A WALL ON THE GREEN LINE?

Written by
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Courtesy of OCHA-OPT, Jerusalem
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This booklet was born out of two discussions held at the AIC’s Beit Sahour office among Palestinian, Israeli and international staff members. The decision was made to focus the present booklet on the question of the legitimacy of the Wall as such, particularly in the form of a ‘Green Line Wall’, and the ideas and opinions of the AIC staff members have been incorporated into the text. However, the principal input for this booklet comes from the author, Andreas Müller. The AIC would like to thank the Austrian Peace Service for supporting Andreas’ work with the AIC.

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Executive Summary

The advisory opinion of the International Court of Justice (ICJ) in The Hague, made public on 9 July 2004, is unequivocal in condemning the Wall that Israel has erected inside the Occupied Palestinian Territories (OPT). However, the ICJ's ability to address only the legal dimensions of the current Wall has increased the vacuum in accountability for the Wall's other, equally important spheres and impacts. The universe inhabited by the Palestinian communities directly affected by Israel's Wall is far from being exclusively legal; the Wall's disastrous consequences intrude into every arena of life including the familial, social, cultural, historical, economic and political. While condemning as illegal the sections of the Wall built inside the OPT, the ICJ's mandate precludes it from addressing the very legitimacy of Israel's policy to build a physical barrier between itself and its occupied Palestinian neighbors.

Since 2002 countless articles, reports and op-eds have been written on the Wall by international, Palestinian and Israeli organizations and activists. Nearly all focus on the intrusive route of the current Wall into the West Bank and its various devastating effects on the Palestinian population. However, no report has systematically and comprehensively studied the project of the Wall as such; in other words, the very notion of a Wall regardless of its route. Consequently, the vast majority of existing reports end up promoting – explicitly or implicitly – the 'alternative' of a 'Green Line Wall,' that is, a Wall relocated to the 1949 Armistice Line between Israel and Jordan. In so doing, international, Israeli and even some Palestinian statements and reports tacitly accept the basic legitimacy of the Wall phenomenon itself. The question emerges: why is it that so few critics of the Wall have been willing to publicly and unequivocally denounce this monstrous project as illegitimate in its totality irrespective of its route?

This booklet posits that many of the Wall's critics are reluctant to unambiguously challenge the security justification propounded by the Israeli Government, even if they do adopt a more moderate, 'security discourse light'. Furthermore, many critics of the current Wall do not doubt the effectiveness of a physical barrier in meeting the security needs of Israel. However, from a narrow legalistic approach they
effectively propose that the Wall must be moved to the Green Line. They consider the Green Line to be a de facto border within which Israel can exercise its sovereign rights and from which point they see only ‘proportional’ harm being done to the Palestinians in the OPT.

From the perspective of International Humanitarian Law and International Human Rights Law it is clear that the gravest breaches occur where the Wall transgresses the Green Line and penetrates the West Bank. However, the attempts of many of the Wall’s critics to propose a new route – or ‘less harmful’ Wall – represent what is termed in this booklet as ‘misguided constructivism’ which for all intents and purposes ends up undermining the much-needed rejection of the Wall project in its entirety.

Ironically, the Israeli Government itself does not recognize the Green Line as any type of border and is careful not to build the Wall along this route so as not to grant it official recognition; to do so would limit Israel’s own expansionist territorial aims of incorporating as much land from beyond the Green Line into Israel as possible. Furthermore, the Israeli Government has sought to elicit popular and international support for the current Wall by engaging in a duplicitous double play. While on the one hand claiming that the Wall is being built on its current route for maximum security, in other contexts Israel admits that the Wall’s route is designed to include as many settlers and settlements as possible. In fact, the security rationale of the Wall has been widely challenged, even within Israel’s own security and military establishment who claim that the winding and lengthy route of the current Wall is practically indefensible.

The unilateral building of a Wall, regardless of its route, must be viewed within the larger context of 37 years of Israeli occupation and colonialism in the West Bank and Gaza. Analyzed from this perspective, even a Green Line Wall would solidify the current closure and curfew policies; destroy what is left of the shattered Palestinian economy by cutting it off from the Israeli economy upon which the occupation has made it totally dependent; signal the explicit abandonment of any hopes for a just and negotiated end to the conflict; and undermine any possibility for a viable Palestinian state. Therefore, the only genuine critique of the Wall project must be an unequivocal rejection of a physical barrier and a call for the end of occupation and full equality and justice for all those living between the Mediterranean Sea and the Jordan River.
Introduction

Good fences make good neighbors. Former Israeli Prime Minister Ehud Barak was very much in favor of this proverb which he cited on many occasions and which inspired his 1999 election campaign motto “Peace through Separation: We are here, they are there.” The handy slogan was also to become the leitmotif for Barak’s plans for a physical obstacle between Israel and the West Bank. Although initially vehemently opposing the ‘fence’ under the Barak administration, Prime Minister Ariel Sharon has since adopted the extremely popular project and, after having reshaped it according to his political vision, started to materialize it.

As the huge dimensions and devastating consequences of the Wall project have become increasingly obvious, the opposition to it has grown, on the domestic and international levels. Many who, consciously or unconsciously, had sympathized with the seductive simplicity of conventional wisdom, got cold feet in view of the excessive nature of the Wall, massively intruding into Palestinian lives and cutting through Palestinian land.

Horrified by the multifaceted and far-reaching destructive impact of the Wall’s path through the West Bank, critics started to identify the route of the Wall as the core problem and demanded its relocation to the so-called Green Line, the Armistice Line of 1949. They felt that this was a more appropriate reference point for a less destructive trajectory which would cause only ‘proportional’ harm. This approach of focusing on the Wall’s trajectory and if not welcoming, at least accepting, a rerouted Wall, has proven to be very popular, and is reflected even in the official Palestinian position. Nasser al-Kidwa, the Permanent Observer of Palestine to the United Nations, made this comment before the International Court of Justice in The Hague: “If Israel wanted a Wall […] it could construct it on its territory and raise

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2 See in more detail Chapter 2.3.1. of report.
it to 80 meters rather than 8 meters if it wished.”

This common practice of focusing the critique of the Wall on its route, rather than on the justifiability of the phenomenon itself, represents what we term ‘a narrowing of perspective.’ In so doing, analysts and commentators overlook the fact that the erection of an obstacle of these dimensions is, independent of its location, a highly problematic and condemnable political project. Outcry against the Wall project in and of itself has seldom appeared; in its place is an impassioned debate on the Wall’s ‘legitimate route.’

The main aim of this booklet is to re-center the current anti-Wall debate away from a hypothetical discussion about a ‘Green Line Wall’ and towards a debate on the fundamental legitimacy of Israel’s construction of a Wall. The booklet is divided into three chapters. The first chapter provides an overview of the Wall phenomenon as it currently stands (Chapter 1.1.). For those already familiar with it, this brief presentation of the Wall’s main features and its multiple impacts on different spheres of life may not provide much new information; those who are interested in more information on specific aspects of the Wall should consult the bibliography at the end of this booklet. The second half of Chapter 1. will offer an analysis of the current ‘anti-Wall discourse,’ the main positions within it and their basic structure. From there a ‘standard anti-Wall argument’ is extracted, presenting a sort of common denominator for the existing critiques of the Wall.

This will be, on the one hand, the basis for challenging and rejecting

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3 Oral Statement by Dr. Nasser Al-Kidwa, Ambassador and Head of Palestine Delegation to the oral proceedings of the International Court of Justice, 23 February 2004, nr. 19.
4 There are myriad names for the Wall including Security or Separation Fence/Barrier/Wall, Anti-terrorist Fence or Apartheid/Transfer Wall. Notwithstanding the fact that official projects claim that some 95% of the whole construction will consist of a fence system, and only 5% of a (concrete) wall in the strict sense of the word (see Chapter 1.1.2.), the dimensions of the project simply prohibit the use of the term ‘fence’ which, as Meron Rappaport (A Wall in their Heart, Yedioth Aharonoth, 23 May 2003) puts it, is “too paltry to describe the matter.” This booklet will use the term ‘the Wall’ – as the UN General Assembly and the International Court of Justice are doing in their documents (see Chapter 1.2.1.). We deliberately abstain from combining it with qualifications such as ‘separation,’ ‘apartheid’ or ‘transfer.’ All of these terms unmask important features of the Wall project, but at the same time direct attention to one characteristic while neglecting others. The ‘Wall phenomenon’ is a very complex one, with multiple inputs and impacts and therefore we prefer the use of a non-specific term.
the 'security only' rationale put forward by the Israeli Government in order to justify its current Wall project (as done in Chapter 2.1.). At the same time, it is pivotal for criticizing a certain 'narrowing of perspective' within the anti-Wall debate. In the overhasty acceptance of the legitimacy of the Wall's construction, there is a tendency to accept the 'lesser evil' of relocating the Wall to the Green Line as a sort of 'viable compromise' or 'balanced approach' to the current Wall project (as expounded in Chapter 2.2.).

It is exactly at this point that the booklet's core argument unfolds around a fundamental analysis and critique of the 'Wall approach' as such. First of all, the widespread assumption that a 'Green Line Wall' would correct all the legal defects of the current 'excessive' Wall project is questioned (Chapter 2.3.). Secondly, even if a Wall on the Green Line could be considered legal – as many commentators suggest – the very notion of a physical separation of the West Bank from Israel must nevertheless be considered illegitimate from a socio-economic (Chapter 2.4.) and political (Chapter 2.5.) perspective. The Wall project, independent of its route, is once again a unilateral Israeli measure used to strengthen its control and colonization of the Occupied Palestinian Territories (OPT), to perpetuate the state of dependency of the Palestinian economy and to create facts on the ground to further influence the political reality between the Mediterranean Sea and the Jordan River according to the visions of only the occupying power.

When the Wall project is viewed as the most recent manifestation of a new thrust of unmasked unilateralism in Israeli policy towards the OPT, it is just a short step to the booklet's main conclusion in Chapter 3.: since the whole Wall project is illegitimate, every attempt to be 'constructive' in the sense of seemingly cobbling together a 'viable compromise' and proposing a 'less harmful' and thus 'acceptable' route undermines the much-needed rejection of the Wall project in its entirety. In other words, every shortsighted attempt to justify a 'better' version of the Wall project provides, intentionally or not, a legitimacy which it does not deserve. Such an attitude – which we call 'misguided constructivism' – is quite widespread within the predominant anti-Wall discourse.

To counter this tendency, we propose that an authentic critique of the current Wall project – and in that sense the most constructive reaction towards it – must focus on the rejection of the project in and on itself,
with no obligation whatsoever, particularly not for civil society activists and human rights organizations, to draft an alternative solution in terms of policy prescription. This approach does not imply mere rejectionism, but rather commits critics to address the root causes of the conflict and demand an end to the longstanding Israeli occupation and the realization of full equality and justice as indispensable presuppositions for peace and security for all people living between the Mediterranean Sea and the Jordan River.

Barak’s favored saying is regularly attributed to Robert Frost. An honest reading of his poem *Mending Wall*, however, makes manifest the American poet’s reservations vis-à-vis the tempting simplicity of conventional wisdom. The poem thoughtfully continues:

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Before I built a wall I’d ask to know
What I was walling in or walling out,
And to whom I was like to give offence.
Something there is that doesn’t love a wall,
That wants it down.6
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6 Ibid., verses 33-37.
1. The 'Route of the Wall discourse'

1.1. The phenomenon of the Wall

1.1.1. The Wall project

*History* – Since 1996 the Government of Israel (GOI) has considered erecting a barrier to physically separate the West Bank from Israel. After limited attempts by the Barak Government to implement the idea, the successive government under Prime Minister Ariel Sharon adopted the project and established a steering committee, in June 2001, headed by National Security Council director Uzi Dayan. The committee's mandate was to formulate a set of measures “to prevent Palestinians from infiltrating into Israel” across the *seam area* (the strip of land extending along both sides of the Green Line). On 14 April 2002, the Ministerial Committee for Security Matters, the so-called 'Security Cabinet,' decided to establish a permanent barrier in the seam area to “improve and reinforce the readiness and operational capability in coping with terrorism.”7 At the same time the Seam Area Administration, headed by the director general of the Ministry of Defense (MOD), was created.

*Phase A* – After the Seam Area Administration had finished its plans for the Wall's first section, they were approved in principle by the GOI on 23 June 2002,8 one week after the official launch of construction, including extensive land requisition and clearing of land and structures along the envisaged route.9 According to the decision, the precise and final route would be determined by the Prime Minister and the Minister of Defense; in the event of a dispute over the route, the Security Cabinet would resolve the matter. On 14 August 2002, the Security Cabinet eventually approved the final route for Phase A of the construction, consisting of two parts: one running from the Palestinian

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7 Government decision 64/B of 14 April 2002.
8 Government decision 2077 of 23 June 2002.
town of Jalbun\textsuperscript{10} at the northeastern edge of the West Bank through Salem to the settlement of Elkana in the south; and the other providing for Wall sections in the north and south of Jerusalem, the beginning of the so-called \textit{Jerusalem envelope}. By the end of July 2003, the MOD announced the completion of the first stage of construction, ultimately including 123 km in the northern West Bank as well as 19.5 km around Jerusalem.

\textit{Phase B} – In December 2002, Prime Minister Ariel Sharon and Defense Minister Shaul Mofaz approved another part of the Wall – \textit{Phase B} – running 45 km east from Jalbun through the Jezreel Valley and the Gilboa mountains towards Beit Shean.\textsuperscript{11} The work began immediately afterwards in January 2003\textsuperscript{12} and is near completion.\textsuperscript{13}

\textit{The Wall's full route} – In October 2003, the GOI approved the full trajectory of the Wall.\textsuperscript{14} What is merely described by the MOD as a “continuous land based obstacle stretching from Beit Shean (North) to Arad (South)”\textsuperscript{15} is a synonym for a 622-km-long\textsuperscript{16} construction –

\begin{itemize}
  \item \textsuperscript{10}For all geographical denominations, the report adopts the transcriptions as used in the map \textit{West Bank Closures – March 2004} published by the United Nations Office for the Coordination of Humanitarian Affairs – Occupied Palestinian Territory (OCHA-OPT) and reprinted in the middle of the booklet.
  \item \textsuperscript{11}Amos Harel, For The Security Fence, Ha'aretz, 5 December 2002.
  \item \textsuperscript{12}Mazal Mualem/Amos Harel, Work Starts on 45-Kilometer Fence from Salem Checkpoint to Gilboa, Ha'aretz, 28 January 2003.
  \item \textsuperscript{13}See B'Tselem – The Israeli Information Center for Human Rights in the Occupied Territories, Statistics on the Separation Barrier, March 2004, Length and Status of Barrier Sections \textit{[later referred to as B'Tselem, Statistics, March 2004, …]} as well as United Nations Office for the Coordination of Humanitarian Affairs – Occupied Palestinian Territory (OCHA-OPT) and United Nations Refugee and Works Agency (UNRWA), The Impact of the Barrier on West Bank Communities, Construction of the Barrier, Access and its Humanitarian Impact. An update to the Humanitarian and Emergency Policy Group (HEPG) and the Local Aid Coordination Committee (LACC), April 2004, p. 3 \textit{[later referred to as UN Update, April 2004, …]}.
  \item \textsuperscript{14}Government decision 883 of 8 October 2003. Two weeks later, on 23 October 2003, the MOD published a map on its website showing the already completed as well as planned sections of the Wall; the now available version was last updated on 30 June 2004 (www.securityfence.mod.gov.il/Pages/ENG/route.htm resp. www.seamzone.mod.gov.il/Pages/ENG/route.htm). Due to pressure at the international and national levels, the succeeding versions of the official Wall projection show an (albeit very limited) trend towards a re-routing of the Wall towards the Green Line (see note 36) and, therefore, towards a certain shortening of the Wall's overall length (see note 16).
  \item \textsuperscript{15}See website of the Ministry of Defense (note 14), subheading “Continuity.”
\end{itemize}
approximately twice the length of the entire Green Line (315 km) – surrounding and sealing off the northern, western and southern West Bank. Thus, the above-mentioned Phases A and B will be joined by a section running from the southern end of Phase A construction at Elkana settlement to Ofer Military Camp and connected to the Jerusalem envelope; from the Har Gilo settlement in the south of Jerusalem the Wall will continue to the settlement of Karmel near the Green Line south-east of Hebron. By June 2004, the completed sections of the Wall already amounted to 185 km.

The Jordan Valley Wall – A March 2003 map, released by the IDF, shows an additional segment of the Wall running from the northeastern West Bank community of Jalbun 17 km south to Tayasir and Al 'Aqaba villages. In a similar way, the southern part of the projected

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16 See OCHA-OPT, Preliminary Analysis of the Humanitarian Implications of Latest Barrier Projections, 8 July 2004, p. 1 [later referred to as OCHA Update, July 2004, ...]. The calculations are complicated by the fact that there is still no final route for the Wall. Since the beginning, the official projections have constantly changed; not only have certain sections of the Wall been relocated for a variety of reasons, but whole components of the project (e.g. the establishment of secondary or depth barriers) have been modified or even given up over the course of time. This may explain the considerable gaps between the different estimations as well as the decreasing trend in assessing the Wall's length. The website of the Israeli Ministry of Foreign Affairs (MFA) (http://securityfence.mfa.gov.il/mfm/web/main/missionhome.asp?MissionID=45187&Concept and Guidelines, A Fence, not a Wall) and the Report of the UN Secretary-General prepared pursuant to General Assembly resolution ES-10/13, 24 November 2003, nr. 6 [later referred to as Report of the UN Secretary-General, November 2003, ...] speak of 720 km; the Report of the UN 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/Add.1, 27 February 2004, nr. 8 [later referred to as Dugard Report, February 2004, ...] mentions 687 km; B'Tselem, Statistics, March 2004, Length and Status of Barrier Sections expects an overall length of 660 km; and the UN Update, April 2004, p. 2 estimates the total Barrier to extend to 630 km.

17 OCHA Update, July 2004, p. 2.
18 Report of the UN Secretary-General, November 2003, nr. 15 and 16.
20 See OCHA-OPT, The West Bank Wall – Humanitarian Status Report, Northern West Bank Trajectory, July 2003, p. 11 [later referred to as OCHA, Humanitarian Status Report, July 2003, ...]. There was a rumor that the construction of the segment would be suspended due to disagreement between the Defense Ministry and the Attorney-General over legal and bureaucratic issues (see No way to build a fence, Yedioth Aharonoth, 3 July 2003), and in the actual MOD map (see note 14) the pertinent section does not appear anymore. Nevertheless, the IDF issued
barrier ends at the Karmel settlement, just above the Jordan Valley. This has been considered “possible evidence of a second 'eastern barrier' reportedly under consideration (although not yet approved nor budgeted).”21 This new Wall would run “all along the so-called Allon Road, trailing the West Bank's eastern foothills next to the Jordan Valley down towards the south.”22 Due to unanimous international opposition (importantly including the US), the project of an 'eastern fence' has been abandoned for the time being.23

1.1.2. The appearance of the Wall

Components of the Barrier24 – The innocent term 'fence' in all official Israeli documents is used to disguise its very nature.25 In many places, the 'fence complex' consists of a 3 meters high26 fence with electronic sensors giving warning of attempts to cross it; a service road along the east side of the fence, bordered by a ditch, up to 4 meters deep; and a barbed- or razor-wire fence. West of the main fence is an asphalt two-lane patrol road, a trace road (a strip of sand designed to detect footprints) and another barbed-/razor-wire fence. The whole complex has an average width of 50-70 meters, increasing to as much as 100

21 The Impact of Israel's Separation Barrier on Affected West Bank Communities, A Follow-Up Report to the Humanitarian and Emergency Policy Group (HEPG) and the Local Aid Coordination Committee (LACC), Update Number 1, 31 July 2003, nr. 3 [later referred to as HEPG/LACC Report, July 2003, …] citing in particular Aluf Benn, Defense Ministry Wants Fence Moved Deeper Into West Bank, Ha'aretz, 23 March 2003.
22 The Palestinian Environmental NGOs Network (PENGON), Stop the Wall in Palestine. Facts, Testimonies, Analysis and Call to Action, June 2003, p. 148 [later referred to as PENGON, Stop the Wall, …]..
23 Colonel (res.) Dan Tirza, considered one of the closest advisers to PM Sharon, recently stated that “the State of Israel will not build a separation fence in the eastern part of the West Bank because of the diplomatic damage it is likely to endure as a result” (see Amnon Barzilai, PM adviser: no plans for 'eastern fence' in West Bank, Ha'aretz, 10 March 2004).
24 See B'Tselem – The Israeli Information Center for Human Rights in the Occupied Territories, Behind The Barrier. Human Rights Violations As a Result of Israel's Separation Barrier, Position Paper, April 2003, p. 3 [later referred to as B'Tselem, Position Paper, April 2003, …].
25 See note 4.
26 See MFA website (note 16), Concepts and Guidelines, A Fence, not a Wall.
THE PHENOMENON OF THE WALL

meters in some places. In other places, especially in urban areas such as Jerusalem, Bethlehem, Qalqiliya and Tulkarm, the electronic fence is replaced by a mammoth concrete wall up to 8-9 meters high. While according to the Ministry of Foreign Affairs this will 'only' be the case in less than 3% of the planned overall route, concrete walls cover about 12 km of the 185 km already built, i.e. 6.5%.

The Wall and the 'Green Line' – Considerable parts of the Wall's already completed Phase A in the northern West Bank run relatively close to the Green Line, although within Palestinian territory. However, in many places the Wall deviates up to 7.5 km from the Green Line in order to incorporate several settlements (comprising a total of 19,000 settlers) on the 'Israeli' side of the barrier. The approximately 5,300 Palestinians also brought on the Wall's western side find themselves in a 'closed military zone,' requiring residency permits to live on their own land, not allowed to cross the Green Line to the west and cut off from the rest of the West Bank to the east. Taking into account already erected depth barriers and the isolation of Qalqiliya, this first segment of the Wall alone leaves some 56,000 Palestinians in enclaves.

Whereas Phase B, also located in the northern West Bank, seems to closely follow the Green Line, the situation is completely reversed for the other parts of the Wall. The section connecting Elkana settlement to the Jerusalem envelope will deviate up to 22 km from the Green Line to bring several large settlements (e.g. Ari'el, Imanu'el, Kdumim)

27 Report of the UN Secretary-General, November 2003, nr. 9 and B'Tselem, Position Paper, April 2003, p. 3.
29 MFA website (note 16), Concepts and Guidelines, A Fence, not a Wall. In another document, the MFA already concedes that the concrete wall sections will make up 5% of the total; see http://securityfence.mfa.gov.il/mfm/web/main/missionhome.asp?MissionID=45187&, The Anti-Terrorist Fence – An Overview: A comprehensive summary of the major issues concerning the fence (download), nr. VI.
30 See UN Update, April 2004, p. 2 as well as Report of the UN Secretary-General, November 2003, nr. 11.
31 Report of the UN Secretary-General, November 2003, nr. 7.
32 The main intrusions of the Wall are located between 'Anin and Qaffin in the north and particularly all around the Palestinian town of Qalqiliya whose 40,000 inhabitants are almost completely disconnected from the rest of the West Bank (for more details see UN Update, April 2004, p. 4-6).
33 Report of the UN Secretary-General, November 2003, nr. 12.
34 Ibid., nr. 12.
and the approximately 52,000 settlers of the 'Ariel salient' on the western side of the Wall. Additionally, it provides for two depth barriers that together create enclaves of some 117,000 dunums (29,000 acres) with 76,000 Palestinian people from 25 communities isolated from the West Bank. In a similar way, the southern part of the Wall will cut several kilometers into the West Bank along its entire route in order to incorporate above all the Gush Etsyon settlement block and the settlement of Efrata, but also a series of smaller settlements in the southwest and south of Hebron.

In total, only 15% of the Wall’s total length will follow the Green Line.

Jerusalem – From the very beginning of the Wall project’s realization, Jerusalem has been directly affected. The already completed Phase A includes two sections totaling 19.5 km in length in the city's proximity.

35 1,000 dunums corresponds to 1 square kilometer (1,000,000 square meters) or approximately 250 acres.
36 UN Update, April 2004, p. 6 as well as Report of the UN Secretary-General, November 2003, nr. 15. The abandonment of these two depth barriers in the most recent MOD map of 30 June 2004 (see note 14) explains most of the considerable drop in the assessment of people and land affected by the Wall (see Chapter 1.1.4.) from the previous projections (see, e.g. the numbers in B’Tselem, Statistics, March 2004) and after the new map’s publication date (see OCHA Update, July 2004, p. 4). While reducing one of the Wall's most excessive sections, the cutbacks from the original project should not be overestimated; furthermore, one must not forget that approximately 43,900 Palestinians residing in communities between At-Tira and Beit Sira northwest of Jerusalem will now be surrounded by the Wall from 'only' three sides, but their access through the fourth side to the north is blocked by Highway 443, a four-lane highway on which Palestinians are not allowed to travel unless they hold a specific permit (see OCHA Update, July 2004, p. 3).
37 Report of the UN Secretary-General, November 2003, nr. 16.
38 See UN Update, April 2004, p. 2 as well as OCHA Update, July 2004, p. 2. As previously mentioned (see note 14), the most recent MOD map shows a re-routing of certain sections of the Wall towards the Green Line; this means that the part of the Wall following the Green Line rises from 10% in older projections to 15% now. For a comparison of the original Wall projection of October 2003 and the most up-to-date one of June 2004 see OCHA Update, July 2004, p. 5.
39 The Impact of Israel's Separation Barrier on Affected West Bank Communities, A Follow-Up Report to the Humanitarian and Emergency Policy Group (HEPG) and the Local Aid Coordination Committee (LACC), Update Number 2: The 'Jerusalem Envelope', 30 September 2003, particularly nr. 11-14 [later referred to as HEPG/LACC Report, September 2003, …] as well as OCHA-OPT, The West Bank Barrier – Humanitarian Status Report, The Jerusalem Wall and Humanitarian Access, December 2003 [later referred to as OCHA, Humanitarian Status Report, December 2003, …], a report devoted especially to the situation in Jerusalem.
north (towards Ramallah) and south (towards Bethlehem) as well as a 1.5-kilometer concrete wall in eastern Jerusalem (Abu Dis).\(^{40}\) The remaining parts which are hurriedly being constructed around the city\(^{41}\) will close the existing gaps and help realize the plan for the so-called *Jerusalem envelope* which strives for physical separation of metropolitan Jerusalem from the rest of the West Bank. Within the Jerusalem envelope there will be at least two enclaves which will be totally surrounded by the Wall.\(^{42}\)

Since the Green Line runs through the city of Jerusalem, the whole Wall project in the Jerusalem area is massively transgressing the Green Line and in several cases even transcends the eastern municipal boundary as set by Israel itself when annexing East Jerusalem.\(^{43}\) Thus the Jerusalem Wall, whose length will amount to some 75 km,\(^{44}\) will enclose annexed East Jerusalem including the settlement ring around the city (and some 180,000 settlers\(^{45}\) and somewhat subsume these areas into West Jerusalem. At the same time, important Palestinian neighborhoods with traditionally close links to Jerusalem (in areas such as employment, education, and health facilities) where the majority of inhabitants often hold Jerusalem IDs\(^{46}\) are cut off from the cultural, economic, religious and social capital of the West Bank.\(^{47}\) In the eastern section of the Jerusalem envelope a 2.3-kilometer hole will remain in order to guarantee the inclusion of the Ma’ale Adumim settlement and its 32,000 inhabitants\(^{48}\) in this envelope and, through this, territorial contiguity to the Jordan Valley settlements.

1.1.3. A track of devastation

*Land seizure* – The Wall project, one of the largest infrastructure pro-

\(^{40}\) Report of the UN Secretary-General, November 2003, nr. 14.
\(^{41}\) UN Update, April 2004, p. 6-10.
\(^{42}\) The Bir Nabala enclave in the north of Jerusalem (15,000 residents in 5 villages) as well as the Al Walaja enclave (1,500 residents) in the southwest.
\(^{43}\) Report of the UN Secretary-General, November 2003, nr. 14.
\(^{44}\) See B’Tselem, Statistics, March 2004, Length and Status of Barrier Sections.
\(^{45}\) Ibid., Settlements West of the Main Barrier.
\(^{46}\) E.g. Kafir ‘Aqab, Ar Ram, Dahiyat al Bareed and Shu’fat refugee camp in the north, Ras al ‘A’Amud in the east or Wadi Hummus in the southeast of Jerusalem.
\(^{48}\) Amnon Barzilal, PM adviser: no plans for ‘eastern fence’ in West Bank, Ha’aretz, 10 March 2004.
jects in Israeli history, leaves a 'footprint' of 28,000 dunums (7,000 acres) of land (or 0.5 % of the whole West Bank surface) confiscated for the Wall’s construction. In the Jerusalem area alone, the Israeli Government has seized over 2,700 dunums (670 acres) of Palestinian land for construction; nearly all of it either privately owned by Palestinians or belonging to churches or Palestinian villages.

Expropriation – Though formally the land obtained for the building of the Wall is seized by temporary military orders valid until December 2005, the vast scope of construction, as well as previous experience with the handling of seizure orders renewable without limitation, leave few doubts about the permanent character of the confiscation, thus amounting to hidden expropriation. Furthermore, the serious problems with the orders’ mode of delivery and, even more, the procedures of review unmask the legal guise which the expropriation procedures seek to retain.

49 Meron Rappaport, A Wall in their Heart, Yedioth Aharonoth, 23 May 2003; see also OCHA, Humanitarian Status Report, July 2003, p. 2. According to the Head of the Knesset Economics Committee the construction costs are expected to total US$ 3.4 billion, that is US$ 4.7 million per kilometer, with the costs for maintenance not taken into consideration (see OCHA Update, July 2004, p. 1). The calculation is based on an anticipated length of 720, not 622 km as assumed by the OCHA report itself (see note 16).

50 See B’Tselem, Statistics, March 2004, Land Affected by the Barrier.


52 Report of the UN Secretary-General, November 2003, nr. 17.

53 The orders – often written in Hebrew only, with no Arabic translation – become effective on the date of their issue and are valid even if they are not delivered to the property owners (not to mention the possibility of issuing military orders for requisition with retroactive effect). If delivered at all, the orders are often not given to the property owners themselves, but are left on the property or given to village representatives. Many land owners become aware of requisition orders only after construction has begun.

54 The most important deadline for filing an objection is one week after the orders’ issue; after that it loses its deferring effect, meaning that construction can continue in spite of the objection. Filing appeals is expensive, requiring the hiring of lawyers and in some cases of land surveyors to draft a map; additionally, their work is hampered by the movement restrictions in the OPT. As the military Appeals Committee is in charge of the objections, the army acts as both the issuing and the reviewing body; moreover, the Military Commander has the authority to reverse a recommendation by the Appeals Committee.

55 For a detailed analysis of the process of land requisition see particularly The Impact of Israel’s Separation Barrier on Affected West Bank Communities, Report of the Mission to the Humanitarian and Emergency Policy Group (HEPG) of the Local Aid Coordination Committee (LACC), 4 May 2003, p. 16-19 [later referred to as HEPG/LACC Report, May 2003, …], HEPG/LACC Report, September 2003,
Destruction – The land requisitioned for the Wall’s construction thus far has been razed which has led to large-scale destruction of fields, assets and infrastructure including orchards, crops, green houses, olive trees, and road and water networks. The Wall has been built with no regard for the environment, fertile agricultural land has been reduced to wasteland and beautiful hills and valleys have been scarred by the Wall.

1.1.4. Dividing land and people

Land affected – The Wall’s construction will leave some 640,000 dunums (158,000 acres) or 11.5% of the West Bank (excluding East Jerusalem) in closed areas between the main barrier and the Green Line – 490,000 dunums (120,000 acres) – or in enclaves completely surrounded by the Wall – 150,000 dunums (38,000 acres). Including East Jerusalem, approximately 770,000 dunums (190,000 acres) or 13.1% of the entire West Bank will lie between the Wall and nr. 50-60 (in particular for the Jerusalem area) as well as B’Tselem, Position Paper, April 2003, p. 9f. and OCHA, Humanitarian Status Report, December 2003, p. 8.


It is estimated that some 100,000 fruit and olive trees have been damaged or uprooted for the Wall’s construction (see HEPG/LACC Report, May 2003, p. 4 as well as PENGON, Stop the Wall).

See HEPG/LACC Report, May 2003, p. 12 speaking of the destruction of 15 km of agricultural roads (in the first phase of the Wall’s construction alone).

During the first phase of construction at least 30 km of water networks were destroyed (see HEPG/LACC Report, May 2003, p. 12 as well as PENGON, Stop the Wall).

See Dugard Report, February 2004, nr. 11.

The main enclaves – the OCHA Update, July 2004, p. 2 speaks of 11 separate enclaves – are built close to Qalqiliya (in order to bring the Israeli settlement of Alfe Menashe on the Wall’s western side) as well as in the west and northwest of Ramallah and around Jerusalem (for a more detailed analysis of the different enclaves see UN Update, April 2004, p. 4-7 and 9-10). The OCHA Update, July 2004, p. 1f. reports that an additional 16,000 dunums (4,000 acres) are already located in two semi-enclaves (Habla and Az Zawiya) where the land is totally encircled by the Wall, but movement in and out of these areas is currently unrestricted along one route.

See OCHA Update, July 2004, p. 1 and 4. B’Tselem, Statistics, March 2004, Land Affected by the Barrier which is still taking into account the depth barriers creating two major enclaves (see note 36) estimates that some 845,000 dunums (210,000 acres) or 15.1% will be cut off from the West Bank.
the Green Line. These figures, based upon official Israeli Government projections, suffice to give an idea of the huge and far-reaching effects which emanate from the construction of the West Bank Wall, not even taking into account the already envisaged, although currently postponed, project of a Jordan Valley Wall which would further aggravate the situation.

**Palestinian Population affected** – The land to be cut off from the West Bank by the Wall’s construction is home to approximately 108,600 Palestinian people in 68 villages and towns (excluding the communities in East Jerusalem). Of these, 46 communities with some 16,300 inhabitants will fall in the closed military zone between the Wall and the Green Line, and about 76,900 people in 17 communities will live in enclaves totally surrounded by the Wall; an additional 15,400 people in 5 communities live in so-called semi-enclaves. The Israeli human rights organization B’Tselem – The Israeli Information Center for Human Rights in the Occupied Territories estimates that more than 875,000 people (in 206 communities), i.e. 38% of the total West Bank Palestinian population, will be directly affected by the Wall. Of this total, 263,000 people will live trapped between the Wall and the Green Line or in enclaves created by the Wall; 210,000 Palestinian residents of Jerusalem will be cut off by the Wall from the rest of the Palestinian population; and more than 400,000 Palestinian people living in 102 communities lying immediately east of the Wall will need to cross it to access farmland, jobs or health services.

**Settlements** – The route of the Wall will place more than 320,000 settlers, which is almost 80% of the total West Bank settler population (including East Jerusalem), on its western side. This figure includes 12 East Jerusalem settlements with 180,000 settlers and 54 (out of the 124 recognized) settlements in the West Bank with some 143,000 settlers (63% of the West Bank settler population, excluding East Jerusa-
Most of the settlers will be located in the closed military zones between the Green Line and the Wall, where they will live with some 16,000 Palestinians, the two being subject to totally different legal regimes.

1.1.5. Preventing access

Different residency regimes – On 2 October 2003, the Army issued a series of Military Orders declaring the 'seam zone' between the Wall and the Green Line in the areas where the Wall is already completed (from Mas-ha to Jalbun) a 'closed zone' and establishing a sophisticated and highly discriminatory permit system for its residents. “Israelis” – according to Art. 1 of the first order every Israeli citizen as well as all people “entitled to immigrate to Israel according to the Law of Return” (i.e. non-Israelis of Jewish descent) – are generally and totally exempt from the effects of the seam zone’s closure (Art. 4 para. 1 lit. a) and can freely move in and out whether or not they live there. All other persons – meaning above all the Palestinians – are only allowed to enter the closed area and stay in it after having obtained a special permit (Art. 4 para. 1 lit. b).

The pertinent orders affect some 73,000 dunums (18,000 acres) with approximately 5,000 Palestinian people living there in a dozen communities. Since the entire area west of the Wall is for them a 'closed military zone,' they have to apply for special green-colored permits (valid for up to six months) in order to remain living in their own homes and their private vehicles must also be registered. In a similar way, every 'visitor,' i.e. health worker, teacher, merchant,

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67 See Report of the UN Secretary-General, November 2003, nr. 8 as well as B'Tselem, Statistics, March 2004, Settlements West of the Main Barrier. The OCHA Update, July 2004, p. 4 counts 140,200 settlers in 56 West Bank settlements (excluding East Jerusalem).

68 According to the OCHA Update, July 2004, p. 4, 101,700 settlers will be in the closed areas between the Green Line and the Wall and 38,500 settlers will live in the enclaves created by the Wall.


70 Report of the UN Secretary-General, November 2003, nr. 19 as well as UN Update, April 2004, p. 13.

71 For details about the green permit system see UN Update, April 2004, p. 13f. including a brief chronology of its development.
international aid worker, is required to apply for a green permit. In principle, these are valid for just one gate; the use of other gates is only allowed in cases of emergency.72

The Gate system – Access to closed military zones and enclaves is, at least theoretically, guaranteed by a network of gates. Along the completed sections of the Wall there are 53 gates: 15 of them were reported to be generally open to permit holders; the remaining 38 are currently closed.73 But even concerning the 'open' gates, one has to distinguish between different types of gates with differing opening hours.74 School gates are often opened only twice daily, coinciding with school hours, while agricultural gates are reportedly open two to five times a day (for a duration of a few minutes to two hours). Access through the gates is regularly dependent on the holding of an appropriate green permit, as mentioned, valid for only one gate. Status and opening time of the gates is subject to change without notice.

Fragmented livelihoods – The combination of the Wall and the restrictive permit and gate system presents a catastrophe for thousands of people beyond the already disastrous consequences in terms of immediate destruction, as described above. With each step of construction, the number of people directly affected expands as their access to land and water, jobs and markets, educational and health services, and family members is seriously hampered and often made impossible. So far, there have been no known studies by the Israeli Government on the impact of the Wall on Palestinian livelihoods;75 however, there is much evidence on the ground of the devastating and to a large extent irreparable impact of the Wall project on numerous lives.76

72 OCHA Update, July 2004, p. 3.
73 See UN Update, April 2004, p. 10 and 12. Gates are considered 'closed' if they have not been open for Palestinian use during the reporting period (six weeks). The IDF, however, records 73 gates, 45 for the use of the Palestinian population (15 open for 24 hours for Palestinians with permits, 16 according to set hours, 12 seasonally for agricultural use and 2 for bus passage for school children); see ibid., note 18.
74 For an account of the different gate types and a detailed description of the existing gates and their administration see ibid., p. 10f.
75 OCHA Update, July 2004, p. 3.
76 See the indications in the Report of the UN Secretary-General, November 2003, nr. 23 and Dugard Report, February 2004, nr. 19ff.
1.2. The emergence of the 'anti-Wall discourse'

While the initial construction of the Wall, which began in June 2002, met with relative silence, the Wall project evoked a steadily growing negative reaction in 2003. Extensive protests were launched, demonstrations took place, peace camps (e.g. near Jenin, Qalqiliya, Deir Ballut) were established and the regional and international coalition against the Wall was mobilized. For many international solidarity activists traveling to the region, visiting the Wall has become an integral part of their trip, to such a degree that one can describe it as a sort of 'Wall tourism.'

The activism on the ground and grassroots initiatives against the Wall have been accompanied and supported by a remarkable amount of documentation, reflection and criticism. The rising awareness of the phenomenon of the Wall and the increased media interest directed towards it (on the domestic, but especially on the international level) reached a pinnacle with the Wall case before the International Court of Justice in The Hague in February 2004. There have been innumerable newspaper articles, TV documentaries and reports highlighting the different aspects of the project as well as its impacts on all spheres of life for those living in its shadow (including employment, agriculture, health, education, family ties and water resources).77

The predominant anti-Wall discourse, though diverse and multifaceted, runs along similar lines. The core of the reaction, on the level of activism as well as written critiques, has concentrated – for quite understandable reasons – on the serpentine, land-grabbing route of the Wall and its most harmful impacts. As a result the main features of the emerging anti-Wall discourse can be characterized as follows:

- In view of a monstrous construction as real as the Wall the efforts have to be directed against the actual project and the multitude and complexity of its traits and consequences. There is no sense in fighting a hypothetical project: the challenge is the construction of the Wall as it is planned and realized, not 'attacking windmills.'

77 The bibliography attached to the present booklet tries to give at least a synoptic view of the extensive literature concerning the Wall phenomenon.
The most disastrous and far reaching effects of the Wall project are due to its snake-like route of more than 600 km, almost doubling the total length of the Green Line of 315 km (220 miles). The de facto land annexation (through land seizure and isolation of land west of the Wall or between the Wall and the depth barriers), destruction of infrastructure and destruction or isolation of resources, as sketched out in Chapter 1.1. and extensively analyzed in the pertinent reports, is closely linked to the permanent and systematic penetration of the Wall’s route into West Bank territory. Thus, it is especially this element of the Wall project which merits the fiercest criticism and the most vehement struggle.

The Green Line (the Armistice Line of 1949), without being an internationally recognized border or marking an already existing physical obstacle, nevertheless constitutes the delimitation of Israel and the occupied West Bank and is thus considered to be the decisive benchmark for distinguishing between the Israeli and Palestinian areas.

In trying to integrate what is often called 'legitimate security interests' (i.e. the protection of Israeli civilians against terrorist attacks) into the argument, one response has been to categorically reject the current Wall plans, but to propose an alternative route for the erection of a physical barrier. The assumption here is that a physical barrier may prevent terrorist attacks but that the route must be along the Green Line. The proponents of this so-called 'balanced approach' argue that the new route will take into account the interests of both sides and therefore lead to a (if not sustainable, at least reasonable) compromise for Israelis and Palestinians.

1.2.1. The main positions

As mentioned above, the anti-Wall discourse is, to a large degree, focused on the question of the route of the Wall, taking the Green Line as the privileged point of reference from which the legitimacy or illegitimacy of the project is measured. A short selection of typical

References to some of the most important reports may be found in the Bibliography.

See Chapter 2.3.3.
positions (on the international as well as on the domestic level) may serve as examples for this kind of reasoning.

The **General Assembly of the United Nations (GA)** called on Israel to “stop and reverse the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem, which is in departure of the Armistice Line of 1949.” In the same spirit, the GA drafted its request for an advisory opinion from the **International Court of Justice (ICJ)** – the “principal judicial organ of the United Nations” – asking for 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.” Bound to the wording of the question posed to it, the decision of the ICJ of 9 July 2004 stated, by a clear vote of 14 to 1, that “the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around Jerusalem, and its associated régime, are contrary to international law.”

The **European Union** took a similar position articulating its strong concerns with the “route marked out for the so-called security fence in the Occupied West Bank and East Jerusalem,” i.e. with the “envisaged

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80 GA Resolution A/Res/ES-10/13 of 21 October 2003, nr. 1 (emphasis added). The Security Council, having had a similar text before it in its 4841st and 4842nd meetings on 14 October 2003, failed to adopt a resolution on the topic, due to the veto of the United States which is a permanent member.

81 See Article 92 of the Charter of the United Nations of 26 June 1945.

82 GA Resolution A/Res/ES-10/14 of 8 December 2003, last paragraph (emphasis added).

83 International Court of Justice, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 9 July 2004, operative subparagraph (3) (A) [later referred to as ICJ, Advisory Opinion, 9 July 2004, …]. The Court has chosen to use the terminology employed by the GA (‘wall’), deliberately not following the terms used by Israel (‘fence’) or the Secretary-General of the United Nations (‘barrier’); see ibid., para. 67.

84 As a reaction to the ICJ’s advisory opinion, General Assembly Resolution A/Res/ES-10/15 of 20 July 2004 was adopted with a huge majority of 150 votes in favor – including all 25 EU States, Russia and China – and only 6 against (amongst them the United States, Australia, and, of course, Israel itself) with 10 abstentions. The resolution fully subscribes to the findings of the ICJ concerning the legal consequences of the Wall’s construction and transforms them in an, albeit not legally binding, demand on the world community of states to comply with the legal obligations as identified in the advisory opinion.
departure of the route from the ‘green line’.\textsuperscript{85} In the aftermath of the ICJ’s ruling and in reaction to the harsh Israeli criticism of the EU states for their support of the subsequent GA resolution, Javier Solana, the EU High Representative for the Common Foreign and Security Policy, reiterated this position: “We told you from square one that we oppose the construction of the wall in occupied Palestinian territory […] We respect the right of every country to construct a fence on its own territory, but a route through occupied territory is not compatible with international law.”\textsuperscript{86}

Even the United States, though largely and unambiguously supporting the Wall’s construction, accepts the Green Line as some sort of reference point for its route. Although the Bush administration did not demand that the Wall follow the Green Line per se, it did oppose the largest deviations inside the West Bank, such as the surrounding of the Ariel settlement (by the Ariel salient).\textsuperscript{87} After having clearly criticized “the Israeli government’s decision to build the barrier off the Green Line – cutting deep into Palestinian areas” (qualifying it as a “barrier to peace”), John Kerry, the Democratic candidate in the upcoming presidential elections, decided in February 2004 to mitigate his October 2003 position and to join the more Wall-friendly position of the Bush administration (yes to the Wall, yes to its trajectory in general, no to a few parts of its route), noting that “President Bush is rightly discussing with Israel the exact route of the fence.”\textsuperscript{88}

The critical non-state actors on the international level take a similar approach, but are more loyal to the Green Line principle. The International Committee of the Red Cross states that the “West Bank Barrier, in as far as its route deviates from the ‘Green Line’ into occupied territory” violates international humanitarian law and therefore “calls upon Israel not to plan, construct or maintain this Barrier within occupied territory.”\textsuperscript{89} Furthermore, Amnesty Inter-

\textsuperscript{85} 4\textsuperscript{th} Meeting of the Association Council EU-Israel, Declaration of the European Union, 17-18 November 2003, nr. 4; Euro-Mediterranean Conference of Ministers of Foreign Affairs, Naples, 2-3 December 2003, Presidency Conclusions, nr. 20 (emphasis added).
\textsuperscript{86} Aluf Benn, Solana: Like it or not, EU will be part of peace process, Ha’aretz, 23 July 2004 (emphasis added).
\textsuperscript{87} See note 153.
\textsuperscript{88} Janine Zacharia, Kerry defends security fence, Jerusalem Post, 25 February 2004.
\textsuperscript{89} International Committee of the Red Cross, Israel/Occupied and Autonomous Palestinian Territories: West Bank Barrier causes serious humanitarian and legal problems, 18 February 2004 (emphasis added).
national demands that the Israeli authorities “stop the construction of the fence/wall inside the Occupied Territories.”\(^{90}\) And the Special Rapporteur of the UN Commission on Human Rights, John Dugard, clearly states: “The Wall might have been justified as a legitimate security measure […] had it followed the course of the Green Line.”\(^{91}\)

This type of reasoning is also widespread within the **Israeli human rights community**. The organization HaMoked – Center for the Defence of the Individual, for example, which became well-known for its general petition against the Wall before the Israeli Supreme Court (sitting as a High Court of Justice),\(^{92}\) condemns “a colossal construction project such as that of the separation wall … insofar as its route runs inside the occupied territory.”\(^{93}\) Taking the same approach, B’Tselem criticizes the Wall because the “Barrier is not being built along the Green Line … [but] inside the West Bank” and holds that if Israel decides to build a barrier, “it must construct it on its own territory.”\(^{94}\) And even the ‘Council for Peace and Security,’ a body mainly composed of former senior Israeli security officials, demanded in an advertisement on the front page of the Israeli newspaper *Ha’aretz*,\(^{95}\) that Prime Minister Ariel Sharon “immediately return the route of the Wall to the proximity of the Green Line.”

Even official **Palestinian representatives** have embraced this argument. In his presentation before the ICJ in The Hague, Nasser al-Kidwa, the Permanent Observer of Palestine to the United Nations, argued that if the Wall was for security reasons “then Israel would have constructed the Wall on its territory along the Armistice Line of 1949 and not in departure of the Armistice Line and almost entirely in the Occupied Palestinian Territory.”\(^{96}\)


\(^{91}\) Dugard Report, February 2004, p. 3.

\(^{92}\) HaMoked: Center for the Defence of the Individual vs. The Government of Israel et al., HCJ 9961/03.

\(^{93}\) Ibid., nr. 3 (emphasis in original version).

\(^{94}\) B’Tselem – The Israeli Information Center for Human Rights in the Occupied Territories, *Separation Barrier*, November 2003 (*italics* in original version). See also B’Tselem, *Position Paper*, April 2003, Conclusions: “If it is decided that there is no choice other than to build the barrier, the government must set the route to run along the Green Line or, alternatively, within Israel.”


\(^{96}\) Oral Statement by Dr. Nasser Al-Kidwa, Ambassador and Head of Palestine Delegation to the oral proceedings of the International Court of Justice, 23
1.2.2. The multiple illegality of the Wall project

The cited arguments are similar in that they adopt (in their reasoning as well as in their range) a rather legalistic approach, while discarding other considerations. And indeed, from a purely legal perspective, the opponents of the Wall project have a very good case: there is no need to enumerate the huge number of governments, international organizations, international as well as national non-governmental organizations (NGOs) and many other bodies which accept the Wall's blatant illegality. However, it is again worth mentioning the perhaps most well-known legal statement amongst them: On 21 October 2003, the General Assembly almost unanimously97 adopted a resolution98 condemning the “wall in the Occupied Palestinian Territory, including in and around East Jerusalem, which is in departure of the Armistice Line of 1949 and is in contradiction to relevant provisions of international law.”

What the pertinent resolution cryptically calls “relevant provisions of international law” serves as an umbrella for a whole series of legal norms violated by the Wall’s construction and its disastrous effects which are evident or expected on the ground. This report will not provide a comprehensive legal analysis which can be found elsewhere;99 it will merely give a snapshot of the most important provisions in order to illustrate the extent to which the Wall project violates fundamental requirements of international law. In this context, one has to distinguish between two main bodies of legal arguments.

International Humanitarian Law

The first layer of argumentation concerns the special legal status of the West Bank and East Jerusalem. The territory east of the line of demarcation of 1949,100 the so-called ‘Green Line,’ which came under Israeli control in the 1967 Six-Day War is generally considered to be
occupied territory. As such, it is subject to a special body of rules known as international humanitarian law (IHL). The four Geneva Conventions of 1949 and their two Additional Protocols of 1977 are the principal instruments of humanitarian law in addition to other treaties such as the Fourth Hague Convention of 1907, to which the Hague Regulations (HR) are annexed. Specifically, the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (IVth GC) details the protections afforded to civilians in occupied territories.

In spite of many Israeli attempts to dilute this qualification in order to absolve itself of a series of duties under the IVth GC, the international community has unanimously and continuously adhered to its position that Israel as the occupying force is bound by the full range of the pertinent provisions of IHL. Therefore the West Bank (including East Jerusalem) and the Gaza Strip are formally addressed as OPT – the ‘Occupied Palestinian Territory.’ Most recently, the ICJ, Advisory Opinion, 9 July 2004, nr. 78 unambiguously reiterated this qualification (for the West Bank): “The territories between the Green Line […] and the former eastern boundary of Palestine under the Mandate were occupied by Israel in 1967 during the armed conflict between Israel and Jordan. […] Subsequent events in these territories […] have done nothing to alter this situation. All these territories (including East Jerusalem) remain occupied territories and Israel has continued to have the status of occupying Power.”

See in particular Section III “Occupied Territories” (Art. 47 to 78).

See David Kretzmer, The Occupation of Justice. The Supreme Court of Israel and the Occupied Territories, 2002, p. 31-42.

While recognizing the applicability of the HR as being part of customary international law, the State of Israel, albeit a party to the IVth GC since 1951, has constantly denied the de jure applicability of the Convention to the OPT. Although the Israeli authorities issued an order No. 3 immediately after the occupation of the West Bank in 1967 stating in its Article 35 that “the Military Court […] must apply the provisions of the Geneva Convention dated 12 August 1949 relative to the Protection of Civilian Persons in Time of War with respect to judicial procedures,” it was claimed afterwards that the Convention is not applicable de jure to the OPT due to a solipsistic interpretation of its Article 2. The Israeli authorities have repeatedly accepted the de facto applicability of (only) the humanitarian provisions of the IVth GC (see, e.g., the recent decision of the Israeli Supreme Court in the case Beit Sourik Village Council vs. The Government of Israel et al., Judgment of 30 June 2004, HCJ 2056/04, nr. 23), but are still rejecting as a matter of principle the Convention’s de jure applicability to the OPT (see, e.g., Report of the UN Secretary-General, November 2003, Summary legal position of the Government of Israel, nr. 3).

The Security Council has on several occasions affirmed that the IVth GC is fully applicable to all the OPT and has called upon Israel “to abide scrupulously” by the Convention; see SC Resolutions 237 (14 June 1967), 271 (15 September 1969), 446 (22 March 1979), 681 (20 December 1990), 799 (18 December 1992) and 904
enforced by the international community's unanimous rejection of the annexation of East Jerusalem. The separation of East Jerusalem from the rest of the West Bank and the attempted integration of this territory into the State of Israel constitutes another blatant violation of international law and is universally considered to be null and void. Every measure affecting East Jerusalem is therefore subject to the IHL regime in the very same way as the rest of the West Bank.

The occupying power, as the administrator of the occupied territory, has to comply with a series of obligations vis-à-vis the population under its control. The Convention forbids, for example, changes of the status of the occupied territory to the detriment of protected persons (Art. 47 IVth GC), individual or mass forcible transfers and deportations (Art. 49 IVth GC) or the destruction of private as well as public property (Art. 53 IVth GC). Israel as the occupying power is not only largely ignoring its obligations under IHL to protect the population of the OPT and to facilitate private and public life as far as possible, but the Wall's construction actively undermines and hampers economic, social, political, religious, and cultural life in manifold ways.

(18 March 1994). In 2001, the High Contracting Parties to the IVth GC reaffirmed the “applicability of the Fourth Geneva Convention to the Occupied Palestinian Territory, including East Jerusalem” (see Declaration of the Conference of High Contracting Parties to the Fourth Geneva Convention, Geneva, 5 December 2001, nr. 3). See also ICJ, Advisory Opinion, 9 July 2004, nr. 101: “The Court accordingly finds that the Convention is applicable in the Palestinian territories which before the conflict lay to the east of the Green Line and which, during that conflict, were occupied by Israel.”

On 11 June 1967, the day after the end of the Six-Day War, the Israeli Government decided on the annexation of East Jerusalem. On 30 July 1980, the Knesset adopted a Basic Law claiming reunified Jerusalem as the “complete and united” capital of Israel.

On 11 June 1967, the day after the end of the Six-Day War, the Israeli Government decided on the annexation of East Jerusalem. On 30 July 1980, the Knesset adopted a Basic Law claiming reunified Jerusalem as the “complete and united” capital of Israel.

See, e.g., SC Resolution 298 of 25 September 1971, nr. 3 as well as SC Resolution 478 of 20 August 1980, in particular nr. 2 and 3 where it explicitly “affirms that the enactment of the ‘basic law’ by Israel constitutes a violation of international law and does not affect the continued application of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, in the Palestinian and other Arab territories occupied since June 1967, including Jerusalem” and “determines that all legislative and administrative measures and actions taken by Israel, the occupying Power, which have altered or purport to alter the character and status of the Holy City of Jerusalem, and in particular the recent ‘basic law’ on Jerusalem, are null and void and must be rescinded forthwith.” See also ICJ, Advisory Opinion, 9 July 2004, nr. 75.

According to ICJ, Advisory Opinion, 9 July 2004, nr. 125f.; the pertinent provisions are Articles 47, 49, 52, 53 and 59 IVth GC.
International Human Rights Law

Parallel to IHL is a second body of international law with which Israel must comply: international human rights law (IHRL). IHRL imposes duties on states to respect the basic rights of the individuals under its jurisdiction. IHRL applies during peacetime and wartime although some limited derogations are permitted during states of emergency. There is no doubt that IHRL is fully applicable to the OPT and binding upon Israel.

The Wall’s construction leads to myriad human rights violations. Instead of giving a comprehensive list, some examples should suffice to show the multitude of destructive effects on the already desperate human rights situation in the OPT: *liberty of movement* (violated by the physical existence of the Wall itself, and also by the creation of closed military zones in the seam zone between the Wall and the Green Line as well as by the irregular and unpredictable opening times of the gates); *right to property* (land requisitioning as disguised mass expropriation of land for the construction of the Wall itself as well as of the land to which access is made impossible or heavily hampered, huge decline in value for innumerable properties); *right to procedural fairness* (defectiveness of the mode of delivery and ineffectiveness of the appeal procedure against requisition orders); *right to privacy, family and home; right to work and make a living; right to adequate standard of living; right to physical and mental health; right to education* as well as *right to equality before the law/non-discrimination* (access to and residence within the seam zone are regulated in a discriminatory manner, giving unjustified preferential treatment to Israelis and non-Israelis of Jewish descent).

1.2.3. The standard argument

The examples above illustrate the main features of the predominant anti-Wall discourse which revolves around the problematic route of the Wall and condemns the Wall project based on its contradiction to international law. The main traits of the (strongly legalistic)

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109 See Chapter 1.1.5.
110 See Chapter 1.1.3.
111 Ibid.
'standard argument,' though often slightly modified, can be summarized, as follows:

1. Every state has the right (and duty) to protect its citizens against terrorist attacks, i.e. legitimate security interests.

2. Among the licit means to this end – emanating from the principle of territorial sovereignty, broadly accepted in international law – the responsible government can resort to the erection of a physical barrier.

3. The legality of the obstacle's construction depends on its respect for the scope of territorial sovereignty, meaning that it can only be exercised within the state's borders.

4. The principally admissible means of constructing a Wall becomes illicit by going beyond the Green Line.

5. The Wall's route, as it is currently realized and further planned, exceeds these limits in a blatant manner and is thus violating a whole series of rules of international humanitarian law as well as of international human rights law.
2. Why there should be no Wall

2.1. Challenging the security rationale

According to the official Israeli position, the 'Security Fence' – later relabeled as the 'Anti-Terrorist Fence' leading up to the ICJ case in The Hague – is built for security reasons only. This position is epitomized on the GOI website which states: “The anti-terrorist fence is being established for the sole purpose of protecting Israelis against Palestinian terrorism.”112 This claim of monicausality has been monotonously repeated on countless occasions in statements all down the political hierarchy, from Prime Minister Ariel Sharon and his cabinet members, to the IDF Chief of Staff, MKs and senior security officials.

By invoking the closely related concepts of security and fight against terrorism the initiators of the Wall project have managed to garner political backing and broad public support. Throughout the Wall's construction there has been a high level of approval from within Israeli society. The erection of the Wall is favored by more than 75 % of the Israeli population (amounting to more than 80 % if only the Jewish population is included)113 and a clear majority among the supporters of each of the six major political parties in the Knesset.114 Almost 60 % of Israelis (66 % of Jewish Israelis) support the Government's considerations in the routing, whereas only 20 % like to see the Green Line as the decisive parameter in the location of the Wall. Asked to what extent the suffering caused to the Palestinian people in the West Bank should be taken into account, 58 % of the whole (and 64 % of the Jewish) population consider this only a minor element in determining the Wall's route.115

112 See note 29, nr. V.
113 See Peace Index, February 2004, conducted by The Tami Steinmetz Center for Peace Research at Tel Aviv University (http://spirit.tau.ac.il/socant/peace/). This was the last time that the Peace Index collected data especially about the Wall's construction, since during the following months the Wall topic has been increasingly overshadowed by the unilateral separation debate (see Chapter 2.5.3.).
114 HEPG/LACC Report, September 2003, nr. 61.
But most probably, the effective realization of the Wall project would not have been possible without the radically changing international climate in the aftermath of the events of 11 September 2001. The Israeli Government seized this unique opportunity to anchor the *Israeli security discourse* within the emerging *global war against terrorism* and to present Israel at the same time as partner and archetype in the collective battle against terrorism. By purposefully de-contextualizing the Israeli-Palestinian conflict and subsuming it into the larger 'clash of civilizations' à la Samuel Huntington (i.e. confrontation of Muslims and Jews, of Islam and the West, of terrorism and democracy), Israel attempted to sell the Wall project to the outside world as a *legitimate measure of self-defense*, solely directed against the blind forces of terrorism.

Israel was able to profit from the high popularity, on the national as well as international level, of 'security-focused' politics and to rest the official justification of the Wall project on this cornerstone. Therefore, the emerging criticism of the Wall has tried to expose the security argument as a fig leaf for a political project with quite different aims. This is the point where the *trajectory* of the Wall comes into play. According to the official position, the route of the Wall was “determined according to security considerations, as well as local topographical factors.” However, the route of the Wall itself, which seeks to include as many Israeli settlers as possible, belies the GOI's own attempts to justify the building of the Wall solely for security.

Many international and Israeli actors have raised doubts about the security only justification, including security experts and Israel's

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116 See, e.g., the statement of Foreign Minister Silvan Shalom in view of the Istanbul bombings of 15 November 2003: “Democratic countries will not surrender to terrorism. They will fight against it wherever it strikes. Terror is a global phenomenon and the community of nations must unite against it while ensuring the values of democracy, freedom and liberties.” And in the very same spirit, he commented on the Madrid attacks of 11 March 2004 emphasizing “that terrorism is an enemy to the entire community of nations and that Israel stands with Spain and the international community in the war against it” (see http://www.mfa.gov.il/mfa/about%20the%20ministry/mfa%20spokesman/2004).

117 See note 29, nr. V.

own security establishment\textsuperscript{119} who contend that from the point of view of security the barrier should be as short and as straight as possible. The project as it is realized now is totally incompatible with this approach: the Wall's meandering construction will reach a length of more than 600 km (almost doubling the Green Line's length of 315 km). The winding route appears difficult to defend and therefore deeply counterproductive to the alleged security rationale.\textsuperscript{120}

The common GOI reaction to this kind of criticism is the reference to a sort of excessive security discourse, which claims that the goal of the current route is to include “as many Israelis as possible”\textsuperscript{122} on the western (i.e. 'Israeli') side of the Wall as the guiding principle of the route's planning (further undermining the alleged security justification since it leaves 100,000 Palestinian people between the Wall and the Green Line). Albeit cryptically formulated, this statement is quite meaningful: when the GOI is forced to specify its nebulous security concept, it explicitly admits that one of the core aims of the Wall's route is to bring as many settlements as possible onto the western side.\textsuperscript{122} These settlements – themselves built in contradiction to IHL\textsuperscript{123} and thus illegal\textsuperscript{124} – do not constitute a legitimate security interest.

\textsuperscript{119} E.g. the critical remarks of the current Chief of Staff Moshe Ya'alon (see David Blair, Israel army chief attacks Sharon's security policies, Telegraph, 31 October 2003).

\textsuperscript{120} Meron Rappaport, A Wall in their Heart, Yedioth Aharonoth, 23 May 2003.

\textsuperscript{121} See note 29, nr. V.

\textsuperscript{122} State's response in HCJ 7784/02, Sa'al 'Awani 'Abd al Hadi et al. v. Commander of IDF Forces in the West Bank, sec. 18-19 (cited according to B'Tselem, Position Paper, April 2003, p. 16): “The fear is that erection of the barrier will channel the attacks to these communities, so it was decided to have the fence pass east of these settlements in order to provide protection for them and for the access roads that reach them.”

\textsuperscript{123} See Art. 49 para. 6 IVth GC: “The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.”

\textsuperscript{124} SC Resolution 446 of 22 March 1979 called upon “Israel, the occupying Power […] to desist from taking any action which would result in changing the legal status and geographical nature and materially affecting the demographic composition of the Arab territories occupied since 1967, including Jerusalem, and, in particular, not to transfer parts of its own population into the occupied Arab territories.” This position was reaffirmed by the Security Council in SC Resolutions 452 (20 July 1979) and 465 (1 March 1980) where “Israel's policy and practices of settling parts of its population and new immigrants” in the OPT were qualified as a “flagrant violation” of the IVth GC. The international condemnation of the illegality of all settlements in the OPT (including East Jerusalem) has been officially renewed by the community of States (see Declaration, note 105, nr. 12: “The participating High Contracting Parties […] reaffirm the illegality of the...
Even in the cautious language of a judicial body, the interests at stake and the dynamics at work manifest themselves in a quite unambiguous way:

“It is apparent [...] that the wall's sinuous route has been traced in such a way as to include within that area the great majority of the Israeli settlements in the occupied Palestinian Territory (including East Jerusalem). [...] [The Court] cannot remain indifferent to certain fears expressed to it that the route of the wall will prejudge the future frontier between Israel and Palestine, and the fear that Israel may integrate the settlements and their means of access. The Court considers that the construction of the wall and its associated régime create a 'fait accompli' on the ground that could well become permanent, in which case, and notwithstanding the formal characterization of the wall by Israel, it would be tantamount to de facto annexation. [...] The route chosen for the wall gives expression in loco to the illegal measures taken by Israel with regard to Jerusalem and the settlements.”

Therefore, it becomes very clear that under the pretext of security only, the Wall is yet one more project in the longstanding policy of colonization of the OPT which includes the control and de facto annexation of land and resources as well as the systematic preference of the settlements and the simultaneous discrimination of Palestinian communities. While the settlers are provided with additional land for further expansion and development, the Palestinians are forced to live in the shadow of the Wall which will annex their land and cut them off from crops, springs and wells, as well as their economic, social and educational ties to other communities. In this context the UN Special Rapporteur John Dugard made the following illuminating remark:

“Where the Wall penetrates Palestinian territory it snakes around villages, separating villages and people from agricultural land. Security could just as easily, and probably more effectively, have been achieved by building the Wall to the west along the Green Line. It is difficult to resist the Palestinian claim that the Wall has been built in this way in order to put..."
agricultural land out of the reach of farmers – and within the reach of settlements adjacent to these lands. Israel clearly wants land, not people. Hence the construction of the Wall around villages, leaving land on its westward side to Israel. Enclaves within the Closed Zone between the Green Line and the wall cannot be explained in terms of security.”

While exaggerating (and thus perverting) the security argument, the GOI is pursuing quite different goals. The utilization of an illegitimately excessive understanding of security has been broadly identified and criticized: far from being a product of security only considerations, the Wall's route constitutes not a security, but a political line.

2.2. Overcoming the narrowing of perspective

Even if one were to argue that the Wall is being built purely for security purposes, invoking the 'fundamental right of self-defense' does not give free reign to a government to erect whatever construct it deems beneficial. This position is confirmed in the very well founded and broadly accepted legal criticism which has already been presented.

International humanitarian law imposes a duty on the occupying force to respect the lives and property of the civilian population in occupied territory. There are very limited exceptions to this rule, mostly pertaining to absolute military necessity. So, for example, private property may be requisitioned only “for the needs of the army of occupation” and destruction of property is only justified when it is rendered “absolutely necessary by military operations.” It thus follows that not only is protecting the settlements (which are inherently illegal) not a legitimate reason for erecting a Wall, but that any requisition of land for its construction must be justified exclusively by military necessity. Notwithstanding Israeli (almost cynical) claims that

127 This view is not only shared by Wall critics but also by its supporters: see, e.g., the statement of the head of the Jordan Valley Council, David Levy, saying “But it is clear to everybody that this is a political line behind which there is a political outlook. Those who try and say that the fence doesn't represent a political line, don't know what they're talking about. Don't give me that nonsense. Everybody is playing this double game, and it's convenient for everybody.” (Meron Rappaport, A Wall in their Heart, Yedioth Aharonoth, 23 May 2003).
128 See Art. 53 IVth GC.
the humanitarian situation of the affected Palestinian population is taken into account and that Israel is “working to find practical solutions to the problems arising in the field,” there is broad consensus that the current Wall project can in no case be reconciled with the exigencies of international humanitarian law.

International humanitarian law would not have anything to say, on the other hand, about a Wall built on the Israeli side of the Green Line since the Armistice Line of 1949 delimits the territories occupied in 1967 by the State of Israel, and it is only within the occupied territory where the principles of IHL apply. Furthermore, although human rights law applies on both sides of the Green Line, the gravest human rights abuses arise from the penetration of the Wall into the West Bank. Therefore, also in terms of IHRL the strongest legal criticism is related to the Wall’s route.

There can be no doubt that one has the strongest case against the currently built, expansionist and excessive Wall project, both qualitative (transcendence of Green Line) and quantitative (violation of basic rights of hundreds of thousands of people), which manifestly goes beyond any threshold of pain admissible from the point of view of international law. This seems to be the main reason why the critique of the Wall highlights those elements which illustrate the fundamental illegality of its construction. Hence, the Wall’s route beyond the Green Line has become the dominating feature, the ‘gravitation center’ of the current anti-Wall discourse.

While attributing the key problem of the Wall to its trajectory, the idea of a physical obstacle strictly respecting the Armistice Line of 1949, a Green Line Wall, has become increasingly attractive. It is interesting that a project which was never really on the agenda of the Israeli Government (a wall on the Green Line), could develop such wide popular appeal. Many opponents of the current Wall, who sought to give a ‘constructive’ critique and to respect a ‘balanced approach,’ began to see a Green Line Wall as a sort of viable compromise, which takes into account the legitimate interests of both ‘sides’ and reconciles them in a reasonable way.

Therefore, the ‘intellectual distance’ increased between a Wall inside the West Bank (violating the basic human rights of thousands of people) and

129 See note 29, nr. IX.
130 See already Chapter 1.2.2.
people and completely disregarding the obligations of Israel as the occupying power under IHL) and a Green Line Wall which would avoid the legal problems and gravest human rights abuses. Soon a Green Line Wall was adopted by the 'left' as a legitimate and viable substitute to the slated alternative. The decisive factor in favor of a Green Line Wall was that it would not infringe upon the West Bank but would be able to achieve all the stated security aims of the original Wall.

As a result, many opponents of the current Wall project reject the 'excessive security discourse' of the State while replacing it with their own security discourse light. While in principle adopting the security rationale and accepting the legitimacy of a physical obstacle, they merely call for its relocation to what they consider to be Israel's border within which full sovereignty can be exercised. This approach has placed far too much import on the route of the Wall and has thus led to a drastic narrowing of perspective within the predominant Wall discourse. This narrowing is very misleading because the Wall project cannot be detached from the greater framework of the Israeli-Palestinian conflict, thus urging a broader approach to the subject.

One of the main aims of this booklet is to identify, analyze, and question this narrowing of perspective and its overhasty acceptance of an alternatively routed Wall. The mere 'solving' of the key legal obstacles to the current Wall does not by itself justify the project; avoiding the most illegal aspects of the project does not imply its legitimacy. Thus, the core part of the following remarks aims at making clear that there are convincing reasons to refuse any kind of physical obstacle, even if built on the Green Line. In that very sense, the booklet is devoted to a fundamental criticism of the phenomenon of the Wall itself, i.e. of a physical obstacle of the kind we have initially seen on maps and nowadays (much more painfully) in its harsh reality, as well as to a principal rejection of any short-sighted attempts to legitimize the Wall project.

The effort to uncover and overcome the previously mentioned narrowing of perspective is not a virtual or hypothetical battle in the sense of Don Quixote's notorious fight against the windmills. Of course, the problem of a barrier as such is perhaps less obvious and acute than the immediate effects of the current expansionist Wall. The 'helpful offer' of a Green Line Wall from the honest critics of the present construction, however, constitutes in several ways a falsely
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understood constructivism which is not taking into account central features of any Wall, even if truly erected along the Green Line. Hence, there is quite a simple question at the very heart of the present paper: Why is it so broadly and naturally accepted that Israel can build a Wall, not inside the OPT, but on the so-called Green Line?

2.3. A Wall on Israel's border?

2.3.1. The legal nature of the Green Line

Perhaps it is now time to clarify the legal nature of the so-called 'Green Line.' The famous term refers to the demarcation line fixed in the aftermath of the First Arab-Israeli War of 1948/9 in the Armistice Agreement with the Kingdom of Jordan;\(^{131}\) the “Armistice Demarcation Line,” as it is formally called, was marked on the attached map in green which led to the common term Green Line. The territory east of it, including the eastern part of Jerusalem, was then annexed to Jordan in 1950\(^ {132}\) and became known as the West Bank (of the Jordan River) or Cis-Jordan.

In the Second Arab-Israeli War, the so-called Six-Day War (from 5 to 10 June 1967), Israel expelled the Trans-Jordanian forces from the West Bank and brought the territory between the Green Line and the Jordan River under its control. It was in that context that the Security Council unanimously adopted its famous Resolution 242\(^ {133}\) which demanded the “withdrawal of Israel armed forces from territories occupied in the recent conflict.”\(^ {134}\)


\(^{132}\) Resolution Adopted by the House of Deputies and the House of Notables, Amman, 24 April 1950.

\(^{133}\) SC Resolution 242 of 22 November 1967.

\(^{134}\) Ibid., nr. 1 (ii). Concerning the famous controversy of whether Israel is supposed to withdraw from all or only part of the occupied territories – some arguing for the latter reading by underlining the missing “the” in the English version – a comprehensive analysis of the text clearly shows that the resolution has to be read such that all the Israeli forces should withdraw from all the occupied territories, as
By using the technical term 'occupied,' the Security Council was referring to Art. 2 para. 2 of the Geneva Conventions\(^\text{135}\) and placing the “territories occupied in the recent conflict” under the jurisdiction of international humanitarian law. Although Israel argues against the designation of these territories as ‘occupied,’ the international consensus is that the Geneva Conventions are applicable,\(^\text{136}\) and that the Green Line determines the geographical scope of their application. Therefore East Jerusalem, determined as the part of Jerusalem east of the Green Line, is also governed by the rules of IHL, despite Israel's annexation of East Jerusalem.\(^\text{137}\)

2.3.2. Different types of delimitation

Since 1967, the State of Israel has controlled the West Bank and exercised its \textit{de facto} rule up to the Jordan River. It is for this reason that the Green Line is – especially in the current discussion about the Wall – also referred to by many as Israel’s '(pre)1967-border.'\(^\text{138}\) It is in this sense that it found its way into the standard argument as outlined above.\(^\text{139}\)

Nevertheless, it is necessary to clearly distinguish between different types of geographical delimitations and their respective functions. The Green Line is the decisive factor for assessing the geographical scope of application (the so-called applicability \textit{ratione loci}) of international

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\(^{135}\) Art. 2 para. 2, common to all four Geneva Conventions of 12 August 1949, reads: “The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.”

\(^{136}\) See Chapter 1.2.2.

\(^{137}\) See note 107.

\(^{138}\) To give only two examples: a) B’Tselem – The Israeli Information Center for Human Rights in the Occupied Territories, Separation Barrier, November 2003: “The barrier is not being built along the Green Line, the 1967 \textit{border} between Israel and the West Bank.” (emphasis added); b) Peace Now’s position regarding the security fence, 8 June 2003, nr. 1: “Peace Now recognizes the obligation and the needs of Israel to defend its citizens along its borders, namely the \textit{June 1967 borders}.” (emphasis added); http://www.peacenow.org.il/English.asp?Redirect=4&CategoryID=5&ReportID=474.

\(^{139}\) See Chapter 1.2.3.
humanitarian law. However, it is very important to realize that this does not mean that it represents an *international border* in the strict sense of constituting the geographical limits within which a state legitimately exercises the prerogatives of territorial sovereignty.

The notion that a Wall on the Green Line is legal derives from the standard argument which presumes an exact correlation between the 1949 Armistice Line and the border of the State of Israel. The mixing up of these two lines of reference, which are not necessarily one and the same, attributes prerogatives of sovereignty where there are possibly none. This conceptual shortcut does not only pose a problem of scholastic hairsplitting, but serves as a wide-spread pattern of argumentation captivating by its simplicity.\(^{140}\) The identification of the Green Line with a border is either false (taking 'border' in the full legal sense with all its implications with regard to the concept of sovereignty) or, at least, misleading (using 'border' in a non technical way).

### 2.3.3. Israel's borders

The clear conceptual distinction between the Armistice Line of 1949 and the question of Israel's eastern border may be surprising for some, but it is far from being revolutionary or even unorthodox. First of all, the use of the word 'green' in the term Green Line rejects its qualification as a regular border. Furthermore, there are leading voices in the pertinent juridical literature which clearly state that the Green Line is, at most, Israel's 1967 *de facto* border: "The only *de jure* boundaries which the State of Israel has ever had are those which were specified for 'the Jewish State' in the Palestine Partition Resolution. Following the Armistice Agreements of 1949, which did not fix *de jure* boundaries, the State of Israel existed within *de facto* boundaries until June 1967."\(^{141}\)

The Israeli acceptance of the boundaries laid out in the 1947 Partition

\(^{140}\) See, e.g., HaMoked's petition, nr. 42 (note 92): “The starting point for an examination of the legality of the barrier in its segments that derive from the Green Line, is that there is no dispute on the right of a state to erect a *border* fence.” (emphasis added).

\(^{141}\) W. Thomas Mallison/Sally V. Mallison, The Palestine Problem in International Law and World Order, 1986, p. 203 [*later referred to as Mallison & Mallison, *...*].
Plan for the British Mandate of Palestine was manifest from the moment that the State of Israel was created as well as in many statements of the Israeli Government. In contrast, the Armistice Line of 1949 did not create a new *de jure* border to which one could attribute the prerogatives of sovereignty as easily as is done by some. This view was unambiguously reiterated in the Armistice Agreement itself and on the occasion of the Israeli-Palestinian Interim Agreement. Hence, the rejection of the Green Line’s status as a border is not a malicious imputation, but in perfect coherence with the official position of all Israeli governments which have principally refused to recognize the Armistice Line of 1949 as the eastern border of the State of Israel. This attitude was reinforced in the official Israeli statement before the ICJ: “The language of the ‘Green Line’ has entered the popular lexicon of lay commentators on the Israeli-Palestinian conflict as the presumptive and immutable border between Israel and a putative Palestinian state. This assessment is, however, problematic as a matter of substance and has no basis in law.”

142 GA Resolution 181 (II) of 29 November 1947, Part II, B.
143 The Declaration of the Establishment of the State of Israel of 14 May 1947 explicitly bases itself “on the strength of the resolution of the United Nations General Assembly.” On the same day, the Provisional Government of Israel communicated to the President of the United States that it has “the honour to notify you that the state of Israel has been proclaimed as an independent republic within frontiers approved by the General Assembly of the United Nations in its Resolution of November, 29, 1947.”
144 See the documentation in Mazzawi, p. 136ff.
145 Israel-Jordan Armistice Agreement (note 131), Art. II para. 2: “It is also recognised that no provision of this Agreement shall in any way prejudice the rights, claims and positions of either Party hereto […] the provisions of this Agreement being dictated exclusively by military considerations”; and even clearer in Art. VI. para. 9: “The Armistice Demarcation Lines defined in articles V and VI of this Agreement are agreed upon by the Parties without prejudice to future territorial settlements or boundary lines or to claims of either Party relating thereto.”
147 See, e.g., http://www.seamzone.mod.gov.il/Pages/ENG/questions.htm: “The so-called ‘Green Line’ has never represented an international boundary. The 1949 armistice agreements specifically refer to this fact.”
148 Written Statement of the Government of Israel on Jurisdiction and Propriety to the International Court of Justice, Request for an Advisory Opinion from the 10th Emergency Special Session of the United Nations General Assembly on “the legal consequences arising from the construction of the wall being built by Israel”, 30 January 2004, nr. 3.45.
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Lisa Nessan, 2002
2.3.4. Uncovering the double-play

The widespread tendency to identify the Green Line as Israel's legitimate border may stem from the belief that the pre-1967 de facto boundaries have received enough international recognition to qualify them as borders by virtue of customary law.\(^{149}\) Even if there is much sense in this argument, one must not forget that it is first and foremost the Israeli Government which has continuously and persistently objected to this position, obviously because its territorial claims go far beyond it.

It is well known that the plans for erecting a physical barrier initially came from the Israeli left and were thoroughly objected to by the Likud party (and in particular by now Prime Minister Ariel Sharon) exactly because of the potential unwanted implications of the construction for Israel's larger territorial claims. The plan of building the Wall was only accepted by the Likud after subjecting it to a fundamental transformation: the Wall would deliberately deviate from the Green Line so that it would not reinforce this demarcation or give it weight as a potential international border.\(^{150}\) By virtue of the above-mentioned excessive security discourse, every trajectory of the Wall satisfying the malleable criteria of "security considerations, as well as local topographical factors"\(^{151}\) was argued to be legitimate, independently of the degree of its intervention into the West Bank.

In view of the harsh (in particular international) criticism with regard to the Wall's intrusive character which was based in large part on the fears that it would change the status of the OPT in contravention to the Oslo Accords,\(^ {152}\) the GOI manifested a more than modest inclination to

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149 Mallison & Mallison, p. 203.
150 The 'official' reasoning as laid out on the MFA website (see document referred to in note 29) does not once mention the 'Green Line' or 'Armistice Line' with one word in its six page presentation.
151 Ibid., nr. V.
152 See Declaration of Principles On Interim Self-Government Arrangements of 13 September 1993, Art. IV: "The two sides view the West Bank and the Gaza Strip as a single territorial unit, whose integrity will be preserved during the interim period"; Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip of 28 September 1995, Art. XXXI, para. 7 and 8: "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 negotiations. The two Parties view the West Bank and the Gaza Strip as a single territorial unit, the integrity and
the Green Line principle. In other words, the GOI slightly modified the trajectory of the Wall in some spots, such as in the case of the Ariel salient where it tried to meet the demands of the US administration by erecting 'only' a fence around the Ariel settlement itself without – at least for the time being – linking it to the rest of the Wall.\footnote{Aluf Benn/Yuval Yoaz, Israel asks for U.S. endorsement of fence route, Ha'aretz, 31 March 2004; see also note 228.}

In that sense, the Israeli Government is performing a subtle double play. On the one hand, the offered justification – Wall construction as exercise of territorial sovereignty within the 'Green Line border' – is gratefully accepted if and insofar as this helps to effectively promote the question of the legitimacy of a physical obstacle itself. When it comes, however, to the Wall's route, the GOI principally disclaims the Green Line approach because it would force it into the unwanted corner of building a \textit{border fence}, potentially involving an abandonment of Israeli territorial claims beyond the Green Line. If the Wall were built in strict adherence to the Armistice Line then it would be hard, so they fear, to maintain that it is merely a security (vs. political) construct.\footnote{See Chapter 2.5.3.}

Thus, the GOI profits from a political opinion while categorically rejecting one of its basic presuppositions: territorial sovereignty essentially requires recognized borders, at the same time enabling and limiting its exercise. Therefore, there is neither a need nor, what is more, a basis to endow a government with sovereign powers in view of a geographical delimitation to which it explicitly denies any border character. Israel's handling of the sovereignty argument is double-tongued: as long as it refuses to clarify its border situation, the usage of powers arising from territorial sovereignty is not only \textit{politically} unacceptable, but also \textit{legally} inadmissible.

The principle of \textit{estoppel}, well established in international law as an emanation of the general principle of \textit{good faith} in international relations, requires consistency in the legal argumentation in the sense that it prevents a party from claiming a right if it previously took actions or made statements that were incompatible with the current claim.\footnote{Out of the huge body of literature, see only I.C. MacGibbon, Estoppel in International Law, in: The International and Comparative Law Quarterly, Vol. 7, status of which will be preserved during the interim period.”} Even speaking in legal terms there is no taking advantage
without taking the corresponding responsibilities,\(^{156}\) in other words: you cannot have your cake and eat it too.\(^{157}\) Hence, a government constantly denying the Green Line's border character should not be awarded by conceding to it space to maneuver (arising from the existence and recognition of a border) whose presuppositions and limits are explicitly rejected.

2.4. Socio-economic considerations

2.4.1. Systematic economic dependency

After the end of the 1967 Six-Day War which brought the West Bank under Israeli control, two competing views developed within the Israeli Government regarding the nature of the desired economic relations with the OPT.\(^{158}\) While the then Minister of Finance Pinhas Sapir advocated economic separation, Minister of Defense Moshe Dayan favored the elimination of economic borders. According to the latter, the integration of the two economies, totally disproportionate in their size as well as structure, should apply both to the exchange of goods and services and to the movement of labor.

Dayan's view, which won out, was no more benevolent vis-à-vis the Palestinian people than that of his opponent. Whereas Sapir feared that the integration of the OPT could lead one day to a majority Palestinian population and thus jeopardize the Jewish character of the State of Israel (a striking precursor to the 'demographic argument' today),

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\(^{156}\) According to the principle of estoppel, “a State asserting a right is barred from avoiding the obligations which the exercise of the right entails.” (ibid., p. 495).

\(^{157}\) In the not less meaningful formulation domestic courts gave to it, an agent “shall not be allowed to blow hot and cold – to affirm at one time and deny at another”; see Cave v Mills (1862) 7 Hurlestone & Norman 913 at 927.

Dayan wanted to promote economic exchange between Israelis and Palestinians in order to make the capture of the OPT politically irreversible, thus creating facts on the ground to undermine SC Resolution 242\textsuperscript{159}, which expressly prohibits the acquisition of territory by war.

It is this kind of political reasoning that was at the heart of the Israeli policy of \textit{systematic economic colonization} which is still apparent today. Far from contributing to a substantial development of the Palestinian economy (which could have led to its eventual independence), Israel hardly invested in the OPT,\textsuperscript{160} resulting in decades-long neglect of infrastructure building. The OPT were primarily seen as a source of cheap labor and as a captive market for Israeli goods, and it was this one-way understanding\textsuperscript{161} that belied the policy of “free movement of goods, services and labor,” euphemistically enshrined in the slogan of a \textit{policy of open bridges}.

The degree of \textit{one-sided dependency}\textsuperscript{163} of the Palestinian economy on Israel which emerged during the last quarter century is evident: up to ninety percent of all imports to the OPT come from or through Israel while eighty-five percent of all Palestinian exports go to or through Israel.\textsuperscript{164} In 1992, more than a third of the Palestinian work force was

\textsuperscript{159} SC Resolution 242 of 22 November 1967, cons. 2.

\textsuperscript{160} See Sarah Roy, The Gaza Strip: The Political Economy of De-development, 1995, p. 5 and 6 \textit{[later referred to as Roy, …]} according to which “official Israeli investment in Palestinian industry and agriculture has consistently been negligible” as well as Gross, p. 156f. speaking of an “intentional Israeli policy to keep the Palestinians under-industrialized.”

\textsuperscript{161} For protectionist reasons, Israel imposed e.g. a series of trade barriers, particularly for agricultural goods being of special significance for the Palestinian economy; see Arnie Arnon et al., The Palestinian Economy – Between Imposed Integration and Voluntary Separation, 1997, p. 5 \textit{[later referred to as Arnon, …]}. 

\textsuperscript{162} See Shlomo Gazit, The Carrot and the Stick – Israel’s policy in Judea and Samaria, 1985, p. 204-222. The policy of ‘open bridges,’ first designed to govern the relations between the West Bank and Jordan via the bridges crossing the Jordan River, was increasingly reframed to the political program of making and keeping the Palestinian territories economically dependent on Israel.

\textsuperscript{163} A phenomenon the World Bank carefully addressed as “asymmetric trade relations” \textit{(International Bank for Reconstruction and Development, Developing the Occupied Territories: An Investment in Peace, The Economy 45 (1993), p. 2).}

\textsuperscript{164} Arnon, p. 34-37. See also The World Bank Group, 27 Months – Intifada, Closure and Palestinian Economic Crisis: An Assessment, West Bank and Gaza Update, April-June 2003, p. 12 \textit{[later referred to as World Bank, 27 Months, …]} according to which, in 1998, imports from and via Israel represented 75 % of total Palestinian imports, while exports to Israel represented 96 % of total exports.
employed in Israel (mostly in low-skilled, manual labor jobs in construction, agriculture and services), contributing directly to about twenty-five percent of the Palestinian GNP.

At the same time, Israel – an economic giant compared to Palestine – depends much less on the Palestinian economy. Palestinian exports to Israel constitute less than one percent of the aggregate Israeli import market, and the role of the OPT as a target market for Israeli exports should not be overestimated. At its height, the number of Palestinian workers in Israel did not exceed 7 percent of the Israeli workforce. Even if some sectors (such as construction and agriculture) relied heavily on Palestinian laborers, Israel was quick to replace them starting in the mid-nineties with foreign workers from low-wage countries (Eastern Europe, the Far East and Africa).

As a result, and due to a lack of employment opportunities inside the OPT, the rate of Palestinian unemployment increased, driving down family income and living standards. The Palestinian economy in its already desolate condition was brought to the brink of collapse with the outbreak of the Second Intifada in 2000 and is only maintained at a very low level by huge amounts of international humanitarian aid. The World Bank estimates the unemployment rate to be about 40% of the workforce. In 2003, real per capita income was 40% lower than in December 2000, and approximately 60% of the population lives in poverty.

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165 See in this context Ishac Diwan/Radwan A. Shaban, Development Under Adversity – The Palestinian Economy in Transition, 1999, p. 45-65 [later referred to as Diwan/Shaban, ...].
167 In 2002, Israel's GDP was US$ 103.7 billion (US$ 15,710 per capita), compared to US$ 3.4 billion (US$ 1,060 per capita) in the OPT (source: The World Bank Group, Israel and West Bank and Gaza Data Profile, available on http://www.worldbank.org/).
168 See Gross, p. 1571.
169 Arnon, p. 8.
170 Diwan/Shaban, p. 5.
171 By the end of 2002, real gross national income (GNI) per capita had shrunk by 46 percent from its 1999 level (see World Bank, 27 Months, p. 11).
172 Since the beginning of the Intifada, donors have provided about US$ 315 per person a year, an unprecedented level of international financial commitment (ibid., p. 4).
173 Ibid., p. 13. For the most recent developments see also The World Bank Group, West Bank and Gaza Update, March 2004, p. 23-25 [later referred to as World Bank, West Bank and Gaza Update, ...].
poverty.\textsuperscript{174} The already modest level of external trade (to Israel as well as to third countries) and foreign investment\textsuperscript{175} has further diminished due to the closure policy establishing a whole series of physical, technical and administrative obstacles and generally creating a climate of uncertainty and instability, hardly favorable to investments from outside.\textsuperscript{176}

These limited data illustrate the heavy dependency of the Palestinian economy and its high degree of susceptibility to one-sided Israeli economic policy. After Israel as the Occupying Power unilaterally shaped the contours of the Israeli-Palestinian 'economic integration' for more than a quarter of a century according to its own interests,\textsuperscript{177} the Paris Protocol of 1994\textsuperscript{178} (establishing a single customs envelope covering both Israel and the areas put under the control of the Palestinian Authority) tried to transform the unilaterally imposed to an 'agreed-upon' economic integration while pursuing the existing status of dependency. Created for an interim period of five years until the conclusion of a final agreement between the two sides,\textsuperscript{179} the Protocol still constitutes the, albeit defunct, framework of Israeli-Palestinian economic relations.

\textbf{2.4.2. The effects of the Wall}

The construction of the Wall severely hurts an already weakened and almost collapsing Palestinian economy. Its harmful effects on labor flows, the health and education system, resource management as well as land ownership and accessibility were already addressed in Chapter 1.\textsuperscript{180} In addition, there are many comprehensive and detailed reports

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\textsuperscript{174} See World Bank, 27 Months, p. 3 and 11 (using a poverty line of US$ 2.1 per day).
\textsuperscript{175} Ibid., p. 1: “Total investment flows have fallen from about US$ 1.45 billion in 1999 to some US$ 130 million in 2002, a decline of about 90 percent.”
\textsuperscript{176} See Gross, p. 1660-1662.
\textsuperscript{177} Arnon, p. 88 speaks of “an involuntary, one-sided, impure, customs union […] Since there was no Palestinian (economic) authority and Palestinians did not participate in policy-making, all decisions were made by the Israeli authorities.”
\textsuperscript{178} The Protocol on Economic Relations, signed on 29 April 1994, was included as Annex V of the Israel-Palestinian Liberation Organization Interim Agreement on the West Bank and the Gaza Strip of 28 September 1995.
\textsuperscript{179} See Paris Protocol, Art. I, para. 1 and Interim Agreement, Preamble, cons. 5.
\textsuperscript{180} For a rough summary of the most important features of the Wall’s impact see, e.g., Report of the UN Secretary-General, November 2003, nr. 23-27.
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on the various socio-economic implications of the now-realized Wall project.\footnote{See Bibliography, Section \textit{Impact of the Wall on different spheres of life}.}

It is clear that many of the harmful impacts are closely linked to what has been called the Wall’s \textit{quantitative} aspect,\footnote{See Chapter 2.2.} i.e. connected to its intrusive route into the West Bank. The consequences of a Green Line Wall would certainly be less far-reaching than those of the current Wall – which is what makes it such a tempting alternative for some. For a start, the effects emerging from enclosing land and people between the Armistice Line and the Wall’s trajectory would cease to exist. Furthermore, farmers would not be separated from their farm land, thus often effectively losing their crops, trees and animals; pupils and students would retain access to their schools and universities; people could reach hospitals in time; workers and merchants would be able to earn their living without being forced to take huge detours resulting in both loss of time and additional costs; and communities would keep their water and other resources.\footnote{For a series of examples of the Wall’s disastrous consequences for agriculture, employment and trade as well as the education and health system see, for example, Dugard Report, February 2004, nr. 16-23.}

This does not mean, however, that a Wall relocated to the Green Line would be unproblematic in terms of economic and social consequences. It is naive to believe that a physical barrier of these dimensions would not affect the flow of persons and goods between Israel and the West Bank, even if a well-functioning gate system were to be implemented.

Furthermore, long and painful experience with the occupation authorities has shown that it is unlikely that the gate system will function fairly. In that regard, the situation in the areas where the Wall has been completed is quite instructive: only a small number of the promised gates have been realized until now,\footnote{OCHA, Humanitarian Status Report, July 2003, p. 9.} and it has been admitted that no money was budgeted for their construction.\footnote{It is reported that Defense Minister Shaul Mofaz said in reply to a query in the Knesset: “At this time there is no budget for farming crossings.” (see Meron Rappaport, A Wall in their Heart, Yedioth Aharonoth, 23 May 2003).} The reports about the opening times of the gates are alarming: more than two thirds of the installed gates are currently closed, and even the ‘open’ gates are accessible only for very limited time – and that is if...
one happens to have a valid permit to cross at that particular gate.\textsuperscript{186} Permits are, for example, not granted to those who only rent land; often they are conditioned upon the producing of documents which are hard to procure and are then only issued for short periods of time; and younger people often face even more difficulties obtaining a permit because they are considered a higher security risk.\textsuperscript{187} The situation is further aggravated by the seemingly random gate opening policy; quite often the crossing points stay closed for several days or even weeks – without advance notice or transparent justification.

'Security considerations' will be enough, at any given moment, to partially or totally close any given Wall gate. The arbitrariness of the security argument, which is completely left to the discretion of the Israeli side, is well known in its handling and consequences. In that sense, the Wall will bring nothing new; it will constitute, however, a new and powerful means in the hand of the occupying force allowing it to further intensify its iron grip over the OPT. Netziah Mashiah, director of the seamline administration in the Defense Ministry, explains the handling of the opening regime – not omitting obviously disproportionate measures and collective punishment in the name of security needs – without mincing matters: “Even if the fallah's [farmer's] son has a security past, he [the farmer] won't cross. The fallah should take this into account. And if even one terror attack manages to get through a farming gate, this crossing will turn into a wall. Nobody will cross.”\textsuperscript{188}

The erection of the Wall opens up a new front in the longstanding occupation policy. Malfunction and misuse are already part of it, not accidental or isolated incidents, but foreseeable and inescapable. From the level of general policy down to the individual soldier patrolling the Wall or standing at the gates, empowered to authoritatively decide on the fate of the passing people, this powerful new 'security instrument' will lead to a strengthening of control, dependency and discrimination in addition to the already existing set of internal and external closure measures.\textsuperscript{189} In fact, there are already reports of harassment of school children and others who are trying to pass through the gates.\textsuperscript{190}

\textsuperscript{186} UN Update, April 2004, p. 10ff. and Report of the UN Secretary-General, November 2003, nr. 22; see Chapter 1.1.5.
\textsuperscript{187} See Dugard Report, February 2004, nr. 17 and 18.
\textsuperscript{188} Meron Rappaport, A Wall in their Heart, Yedioth Aharonoth, 23 May 2003.
\textsuperscript{189} See note 203.
\textsuperscript{190} Dugard Report, February 2004, nr. 20.
Wall gate system in all its aspects – the detours, the additional costs, the uncertainty of getting a permit, the adaptation to the arbitrary opening regime, the lining up and waiting, the not knowing if and when one can get through, the risk of humiliation and violence – constitutes a further exposure to the occupation system and in that sense a new 'focal point' of the occupation.

The closer people happen to live to the Wall, the more it intrudes into the different spheres of their lives and disconnects them from other people, basic services, and possibilities to make a living. The only exemption from this fragmentation of livelihood is by belonging to the privileged (i.e. Israeli) side and thus being able to use by-pass roads and having access to, and the right to live unhindered in, closed military zones without any permit. It should not, therefore, come as a surprise that Palestinians in the most affected areas might find it untenable to continue living there and feel compelled to give up their house, job, land, family and social network.

This phenomenon of involuntary transfer which has so far been addressed either guardedly, or under the euphemism 'population migration,' reflects the harsh and unambiguous reality facing many West Bank residents. The recent ICJ advisory opinion, however, puts it in a quite clear way: “Since a significant number of Palestinians have already been compelled by the construction of the wall and its associated régime to depart from certain areas, a process that will continue as more of the wall is built, that construction, coupled with the establishment of the Israeli settlements […], is tending to alter the demographic composition of the Occupied Palestinian Territory.” It is obvious that the exact profile and extent of the people forced out by the Wall’s construction can only be evaluated in the long-run; until now only limited data is available, but trends in this direction are becoming increasingly apparent.

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191 The Report of the UN Secretary-General, November 2003, nr. 22 speaks of the “concern […] raised that Palestinians may leave the area.”
193 ICJ, Advisory Opinion, 9 July 2004, nr. 133 (see also nr. 122).
194 See HEPG/LACC Report, September 2003, nr. 26-44.
195 See, for example, the situation around Jerusalem where many holders of blue Jerusalem IDs are moving now inside the Jerusalem Envelope in order not to jeopardize their right of residence there (see OCHA, Humanitarian Status Report, December 2003, p. 10-12). In that context, see also Dugard Report, February 2004, nr. 13.
Once again, it has to be underlined that also the danger of population transfer would shrink with a relocation of the Wall to the Green Line. However, the Wall's construction, independent of its routing, will result in negative impacts, especially on the people living close to it. The already completed parts of the Wall serve as an important lesson: even the more prosperous northwestern governorates\textsuperscript{196} of the West Bank where the Wall has been built relatively close to the Green Line have suffered heavily from the Wall's existence. 'Border communities' used to profit from their relatively easy access to the Israeli labor market as well as from the large number of Israelis living close to the Green Line frequenting them to purchase lower cost goods and services.\textsuperscript{197} Now with the change of the Green Line from a mostly 'technical' delimitation which did not impede economic exchange and personal mobility, to a Wall, the access to the Israeli labor market is strongly hampered whereas the Israeli demand for Palestinian goods and services is widely lost – both of them important inputs to the weak Palestinian economy, especially due to its heavy dependency on the Israeli one.

As illustrated above, the Wall's impact should not only be analyzed as a physical or legal obstacle, but also in terms of its consequences on a psychological level which should not be underestimated. In the past, Israeli citizens were not prevented from crossing the 'border' and frequenting the Palestinian areas east of it, as many Palestinian citizens of Israel once did, especially those who had family members on both sides of the Green Line. Some Jewish Israelis also crossed the Green Line into the West Bank for business or other purposes. After this flow had already been reduced in late 2000 with the beginning of the Second Intifada and the increased mobility restrictions, it was further aggravated and eventually stopped entirely by the Wall's construction.\textsuperscript{198} This will have important consequences in terms of shaping of conscience; the formerly prospering zones close to the Wall are in real danger of mutating from areas of exchange and communication to mere peripheries of socio-economic development.

\textsuperscript{196} HEPG/LACC Report, May 2003, p. 31.
\textsuperscript{197} Ibid., p. 31.
\textsuperscript{198} Ibid., p. 32.
2.4.3. Economic unilateralism

In the context of Palestinian economic viability, even a Green Line Wall would have highly problematic impacts: while ostensibly nothing less than a 'simple' border barrier, it would actually play a key role in maintaining the well-planned and long-administered colonial economic policy. On the one hand it would solidify Palestinian economic dependence upon Israel and on the other hand it would isolate the OPT behind a Wall as long as there are no economic advantages to be gained by Israel.

This kind of economic unilateralism traces its roots to the beginning of the occupation (as has been described above) and has continued unabated. The permeability of the economic borders and the existence and intensity of economic flows was mainly arranged according to the interests of only one of the sides. The fundamental and deliberate asymmetry in the economic relations of Israel and the OPT as well as in the creation of the latter's dependency – not first and foremost as an end in itself, but as an instrument for a specific political agenda – is most apparent in the Gaza Strip where it has been termed as 'de-development.'

One of the instruments for implementing the policy of economic unilateralism can be seen in an elaborate system of permits and closure to which the flows of goods and workers are submitted. The permit policy, first introduced in 1991, made entry of workers from the OPT into Israel conditional upon obtaining security clearance from the Israeli military establishment and a request for employment from an Israeli employer. Thus, the entry of workers into Israel was not

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199 See Roy, p. 4-6 developing the main features of the concept of 'de-development' under which she understands “the deliberate, systematic deconstruction of an indigenous economy by a dominant power […] De-development is an economic policy designed to ensure that there will be no economic base, even one that is malformed, to support an indigenous existence […] [Israel] sought primarily to dispossess the Arabs of their economic and political resources with the ultimate aim of removing them from the land […] Israeli control in the occupied territories is motivated not by labor integration, market dependency, or physical infrastructure per se, but by the political imperatives of Jewish sovereignty and the military force needed to achieve them.”

regulated on the basis of supply and demand but according to unilaterally defined Israeli 'security' considerations. Since 1993, the system was further tightened by restricting permits to married men over 28 as well as by shortening their duration to two months.\footnote{201}{Leila Farsakh, Palestinian Labor Flows to the Israeli Economy: A Finished Story?, in: Journal of Palestine Studies, nr. 125, Autumn 2002, 13-27, p. 19 [later referred to as Farsakh, ...].}

As an even more important means of control, however, Israel simultaneously enforced a \textit{closure policy}, including the implementation of measures of \textit{internal} as well as of \textit{external closure}.\footnote{202}{World Bank, 27 Months, p. 2.} In that sense, Israel has not only sealed its borders to the West Bank and Gaza, but has also prevented the flow of labor and goods within the OPT themselves (by a complex system of checkpoints, roadblocks, earth mounds, curfews, and the by-pass road system).\footnote{203}{See Report of the UN Secretary-General, November 2003, nr. 23. The \textit{West Bank Closures} map (March 2004), published by OCHA-OPT (available on http://www.reliefweb.int/hic-opt/), registers 753 'closure installations' within the West Bank: 57 checkpoints, 98 roadblocks, 40 road gates, 423 earth mounds and 65 trenches.}

Already a widespread practice since 1993, extensive internal and external closures have characterized everyday life in the OPT since the outbreak of the Second Intifada in 2000 and are the proximate cause of the Palestinian economic and humanitarian crisis.\footnote{204}{World Bank, 27 Months, p. 2 and 11 describing “a Palestinian economy under tremendous external pressures, with closure the main force in its decline.”}

For Israel, closure is seen as the most effective way of restricting the mobility of workers,\footnote{205}{Farsakh, p. 19.} thus allowing unilateral control over the flow of Palestinian workers according to the needs of the Israeli side. The already relatively strict closure policy between 1993 and 2000, which periodically completely sealed the West Bank and Gaza off from Israel, made it impossible for many Palestinians to show up to work on a regular basis so that their employers started to replace them.\footnote{206}{See Diwan/Shaban, p. 45-65. In 1996, only seven percent of the Palestinian work force was still employed in Israel.} The massive waves of immigration of foreign workers from low-wage countries to Israel have already been mentioned as one of the main reasons for the steady substitution of the Palestinian work force. Despite the integration of some 250,000 foreign workers into the
Israeli labor market as well as the arrival of almost 1,000,000 new immigrants between 1990 and 1998, the resulting growth of the Israeli economy (and in particular the building sector) led to an increased demand for Palestinian workers again.\textsuperscript{207} The number of Palestinian workers in Israel recovered from its low point in 1996 (62,000 workers) to a new high point of 145,000 workers in 2000.\textsuperscript{208} As a result of external closures, nearly 100,000 Palestinians have lost their jobs since September 2000,\textsuperscript{209} bringing down the total to a mere 58,000 workers from the OPT in Israel at the end of 2003 (54,000 from the West Bank and 4,000 from Gaza).\textsuperscript{210}

The unilateral design of economic relations is also evident in the regulation of flows of goods between Israel and the West Bank. Due to the so-called 'back-to-back' system, all non-humanitarian goods have to be off-loaded from incoming trucks and re-loaded onto local trucks at eight checkpoints near major West Bank cities. However, these restrictions are in practice more rigorously applied to the export of goods from the West Bank than to the transport of goods from Israel.\textsuperscript{211}

\textbf{2.4.4. The place of the Wall within the system}

Underlining the close relationship between the tightening of closure and consequent economic deterioration, the World Bank highlights the destructive nature of the Wall: “the construction of the barrier represents the ultimate form of external closure.”\textsuperscript{212} It is important not to see the Wall as an isolated phenomenon when talking about its economic and social implications, but rather to view it in the greater context of Israeli policy vis-à-vis the OPT. The Wall, even built on the Green Line, presents the physical capstone of external closure.

The experience, particularly of the last years, should be sufficient to demonstrate the impacts of Israel’s unilateral and asymmetric exercise

\textsuperscript{207} See Farsakh, p. 22.
\textsuperscript{208} Ibid., p. 17.
\textsuperscript{209} World Bank, West Bank and Gaza Update, p. 22.
\textsuperscript{210} Ibid., p. 22. The actual situation is far from recovering; see only the Weekly Briefing Notes of OCHA-OPT (available on http://www.reliefweb.int/hic-opt/) containing a section on Labor Movement to Israel.
\textsuperscript{211} World Bank, 27 Months, p. 2.
\textsuperscript{212} HEPG/LACC Report, July 2003, nr. 24.
of controlling Palestinian movement through physical barriers. The two main examples are the situation in the Gaza Strip, already fenced in since the late nineties, and the closure regime exercised at the gates in the already built parts of the West Bank Wall. The results should clearly advocate against putting such control in the hands of the Israeli Government.

It is naive and short-sighted to believe that after decades of systematic economic dependency the OPT could be simply cut off and abandoned to their fate. Israel has a responsibility, towards the Palestinians as well as towards itself, to provide for an intact and equitable exchange of goods and labor. There is already much evidence that the Israeli economy is also heavily afflicted with the direct and indirect effects of the current Intifada (though obviously much less so than the Palestinian economy). The last thing two economies as strongly interwoven and linked together as the Israeli and Palestinian ones need is a Wall between them.

2.5. Unilateralism materialized

2.5.1. An intermezzo of nominal bilateralism

What Chapter 2.4 attempted to illustrate at the level of economics is symptomatic of the concept of unilateralism as a whole which has characterized the relations between the Israelis and the Palestinians from the beginning of the occupation in 1967. Since then, Israeli policy towards the OPT has sought to shape the reality between the Mediterranean Sea and the Jordan River according to its own political agenda and, as a decisive part of this, to promote the principle of maximum land, minimum population. In spite of massive efforts, on the one hand, to undermine Palestinian livelihood within the OPT as well as, on the other, to implant colonies and to send a significant

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213 See Chapters 1.1.5. and 2.4.2.
214 E.g. according to the International Monetary Fund, the Israeli authorities themselves estimate that the “deterioration in the security situation” accounted for a loss of 6 to 8 percent of the GDP (see International Monetary Fund, Israel, Staff Report for the 2003 Art. IV Consultation, 26 February 2004, p. 3, available on http://www.imf.org/external/pubs/ft/scr/2004/cr04158.pdf).
215 See note 199.
number of settlers there, Israel has had to cope with the enduring reality of the presence of millions of Palestinian people. During the 1990s, in view of considerable international pressure and against the backdrop of the lessons learned from the First Intifada, there was a switch in the prevailing attitude about the most promising way to 'manage' the conflict. Even though the underlying political maxims stayed by and large the same, the Israeli political establishment, broadly supported by the growing peace hopes within the Israeli public, opted for a modified way of proceeding vis-a-vis the Palestinians. This paved the way for a nominal bilateral approach.

The 'Oslo process' ostensibly meant an Israeli recognition that there was another entity in the conflict with interests independent of its own. However, there was a blatant asymmetry in the reciprocal declarations of recognition between Israel and the PLO. It was upon this flawed bilateral basis that the entire Oslo process evolved; namely the 1993 Declaration of Principles ('Oslo I'), the 1994 Gaza Strip and Jericho Agreement and the 1995 Interim Agreement ('Oslo II'). Although the agreements contained a specific ban on unilateral measures which might prejudice the final outcome, the inequality between the two sides allowed Israel to create 'facts on the ground' at an alarming rate during those years.

Although the Oslo process was clearly disintegrating in the late 1990s, the two sides continued to negotiate under heavy international pressure. The result was a failure to reach any agreement on permanent status issues as demonstrated at Camp David (July 2000) and Taba (January 2001). Still, the international community continued to craft new initiatives, such as the Zinni, Tenet and Mitchell reports and the

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216 See e.g. Moshe Behar, The Peace Process and Israeli Domestic Politics in the 1990s, in: Socialism and Democracy, Vol. 16, No. 2, Summer/Fall 2002, 34-48, p. 42 [later referred to as Behar, …] commenting on the exchange of letters of Israeli Prime Minister Yitzhak Rabin and PLO Chairman Yasser Arafat of 9 September 1993: “Whereas the PLO recognized, among other things, ‘the right of the State of Israel to exist in peace and security,’ Rabin neither recognized in a reciprocal manner the right of the Palestinians to an independent state, nor that they also have the human right to exist in peace and security. Instead, Rabin responded to Arafat’s fairly detailed letter solely by informing him – as the Chairman of the PLO – that ‘the government of Israel has decided to recognize the PLO as the representative of the Palestinian people.’”

217 See Art. IV of the Oslo I Agreement as well as Art. XI para. 1 and particularly Art. XXXI, para. 7 and 8 of the Oslo II Agreement: “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 negotiations.” See note 152.
recent Road Map\textsuperscript{218} (sponsored by the so-called 'Middle East Quartet,' consisting of the United States, the European Union, the UN, and Russia), which commits itself and the parties to the conflict to a "clear, unambiguous acceptance by both parties of the goal of a negotiated settlement." As demonstrated below, long after Israel gave up even the pretense of bilateralism, and even managed to win the US over to her position, the international community is still talking about 'negotiations.'

2.5.2. Renewal of unvarnished unilateralism

The breakdown of the peace process is often associated with the outbreak of the Second Intifada. However, the whole 'bilateralist' Oslo period of negotiations and agreements was accompanied by a continuation and even intensification of unilateralist policies. In other words, the Oslo Process actually entrenched the Israeli occupation while giving it a guise of legitimacy which it had hitherto lacked. The end of the nineties brought for many, not only on the Palestinian side, a growing consciousness of a \textit{nominal} bilateralism and a \textit{de facto} solidification of the occupation.\textsuperscript{219} In this sense the Intifada was the culmination of the Oslo process rather than the signal of its break-down. However, the Israeli public's perception was that after a decade of negotiations the peace process collapsed, frustrating the hope for peace.

This was a convenient time for Prime Minister Ariel Sharon to launch his campaign for a return to a policy of unvarnished unilateralism. Emphasizing the vanishing chances for peace and underlining the naivety of further negotiations by boosting the rhetoric of a missing partner on the other side, Sharon was able to convince an increasing

\textsuperscript{218} A Performance-Based Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict of 30 April 2003; then endorsed by SC Resolution 1515 of 19 November 2003.

\textsuperscript{219} To give only two examples: In the years of the 'peace process' the settler population in the OPT (excluding East Jerusalem) – in spite of all rhetoric of a 'freeze of settlements' – doubled (!) from 100,000 in 1992 to 200,000 in 2000 (see Palestinian Academic Society for the Study of International Affairs (PASSIA), Diary 2004, p. 278 [later referred to as PASSIA, Diary 2004, ...] as well as Behar, p. 42). At the same time, the Oslo process brought about the establishment of the closure system which has given Israel a considerable intensification of its control of the OPT.
number of people that unilateralism was again the most promising political means to cope with the conflict. The years from 2000 on were then characterized by a downright renaissance of direct, unflattering and, in a certain sense, 'honest' unilateralism, including above all the re-invasion of the West Bank territory handed over to the control of the Palestinian Authority, culminating in 'Operation Defensive Shield' in March/April 2002. It is in the very spirit of revitalized unilateralism that the construction of the Wall was launched. In the maelstrom of one-sided measures, the notion of a bilateral approach almost completely vanished. PM Ariel Sharon increasingly made a virtue out of necessity and let the policy of unilateralism hit its hitherto peak by presenting what he called the 'Disengagement Plan' in his speech at the Herzliya Conference on 18 December 2003.

Renewing the 'no partner discourse' while disingenuously affirming Israel's lasting commitment to a negotiated settlement – the idle talk decorated with the notorious bow tie of necessary 'painful concessions' – PM Sharon announced his intention to "initiate the unilateral security step of disengagement from the Palestinians." 220 What at first glance may look like an almost generous act of selflimitation is yet another attempt to shape the landscape according to the political vision of only one side. Belying its own commitment to a bilateral solution as stipulated in the US-sponsored Road Map the Bush administration gave full support to this unilateralist approach (which it has been in favor of not only since the recent Iraq war). After PM Sharon had already promised in the Herzliya speech that he would fully coordinate his Disengagement Plan with the United States, 221 the intensive bilateral negotiations – now bizarrely enough between Israel and the US – culminated in a formal exchange of letters between President George W. Bush and Israeli PM Ariel Sharon on 14 April 2004.

In exchange for the announcement of an Israeli withdrawal from the Gaza Strip and the abandonment of the Gaza settlements as well as four minor West Bank settlements – all together comprising some 7,000 or 8,000 of the whole settler population of more than 400,000 222

221 Ibid., para. 27.
222 See PASSIA, Diary 2004, p. 278f. and 307. The already meager pull-out plan has been decisively weakened by the so-called 'revised Disengagement Plan' which passed the Israeli Government on 6 June 2004 (after the plan's original version had been clearly rejected in the Likud party referendum of 2 May 2004). The carefully worded decision now only contains a basic approval for the dismantlement of
Sharon received unprecedented promises and guarantees from the Bush administration concerning the refugee as well as the settlement issue. The Bush position can be summarized as limiting the right of return to the future Palestinian state, on the one hand, and quasi-recognizing major settlement blocs on the other. Bush's letter laid out a formula of “new realities on the ground, including already existing major Israeli populations [sic!] centers” and emphasized that a “full and complete return to the armistice lines of 1949” is not “realistic” (thus giving up a 35-year-long US policy of at least formally rejecting the settlements in the OPT as illegal in the face of IHL). In other words, the US canonized (and by that further encouraged) the policy of systematically creating facts on the ground in order for Israel to shape the landscape according to her own political vision (thus prejudicing any 'final status agreements') and sent Sharon back to Israel with a whole package of rewards for his policy of unilateralism.

2.5.3. The Wall as epitome of unilateralist policy

Albeit not a central theme of the Bush-Sharon encounter in Washington, the Wall project was also present in the negotiations leading up to the recent exchange of letters. In fact, the US President simply repeated the wording of the Sharon letter, stating that “the barrier being erected by Israel should be a security rather than political barrier, should be temporary rather than permanent, and therefore not prejudice any final status issues including final borders, and its route should take into account, consistent with security needs, its impact on Palestinians not engaged in terrorist activities.”

settlements, explicitly making its implementation dependent on another Government vote (see the revised text of the Disengagement Plan, II, C: “The Government will discuss and decide separately on the evacuation of each of the above-mentioned groups.”). In the meantime, President Bush’s April 14 letter to PM Sharon was endorsed by huge majorities in both Chambers of the US Congress (see resolutions of the House of Representatives as well as of the Senate of 24/25 June 2004).

224 See e.g. Opinion of the Legal Adviser of the Department of State to the US Congress on the legal status of Israeli settlements in the occupied territories of 21 April 1978.
Aside from the quite astonishing fact that this wording seems to suggest that the majority of Palestinians are “engaged in terrorist activities,” the statement also reflects the official Israeli justification of the Wall being a temporary security-only measure, fully taking into account the humanitarian needs of the Palestinian population. The meeting of Bush and Sharon in mid-April will enter into history as the moment when the United States unreservedly accepted the Israeli plans to construct the Wall in the West Bank. While always welcoming the idea in principal, the US administration had articulated objections to some parts of the Wall’s route and even threatened to reduce US loan guarantees to Israel by the pro-rata amount spent on the unapproved sections.226 After Israel had promised some minor changes (e.g. the abdication of the connection of the West Bank settlement of Ariel to the main route of the Wall,227 thus giving up the original idea of the highly controversial Ariel salient at least for the year 2004 without commitments for subsequent years228), Secretary of State Colin Powell declared around the time of the 14 April encounter that the US has no plans to cut loan guarantees to Israel because of the Wall’s route.229

It is not surprising that the complete approval of the Wall project did not really make headlines. Looking at the front pages of the newspapers, one can easily see that the unilateral disengagement plan has totally overshadowed the Wall in terms of media interest, making it a mere second-rate issue. Despite this, it should not be forgotten that the two issues are closely linked. It is not by chance that in the very moment of the creation of the Disengagement Plan Sharon announced that “Israel will greatly accelerate the construction of the security fence”230 and that again in his letter to US President Bush he explicitly reaffirmed the plans for accelerating the Wall’s realization.231

Both of them are committed to a deliberate return to unilateralism,

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227 Aluf Benn, PA to nix any U.S. pledges that endanger final status issues, Ha’aretz, 12 April 2004.
228 Aluf Benn, Bush says return to Green Line ‘unrealistic’, Ha’aretz, 15 April 2004. Meanwhile, however, the construction of the Wall around the settlement of Ariel has begun (Arnon Regular, Despite U.S. deal, Israel starts Ariel fence, Ha’aretz, 14 June 2004); see note 153.
229 Powell: U.S. has no plans to penalize Israel for fence route, Ha’aretz, 9 April 2004.
230 See Herzliya speech (note 220), para. 34.
voluntarily neglecting and even undermining and gravely harming a future negotiated settlement. Quite the contrary, the very nature of these projects is to one-sidedly shape the final outcome of the Israeli-Palestinian conflict. Israeli unilateralism is to be seen as one of the characteristic constants throughout the history of the conflict although its stature did change over time. Originally, the Zionist project envisaged taking possession of all of the West Bank and Gaza. In light of the continuous presence of a large Palestinian population and a comparatively high growth rate – a fact manifesting itself in all varieties of so-called ‘demographic reasoning’ – the political project has changed in order to endow Israel with the greatest amount of land and resources possible while disposing of the major Palestinian population centers in order to guarantee a stable Jewish majority and to permanently ensure the character of Israel as a ‘Jewish state.’

The most important instrument for the realization of this project is, without a doubt, the Israeli settlement policy. By systematically settling Israelis within the OPT, giving them land, resources, state funding and plenty of room to develop and grow, this policy intentionally limits Palestinian livelihoods and development. The multiplicity of measures applied to that effect is well-known: the issue of building permits only within already existing Palestinian population areas, seizing or making inaccessible or unusable agricultural land, wells and springs and other resources, and the establishment of bypass roads. The true nature of this policy of systematically creating facts on the ground is best illustrated by the Bush letter of 14 March 2004 and its appreciation of “already existing major Israeli populations [sic!] centers”\textsuperscript{232} in the OPT.

Over the years, this very policy of colonization has started to include – at first sight quite paradoxically – the Israeli endorsement of the creation of a Palestinian state in parts of the OPT. It was, however, essential that Israel would be able to largely shape the territory, form and scope of action of the ‘state’ arising next to it. It is also in this context that the measures of \textit{internal} and \textit{external closure} have to be analyzed. The systematic – inner and outer – control of Palestinian freedom of movement and development potential is directed at a progressive \textit{fragmentation} and \textit{de-integration} of Palestinian life in all

\textsuperscript{232} See note 223.
its spheres. This process of *cantonization* or *bantustanization*\(^{233}\) of the West Bank is aimed at constructing a Palestinian pseudo-state, deprived of its territorial contiguity and the essential attributes of its sovereignty.\(^{234}\)

This vision of the future Palestine, while contrary to the Road Map’s stipulation of an “independent, democratic, and viable Palestinian state,”\(^{235}\) is completely coherent with the Wall project which solidifies the closure system and therefore contributes to a unilateral ‘disengagement.’ It was in his 2003 Herzliya speech that PM Sharon announced the relocation of settlements “which will not be included in the territory of the State of Israel in the framework of any possible future permanent agreement.”\(^{236}\) At the same time, the at least alleged abandonment of certain parts of the OPT and the creation of a new ‘security line’ to which the IDF would be redeployed would be accompanied by a simultaneous strengthening of control “over those same areas in the Land of Israel which will constitute an inseparable part of the State of Israel in any future agreement.”\(^{237}\)

It is not at all by chance that the very sentence following the renewal of the Zionist claim to the OPT contains the promise to “greatly accelerate the construction of the security fence.” Both ideas adhere to the identical program of unilateralism: the Disengagement Plan will absolve Israel of controlling areas it does not find opportune to control any more (at least for now), whereas the Wall will physically separate the desired areas which can then be annexed to Israel. Thus the same policy of creating facts on the ground is being pursued, with the

\(^{233}\) This term goes back to now PM Ariel Sharon who in a conversation with former Italian PM Massimo D’Alema is reported by the latter to have said that the South African “Bantustan model was the most appropriate solution to the conflict” (see Akiva Eldar, People and Politics. Sharon’s Bantustans are far from Copenhagen's hope, Ha’aretz, 13 May 2003). Most interestingly, US Secretary of State Colin Powell used the term recently when he said “that you can’t have a bunch of little bantustans or the whole West Bank chopped up into non-coherent, non-contiguous pieces and say this is an acceptable state” (see Powell warns against division of West Bank into ‘bantustans’, Ha’aretz, 7 June 2004).

\(^{234}\) See e.g. Sergio Yahni, *The Politics of the Apartheid Wall*, News from Within, Vol. XIX, No. 8, September 2003, p. 6 as well as Meron Rappaport, *A Wall in their Heart*, Yedioth Aharonoth, 23 May 2003 citing Uzi Dayan, former director of the National Security Council, in view of the Wall project with “It would not be an illusion to speak of cantons.”

\(^{235}\) Road Map (note 218), para. 3.

\(^{236}\) Herzliya speech (note 220), para. 30.

\(^{237}\) Ibid., para. 30.
certainty that it will ultimately be broadly endorsed.

The Israeli (and then US-backed) definition of the Wall as “a security rather than political barrier […], temporary rather than permanent”\textsuperscript{238} taking into account the greater framework of the unilateralist approach is quite meaningful. The alleged character of an only “temporary security measure”\textsuperscript{239} is already belied by the “scope of construction and the amount of occupied West Bank land that is either being requisitioned for its route or will end up between the Wall and the Green Line.”\textsuperscript{240} Few people doubt that most of the area designated for the western side of the Wall will become permanently integrated into the State of Israel.

The categorical refusal of Israel to use the attributes ‘permanent' and 'political' to describe the Wall is not only a strategic one of denying the intention of de facto annexation, but also, and perhaps more so, a political one of keeping open the option for further intrusion into West Bank territory. Once again, one can observe the quite familiar double play: on the one hand, the unilateral creation of facts on the ground with the expectation of their formal approval sometime in the future (as the recent exchange of letters cynically demonstrates), on the other the rejection of committing oneself to certain borders and delimitations in order to leave the possibility open for greater territorial gains in the future.

\textbf{2.5.4. The separatist illusion}

The ‘excessive' Wall project as it is planned and built right now has been broadly criticized, as described above.\textsuperscript{241} At the same time, the existence of ‘legitimate security interests' causes many critics to resort to a seeming 'compromise' often embodied in the vision of a \textit{Green Line Wall}. They believe that this version of the Wall will not cause as much harm to the Palestinian people while still maintaining the security rationale. Only rarely do they acknowledge that a physical barrier may not be the best way to bring about legitimate self-defense.

\textsuperscript{238} See note 225.
\textsuperscript{239} See note 29, nr. VII.
\textsuperscript{240} Report of the UN Secretary-General, November 2003, nr. 29.
\textsuperscript{241} See Chapter 1.2.1.
It has become quite popular to embrace the rhetoric of a missing partner on the other side. From this perspective, the Wall project is perhaps tackled in a more careful and reluctant way than the above mentioned excessive reasoning does, but stays nevertheless fundamentally inspired by the same idea of unilateralism and adheres to the same policy of oscillating between defining and not accepting to be defined. Far from seeing a solution of the conflict (or even a conducive step in that direction) in simply cutting the OPT away, one has to principally refuse such an act of denial of reality and to accept that the Palestinian people are not going to disappear and that their representatives cannot be either substituted or eliminated in finding a solution to the historic conflict, a conflict which will not end just by walling others out and oneself in.

However, this reality is often drowned out by the power of the security argument which activates the basic drive for self-protection and thus evokes strong emotions; the promising simplicity that it is better to do things on one’s own; and the tempting, almost archaic image that a threat is best handled by simply physically distancing oneself. As a result, people tend to ignore that, apart from the Wall’s blatant and well documented disproportionality\(^{242}\) when measured against ‘legitimate security interests,’\(^{243}\) important doubts concerning its effectiveness have also been raised.\(^{244}\)

Furthermore, only a quite naïve perspective would allow one to believe that a Wall, no matter how high, could be a real ‘safety net.’ The further pressure, violence and deprivation in all their multiple forms which are inflicted on thousands of human beings by the inhumane Wall will only increase humiliation and hopelessness, anger and despair, and could well fuel hatred and violence on the Palestinian side, potentially undermining the security of the Israeli population.

\(^{242}\) ‘Proportionality’ was in fact the main concept under which the Israeli Supreme Court in a recent decision declared a stretch of some 30 km of the planned Wall illegal (see note 248).

\(^{243}\) See Bibliography, Section Legal Analysis.

\(^{244}\) In addition to the ineffectiveness caused by the meandering route of the Wall and particularly pointed out by members of the Israeli security establishment (see Chapter 2.1.), B’Tselem, Position Paper, April 2003, note 63 cites a report of the Israeli State Comptroller (Audit Report on the Seam Area, Report No. 2, Jerusalem, July 2002, p. 35) stating “that IDF documents indicate that most of the suicide terrorists and the car bombs crossed the seam area into Israel through the checkpoints, where they underwent faulty and even shoddy checks,” and not through the open areas in between where the Wall is being built.
The suggested direct correlation between the degree of physical separation and that of security is itself a dangerous illusion – both for the 'legitimate security interests' of the Israeli people as well, of course, for the security of the Palestinian people which is virtually never mentioned.

From such point of view, the construction of a physical obstacle of the dimensions and implications of the current Wall – even if re-routed to reduce the humanitarian disaster which is occurring – can only be regarded as fundamentally counterproductive and illegitimate. As such, it promotes what can be called the separatist illusion whereby walls in the head and walls on the ground reinforce each other, renewing and strengthening the psychological barriers between the two peoples. At its very best, a policy of constant unilateralism can bring pacification, not peace; as such it is a (really) temporary and short-sighted policy. This explicitly includes the vision of unilateral separation by a fence or a wall, irrespective of its exact route. The road of unilateralism, in either explicit or hidden form, leads only to a dead end.
A WALL ON THE GREEN LINE?

Allison Monroe, 2003
3. Against misguided constructivism

It is worth restating the notable comment of Nasser al-Kidwa, the Permanent Observer of Palestine to the United Nations, in his official presentation before the ICJ: “If Israel wanted a Wall for security, it could construct it on its territory and raise it to 80 meters rather than 8 meters if it wished. This would not bode well for mutual coexistence, but no one would challenge its legality in principle.” The general acceptance of the Wall itself, combined with clear limitations on its legally justifiable route, represent an approach which can be called a 'formula of conditionality.' Statements with this formula abound, such as in the concluding remarks of a report on the Wall by the Israeli human rights organization B’Tselem: “If it is decided that there is no choice other than to build the barrier, the government must set the route to run along the Green Line or, alternatively, within Israel.”

One should not claim that this approach wholeheartedly supports the Wall. Both statements above signal more or less clearly that the erection of a physical obstacle is not the appropriate way to react to the current situation. By shifting initiative and responsibility for the unwanted measure to the Israeli Government, they contribute nevertheless – voluntarily or not – to justifying the legitimacy of the Wall's construction as well as to supporting a unilateralist perspective. Every attempt to be constructive in the sense of proposing a 'less harmful' and thus tolerable or even acceptable route undermines the much-needed unequivocal rejection of the Wall project in and of itself. Although indirect, this type of recognition of unilateralism constitutes, notwithstanding all 'safety precautions,' a misguided and therefore dangerous form of constructivism; this approach is, however, quite widespread within the predominant anti-Wall discourse.

Certainly there are particular contexts where raising the Green Line argument (and thus practicing a sort of 'voluntary self-limitation') may be deemed reasonable and appropriate, for example for the specific

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245 Oral Statement by Dr. Nasser Al-Kidwa, Ambassador and Head of Palestine Delegation to the oral proceedings of the International Court of Justice, 23 February 2004, nr. 19.

246 B’Tselem, Position Paper, April 2003, Conclusions, last paragraph.
needs of court trials such as the one before the ICJ\footnote{247} or HaMoked’s petition to the Israeli Supreme Court.\footnote{248} The reasons for such ‘modesty’ may be seen in the fact that certain categories of arguments (for example more politicized ones) cannot be used in a judicial forum, or that their abandonment promises a better outcome to the case. Apart from the fact that there indeed exist legal arguments against the Wall project as such,\footnote{249} it is important to bear in mind that restricting oneself to a purely legal critique should only be done in settings such as a court room where there may be a justification. Sometimes, however, one gets the impression that the whole current Wall debate is ‘over-legalized’ in the sense that most of its participants are completely focused on arguments from the, certainly important, legal sphere while ignoring other very important aspects – political, economic, social, cultural, historical – which must be taken into account in any serious evaluation of the Wall project.

However, a general acceptance of the Wall concept for \textit{strategic} reasons – in order not to alienate people who identify themselves with the security argument, particularly the above-mentioned ‘security dis-

\begin{footnotes}
\item[247] The ICJ’s decision was based upon a built-in limitation: The GA’s request restricts its scope of examination to “the wall being built […] in the Occupied Palestinian Territory, including in and around East Jerusalem” (emphasis added), i.e. beyond the Green Line (see Chapter 1.2.1.) In view of the fact that “some parts of the complex are being built, or are planned to be built, on the territory of Israel itself,” the Court therefore states that it “does not consider that it is called upon to examine the legal consequences arising from the construction of those parts of the wall” (ICJ, Advisory Opinion, 9 July 2004, para. 67). Hence, by the wording of its question itself, the GA offered the Court an ‘exit strategy’ in this regard which the latter gratefully accepted and, neither in its analysis nor in its conclusions did it transcend the predetermined horizon (see ibid., para. 149-153 as well as 163). It is unknown how the ICJ would have coped in its legal reasoning with a general questioning of the Wall’s construction.

\item[248] See note 92; see in this context also the petitions filed by The Association for Civil Rights in Israel (ACRI) directed against the Wall’s gate system as well as against the regime of permit allocation in the closed military zone (see the organization’s website http://www.acri.org.il/english-acri/engine/list.asp?topic=20). The approach of principally and almost unquestionably accepting the “Authority to Erect the Separation Fence” and contenting oneself with the judicial review of “The Route of the Separation Fence” in the light of the “rights, needs, and interests of the local population” has found a recent manifestation in a so-called ‘landmark decision’ of the Israeli Supreme Court (Beit Sourik Village Council vs. The Government of Israel et al., Judgment of 30 June 2004, HCJ 2056/04, nr. 25ff. and 33ff.) declaring illegal seven confiscation orders (and thus a stretch of some 30 km of the planned Wall) due to lack of proportionality.

\item[249] See 2.3.
\end{footnotes}
AGAINST MISGUIDED CONSTRUCTIVISM

... course light’ – while attempting to mitigate it with the Green Line regime is as unnecessary as counterproductive. General experience shows that the people responsible for the realization of the current Wall project gratefully accept this kind of basic support for the project while ignoring the accompanying limitations which constitute for the 'Wall light' supporters an essential part of their consent; different versions of this double play have been outlined above.

After opening Pandora’s box one cannot easily control or stop unwanted developments from arising. This slippery-slope phenomenon began with B’Tselem’s tacit acceptance of the Wall project along the Green Line, albeit limited by the two criteria of “benefit to the local Palestinian population” and “meeting Israel’s military needs in the narrow sense of the term” allowing for “deviations from this [Green Line] principle […] only in exceptional cases.” Then, taking a quite similar approach that the Wall should meet a narrow definition of Israel’s military needs, the Council for Peace and Security abandoned the criteria of only sporadic and exceptional deviations in favor of merely demanding a “route of the Wall to the proximity of the Green Line.”

In view of the flexible definition of security and military needs – highly vulnerable to abusive application – it is, from there, not far to the excessive Wall discourse claiming for itself nothing more than a security only reasoning. Yoel Esteron strikingly captures these dynamics when writing that “people who during cooler days understood that building a separation fence, or wall, is an act of despair made do with a lukewarm battle for the ‘route.’ With a shrug of their shoulders they supported the fence, on condition that it was built along the 'route.' Thus was born a new magic word, which of course disappeared into thin air. Whoever allowed Prime Minister Ariel Sharon to build a fence should have known that the route would not be that of Peace Now. […] Anyone who supports the fence, or remains silent, cannot console himself that he is supporting a route that is reasonable. Anyone who doesn’t oppose the fence is in effect accepting Sharon's fence.”

In a general evaluation of the Wall project, taking into account its wide ranging aspects and implications in different spheres (and not only the

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250 B’Tselem, Position Paper, April 2003, Conclusions, last paragraph.
251 See note 95 (emphasis added).
252 Yoel Esteron, Let’s dismantle the fence, Ha’aretz, 7 July 2004.
quite specific legalistic perspective), it is important to maintain a fundamentally critical approach against the concept of a Wall regardless of its location. There is no need at all to provide the Israeli Government with a 'legitimate' alternative route to the planned and built one. It is up to the GOI to present a comprehensive project which – considering its characteristics and consequences – may be accepted both as juridically legal as well as politically legitimate. It has already been pointed out that there is no way to refuse to define the state's borders on the one hand, but simultaneously seek to profit from prerogatives arising from fixed borders on the other. It is up to the Israeli authorities to eliminate contradictions like these before moving forward, and there is no need for others to try to explain away the government's contradictions and hypocrisies.

The broad camp of Wall critics do not have to shoulder the burden of constructivism, all the more so given that this constructivism is, as already mentioned above, not met at all from the side of the government. Civil society activists and human rights organizations in particular must be well aware of a certain incoherence and tension within their statements and actions: on the one hand emphasizing that they do not want to interfere in the political sphere and that they limit themselves by only focusing on human rights and humanitarian issues, while on the other hand, voluntarily or not, providing alternative solutions in terms of policy prescription. This maneuvering on the part of NGOs seems to derive from a fear of being reproached for 'blind rejectionism' and – again – motivated by the wish to provide a 'constructive' answer towards the project they are confronted with.

It is important to reiterate, as stated in the Introduction, that the most authentic critique should be a total rejection of the Wall project in and of itself. Furthermore, a serious and well-founded Wall criticism should demand that the root causes of the conflict must be addressed rather than just 'managing' its symptoms. This translates into an unambiguous end to the occupation and full equality and justice for all those living between the Mediterranean Sea and the Jordan River as true prerequisites for peace and security. One must refute the Israeli 'logic' that the Wall's construction would allow them to ease up on the degree of inner closure, i.e. to give up some checkpoints, road blocks or earth mounds within the West Bank. This is nothing more than a cynical promise to substitute one face of the occupation with an even harsher one.
This booklet hopes to serve as a corrective voice in the anti-Wall discourse making unambiguously manifest that a well-founded and proper Wall criticism must not stop at one of the project's elements, even an important one such as its route, but must stick to a fundamental rejection of the Wall project as such as well as of the fatal policy of unilateralism it embodies. Notwithstanding the lasting significance of the Green Line as a privileged point of reference, the unequivocal answer must be: There is no justification, no legitimacy for a Wall, neither beyond nor on the Green Line.
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PENGON's main Wall publication includes an extensive bibliography\(^{253}\) containing reports and articles about the Wall published until May 2003. Therefore, this period is not covered by the references given here.

This bibliography, while in no way exhaustive, presents a selection from the abundance of Wall-related publications from mid-2003 onwards. We have tried to provide an overview of the literature by referring to key documents and comprehensive reports, joined by some exemplary pieces of political analysis, all of them explicitly addressing the Wall phenomenon.

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\(^{253}\) The Palestinian Environmental NGOs Network (PENGON), Stop the Wall in Palestine. Facts, Testimonies, Analysis and Call to Action, June 2003, p. 192-199.
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**Impact of Wall on Different Spheres of Life**


**Political Analysis**


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