

International Court of Justice

Press Release 2004/28

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

ADVISORY OPINION

The Court finds that the construction by Israel of a wall in the Occupied Palestinian Territory and its associated régime are contrary to international law; it states the legal consequences arising from that illegality

THE HAGUE, 9 July 2004. The International Court of Justice (ICJ), principal judicial organ of the United Nations, has today rendered its Advisory Opinion in the case concerning the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (request for advisory opinion).

In its Opinion, the Court finds unanimously that it has jurisdiction to give the advisory opinion requested by the United Nations General Assembly and decides by fourteen votes to one to comply with that request.

The Court responds to the question as follows:

“A. By fourteen votes to one,

The construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated régime, are contrary to international law”;

“B. By fourteen votes to one,

Israel is under an obligation to terminate its breaches of international law; it is under an obligation to cease forthwith the works of construction of the wall being built in the Occupied Palestinian Territory, including in and around East Jerusalem, to dismantle forthwith the structure therein situated, and to repeal or render ineffective forthwith all legislative and regulatory acts relating thereto, in accordance with paragraph 151 of this Opinion”;

“C. By fourteen votes to one,

Israel is under an obligation to make reparation for all damage caused by the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem”;

“D. By thirteen votes to two,

All States are under an obligation not to recognize the illegal situation resulting from the construction of the wall and not to render aid or assistance in maintaining the situation created by such construction; all States parties to the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 have in addition the obligation, while respecting the United Nations Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention”;

“E. By fourteen votes to one,

The United Nations, and especially the General Assembly and the Security Council, should consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall and the associated régime, taking due account of the present Advisory Opinion.”

Reasoning of the Court

The Advisory Opinion is divided into three parts: jurisdiction and judicial propriety; legality of the construction by Israel of a wall in the Occupied Palestinian Territory; legal consequences of the breaches found.

Jurisdiction of the Court and judicial propriety

The Court states that when it is seized of a request for an advisory opinion, it must first consider whether it has jurisdiction to give that opinion. It finds that the General Assembly, which requested the opinion by resolution ES-10/14 of 8 December 2003, is authorized to do so by Article 96, paragraph 1, of the Charter.

The Court, as it has sometimes done in the past, then gives certain indications as to the relationship between the question on which the advisory opinion is requested and the activities of the General Assembly. It finds that the General Assembly, in requesting an advisory opinion from the Court, did not exceed its competence, as qualified by Article 12, paragraph 1, of the Charter, which provides that, while the Security Council is exercising its functions in respect of any dispute or situation, the Assembly must not make any recommendation with regard thereto unless the Security Council so requests.

The Court further refers to the fact that the General Assembly adopted resolution ES-10/14 during its Tenth Emergency Special Session, convened pursuant to resolution 377A (V), which provides that if the Security Council fails to exercise its primary responsibility for the maintenance of international peace and security, the General Assembly may consider the matter immediately with a view to making recommendations to Member States. The Court finds that the conditions laid down by that resolution were met when the Tenth Emergency Special Session was convened; that was in particular true when the General Assembly decided to request an opinion, as the Security Council was at that time unable to adopt a resolution concerning the construction of the wall as a result of the negative vote of a permanent member.

The Court then rejects the argument that an opinion could not be given in the present case on the ground that the question posed in the request is not a legal one.

Having established its jurisdiction, the Court considers the propriety of giving the requested opinion. It recalls that the lack of consent by a State to its contentious jurisdiction has no bearing on its jurisdiction to give an advisory opinion. It adds that the giving of an opinion would not have the effect, in the present case, of circumventing the principle of consent to judicial settlement, given that the question on which the General Assembly requested an opinion is located in a much broader frame of reference than that of the bilateral dispute between Israel and Palestine, and that it is of direct concern to the United Nations. Nor does the Court accept the contention that it should decline to give the advisory opinion requested because its opinion could impede a political, negotiated solution to the Israeli-Palestinian conflict. It further finds it has before it sufficient information and evidence to enable it to give its opinion, and emphasizes that it is for the General

Assembly to assess the usefulness of that opinion. The Court concludes from the foregoing that there is no compelling reason precluding it from giving the requested opinion.

Legality of the construction by Israel of a wall in the Occupied Palestinian Territory

Before addressing the legal consequences of the construction of the wall (the term which the General Assembly has chosen to use and which is also used in the Opinion, since the other expressions sometimes employed are no more accurate if understood in the physical sense), the Court considers whether or not the construction of the wall is contrary to international law.

The Court determines the rules and principles of international law which are relevant to the question posed by the General Assembly. The Court begins by citing, with reference to Article 2, paragraph 4, of the United Nations Charter and to General Assembly resolution 2625 (XXV), the principles of the prohibition of the threat or use of force and the illegality of any territorial acquisition by such means, as reflected in customary international law. It further cites the principle of self-determination of peoples, as enshrined in the Charter and reaffirmed by resolution 2625 (XXV). As regards international humanitarian law, the Court refers to the provisions of the Hague Regulation of 1907, which have become part of customary law, as well as the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 1949, applicable in those Palestinian territories which before the armed conflict of 1967 lay to the east of the 1949 Armistice demarcation line (or "Green Line") and were occupied by Israel during that conflict. The Court further notes that certain human rights instruments (International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights and the United Nations Convention on the Rights of the Child) are applicable in the Occupied Palestinian Territory.

The Court ascertains whether the construction of the wall has violated the above-mentioned rules and principles. It first observes that the route of the wall as fixed by the Israeli Government includes within the "Closed Area" (between the wall and the "Green Line") some 80 percent of the settlers living in the Occupied Palestinian Territory. Recalling that the Security Council described Israel's policy of establishing settlements in that territory as a "flagrant violation" of the Fourth Geneva Convention, the Court finds that those settlements have been established in breach of international law. It further considers certain fears expressed to it that the route of the wall will prejudice the future frontier between Israel and Palestine; it considers that the construction of the wall and its associated régime "create a 'fait accompli' on the ground that could well become permanent, in which case, . . . [the construction of the wall] would be tantamount to de facto annexation". The Court notes that the route chosen for the wall gives expression in loco to the illegal measures taken by Israel, and deplored by the Security Council, with regard to Jerusalem and the settlements, and that it entails further alterations to the demographic composition of the Occupied Palestinian Territory. It finds that the "construction [of the wall], along with measures taken previously, . . . severely impedes the exercise by the Palestinian people of its right to self-determination, and is therefore a breach of Israel's obligation to respect that right".

The Court then considers the information furnished to it regarding the impact of the construction of the wall on the daily life of the inhabitants of the Occupied Palestinian Territory (destruction or requisition of private property, restrictions on freedom of movement, confiscation of agricultural land, cutting-off of access to primary water sources, etc.). It finds that the construction of the wall and its associated régime are contrary to the relevant provisions of the Hague Regulations of 1907 and of the Fourth Geneva Convention; that they impede the liberty of movement of the inhabitants of the territory as guaranteed by the International Covenant on Civil and Political Rights; and that they also impede the exercise by the persons concerned of the right to work, to health, to education and to an adequate standard of living as proclaimed in the International Covenant on Economic, Social and Cultural Rights and in the Convention on the Rights of the Child. Lastly, the Court finds that this construction and its associated régime, coupled with the establishment of settlements, are tending to alter the demographic composition of the Occupied Palestinian Territory and thereby contravene the Fourth Geneva Convention and the relevant Security Council resolutions.

The Court observes that certain humanitarian law and human rights instruments include qualifying clauses or provisions for derogation which may be invoked by States parties, inter alia where military exigencies or the needs of national security or public order so require. It states that it is not convinced that

the specific course Israel has chosen for the wall was necessary to attain its security objectives and, holding that none of such clauses are applicable, finds that the construction of the wall constitutes “breaches by Israel of various of its obligations under the applicable international humanitarian law and human rights instruments”.

In conclusion, the Court considers that Israel cannot rely on a right of self-defence or on a state of necessity in order to preclude the wrongfulness of the construction of the wall. The Court accordingly finds that the construction of the wall and its associated régime are contrary to international law.

Legal consequences of the violations found

The Court draws a distinction between the legal consequences of these violations for Israel and those for other States.

In regard to the former, the Court finds that Israel must respect the right of the Palestinian people to self-determination and its obligations under humanitarian law and human rights law. Israel must also put an end to the violation of its international obligations flowing from the construction of the wall in the Occupied Palestinian Territory and must accordingly cease forthwith the works of construction of the wall, dismantle forthwith those parts of that structure situated within the Occupied Palestinian Territory and forthwith repeal or render ineffective all legislative and regulatory acts adopted with a view to construction of the wall and establishment of its associated régime, except in so far as such acts may continue to be relevant for compliance by Israel with its obligations in regard to reparation. Israel must further make reparation for all damage suffered by all natural or legal persons affected by the wall’s construction.

As regards the legal consequences for other States, the Court finds that all States are under an obligation not to recognize the illegal situation resulting from the construction of the wall and not to render aid or assistance in maintaining the situation created by such construction. The Court further finds that it is for all States, while respecting the United Nations Charter and international law, to see to it that any impediment, resulting from the construction of the wall, in the exercise by the Palestinian people of its right to self-determination is brought to an end. In addition, all States parties to the Fourth Geneva Convention are under an obligation, while respecting the Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention.

Finally, the Court is of the view that the United Nations, and especially the General Assembly and the Security Council, should consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall and its associated régime, taking due account of the present Advisory Opinion.

The Court concludes by stating that the construction of the wall must be placed in a more general context. In this regard, the Court notes that Israel and Palestine are “under an obligation scrupulously to observe the rules of international humanitarian law”. In the Court’s view, the tragic situation in the region can be brought to an end only through implementation in good faith of all relevant Security Council resolutions. The Court further draws the attention of the General Assembly to the “need for . . . efforts to be encouraged with a view to achieving as soon as possible, on the basis of international law, a negotiated solution to the outstanding problems and the establishment of a Palestinian State, existing side by side with Israel and its other neighbours, with peace and security for all in the region”.

Composition of the Court

The Court was composed as follows: Judge Shi, President; Judge Ranjeva, Vice-President; Judges Guillaume, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal, Elaraby, Owada, Simma and Tomka; Registrar Couvreur.

Judges Koroma, Higgins, Kooijmans and Al-Khasawneh append separate opinions to the Advisory Opinion. Judge Buergenthal appends a declaration. Judges Elaraby and Owada append separate opinions.

A summary of the Advisory Opinion is published in the document entitled “Summary No. 2004/2”, to which summaries of the declaration and separate opinions appended to the Advisory Opinion are attached. This Press Communiqué, the summary of the Advisory Opinion and the latter’s full text can also be accessed on the Court’s website by clicking on “Docket” and “Decisions” (www.icj-cij.org).

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