

**All in All, it was Just Another Brick in the Wall:
Determining the Efficacy and Legality of the Mexican
Border Wall**

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Introduction

The debate concerning the efficacy and legality of interstate barriers has experienced a revival as a result of the polarizing campaign rhetoric of Donald Trump. Although the concept of a Mexican Border Wall is not an entirely new concept in American conservative politics, Trump has presented a unique perspective on the necessity and feasibility of the Wall. Early campaign promises of the new administration suggested that “the Wall” would be paid for by the Mexican government. While Mexico’s paying for the Wall is no longer a promise Trump is capable of making, the Administration continues to argue for the construction of the barrier along the border. As a whole, the Trump Administration has faced early opposition to many proposals concerning immigration policy. Continued pressure has been placed on vows to build the Wall, prompting the inclusion of the barrier in this year’s proposed budget.

This paper seeks to explore the reality facing any such construction in terms of efficacy and legality of interstate barriers. Historical barriers such as the Great Wall of China and the Berlin Wall can be used to draw conclusions about the likely efficacy of the Mexican Border Wall in achieving its desired ends. The Israeli Separation Barrier in the occupied Palestinian Territory demonstrates the application of newly-developing international legal principles which render interstate barrier illegal. Finally, the historical obstacles facing previous American presidential administrations in the construction of similar barriers along the Mexican border suggest that such a venture is unrealistic and increasingly unnecessary in the face of new methods of unlawful immigration.

This paper argues that while undocumented immigrants continue making their way into the country, recent evidence demonstrates that the construction of a wall would be ineffective to stop the influx (Warren & Kerwin 2017: 124). Legally, opinions by international courts suggest

that the Mexican Border would be a violation of international law (International Court of Justice 2004).

I. Historical Walls

The Mexican Border Wall is not an original concept. The Great Wall of China and the Berlin Wall represent two of the most notable intrastate barriers. Both the Great Wall and the Berlin Wall were constructed for different reasons and with varying levels of effectiveness. Each barrier represents the political, cultural, and economic motivations of dissimilar governments in disparate historical contexts. Despite the variances between the two structures, there were many similarities in materiality and humanitarian objections to the building of each. By understanding the historical implications of the Great Wall and the Berlin Wall much can be determined about the likely effectiveness of the Mexican Border Wall.

A. The Great Wall of China

The Great Wall of China is composed of 4,300 miles of independently created barriers, some of which are over 2,000 years old. Construction on the earliest segments, those made of tampered earth and a framework of wood or reed, began during the Warring States period from 481 to 221 B.C.E. (Langerbein 2009: 11). The iconic brick-laid sections of the Wall were constructed most recently, reaching completion in the 1600s. These segments are only about 450 years old and encompass a relatively small portion of the Wall's vast expanse. As is to be expected, the older segments were more vulnerable to destruction and decay because of natural disaster, poor maintenance, and barbarian invasion. Construction of the barrier was oftentimes dangerous and brutal, resulting in millions of deaths of workers living in abysmal conditions. Many of those who died while working on the Wall are buried alongside, or even inside, their construction.

The numerous sections of the Wall represent diverse motivations for construction. “The original purpose of the Great Wall of China was to separate the civilized Chinese heartland from barbarian territory to the north” (Langerbein 2009: 11). Since then various leaders have chosen to expand, connect, remodel, or renovate the Wall to serve their own purposes. Construction during the period known widely as the Chinese “Dark Ages,” was meant to prevent invasion by northern nomadic clans such as the “Xiongnu, Huns, Turks, and Mongols,” who were especially dangerous between the Han and Sui Dynasties (Langerbein 2009: 11). Other leaders sought to expand the Wall to secure trade monopolies on salt and silk. Others still utilized the barrier as a method to establish Chinese architectural greatness in the ever-expanding world. Although the construction of the Wall was not immensely complex, the assumed superiority of Chinese builders was a point of pride for the Chinese government. The Communist leadership of China cited the Wall as a testament to China’s long history of excellence. In this way, “Ethnocentrism, therefore, not only led to the creation of the Wall; [ethnocentrism] is also resultingly much stronger and more powerful [as a result of the Wall’s construction]” (Langerbein 2009: 15). Today, the primary justification for the Wall is exactly that: a monument to the strength of China.

Despite insistence that the Great Wall is indicative of Chinese superiority, the utilization of the barrier throughout history has been linked to periods of military and diplomatic weakness. Expansion of the Wall for protection from the invading clans of the north was a complete failure. While millions of ounces of silver were being used to purchase materials and laborers to connect, renovate, and expand the Wall, invading nomads were settling in the “civilized south” (Langerbein 2009: 15). The barrier failed to prevent smugglers from sneaking silk out of the country, thus shattering the Chinese monopoly on silk. The Great Wall remains the “unofficial”

symbol of the China, a symbol of strength and outstanding accomplishments. However, the Wall did little to prevent interactions between the barbaric nomads and the civilized Chinese. Trade of goods, customs, and traditions was common among peoples living near the wall, on either side.

The Great Wall of China demonstrates the sometimes unsurmountable cost—in terms of both labor and money—associated with the construction of barriers. During every major period of renovation or expansion of the Wall, even well into the twentieth century, providing ample workers to complete construction of the barrier was near impossible (Langerbein 2009: 13). Dependent upon the leader's faith in the efficacy of the Wall, the barrier was tended to by at least some guards and conscripted maintenance laborers. The Chinese government was forced to repeatedly raise taxes, prompting widespread disapproval of the building projects. In 1576, during the construction of one of the most extensive sections of the Wall, the Ming Wall, the Chinese government was spending almost three-quarters of the country's annual budget to provide supplies and workers. Construction on the Wall even lead to the complete bankruptcy of multiple Chinese dynasties (Langerbein 2009: 15). Oftentimes the Wall crumbled because of the lack of maintenance on the older sections. Construction on just the most recently built section composed of brick, which began in the mid-sixteenth century, took more than one hundred years to complete (Langerbein 2009: 15). Ultimately, the Great Wall of China cost the Chinese government much more than it provided in terms of trade control or protection from invading peoples.

B. The Berlin Wall

The Berlin Wall was part of a larger system of barriers separating the Federal Republic of Germany (West Germany) from the Communist German Democratic Republic (East Germany). The Berlin Wall, erected by the East German government, stood from August 13, 1961, to

November 9, 1989 (Langerbein 2009: 15). The original barrier was quickly constructed over a period of two days. “[Soldiers] of the National People’s Army, border policemen, members of the People’s Police, and workers’ militiamen” were tasked with the hasty construction (Langerbein 2009: 17). The initial cordon was composed of road blocks and fences, followed by a brick wall. Over time, however, the Wall became more substantial in its materiality, reflecting the seriousness of the Communist government of East Germany. Additional fortifications were made to the existing road blocks, including: a wall several meters high along the interior of the barrier with sensors throughout; a fence almost three meters high; bundles of barbed wire; dog-access paths; a vehicle ditch; an access road for border guards; a row of spotlights; almost 200 guard towers; a raked sand path; and an exterior 3.75 meters high made of concrete (Langerbein 2009: 17). The Berlin Wall cost the East German government more than \$200 million in material, construction, and labor costs (Langerbein 2009: 18). More than two thousand guards patrolled the Wall daily, along with approximately one thousand guard dogs. The guards were equipped with heavy weaponry and permission to shoot on sight of anyone, including women and children, attempting the breach the barrier.

The construction of the Berlin Wall came after repeated attempts by the Communist government of East Germany to prevent flight of its citizens to West Germany. Immediately following the separation of post-war Germany into East and West, citizens on the East began leaving for the more economically prosperous Western half. Initially, only a permit was required to cross the new boundary. Only a year after the split, however, the East German government established a border patrol organization that required more stringent documentation and began erecting road blocks and other impediments along the border. By the early 1950s, the demarcation was highly policed, including “increased sensors and three new security zones right

along the border” (Langerbein 2009: 16). The continued migration of East Germans out of the area prompted the rushed construction of the Wall and the brutal “shoot to kill” orders. Guards were given incentives to shoot those attempting to pass illegally, and often encouraged to create an atmosphere of fear in those crossing the border, even with the proper documentation (Langerbein 2009: 18). The constant movement of people out of East Germany was hurting the already less prosperous half of Germany. In addition, the most capable and accomplished Germans were often those who sought residence outside of East Germany, a great blow to the East German government.

The erection of the Berlin Wall was only somewhat effective in preventing East Germans from escaping to West Germany. Sources vary on the number of deaths which occurred as a result of the Wall: anywhere from 86 to 262 died while trying to cross the border (Langerbein 2009: 22). Those caught trying to cross the border who were not killed on sight were charged with desertion, some 75,000 people were sentenced to up to eight years in prison as a punishment (Langerbein 2009: 22). As is true for all interstate barriers, the Berlin Wall was not impassable. Despite the intricate security system put in place by the East German government, tens of thousands escaped. In the face of miserable conditions, East Germans ingeniously concocted ways to get through the border without being detected. However, the vast majority of those who wanted to leave East Berlin remained until the Wall fell. This preventative measure preserved the existence of East Berlin for the twenty-eight years during which it stood. Without such a barrier to migration out of the region, East Germany would have quickly collapsed economically (Langerbein 2009: 22).

Humanitarian concerns and popular support are two important considerations to be made when discussing the implications of the Berlin Wall on the proposed Mexican Border Wall. The

orders of the East German government to shoot any person attempting to breach the barrier was a clear violation of international law, even as it existed during the Cold War period, including the *Law of Armed Conflict* which prohibited the execution of non-combatants. Soldiers responsible for guarding the Berlin Wall were prosecuted by German courts in the “Wall-Shooter Trials,” resulting in convictions for murder and other offenses (Langerbein 2009: 22). The miserable living conditions for those living in East Berlin were not unknown to the rest of the international community. The West was able to use the Wall as a propaganda tool demonstrating the brutality of the Communist East. The Berlin Wall was “a sign of the inhumanity...of a political system which...needed to build a heavily guarded wall to prevent its own citizens from leaving” (Langerbein 2009: 22). Further, the Wall had almost no public support. Those who did not want to leave East Germany were appalled by the murder of those attempting to leave. Individuals wanting to leave felt trapped by their already repressive government. In the end, the construction of the barrier contributed significantly to the collapse of East Germany.

II. Literature Review

Recently, more attention has been given to analyses of interstate barriers as inherently illegal and illegitimate obstacles to self-determination. Some international legal experts suggest that construction of any such wall, be it the proposed Wall between the United States and Mexico or the already constructed Separation Barrier in Israel and Palestine, is illegal on its face. One such article, “Legalizing the Barrier: The Legality and Materiality of the Israel/Palestine Separation Barrier,” authored by Yishai Blank, explores the intrinsic unlawfulness of walls (Blank 2011: 309). This article includes a careful examination of the role of the international laws governing self-determination of individual groups as well as the reasons why arguments about the wrongness of barriers are often overlooked by international law experts. In addition,

Blank explains the repercussions of choosing to include the basic illegality of walls into already complex discussions of sovereignty and human rights.

Blank suggests that the inherent illegality of any barrier is the missing element of legal arguments governing the Separation Barrier in Israel and Palestine. The author argues that the role of sovereignty, while frequently mentioned and explored in conversations about the United States-Mexico border, also addresses legality. Although the entirety of the Mexican border fence is constructed within sovereign territory, it still constitutes a questionable application of American law. In fact, the Mexican fence, even prior to the more extreme proposal by President Trump, has been questioned by the Inter-American Court (IAC) for possible violations of international, environmental, and property rights law (Blank 2011: 336). Blank argues that if a barrier constructed entirely within the territory of its creator can be challenged successfully as a violation of law, then there is enough ground to suggest the innate unlawfulness of any and all such borders, barriers, and walls. Blank convincingly dissects the role of sovereignty on the acceptance of border walls despite clear violations of international customary law.

Blank provides an objective, convincing, and well-supported argument for the unlawful nature of barriers. Blank is a “Senior Lecturer at the Buchmann Faculty of Law at Tel Aviv University,” who published this article as part of the Texas International Law Journal’s conference on “Walls: What They Make and What They Break” (Blank 2011: 309). Blank was also extensively involved in the legal battle over the route of the Separation Barrier. Expert sources in the field of international law, such as Marta Tavares and Orna Ben-Naftali lends credence to the work. Court documents issued by the Israeli High Court of Justice (HCJ) and the International Court of Justice (ICJ) as a basis for the unlawfulness of barriers is both objective and persuasive. In addition, Blank does not refuse to offer information contrary to her position

on the intrinsic wrongness of barriers, such as the argument by Michael Sfard that it is possible to build a barrier consistent with international law, which follows the Green Line—the United Nations’ suggested borders for Israel and Palestine (Blank 2011: 336). Blank is most convincing in arguing that barriers exist only as they adhere to preconceived notions of national sovereignty and national self-determination, despite discussions by bodies such as the United Nations on the right of the individual to be free from such restrictive borders. Ultimately, this work contributes to the foundational documents which establish that borders are illegitimate and unlawful. Blank’s article is significant in its ability to explain the legal and extra-legal threats of walls, as well as the importance of pushing international legal theorists to see the intrinsic unlawfulness of barriers as a legitimate legal argument. In relating this article to the study of Trump’s proposed Wall, Blank offers support for the inherent wrongness of such a barrier, as well as the concept that sovereignty should not and cannot exist as an accepted legal argument for the construction of barriers which seek to threaten the lives and basic human rights of those on both sides of the border.

Application of international law to domestically adjudicated interstate barriers has been the subject of academic analysis since the construction of the Israeli Separation Barrier. International law, while offering a great deal of deference to the sovereignty of nations, has begun to recognize the rights of groups to challenge the decisions of their own government and foreign governments acting upon individuals. In a similar way, international legal theorists give much credence to domestic court decisions in the development of international law. Palestinians were able to bring challenges against the Israeli government to ICJ; a body of which Israeli is not a member. Barriers cannot be understood through purely legal terms; however, political dimensions exist for the justification and authorization of walls. Sarah Williams wrote an in-

depth analysis of the implication and applications of developing international law on the Separation Barrier in “Has International Law Hit the Wall? An Analysis of International Law in Relation to Israel’s Separation Barrier” (Williams 2006: 192).

Williams deliberates on the role of international law in challenging and reviewing decisions issued by domestic courts. The Israeli Separation Barrier was questioned at several periods during its construction, on the basis of violations of Israeli and international law. Each of these challenges at the Israeli HCJ resulted in decisions that may have fractionally changed the route of the barrier, but ultimately reaffirmed the authority of the Israeli government to construct it. There is an important discussion of the role of domestic courts of last resort as contributors and authors of international law. Relatively, international law is still a nascent concept; constantly evolving and expanding. According to Williams, “the state serves as a filter through which international legal concepts interact with domestic political, social, and legal forces only to return to the international level as part of an ongoing, dynamic, and circulating process” (Williams 2006: 196). In the same way, the Mexican Border Wall, which has been challenged for violations of international law in American courts contributes to the development of legal principles which will govern the legality of interstate barriers in the International community. This essay also touches on the voluntary nature of international law: the opinion of the ICJ was just that, an opinion. No binding action was required of Israeli after the Wall was declared illegal. For Williams, this is not necessarily a deficiency of international law, but rather a characteristic of a system with real value to the global community.

Williams offers information from a variety of sources and theories to develop the application of international law from domestic court decisions. Williams is “a British barrister and former Rotary World Peace Fellow at the Rotary Center for International Studies in Peace

and Conflict Resolution at UC Berkeley; her qualifications include several Masters degrees in areas such as Political Science, International and Area Studies, and Public International Law” (Williams 2006: 192). Williams offers theoretical analysis from several popular schools of thought in international relations, such as realism and liberalism. Looking through each lens, her article references competing and coexisting ideas about the role of international law in domestic legal decisions, and, in turn, the role of domestic jurisprudence on international law. While this work clearly takes a position on the issue: that international law is valuable despite its limitations, it does not appear one-sided to the point of untrustworthiness. Williams uses the Israeli Separation Barrier as a testament to the validity of her conclusions. There is truth to the concept of shared legal concepts between domestic law and international law. The HCJ of Israel, despite its favorable decisions for the Israeli government, did not ignore international law in its entirety, although it was not bound to compliance. In a conversation about the expected determination of legality of the Mexican Border Wall, the role of precedent in the American courts and consideration of international law could be the difference between legality and, at least implied illegality.

Most analyses of Trump’s proposed Wall plan are confined to those promises made during the campaign cycle. The plan to build the Wall using funding provided by the Mexican government was a hallmark of Trump’s campaign rhetoric. Thorough research has yet to be accumulated regarding the feasibility of the out-laid plans, but some articles have already started to emerge which explain, in full, the promises made by the current administration. The Congressional Digest published an article titled “Mexican Border Wall,” which seeks to accumulate all the statements made by the current administration about the Wall (Congressional Digest 2017: 10).

This compilation of statements outlines the metamorphosis of Trump's plan throughout the campaign and into the first months of the Presidency. The original plan was to force the Mexican government to pay for the Wall with threats of limiting cash-flow from Mexican-Americans back to their loved ones—that is to say, to halt the return of remittances (Congressional Digest 2017: 10). However, the new administration was met with harsh opposition by the Mexican government and an out-right refusal to pay for the construction. Thus, the new plan stated a preference for the United States to pay for the initial costs of building the barrier, which would later be repaid by the Mexican government, in a currently unspecified manner. This brief also details the legal authority relied on by the administration to justify the erection of the Mexican Border Wall. Further, this article presents some of the legal obstacles facing the proposed Wall, including environmental, property rights, and indigenous communities' law suits.

The Congressional Digest is an independent publication which provides brief outlines of controversies currently before the United States Congress. Its purpose is to provide objective information about the current plans set forth by the Trump administration. This publication uses direct quotations from Congresspeople on their opposition to, or support for, certain important topics on the floor. In a discussion of the legality of the construction of the Mexican Border Wall, this document is valuable in that it provides the legal reasoning of the Trump Administration, the *Secure Fence Act of 2006*. The Digest provides an objective and unbiased source of facts on this constantly evolving topic. Ultimately, this document provides essential background information on any discussion involving the Mexican Border Wall at Congress.

Human rights concerns are of utmost importance to researchers writing about the illegality of interstate barriers (Tavares 2007: 33). The United States-Mexico border fence has

been under constant scrutiny since the passage of the Secure Fence Act in 2006, resulting in hundreds of lawsuits originating in almost every area of law (Tavares 2007: 33). Although the construction up to this point is mostly fencing, the new proposal by the Trump administration calls for the creation of a more permanent, concrete wall. More than 11 million people live in the region where the wall would be built. Violations of international and domestic human rights law would surely result from the erection of the Trump Wall, in the same manner as they have from previous constructions on the barrier. Discussions of the barrier following the passage of the Secure Fence Act, which also sought to produce a more permanent wall—albeit fences, not concrete slabs—resulted in similar debate of human rights issues. These conversations, although not entirely relevant to the newly proposed construction, can be used to understand the legal arguments against the building of any such barrier along the United States-Mexico border. Marta Tavares authored an essay on the human rights implications of such a construction following the border legislation of 2006 in “Fencing Out the Neighbors: Legal Implications of the U.S.-Mexico Border Security Fence” (Tavares 2007: 33).

The role of international human rights treaties in the legality of interstate barriers is discussed in depth by Tavares. This article explores some of the fundamental human rights treaties that have been authored since the end of World War II, and their provisions which address, directly or indirectly, the unlawfulness of interstate barriers such as the one between the United States and Mexico. There is a duty to uphold international customary law as well as international human rights covenants which the United States is a party to, such as the *International Covenant on Civil and Political Rights* (Tavares 2007: 34). These binding documents and legal principles demand that all parties, including the United States, consider international law when enacting domestic policy. There is a fine line, therefore, between laws

which seek to protect citizens of the United States and laws which seek to harm others because of their status as migrants. There are several rights, including: the right to life, the rights of indigenous peoples, and the right to a healthy environment found in international covenants and treaties, which are in direct opposition to the building of interstate walls. If the United States is to operate under international humanitarian law, there can be no unlawful construction such as the edifice proposed by the Trump administration.

This article finds objective and convincing support in the form of international legal documents—covenants and treaties—and international customary law. Tavares makes repeated references to framework treaties such as the International Covenant on Civil and Political Rights and the Committee on the Elimination of Racial Discrimination (Tavares 2007: 34-36). The use of these sources provides an impartial source with which to tie claims of human rights abuses which will occur as a result of the Wall's construction. Therefore, if the proposed Wall were to be built—assuming for an instance that it is feasible in terms of funding and labor—it could be tested in international and domestic court for these violations with almost guaranteed success by its challengers. Both State sovereignty and international demands for human rights must be balanced in discussions of the legality of interstate barriers. In comparing the scope and depth of this article to research on the current Administration's push for the construction of a new barrier, there are many connections that can be made between suspected violations of international law in the past and present. Ultimately, this essay provides a strong source from which to draw information about the abuses occurring because of the construction of a barrier on the United States-Mexico border.

Experts in border history have recently began connecting Trump's proposed Wall with the actions of his predecessors in the securitization and militarization of the border. Prior to

Donald Trump, two presidents did the most to establish and fortify the barrier on the Mexican border: Richard Nixon and George W. Bush. Since the creation of the wall, conservatives have expanded on it in the hope of finally ending the flow of undocumented immigrants and drugs into the United States. Unfortunately, all of the barrier's creators have failed to do so. The connections with and extensions of Nixon's project in Trump's Wall are discussed in Patrick Timmons' "Trump's Wall at Nixon's Border" (Timmons 2017: 15). Timmons argues that like Nixon, Trump will not achieve much success with the expansion of the barrier, and will instead cost the United States billions on a monument to weak immigration policy.

Timmons' article presents a connection between Nixon's *Operation Intercept*, the first border monitoring operation, and Trump's plan to build a wall where the fence stands. In the same way, the Nixon's border enforcement plan was an entirely new concept, Trump's wall revolutionizes the materiality and substantially of the border barrier. Trump's similarities to Nixon do not end there, however, Nixon was the first to promise the closure of the border as a guaranteed method to prevent the flow of illegal drugs and undocumented immigrants (Timmons 2017: 16). Additionally, the article questions the efficacy of the wall. Nixon's fence cost the federal government millions and cost the economy even more in lost jobs and trade. Trump's Wall would be even worse for the economy, especially in terms of job loss (Timmons 2017: 17). This article's argument lies in a denial of the efficacy in terms of border security and reduction of undocumented immigration, especially considering recent trends in immigration. Instead, Timmons argues that such a barrier is truly a testament to national insecurity and misguided beliefs.

Timmons is compelling in his comparison between the actions taken by President Nixon and President Trump. The North American Congress on Latin America (NACLA) issues reports

on the Americas annually. The organization seeks to explain controversies concerning Latin American nations from an impartial and academic point of view. Timmons presents an interesting point of view, utilizing the history of border construction to understand the potential of border construction. Although Timmons concludes that the border wall would be a disaster for the United States government monetarily and would most likely be as ineffective as its predecessors, he does so objectively. The figures are derived from expert statisticians who can extrapolate previous losses in jobs and increased trade deficits as a result of the issues at the United States-Mexico border. In addition, Timmons crafts a persuasive argument; the idea that Trump is not creating something new, but rather adding to the already militarized and technologically advanced wall is an important concept to consider. In a discussion of the Mexican Border Wall, this article is valuable in its references to the history of the border as a strong testament to the weaknesses of barriers as effective anti-unlawful immigration strategy.

III. A Modern-Day Case Study: the Israeli Separation Barrier

Separating Israel from the Occupied Palestinian Territory (OPT) is what some have called a wall, a fence, a separation barrier, or an apartheid wall. The official nomenclature of the barrier by the Israeli government is “separation fence,” while the organs of the United Nations have simply referred to the structure as the “wall” (Kattan 2007: 1427). This paper will refer to the wall using the language of the legal body being referenced and the terminology utilized by the legal arguments supplied (eg. “Fence” when discussing Israeli defenses of the barrier). The wall separating Israel from the occupied territories of Palestine has been a topic of primary discussion in international law for more than a decade. Since the Israeli government began construction of the fence in 2002, Palestinians have voiced their opposition to the barrier’s route, the implications it has for their lives, the political and economic changes which accompanied the

construction, and its permanence. This paper explores the legality of the Israeli barrier at both the local and international courts. In addition, this paper aims to analyze the legal reasoning for both the Israeli government and the Palestinian opposition, and to draw conclusions about the strength of each position. Finally, this paper looks at the implications of the International Court of Justice's advisory opinion on the continued presence of the wall and the precedent set forth for other interstate barriers.

A. The Historical Background of the Wall

In the summer of 2002, the Israeli government set forth plans to begin construction of a fence which would separate Israel from the West Bank territory. This decision came as the result of massive political pressure from the Israeli populace. The country was reeling from almost non-stop suicide bombings and targeted attacks by Palestinians during the Al-Aqsa Intifada, the Second Intifada of Palestinians after an Israeli leader, Ariel Sharon, visited the Al-Aqsa mosque in Jerusalem (Ben-Eliezer 2007: 172). The infighting between the Israeli military and Palestinian terrorist organizations cost more than 3,000 Palestinian lives and close to 500 Israeli lives. The security fence, then, was the Israeli response to legitimate threats to their citizens' lives. The argument remains however, whether the Israeli government's response violates existing international conventions to which Israel is party, as well as principles of international customary law. Palestinians and "anti-wall" groups operating around the world fear that the barrier is more than a security measure. For the Israeli government, the fence offers the Israeli an opportunity to single-handedly rewrite their territorial borders by constructing the wall in, what is arguably, Palestinian-owned territory (Amir 2011: 769). The fence has been used to effectively annex Palestinian territory to surround illegally formed settlements of Israelis.

On April 14, 2002, the Israeli Cabinet approved Government Decision 64/B which authorized the construction of an 80-kilometer fence in three areas of the West Bank. The Israeli Minister of Defense told the legislative body that the fence was a “necessary means to protect Israeli citizens from terrorist attacks” (Ben-Eliezer 2007: 172). The Director General of the Israeli Ministry of Defense established one of the most hotly contested entities relating to the wall, the “Seam Zone Administration,” which was made up of the areas to the east of the Green Line, and west of Israel’s security fence (International Debates 2004: 134). The Green Line is the border demarcation line set out in the 1949 Armistice agreement between the armies of Israel and several Arab nations following the 1948 Arab-Israeli War. The “seam zone” as it is referred to now, is home to thousands of Israeli citizens living in settlements. Months later, the Knesset passed Cabinet Decision 2077 which granted permission for military construction of a contiguous border with the West Bank territory and East Jerusalem, citing the need for security in the region. The route of the fence would be left to the Prime Minister Sharon, and his Minister of Defense, Shaul Mofaz, of the conservative Likud party. In August, the Cabinet approved of the final route for the first phase of the constructions, which surrounded the Palestinian districts of Qalqiliya, Tulkarem, and Jenin, home to over 200,000 people. This route trapped nearly 12,000 Palestinians in the “seam zone,” which would threaten their resident status and their access to the rest of Palestinian territory. In October, 2003, Cabinet Decision 883 proposed and authorized the construction of the full barrier, a single fence 720-kilometers long. The plan deviated more than seven and a half kilometers from the Green Line border demarcation in several areas to incorporate the Jewish settlements, some sections of the fence stray more than 20 kilometers from the Israeli border (International Debates 2004: 135).

As a result of the deviations, hundreds of thousands of Palestinians in more than 16 villages were surrounded on three, or sometimes all four, sides by the fence. To make matters worse, the day after the Knesset approved the route of the full barrier, the Israeli Defense Forces (IDF) issued “the Orders,” legal instruments pertaining to land in the West Bank territory that fell within in the seam administration. For Palestinians in this region, the area has come to be known as the “closed area.” The IDF informed 5,300 Palestinians that they would be required to leave their homes and would be ineligible for return until after construction finished. Any Palestinian entering the area would be required to have an identification card or permit issued by the IDF. Israeli permanent residents and those who can legally immigrate to Israel with the Law of Return—legislation which allows Jews to legally move to, and gain citizenship in, Israel—would not be required to apply for the identification and could move freely throughout the area. Those Palestinians who lived in the area during the construction of the fence were issued temporary permits which expired after one, three, or six months. Palestinian non-residents were not eligible for permits, at all. Security measures at the access gates made moving in and out of the area extremely difficult for those Palestinians with permits. The schedule of operations at the gates was limited to three thirty-minute access windows each day. This measure denied thousands of Palestinians regular access to their farmlands, jobs, medical services, education, and other basic necessities. Those individuals attempting to maintain farmlands often had their land confiscated for not being “properly cultivated,” authorized by Israeli law (International Debates 2004: 135).

The construction of the wall in new areas, as well as the rerouting of old fences, continues today. In 2009, the Israeli government decided to construct a new route for a section of fence contested at the Israeli H CJ in *Mara’abe v. Prime Minister of Israel* (2005). Construction

for that section was finished in 2011. In East Jerusalem, production of the wall has increased drastically since early 2010. Many scholars studying the route of the wall suggest that the building of walls in Jerusalem is meant to restrict room for expansion of Palestinians. This is a purposeful movement to restrict the possibility for future growth of the Palestinians population in Jerusalem and the preservation of a Jewish majority in the holy city (Amir 2011: 772). In 2013, the military finished the installation of 99 checkpoints to pass through and between towns in the West Bank territory. In February, 2016, Prime Minister Netanyahu proposed an expansion of the wall to surround all of Israel, in addition to permanently securing the already constructed walls. An end to this wall is not within sight for the Palestinians living in its shadow.

B. A Description of the Wall

Many critics of the separation “fence” have a problem with labeling the structure as such because it is so patently obvious that much of the wall is *not* a fence. Behind an eight-meter tall ready-made concrete wall, there lies a series of fences complete with electronic alarming systems and barbed wire, but the structure itself is a *wall* (Blank 2011, 315). The features of the barrier vary depending on the threat level associated with the region and the proximity of the Palestinian population to Israel or the Jewish settlements. Many sections have some or all of the following security measures in place: fences with electronic sensors which alert IDF forces of infiltration, four-meter deep ditches, asphalt two-lane patrol roads, trace roads which are smoothed to detect footprints, six coils of barbed wire on every fence, various observation systems, cameras and watchtowers, depth barriers, and gunfire protection walls. Established before the construction of the wall was a series of roads which connected the Israeli-Jewish settlements to each other and Israel proper (Blank 2011, 315). These roads have been incorporated into the wall security

system and restrict access of Palestinians to these roadways, resulted in increased fragmentation of Palestinian life.

C. Legal Reasoning

Both the Israeli government and the Palestinian Liberation Organization (PLO) support and refute the construction and wall, respectively. The argument of the Israeli government is based on the belief that Palestine, as an occupied territory and not a sovereign nation, does not enjoy the same rights as Israel. According to the Israeli government, international conventions do not apply to Palestine in the same way they apply to diplomatically recognized States. Palestine disagrees with the reasoning, claiming that these international legal principles, such as the Geneva Conventions and the United Nations Charter, apply to all people. Unsurprisingly, the argument of the two sides are, on many points, the antithesis of the other. Israel believes the construction of the Israeli security fence is justified by international law “on the basis that it was not motivated by political considerations but by considerations of safety” (Williams 2006: 199). Israel’s argument tends to favor the international principles of sovereignty, especially through protection from terrorism. The Palestinians, on the other hand, focus mostly on international humanitarian and human rights law, as well as one of the bedrocks of international law, self-determination.

i. Israel’s Legal Argument in Support of the Fence

Israel maintains that the security fence is a necessary measure to ensure the safety and freedom of Israeli citizens from terrorist attacks by Palestinian extremist groups. Israel relies mostly on *Article 51 of the United Nations Charter* which states: “[n]othing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations (UN Charter 1945). *Article 51* is often associated

with sovereignty and the right of States to do what they deem necessary in the face of attacks from another State. Although Israel does not recognize Palestinian statehood, the Israeli government does suggest that *Article 51* authorizes military action to protect its citizens from terrorism. Additionally, the Israeli government cites *Security Council Resolution 1368 (2001)* which condemned the terrorist attacks against the United States on September 11, 2001, and authorizes States to protect themselves from terrorism. The Israeli legal argument also references *Security Council Resolution 1373 (2001)* which offers strategies to combat terrorism, claiming that because the separation fence has contributed to a decline in the number of attacks, that it is an effective strategy.

The other half of the Israeli legal argument simply refutes the application of all international human rights and humanitarian law to the Occupied Palestinian Territory. The Israeli government has ratified the Geneva Conventions, but it has not implemented the Convention into domestic legislation. Further, the Israeli government argues that the *Fourth Geneva Convention* does not apply to the Palestinian people because Palestine has never existed as an independent territory and is therefore, not a party to the Conventions. The Israeli legal argument opposes the application of the *International Convention on Civil and Political Rights* and the *International Convention on Economic, Social, and Cultural Rights* to the Palestinian territory. In response to the Palestinian claim that humanitarian law applies to their situation, the Israeli government has claimed that humanitarian law applies only during wartimes, or conflict situations. Human Rights law is also inapplicable to Palestinians, per the Israeli argument, because human rights are those rights afforded to citizens by their government. Palestinians are not Israeli citizens and are therefore ineligible for those rights.

On the route of the fence, Israel claims that the Green Line, or Armistice Line, is not the confirmed international boundaries of Israel pursuant to *Security Council Resolution 242/238 (1967)*. Thus, there is no mandate to respect these borders when constructing its fence.

The strength of the Israeli argument depends on if there is an actual or imminent threat of terrorist attacks by Palestinian radicals to justify the construction of a permanent barrier which clearly infringes on the rights of people living in the Occupied Palestinian Territory. Israel's usage of *Article 51 of the United Nations Charter* is to be expected. This passage is often cited to justify actions which could be considered a violation of international law in the interest of sovereignty and self-determination. Israel fails to justify the construction of the wall in the application of *Security Council Resolution 1368 (2001)* and *1373 (2001)*. The threat which may have existed during the Second Intifada of the early 2000s no longer poses a danger to Israeli citizens. The initial claim of the Israeli government was that the fence was a temporary measure during the most brutal interactions between Israelis and Palestinians. As evidenced by the expansion and maintenance of the fence, this barrier has ceased to be temporary.

It is also quite ridiculous to claim that matters of international customary law do not apply to Palestine because the territory has never existed as an independent State. Historically, Israel is correct, Palestine was first under the rule of Ottoman Empire before being annexed by Jordan and Egypt and the British Mandate. However, these conventions are clearly meant for application to all people. Israel's application of the same flawed logic to humanitarian and human rights law is troubling. There is no question that human rights are deserved innately by all people, whether they are citizens of Israel or not.

ii. The Palestinian Argument Against the Wall

The Palestinian argument hedges on the insistence the violations of humanitarian and human rights law that occur as a result of the construction of the separation wall supersedes Israel's entitlement to sovereignty and the protection of their citizens from terrorist attacks. Palestine does not deny that Israel can develop security measures and take military action in cases of absolute necessity to protect legitimate military interests. The Palestinian argument diverges from the Israeli position in that the PLO believes these actions must be taken in accordance with international human rights and humanitarian laws as it applies to *all* people. Palestine argues that the construction of the wall within Palestinian territory as established by the Green Line border demarcation is a violation of international law, humanitarian law, and the proportionality principle. The Palestinian people have argued that the route of the wall around the Jewish settlements is annexation of Palestinian territory and is illegal under international law.

The Palestinian argument claims that one of the most egregious violations is the extensive destruction of homes and appropriation of property in violation of the *Fourth Geneva Convention* and the *Law of Belligerent Occupation* (Kretzmer 2012: 224). The PLO claims that the wall which completely encircle many Palestinian villages to accommodate Jewish settlements, infringes on the right to education, decent standards of living, work, health care, religious services, etc. as defined by the *Conventions on the Rights of the Child* to which Israel is a party. The freedom to choose one's place of residence is denied by the establishment of the "closed area," and is contrary to the *International Convention on Economic, Social, and Cultural Rights*, by which Palestine believes it is entitled protection. The forced transfer of Palestinians out of the area is also a violation of the *Fourth Geneva Convention*, the *International Convention on Economic, Social, and Cultural Rights*, and the *Law of Belligerent Occupation* (Williams

2006: 201). Ultimately, the effects of the wall on the lives of Palestinian people is responsible for as many, if not more, violations of international law than the wall itself.

Based on international law, Palestine has a more effective legal argument for the dismantling of the separation wall. Many of the conventions or laws mentioned on both the Israeli and Palestinian ends of the argument are those to which Israel is a party, and is therefore bound to follow, or a matter of international customary law. All people, including non-citizens, are entitled to self-determination, as established by the International Court of Justice. It is the responsibility of the Israelis to promote and support the PLO in their struggle for independence. The Israeli military is, without question, violating the *Law of Belligerent Occupation* by forcing Palestinian citizens out of the “seam zones,” and changing the resident status of Palestinians, especially in making these individuals obtain an identification card issued by the Israeli Defense Force. The *Fourth Geneva Convention* which must apply to Palestinians, in accordance with adaptation of the Convention as customary law, is being violated daily as a result of the permit system. The proportionality principle has been all but abandoned by the Israeli military in their routing of the separation wall. The Palestinians have a compelling argument against the wall.

D. Court Decisions

The Israeli High Court of Justice (HCJ), also called the Supreme Court of Israel, has issued two major decision on the legality of the separation fence; *Beit Sourik Village Council v. the Government of Israel* (2004) and *Mara’abe v. Prime Minister of Israel* (2005). The International Court of Justice (ICJ) released an advisory opinion on the matter, as well, becoming the first international court to decide on the issue of the wall in *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (2004). The scope of the legal question before the International Court of Justice was broader than either of those before the HCJ

in Israel. The international Court did not refrain from addressing the legality of the Jewish Settlements or the obligations of the international community to address the legality of the wall. To the credit of the HCJ, their rulings did not reflect absolute support for the construction of the wall, its route, and the implications it has for Palestinians in its path. The decision of the International Court of Justice came only nine days after the decision in the first case before the HCJ, *Beit Sourik*. The decisions of the HCJ issued prior to, and following, the advisory opinion of the ICJ, make very sparse reference to international law (Lynk 2005: 8). These decisions are valuable applications of international law to a situation which has been developing for most of the twenty-first century.

i. Deciding on the Legality of the Fence at the Israeli High Court of Justice

In Summer of 2004, the Israeli High Court of Justice decided on *Beit Sourik Village Council v. the Government of Israel (2004)*. The petitioners, a group of landowning members of the village council in several Palestinian villages, including Beit Sourik, had their land seized by the Israeli government in the construction of the separation fence. The landowners claimed that the seizure was illegal. The petitioners argued that the seizure should either be reversed, and the land returned, or the location of the wall should be changed to prevent the seizure of Palestinian land. The seizure accounted for 42 square kilometers of their land and even more would be cut off from them once the wall was built. The Palestinians argued that if the land wasn't returned, it would cause severe and irretrievable damage, despite the existence of the permit system. The villagers' council claimed that the building of the wall would prevent them from accessing water to irrigate their crops, and wells which were used in herding, thousands of olive trees would be cut off from the village, as well as medical services and schools; the entire village would be affected by the wall.

The Palestinian perspective, supplying some of the legal arguments explained earlier, was that the seizure of land was illegal under Israeli administrative law, as well as international law. The wall was being built for political reasons, which they believed was a “violation of the *Fourth Geneva Convention Relative to the Protection of Civilian Persons in Times of War of 1949* (Kattan 2007: 1430). The Israeli government argued that the wall was not a political measure, but a matter of military necessity and paramount security interests of the Israeli population. The Israeli government ensured the Court that the seizures of land were legal and consistent with Israeli administrative law. The government suggested that the threat of terrorism against Israeli citizens prompted the construction of the wall, justifying it. The Israeli government also claimed to have given great thought about the lives of the people in the area when deciding the route of the fence.

The HCJ ruled that the wall was justified and could be built in the areas of the West Bank and East Jerusalem. The Court did, however, support the claim of the petitioners in that they asked for the Israeli government to redraw the route of the wall in several areas. In this decision, the Court affirmed the legality of the fence while questioning the decisions of the military commanders who were responsible for determining its actual route through Palestinian territory. The HCJ rejected the Palestinian argument that the wall was being built for political reasons, agreeing with the necessity of the wall to prevent loss of Israeli life (Kattan 2007, 1430). The Court did not address the legality of the settlements and referred to them exclusively as Israeli neighborhoods or towns in their ruling. The HCJ also ignored the petitioners’ claims that the seizures and construction are violations of the *Geneva Conventions*. The ruling resulted in minor changes to the route of the wall.

The second major case decided by the HCJ is *Mara'abe v. Prime Minister of Israel* (2005). Part of the route for the separation wall included surrounding the Jewish Settlement, Alfei Menashe. The construction of this wall resulted in the complete circumscription of five Palestinian villages. A resident of that village, a Palestinian man named Zaharan Yunis Muhammad Mara'abe, petitioned the court to have the wall removed. His initial appeal to the Military Commander in the area was rejected outright, so he appealed to the HCJ (International Crimes Database 2013). The Palestinians based their claim on the advisory opinion of the International Court of Justice issued a year earlier, which stated that the wall was illegal. The Israeli government argued that the wall was a necessary measure to protect the Israeli citizens living in Alfei Menashe. The Israelis claimed that the military commander had the authority to order construction of the fence and the construction was within those standards organized by the High Court in the Beit Sourik decision.

The Court held that the military commander of the West Bank was authorized to order the building of the fence, but only if it was necessary for security or military interested, as established in the Beit Sourik decision. The Court found that the barrier was infringing on the lives of the Palestinians in such a severe way that the military should look for another alternative route for construction of the Wall. Even after the ICJ ruled that the Geneva Conventions applied to the Occupied Palestinian Territory, the Israeli Court refused to acknowledge that holding (Kattan 2007: 1433). Following the decision of the Court in 2009, the Israeli military constructed a new route which no longer surrounded the Palestinians, and was completed in 2011.

ii. Deciding on the Legality of the Wall at the International Court of Justice

The International Court of Justice, the highest judicial body of the United Nations, released an “advisory opinion” on the “Legal Consequences of the Construction of a Wall in the

Occupied Palestinian Territory” in the summer of 2004. The issue came before the Court at the request of the Security General of the General Assembly of the United Nations in *ES/10-14* which asked directly about the legality of the separation wall. The ICJ offered their opinion only nine days after the *Beit Sourik* decision by the HCJ in Israel. All 5 opinions of the Court were agreed upon by 14 of the 15 members, excluding Justice Buergenthal.

The International Court of Justice supported its opinion using a variety of conventions, treaties, and international customary legal principles. The Court cited *Article 2, Paragraph 4 of the United Nations Charter*, which states that: “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations.” The Court believed that Israel had violated this provision by using force the full extent of their military force against the Palestinians. *GA Resolution 2625*, which represents international customary law states: “No territorial acquisition resulting from the threat or use of force shall be recognized as legal,” was cited concerning the de facto annexation of land through the construction of the wall within Occupied Palestinian Territory and around the illegal Jewish settlements. Enshrined in the *United Nations Charter* and *GA Res 2625*, as well as the *International Convention on Civil and Political Rights* and the *International Convention on Economic, Social, and Cultural Rights*: “Every State has the duty to refrain from any forcible action which deprives peoples referred to [in that resolution] . . . of their right to self-determination,” and the duty to support the attainment of those rights and respect them. It was determined to be the duty and responsibility of Israel to not prevent the exercise of self-determination by the Palestinian government, and further to support the efforts of the Palestinian Liberation Organization to achieve its independence.

The Fourth Hague Convention of 1907, to which Israeli is not a party, but is considered customary law, as well as the *Fourth Geneva Convention*, which Israel maintains do not apply to the Occupied Palestinian Territory were examined by the Court. The ICJ disagreed with Israel on this matter, the Conventions do apply and demonstrate clear violations of international law on the part of the Israeli government. Israel also disagreed with Palestine in the application of human rights law to the territory, especially about the *Convention on the Rights of the Child*, *International Convention on Civil and Political Rights* and the *International Convention on Economic, Social, and Cultural Rights*. The international Court, again, suggests that the laws do apply. To this end, the Court found that since 1977, Israel has conducted a policy and developed practices involving the establishment of settlements in the Occupied Palestinian Territory, contrary to the terms of *Article 49, paragraph 6*, of the *Fourth Geneva Convention* which provides: “[t]he Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.”

Israel claims that: “the construction of the Barrier is consistent with Article 51 of the Charter of the United Nations, its inherent right to self-defense and Security Council resolutions 1368 and 1373.” Because Israel is building much of the Wall within territory that belongs to Palestine, a territory that they refuse to recognize as a State, these resolutions are not applicable, according to the ICJ. The International Court of Justice maintains that Israel must be in imminent peril to justify the construction of the Wall, which it is not.

The opinion of the Court also included several legal consequences for both the State of Israel and the international community. Israel is obliged to halt construction, and dismantle what exists of the Wall, in accordance with the decision of the ICJ. Israel must respect the self-determination rights of the Palestinian people, in addition to ensuring access to the holy sites in

Jerusalem and elsewhere. All domestic legislation related to the enforcement of the wall must be repealed or reversed. Further, Israel has an obligation to make reparations for the appropriation of land, crop yield, property, destruction of lands, etc. to the Palestinians. All other nations are obligated to not recognize the Wall as legal following the decision of the Court. Finally, The United Nations should consider further action to bring an end to the illegal situation perpetrated by Israel.

IV. The Mexican Border Wall

The border connecting the United States and Mexico runs some 2,000 miles across four U.S. States: California, Arizona, New Mexico, and Texas. Since the 1960s the Mexican border has been the sight of heated and often misinformed discussion about American immigration policy. During the 2016 Presidential election, reformulation of border policy emerged as one of the fundamental campaign talking-points for then-candidate, Donald Trump. Trump promised to deport all of the over-ten-million undocumented immigrants living in the United States. In addition to mass deportations, Candidate Trump promised the erection of a Mexican Border Wall paid for by the Mexican government. Unilateral decisions such as these have plagued American immigration policy for more than half a century. This section aims to explore the complex history of American border policy since the latter part of the 19th century. In addition, this section analyzes previous wall proposals and the response by international and domestic courts. Finally, the details of the proposed Mexican Border Wall will be dissected, along with the foreseeable feasibility, efficiency, and legality of the construction.

A. A Brief History of U.S. Border Policy

American border policy has experienced a tumultuous evolution since the Mexican-American War of the 1800s. Motivations for the construction, expansion, and enhancement of

the border fence have changed drastically since the erection of the first fences along the 2,000-mile border separating Mexico from the United States. Political rhetoric has become more xenophobic and less reflective of the real benefits of Mexican immigration. The transformation of the border fence—which may one day be the border wall—reflects increased association of undocumented immigrants with the, often unrelated, loss of jobs and incidents of crime. Following the conclusion of the Mexican-American War in 1848, to the end of the second Bush Jr. term, Mexican border politics can be characterized by five distinct periods of expansion and securitization: the line, the fence, the watched fence, the militarized fence, and the technological fence. The success and failures, as well as the perceived successes and failures of each phase has in many ways contributed to the continued discussion of the border barrier, and have ultimately led to the campaign rhetoric of Donald Trump.

i. The Evolution of Immigration Policy in the United States

The primary motivation for the original construction of a border was to demarcate the newly purchased land following the Mexican-American War of 1848 and the Gadsden Purchase in 1853. Over thirty thousand square miles of what is now Arizona and Mexico was sold to the United State (Ganster & Lorey 2008: 30). The redrawn border was in no way impermeable, however. This delineation represents ‘the line’ phase of immigration policy. The United States government had simply drawn a line in the sand to separate the purchased and annexed territory from what remained under Mexican jurisdiction. The border continued to be freely accessible to both Mexican and American citizens wishing to enter or leave their respective countries. In the early twentieth century, Mexican immigration was championed, regardless of the immigrant’s possession of documentation or proof of lawful residence. The cheap, low-skill labor provided by both documented and undocumented Mexican immigrants was harnessed in wartime factory

production to the benefit of the American government and economy. The Great Depression incited a decrease in support for large influxes of immigrants and an increase in xenophobia. Despite this unreasonable blame, Mexican immigrants were exempted from stringent quotas imposed on many other groups through the Immigration Acts of 1921 and 1924.

The second phase of U.S. border policy, ‘the fence,’ manifested without public debate and controversy. The 1940s saw a renewed campaign for the securitization of the border without the now all-too-common rhetoric, the purpose of the fence was not to halt illegal drug trafficking or unlawful entry of immigrants, rather, environmental concerns motivated the construction of the first physical border construction. The apprehensions of environmentalists in the border region prompted the passage of the Organic Act of 1937 which created the Organ Pipe National Park on the border between the United States and Mexico. The main concern for environmentalists was the movement of livestock indigenous to Mexico moving into the grazing land utilized by American ranchers. Another concern was the spread of diseases native to Mexican wildlife. Like more modern iterations of the border wall, the fences provided only limited success.

Popular misconceptions about the success of the fencing project conducted by the National Park Service informed political policy creation. The securitization of the border became a tool which could be used to address one of the worst failures in American domestic policy, the “War on Drugs.” The border policy of the 1960s can be characterized by mounting aggression towards Mexico, the perceived source of illicit drugs in the United States. Nixon was the first President who used promises to close the border to drug trafficking and to stop unwanted immigration during his campaign. These promises were reflected in his declaration of the “War on Drugs” and the increased criminalization of marijuana. In September of 1969, President Nixon implemented the first real border policing initiative, Operation Intercept, thus creating the third

phase of immigration policy, ‘the watched fence.’ The Operation saw a tremendous increase in the number of border agents and customs officials on the ground. Unfortunately, providing the number of border guards to make the operation possible cost the federal government over \$30 million (Timmons 2017: 16). The initiative was not well-received by those living in the border region who had experienced decades of free travel between the two nations, wait times ranged from one to several hours for inspection. Bipartisan disapproval also manifested as politicians worried that unilateral action by the Americans was a violation of the unofficial agreement between the United States and Mexico concerning border policy. Operation Intercept represents the sad beginning of a series of policies implementing increased militarization at the border and unilateral action on the part of the United States.

In the period between the third and fourth stages of immigration policy, Mexico experienced economic collapse, prompting many to cross the border illegally. The implementation of the North American Free Trade Agreement in 1993, devastated Mexican farmers who experience rapid depreciation of their crops’ values. With hope that immigration to the United States would offer a new beginning and better economic prospects, many Mexicans moved across the border into the United States, oftentimes illegally. This wave of undocumented immigration spurred the creation of several operations meant to halt illegal entry in areas most frequently used by undocumented immigrants. Unlawful entry into the country did not end by any means, but simply moved to less accessible and more inhospitable border regions. Since 1986, tax dollar expenditure on immigration enforcement has rapidly increased—the success of these policies, however, have not increased

More recently, the border has experienced additional securitization and militarization at several crucial points. One of these points was the period directly following the attacks on

September 11, 2001. The checks introduced by Nixon during Operation Intercept became a permanent fixture of border policy (Timmons 2017: 16). The extent and substantiality of the border increasing drastically following this event, as fear of further acts of terrorism plagued the nation. National security became a primary justification for the new enhancements. Border policy had reached the fourth phase, 'the militarized fence.' In 2006, the Secure Fence Act was signed into law by President George W. Bush. The enactment of the Secure Fence Act required the construction of over 800 additional miles of "at least two different layers of 'reinforced fencing' that would be mediated by patrol roads at key stretches of the border" (Nevins & Dunn 2008). The Department of Homeland Security, tasked with all matters concerning the Mexican Border Fence, was to act within 18 months of enactment of the Secure Fence Act to achieve "operational control" of the US international land and sea borders. Systemic border surveillance was implemented, including: unmanned aerial vehicles, ground-based sensors, satellites, radar coverage, and cameras. As well as physical infrastructure: additional checkpoints, all weather access roads, and vehicle barriers (International Debates 2006). The modernization of the structure comes with cumbersome costs: in the period between 1993 and 2007, border enforcement costs increased by almost 600 percent. Each mile of construction of the new or renovated barrier prices anywhere from two to three million dollars. Despite these almost unfathomable expenses conservative politicians continue to extoll the successes of each expansion.

In 2008, "Project 28," border policy proposed during the Bush administration passed through Congress in February 2008, requiring additional construction on the Mexican border. The bill mandated the construction of additional security infrastructure, fences; and updated surveillance and communication technologies; radar, sensors, cameras, satellite phones, etc. The project

meant to secure 28 miles of the Arizona-Mexico border, with a \$20.6 Million cost to the federal government. Completion of the first section, which began in 2009, was not completed before 2011. The eventual goals of the Customs and Border Protection program was to have 370 miles of pedestrian fence, meant to keep out unlawful entrants coming by foot; and 300 miles of vehicle fence in place by 2008 (GAO 2008). The installation of new fences, because of differing terrain and the need to purchase land rights cost the federal government \$7.6 Billion between fiscal years 2007 and 2011. The ‘technological fence’ representing the changing face of immigration. Drone images can show whole square miles of inhospitable land and heat sensors can detect immigrants attempting to use the cover of night to their advantage. Border agents have been given vast powers to search cars, planes, people attempting to cross the border. Although previous administrations have gone to such lengths to ensure the security of the United States-Mexico border proponents of anti-immigration policy are always willing to expand the already formidable barrier.

Border policy during the Obama administration years focused more on a “path to citizenship” and even amnesty, rather than increased border securitization or militarization. Amnesty legislation, a concept detestable to conservatives, was proposed in recent years, the Comprehensive Immigration Reform Act of 2007 and 2009 would have granted amnesty to large numbers of undocumented immigrants—it also would have increased the number of legal immigrants and strengthened enforcement of immigration laws. Other immigration policies like Deferred Action for Childhood Arrivals (DACA) and Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) created a method for undocumented immigrants to avoid deportation while working to achieve legal status. Another policy of the Obama administration attempted to assist workers in securing documentation that would have provided

citizenship to more than five million Mexican immigrants. The immigration policies proposed would not allow for unlawful entrants to escape all punishment, however, immigrants must atone for breaking the law—unlawful entry—by paying fines, doing community service, and learning English. Although former President Obama did not propose any legislature expanding or enhancing the border fence, he also did not do anything to lessen restrictions on travel between the two countries.

B. Trump's Wall

Promises to construct a bigger and better Mexican Border “Wall,” began with Trump’s very first speech announcing his candidacy for President. Since then, the Border Wall has been a cornerstone of his nationalistic and xenophobic ascension to power. Experts on border history suggest that Trump’s goal is not to create, but to complete a border barrier that is already in existence (Timmons 2017: 16). While the vow to build the Wall remained constant, differing promises and logistics were being offered almost daily. Initially, Trump offered only that he “would a build a great wall,” “very inexpensively,” and that “Mexico [would] pay for that wall” (Trump 2015). Much more about the materiality, cost, and payment for the barrier has been revealed since this first proposal. These details will be examined, as well as the likelihood that such a wall could make American the greater place Trump has promised it would be.

i. “al muro”

The only constant about Trump’s Wall, commonly known as “al muro” to those living in the border region, is his insistence that it will be “great.” Plans about the cost, height, materials, length, and payment for the Wall have changed on an almost daily basis. Determining which figures are fueled by Trump’s ego and those which are serious policy decisions is incredibly difficult. The lack of constancy and stability in one of the most essential elements of Trump’s

campaign reflects the role of the Wall as less of a physical barrier to ensure national security but rather a symbol of nationalist frustration and widespread ignorance about the immigration trends.

Although Trump first promised he would spearhead the construction of the Wall in mid-2015, estimation of the cost was not offered until early on in 2016. Until this point, Trump simply ensured that he could get the Wall made cheaply. The preliminary figures were given during an interview on MSNBC in early February of 2016; Trump offered an estimation of approximately \$12 billion for the construction (Trump 2016). The cost of the Wall was refigured to \$8 billion for construction of 1,000 miles of concrete walls “35 to 40 feet high” in March (Trump 2016). The height of the wall has also varied from the 35 feet to 40 feet to 50 feet and higher. Some proposals include additional construction of wall underneath the ground to prevent tunneling. Trump has consistently suggested the use of steel and pre-cast concrete slabs in construction of the Wall, like those used in construction of the Israeli Separation Barrier. The actual materials have not been specified however, potentially because the agencies in charge of making that decision do not yet know what materials will be used. In addition, experts suggest that because of the high temperature at the border, concrete would have to be pre-cast, which is more expensive, and taken to the building site, held up by steel pillars (Roseberg 2016: 3). Most confusing about the Wall’s however, is the discussion of payment. Trump, throughout the campaign, repeatedly assured his supporters that Mexico would pay for the Wall in its entirety through a lumpsum payment of \$5 to \$10 billion. If the Mexican government refused to pay the price for the Wall, Candidate Trump vowed to prevent the flow of remittances back to the families of undocumented immigrants (Congressional Digest 2017: 10). Immediate resistance and refusal by the Mexican government has forced the Trump administration to rethink this point, however. Once Trump entered office he refused to make any statements about Mexico’s

role in the paying for the Wall. Recently, however, Trump has changed his tone, stating that the United States government would be paying for the Wall, at least initially.

Ultimately, much remains unknown about what the resulting Wall, if ever completed, will look like. Plans have ranged from a concrete wall, a steel wall, a continuation of fencing, to simply ‘other materials.’ The height of the Wall can be expected to be anywhere from 30 to 50 feet. The proposed length of the barrier is the entirety of the United States-Mexico border save those areas that a wall would be unnecessary, like natural barriers. Almost completely left out of the conversation is what is to become of the construction that already exists on the border. The Trump administration has not offered any statements on if the watch towers, cameras, sensors, utilized on the fence will be transferred to the new structure. It is remarkable to consider that a barrier which has cost the federal government tens of billions of dollars will be dismantled to make way for a wall that is likely to experience the same limited success as its predecessors.

ii. Feasibility of the Mexican Border Wall

Prior to a discussion of the effectiveness or legality of Trump’s proposed Wall, it is necessary to determine if such a barrier is even likely to ever be completed. Some aspects of the Wall are more easy to secure than others, for example, the Trump administration’s authority to build the Wall is vested in the Secure Fence Act of 2006. Other aspects, such as cost and timeframe are not so clear-cut. Experts have already begun criticizing the price estimates set forth by the Trump administration as arbitrary and incorrect. Contractors argue that there is no possible way for the Wall to reach completion in the four years of the Trump presidency. Withstanding the presumed authority of the President to build the Wall, there is not much to suggest that Trump *can* build the Wall.

Trump now suggests that his Wall, just for materials and construction, should cost the federal government, and the American people, about \$10 billion. The remaining costs: yearly maintenance, guards to staff the wall, property acquisition costs, construction of accompanying infrastructure, and other miscellaneous needs, therefore, must drive the price tag up at least several billion dollars. Trump's estimation has been disputed by experts and by history. The 635 miles of the fencing that currently stands, constructed under the Secure Fence Act of 2006, cost the government more than \$7 billion (Roseberg 2016: 1). Trump plans to build an even longer Wall, close to 1,000 miles long, with even more costly materials. The more accurate cost of the Trump Wall, consequently, exceeds \$15 billion and caps off at around \$25 billion (Roseberg 2016: 2). Another obstacle to construction is the landscape of the border—deserts, canyons, floodplains, mountains, and dunes exist in abundance in the border region. Also along the border are “wildlife refuges, [Native American] territory, and ranchers whose owners are unlikely to willingly agree to sell their land to the federal government” (Roseberg 2016: 2). Each of these aspects raise the prices of labor, land, and materials—assuming that the Wall is built to last longer than the Trump administration itself. If Trump is to use pre-cast concrete of the same type created for the Israeli Separation Barrier section along the West Bank, which would offer the aesthetics and durability desired by the Trump administration, the wall would consist of 7.1 million square meters of concrete (Roseberg 2016: 3). Concrete and cement costs alone encompass 10% of Trump's price estimation of \$10 billion. The appropriation requested from the government in March 2017, around \$3 billion, will not go to construction of the Wall, but fund the building of prototypes in southern California, used to choose which contractors will build the Wall. Recently, the Department of Homeland Security has set the cost at over \$20 billion, to be issued over three years (Warren & Kerwin 2017: 124). Obviously, many hidden

costs have already begun to skew the original price placed on the Wall by Trump during the campaign. Taking into consideration that the Mexican government has refused to ever consider paying for the Wall, despite the threats hurled by Trump, these exorbitant costs will fall on the American people.

History and contemporary expert opinions can inform estimations about the timeframe by which the Wall could be expected to be completed. Construction of the fence commissioned by the Secure Fence Act of 2006, which called for 700 miles of new fencing along the border, was still incomplete five years later, in 2011 (Dearman 2016). The construction of a Wall, however, is sure to be even more time-consuming considering the need to have pre-cast concrete sections transported to the building sites and maneuvered around often unforgiving landscapes. Before construction can even start, however, the government must carefully plan out the Wall's route and buy all privately held land on which it will be constructed—which can be expected to take at least one or two years (Dearman 2016). Assuming there are still environmental regulations at the time of the Wall's construction, there would also be a mandatory environmental impact report required for the length of the barrier. Preparation of the area in which the Wall is to be built would require extensive fortification of the foundation, especially since the Wall is to be constructed with a significant section underground to prevent tunneling. This process would also be lengthy and could be expected to take two to three years (Dearman 2016). Thus, even prior to the construction of the Wall, the Trump administration could be waiting from four to six years to complete appropriate preparations. The actual time needed to complete the building of the Wall itself varies from expert to expert: some suggest that if the Wall were made a national priority and every laborer in the country assisted, it could be constructed within a year; others argue that even if cost was not an issue, at best, the wall could reach completion in five to ten years

(Dearman 2016). Although construction would not halt if a new president were to be elected, these expert estimates contradict every statement the Trump administration has made about the Wall. The lengthy time period necessary to begin and complete building also cuts directly into the issue of efficacy. A Wall that takes 10 to 15 years to complete is not efficient in preventing the unwanted movement of people and drugs into the United States.

This frame of thinking, feasibility, is meant to determine if the Wall can be built in accordance with the promises made by the Trump administration. The simple answer is no. There is no way that the Wall can be made in the time period allotted by the current administration. It is even less reasonable to suggest that the Wall could be made for the cost estimation offered by Trump throughout his candidacy and into his first months in office. The figures proposed by the administration are not reasonable with any reference to historical evidence concerning the price and time costs of the pre-existing fence. Ultimately, Trump made promises about the Wall from an uneducated perspective to uneducated voters. Again, the concern that remains is whether a Wall exacting such a cost can be effective.

iii. Efficacy of the Mexican Border Wall

Candidate Trump proposed the Mexican Border Wall during his candidacy speech in 2015, suggesting that such a barrier was necessary to prevent the influx of dangerous Mexican immigrants into the country. Infamously, Trump made incredibly disparaging remarks about Mexican immigrants, including: “[w]hen Mexico sends its people, they're not sending their best...They're sending people that have lots of problems...They're bringing drugs. They're bringing crime. They're rapists” (Trump 2015). For the remainder of the campaign and in to Trump’s first months in office, he has continued purporting grossly inaccurate information about the criminal tendencies of immigrants and their communities. This rhetoric fueled the Wall and

its supporters. However, history and recent trends in immigration suggest that fences—or Walls—can do little to combat unlawful immigration.

From the very first border constructions, those utilized to combat grazing by Mexican livestock on preserved land in the United States, barriers have been ineffective in preventing migration. Misconceptions about the success of the environmentally motivated barriers—of which there was little—encouraged anti-immigration lawmakers to produce bigger and more militarized barriers. President Nixon, in 1969, saw the construction of the first monitored border, with minimal achievement. Although there was a net reduction in the amount of immigrants coming into the country unlawfully, immigration did not stop—it simply moved out of urban areas. Even the incredibly high-tech barrier built under the Secure Fence Act was not completely effective. Between 2010 and 2015, the current 654-mile pedestrian fence was breached close to 10,000 times. Concerning the Wall, however, there are even more issues facing border security. Veteran guards believe that the materiality of the Wall will be inconvenient and could result in fewer arrests at the border. Unlike previous iterations of the barrier, the Wall, made from pre-cast concrete, cannot be seen through. Observations made on patrols would be made extremely difficult, allowing increased opportunity for unlawful entrants to find a way past the barrier without detection.

While the pattern of entry began with the stereotypical “coyote” system of human smuggling, this is no longer the case. A majority of immigrants who are living in the United States without proper documentation entered lawfully by securing a work or student visa. Recent studies suggest that visa overstays are the preferred method of entry for undocumented immigrants because it prevents arrest on unlawful entry charges, the criminal aspect of illegal immigration. Those choosing to enter legally now make up the majority of undocumented

entrants, close to two-thirds in 2014 (Warren et al. 2017: 124). Moreover, each year since 2007, overstays have surpassed the numbers for unlawful entry, encompassing more than half a million individuals (Warren et al. 2017: 125). The face of undocumented immigration is changing, close to half of all immigrants in every state entered with a visa. The data suggests that this trend, visa overstays, is only going to increase in the coming years, rendering the Wall increasingly ineffective at preventing undocumented residency in the United States.

To a lesser extent, Trump has used the Wall to suggest that the United States would benefit economically from the construction of the barrier. Anti-immigration rhetoric frequently traces back to the untrue adage that undocumented immigrants are stealing jobs from American citizens. Despite this statements complete inaccuracy, the construction of border barriers between the United States and Mexico has contributed significantly to a decrease in American jobs for one simple reason: wait times at the border deter trade. The repercussions of barrier construction can be seen over time: in 2008 waiting at the border cost the United States \$5.8 billion, in 2017 wait times will cost the \$12 billion and 54,000 American jobs, and projected loses in 2035 foresee the loss of \$54 billion in trade profits and the elimination of 850,000 jobs (Timmons 2017: 17). The construction of the Wall would only increase the damage done to the United States' economy as construction slows movement over the border even further.

Not only have barriers been demonstrated throughout history to be ineffective in combatting unlawful entry, the way immigrants are coming to the country has changed drastically. A wall, even more so than the already-constructed fence, will be unable to curb the flow of unlawful entrants into the country. There is nothing to suggest that such a barrier contributes anything further than the already militarized structure built under the previous administration. Further, there is new evidence suggesting that immigration policy and

enforcement funding should be spend elsewhere. Immigrations trends point away from increased securitization of the border and towards better internal infrastructure to monitor the status of visas. Finally, the Wall offers much less in the way of security than it takes in American jobs and economic loss.

iv. Legality of the Mexican Border Wall

The Mexican Border Wall, and its construction, is inconsistent with environmental law, international human rights law, and property rights law. Trump's Wall is sure to face the same legal obstacles as previous constructions in American courts. In addition, the advisory opinion by the International Court of Justice on the Israeli Separation Barrier may play some role in international deliberations about the legality of the Wall. Further, the Inter-American Court which has never heard a case involving the United States may discuss this matter because, recently, a Mexican presidential candidate, Andres Manuel Lopez Obrador, filed a claim against Donald Trump at the Inter-American Commission on Human Rights for his plan to build the Wall. Ultimately, considering the appropriate application of existing law, the Mexican Border Wall is illegal.

Previous fence installments, especially those following the enactment of President Bush's Secure Wall Act of 2006, have been repeatedly challenged by environmental activists, property owners, and human rights lawyers (Tavares 2007: 34). Although no other President has proposed the construction of a "wall" in the same manner as Trump, the fence has proven incredibly difficult to litigate. The Real ID Act of 2005 contains a complex provision, Section 102, which gives the Secretary of Homeland Security the power to put aside any laws impeding the quick installation of border fences (Greenspan 2008). This clause has made it almost impossible for

challengers, operating under any area of law, to successfully bring a case against the government.

Environmental groups have been some of the fiercest opponents of the expanding border fence. “In...2004, the Sierra Club, the San Diego Audubon Society, and other conservation groups filed a lawsuit in the U.S. District Court for the Southern District of California to prevent the construction of a border fence across a canyon...” (Greenspan 2008). The federal government intended to fill the canyon to build the fence across it. The environmental groups, however, warned that doing so would cause the build-up of silt in an important ecological estuary, which was also a federally protected area. The decision to fill the canyon was in violation of the National Environmental Policy Act. Using the brand-new authority vested in the Real ID Act, the Secretary of Homeland Security at the time, Michael Chertoff, waived environmental laws. Under the provision, the environmental organizations were given an opportunity to argue for the necessity that the case be heard. Their argument? The waiver invoked by Secretary Chertoff was a violation of the Constitution. The case was ultimately dismissed.

The next environmental challenge came in 2007, when the Sierra Club and Defenders of Wildlife organization opposed the construction of roadways along the border in the National Conservation Area of Arizona known as San Pedro Riparian. The challengers cited some of the same law, including the National Environmental Policy Act; but also referenced provisions under the Arizona-Idaho Conservation Act (Greenspan 2008). Despite initial success, the U.S. District Court in D.C. granted a preliminary injunction, the triumph was short-lived. Chertoff again waived all environmental enactments, 19 in total, which might prevent the fence’s construction.

Legal challenges are also coming from property rights advocates who fear that the government may be confiscating, rather than buying, land on which the fence is constructed. The federal government denies the occurrence of even a single confiscation, instead stating that only 13 privately owned properties on which American citizens resided were needed for the construction project. In addition, the spokesperson for U.S. Customs and Border Protection assured that these residents were entitled to the same relocation process as those whose land is purchased for the building of highways. Some property owners, fearing their land may be next for “confiscation,” refuse to let builders onto their land. The government has emerged entirely unscathed by any of the hundreds of cases brought to the courts since construction under the Secure Fence Act of 2006 began. In just the Rio Grande Valley area, “138 cases have been resolved, all in favor of the government” (Greenspan 2008). Texas has become a hotbed for property suits against the government because it is more populous and more land needs to be purchased there than in California or New Mexico. Attitudes towards the border fence have continued to be negative, especially in the face of extreme government intervention in the basic rights of its citizens.

Indigenous peoples’ groups have long been fighting to thwart the construction of the border fence on their sacred land. In the U.S. District Court for Western Texas, “the city of El Paso, the county of El Paso, various conservation groups and a Native American tribe” brought a lawsuit against the federal government (Greenspan 2008). Chertoff, the main target of the lawsuit was under fire for his use of the Real ID Act waiver authority to dismiss over 30 laws. These laws included a broad spectrum of legislation ranging from the Endangered Species Act and the Clean Water Act, to the Noise Control Act and the Archeological Resources Protection Act (Greenspan 2009). Again, the group attempted to argue for the inherent unconstitutionality

of the waiver, but failed. The judge ruled that the plaintiffs had not proven the irreparable damage construction of the fence would have on the public.

In 2008, international legal experts petitioned the Inter-American Court to address issues concerning indigenous communities living on the border. The construction of the fence “directly impact[ed] the lands of the Lipan Apache, Kickapoo, and Tigua Native Americans (Gilman 2008: 15). “The United States government is violating the indigenous peoples’ right to recognition of juridical personality and civil rights protected in Article XVII of the American Declaration of the Rights and Duties of Man...” (Guzman & Hurwitz 2008: 3). Another concern is the lack of recognition of the property rights entitled to indigenous communities in Article XXIII of the same Declaration. The government engaged in the appropriation of land from the affected communities without any real conversation about the sacred nature of the land or the detrimental effects its confiscation would have. Further, the right of indigenous people to legal protection and recognition under Article XVIII was not been respected in drafting of the fence’s route. Native communities also contest the construction of the fence and appropriation of land as a violation of preexisting treaties and agreements between native communities and the government. The recognition of treaties is mandated in Article 37(1) of the United Nations Declaration on the Rights of Indigenous Peoples (Guzman et al. 2008: 4). Finally, preparation for the construction of the fence, as well as the actual building of the structure was challenged because of the irreparable harm caused to natural resources essential to native survival, religion, and preservation of traditional ways of life. Unfortunately, the Court cannot issue a binding decision on the American government without the ratification of the treaty which established the jurisdiction of the Court. To date, the Court has never pursued a case against the United States.

The recent advisory opinion issued by the International Court of Justice suggests that barriers, like the Israeli Separation Wall, are an infringement of international customary law and human rights law. The Mexican Border Wall threatens to endanger the lives of Mexicans and Americans living in the border region in the same way. Those who make their living moving from one side of the border to the other will be faced with longer wait times, which as mentioned above, results in the elimination of those positions. For others, the Wall would threaten the ease of access to loved ones. International legal theorists arguing against the Wall claim that all interstate barriers are illegal because they violate the basic principle of self-determination. Unfortunately, international law lacks the authority, especially in the United States, to prevent the construction of the Wall. The ICJ's decision was only an advisory opinion with no mandating force, and in the same way that the Israeli government has continued its expansion, the United States would not let the Court's decision influence construction. However, it is important to note, that at least formally, the barrier would be considered illegal.

Another international court, the Inter-American Court, may be called to determine the legality of the Mexican Border Wall following the claim made by Lopez Obrador, which challenged the repeated threats made by the Trump administration. Trump may have violated international law by threatening to suspend immigrants' ability to send remittances back to Mexico. The Mexican candidate seeks an opinion by the Inter-American Court to determine if Trump is guilty of a dangerous over-step of presidential power by attempting to coerce the Mexican government into paying for the barrier. This case, if heard, could open the Trump administration up to other challenges on the legality of the Wall. Unfortunately, like the International Court of Justice, the United States has not ratified the treaty which gives jurisdiction and binding authority to the Court.

Despite the numerous, hundreds, of laws—environmental, human rights, international, property rights, indigenous peoples’ rights—that will be violated because of the Mexican Border Wall’s construction, it likely the Wall will be built. The Real ID Act provision which allows laws to be waived in the interest of national security has already been invoked by the Trump administration regarding 16 environmental laws. The international court system is powerless to stop the construction of the Wall, especially considering the United States’ position of power at the United Nations. In the same way, the Inter-American Court has no authority in the United States and will probably choose not to hear the case against the Wall. In application of the law there is only evidence to suggest the illegality of the barrier, but there is little that can be done to halt the construction of the Wall.

C. Outcomes

Construction of Trump’s Mexican Border Wall is an ineffective and—at least formally illegal—method of immigration policy and its costs will be detrimental. The Wall will be difficult, costly, and time-consuming to build. The Wall reflects immigration policy that is inconsistent with the enforcement needs of the country, i.e. visa expiration checks. There is limited access for individuals and organizations to bring cases against the federal government about the legality of the border fence. International law has also failed to prevent the construction of the fence and the Inter-American Court cannot make binding decisions about the legality of the Mexican border fence. The Wall is infeasible, ineffective, and illegal, but, with all likelihood, it will be built.

V. Conclusion

The Mexican Border Wall proposed by the Trump administration is an ineffective and illegal method of immigration policy which should not be pursued. Barriers have existed

throughout history, for various purposes, with varying effectiveness, and limited legality. The Great Wall rested on the belief that Walls can be used to protect a country's people from outside migration. This idea, however flawed, has persisted since the erection of the Great Wall. The Berlin Wall was erected with the opposite goal; keep people inside East Germany. The Berlin Wall demonstrates the inherent inefficacy of Walls. Despite the inhumane orders given to guards along the Wall, there were still those who could make it over, or through, the Wall. Adjudication of the Israeli Separation Barrier establishes new advancements in international law which seek to take some power from the concept of sovereignty and give it to individual and community self-determination. The international mechanisms which sought to prove the illegality of the Separation Wall also exhibit the progress that needs to be made to give power to international judicial bodies. The evolution of the United States-Mexico border illuminates the root of the problem with the Mexican Border Wall. There is nothing to suggest that such a barrier would be effective in curbing the flow of immigration any more than the barrier which already stands. Further, the proposed Wall will be costlier than the Trump administration has suggested, possibly up to \$20 billion more than estimated. The absurd amount of labor and materials dedicated to this project will result in the construction of a less effective barrier than the one which already exists.

Altogether, there is nothing to suggest that the Mexican Border Wall would produce the results promised by the Trump administration. History suggests that barriers are ineffective at preventing unlawful entry of people and illicit drugs. In addition, recent reports argue that unlawful entry through the barrier-fence is no longer a reality for many undocumented immigrants. On the other hand, enforcement on the border would be worsened with the construction of the barrier—the concrete would limit visibility. Precedent offers support for the

illegality of the barrier, but power structures put in place in the international community protect the United States government from intervention. Within the domestic court system, the federal government has also taken steps to prevent legal challenges to barriers.

Construction of the Mexican Border Wall is inevitable. The Trump administration has maintained its intention despite initial pushback and the refusal of the Mexican government to contribute to its funding. However, decreases in undocumented immigration will not occur as a result and it will not make America great.

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