion'), para 85.

¹⁰ See Mara'abe, supra, note 3, para 42; HCJ 5488/04 A-Ram Local Council v Government of Israel (judgment of 13.12.2006).

¹¹ See Human Right Commission, Report of the Special Rapporteur of the Commission on Human Rights, John Dugard, on the Situation of Human Rights in the Palestinian Territories Occupied by Israel since 1967, E/CN.4/2004/6, 8 September 2003, para 12.

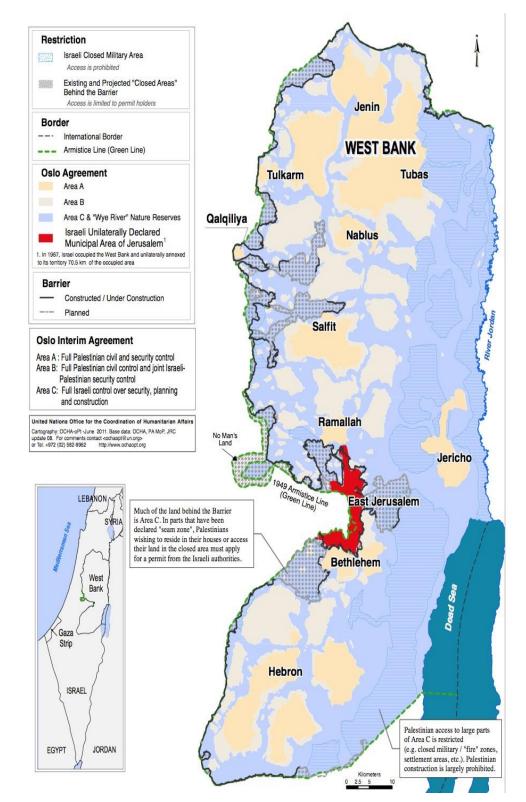


Figure 1: UN OCHA, Map of Restrictions on Palestinian Access and Route of the Wall, July 2011

Case Summaries

The cases highlighted in this briefing, all currently in Israeli courts, highlight the devastating impact of the Wall and the displacement caused to Palestinian communities. Whilst some communities have been forced to accept comprises or propose alternative routes in order to protect their land, it should be noted that such concessions are inconsistent with the position that the Wall is unlawful under international law.¹²

Cremisan Valley

The Salesian convent, monastery and school are situated in the Cremisan valley, mainly in Area C of the West Bank, north west of Bethlehem. Part of the monastery's land is situated within Jerusalem municipal borders.

For more than 50 years the convent's school has provided services to almost 400 children and youth, coming from Bethlehem, Beit Jala, Beit Sahour and Walaja villages. Services at the school are extended to Muslim and Christian children alike. The school also operates special classes for children with learning difficulties, a youth club and a yearly summer camp.

Israel intends to construct the Wall through the land owned by the church and village. The initial proposed route in this area would have annexed the Salesian convent and their school to the 'Jerusalem side' of the Wall, thus cutting them off from the communities they serve which would have remained on the 'West Bank side' of the Wall. Many parents made it clear that they would not send their children to the school if they were forced to cross a checkpoint daily. This proposed route would have also affected the livelihood and freedom of movement of hundreds of Palestinian residents of the Cremisan valley. With the separation of the Cremisan valley from Beit Jala, the community will lose access to the last big agricultural and recreational areas of the greater Bethlehem area, as well as to crucial water source for farmers situated there.

The alternative route, now being pursued by the Israeli Civil Administration through the issuance of seizure orders, is as damaging. It would leave the Salesian sisters convent on the Palestinian side of the Wall, however will separate them from the Salesian monastery, placing the monks on the west side of the Wall. Further, it would split the Cremisan valley into two, cutting off the Salesian sisters, as well as residents of Beit Jala, Bethlehem and surrounding villages who would remain on the Palestinian side of the Wall, from their agricultural land which will be on the west side of the Wall. This raises the concern that the harm suffered by the communities in the Cremisan valley – the majority of whom are Christians – will inevitably force them to leave the area.

The Salesian convent opposed the proposed routes in front of the Israeli Supreme Court. Both routes are far beyond the Green Line and would place private land within the Seam Zone. If implemented, they would enable the connection of two Israeli settlements, Gilo and Har Gilo, thus serving the aim of settlement expansion. The convent submitted to the Court a proposal for a less intrusive alternative route prepared by military experts and members of the Israeli NGO Council for Peace and Security. These experts pointed out that the routes advanced by the Israeli Ministry of Defence are a failure from a security perspective.¹³

In August 2014 the Supreme Court instructed the Israeli government to consider new alternatives that will leave both the Silesian convent and monastery on the Palestinian side of the Wall. The case is still pending.

¹² cf Fourth Geneva Convention, art 8 regarding the non-renunciation of rights secured by the Convention.

¹³ See Shaul Arieli, 'On Monasteries and Walls', *Ha'aretz*, 1 September 2014 (in Hebrew).

2. The ICJ Advisory Opinion

In December 2003 the UN General Assembly requested an advisory opinion from the International Court of Justice (ICJ) regarding "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".¹⁴ Israel challenged the jurisdiction of the Court to address the matter and refused to submit a detailed argument on the merits of the case, including on its alleged security justifications for building the Wall.

In July 2004 the Court delivered its advisory opinion, stating that the Wall and its associated regime are contrary to international law. While technically an advisory opinion is non-binding, it is an interpretation of international law by the highest judicial body in international law, and should be given its full appropriate weight.¹⁵

The Court pointed out the damage caused by the Wall to a range of human rights and protections enshrined in basic instruments of international humanitarian law and human rights law, such as the 1907 Hague Regulations, the 1949 Fourth Geneva Convention, the 1966 International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), as well as in customary international law – all which apply in the West Bank and regulate Israel's actions there as the occupying power.¹⁶

It was noted that as a result of the Wall and associated policies, Palestinians have suffered a significant economic hardship and decrease in their quality of life. The building of the Wall violates the protection given to private property as it was mostly built on private property and involved the confiscation or destruction of that property. It also violates the right to freedom of movement, to family life, work, health, education and adequate standard of living.¹⁷ The damage caused by construction of the Wall, especially the restricted access to agricultural land and to the workplace, may result in the forcible transfer of the local population in violation of international humanitarian law.¹⁸ Despite the severe harm caused to the local population, it was not demonstrated by Israel that this damage was absolutely necessary by military operations or by reasons of national security or public order.¹⁹

From the material presented before it, the ICJ noted that when the Wall is completed, the great majority of the Israeli settlements are expected to be on its west side.²⁰ This raises concerns that the Wall creates facts on the ground (*fait accompli*) – a permanent border and a *de facto* annexation of the territory between the Green Line and the Wall.²¹ This, as well as the danger of promoting the forced transfer of Palestinians from the Seam Zone area to the Palestinian side of the Wall and the resultant change in the demographic composition of the area, impedes the Palestinian's right to self-determination.²²

¹⁴ UNGA, Res ES-10/14 (2003).

¹⁵ Mara'abe, supra, note 3, para 56.

¹⁶ Wall advisory opinion, supra, note 9, paras 89, 101, 111, 113.

¹⁷ ICCPR, arts 12, 17; ICESCR, arts 6, 11, 12, 13; *Wall* advisory opinion, *supra*, note 9, para 134.

¹⁸ Fourth Geneva Convention, art 49; *Wall* advisory opinion, *supra*, note 9, paras 122, 133.

¹⁹ *Wall* advisory opinion, *supra*, note 9, paras 132, 135, 137; Hague Regulations concerning the Laws and Customs of War on Land ('Hague Regulations'), 1907, arts 46, 52; Fourth Geneva Convention, art 53; ICCPR, art 12.

²⁰ Wall advisory opinion, supra, note 9, para 119.

²¹ *Ibid*, para 121.

²² *Ibid*, para 122.

In light of the above, the ICJ concluded that Israel must, *inter alia*, cease the construction of the Wall, dismantle the parts already built, return the land seized and compensate Palestinians who suffered harm as a result of the Wall.²³



The Cliff Hotel, which is owned by the Ayyad family for several generations, has always been regarded as part of the West Bank and was registered as a hotel with the Israeli Civil Administration.

When Israel started planning the route of the Wall in the early 2000s, it became clear that part of the Wall in Abu Dis was planned to run adjacent to the Cliff Hotel property. The Ayad family realised that the planned route of the Wall would result in the property being located on the East Jerusalem side (the west side) of the Wall, whilst the co-owners, Ali Ayyad and other family members, would be located on the other side (the Palestinian side) of the Wall, and thus separated from their hotel.

During the last decade the Ayyad family took every possible mean to challenge the route of the Wall in the Israeli legal system, but those efforts came to a dead end.

In March 2014 the Israeli Supreme Court decided not to intervene in the government's discretion regarding the route of the Wall or in the decision to expropriate parts of the land where the hotel is located. The Court found that security reasons justified construction of the Wall according to the planned route given the hotel's use as a high look-out point which needs to remain under the control of Israeli forces. The Court ruled that the route and construction of the Wall are reasonable and proportionate despite the harm caused to the hotel's owners, and rejected the alternative route suggested by the owner which cuts off the hotel from East Jerusalem and leaves it connected to the rest of the West Bank where the owners reside, stating that such an option would not fulfill the security necessity of preventing militants from carrying out attacks from the hotel itself. Following this decision, the Israeli authorities renewed the construction of the Wall around the property which has now been completed.

²³ *Ibid*, paras 151-153. The Court also rejected Israel's assertion that the construction of the Wall is consistent with its right to self-defence against terrorist attacks, noting that Israel is not attacked by another state but rather deals with non-state actors acting from an area which is under Israel's control, *Ibid*, para 139. While the Court's reasoning is controversial, it should be noted that even if the Israel's right to self-defence in these circumstances is upheld, the Wall must conform to the rules of international humanitarian law and human rights law.

3. The Israeli Supreme Court's Jurisprudence

The ICJ decision stands in stark contrast to the jurisprudence of the Israeli Supreme Court on this issue.

3.1 **The General Approach**

In parallel to the proceedings in front of the ICJ, Palestinians whose rights were violated because of the Wall sought legal remedies from the Israeli Supreme Court. The Israeli Court affirmed that Israel's actions in the West Bank are regulated by the law of occupation (inasmuch as it reflects customary international law); that the Israeli Military Commander is not the sovereign in the West Bank; that the West Bank is not part of Israel; and that international law prohibits the annexation of occupied territory.²⁴ While the Court acknowledged that the human rights of Palestinians in the West Bank include "the whole gamut of human rights", it noted that these rights can be restricted on certain grounds, for example, for reasons of national security.²⁵

The Supreme Court further opined that the construction of the Wall in occupied territory is lawful if justified by a security or military reason, and as long as the damage caused to the local population is proportionate.²⁶ In these circumstances, building the Wall is in accordance with the Military Commander's responsibility to maintain law and order in the West Bank.²⁷ For this purpose, the Military Commander is also authorised to temporarily seize private land (requisition), subject to the payment of compensation.²⁸ Importantly, it was determined that the Military Commander is *not* authorised to order the construction of a Wall if the reason behind it is a political goal of annexing territories of the West Bank to Israel or determining Israel's political border.²⁹

Contrary to the position taken by the ICJ, the Israeli Supreme Court accepted, in principle, the Israeli government's argument that there is a valid military justification for building the Wall which is "a security measure for the prevention of terrorist attacks and does not mark a political border".³⁰ The focus of the Court's judgments in this matter have thus shifted to the question of proportionality, namely whether the Palestinian petitioners have managed to show, in relation to specific segments of the Wall, that there is an alternative route that is less harmful. Only segments that inflict a disproportionate damage on Palestinian residents were declared unlawful, and in these cases the Israeli government was required to come up with an alternative route.³¹

In this respect, the Israeli Court claimed that the factual basis presented before the ICJ was lacking and did not enable it to make informed findings regarding the security justifications for the construction of the Wall and whether the harm caused to Palestinians by the Wall is proportionate.³²

²⁴ Mara'abe, supra, note 3, paras 14, 22.

 ²⁵ Ibid, paras 24-25, 27; ICCPR, art 12(3). The Court refused to rule on the formal application of the ICCPR and the ICESCR in the West Bank.
²⁶ Mara'abe, supra, note 3, para 32.

²⁷ HCJ 2056/04 *Beit Surik v Council v Government of Israel* (judgment of 30.6.2004), para 32; Hague Regulations, arts 23(g), 43, 52; Fourth Geneva Convention, art 53.

²⁸ Mara'abe, supra, note 3, para 16.

²⁹ Beit Surik, supra, note 27, para 27; Mara'abe, supra, note 3, para 15.

³⁰ Beit Surik, supra, note 27, para 28; Mara'abe, supra, note 3, paras 59, 62.

³¹ For example, Mara'abe, supra, note 3; Beit Surik, supra, note 27; HCJ 8414/05 Ahmad Yassin (Head of Bil'in Council) v Government of Israel (judgment of 4.9.2007).

³² *Mara'abe, supra*, note 3, paras 65-66; see also *Wall* advisory opinion, *supra*, note 9, para 55; compare *Mara'abe*, paras 114, when the Court concluded that such an alternative route can be adopted in the segment of the Wall in the area of the settlement Alfei Menashe.

3.2 **Problems and Concerns**

The jurisprudence of the Israeli Supreme Court on the Wall raises a number of issues of concern:

- The protection of Israeli settlers is considered by the Supreme Court to constitute a legitimate security reason which justifies construction of the Wall,³³ although the settlements themselves are illegal under international law.³⁴ The Court has continuously refrained from analysing the status of settlements under international law.
- Given the Israeli annexation of East Jerusalem, the Court assesses the route of the Wall in East Jerusalem according to Israeli domestic law, namely the requirements of reasonableness and proportionality in Israeli administrative law. The Court has not considered Israel's authority to build such a Wall in East Jerusalem under the law of occupation and the relevant obligations embodied in international humanitarian law.³⁵
- The Court has also refrained from addressing the negative impact of the Wall and the expansion of Israeli settlements on the Palestinian collective right to self-determination and the implications for its future fulfillment, including in the context of a two-state solution to the conflict.
- As for the security justification of building the Wall, the Court allowed a broad scope of discretion to the Military Commander, and was ready to accept the argument that the Wall serves a military need and is in fact effective in preventing violent acts. According to the Court, the Military Commander has the military expertise to decide these issues, and it is sufficient that his determinations are "reasonable".³⁶
- The Supreme Court has failed to give due regard to indications that annexation and settlement expansion – illegitimate considerations according to the Court itself – motivate the current route of the Wall. This may be easily inferred from the general route that incorporates settlements to the west side of the Wall in a manner which is inconsistent with a security rationale (also according to military experts), and from statements by Israeli politicians referring to the Wall as a future permanent political border.³⁷ The Court has chosen to maintain this narrow perspective, which does not look at the Wall and the motivation behind it as a whole, even in cases where the Court disgualified segments of the Wall following a determination that the specific route was not adopted according to security reasons, but rather in order to enable the future expansion of settlements.³⁸
- It has usually been decided by the Court that the severe damage caused to Palestinians in individual Wall cases is proportionate. In some cases, petitioners presented a less harmful route, supported by military experts, that was not accepted. This is despite the fact, for example, that the entire community would be cut off from the West Bank and its workplaces, or that access to thousands of dunams³⁹ of agricultural land, necessary for the livelihood of residents, would be strictly limited.40

³³ For example, *Mara'abe*, *supra*, note 3, paras 20-21.

³⁴ Fourth Geneva Convention, art 49.

³⁵ For example, HCJ 5488/04 A-Ram Local Council, supra, note 10, paras 44-45.

³⁶ For example, Beit Surik, supra, note 27, paras 46-47; Mara'abe, supra, note 3, para 32; HCJ 10309/06 Alfei Menashe Local Council v Government *of Israel* (judgment of 29.8.2007), para 16; A-*Ram Local Council, supra*, note 10, para 48. ³⁷ B'tselem, *supra*, note 6, pp. 7-8; *Beit Surik, supra*, note 27, paras 16, 18-19.

³⁸ For example, HCJ 2732/05 Azun Council v Government of Israel (judgment of 15.6.2006); Ahmad Yassin (Head of Bil'in Council), supra, note 31, paras 34-35.

³⁹ A dunam is equivalent to 1000 m2.

⁴⁰ For example, HCJ 11344/03 Fais Salim v Military Commander in the West Bank (judgment of 9.9.2009); Alfei Menashe Local Council, supra, note 36, para 19.

- It is unclear whether in cases in which the Supreme Court has ordered the dismantling of a constructed segment of the Wall, Palestinians have been compensated for the damage caused. It has also been reported that the Israeli government delays the execution of judgments which have ordered the dismantling of certain segments of the Wall.



Figure 3: Battir village

Battir Village

The village of Battir, located south of Bethlehem, is unique. It has preserved an age-old agricultural farming tradition using a Roman-era irrigation system through scenic terraces, which has created a special cultural and historical landscape. The proposed route of the Wall around Battir, which largely follows the 1949 Armistice Line, would restrict the access of Battir's residents to the land they have been cultivating for many years (before 1948) and endanger the ancient terraces through which the Wall will be built.

The village's initial challenge to the proposed route focused on the residents' right to property. This argument was previously rejected by the Supreme Court in similar cases based on a security justification for the construction of the Wall and findings that the damage caused to the local population is proportionate.

In 2012 an Israeli-Palestinian-Jordanian environmental group and a number of environment activists submitted a petition to the Court in support of the village's position, challenging the Wall on environmental grounds. The Israeli National Parks Authority (INPA) expressed support for the petitioners' position that no physical barrier should be erected in the Battir area. It should be noted that the residents of the Israeli settlement Gush Eztion also opposed the proposed route, however for a different reason, as it does not 'absorb' the settlement into the west side of the Wall.

In December 2012, the Israeli Supreme Court ordered the Ministry of Defence to re-evaluate the proposed route in Battir, and in July 2013 it further ordered the Israeli government to consider alternative routes in consultation with the Israeli National Parks Authority. The Ministry of Defence pointed out that the Wall is required to prevent the crossing of militants from the area to Jerusalem, and to protect the nearby railway track. It proposed replacement of the planned cement wall with a fence to "minimize damage to the scenery and improve the feeling of continuity". It also offered to build a gate through which Battir's residents would be able to access their lands.

In June 2014 UNESCO declared Battir's ancient terraces as a World Heritage Site in danger. Following this development, the Supreme Court ordered the Israeli government to reconsider the route in light of UNESCO's decision and "the political implications".1 On 4 January 2015, the Israeli Supreme Court issued its final ruling against the construction of a Wall through the Battir World Heritage Site. In rejecting the proposed construction, the Court relied upon recent interviews given by the Minister of Defence in which he advised that construction of the Wall in this area was not on the government's agenda. This statement suggested to the Court that the security justification for the construction of the Wall was absent.

4. Third State Responsibility

Given the serious damage caused by the Wall to protected persons living under the Israeli occupation, its questionable security rationale and the limited scrutiny by the Israeli Supreme Court of the Israeli government's policies and when protecting the rights of affected Palestinians, it is necessary to consider the potential involvement of the international community. In this context, the right to self-determination and certain obligations of international humanitarian law are considered *erga omnes*, i.e., all states have a legal interest in their protection.⁴¹ While respecting the UN Charter and international law, all states, including those which are not individually affected by the serious breach of these obligations, are required.⁴²

- To ensure compliance by Israel with international humanitarian law.⁴³
- To promote, through joint and separate action, realisation of the Palestinian right to selfdetermination, and to render assistance to the UN in carrying out its responsibilities regarding the implementation of this right.
- Not to aid or assist Israel in the construction of the Wall, including, for example, by providing necessary facilities for building or for the destruction of private property, or by financing these activities.⁴⁴
- Not to recognise the illegal situation resulting from the construction of the Wall. This does not only mean the formal recognition of these situations, but also prohibits acts which would imply such recognition.⁴⁵
- Not to render aid or assistance in maintaining the situation created by such construction, whether it has been completed or not.

The implementation of these obligations can be done by states at the national level, for instance, by ensuring through legislation and enforcement that those subject to their control do not cooperate with the construction of the Wall. It may also include cooperating with other states, as well as with international organisations.

⁴¹ Wall advisory opinion, supra, note 9, para 155.

⁴² See Fourth Geneva Convention, art 1; *Wall* advisory opinion, *supra*, note 9, para 159; International Law Commission (ILC), *Draft Articles on the Responsibility of States for Internationally Wrongful Acts with Commentaries*, 2001, art 41.

⁴³ Fourth Geneva Convention, art 1.

⁴⁴ ILC, Draft Articles, supra, note 43, p. 66 (art 16).

⁴⁵ *Ibid*, p. 114.

A prominent example of such international cooperation is persuading State Parties of UNESCO that the construction of a Wall in the village of Battir will destroy a large part of its unique landscape, leading to the adoption of a decision placing the Land of Olives and Vines in Battir on the list of World Heritage in Danger (see above).⁴⁶

The Wall decision is a landmark in the jurisprudence of the ICJ. Not only does it rule decisively against the legality of the Wall, it provides clear guidance on the applicability of both international humanitarian law and human rights law in assessments of the situation in occupied Palestine. Further, and consistent with the internationalised nature of the Israeli/Palestinian conflict, it sets out the key principles of Third State Responsibility and reminds all states of their obligations to take measures to promote the enforcement of international law in occupied Palestine.

Just as the international community has a strong interest in the promotion of the rule of law, it has a clear interest in the implementation of decisions of the ICJ, including Advisory Opinions. Whilst the Wall remains under construction, there is much that can be done to challenge such construction and enforce compliance with international law. For those parts of the Wall that have been constructed, and for those communities that have been adversely affected or displaced, there is much that can be done to remedy their situation through dismantling the Wall, re-routing the Wall along the Green Line/international law. The 10 year anniversary of the ICJ Wall decision marks an opportune time to take stock of the significance of the Court's decision and the work that remains necessary to give effect to its ruling.

⁴⁶ UNESCO, Nominations to be Processed on an Emergency Basis: Palestine: Land of Olives and Vines – Cultural Landscape of Southern Jerusalem, Battir, World Heritage Committee, 38 COM 8.B4, 2014.