



American Model United Nations
International Court of Justice

1 IN THE INTERNATIONAL COURT OF JUSTICE

2 THE STATE OF PALESTINE,

3 APPLICANT

4 V.

5 THE STATE OF ISRAEL,

6 RESPONDENT

7 MEMORIAL OF THE STATE OF PALESTINE

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

9 Jurisdictional Statement

10 The people of Palestine submit to ICJ jurisdiction in this request for an Advisory Opinion. Pursuant
11 to Chapter 96, paragraph 1 of the UN Charter, the General Assembly of the United Nations is able to
12 request the ICJ give an advisory opinion on any legal question. This is specific and exact, with no room
13 for interpretation. Thus, the Court does have jurisdiction over this case, which Palestine submits to fully
14 and eagerly.

15 This application is submitted under Article 36, Paragraph 1 of the Statute of the International
16 Court of Justice, that affirms: "The jurisdiction of the Court comprises all cases which the parties re-
17 fer to it and all matters specially provided for in the Charter of the United Nations or in treaties and
18 conventions in force".

19 Statement of Facts

20 The wall, or labeled to Israel as a "security barrier" first constructed in 2002, is located in a closed
21 area between the Green Line. The wall has posed significant threats to the Occupied Palestinian peo-
22 ples from restrictions in the freedom of movement to grave repercussions in health services and agri-
23 culture. The continuation of the wall will perpetuate the displacement of Palestinians, impeding on their
24 freedom to work, education, and their standard of living.

25 Statement of Law

26 The State of Palestine retains the right to self-determination, which is a core principle of inter-
27 national law. The wall fractures Palestinian territory and severely undermines sovereignty. All states
28 must ensure compliance with international humanitarian law, as various UN Human Rights Counsel
29 Resolutions deeply condemn the Israeli wall and call for compliance with international law.

30 Under Article 53 of the 4th Geneva Convention, an occupied power "must therefore try to in-
31 terpret the clause in a reasonable manner: whenever it is felt essential to resort to destruction, the
32 occupying authorities must try to keep a sense of proportion in comparing the military advantages
33 to be gained with the damage done". Furthermore it is especially forbidden to "destroy or seize the
34 enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of
35 war".

36 This Party relies upon the following to assert its claims:

37 UN Charter: Establishing self-determination as an overwhelmingly recognized concept in the
38 international community.

39 Geneva Convention: Establishing the principles and guidelines of military action in a civil soci-
40 ety.

41 Tinoco Arbitration: Establishing that political recognition of a State is not a requirement of de
42 facto statehood.

43 East Timor Case: Establishing that self-determination is considered erga omnes by the inter-
44 national court system.

45 International Covenant on Civil and Political Rights: Establishing the principles of self-determination
46 as customary international law.

47 Resolution 1514 (1960) of the United Nations General Assembly: Reinforcing the principles of self-
48 determination established in the International Covenant on Civil and Political Rights.

49 Resolution 2625 (1970) of the United Nations General Assembly: Reinforcing the principles of
50 self-determination established in the International Covenant on Civil and Political Rights.

51 International Covenant on Economic, Social and Cultural Rights: Establishing the principles of
52 self-determination as customary international law.

53 The above referenced materials clearly support the State of Palestine's claim in regards to the
54 illegality of the Israeli wall.

55 Argument

56 The existence of self-determination must be considered now to be jus cogens. Over the past
57 two and a half centuries, it has cemented itself as a founding, immutable principle of international law.
58 The right of all people to self-determination is clearly described in the UN Charter in Article 1, being one
59 of only four founding principles of the body. "To develop friendly relations among nations based on
60 respect for the principle of equal rights and self-determination of peoples, and to take other appropri-
61 ate measures to strengthen universal peace" cannot possibly be taken as construing a lack of Israeli
62 obligation to uphold the right of self-determination. As established in the Tinoco Arbitration, a de facto
63 government, even if not politically recognized by a State, has the authority, rights and responsibilities
64 of a self-governing State. The State of Palestine, having a functional government within its borders,
65 being capable of submitting itself to diplomacy with other States, and having no question of political
66 authority over its populace, must be considered to be an independent State under the guidelines of the
67 Tinoco Arbitration. Additionally, in the East Timor Case, the arbitration court found that the right of self-
68 determination was both erga omnes and irreproachable. To further support the jus cogens status of
69 self-determination, Article 1 of the International Covenant on Civil and Political Rights expressly says "All
70 peoples have the right of self-determination." This treaty goes on to further define self-determination
71 as the ability to freely determine their political status and freely pursue their economic, social and cul-
72 tural development.

73 In addition, resolution 1514 (1960) of the United Nations General Assembly reinforces the con-
74 cept of self-determination. In this resolution, the United Nations General Assembly declared that all
75 people have the right to self-determination, echoing the exact wording of the International Covenant
76 on Civil and Political Rights by defining self-determination in the exact same wording- "the ability to
77 freely determine their political status and freely pursue their economic, social and cultural develop-
78 ment." This resolution also goes on to declare that to subject a people to alien subjugation, domina-
79 tion and exploitation constitutes a violation of human rights under the UN Charter. While an entire
80 treatise could be crafted on this resolution alone, the State of Palestine believes such action is not nec-
81 essary, for self-determination is also reinforced in UN General Assembly Resolution 2625 (1970), wherein
82 self-determination is a right of all human beings and must be protected by member States. This self-
83 determination in Resolution 2625 (1970) is, once again, directly defined as the right to freely determine
84 political status and pursue economic, social and cultural development.

85 If the UN Charter itself and numerous statements by the General Assembly, the largest gath-
86 ering of States in the history of politics, does not establish a universal recognition of the jus cogens of
87 self-determination, then what, if anything, ever will? The jus cogens of self-determination has been
88 acknowledged time and again by the international community for decades, with support from UN res-
89 olutions, treaties, arbitration and even the UN Charter itself. In context of such a wealth of support, there
90 can be no doubt self-determination is elevated to the position of jus cogens through an overwhelming
91 volume of state practice and opinio juris.

92 The construction of the border wall on Palestinian territory is a blatant, willful and egregious vi-
93 olation of the jus cogens of self-determination. Israel claims it is for self defense, but if that were the
94 case, the wall would be built on internationally recognized Israeli territory. The nation of Palestine is
95 not a near peer competitor with Israel; not only does Palestine not have nuclear warheads, it does not
96 even have a standing military force. This wall violates not only the jus cogens of self-determination,
97 but also the UN Charter. Members of the United Nations are held to a standard – refrain from the threat
98 or use of force and settle international disputes in a peaceful manner. This border wall, built over-
99 top Palestinian territory without the consent of its people, violates the territorial integrity of the state
100 of Palestine. It violates the clear jus cogens principles of self-determination, specifically of the human
101 right of self-determination of economic, social and cultural development, and must be removed from
102 its current location. International law in this context is quite clear, and the economic, social and cul-
103 tural development of the Palestinian people is under attack by Israel. This wall, built under the already
104 established false pretenses of national security, directly prevents cultural exchange between Pales-
105 tine and other States, thus violating the jus cogens of self-determination. The wall violates the right of
106 Palestinian people to engage in economic opportunity within both its own sovereign territory and that
107 of other States, thus violating the jus cogens of self-determination. The wall additionally violates the
108 jus cogens of self-determination of social development by preventing the Palestinian populace from
109 engaging in legal discourse within its own territory. This wall violates the UN Charter, it violates jus co-
110 gens, and it violates treaty law present in the International Covenant on Civil and Political Rights as well
111 as the treaty of the International Covenant on Economic, Social and Cultural Rights.

112 Lastly, under Article 53 of the 4th Geneva Convention, an occupying power is especially for-
113 bidden to “destroy or seize the enemy’s property, unless such destruction or seizure be imperatively
114 demanded by the necessities of war”. The wall constructed by Israel seizes the property of Palestine
115 and is not imperatively demanded by the necessities of war. Israel and Palestine are not at war to
116 begin with, as Palestine has no standing military at all. Should the Court require further persuasion, the
117 state of Palestine urges it to question – does the state of Palestine violate Israeli territorial sovereignty
118 by building walls in Israeli land?

119 Prayer for Relief

120 The people of Palestine request the Court to find the construction of the Israeli border wall a
121 violation of the UN Charter and the jus cogens of self-determination, and to advise the immediate
122 deconstruction of the wall.