THE POLITICS OF BORDERS AND THE BORDERS OF POLITICS:
SOVEREIGNTY AND AUTONOMY AROUND ISRAEL’S HUMAN RIGHTS
ABUSES IN THE SEPARATION BARRIER PROJECT

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This article takes issue with the “weak state” and “hollowing out of the state” theses, which appear in recent literatures dealing with globalization. In order to analyze the nation state’s contention with various actors concerning human rights and other issues, a conceptual distinction is suggested between state autonomy and capacity—defined as the state’s ability to rationally posit objectives and to realize them—and state sovereignty, defined as the symbolic and discursive basis of the state’s legitimate rule. Based on the constructivist perspective, which emphasizes the intersubjective character of the social world, and the role of knowledge and interpretation in any social conflict, we present three cases of objections to Israel’s construction of a separation barrier on occupied Palestinian territories. These three cases exemplify the importance of the conceptual distinction between autonomy-capacity and sovereignty as two dimensions of domination and reveal a situation in which political struggles that effectively reduce state autonomy may actually increase its sovereignty.

While the history of mankind has witnessed various forms of domination rising and falling, Max Weber’s (1968: 37) postulate that “a willingness to submit to an order […] always implies a belief in the legitimate authority of the source imposing it” seems to capture a profound and enduring principle of political life. When belief in the legitimate authority is related to modern nation states, sovereignty is usually the term that represents supreme authority. For centuries, individual states, as well as the society of states, succeeded in presenting state sovereignty as undeniable, even though attempts to undermine states’ rule were a common fixture of world politics. ¹ With globalization, however, many claim that such a presentation has become more problematic, with more frequent “provocations” directed towards the state’s rule from below and above. These provocations are regarded as part of a process of institutional change, powerful enough to undermine states’ rule and sovereignty and to hollow out its very structure (Camilleri 1990; Rhodes 1994; Mastanduno 1995; Thompson 1995; Sassen 1996; Castells 1997; Strange 2000).

Unsurprisingly, the weak-state hypothesis invites objections, with the argument that the forces active in the constitution of the state system are still at work (Anderson, Brook, and Cochrane 1995; Meyer 1995; Wolf 2001; Hirst 2002), and that nation states are in fact the principal agents of globalization itself (Barrow 2005). Still, few would deny that under the dictates of globalization and in the so-called late, second, reflexive, or liquid modernity (e.g., Bauman 2000; Beck, Bonss, and Lau 2003) states are exposed more than ever before to attacks of local and global collective actors concerning their rule and basis of legitimacy.

The process of institutionalization of universal human rights is often regarded as a challenge to the state’s rule (Donnelly 1986; Forsthe 2000). This concept has been institutionalized to a remarkable degree in the sixty years that have passed since the Universal Declaration of Human Rights. It is now an integral part of the international discourse, pivotal

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in international laws, conventions, treaties, and declarations, and is the raison d'être for the activity of many international and transnational organizations and associations. This remarkable institutional shift is often described as the emergence of a “human-rights regime” in which—if we follow the “spiral model” of Risse, Ropp, and Sikkink (1999)—a growing interconnectedness of global-local groups and organizations leads to an expansion of international supervision on states that abuse human rights and that, in turn, these states gradually adopt the norms of the “regime.” Scholars often point to examples such as the international military interventions in Kosovo, Haiti, Bosnia, and East Timor as evidence to the effectiveness of the human rights regime (Barkin 1998; Donnelly 2003: 249-51).

However, even if such examples now occur with greater frequency, they are still rare (Falk 2000). Ample studies have shown that many states are powerful enough to be involved in massive abuses of human rights, while global institutions, including the United Nations, lack the will and capacity to stop these states (Ryan 2000; Tarrow 2000; Ben-Eliezer and Kemp 2008). Whether one sees the half-full or half-empty glass, the question remains: how do states deal with the new international human rights regime? Do they accept the developing norms? Or inversely, can they simply reject them? What influence do these norms have upon their rule? While one can be sympathetic with the abundant activity of transnational movements and human rights organizations, when it comes to evaluating their overall effect on nation-state domination, we are somewhat skeptical. Tarrow (2000: 197) reminds us that “modern states developed in a strategic dialogue with social movements.” He then asks: “why would states be any more supine today when faced by transnational diffusion, exchange, and advocacy networks than they were against domestic movements in the late nineteenth or early twentieth centuries?” With that question in mind, our study reveals how states can cope with political and cultural challenges even under conditions of globalization and late modernity.

In the following, we deal with these questions through the presentation of Israel’s massive and ambitious project of building a separation barrier on the occupied Palestinian territory. Mostly a network of fences and trenches, the barrier was designed to prevent vehicles and pedestrians from crossing to the Israeli side. Five percent of it consists of concrete walls, and here and there are gates and roadblocks. The barrier, called a “fence” by its supporters and a “wall” by its opponents, was planned to run 500 miles in length. Two thirds of it has been gradually erected within Palestinian territory, violating numerous human rights conventions as well as the rights of individuals, creating antagonism and strife, and leading to political mobilization of opposition to the barrier not only by Palestinians, but also by Israeli groups and associations, as well as by transnational peace movements and international human rights organizations. By examining the dynamics of contention between the state of Israel and these various oppositions to the separation barrier, we try to extend our understanding of the ways contemporary nation states work to secure their domination.

SEPARATING SOVEREIGNTY FROM AUTONOMY AND CAPACITY

Neorealism is a theory of international relations that assumes a world system composed of formally equal sovereign states that compete for survival under the conditions of unequal power distribution (Waltz 1979). In this perspective, world politics is seen as an atomistic universe of self-regarding units (states) that are responsible largely, if not solely, for realizing their material interests and for preserving their security needs (Keohane 1986). The neorealist perspective greatly influenced the theories of the state in sociology, which examined states, mainly in the 1980s, through the lens of rationality. The terms which were commonly used then were state autonomy and capacity, pointing to decision-making processes and helping researchers to evaluate states’ ability to posit goals and to achieve them (Tilly 1975, Nordlinger 1981; Skocpol 1985; Mann 1988, Migdal 1988; Rothchild and Chazan 1988). For years, this mainstream approach invoked criteria of rationalism, utilitarianism, and instrument-
talism to rank states as “stronger” or “weaker,” ignoring almost completely sovereignty, which was usually regarded as given and fixed (Ruggie 1998: 4-11; Hopf 1998; Biersteker and Weber 1996). Social constructivism, however, presents a more interpretative approach, holding that sovereignty is three things: a social construct; a variable rather than a constant; and an outcome of rival interpretations and conflicts between various political actors, including the state itself, concerning the basis and the meaning of a state’s supreme position (Biersteker and Weber 1996; Clark 1999: 81-84; Wendt 1998; Copeland 2000; Krasner 1999).

The struggle over sovereignty includes normative questions concerning the relations between state and society, which can be seen more explicitly and frequently in the era of globalization and late modernity. Barkin and Cronin (1994) claimed that sovereignty is constructed and reconstructed by marking two dividing lines. The first of these is the divide between the state’s territory and the outside world—the internal affairs/international relations distinction—which may be called statehood sovereignty. The other division line is between a national group and other communities inside and outside the borders of the states—the us/them distinction—that may be called nationhood sovereignty. These two division lines conjoin in the claim for “one nation, one state!” so typical of modern politics.

Indeed, it is important to acknowledge, following Bourdieu (1999: 63), that the state “possesses the means of imposition and inculcation of the durable principle of vision and division that conforms to its own structure.” Therefore, in order to understand the politics of states, one should consider—alongside their coercive force and infrastructure—the monopolization of symbolic power. Thus, by treating autonomy/capacity and sovereignty as representing, at least analytically, two distinct political dimensions, we offer a more comprehensive model for understanding the secret of state domination. Moreover, with the increase in challenges to both state autonomy and sovereignty in this era of interconnectedness and reflexivity, an interesting relationship between the two political dimensions is exposed. Based on our study, we argue that when states are involved in certain national projects, such as the Israeli separation barrier, the rational question of positing goals and achieving them may becomes less important than the symbolic meaning of the project. Thus, when sovereignty is at stake, a state may sometimes even lose some of its autonomy, as long as its sovereignty remains intact. This type of consideration resembles a chessboard, on which protecting the symbols of governance is the ultimate goal that can be achieved sometimes by a strategic sacrifice of power.

This empirical discussion is divided into three parts, each of which presents a distinctive dynamic of contention between the state and opposition to the barrier. We open with the International Court of Justice (ICJ) in The Hague, and end with the “antiwall movement.” Both delegitimized the separation barrier as a whole and set a challenge to state sovereignty. In between, we present a distinctively different form of resistance in which activists used more moderate and instrumental means to negotiate with the state in order to change the barrier’s route and reduce human rights abuse. To grasp the specific frames and modes of action of the objectors to the Israeli separation barrier and of the state’s various responses to these challenges, we gathered ethnographic materials through observation of the demonstrations of the antiwall movement and in Israeli High Court of Justice trials, and interviewed activists and lawyers. We also collected numerous documents, including press releases, calls for action, human rights reports, web pages, movies and photos, newspaper reports, and legal documents. Then, through the delicate work of interpretation of these documents and notes, we identified patterns in the dynamics of contention between the state of Israel and the various opponents to the separation barrier project.

THE INTERNATIONAL COURT OF JUSTICE IN THE HAGUE

During the first two years of the Al-Aqsa Intifada, the second Palestinian uprising that began in September 2000, terrorist attacks occurred in every large city in Israel and created fear,
devastation, and a high rate of casualties. The ability of the state to protect its citizens, as well as to oppress the Palestinian upheaval, came into doubt. Soon a demand for separation by a barrier spread in the Israeli public and several associations were formed to promote that agenda. The government was initially reluctant to embrace the idea of a separation barrier. The difficulty was rooted in the possibility that such a project might turn out to be not a temporary act of defense, but an actual border for a new Palestinian state. This two-state scenario stood at the center of contentions within Israeli society since the occupation of the West Bank and the Gaza strip in 1967 (Lustick 1993), and most intensively during and after the Oslo Agreements, signed in 1993-1994 by both Israelis and Palestinians. In the eyes of Prime Minister Sharon, who was elected in February 2001, a separation barrier was regarded as a compromise with the Palestinians, and a step that would drastically harm the Israeli settlements in the occupied territories. However, as the army and government could not suppress the Palestinian attacks, public criticism became harsh and the government surrendered to the pressures and decided, in June 2002, to construct a barrier that would separate Israel from the occupied territories in the West Bank.

Although the barrier was officially declared a temporary act of defense, its construction did more than that. The barrier created a clear separation between “us” and “them” as it was designed to be built on Palestinian lands, far from the pre-1967 internationally recognized border (the Green Line), and to include as many Jewish settlers on the Israeli side of the barrier as possible. Furthermore, by putting the “security needs” of the Israeli citizens as the ultimate moral yardstick, the separation barrier project was a means by which the Israeli government could reestablish internal legitimacy. Indeed, the barrier was a major national project, too expensive to be temporary, which for the first time in years united the vast majority of the Israeli-Jewish populations. Did the barrier ultimately result in increased Israeli security, in the form of reduced levels of violence? Whatever the answer to this question may be, the separation barrier project was a sovereignty-claiming act: its construction was a unilateral step toward creating a new eastern borderer, and emphasized the commitment of the state (perceived in security terms) for the national community. Following Brubaker’s conceptualization, we argue that by deciding to build the separation barrier, Israel reconstructed itself in a time of crisis, both as a “territorial organization” and as an exclusive “membership organization” (Brubaker 1992: chapter 1).

With such a political agenda, it did not take long before the decision to build the separation barrier created significant antagonism and strife. The barrier necessitated the destruction of many houses and wells, and the uprooting of countless olive trees, which are a major source of income for many Palestinians in the West Bank. Much Palestinian agricultural land located along the barrier fell on account of the construction on the “Israeli side.” With this confiscation of more than 20 percent of the West Bank, human rights abuses were enormous (e.g. Human Rights Watch 2004; United Nations Office for the Coordination of Humanitarian Affairs 2005). A quarter of a million Palestinians—not including the “Jerusalem Wrap,” which was already annexed by Israel in 1967—were to remain on the “Israeli side” of the barrier, which assailed the most daily and ordinary aspects of their lives, enclosing them in huge prison-like enclaves with every gate, every barbed-wire fence, every police officer, soldier or guard becoming the emblem of Israel’s supremacy and domination.

Human rights are often subordinated to the competing values of statehood and national sovereignty, which appear through terms such as “national security,” “security needs,” and recently also “the global war against terror.” In Israel in particular, sovereignty, which puts security reasons at its center, became the state’s raison d’être from the outset (Ben-Eliezer 1998). Still, in the late-modern era, the abuse of Palestinian human rights could not pass without resistance to the barrier and its route. On July 9, 2004, the International Court of Justice in The Hague (henceforward ICJ) ruled by fourteen votes to one that “the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated regime, are contrary to
international law” (ICJ 2004: 69) The court also decided that Israel was under an obligation to halt construction of the wall, to dismantle the structure that was already built, and to make reparation for all damage. Using the Fourth Geneva Convention, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, relevant human rights and humanitarian laws, as well as the right to Freedom of Movement, Work, Education, etc., the ICJ challenged Israel’s sovereignty. By thirteen votes to two, the court said: “All States are under an obligation not to recognize the illegal situation resulting from the construction of the wall,” and “all State parties to the Fourth Geneva Convention […] have in addition the obligation to ensure compliance by Israel with international humanitarian law as embodied in that Convention.” As if to ensure the message was not lost, the ICJ also said, by fourteen votes to one, that “The United Nations, and especially the General Assembly and the Security Council, should consider what further action is required to bring to an end the illegal situation” (ICJ 2004: 70).

The ICJ decision was, first and foremost, a result of grassroots politics of international and Palestinian human rights associations, combined with the work and reports of U.N. delegations and representatives, and diplomatic acts by a coalition of states and the Palestinian National Authority that was aimed at reducing Israel’s autonomy to construct the barrier on Palestinian lands. However, by taking this issue to the international court, which was convened despite Israel’s formal and informal attempts to prevent it, state sovereignty was brought to the fore. For the Israeli authorities, the international legal proceedings were perceived as an illegitimate intervention in national security issues. Although Israel officially refused to participate in the tribunal, outside the court, the Ministry of Foreign Affairs conducted an intensive countercampaign, together with many Israeli and Jewish associations. These events were not directed at influencing the court decision—which was already written and decided, albeit not published, according to a line that everybody could have foreseen—but were part of the process of reconstructing Israel’s sovereignty. The sovereignty practices included parades and ceremonies, displays, expositions, declarations, slogans, and flags. They even included shipping to The Hague the ruins of a bus that was exploded in a suicide attack, symbolizing not only the horror of terrorism but also Israel’s right and duty to protect its citizens (Israel Ministry of Foreign Affairs 2004; Haaretz 2004a).

In criticizing the way Israel used the separation barrier to annex territories, change the borderline, and abuse human rights, the ICJ opinion had potentially serious consequences. Therefore, Israel mobilized its efforts through diplomatic channels to protect its sovereignty. The state’s immediate goal was to convince as many of the “relevant countries,” a euphemism for the West, not to allow the U.N. bodies to use the Advisory Opinion as a basis for an effective international policy of direct intervention or sanctions against Israel. The diplomatic efforts indeed helped, and the court ruling did not materialize into a formal international policy. Besides the diplomacy behind closed doors, official speakers such as the Israeli President, the Foreign Minister, and the Justice Minister publicly announced that the barrier construction work would continue apace. “It is meant to protect the lives of the citizens of Israel,” Foreign Minister Shalom said. Likewise, Ra’an an Gissin, a senior advisor to Prime Minister Sharon, did not contain himself, saying: “I believe that after all the rancor dies, this resolution will find its place in the garbage can of history” (Haaretz 2004b). These statements were all declarations of sovereignty, because they delegitimized the court’s symbolic interference in Israel’s affairs, while its autonomy and capacity to construct the barrier were never really put at any risk.

To a certain degree, the International Court’s decision only strengthened the internal legitimacy of the state, because it was used by the Israeli leadership to create a sense of moral outrage within Israeli society. Two days after the end of the court proceedings in The Hague, a dreadful suicide bombing attack was perpetrated in Tel-Aviv, causing the death of a young woman and injuring 33 people. In a public response to this incident, Prime Minister Sharon said: “The sacred right to fight terror got a slap in the face by the [international] court.” The
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advisory opinion, he added, was biased, “supported by political considerations” (Israeli Prime Minister’s Office 2004). Such a declaration reflected the reinforcement of the sovereignty of the Israeli nation state, now appearing to most of its citizens and leaders not only as acting to protect them against the Palestinian terror, but also against a hostile (and even anti-Semitic in their view) global environment. Indeed, the nationalistic character of the campaign to delegitimate the ICJ decision was strengthened by the active support of international Jewish organizations such as The Anti-Defamation League (2004) and the Simon Weisenthal Center (2004). Thus, at least formally, the advisory opinion of the ICJ was responded to with a declaration and manifestation of sovereignty. However, as our next case shows, in the late-modern era, human rights norms are not easily disregarded, even by a nation state that bases its claim for sovereignty mainly on security reasoning.

THE BEIT SURIK AND ALFEI MENASHE CASES

Beit Surik and Mevasseret Zion (known simply as Mevasseret) are two localities, one Palestinian and one Israeli, which until 1967 were divided by the Green Line. Ironically, the occupation of the Palestinian territories created good-neighborly relations between the inhabitants on both sides, based mainly on the employment of cheap Palestinian labor in the Jewish town. When news of the planned barrier was published in January of 2004 it became clear that the barrier would cross the Green Line and be close to the houses of Beit Surik, confiscating a significant portion of its agricultural land that would remain on the Israeli side of the barrier. As a result, various Israeli Jews, residents of Mevasseret, decided to take some measures against the decision.8 The efforts were combined into a shared framing process that resulted in a campaign against the planned route of the barrier.9

Processes of framing always include negotiations and conflicts between activists (Benford and Snow 2000: 615). Creating a common language in Mevasseret was challenging because of the diverse political stances held by the activists. As the association reached a compromise, however, it became clear that they had created a framework completely different from the one that was expressed in the appeal to the international court in The Hague, challenging the idea that the barrier was built to realize Israel’s security needs. Practically, the collective frame of action in Mevasseret was based on two main themes: the first expressed concern that the confiscation of lands by the barrier would cause frustration among the residents of Beit Surik who may, then, become a threat to the residents of Mevasseret. Evidently, this argument was in line with the dominant discourse of the state, because it emphasized that the barrier’s mission was to provide security for Israeli citizens, and used that as a criterion for criticizing the quality of the proposed path. The other more dominant theme presented a sense of injustice toward the damage inflicted on the Palestinians by the barrier’s route, and argued for a moral obligation to help them as neighbors.10 As one resident of Mevasseret wrote in the local newspaper: “If we sit around and don’t act against what our representatives are doing to our neighbors, we will bear a collective and personal responsibility for a crime against humanity, which may happen near our houses” (Zeman Mevasseret 2004a).

The “injustice frame” is among the most common frames of grassroots political activities (Gamson 1992: 111-114; Benford and Snow 2000: 619). In the case of Mevasseret too, people were mobilized by a shared indignation about what they defined as an unjust policy. It is important, though, to discern the specific nuance of this “injustice frame,” the fact that the protestors’ argument rested not so much on a moral universal reasoning, but on the idea that the village of Beit Surik had a “clean record,” namely, no terrorist attacks had ever originated there.11 By using this argument, the protest enclosed itself in the state sovereignty discourse of “security reasons.” As for the fact that the local campaign against the barrier route was founded on fairly uncommon political cooperation between Israeli and Palestinian neigh-
boring communities, this was done in a relatively modest frame. The activists from *Mevasseret* restricted themselves to the mission of helping their neighbors to change a specific segment of the barrier and abstained from challenging the whole barrier project or showing support of the Palestinian national aspirations.12

The activists decided to channel their efforts to the legal sphere. Their decision to appeal to the Israeli High Court of Justice (henceforward HCJ), which is a state organ, was a symbolic act of accepting Israel’s sovereignty, while at the same time, an attempt to influence the state’s autonomy and capacity from within. In practice, the Israeli activists joined the appeal of the local council of *Beit Surik*, demanding changes in the barrier’s route. This right to appeal to the HCJ is also reserved for Palestinians living in the occupied territories. However, Palestinian appeals rarely succeed because the court tends to prioritize security arguments put forward as expert military opinion over human rights reasoning (Kretzmer 2002: 124; Barzilai 2004).13 In the *Beit Surik* case too, cases representing the security argument were presented in court, yet this time the court was surprised by security arguments from the side of the petitioners as well. Moreover, the activists from *Mevasseret* recruited several Israeli security experts to support the appeal.14

In the late-modern era, associations may attain a certain amount of influence by raising rational arguments asserted by experts and by making appeals to courts (Hulme and Edwards 1997; Chandler 2001). Israel displays the same feature of associations highly involved in civil society and politics (Ben-Eliezer 2003; Gordon 2005). The Israeli association that played a crucial role in the case of *Beit Surik* was the “Council for Peace and Security” (henceforward CPS), a moderate and prestigious association of former senior officers in the Israeli Defense Force and other security organizations, whose members believe that the Israeli-Palestinian conflict can be resolved peacefully with some concessions made by the Israeli side.15 The CPS, which joined as *amici curiae*, provided the petitioners with an affidavit in which it was argued that the planned route of the barrier in that area did not meet its security objectives. As security experts, representatives of the CPS even offered the court, together with an association of architects, an alternative route which, in their opinion, was more in accord with the Palestinians’ rights but did not compromise Israel’s security. Unsurprisingly, the IDF commander in the occupied territories replied with an opposing affidavit and sent his experts to argue for the route preferred by the state. The judges regarded the situation as a legitimate “disagreement between experts on security,” hence allowing human rights to play a greater role (HCJ 2056/04: clause 20).

On June 30, 2004, the HCJ ruled that sections of the barrier in the area of *Beit Surik*, more than 18 miles long, were illegal since they did not meet the principle of “proportionality.”16 The damage caused to the petitioners by the barrier, the court stated, “can be substantially decreased by an alternative route,” which would also safeguard the expected security benefits (HCJ 2056/04: clause 61). The decision was dramatic. For the first time since the beginning of the barrier construction in late 2002, an appeal against the route had been accepted. Moreover, the ruling represented a legal precedent and forced state authorities to reconsider the entire route, and to change other sections of the barrier in an effort to avoid the possibility of “disproportionate” human rights abuses. State autonomy was thus decreased by the court rule. Was sovereignty reduced as well?

The HCJ’s decision was handed down just a few days before the ICJ was scheduled to give its advisory opinion on the issue of the separation barrier to the United Nations General Assembly. We have doubts concerning the possibility that the Israeli court hoped that its relatively moderate verdict would influence the International Court’s decision. Naturally, ICJ decisions do not take days, but are prepared for months, their direction well known in advance and implied also by the questions the U.N. General Assembly asks the court to address. Still, the Israeli High Court of Justice’s ruling in the case of *Beit Surik* signaled Israel’s reconstructed sovereignty to the human rights regime, including the ICJ. According to this reconstructed sovereignty, only Israel has the right to decide on the appropriate balance
between national security and human rights in the territories under its control. The HCJ’s ruling contributed to the reconstruction of state sovereignty for several reasons. First, for the first time since the construction of the barrier had started, the highest Israeli legal institution produced a formal and widely publicized positive opinion on the whole project of the barrier, giving tremendous weight to the defense establishment. Secondly, the court decision, indirectly but practically, legitimized the idea of building the barrier mostly on Palestinian land (with certain alterations). Thirdly, the court accepted the state’s official claim that the barrier was not being built for any political purpose such as annexation of territories, establishing a permanent border for Israel, or satisfying settlements’ interests. And fourthly, Israel’s sovereignty now embodied an element that is central to the international legitimizing principles: international human rights norms. Reducing some of its autonomy by yielding to the pressures and changing the route of the barrier was thus a fair price for presenting Israel as a moral state.

Nevertheless, the HCJ decision was dramatic to a degree that some senior personnel within the IDF felt that it “slapped the system in the face.” Several primarily right-wing government ministers considered this ruling to be an illegitimate interference by the court in security issues and suggested passing a special law for the barrier that would bypass the HCJ and prevent it from interfering in the state decision (Haaretz 2004d). Yet, such ideas were never realized. On the contrary, the Israeli authorities emphasized their intention to meet the new standards set by the HCJ ruling and not those of the ICJ verdict. By adhering to the HCJ rule, the Israeli government was willing to sacrifice some autonomy, but in return state sovereignty was fortified. While the International Court of Justice ruling was labeled “political,” the politics of the state was legitimized as “legal” by the Israeli High Court of Justice. Human rights, therefore, were absorbed and adjusted to state sovereignty.

In the next months, following Prime Minister Sharon’s orders, Ministry of Defense personnel were kept busy day and night, and a new route was designed, this time with the HCJ’s ruling functioning as an ax hanging over the planners. The main line of the new planning— with the exception of the city of Jerusalem and its vicinity (the “Jerusalem Wrap”)—was to leave a bare minimum of Palestinians within the Israeli side of the barrier, so that their basic human rights would not be severely infringed. On February 20, 2005, the Israeli government approved a new route for the barrier (Israeli Prime Minister’s Office 2005). As a consequence, the annexed territory was reduced from about 20 percent of the West Bank to 8 percent. As for the Palestinian population, with the new path, the number of those who were captured between the Green Line and the barrier was drastically minimized from about 100,000 inhabitants to none (again, without counting Jerusalem and its vicinity).

In order to avoid any misunderstanding concerning the meaning of its Beit Surik verdict, more than a year later, on September 15, 2005, the HCJ ruled again in favor of Palestinian and Israeli petitioners against the barrier route, this time near the Palestinian city of Qalqilya in the so-called “Alfei Menashe ruling” (HCJ 7957/04). In between the two rulings—Beit Surik and Alfei Menashe—the HCJ ordered the Israeli government to present its position on the ICJ Advisory Opinion and its possible implications on new pending petitions. On February 23, 2005, the government submitted its response in a long report, which argued that: 1) the ICJ did not rule out the construction of a separation barrier inside the West Bank as such; 2) the ICJ objected to the barrier based on incomplete, inaccurate, and one-sided information; 3) legal reasoning made by the ICJ was not elaborated on, and therefore, cannot be relied on; and 4) the military necessity to construct the barrier did not get enough attention. Only then was the HCJ ready to deal with the Alfei Menashe case, to confront the ICJ, and to display Israel’s renewed sovereignty.

The Alfei Menashe ruling was given unanimously by a panel of nine Supreme Court justices who were convinced that the reason behind the decision to erect the barrier was security, namely to prevent infiltration of terrorists into Israel and into Israeli communities in the so-called Judea and Samaria (the West Bank). The court determined that constructing the
barrier on the Green Line would leave the Israeli settlement of Alfei Menashe on the eastern side of the barrier vulnerable to terrorist attacks, and that any route of the barrier must take into account the need to provide security to the Israeli residents in the West Bank. However, the court ordered the state to reconsider the existing route, and to examine the possibility of leaving all or some of the Palestinian villages on the “Palestinian” side of the barrier. The Alfei Menashe verdict was based, like that in Beit Surik, on the principle of proportionality, which enabled the court to grasp both ends of the stick. It upheld the state’s authority to build the barrier beyond the Green Line in order to protect Israeli civilians. In other words, the court continued to play a contributing role in the reconstruction of Israel’s sovereignty while somewhat limiting state autonomy.

Much like in the case of Beit Surik, both sides in the Alfei Menashe ruling saw the advantage of the verdict. Israeli Attorney Michael Sfard, who represented the Palestinian petitioners, said: “We are talking about a very brave verdict on the part of the High Court, which extracts Israel from the international imbroglio it has entered” (Haaretz 2005a).” On the other hand, Deputy Prime Minister Ehud Olmert said that “the High Court of Justice’s ruling on the separation fence route upholds the legality of building the fence beyond the Green Line” (Haaretz 2005b). Evidently, both sides were right. The Alfei Menashe verdict, however, was in fact more than just holding both ends of the stick. On the principle dimension, it was an answer to the ICJ at The Hague and its advisory opinion. The HCJ did convey its commitment to the international law and to the ICJ as the highest judicial authority for interpreting that law. However, by the same token, the Israeli court announced that the ICJ’s advisory opinion was based on insufficient factual basis, not res judicata, and did not obligate the Israeli High Court of Justice to determine that all segments of the barrier violate international law.

In sum, at a relatively low cost to state autonomy, using the tactics of proportionality, the HCJ sent a sharp message of sovereignty, directed outward and inward, according to which it is the state’s decision, advised only by its own judicial apparatus, how to weigh human rights and national security needs. Democratic states like Israel are unlikely to completely ignore criticism made by the human rights regime, since sovereignty depends on an international system of mutual recognition. Thus, in the case of the Israeli separation barrier, human rights were partially absorbed into the discourse of state institutions. Israel could then present itself as a sovereign power capable of making its own judgments, yet still be a normative member of the family of nations.

THE ANTIWALL MOVEMENT

The most prominent resistance to the separation barrier was expressed in the demonstrations of the antiwall movement (henceforward AWM). This was a network of small groups active throughout the Second Intifada, with Anarchists Against the Wall, a group of Israeli activists founded in late 2002, at its center. Within the AWM, Israeli activists collaborated with Palestinian villagers and international activists, mainly from North America and Western Europe, whose activity was coordinated by the International Solidarity Movement (ISM). In 2005-2006, most AWM protests took place every week near the village of Bil’in, close to the Palestinian city of Ramallah. The route of the separation barrier in the area of Bil’in left some 50 percent of the village’s land on the “Israeli” side, including cultivated fields and reserves for future building in the community. Almost every week the protests led to violent clashes with the Israeli soldiers and policemen. Formally, the Israeli security forces were there to prevent any interference with work on the barrier. Interestingly, however, some of these clashes happened on Friday noon, when there was no construction work in that area. Moreover, the clashes also occurred at sites where construction of the barrier had not yet started, and thus did not actually disrupt the construction work. At first sight, the clashes during antiwall demonstrations looked excessive, out of context, even weird, and could not be
explained by the *autonomy/capacity* criterion. A close examination of our field notes revealed how the violence was part of a noninstrumental, symbolic mode of action, which we explain by using the *sovereignty* criteria. Indeed, the presence of soldiers and police was above all symbolic and performative, as were their violent actions. On the one hand, it was the state’s way to show efforts aimed at protecting its citizens who were constantly exposed to terrorist attacks. On the other hand, it delineated and reaffirmed the nationalistic dividing line between “us” and “them” through the symbolic use of physical means. Israel thus reconstructed not only its presence as an omnipotent state, but its sovereignty as a *nation state* as well.

The resistance of the AWM to the ambitious Israeli project was no less symbolic than that of the state and was developed through a particular frame of action. The AWM’s declared objective was demonstrated by slogans such as “Stop the Wall.” However, its larger frame was more ambitious. Understanding that the practices of building such an immense barrier mainly on Palestinian territory meant the reconstruction of Israel’s sovereignty and superiority, and not just an act “to save lives” as the state authorities claimed, and noting that the barrier legitimized the separation between the two nations, the protests aimed at deconstructing Israel’s sovereignty.

A good starting point to describe the politics of deconstructing sovereignty is to present the way activists held the state itself accountable for constructing the barrier on Palestinian lands, rather than specific decision makers or political groups, such as the right-wing, or settlers, who had a major influence on the route of the barrier (Roth 2005). In numerous publications, and in the “calls for action” of all the groups involved in the protest, the Israeli official stance, which justified the barrier by using security reasons, was presented as a falsehood. The barrier’s real objective, it was claimed, was to set the eastern border of Israel, to annex Palestinian land, to include as many Jewish settlements in the “Israeli side” of the barrier as possible, and to continue the occupation by other means (e.g., Shalom Achsav 2005; Coalition of Women for Peace 2005; B’Tselem 2005). Nothing in the AWM’s frame and action demonstrated any desire to twist arms in the political game within the state system and its organs.

This kind of politics is common in the reflexive, late-modern era. It stems from substantial doubts about basic modern truths and certainties, which especially appear in new social movements’ offering counterhegemonic truths, and by calling on state leadership to reconsider the “politics of politics,” to use Ulrich Beck’s term (Beck 1997: 133). Among other things, this “politics of politics” was realized by the AWM’s specific patterns of cooperation developed by the Israeli activists, the Palestinian inhabitants, and international activists who came to the region from abroad. Thus, if the state reconstruction practices of sovereignty were intended to enhance cultural and political lines that would divide Israelis and Palestinians—“We Are Here, They Are There,” as Prime Minister Barak used to say—the antiwall activists were busy doing quite the opposite. Their patterns of cooperation, almost nonexistent in Israel previously, called into question the two fundamental binary divisions that are at the basis of nation states’ sovereignty: the ethnonational division into “us” and “them,” and the state division between an “internal” territorial unity and the world “outside.”

The blurring of the distinctions between Israelis and Palestinians in the AWM exposed, through action, an element of unity and mutuality, which stood in direct opposition to the Israeli nationalist discourse, as well as to the Palestinian nationalist project. Time after time in the AWM demonstrations, Israelis, Palestinians, and international activists did everything as one: together they marched dressed in symbolic costume, together they planted olive trees (symbolically replacing the uprooted trees), and together they wrestled with the soldiers. Quite often, when a Palestinian or an international demonstrator was arrested, Israeli activists tried to get arrested too, in order to make it hard for the Israeli security forces to mete out severe punishment methods reserved to non-Israelis. “The importance of the demonstrations,” said Jonathan Pollak, the nonformal leader of Anarchists Against the Wall, “is in their contribution to the transformation of the occupation to be ungovernable.”

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To a certain degree, these nonviolent methods of deconstructing Israel’s sovereignty proved efficient. More than once, senior IDF officers used the Israeli media to convey their frustration at the “operational difficulties” caused by the presence of Israeli citizens in the demonstrations along the barrier route (e.g. Haaretz 2005c). Actually, however, the activists did not impose any real difficulty on the construction of the barrier itself, but instead created a symbolic challenge to an army used to acting through a clear distinction between “friends” and “foes.” The IDF’s sovereignty practices—aimed at (re)marking the state as a supreme entity above and beyond any other societal organization—frequently had horrendous results. It caused the death of several Palestinian demonstrators, and it led to the injury of hundreds (e.g. Haaretz 2004e). On one occasion, soldiers shot a young Israeli, Gil Naamati, when he and other antiwall activists strenuously shook one of the barrier’s gates (e.g. Maariv 2003). The army argued self-defense and a report of its inspection committee described a nightmare scenario that could have happened if the “anarchists” would have ruined the fence (Yediot Achronot 2004). However, from videos filmed at the event it is clear that the soldiers were not at any risk when they decided to use their guns. Was it just a mistake, a result of fatigue? Or could it have been a symbolic military practice of reconstructing sovereignty against those desiring to deconstruct it by shaking one of the barriers’ locked gates? As if to verify the hypothesis of symbolic struggles, when the demonstration was over a soldier stepped forward and simply closed the gate. But that was not enough. The police then considered accusing Naamati, who was in the hospital wounded by two gunshots, of violating the military’s rules with his attempt to destroy the barrier (e.g. Maariv 2004). Thus, state agents reacted drastically not to the possibility that a barrier gate would be destroyed and made incapable of accomplishing its function, but to the idea that Israelis dared to delegitimize their country’s practices of claiming sovereignty through security actions.

Antiwall movement activists tried not only to blur the “us” versus “them” division, they also tried to deconstruct another distinction, related to state sovereignty as well, between the so-called “internal affairs” and “foreign affairs.” The distinction was blurred by the antiwall movement’s leaning to involve global activists in their demonstrations, thus creating a global/local interconnectedness. With the global activists, the struggle was “marketed” (Bob 2005) all over the world. The global participants could speak English or French fluently while being interviewed. Returning to their home countries, they participated in information campaigns, offering firsthand testimonies. The activists also produced an international petition to support the struggle of the people of Bil’in. All these actions enabled the AWM to draw the attention of different audiences around the world which, at least potentially, could undermine Israel’s sovereignty. No less important for the principle of universal human rights was the symbolic meaning of the protest along the barrier’s route. As one of the Palestinian activists said: “against an army that represents one citizenship only stand people who represent many international citizenships.”

Furthermore, the human rights rhetoric used in AWM demonstrations was universal, taken from the cultural “toolbox” of peace and human rights movements around the world. On certain occasions, for instance, activists in Bil’in carried big pictures of Mahatma Gandhi, Rosa Parks, and Martin Luther King, Jr.; they even used King’s famous “I have a dream” slogan of liberation to confer a universal character upon their struggle over the barrier. The protestors did all they could do in order to make their protest effective. However, with respect to sovereignty, nation states can be quite obsessive (Kemp and Ben-Eliezer 2000). Time after time, Israel’s security forces repressed the demonstrations by shooting rubber bullets, using tear gas and cudgels, and making arrests and trials. Although they may have received better treatment than the Palestinians, many Israeli demonstrators were arrested, and their names were put into the police criminal records, which is something that can affect their chances in the Israeli job-market. As for the global activists, the state made efforts to prevent their presence at the scene by trying to bar them from entering Israel. When these efforts failed, global activists were arrested in demonstrations and deported at once.
The IDF used various methods to reconstruct Israel’s sovereignty at the AWM demonstrations. In this regard, it was striking to witness how important it was for the soldiers to manifest their control in the demonstration arena. Despite the fact that demonstrators usually recognized the strength of the security forces—they neither tried to destroy the barrier nor to stop the work—the security forces insisted on playing small “sovereignty games” with them. The soldiers marked narrow borders for the demonstration area by placing a barbed wire fence on the ground and declaring that the wire fence was the final boundary; whoever crossed it would be arrested. Such a symbolic act sent a sharp message of sovereignty, not by the physical means itself, but mainly by declaring through these means the right of the state to set the rules in the territory. The activists recognized the symbolic meaning of the situation and therefore tried to cross the wire fence. The demonstration, thus, developed into a weekly ritual that looked like “cat and mouse” games between the AWM activists and Israeli soldiers and policemen.

Facing the challenge of the AWM, Israel’s efforts to reconstruct its sovereignty also included processes of counter framing (Benford and Snow 2000: 617). First and foremost, the state authorities continued stating that the barrier was a legitimate means of a sovereign state aimed at protecting its civilians. Such rhetoric ignored the narrow interests embedded within the barrier, mainly those of the settlers, who could expand their settlements by means of the barrier’s route (B’Tselem 2005). As for the protestors, state machinery presented them as eccentrics, oddballs, “leftists,” and traitors. A typical example was a report that appeared in an Israeli newspaper, following one of the AWM demonstrations in Bil’in: “It is time to state the plain fact,” the columnist wrote, “[that] demonstrations against the separation barrier are neo-terrorism […] everybody who fights the IDF is a traitor. Those whose choice to embrace the Palestinians comes at the cost of endangering IDF soldiers, may not brandish human rights. One who wishes to fight for [his] opinions should do it inside his home and not with the enemy” (Maariv 2005).

The Israeli government did its utmost to present the protestors not as human rights activists but as firm supporters of Palestinian nationality and the Palestinian struggle against Israel. In this light, a state attorney, referring to two well-known Israeli NGOs involved in human rights protection, said that they did not protect human rights per se, but the rights of Palestinians only (Haaretz 2006). Unable or even unwilling to escape the stigma of Palestinian nationalism, the activists were not able to mobilize sufficient support from Israelis, nor to attract supportive media coverage, nor were they able to deconstruct Israel’s sovereignty through the human rights discourse. They remained a relatively small group, which was exposed to army and police repression. Still, the demonstrators had some notable political influence.25

One who follows our claim concerning the logic of sovereignty versus autonomy and capacity would not be surprised to realize that on September 4, 2007, two years after the Alfei Menashe verdict and more than three years after that of Beit Surik, the HCJ found that the section of the barrier built on land belonging to the Palestinian village of Bil’in had been routed not just out of security reasons, but also took into account expansion plans of the Modi’in Ilit settlement. As a result, the court decided that the barrier surrounding the lands of Bil’in had to be redesigned and certain segments had to be dismantled (HCJ 8414/05). The antiwall movement celebrated its victory as described in the Anarchists Against the Wall’s website: “The next morning when the stunning decision was announced the entire village went out of the houses and joined an impromptu celebration at site of the countless demonstration. Throughout the day, members of Anarchist Against Walls rushed to the West Bank to congratulate their Palestinian comrades and dance in the streets of the village with them” (Anarchists Against the Wall 2007). “Together we demonstrated the truth,” said the representative of the Popular Committee of Bil’in, Mr. Basel Mansour, “that Israelis can stand beside Palestinians and live with them in peace and security, and even struggle with them against injustice and occupation, on the fundamental basis that this occupation is an enemy of humanity (Haaretz 2007).”
The villagers of Bil’in got some of their lands back; for them the victory was real. Still, that local victory changed only about 1.1 miles of the 500-mile barrier. It is hard to determine to what extent the weekly demonstrations of the AWM contributed to the success. It is easier to determine, however, that the decision of the local council to appeal to the Israeli High Court of Justice was crucial. The case of Bil’in is therefore more evidence to the flexibility of the relations between autonomy and sovereignty. Once again sovereignty was kept intact while autonomy was somewhat reduced. Meanwhile, construction works on the separation barrier continued, often carried out at full speed with up to 500 bulldozers working day and night, while tens of petitions against the barrier were still pending before the Israeli High Court promising more local victories and cosmetic changes in the barrier route. “The battle over our homes,” as the Second Intifada was termed by the Israeli newspapers, was “a battle for sovereignty” as well, with the annexation of territories legalized by the HCJ; with a separation barrier built as a national project inside the West Bank; and with a nation state claiming that human rights norms are embedded as well in its sovereignty in proportion to its security.

CONCLUSION

In present times, undoubtedly, more participants—local, international, and transnational—take part in struggles over and against state domination. However, one should be very careful when assessing their effects. The character of nation states is too complicated to be reduced to a weak/strong line of argument, or to any other simple form of causality. Instead, while we should certainly take seriously the challenges many states face in current world politics, including the role of social movements and NGOs in promoting universal norms of human rights, we should also be aware of the ways states respond to these challenges in order to preserve their supreme authority. Any state reconstructs its domination by using a variety of resources—diplomatic, judicial, military, and symbolic. This paper, thus, suggests a conceptual distinction between autonomy-capacity and sovereignty, which can contribute to the interpretative work of present confrontations between states and various forms of opposition. The case of the Israeli separation barrier demonstrates the flexibility of states as they yield to some challenges to their autonomy, but respond to more subversive claims through resistance or absorption into the state’s discursive arsenal. Thus, the several dynamics of contention between the state of Israel and oppositions to the construction of a separation barrier show not only a vibrant “politics of borders,” in which the most basic organizing principles of state rule are often challenged, but “the borders of politics” as well, namely the determination and creativity of the state’s reaction when sovereignty is at stake.

NOTES

1 In fact, Kransner’s (1999) claim that even though the “The Peace of Westphalia” contributed to the principle of sovereignty, which guarantees the autonomy to states and prevents any interference in their internal affairs, it never existed in its pure sense, and states’ sovereignty was always undermined by various contenders.

2 For more on this see Sikkink (1998); Forsythe (2000). On NGOs as agents of human rights, see Kirby (2003: 348-49); Keck and Sikkink (1998); Smith, Pagnucco, and Lopez (1998). Some even believe that human rights can undermine the entire logic of the old “Westphalia sovereignty,” “for, if the rights of each man can be asserted on the world political stage over and against the claims of his state […] then the position of the state as a sovereign over its citizens has been subjected to challenge” (Bull 1997: 146).

3 By employing the assumptions of neorealism, theorists of the state developed a powerful framework for comparative studies, but their efforts also suffered from a major limitation. Specifically, looking at sovereignty as a property of states meant an uncritical adoption of the language states themselves use in international relations at least since the 1648 Peace of Westphalia. This conflation of practical terminology with an analytical term inevitably creates a bias.

4 The major association that was established in order to promote the idea of a separation fence was Gader Lechaim (“Fence for Life”): www.hagader.com.
5 In several opinion polls, the separation fence project was supported by the vast majority of Jewish-Israeli citizens, who also thought that Israel should not include the suffering of the Palestinians in its considerations when planning the fence’s route (see “The Peace Index,” Tami Steinmetz Center for Peace Research, www.tau.ac.il/peace/).

6 Some, like Forsythe (1998: 509), would even go further, claiming that human rights are just mantra, a lip service paid by nation states with no intention to follow the treaties they sign.

7 State representatives also claimed that the ICJ judges did not do their “homework,” that not all the details were given to them, and that they were biased from the outset. The fact that Israel itself boycotted the ICJ before the sessions began, thus refusing to provide materials to the court, did not seem essential to the Israeli authorities.

8 Interviews with Rotem Mor, March 31, 2005, and with Sarah Bartal, April 3, 2005.

9 First used by Goffman, the term “frame” refers to “schemas of interpretation” that enable individuals “to locate, perceive, identify and label” occurrences within their life space and the world at large (Snow, Rochford, Worden, and Benford 1986: 464). Following Snow and Benford (1992), by the concept of “framework” we consider a collective action that is part of the politics of signification, which highlights certain aspects of an issue but not others. Typically, these frameworks include the identification and definition of a social “problem,” its causes (or the answer to the question “Who should be blamed?”), the desired solution to the “problem,” and the most preferable way to achieve it.

10 These two definitions of the situation were repeated in all the interviews we conducted with residents of Mevasseret, and in the invitations for protest invents that were distributed among all the residents of Mevasseret.

11 This version of a feeling of injustice was repeated in all interviews we conducted with activists from Mevasseret. See also: Zeman Mevasseret (2004b).

12 The difficulty was greatest for some of the initiators of the campaign in Mevasseret that simultaneously participated in the antwall movement because they were opposed ideologically to the entire project of the separation and to any security reasoning (Interview with Rotem Mor, March 31, 2005).

13 As Shamir (1990) argued, the fact that the Supreme Court occasionally ruled in favor of Palestinians in the occupied territories increased not only its own legitimacy as a judicial institution, but also the legitimacy of the occupation by the Israeli citizens within the international community, and maybe even by Palestinians in the territories.

14 Interview with lawyer Mohammad Dahle, July 19, 2005.

15 See the guiding principles of the council for Peace and Security on its official website (www.peace-security-council.com/about.us.asp#abGuiding).

16 The proportionality principle is a legal tool intended to enable liberal-democratic regimes to determine whether an administrative action that results in the abuse of rights of members of the society is legitimate. On this principle and on aspects of its use in the case of the Beit Surik appeal, see Gross (2006).

17 The movement is not an organization, but a dynamic coalition of groups and organizations without a formal name. We use the name “antiwall movement” because objecting to “the wall” is the major theme of the movement.

18 The ISM is a Palestinian-led movement committed to resisting the Israeli occupation of Palestinian land (www.palsolidarity.org).


20 See especially the relevant parts of the antiwall movement’s movie on the incident (http://dc.indymedia.org/media/all/display/23311/index.php).


22 Demonstration in Bil’in, May 26, 2005.

23 During the years of the Second Intifada, Israeli activists against the state’s policy in the territories were detained at the airport, and a thorough search was made of their baggage. No reason was given for this, and they were later released without charge (Interview with Jonathan Pollak, January 29, 2006).

24 According to the ISM coordinator in the occupied territories (a telephone interview with Neta Golan, July 14, 2005), more than 100 global activists who took part, or intended to participate, in activities against the barrier or the occupation have been deported from Israel and the occupied territories by the Israeli authorities. Several testimonies of activists who were interrogated by the Israeli border control, a few of them even being deported, can be found on the ISM’s website (www.palsolidarity.org).

25 It is reasonable to assume that the presence of the antiwall Israeli and international activists had effects on the Palestinian political field; however, these effects are beyond the scope of this study.

REFERENCES


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