

American University Washington College of Law

Digital Commons @ American University Washington College of Law

PEEL Alumni Scholarship

Program on Environmental and Energy Law

2012

Dangerous Separation: An Ecosystem and Way of Life in the West Bank at the Brink of Destruction

Elena Katz Mink

Follow this and additional works at: https://digitalcommons.wcl.american.edu/peel_alumni

Recommended Citation

Katz-Mink, Elana. "Dangerous Separation: An Ecosystem and Way of Life in the West Bank at the Brink of Destruction." *Sustainable Development Law & Policy* 13, no. 1 (2012): 47, 70.

This Feature is brought to you for free and open access by the Program on Environmental and Energy Law at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in PEEL Alumni Scholarship by an authorized administrator of Digital Commons @ American University Washington College of Law. For more information, please contact kclay@wcl.american.edu.

Dangerous Separation: An Ecosystem and Way of Life in the West Bank at the Brink of Destruction

Elana Katz-Mink

American University Washington College of Law

Follow this and additional works at: <http://digitalcommons.wcl.american.edu/sdlp>



Part of the [Environmental Law Commons](#)

Recommended Citation

Katz-Mink, Elana. "Dangerous Separation: An Ecosystem and Way of Life in the West Bank at the Brink of Destruction." *Sustainable Development Law & Policy* 13, no. 1 (2012): 47, 70.

This Article is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in *Sustainable Development Law & Policy* by an authorized administrator of Digital Commons @ American University Washington College of Law. For more information, please contact fbrown@wcl.american.edu.

DANGEROUS SEPARATION: AN ECOSYSTEM AND WAY OF LIFE IN THE WEST BANK AT THE BRINK OF DESTRUCTION

by Elana Katz-Mink*

Residents of the Palestinian village of Battir practice an ancient agricultural technique dating back to the Roman Period a few miles from Jerusalem, Bethlehem, and the Green Line.¹ Agricultural terraces, which were developed to take advantage of natural mountain springs, cover 2,000 hectares around the village where residents cultivate produce for their livelihoods and sustenance.² Over the centuries, the terraces have increased the land's fertility, preserving the area's agricultural heritage and environmental integrity.³

Israel is currently planning to build the separation wall on the edge of Battir, separating farmers from their fields.⁴ If the wall is constructed, residents face the specter of abandoning their way of life and severely restricting their movement, while at the same time the hydrology and ecology of the area will become severely imperiled.⁵ In early December, the Israeli Supreme Court (ISC) issued an interim decision ordering the Israeli Defense Ministry (IDM) to submit plans for an alternate route for the wall within ninety days, indicating that the Court is not willing to let Israeli's security interests override consideration of environmental impacts and the rights of Battir's residents.⁶


Construction of the separation wall began in 2003 to address Israeli security.⁷ Israel legitimized construction of the wall through a series of decisions beginning with *Beit Sourik Village Council v. The Government of Israel*.⁸ In *Beit Sourik*, the ISC ordered portions of the wall rerouted due to minimal Israeli security gains as compared to the disproportionate impact on Palestinian rights and interests.⁹ Despite this order, the court held that the construction of the wall was legally authorized based on its interpretation of belligerent occupation laws that supported Israel's efforts to secure Jewish-Israeli rights against Palestinian terror attacks.¹⁰ The International Court of Justice (ICJ) then issued an advisory opinion contradicting the ISC, holding that construction was contrary to international law because: (1) Israeli settlements were a breach of international law; (2) the wall was a 'fait accompli' future border;¹¹ and (3) construction impeded Palestinians' basic rights to work, health, education, and adequate standards of living.¹² The ICJ determined that Israel had to cease present and dismantle past construction, and make reparations for construction-related damages.¹³ Israel rejected the ICJ's opinion and has ruled in contravention on numerous occasions, clinging to the *Beit Sourik precedent*.¹⁴

In 2007, Battir brought suit against IDM to change the wall's proposed route to protect agricultural areas.¹⁵ IDM argued that the wall was necessary for security, but that a gate would allow Battir residents to access their fields.¹⁶ Battir then filed a claim with the ISC, but suspended it early this year as the Finance Ministry considered their request to reroute the wall around the agricultural lands.¹⁷ The Finance Ministry advisory commission has not yet ruled,¹⁸ but construction plans were halted by the ISC, which ordered the state to quickly respond to the appeal.¹⁹

While many attempts to stop or reroute construction of the wall have failed, two nearby villages have succeeded in stopping construction of other portions.²⁰ The Palestinian village of Bilin won its challenge before

the ISC in 2007.²¹ In Bilin, residents, along with Israelis (Arabs and Jews from Mevasseret) and other activists, held weekly demonstrations that drew considerable global media attention.²² There, the ISC determined that the wall was not being built for security reasons.²³ The court accepted an alternate route for the wall and ordered the dismantling of what had been built.²⁴ In a similar case, the Palestinian village of Wadi Fuqin won its legal battle on environmental grounds.²⁵ There, the neighboring Israeli community understood that the wall would deprive Wadi Fuqin of its agricultural livelihood and threaten security by breeding hostility between Palestinians and Israelis.²⁶ In response, 300 Israeli residents from neighboring Tzur Hadassah signed a petition against construction.²⁷ Using evidence that the wall would cause hydrological and ecological destruction to the area, together with the petition, Wadi Fuqin succeeded in its appeal to the ISC and successfully stopped construction.²⁸

In continuing its legal battle, Battir has several options. Arguments based on human rights and the effectiveness of the wall have not proven persuasive to the ISC.²⁹ Both the Wadi Fuqin and Beit Sourik outcomes demonstrate that support of Jewish-Israeli neighbors can help secure a positive outcome. Unfortunately, Battir does not have such a clear ally nearby, though residents could seek support from residents of Aminadav.³⁰ Nonetheless, Battir has an environmental avenue open following publication of a paper by the Israel Nature and Parks Authority (INPA) condemning construction of the wall in Battir and finding significant threats to hydrology and ecology in the area.³¹ Further, INPA emphasized the wall's potential destructiveness to the area's unique agricultural practices and livelihoods.³² Based on INPA's findings, Battir's best hope for legal success rests on evidence that the wall will threaten Israeli water and ecological security. In a water-starved region, this legal basis may prove extremely persuasive as Israel is forced to confront how its actions affect one of its biggest security concerns: access to fresh water.³³

The ISC's interim decision ordering IDM to produce a plan for an alternate route is a temporary win for the residents of Battir. The decision includes a requirement for IDM to consider the environmental impact on the area in its alternate route plan.³⁴ UNESCO's expedited consideration of Battir's application to be a World Heritage Site—recognizing the rarity of Battir's agricultural terraces—bolstered its case in the ISC.³⁵ This month's decision suggests that the ISC is no longer willing to blindly give more weight to IDM's invocation of national security over environmental and justice issues. No matter the final outcome, it is increasingly clear that construction of the wall will bring environmental degradation, hydrological destruction, and further insecurity to both sides. The ISC's order for study of ecological implications of construction³⁶ indicates that the strength of environmental objections to the wall's construction is growing despite the absence of historically important Jewish-Israeli participation. 

*Elana Katz-Mink is a J.D. Candidate, May 2014, at American University, Washington College of Law.
continued on page 70

¹ The Green Line marks the boundary between Israel and Palestine, the pre-1967 border, drawn in the 1949 Armistice Agreement. IAN S. LUSTICK, THE FETISH OF JERUSALEM, in ISRAEL IN COMPARATIVE PERSPECTIVE: CHALLENGING THE CONVENTIONAL WISDOM, 152 (MICHAEL N. BARNETT ed., SUNY Press, 1996).

² The terraces are so unique that they were awarded the 2011 Melina Mercouri International Prize for the Safeguarding and Management of Cultural Landscapes. *Israel's Separation Barrier Threatens Ancient Palestinian Farming Practice*, N.Y. DAILY NEWS, May 11, 2012, http://articles.nydailynews.com/2012-05-11/news/31672583_1_separation-barrier-west-bank-battir; Cross-Border "Priority Initiatives" of the Good Water Neighbors Project, Friends of the Earth Middle East, 7 (Sept. 2012), available at http://foeme.org/uploads/13470236580~%5E%5E~Community_Based_Problem_Solving_on_Water_Issues_2012.pdf.

³ Friends of the Earth Middle East, *supra* note 2, at 7.

⁴ Zafrir Rinat, *Ministry of Defense: Minimal Damage, A First: A Government Ministry Against the Separation Wall*, HAARETZ, Sept. 13, 2012, available at <http://www.haaretz.co.il/news/politics/1.1823483>.

⁵ The destruction and abandonment of terrace agriculture in other areas has caused natural springs to dry up, while other springs have become polluted by agricultural runoff and sewage. DU'ACH RASHUT HA TEVA VE HANIM LSHNAT 2010 [ISRAEL NATURE AND PARKS

AUTHORITY REPORT] <http://www.parks.org.il/publicparticipation/publichearing/publishing/images/%20%20%20%20%202010.pdf>.

⁶ Nir Chason, *The Israeli Supreme Court Ordered the State to Reexamine the Construction of the Separation Wall in the Village of Battir*, HAARETZ, Dec. 13, 2012, available at <http://www.haaretz.co.il/news/politics/1.1885682>.

⁷ See Yisha Blank, *Legalizing the Barrier: The Legality and Materiality of the Israel/Palestine Separation Barrier*, 46 TEX. INT'L L.J. 309, 310 (2010-11); See also, Susan Akram & Michael Lynk, *The Wall and the Law: A Tale of Two Judgments*, 24 NETH. Q. H.R. 61, 85 (2006) ("In June 2002, when the Israeli Government announced its formal decision to build an integrated system of walls, trenches, barriers and fences throughout the West Bank, it stated that the Wall was initiated solely as a response to the series of Palestinian suicide bombings that had killed approximately 450 Israelis since the start of the second Intifada in September 2000.").

⁸ Blank, *supra* note 7, at 317. ("[T]he barrier is erected on the basis of authorized government decisions, administrative regulations, and military orders... done in a highly legalized fashion according to legal chains of authorizations... some of the actions taken with regard to the barrier were in violation of Israeli administrative and constitutional law...[y]et, the state of Israel behaved as if it were bound by law. Every action was done in accordance with administrative procedures, under explicit authorization, and often received the approval of the Israel courts which reviewed them."); H CJ 2056/04 Beit Sourik Village Council v. The Government of Israel 58(5) PD 807 [2004] (Isr.), available at <http://www.icrc.org/ihl-nat.nsf/39a82e2ca42b52974125673e00508144/09d47365bd007706c12575c20046ec2a?OpenDocument>.

⁹ Beit Sourik Village Council v. Israel, *supra* note 8.

¹⁰ The court found that the laws of belligerent occupation in the 1907 Hague Regulations and 1949 Fourth Geneva Convention applied in this case, and in Israel's interpretation supported Israel's effort to secure the rights of the Jewish-Israeli population against Palestinian terror attacks. See Beit Sourik Village Council v. Israel, *supra* note 8 (basing the opinion on the laws of belligerent occupation and Jewish Israeli security); See also, Hague Convention IV respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, arts. 23(g) and 46, 18 Oct. 1907 (stating the laws of belligerent occupation).

¹¹ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 28 (July 9), available at <http://www.icj-cij.org/docket/index.php?pr=71&code=mwp&p1=3&p2=4&p3=6&c>.

¹² *Id.*

¹³ These decisions were reached by a 14-1 majority within the court. *Id.*

¹⁴ Notably in *Mara'abeh v. The Prime Minister of Israel* where the court rejected the ICJ advisory opinion. See Blank, *supra* note 7, at 330.

¹⁵ N.Y. DAILY NEWS, *supra* note 2, 2.

¹⁶ Zafrir Rinat, *Separation Fence Threatens to Destroy Farming, Ecosystem Around Jerusalem: According to the Nature and Parks Authority, Establishment*

of the Wall Will Change Not Only the Landscape, But Also the Special Pace of Life of Traditional Farmers, HAARETZ, Oct. 18, 2012, available at <http://www.haaretz.com/news/features/separation-fence-threatens-to-destroy-farming-ecosystem-around-jerusalem.premium-1.470656>

¹⁷ N.Y. DAILY NEWS, *supra* note 2 at 2 (allowing for the lands to remain with Battir residents).

¹⁸ *Id.*

¹⁹ *Id.*; Nir Chason, Atirah Neged Geder HaHefradah SheMeskenet et HaTara-sot BeBatir [Appeal Against the Separation Wall, Which Endangers the Terraces in Battir], HAARETZ, October 23, 2012, <http://www.haaretz.co.il/news/politics/1.1848525>

²⁰ A recent example of failure is in the village of Walajah, close to Battir.

²¹ Isabel Kershner, *With a Bit of Land Restored, Villagers End Campaign*, N.Y. TIMES, June 24, 2011, <http://www.nytimes.com/2011/06/25/world/middleeast/25palestinians.html>; Friends of Freedom and Justice-Bilin (last visited Dec. 18, 2012).

²² *Id.* at 3.

²³ *Id.*

²⁴ *Id.*

²⁵ Zafrir Rinat, *Construction Plans Clog Palestinian Village's Water Supply: A Blueprint to Expand Both Betar Illit and the Separation Fence Encroaches on Wadi Fuqin*, HAARETZ, Jan. 16, 2006, <http://www.haaretz.com/print-edition/features/construction-plans-clog-palestinian-village-s-water-supply-1.62345>; USAID, BREAKING THE CYCLE OF DESPAIR: IN THE HORN OF AFRICA, 2 GLOBAL WATERS 5, 21 (Oct. 2011), available at http://issuu.com/sixhalfdozen/docs/gw_redesign_22_issuu.

²⁶ *GWN Communities: Wadi Fuqin and Tzur Hadassah Join to Oppose Separation Barrier*, EcoPeace—Friends of the Earth Middle East (Mar. 8, 2010), <http://foeme.wordpress.com/2010/03/08/wf-th-separation-wall-meeting/>.

²⁷ Scott Wilson, *Bonded in Resistance to the Barrier*, WASHINGTON POST, June 8, 2007, available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/06/07/AR2007060702588.html>; Julien Katchinoff, *Green Objections to the Green Line: A Struggle For a Shared Environment in the Middle East*, NEW SECURITY BEAT, March 4, 2010, <http://www.newsecuritybeat.org/2010/03/green-objections-to-the-green-line-a-struggle-for-a-shared-environment-in-the-middle-east/>.

²⁸ Sue Fishkoff, *Palestinian Village and Israeli Town Build Rare Partnership Across Line*, JTA, April 16, 2010, <http://www.jta.org/news/article/2010/04/19/1011655/palestinian-village-and-israeli-town-build-rare-partnership-across-line>.

²⁹ See generally, Blank, *supra* note 7; Aeyal M. Gross, *Human Proportions: Are Human Rights the Emperor's New Clothes of the International Law of Occupation?* 18 EUR. J. INT'L L. (2007). (giving examples of cases *Mara'abeh v. Prime Minister of Israel*, *Ma'arab v. The IDF Commander in Judea and Samaria*, *Hass v. Commander of the IDF Forces in the West Bank*).

³⁰ Aminadav, 2 km away, is Battir's best option for a neighboring Israeli participant. Har Gilo, which is very close by is a settlement and is unlikely to aid Battir in its struggle.

³¹ Zev HaCohen, Michshol Kav Hatefer—Keta Batir-Machsom Ha Lamed Heh: Emdat Rashut Hateva VeHaganim [The Seamline Obstacle—the segment of Battir to the Lamed Heh Checkpoint: The Position of Israel Nature and Parks Authority], 12 (Aug. 2012), available at http://www.k-etzion.co.il/_Uploads/735ratag.pdf (suggesting that the wall will adversely affect plant growth and animal migration).

³² Zafrir Rinat, *supra* note 4.

³³ Water is imperative for human survival and in the water scarce environment of Israel and Palestine, there is intense competition for water resources. Israel's determination of water resources as a national security issue rightly prioritizes the necessity of water for its citizens, agriculture, and economy. See Peter H. Gleick, *Water and Conflict: Fresh Water Resources and International Security*, 18 INT'L SEC. 79, 79 (1993) (discussing the competition for scarce water resources leading to viewing water as a national security matter).

³⁴ Nir Chason, *supra* note 6.

³⁵ Nir Chason, *Representative of The Israel Nature and Parks Authority to the Israeli Supreme Court: The Separation Wall in Batir Harms Nature*, HAARETZ, Dec. 12, 2012, available at <http://www.haaretz.co.il/news/politics/1.1884670>

³⁶ Nir Chason, *supra* note 6.