

6c: case analysis



Case Analysis: Legal Consequences of a Wall in the Occupied Palestinian Territory

Introduction: This case deals with and discusses the provisions, implications and interpretation of article 17 of the International Court of Justice which is designed to prevent impartiality of the judges, whereby any member of the ICJ who has previously participated in the decision making of any case, in any capacity including that of an agent, a counsel or an advocate of one of the parties involved, or as a member of a national or international court, or of a commission of enquiry, or in any other capacity. The discussions and arguments put forward in this case, provides a deeper insight in to the various implications of the said articles and the rulings in the case further help in deriving logical conclusions about the said laws. This case discusses the issue of implications of the said article and discusses the factors that allow or restrict its members to act in a certain capacity based on their previous roles of authority and otherwise.

Facts of the Case:

This case discusses the various provisions and aspects of article 17 laid down by the statute and investigates into the factors such as whether or not, one of the judges on the ICJ be permitted to participate in the case and whether it would be prudent to disqualify him under the provisions of the said act on the grounds of his previous involvement in the issue, a matter which is expressly prohibited in the act. The case was brought to the ICJ by the Government of Israel, which in its letter addressed to the court expressed concerns over the appointment of a member of a court for participating in decisions in a case in which he had previously played an active official and public role as an advocate and for a cause that is in contention in this case.

Questions:

What is the central issue in this case?

The question of whether one of the judges on the ICJ ought to be permitted to participate in the case or be disqualified under this provision because of his previous involvement in the issue, is the central issue in this case. It discusses and challenges the eligibility of a member in accordance with the article 17 of the said statute whereby the panel of judges is appointed.

Paragraph 2 of the article states that “ No Member of the ICJ may participate in the decision of any case in which he has previously taken part as agent, counsel, or advocate for one of the parties, or as a member of a national or international court, or of a commission of enquiry, or in any other capacity”.

This issue was raised by Israel, objecting on the inclusion of Judge Nabil Elaraby of Egypt as one of the panel members on the grounds of his alleged involvement in a number of initiatives that touched on several sensitive issues involved in the dispute.

What legal statutory provision provided grounds for the complaint lodged by Israel?

The provision of paragraph 2 of article 17 that expressly prohibits the involvement / participation of a member of ICJ in any capacity in case of his / her previous involvement in the capacity of an agent, counsel, advocate or as a member of national or international court, commission of enquiry or in other similar capacities.

What was the decision of the majority? Explain.

The majority decision was unanimously against the appeal of Israel, objecting his involvement in certain activities, which saw no problem in the involvement of Judge Nabil Elaraby. They also expressed their opinions in

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favor of the accused Judge, showing no objections in his role as a legal advisor to the government of Egypt or his activities during his tenure as the agent of his government. Responding to the objections raised by Israel on the published interviews, the majority pointed to the fact that article 17, paragraph 2, detailed certain roles that a judge was prohibited from performing in a case that was before the court and nothing on the list (as concluded by the Court later on), mentioned giving interviews or publishing private political views. Therefore, the majority upheld the judges participation in the case.