

In the International Court of Justice

Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory

Memorial of the Commonwealth of Australia

Comes now the Commonwealth of Australia and for their Memorial to the Court states the following:

Statement of Fact

In 1949, Israel and neighboring states signed Armistice Agreements creating lines of demarcation between the states and pressuring military forces to withdraw along these lines, creating a temporary peace. More than a decade later, Israel began to expand its territory beyond the so-called "Green Line," a controversial decision that sparked explosive conflict between Israel and Palestine. Consensus among the nations regarding this issue was finally achieved through the Oslo Accords of 1993, creating new lines of demarcation between Israel and Palestine similar to the "Green Line." However, Israel continued to maintain a strong occupying presence in the West Bank.

In the early 2000s, Israel experienced frequent suicide bombings and other terrorist attacks including multiple car and bus bombs, often perpetrated by Palestinians. Due to this threat to the safety and well-being of Israeli citizens, the Israeli government, led by Prime Minister Ariel Sharon, approved a plan to construct a wall around the West Bank. This wall would extend into Occupied Palestinian territory, but is necessary to safeguard the Israeli population from terrorist attack.

A major argument for the wall's existence, as stated by the Israeli scholars is that the wall serves as a reaffirmation of Israel's sovereignty as a state. In addition, the wall also symbolizes the Israel's ability as a secular, civil, and democratic state, to make use for the available military power at their disposal to provide security for their citizens, in comparison to the Palestinian government who are too intertwined in their connections with hardline religious organization who masquerade themselves as a political entity, such as Hamas and Fatah. This complex entanglement, in Israel's view, clouded the Palestinian government from being able to make cogent policies when it comes to the issue of Israel's security barrier on the West Bank.

Statement of Jurisdiction

1. This application is brought under Article 65, Paragraph 1 of the Statute of the court: "The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request."
2. Article 96, Paragraph 1 of the Charter of the United Nations states: "The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question."

Statement of Law

1. Article XVII, Annex II, of the Oslo Accords of 1993 "Israel will implement an accelerated and scheduled withdrawal of Israeli military forces from the Gaza Strip and Jericho area, beginning immediately with the signing of the agreement on the Gaza Strip and Jericho area and to be completed within a period not exceeding four months after the signing of this agreement."

2. Article III, Section 2, of the Jordanian-Israeli General Armistice Agreement, April 3, 1949, “No element of the land, sea or air military or paramilitary forces of either Party, including non-regular forces, shall commit any warlike or hostile act against the military or paramilitary forces of the other Party, or against civilians in territory under the control of that Party; or shall advance beyond or pass over for any purpose whatsoever the Armistice Demarcation Lines set forth in [articles V](#) and [VI](#) of this Agreement; or enter into or pass through the air space of the other Party.”
3. Article VI, Section 11 of the Jordanian-Israeli General Armistice Agreement, April 3, 1949 “The Armistice Demarcation Lines defined in this article and in [article V](#) shall be subject to such rectification as may be agreed upon by the Parties to this Agreement, and all such rectifications shall have the same force and effect as if they had been incorporated in full in this General Agreement.”
4. Article II, Hague Convention, October 18, 1907 “The provisions contained in the Regulations referred to in Article 1, as well as in the present Convention, do not apply except between Contracting powers, and then only if all the belligerents are parties to the Convention.”

Arguments

1. Israel’s construction of a wall breaks no international law and does not violate the 1949 Armistice Agreement, and does not breach any of the obligations that are owed by Israel *erga omnes*. The Green Line was only meant as a temporary means to separate the two countries and not a permanent border.
2. The wall’s purpose is not to annex territory or infringe on the Palestinian state, but only to protect the Israeli people from suicide bombings and similar terrorist attacks, which have recently become much more frequent and devastating.
3. The United Nations Charter states that “The [United Nations] is based on the principle of the sovereign equality of all its Members.” As a member of the United Nations, it is imperative that Israel continue to exercise its right to sovereignty, especially given the imminent danger of terrorist attacks that the Israeli people face today.
4. The Palestinian people’s status as an internationally unrecognized state (given its lack of membership status in the United Nations among other international governmental organizations), the Court ought to note that governance through other conventions, namely the Hague and Geneva Conventions of 1907 and 1949 respectively, does not apply cleanly towards the people of Palestine. In addition, given that neither Israel nor Palestine is party to the Hague Convention, the mandates of the Convention hold no legal authority over the action of either party.

Summary and Request

Australia urges the court to adjudge and declare that this issue does not warrant jurisdiction, as Israel is acting completely within their rights as a sovereign state, breaking no international law and acting only on behalf of the safety of their citizens. Furthermore, it is in Australia’s opinion that Palestine can exclusively use religious argumentation with regard to the existence of the West Bank barrier, and this reliance on religious argumentation is problematic. Australia requests the International Court of Justice, if the Court does indeed decide that it holds jurisdiction over the matter, to advise the United Nations General Assembly to permit the Israeli construction of a

security barrier while encouraging the parties involved to conduct further diplomatic negotiations. In doing so, the Court will avoid setting a precedent that permits costly breaches of national sovereignty and puts innumerable lives in danger.