



AL-HAQ

The Annexation Wall and its Associated Regime



The Wall Campaign: Ten Years Too Long
Second Edition 2012



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Photo by: Fadi Arouri



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Photo by: Fadi Aroun

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Glossary

Occupied Palestinian Territory (OPT): Composed of two discontinuous regions, the West Bank, including East Jerusalem, and the Gaza Strip, the OPT refers to the territory occupied by Israel since the 1967 Six-Day War.

Division of the West Bank under the 1995 Interim Agreement on the West Bank and the Gaza Strip (also known as the Oslo II Accord):

Area A (17 per cent): Under full Palestinian civil and security control. However, since 2002, Israel has retained responsibility for overall security in all areas of the West Bank, and does not abdicate full authority over Area A.

Area B (24 per cent): Under full Palestinian civil control and joint Israeli-Palestinian security control.

Area C (59 per cent): Under full Israeli control over security, planning and construction.

Dunum: A dunum (or dönüm, dunam) is a unit of land area enclosing 1,000 square metres. Land area in the West Bank, Gaza Strip and Israel has been measured in dunums since the era of the British Mandate of Palestine.

Annexation Wall: Also referred to as the Separation Barrier/Barrier/Security Fence/Apartheid Wall/Wall. The International Court of Justice decided to use the term “Wall.”¹ However, since the main purpose of its construction is to annex land belonging to the OPT, Al-Haq refers to it as the “Annexation Wall.”

Green Line: The 1949 Armistice Line, which is internationally accepted as the boundary between Israel and the OPT. Its name derives from the green ink used to draw the line on the map during the peace talks.

Seam Zone: Land, mostly arable, trapped between the Wall and the Green Line. These areas have been defined by the Israeli Ministry of Defence as a “closed military zone.”

¹ Advisory Opinion of the International Court of Justice on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, ICJ Report 2004 (9 July 2004).



Photo by: Fadi Arouri

No Man's Land: A buffer zone created during the 1949 Armistice Agreement between Israel and Jordan, in an area northwest of Jerusalem that includes the Palestinian village of Beit Sira and the western part of the Latroun salient.

Closed Military Zone: Demarcated by Israeli-issued Military Orders, large swathes of Palestinian territory² are virtual exclusion zones with heavily restricted access. Within these zones Palestinian construction is forbidden.

OCHA: United Nations Office for the Coordination of Humanitarian Affairs.

UNRWA: The United Nations Relief and Works Agency for Palestine Refugees in the Near East is a relief and human development agency, established in 1949 to provide education, health care, social services and emergency aid to Palestinian refugees living in Jordan, Lebanon and Syria, as well as in the West Bank and the Gaza Strip.

UNRoD: The United Nations Register of Damage Caused by the Construction of the Wall in the Occupied Palestinian Territory is a subsidiary organ of the General Assembly of the United Nations and operates under the administrative authority of the Secretary General at the site of the United Nations Office at Vienna (UNOV), which provides administrative and logistical backstopping.

² Over the years, over 21 per cent of the West Bank, excluding East Jerusalem, has been categorised as "closed military zones." Currently over 400 square kilometres of the Jordan Valley is a "closed military zone."



Photo by: Anne Paq



Photo by: Grazia Careccia

1. The Annexation Wall

Since June 2002, Israel has been building what Professor John Dugard, former United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967, has termed “the Annexation Wall.” From the outset, the construction of the Wall has faced international condemnation on the basis of its illegality under international law. Indeed, approximately 85 per cent of the Wall will be built on occupied territory. This is also in violation of the commitment Israel made under the 1995 Interim Agreement on the West Bank and the Gaza Strip³ that “neither side shall initiate or take any step that will change the status of the West Bank and the Gaza Strip pending the outcome of the permanent status negotiation.”⁴ The construction of the Wall in the Occupied Palestinian Territory (OPT) and its associated regime is having a devastating impact upon the fundamental human rights of the Palestinian population in the occupied territory.

³ Also referred to as the Oslo II Accord.

⁴ *Interim Agreement on the West Bank and the Gaza Strip*, Article XXXI, paragraph 7.

2. Facts and Figures

Total length:

708 kilometres, approximately twice the length of the 1949 Green Line.

Width:

Ranges between 80-100 metres.

Total area located between the Wall and the Green Line:

9.4 per cent of the West Bank, including East Jerusalem and No Man’s Land.

Area inside the West Bank:

When completed, it is estimated that 85 per cent of the Wall will have been built within the West Bank. This leaves only 15 per cent built on the Green Line, beyond the borders of the OPT.

Composition:

The composition of the Wall varies between locations, including layered razor wire, military road patrols, sand paths, trace footprints,⁵ trenches, surveillance cameras, electronic fences and 8-9 metre high concrete slabs. Approximately 5 per cent (37 kilometres) of the total length of the Annexation Wall is made of concrete, especially in urban areas such as Jerusalem, Toulkarem and Qalqiliya.

Currently Completed:

As of April 2012, 438 kilometres (61.8 per cent) of the Wall has been completed, with a further 8.2 per cent (60 kilometres) currently under construction and a further 213 kilometres (30 per cent) planned.

Completion:

Completion of the Wall is not expected until 2020, some 18 years after its construction began. The cost of the Wall thus far is estimated at USD 1.8 billion.

⁵ A strip of sand running parallel to the fence smoothed to detect footprints.

3. Key Dates in the Construction of the Wall

November 2000:
Israeli Prime Minister Ehud Barak approves an initial plan to build the Wall in the northern and central West Bank in order to prevent vehicle crossings between the West Bank, excluding East Jerusalem, and Israel.

June 2001:
A Steering Committee created by Israeli Prime Minister Ariel Sharon recommends developing Ehud Barak’s plan in order to prevent Palestinian pedestrians from crossing into Israel in specific areas.

July 2001:
The Israeli Cabinet approves a plan that outlines these specific areas.

29 March 2002:
The first Military Orders for land confiscation are issued by Brigadier General Yitshak Eitan, Commander of the Israeli Army in the West Bank.

1 April 2002:
Operation Defensive Shield, the largest Israeli military operation in the West Bank since the 1967 War. The operation included the 39-day siege of the Church of the Nativity in Bethlehem and the siege of Jenin Refugee Camp.

14 April 2002:
The Israeli Cabinet approves the construction of the Wall.

23 June 2002:
A plan for the Wall is approved by the Israeli Cabinet but its final route is still to be determined. The responsibility for this will rest with the Prime Minister and Minister of Defence.

March 2003:
Israeli Prime Minister Ariel Sharon indicates that an additional section of the Wall may extend into the Jordan Valley. This “Eastern Section” plan has never been formally approved

for construction, but Israel has in effect created an “invisible Wall” in the Jordan Valley, through the creation of extensive closed military zones and by-pass roads.

8 December 2003:
The United Nations General Assembly issues Resolution ES-10/14 requesting an Advisory Opinion of the International Court of Justice on the legal status of the Wall.

1 June 2004:
Pre-empting the findings of the International Court of Justice, the Israeli High Court of Justice issues a finding regarding a 40-kilometre stretch of the Wall, north of Jerusalem. In the case *Beit Sourik Village Council v. the Government of Israel et al.*, the Israeli High Court of Justice found that the impact of the Wall in that area was disproportionate to the military advantage sought, but also legitimised its presence by recognising the authority of the Military Commander on the construction of a Wall in the OPT.

9 June 2004:
The International Court of Justice issues its Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, condemning the Wall built in the West Bank as illegal under international law.

10 July 2005:
The final route of the Wall is approved by the Israeli Cabinet.

30 April 2006:
Despite its commitment to finalisation in 2005, the Israeli Cabinet approves various amendments to the route of the Annexation Wall in the West Bank, including East Jerusalem. These amendments affect, for example, Beit Iksa Biddu and Beit Surik villages (Jerusalem Governorate), which are further encircled by the Wall and by the 443 Road. Al Walaja village (Bethlehem Governorate) is also surrounded as a result of the rerouting, which disconnects villagers from their farmland.

17 October 2006:
The United Nations Secretary-General submits a report proposing an institutional framework for the Register of Damage Caused by the Construction of the Wall in the Occupied Palestinian Territory.

4 September 2007:
The Israeli High Court rules that a 1.7-kilometre section of the Wall encircling the Palestinian village of Bil’in (Ramallah Governorate) was to be re-routed and partially dismantled. The Court had reservations on the security needs the Wall would address. The Court held that, “[i]n light of the provisional nature of the fence as a security measure, it is improper to plan the route according to considerations related to invalid building plans or to plans that are not expected to be implemented in the near future.”

9 July 2009:
Five years after the International Court of Justice Advisory Opinion the United Nations High Commissioner for Human Rights submits that “the situation has not improved Israel continues to disregard the views of the International Court of Justice, and the Wall remains under construction.”

22 March 2011:
United Nations General Assembly Resolution A/RES/65/179 once again recalls the Advisory Opinion rendered on 9 July 2004 by the International Court of Justice as well as resolutions ES-10/15 of 20 July 2004 and ES-10/17 of 15 December 2006.

29 June 2011:
Five years after the Israeli High Court of Justice ruling of 2007 on the village of Bil’in, the illegally built Wall is relocated to the west, thus handing back 745 dunums of farmland previously occupied by the Wall. However, the borders of the settlement of Modi’in Illit, which is illegal under international law, still occupy some 1,300 dunums and the village continues its struggle against the Wall.

Photo by: Grazia Careccia



4. Security: A Pretence for Annexation?

Photo by: Grazia Careccia

Since the beginning of the construction of the Wall, in the summer of 2002, Israel has alleged a security rationale for the superstructure that is separating Israel and the OPT, annexing Palestinian land east of the Green Line and fragmenting the West Bank, including East Jerusalem. The Israeli Parliament used the pretext of a spate of attacks carried out inside Israel in the spring of 2002 by Palestinians to authorise this “temporary” structure as an “anti-

terrorist fence” or “security fence.” Israel claims the Wall is designed to circumvent any potential attacks against Israel by creating a physical separation between Israel and the West Bank. The State Attorney professes that this gap is a “warning space [that] is vital to strike against terrorists who succeed in crossing the barrier before they carry out their attack.”⁶

⁶ *Muhammed Khaled ‘Alian et al. v. The Prime Minister et al.*, Statement of Response, Israeli High Court of Justice 4825/04, Section 469.

Although Israel reserves the legitimate right to defend itself from such attacks, and indeed has an obligation to protect individuals residing under its jurisdiction, the security rationale that it puts forward is suspect. The central and most contentious issue with the construction of the Wall is that, upon completion, it is estimated that the majority of the route, approximately 85 per cent, will run inside the West Bank, including East Jerusalem, rather than along the 1949 Green Line.

“Good Fences Make Good Neighbours”

The Israeli Ministry of Foreign Affairs has declared that the “as yet uncompleted anti-terrorist fence has shown initial successes in thwarting terrorist efforts and reducing the overall number of successful terrorist attacks,” with figures ranging from a 30 per cent to an enormous 90 per cent reduction in attempted terrorist attacks achieved.

While Israel has claimed that the Wall has led to a decrease in the number of suicide attacks by Palestinians, these findings do not account for the sharp decline in the number of attempted suicide bombings that accompanied the Hamas ceasefire of 2005. Correlation does not amount to causation, and to accept such a monolithic argument ignores the complex reasons for the fall in attempted attacks, including the purposeful decision of the Palestinian leadership to pursue an alternative resolution to the ongoing conflict.

This policy of building the Wall in the OPT, rather than on the Green Line, effectively invalidates the

alleged security rationale. Physically, it actually increases the length of the Wall, thus creating a longer border to be policed. This is antithetical to security needs and proves that annexation is the ultimate objective. The social impact of the Wall has been criticised by Avraham Shalom, former head of the Israeli intelligence agency. Shalom states that the Wall “creates hatred, it expropriates land and annexes hundreds of thousands of Palestinians to the State of Israel. The result is that the fence achieves the exact opposite of what was intended.”⁷

This conclusion was also reaffirmed by the Special Rapporteur for the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism during his mission to Israel and the OPT in 2007;

“[T]he route of the barrier does not always coincide with the location and protection of Israeli citizens. [The Wall] is nevertheless having an enormously negative impact upon the enjoyment of human rights by the Palestinian people.”

“The Special Rapporteur is gravely concerned about the impact of the barrier and accompanying measures upon the freedom of movement, right to property, right to work, right to health, right to education, the right to private and family life, the right to non-discrimination and the human dignity of all persons.”⁸

⁷ Molly Moore, “Ex-Security Chiefs Turn to Sharon: Government Policies ‘Create Hatred’ Israeli Newspaper is told,” *The Washington Post*, 14 November 2003.

⁸ Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, A/HRC/6/17/Add.1, 28 November 2007.

The practices indicated by the Special Rapporteur severely contradict Israel's commitments to implement the United Nations Global Counter Terrorism Strategy. Like all the other signatories to this instrument, Israel is under an obligation to take "measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism."

Counter Terrorism and Human Rights Israel's False Promise

The United Nations Global Counter-Terrorism Strategy:

"[...] States must ensure that any measures taken to combat terrorism comply with their obligations under international law, in particular human rights law, refugee law and international humanitarian law."

A/RES/60/288, 20 September 2006.

The inadequacy of the security rationale points to the reality of the Wall's construction as being a much more aggressive Israeli policy aimed at annexing significant portions of Palestinian territory. This institutionalised annexation policy is most apparent on three fronts; the annexation of East Jerusalem, the continued settlement construction and expansion, and the aggressive appropriation of essential water resources.

The Difference between the Route of the Wall and the Green Line

The Wall deviates extensively from the path of the Green Line, at some points veering up to 22 kilometres into the West Bank. If the current plans for the construction of the Wall are successfully completed, over 351,000 Palestinians will be living between the Green Line and the Wall (the so-called Seam Zone), including approximately 270,000 residents of East Jerusalem.

Conversely, approximately 385,000 Israeli citizens, living in some 80 settlements constructed inside the OPT (including 192,000 settlers living in East Jerusalem) will find themselves on the western side of the Wall, fully integrated, in practice, into the State of Israel. Another 70 settlements, with a population in excess of 85,000 settlers will remain on the eastern side of the Wall.

4.1 East Jerusalem

Since the occupation of East Jerusalem in June 1967, Israeli authorities and legislators have engaged in an aggressive programme of establishing their authority over the entire city of Jerusalem. This has included the implementation of Israeli law throughout occupied East Jerusalem, cementing a situation of *de facto* annexation. In 1980, the Israeli Parliament reinforced its illegal claims to East Jerusalem by ratifying Basic Law: Jerusalem - The Capital of Israel that states, "Jerusalem, complete and undivided, is the Capital of Israel."⁹ Both the United Nations and the international community have rejected this declaration.¹⁰

⁹ Article 1, Basic Law: Jerusalem - The Capital of Israel, 1980.

¹⁰ United Nations Security Council Resolution 478 (20 August 1980).

The Wall serves not only to physically reinforce Israel's claim over Jerusalem but also to further exacerbate East Jerusalem's administrative and social detachment from the rest of the West Bank. As a result of the construction of the Wall, the West Bank and East Jerusalem are now two divided parts of the tripartite OPT, along with the Gaza Strip, when the Palestinian territorial contiguity should be preserved intact. The lack of physical continuity has resulted in Palestine becoming a concept that is difficult to conceive of, in geographical, demographic or spatial terms.

This approach is paving the way for Israel to unilaterally declare the Wall as the new municipal boundary of occupied East Jerusalem. The enormous



Photo by: Anne Paq

cost of the Wall’s construction and the accompanying heavily securitised checkpoints, which have a greater resemblance to international rather than temporary borders, combined with various statements made by Israeli cabinet ministers provide strong evidence that the Wall is intended to be the future border of the Israeli State. This would also leave Palestinian Jerusalemites residing on the eastern side of the Wall unable to fulfil the centre of life requirement,¹¹ thus effectively placing some 30,000 Palestinian Jerusalemites at risk of losing their residency rights and of being displaced from occupied East Jerusalem.

¹¹ The “centre of life” policy requires Palestinian permanent residents to consistently prove that they hold continuous residence in East Jerusalem by providing extensive documentary evidence including rental agreements, home ownership documents, tax receipts, school registration and receipts of medical treatment in Jerusalem.



Photo by: Fadi Aroui

4.2 Settlements

Presently, the Israeli Ministry of the Interior has formally recognised 150 settlements in the West Bank, including East Jerusalem, despite their illegality under international law. This annexation tactic, which has been implemented unremittingly during the 45-year long Israeli occupation, has been applied in the entire occupied territory, starting in 1967 in East Jerusalem and further extending to the rest of the West Bank and the Gaza Strip, even if

it has been on a less aggressive scale in the latter. While nearly half of the entire settlement population is located in East Jerusalem (approximately 200,000 settlers), the remaining settlements are located in Areas B and C of the West Bank and are serviced by an extensive infrastructure, including by-pass roads.

In March 2012, the United Nations Human Rights Council, during its 19th session, decided that it

would dispatch an independent international fact-finding mission to investigate the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the OPT, including East Jerusalem. At the time of writing, no progress had been made in appointing the experts for such a fact-finding mission.



Photo by: Anne Paq

By-Pass Roads

The Israeli Settlement Master Plan for 1983-1986 outlined what was to become the “special roads to service planned settlements,” according to which one of the primary objectives determining the routes of such roads was to “bypass the Arab population centres.” Many of the roads in question in the West Bank are intended for exclusive Israeli use, such as the Ariel-Salfit road, with Palestinian travel completely prohibited. Palestinian travel is further partially prohibited on a second category of roads, which are accessible only to Palestinians with specific requisites, such as permanent residence. Aside from facilitating movement between settlements, the by-pass roads also represent a physical barrier to the urban development of large Palestinian population centres over which Israel intends to maintain control.

As with settlements, by-pass roads are constructed on private Palestinian land, further compounding the annexation of large tracts of Palestinian territory.

OCHA estimates that settlements, outposts, closed military areas, Israeli declared nature reserves or other related infrastructure, which are off-limits or have tightly controlled access for Palestinians, amount to almost 43 per cent of the territory of the West Bank.



Photo by: Anne Paq

The principal tool used to take control of land, for the purpose of settlement building and expansion, is to declare it “state land.” Other methods employed by the State of Israel include seizure for ostensible military needs, declaration of land as “abandoned assets,” and the expropriation of land for public needs. Since the appropriation of land in an occupied territory for non-imperative military purposes violates international humanitarian law, any method used to achieve this end is also unlawful.

The Wall serves to annex land and to further entrench the presence of Israeli settlements in the OPT, with the design of the Wall taking into consideration the further expansion “needs” of settler communities. The settlement expansion programme is nothing short of “land grab,” with the Wall serving to assimilate the settlements into the territorial contiguity of Israel. Once the Wall is complete, approximately 85 per cent of the total estimated 500,000 settlers currently residing in the OPT will be located between the Wall and the Green Line, therefore consolidating the illegal appropriation of Palestinian land and resources.

Settler Violence and 'Price Tag'

The continued rise in settler attacks is a manifestation of the so-called 'Price Tag' policy, which advocates for violence against Palestinians in response to those limited Israeli government decisions and measures intended to restrict settlement construction. The number of attacks resulting in Palestinian casualties and damage to property has increased by over 144 per cent in 2011 compared to 2009. In addition, according to Yesh Din,* since 2005 91 per cent of investigations by Israeli authorities into acts of settler violence were closed without indictment, thereby contributing to a climate of impunity.

**Yesh Din Monitoring Unit, Law Enforcement upon Israeli Civilians in the West Bank, Data Sheet March 2012.*



Photo by: Anne Paq

What is a Settlement?

Some Facts and Figures

- Settlements are Israeli communities illegally built on Palestinian territory occupied since the 1967 Six Day War. Settlements violate customary international humanitarian law as detailed in the Fourth Geneva Convention and reiterated by the International Court of Justice in its Advisory Opinion as well as in several United Nations Security Council Resolutions. Despite attempted legitimisation by Israeli authorities, under no circumstances are settlements legal under international law.
- Types of settlements include regular urban and rural settlements, community settlements and cooperative settlements. Rather than being small “frontier” holdings, settlements often bear a closer resemblance to large towns or small cities. Palestinians are prohibited from entering these settlements areas, unless they hold special permits to work there.
- Settlers are Israeli citizens who reside in the OPT, but are entitled to full Israeli citizenship, with all the according benefits.
- Israel has actively facilitated the development of settlements through the provision of financial incentives for the settler population, effectively

encouraging the transfer of its population to the OPT.

- Settlement expansion is intimately linked with the spread of “outposts.” Outposts are unofficial settlements established by extremist ideological settlers. Usually they are smaller, informal structures, often made up of collections of prefabricated trailers or mobile homes, which generally serve as preludes to future settlements. They lack prior legal approval by the Israeli government, but nonetheless often receive funding and assistance, in the form of utilities, roads, infrastructure and security, from relevant government ministries. There are approximately 105 outposts in the OPT today, their ‘unofficial’ designation “allowing” Israel to discount their existence when it claims it has stopped settlement expansion, or dismantled them, even temporarily, during peace negotiations as an empty gesture of commitment to removing settlements.
- In January 2012, the Israeli High Court of Justice ruled that the Migron outpost, near Ramallah, must be demolished as it was illegally built on private Palestinian owned land, stating that “[N]o one has the authority to permit the construction of a settlement on privately owned land.” Also in May 2012, the Court denied an appeal by the State of Israel against the evacuation of

the illegal outpost of Ulpana, near Ramallah, and insisted on the demolition of the illegal structures as they are built on privately owned Palestinian land. The Israeli government support for settlement expansion became particularly evident in April 2012. Prime Minister Netanyahu, in order to circumvent the Court’s prohibition on the construction of outposts, established a ministerial panel to legitimise Bruchin, Rechelim and Sansana upon Parliamentary approval. Such political sanction would likely result in the legitimisation of further outposts, effectively overriding the ruling of the High Court of Justice and in defiance of international law. In an official statement, the United Nations Secretary-General Ban Ki-moon described these efforts as “deeply troubling” and reaffirmed the “illegality of settlement activity under international law.”

- The first West Bank settlement was established by Israel in September 1967 at Kfar Ezyon (near Bethlehem).
- Ma’ale Adumim is the largest settlement in the OPT, covering 50 square kilometres. The population of Ma’ale Adumim stands at approximately 39,000, but is projected to expand to more than 50,000.
- Ariel, the largest settlement in the Salfit region, is located approximately 22 kilometres inside the West Bank and away from the Green Line.



4.3 Water Resources

The construction of the Annexation Wall not only actively destroys artisan wells and natural drainage systems, but has also been used to annex vital water resources. There are four ground water basins that lie wholly or partially in the OPT, including the Western Aquifer system. With the completion of the Wall, the West Bank will lose 70 per cent of the recharge area of the Western Aquifer, which will be isolated between the Wall and the Green Line and will therefore fall under exclusive Israeli control.

The construction of the Wall will exacerbate an already unequal distribution of water resources. In the West Bank, Palestinians now control and consume approximately 20 per cent of all ground water resources. Israel controls approximately 80 per cent of the West Bank ground water resources, which is not only used in Israel but also to supply illegal settlements built on occupied land in the West Bank.

Palestinians have yet to be granted their legal entitlements to the water resources they formally share with Israel under the Oslo II Accord. With the construction of the Wall, Israel is guaranteeing that Palestinians will never achieve these legal entitlements.

Photo by: Anne Paq

Israel is creating “facts on the ground,” namely the separation of East Jerusalem from the rest of the West Bank, settlement expansion and appropriation of vital resources, all of which are deliberate policies to extend Israeli control over Palestinian land, with the end purpose being annexation. Through the Wall and its associated regime, Israel is effectively extending and entrenching its control to the extent that it will render any alternative arrangement impossible in a final status agreement, *de facto* annexation having already been achieved.

The Right to Water

In October 2011, the United Nations Human Rights Council reaffirmed the right to drinking water and sanitation as legally binding and linked to existing human rights treaties by stating;

“The human right to safe drinking water and sanitation is derived from the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity.”

GA/HRC/18/L.1 Human Right to Safe Drinking Water and Sanitation, 23 September 2011.



Photo by: Grazia Careccia



Photo by: Grazia Careccia

5. The Wall’s Associated Regime

The Wall is reinforced and sustained by a complex associated regime of physical, legal and administrative obstacles.

This regime not only has a negative impact upon the Palestinian population on either side of the Wall, but also serves to reinforce and institutionalise its permanency. Although each element of the Wall’s associated regime is addressed separately, one cannot be understood in isolation from the other. Each serves to compound the others, cementing the annexation of Palestinian territory and gravely

impacting the right to self-determination of the Palestinian people.

The Wall’s Associated Regime

Gates and Checkpoints

Permit System

ID Cards

Property Destruction and Confiscation

5.1 Gates and Checkpoints

Individuals with homes and farmland located in the Seam Zone, as well as those separated by the Wall from family, education or healthcare facilities, are reliant on a sequence of gates to cross through the Wall. These gates are in fact Israeli checkpoints situated deep inside occupied territory that dramatically impede Palestinians from exercising their right to freedom of movement and delay and prevent access to essential services. Along the total length of the Wall, there are 66 gates currently open on a daily, weekly and/or seasonal basis. The irregular placement of the gates and the restrictive opening times severely curtail the time available to Palestinians for farming, thus having a particularly negative impact on rural livelihoods. 27 checkpoints are “closed” checkpoints,¹² leaving only 39 for Palestinian use. Many of these checkpoints are open only seasonally or have erratic opening hours, leaving many Palestinians with inconsistent access to their land and homes.

Gates and Checkpoints Facts:

There are seven types of operational gates incorporated into the Wall: agricultural, checkpoint, military, road, school, seasonal and settlement gates.

There are 26 checkpoints along the intended route of the Wall. These are all either in the OPT or on the Green Line but none are located within the State of Israel.

The checkpoints are staffed by the Israeli Border Police but also, increasingly, by private security companies.

¹² These are checkpoints that are closed to Palestinians unless they have the required permit, e.g. the “Mazmouriya” checkpoint is closed to Palestinians except for the residents of Al-Nu‘man whose names, in accordance with a decision of the Israeli High Court of Justice, appear on a list kept at the checkpoint.



Photo by: Anne Paq



5.2 Permit System

Israeli-issued permits are essential for crossing the complex network of gates, and all other *ad hoc* checkpoints, established by the Israeli occupying forces within the West Bank, including East Jerusalem. The highly restrictive permit system impedes the exercise of a wide range of fundamental rights of the Palestinian people, primarily by severely violating the right to freedom of movement. Restrictions on movement prevent Palestinians from travelling to work, schools, places of worship and from accessing family, agricultural land and essential health care facilities. According to a survey carried out by OCHA, some 522 restrictions on movement, including roadblocks and checkpoints were encountered by Palestinians in 2011, compared to 503 the previous

year. Even more striking is the fact that 200,000 Palestinians are required to travel distances two to five times their required journeys due to these travel restrictions.

The application process to acquire a permit is prohibitively complex and arbitrary. Palestinians must submit an application to the District Coordination Office of the Israeli Civil Administration.¹³ The process for obtaining a permit has never been clarified by the Israeli authorities, nor are there any definite criteria for examining a request for a permit.

Palestinians are further discouraged from applying

¹³ The Civil Administration was established in 1980 by a military order issued by the Regional Commanders of the Israeli army in the Gaza Strip and West Bank to administer the civilian life of Palestinians in the OPT.

for a permit because an applicant denied on the basis of posing a “security threat” could subsequently be placed on a security list. The duration of permit validity varies, however typically permits are valid for between two weeks and six months. The permit duration is a particular obstacle for farmers whose land now lies suffocated between the Green Line and the Wall. These persons must apply for a “visitor” permit in order to farm their own land. Essential for obtaining this permit is proof of land ownership coupled with supporting purchase documentation. These documents are difficult to produce for those whose land ownership title dates from either the Ottoman, British Mandate or Jordanian periods of rule. A 2007 OCHA/UNRWA survey found that less

than 20 per cent of those who fall into this category were actually granted a permit.¹⁴

The permit system has been described, by the former United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967, John Dugard, as reminiscent of the South African Apartheid “Pass Laws.” Professor Dugard was particularly critical of the fact that, “[t]he pass laws were administered in an arbitrary manner, but uniformly, Israel’s laws governing freedom of movement are likewise administered in a humiliating manner, but they are governed by arbitrariness and caprice.”¹⁵

¹⁴ OCHA-UNRWA, Barrier Monitoring Survey, July 2007.

¹⁵ Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied by Israeli since 1967, A/59/256 (12 August 2004).

Photo by: Anne Paq

5.3 ID Cards

Israeli-issued identification cards for Palestinians have been in existence since 1967. All Palestinians over the age of 16 must carry these cards at all times, or risk incurring a financial penalty or arrest. ID cards demarcate where Palestinians can and cannot travel.¹⁶

ID cards come in two colours, blue (East Jerusalem) and green (West Bank and the Gaza Strip). This system effectively differentiates between “types” of Palestinians. Along with the Wall, this system of different ID cards contributes to the fragmentation of the social cohesion of the Palestinian population of the OPT.

The ID card system is used to squeeze the Palestinian

¹⁶ These ID cards indicate not the nationality of the holders, but instead their religion. The ID serial number must also be included in the individual's passport.

population of East Jerusalem, reducing its demographic “threat” to the State of Israel, while promoting the Judaisation of Jerusalem. East Jerusalem ID cards can be revoked if proof of residency is deemed insufficient¹⁷ or if the ID holder also holds non-Israeli nationality. Similarly, the difficulty of changing one's residency is prohibitive. Since 2001, the denial of family unification for spouses or family members who are not East Jerusalem ID card holders, *i.e.* from other parts of the OPT or foreign nationals of “enemy countries,” has been used to prevent the proliferation of Palestinians with lawful residency status in Jerusalem.

¹⁷ The individuals must prove that the centre of their life, including homes and jobs, is based in Jerusalem. This, for instance, can make it difficult for young Jerusalemites to study or gain work experience abroad, or even in other parts of the West Bank.

5.4 Property Destruction

The construction of the Annexation Wall not only denies access to land but also actively destroys it. Property appropriation and destruction have been the *modus operandi* for the Israeli Ministry of Defence to secure sufficient land to build the Wall inside the OPT. Israel most often cites administrative reasons for the destruction of property, *i.e.* lack of building permits, rather than acknowledging it to be part of its deliberate policy to seize land, in this case for the construction of the Wall. This practice has allowed Israel to requisition substantial territory and raze large areas in the OPT along the Green Line, creating a “no-go area” and land available for the construction of the Wall.

The United Nations Register of Damage

United Nations Registry of Damage (UNRoD) was established in accordance with General Assembly resolution A/RES/ES-10/17 of January 2007. Its mandate is to “serve as a record, in documentary form, of the damage caused to all natural and legal persons concerned as a result of the construction of the Wall by Israel in the Occupied Palestinian Territory, including in and around East Jerusalem.”

UNRoD collects data from those who have sustained loss or damage resulting from the Wall. As of January 2012, 24,000 cases were submitted to UNRoD, along with 240,000 supporting documents relating to the OPT and the Wall.

The Impact of the Wall

- Fragmentation of the OPT and reduction of the territory available to Palestinians for the meaningful exercise of their right to self-determination.
- Annexation of East Jerusalem.
- Loss of land and property through confiscation and annexation.
- Forcible Transfer.
- Erasing of the Green Line.
- Prevention of access to employment, resulting in a diminished economic capacity for Palestinians.
- Restricted access to education.
- Restricted access to healthcare.
- Isolation, as a result of the of the separation of families and the erosion of the social fabric.



Photo by: Anne Paq

6. The Annexation Wall and International Law

Despite Israel’s obligations as a High Contracting Party to the Fourth Geneva Convention of 1949 and as a State Party to all major international human rights treaties, through the creation of the Wall and the implementation of its associated regime, Israel remains in constant and apathetic violation of public international law, in particular international humanitarian and human rights law. It is not possible in a booklet such as this one to provide an exhaustive list of the violations committed by the construction of the Wall in the OPT due to their multiplicity and the intertwined nature of the rights breached.

Israel accepts the applicability of The Hague Regulations of 1907 to the OPT but not the *de jure* applicability of the Fourth Geneva Convention. Instead it has stated that it would voluntarily conform to the “humanitarian provisions” thereof, although it has never clarified exactly what those provisions are. Israel’s official position is that international humanitarian law is not fully binding on its actions in the OPT as the territory was not the “territory of a High Contracting Party,” which they consider to be an essential requirement for the applicability of the Fourth Geneva Convention. In 1981, the

international community rebuked this narrow interpretation of the Fourth Geneva Convention. The position of all other High Contracting Parties to the Geneva Conventions, various United Nations bodies, including the General Assembly, the Security Council and the Commission on Human Rights (replaced by the present Human Rights Council), as well as the International Committee of the Red Cross (ICRC), is that the Geneva Conventions are applicable *de jure* to the OPT.

6.1 International Humanitarian Law (IHL)

6.1.1 The Prohibition of Annexation of Occupied Territory

The West Bank, including East Jerusalem, is classified as occupied territory under international law. The Fourth Geneva Convention is clear about the inviolability of protected persons living in occupied territory. In accordance with Article 47 thereof, Palestinians in the OPT may not be deprived of the Convention’s protections by changes introduced as a result of the occupation.

This article specifically references annexation, in whole or in part, and clearly prohibits Israel’s attempt to annex land in the West Bank, including East Jerusalem. The ICRC, the guardian of the Geneva Conventions, emphasised this in February 2004,¹⁸ when it stated that the Wall’s construction and its associated measures were a violation of

¹⁸ ICRC, Israel/Occupied and Autonomous Palestinian Territories: West Bank Barrier Causes Serious Humanitarian and Legal Problems, News release 04/12 (18 February 2004).

Israel’s obligations under international law. It added that “[t]he measures taken by the Israeli authorities linked to the construction of the Barrier in occupied territory go far beyond what is permissible for an occupying power under IHL.”

Fundamental Principles of International Humanitarian Law

Principle of Military Necessity:

Any attack must be intended and aimed toward the partial or total submission of the enemy. Military necessity is not a justification for violations of the other rules of IHL.

Principle of Distinction:

A distinction must always be drawn between military objectives and civilian objects, combatants and non-combatants, and an attack can only target military objectives and combatants.

Principle of Proportionality:

An attack aimed at weakening the military of the enemy must not cause harm to civilians or civilian objects that is excessive in relation to the concrete and direct military advantage anticipated.



6.1.2 Destruction and Confiscation of Private Property

One of the fundamental principles of international humanitarian law, and of The Hague Regulations in particular, is the temporary nature of military occupation. Accordingly, acts by the Occupying Power are to be temporary in nature. While it can be argued for instance that the seizure of land is a temporary act, the confiscation and subsequent destruction of property establishes permanency, which is in violation of Israel's legal obligations under The Hague Regulations and Fourth Geneva Convention.

Article 46 of The Hague Regulations specifically prohibits the confiscation of private property. Israel

circumvents this provision by "seizing" land for five years rather than permanently confiscating it, however as the seizures usually last longer than five years, it should be seen as *de facto* confiscation. The claim that the appropriation process is temporary is undermined by a sustained practice of razing confiscated property, to build the Wall and to expand and build settlements, by-pass roads, and other illegal structures for the benefit of Israeli settlers.

The confiscation of Palestinian property by Israel, the Occupying Power, is often coupled with its destruction. Article 53 of the Fourth Geneva Convention states that "[a]ny destruction by the Occupying Power of real or

personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations." This provision of military necessity for property destruction must respect the principle of proportionality. In these instances this principle must be applied very restrictively as the military necessity has to be absolute. The resulting harm shall not be excessive in comparison with the anticipated absolute military advantage and it shall not be wanton. If property destruction fails to meet these criteria and it is extensive in nature then it amounts to a grave breach of the Fourth Geneva Convention.

Israel's appropriation and destruction of property for the purpose of constructing the Wall, its building of illegal settlements, with utter disregard for the impact of these actions on the Palestinian population, and its failure to meet standards of military necessity violate its international legal obligations. These actions are war crimes and may amount to grave breaches of the Fourth Geneva Convention.

Grave Breaches of the Fourth Geneva Convention

Article 147 of the Fourth Geneva Convention defines grave breaches to be the following acts, if committed against persons or property protected by the Convention:

Wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.



Under Article 146, the High Contracting Parties to the Fourth Geneva Convention have a corresponding obligation to:

- Undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches.
- Search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before their own courts.

Additionally, grave breaches of the Fourth Geneva Convention and Additional Protocol I and II are classified as war crimes under the Statute of the International Criminal Court. On 3 December 1986, United Nations General Assembly Resolution 41/63 declared Israel's breaches of the Fourth Geneva Convention to be war crimes and "an affront to humanity."

6.1.3 Principle of Proportionality

Israel continuously violates one of the central tenets of international humanitarian law by failing to adhere to the principle of proportionality with regards to the construction of the Wall. This principle requires that a balance be reached between an action's anticipated military advantage and the means to obtain it. The Israeli High Court of Justice has stated that the principle of proportionality is also a general principle of Israeli administrative law, adding that *"it applies to the use of the military commander's authority pursuant to the law of belligerent occupation."*¹⁹ The construction of the Wall in the OPT, together with its associated regime of property destruction and confiscation, house demolition, destruction and appropriation of natural resources, restriction on

¹⁹ *Beit Sourik Village Council v. the Government of Israel, et al.*, Israeli High Court of Justice 2056/04, para. 38.

the rights to work, health, food, water, education, adequate housing, movement, and worship amount to the denial of the right of the Palestinian people to self-determination and to the infliction of harm on protected persons. These actions fail to satisfy the proportionality test, even if the Israeli High Court of Justice contends this is the test used for its decisions regarding the Wall.

6.1.4 Prohibition of Collective Punishment and Measures of Intimidation

Although the Wall in itself would be difficult to conceive as a form of collective punishment, the security rationale provided for the Wall coupled with the impact it has on the Palestinian population as a whole allows for the determination that it is in violation of Article 33 of the Fourth Geneva Convention, which states that, *"[n]o protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited. Pillage is prohibited. Reprisals against protected persons and their property are prohibited."*

According to Israel, the Wall is designed to deter acts that may be committed in the future by others. This makes the Wall a measure of collective punishment as it is applied in an indiscriminate manner given that it severely impacts upon the fundamental rights of all protected persons in the occupied territory.



Photo by: Thomas Palmer

6.1.5 Forcible Transfer

Forcible deportation or transfer of protected persons is expressly prohibited in Article 49(1) of the Fourth Geneva Convention and is recognised as a principle of customary international law.²⁰ Article 49(1) states that “[i]ndividual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.”

²⁰ Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law – Volume I: Rules* (Cambridge, Cambridge University Press, 2005), 257.

The forcible transfer of protected persons within an occupied territory constitutes a grave breach as per Article 147 of the Fourth Geneva Convention, giving rise to individual criminal responsibility. The term “forcible” is broadly interpreted and the absence of genuine choice is sufficient to make the displacement unlawful. Unlawful forcible displacement extends to Palestinian Jerusalemites who are compelled to leave their homes because of the unbearable living conditions created by the annexationist policies, including the construction of the Annexation Wall, implemented by the Occupying Power.



Photo by: Anne Paq

6.1.6 Respect for the Human Person

The inviolability of the principle of respect for the human person and the inviolable character of the basic rights of individuals are embodied in Article 27 of the Fourth Geneva Convention. This article is considered by the ICRC as the “basis of the Fourth Geneva Convention, proclaiming as it does the principles on which the whole of 'Geneva Law' is founded.”

Although the State of Israel is lawfully able to restrict certain rights as a security measure, these restrictions should not affect fundamental rights of protected persons, including amongst others, the rights to food, housing, work, education, health, culture, worship and should not impede the fundamental right of the Palestinian people to self-determination.



Photo by: Anne Paq

6.2 International Human Rights Law

6.2.1 Freedom of Movement

Article 12(1) of the International Covenant on Civil and Political Rights (ICCPR) states that “[e]veryone lawfully in the State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.” The physical obstacle of the Wall is the most obvious testament to the restrictions Palestinians face in their freedom of movement, in particular in the Seam Zone. This is further reinforced by the permit and ID systems that regulate and restrict Palestinian movement within the OPT, including between East Jerusalem and the rest of the West Bank.

Although the State of Israel reserves the right to restrict movement based on the need to protect national security, these restrictions cannot, under the ICCPR, be based on distinctions such as race, colour, sex, language, religion, political and other opinion, national or social origin, property, birth and other status.

The requirement to have a permit to cross through gates in the Wall is not applicable to the settler population, non-citizens who are allowed to immigrate to Israel under the Law of Return (1950), nor to foreigners. The Wall and its permit regime are

therefore clearly based on discriminatory grounds.

6.2.2 Right to Work, Food, Health and Education, Family Life and Worship

As a by-product of the construction of the Wall, and the restrictive permit system, Palestinians are subjected to infringements on, and in some instances the deprivation of, several economic, social and cultural rights. Many of these rights are upheld in the International Covenant on Economic Social and Cultural Rights (ICESCR), notably the right to work (Article 6); the right to food (Article 11(1)); the right to the highest attainable standard of physical and mental health (Article 12); the right to education (Article 13) and the right to take part in cultural life (Article 15(1)(a)). These standards are also enshrined in the Universal Declaration on Human Rights (UDHR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC). The deprivation of the Palestinian people’s ability to fully achieve these rights undermines their ability to live in dignity and ultimately to meaningfully exercise their right to self-determination.

6.2.3 The Right to Self-Determination

The right to self-determination, which is rooted in the United Nations Charter, is also common to Article 1 of both the ICCPR and the ICESCR and has been recognised as a peremptory norm of international law. It has been repeatedly upheld by the United Nations General Assembly and the Security Council. Furthermore, in its Advisory Opinion of July 2004 on

the Wall in the OPT, the International Court of Justice reiterated that the right to self-determination is an obligation *erga omnes*.²¹

Israel’s construction of the Wall directly undermines this right through the *de facto* annexation of Palestinian territory, the isolation of East Jerusalem from the rest of the West Bank, thus resulting in territorial non-contiguity and the artificial manipulation of local demographics through settlement expansion and related infrastructure. The construction of the Wall and its selected route are harming Palestinian natural resources and depriving Palestinians of their means of sustenance. Rather than promoting and respecting the right to self-determination of the Palestinian people, Israeli authorities are on the contrary restricting it and weakening the capacity for its future realisation. Its relentless infringement upon a wide range of fundamental human rights, as detailed above, effectively impede any meaningful exercise of the right to self-determination of the Palestinian people.

	Signed	Ratified
ICCPR	1966	1991
ICESCR	1966	1991
CEDAW	1980	1991
CRC	1990	1991
CERD	1966	1979
CAT*	1986	1991

**Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*

21 *Erga omnes* obligations are obligations whose fulfilment all States have a legal interest in because their subject matter is of importance to the international community as a whole. Consequently, any State has the right to complain of a breach of such obligations.



6.3 Public International Law

6.3.1 The Prohibition of Annexation of Territory by Force

Public international law prohibits the acquisition of territory by force, even in self-defence. This principle is upheld in Article 2(4) of the United Nations Charter, which notes that States may not use force or the threat thereof against the territorial integrity or the political independence of other States, or in a

manner that is inconsistent with the purpose of the United Nations. Despite this undisputable principle, Israel continues to use the construction of the Wall to annex sections of the OPT. Land in the Seam Zone is particularly vulnerable to long-term annexation as Israel, through the construction of the Annexation Wall, is trying to achieve *a fait accompli* before any final status agreement.

7. The International Court of Justice Advisory Opinion

The International Court of Justice Advisory Opinion is an authoritative statement regarding the legality of Israel's construction of the Wall in the OPT. Detractors of the Advisory Opinion point to the fact that it is just that, advisory in nature and therefore not legally binding. While advisory opinions are not binding instruments as such what is relevant is the content. The Advisory Opinion on the Wall reaffirms norms of customary international law, including the prohibition of annexation of territory by force and the right to self-determination, to which Israel, as any other State, is bound.

In December 2003, the United Nations General Assembly, in accordance with Article 96(1) of the United Nations Charter, which states that "the General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question," requested an advisory opinion on the legal status of the Wall, asking; "[w]hat are 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, as described in the report of the Secretary-General, considering the rules and principles of international law, including the Fourth Geneva Convention of 1949, and relevant Security Council and General Assembly resolutions?"²²

The International Court of Justice invited written statements on the Wall from the United Nations, Israel,

Palestine, the League of Arab States, the Organisation of the Islamic Conference and 43 additional member States of the United Nations. The collection of statements was followed by a hearing session, which lasted three days. The Israeli government refused to participate in these hearings but it did contribute a 130-page document questioning the legitimacy of the International Court of Justice jurisdiction over the case.

The International Court of Justice convened to consider the case in three parts: 1. the jurisdiction of the Court; 2. the legality of the construction of the Wall in the OPT; 3. the legal consequences of the violations identified.

On 9 July 2004, the International Court of Justice rendered its findings, which were unequivocal, in a vote of 14 to one, in both its assertion of the International Court of Justice's legitimate jurisdiction over the case and in its condemnation of the illegality of the construction of the Wall in the OPT. The solitary dissenting opinion of Justice Buergethal was not predicated on the illegality of the Wall but was more concerned about whether the Court's procedural technicalities were fulfilled. He concluded that Israel's refusal to participate and provide data invalidated the Court's jurisdiction. Despite this finding he did not rule out the illegality of the Wall, "[i]t may well be, and I am prepared to assume it, that on a thorough analysis of all relevant facts, a finding could well be made that some or even all segments of the wall being constructed by Israel on the Occupied Palestinian Territory violate international law."

²² United Nations General Assembly Resolution on Illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory, ES-10/14 (8 December 2003).



Photo by: Anne Paq

7.1 Findings

1. The International Court of Justice recognised the status of Israel as the Occupying Power in the West Bank from the Green Line to the eastern boundary under the British Mandate, including East Jerusalem, under both customary international law and Article 42 of The Hague Regulations.
2. The International Court of Justice reaffirmed the illegality and consequent prohibition of the acquisition of territory by force, or threat to use force, as stated in Article 2(4) of the

United Nations Charter, referring to relevant Security Council resolutions, General Assembly Resolution 2625 and previous International Court of Justice jurisprudence. The Court held that the construction of the Wall in the OPT, and its associated regime, had a threat of permanency, which “would be tantamount to *de facto* annexation,” amounting to acquisition of territory through use of force, in violation of Article 2(4) of the United Nations Charter.

3. The right to self-determination of the Palestinian

people was reaffirmed by the Court, as stated in numerous General Assembly and Security Council resolutions, as being a customary norm of international law. The Court held that the construction of the Wall along with measures taken previously would severely impede the fulfilment of the right to self-determination of the Palestinian people.

4. The Court held that The Hague Regulations were declaratory of customary international law and that section III of The Hague Regulations was pertinent in this situation. The application of Articles 43, 46 and 52 thereof was considered, and the Court held that the destruction and requisition of property under occupation contravened these provisions.
5. The Fourth Geneva Convention was held to apply *de jure* in keeping with the proper interpretation of Common Article 2 thereof, as endorsed by the High Contracting Party Conference of 1999, ICRC declarations, and General Assembly and Security Council resolutions.
6. The Court held that the destruction and requisition of property under these circumstances contravened the requirements of Article 53 of the Fourth Geneva Convention, which prohibits any personal or collective destruction of property. Given that the construction of the Wall in the OPT has, *inter alia*, entailed the requisition and destruction of homes, businesses and agricultural holdings, the Court found that Israel is under the obligation to make reparations for

the damage caused.

7. In its consideration of the Wall and its route, which encompasses the majority of the settlements in the West Bank, the International Court of Justice held that the settlement policy in the OPT is contrary to Article 49(6) of the Fourth Geneva Convention. This policy contributes to demographic changes, nominally transferring population from the Occupying Power to the occupied territory and causing the forcible transfer of the occupied population.
8. The Court held that human rights treaties, such as the ICCPR, the ICESCR and the CRC, apply to the OPT. This application is not subject to any derogation, thus Israel has violated its legal obligations under human rights law by infringing upon the rights of the occupied Palestinian population.
9. The Court held that the specific course of the Wall chosen by Israel was not necessary to attain its stated security objectives; therefore it cannot be justified by military exigencies or by the requirement of national security or public order. The Court rejected the argument that the customary international law principle of the state of necessity was satisfied, as the conditions were not cumulatively met, and remained unconvinced that this was “the only way for the State to safeguard an essential interest against a grave and imminent peril.”



Photo by: Anne Paq



Photo by: Thomas Palmer

7.2 Israel's Legal Obligations under the International Court of Justice Findings

Israel has three primary legal obligations, which were outlined by the dispositive:

- Stop the illegal construction of the Wall in the OPT and dismantle the sections built to date.
- Undo all legislative and regulatory acts related to the construction of the Wall.

- Provide reparations for all damage caused by the construction of the Wall in the OPT.

To date, Israel has failed to meet any of these obligations and, in contrast, relentlessly persists with the construction of the Wall and its associated regime.

Litigating the Wall before Israeli Courts: An Empty Victory

A pattern of legal manipulation and deference to Israeli policies has been consistently exhibited by the Israeli High Court of Justice since the beginning of the occupation. Showing significant deference to the political sphere, the Court has at best balked on taking decisions with important ramifications towards the human rights situation in the OPT and, at worst, actively abetted the illegal activities being

undertaken by the Israeli authorities, through an active interpretive distortion of international law. This logic has continued with the legal petitions being taken to the High Court of Justice with regard to the construction of the Wall. Despite the clarity of the Advisory Opinion of the International Court of Justice, petitions taken to the High Court of Justice by Palestinians affected by the Wall have

most often resulted in the High Court of Justice appeasing the general policy of the defendant (the Israeli Government), while occasionally providing condescending empty victories for the petitioners.

On 21 June 2011, the State of Israel began implementing the High Court of Justice judgment of September 2007 requiring it to alter the Wall's route around the village of Bil'in. The new route required the return of 175 acres of farmland to the village. The incessant delays by Israel over the four year period led to another petition by the village in 2008 against the State's contempt for the rulings. This decision cannot be seen as a victory. The rerouting of the Wall legitimises the *de facto* annexation of 435 acres of Palestinian land, as the new section is not built on the Green Line as required under international law.

Around the same time, Israel also altered the Wall's

route in the vicinity of the Alfe Menashe settlement (near Qalqiliya) some five years after a decision on this matter was issued by the High Court of Justice in August 2007. The new route removed the Palestinian villages of Wadi Rasha, Ras a-Tira and M'arat a-Dab'a from the path of the Wall, thus reconnecting them to the rest of the West Bank. However, the village of Arab al-Ramadin al-Janubi remains encircled by the Wall.

On 22 August 2011, the High Court of Justice rejected an appeal against the route of the Wall by the village of Al-Walaja (Bethlehem Governorate). Permission to complete construction was granted after the Court ruled that significant security considerations determined the route, which could not be altered, thus encircling 2,400 villagers and appropriating 2,300 dunums of Palestinian land.

Photo by: Grazia Careccia

7.3 Third-State Party Responsibility

The International Court of Justice additionally outlined the legal obligations for the international community resulting from Israel's unlawful construction of the Annexation Wall in the OPT, including the following:

- Not to recognise the illegal situation resulting from the construction of the Wall in the OPT.
- Provide neither aid nor assistance in maintaining the situation created by its construction.
- All High Contracting Parties to the Geneva Conventions must uphold their obligations under Common Article 1 to ensure respect for the Conventions.

- The United Nations should consider what further action is required to bring an end to the illegal situation resulting from the construction of the Wall in the OPT.

These responsibilities are in addition to the primary category of legal obligations incumbent upon the members of the international community, even before the International Court of Justice findings. All High Contracting Parties must ensure Israeli compliance with international humanitarian law. Similarly, Third-State Parties carry duties and obligations to respect and to ensure respect for certain conventional provisions by other State parties, as well as to prosecute those responsible for grave breaches of the Fourth Geneva Convention and *erga omnes* obligations under customary international law.



Photo by: Fadi Arouri

7.3.1 Litigating the Wall before Foreign Courts: an Avenue for Justice

7.3.1.1 A Legal Challenge to UK Foreign Policy toward Israel

On 15 November 2006, Public Interest Law firm in cooperation with Al-Haq lodged a complaint against the UK government in the High Court of London on behalf of Palestinians against the construction of the Annexation Wall.²³ The case was filed following the blanket refusal of the Secretary of State for Trade and Industry to respond to the claimant's, Saleh Hasan, request for a justification of UK policy on arms-related sales to Israel.

²³ *R (Saleh Hasan) v Secretary of State for Trade and Industry*; Case No/9605/2006.

It was alleged that the UK's granting of export licenses for the sale of weapons to Israel breached both its own "Consolidated Criteria," as well as principles of international law reflected in the International Court of Justice Advisory Opinion. It argued the legality and rationality of the UK government's arms trade with Israel, in light of clear evidence that arms related products from UK-based companies were implicated in violations of international humanitarian law carried out by Israeli forces against Palestinians in the OPT. When reviewing its actions, the UK government was under legal obligations to uphold the International Court of Justice Advisory Opinion.

By holding the United Kingdom accountable for its failure to meet its obligations as a Third-Party State, Al-Haq sought improved respect for the Third-State Parties obligations for violations committed in the OPT.

On 19 November 2007, the UK High Court of Justice denied the claim of Saleh Hasan requesting the UK government to clarify its position on its arms-related licensing agreements with Israel.

The Court of Appeal, however, found there to be strategic questions with regard to the High Court's rejection of the claim and granted an appeal on 11 February 2008. On 25 November 2008, the Court of Appeal unfortunately determined that:

"[t]he subject matter is generally sensitive, such that unguarded publication is likely to be on occasions damaging. Parliamentary scrutiny, with a possibility of receiving information in closed session, is thus to be seen as preferable."

7.3.1.2 The Case Against Riwal: Corporate Complicity in International Crimes

In March 2010, Al-Haq instructed Dutch lawyers to submit a criminal complaint to the Dutch prosecutor alleging that a Dutch company, Riwal, was complicit in the commission of war crimes and crimes against humanity through its construction of the Annexation Wall and illegal settlements in the occupied West Bank. The complaint was lodged following months of investigation and the collection of documentation by Al-Haq and partner organisations on Riwal's activities in the OPT.

On 13 October 2010, the Dutch National Crime Squad conducted a search of Riwal's offices in the Dutch town of Dordrecht under their statutory powers of investigation. The Prosecutor has yet to make a decision as to whether to pursue the complaint further.

What is Riwal?

Riwal is a Dutch private rental company specialising in the field of vertical transportation. The company leases mobile cranes and aerial platforms to use in construction work. Up until December 2009, it had several operations across Europe and in Israel. In 2006, a Dutch film crew pictured a Riwal mobile crane constructing the Wall around the West Bank village of Hizma. A year later, in the summer of 2007, Riwal machines were seen building the Wall next to the West Bank village of Al-Khader, near Bethlehem. In 2009, Riwal aerial cranes were pictured constructing factories in the Ariel West industrial zone near the West Bank village of Bruqin.

Photo by: Fadi Arouri



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ABOUT AL-HAQ

Al-Haq is an independent Palestinian non-governmental human rights organisation based in Ramallah, West Bank. Established in 1979 to protect and promote human rights and the rule of law in the Occupied Palestinian Territory (OPT), the organisation has special consultative status with the UN Economic and Social Council.

Al-Haq documents violations of the individual and collective rights of Palestinians in the OPT, regardless of the identity of the perpetrator, and seeks to end such breaches through advocacy before national and international mechanisms and holding the violators accountable. The organisation conducts research; prepares reports, studies and interventions on the breaches of international human rights and humanitarian law in the OPT; and undertakes advocacy before local, regional and international bodies. Al-Haq also cooperates with Palestinian civil society organisations and governmental institutions in order to ensure that international human rights standards are reflected in Palestinian law and policies. The organisation has a specialised international law library for the use of its staff and the community.

Al-Haq is the West Bank affiliate of the International Commission of Jurists - Geneva, and is a member of the Euro-Mediterranean Human Rights Network (EMHRN), the World Organisation Against Torture (OMCT), the International Federation for Human Rights (FIDH), Habitat International Coalition (HIC), and the Palestinian NGO Network (PNGO).

