

Unilaterally Constructed Barriers in Contested Areas

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Brief Analysis

The International Court of Justice (ICJ) in The Hague is expected to issue an advisory opinion this Friday, July 9, on the international legality of Israel's security fence. Although advisory opinions are often sought from the ICJ before an international body has made up its mind on an issue, the United Nations (UN) General Assembly referred the matter to the ICJ after it had already condemned the Israeli move. Given the UN General Assembly vote on December 8, 2003, by a ninety-to-eight margin with seventy-four abstentions, a comparable number of states were expected to offer briefs to the ICJ. However, this was not the case.

All major industrial countries opposed referral and many issued written statements basically arguing that the ICJ should not adopt an advisory opinion, including the United States, United Kingdom, France, Germany, the entire European Union (EU), Japan, and Canada. Although many of these countries expressed their opposition to the fence—or its route—in their written submissions, they also pointedly stated that the Israeli-Palestinian issue was a political problem that should be addressed through political rather than legal means and that, therefore, the ICJ was not the correct venue for addressing the question. In contrast, of the forty-nine states that submitted written statements, only a minority supported ICJ referral, including nine Arab states, the Palestinian Authority, North Korea, and Cuba.

Ironically, three countries—India, Saudi Arabia, and Turkey—condemned Israel at the UN General Assembly and voted to refer the Israeli fence to the ICJ for an advisory opinion even though they had themselves built barriers in areas contested by their neighbors. India is just completing a 460-mile barrier in the contested Kashmir to halt infiltrations supported by Pakistan; within the last two years, Saudi Arabia built a sixty-mile barrier along an undefined border zone with Yemen to halt smuggling of weaponry; and Turkey built a barrier in an area that Syria claims as its own. Of the three countries, Saudi Arabia also submitted a written statement to the ICJ directly, while the other two—India and Turkey—did not. The Arab League and Organization of Islamic States submitted statements to the ICJ condemning the Israeli barrier, but they did not condemn the Saudi barrier when it was being built. The ICJ has not been involved in any of the other barrier disputes.

India

To halt infiltrations from Pakistan, India has almost completed a twelve-foot-high fence in the contested area of Kashmir. Straddling 460 miles of territory known as the Line of Control (which divides both Kashmirs), the fence

reportedly looks comparable to other sections of the India-Pakistan border. The issue of Kashmir goes back to the India-Pakistan partition of 1947. Because a majority of Kashmir residents were Muslims, in 1947, Pakistan seized part of Kashmir. In the late 1980s, it sought to obtain the rest of Kashmir by supporting an insurgency movement. Last year, India began constructing a fence to halt the infiltrations. Construction of the fence was at first hampered by shelling between Pakistan and India. However, it has been aided by a ceasefire worked out late last year between the militaries of both countries. Pakistani leaders pledged early this year not to allow their territory to be used as a springboard for attacks.

The Pakistani government has accused India of violating the UN charter as well as the ceasefire agreement. The spokesperson for the Pakistani military, Major General Shaukat Sultan, said that "the border in Jammu and Kashmir remains undemarcated. It is a working boundary and a ceasefire line. [A]ny measure to alter the status of [the boundary] and any attempt to erect a new impediment is a direct violation of international commitments, and Pakistan opposes it. Border fencing is not allowed."

General Nimal Chand Vij, India's Army chief, claimed in May 2004 that the barrier was constructed to decrease the number of attacks of invaders coming from Pakistan into India: "The number of terrorists inside Jammu and Kashmir has dropped to nearly 55 percent to 60 percent of what it was last year." General Vij added that the fence had stopped almost 90 percent of infiltration attempts, but about 3,000 militants are still waiting for the best chance to invade.

Saudi Arabia

In a twenty-four-page [statement \(http://www.icj-cij.org/icjwww/idocket/imwp/imwpstatements/iWrittenStatement_02_KingdomofSaudiArabia.pdf\)](http://www.icj-cij.org/icjwww/idocket/imwp/imwpstatements/iWrittenStatement_02_KingdomofSaudiArabia.pdf) available on the ICJ website, the Kingdom of Saudi Arabia issued a blistering attack against the Israeli security fence, which it called an "internationally wrongful act" and called for the "destruction" of the barrier.

Yemeni officials have publicly charged that Saudi Arabia, within the last two years, constructed sixty miles of barrier in an undefined zone along the Saudi Arabia-Yemen border. The barrier is ten feet high. Saudi Arabia claims that the disputed area is part of its territory and asserts that the move is defensive to stem the flow of Yemeni smuggling of militants and weaponry. Yemen claims that the Saudi move violates the Jeddah Treaty, which the two countries reached in 2000. Amid continued Yemeni protest and just days before the ICJ convened in February, the Saudis and Yemenis held a high-level bilateral meeting in Riyadh. As a result of the summit and the ICJ, the Saudis have agreed to pause construction—at least for now. However, they have not done what they advise the Israelis to do—namely, to take down the barrier.

Turkey

Turkey's control of the southern province of Alexandretta, which was formerly in Syria, is accepted internationally, but it remains disputed by Damascus. Turkey patrols the border area, which it calls Hatay Province. Syria, however, calls it the Sanjak of Alexandretta Province.

Alexandretta was part of France's mandate for Syria after World War I, but the French-Turkish Treaty of Ankara also guaranteed the Turks living there cultural autonomy. In 1936, as France took early steps toward Syrian independence, Turkey sought a revision of Alexandretta's status. It appealed to the League of Nations, claiming that the privileges of the large Turkish minority there were being infringed and would be further infringed if Alexandretta were part of an independent Syria. The League of Nations decided in 1937 that the area should be a separate, self-governing state, and indeed, it was an independent state for a year. France ceded the area to Turkey in 1939, hoping to coax the Turks away from Nazi Germany. Justifying its move, France cited a freshly formed local parliamentary vote of the new state of Hatay to join Turkey. However, the move created disturbances in Syria. Syrian maps still

show the region as part of Syria. Hence, Turkey constructed a barrier in the disputed area. Also, since the late 1980s, Turkey has fenced and mined almost 500 miles of other parts of its border that are not disputed by Syria because of infiltration of Kurdish insurgents.

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