



## Advisory Opinion: Wall in the Occupied Palestinian Territory (Palestine; Israel; Canada; Egypt)

**ARGUED: 22 November 2021**

**DECIDED: 23 November 2021**

1 The advisory opinion was signed by and agreed by Justice Gibson of Japan, Justice Gil of Kuwait, Justice  
2 Kazor of Bangladesh, Justice Krone of Fiji, Justice Mendoza of Estonia, Justice Mounts of Japan, Justice Potterf  
3 of Fiji, Justice Robson of Kazakhstan, Justice Rook of Turkmenistan, Justice Cargile of Egypt, and Justice Utz of  
4 Serbia.

5 In November 1947, the UN General Assembly adopted A/RES/181 that set up a two-state system of rule  
6 in the Palestinian territory. The state of Israel signed this resolution in 1949 and temporary borders, referred to as  
7 the Green Line, were drawn, delineating the territories owned by Israel, Palestine, Jordan, Egypt and Syria. These  
8 borders were maintained until the 1967 Six Day War when Israel captured the West Bank and East Jerusalem. On 4  
9 June 2003, the Roadmap to Peace was established and adopted by the UN as a plan to resolve the Israeli-Palestinian  
10 conflict. This plan involves three phases, with the first being the “Ending Terror and Violence, Normalizing Pales-  
11 tinian Life, and Building Palestinian Institutions. This phase outlines both Palestine’s and Israel’s leadership and  
12 commitment to the two-state vision of an independent sovereign Palestinian State. On 18 June 2002, Israeli author-  
13 ities began constructing a security fence that went beyond its boundaries as established by the Green Line. On 19  
14 November 2003 the Tenth Emergency Security Council was called and adopted S/RES/1515 2003 which reaffirmed  
15 the Roadmap to Peace. On 8 December 2003 GA/10216 voted in favor of requesting an advisory opinion from the  
16 ICJ on the construction of the security wall.

17 The Court is tasked with addressing the question: “What are the legal consequences arising from the  
18 construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including  
19 in and around East Jerusalem, as described in the report of the Secretary-General, considering the rules and principles  
20 of international law, including the Fourth Geneva Convention of 1949, and relevant Security Council and General  
21 Assembly resolutions?”

22 It is first essential to note the jurisdiction of the Court in this case. Israel argues that the Court lacks  
23 jurisdiction to issue an advisory opinion in this case on the basis that the General Assembly was acting beyond their  
24 authority when they called the 23rd meeting of its Tenth Emergency Special Session. As was previously clarified,  
25 the General Assembly adopted resolution ES-10/14 during this emergency session, which asks the Court to issue the  
26 advisory opinion on the aforementioned question. The Court believes that the General Assembly was acting within  
27 their power to both call this emergency session and ask the Court to issue the advisory opinion.

28 A/RES/377 (1950), “Uniting for peace” was adopted by the General Assembly on November 3rd 1950. The  
29 resolution outlines that: “if the Security Council, because of lack of unanimity of the permanent members, fails to  
30 exercise its primary responsibility for the maintenance of international peace and security in any case where there  
31 appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider  
32 the matter immediately with a view to making appropriate recommendations.” It furthers this by stating that “If  
33 not in session at the time, the General Assembly may meet in emergency special session within twenty-four hours of  
34 the request therefore.”

35 The Court believes that the Security Council failed to unanimously act in this case to come to a consensus  
36 on the specific issue at hand, the construction of the wall. Israel furthers their jurisdiction argument by claiming that  
37 S/RES/1515 (2003) was adopted unanimously by the Security Council on November 19th relating to the situation  
38 in the Middle East and the Palestinian question. This resolution endorsed the Roadmap plan, and did not come  
39 up with any sort of plan on its own. The Court believes there are a few important distinctions to be made here.

40 Although the Roadmap plan is relating to the general conflict between Israel and Palestine, it does not specifically  
41 address the issue of the construction of the wall. The key issue at hand in this case that requires the UNs expedient  
42 work is the actual building of the wall. Due to this, the Court does not believe that one could consider the adoption  
43 of S/RES/1515 (2003) to be understood as the Security Council reaching a unanimous decision on the issue. The  
44 Court also finds it important to clarify that the Security Council held another meeting on December 12 2003 on the  
45 same topic, and no resolutions or agreements were reached during that meeting either. This lack of action opens up  
46 the opportunity for the General Assembly to call an emergency session, as the Court clarified comes from A/RES/377  
47 (1950) .

48 It is foundational to the consideration of jurisdiction that the Court inquires to the effective implementation  
49 of the standing S/RES/1515 (2003) and the encompassed S/RES/1397 (2002) and S/2003/529. Under resolution  
50 S/1950/377A(V), as stated prior, the Court affirms that the Security Council failed to provide a consensus on the  
51 specific issue brought before the body, the construction of a wall in the Occupied Palestinian Territory. Israel and  
52 Canada presented evidence pertaining to the political and primary authority of S/2003/529, commonly referred to  
53 as the Roadmap to Peace and the Court does recognize the inherent political nature of the Israeli-Palestinian Conflict.  
54 However, the presence of a wall in the Occupied Territory of Palestine demonstrates a violation of the aforementioned  
55 resolutionary statutes that threatens international peace.

56 Resolution S/1950/377A(V), “Uniting for Peace” addresses the proper procedure when the Security Council  
57 lacks unanimity and fails to preserve international peace. Phase I of the adopted Roadmap to Peace, which should  
58 have been completed in May 2003, focuses on ending terror and violence, normalizing Palestinian life, and building  
59 Palestinian institutions. Both the Israeli and Palestinian arguments affirmed before the Court a “stall” in the imple-  
60 mentation of Phase I. Further, the presence of a wall in the Occupied Territories of Palestine demonstrates a direct  
61 violation of the Settlement Clause in the Roadmap plan, which prescribed that the “Government of Israel immedi-  
62 ately dismantles outposts erected since March 2001” and “Consistent with the Mitchell Report, the Government of  
63 Israel freeze all settlement activity (including natural growth of settlements).” Further, S/RES/1515 (2003) pream-  
64 bulatory clause three: “*Reiterating* the demand for an immediate cessation of all acts of violence, including all acts  
65 of terrorism, provocation, incitement and destruction,” demonstrates the consensus the Security Council regarding  
66 the escalation of hostilities. Palestine and Egypt affirmed that the presence of a wall in the Occupied Palestinian  
67 Territories was perceived as a provocation and incitement towards Palestinian individuals.

68 The violation of the Roadmap to Peace further affirms the request from the General Assembly. Although  
69 consensus was established through the adoption of the Roadmap to Peace, the Security Council has failed to ade-  
70 quately preserve international peace through the failure to provide effective mechanisms of accountability in Phase  
71 I of the Two-State Solution. Additionally, the creation of a wall in the Occupied Palestinian Territory and lack of  
72 response provided by the Security Council provides the General Assembly with full authority to seek the issuance of  
73 an opinion from the Court.

74 The Court stands firm in its view that the General Assembly was acting within their purview to call the  
75 emergency session. It is next important to outline that it is also fully within their power to ask the Court to issue an  
76 advisory opinion. Article 96 of the United Nations Charter states, “The General Assembly or the Security Council  
77 may request the International Court of Justice to give an advisory opinion on any legal question.” This clearly  
78 outlines the Court’s jurisdiction in this case.

79 The opinion and explanation of the Court is as follows:

80 With the jurisdiction settled, the Court feels it is necessary to clarify that the advisory opinion is answering  
81 a legal question and not a political statement. Canada’s memorial contends that “the long-term resolution of this  
82 question is largely a political matter that would be better disputed in other avenues” (Page 1, Paragraph 1). The  
83 Court is not taking a political or moral stance in the ruling, but rather a legal stance which does not seek to  
84 alter the content of political agreements made between the parties. The Court recognizes the contentious political  
85 issues in the region, but stresses that its ruling is on how the matter of the Israel- Palestine border wall fits within  
86 international law. Canada also states that the Court’s opinion “is an ineffective solution to a problem that must be  
87 resolved through diplomatic negotiation requiring the enthusiastic cooperation of involved parties.” However, the  
88 Court has seen cooperation of involved parties in agreements such as the “Roadmap to Peace” and does not believe  
89 that advising on the legal issues would be ineffective or stall diplomatic progress. Rather, this advisory opinion will  
90 help clarify the measures that can be taken in light of existing international law.

91 Determining if any international law is violated by the construction of the border wall past the 1949 Green  
92 Line by Israel is an important task that this Court has before it. Israel contends that they are acting wholly under

93 their sovereign power to protect their citizens through a national defense measure. Palestine, Egypt, and Canada all  
94 contend that Israel is in clear violation of international law on several points. Palestine, in their written memorial,  
95 states several treaties and conventions that would demonstrate violations of international law by Israel. The Court  
96 feels it is important to discuss each one of these.

97 Palestine looks back to the Charter of the United Nations to further their claims of Israeli violations of  
98 international law. Article 2, Section 4 states “The Organization and its Members, in pursuit of the Purposes stated  
99 in Article 1, shall act in accordance with the following Principles... All Members shall refrain in their international  
100 relations from the threat or use of force against the territorial integrity or political independence of any state, or  
101 in any other manner inconsistent with the Purposes of the United Nations.” Israel argues to this Court that their  
102 right to self defense supersedes international law, including this part of the Charter. The Court has ruled on the  
103 relationship between self defense and obligations under international law in the case of *Military and Paramilitary*  
104 *Activities in and against Nicaragua (Nicaragua v. United States of America)* in 1986. In the opinion, the Court  
105 discussed at length the relationship between a right to self defense and adherence to international law. The right to  
106 self defense, the Court found, is applicable to a state that is considered under attack. However, in paragraph 195 of  
107 the Court’s decision in *Nicaragua v. United States of America*, it states “There is no rule in customary international  
108 law permitting another state to exercise the right of collective self-defense on the basis of its own assessment of the  
109 situation”. This interpretation of Article 2, Paragraph 4 holds true to this case. Israel does have a right to defend  
110 their people. What Israel does not have is the right to impede on the territory of Palestine as a reactionary measure  
111 in response to insurgent attacks by groups whose affiliation with the Palestinian authority is ambiguous. Using this  
112 interpretation, we do find Israel in violation of their obligations as a Member State under Article 2, Paragraph 4.

113 Another area of international law relied upon by Palestine in their arguments are the Hague Regulations  
114 Concerning the Laws and Customs of the War on Land, adopted on 18 October 1907. The particular language  
115 referenced by Palestine is Article 23 (g), which states “In addition to the prohibitions provided by Special Conventions,  
116 it is especially forbidden...to destroy or seize the enemy’s property, unless such destruction or seizure be imperatively  
117 demanded by the necessities of war”. It has been found that Israel has been seizing land outside of the boundary set  
118 by the 1949 Green Line. A report from the International Committee of the Red Cross found that 10,000 hectares  
119 of highly-fertile farmland in the West Bank had already been seized by Israel to construct this wall. For reference,  
120 10,000 hectares is equivalent to roughly 24,710 acres of land or 24,710 football fields (a football field is one acre).  
121 This seizure of Palestinian land by Israel is not a result of war because of the Green Line border set in 1949. Israel  
122 has not demonstrated to this Court that the seizure of this land was a necessity of war. Therefore, this Court finds  
123 that Israel has violated Article 23(g) of the 1907 Hague Regulations by seizing Palestinian land not imperatively  
124 demanded by war.

125 The Armistice Line, also known as the 1949 Green Line, stands before the international community as the  
126 established boundaries between Israel and neighboring countries. The Court further affirms this as the present legal  
127 boundaries of Israel, providing the sovereign right to construct a “defensive” barricade within these boundaries,  
128 not outside. Building a wall in the Occupied Territories directly violates the Green Line and infringes upon the  
129 self-determination of Palestinian individuals who reside in the regions. Israel stated that borders and territory of  
130 their state had evolved past the Green Line, which served as the primary incentive for building defensive walls at  
131 their current locations. However, Palestine and Egypt both stated that the evolution of the Green Line was not a  
132 consensual process and has not been afforded due consideration and re-allocation by the international community.  
133 Therefore, the Court does affirm the legality binding Israel’s sovereign decision to construct defensive mechanisms  
134 within the boundaries of the Armistice Line.

135 The Universal Declaration of Human Rights was ratified on 10 December 1948 in Paris. Article 17 defines  
136 the right of a person to have private property. “Everyone has the right to own property alone as well as in association  
137 with others. No one shall be arbitrarily deprived of his property”. Palestine argues that Israel is arbitrarily seizing  
138 property from Palestinians to construct this wall. Israel did not contest or address these accusations in their written  
139 memorial or oral arguments to this Court. A discussion of the seizure of private property is not warranted again for the  
140 Court would be repeating itself. We find that Israel is violating the human rights of the Palesntian people, pursuant  
141 to Article 17 of the Universal Declaration on Human Rights, by arbitrarily seizing property for the construction of  
142 the wall.

143 Therefore, the court advises the following:

144 First, if Israel were to construct a border wall in the planned area within the Occupied Palestinian Territories  
145 they would be in violation of international law. As Israel is party to the 1949 Armistice Agreements, any construction  
146 by Israel past the Green Line is a clear overstep of the bounds. The Court advises that if any wall is to be constructed,

147 it cannot be past the Green Line and sit in recognized Palestinian Territory. Construction of a wall in Occupied  
148 Palestinian Territory is in violation of international law. In particular, we would find that Israel would be in violation  
149 of: Article 2, Paragraph 4 of the United Nations Charter, Article 23(g) of the Hague Regulations, and Article 17 of  
150 the Universal Declaration of Human Rights. There may be other facets of international law which Israel violates if  
151 the planned border wall is constructed.

152 Second, acknowledging Israel's claim to having adjusted, through conflict, the formal border detailed within  
153 the 1949 Green Line, the Court attests that we cannot use these unofficial territorial expansions as the basis of  
154 legal decision without formal negotiations, recognition, and agreements. If Israel would like to lay formal claim to  
155 these unofficially and illegally claimed borders, the Court advises they negotiate changes to the regional boundaries  
156 through the proper diplomatic and legal channels, such as renegotiating through the Roadmap to Peace.

157 Third, the Court highly encourages both Parties to adhere to the Roadmap to Peace in order to encourage  
158 a solution that favors the interests of everyone in the best possible manner. Acting on the Roadmap to Peace will  
159 hopefully encourage cooperation between and the betterment of situation for the two Parties.

160 Finally, the Court encourages the Parties to resolve any future conflicts through joint negotiations and  
161 mutual cooperation. No matter what opinion one holds regarding Israel or Palestine, both peoples live within these  
162 same areas and therefore must be able to resolve conflict through proper and respectful means without disregarding  
163 the rule of international law. If an agreement involving these two Parties cannot be reached due to incompetence,  
164 ignorance, or other incapacibilities, the International Court of Justice will be willing to resolve any dispute in question  
165 as jurisdiction allows.

Signed By



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Justice Austin Rook



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Justice Sydney Robson



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Justice Mackenze Gibson



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Justice Aaron Mounts



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Justice Anthony Mendoza



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Justice Reagen Tibbs



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Justice Jeremy Utz



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Justice Eden Gil



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Justice Jack Krone



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Justice Elizabeth Potterf



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Justice Josephine Kazor



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Justice Lane Cargile