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WALL BUILDING IN ISRAEL AND THE EUROPEAN UNION :

The fortress of the West Bank Wall and Ceuta and Melilla

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"Your neighbor is your other self dwelling behind a wall. In understanding, all walls shall fall down".

Kahlil Gibran
Written on the "Peace Walls" of Belfast, Northern Ireland

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ABSTRACT

The walls of the West Bank and Ceuta and Melilla are all in contested territory. The Israeli-Palestinian territorial disputes date back to 1948, while the ones of Spain and Morocco to 1956. They all come in the context of post-World War II and post-colonialism with Israel's and Morocco's independence. Palestine was under the United Kingdom's administration from 1922 until the partition plan of 1947. The end of the British Mandate, however, did not result in the two States envisaged in UN Resolution 181, Palestine and Israel, as only one became independent. When France and Spain withdrew from their protectorates in Morocco, Madrid still maintained control over the coastal enclaves. In the different wars waged by Israel and its Arab neighbors and the construction of the wall, a large part of the Palestinian territory from the 1949 Green Line, including the West Bank, was absorbed under Israeli control. In the case of Ceuta and Melilla, the *quid pro quo* of international politics has entangled the fates of the autonomous towns and the Western Sahara and Gibraltar. Both sets of barriers are associated with different types of violations of international law and, particularly, of human rights law. This study analyzes the State reasoning for wall building policies through a historical overview and the legal framework and consequences of the construction of border walls using the cases of Israel and Spain.

Key words: Wall building; West Bank Wall; Ceuta and Melilla fences; Territorial disputes; International Human Rights law.

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ACRONYMS

CEIRPP	Committee on the Exercise of the Inalienable Rights of the Palestinian People
DROI	European Parliament Subcommittee on Human Rights
EC	European Economic Community
ECCHR	European Center for Constitutional and Human Rights
ECHR	European Court of of Human Rights
ENP	European Neighborhood Policy
EP	European Parliament
EU	European Union
EUTF	European Union Emergency Trust Fund
Frontex	European Border and Coast Guard
GMG	Global Migration Group
ICJ	International Court of Justice
FIDH	International Federation for Human Rights
IOM	International Organization for Migration
LIBE	European Parliament Committee in Civil Liberties, Justice and Home Affairs
Likud	National Liberal Party
MEP	Member of the European Parliament
MS	Member State
NATO	North Atlantic Treaty Organization
NGO	Non-governmental Organization
OMCT	World Organization against Torture
OPT	Occupied Palestinian Territories
PLO	Palestine Liberation Organization
PNA	Palestinian National Authority
SBC	Schengen Borders Code
SIVE	Integrated System of External Surveillance
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
UNHCR	United Nations High Commissioner for Refugees
UNOHCHR	United Nations Office of High Commissioner of Human Rights?
UNGA	United Nations General Assembly
UNOCHA	UN Office for the Coordination of Humanitarian Affairs
UNSC	United Nations Security Council
WHO	World Health Organization

1 Introduction

Throughout history, walls and fortifications have been built to divide territories and protect against foreign invasions. From the Great Wall of China to the political campaigning of a US-Mexico border wall from former President Donald Trump, “walls are physical and symbolic sites of inclusion and exclusion that mark the inside from the outside” (Callahan 2018 p. 9). They used to be made of wood, bricks and stones depending on the culture and time, but now they are made of concrete, iron, steel and barbed wire and other technologies.

One of the biggest symbols of the latter half of the 20th Century, the Berlin Wall came down on November 9th 1989, an event full of meaning and importance to world history and international politics. Having stood for 28 years dividing the capital of Germany in East and West, Communist and Capitalist, but only one people, it has now been longer since it has fallen. Following the fall of the Iron Curtain, many neo-liberal and critical scholars have discussed and believed in the idea of a borderless world. The notion of going "beyond a State-centric reading of international geopolitics" in the new era of globalization and a world without borders, unfortunately seems to not have materialized as the wall building has made a strong comeback following 9/11 (Vallet, David 2012 p. 2).

For reasons that include territorial tension, conquest or dispute, immigration, terrorism, drug trafficking, contraband or entry of militants, States have built 63 walls in the last 50 years, the vast majority of them after 1989. The years of 2005 and 2015 saw a significant increase in wall building, especially 2015 when 14 walls were erected. This translates into six in every ten people worldwide living in a country with border walls; 56% of the total number is found in Asia, while 26% in Europe and 16% in Africa. Israel is the country that built the biggest number of walls, six, against Palestine (the West Bank and the Gaza Strip), Egypt, Jordan, Lebanon and Syria. Spain, Hungary and Lithuania, each with two border barriers, are the ones that built the most in the European Union (Ruiz Benedicto, Akkerman, Brunet 2020).

The walls already standing in one State are often used as the rationale for constructing new ones somewhere else. President Trump praised “the wall” from Israel to justify the one he was campaigning for (NY Times 2017). The fences in Ceuta and

Melilla were used as grounds for the Greek government to announce its own on the border with Turkey in 2011. This way, the “old border fences serve in a self-fulfilling fashion as models and precedents to legitimize the construction of similar new fences” (Castan Pinos 2022 p. 3). Be it to keep populations in – the Berlin Wall was the first of its kind -, to keep people out, migrants or military enemies – like the wall of Port of Calais or the Hadrian Wall in Roman Britannia – or to separate one population – as the “Peace Walls” in Belfast -, worldwide wall building continues to receive millions of dollars annually (Saddiki 2017) with a global market estimated in €17.5 billion in 2018 (Akkerman 2019).

Cohen (2006) wondered: "Why are walls built, whom do they serve, and, perhaps most important, how do they become obsolete?". The ever changing nature of modern international border barriers relates to the modern challenges faced by States in a globalized world: securitization, terrorism, migration, territorial and legal disputes. Feigenbaum (2010) categorizes the globalized fences as cultural material artifacts of globalization that can be recognized by four common characteristics: they have transnational security functions (increased in the context of post 9/11 security), multinational companies are used for their building, materials for them arrive from different countries, and they combine both ‘virtual’ and physical technologies.

It is argued that borders are human political constructs but also sites of struggle and the results of material, human struggles (Walker 2002 apud Wilkins 2017). Moreover, Feigenbaum (2010) asserts that moments of political struggle on borders have methodological and ethical importance, as the resistance to walls and fences redefines an inanimate object in the landscape into wire and concrete. "It is when a fence is contested, transformed or destroyed, that it is rendered discernable" (Feigenbaum 2010 p. 120). Concerning the human aspect of the borders, the acts of resistance of migrants and policy responses of the authorities, for example, both contest and reaffirm the borders (Queirolo Palma 2021).

In the context of the present work, two different nations that have constructed walls in contested territories will be looked at: Israel and its Separation Wall, especially in the West Bank from 2002, and Spain’s border barriers in its African enclaves, Ceuta from 1993 and Melilla from 1996, the first ones built in the European Union. Israel’s territorial disputes with the State of Palestine date back to the 1967 Six Day War when it

captured and occupied territories beyond the established Green Line[1] in Palestine, namely the West Bank, East Jerusalem, the Gaza Strip and Golan Heights (ADL 2022). Since its independence in 1956, in any opportunity Morocco claims territories among which Ceuta and Melilla[2]. EU bilateral and regional funding to Morocco amounts currently to €236 million under the North of Africa windom of the EU Emergency Trust Fund (EUTF) Africa (European Commission 2021a). Even benefitting from funding to implement migration and asylum policies, Morocco maintains its requests regarding the enclaves.

While the walls in Israel were constructed with a security rationale to allegedly stop terrorism, the ones in Spain came up as means to interrup the migration routes in the Gibraltar Strait and the Mediterranean Sea. Historically, they also differ as the Spanish enclaves with fences were conquered in colonial times, while the occupied territories of Israel with erected walls were obtained post-1967. As much as both sets of barriers are different from one another, commonalities can still be found. Both Israel and Spain's walls were accused of violating human rights under international or European law. Regarding it, the two countries have faced legal repercussions for their walls either at the International or the European Court of Justice, but with different outcomes.

Where once stood the defense walls of the city of Jericho around the 10th Century BC, today in the West Bank there are different, longer, higher, and more technological walls standing. Since Israel's independence, the Palestinian question has been one of the topics discussed the most in the Security Council. Particularly relevant to international resolutions on the wall are the US-Israel relations. The United States has consistently used its influence and symbolic weight, i.e. veto, whenever other Council members introduced resolutions for particular crises in the Israel-Palestine conflict, including the issues regarding the Wall of the West Bank and the Israeli settlements, considered key issues stalling the peace process (Bozorgmehri, Khani 2011).

It is noted that Spain has a peculiar situation, as it used to be a country of origin of migrants to one of transit or destination (UN Economic and Social Council 2004). As

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[1] The Green Line was negotiated during the 1949 Armistice Agreement between Israel, Egypt, Lebanon, Jordan and Syria and established the boundaries with Palestine until the 1967 occupation.

[2] Morocco also claims the Isla de Perejil, Peñón de Velez de la Gomera (Badis de Nekkor), Peñón de Alhucemas (Al Hoceima), Islas Chafarinas (Moulouya) (Gold 2000).

part of the Western Mediterranean migration route, a large influx of arrivals in Spain are done by the Sea or the Atlantic, often to Melilla and Ceuta or the Canary Islands (Infomigrants 2021b). Saddiki (2010 p. 1) argues that studying the borders fences of Ceuta and Melilla is a good model "to what extent governments could harmonize between stated purposes and hidden objectives".

The wall of the West Bank was chosen considering its implications to a two-State solution for the Israeli-Palestinian conflict. It also shows the Israeli expansionist policies of territorial annexation by military means (Ruiz Benedicto 2020; Dolphin 2006). The fences of Ceuta and Melilla were picked as case studies for different reasons: apart from both enclaves being contested by Morocco, the barriers erected were the first in post-Berlin Wall Europe and partly funded with EU money. The fences in Melilla and Ceuta are described as “constantly evolving projects, architectures of continuities and changes in spatial forms of control” (Pallister-Wilkins 2017).

They are both borders of instability, be the thousands that gather at crossing points daily to enter the State of Israel for religious, health or cultural reasons or those thousands that try to storm Fortress Europe passing the fences of Spain for a better chance at life. It is noteworthy to mention that the subjects related to the border walls are different between the West Bank and Ceuta and Melilla. While the dynamics of the first barriers are with a population in occupied territory, the second set of fences are in constant contact with migrants, refugees and asylum-seekers. The terminology and the legal framework for the different subjects will be explained in the course of the paper.

In this context, the study will aim at responding to the following research question: "*Are Israel and Spain using border walls and fences for different reasons other than those officially stated?"* A subordinate question relevant to the topic is: How do the border barriers of Israel and Spain violate human rights under international law? The primary and secondary hypothesis the paper will attempt to test are: (1) These States are using border walls and fences for the officially stated reasons - security, migration - in order to seize, maintain and control disputed territory. (2) International law falls short against the will of a sovereign State.

A visit to the checkpoint border in the West Bank between Jerusalem and Bethlehem and the scenes witnessed by the author first gave the idea of studying the lawfulness of building walls in disputed territories. On the Palestinian side, very close to

houses and shops, the wall is contested with the use of art and grafitti for protest and resistance. Moreover, another justification for choosing the West Bank Wall is importance that the Israeli-Palestinian conflict has in the Middle East and international relations, in general. In the context of the Master in European Union Trade and Climate Diplomacy, it seemed relevant to analyze the second continent that has built the most border walls (Ruiz Benedicto, Brunet 2020).

Concerning the EU, two recent events have propelled its Member States to build up walls, the 2015 European migration crisis attempting to close the Balkan route and the 2014 invasion of Crimea, in Ukraine increasing territorial tensions with barriers being put up on borders with Russia. A couple of new international developments have or probably will influence further the wall building business in the old continent and justify greater study in wall building in the EU, namely Belarus' political migrant pressure in 2021 and the 2022 major escalation in the Russian-Ukrainian war and invasion of Ukraine on February 24th 2022, as five countries in the EU share borders with Russia. A briefing from the EP Research Service on the protection of EU external borders stated about recent walls in the EU:

> An increasing number of Member States also set up fences and border walls at the external Schengen borders to prevent migrants and asylum-seekers' access to their territory. These barriers have been a cause for concern, due to, for example, the poor human rights situation of migrants thereby refused entry. The European Court of Human Rights also delivered a judgment citing a violation of the right of third-country nationals to submit asylum claims and prohibition of collective expulsions when returning all asylum-seekers and migrants at the external borders (European Parliament 2019).

Qualitative research was the most suited method for the present study, in an analysis of decisions made by sovereign States and their international consequences. Moreover, the exploratory research will be done by bibliographical and documental means, as this paper aims at providing both a historical overview and a selection of resolutions, treaties and case laws pertinent to the objectives established, as well as commonalities found between Israel and Spain. A literature review on the current state of play of the topic will be done following.

This paper will have the following structure. After an introduction to the topic of wall building and the current state of literature on it, the second chapter will approach the subject of border barriers in Israel. With a brief historical outline of the Israeli policy

of walls, followed by the overview of the West Bank Wall in the period 2000-2022 and finally the legal framework, implications and consequences of said wall. Chapter 3 will begin with the current state of play of wall building in the European Union, succeeded by a historical narrative of the fences of Ceuta and Melilla. In the same way as in Israel's chapter, the institutional and legal frameworks under which the fences ruled. The final chapter will outline possible comparisons between the sets of walls in Israel and Spain and conclusions on the above mentioned questions.

Literature Review

The present study combines both a historical review and the legal framework and consequences of the walls and fences built by Israel and Spain. Therefore, the literature used will take into account both relevant historical periods; in the case of the wall in the West Bank, from 2000, with the beginning of the second Intifada to nowadays and for the fences in Ceuta and Melilla, from 1985 and the accession of Spain to the European Union reaching present days. A brief overview of the EU's walls will be done as well, accounting for the developments in the recent past in wall building.

The literature available on the historical and legal topic is vast contemplating different angles of the sets of border barriers, as they both have specific security contexts that attract the attention of the international and academic community. The sources referred to in the historical narrative of both Israel and Spain are in its vast majority from 2000 onwards. However, in the case of legislation - Charters, Conventions, EU regulations, many are from soon after the end of the Second World War or following Spain's accession to the EU and NATO (North Atlantic Treaty Organization). On the other hand, the case laws discussed are more recent, contemporary to the barriers themselves. Most documents are written in English, however certain public documents of Spain are in Spanish.

The legal texts were all collected in their original primary sources in the form of public records. Documents and resolutions from the United Nations Security Council (UNSC), General Assembly (UNGA) and the International Court of Justice (ICJ) will be used to study the case of the West Bank Wall and the overall legal framework related to it. Besides that, documents from European institutions such as the European Council,

Commission and Parliament (EP) and the European Court of Human Rights (ECHR) , as well as a letter sent by EU Member States will be analyzed in the exposition of the walls in the EU and in Spain, specifically.

Secondary sources, academic and peer reviewed articles in international affairs and law journals as well as published books will be used for most of the historical overview. After extensive analysis of a wide range of sources, a selection of the most relevant to the study was made. Many have researched deeply into why States build walls (Carter, Poast 2017) and its consequences. Authors have argumented globalized fences as sites of political struggle Feigenbaum (2010), and also walls "as political artifacts that embody political negotiations" (Callahan 2018). Said Saddiki has done work on the walls of Spain (2010, 2012), the West Bank (2015) and finally a compilation of different border barriers in four continents, including both the others, studying their roles and effectiveness (2017).

Much has been written about the walls of Israel and the West Bank, tracing back Israel's foreign policy to its neighbors (Shlaim 2014), thinking on the origins, implementation and consequences of the wall (Métais 2021), wondering whether the wall was an impediment to peace (Cohen 2006) and arguing a military conquest by architectural means (Dolphin 2006). Concerning the legal aspects of the wall and human rights in Israel, work has been done on the Palestinian issue in the UN Security Council (Bozorgmehri, Khani 2011), on the legal battles involving the subject (Sfard 2018) and the legal consequences of the construction in the Occupied Palestinian Territories (OPT) (Gareau 2015).

A large amount of research in the field of wall building in the European Union is also available, regarding fear and securitization in the EU (Ruiz Benedicto, Brunet 2018), about the wall building business in the bloc (Akkerman 2019). Regarding Ceuta and Melilla, a discussion on whether they are Europe or Africa and Spain-Morocco relations (Gold 2000), their pioneerism in Post-Cold War border fortification (Castan Pinos 2022), on how their fences are producers of and sites of resistance (Pallister-Wilkins 2017), approaching the migrational aspect of the fences behind and beyond them (Queirolo Palma 2021) has been done. Moreover, the relations Spain/EU-Morocco were looked at with a post-colonial approach (Taddele Maru 2021), as well as the processes of Spanish-Moroccan rebordering (Ferrer-Gallardo 2008).

Published reports by different international NGOs involved in the regional humanitarian landscape are also relevant to the present study as the organizations are present at the site, accounting for possible violations of human rights and international law. Those include B'Tselem[3] (2017), the Norwegian Refugee Council (2015), Amnesty International (2006) and the European Center for Constitutional and Human Rights (2020). Since both sets of walls and the events surrounding them are of wide public interest and knowledge, international newspaper articles from Israel, Palestine and the Middle East, Spain, Morocco and Europe as well as from the United States are also relevant to the study, as they report facts happening on the ground as they occur. The quality and reliability of the sources were undoubtedly taken into account in choosing the news publications.

Comparative works have been found associating the walls of Israeli-Palestinian walls and the US-Mexican ones (Flores 2017) or the walls in Spain and Poland (Alscher 2005), as well as different compilations on sets of walls worldwide. Nevertheless, no work approaching solely both the walls of the West Bank and Ceuta and Melilla with the focus and scope of this paper has been found. Therefore, the study will aim at providing a specific angle - walls in contested territories - of a much larger topic that has been vastly explored.

[3] The Israeli Information Center for Human Rights in the Occupied Territories.

2 Wall building in Israel

In February 2016, former Prime Minister Benjamin Netanyahu vowed: "Will we surround all of Israel with fences and obstacles? The answer is yes. In the environment we live in, we must defend ourselves from the predators" (Times of Israel 2021). Israel has constructed six walls in its borders with Lebanon, Jordan, Syria, Egypt and in the Occupied Palestinian Territories of the West Bank and the Gaza Strip. The border barriers, Saddiki (2015) argues, are part of a policy of walls and fences rooted in Zionist thought from its beginning. A state of perpetual security concerns can be discerned through the different Israeli projects, even as they are built in different contexts with overlapping goals.

The policy of walls began on the border with Syria, in the occupied region of Golan Heights in 1973 (Ruiz Benedicto, Brunet 2020). During the 1970s, the Israeli government built fences in the northern borders with Lebanon. Work was done in the 1980s on a complex defense system of electrified fences, patrol roads, anti-personnel minefields, barbed wire obstacles, and extending it and moving the border fence to the northwest. It was referred to as "the backbone of Israel's passive defense on its northern border" (Saddiki 2015 p. 19). In 2018, a slab wall began to be erected along the ceasefire line with Lebanon. Beirut claimed an aggression on Lebanon's sovereignty since Israel was allegedly building on the country's territory (Jordan Times 2018).

After signing the Oslo Accords of 1993 that mediated the first Intifada, established and recognized the Palestinian Authority, Israel built two parallel structures in the Gaza Strip starting in 1994. One was a barbed wire fence within Gaza and the second was a 3 meters high metal smart fence with surveillance sensors along the demarcation line. Around 274 meters made up a restricted buffer zone between them (The New York Times 2018). In 2021, the government of Israel declared that it had completed a sensor-equipped underground wall on the Gaza border, in a total height of six meters and extending for 65 km. Said wall is also composed of “a naval barrier equipped with technology to detect infiltration by sea, a remote-controlled weapons system and an array of radars and cameras, and command and control rooms” (Al Monitor 2022).

In 2010, Israel announced the building of a fence in the Sinai border with Egypt to prevent entry of African migrants in its territory, mainly from Sudan and Eritrea. The 242 km wall was finished in 2013, after costing US$ 400 million; it is made of steel and barbed wire with guard towers. It is considered a "successful border wall" since from 2011 to 2013, the number of immigrants entering illegally fell from 17.000 to 43 (Flores 2017). Nevertheless, to further curb immigration, the Israeli government heightened a stretch of 17 km of the barrier from 5 to 8 meters, completed in 2017, from the Gaza Strip to Eilat on the Red Sea (The Jerusalem Post 2017).

A peace treaty has established the international boundaries between Israel and Jordan since 1994 and walls against the neighboring country were constructed in 2015. Another system of barriers was constructed, not by Israel, but according to its interest. After pressure from the United States and Israel, in December 2009, Egypt began construction of an underground wall made of steel sheets and sensors on its border with the Gaza Strip. Washington threatened Cairo with cuts on military aid and offered significant technical and financial assistance to shut access to the 1980s underground tunnels linking Palestine and Egypt (Saddiki 2015).

In this chapter, first the wall building of the State of Israel will be analyzed, with emphasis on the West Bank Wall, the 708 km long structure called a "separation barrier" or "security fence" by Israelis and an "apartheid wall" by Palestinians (Métais 2021). This discursive dichotomy is discussed by Regan Wills (2016), where it is argued that different relevant actors of the conflict differ between a wall-discourse and fence-discourse[4]. Taking it into account, this study will make reference to the border structure of the present and next chapter using the terms walls, barriers and fences as simple descriptive words for an object of dispute. Furthermore, the legal framework and consequences of the West Bank Wall will be looked at in the second part.

[4] The fence-discourse is used in a pro-Israel manner to describe an object designed to provide safety and to separate territory, centering the question on Israel's security and the Palestinian danger. The wall-discourse, used by Palestinians and those against the separation barrier, focuses the question on Palestinian rights, Israeli domination and justice. The author argues that "calling the object a fence or a wall is a short-cut into participating in one of these discourses. [...] Along with the judgment of what object is, it communicates a judgment of what the relevant political questions are, and in what order they should be considered" (Regan Wills 2016 p. 8).

2.1 The Separation Wall of the West Bank

Israel's West Bank Wall was once referred to as “the largest project ever undertaken in Israel” by the former director of Israel’s Ministry of Defense Amos Yaron[5] (Saddiki 2017). The will and plans to build a wall separating Israel from the West Bank are usually associated with the increase of Palestinian attacks at the height of the second intifada, however the plans for it came from long before. However, it is said that the idea of a separation wall against Palestine goes back to 1923 (Saddiki 2015). Since the violation of the Green Line, in 1967, the state of Israel aimed for constructing around itself a fortress.

Different governments tried to act on the idea, but it never took place, since it was a controversial idea throughout the political spectrum. Back in 1967, during the third phase of Gaza and West Bank occupation, Samer Alatout attempted to and failed to begin construction. Yitzhak Rabin, the Israeli prime minister in 1995, made a proposition to build a wall that would encompass the complete length of the West Bank and East Jerusalem but concerns from Israeli settlers in the occupied Palestine made the plans be postponed (Métais 2021; Saddiki 2017).

Following the failure of the Oslo Accords, began the second Intifada, regarded as perhaps the most significant confrontation since 1948. The al-Aqsa intifada brought an increase in Islamic suicide bombers in Israeli cities, that mostly Hamas and the Islamic Jihad claimed responsability for (Shlaim 2014). It had its beginning after a "highly controversial" (UN 2001) "provocative" (Mustafa 2000) visit by the soon to be Prime Minister Ariel Sharon to the Al-Haram al-Sharif compound[6] on September 28th 2000. This event led to Palestinian protests that according to the Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People (CEIRPP), Papa Louis Fall, were responded with the use of excessive force by Israel (UN 2001).

Fighter aircraft, combat helicopter gunships and other material were used resulting in the death of more than 800 people, the great majority Palestinians, and

[5] He was later convicted for crimes against humanity and genocide together with the State of Israel in 2013 in the Kuala Lumpur War Crimes Commission of the corresponding Tribunal for being the Israeli Commanding General of the Sabra and Shatila refugee camps in occupied Lebanon in 1982 (CLJ LAW 2013), facilitating and perpetrating large scale massacres of the residents from these camps.

[6] Part of Al-Aqsa Mosque in the Temple Mount, Jerusalem, one of the holiest places for muslims.

thousands injured over the course of 12 months. The economic blockade imposed to crush the uprising led tens of thousands to lose their livelihoods and many more to become dependent on international humanitarian assistance (UN 2001). From 2000 to 2005, nearly 3.000 Palestinians and almost 1.000 Israeli died in the confrontations. One of the results after a cease-fire was agreed in Egypt was Israel's announcement that it would remove all its troops and all Jewish settlements from Gaza, which happened on September 11 2005, after 38 years of territorial occupation (CNN 2013).

Another consequence of the start of the second Intifada and the increase of Palestinian suicide bombers was the beginning of the construction of a wall that is meant to stretch for more than 700 kilometers once finished. In June 2002, under the government of Likud's (National Liberal Party) Prime Minister Ariel Sharon, construction started in the northern part of the West Bank, close to Nablus, Jenin and Tulkarem, cities that had reported terrorist operations centers near Israeli towns vulnerable to suicide bombers. Only in 2003, the Israeli government decided to have it around the whole perimeter of the West Bank (Métais 2021). According to Shlaim (2014 p. 1414), “a wall could not provide complete immunity, but it showed the public that their government was taking concrete steps to protect them.”

Politically, even if a large portion of Israelis across the spectrum favor increased security, some in the ultra hawks[7] of the right wing were not enthusiastic on Israel's wall because of territorial compromises. Even though the wall encompasses territories beyond the Green Line, the ultra hawks opposed it initially since constructing a wall meant taking a stand on the borders and if it followed the Green Line, it would mean a "withdrawal" to the internationally recognized sovereign boundary (Sfard 2018). Indeed, Métais (2021) maintained that "before 2000, nothing would have convinced a right-wing Israeli politician to build a barrier separating Israel from the West Bank". Sharon himself had opposed the idea because a wall would create an obstacle between Israel and territories that it could eventually want to annex (Shlaim 2014).

On the other hand, most supporters of a physical wall were from the center and center-left of the political spectrum. Eventually, Sharon, a great supporter of the settlement project and the expansion into large areas of the OPT (Sfard 2018), and its

[7] From the Dove-Hawk paradoxical axis of Israeli politics, where hawks are hard-liners of the right, that do not accept exchange of occupied territories for peace, and doves are more inclined to compromise for peace. In: Liebes, Tamar (1992). Available at: https://link.springer.com/content/pdf/10.1007/BF00993453.pdf [accessed: 7 June 2022].

government and supporters decided to build what Israel characterized as "a measure of self-defense" for the protection of its citizens against Palestinan suicide bombers. Nonetheless, "the fence became a means of determining by unilateral action the future borders of the Jewish state" (Shlaim 2014 p. 1415). The Palestinian National Authority (2003) claimed that the construction of the wall was Israel's way of imposing a new reality on the ground for the upcoming years of the occupation.

The plan established construction in three areas of the West Bank initially: the Greater Jerusalem region, the Qalqilya-Tulkarm region and the Umm El-Fahm region and the villages divided by Israel and the area (Baka and Barta'a) (Saddiki 2017). In what Sfard (2018 p. 406) referred to as a goal of "de facto annexation of as much of the West Bank as possible", the Ministry of Defense approved the outline plans for the Separation Wall. With more than 700 km of length, more than double of the Green Line that measures 320 km, the Separation Wall zigzags into the West Bank with an average width of 60 to 80 meters (Cohen 2006). At points, it goes 22 km in, to ensure that Israeli settlements are on west side, separating Palestinian populations or Palestians and the West Bank .

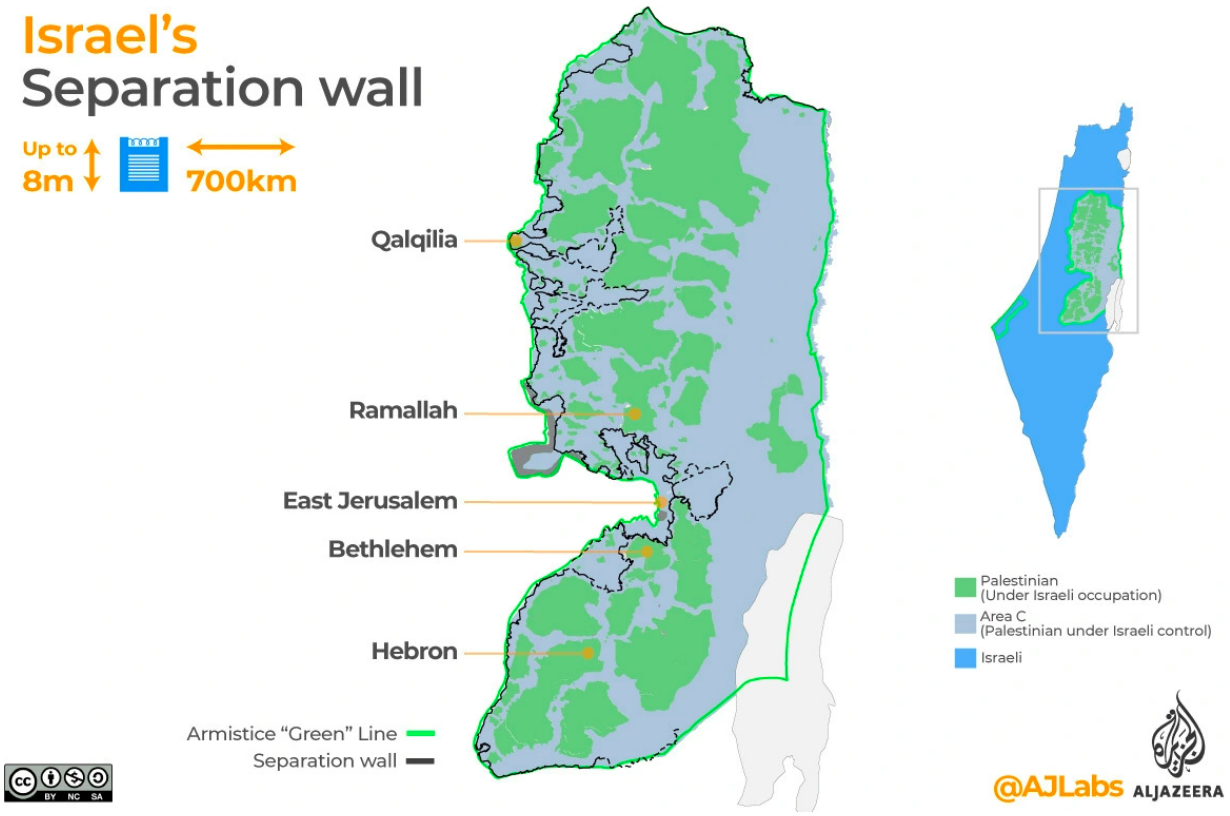
From the already existing wall built and taking the whole plan into account, according to the UN Office for the Coordination of Humanitarian Affairs (UNOCHA), almost 90% of the route is inside the West Bank, east of the Green line's path. It repossesses 14% of the West Bank and 680.000 Palestinians are affected (Asia New 2003). In fact, the route was determined considering the location of Israeli settlements and lands. When entirely completed, more than 52.000 hectares of land equivalent to 9,4% of the West Bank will be under the Israeli occupation (B'Tselem 2017). "The current course of the wall makes it, or, at least, a significant portion of it, a political project of the territorial agenda that has mired Israel in the West Bank since shortly after the war of 1967" argues Cohen (2006 p. 685).

Israel has established around 300 illegal civilian settlements for only Jewish people in the last 50 years. Approximately 700.000 Israeli settlers live in between but separate from 3 million Palestinians in these settlements. In Gaza, 2 million Palestinians are barricaded behind what was called "an open-air prison" by David Cameron (BBC 2010), former UK Prime Minister. Indeed, an important part of the Israeli strategy is fragmenting the territory of Palestine keeping different populations from the West Bank,

Gaza and East Jerusalem under control and divided. The walls, barricades, checkpoints, separate roads for Israeli and Palestinians and military closure ensure the fragmentation of the territory, dividing the West Bank, for example, into 165 disconnected enclaves (OHCHR 2022).

A report from the UN Human Rights Council (2018) stated that 87% of the Jordan Valley was "under full Israeli military or settler jurisdiction, and Palestinian use of those lands is prohibited". Below, the Palestinian territories either under Israeli occupation or control, are in green and grey respectively, while Israel is in blue. Moreover, the Israeli walls built against Palestine can be seen in the map on the right and how the West Bank Wall (black line) zigzags its route past the official Armistice Line of 1967 (green line) on the map on the left. In fact, the tortuous and winding route (Shlaim 2014), enters the West Bank in many locations to incorporate Israeli settlements and most of the municipality of Jerusalem (Cohen 2006).

Image 1 - Map of Israel's West Bank Wall



Source: Al Jazeera 2020

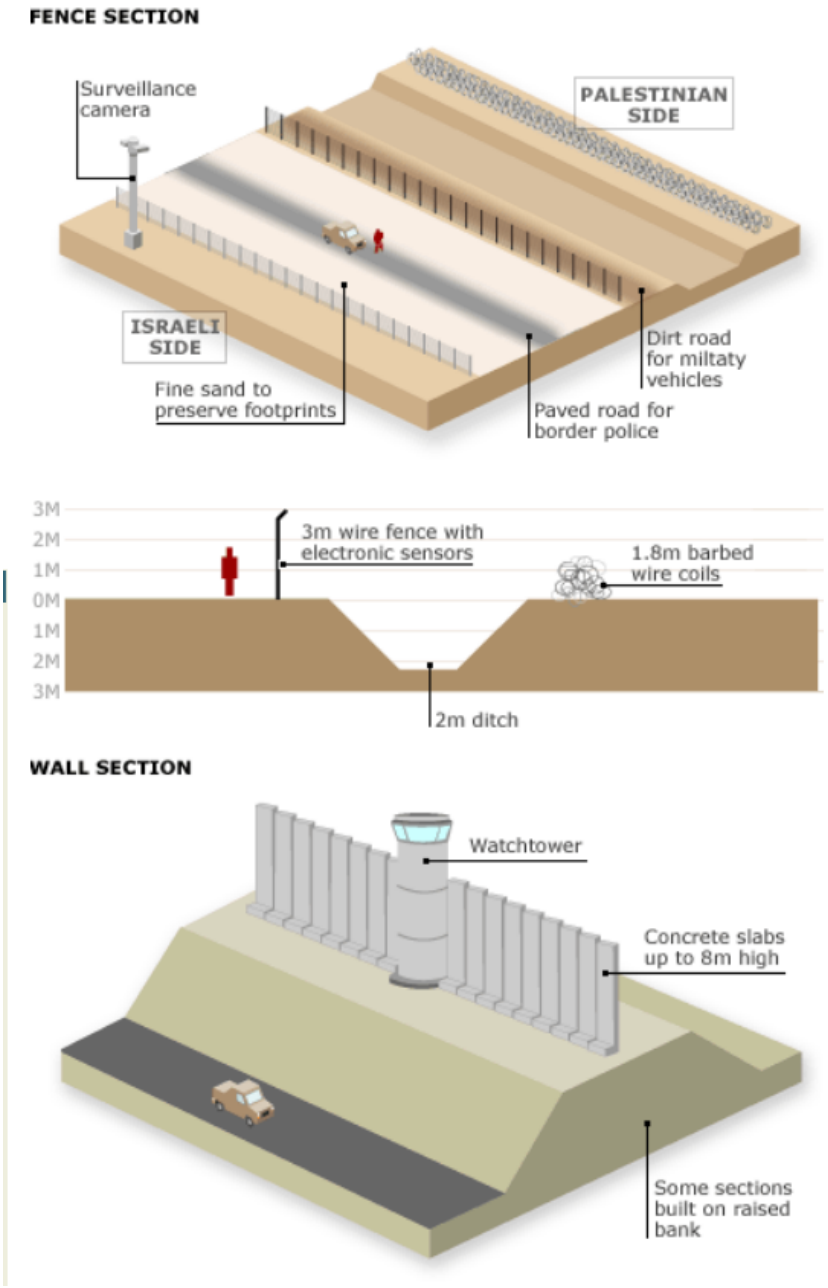
In a letter from US President George Bush to Prime Minister Sharon of April 2004, he affirmed that the route of the barrier should take non-terrorist Palestinians into account, but being consistent with security necessities. Furthermore, he speaks of the statement of Israeli government that this wall would be for security and not for political reasons, be temporary and not permanent and without prejudice to the final status issues, there included the final borders (White House 2004). Shlaim (2014 p. 1416), however, disregards the claims of the Israeli government, as "all the signs suggested, to the contrary, that the wall was meant to be political and permanent".

The fully integrated military system is a network of concrete walls, electronic fences - or made of barbed wire -, barriers, ditches and trenches, tank-patrol lanes on each side and large trace paths, sensors, guard towers, thermal imaging, cameras and drones (Saddiki 2017; Shlaim 2014). Behind both sides of the wall there is barbed wire, then a 4 meter wide and 5 meters deep trench, followed by a 12 meters wide paved road for military surveillance and a 4 meters wide sand road behind it to spot footprints (Saddiki 2015). Most of the barrier is made of 2-meter-high electrified barbed-wire fences; however, closer to cities, there are concrete walls from eight to nine meters high with a complete extension of 70 km (B'tselem 2017).

According to Israeli government, the barrier is a structure of fences with other obstacles, with around 6% (Cohen 2006) to 20% (Stop the Wall 2018) of it made of solid walls. Several companies from different countries were involved in the wall building business of Israel's wall. Aside from the majority of Israeli ones, the companies that provided different parts of the wall came from the United States, the United Kingdom, Japan, Switzerland/Germany, France and Sweden (Ruiz Benedicto Brunet 2020). The estimated cost per kilometer of the Wall in the West Bank is between NIS 10 million to NIS 15 million[8], added to the costs of 24-hour electronic surveillance and guards (Saddiki 2015). By 2018, Israel had reportedly spent NIS 25 billion in the construction project, having still NIS 1,3 billion[9] left of the budgeted funds (The Jerusalem Post 2018).

[8] US$ 2,8 million and US$ 4,3 million, respectively (Saddiki 2015).
[9] Around US$ 7,4 billion and US$ 390 million on June 8th 2022.

Image 2: Structure of the West Bank wall



Source: Stop the wall 2018

In 2014, around 62% of the wall was complete, while an estimated 10% and 28% were under construction and on the plans (UNOCHA 2014). Reportedly, there are still uncompleted stretches of the wall as in the Ma'aleh Adumim and Ariel settlements, a section in the South Hebron hills and the Gush Etzion region. Said gaps were called "ticking time bombs" by former Zionist Union head Avi Gabbay, demanding

reinforcements of the security barrier after a vote in June 2018 of 42 against and 23 in favor on a bill to finish the wall in 18 months (The Jerusalem Post 2018).

Around 65.000 Palestinian living around the West Bank Wall are estimated to require written permit of permanent residence with a completed wall. To be able to go to their residences, they must cross the wall into the West Bank. Another 270.000 living in such areas would be trapped between the wall and the Green Line or surrounded by the barrier in enclaves (Saddiki 2015). The village of Anata, near Jerusalem has become a semi-enclave, with walls surrounding the 15.000 inhabitants on three sides, cutting the city's access to the economic center of Jerusalem and its hospitals, shops and holy places (Seitz 2007). The structural barriers of the occupation are also said to have an overall impact on the health of the population (UN Human Rights Council 2018).

After a war that assured Israel 77% of the territory of Palestine in 1948, later in 1967, it occupied and annexed territories, displacing half the Arab population in the first and half a million Palestinians in the second (UN 2022 c). Consequently, by 2008, around 6,6 million Palestinians had refugee status and 427.000 Palestinians were internally displaced, 67% of their entire population in the world (Jacques 2012). Furthermore, upon building its wall, Arab people were expropriated of and separated from their land, houses, fields, place of work, schools and even their sources of water (Shlaim 2014).

In the case of the walls in Gaza, the damage caused is not only done to the Palestinian population. According to Al Monitor (2022), “the barrier is preventing wild animals [...] from crossing into the besieged enclave”. The wall is prohibiting wild animals, reptiles and underground microorganisms from their natural movement and biological exchange above and below the ground. Such a massive construction obstructs ecological and biological balance and animal biodiversity in Gaza, a place that has already seen a major decrease in the numbers and types of animals due to smaller agricultural areas and high population density considering the enclave’s geographical size (Al Monitor 2022).

The groundwater supply to the Gaza Strip is also compromised since the wall is placed above and below ground, which cuts the flow of some millions of cubic meters. The remaining water available is polluted due to the work done constructing the wall. “This act by Israel is contrary to international law for managing transboundary shared

water resources", said Mazen al-Banna, director general of the water resources unit at the Water and Environment Quality Authority in Gaza (Al Monitor 2022). Moreover, there is a severe water shortage due to pollution and over-consumption in the region and the water obtainable is under the standards of the World Health Organization (WHO).

In September 2013, 99 fixed checkpoints were working in the West Bank, where Palestinians are obliged to go through to move to different towns (Al Jazeera 2014). Upon raising the wall, Israel incorporated the lands for housing, farming and livestock farming of some 150 communities. Thousands of Palestinians have been denied the free access to their lands to be able to cultivate them. According to UN OCHA, in 2016, 84 gates, only nine are opening everyday, 10 only a few days per week and during the olive harvest season and 65 are only opening for the harvest. UNOCHA (2018) reported 705 permanent obstacles through the West Bank, to control and restrict Palestinian vehicles and, sometimes, pedestrians' movement.

Even upon its building, the wall showed in effectiveness reducing the number of suicide attacks in Israel and the settlements (Shlaim 2014). However the overall Israeli-Palestinian conflict and the tensions in the Middle East are closely linked with the wall. The former Member of Knesset[10] Tzipi Livni, who held several different cabinet positions as an Israeli Minister affirmed that those who wished for the two-State solution should support the West Bank barrier, as a security concept for Israel but also a border marking the division for two States for two peoples (The Jerusalem Post 2018).

2.2 Legal framework and consequences of the West Bank Wall

Under the framework of the United Nations, resolution 181 (II) of 1947 established the end to the British Mandate in Palestine and the partition into one Palestinian Arab and one Israeli Jewish State, Jerusalem being internationalized (UN 2022c). However, while Israel declared its independence in 1948, the Palestinians remain the largest stateless community worldwide, with four generations of refugees (Shiblak 2006). Israel has been a member of the UN since May 11th 1949. The General Assembly established the Committee on the Exercise of the Inalienable Rights of the

[10] Parliament of the State of Israel.

Palestinian People in 1975, also conferring the Palestinian Liberation Organization (PLO) the status of observer in the UNGA and UN conferences (UN 2022).

Palestinian National Authority (PNA)'s president, Mahmoud Abbas requested UN membership for the State of Palestine in 2011. It has been considered a non-member observer State since the Assembly adopted Resolution 67/19 (paragraph 2) on November 29th 2012. UNGA's adoption was a result of 138 votes in favor, 9 against and 41 abstentions (UN 2022c). Palestine has the right of participation in the work and sessions of the General Assembly, being able to put items in the provisional agenda of both UNSC and UNGA, but it has no voting rights (UN 2013). Different United Nations bodies will be analyzed in this chapter for their international response, such as the General Assembly, the Security Council and the International Court of Justice.

Many controversies and legal repercussions came following and since the beginning of the construction of the wall separating Israel and Palestine. Condemnation from the international community came first with a draft resolution in the Security Council by Guinea, Malaysia, Pakistan and Syria on October 14th 2003. It called for deeming the Israeli wall in the Occupied Territories illegal under relevant provisions of international law and that construction should be ceased and reversed. The UNSC failed to adopt said resolution after 10 votes in favor, 4 abstentions - Bulgaria, Germany, United Kingdom and Cameroon - and 1 vote against by the United States (UN 2003b).

Also in October 2003, Italy representing the European Union presented a draft resolution for the resumed tenth emergency session of the General Assembly to demand Israel to cease constructing the wall and for both countries to respect the Road Map obligations. The special emergency session was started in 1997 with the establishment of new Israeli settlements and has been convened on several occasions in the next few years. While in the Security Council out of 15 countries, 5 permanent members have veto power, the same does not happen in the General Assembly, where all UN member states simply have the right to be in favor, against or abstain. Therefore, 144 countries were in favor, 4 were against – Israel, USA, Marshall Islands and Micronesia – and 12 countries abstained from the draft resolution (UN 2003a).

The legal obstacle however, is the division of competences between the UNGA and the UNSC, which is established in the Charter of the United Nations. Article 24 of the Charter determines that the Security Council holds primary responsibility for

maintaining international peace and security. Article 12 of the UN Charter provides that the General Assembly is not to make recommendations regarding disputes and situations while the Security Council is working on them unless requested by it to do so (UN 2022). The UNGA resolutions are considered recommendations, not legally binding on the Member States. The resolutions adopted by the UNSC are the only ones with potential to be legally binding (UN NDa).

Concerning the right to veto, the five permanent members of the Security Council - China, France, the Russian Federation, the United Kingdom and the United States - are entitled to it. If any of them casts a negative vote out of the 15, the resolution cannot be adopted. Considering the context of the Cold War and US-USSR dynamics of the time, if one of the permanent members is not in fully accordance with the proposed resolution, but doesn't want to veto it, it can choose to simply abstain and the resolution can be adopted if it reaches the minimum required of nine favorable votes (UN NDb). Therefore, even if there is a majority in the General Assembly, binding resolutions on the wall of Israel are hard to be adopted in the UNSC given the "US liberal use of the veto in the UN Security Council in support of Israel" that ensures its allies are free and protected from enforcement action (Sarsar 2004 p. 457).

Given US-Israel relations, the US has vetoed at least 53 UNSC resolutions that were critical of Israel between 1972 and 2021, including concerns of violence against protesters, investigations of killings by Israeli soldiers and settlements illegally occupying the West Bank. Washington has vetoed at least four Security Councils on the topic dating back to 1983 one of which from 2011 that deemed “all Israeli settlement activities in the Occupied Palestinian Territory, including East Jerusalem, are illegal and constitute a major obstacle to the achievement of peace on the basis of the two-State solution” (Al Jazeera 2021).

The two-State solution means the existance of one State of Israel for the Jewish people and one State of Palestine for the Palestinian people. In public-opinion polls from the beginning of the construction in 2004, majorities of both sides were in favor of a two-State solution (Kelman 2022). One of the major obstacles towards achieving a resolution in the conflict is deciding the lines for borders, since the territories Israel has occupied in the West Bank surpass the 1967 Green Line. Changes in the original plans would only be minor mutually agreed-upon adjustments, with exchanges of territories

of equal size and value. As the wall has absorbed in its zigzag many Palestinian territories, it is arguable that they have had a bad impact in the negotiations of a two-State solution, as no compromise has been reached so far and the confrontations continue (Pressman 2021).

On 8 December 2003, through resolution ES-10/14, the Tenth Emergency Special Session of the General Assembly requested the International Court of Justice for an advisory opinion questioning the Legal consequences of the Construction of the Israel wall in occupied Palestine, including in and around East Jerusalem. The demand came based on principles and rules of international law, the Fourth Geneva Convention and the relevant UN resolutions (ICJ 2004). The question was phrased as follows:

> What are the legal consequences arising from the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, as described in the report of the Secretary-General, considering the rules and principles of international law, including the Fourth Geneva Convention of 1949, and relevant Security Council and General Assembly resolutions? (ICJ 2004).

Concerning Israel's argument of having built the wall for self defense, the ICJ ruling of 2004 disregarded it based on Article 51 of the UN Charter. As a right, self-defense needs to occur in response to an armed attack by another State; by contrast, the lawful population living in the occupied territory does not represent a foreign threat for the purposes of said article (Shlaim 2014).

By fourteen votes in favor to one against, the conclusions of the International Court of Justice found that the wall construction by Israel was contrary to international law, that Israel was under the obligation to finish the breaches, to stop the building of the wall in the Occupied Palestinian Territory, to dismantle the structure already present and to repeal all legislative and regulatory acts related to it. Furthermore, by 14 votes to one, Israel was demanded to make reparations for all the damage that came with the construction of the wall and by 13 votes to 2 all states were under obligation to not recognize the illegal construction. Finally, with 14 in favor and one against, the UN and its General Assembly and Security Council in particular were advised to consider appropriate further actions to terminate the illegal situation (ICJ 2004).

The international law deemed applicable by the Court was the UN Charter, UNGA resolution 2625 (XXV), the Fourth Geneva Convention of 1949, regulations annexed to the Fourth Hague Convention of 1907, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention on the Rights of the Child, among other humanitarian and human rights laws (ICJ 2004).

In contrast, Israel's Supreme Court sanctioned the route for the construction of the barrier, after more than 150 petitions questioning the legality of wall. In case laws from 2004 and 2005, the Court claimed that "the barrier within occupied territory is lawful and raises no issues of authority". Responding to the question if the planned route caused disproportionate harm to the rights of Palestinians the Israeli Court ruled that the harm to the population was not excessive (B'Tselem 2017).

In the Beit Sourik case law from 2004, the decision for building the wall, according to the Supreme Court, had to be judged based on the three-pronged test of proportionality, a general test both in international and domestic law, and in the law of belligerent occupation, specially. The test has been used for different sections of the wall since then. The Court established that the chosen route for building the wall was clearly connected to protecting security and that from the point of view of security, the path was optimal. An alternative route, as asked by the petitioners would incur less damage to them, but would be less advantageous in a security context as was the commander's opinion (Kretzmer 2012).

> This meant examining three criteria: whether there was a rational connection between requisitioning the land and the legitimate purpose (security); whether the route chosen was the least invasive way of achieving this purpose; and whether the security benefit of the particular route chosen outweighed the damage caused to the persons affected by that route. This final criterion implied that, if there were an alternative route that could provide security protection, the marginal security advantages of the chosen route had to be weighed against the marginal benefits to the petitioners of the alternative route (Kretzmer 2012 p. 229).

During the 27th plenary meeting on July 20th 2004, the General Assembly adopted Resolution ES-10/15, upon reception of the ICJ's advisory opinion, which states:

> 1. Acknowledges the advisory opinion of the International Court of Justice of 9 July 2004 on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, including in and around East Jerusalem;
> 2. Demands that Israel, the occupying Power, comply with its legal obligations as mentioned in the advisory opinion;
> 3. Calls upon all States Members of the United Nations to comply with their legal obligations as mentioned in the advisory opinion;
> 4. Requests the Secretary-General to establish a register of damage caused to all natural or legal persons concerned in connection with paragraphs 152 and 153 of the advisory opinion;
> 5. Decides to reconvene to assess the implementation of the present resolution, with the aim of ending the illegal situation resulting from the construction of the wall and its associated regime in the Occupied Palestinian Territory, including East Jerusalem (UN 2004).

The advisory opinion received 150 yes votes, 10 abstentions, 6 no votes, while 25 countries didn't vote. With its Resolution ES-10/17 from December 2006, the General Assembly established a United Nations Register of Damage caused by the construction of the Wall in the Occupied Palestinian Territory. Said Register of Damage is stipulated to be open as long as the wall exists (UN 2006).

One of the most used legal texts for reasoning the possible illegality of the wall is the Fourth Geneva Convention regarding the Protection of Civilian Persons in Time of War of August 12th 1949, which Israel is a High Contracting Party of after ratifying it on July 6th 1951. Palestine, on the other hand, by a unilateral declaration on June 7th 1982, claimed to apply the Fourth Geneva Convention, which Switzerland, a depositary State, deemed valid. However, it could not decide whether a request to accede inter alia to the Convention by the Palestine Liberation Movement on June 14th 1989 "can be considered as an instrument of accession" (ICJ 2004 p. 173). A report of the Secretary-General reaffirmed the applicability

The Convention is made up of 159 articles, divided into four parts and 12 chapters (Geneva Convention 1949). Articles 2 is particularly important, laying the grounds for occupying powers, even if one of the countries is not a High Contracting Party.

> ART. 2. — In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them. The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance. Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall

> furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.
> ART. 47. — Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory.
> ART 49. - Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive (Geneva Convention 1949).

Particular attention has been given by legal scholars and international organizations to the legal difference between *de jure* and a *de facto* annexation. The terminology is analyzed in a report of the Secretary-General of the United Nations regarding *de jure* annexation of East Jerusalem and *de facto* annexation of the West Bank (OHCHR 2018).

> *De jure* annexation is widely recognized in international law as the formal declaration by a state that it is claiming permanent sovereignty over territory which it had forcibly acquired from another state. In contrast, *de facto* annexation has been generally employed as a descriptive term to illustrate the actions of a state in the process of consolidating – often through oblique and incremental measures – the legislative, political, institutional and demographic facts to establish a future claim of sovereignty over territory acquired through force or war, but without the formal declaration of annexation (OHCHR 2018).

The Special Rapporteur on the situation of Human Rights in the Palestinian territories occupied since 1967 submitted a report on March 21, 2022 to the Human Rights Council. The Special Rapporteur considered the continued and significantly deteriorated situation of human rights of Palestinians in the West Bank, East Jerusalem and Gaza. The question asked was of whether the occupation of Palestine territories had evolved to apartheid. To answer said question, three steps of the test of the Convention against Apartheid and the Rome Statute were used: whether an institutionalized regime of systematic racial oppression and discrimination was in place, if such regime was instituted to be able to maintain the domination of one racial group over another and lastly whether inhumane acts carried out was an integral part of the regime (UN Human Rights Council 2022a).

The answer provided by the Special Rapporteur was that yes, the existence of apartheid in the Palestinian territory can be proved with the use of the three steps.

Arguments provided encompass the fact that while one racial-national-ethnic group lives trapped behind walls, checkpoints and under a durable military rule, another group benefits from rights, privileges and benefits. The report made a distinction between the practice done in South Africa, including the fact that high walls and a barricaded population are part of the daily reality, which didn't happen in the south of the continent. The recommendations given speak of Israel fully complying with international law and ending the occupation in Palestine, along with all discriminatory and apartheid laws, policies and practices (UN Human Rights Council 2022a). The international community was also advised to provide different accountability measures.

Three days after the report, on March 24th 2022, Chile, Cuba, Ecuador, Namibia, Pakistan, Venezuela and the State of Palestine have submitted a draft resolution during the Forty-Ninth session of the Human Rights Council considering the principles of the Charter of the United Nations, the Universal Declaration of Human Rights the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and other relevant conventions. The draft resolution also recalls the rules and principles of international law and international humanitarian law, the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War from 1949, as well as relevant resolutions from United Nations institutions (UN Human Rights Council 2022b).

In the draft resolution, Israel is demanded to leave the Palestinian territory that has been occupied since 1967 and efforts should be done to end the conflict based on international humanitarian law, international human rights law and relevant UN resolutions in article 1. The resolution also gives recommendations for international cooperation and reprimands the lack of cooperation from Israel.

> 4. Affirms that no State shall recognize as lawful a situation created by a serious breach by a State of an obligation arising under a peremptory norm of general international law, nor render aid or assistance in maintaining that situation, and all States shall cooperate to bring to an end through lawful means any serious breach;
> 5. Deplores the persistent non-cooperation of Israel with the special procedures of the Human Rights Council and other United Nations mechanisms seeking to investigate alleged violations of international law in the Occupied Palestinian Territory, including East Jerusalem, and calls for full cooperation with the Council and all its special procedures, relevant mechanisms and inquiries, and with the Office of the United Nations High Commissioner for Human Rights; (UN Human Rights Council 2022b).

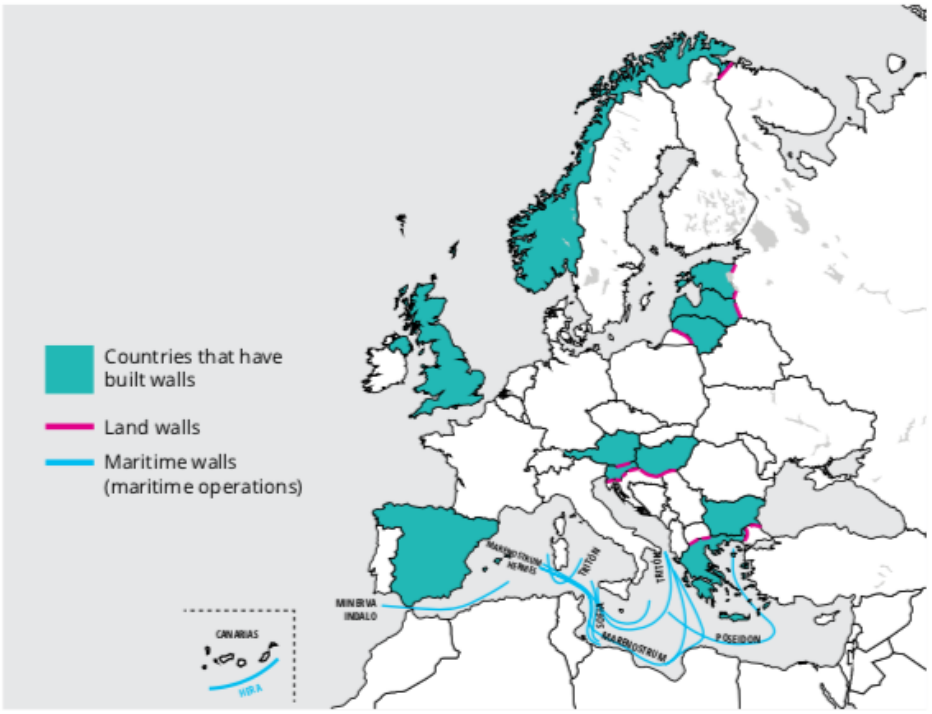
Demands were made to Israel for its illegal actions and violations of human rights. The draft resolution also stipulates the need for accountability under international law and reparations to the victims.

> 6. Demands that Israel, the occupying Power, cease all illegal actions in the Occupied Palestinian Territory, including East Jerusalem, including the establishment and expansion of settlements; the demolition of privately owned and residential structures belonging to Palestinians, including punitive home demolitions; the forcible transfer of Palestinian inhabitants and the revocation of residency permits of Palestinians living in East Jerusalem through various discriminatory laws; excavations in and around religious and historic sites; and all other unilateral measures aimed at altering the character, status and demographic composition of the territory as a whole, all of which have, inter alia, a grave and detrimental impact on the human rights of the Palestinian people and the prospects for a just and peaceful settlement; […]
> 12. Reiterates the need for respect for the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory and for guarantees of the freedom of movement of persons and goods within the Palestinian territory, including movement into and from East Jerusalem, into and from the Gaza Strip, between the West Bank and the Gaza Strip, and to and from the outside world; […] (UN Human Rights Council 2022b).
> 26. Emphasizes the need to ensure that all those responsible for violations of international humanitarian law and international human rights law are held to account through appropriate, fair and independent national or international criminal justice mechanisms, and to ensure the provision of an effective remedy for all victims, including full reparations, and stresses the need to pursue practical steps towards these goals to ensure justice for all victims and to contribute to the prevention of future violations (UN Human Rights Council 2022b).

3 Fortress Europe's walls

Ever since the fall of the Berlin wall and the unification of Germany and Europe, the Member States of the European Union constructed more than 1.000 km of border walls, equivalent to six Berlin walls in length (Ruiz Benedicto, Brunet 2018). From having two walls in the 1990s, the EU went on to have 15 of them in 10 of its Member States in 2017, when the United Kingdom was still a part of the bloc. During the 2015 migration crisis in Europe, the number of border walls sharply augmented with seven new ones (Independent 2018). This is the first of the major reasons why the border wall policy of the European Union is relevant and will be analyzed in the present study.

Image 3 - The Walls built in the European Union



Source: Akkerman 2019

The States' argument to erect such border walls concentrate mainly that they are there to contain illegal immigration and would-be refugees, as the table I shows. However, reasons of security, territorial tension and smuggling were also given, especially in the countries that built barriers in the borders of Russia since the Crimea

crisis of 2014 (Ruiz Benedicto, Brunet 2018). The rise of xenophobic and far-right parties in Europe since 2010 can also be accounted as a motivation behind the building of walls (Independent 2018). The table accounts for walls built in EU and Schengen countries between 1990 and 2017, when the United Kingdom was still part of the Union; Macedonia is included given its importance in the Balkan route through EU countries.

Table I – Walls in EU Member States, Schengen area and Macedonia (1990-2017)

Building country	Border country	Starting year	Reasons
1. Spain	Morocco (Ceuta)	1993	Immigration
2. Spain	Morocco (Melilla)	1996	Immigration
3. Greece	Turkey	2012	Immigration
4. Slovakia	Internal cities: Kosice, Velka Ida, Ostrovany	2013-under construction (2017)	Segregation, security
5. Bulgaria	Turkey	2013	Immigration
6. Hungary	Croatia	2015	Immigration
7. Hungary	Serbia	2015	Immigration
8. Macedonia	Greece	2015	Immigration
9. United Kingdom	France (Port of Calais)	2015	Immigration
10. Slovenia	Croatia	2015	Immigration
11. Austria	Slovenia	2015	Immigration
12. Latvia	Russia	2015	Security, territorial tension, smuggling, immigration
13. Norway	Russia	2016	Security, immigration
14. Estonia	Russia	2016-2017	Security, territorial tension, immigration
15. Lithuania	Russia	2017	Security, territorial tension, immigration

Source: Ruiz Benedicto, Brunet 2018

A second reason why Europe's walls are relevant to the present study is that in October 7th 2021, 12 Ministers of Interior out of the 27 Member States of the EU sent a letter addressed to the Vice-President of the European Commission Margaritis Schinas and to the Commissioner for Home Affair Ylva Johansson requesting EU funding to build walls in its borders. The countries signatories to the letter were, both old and new to wall building policy, Austria, Bulgaria, Cyprus, The Czech Republic, Denmark, Estonia, Greece, Hungary, Lithuania, Latvia, Poland and Slovak Republic (Letter from 12 Member States 2021).

The letter was sent in the midst of the crisis in the borders with Belarus, where the Belarusian President Alexander Lukashenko was sending asylum-seekers and migrants from the Middle East to the borders with Lithuania, Latvia and Poland. This was a possible retaliation strategy due to EU sanctions concerning the democratic process in the country (Economist 2021). All three countries had declared a state-of-emergency at the borders, since approximately 4.000 people had entered in Lithuania, around 1.400 in Poland and some 400 in Latvia in just a few months (EU Observer 2021).

As a consequence, Lithuania decided to erect a 4-meter welded wire mesh fence in the 500 km border with Belarus, worth €150 million to be done by September 2022. Poland also reported that it would build a 2,5-meter high wall following the design of the Hungarian wall in the border of Serbia, from 2015. Moreover, Greece constructed a 40 km long fence in the Turkey-border to prevent the entrance of Afghan refugees (EU Observer 2021). Latvia was also considering plans of building a 134 km barbed wire fence in its border with Belarus (Bloomberg 2021). Be them land, maritime or virtual walls, the amount of money spent by EU countries is hard to determine, but estimations point to over €2 billion for main virtual and maritime walls and around €1billion for fences and land walls (Akkerman 2019).

The letter sent by the 12 Member States argued that the EU should adapt its existing legal framework to the new realities, to be able to react for example in cases of political instrumentalization of illegal migration used as means to exert pressure and blackmail the EU and the MS. The reasoning for EU action was that the whole Union was under threat, therefore, common solutions at EU level were required. They requested the European Commission to consider proposing new legislations, including in the Schengen Borders Code (SBC), in ways to seek for "sustainable, long term solutions based on European values" (Letter from 12 Member States 2021).

> 6) SBC does not foresee a **physical barrier** as a measure for protection of the EU external borders. Physical barrier appears to be an effective border protection measure that serves the interest of whole EU, not just Member States of first arrival. This legitimate measure should be **additionally** and **adequately funded** from the EU budget as a matter of priority. This should also apply at the Green Line, in the case of Cyprus, which does not constitute an external border (Letter from 12 Member States 2021).

While there is no legislative impediment from the SBC and border management is a shared competence and responsibility between EU and Member States, Brussels has had a long stance of not funding border walls and fences. The argument is that they are costly and ineffective, as they can be climbed. Instead, border guards and high-tech solutions are preferred by the EU (Economist 2021). Ursula von der Leyen, president of the European Commission since 2019 affirmed unequivocally after the demands: “I was very clear that there is a longstanding view in the European Commission and in the European Parliament that there will be no funding of barbed wire and walls” (The Guardian 2021).

The border barriers inside the European Union can be divided in four regions: the Balkan route (Greece, Bulgaria, Hungary, Macedonia, Austria and Slovenia), the Spanish enclaves of Northern Africa, the Arctic route in Norway and the region of the Baltic Republics and border with Russia (Latvia, Estonia, Lithuania) (Ruiz Benedicto, Brunet 2018). Considering the already mentioned ongoing Russian-Ukrainian war, tensions are high within the European Union, as the bloc has applied several economic and military sanctions against Russia. A third reason for looking at the European Union’s walls is that further developments in the conflict may lead to more securitization in the borders and help the argument of erecting walls.

What was once the symbol of European division, since the fall of the Berlin Wall, several Member States of the European Union have erected high fences and walls in their borders, for a number of reasons. As there are too many already that the present study could contemplate, two were chosen to be looked at in more detail, both in the borders between Spain and Morocco, Ceuta and Melilla. They were the first to come up following the reunification of East and West Germany, in 1993 and 1996, respectively, as an alleged way of preventing and deterring migration in the Spanish enclaves (Ferrer-Gallardo 2008). During this chapter, the fences of Ceuta and Melilla will be analyzed; firstly through a historical overview and secondly outlining the institutional and legal framework for them.

3.1 The cases of Ceuta and Melilla, Spain

Ceuta and Melilla are two Spanish maritime enclaves in North Africa with a population of around 80.000 people each, considered the pioneer cases of post-Cold War border fortification trend. Both barriers were built, like many others, with the argument of stopping illegal migrants from entering (Castan Pinos 2022). Ceuta has been under Spanish control since 1668, while Melilla's occupation dates back to 1497. However, Morocco, independent from France and Spain in 1956, considers both enclaves and mentioned islands integrally a part of Moroccan territory, never acknowledging Spanish sovereignty. Since its independence, Morocco has been claiming the Spanish-controlled territories on geographical, historical, geopolitical and juridical reasons (Saddiki 2017).

> The fences of Ceuta and Melilla are not just a land border between two neighboring countries, but they are built upon "a complex amalgamation of clashes and alliances" representing a "multi-faceted fault line" between Spain and Morocco. The two countries represent an ex-colonizer and an ex-colonized, respectively, two peoples (Spaniards and Moroccans), two nations (Westerns and Arabs), two religions (Christianity and Islam), two continents (Europe and Africa), and two regions (Western Europe and Arab Maghreb) (Saddiki 2017 p. 63).

Although Ceuta and Melilla share proximity and migration issues, the two autonomous cities or towns – given their size – or enclaves – even if they have access to sea and are not fully enclosed in foreign territory – are different in history, geographical location and terrain. Ceuta occupies a territory of 19,5 km² that is 25 km from continental Europe and only 1 hour 30 minutes ferry ride to the Port of Algeciras, in Spain by the Strait of Gibraltar. Sebta, as it is called in Berber, acquired important status by the 12th Century as one of the main ports in the Mediterranean after a sequence of emirates and caliphates. It remained under Portuguese control from 1415 until 1668 when the Treaty of Lisbon made it officially Spanish territory (Gold 2000).

Melilla, around 380 km east of Ceuta, occupies 12,5 km² and is 8 hours distant from Málaga by sea, on the Spanish Costa del Sol. Its port in the Guelaia Peninsula had less importance compared to the one of Ceuta, but the salt deposits located nearby were of interest. Melilla has been part of Spain since 1497 taken under the orders of the Duke

of Medina Sidonia. As a means to stop Moors[11] invading the Spanish peninsula, the kingdom of Spain established along the Moroccan coast fortresses or presidios – also used as prisons for criminals of the peninsula. The presence of Moors dated back to eight centuries and they were expelled in 1492 (Gold 2000).

Image 4 - Map of Ceuta and Melilla

Source: Schengen Visa Info 2021

The year of 1985 represents a moment of rupture in the relations of Ceuta and Melilla with their neighbor, Morocco. Spain joined the future European Union, after signing the Treaty and the Act of Accession to the European Economic Community (EC) on June 12th 1985. On January 1st 1986, Spain became a fully-fledged member of the EC. That was, in fact, "the first tangible juxtaposition of EC and African territory" (Gold 2000 p. 13). From then onwards, Ceuta and Melilla found themselves in a paradoxical situation as being situated in the poorest continent in the world and part of the world's richest trading bloc. Being the only EU territories in Africa, the enclaves represent a "cultural and ethnic crossroads", where Europeans and Catholics meet Africans and Muslims (Gold 2000).

Spain signed the Schengen Agreement of May 1985 that allows free movement of people within the Member States in June 1991 and its implementation started in

[11] General term to refer to the Arabs and Berbers from the south (Gold 2000).

1995. For Melilla and Ceuta that meant that the previous "(EU)ropeanization" of the border was accompanied by its "Schengenization" (Ferrer Gallardo, 2008). The established Schengen Area meant, “the control of external European Community borders was no longer a matter for each European state to resolve independently but a common European problem” (Saddiki 2017 p. 70). Further details concerning the legal framework for Ceuta and Melilla within the Schengen Agreement will be discussed under the legal framework chapter.

Over time, after Spain’s conquest of the two cities, different fortifications were erected to defend them against neighbor Portugal and other non-European and non-Christian people. In the context of Spain’s imperial competition and expansion, both cities witnessed elaborate technologies and products to ensure maintenance of territorial control. However, with Spain’s entry to the European Community and later into the Schengen Area, tensions at the border grew, especially with the rise of immigration. Eventually, it led to the decision of establishing physical barriers in the border of the two enclaves.

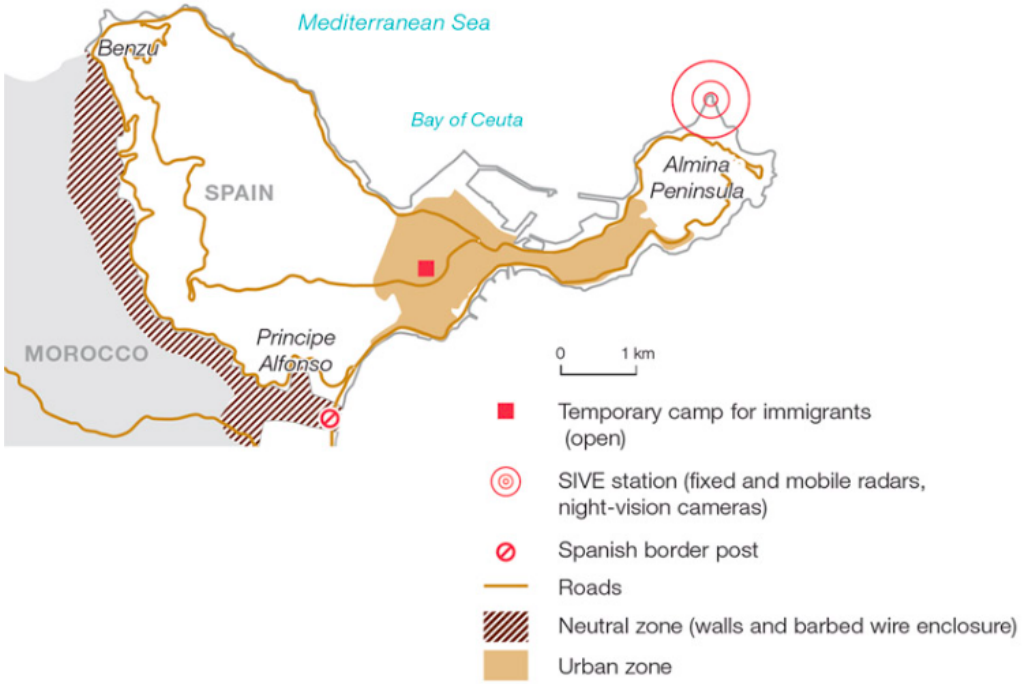
The modern fences in Melilla started to be constructed in 1993, while measures for the ones around the entire border perimeter in Ceuta were taken in 1995, with construction beginning in 1996 (Pallister-Wilkins 2017). In Ceuta the barrier is 8,2 km long, while the one separating Melilla is 10,5 km. During construction, fencing material was often stolen due to poor security planning, which led to the process being slow. The Spanish army was brought in to assist the Guardia Civil with the surveillance operation in 1997, first in Melilla’s fence and later in Ceuta’s (Gold 2000).

Until April 1986, only the four border crossing points were permanently guarded between Morocco and Melilla. According to a delegation from the European Parliament (2006), Ceuta and Melilla’s external border was made of double fences; both the outer and inner fences reaching 6 meters of height and separated by a 2 meter asphalt road for the Guardia Civil. They were equipped with barbed wire, surveillance cameras, microphones and infrared surveillance systems. Doors can be found along the fences to cross from Spanish to Moroccan side.

The border barrier in Ceuta is also equipped with motion detectors and 17 control towers. The one in Melilla is a triple layered fence of six, three and six meters each on Spain's side (ECHR 2020). Morocco has also built two layers of barbed wire

fencing starting in 2014 and the migration crisis due to conflicts in Africa and the Middle East (Vox 2018), with added three meters high 3D cable in 2007, two meters deep trenches, motion detectors, acoustic and optical sensors, control towers and over 70 surveillance cameras (Ruiz Benedicto, Brunet 2018). In the map below the neutral zone established at the border between Spain and Morocco in Ceuta can be seen, where the walls and barbed wire are.

Image 5 - Map of the border of Ceuta and Morocco



Source: OECD 2014

Castan Pinos (2022) affirms that the Spanish government spent originally €62 million to build both fences, followed by €72 million for fence reinforcements (2005-2013). Between 2005 and 2014, the updates in the barrier of Ceuta cost €18 million for construction and €8 million for maintenance, while that of Melilla cost €21 million and 12 million, respectively (Queirolo Palma 2021). Additional €17,9 million in 2019 to heighten certain parts of the fences to 10 meters and to technologically modernize them and €9,7 million for maintaining the fence (2022-2026) were secured (Castan Pinos 2022).

It is unclear which companies participated in the early states of construction, but in 2005 and 2006, with the inclusion of additional fences in Melilla, Indra was responsible with contracts of US$ 21 million, while in Ceuta the company Ferrovial and Dragados was in charge of the main construction and repair. Between 2005 and 2016, all the companies with contracts for the fences of Melilla and Ceuta were Spanish (Ruiz Benedicto, Brunet 2020). In 2009, the Spanish government decided to spend more money renovating and strengthening the razor wire fences in both enclaves (Saddiki 2017).

Apart from physical barriers, Madrid also uses digital surveillance to control irregular migration. The SIVE (Integrated System of External Surveillance[12]), one of the biggest surveillance systems in the continent is part of Spain's policy to monitor its maritime waters for illegal migration. The System received €150 million from EU funds from 1999 to 2004. During that period, it meant €1.800 for each immigrant intercepted, a cost justified by the high standards requested by the EU (Saddiki 2017). Guardia Civil (ND) says the SIVE in Ceuta has been operational since 2005.

> The SIVE has been implemented through the gradual addition of border control and management technologies, including long-distance radar systems, advanced sensors that can detect heartbeats from a distance, thermal cameras, night vision cameras, infrared optics, helicopters and patrol boats. Spain's virtual fence, similarly to the American one, required a large budget funded partly by the EU (Saddiki 2017).

Remembering President von der Leyen's words that the European Union doesn't fund walls and barbed wire, it is noteworthy to say that the European Community, later absorbed into the EU framework, did provide funds in the cases of Ceuta and Melilla (Gold 2000; Pallister-Wilkins 2017; Saddiki 2017). Sources differ as to the exact figure of EU funding; from two thirds of the 5.500 million pesetas (US$ 36,6 million) for both barriers (Gold 2000) to 75% of total € 48 million in Ceuta (Saddiki 2017; Akkerman 2019) for the first fences (1995-2000). In 2005, additional £200 million were given for construction of the razor-wire border fence around Ceuta (Saddiki 2017).

The EP Committee in Civil Liberties, Justice and Home Affairs (LIBE) and EP Subcommittee on Human Rights (DROI) sent a delegation to visit Ceuta and Melilla from December 7th to 9th 2005. The 17 MEPs (Members of Parliament) were tasked,

[12] *Sistema Integrado de Vigilancia Exterior*.

among other things, with obtaining information about occurrences starting on August 28th 2005 that led to the death of migrants (European Parliament 2006). The reports of human rights violations included “killings of migrants and asylum-seekers trying to cross the border, the use of excessive force by law enforcement officials, collective expulsions, and violations of the principle of *non-refoulement* (Amnesty International 2006).

In the second semester of 2005, there were reports of 13 people found dead and many others injured due to accidents crossing the border of Melilla or Ceuta or ill treatment from the Spanish Guardia Civil. On September 29th, hundreds of people attempted to cross the fence in Ceuta with makeshift ladders. Teargas was used as the Spanish Guard and Moroccan forces were shooting either into the air or directly at the group of people. At least four people were killed and dozens were injured, to which later the Spanish Minister of Interior dismissed any responsibility from the Spanish Civil Guard. On the night of October 5th, some 400 people were scaling over the fence in Melilla when Moroccan security agents interfered leading to the death of six and dozens of injured (Amnesty International 2006).

A large part of the injuries when attempting to cross the fences in Melilla and Ceuta used to be due to the concertinas - razor wire placed on top of the barrier structure. They were first put up in 2005 as results of the events of September and October but removed later in 2007 by former President José Luis Rodríguez Zapatero. However, in 2013 they were brought back by the successor President Mariano Rajoy (Forbes 2019). The concertinas did little to stop the so called *avalanches*, when hundreds or thousands of people gather in coordinated "collective storms" to be able to cross the fence (Castan Pinos 2022).

They were again removed in 2020 by current Prime Minister Pedro Sánchez to have security at the borders "with less cruel means" according to his Minister of Interior. Different human rights organizations in Europe continuously criticized the use of concertinas in the fences considering the injuries they can cause. Their effectiveness in intimidating migrants was questioned (Forbes 2019), as was the "possible unnecessary physical dangers presented by the razor wire fence", as in the case of Amnesty International (2006). When the Spanish government announced the removal of both fences' concertinas, Rabat decided to install its own (Akkerman 2019). In their

place, some more vulnerable sections were elevated to 10 meters high, with a structure of bars, anti-climbing fence, metal sheets and smooth cylinders of up to a meter in diameter (Info Migrants 2021; Forbes 2019).

Much like the agreements signed by the EU with Turkey, Libya and other African countries, the European Union has placed Morocco into its framework of third countries as a core response to 2015's refugee crisis. This strategic cooperation is based on readmitting illegal migrants, border control and surveillance and receiving refugees in these third countries. Usually, the EU ties the agreements with funding and other mobility incentives, but not always the bloc succeeds in achieving its goals by these means as seen on the EU Readmission Agreement with Morocco (Carrera, Cassarino, El Qadim, Lahlou and den Hertog 2016). The agreements signed between EU and Spain with Morocco pertinent to the cases of Ceuta and Melilla and migration will be analyzed in 3.2.

After the Italian government signed an agreement with Libya on migration in 2017, the central Mediterranean route became progressively harder to access. This increased the pressure in Ceuta and Melilla, as well as in the Gibraltar Strait and the Alboran Sea. In contrast, the fences of the enclaves lead to the route being diverted to a direct crossing of the Strait. However much Spain and the EU spent on fences and virtual walls, Madrid's deterrence on migration in the enclaves greatly relies on its agreements with Morocco.

The Western Mediterranean route, that stretches from Spain to Morocco and Algeria, encompasses irregular migrants arriving either by the Mediterranean Sea to the Spanish peninsula or by land to Ceuta and Melilla (European Council 2022). While in 2016 the arrivals at the borders of the enclaves were a record low, in 2018 the Western Mediterranean saw a record high of immigrants detected. It became the main route into Europe and the second most used in 2019. Due to the Covid-19 pandemic and stricter restrictions to divert migration by Morocco, a decrease in the use of the route was seen in 2020 and in 2021 it remained stable, with most migrants detected of Algerian nationality and second Moroccans (Frontex 2021).

The table below shows the Schengen visa applications from each of the six Spanish Consulates in Morocco. Casablanca has the second highest number of applications with the smallest rate of rejection; Nador, close to Melilla has the second

worst rejection rate in the country; Tetouan has around ¼ of visa applications denied and Tanger has the biggest number of applications and the worst rate between the consulates, both cities are close to Ceuta (Schengen Visa Info 2020). The information is relevant as it provides the number of people lawfully applying for entry and the consequent rate of rejection.

Table II - 2020 Schengen Visa applications from Morocco in Spanish Consulates

Consulate	Nº applications	Visas issued	Visas denied	Not issued rate
Casablanca	13.636	12.121	1.250	9,32%
Agadir	3.756	2.640	836	24%
Rabat	7.517	5.330	1.765	24,85%
Tetouan	4.784	2.719	950	25,37%
Nador	7.185	4.243	2.614	37,57%
Tanger	32.093	18.608	12.236	39,64%

Source: Schengen Visa Info 2020

3.2 Legal and institutional framework of the fences of Ceuta and Melilla

In February 1981, Spain announced officially its intention of joining the North Atlantic Treaty Organization, being the 16th full Member State on May 30th 1982. After a referendum in March 1986, Spaniards voted , and its full incorporation to the integrated military structure of NATO happened from January 1999 (Ministerio de Asuntos Exteriores ND). However, the enclaves of Ceuta and Melilla were excluded from the agreement when joining NATO, which was positively seen by Rabat (El Pais 1981). Indeed, both territories are not under the protection of the Alliance (Gaspar 1994).

Just before effectively being an EC member, on July 1985, the Spanish Parliament passed an Immigration Law, the Organic Law on the Rights and Freedoms of Foreigners[13] in Spain, put into force the same year. The law highlighted “the differences between the main ethnic communities in the enclaves and creating tensions between the enclaves and Madrid” (Gold 2000). Indeed the highlighted differences can be seen in the Organic Law 4/2000, article 57.5 formulates that the sanction of expulsion cannot be

[13] *Ley Orgánica sobre Derechos y Libertades de los Extranjeros en Espanã, la Ley de Extranjería*, 3 July 1985. Available at: https://www.boe.es/boe/dias/1985/07/03/pdfs/A20824-20829.pdf.

imposed, save the infraction committed is given in Article 54a (very serious infringements) or is a reincidence in the commission; however this provision only applies to a certain category of foreigners.

According to Amnesty International (2021), two methods of expelling foreign individuals is allowed under Spanish law, expulsion or accelerated return[14]. The first regards those entering illegally caught at the moment of entry in an unofficial border or close to it while the second the "hot return" to the neighboring country immediately after capture. In the same Organic Law of 2000, under article 58.3b states that the file for expulsion or rapid return of foreigners won't be necessary for those that intend to enter the country illegally (Boletín Oficial de Estado 2000).

A Royal Decree n. 557/2011 approved the Regulation of the Organic Law 4/2000, to which it reiterated the provisions given under article 58.3. It establishes in article 23.2 that the intercepted foreigners have to be taken by the border authorities as soons as possible to the National Police Corps for identification and, if necessary, return. However, in all cases of return of foreigners illegally entering Spain, under article 23.3 the non-national has the right of juridical assistance, as well as an interpreter when not able to communicate in one of the official languages (Boletín Oficial del Estado 2011).

In the Schengen Agreement, Melilla and Ceuta have received special status since 1991 when Spain signed ad hoc clauses. Indeed, in order to impede the economic collapse of the enclaves, residents of Tetouan and Nador are allowed to enter by day without a visa, but having to return to Morocco in the evening. Regardless of the "spectacle of fences and fortress", both towns require labor and economic exchanges with the neighbors. Therefore, free circulation to the Spanish peninsula is applicable to only some groups of people, which is "a structural element that evokes and anticipates the reappearance, all over Europe, of the internal borders of the Union" (Queirolo Palma 2021 p. 453).

In the Schengen *acquis* from 1991, the Agreement that led to Spain's accession to the Schengen Area, the III provision of the Final Act establishes the following arrangements for the territories of Melilla and Ceuta in accordance with Protocol 2 of the Act of Accession of Spain to the European Communities.

[14] *Expulsión* and *devolución*, respectively.

> III. The Contracting Parties have taken note of the following declarations made by the Kingdom of Spain:
> 1. Declaration on the towns of Ceuta and Melilla
> (a) The current controls on goods and travellers entering the customs territory of the European Economic Community from the towns of Ceuta and Melilla shall continue to be performed in accordance with the provisions of Protocol 2 of the Act of Accession of Spain to the European Communities.
> (b) The specific arrangements for visa exemptions for local border traffic between Ceuta and Melilla and the Moroccan provinces of Tetuan and Nador shall continue to apply.
> (c) Moroccan nationals who are not resident in the provinces of Tetuan or Nador and who wish to enter the territory of the towns of Ceuta and Melilla exclusively shall remain subject to the visa requirement. The validity of these visas shall be limited to these two towns and may permit multiple entries and exits ("visado limitado múltiple") in accordance with the provisions of Article 10(3) and Article 11(1)(a) of the 1990 Convention.
> (d) The interests of the other Contracting Parties shall be taken into account when applying these arrangements.
> (e) Pursuant to its national law and in order to verify whether passengers still satisfy the conditions laid down in Article 5 of the 1990 Convention on the basis which they were authorised to enter national territory upon passport control at the external border, Spain shall maintain checks (on identity and documents) on sea and air connections departing from Ceuta and Melilla and having as their sole destination any other place on Spanish territory.
> To the same end, Spain shall maintain checks on internal flights and on regular ferry connections departing from the towns of Ceuta and Melilla to a destination in another State party to the Convention (Agreement on the Accession of the Kingdom of Spain to the Convention implementing the Schengen Agreement 1991).

Regulations from the European Commission No 1931/2006[15] (Article 16) and from the European Parliament and the Council No (EU) 2016/399[16] (Article 41) did not change the provisions above.

> **Article 41**
> Ceuta and Melilla
> The provisions of this Regulation shall not affect the special rules applying to the cities of Ceuta and Melilla, as defined in the Declaration by the Kingdom of Spain on the cities of Ceuta and Melilla in the Final Act to the Agreement on the Accession of the Kingdom of Spain to the Convention implementing the Schengen Agreement of 14 June 1985 (European Parliament, Council 2016).

[15] Laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention.

[16] On a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code).

In June 2021, it was reported that Spain was considering fully including Ceuta and Melilla into the Schengen Area and canceling the unique regime for the towns. That would require demanding visas for Moroccans from Tetouan and Nador and that the effective European borders be moved from the current ports to Moroccan borders (Schengen Visa Info 2021). Replying to a question from MEP José Ramón Bauzá Díaz (Renew) to the Commission on March 7th 2022, Commissioner Johansson affirmed that Schengen *acquis* applies fully to Ceuta and Melilla, being them also the external borders of the Schengen Area. However, the special rules determine "identity and document checks need to be carried out on departure from Ceuta and Melilla to Peninsular Spain or other Schengen countries" according to Article 41 of (EU) 2016/399 (European Parliament 2022).

The Schengen Area of 26 countries includes most of EU Member States – not Croatia, a reason explaining why Hungary and Slovenia have built walls inside EU (table I)-, as well as some non-EU countries, using the Schengen Borders Code to have common rules on external borders. On December 14th 2021, the European Commission submitted a proposal for a Regulation amending EU 2016/399 to the Council and the European Parliament. The document corresponds to the SBC, responding to the EU's external borders' latest developments and after extensive consultation with MS. The amendment envisaged three key goals: provide solutions so that internal border checks are only a last resort, apply lessons from the Covid-19 pandemic and react to the latest challenges at external borders, as in the case of the abovementioned state-sponsored instrumentalisation of migrants (Commission 2021).

The European Union shares the competences of migration and border control and management with its Member States According to the European Commission (ND), the effective management of the EU and Schengen's external borders aims at expediting legitimate border crossings, controlling migration effectively, safeguarding the principle of free movement of people and increasing internal security in the EU. The Commission proposed the new Pact on Migration and Asylum for a fairer, more European approach in September 2020. The new pact would allow trust between MS to be rebuilt and strengthen the EU's management of migration.

The European Border and Coast Guard (Frontex) is responsible for implementing the European Integrated Border Management under a Regulation from

December 2019 (European Commission 2021). Frontex organizes joint operations and interventions in order to assist Members in their external borders, which include humanitarian operations and rescue at sea. The agency “promotes, coordinates and develops European border management in line with EU Fundamental Rights Charter and the concept of Integrated Border Management” (Frontex 2021).

Queirolo Palma (2021) affirms that borders act in different ways on different categories of subjects. For that reason, it is noteworthy to explain the independent but associated categories of legal subjects that can be found trying to surpass the fences of Ceuta and Melilla. The term migrant is not defined in international law, but a general description given by the International Organization for Migration (IOM 2019) is a person moving from its home within a State or across international borders, for a period of time or indefinitely for a variety of reasons. It is a general term to encompass all forms of movement, with subcategories of regular and irregular migrant, in vulnerable situations or smuggled, migrant worker and economic or climate migrant.

An asylum seeker is a person asking for international protection, whose request is yet to be decided by a State. "Not every asylum seeker will ultimately be recognized as a refugee, but every recognized refugee is initially an asylum seeker". (IOM 2019). The term refugee is universally defined under the 1951 Refugee Convention as a person:

> Owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it (UNHCR ND).

The European Court of Human Rights lays out provisions for the treatment of non-nationals in the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950. Article 4 of Protocol 4 states the prohibition of collective expulsion of aliens and Article 1 of Protocol 7 of said Convention determines the procedural safeguards when expelling foreigners. It establishes the rules for expulsion of aliens lawfully residing in the territory in paragraph 1, that can only be overlooked in cases of interest of public order or reasons of national security, according to paragraph 2 (ECHR ND).

Both Kingdoms of Spain and Morocco are State parties to the 1951 Refugee Convention and 1967 Protocol, under the framework of the UNHCR (United Nations High Commissioner for Refugees). Articles 31 (1)(2), 32 (1)(2) and 33 (1) establish the grounds for the treatment that must be given to refugees entering illegally in a country and also the prohibition of the practices of expulsion and *refoulement* of these refugees (UNHCR 2022).

> **Article 31** Refugees unlawfully in the country of refugee
> 1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.
> 2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.
> **Article 32** Expulsion
> 1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.
> 2. The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.
> **Article 33** Prohibition of expulsion or return ("*refoulement*")
> 1. No Contracting State shall expel or return ("*refouler*") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion (UNHCR 2022).

A case report from the European Center for Constitutional and Humans Rights (ECCHR 2020), called the border of Melilla and Morocco a "lawless zone of automatic expulsions". It affirmed that the Spanish authorities didn't have records of these, so a precise number wasn't possible to be given. It estimated them based on media reports at a minimum of one thousand summary deportations only in 2014. The practice is also known as hot returns or push backs, and under Spanish law it had no legal basis but based on internal protocol of Melilla's Guardia Civil to "automatically and summarily expel everyone who had not crossed the ad hoc 'operative border'" (ECCHR 2020 p. 2).

Organizations International Federation for Human Rights (FIDH), the World Organization against torture (OMCT[17]) and EuroMed Rights made a joint statement denouncing the violence perpetrated in the Spanish-Moroccan border. After 116 people were deported from Ceuta and two were killed in mass arrests in Morocco in September 2018, some in the group deported were criminally charged for irregular entry and stay in the courts of the country. The NGOs asked Morocco to incorporate with urgency a law on asylum and migration, as well as an integration policy to ensure the rights of migrants and refugees are fully and effectively respected in accordance with international law (FIDH 2018). Regarding unlawful entry and stay, the OHCHR and Global Migration Group (GMG) published principles and guidelines for the human rights protection of vulnerable migrants:

> Ensure that it is not a criminal offense to leave, enter or stay in a country irregularly, given that border crossing and the management of residence and work permits are administrative issues. Any administrative sanctions applied to irregular entry should be proportionate, necessary and reasonable, and should never include the detention of children (OHCHR 2018).

The latest decision of the ECHR regarding the fences of either Melilla or Ceuta is found in the case of N.D. and N.T. v. Spain on February 13th 2020 (ECHR 2020). Two foreigners from Mali and Côte d'Ivoire respectively lodged applications alleging violations of article 3 - prohibition of torture - and article 13 - right to effective remedy in case of violation of the Convention. According to the facts of the case law, the plaintiffs attempted a crossing with 600 people on the fences of Melilla on August 13th 2014 during the night organized by smuggling networks.

Both applicants remained on top of the fences until the afternoon when they climbed down ladders with assistance of Spanish law-enforcement officials. They were subsequently returned to Moroccan authorities in handcuffs, allegedly without possibility of identification, explaining their personal circumstances or assistance by interpreters and lawyers, as established in the royal decree n. 557/2011, article 23. Ultimately, the Court unanimously ruled that there had been no violations of Article 4 of Protocol 4 to the Convention and no violation of Article 13 of Convention of the Convention combined with Article 4 of Protocol 4 (ECHR 2020).

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[17] *Fédération internationale pour les droits humains* and *Organisation mondiale contre la torture*.

The European Union has established different agreements regarding migration with neighboring States in a policy of externalization of the border management (Ruiz Benedicto, Brunet 2020). The outsourcing of the migration issue to third countries can be seen in the agreements signed with the governments of Libya and Turkey and the financial aid provided to these States (Wihtol de Wenden 2021). Following, an overview of the agreements signed between Spain and the EU with Morocco. The Kingdoms of Spain and Morocco signed a Treaty of Friendship, Good-neighborliness and Cooperation in July 1991 (UN 1993). As a consequence, later in February 1992, the two countries signed an Agreement on the Movement of People, the Transit and the Readmission of Foreigners who have entered illegally.

Chapter I of the agreement gives the provisions for readmission of third-country nationals while chapter II establishes the grounds for the transit for expulsion of illegally entering foreigners. Article 9 of chapter III establishes that the requesting State is responsible for the costs of transport for entry into the requested State and for arriving at the destination country. A Spanish-Moroccan Joint Committee was therefore put in place to monitor the implementation and resolve arising issues in article 11 (Boletín Oficial del Estado 1992). Also, the agreement would be provisionally applied from its signature date but would come into force 30 days after both contracting parties notified each other of the fulfillment of the constitutional requirements. Then it would be valid for a period of three years after which the parties would renew it on the basis of a tacit agreement. The Readmission Agreement however only came into force on October 21st 2012 (Boletín Oficial del Estado 2012).

Also on the basis of the 1991 Agreement, both countries signed a Convention on Cooperation in the Fight against Crime in February 2019 to be enacted from April 2022. Article 1.2 (f) estates that one of the areas of cooperation against criminal activies will be trafficking in human beings and illegal immigration (Statewatch 2022). Different associations have denounced the problematic association between actual crimes such as human trafficking and irregular migration, which alone cannot be considered a crime in EU law[18] (footnote). In what they called an ambiguous and imprecise wording, migration is put in a logic of securitization and therefore the agreement could lead to numerous rights violations at the borders (Migreurop 2022).

[18] ECJ, 28 April 2011, C-61/11, Hassen El Dridi alias Soufi Karim. Available at: https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62011CJ0061 [accessed: 10 June 2022].

The European Union and Morocco issued a Joint Declaration in June 2019 laying the grounds for a Euro-Moroccan partnership for shared prosperity divided into four structural areas and two horizontal fields for targeted operational measures, one of which regarding cooperation in mobility and migration. Bilateral consultations building from the 2013 Mobility Partnership on "an approach that is comprehensive, humane and respectful of human rights, and envisages concerted action to deal with the root causes of irregular migration" (European Council 2019). For preventing and fighting against irregular migration, the countries also committed to intensifying the management of land and sea borders.

A mandate has been established since 2000 to negotiate an agreement of readmission with the Kingdom of Morocco, since it is one of the main countries for transit and of origin to the EU. Answering the Romanian MEP Traian Băsescu, Ms. Johansson affirmed on behalf of the Commission that between 2003 and 2010 fifteen rounds of negotiations had taken place, when negotiations stalled. She mentioned both the Mobility Partnership and the Joint Declaration from the previous paragraph as giving new impetus to the EU-Moroccan partnership. Finally, she replied that the EU was interested in deepening "the migration dialogue in all strands along the priorities set in the EU-Morocco Joint Declaration", with readmission and facilitating visas as objectives (European Parliament 2020).

According to Taddele Maru (2021), in the context of past and present agreements between EU and Africa, there is a diplomatic and financial power asymmetry. Said European asymmetrical concencentration of power leads to pressure for policies and partnerships that prioritize the interests of Europe above the African ones. In that sense, "Africa's migration policy-making has been significantly informed, influenced, and shaped by the EU's employment of a mix of persuasive and coercive diplomatic and financial measures" (Taddele Maru 2021, p. 23).

To make the situation in the border and between the countries more tense and complex, Morocco claims the Spanish-controlled northern territories over the past decades in international fora such as the United Nations and agreements signed with Spain and the EU/EC. Indeed, upon signing a cooperation agreement with the European Community in May 1988, Morocco added a memorandum saying the accord did not entail recognition of Ceuta and Melilla’s situation. It did so considering that before

European arrivals, the two cities were important Islamic cities, the first of the Islamic state in Western North Africa and since 788 ruled by Moroccan sovereigns. Rabat argues that the towns for many years used to have the same colonial status as Morocco itself had before 1956 (Gold 2000).

The Gibraltar Strait, along with the Suez Canal are the main trade sea routes to and from the Mediterranean Sea. The Strait is a vital zone in strategic terms as well as in security, trade and migration for all three countries - Spain, Morocco and the United Kingdom - and the international community. As such, according to the United Nations Convention on the Law of the Sea (UNCLOS 1982), User and Bordering States of the Strait have obligations and rights set out in Part III of the provisions, for example no hampering and no suspension of transit passage (article 44). Saddiki (2017), Cherkasova (2017) and Gold (2000) argue that there is a direct connection between the status of Ceuta and Melilla as part of Spain and that of Gibraltar. It is officially part of the United Kingdom, but Spain has consistently contested it for territorial reintegration since the 1960s.

If a positive outcome was reached by Spain on Gibraltar, it is said (Gold 2000) that Spain wouldn’t be able to hold both sides of the Gibraltar Strait in the eastern extremity as this could have serious impacts on global trade and the international community has direct interests in the region. Indeed, Spain's geographical claims of proximity with Gibraltar are also arguments used by Morocco. In fact, Rabat's claims to the enclaves and other Spanish territories in northern Africa are strongly reliant on the situation of Gibraltar. However, Spain never accepted that a resolution on Gibraltar would mean transfering the sovereignty of Melilla and Ceuta (Gold 2000).

In January 1975, Morocco requested the inclusion of Ceuta and Melilla, the Peñones and the Islas Chafarinas in the UN's list of Non-Self-Governing Territories. According to Jaime de Piniés y Rubio (2002), former ambassador of Spain, Morocco wanted to pressure Madrid on the question of Western Sahara. The New York Times (1978) reported that King Hassan of Morocco had "toned down" the claims for Melilla and Ceuta for Spain's backing in the annexation of former Spanish Sahara in 1975. Despite continuous pleas by Rabat, Ceuta, Melilla and other Spanish territories in northern Africa were never added to the list while Gibraltar has been since 1946 and the

Western Sahara[19] since 1963, the only ones remaining in Europe and Africa (UN 2022b).

[19] After Spain handed control of Western Sahara to Morocco and Mauritania, Algeria backed the Polisario movement and the rights of self-determination for the Sahrawi people. Since 1975, tensions between Morocco and Algeria have impacted the region (See Dworkin, Anthony (2022). North African standoff: How the Western Sahara conflict is fuelling new tensions between Morocco and Algeria. European Council on Foreign Relations. Available at: https://ecfr.eu/publication/north-african-standoff-how-the-western-sahara-conflict-is-fuelling-new-tensions-between-morocco-and-algeria/ [accessed 3 June 2022].

4 Final considerations and conclusions

Historically, dynasties, kingdoms and nations have built walls in their border for a multitude of reasons. However, the multidimensional character of border walls and fences seen in modern days indicates that States may use this intricate system of land, maritime and virtual walls for different purposes than those officially stated. As put by Cohen (2012 p. 1), wall building has long been used as "a tool to regulate - or attempt to regulate - human passage and the defense of territory". The idea of a borderless world envisioned after the fall of the Berlin Wall was not materialized as each year more walls are erected in the world, specially in the aftermath of security and migration crises.

Ehud Barak (2017), former Prime Minister of Israel between 1999 and 2000, referred in many occasions to the country as being in a situation of a villa in the jungle. Indeed, the Jewish State is surrounded entirely by muslim countries, with whom it waged different numerous wars since its official recognition in May 14th 1948. The 1967 Six-Day War with Egypt and Syria, the conflict with Egypt starting a month after in the "War of Attrition", the Yom Kippur War, again with Syria and Egypt, but this time helped by many Arab countries and with Soviet and US interference, different invasions of Lebanon[20], the two Palestinian intifadas and more recently, the 2006 Lebanon War and several confrontations with Hamas and Lebanon's Hezbollah; Those are all the main conflicts Israel was involved in the past decadas, many of which resulted in military and diplomatic dispute of territories (CNN 2013).

From its inception, the Green Line was involved with territorial disputes. It was a direct result of the Armistice talks of 1949, when Israel received 75% of Palestine; it added almost one third more land than the State had before the Arab invasion (CNN 2013). The Six-Day War ultimately ended with Israel occupying more Palestinian territories, including the West Bank, East Jerusalem, locations of the wall of the present study, and the Gaza Strip, where it remained for 38 years. Cohen (2006 p. 685) affirmed that the separations of towns, villages, families and people from their farms, schools and jobs represent "a visible and acute disruption of normal life".

[20] One resulted in the emergence of Hezbollah, a fundamentalist Shiite Muslim militant group (CNN 2013).

> At the site of struggle, the surface of the fence-as-canvas comes to tell a unique story. Each fence has a style, an identifiable aesthetic. In Palestine: splatterings of paint in red, green, black and blue; scrawls of what is sometimes impossible to say out loud in public, testified here in Arabic, Hebrew, English, Spanish... These walls can talk (Feigenbaum 2010 p. 127).

When the Israeli government drew the maps for the construction, it took into account the settlements and territories acquired in 1967, beyond the Green Line. The West Bank Wall is particularly important in the Middle East region given that "whatever its length, the wall is sure to play a role in the tangled process of territorial negotiation related to resolution of the conflict as a whole" (Cohen 2006 p. 685). Shlaim (2014) argues that the building of the wall attested that the Israelis were abandoning the two-State solution. Israel's government's sole repeatedly stated purpose for the barrier is to serve as "a temporary structure providing security" (Saddiki 2015), however it has been 20 years since the beginning of its construction.

> Even if we accept the claim that physical separation between Palestinians and Israel enhances security, then the government's plan for the fence, with a route designed with settlement goals in mind, in fact sacrificed its civilians' safety, as well as the safety of the security forces stationed along the fence, in pursuit of a political goal (Sfard 2018 p. 512).

In the case of Ceuta and Melilla, the fences were erected after the entry of Spain into the European Union and the Schengen Area. Madrid was under pressure to better control the border and the migration flows of the only EU territories in Africa. The daily contact between the peoples of the two continents in the enclaves comes by two forms: either by the supply of labor from two neighboring Moroccan cities that have a special regime of entry, or when the fences are contested by migrants and asylum-seekers. The physical and virtual border walls are a symbol of a division that is rooted in centuries of asymmetrical relationship.

Morocco can be said to hold the gateways of the Western Mediterranean route, which confers bargaining power to the country. A recent diplomatic crisis in May 2021 took place when between 8.000 (Bennis 2021) and 12.000 (NY Times 2021) migrants entered Ceuta in just two days by either swimming around the fences or using inflatables. In Madrid, the situation was perceived as Rabat was using migration as an "act of blackmail towards Spain", following reports and footage where Moroccan

authorities would have relaxed border controls and were allowing passage to migrants (Sundberg Diez 2021; Bennis 2021; CNBC 2021).

The migration and border management and control, a shared competence between EU and MS, is outsourced to third countries. The transfer of part of its responsibilities to neighboring States usually comes with a *quid pro quo* in the form of agreements, funding and financial aid. In doing so, it replays the dynamics of pre-1945 but in a post-colonialist context. Morocco's violations of international law and human rights, reported and denounced by many international organizations, are committed at the borders of the enclaves in favor of an EU policy, not for its own interests. Therefore, it is arguable that the European Union shares responsibility over the unlawful infringements in the so called safe third countries.

The Kingdom of Spain and the European Union have both signed agreements with the Kingdom of Morocco in order to curb migration. It is said that even if a number of migrants are still entering Spain, the country is still satisfied with the results of its fences and relations with its southern neighbor. Numerous NGOs have come forth denouncing violations of human rights in the borders and especially in the fences of Ceuta and Melilla. Said violations regarded, as seen, both the countries of Spain and Morocco. Considering the European funds provided to the African country in order to prevent migration and the advantages the EU and Madrid enjoy from the agreements, it is arguable that both State and Union should also be held accountable for the violations committed by Morocco in their name.

While Morocco has signed different agreements regarding migration and cooperation with Spain and the European Union, it is yet to sign a comprehensive readmission agreement, to which the Commission holds a negotiatory mandate since 2000. The EU stated that it wanted to deepen the migration dialogue with Morocco in 2020 (European Parliament 2020). However, as it was seen in 3.1, in table II, regarding the applications for Schengen visas done in Spanish consulates in Morocco denied in 2020, Tetouan, Tanger and Nador - the three Consulates close to Ceuta and Melilla - had the highest levels of rejection for applicants. There exists three different categories of migrants - refugees, asylum-seekers and economic migrants -, and to each different arrangements of international law are applicable that were addressed in 3.2.

The role of colonization still influences the relations between States in a post-colonial world. As argued by Mehari Taddele (2021), migration is used by African States and leaders in order to gain negotiating diplomatic leverage and to secure financial aid. Parallels can be drawn between the Moroccan crisis of 2021 and the case of Belarus applying pressure on the EU by means of migratory influxes later that year. In light of such events, the question regarding the effectiveness of the European Union's outsourcing of the migration issue is brought forth, as well as considerations of the vulnerability of the bloc.

Spain is insistent that Ceuta and Melilla are integral part of its territory, even when it claims Gibraltar. As seen by the Schengen Agreement signed by Spain, the cities have a different management for the free movement of people in the Schengen area, considering residents of two Moroccan cities have free passage to provide labor force. In fact, both enclaves cannot survive without the daily interactions with the African neighbors. As much as Spain wants to hold territories in Africa, it shows willingness to interact with Africa only on the basis of a colonial hierarchy, either by only allowing the people of Tetouan and Nador working hours or its diplomatic relations with offers of funding and aid.

The cases of Israel with its West Bank Wall and those of Spain, with Ceuta and Melilla in the European Union were chosen for the present study for different reasons. As it was seen, the different sets of walls and fences were constructed in Israel and Spain with allegedly different rationales. While a surge of terrorist attacks in the second Intifada after 2000 was used for grounds to the envisaged 700 km Israeli wall isolating the West Bank and East Jerusalem, an increasing flow of migrants and asylum-seeekers in the two Spanish enclaves and the pressure to control it by the European Union were part of the official rationale used by Spain.

The international community, in general, has already recognized the unlawfulness of the West Bank Wall as the border between Israel and Palestine and condemned the annexation of the territories where it passes. In contrast, Ceuta and Melilla have been officially a part of Spain for centuries. However, Morocco still claims on a variety of geographical, historical and post-colonial grounds that the two autonomous cities are part of its territory. It was said that Morocco uses the status of both Melilla and Ceuta, as a way of bargaining either the territories of the Western

Sahara or Gibraltar. As the situation in Gibraltar doesn't evolve for Spanish claims, it is reasonable to assume that the situation of the enclaves won't change either.

The International Court of Justice issued a ruling in 2004 that was later adopted by a resolution in the General Assembly. The Court ruled the walls built by Israel illegal, as they encapsulate territories beyond the established Green Line from the 1949 Armistice. The State was ordered to bring the barriers down, but never did so, in fact, it continued expanding construction. In that sense, international law and its highest Court cannot seem to match up with State sovereignty. The fences of Melilla and Ceuta, on the other hand, were never deemed illegal neither by International nor European Courts.

While the Palestine Authority and its people denounce the violations of the border walls erected by Israel, Morocco doesn't contest it, in fact, it helps in its surveillance and control. However, Moroccans and people of other African nationalities have gone to court over the question of Melilla and Ceuta's fences. In aiding the EU border management, Morocco has even erected its own fences complementing the Spanish ones, not to serve its own purposes, but rather the interests of the European Union and its Member States Mehari Taddele (2021).

However many differences can be found between the border barriers of Ceuta, the West Bank and Melilla, they all stand as symbols of division, much like the wall that separated Berlin for 28 years. In fact, they are only a physical representation of the separation that was already there before. Palestinians and Israelis, Moroccan and Spanish, christians, muslims and jewishes, Africa and the European Union, different families, different peoples divided by concrete and barbed wire. Both territorial disputes begin in the context of post-1945 and under the framework of the United Nations, with the partition of Palestine and the decolonization promoted by the UN after World War II.

In the case of Israel, it was discussed that the country profits from its relations with the United States, as they have continuously backed Israeli policies in the UN General Assembly and in the Security Council, the last with its veto power. As the UNSC is the only body able to pass binding resolutions, the repeated US vetoes undermine the possibility of a resolution and the full respect for human rights. The same can be said by the case of Spain, backed by another political and economical giant, the

European Union. When Spain establishes relations with Morocco, it ultimately also represents the EU.

Regarding the questions and hypotheses formulated and laid in the introduction chapter, after discussions of the following two chapters, conclusions can be taken. Firstly, on the research question: "*Are Israel and Spain using border walls and fences for different reasons other than those officially stated?"*, Israel has always claimed that the wall was meant to be temporary and that it was constructed for security reasons. Nevertheless, on its sinuous path, the wall has absorbed large portions of Palestinian land zigzaging on the West Bank, not part of the official governmental narrative. This also is applicable to the first hypothesis, as factually the design of the wall was used to seize, maintain and control territory.

As for the second hypothesis, as it has been 18 years since the International Court of Justice issued its first ruling on the illegality of the wall and it still stands on the West Bank, it is possible to assert that international law falls short against the will of a sovereign State. This legal insufficiency is related, as was seen, to the veto power the United States, Israel's closest ally, enjoys in the Security Council of the United Nations.

Concerning Ceuta and Melilla, they are officially recognized as part of Spain even with Moroccan claims. Spain is a former colonial power, conquering the enclaves centuries ago. Therefore, it is not possible to assert that the pair of fences was used to seize disputed territory. However, considering that Morocco maintains its position on the enclaves and since they have a very peculiar arrangement under EU and Schengen and are not under NATO's protection, that attest to their paradoxical singularity, Spain is the sole responsible for the security of the enclaves. In that sense, constructing the fences in the borders with Morocco was used to curb migration, but the rationale of maintaining and controlling territory can also be noted.

Under the European Union framework, Commission President von der Leyen affirmed that there would be no funding of walls and fences with EU money. However, the fact that the barriers of Melilla and Ceuta were partially built with money from the European Community and that the EU doesn't condemn wall building in the shared competence of border management weaken its stance. Several human rights NGOs have spoken of the problematic of the fences, but no international law cases have ruled against them, as was the case of the West Bank Wall.

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