

Wall mitigation efforts: legal and practical tensions

by Chareen Stark

Assisting communities affected by the Wall often involves difficult decisions. Does assistance contribute to the permanence of the Wall or legitimise its existence?

Under international humanitarian law an occupying power is solely responsible for providing humanitarian assistance to the people of the territory it occupies. In the occupied Palestinian territory, this responsibility lies with Israel. However, the reality is that since 1967 the international community has largely borne this burden. Today many donor and humanitarian aid agencies are engaged in mitigating the effects of the Wall through humanitarian and development projects.



In July 2004, in response to a UN General Assembly (GA) request, the International Court of Justice (ICJ) found that the Wall and its associated régime constitute a violation of international human rights and international humanitarian law.¹ The Court called for the immediate cessation and dismantling of the Wall and for Israel to make reparation

for the damage caused by its construction. The ICJ's 'advisory opinion' requires all states "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." The GA's adoption of Resolution ES-10/15² affirms the legal obligations of Israel – as well as those of High Contracting Parties to the Fourth Geneva Convention³ – to respect these findings.

In the wake of the ICJ advisory opinion, many donor and humanitarian aid agencies do not want to create infrastructure such as roads or schools that would not be necessary were it not for the Wall. However, the advisory opinion does not give clear guidelines to states vis-à-vis acceptable Wall mitigation projects. This topic has been the subject of debate and remains unclear. Some states refuse to engage in Wall mitigation projects at all, while the trend is to respect the advisory opinion by funding short- rather than long-term Wall mitigation projects – such as mobile health clinics in lieu of permanent health facilities.⁴ These issues beg a broader concern: how governments can respect international law while helping to provide for the humanitarian needs of Wall-affected communities.

As they are not states bound to the ICJ advisory opinion which reaffirms customary international law, some NGOs tend to have more leeway with Wall mitigation projects. For example, two Palestinian NGOs – the Palestinian Agriculture Relief Committees⁵ and the Union of Agricultural Workers Committee – partnered with an Arab-Israeli NGO, Al-Ahali, in an innovative mitigation project which includes

the replanting of trees destroyed during the construction of the Wall. Hundreds of families on both sides of the Wall benefit from this project in which Arab-Israelis in Israel assist West Bank Palestinians in an effort to prevent confiscation of 'unused' land by Israel.

UN agencies' approaches to Wall mitigation vary. The 2005 annual report of UNRWA's Commissioner-General to the GA notes that the Wall has caused deteriorating conditions for refugees in its vicinity.⁶ UNRWA does not have a special programme exclusively targeting Wall-affected refugee communities. However, some are directly or indirectly included for humanitarian assistance as they meet eligibility criteria set by the Agency. WFP includes Wall-affected communities among its targeted beneficiaries. UNICEF ensures that Wall-disadvantaged children are prioritised for remedial education support.

Wall mitigation projects are problematic in terms of implementing projects that address the lack of access to basic services due to the Wall while respecting international law. The socio-economic crisis induced by the Wall and the occupation requires the implementation of serious long-term solutions rooted in international law. The ICJ advisory opinion and the ensuing General Assembly Resolution remind Israel and other states of their obligations under international law.

The author's email is chareen.stark@yahoo.com

1. www.icj-cij.org/icjwww/idocket/imwp/imwpframe.htm

2. www.palestine-un.org/res1015.html

3. www.icrc.org/ihl.nsf/WebList?ReadForm&id=380&t=art

4. See Hampson A and Abou Azzam J, *Wall Mitigation: Implications for Donors and Implementing Agencies Operating in Areas Affected by the Separation Wall*, www.reliefweb.int/library/documents/2005/lacc-pse-30jan.pdf

5. www.pal-arc.org

6. www.un.org/unrwa/publications/pdf/comgen-report2005.pdf