

CHAPTER I

INTRODUCTION

1.1 BACKGROUND

The construction of the West Bank Wall could be seen as a negative effect of globalization¹. It is a great paradox of our times that with the weakening of national borders and interdependency associated with globalization seems to appear a growing tendency to erect material walls between states². These walls are usually constructed with the declared purpose of fending off terrorists, traffickers, illegal immigrants, or other undesirable persons or things³. Long stretches of physical barriers have been built on the borders of USA and Mexico, Botswana and Zimbabwe, India and Pakistan, and Israel and Palestine⁴.

However noting upon the argument above, although the examples shown some similarities amongst each other, in the case of the Israeli wall it is exceptional due to the fact that Palestine is not an independent, internationally recognized state. Hence, the wall separating it from Israel functions rather differently, both politically and legally, from other walls across the world⁵.

In summer 2002, following a campaign of suicide bombings by Palestinian militants, the Government of Israel approved construction of a barrier; incrementally to prevent suicide bombers from entering Israel. The real and concrete actions of the construction of the wall began in late 2003, when the government officially approved an initial route for the barrier⁶. According to the most recently approved route, the barrier's total

¹ Yishai Blank. (2011). "*Legalizing the Barrier: The Legality and Materiality of the Israel/Palestine Separation Barrier*" (Texas International Law Journal, Vol. 46, No. 2, p 309 – 343, 2011) Available online at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1872964

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.*

⁶ Yishai Blank. (2011). *op. cit.* p. 311

length is approximately 708 km, more than twice the length of the 1949 Armistice Line (Green Line) between the West Bank and Israel⁷.

The international community was not convinced that the construction of the wall was for a political and settlement interests for the state of Israel⁸. As construction proceeded, what was first sought to be temporary and for preventive reason, it grew into something else; hence the result was in particular seen through the large areas of prime Palestinian land that were alienated from their owners and whose access became dependent on a gate and permit regime⁹. Special Rapporteur for the United Nations, John Dugard stated that the primary purpose of the wall is not for security measure but it was an act of territorial annexation. Specifically, the route was designed for the *de facto* annexation to Israel of the major settlement blocs, which had been implemented throughout the West Bank and East Jerusalem in contravention to the international law¹⁰.

The high point of the international opposition and arguments to the construction of the wall was the advisory opinion delivered by the International Court of Justice (ICJ) in July 2004. The court not only ruled out that the route of the wall construction violated international law but reaffirmed the illegality of the settlements¹¹.

In a report made by the United Nations Secretary-General¹², the barrier is often perceived through its two distinct characteristics: First, as a *material* object, which is described as a physical entity that its characteristics produce a set of almost-necessary consequences to reality. Secondly, viewed as an *ideological-legal* construction, that describes the barrier as an intangible object. In this view, the barrier is mostly an idea, a regime, and a set of legal rules – of separation and segregation, of domination and occupation, and of

⁷ Ray Dolphin. (2006). *loc. cit.*

⁸ *Ibid.*

⁹ *Ibid.* p. 8

¹⁰ *Ibid.*

¹¹ *Ibid.* p. 10

¹² See U.N. Secretary-General. (2003) “*Report of the Secretary-General Prepared Pursuant to General Assembly Resolution ES-10/13, paras. 23 – 27, delivered to the General Assembly, U.N. Doc. A/ES-10/24*”

controlling the population and managing risks¹³. The two characteristics made it possible to call the barrier a *hybrid creature*¹⁴. Further, Yishai Blank elaborate upon this idea, as;

“It is a mixture of facts and norms, of materiality and legality, of physically and ideology. A description of the barrier focusing on a single aspect is, therefore, lacking and biased and risks producing negative normative consequences. Realizing that the material aspect of the barrier is indistinguishable from its legal and ideological aspect allows one to fully understand the uniqueness of the barrier... and to better grasp and describe the way the wall functions in reality, thus offering new avenues for legality challenging it.”

However the narrative derives from the characteristics, resulting in an action taken by Israel, by *de-facto* annexed Palestinian territories, turning them into a land reservoir for Jews to settle in. It took the form of separating between the two groups, and an overwhelming domination of the Jews over the Palestinians over the territory – clearly seen in the superiority of the Jewish infrastructure over the Palestinians, also in the absolute preference of Jewish free movement over that of the Palestinians¹⁵. As physically imposing and materially oppressing as the barrier is, it is nonetheless *a legal concept* and *a legal regime*¹⁶.

As such, the legal campaign against the Israeli barrier was both local, in Israeli courts that had to determine its legality, as well as international, in the International Court of Justice (ICJ), which issued an advisory opinion concerning its legality¹⁷. As it was already noted earlier that the ICJ determined that the construction of the barrier was entirely in violation of the international law. Yet, the state of Israel behaved as if their law bound it to be legal.

Therefore, we could see that the issue concern in regards of the wall are a legal and material manifestation of the idea of sovereign states, and made it possible for such visible debate¹⁸. In a way that the *legal barrier* concern, in the matter of elaborating set of legal definitions, rules, procedures, and permits that accompanied the erection of the material

¹³ Yishai Blank (2011). *op. cit.* p. 312

¹⁴ *Ibid.*

¹⁵ Eyal Weizman. (2007). “*Hollow Land: Israel’s Architecture of Occupation*” (Verso, New York) Available online at: <http://communication.ucsd.edu/fields/comm158/WeizmanHollowLand.pdf> p. 315

¹⁶ Yishai Blank. (2011). *op. cit.* p. 316

¹⁷ *Ibid.*

¹⁸ *Ibid.*

barrier legitimized the concrete blocks, iron fences, barbed wires, watch towers, surveillance cameras, and gates¹⁹.

Ergo, this thesis will discuss the justification of the State of Israel in constructing a wall in the West Bank territory under the legal basis of international law. Furthermore, the analysis of this thesis will focus and cover, first and foremost the respond of the state of Israel in ignoring the injunction to cease construction of the wall and to dismantle the sections already built. Secondly, the state of Israel's concern and respond towards non-compliance and facing international sanctions from the United Nations. Thirdly, the state of Israel relationship with the United States that changes the upbringing of every peace negotiations or agreements with the Palestinians – hence securing the new border and direct territorial authority prospering the Israel's interest. Fourth, analyzing the international community – The United Nations and the International Court of Justice in particular – in their failure of implementing the international law and norms in the case of the construction of the wall by the state of Israel. Coming forth to that argument, this thesis will also covers the legality of order of the international law especially in the case of illegal occupation. Last and finally, this thesis will analyze the consequences leading to the construction of the wall made by the state of Israel and its impact towards its international relations with other states.

In conclusion, the simplest way to explain the background of this issue *with* the pattern of the international law that was applied during the course of events following the construction of the West Bank Wall is as follows:

1. *First* and foremost, the construction of the West Bank Wall for the *reasoning* of security and the elimination suicide-bombings and terrorist attacks inside the territory of the state of Israel *resulted* in the ICJ Advisory Opinion;

¹⁹ Yishai Blank (2011). *op. cit.* p. 317

2. *Secondly*, the following argument made by the state of Israel in regard of the Advisory Opinion *refers* back to the solution made in the 1967 Six Days War after Israel won the war; this argument will be further elaborated in the analysis of this thesis;
3. *Thirdly*, the discussion made in regard of determining the *legality of order* of the international law that applies in the current case and to justify Israel's action will be further elaborated in the analysis of United Nations Security Council Resolution 242 and also pertaining to that, UN Resolutions 181 (II) and UN Resolution 181 (III); ergo, this following discussion will be further elaborated in the analysis of this thesis.

1.2 RESEARCH QUESTIONS

This thesis' two main concepts relies heavily on the framework of firstly, the pattern of *international law* and the *legal* basis of the construction of the West Bank Wall, hence the following research question resulted from both understanding, as follow: "*Why does international law and international pressure does not hinder the state of Israel in the construction of the West Bank Wall?*"

Furthermore, to enhance this thesis' main research question, the following framework constitute the whole idea of the research to guide and maintain the authors analysis and debate, as follows:

1. The history of the Israel-Palestinian issue in general as a *base* towards correlating it with international law to succeed until the current event of the construction of the West Bank Wall;

2. The pattern of consistent and repeated international law that has been made upon this issue in hand, in contrast with the current – status quo – of the international law that applies to justify the state of Israel’s actions;
3. Last but not least, the mechanism of the United Nations especially its judicial organs the International Court of Justice to justify its presence of *international pressure* in the construction of the West Bank Wall by the state of Israel.

1.3 OBJECTIVES

The notion that is brought up upon this thesis is constructed into one research question – already mentioned and explained in the previous points, which is as follow: *Why does international law and international pressure does not hinder the state of Israel in the construction of the West Bank Wall?*

Hence, the study of this thesis will have a limited scope of three different justifications to which answers the research objectives:

1. *First* and foremost, the question of international law that is applied to different events leading to the construction of the West Bank Wall and the actions taken by the state of Israel; this includes *pattern* movement of the international law, the *history* of the international law, and the current *status quo* of the international law; - Which this leads on answering the *first* part of this thesis’ research objectives to *why international law does not hinder the state of Israel and actually justify their action instead?*
2. *Secondly*, the question of the international pressure – pertaining from the previous understanding, which is the United Nations – especially the International Court of Justice, as part of the United Nations judicial organs that took further step to hinder and stop the construction of the West Bank Wall; - Which this leads on answering

- the *second* part of the thesis' research objectives to *why international pressure does not hinder or stop the state of Israel and actually justify their action instead?*
3. *Last but not least*, the question of the legality of order that is not *viable* or *visible* in the international law that resulted in the justification of the Israel's actions against the construction of the West Bank Wall; - in which pertaining to that, *the three objectives will answer the research objectives of the case study.*

1.4 RESEARCH CONTRIBUTIONS

Law has always been directly involved and implemented in the Israel-Palestinian conflict ever since the words '*public law*' appeared in the first resolution adopted by the first Zionist Congress in Basel in 1897²⁰. Although the question arise from this thesis are mostly in the form of legal basis and also under the framework of international law, rather than the general International Relations perspectives and understanding, however the author sees the big picture of bridging international law and international diplomacy, especially sought under the case study of this thesis.

Hence, the benefit of this thesis and the result of the research could become a fundamental base towards understanding the politic behind great powers such as the Israel, but also understanding the *legal* basis that is somewhat, one way or another influence the state decisions and policies. With the theory combined from the Neo-Realist perspectives, this thesis hopes to further contribute towards international lawyer, but also, decision makers, diplomats and other constituent that would like to apply this research into the International Relations views and paradigm.

²⁰ Victor Kattan. (2009). "*From Coexistence to Conquest*" (Pluto Press, New York) p. 1

1.5 STRUCTURE OF WRITING

This thesis, titled “The Impact of International Law on Israel’s Construction of the West Bank Wall” is organized into five main chapters, as follows:

- **CHAPTER ONE (I): Introduction** – Chapter One of this thesis will consist of the introduction and background of the issue of the construction of the West Bank Wall by the state of Israel, which also included the research questions upon the issue and also the objectives set towards this thesis. Lastly, Chapter One of this thesis will end with the research contributions and structure of writing.
- **CHAPTER TWO (II): Theoretical Framework** – In Chapter Two of this thesis will consist of the sources for the research of the case study, and applicable theories to support the research’s arguments – in this case the Neo-Realist approach.
- **CHAPTER THREE (III): Research Methodology** – Chapter Three of this thesis will discuss and further explain the research method, type of data used – data collection method, and also data analysis that will frame the research and analysis in a more concise manner.
- **CHAPTER FOUR (IV): Analysis** – In Chapter Four of this thesis, it will further elaborate the ground basis of the introduction of the issue, the research questions and objectives in a manner of arguments and data found to be analyzed and implemented in the process of the research.
- **CHAPTER FIVE (V): Conclusion and Recommendations** – Last but not least, Chapter Five of this thesis will conclude the arguments brought up from the previous chapters and further conclude the findings of the research

objectives and questions. Recommendations will also be present for further research by other researchers or constituent that is aware and realized the importance of this study case in International Relations field study as well as other study fields.

