

## **Israel follows its own law, not bigoted Hague decision**

Alan Dershowitz

The Israeli government has both a legal and a moral obligation to comply with the Israeli Supreme Court's decision regarding the security fence.

After all, the Supreme Court is a creation of the Knesset and is therefore representative of all of the people - Jews, Muslims, and Christians alike. Moreover, the Supreme Court has a real stake in both sides of the fence dispute. Its job is to balance the security needs of its citizens against the humanitarian concerns of West Bank Palestinians. It tried to strike that balance by upholding the concept of a security fence while insisting that the Israeli military authorities give due weight to the needs of the Palestinians, even if that requires some compromise on the security of Israelis.

Contrast this with the questionable status of the International Court of Justice in The Hague. No Israeli judge may serve on that court as a permanent member, while sworn enemies of Israel serve among its judges, several of whom represent countries that do not abide by the rule of law. Virtually every democracy voted against that court's taking jurisdiction over the fence case, while nearly every country that voted to take jurisdiction was a tyranny. Israel owes the International Court absolutely no deference. It is under neither a moral nor a legal obligation to give any weight to its predetermined decision.

The Supreme Court of Israel recognized the unquestionable reality that the security fence has saved numerous lives and promises to save more, but it also recognized that this benefit must be weighed against the material disadvantages to West Bank Palestinians. The International Court, on the other hand, discounted the saving of lives and focused only on the Palestinian interests. By showing its preference for Palestinian property rights over the lives of Jews, the International Court displayed its bigotry.

The International Court of Justice is much like a Mississippi court in the 1930s. The all-white Mississippi court, which excluded blacks from serving on it, could do justice in disputes between whites, but it was incapable of doing justice in cases between a white and a black. It would always favor white litigants. So, too, the International Court. It is perfectly capable of resolving disputes between Sweden and Norway, but it is incapable of doing justice where Israel is involved, because Israel is the excluded black when it comes to that court - indeed when it comes to most United Nations organs.

A judicial decision can have no legitimacy when rendered against a nation that is willfully excluded from the court's membership by bigotry.

Just as the world should have disregarded any decision against blacks rendered by a Mississippi court in the 1930s, so too should all decent people contemptuously disregard the bigoted decisions of the International Court of Justice when it comes to Israel. To give any credence to the decisions of that court is to legitimize bigotry.

The International Court of Justice should be a court of last resort to which aggrieved litigants can appeal when their own country's domestic courts are closed to them. The Israeli Supreme Court is not only open to all Israeli Arabs, but also to all West Bank and Gaza Arabs. Israel's Supreme Court is the only court in the Middle East where an Arab can actually win a case against his government.

The decision of the International Court of Justice against Israel should harm the reputation of that court in the minds of objective observers rather than damage the credibility of Israel. The Israeli government will comply with the rule of law by following the decision of its own Supreme Court.

If the International Court of Justice were itself to apply the rule of law instead of the calculus of politics, it might deserve respect. Now - like the general assembly of which it's a creation and the Mississippi courts of the 1930s of which it's a clone - all it deserves is the contempt of decent people for its bigoted processes and its predetermined partisan result.

*Prof. Dershowitz wrote this article the day before the International Court rendered this opinion because he was certain - based on the composition of the court - that its verdict would be against Israel. Following the decision he did not have to change a single word. Alan Dershowitz is a professor of law at Harvard.*

Presented with permission of author.