



Advisory Opinion: Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory

ARGUED: 22 November 2015
DECIDED: 23 November 2015

1 **The majority opinion was signed by and agreed to by Justice Conor Burns, Justice Sidney**
2 **Larsen, and Justice Patrick Mudd.**

3 At the request of the 10th Emergency Session of the General Assembly under Article 96 of the United Nations
4 Charter, the Court has been charged with the following question: What are the legal consequences arising from the
5 construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in
6 and around East Jerusalem, as described in the report of the Secretary-General, considering the rules and principles
7 of international law, including the Fourth Geneva Convention of 1949, and the relevant Security Council and General
8 Assembly resolutions? The Court finds that Article 93(2) of the UN Charter expresses the Courts jurisdiction in
9 issuing an advisory opinion for the General Assembly. Additionally, the court finds that although Israel issued its
10 withdrawal from the realm of the Courts compulsory jurisdiction in 1985, Article 94 of the UN Charter requires all
11 member nations to comply with the decision of the Court in any case to which the member is a party. Keeping in
12 mind these principles, the Court finds that it does indeed have the jurisdiction to issue an advisory opinion on this
13 issue.

14 Article 96(2) of the UN Charter enables the Court to issue an advisory opinion under the terms expressed
15 above, but the Court is provided with the capacity to use its own discretion when deciding whether or not to honor
16 an advisory opinion request. The Court is expected to evaluate the following two issues: (1) whether the questions
17 presented to the court are of a political nature, and (2) whether the questions raised to the court exceed the scope
18 of the Courts capacity to issue an advisory opinion. Historically, the conflicts between the state of Israel and the
19 Palestinian people have been of a political nature; however, with its request for an advisory opinion, the General
20 Assembly has asked the court to review the *legal* consequences of the wall built by the Israeli government in disputed
21 territories. It is the opinion the court that this issue is not a political question, nor does a question of a legal nature
22 exceed the evaluative capabilities of the court. Therefore, the Court now chooses to consider the legal consequences
23 of a wall in the Occupied Palestinian Territories.

24 According to A/RES/ES-10/14, which detailed the effects of the illegal Israeli actions in the disputed territo-
25 ries both prior to and after the construction of the Israeli wall, the human rights of the Palestinian people, as set out
26 in the Fourth Geneva Convention, were violated. Moreover, the report of the Special Rapporteur of the Commission
27 on Human Rights states that more than 210,000 Palestinians have been or will be displaced as a consequence of
28 the construction of the Israeli wall. Article 53 of the 4th Geneva Convention reads as follows: Any destruction by
29 the Occupying Power of real or personal property belonging individually or collectively to private persons, or to
30 the State, or to other public authorities, or to social or cooperative organizations, is prohibited [] The Court finds
31 that the report of the Special Rapporteur indicates a direct violation of the rights ensured under Article 53 to the
32 Palestinian people who were displaced by the construction of the Israeli wall.

33 The report of the Special Rapporteur also detailed the denial of the Palestinian peoples basic human rights
34 following the continued construction of the Israeli wall. By constructing the wall in a way that inhibited access to
35 the Palestinian territory, the Israeli government systematically denied the Palestinian people the following human
36 rights: as stated in the International Covenant on Economic, Social and Cultural Rights, the right to work (Article
37 6), the right to suitable living standards (Article 11), the right to adequate healthcare (Article 12), and the right
38 to education (Article 13); as stated in the International Covenant on Civil and Political Rights, the rights to freely
39 enter and leave territory (Article 12 (1)(2)) and the right to access to resources, as well as the right to ones own
40 protection (Article 17).

41 The Court further recognizes that the Israeli peoples universal human right to life under Part 3, Article 6
42 of the International Covenant on Civil and Political Rights has been compromised as a result of attacks conducted
43 by terrorist organizations operating within the Palestinian territory. While the Court recognizes that the Israeli
44 government has the right to protect the lives of its citizens, the Israeli government is also charged with the duty to
45 uphold the basic rights of all other peoples.

46 The opinion and explanation of the court is as follows:

47 As a consequence of the construction of a wall in the disputed territory, the human rights of the Palestinian
48 people have been violated. The Court has determined that in order to construct the wall, the Israeli government
49 violated the rights of the Palestinian people formerly living in that area. Additionally, the Court has found that the
50 continued existence of a wall surrounding the Palestinian territory has severely limited the flow of people and goods
51 in and out of the territory, thereby violating the rights of the Palestinian people.

52 Therefore, the court advises the following:

53 First, the Court advises that Israel should cease any and all actions that could constitute human rights
54 violations under the aforementioned conventions and treaties,

55 Second, the Court advises Israel to enact programs in order to provide aid to the Palestinian victims of
56 Israels human rights violations,

57 Third, the Court encourages the Palestinian authorities to condemn any and all terrorist operations within
58 their boundaries,

59 Fourth, the Court recommends that both Israel and Palestine seek out diplomatic solutions to any conflicts,
60 such as the Roadmap Initiative set out by the SC/RES/15/15.

61 **This concurring opinion was signed by and agreed by Justice Dylan McCloskey and Justice**
62 **Benjamin Wade. The purpose of this opinion is to explain the justification for the creation of the**
63 **wall and the legality surrounding it.**

64 The United Nations Economic and Social Council states that between October 2000 and January 2004,
65 Israel withstood approximately 20,000 attempted attacks by Palestinian terrorist organizations. Over 830 Israelis
66 were killed, with approximately 5,600 injures also resulting from these attacks.

67 Article 6 of the International Covenant on Civil and Political Rights states, 1. Every human being has the
68 inherent right to life. This right shall be protected by law. The State of Israel articulated that life is the most basic
69 right for all humans, providing justification for the creation of the wall. The Hague Fourth Convention Respecting
70 the Laws and Customs of War on Land Section 3, Article 43 states that the occupant shall take all the measures
71 in his power to restore, and ensure, as far as possible, public order and safety. Israel, being the occupying power,
72 is ensuring public order and safety with the creation of a wall. This gives Israel the right to build the wall in the
73 Occupied Palestinian territory to provide order and safety for their people, as long as they also work towards the
74 same order and safety for the nation of Palestine. We must also recognize Palestinians right to life and the absence
75 of this right without the resources stipulated in the majority opinion.

76 Therefore we recommend the following:

77 As stated in the majority opinion, Israel should prevent humanitarian violations in the occupied territory of
78 Palestine because the wall is the cause of people not receiving necessary resources.

79 The State of Israel and the Territory of Palestine should work together to increase the overall security of the
80 two parties. However, if the two parties cannot agree upon better security measures, then Israel should continue its
81 efforts to provide security for its people by means of the barrier.

82 **President Ackerman, Vice President Cyhaniuk, and Justice Thornton concur with the major**
83 **opinion in full. Yet, we find that additional analysis of the legal consequences of territory, the legal**
84 **obligation of Israel to protect and secure Palestinian human rights as an occupying force.**

85 We find the wall is an attempt to establish a permanent boundary rather than a temporary barrier. This is
86 supported by descriptions in the *Report of the Special Reporter of the Commission on Human Rights on the situation*
87 *of human rights in the Palestinian territories occupied by Israel since 1967*. The wall is eight-meters tall and 60-100
88 meters wide, with electric fences, barbed wire, guard towers and patrols. Israel does not have effective occupation
89 over the area because it has not had a peaceful and stable occupation, and its occupation over the territory has been

90 disputed. While Israeli settlements are present in the territory, sovereignty over the territory is heavily disputed,
91 resulting in conflicts; and through building the wall, Israel's actions are an attempt to establish territorial annexation
92 over disputed territory through *de facto* annexation before a negotiated resolution has been agreed upon by Israel
93 and Palestine and recognized by the international community, becoming a matter of international law. Israel is
94 not permitted to engage in *De facto* annexation of territory under the Security Council Resolution 242 and the
95 Oslo Accords finds that the Status of the West Bank and Gaza should not be changed pending the outcome of
96 the permanent status negotiation. E/CN.4/2004/6. Therefore Israel's construction of the permanent boundary as a
97 means of establishing a de facto border defies previous international agreements.

98 As referenced earlier, the barrier is not a simple fence but a heavily militarized imposition of a new de-facto
99 border. This presents a visible show of force as well as an implied threat to use said force. Under the United Nations
100 Charter Art. 2(4), states shall refrain in their international relations from the threat or use of force against the
101 territorial integrity or political independence of any state, or in any manner inconsistent with the purposes of the
102 United Nations.

103 While Israel has a right to self-defense under article 51 of the UN charter, we have found that the unlawful
104 construction of the barrier undermines the authority of the Security Council and peace and security in the region.
105 Consequently, the construction of the wall is not a legal measure under article 51. Furthermore, the *Report of*
106 *the Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Palestinian*
107 *territories occupied by Israel since 1967* found that most suicide bombers have passed through checkpoints and that
108 the Wall will not deter persons determined to cross into Israel to commit acts of terrorism.

109 Israel does have a duty to protect its citizens right to life under the International Covenant on Civil and
110 Political Rights article 6. However, while, Israel has a right to protect their citizens, they've shown a disregard for
111 the human rights of the Palestinians. We agree that the human rights violations pointed out in the Majority opinion
112 are occurring and should be addressed, but we further emphasize the failure of Israel to address these abuses despite
113 their responsibility to the Palestinian people in the occupied territory and their responsibility for the consequences
114 of their wall. Since Israel was acting as an occupying power, they had special obligations to the Palestinian people
115 to preserve their human rights. Article 55 of the Fourth Genocide Convention reads that The Occupying Power has
116 the duty of ensuring the food and medical supplies of the population; it should in particular, bring in the necessary
117 food-stuffs, medical stores and other articles if the resources of the occupied territory are inadequate. Yet, their
118 construction of the wall has already caused human rights violations to the very people that they are required to
119 protect and assist within the region. Israel has failed to compensate and has failed to provide assistance to the
120 Palestinians who have had their human rights violated by the wall. While Israel has a duty to protect the human
121 rights of its citizens, including right to life, its obligation to protect the human rights of Palestinians ought to be
122 respected.

123 While, Article 53 prohibits the destruction of property Except where such destruction is rendered absolutely
124 necessary by military operations, Israel has failed to conclusively demonstrate that the construction of the barrier
125 was absolutely necessary for the protection of Israeli nationals. There is not enough evidence that the wall is needed
126 to the extent that it would justify the violations of human rights that it brings forth.

127 Recommendations: We echo the majority opinion and encourage the states of Israel and Palestine to consult
128 this advisory opinion if they seek to engage in further actions regarding this dispute. Furthermore, we implore
129 both parties seek a permanent solution through bilateral negotiations regarding the territory and that Israel cease
130 construction of border barriers in order to prevent further human rights abuses.

131 **The Dissent Opinion was agreed upon and signed by Justice Calvin Bell, Justice Miriam**
132 **Housewright, Justice Duncan Justice, Justice Amelia Kimbro, Justice Alexandra Klein, Justice Chris**
133 **Rudolph, and Justice Colin Weeks.**

134 With the issue concerning jurisdiction, we contend the Court has jurisdiction to rule in this case under
135 Article 65 of the Statute of the International Court of Justice since the General Assembly requested an advisory
136 opinion.

137 The Court was asked to examine the Advisory Opinion on the Legal Consequences of a Wall in the Occupied
138 Palestinian Territory. The Dissenting Justices of the Court assert that this case should not be adjudicated by this
139 Court, which is within our discretion. Based upon Article 65 of the Statute of the International Court of Justice,
140 the Court may give an advisory opinion on any legal question at the request of whatever body may be authorized
141 by or in accordance with the Charter of the United Nations to make such a request. We decline to rule on the case.

142 The Dissenting Justices have declined to rule on this case for the following reasons:

143 First, the Dissenting Justices resent this request by the General Assembly because of its assertion of legality
144 prior to an opinion from the Court. The General Assembly has already stated their opinion on the legality of Israel's
145 actions regarding the Wall. It is inappropriate for the General Assembly to ask for our opinion on an issue that has
146 been decided. In Resolution ES-10/2, adopted by the General Assembly, it is the consensus of their body that, the
147 repeated violations of Israel, the occupying power, of international law and its failure to comply with relevant Security
148 Council and General Assembly resolutions and the agreements reached between the parties undermine the Middle
149 East peace process and constitute a threat to international peace and security. This concern and other criticism of
150 Israel's actions show how the General Assembly is resolved with its opinion.

151 Second, the Dissenting Justices view the consenting opinion regarding this case as detrimental to the judicial
152 character of the Court. An answer to the question before us challenges the integrity of the Court, as an institution,
153 and further challenges the integrity of the United Nations, as an international governing body. This Court is not a
154 political entity and the question posed by the General Assembly seeks to turn the Court into a political mechanism,
155 which is in violation of our Charter. Additionally, due to the General Assembly ignoring the Security Council's previous
156 actions concerning the peace process between Israel and Palestine, an opinion may further destabilize the region,
157 increase conflict, and inhibit peace negotiations facilitated by the Security Council, known as the Quartet Road
158 Map Initiative.

159 Third and finally, the Dissenting Justices of the Court find that we should not compromise our judicial
160 integrity for an advisory opinion, which would only advise the General Assembly on its next step.

Signed By

Justice Ackerman

Justice Bell

Justice Burns

Justice Cyhaniuk

Justice Housewright

Justice Justice

Justice Kimbro

Justice Klein

Justice Larsen

Justice McCloskey

Justice Mudd

Justice Rudolph

Justice Thornton

Justice Wade

Justice Weeks