



Advisory Opinion: Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Palestine; Israel; Canada; Egypt) (2003)

ARGUED: 24 November 2025

DECIDED: 25 November 2025

1 This Dissenting Advisory Opinion was signed and delivered by Justice Obabko of the Argentine
2 Republic.

3 BACKGROUND

4 Since 1948, the Middle East has been a scene of an active dispute with varying levels of military
5 hostility. Indeed the 1917 Balfour Declaration guaranteed the right of the Jewish people to have their
6 own state and homeland following World War I. Further it affirmed that local Arabs have a right to their
7 own rights and status. UN Resolution 181 in 1947 guaranteed that the former British Mandate of Palestine
8 would be split into two roughly even states: a state for the Jewish People which would become the State
9 of Israel and a State for the Arabs of Palestine, along with an international control zone over the Holy City
10 of Jerusalem to guarantee the religious rights and significance of the City for both peoples, religions,
11 and cultures.

12 Instead, the Arab League broke the peace negotiations and chose to initiate war against the
13 newly established State of Israel in an attempt to destroy it. They would lose the 1948 war, and the
14 consequences that came afterwards resulted in approximately 700,000 Arabs fleeing or being expelled
15 from the lands of present day Israel to the West Bank, Gaza Strip, and neighboring Arab countries.
16 Further, over 900,000 Jews from Arab and Middle Eastern countries were brutally expelled from their
17 homes in which they lived for generations, as a consequence of the war. For many, Israel would become
18 the only safe haven to restart their lives.

19 The current dispute largely follows the status of the 1949 Armistice lines which established Is-
20 rael's modern day borders and the West Bank and the Gaza Strip as a homeland for a future Palestinian
21 Arab State which never materialized. These lands were captured by Israel during the Six-Day War of
22 1967, as Arab forces were massing on their borders in an attempt to destroy the Jewish State. Under
23 the norms of *Casus Belli*, Israel struck first in self defense and secured their existence and the safety
24 of their cities and citizens from conventional Arab attacks. Since then, several wars against Israel by
25 neighboring Arab states and Palestinian militias have occurred such as the 1973 Yom Kippur, the First
26 Lebanon War from 1982-1985, the First Intifada from 1987 - 1993, and now the ongoing Second Intifada
27 from 2000. Throughout the entire protracted conflict with their neighbors, the State of Israel has shown
28 willingness to negotiate for peace, while the Arab and Palestinian forces have been less reciprocative.

29 JURISDICTION

30 In their Majority Opinion, my fellow Justices on the Court claim that we have jurisdiction to hear
31 and issue an Advisory Opinion on the matter of the Wall in Occupied Palestinian Territory in the West
32 Bank. In regards to jurisdiction, I am in full agreement with the Majority Opinion. As mentioned in Article
33 96 of the United Nations, the Court has the authority to grant non binding Advisory Opinions on cases
34 and disputes. Further UN General Assembly resolution, A/RES/ES-10/14, has requested the Court to give
35 its nonbinding advisory opinion on the status of this wall. To further strengthen the claim of jurisdiction,

36 the Court invokes Article 65(1) which states as follows, "The Court may give an advisory opinion on any
37 legal question at the request of whatever body may be authorized by or in accordance with the Charter
38 of the United Nations to make such a request."

39 When it comes to the question of the jurisdiction of this Court, I am in full concurrence with
40 the Majority Opinion that the Court indeed has the authority to hear and issue nonbinding advisory
41 opinions on the matter at hand. However, I respectfully dissent from the opinion of the majority, which
42 claims that the State of Israel is in violation of the Fourth Geneva Convention due to the construction
43 of the West Bank Wall and is responsible for all legal consequences that may arise from it.

44 OPINION

45 The Majority Opinion of the Court claims that there is a major legal consequence of the con-
46 struction of the Wall in the West Bank. The Majority claims that the State of Israel is in violation of the
47 Fourth Geneva Convention of 1949, without any regard to the complex situation regarding the State
48 of Israel's right to exist with its own secure and safe borders. The fact of the matter is that, the ongo-
49 ing Second Intifada in which Palestinian Militant/Terrorist Groups of Hamas, Palestinian Islamic Jihad,
50 the Fatah-aligned Al-Aqsa Martyrs Brigades, and other smaller groups have all rejected the Fatah-led
51 Palestinian Authority's peace attempts with the State of Israel and launched waves of terrorist attacks
52 which include but are not necessarily limited to suicide bombings, rocket attacks from Gaza, and of
53 course border incursions and infiltrations from West Bank cities and suburbs in which the Palestinian
54 Authority remains in total control as agreed under Oslo I & II. Further under these agreements, in turn
55 for the State of Israel's withdrawal from most Palestinian Populated Centers in the West Bank (Areas A
56 and partially from Area B), the Palestinian Authority committed itself to forgoing terrorism and political
57 extremism and settling out disputes on the final status of the border demarcation with Israel.

58 Both sides were in agreement that final status of their frontiers, both in the West Bank and Gaza
59 Strip, would be based roughly on the borders of the Green Line with several negotiated landswaps
60 to settle the issues of Arab Majority neighborhoods within Israel that have closer ties to Palestine and
61 several Jewish settlement blocs on the border that have been integrated into Israel proper. Instead, the
62 Palestinian Authority which, under the Oslo Accords, has been given the right to create its own armed
63 security forces in coordination with Israel and Israeli authorities throughout the transitional phases to
64 a peaceful settlement either choose not to or could not stop the militant groups who used Areas A and
65 B of West Bank. Israel had withdrawn from this region to combat terror attacks and as an act of good
66 faith for peace negotiations.

67 Article 51 of the United Nations Charter states in its wording as follows, "Nothing in the present
68 Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs
69 against a Member of the United Nations, until the Security Council has taken measures necessary to
70 maintain international peace and security. Measures taken by Members in the exercise of this right of
71 self-defence shall be immediately reported to the Security Council and shall not in any way affect the
72 authority and responsibility of the Security Council under the present Charter to take at any time such
73 action as it deems necessary in order to maintain or restore international peace and security." To put
74 simply, it recognizes a State's right to protect itself and its people from harm. Given the context of this
75 situation, with the failure of the Palestinian Authority to fully commit to the Oslo Accords, the State of
76 Israel is in the right to construct a temporary barrier along the Green Line and areas adjacent to it that
77 is necessary for its own safety and the security of its citizens.

78 Furthermore, as the Israeli advocates demonstrate in their presentation before the Court, the
79 Israeli barrier wall is largely a temporary measure to protect their civilians. It is my opinion that this
80 barrier is necessary in thwarting and/or reducing the scale and intensity of Palestinian Terror Attacks
81 on the Israeli people. Further, the State of Israel is a Western Style democratic nation, the same can not
82 be said about its neighbors in the Middle East. In Israel, a separation of government and powers does
83 exist, and their judiciary, the Supreme Court, has allowed Palestinians and their advocates to petition
84 in Israeli courts on the harm and damage to their livelihoods that the Wall may have caused.

85 To add on, there have been cases in which the Israeli Supreme Court has ruled in their favor
86 and ordered parts of the Wall to be demolished and rebuilt in a less disruptive location to Palestinian
87 livelihoods and daily business, without compromising the integrity of Israel's safety and security. This
88 further proves the temporary and fluid nature of the West Bank Wall which is a security measure pend-

89 ing final peace settlement between the State of Israel and the Palestinian Authority. It is my opinion
90 that the right of self determination is legitimate to all nations as found within the UN Charter, including
91 Israel and Palestine; however this right cannot come at the expense of Israel's right to exist in safe and
92 secure borders for themselves and their own people.

93 Given the aforementioned characteristics of the Wall and the facts of the matter at hand, I
94 respectfully dissent with the majority opinion that Israel is in violation of the Fourth Geneva Convention
95 and responsible for all the legal consequences that Palestinians may face as a result of the barrier.

96 RECOMMENDED REMEDIES

97 It is the nonbinding advisory opinion of the Court that both the State of Israel and the Palestinian
98 Authority as the recognized representative of the Palestinian People should show genuine commitment
99 to restarting the peace talks under the Oslo Accords and the American-led framework of the Roadmap
100 for Peace. The Court further strongly recommends in this nonbinding advisory opinion that the Pales-
101 tinian Authority remain committed to its promises on forgoing terrorism and extremism against Israel
102 by preventing armed attacks from terrorist groups like Hamas, Palestinian Islamic Jihad, and Al-Aqsa
103 Martyrs Brigades. To that end, I strongly recommend that both the State of Israel and the Palestinian
104 Authority should offer amnesty for lower rank and file members of these extremist groups in return for
105 their disarmament and commitment to peace and the legitimate aspirations of both peoples right to
106 self determination and safety.

107 Further, the Court strongly recommends to the State of Israel to halt further construction and
108 extensions of settlements in the West Bank Area C. We further suggest that the State of Israel perma-
109 nently redraw and reconstruct its border wall so as to not disadvantage the Palestinian people's daily
110 livelihoods and not cause them any unnecessary harm and complications in their lives. Both nations
111 and peoples must return to, without any delay, to international mediation and/or direct negotiations
112 to implement the Oslo Accords and the US-led framework of the Roadmap of Peace in an effort to end
113 their protracted conflict.

114 CONCLUSION

115 For the aforementioned reasons above, I respectfully dissent from the Majority Opinion of the
116 Court, and find no basis for a large-scale Israeli violation of the Fourth Geneva Convention in regards
117 to the occupation of the West Bank. In this dissent, I encourage that both Israel and Palestine engage
118 in discussion without delay to end their protective conflict and recognize the legitimate aspirations of
119 both peoples and their respective nations to live in safety and security without harming the other's
120 rights to do the same.

Signed By

A handwritten signature in cursive script, reading "Justice Obabko", with a long horizontal flourish extending to the right.

Justice Nicolas Obabko