



*American Model United Nations*  
**ICJ**

IN THE INTERNATIONAL COURT OF JUSTICE  
OF THE  
AMERICAN MODEL UNITED NATIONS

Argued: 23 November 2009

Decided: 24 November 2009

The majority opinion was signed by and agreed to by Justice Abduljaber, Justice Feikema, Justice Eldred, Justice Klipfel, Justice Lara, Justice Licari, Justice Kernosky, Justice Placek, Justice Merchant, Justice Vega-Siferd, Justice West.

**Jurisdiction**

Chapter 6, Article 96 of the United Nations Charter states that the “General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal questions”. Additionally, in accordance with Article 65 of the Statue of the International Court of Justice, “the court may give an advisory opinion on any legal question at the request at whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request”. Resolution 1014 of the General Assembly requested that this court deliver an advisory opinion in regards to the legal consequences of the building of the Israeli barrier in the occupied territories.

Israel contends that the General Assembly acted *ultra vires* considering Article 12 of the United Nations Charter states that “while the Security Council is exercising in respect to any dispute or situation the functions assigned to it in the present charter, the General Assembly shall not make any recommendations with regards to that dispute unless the Security Council so requests”.

We, the Court, unanimously reject this claim pursuant to Resolution 377A (V), the General Assembly has instituted a precedent that if the Security Council fails to fulfill their primary responsibility for the maintenance of international peace and security, than

the General Assembly “shall consider the matter immediately with a view to making appropriate recommendations to members for collective measures.

Israel contends that the occupied territories are not recognized as a Sovereign state and such have no legal standing before the court.

We, the Court, unanimously reject this claim by the fact that the General Assembly brought this request before the court as aforementioned.

Israel contends that the question raised is not of a legal character but of a political one.

We, the Court, unanimously reject this claim due to the overwhelming ramifications alleged violations to human, civil, cultural, customary, and international civil rights could create.

On these grounds we unanimously accept jurisdiction to deliver an advisory opinion on the matter requested.

### **State Security**

Israel contends that it is their explicit right to protect their state interests and people from threats to their security. They further contend that the barrier being built is under the auspices of protecting their security and people.

The court unanimously recognizes that sovereign states have the reserved right to protect their sovereignty under article 51 of the United Nations Charter. The court further unanimously recognizes that sovereign states have the reserved right to protect their borders under auspices of international customary law.

However, citing the International Court of Justice opinion in Hungary v. Slovakia (1997), the court found that in order to invoke argumentation for self-defense the parties must demonstrate that they were guarding “against a grave and imminent peril to essential state interests”.

Thus, this court, unanimously finds, that Israel has not met this test. Therefore, any construction of the wall in the occupied territories is not justified by claims of self-defense and security.

### **International Humanitarian Law**

Israel contends that the status of the occupied territories does not constitute a sovereign

entity that is bound to international humanitarian law as found in the 4<sup>th</sup> Geneva Convention. Further they contend since it has not signed the Hague Regulations of 1907 it is not bound to apply such international humanitarian law mandates.

The court unanimously finds that under Article 47 of the 4<sup>th</sup> Geneva Convention “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 occupying power nor by any annexation by the latter or of the whole or part of the occupied territory.”

This court unanimously finds that the Hague Regulations of 1907 are part of the International Customary Law and thus, Israel is bound to their mandates.

### **Human Rights**

Palestine, Saudi Arabia, and South Africa contend that the construction of the wall on occupied territories exacerbates a human rights crisis due to limiting access to resources including water, displacement of people, and restriction of free movement.

Israel contends that in this case the human rights violations claimed by Palestine, Saudi Arabia, and South Africa, are not breaches against pertaining international humanitarian law under the ICESCR, ICCPR, and numerous resolutions passed by the international community. Under these covenants derogation maybe allowed if there is “grave and immanent peril”. Israel contends that the current state of conflict would apply and would allow them to derogate from the applicable international humanitarian law.

However, this court, unanimously finds that the level of conflict has not reached an adequate level that would constitute a “grave and immanent peril”. Therefore, the court, accepts the full applicability of said Human Rights obligations.

### **Self Determination**

As enshrined in the United Nations Charter, Article 2 and pursuant to numerous resolutions rendered by the various organs of the United Nations, especially resolution 265, the right of self-determination of the peoples is indispensable.

Thus, the court unanimously finds that the construction of the wall in the occupied territories and around east Jerusalem jeopardizes the viability of the Palestinian peoples rights to self-determination.

**Advisory Opinion**

Effective immediately, the court strongly advises the United Nations General Assembly to take appropriate measures to cease all construction of the contested barrier in occupied territories.

Effective immediately, the court strongly advises the United Nations General Assembly to implement measures to remove sections of the barrier from the occupied territories.

Effective immediately, the court strongly advises the United Nations General Assembly to take measures to ensure the protection of human rights, self-determination, access to property, and other pertinent rights.

Justice Abduljaber

Justice Feikema

Justice Eldred

Justice Klipfel

Justice Lara

Justice Licari

Justice Kernosky

//s//

Justice Placek

Justice Merchant

Justice Vega-Siferd

Justice West

**Separate concurring opinion of Justice Placek:**

I express an independent opinion on the construction of the Israeli wall. With regard to the actual border between Israel and Palestine, it should be agreed that the Green Line or a internationally accepted boundary should be a definitive and immobilizing boundary. The placement of the line should be mutually agreed upon and enforced through previous conventions. Between the Oslo Accords and International Customary Law, taking the UN Charter (Article 2), the Geneva 4<sup>th</sup> Convention, and the Hague Convention into consideration, a definitive and final boundary should be defined as soon as possible.

Taking this suggestion to the parties involved brings the Wall into debate. As the wall is not currently on the Green Line, I find the wall is in violation of International Law. The wall is currently being argued by Israel to protect settlements in Palestinian territory. It is against International Law for Israel to do this in occupied territory.

This wall protecting Israeli settlements is an issue of security, but it is not even protected in whole by Article 51 of the UN Charter. The wall's defense in its current position violates rights of the Palestinian territory and the humanitarian rights of the people residing in the walled-in area.

Finally, the Wall can again be disposed of by Article 51 because the Security Council has not deemed a wall necessary for national security.

It is my opinion that Israel may build a gated and semi-transparent boundary for its protection and security but it must only be constructed on and along an internationally agreed-upon border between the Israeli state and the Palestinian territory. Taking into consideration the ICJ decision between Hungary and Slovakia in 1996, there are no omnipresent grave and imminent dangers; therefore, Israel should not be able to overstep the current internationally recognized border. My opinion places Israel currently in the wrong, but I would not object to a wall or any barrier to be constructed along a mutually- and internationally-accepted border.

**Separate concurring opinion of Justice Abduljaber:**

I concur with the found judgment of the Court. Nonetheless, I disagree with the use of

the term of barrier to describe the so called Israeli fence. I recall the rendered question to the Court by the General Assembly that alternatively uses the term wall to describe the asphalt physical body. Finally I further suggest that Justices abide by the clear text forwarded though the General Assembly.