

IN THE INTERNATIONAL COURT OF JUSTICE

ADVISORY OPINION: LEGAL CONSEQUENCES OF THE CONSTRUCTION OF A WALL IN THE OCCUPIED PALESTINIAN TERRITORY

MEMORIAL OF THE STATE OF ISRAEL

COMES NOW the State of Israel and for their Memorial to the Court states the following:

STATEMENT OF FACT:

Despite continued attempts to achieve peace between the peoples of Israel and Palestine, the State of Israel and its citizens face constant threats of terrorist attack from various Palestinian groups. From October 2000 to January 2004, Israel withstood approximately 20,000 attempts at violent attacks by Palestinian terrorist organizations.

In response to the grave threats to its citizens' lives and property, the Government of Israel deemed it appropriate in April 2002 to approve plans for the construction of a fence along its boundaries and those of its settlements. It should be noted that Israel only employed this measure as a last resort to protect against violence, and that the barrier is not intended to be a permanent fixture.

Concerned that this barrier's route did not follow the boundaries between Israel and the Palestinian Territories, and that it may obstruct Palestinian citizens' access to various services, the Tenth Emergency Special Session of the United Nations General Assembly adopted a resolution on 8 December 2003, requesting the International Court of Justice to offer an advisory opinion on the following question:

What are the legal consequences arising from the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, as described in the report of the Secretary-General, considering the rules and principles of international law, including the Fourth Geneva Convention, of 1949, and relevant Security Council and General Assembly resolutions?

STATEMENT OF JURISDICTION:

The State of Israel does not recognize the jurisdiction of the International Court of Justice on this issue for the following reasons:

1. According to Article 35(1) of the Statute of the Court, "The Court shall be open to the states parties to the present Statute." "Palestine" is not a state party to the Statute, and is thus not eligible to appear before the Court.
2. Israel has not given consent to the jurisdiction of the Court on this matter. Israel's explicit consent is necessary for the following reasons:

- (a) On 19 November 1985, Israel withdrew its declaration of acceptance of the compulsory jurisdiction of the Court;
 - (b) Israel has not accepted the Court's compulsory jurisdiction in any multilateral treaty since 1975;
 - (c) No agreement concluded as part of the Israeli-Palestinian peace process references dispute resolution by the Court.
3. The request for an advisory opinion on this issue is *ultra vires* ("beyond the powers") the competency of the Tenth Emergency Special Session of the General Assembly, as well the competency of the General Assembly in regular session.

General Assembly resolution 377 A (V) of 3 November 1950 provides that the General Assembly may in either regular session or in emergency special session make recommendations, such as the request of an advisory opinion, "if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security."

However, the Security Council has not failed to exercise such responsibility. Just 19 days before the Tenth Emergency Session requested an advisory opinion, the Security Council adopted resolution 1515 (2003) endorsing a Roadmap initiative aimed at bringing about diplomatic negotiations between Israel and "Palestine".

STATEMENT OF LAW:

For over 40 months, Israeli people have been targeted by Palestinian terror organizations with attacks ranging from stabbings to shootings to suicide bombings. These terrorist attacks flagrantly trample international law concerning human rights, particularly the most basic right: the right to life, enshrined in Article 3 of the Universal Declaration of Human Rights. The acts amount to crimes against humanity, defined in Article 6 of the Nuremberg Charter as "namely, *murder*, extermination, enslavement, deportation, and other *inhumane acts committed against any civilian population...*" (emphasis added)

In order to protect its citizens from these heinous human rights violations, the Israeli government ordered the construction of a barrier along its boundaries. This is well within Israel's right to self-defense as a sovereign nation-state, clearly stated in Article 51 of the United Nations Charter.

ARGUMENTS:

1. In regards to the Israeli-Palestinian conflict, halting Palestinian terrorism is the most important issue to be considered, before anything else can be effectively addressed.
2. By providing an advisory opinion on this issue, the Court could delay or destabilize the implementation of the Roadmap initiative and a two-state solution, for which members of the Security Council and other actors have been working tirelessly for years. As an

advisory opinion is not part of the Roadmap framework, its provision may encourage “Palestine” to work for its objectives outside the agreed plan.

3. By providing an advisory opinion on this highly contentious issue, the Court would make decisions on key pieces of the ongoing Israeli-Palestinian dispute. Thus, the Court could become too politicized, undermining its own impartiality and credibility for future cases.
4. The Court is not obligated to respond to the request for an advisory opinion. Article 65(1) of its Statute states: “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.” (emphasis added) Thus, it is left to the discretion of the Court whether to consider such a request.

SUMMARY AND REQUESTS:

The State of Israel contends that the International Court of Justice does not have the jurisdiction to provide an advisory opinion on this issue. Even if the Court should determine it has jurisdiction, though, it is not obligated to render an advisory opinion in response. An advisory opinion risks destabilizing the peace plan laid out by the Roadmap initiative, as well as damaging the integrity of the Court itself. Therefore, Israel requests that the Court exercise its right under Article 65(1) of its Statute to decline to respond to the request for an advisory opinion.