SEPARATE OPINION OF JUDGE HIGGINS

Issues relevant for discretion not addressed by the Court — Elements lacking for a balanced Opinion — Violations of Articles 46 and 52 of the Hague Regulations and Articles 49 and 53 of the Fourth Geneva Convention — Disagreement with passages in the Opinion on self-determination, self-defence and the erga omnes *principle — limitations of the factual materials relied on.*

1. I agree with the Opinion of the Court as regards its jurisdiction in the present case and believe that paragraphs 14-42 correctly answer the various contrary arguments that have been raised on this point.

2. The question of discretion and propriety is very much harder. Although ultimately I have voted in favour of the decision to give the Opinion, I do think matters are not as straightforward as the Court suggests. It is apparent (not least from the wording of the request to the Court) that an attempt has been made by those seeking the Opinion to assimilate the Opinion on the wall to that obtained from the Court regarding Namibia (*Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 12). I believe this to be incorrect for several reasons. First and foremost, there was already, at the time of the request for an opinion in 1971 on the legal consequences of certain acts, a series of Court Opinions on South West Africa which made clear what were South Africa's legal obligations (*International Status of South West Africa, Advisory Opinion, I.C.J. Reports 1950*, p. 128; *Voting Procedure on Questions relating to Reports and Petitions concerning the Territory of South West Africa, Advisory Opinion, I.C.J. Reports 1955*, p. 67; *Admissibility of Hearings of Petitioners by the Committee on South West Africa, Advisory Opinion, I.C.J. Reports 1956*, p. 23). Further, all the legal obligations as mandatory Power lay with South West Africa. There were no legal obligations, still less unfulfilled obligations, which in 1971 lay also upon South-West Africa People's Organization (SWAPO), as the representative of the Namibian people.

3. In the present case, it is the General Assembly, and not the Court, which has made any prior pronouncements in respect of legality. Further, in contrast to how matters stood as regards Namibia in 1971, the larger intractable problem (of which the wall may be seen as an element) cannot be regarded as one in which one party alone has been already classified

by a court as the legal wrongdoer; where it is for it alone to act to restore a situation of legality; and where from the perspective of legal obligation there is nothing remaining for the other "party" to do. That is evident from the long history of the matter, and is attested to by Security Council resolutions 242 (1967) and 1515 (2003) alike.

4. In support of the misconceived analogy — which serves both to assist so far as legal issues of discretion are concerned, as well as wider purposes — counsel have informed the Court that "The problem . . . is a problem between one State — Israel — and the United Nations." (See for example, CR 2004/3, p. 62, para. 31.) Of course, assimilation to the *Namibia* case, and a denial of any dispute save as between Israel and the United Nations, would also avoid the necessity to meet the criteria enunciated by the Court when considering whether it should give an opinion where a dispute exists between two States. But, as will be elaborated below, this cannot be avoided.

5. Moreover, in the *Namibia* Opinion the Assembly sought legal advice on the consequences of its own necessary decisions on the matter in hand. The General Assembly was the organ in which now the power to terminate a League of Nations mandate was located. The Mandate was duly terminated. But Assembly resolutions are in most cases only recommendations. The Security Council, which in certain circumstances can pass binding resolutions under Chapter VII of the Charter, was not the organ with responsibility over mandates. This conundrum was at the heart of the opinion sought of the Court. Here, too, there is no real analogy with the present case.

6. We are thus in different legal terrain — in the familiar terrain where there is a dispute between parties, which fact does not of itself mean that the Court should not exercise its competence, provided certain conditions are met.

7. Since 1948 Israel has been in dispute, first with its Arab neighbours (and other Arab States) and, in more recent years, with the Palestinian Authority. Both Israel's written observations on this aspect (7.4-7.7) and the report of the Secretary-General, with its reference to the "Summary Legal Position" of "each side", attest to this reality. The Court has regarded the special status of Palestine, though not yet an independent State, as allowing it to be invited to participate in these proceedings. There is thus a dispute between two international actors, and the advisory opinion request bears upon one element of it.

8. That of itself does not suggest that the Court should decline to exercise jurisdiction on grounds of propriety. It is but a starting point for the Court's examination of the issue of discretion. A series of advisory opinion cases have explained how the *Status of Eastern Carelia, Advisory Opinion, 1923 (P.C.I.J., Series B, No. 5)* principle should properly be read. Through the *Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion* (*I.C.J. Reports 1962*, p. 151); the *Legal Consequences for States of the Continued Presence of*

South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion (*I.C.J. Reports 1971*, p. 12); and, most clearly, the *Western Sahara, Advisory Opinion* (*I.C.J. Reports 1975*, p. 12), the *ratio decidendi* of *Status of Eastern Carelia* has been explained. Of these the *Western Sahara* case provides by far the most pertinent guidance, as it involved a dispute between international actors, in which the Court had not itself already given several advisory opinions (cf. the *Namibia* Opinion, which was given against the background of three earlier ones on issues of legality).

9. The Court did not in the *Western Sahara* case suggest that the consent principle to the settlement of disputes in advisory opinions had now lost all relevance for all who are United Nations Members. It was saying no more than the particular factors underlying the *ratio decidendi* of *Status of Eastern Carelia* were not present. But other factors had to be considered to see if propriety is met in giving an advisory opinion when the legal interests of a United Nations Member are the subject of that advice.

10. Indeed, in the *Western Sahara* case the Court, after citing the oft-quoted dictum from *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion,* that an opinion given to a United Nations organ "represents its participation in the activities of the Organization, and, in principle, should not be refused" (*I.C.J. Reports 1950*, p. 71), went on to affirm that nonetheless:

> "lack of consent might constitute a ground for declining to give the opinion requested if, in the circumstances of a given case, considerations of judicial propriety should oblige the Court to refuse an opinion. In short, the consent of an interested State continues to be relevant, not for the Court's competence, but for the appreciation of the propriety of giving an opinion.
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> In certain circumstances, therefore, the lack of consent of an interested State may render the giving of an advisory opinion incompatible with the Court's judicial character." (*Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 25, paras. 32-33.)

11. What then are the conditions that in the *Western Sahara* case were found to make it appropriate for the Court to give an opinion even where a dispute involving a United Nations Member existed? One such was that a United Nations Member:

> "could not validly object, to the General Assembly's exercise of its powers to deal with the decolonization of a non-self-governing territory and to seek an opinion on questions relevant to the exercise of those powers" (*ibid.*, p. 24, para. 30).

Although the Assembly is not exercising either the powers of a mandate supervisory body (as in *Namibia*) or a body decolonizing a non-self-governing territory (as in *Western Sahara*), the Court correctly recounts at paragraphs 48-50 the long-standing special institutional interest of the United Nations in the dispute, of which the building of the wall now represents an element.

12. There remains, however, a further condition to be fulfilled, which the Court enunciated in the *Western Sahara* case. It states that it was satisfied that:

> "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." (*Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, pp. 26-27, para. 39.)

In the present case it is the reverse circumstance that obtains. The request is not in order to secure advice on the Assembly's decolonization duties, but later, on the basis of our Opinion, to exercise powers over the dispute or controversy. Many participants in the oral phase of this case frankly emphasized this objective.

13. The Court has not dealt with this point at all in that part of its Opinion on propriety. Indeed, it is strikingly silent on the matter, avoiding mention of the lines cited above and any response as to their application to the present case. To that extent, this Opinion by its very silence essentially revises, rather than applies, the existing case law.

14. There is a further aspect that has been of concern to me so far as the issue of propriety is concerned. The law, history and politics of the Israel-Palestine dispute is immensely complex. It is inherently awkward for a court of law to be asked to pronounce upon one element within a multifaceted dispute, the other elements being excluded from its view. Context is usually important in legal determinations. So far as the request of the Assembly envisages an opinion on humanitarian law, however, the obligations thereby imposed are (save for their own qualifying provisions) absolute. That is the bedrock of humanitarian law, and those engaged in conflict have always known that it is the price of our hopes for the future that they must, whatever the provocation, fight "with one hand behind their back" and act in accordance with international law. While that factor diminishes relevance of context so far as the obligations of humanitarian law are concerned, it remains true, nonetheless, that

context is important for other aspects of international law that the Court chooses to address. Yet the formulation of the question precludes consideration of that context.

15. Addressing the reality that "the question of the construction of the wall was only one aspect of the Israeli-Palestinian conflict", the Court states that it "is indeed aware that the question of the wall is part of a greater whole, and it would take this circumstance carefully into account in any opinion it might give" (para. 54).

16. In fact, it never does so. There is nothing in the remainder of the Opinion that can be said to cover this point. Further, I find the "history" as recounted by the Court in paragraphs 71-76 neither balanced nor satisfactory.

17. What should a court do when asked to deliver an opinion on one element in a larger problem? Clearly, it should not purport to "answer" these larger legal issues. The Court, wisely and correctly, avoids what we may term "permanent status" issues, as well as pronouncing on the rights and wrongs in myriad past controversies in the Israel-Palestine problem. What a court faced with this quandary must do is to provide a balanced opinion, made so by recalling the obligations incumbent upon all concerned.

18. I regret that I do not think this has been achieved in the present Opinion. It is true that in paragraph 162 the Court recalls that "[i]llegal actions and unilateral decisions have been taken on all sides" and that it emphasizes that "both Israel and Palestine are under an obligation scrupulously to observe the rules of international humanitarian law". But in my view much, much more was required to avoid the huge imbalance that necessarily flows from being invited to look at only "part of a greater whole", and then to take that circumstance "carefully into account". The call upon both parties to act in accordance with international humanitarian law should have been placed within the *dispositif*. The failure to do so stands in marked contrast with the path that the Court chose to follow in operative clause F of the *dispositif* of the *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion* (*I.C.J. Reports 1996 (I)*, p. 266). Further, the Court should have spelled out what is required of both parties in this "greater whole". This is not difficult — from Security Council resolution 242 (1967) through to Security Council resolution 1515 (2003), the key underlying requirements have remained the same — that Israel is entitled to exist, to be recognized, and to security, and that the Palestinian people are entitled to their territory, to exercise self-determination, and to have their own State. Security Council resolution 1515 (2003) envisages that these long-standing obligations are to be secured, both generally and as to their detail, by negotiation. The perceptible tragedy is that neither side will act to achieve these ends prior to the other so doing. The Court, having decided that it was appropriate to exercise its jurisdiction, should have used the latitude available to it in an advisory opinion case, and reminded both parties not only of their substantive obligations

under international law, but also of the procedural obligation to move forward simultaneously. Further, I believe that, in order to achieve a balanced opinion, this latter element should also have appeared in the *dispositif* itself.

19. I think the Court should also have taken the opportunity to say, in the clearest terms, what regrettably today apparently needs constant reaffirmation even among international lawyers, namely, that the protection of civilians remains an intransgressible obligation of humanitarian law, not only for the occupier but equally for those seeking to liberate themselves from occupation.

20. My vote in favour of subparagraph (2) of the *dispositif* has thus been made with considerable hesitation. I have voted affirmatively in the end because I agree with almost all of what the Court has written in paragraphs 44-64. My regrets are rather about what it has chosen not to write.

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21. The way subparagraph (3) (A) of the *dispositif* is formulated does not separate out the various grounds that the Court relied on in reaching its conclusions. I have voted in favour of this subparagraph because I agree that the wall, being built in occupied territory, and its associated régime, entail certain violations of humanitarian law. But I do not agree with several of the other stepping stones used by the Court in reaching this generalized finding, nor with its handling of the source materials.

22. The question put by the General Assembly asks the Court to respond by "considering the rules and principles of international law, including the Fourth Geneva Convention of 1949, and relevant Security Council and General Assembly resolutions" (General Assembly resolution ES-10/14). It might have been anticipated that once the Court finds the Fourth Geneva Convention applicable humanitarian law would be at the heart of this Opinion.

23. The General Assembly has in resolution ES-10/13 determined that the wall contravenes humanitarian law, without specifying which provisions and why. Palestine has informed the Court that it regards Articles 33, 53, 55 and 64 of the Fourth Geneva Convention and Article 52 of the Hague Regulations as violated. Other participants invoked Articles 23 *(g)*, 46, 50 and 52 of the Hague Regulations, and Articles 27, 47, 50, 55, 56 and 59 of the Fourth Convention. For the Special Rapporteur, the wall constitutes a violation of Articles 23 *(g)* and 46 of the Hague Regulations and Articles 47, 49, 50, 53 and 55 of the Fourth Geneva Convention. It might have been expected that an advisory opinion would have contained a detailed analysis, by reference to the texts, the

voluminous academic literature and the facts at the Court's disposal, as to *which* of these propositions is correct. Such an approach would have followed the tradition of using advisory opinions as an opportunity to elaborate and develop international law.

24. It would also, as a matter of balance, have shown not only which provisions Israel has violated, but also which it has not. But the Court, once it has decided which of these provisions are in fact applicable, thereafter refers only to those which Israel has violated. Further, the structure of the Opinion, in which humanitarian law and human rights law are not dealt with separately, makes it in my view extremely difficult to see what exactly has been decided by the Court. Notwithstanding the very general language of subparagraph (3) (A) of the *dispositif*, it should not escape attention that the Court has in the event found violations only of Article 49 of the Fourth Geneva Convention (para. 120), and of Articles 46 and 52 of the Hague Regulations and Article 53 of the Fourth Geneva Convention (para. 132). I agree with these findings.

25. After its somewhat light treatment of international humanitarian law, the Court turns to human rights law. I agree with the Court's finding about the continued relevance of human rights law in the occupied territories. I also concur in the findings made at paragraph 134 as regards Article 12 of the International Covenant on Civil and Political Rights.

26. At the same time, it has to be noted that there are established treaty bodies whose function it is to examine in detail the conduct of States parties to each of the Covenants. Indeed, the Court's response as regards the International Covenant on Civil and Political Rights notes both the pertinent jurisprudence of the Human Rights Committee and also the concluding observations of the Committee on Israel's duties in the occupied territories.

27. So far as the International Covenant on Economic, Social and Cultural Rights is concerned, the situation is even stranger, given the programmatic requirements for the fulfilment of this category of rights. The Court has been able to do no more than observe, in a single phrase, that the wall and its associated régime

> "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 . . ." (para. 134).

For both Covenants, one may wonder about the appropriateness of asking for advisory opinions from the Court on compliance by States parties with such obligations, which are monitored, in much greater detail, by a treaty body established for that purpose. It could hardly be an answer that the General Assembly is not setting any more general precedent, because while many, many States are not in compliance with their obligations under the two Covenants, the Court is being asked to look only at the conduct of Israel in this regard.

28. The Court has also relied, for the general determination in subparagraph (3) (A) of the *dispositif*, on a finding that Israel is in violation of the law on self-determination. It follows observations on the legally problematic route of the wall and associated demographic risks with the statement: "That construction, along with measures taken previously, thus 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." (Para. 122.) This appears to me to be a non sequitur.

29. There is a substantial body of doctrine and practice on "self-determination beyond colonialism". The United Nations Declaration on Friendly Relations, 1970 (General Assembly resolution 2625 (XXV)) speaks also of self-determination being applicable in circumstances where peoples are subject to "alien subjugation, domination, and exploitation". The General Assembly has passed many resolutions referring to the latter circumstance, having Afghanistan and the Occupied Arab Territories in mind (for example, General Assembly resolution 3236 (XXIX) of 1974 (Palestine); General Assembly resolution 2144 (XXV) of 1987 (Afghanistan)). The Committee on Human Rights has consistently supported this post-colonial view of self-determination.

30. The Court has for the very first time, without any particular legal analysis, implicitly also adopted this second perspective. I approve of the principle invoked, but am puzzled as to its application in the present case. Self-determination is the right of "All peoples . . . freely [to] determine their political status and freely pursue their economic, social and cultural development" (Art. 1 (1), International Covenant on Civil and Political Rights and also International Covenant on Economic, Social and Cultural Rights). As this Opinion observes (para. 118), it is now accepted that the Palestinian people are a "peoples" for purposes of self-determination. But it seems to me quite detached from reality for the Court to find that it is the wall that presents a "serious impediment" to the exercise of this right. The real impediment is the apparent inability and/or unwillingness of both Israel and Palestine to move in parallel to secure the necessary conditions — that is, at one and the same time, for Israel to withdraw from Arab occupied territory and for Palestine to provide the conditions to allow Israel to feel secure in so doing. The simple point is underscored by the fact that if the wall had never been built, the Palestinians would still not yet have exercised their right to self-determination. It seems to me both unrealistic and unbalanced for the Court to find that the wall (rather than "the larger problem", which is beyond the question put to the Court for an opinion) is a serious obstacle to self-determination.

31. Nor is this finding any more persuasive when looked at from a territorial perspective. As the Court states in paragraph 121, the wall does not at the present time constitute, *per se*, a *de facto* annexation.

"Peoples" necessarily exercise their right to self-determination within their own territory. Whatever may be the detail of any finally negotiated boundary, there can be no doubt, as is said in paragraph 78 of the Opinion, that Israel is in occupation of Palestinian territory. That territory is no more, or less, under occupation because a wall has been built that runs through it. And to bring to an end that circumstance, it is necessary that both sides, simultaneously, accept their responsibilities under international law.

32. After the Court deals with the applicable law, and then applies it, it looks at possible qualifications, exceptions and defences to potential violations.

33. I do not agree with all that the Court has to say on the question of the law of self-defence. In paragraph 139 the Court quotes Article 51 of the Charter and then continues "Article 51 of the Charter thus recognizes the existence of an inherent right of self-defence in the case of armed attack by one State against another State." There is, with respect, nothing in the text of Article 51 that *thus* stipulates that self-defence is available only when an armed attack is made by a State. *That* qualification is rather a result of the Court so determining in *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America) (Merits, Judgment, I.C.J. Reports 1986*, p. 14). It there held that military action by irregulars could constitute an armed attack if these were sent by or on behalf of the State and if the activity "because of its scale and effects, would have been classified as an armed attack . . . had it been carried out by regular armed forces" (*ibid.*, p. 103, para. 195). While accepting, as I must, that this is to be regarded as a statement of the law as it now stands, I maintain all the reservations as to this proposition that I have expressed elsewhere (R. Higgins, *Problems and Process: International Law and How We Use It*, pp. 250-251).

34. I also find unpersuasive the Court's contention that, as the uses of force emanate from occupied territory, it is not an armed attack "by one State against another". I fail to understand the Court's view that an occupying Power loses the right to defend its own civilian citizens at home if the attacks emanate from the occupied territory — a territory which it has found not to have been annexed and is certainly "other than" Israel. Further, Palestine cannot be sufficiently an international entity to be invited to these proceedings, and to benefit from humanitarian law, but not sufficiently an international entity for the prohibition of armed attack on others to be applicable. This is formalism of an unevenhanded sort. The question is surely where responsibility lies for the sending of groups and persons who act against Israeli civilians and the cumulative severity of such action.

35. In the event, however, these reservations have not caused me to vote against subparagraph (3) (A) of the *dispositif*, for two reasons. First, I remain unconvinced that non-forcible measures (such as the building of

a wall) fall within self-defence under Article 51 of the Charter as that provision is normally understood. Second, even if it were an act of self-defence, properly so called, it would need to be justified as necessary and proportionate. While the wall does seem to have resulted in a diminution on attacks on Israeli civilians, the necessity and proportionality for the particular route selected, with its attendant hardships for Palestinians uninvolved in these attacks, has not been explained.

36. The latter part of the *dispositif* deals with the legal consequences of the findings made by the Court.

37. I have voted in favour of subparagraph (3) (D) of the *dispositif* but, unlike the Court, I do not think that the specified consequence of the identified violations of international law have anything to do with the concept of *erga omnes* (cf. paras. 154-159 of this Opinion). The Court's celebrated dictum in *Barcelona Traction, Light and Power Company, Limited, Second Phase* (*Judgment, I.C.J. Reports 1970*, p. 32, para. 33) is frequently invoked for more than it can bear. Regrettably, this is now done also in this Opinion, at paragraph 155. That dictum was directed to a very specific issue of jurisdictional *locus standi*. As the International Law Commission has correctly put it in the Commentaries to the draft Articles on the Responsibility of States for Internationally Wrongful Acts (A/56/10 at p. 278), there are certain rights in which, by reason of their importance "all states have a legal interest in their protection". It has nothing to do with imposing substantive obligations on third parties to a case.

38. That an illegal situation is not to be recognized or assisted by third parties is self-evident, requiring no invocation of the uncertain concept of *"erga omnes"*. It follows from a finding of an unlawful situation by the Security Council, in accordance with Articles 24 and 25 of the Charter entails "decisions [that] are consequently binding on all States Members of the United Nations, which are thus under obligation to accept and carry them out" (*Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 53, para. 115). The obligation upon United Nations Members not to recognize South Africa's illegal presence in Namibia, and not to lend support or assistance, relied in no way whatever on *"erga omnes"*. Rather, the Court emphasized that "A binding determination made by a competent organ of the United Nations to the effect that a situation is illegal cannot remain without consequence." (*Ibid.*, para. 117.) The Court had already found in a contentious case that its determination of an illegal act "entails a legal consequence, namely that of putting an end to an illegal situation" (*Haya de la Torre, Judgment, I.C.J. Reports 1951*, p. 82). Although in the present case it is the Court, rather than a United Nations organ acting under Articles 24 and 25, that has found the illegality; and although it is found in the context of an advisory opinion rather than in a contentious case, the Court's position as the principal

judicial organ of the United Nations suggests that the legal consequence for a finding that an act or situation is illegal is the same. The obligation upon United Nations Members of non-recognition and non-assistance does not rest on the notion of *erga omnes*.

39. Finally, the invocation (para. 157) of "the *erga omnes*" nature of violations of humanitarian law seems equally irrelevant. These intransgressible principles are generally binding because they are customary international law, no more and no less. And the first Article to the Fourth Geneva Convention, under which "The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances" while apparently viewed by the Court as something to do with "the *erga omnes* principle", is simply a provision in an almost universally ratified multilateral Convention. The Final Record of the diplomatic conference of Geneva of 1949 offers no useful explanation of that provision; the commentary thereto interprets the phrase "ensure respect" as going beyond legislative and other action within a State's own territory. It observes that

> "in the event of a Power failing to fulfil its obligations, the other Contracting Parties (neutral, allied or enemy) may, and should, endeavour to bring it back to an attitude of respect for the Convention. The proper working of the system of protection provided by the Convention demands in fact that the Contracting Parties should not be content merely to apply its provisions themselves, but should do everything in their power to ensure that the humanitarian principles underlying the Conventions are applied universally." (*The Geneva Conventions of 12 August 1949: Commentary, IV Geneva Convention relative to the protection of civilian persons in time of war*, Pictet, ed., p. 16.)

It will be noted that the Court has, in subparagraph (3) (D) of the *dispositif*, carefully indicated that any such action should be in conformity with the Charter and international law.

40. In conclusion, I would add that, although there has indeed been much information provided to the Court in this case, that provided directly by Israel has only been very partial. The Court has based itself largely on the Secretary-General's report from 14 April 2002 to 20 November 2003 and on the later Written Statement of the United Nations (see para. 79). It is not clear whether it has availed itself of other data in the public domain. Useful information is in fact contained in such documents as the Third Report of the current Special Rapporteur and Israel's Reply thereto (E/CN.4/2004/6/Add.1), as well as in "The Impact of Israel's Separation Barrier on Affected West Bank Communities: An Update to the Humanitarian and Emergency Policy Group (HEPG), Construction

of the Barrier, Access, and Its Humanitarian Impact, March 2004". In any event, the Court's findings of law are notably general in character, saying remarkably little as concerns the application of specific provisions of the Hague Rules or the Fourth Geneva Convention along particular sections of the route of the wall. I have nonetheless voted in favour of subparagraph (3) (A) of the *dispositif* because there is undoubtedly a significant negative impact upon portions of the population of the West Bank that cannot be excused on the grounds of military necessity allowed by those Conventions; and nor has Israel explained to the United Nations or to this Court why its legitimate security needs can be met only by the route selected.

(Signed) Rosalyn HIGGINS.