



El Embajador de España

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S. E. Shi Jiuyong
Président.
Cour Internationale de Justice.

La Haye, 30 janvier 2004.

Monsieur le Président :

J' ai l' honneur de vous avancer la copie d'une lettre adressée à Votre Excellence par S. E. le Ministre des Affaires Étrangères, Mme. Ana Palacio, afin de présenter l' exposé écrit ci-joint sur l'affaire des *Conséquences Juridiques de l'édification d'un mur dans le Territoire palestinien occupé* . Ultérieurement, je vous ferai parvenir l'original de ladite lettre.

Veuillez agréer, Monsieur le Président, les assurances de ma très haute considération.

Carlos de Benavides

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Madrid, 30 January 2004

H. E. Mr. Shi Jiuyong
President
International Court of Justice
Peace Palace
The Hague

Mr. President,

I have the honour, on behalf of the Spanish Government, to respond to the invitation by the International Court of Justice, contained in its order of 19 December 2003 and transmitted by the letter of the Registrar of the same date, to Members States of the United Nations to furnish information on aspects raised in the request of the General Assembly of the United Nations of an advisory opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*. This letter complements the written statement of Ireland, Presidency of the European Union.

The Spanish position regarding this matter is consistent with its attitude at the moment of the adoption of Resolution A/RES/ES-10/14 by which the General Assembly decided to request the said advisory opinion. Indeed, Spain, in line with the rest of the member States of the European Union, decided to abstain in the vote on the Resolution, which was adopted by 90 votes to 8, with 74 abstentions. The Representative of Italy on behalf of the European Union, as well as the Acceding and Associated Countries explained this abstention, in the following manner:

"The EU believes that the proposed request for an advisory opinion from the International Court of Justice will not help the efforts of the two parties to re-launch a political dialogue and is therefore inappropriate. It is for this reason that the European Union will abstain on the relevant draft resolution submitted to the consideration of this Emergency Special Session [of the General Assembly]."

The EU also addressed the legitimate concerns of Israel with regard to the continued terrorist violence, especially against innocent civilians, as well as the adverse consequences suffered by the Palestinian people, in the following way:

"While recognizing Israel's right to protect its citizens from terrorist attacks, the European Union urges the Government of Israel, in exercising this right, to fully respect international law, in particular human rights and international humanitarian law, including the Fourth Geneva Convention, and to exert maximum effort to avoid civilian casualties and take no action that aggravates the humanitarian and economic plight of the Palestinian people".

Spain, together with its partners of the EU, has consistently taken the position that the unilateral building of a barrier (or security fence, or separation wall) by Israel in the Palestinian occupied territory, in the circumstances in which this erection is taking place, is causing unnecessary hardship to the affected populations and has posed an added obstacle for the resumption of peace negotiations under international auspices with a view to a permanent and just settlement of the Israel-Palestinian conflict, as called for by Security Council and General Assembly Resolutions. It has also expressed the view that the route marked out for its construction as well as the negative consequences for the local populations living under occupation are in contradiction to relevant international obligations, in particular those deriving from the Armistice Agreement of 1949 and the Fourth Geneva Convention of 1949.

Thus, at the meeting of the European Council at Copenhagen, on 12-13 December 2002, the Heads of State and Government of the European Union stated "The European Council urges the Government of Israel to reverse its settlement policy and (...) calls for an end to further land confiscation for the construction of the so-called security fence". Again at Thessaloniki on 19-20 June 2003, the European Council called on Israel "to reverse the settlement policy and activity and end land confiscation and the construction of the so-called security fence, all of which threaten to render the two-State solution physically impossible to implement". More recently, meeting in Brussels on 12 December 2003, the European Council stressed that "this [settlement] policy, together with the departure of the so-called security fence in the occupied West Bank and East Jerusalem from the Green Line, could prejudice future negotiations and make the two-State solution physically impossible to implement. In this context, the EU is alarmed by the creation of a closed zone between this 'fence' and the Green Line."

This consistent concern explains the principled position taken by the EU in the General Assembly of the United Nations at the resumed 10th emergency special session held in New York during the autumn of 2003. There, the EU member States, together with the acceding countries, cosponsored and introduced the draft (document A/ES-10/L.15) of what would become Resolution A/RES/ES-10/13, of 21 October 2003, entitled "Illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory". In that resolution, the General Assembly inter alia reaffirmed "the principle of the inadmissibility of the acquisition of territory by force" (preamble, paragraph 3), reiterated "its call upon Israel, the occupying power, to fully and effectively respect the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949" (preamble, paragraph 11) and demanded "that Israel stop and reverse the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem, which is in departure of the Armistice Line of 1949 and is in contradiction to relevant provisions of international law" (operative paragraph 1).

After the United Nations Secretary-General submitted to the General Assembly his report prepared pursuant to Resolution A/ES-10/13 (document A/ES-10/248, of 24 November 2003), the EU again expressed its concerns about the continued building of the barrier by Israel and elaborated on its position in the statement made by the Representative of Italy on 8 December 2003 on behalf of the member States of the EU as well as the Acceding and Associated Countries and other European States. The EU statement said inter alia:

"The European Union is particularly concerned by the route marked out for the Barrier in the Occupied West Bank. The envisaged departure of the Barrier from the 'Green Line' could prejudice future negotiations and make the two-State solution physically impossible to implement. It would cause further humanitarian and economic hardship to the Palestinians. Thousands of Palestinians west from the fence are being cut off from essential services in the West Bank, Palestinians east of the fence will lose access to land and water resources. In this context, the EU is alarmed by the designation of land between the Barrier and the 'green line' as a closed military zone. This is a de-facto change in the legal status of Palestinians living in this area which makes life for them even harder."

Consequently, the EU statement regretted "the fact that Israel, according to the report of the Secretary-General pursuant to General Assembly Resolution ES-10/13, is not in compliance with the Assembly's demand that it stops and reverses the construction of the wall in the Occupied Palestinian Territory".

In conclusion, Spain has consistently taken the position that:

1. Israel has the right to protect its citizens from terrorist attacks.
2. However, in exercising this right the Government of Israel should conduct itself in compliance with relevant provisions of international law.
3. The construction of the barrier (or security fence, or separation wall) inside the occupied Palestinian territories, including in and around East Jerusalem, is in departure of the Armistice Line of 1949 and is in contradiction to relevant provisions of international law.
4. Furthermore, the construction of the barrier is causing further humanitarian and economic hardship to the Palestinians.
5. The envisaged departure of the barrier from the "Green Line" could prejudice future negotiations between the parties and make the two-State solution physically impossible to implement.
6. Finally, the request for an Advisory Opinion from the International Court of Justice is inappropriate.

Respectfully yours,

Signed: Ana Palacio
Minister of Foreign Affairs of the Kingdom of Spain