

**THE INTERNATIONAL ORGANIZATION FOR THE ELIMINATION OF ALL FORMS OF RACIAL
DISCRIMINATION (EAFORD)**

5 route des Morillons, CP 2100. 1211 Geneva 2, Switzerland
Telephone: (022) 788.62.33 Fax: (022) 788.62.45 e-mail: info@eaford.org
www.eaford.org

A Tale of Three Walls

The Wall of Ideology, the Wall of Mythology and the Wall of Final Solution in Palestine

Dr. Anis Al-Qasem

28 October 2008

“Woe to them that devise iniquity, and work evil upon their beds! when the morning is light, they practice it, because it is in the power of their hand.

2 And they covet fields, and take them by violence; and houses, and take them away: so they oppress a man and his house, even a man and his heritage.”^[1]

“It took 50 years to grow our olive trees and in three minutes everything was gone^[2].”

The Iron Wall

An Ideology of Total Negation

Give the land without a people
To a people without a land
(A Zionist slogan)

When Sharon launched his so-called Separation or Segregation Wall he chose his words very carefully. He used an innocently appealing slogan: “*Good walls make good neighbours*”. He chose an innocently fitting name for the Wall: “*The Separation Fence*”, and chose the right opportunity to launch it. The location and extent of the Wall and its execution were made step by step depending upon the arrival of the right opportunity. All this fits neatly within the framework of the implementation of an ideology inherited by Sharon and his predecessors and successors of the Zionist movement for the achievement of the main object of the movement: the total colonization of the land of Palestine totally free from the presence of its indigenous population. An understanding of this ideology and the process of its implementation are essential for evaluating the significance of the construction of this ‘Separation’ Wall. To look at the Wall in isolation of this ideology or in segments, as advocated by the Israeli Supreme Court in decisions to be considered later, is like picking a single tree in a huge forest to judge the extent and significance of the whole forest. The construction of the Wall was dictated by this ideology, which is a political decision, and may not be addressed solely and exclusively from the perspective of its legality. The same considerations apply to the second wall referred to in this article, the Western or Wailing Wall.

In the twenty first century, Israeli leaders and their supporters seem to be dominated by and obsessed with sixteenth century European ideology of settler colonialism, nourished by Biblical myths of plundering. The slogan “*give the land without a people to a people without a land*” was raised by Zionism to justify the colonization of Palestine, although it was fully known to Zionist leaders that Palestine was not a land without a people, and that the people of that country, the Palestinians, will resist the colonization of their country^[3]. The separation, apartheid, security wall, barrier or fence, call it what you may, is an integral part of this process of projected colonization in its 16th century formula and Old Biblical mythology of either total submission to the process by the indigenous population or extermination, if they persist in resisting the process. One main feature of this type of colonialism is the firm assumption that the indigenous populations have no sacred or inalienable rights and their lives, land, properties, culture and traditions, indeed their destiny on this earth, are at the mercy of the occupier to suffer, allow, restrict, change or

expropriate. Those allowed to continue in existence, are reduced to a total dependency on the occupier and deemed 'surplus' to humanity, 'disposable' at the will of the occupier. The prime example of the application of this ideology is the fate of the indigenous peoples of North and Latin America and Australia, and the fate of the Palestinians at the hands of the Hebrew tribes, according to the mythical history in the Bible. And indeed these are the examples given by Jabotinsky in expounding the Zionist ideology for the colonization of Palestine.

Vladimir Jabotinsky, the Zionist Russian leader, succinctly formulated this ideology in an article first published in Russian on 4th November 1923, and in English on 26th November 1937 under the title "*The Iron Wall (We and the Arabs)*" [\[4\]](#). It is important to note that the original Russian version was published long before Hitler came to power with his racist policies and the holocaust, but after the grant to Britain of the mandate over Palestine in 1922, and the incorporation therein of the Balfour Declaration of 1917. The English version was published years before the holocaust and the Second World War, but after it became apparent that the indigenous population of Palestine are determined, through successive revolts, to resist the attempted colonization of their country. It was time to reiterate, in a concise form, the ideology and the way to achieve its objective. Zionist leaders and successive Israeli governments, of whatever political colour, have pursued policies and set plans and seized on opportunities to achieve the objective set out by this ideology, and the Palestinian reaction has been as foretold by Jabotinsky [\[5\]](#).

Jabotinsky starts his article by a denial: he declares that it is not true that he was an enemy of the Arabs and "*a proponent of their expulsion etc.*" from Palestine. His "*emotional relationship to the Arabs is the same as it is to all other peoples – polite indifference.*" This 'polite indifference to all other peoples' is, of course, reserved to Jabotinsky and his followers, and is utterly unacceptable from other peoples to them. As will be shown later, he wants the British Government to be actively engaged in promoting his scheme, rather than be indifferent to it.

"*There will always be,*" he declares, "*two people in Palestine – which is good enough for me, provided the Jews become the majority...we will never attempt to expel or oppress the Arabs.*" This is indeed great generosity, but will happen should the Arabs react in the way predicted by him? The answer was deduced by his followers: expulsion, ethnic cleansing and oppression of those who remain as a minority. The aim is to become the majority and overlords. This, of necessity, will mean the transformation of the Arabs of Palestine, who were the vast majority in 1923 as in 1948, when Israel was created, into a minority. According to Jabotinsky, the way that this objective can be achieved depended entirely on the relationship of the Arabs to Zionism. If they accept it, with its objective, the transformation will be peaceful, otherwise it will not. This admission on the part of Jabotinsky that there were Arabs in Palestine at least in 1923 who made the majority of its population confirms the deceptive behaviour of the Zionist movement and its leaders in raising the slogan "give the land without a people to a people without a land" and

characterizes Israeli policies, undertakings and statements, and yet the Israeli Supreme Court decided to accept, at face value, the assertions of the government of Israel that the Separation Wall is of a temporary nature, not constructed for political reasons and does not mark boundaries, and the similar assertion by the security forces that the only objective of the Wall was security. The Court shifted its position from self-defence when it discovered that it was ridiculous to build a huge Wall of the specifications it has to defend against primitive attacks by individual Palestinians. Self-defence is thrown away for future consideration by the Court, and a substitute argument, which does not hold water, was discovered, to the obvious pleasure of the Court, Nevertheless both the slogan and the reality of Palestine in the scheming minds of the likes of Jabotinsky have remained. The slogan has also remained to deceive the innocent or ignorant.

Jabotinsky, the colonialist, knew that, historically, it has never happened that indigenous peoples have ever surrendered willingly their homeland to foreign invaders. He says: *“That the Arabs of the Land of Israel [sic] should willingly come to an agreement with us is beyond all hopes and dreams at present, and in the foreseeable future...Apart from those who have been virtually “blind” since childhood, all the other moderate Zionists have long since understood that there is not even the slightest hope of ever obtaining the agreement of the Arabs of the Land of Israel [Palestine] becoming a country with a Jewish majority.”* And why is that? Because, Jabotinsky writes, *“Every reader has some idea of the early history of other countries which have been settled [i.e. colonized].”* Jabotinsky gave the examples of the Spaniards who conquered Mexico and Peru and *“our own ancestors in the days of Joshua ben Nun”* both of whom *“behaved, one might say, like plunderers.”* He also gave the examples of the English, Scots and the Dutch, *“the first real pioneers of North America”*. In all these cases, Jabotinsky writes, *“The inhabitants fought the white settlers not out of fear that they might be expropriated, but simply because there has never been an indigenous inhabitant anywhere or at any time who has ever accepted the settlement of others in his country. Any native people – its all the same whether they are civilized or savages - views their country as their national home, of which they will always be the complete masters. They will not voluntarily allow, not only a new master, but even a new partner. **And so it is for the Arabs** [emphasis provided]...Every indigenous people will resist alien settlers as long as they see any hope of ridding themselves of the danger of foreign settlement. **That is what the Arabs in Palestine are doing, and what they will persist in doing as long as there remains a solitary spark of hope that they will be able to prevent the transformation of “Palestine” into the “Land of Israel”** [emphasis provided]. Colonization itself has its own explanation, integral and inescapable, and understood by every Arab and every Jew with his wits about him. Colonization can have only one goal. For the Palestinian Arabs this goal is inadmissible. This is in the nature of things. To change that nature is impossible.”*

The quotation is long; but this is necessary in order to understand the nature of the Zionist project and the anticipated certain reaction to it. Jabotinsky was honest to admit that the Zionist project was settler colonialism, like that of the Spaniards, the English, the Dutch and the Hebrew tribes of old. None of them could claim any connection, historical or otherwise, with the land they wanted to settle in and colonise, The aim was to settle and colonise, to control and be masters of the land. So is the case with the Zionist project for Palestine, he

admits. He further does not claim that the Jews were nor are the indigenous people of Palestine. It is the Arabs of Palestine who are the indigenous people, and who, like all other people will resist the colonization of their country until all hope is lost. This resistance is in the nature of things and is understandable and cannot be changed. This is the basis of the legality of resistance to foreign occupation; it is in the nature of things, as Jabotinsky admits.

Jabotinsky considers the various peaceful possibilities for achieving the result he advocates and concludes that the Zionists “*cannot promise anything to the Arabs of the Land of Israel [sic] or the Arab countries.*” Since Palestine “*would still remain for the Palestinians not a borderland, but their birthplace, the center of their own national existence, [t]herefore it would be necessary to carry on colonization against the will of the Palestinian Arabs, which is the same condition that exists now [in 1923]...Zionist colonization, even the most restricted, must either be terminated or carried out in defiance of the will of the native population.*” The way to do that is declared: “*This colonization can, therefore, continue and develop only under the protection of a force independent of the local population – an Iron Wall which the native population cannot break through. This is, in toto, our policy towards the Arabs. To formulate it any other way would only be hypocrisy.*” The support for this ‘Iron Wall’, defined later by Jabotinsky, was first Britain, now the United States and Europe, and, at one time it was Germany, thanks to the Zionist leaders who continued to cooperate with Nazi Germany to the end. These nations cannot be allowed to act with “polite indifference”.

Jabotinsky then deals with the morality of this. “*[I]f anyone objects that this point of view is immoral, I answer: It is not true; either Zionism is moral and just or it is immoral and unjust. ...We hold that Zionism is moral and just. And since it is moral and just, justice must be done...There is no other morality.*” And the just and moral thing to do is to colonise Palestine, even in defiance of its indigenous population, and reduce its Arab majority to a helpless minority that cannot defy this colonization. The only morality is that of Zionism; and no question arises as to the morality or justice of colonization or to what Zionism may do to achieve its objective. The indigenous population has no rights in its own homeland. All these rights are at the disposal of the Zionist colonizer to deny, reduce, or eliminate. They will always be subject to the whim of the colonizer.

It is important to note that Jabotinsky does not raise a historical, religious or legal claim to Palestine as against its indigenous people. The reason is obvious. Jabotinsky and most of the leaders of the Zionist movement were and still are East Europeans who are of Khazar origin. Shlomo Sand of Tel Aviv University, author of *When and How was the Jewish People Invented*, confirms the view held by many that genesis of the Ashkenazi Jews of central and Eastern Europe originated with the mass conversion to Judaism of the people of the Khazar kingdom in what is to-day south Russia. Consequently, they cannot claim to be descendants of the old Hebrew tribes of Palestine. In fact he says “*Most of the early Zionist leaders, including David Ben Gurion, believed that the **Palestinians** were the descendants of the area’s original Jews. They believed the Jews had later converted to Islam*”^[6] [emphasis

provided]._Needless to say that some of the Palestinians of today may be descendants of Jews who converted to Islam (and I personally know a family in Jerusalem reputed to be such) or of Jews who remained in the country but did not convert (like the *Samara* of the city of Nablus). But the Palestinians of today are the descendants as well as of all peoples who settled in Palestine before and after the arrival of the Hebrew tribes. Dr Sand found no evidence of the Exile by the Romans in 70 A.D., and that he discovered that the kingdoms of David and Solomon were legends [\[7\]](#).

Jabotinsky continues: “*All this does not mean that any kind of agreement is impossible, **only a voluntary agreement is impossible**. As long as there is a spark of hope that they can get rid of us, they will not sell these hopes, not for any kind of sweet words or tasty morsels, because they are not a rabble but a nation, perhaps somewhat tattered, **But still living. A living people makes such enormous concessions on such fateful questions only when there is no hope left**” (emphasis provided). Is it unreasonable to interpret this as a call for the extermination of the Palestinians from existence if they were to defy Zionist justice and morality? Was not this the ethnic cleansing and more that Zionist Israel has done and is still doing because the ‘living’ Palestinians refuse to make the ‘enormous concessions on such fateful questions’ as the Zionists-Israelis demand of them? Is this not the holocaust threatened recently by the Israeli Deputy Defence Minister in operations against the Palestinians of Gaza? Are not the present total siege of Palestinians in Gaza and the total dependence of Palestinians in the West Bank on Israel and international charity instruments of oppression used by Israel to produce conditions under which involuntary agreement becomes possible? Are not the ‘Separation’ Wall, road blocks, military raids, day and night, the unlawful detention of thousands of Palestinians, the harassments by settlers ways to produce this result, since voluntary agreement so far has been impossible, as admitted by Jabotinsky?*

How will the Palestinians lose every spark of hope? “*Only when not a single breach is visible in the Iron Wall, only then do extreme groups, with their “Never”, lose their sway, and influence transfers to moderate groups. Only then would these moderate groups come to us with proposals for mutual concessions. And only then will moderates offer suggestions for compromise on practical questions like a guarantee against expulsion, or equality and national autonomy.*” “*But the only path to such an agreement,*” concludes Jabotinsky, “*is the Iron Wall, that is to say the strengthening in Palestine of a government without any kind of Arab influence, that is to say one against which the Arabs will fight. In other words, for us the only path to an agreement in the future is an absolute refusal of any attempts at an agreement now.*” These are the last words of the article.

The extremist groups among the Palestinians are, to Jabotinsky, those who say “Never” to the colonization of their homeland by the Zionist colonizers. They are the people who refuse to make the “*enormous concessions on the fateful questions*” that the Zionist project demands of the Palestinians. The “*moderates*” are those who will agree to make such concessions in return for “*assurances*”, not commitments, for example against “*expulsion*” from their country, but on condition that they will have no kind of any influence in the government of

Palestine, their country. Those moderates who might become exempt from expulsion must be satisfied with the fact of remaining in the country but without any say in its government. However, in no event an agreement is to be concluded until the colonization of Palestine, the whole of Palestine, is achieved and there remains no spark of hope to get rid of the colonizer. Recognition of Israeli colonization of less than the whole of Palestine is not sufficient, as the PLO recognition has proved. "Negotiations" and the creation of more facts of colonization on the ground are only steps to achieve the total colonization of Palestine, after which the "moderates" may negotiate to get the "assurances".

Jabotinsky's plan for the colonization of Palestine with a Jewish majority and a possible helpless Palestinian minority of 'moderates', if such a minority is allowed to stay, has been carried out to the full in those parts of Palestine that have come to be called Israel. The construction of the Iron Wall was almost completed between 1947 and 1949, through massacres too many to count, destruction of homes and complete erasure of hundreds of Palestinian villages, the planned and systematic expulsion of Palestinians from the areas Israel was able to control in that period, and the ethnic cleansing of Palestine. This cleansing, with what accompanied it of massacres and organized killing of Palestinians of military age, defined by Israel as that between 10 and 50, has gone unpunished, and great criminals of this period, such as David Ben Gurion, who master-minded the execution of this plan, and his generals are treated as celebrated heroes instead of being condemned for the atrocities they had authorized or committed. I said 'almost completed' because there are still '*living*' Palestinians who should be eliminated to secure that the wall is not breached. Palestinians living in refugee camps, inside and outside Israel, as well as Palestinian activists, have become targets for elimination according to Zionist justice and morality. The massacre committed at the Sabra and Chatila refugee camps in 1982 in Lebanon under an arrangement by and supervision of the occupying Israeli forces, which were, under international law and an American undertaking through American ambassador Phillip Habib, responsible for their protection and safety, is one of the most atrocious examples of intentional genocide. The then minister of defence, no other than Ariel Sharon, who was condemned for his '*indirect responsibility*' for the massacre by the high-powered Kahan Israeli Commission of Inquiry, was not prosecuted or even investigated by the prosecuting authorities in Israel. He continued his political career to be rewarded with leading two political parties, one after the other, and end up as prime minister.

The other target was and still is the small minority of Palestinians inside that part of their homeland that became Israel. Although they have no influence on Israeli policies, (the camouflage of participation in elections is no guarantee of such influence) and, therefore unable to breach the Iron Wall, have become to be perceived as a threat to the 'purity' of Israel and its Jewish majority. All Israeli political parties are now agreed on one solution: more ethnic cleansing under the name 'transfer'. The calls for recognition of Israel as a 'Jewish' state or 'state of the Jewish people' have their objective the completion of the ethnic cleansing of Palestinians from present day Israel. Perhaps one may be allowed to see the start of this in the events of October 2008 in the mixed city of Acre when Jewish settlers of the city attacked the Arab quarter burning shops and houses and vandalizing the Arab quarter of the city. Also, within this target one should view the recent official ransacking in

August of 2008 of the offices of Al-Aqsa Society and the open theft of all the records it has been collecting concerning Palestinian historical sites inside Israel. No trace should remain in the hands of the Palestinians of their Palestinian existence. The same was done when the offices of the Sharia courts in Jerusalem were ransacked after the city's occupation in 1967 and the library of the Palestine Research Institute in Beirut in 1982.

It is within the logic of this ideology that one should always view the declarations, policies and actions of Israel, including actions pertaining to the Western or Wailing Wall and the construction of the 'Separation' Wall. Jabotinsky's statement of this ideology has been partly implemented as facts on the grounds, no matter to any contrary assertions, now and then, by Israeli governments, including commitments to the United Nations itself. As we shall see later, the Israeli Supreme Court has emphasized the importance of facts for the arrival at the correct conclusions. These facts were, of course, not taken into consideration by the Court. A review of the judgements of Israeli courts, including the Supreme Court, hardly leaves any serious doubt that these judgements are reflections of this ideology on the judicial level.

The Western Wall

"They [the Jewish witnesses] did not make any property claim about the Wall"
Report of the International Commission of Enquiry

A myth is now in the making in the grand Zionist scheme of changing the history of Palestine to fortify the myth of Jewish earlier presence at one of the most important Palestinian sites in the old city of Jerusalem. A newly constructed small 'synagogue' in a tunnel underneath the Aqsa Mosque area will almost certainly be claimed on some Zionist websites as an old synagogue constructed at the time of the Temple. In October 2008 another small synagogue was constructed 50 metres away from the Western Wall on Arab confiscated property. Extensive excavations underneath the Aqsa Mosque on what is called in the West the Temple Mount have failed to unearth any trace of a Temple, large or small. Allegations of discovery of items related to the Temple have been made, perhaps the most famous has been the stone tablet alleging the repair of the Temple at the hands of one of the kings of Israel. That tablet was so perfectly done as to the age of the stone used, the script and vocabulary, that it at first fooled Israeli experts. Doubts as to its authenticity started to show up when the forger evaded questions as to the location where the find was made. He first alleged that it was sold to him by a Palestinian, later to declare that this Palestinian had died. The story could have ended there and a myth could have been started. What saved the day was the discovery by

one of the Israeli linguists, who decided to look at the stone perhaps for the umpteenth time, of the use of one word, which was modern Hebrew. This discovery alerted the experts to the forgery, only to find that the forger had a forgery factory in his basement and had passed so many of his forgeries of ancient Israel to museums in many countries. In view of a gullible doctriated market ready to pay for such finds, one only wonders as to how many forgers may be actively engaged in this kind of business and how much forged items are already there.

Fortunately, there are serious Israeli archaeologists who are searching for the truth. In an article published in the Israeli *Ha'Aretz Weekly Magazine* on 29th October 1999, Professor C. Z'e'zv Herzog, of Tel Aviv University reviewed, for the benefit of the ordinary reader, the results of excavations carried out over the last century and a half. In the first paragraph of this article he sums up the results as follows: *"This is what archaeologists have learned from their excavations in the Land of Israel: The Israelites were never in Egypt, did not wander in the desert, did not conquer the land in a military campaign, and did not pass it on to the twelve tribes of Israel. Even harder to swallow is the fact that the united monarchy of David and Solomon, which is described in the Bible as a regional power, was at most a small tribal kingdom."* He says that this information is widely published, but the general Israeli public does not want to know. He gives his reason: *"Any attempt to question the reliability of the biblical descriptions is perceived as an attempt to undermine "our historic right to the land" and is shattering the myth of the nation that is renewing the ancient Kingdom of Israel. These symbolic elements constitute such a critical component of the construction of the Israeli identity that any attempt to call their veracity into question encounters hostility or silence."* He concludes: *"It turns out that part of Israeli society is ready to recognize the injustice that was done to the Arab inhabitants of the country ...but is not up to adopting the archaeological facts that shatter the biblical myth. The blow to the mythical foundations of the Israeli Identity is apparently too threatening, and it is more convenient to turn a blind eye."* On the basis of all this, one hazards the opinion that the Temple, at least as portrayed, never existed. The Hebrew tribes could not have been of the wealth or knowledge to construct such an imposing building. One can only pray, for the cause of peace and the restoration of the positive co-existence between Arabs and Jews that prevailed for centuries before the invention of Zionism by East European Jews, that the Israelis would release themselves from the myths that have directed their leaders for long and had brought so much misery and bloodshed for both Palestinians and Jews. One can only hope that Uri Avniri was wrong when he said, in concluding an article on the same subject, that it seems that 'myth is stronger than fact'.

The Western Wall (known in the West as the Wailing Wall) lies on the western side of the Aqsa Mosque in the old city of Jerusalem. It forms part of a wall that runs around the area, interrupted in some parts with buildings in service of the Mosque or Islamic Awqaf (charitable foundations). It has been alleged that it is a remnant of an old wall of the Temple. Neither history nor persistent archeological excavations in the alleged area where the Temple is supposed to have been support this. *"[T]he privileged site of Jewish prayer in later times [i.e. after the Romans] was located on the Mount of Olives. Toward the end of the medieval*

age, gradually Jews began to turn instead to the Western Wall for their prayers, and were authorized to do so by the [Islamic] waqf authorities.”^[8] Accordingly, the Western Wall (the Wailing Wall) was not originally the ‘privileged’ site of prayer after the assumed destruction of the Temple, and it became so only toward the end of the medieval age, and, even then, it happened ‘gradually’. Why was that? It should have happened much earlier, particularly after the Arab Muslim conquest of Jerusalem in the seventh century and before the construction of the Aqsa Mosque. Under Arab Muslim rule, the Jews enjoyed full religious freedom and there was no persecution. However, the Jews preferred to live in other parts of the Muslim world, particularly in Spain. The same source, in the first paragraph of the article on the subject asserts “*The Western Wall ... is a Jewish religious site located in the old City of Jerusalem. The Wall itself dates from the end of the Second Temple period, being constructed around 19BCE.*”^[9] Surely if it dates from that period, and had formed part of the wall of the Second Temple, Jews would not have treated the location on the Mount of Olives as their “privileged” site of prayer after Roman times. Evidence searched for by Dr Shlomo Sand, of Tel Aviv University, in his book *When and How Was the Jewish People Invented?* has led him to different conclusions. “*I was not raised a Zionist*” he says, “*but like all other Israelis I took it for granted that the Jews were a people living in Judea and that they were exiled by the Romans in 70 A.D. But once I started looking at the evidence, I discovered that the kingdoms of David and Solomon were legends.*”^[10] There was no evidence of exile. I have already quoted his statement that most of the early Zionist leaders, including Ben Gurion, believed that the Palestinians were the descendants of the area’s original Jews, and that these Zionist leaders believed that the Jews later converted to Islam. On this basis, one would assume that these Jews, who were not exiled, would have known where the Temple and its walls were, and would have continued to pray there before conversion to Islam. There seems no evidence that the area of the Wailing Wall was their privileged site for prayer. The transfer happened much later, most probably because the myth took hold and the Jews who knew better had already converted to Islam. It was then that prayer at the Wall was allowed by the Muslim authorities by way of “sufferance”, as the Commission of Enquiry has found.^[11]

Return to Jerusalem itself by the Jews seems to be conditional. According to Dr Sand, “*Zionism changed the idea of Jerusalem. Before, the holy places were seen as places to long for; not to be lived in. For 2000 years Jews stayed away from Jerusalem not because they could not return but because their religion forbade them from returning until the messiah came.*” This is of course the view held by those religious Jews who refuse to recognize the state of Israel. Dr Sand argues further that most of today’s Jews have no historical connection to the land called Israel, and that the idea of a Jewish nation is a myth invented little more than a century ago.

The ownership of the Wall was raised for the first time during the British mandate over Palestine in the 20th century. Attempts to buy the pavement in front of the Wall and of the adjacent buildings (not the Wall) from the Muslim waqf authorities had been made by rich

Jews; but these attempts failed. A proposal to the Mandatory to expropriate the Wall for the Jews was rejected,

It is not necessary for the purposes of this article to go into the details of events that led to the appointment of the international commission which was charged with resolving the dispute that has arisen between Palestinians and Jews in respect of the Western Wall^[12]. Suffice it to say that by 1928-9 demonstrations and riots occurred between Arabs and Jews over the extent of rights of worship Jews had at the Western Wall and the use of the pavement, courtyard and dwellings in front of or adjacent to the wall. After the disturbances, the British government, as the Mandatory, appointed an *ad hoc* International Commission to determine the rights and claims of Muslims and Jews in connection with the Western or Wailing Wall at Jerusalem. On 15 May 1930, the Council of the League of Nations approved the composition of the International Commission of three persons as follows: Eliel Lofgren, formerly Swedish Minister of Foreign Affairs, Member of the Upper Chamber of the Swedish Riksdag (to act as Chairman); Charles Barde, Vice-President of the Court of Justice at Geneva, President of the Austro-Romanian Mixed Arbitration Tribunal, and C.J. Van Kempen, formerly Governor of the East Coast of Sumatra, Member of the States-General of the Netherlands. The Commission arrived in Jerusalem on 19th June 1930, visited the site, held twenty three meetings and heard fifty two witnesses, twenty one presented by the Jewish side and thirty by the Muslim side, and one British official called by the Commission. It examined all reports, dispatches and memoranda connected with the Wall, and made discreet enquiries with the full knowledge of the parties. At no time did the Jewish side^[13] claim ownership of the wall or the pavement or the buildings adjacent to it, known as the Moghrabi Quarter. Rather, it asked the Commission “*to give recognition to the immemorial claim that the Wailing Wall was a Holy Place for the Jews, not only for the Jews in Palestine, but also for the Jews of the world.*”

In its report, the Commission stressed that the Jewish side “[did] *not claim any property right to the Wall.*” Nevertheless, it thought proper to explore this issue, which was, in effect, to explore the propriety of the Muslim claim of ownership, and arrived, *inter alia*, at the following conclusions:

A - To the Moslems belong the ownership of, and the sole proprietary right to, the Western Wall, seeing that it forms an integral part of the Haram-esh-Sherif area, which is a Waqf property.

To the Moslems there also belongs the ownership of the Pavement in front of the Wall^[14] and of the adjacent so-called Moghrabi (Moroccan) Quarter^[15] opposite the Wall.

Such appurtenances of worship and/or such other objects as the Jews may be entitled to place near the Wall either in conformity with the provisions of this present Verdict or by agreement come to between the Parties shall under no circumstances be considered as, or have the

effect of, establishing for them any sort of proprietary right to the Wall or to the adjacent Pavement

This last *caviat* was of special importance to the Arab side as explained to the Commission. [\[16\]](#)

The Commission recognized the right of access to the Wall for the Jews on the basis of long usage which is recognized by Muslim law. In the view of the Commission, Muslim law seems “*to justify the conclusion that the mere access of the Jews to the Wall has not been held by the Arabs as an infringement of the Moslem Law for if it had, the visits would long ago have been prohibited.*” In holding this, the Commission cited in particular the relevant Article of the Ottoman Civil Code, the *Majalla*, “*Everything which is not in itself illegal and which has been practiced from immemorial times, shall be respected as a right,*” which is a Shari’a long-established rule. The Commission did not establish when these immemorial times have started; nevertheless the Muslim side did not question that the practice has been allowed for long time under Muslim rule of Jerusalem.

The Jewish side asked the Commission “*to decree that the drawing up of any regulations that may be necessary to Jewish devotions and prayers at the Wall shall be entrusted to the Rabbinate of Palestine*”. It asked further that the Commission may suggest to the Mandatory authorities to make a valuation of the Moghrabi Quarter and relocate it somewhere else in Jerusalem. Both requests were denied by the Commission. As to the devotional rights of the Jews, the Commission decided to maintain the then existing *status quo*.

After the occupation of Jerusalem by Israel in 1967, Israel annexed the whole of Jerusalem, including the old city which, in law and all resolutions of the Security Council and UN General Assembly as well as the opinion of the International Court of Justice, is classified as ‘occupied territory’, and started changing the Arab character of the city. Its bulldozers destroyed the entire historic Moghrabi Quarter and other Arab properties near the Wall and created a very large area in front of the Wall. It laid its hands on the Muslim waqf properties and raided the offices of the Sharia court and carried away all its records. The world unique Dome of the Rock mosque bounded on the west by the Western Wall, which dominates the city and whose pictures adorn Israeli embassies and Israeli tourist brochures, is threatened with demolition because of the endless excavations beneath it. Muslim authorities who had maintained the Wall for centuries and allowed Jews to pray at it, face considerable difficulties in maintaining religious sites and other waqf properties that have remained theoretically under their control. The ‘Separation Wall’ cuts the city from its Palestinian natural surroundings and permanent road blocks control entry of Palestinians, not Israelis, to the city. Thousands of Palestinians are denied entry to the Mosque, particularly on Fridays, and forced to pray in the open or streets outside the Mosque. Licenses to build to meet demographic natural growth of Palestinians in the city are rarely, if ever, granted, and houses or additions to them without such licenses are pulled down. To add insult to injury, owners are ordered to pull down what they had built or pay the cost of demolition. Although Palestinian Jerusalemites pay full Israeli taxes and municipality dues, they hardly receive any services in the ‘united’

capital of Israel. Economic life is at its minimum. The whole purpose is to create intolerable conditions for them so that they will be forced to leave the city.

The Security Council, in Resolution 252(1968) adopted on May 21, 1968, “urgently” called upon Israel “to rescind all measures already taken and to desist forthwith from taking any action which would alter the status of Jerusalem.” The same Resolution “considers that all legislative and administrative measures and actions taken by Israel, including expropriation of land and properties thereon, which tend to change the legal status of Jerusalem, are invalid and cannot change that status”.

The tolerance by Arab and Turk Muslims, which permitted the creation of a right that did not exist before, has been rewarded by Israel by measures of utter disregard for their rights and the destruction of their heritage. The positive co-existence that prevailed during Muslim rule of the city has given way to bigotry, racism and exclusiveness, in a state considered by the world as the ‘only democracy’ in the Middle East. Inside Israel, the ethnic cleansing of Palestine did not stop at the expulsion of the Palestinians, but this step was followed by the complete destruction of towns, villages and neighbourhoods, the deletion of their names from signposts and road signs, and the invention of stories to describe the little that has

remained.^[17] Mosques are desecrated: some have been turned into storehouses, others into coffee bars by those to whom the authorities passed ownership, although mosques are waqf

property and may never be privately owned.^[18] It is ironic that when the Israeli settlements were removed from the Gaza Strip, none other than Peres (if I remember right), the present President of Israel, was of the opinion that the synagogues could be left alone because Muslims would not desecrate them. He was right. In the centre of the city of Nablus, the base of Palestinian nationalism, there is still standing a tomb reputed to be that of Joseph son of Jacob. It was kept and maintained by Palestinian Arab Muslims right until the occupation of the city by Israel in 1967. Near the Dead Sea, far from inhabited areas, there is a reputed tomb of Moses, which has been made the object of annual pilgrimages to Palestinians by none other the great Salahuddin (Saladin). Near Jericho, again far from civilization, there still stands a small synagogue of old, and in Al-Khalil (Hebron), named by the Arab Muslims after Abraham, there are the tombs respected and maintained by the Palestinians and honoured by the construction of a mosque in their vicinity. In fact, every reputed site pertaining to Judaism in Palestine has been preserved for centuries by the indigenous people of Palestine and their rulers. The same goes for Christian holy places, the Church of the Holy Sepulchre, the Church of the Nativity, the Church of Annunciation, and other Christian holy places. The keys to the Church of Holy Sepulchre have been entrusted for centuries to this very day by all Christian sects to two Arab Muslim families of Jerusalem who every day of the year open the doors of the Church for prayer and close them at the end of the day. In Jerusalem there are more churches than mosques. The respect for the City, its spirit and culture cannot be more demonstrated than by the fact that the Caliph himself, the great Omar, travelled on his camel all the way from Medina (in present Saudi Arabia) to receive the surrender of the City to the Arab Muslim army from its Christian Patriarch, at the request of the latter. No head of state in recorded history has ever done this before or after. Not only

that, but the time for prayer arrived while the Caliph was visiting the Church. The Patriarch invited him to pray in the Church. Omar refused lest future generations might think of building a mosque where he had prayed. He left the Church and prayed outside, and there stands now a small mosque, as Omar had predicted, outside the Church called the Mosque of Omar. The Caliph himself signed the agreement of surrender with the Patriarch that guaranteed Christian holy places and their rights, and ever since, that agreement has been fully respected by successive Muslim rulers. Palestinian Christians, like their Muslim compatriots, are suffering the same under the occupation and are in the struggle against it. The Christian presence in the Holy Land and in Jerusalem has dwindled drastically since Israeli occupation. President Carter relates how during a visit he made to Jerusalem in 1990, some of the Christian leaders asked for an urgent meeting. He was able to meet them after midnight. He says: “[H]e was surprised to receive custodians of the Christian holy places plus cardinals, archbishops, patriarchs, and other leaders of the Greek Orthodox, Roman Catholic, Armenian, Coptic, Ethiopian Orthodox, Anglican, Lutheran, Baptist, and other faiths. They were distressed by what they considered to be increasing abuse and unwarranted constraints imposed on them by the Israeli government, and each of them related events that caused him concern.” [\[19\]](#) Subsequently, he had a meeting with the then Prime Minister Yitzhak Shamir. After listening to Shamir’s declaration that “there was no official inclination to discriminate against Christians” and the explanation he gave, President Carter concluded: “He [Shamir] seemed to consider these matters out of his hands, and I understood for the first time why there was such a surprising exodus of Christians from the Holy Land.” [\[20\]](#) As usual, there is no ‘official’ discrimination, but ... One wonders what the Judeo-Christian values are. The representatives of these different Christian faiths are the spiritual leaders who continued, as their ancestors have done, to trust the same two Palestinian Muslim families with the keys to the holiest of Christian sites.

“Despite their [the Jewish] remarkable contributions in all aspects of society, many Jews were killed and others driven from place to place by Christian rulers. Although not given the same rights as Muslims, both Christians and Jews who lived in Islamic countries often fared better than non-Christians in Christendom, because the Prophet Muhammad commanded [\[21\]](#) his followers to recognize the common origins of their faith through Abraham, to honor their prophets, and to protect their believers.” [\[22\]](#)

Visitors to the University of Tel Aviv would not know, and may not enquire, that this centre of learning has been built on the ruins of the Palestinian village of Shaykh Muwannis and that the University’s faculty club is the village’s few remaining houses. [\[23\]](#)

This is the spirit of Jerusalem and Palestine and that of their people. This spirit is now threatened by an ideology of racism and exclusivism, of ethnic cleansing and erasure of history. The new synagogue built recently in the vicinity of Alaqsa Mosque and the Western Wall is used as a rabbinical school from which will graduate generations of Jewish fundamentalists who, most certainly, will cause trouble in the Mosque area, and, like other

settlers, will attempt to put foundations for the construction of a temple within the Mosque's area in pursuance of a myth. Their activities will be protected by the armed forces of Israel, and another fact on the ground will be established. Bloodshed will certainly follow, and the Mosque area will be closed to Muslims as a military zone. This scenario, which I hope will never be performed, is in line with Israeli step by step practices of creating facts on the ground. The Wailing Wall will become a true wailing wall and the struggle will take a most dangerous turn. It will become religious. I pray that this will never happen, but the seeds are now in place through the construction of this synagogue so close to the Mosque area. Should that happen, Jerusalem will no longer be the Jerusalem of the three faiths living together. It will become the Jerusalem of religious extremism and religious warfare, and Israel will be responsible for all this. I love my city from whose spiritual fountains generations of all faiths drank to the full and made it what it is. I hope there will be Jews who will prevent this tragedy from happening. The spirit of Jerusalem must not be allowed to be dulled.

The Wall of Separation or Final Solution?

“Something like this is done to animals, not to human beings”^[24]

The Zionist project for the colonization of the whole of Palestine, as ideologized by Jabotinsky, is not yet complete. Israel has appropriated and ruinously transformed only 80% of the country and there is still a small minority of Palestinians in the area of Palestine called Israel. The occupation in 1967 of what has remained of Palestine heralded an opportunity for the completion of the project. However, the Zionist project demands a Jewish majority with, utmost, an ineffectual minority of the indigenous population. The occupation brought with the land about four million indigenous Palestinians, who, with the Palestinian minority inside Israel, will soon surpass the Jewish majority if the opportunity is not seized upon to colonise and cleanse the whole of Palestine. Jewish immigration is fast drying up, let alone the counter emigration generated by the instability of the region, and in Palestine in particular after the occupation. The question of the land is being solved through unrelenting expropriation and the creation of more and more illegal settlements to which Israel encourages the movement of its Jewish citizens; but this does not solve the demographic problem. The indigenous population is still there and all kinds of oppressive measures so far have failed to extinguish the spark of hope about which Jabotinsky has spoken. To add to this, the Palestinians victim of the earlier ethnic cleansing are holding fast to their natural and legal right of return to their homes and villages in Palestine, wherever they had been, inside or outside Israel.

The choices for Zionist Israel, if it wants to pursue the Zionist dream to the end^[25], are clear: A choice that is aired in the open under the name of ‘transfer’, which is a euphemism for ethnic cleansing or expulsion of the millions of Palestinians; while the second choice is to force the Palestinians, step by step, into utter capitulation and loss of hope. This can be

achieved through the creation of harsh living conditions that will gradually force them to leave the country.^[26] The first choice must wait for a ‘proper opportunity’, as Ilan Pappé calls it, to avoid the certainty of violent reaction from the Palestinians themselves and a possible international condemnation, while the second choice can be carried out step by step, in the same way that colonization, through the gradual expropriation of land and creation of illegal settlements, has been accomplished.

The so-called Separation or Segregation Wall must be looked at, in my view, as one of the instruments to implement the second choice. That is why I called it the Wall of Final Solution. In this final part of the article I shall concentrate on some aspects of the decision of the Israeli Supreme Court, sitting as a High Court of Justice (IHCJ), which do not seem to have been fully addressed by comments on that decision and on the Advisory Opinion of the International Court of Justice on the consequences of the construction by Israel of a wall in the Occupied Palestinian Territories (OPT). The IHCJ decision is *Mara’abe vs The Prime Minister of Israel*, handed down on 15 September 2005, HCJ 7957/04, that is after the Advisory Opinion (9 July, 2004), in which IHCJ commented on the Advisory Opinion of ICJ^[27]. These aspects are:

- (1) The factual basis.
- (2) The settlements and settlers.
- (3) The question of enforcement of the Advisory Opinion.

1 – The Factual Basis

It is perhaps misleading, without actually knowing at least some of the specifications of this construction to call it a ‘wall’, a ‘fence’, an ‘obstacle’ or a ‘barrier’. ‘The good wall’ started by Sharon to ‘make good neighbours’, is a very complicated thing. “*The separation fence is an obstacle built of a number of components*”, writes President Barak of the Israeli Supreme Court in the *Mara’abe Case*: “*In its center stands a ‘smart’ fence...On the fence’s external side lies an anti-vehicle obstacle, composed of a trench or other means...There is an additional delaying fence. Adjacent to the fence, a service road is paved. On the internal side of the electronic fence, there are a number of roads: a trace road, and a road for armoured vehicles, as well as an additional fence. The average width of the obstacle, in its optimal form, is 50-70 meters. Due to various constraints at certain points along the route, a narrower obstacle, which includes only part of the components supporting the electronic fence, will be constructed. In certain cases the obstacle can reach a width of 100 meters, due to topographical conditions.*”^[28] When completed, its length will be approximately 763 km^[29], having started with a length of only 116 k.m.^[30] 150.4 km. is inside of Israel or on the Green Line.^[31] This means that about 610 km will be constructed on Palestinian land, and the area to the west of it, will be on the Israeli side, detached from its Palestinian

surroundings. The Wall is eight metres (24 feet) high, and in some parts, of concrete blocks, with electronic surveillance, watch towers, electrified spiked wire fence, and gun emplacements. The Wall cuts deep into Palestinian land, clearing homes and farmlands, uprooting trees and separating villages and families. It is estimated that, when completed, 47% of the West Bank will have been placed on the Israeli side^[32]. The Wall puts Palestinian water aquifers and Palestinian water wells on the Israeli side, and encircles the whole of the West bank forming a boundary for it with Israel and separates it from neighbouring Jordan. It is public knowledge that Jordan stands guard on its borders and no attacks have been reported on Israel or the settlements from across the River Jordan. The peace treaty is respected and enforced. How then may the inclusion of the border with Jordan in the Wall be justified on security grounds? The Wall brings in Israel all settlements illegally established in the West Bank and connects them with Israel by roads built on expropriated Palestinian lands.^[33] Again it is within public knowledge that Sharon has asked for and obtained a letter of assurance from President Bush that any peace settlement with the Palestinians would include incorporation in Israel of at least the large settlements of the West Bank. The cost of construction of the Wall runs into billions of dollars, estimated at US\$4.3.

All these are facts that, one would assume, should have been known to the Israeli Supreme Court when considering the legality of the Wall. However no significance is given to them by a court that based its differences with ICJ on the factual situation. The Court accepted the assertion that this kind of a wall was of a temporary nature and that the motive behind it was not political.

IHCJ was of the opinion that the difference between the Advisory Opinion and its decision “*stems primarily from the difference in the factual basis upon which each court made its decision*”.^[34] With respect, the basis of the difference seems deeper. With this kind of a ‘fence’ established as fact before IHCJ, it is difficult to accept, as the Court has accepted, the assertion of the Israeli government that the wall is of a temporary nature, and not politically motivated. It is much more difficult not to agree with the conclusion arrived at by ICJ that “*The Court[ICJ] considers that the construction of the wall and its associated regime create a ‘fait accompli’ on the ground that it 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*”^[35]. Instead of looking at the facts pertaining to the Wall itself to determine its nature and the consequences of its construction, the Israeli Supreme Court looked at government assertions and accepted them. Assertions are not the proper criterion to judge motives. Facts speak louder than words, and the facts of this case as to the nature of the Wall, its chosen route and expense rebut the assertion that it was not politically motivated.

The Court has fallen in this trap before when it accepted that the creation of settlements was ‘security’ and not ‘politically’ motivated on the basis of government and security assertions.

These settlements are now described by the Court itself as ‘Israeli towns’ or ‘Israeli communities living’ in Judea and Samaria. They are no longer called ‘security’ outposts. A dilemma is now facing IHCJ as to the legality of these settlements because of its earlier acceptance of these assertions. The unanimous opinion of all the judges of ICJ, including the dissenting American judge, Buergenthal, is that the settlements are illegal. Even Israeli jurists, such as Professor Kretzmer cited by the Court in paragraph 20 of its judgement, agree with ICJ. Faced with this dilemma that, may it be repeated, resulted from acceptance of government and security assertions without proper consideration, the Court has found itself restrained from dealing with the legality of settlements, leaving the question open for the future. It is submitted that ICJ was correct in its conclusion from these indisputable facts about the Wall – facts that do not seem to have carried any weight in the conclusions of IHCJ because of its acceptance of government and security assertions. As to security, there is certainly a better and much less costly alternative to the Wall, discussed below, that does not give rise to questions of legality.

The Court treated the land taken for the construction of the Wall as having been taken into ‘possession’, not expropriated or changed in ownership. It argued that there is a difference: taking into possession calls for payment of compensation and it will expire at the date set in the possession order. However, the Court failed to mention that it is within the exclusive power of the military commander to renew his order indefinitely, and that his order becomes effective and final, no matter what challenges are made to it. It also treated the question as a simple private law matter, with no relevance to the fact of occupation and its effect on the territorial integrity of the Palestinian Occupied Territory, which should not be touched. A citizen has no right to dispose with or cede any part of the territory of his country, either through transfer of ownership or possession, to a foreign power, assuming, which is not the case, that Palestinian landowners have agreed to the transfer of ‘possession’. Suppose the military commander did not renew his possession order, how would it be possible for the owners of the land to recover possession of land on which this kind of Wall has been erected? Judging from experience, this *de facto* situation, which tried to avoid the sting of ‘expropriation’, is expropriation in disguise and falls within the category of irreversible facts on the ground, another *fait accompli*, as noted by ICJ.

IHCJ thought that the legality of the Wall should be approached on the basis of segment by segment and repeatedly criticized ICJ for looking at the Wall as a whole. First, ICJ was responding to a question by the General Assembly about the consequences of construction of “a wall” in the Occupied Palestinian Territory (including Jerusalem), not a segment or segments, of it. Secondly, segmentation does not disclose the full picture or the total effect of the construction of the whole wall on the totality of the rights of the Palestinian People, as a people, and the integrity of their territory. This difference in approach made IHCJ, in the rare occasions where it asked for a reconsideration of the route of the Wall, to decide the issue exclusively on the basis of private individual rights, without paying any attention to the overall effect.

2- The Settlements and settlers

As stated above, the route of the Wall places Israeli settlements (and Palestinian lands) on the Israeli side under the pretext of providing security to settlers. ‘Israeli-only’ roads have been constructed on expropriated Palestinian territory inside the Occupied Palestinian Territory to connect the settlements with Israel. Palestinians are barred from using these roads, and the Israeli Supreme Court, upheld, by a majority, this obviously racist act. Israel is a party to the International Convention on the Elimination of All Forms of Racial Discrimination. Yet, the Court has done again what it did regarding the Covenant on Civil and Political Rights, to which Israel is also a party: it adopted the Israeli practice of ‘accept and ignore’, although ICJ has rightly held that human rights treaties are binding on Israel and are applicable to the Occupied Territories. This and similar racist decisions handed down by the highest court in Israel confirms the apartheid^[36] nature of the regime, and, most unfortunately, undermine the international struggle against racism and racial discrimination, including of course the struggle against anti-semitism and Islamophobia.

The question is whether the particular route chosen for the Wall is legal. Let us look at the facts, as IHCJ has determined as the proper course. Factually, the Wall places a considerable part of the area of the West Bank in *de facto* annexation, out of reach for Palestinians and the Palestinian Authority. The Wall imposes collective punishment on the whole Palestinian community in the West Bank and locally on the areas placed behind the Wall and the communities it encircles. It places severe restrictions on their movement in the totality of their country and the areas concerned, and impinges on their personal human and economic rights. In view of these and other facts, ICJ was of the opinion that the Wall was illegal, the construction should stop and the constructed portions should be dismantled. ICJ rejected the security argument, and ruled that the settlements themselves violate the Fourth Geneva Convention and are illegal. David Kretzmer, professor of international law at the Hebrew University of Jerusalem has written the following in commenting on the question of settlements and settlers as expounded by the ICJ’s Advisory Opinion: “*The [ICJ’s] view that Article 49(6) [of the Fourth Geneva Convention] does not apply only to forced transfers [as frequently argued by Israel] is well-founded. As paragraph 1 of Article 49 refers expressly to forcible transfers, it seems fair to conclude that the term ‘transfer’ in paragraph 6 means both forcible and non-forcible transfers. This conclusion would seem to flow from the object of the Fourth Geneva Convention, which is to protect civilians in the occupied territory, and not the population of the occupying power... While the Court was on firm ground in deciding that by establishing settlements on the West Bank the State of Israel had violated Article 49(6)... [T]he big question, however, is the effect of this violation on the legality of the separation wall*”. ^[37]

ICJ answer was the Wall was illegal. IHCJ raised the question “*Does the military commander’s authority to construct a separation fence also include his authority to construct a fence in order to protect the lives and safety of Israeli communities in the Judea and Samaria area?*”^[38] Judea and Samaria is used by the Supreme Court, meaning thereby the Occupied Palestinian Territory of the West Bank, but giving the impression that the Israeli

communities were in an area inside Israel. The question should be rephrased to fit the situation by qualifying the fence as being constructed *in the Occupied Palestinian Territory*, and not just 'a fence'. The Court answered the question in the positive basing its decision on its own jurisprudence in the interpretation of the Hague Regulations, instead of the Fourth Geneva Convention, which is the relevant international instrument. No attempt is made to show why preference is made to the Hague Regulations in this instance. The Court dismissed the Fourth Geneva Convention, which is a special Convention, in favour of its own interpretation of a general provision. This approach contravenes a basic rule of construction that the special overrides the general and the proper course would be to give effect to the special rather than the general.

In this determination, the Court did not consider the application of the principle of 'balancing' enunciated by it to determine whether construction of the Wall was the proper solution: "*When the action can be performed in a number of ways, the Court examines whether the act of the military commander is an act that a reasonable military commander could have adopted.*"^[39] In the same paragraph, President Barak, quoting himself, said; '*The question before us is whether the military action withstands the national and international standards which determine the legality of that action*'. It is submitted that an obvious action that a responsible reasonable commander, concerned solely with the safety of the settlers as well as satisfying the test of national and international standards, would be the transfer of the settlers back to Israel. This action is exclusively within the power of the state of Israel, and is supported by Israeli precedents. It has done it from the Sinai of Egypt with agreement of the Egyptian government, and from the Gaza Strip of Palestine without a similar agreement. The settlers were removed and the territory remained Egyptian and Palestinian, respectively. The fear of annexation of the areas previously occupied by the settlers was automatically removed. By this action the two requirements were met: reasonability on the one hand and the Israeli national interest and international standards on the other. The settlers were moved to the safety of their strong state.

This alternative solution has additional advantages: it will remove one of the great obstacles to peace, and will comply with relevant resolutions of the Security Council and UN General Assembly, as well as international humanitarian law. Another advantage, which should not be overlooked, is that it may help to protect Israeli leaders and generals from criminal prosecution for violating international law and international humanitarian law. In the case of Gaza, the evacuation ensured the safety of the settlers and removed the need to take any further action for that specific purpose. The problem that has remained is the problem of occupation. If the settlers in the West Bank area of Palestine are also transferred to their state, Israel, the termination of the present occupation will be reduced to agreeing on practical arrangements to achieve it. The fear of annexation, subjugation or ethnic cleansing will disappear; the Wall will become redundant and could safely be dismantled, if the assertions of the government of Israel were to prove right, or re-routed to the Green Line, if security concerns persist. Only then, peace will be within the grasp of both peoples. Is this not a better alternative to a Wall of hatred and mistrust that will only engender more and more animosity?

Unfortunately, it is not likely that this action will be taken, not for military reasons, but for political, and the Israeli Supreme Court seems to give support to this: first by refusing to take a clear position on the applicability of the Fourth Geneva Convention in its entirety to the Palestinian Occupied Territory, as it should, and second by supporting an interpretation of the Accords with the Palestinians that may give comfort to those who wish to perpetuate the illegal situation.

As to the first, the Court is simply satisfied that the government has declared that it will apply the humanitarian principles of the Convention, without defining what these principles are. This is not a satisfactory position that encourages good faith performance of obligations undertaken under a binding international treaty, or respect for the law in international affairs. As to the second, The Court says “*The status of the settlements will be determined in the peace treaty.*”^[40] This position was also taken in earlier judgements of the Court to the extent of blaming the Palestinians for the failure to conclude this treaty. We will not comment on the political aspect of such statements. Suffice it to say that the Court should know better, if it is looking for facts when it draws its conclusions. If the Court is to speak from the bench of justice according to law, it would, instead, have advised the parties to respect and abide by their obligations under the law, refrain from transgressing them or creating obstacles in the way of their enforcement. The role of a court of law is to encourage parties to abide by it through a proper elucidation of the law. It does not help to leave vital questions unanswered.

It is true that the question of the settlements was left to the final status negotiations. But this does not mean that they have become legal, or that more steps can be taken lawfully to protect their illegality. Their status remains illegal. This is not the stand of ICJ only, but is also the almost unanimous view of jurists and states. They are illegal, and their illegality stands, and it is most unlikely that any Palestinian authority will ever agree to more loss of their national home, a loss that will leave them only 20% of their land.

The choice of this alternative route, the transfer of the settlers back to the security of their state, would be in compliance with the military commander’s obligation to protect the settlers, as seen by IHCI, and with his primary obligation under the Fourth Geneva Convention, to protect ‘the protected persons’, the Palestinians, from *them*. This latter obligation is an overriding obligation of the occupier. The settlers themselves are the main source of trouble in Palestinian areas near the settlements, which are strategically situated to divide Palestinian communities and control them – thus providing the atmosphere for daily friction and permanent conflict. They occupy farming or grazing lands, thus depriving these communities of a main source of livelihood, the settlers attack their Palestinian neighbours, uproot their olive trees and destroy their crops, prevent them from attending to the land, burn shops, occupy houses, wound and kill, and cause havoc. Settlements mushroom by the day through the action of any group of settlers wherever and whenever they decide, and more Palestinian land is being grabbed. Settlers do that while the representatives of the military commander watch and seem to enjoy the scenes of destruction, or worse still, shower the

victims with gas bombs or rubber or live bullets. The victims are often arrested for defending their land or crop, while the settlers are either left in occupation of the land they had their eyes on, or escorted back to the safety of their homes. No arrests for breaking the law or for the damage inflicted, and of course no prosecution. Should not the military commander be held responsible for failing to provide protection to those whose duty is to protect? Only in October 2008, that the outgoing Prime Minister of Israel has decided to take notice of these activities – only notice – and the destructive forays continued, particularly in the annual season for picking the olive crops. The Court, thankfully, stated that “*respondent* [i.e. the military commander] *has the duty to defend the population (Arab and Jew) in the territory under his control*” (emphasis provided)^[41]. Has the Court, or indeed the entire judicial system in Israel ever enforced that duty of the military commander – the defence of the Arabs in the territory under his control? The Supreme Court knows very well that the answer is in the negative, and that its statement, by including “Arabs”, is, one is forced to say, a mere public relations exercise with no supporting facts on the ground.

Instead of discussing various alternatives and come to grips with the real source of the problem, the Court decided to extend the authority of the military commander and refused to take a position under the Fourth Geneva Convention. The Wall must remain, so should the settlers. The question is then: Is it permitted in law, for the authority in charge of the enforcement of law to take action to protect and perpetuate an illegal situation, or is it its responsibility to remove the illegality itself? Would it be legal for a policeman to provide a thief with a casket to protect the articles he has stolen? The illegal situation is not only the construction of the settlements, but also the act of transfer of population, the presence of the settlers as settlers. This illegality was committed by the military commander himself. Consequently the construction of the Wall by him will be to perpetuate this illegality and will be a further illegality on his part. Both, the creation of the settlements and transfer of settlers, as one step, and the construction of the Wall to protect them, as the second step, form a series of illegalities to achieve an illegal object, namely the annexation of Palestinian territory. The letter of guarantee given by President George Bush to Prime Minister Sharon regarding the future of settlements is a clear evidence of this decision of annexation, and the Wall seals this as a fact on the ground. This is another fact on public record that the Court failed to give effect to, or even notice. The fate of the settlements has been determined by Israel, no matter the final status negotiations with the Palestinians.

The action of the military commander will amount to the commission of more illegalities. It imposes conditions of collective punishment on the supposedly ‘protected persons’, while leaving the illegal settlers and settlements enjoying full ‘rights’. It affords them protection for their illegal activities and their illegal presence. The Wall would not have been needed if the settlements and settlers were not there, assuming of course that the motive of constructing the Wall was security.

It is not open to an occupying power to settle its citizens in the occupied territory and then impose restrictions on or adversely affect in any way the rights of the ‘protected persons’ for the protection of the settlers’ illegal presence. The Court was indeed right where it said:

“The mere fact that the action is called for on the military level does not mean that it is lawful on the legal level.”^[42] Assuming the action of constructing the Wall on the military level is called for, the fact that it is intended to perpetuate and protect an illegal situation that should be removed, and the fact that its construction affects adversely the protected rights of the protected persons, makes it unlawful on the legal level. The rights of the protected people, be they human rights, humanitarian or national rights, must not be violated in order to protect or preserve an illegal situation: the presence of settlers in the occupied territories and their unlawful activities. The creation of a large prison, with hundreds of cells inside it, for the persons supposed to be the primary responsibility of the occupier, in order to allow complete freedom of action and movement for illegal settlers, is not in any way a proper discharge of the occupier’s obligation.

No doubt, every individual has the right to safety, and, as the Court emphasized, it is the duty of his state to protect him. But, in a situation of occupation, the occupying power should fully observe the Fourth Geneva Convention in its entirety: it should not create an illegal situation (in this instance through the transfer of its citizens to the occupied territory), and should protect the rights of the ‘protected persons’. The Court rightly observed that the settlers do not fall into the category of ‘protected persons’ as defined in the Fourth Geneva Convention. But the primary responsibility of the military commander is exactly the protection of the ‘protected persons’. In the discharge of this responsibility, the military commander may not authorize or create a situation in which the rights of his chargees may be placed at risk, or if such a situation has arisen, it will be his responsibility to eliminate it. The ‘balancing’ concept has no application: there is no balancing between illegality and legality.

The Court seems of the opinion that the military commander cannot prevent a citizen of his state from entering the occupied territory, and that Israelis have the right to roam at will in the occupied territory. This is a tall proposition. The occupied territory is not part of the territory of the military commander where he may not have authority to control movements of citizens. However, he has this authority in the occupied territory and he exercises it frequently over the ‘protected persons’, the Palestinians, themselves. He restricts their movement, he imposes curfews, he violates the privacy of their homes, he makes arrests at will, he even kills and assassinates. It is certainly within his powers to place restrictions on others, Israelis and non-Israelis for the protection of public order and safety. His obligation reaches greater heights when it comes to settlers. Their very presence in the Occupied Palestinian Territory is illegal, and it will be in breach of his obligation to allow that presence and any activity by the settlers. By this he will not be violating their rights. On the contrary, he will be enforcing the law.

3- Enforcement of the Advisory Opinion

It must be said. It is high time that Israel and Israelis be held accountable for their actions, like all other states and other people. Israel should not be allowed to continue violating international law, international humanitarian law, and the rights, inalienable and human, of the

Palestinians with impunity. It should not be allowed to continue its illegal occupation and its utter disregard of the resolutions of the UN Security Council and General Assembly, and act in disrespect for the opinions of the International Court of Justice. In other words it should not be permitted to remain above the law. It is no excuse that, because of the persecution of the Jews in the West, it can persecute the Palestinians, who in no way were responsible for their persecution. If the West is to make amends, they should do that at their own expense and the expense of their own rights. One holocaust should not be allowed to breed another. Israel and Israeli leaders have committed acts of ethnic cleansing of the Palestinians, and are preparing the ground for further catastrophes through the construction of a Wall in which the Palestinians will be caged under the 'mercy' of Israel and its vandal settlers. The Wall, with its inner prison cells of closed areas and checkpoints, will be at the utter control of Israeli whim and settler hooliganism. The present crippling siege of Gaza is an indication of what is to come. Negotiating with Israel has proved that it will not lead to a just solution or permanent peace. Fifteen years have already passed on the Oslo Accords, and the situation has deteriorated through more and sweeper violations of the rights of the Palestinian people. Agreements to stop the expansion of settlements led to more settlements and greater expansion of those already in existence. Jerusalem is being completely Judiasised, and its Palestinian population is being expelled or forced out through various restrictions on their presence in their city. Facts on the ground, declared temporary, have become permanent. This must be stopped, and it can only be stopped through the enforcement of the rule of law through international action. The American administration bears great responsibility for thwarting action that could have prevented the situation from reaching this level of lawlessness. Other members of the international community can and should challenge this lawlessness, for there will be no future peace and harmony in the world if such situation is allowed to continue or to create this dangerous precedent.

The question of enforcement has been raised by a number of commentators mainly on the ground that, by their nature, advisory opinions are advisory, and therefore, not binding. IHCI is of this opinion. However, not being 'binding' does not mean that they are unenforceable.

As to being not binding, it must be observed that ICJ adopts in its Advisory Opinions the same procedure it adopts in contentious proceedings. It invites all interested parties to submit their position and participate fully in the proceedings, including final oral submissions. In the present case, the Court invited all members of the United Nations, including Israel and Palestine, to participate. Israel submitted the position it has chosen to submit, but abstained from participation in the oral proceedings. That was its choice, and the Court has no power to force it to do more. On the other hand, Palestine, and some other members of the United Nations, including friends of Israel, decided to participate in all stages of the proceedings. None of the participants, including the friends of Israel, argued that the Wall was legal. And it was on the basis, factual and legal, provided to the Court that it gave its Opinion. It was open to the Israeli government to submit all the facts it deemed necessary to ICJ as it has done to IHCI, if the facts submitted to IHCI was indeed more than what was under consideration by ICJ. ICJ had before it not only the evidence Israel had decided to provide, but also the evidence of independent bodies and governments. It had therefore a wider vision of the situation, and its Opinion, given as it was by an unprecedented majority of utterly

independent judges, deserves greater authority than a decision of IHCIJ.

The Advisory Opinion was given to the UN body that was entitled to ask for it, the General Assembly. This Opinion is binding on the General Assembly in any action it decides to take concerning its subject-matter, but does not bind the General Assembly to take any action. However, the General Assembly decided to act. On 20 July 2004, in its 27th plenary meeting, it adopted resolution A/RES/ES-10/15 “Advisory opinion of the International Court of Justice on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, including in and around East Jerusalem.” The Resolution noted ‘*in particular*’ that the Court replied to the question put forth by the General Assembly, and repeated the conclusions arrived at in the Advisory Opinion, noting also that the Court concluded that “the Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem) have been established in breach of international law.” The Resolution then proceeded to its operative part:

“*Considering* that respect for the Court [ICJ] and its functions is essential to the rule of law and reason in international affairs,

1. *Acknowledges* the advisory opinion of the International Court of Justice of 9 July 2004 on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, including in and around East Jerusalem;
2. *Demands* that Israel, the occupying Power, comply with its legal obligations as mentioned in the advisory opinion;
3. *Calls upon* all States Members of the United Nations to comply with their legal obligations as mentioned in the advisory opinion.

In the same resolution, the General Assembly, in operative paragraph 4, took action within the powers of the United Nations by requesting the Secretary General “*to establish a register of damage caused to all natural or legal persons*” for the purpose of payment of compensation to them for the damage sustained in consequence of the construction of the Wall. In operative paragraph 5, it decided to reconvene “*to assess the implementation of the present resolution, with the aim of ending the illegal situation resulting from the construction of the wall and its associated regime in the Occupied Palestinian Territory, including East Jerusalem*”. In operative paragraph 6, it called upon both the Government of Israel and the Palestinian Authority to immediately implement their obligations under the road map. In operative paragraph 7, it called upon states parties to the Fourth Geneva Convention to ensure respect by Israel for the Convention. This resolution was adopted by a majority of 150 as against six, which is one of the highest in the history of the United Nations. The majority included all members of the European Union, but not of Israel and USA, who voted against it. Thus the international community, through the UN General Assembly, has adopted both, the legal foundation and the findings, of the Court and made them binding. The General Assembly went further. It took steps of *enforcement*, through the operative paragraphs referred to above.

The action taken by the General Assembly is a first step in the enforcement of the Advisory Opinion. However, this step can and should be followed by further action by the United Nations, the General Assembly and Security Council who had been asked by the ICJ in paragraph E of its conclusions to consider “*what further action is required to bring to an end the illegal situation resulting from the construction of the wall and the associated regime, taking due account of the present Advisory Opinion.*” The American veto stands in the way of action by the Security Council, which raises the serious question of American culpability, in view of the ruling of ICJ that “*All States are under an obligation not to recognize the illegal situation resulting from the construction of the wall and not to render aid or assistance in maintaining the situation created by such construction...*” (emphasis provided).

The General Assembly is free from obstruction to the rule of law by a veto of any state. It may engage actively, as it has done in the case of Namibia, to make Israel abide by the law as declared by ICJ. In the case of Namibia, ICJ delivered an advisory opinion in which it concluded that South African occupation (under the apartheid regime) of Namibia was illegal. The General Assembly did not leave the matter in the hands of the Security Council. It acted independently and achieved an end to Namibia’s occupation. The same can be done to enforce the Advisory Opinion regarding the Wall and the other Israeli violations of the rule of law. In fact, ICJ indicated the way this can be achieved: enforcement of the resolutions of the Security Council and General Assembly, guided by the principles of law set out in the Advisory Opinion. Therefore, the General Assembly can initiate steps of various sanctions against Israel culminating in total boycott, until it complies with the ruling of the Court. With resolution ES -10/15 having been passed with such huge majority, there is a good chance that such steps will also be approved.

The authority of the General Assembly to take action to meet a threat to international peace was thoroughly discussed by ICJ. The Court held that, in cases where international peace and security are threatened, the General Assembly has the same authority as the Security Council to take the action it deems proper. Dependence on the Security Council, where action is thwarted by irresponsible vetoes, is out of the way and the General Assembly can take matters into its own hands.

The second body that can take effective action is the General Conference of the High Contracting Parties to the Fourth Geneva Convention. The Advisory Opinion specifically called for this action. ICJ referred to “*an additional obligation*” that States Parties to the Convention have, namely: “*while respecting the United Nations Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention.*” The General Conference, like the UN General Assembly, has already called upon Israel to desist from construction of the Wall. But the call by both has been ignored. The General Conference needs to move further to ensure respect for the Convention. Sanctions may be needed now to protect enforcement of this hard won Convention. The protection of this Convention is so vital to humanity to allow precedents of unpunished violation to be established or passed over.

Thirdly, in view of the Advisory Opinion, any state or group of states may take whatever action permitted by international law to bring about compliance by Israel of the ruling of ICJ. Such action will be in obedience to their obligation to ensure respect for international law as pronounced by the Court.

Fourthly, prosecution before the International Criminal Court is possible. It is true that Israel is not a party to the Rome Convention that created the Court. However, it is within the power of the Security Council to initiate criminal proceedings against Israel and Israeli officials suspected of committing war crimes or crimes against humanity. This has been done in the case of the Sudan, which is not a party to the Convention. If it can be done against the Sudan it should be possible to do it in the case of Israel, particularly in view of the ICJ Advisory Opinion that specifically ruled that the construction of the Wall and the creation of settlements are illegal. Of course, there is the readily available American veto, but, who knows, the American government may be awakened to its responsibility to uphold the rule of law whoever the accused happens to be. At least it is worth trying. Similarly, a special tribunal can be created in line with the other special tribunals that have been created to consider actions in specific situations, like the tribunal for former Yugoslavia.

NGOs have a role to play, and they can play it. Grave violations of the Fourth Geneva Convention are crimes against humanity and war crimes as well. The courts of some countries have general jurisdiction to try these cases, and some NGOs have not missed on this. They have started criminal proceedings in national courts against Israeli generals accused of alleged crimes of this type. The most recent, perhaps, is the action before the Audiencia Nacional, the National Court of Spain (the highest Spanish judicial council) against six Israeli generals. The court accepted a petition from the Palestinian Centre for Human Rights that suggested the generals were guilty of war crimes in the Gaza Strip during the summer of 2002, and issued arrest warrants against the generals.

Before that, in 2005, similar warrants of arrest were issued by an English court against General Doron Almog (one of the six against whom the Spanish court has issued the warrant of arrest). Almog was travelling to London, but he stayed in his plane upon arrival rather than risk arrest.^[43] After the Almog precedent, another Israeli general cancelled his trip to England where he was to attend a military course, and the army advised its generals to avoid travelling abroad.

In New Zealand, former Israel Chief of Staff Moshe Ya'alon was spared arrest or any proper prosecution despite a decision by a judge in the District Court at Auckland to issue warrants for his arrest on suspicion of committing a grave breach of the Fourth Geneva Convention. According to reports from New Zealand, *“his escape from justice was facilitated by the intervention by the New Zealand Deputy Prime Minister and Attorney General. ... The arrest warrant was extinguished by the Attorney General directing the District Court to stay the prosecution permanently.”*^[44]

Before all this, action was taken in Brussels, Belgium, against Sharon, former Israeli Prime Minister, while he was in office.

Israel will undoubtedly fight, on the political level, these actions as it has fought the action against Sharon. The aim of Israeli pressure is to prevail on governments to amend the general jurisdiction of their courts – and limit it, in one way or another, so that Israeli generals and politicians will not be exposed to trial for crimes alleged to have been committed by them. This was achieved to some degree in the Sharon trial in Belgium. If successful, it will be a retrograde step in the protection that international humanitarian law affords, and the integrity of the judicial system in the countries concerned will be at stake. It is indeed very dangerous to whittle down, for any reason, the chances of prosecuting suspected war criminals and criminals against humanity. Israel should remember that it was this general jurisdiction that enabled the trial of Nazi criminals, and if removed no one knows who will escape punishment in the future. It will be a drastic step that will give comfort to present and future criminals, and may provide safe havens to them. Let the generals stand trial without interference in the judicial process. They have on their side the presumption of innocence until proven guilty, so why should they escape punishment if proven guilty or have their names clouded with accusations if they are innocent? Israel alleges that it is a democracy, the only democracy in the Middle East; where the rule of law prevails; where every soldier, according to the Israeli Supreme Court, carries with him a manual of the rules of warfare; where every general, would, presumably, have learnt it by heart by the time he reaches this rank; and where the slogan ‘purity of the gun’ has been raised. What is it, then, that Israel and its generals are afraid of?

[1]

Holy Bible, Authorized Version, Micah, chapter 2, 1-2

[2] A Palestinian farmer after Israeli bulldozers uprooted his olive trees to make way for the Separation Wall, quoted in “Voices from Occupied Palestine”. www.eduvoyage.com/Palestine/viewVoice.php?voiceID=38&categoryID=1...

[3] For a comprehensive study see Alan Hart’s two volume analysis *Zionism The Real Enemy of the Jews*, publisher World Focus Publishing, Kent, England (2005 and 2007) and *Ilan Pappé The Ethnic Cleansing of Palestine*, first published by Oneworld Publications Limited, Oxford, England, first published in 2006. . On legal aspects, see Victor Kattan *from Coexistence to Conquest: International Law and the Origins of the Arab-Israeli Conflict 1891-1949* (forthcoming 2009, London Pluto Books).

[4] See *51 Documents: Zionist Collaboration with the Nazis*, ed. Lenni Brenner, Barricade Books, Fort Lee, New Jersey, (2002)

p 32, and can be seen at the internet by searching for its title.

[5] One of the latest examples is a circular by the Minister of Defence, Ehud Barak, to Israeli universities not to enroll Palestinian students in science faculties. Some universities objected, but, as of writing, the question remains.

[6] Quoted from an article by Jonathan Cook *Israel's Surprising Best Seller Contradicts Founding Ideology*, www.Arabmediawatch.com 8th October 2008. All references to this book are to Mr. Cook's article. Mr. Cook states that the book will be translated into Arabic and English and the author expects a rough ride when the English publisher Verso launches the book in America next year.

[7] See above footnote.

[8] Wikipedia.org/wiki/Western_Wall. Last visited on 18th September 2008 .

[9] Last visited on 18th September 2008.

[10] References in this article and quotations are from a review of the book by journalist and author Jonathan Cook. For the full review of the book see www.arabmediawatch.com/amw/Articles/Analysis, 8th October 2008, under the heading “*Israel's surprising best seller contradicts founding ideology*”. Last visited 16th October 2008. Mr. Cook says that the English translation of the book will be available in USA by its English publisher Verso next year (2009)

[11] It is interesting to note that the editors of Wikipedia have permitted an unusual run of the history of the Wall, by allowing a jump in the historical narrative from the year 70 B.C. (the Siege of Jerusalem) to 1517-1917 A.D. (the Ottoman Period). This is a long stretch during which the history of Palestine and its population have changed dramatically. References are made to additions to the Wall, but nothing is mentioned about its history and the relationship between it and the Jews. For most of this period, Palestine, including Jerusalem, was ruled by Muslims, whether Arabs or Turks, or Mamluks, under a Muslim Caliphate, and it was during this period that the Jews enjoyed full religious freedom and freedom of movement and residence in Muslim lands. Despite its long history, of which the presence of the Hebrew tribes, as distinct from the rest of the population, was comparatively short and surrounded by mythology, the editors allowed Palestine to be referred to as the ‘*Land of Israel*,’ implying thereby a continuous uninterrupted history of Israel of old, which is a political, not historic statement.

[12] For details see Victor Kattan, op.cit. Chapter 5, *Arab Opposition to Political Zionism*. For the full report of the Commission see: www.unispal.un.org. Search for A/7057/Add.1 – S/8427/Add.1 , and letter dated 23 February 1986 by the Permanent Representative of Jordan to the Secretary-General of the United Nations after Israel commenced bulldozing the buildings of the Moghrabi Quarter ref A/7057, S/8427.

[13] It is important to note that the Jewish side was represented by the religious and political bodies with the greatest influence within the Jewish community worldwide. These bodies were: the Rabbinate of Palestine, the World Association of Rabbis, the Jewish Agency for Palestine (which was recognized by the League of Nations as representing world Jewry), the Vaad Leumi and the Agudath Israel.

[14] The pavement was constructed by Afdal, the son of Salahuddin (Saladin) in 1193 A.D, and constituted into an Islamic waqf i.e. a Muslim religious endowment owned in perpetuity by the Muslim community.

[15] The Moghrabi Quarter buildings adjacent to the Wall were built in 1320 A.D. “to serve as lodgings to Moroccan pilgrims” and were made a Muslim waqf by Abu Madian. These historic buildings were swept away by Israel to enlarge the area adjacent to the Wall.

[16] The Commission noted that the Muslims of Jerusalem were always alert to the Jewish attempt to exploit Muslim tolerance in order to claim at a later stage, a right of ownership. In 1911, the Guardian of the Abu Madian Waqf (Moghrabi Quarter) complained that the Jews, contrary to usage, had placed chairs on the pavement, and he requested that ‘in order to avoid a future claim of ownership’ the present state of affairs should be stopped”. The Arab side argued that after stools would come benches, the benches would then become fixtures and before long the Jews would have established a legal claim to the site. As a direct result of the complaint, the British Administrative Council decided that it was not permissible to place any articles on the pavement that could “be considered as indications of ownership.” The step by step policy implementation of Zionism’s strategy is Zionism’s master method which is still pursued for the Judaisation of the whole of Palestine.

[17] Ilan Pappé p 103.

[18] Ilan Pappé, pp 158-159 and p 163.

[19] Jimmy Carter, *Palestine: Peace Not Apartheid*, Simon & Schuster, 2006, p. 126-127..

[20] Carter p.127.

[21] To Muslims, the authority is higher than that of the Prophet. The Qur'an itself, the Holy Muslim Book, ordains this.

[22] Carter, p 64.

[23] Ilan Pappé p 103.

[24] The German Cardinal Joachim Meiser after crossing the Separation Wall, as reported in Haartz of 7th March 2007

[25] The outgoing Israeli Prime Minister, Ehud Olmert, declared before leaving office in September 2008, that the dream of 'Greater Israel' was over. Whether his successors in government will hearken to his statement and change course because of this realization remains to be seen.

[26] Noam Chomsky describes the Wall as a Weapon, *A Wall as a Weapon*, The New York Times, February 23, 2004. www.chomsky.info/articles/20040223.htm Last visited 8/6/2008.

[27] For a detailed discussion see Victor Kattan "*The Legality of the West Bank Wall: Israel's High Court of Justice v. the International Court of Justice*", *Vanderbilt Journal of International Law*, Vol. 40, pp.1424-1521. For a succinct summary of the Advisory Opinion, see Susan M Akram and John Quigley "*A Reading of the International Court of Justice Advisory Opinion on the Legality of Israel's Wall in the Occupied Palestinian Territories*", July 19, 2004, at www.palestinecenter.org, and generally, for example, Pieter H.F. Bekker, "*The World's Court Ruling Regarding Israel's West Bank Barrier and the Primacy of International Law: An Insider's Perspective*", 38 *Cornell International Law Journal* 553 (2005), "*AGORA: icj Advisory Opinion on Construction of a Wall in the Occupied Palestinian Territory*", 99 *American Journal of International Law* (2005) a number of contributors, Ian Scobbie, *Smoke, mirrors and killer whales: the International Court's opinion on the Israeli barrier wall*", 5 *German Law Journal*, No 9 91 September 2004 – *European International Law*

[28] At paragraph 4.

[29] This is more than twice the length of the green line (315) separating Israel from the West Bank.

[30] At paragraph 3.

[31] At paragraph 6.

[32] Kathleen McQuillen, Iowa Program Coordinator, American Friends Service Committee, *Iowa Program News, Issue 23, winter 2008, p. 1.*

[33] When one looks at the 'facts' as stated in the decision of IHCJ, which presumably formed the 'factual' basis of the judgement in the *Mara'abe Case*, one can hardly conclude that all the facts had been taken into account. After detailing the casualties suffered by Israelis, presumably provided by the security agencies of the government, the Court brought in a 'balancing' statement about Palestinian casualties in one short sentence: "On the Palestinian side as well, the armed conflict has caused many deaths and injuries. We are flooded with bereavement and pain" (paragraph 1). That was all; no figures, no mention of how these have been inflicted or by whom, and no further mention in a long judgement of sixty pages. The Court never looked at the effect of the Wall as a whole on the rights and lives of the Palestinian people. According to estimates published before the two courts delivered their decisions the projected collateral damage to Palestinians was as follows: 22% of West Bank's (WB) land will be confiscated, 60% of WB lands will be isolated into cantons, enclaves and military zones, 10% of agricultural land of WB will be lost, 15% of WB population isolated in the Israeli controlled side" of the Wall, 680,000 Palestinians deprived of means of livelihood, 34% of Palestinian individuals directly affected, 19% of WB population will be separated from their land and water resources, 700 million cubic meters of water will become inaccessible annually, the area left for the Palestinians will be no more than 52% of the West Bank (*TANMIYA*, THE Quarterly newsletter of the Welfare Association on Palestinian development issues, February 2004). These facts were of no concern to the Israeli Supreme Court, but no doubt concerned ICJ in its overall assessment of the effect of the Wall.

[34] At paragraph 61.

[35] At paragraph 71, quoting the Advisory Opinion.

[36] When President Jimmy Carter published his book *Palestine: Peace Not Apartheid*, he was vehemently attacked by Zionists and their supporters and was not received by any Israeli official on his visit to the Holy Land, although no man has done a greater service to Israel than him through negotiating peace treaty with Egypt, the leader of the Arab world. This decision proves that the President was right, and his detractors were again misleading the general public..

[37] "*Agora; ICJ Advisory Opinion on Construction of a Wall in the Occupied Palestinian Territory*" 99 *American Journal of International Law* (January 2005) at p91.

[38] At paragraph 18

[39] At paragraph 32.

[40] At paragraph 19

[41] At paragraph 19.

[42] At paragraph 32.

[43] Ksenia Svetlova, *Israel battles Spanish arrest warrants*, The Jerusalem Post, August 8, 2008.

[44] *Urgent Action Alert: The PCHR and the Anti-Apartheid Wall Campaign urge you to act immediately: Stop support for Israel's war crimes*, November 30, 2006, at www.pchrgaza.ps/files/PressR/English/2006/127-2006.htm. Last visited on 12 January 2006.