SEPARATE OPINION OF JUDGE OWADA

The issue of judicial propriety in exercising jurisdiction in advisory proceedings is a factor to be examined by the Court proprio motu*, if necessary — Relevance of the existence of a bilateral dispute in the subject-matter of the request as such is not to be a bar for the Court in exercising jurisdiction, but nonetheless a factor to be considered in determining how the Court should deal with the subject-matter of the request without impingeing upon the problem of regulating the very dispute between the parties — The Court should have approached the issue of exercising judicial propriety, not simply in relation to the question as to whether it should comply with the request for an advisory opinion, but also in relation to the question as to how it should exercise jurisdiction with a view to ensuring fairness in the administration of justice in a case which clearly is related to a bilateral dispute, including the issue of appointing a judge* ad hoc *— Consideration of fairness in the administration of justice requires equitable treatment of the positions of both sides involved in the subject-matter in terms of the assessment both of facts and of law involved — Condemnation of the tragic circle of indiscriminate mutual violence perpetrated by both sides against innocent civilian population should be an important segment of the Opinion of the Court.*

1. I concur with the conclusions of the Opinion of the Court both on the preliminary issues (jurisdiction and judicial propriety) and on most of the points belonging to the merits of the substantive issues involved. Nevertheless, not only have I some disagreements on certain specific points in the Opinion, but I have some serious reservations about the way the Court has proceeded in this case. While I acknowledge that the way in which the Court has proceeded with the present case has to a large extent been made inevitable under the somewhat extraordinary and unique circumstances of the case that are not always attributable to the responsibility of the Court, I feel it incumbent upon me to make my position clear, by pointing to some of the problematic aspects of the way in which the Court has proceeded in the present case.

2. The Court has reached its conclusions on the preliminary issues on jurisdiction and on judicial propriety of exercising this jurisdiction primarily on the basis of the statements put forward by the participants in the course of its written and oral proceedings. The reasons for the Court to arrive at these conclusions are set out in paragraphs 24-67. These, as such, raise no major disagreement on my part. However, I believe that the issue of jurisdiction and especially the issue of judicial propriety is a matter that the Court should examine, *proprio motu* if necessary, in order to ensure that it is not only *right* as a matter of law but also *proper* as a matter of judicial policy for the Court as a judicial body to exercise jurisdiction in the concrete context of the case. This means, at least to my mind, that the Court would be required to engage in an in-depth scrutiny of all aspects of the particular circumstances of the present case relevant to the consideration of the case, if necessary going beyond what has been argued by the participants. One of such aspects of the present case is the implication of the existence of a bilateral dispute in the subject-matter of the request for an advisory opinion.

3. The original Statute of the Permanent Court of International Justice contained no express provisions relating to advisory jurisdiction. Only the Covenant of the League of Nations, in its Article 14, stipulated that "[t]he Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly". It was this provision that came to form the legal basis for the exercise of advisory function by the Permanent Court of International Justice.

4. While the purport of this provision according to the intention of the founding fathers of the League does not appear to have been entirely clear nor unified, one of the points that clearly emerge from the legislative history of the Covenant is that the purpose of the advisory function of the Permanent Court consisted from the beginning in aiding the League in the peaceful settlement of a concrete dispute before the Council of the League, in particular in the context of the procedures provided for in Articles 12 to 16 of the Covenant[1].

5. When the Rules of Court were drafted in 1922 following the establishment of the Permanent Court, four articles (71-74) were consecrated to advisory procedure. They affirmed the "judicial character" of the advisory function of the new Court and paved the way for the later fuller assimilation of advisory to contentious procedure[2]. Indeed, the Report of the Committee [of the Permanent Court of International Justice], appointed on 2 September 1927, stated as follows:

> "The Statute does not mention advisory opinions, but leaves to the Court the entire regulation of its procedure in the matter. The Court, in the exercise of this power, deliberately and advisedly assimilated its advisory procedure to its contentious procedure; and the results have abundantly justified its action. Such prestige as the Court to-day enjoys as a judicial tribunal is largely due to the amount of its advisory business and the judicial way in which it has dealt with such business. In reality, where there are . . . contending parties, the difference between contentious cases and advisory cases is only nominal. The main difference is the way in which the case comes before the Court, and even this difference may virtually disappear, as it did in the Tunisian case. So the view that advisory opinions are not binding is more theoretical than real." (*P.C.I.J., Series E, No. 4*, p. 76.)

6. In fact, when the Permanent Court declined to exercise jurisdiction to give a requested advisory opinion in the *Status of Eastern Carelia* case (*P.C.I.J., Series B, No. 5*), the main rationale of this decision lay precisely on this point. The specific issue referred to the Court was whether

> "Articles 10 and 11 of the Treaty of Peace between Finland and Russia [of 1920] and the annexed Declaration of the Russian Delegation regarding the autonomy of Eastern Carelia, constitute engagements of an international character which place Russia under an obligation to Finland as to the carrying out of the provisions contained therein" (*ibid.*, p. 6).

In other words, it arose in the context of a dispute between Finland and Russia involving this issue — a matter which Finland asked the League of Nations to take up. The Council in its resolution expressed its "willing[ness] to consider the question with a view to arriving at a satisfactory solution if the two parties concerned agree" (*ibid.*, p. 23). It was, however, due to the circumstances where the Russian Government declined the request from the Estonian Government for it to "consent to submit the question to the Council in conformity with Article 17 of the Covenant" (*ibid.*, p. 24) and where the Finnish Government again brought the matter before the Council, that the Council decided to request the advisory opinion in question.

---

[1]See, in particular, Michla Pomerance, *The Advisory Function of the International Court in the League and U.N. Eras* (1973) at p. 9.

[2]*Ibid.*, at p. 14.

7. Against this background, the Permanent Court stated as follows to clarify its position:

> "There has been some discussion as to whether questions for an advisory opinion, if they relate to matters which form the subject of a pending dispute between nations, should be put to the Court without the consent of the parties. *It is unnecessary in the present case to deal with this topic*." (*P.C.I.J., Series B, No. 5*, p. 27; emphasis added.)

After making this point clear, the Permanent Court continued as follows:

> "It follows from the above that the opinion which the Court has been requested to give bears on an actual dispute between Finland and Russia. *As Russia is not Member of the League of Nations, the case is one under Article 17 of the Covenant . . .* the Members of the League . . . having accepted the Covenant, are under the obligation resulting from the provisions of this part dealing with the pacific settlement of international disputes. As concerns States not members of the League, the situation is quite different; they are not bound by the Covenant. *The submission, therefore, of a dispute between them and a Member of the League for solution according to the methods provided for in the Covenant, could take place only by virtue of their consent.* Such consent, however, has never been given by Russia." (*Ibid.*, pp. 27-28; emphasis added.)[3]

It is clear from this passage that the main rationale of the Permanent Court in declining the exercise of jurisdiction in the *Eastern Carelia* case was not the existence of a dispute relating to the subject-matter of the request between the parties, but rather the fact that one of the parties to the dispute did not give its consent to a "solution according to the methods provided for in the Covenant".

8. When the International Court of Justice was reconstituted as the institutional successor to the Permanent Court of International Justice, and incorporated into the United Nations system as its principal judicial organ, no drastic change was introduced in the new Statute of the International Court of Justice relating to its functions or to its constitution in this respect. Since then, advisory function of the Court, as the secondary but important function of the Court, has been exercised by the Court in line with the course laid down by its predecessor, the Permanent Court of International Justice, in the days of the League as described above.

9. Given this background, and in light of the case law accumulated in the course of years since the establishment of the International Court of Justice on the questions of jurisdiction of the Court in advisory proceedings and of propriety of its exercise, it is my view that the Court is right in its conclusion in the present case that the existence of a dispute on a bilateral basis should not be a bar to the Court in giving the advisory opinion requested.

---

[3]Article 17 of the Covenant provides:

> "In the event of a dispute between a Member of the League and a State which is not a Member of the League, or between States not Members of the League, the State or States not Members of the League shall be invited to accept the obligations of membership in the League for the purposes of such dispute, upon such conditions as the Council may deem just. If such invitation is accepted, the provisions of Articles 12 to 16 inclusive shall be applied with such modifications as may be deemed necessary by the Council."

10. While the existence of a bilateral dispute thus should not exclude the Court from exercising jurisdiction in advisory proceedings as a matter of judicial propriety, however, it is my view that the existence of a bilateral dispute should be a factor to be taken into account by the Court in determining the extent to which, and the manner in which, the Court should exercise jurisdiction in such advisory proceedings. In this respect, I am of the view that the Court has drawn too facile an analogy between the present case and the past cases of advisory opinion and especially the case concerning *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion*. Given the intricacies of the present case, I submit that this approach of applying the principles drawn from the past precedents automatically to the present situation is not quite warranted.

11. Especially in the *Namibia* case, the point in issue that formed the basis for the request for an advisory opinion was the "legal consequences . . . of the continued presence of South Africa in Namibia . . . notwithstanding Security Council resolution 276 (1970)". In spite of the similarity in language in the formulation of the request, the basis for this request was very different from the present one. In the *Namibia case*, the Court was asked to give an opinion on the legal significance of the action taken by the United Nations in terminating the South African Mandate over South West Africa and its legal impact upon the status of South Africa in that territory. If there was a legal controversy or a dispute, it was precisely the one between the United Nations and the State concerned. By contrast, what is in issue in the present situation centres on a situation created by the action of Israel vis-à-vis Palestine in relation to the Occupied Palestinian Territory. It is undeniable that there is in this case an underlying legal controversy or a dispute between the parties directly involved in this situation, while at the same time, as the Court correctly points out, it concerns a matter between the United Nations and Israel since the legal interest of the United Nations is legitimately involved.

12. This of course is not to say that the Court should decline for this reason the exercise of jurisdiction in the present case. It does mean, however, that the question of judicial propriety should be examined taking into account this reality, and on the basis of the jurisprudence in more pertinent cases. I believe the closest to the present case probably is the *Western Sahara, Advisory Opinion* case, in the sense that there was in that case clearly an underlying legal controversy or a dispute between the parties involved. However, even that case does not offer a completely analogous precedent, from which the Court can draw its conclusion. In the *Western Sahara* case, the Court stated:

> "The object of the General Assembly has *not* been to bring before the Court, by way of a request for advisory opinion, a dispute or legal controversy, in order that it may later, on the basis of the Court's opinion, exercise its powers and functions for the peaceful settlement of that dispute or controversy. The object of the request is an entirely different one: to obtain from the Court *an opinion which the General Assembly deems of assistance to it for the proper exercise of its functions concerning the decolonization of the territory*." (*I.C.J. Reports 1975*, pp. 26-27, para. 39; emphasis added.)

In the present case, the presumed objective of the General Assembly in requesting an advisory opinion would not seem to be the latter so much as the former in the two examples given in this passage.

13. Thus, acknowledging the fact that in the present case there is this undeniable aspect of an underlying legal controversy or a dispute between the parties involved, and keeping this aspect clearly in mind, I wish to state that the critical test for judicial propriety in exercising jurisdiction of the Court, which it undoubtedly has, should lie, not in whether the request is related to a concrete legal controversy or dispute in existence, but in whether "to give a reply would have *the effect of circumventing the principle that a State is not obliged to allow its disputes to be submitted to judicial settlement without its consent*" (*I.C.J. Reports 1975*, p. 25, para. 33; emphasis added). To put it differently, the critical criterion for judicial propriety in the final analysis should lie in the Court seeing to it that giving a reply in the form of an advisory opinion on the subject-matter of the request should not be tantamount to adjudicating on the very subject-matter of the underlying concrete bilateral dispute that currently undoubtedly exists between Israel and Palestine.

14. The reasoning that I have offered above leads me to the following two conclusions. First, the fact that the present case contains an aspect of addressing a bilateral dispute should not prevent the Court from exercising its competence. Second, however, this fact should have certain important bearing on the whole proceedings that the Court is to conduct in the present case, in the sense that the Court in the present advisory proceedings should focus its task on offering its objective findings of law to the extent necessary and useful to the requesting organ, the General Assembly, in carrying out its functions relating to this question, rather than adjudicating on the subject-matter of the dispute between the parties concerned.

15. It should be recalled that, even when deciding to exercise its advisory function, this Court has consistently maintained the position that it should remain faithful to "the requirements of its judicial character". Thus in the *Western Sahara* case the Court declared:

> "Article 65, paragraph 1, of the Statute, which establishes the power of the Court to give an advisory opinion, is permissive and, under it, that power is of a discretionary character. *In exercising this discretion, the International Court of Justice,* like the Permanent Court of International Justice, *has always been guided by the principle that, as a judicial body, it is bound to remain faithful to the requirements of its judicial character even in giving advisory opinions.*" (*Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 21, para. 23; emphasis added.)

16. One of such *requirements* for the Court as a judicial body is the maintenance of fairness in its administration of justice in the advisory procedure in the midst of divergent positions and interests among the interested parties. To put it differently, it must be underlined that the Court's discretion in advisory matters is not limited to the question of whether to comply with a request. It also embraces questions of advisory procedure[4]. This requirement acquires a special importance in the present case, as we accept the undeniable fact as developed above that the present case does relate to an underlying concrete legal controversy or a dispute, despite my own conclusion that it is proper for the Court to exercise its jurisdiction in the present case.

17. Article 68 of the Statute of the Court prescribes that "[i]n the exercise of its advisory functions the Court shall further be guided by the provisions of the present Statute which apply in contentious cases to the extent to which it recognizes them to be applicable." Rules of Court in its Part IV (Arts. 102-109) elaborates this provision of the Statute. Particularly relevant in this context

---

[4]Michla Pomerance, *op. cit.*, at p. 281.

is Article 102, paragraph 3 of which provides that "[w]hen an advisory opinion is requested upon a legal question actually pending between two or more States, Article 31 of the Statute shall apply, as also the provision of these Rules concerning the application of that Article."

18. In the *Namibia* case, South Africa made an application for the appointment of a judge *ad hoc* to sit in the present proceedings in accordance with this provision. Although the Court in its Order of 29 January 1971 decided to reject this application (*I.C.J. Reports 1971*, p. 12), it was met with well-argued dissenting views on this point (*ibid.*, p. 308; p. 324). By contrast, in the *Western Sahara* case the Court took a different position. In response to a request by Morocco for the appointment of a judge *ad hoc* in accordance with Article 89 (i.e., present Art. 102) of the Rules of Court, the Court found that Morocco was entitled to choose a judge *ad hoc* in the proceedings. (A similar request by Mauritania on the other hand was rejected.) (*I.C.J. Reports 1975*, p. 6.)

19. The procedure for the appointment of a judge *ad hoc* is set in motion by the application of a State which claims that "the request for the advisory opinion relates to a legal question actually pending between two or more States" (Rules of Court, Art. 102). It is my view that in light of the precedents noted above, Israel in its special position in the present case would have been justified in making an application to choose a judge *ad hoc*. For whatever reason, Israel did not choose this course of action. It if had done so, the task of the Court in maintaining the essential requirement for fairness in the administration of justice would have been greatly enhanced. It goes without saying that such a course of action would have complicated the situation, due to the fact that the other party to this dispute, Palestine, is an entity which is not recognized as a State for the purpose of the Statute of the Court. What would happen then, if one of the parties directly interested is in a position of appointing a judge *ad hoc*, while the other is not. Fairness in the administration of justice could be questioned from this angle. While I do not propose to offer my own conclusion to this intractable but hypothetical problem, what I wish to point out is that this factor is one of the important aspects of the present case that could have been considered by the Court in deciding on the question of judicial propriety of whether, and if so how far, the Court should exercise its jurisdiction in the unique circumstances of this case.

20. Be that as it may, it is established that even in contentious proceedings the absence of one of the parties in itself does not deprive the Court of its jurisdiction to proceed (Statute of the Court, Art. 53), but that the Court has to maintain its fairness in the administration of justice as a court of justice. Thus, in relation to the question of the law to be proved and applied, the Court stated in the cases concerning *Fisheries Jurisdiction* as follows:

> "The Court . . . as an international judicial organ, is deemed to take judicial notice of international law and is therefore required in a case falling under Article 53 of the Statute, as in any other case, to consider on its own initiative all rules of international law which may be relevant to the settlement of the dispute. It being the duty of the Court itself to ascertain and apply the relevant law in the given circumstances of the case, the burden of establishing or proving rules of international law cannot be imposed upon any of the Parties, for the law lies within the judicial knowledge of the Court." (*I.C.J. Reports 1974*, p. 181, para. 18.)

In relation to the question of the facts to be clarified, the Court in the case concerning *Military and Paramilitary Activities in and against Nicaragua, (Merits)* stated that:

> "in principle [it] is not bound to confine its consideration to the material formally submitted to it by the parties (cf. *Brazilian Loans, P.C.I.J. Series A, No. 20/21*, p. 124; *Nuclear Tests, I.C.J. Reports 1974*, pp. 263-264, paras. 31, 32)" (*I.C.J. Reports 1986*, p. 25, para. 30).

It went on to state as follows:

> "The Court . . . has thus to strike a balance. On the one hand, it is valuable for the Court to know the views of both parties in whatever form those views may have been expressed. Further, as the Court noted in 1974, where one party is not appearing 'it is especially incumbent upon the Court to satisfy itself that it is in possession of all the available facts' (*Nuclear Tests, I.C.J. Reports 1974*, p. 263, para. 31; p. 468, para. 32.). On the other hand, the Court has to emphasize that the equality of the parties to the dispute must remain the basic principle for the Court." (*I.C.J. Reports 1986*, pp. 25-26, para. 31.)

21. This principle governing the basic position of the Court should be applicable to advisory proceedings as it is applicable to contentious proceedings. Indeed, it may even be arguable that this principle is applicable *a fortiori* to advisory proceedings, in the sense that in advisory proceedings as distinct from contentious proceedings it cannot be said, at any rate in the legal sense, that "[t]he absent party . . . forfeits the opportunity to counter the factual allegations of its opponent" (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America)*, *I.C.J. Reports 1986*, p. 25, para. 30). In advisory proceedings no State, however interested a party it may be, is under the obligation to appear before the Court to present its case.

22. On this point of facts and information relating to the present case, it is undoubtedly true, as the present Opinion states, that

> "the Court has at its disposal the report of the Secretary-General, as well as a voluminous dossier submitted by him to the Court, comprising not only detailed information on the route of the wall but also on its humanitarian and socio-economic impact on the Palestinian population" (Advisory Opinion, para. 57).

Indeed, there is ample material, in particular, about the humanitarian and socio-economic impacts of the construction of the wall. Their authenticity and reliability is not in doubt. What seems to be wanting, however, is the material explaining the Israeli side of the picture, especially in the context of why and how the construction of the wall as it is actually planned and implemented is necessary and appropriate.

23. This, to my mind, would seem to be the case, in spite of the Court's assertion that "Israel's Written Statement, although limited to issues of jurisdiction and propriety, contained observations on other matters, including Israel's concerns in terms of security, and was accompanied by corresponding annexes" (Advisory Opinion, para. 57). In fact my point would seem to be corroborated by what the present Opinion itself acknowledges in relation to the argument of Israel on this issue. Israel has argued that the wall's sole purpose is to enable it effectively to combat terrorist attacks launched from the West Bank, or as the report of the Secretary-General puts it, "to halt infiltration into Israel from the central and northern West Bank" (Advisory Opinion, para. 80). However, the Court, in paragraph 137 of the Opinion, simply states that "*from the material available to it, [it] is not convinced* that the specific course Israel has chosen for the wall was necessary to attain its security objectives" (emphasis added). It seems clear to me that here the Court is in effect admitting the fact that elaborate material on this point from the Israeli side is not available, rather than engaging in a rebuttal of the arguments of Israel on

the basis of the material that might have been made available by Israel on this point. Again in paragraph 140 of the Opinion, the Court bases itself simply on "the material before it" to express *its lack of conviction* that "the construction of the wall along the route chosen was the only means to safeguard the interests of Israel against the peril which it has invoked as justification for that construction".

24. In raising this point, it is not my purpose to dispute the factual accuracy of these assertions, or to question the conclusions arrived at on the basis of the documents and the material available to the Court. In fact it would seem reasonable to conclude on balance that the political, social, economic and humanitarian impacts of the construction of the wall, as substantiated by ample evidence supplied and documented in the course of the present proceedings, is such that the construction of the wall would constitute a violation of international obligations under various international instruments to which Israel is a party. Furthermore, these impacts are so overwhelming that I am ready to accept that no justification based on the "military exigencies", even if fortified by substantiated facts, could conceivably constitute a valid basis for precluding the wrongfulness of the act on the basis of the stringent conditions of proportionality.

25. However, that is not the point. What is crucial is that the above samples of quotations from the present Opinion testify to my point that the Court, once deciding to exercise jurisdiction in this case, should be extremely careful not only in ensuring the objective fairness in the result, but in seeing to it that the Court is seen to maintain fairness throughout the proceedings, whatever the final conclusion that we come to may be in the end.

26. The question put to the Court for its advisory opinion is the specific question of "the legal consequences arising from the construction of the wall being built by Israel" (General Assembly resolution A/ES-10/L.16). It concerns only that specific act of Israel. Needless to say, however, the Israeli construction of the wall has not come about in a vacuum; it is a part, albeit an extremely important part, of the whole picture of the situation surrounding the peace in the Middle East with its long history.

27. Naturally, this does not alter the fact that the request for an advisory opinion is focussed on a specific question and that the Court should treat this question, and this question only, without expanding the scope of its enquiry into the bigger question relating to the peace in the Middle East, including issues relating to the "permanent status" of the territories involved. Nevertheless, from the viewpoint of getting to an objective truth concerning the specific question of the construction of the wall in its complete picture and of ensuring fairness in the administration of justice in this case which involves the element of a dispute between parties directly involved, it seems of cardinal importance that the Court examine this specific question assigned to the Court, keeping in balance the overall picture which has formed the entire background of the construction of the wall.

28. It has always been an undisputed premise of the peace in the Middle East that the twin principles of "[w]ithdrawal of Israel armed forces from territories occupied in the [1967] conflict" and "[t]ermination of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force" have to form the basis of the peace. Security Council resolution 242 (1967) has consecrated these principles in so many words. The "Roadmap", endorsed by Security Council resolution 1515 (2003), is a blueprint for proceeding on the basis of these principles.

29. If the Court found that the construction of the wall would go counter to this principle by impeding and prejudicing the realization of the principles, especially in the context of the customary rule of "the inadmissibility of the acquisition of territory by war" (Advisory Opinion, para. 117), it should state this. At the same time, the Court should remind the General Assembly that this was a principle couched in the context of the twin set of principles, both of which would have to be realized, at any rate in the context of a peace in the Middle East, side by side with each other.

30. As observed above, Israel has argued that the wall's sole purpose is to enable it effectively to combat terrorist attacks launched from the West Bank. In response to this, the Court has confined itself to stating that "[i]n the light of the material before it, the Court is not convinced that the construction of the wall along the route chosen was the only means to safeguard the interests of Israel against the peril which it has invoked as justification for that construction" (Advisory Opinion, para. 140). It is certainly understood that the material available has not included an elaboration on this point, and that in the absence of such material, the Court has found no other way for responding to this situation. It may also be accepted that this argument of Israel, even if acknowledged as true as far as the Israeli motives were concerned, would not be a sufficient ground for justifying the construction of the wall as it has actually been drawn up and implemented. As the Court has demonstrated with a high degree of persuasiveness, the construction of the wall would still constitute a breach of Israel's obligations, inter alia, under the Hague Regulations Respecting the Laws and Customs of War on Land and the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, unless cogent justifications are advanced for precluding the wrongfulness of this act. But the important point is that an in-depth effort could have been made by the Court, *proprio motu*, to ascertain the validity of this argument on the basis of facts and law, and to present an objective picture surrounding the construction of the wall in its entirety, on the basis of which to assess the merits of the contention of Israel.

31. It is to my mind important in this context that the issue of mutual resort to indiscriminate violence against civilian population should be looked at. Without going into the question of what is the causal relationship between the tragic acts of mutual violence resorted to by each of the parties and the question of whether the so-called terrorist attacks by Palestinian suicide bombers against the Israeli civilian population should be blamed as constituting a good enough ground for justifying the construction of the wall, I believe it is beyond dispute that this tragic circle of indiscriminate violence perpetrated by both sides against innocent civilian population of each other is to be condemned and rejected as totally unacceptable. While it is true that this is not an issue expressly referred to as part of the specific question put to the Court, I believe it should only be natural that this factor be underlined as an important segment of the Opinion of the Court in dealing with the issue of the construction of the wall. This point to my mind is of particular relevance from the viewpoint that the Court should approach the subject-matter in a balanced way.

(Signed) Hisashi OWADA.

____