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Example 5 | Self-determination as a jus cogens norm and the scope of State responsibility

With regard to the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem, the Advisory Opinion of the ICJ does not state explicitly or otherwise the consequences of a State's failure to respect the stated 'obligations'.

While the obligations listed could be considered as applicable in a jus cogens situation – such as the construction of the wall – the term jus cogens is not stated, nor an accepted synonym. Also, is such a situation credible to be considered for jus cogens given that that said construction will take place on an occupied territory?

However, there is mention of the “right to self-determination” of the Palestinian people and this is a jus cogens norm.

There is no opinion or decision included regarding steps to actively support the “right to self-determination” of the Palestinian people, nor is there a decision to the removal of the wall. Instead, a list of what could be considered ‘obligations’ to not help those responsible for the construction of the wall are listed.

The interesting part is that the Advisory Opinion of this ICJ is that the construction of the wall is deemed to be an “Illegal situation”, yet there is no content that would outline possible steps or actions (national or international) that could resolve the current status but only what seems to be recommendations to all countries on how to show their abhorrence on the matter, thus seeking to channel the discussion on how the implementation of such decisions can be made in practice. Time has come that enforcement of the decisions and/or recommendations of the institutions burdened with such human rights issues be made possible.

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A potential consequence to what is considered a neutral stance on the jus cogens status of human rights is that states may be successful in segregating those individuals that do not support the majority political/civil view point; which also raises the issue of the political handling of decisions/recommendations on human rights issues according to the various interpretations abusers of human rights may present.

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