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## **LEGAL MEMORANDUM**

*Submitted by the*

**Arab Republic of Egypt**

*to*

**The International Court of Justice**

**Concerning**

**The General Assembly's Request for an Advisory Opinion  
regarding the Legal Consequences Arising from the Construction of the  
Wall Being Built by Israel in the Occupied Palestinian Territories**

**Considering the Rules and Principles of International Law,  
including the Fourth Geneva Convention of 1949,  
and relevant Security Council and General Assembly Resolutions**

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## INTRODUCTION

The Government of Egypt submits this Memorandum, as an expression of genuine and long standing interest in international peace and security, in the heart of which lies the peace and security of the Middle East Region. This interest is based on a sound understanding of the nature of modern international relations, where people of a state can no longer live in isolation from events occurring and actions taken beyond its borders, not to mention just outside these borders.

This approach has been consistently adopted by Egypt when addressing foreign policy issues in general, and the development of the Arab-Israeli conflict in particular. In the same line, experience dictates that peace in the Middle East region cannot be established on the basis of bilateral relations, but should express an overall reality that reflects the core desire to achieve mutual understanding, coexistence and the joint welfare of all peoples in the region. As Egypt is a neighbouring country to both Palestine and Israel, it is thus among the most affected countries by the current conflict. Moreover, the complicated nature of this conflict has resulted over an extended period of time in wasting the lives of many innocent victims and huge resources, a matter which imposes an obligation not only on the countries of the region but also on the whole world to consolidate their efforts in order to reach a fair and balanced settlement to this conflict.

Egypt has never hesitated to carry this responsibility, and has been taking steady and confident steps, backed by an extended heritage of a successful balanced policy seeking to achieve its own national interests in conciliation with those of the international community, through full respect and compliance with the rules of International Law and consistent use of peaceful mechanisms in the management and interrelations among countries. Egypt has successfully applied this policy throughout the long process of recovering Sinai, which was occupied during the 1967 war. Egypt has also been among the first countries to accept the UN Security Council resolution 242. Egypt's late President Anwar El-Sadat did not hesitate, when it seemed that efforts for peace had reached a deadlock, to launch his historic initiative in 1977 in order to give such efforts a new momentum, which succeeded in 1979 by concluding the first peace treaty between Israel and an Arab State.

Since then, Egypt has exerted serious efforts to expand the scope of the peace process to include all concerned parties. Also when certain problems were faced concerning the implementation of the Egyptian Israeli Peace Treaty, especially concerning the locations of some border pillars, the most famous of which is the Taba pillar, Egypt was the first to accept arbitration as a mechanism to resolve such crisis, a position which reaffirmed Egypt's belief in and respect of the rules of International Law and its enforcement mechanisms, in the context of peaceful resolution of international disputes, including those which are closest to supreme national interests.

When the comprehensive peace process started in Madrid, Egypt was one of the key parties directly involved in such process, notwithstanding that the peace treaty between Egypt and Israel had resolved all the issues which directly concerned

Egyptian interests in the conflict in the strict sense. Egypt has thus continued to act as the "regional sponsor" in various forms, and in particular on the Palestinian Israeli course.

However, the recent months have witnessed a major shift in the Israeli policy in the Palestinian territories occupied during the war of 1967, namely building a separation wall by Israel in the occupied West Bank. Egypt is deeply concerned by the developments of building this wall, its indications and consequences, not only because the completion of this wall constitutes a flagrant violation of International Law and the relevant resolutions issued by the UN to put an end to the Israeli occupation of the Palestinian territories which resulted from the 1967 war, but most seriously because the concept of the wall itself reinstates condemned practices of racial discrimination (apartheid), which have been firmly rejected several decades ago by an unprecedented international consensus. Moreover, this wall represents a serious aggression on the human rights of the Palestinian people, as will be clarified in detail hereinafter.

Peace, in essence, does not emanate merely from formal procedures, treaties or protocols but from an underlying belief in the possibility of mutual understanding and coexistence among peoples in order to achieve their joint interests, a belief which would be completely destroyed by the building of the separation wall, which will enhance isolation rather than communication, and promote sustainability of the accumulated hatred and animosity between the two communities that the wall aims at isolating one from the other. Building this wall and its consequences represent major violations of the human rights of the Palestinian people, which will make this wall, unfortunately, the most dangerous method of sustaining tension, instability, animosity and conflict in a region that desperately needs stability and joint construction of peaceful coexistence.

Claiming that this wall is a temporary measure to meet Israeli security requirements, does not reduce such dangers in any manner whatsoever, because, notwithstanding that such security requirements can only be fulfilled through ending the Israeli occupation of the Palestinian territories occupied since June 1967, this wall which Israel claims is temporary, has already resulted in flagrant violations of consistently applied rules of International Law and explicit resolutions of many international organizations, on the top of which comes the UN, a matter which cannot be accepted by the international community.

Egypt feels confident that the views expressed in this Memorandum reflect the consensus of the international community towards this serious situation and its consequences.

As evidence of this consensus, the Quartet Committee formed of the United States, the European Union, the Russian Federation, and the United Nations, which represents the most important international gathering seeking to push the Middle East peace process forward aiming at establishing a Palestinian State in the West Bank and Gaza Strip beside the State of Israel, pointed out its position with respect to the isolation wall as follows:

*"The Quartet members reaffirm that, in accordance with the Road Map,*

*settlement activity must stop, and note with great concern the actual and proposed route of the Israel's West Bank fence, particularly as it results in the confiscation of Palestine land, cuts off the movement of people and goods and undermines Palestinians trust in the road map process as it appears to prejudge final borders of a future Palestinian State”.*

In addition, the stance of the UN General Assembly, which represents the most democratic and widest representation of the international community, was clear concerning the wall as it confirmed in its resolution No. ES-10/13 dated October 1, 2003 that: It demands Israel to stop and reverse the construction of the wall in the Occupied Palestinian Territories including in and around East Jerusalem, which is in departure of the Armistice Line of 1949 and is in contradiction to relevant provisions of the International Law.

The General Assembly added in its request for an advisory opinion from the International Court of Justice “Resolution No. A/ES-10/L.16 dated December 8, 2003 that:

*“Gravely concerned at the commencement and continuation of construction by Israel, the occupying Power, of a wall in the Occupied Palestinian Territory, including in and around East Jerusalem, which is in departure from the Armistice Line of 1949 (Green Line) and which has involved the confiscation and destruction of Palestinian land and resources, the disruption of the lives of thousands of protected civilians and the de facto annexation of large areas of territory ”.*

The Assembly also decided that:

*“Bearing in mind that the passage of time further compounds the difficulties on the ground, as Israel, the Occupying Power, continues to refuse to comply with international law vis-à-vis its construction of the above-mentioned wall, with all its detrimental implications and consequences, and underlining the unanimous opposition by the international community to the construction of that wall... ”.*

The European Union expressed its position in the Tisaloniki Summit Statement (19-20 June 2003) as follows:

*“It also calls on Israel to reverse the settlement policy and activity and end land confiscations and the construction of the so-called security fence, all of which threaten to render the two-State solution physically impossible to implement”.*

The European Union reaffirmed this position in the Brussels Summit (12 December 2003), referring to Israel's policy as follows:

*“This 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”.*

This clear international unanimity refusing the wall and its legal and political consequences underscores the urgent need for constructive efforts to address such flagrant breach of law and serious threat to peace in an area that has been striving to achieve peace for decades. This international stance has lead the General Assembly to take a commended step on 8 December 2003 by requesting the International Court of Justice to give an Advisory Opinion concerning the legal consequences of building the wall, considering the rules and principles of International Law, including the Fourth Geneva Convention of 1949 and the relevant Security Council and General Assembly resolutions.

While Egypt recognizes that advisory opinions are not judicial rulings, Egypt is nevertheless keen to promote and activate this important role of the International Court of Justice, based on a constant objective of Egyptian policy to strengthen and consolidate peaceful resolution and settlement of disputes, especially judicial settlement, whenever possible. Thus, we totally agree with Judge Bedjaoui's statements on the 50<sup>th</sup> anniversary of the International Court of Justice when he said:

*“La soumission à la Cour d’une question juridique par une organisation internationale peut, toutefois, prévenir la cristallisation d’un différend éventuel comme elle peut viser à assister l’organisation concernée dans la solution d’un différend déjà né et concernant son fonctionnement interne, voire ses relations avec des tiers.*

*En dépit des apparences, les avis de la Cour sont susceptibles de déployer des effets “Pacificateurs”, directement, dans un contexte conflictuel, ou indirectement, en dehors d’un tel contexte, ne serait-ce que par leur apport au bon fonctionnement des organisations universelles ainsi qu’au développement du droit. La procédure consultative apparaît ainsi au moins comme un instrument de “diplomatie préventive”, un moyen privilégié pour la Cour de désamorcer les tensions et de prévenir les conflits en disant de droit”.<sup>1</sup>*

Sir Robert Jennings stressed on the same meaning as follows:

*“Properly understood, the adjudicative process can serve, not only to resolve classical legal disputes, but it can also serve as an important tool of preventive diplomacy in more complex situations. Judicial decision-making and political decision-making are very different from each other, and sometimes, it may be necessary to choose between them in respect of a*

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<sup>1</sup> . Mohamed BEDJAOU, “Discourse”, in Connie Peck and Roy S. Lee (eds.), *Increasing the Effectiveness of the International Court of Justice*, Netherlands: Kluwer Law International, 1997, pp. 35-36.

*particular problem; but they are also complementary and can be used together to great effect".<sup>2</sup>*

This advisory opinion, in Egypt's assessment, does not entail mixing law with politics in any way, but it simply reflects a realistic appreciation of the facts of international relations which recognizes that the Law is enforced within a political framework, and that the Law must affect this political framework to the maximum possible extent and be affected by it to the least possible extent. In this context, for the case in question, we are confident that the opinion of the International Court of Justice concerning the "Separation Wall" will achieve the "complementarity" referred to by Sir Jennings, and that it will have positive political consequences that reinforce the role of peace advocates and civil society as well as all democratic mechanisms, on both national and international fronts.

Egypt is equally confident that the Court, using its focal role and distinguished position within the international judicial system, will establish, through its response to the General Assembly's request, concrete and sound legal basis for dealing with a very serious question having impact on the future of the Middle East peoples and international peace and security.

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<sup>2</sup> Sir Robert JENNINGS, "Presentation", Ibid, p. 79



## **FIRST: JURISDICTION OF THE INTERNATIONAL COURT OF JUSTICE TO RENDER THE REQUESTED ADVISORY OPINION**

On December 8, 2003, the General Assembly requested the International Court of Justice, based on Article 96 of the UN Charter and Article (65) of the Statutes of the Court, to issue urgently an advisory opinion on the following question:

**“What are the legal consequences arising from the construction of the wall being built by Israel, the occupying Power, in the occupied Palestinian territory including in and around East Jerusalem, as described in the report of the Secretary General, considering the rules and principles of International Law, including the Fourth Geneva Convention of 1949, and relevant Security Council and General Assembly resolutions”<sup>3</sup>.**

Article (96) of the Charter gives the Security Council and the General Assembly an unconditional right to request the International Court of Justice to issue an advisory opinion on any legal question arising within the scope of their activities and it gives the same right to the other organs of the UN and specialized agencies. Yet exercising this right by such other organs or agencies is subject to two conditions: (a) the General Assembly must authorize such organs and agencies to request the legal opinion, and (b) the legal questions submitted to the Court must be within the sphere of competence of such organs and agencies.

It is clear from the text of Article (65) of the Court Statutes that **it has the right** to render the requested advisory opinion, based on the first paragraph, which states that:

*“The Court may give its opinion on any legal question at the request of whatever body authorized by or in accordance with the UN Charter to make such a request”.*

As Article (96) of the UN Charter has provided that the question subject matter of an opinion from the Court must be **“a question of a legal nature”**, as a condition for the competence of the Court to issue its advisory opinion, whether such request for an opinion came from an entity having the absolute right (like the General Assembly and Security Council), or a preconditioned right as previously mentioned. This requires defining the intended meaning of **“questions of a legal nature”** that give the Court jurisdiction to issue advisory opinions.

On the other hand, it may be inferred from the text of Article (65) of the Court Statute that it has a discretionary authority to refrain from issuing such opinion, even when the conditions for requesting an opinion are satisfied. This requires a discussion

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<sup>3</sup>. A/ES/10/L.16, A/Res/ES/10/14.

of the extent of the discretionary authority of the Court in deciding to render or not render an opinion, in order to conclude finally whether the question which the General Assembly requested a legal opinion on from the International Court of Justice concerning the Wall currently being constructed by Israel, constitutes a question of a legal nature on which the Court is competent to give an advisory opinion.

Once we reach a conclusion on this point, we will respond to the following question on the extent of the Court's obligation to give an advisory opinion, when so requested within the scope of its jurisdiction.

## 1. The Meaning of "Questions of a Legal Nature"

Article (96) of the UN Charter, which gives the General Assembly and the Security Council an unconditional right to request the advisory opinion of the Court on any legal question invited jurists to define the intended meaning of the legal questions which fall within the jurisdiction of the Court.

In this connection, Mr. Conforti stated:

*"(...) the object of the advisory function is indicated in a such broad terms that it would be arbitrary not to accept any question pertaining to the application or interpretation of legal norms".<sup>4</sup>*

The meaning has also become apparent through the consistent application by the Court, particularly when certain member States on one hand, whether before the General Assembly or the International Court of Justice, and certain jurists on the other hand, attempted to deny the legal nature of Questions submitted to the Court for an advisory opinion.

Certain member States attempted very early in the life of the United Nations to exclude from the scope of legal questions eligible for advisory opinions from the Court, all matters related to the interpretation of the provisions of the UN Charter. The International Court of Justice itself refused this direction in its advisory opinion issued on May 18, 1948, concerning the terms of admitting members to the UN. The Court responded as follows:

*"Aucune disposition n'interdit à la Cour "organe judiciaire principal de l'ONU, d'exercer à l'égard de la Charte, traité multilatéral, une fonction d'interprétation. La Cour s'estime donc compétente sur la base de l'article 96 de la Charte et de l'article 95 de son statut".<sup>5</sup>*

Moreover, reviewing the Court's consistent precedents related to its advisory function, shows that it has refused the objections made to deny its capacity to issue

<sup>4</sup>. Conforti BENEDETTO: *The Law and Practice of the United Nations*, Kluwer Law International, the Hague, London, Boston, p. 262.

<sup>5</sup>. Eisemann, Coussirat-Coustere, Hur.: *Petit manuel de la Jurisprudence de la Cour Internationale de Justice*, 3e ed., Pedone, Paris, 1980, p.187

advisory opinions on the basis that the relevant questions are of a political nature, as opposed to legal nature, and that thus, the Court had no jurisdiction to issue an opinion thereon.

The advisory opinions of the Court that included such objections show clearly that the Court has disregarded such objections, and in certain cases went as far as responding to such objections although they were not raised in the context of judicial Court proceedings. This is clear from the advisory opinion of the Court dated March 25, 1951, regarding the interpretation of the treaty between Egypt and World Health Organization (WHO), which states:

*"In the debates (...) on the proposal to request the present opinion from the Court, opponents of the proposal insisted that it was nothing but a political maneuver designed to postpone any decision concerning removal of the Regional Office from Egypt, and the question therefore arises whether the Court ought to decline to reply to the present request by reason of its allegedly political character. In none of the written and oral statements submitted to the Court, on the other hand, has this contention been advanced and such a contention would in any case have run counter to the settled jurisprudence of the Court. That jurisprudence establishes that if, as in the present case, a question submitted in a request is one that otherwise falls within the normal exercise of its judicial process, the Court has not to deal with the motives which may have inspired the request. Indeed, in situations which political considerations are prominent, it may be particularly necessary for an international organization to obtain an advisory opinion from the Court as to legal principles applicable with respect to the matter under debate (...)”<sup>6</sup>.*

In adopting this line, the Court followed its consistent rulings since the beginning of its advisory activities. The objection to the jurisdiction of the Court to give advisory opinions based on the political character of the questions has been often raised before the Court. Yet such objections have not impeded the issuance of advisory opinions by the Court on such questions. We refer, in particular, to the advisory opinion to accept membership in the UN herein before mentioned<sup>7</sup>, as well as the Court's advisory opinion issued on March 3, 1950 concerning the jurisdiction of the General Assembly to accept a State as a member of the UN, where the Court confirmed its previous opinion on the matter issued in 1948. In both cases, the court affirmed that the advisory opinion related to a question of a legal nature, even if such question had also a political character, because the question raised relates to the interpretation and application of the text of Article (4) of the Charter concerning the UN membership terms.

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<sup>6</sup>. I.C.J. Reports, 1980, p. 87.

<sup>7</sup>. See analysis of this opinion in Eisemann and others, Ibid, p. 186 - and I.C.J. Reports, 1947 - 1948, pp. 61-62

The Court adopted the same principle in its advisory opinion dated July 20, 1962, at the General Assembly's request regarding certain expenses borne by the UN in connection with peace keeping forces in the Middle East and Congo. Prior to dealing with the substance of the matter, the Court clarified certain preliminary considerations concerning its jurisdiction. The Court decided in this regard that although it was not competent to issue advisory opinions concerning questions of a political nature, yet it had to follow its established rulings, especially with regard to the questions related to the interpretation and application of the UN Charter. The Court thus concluded that it had to give an advisory opinion on such question as a legal question, since the required opinion was concerning the interpretation of Article 2/17 of the Charter<sup>8</sup>.

Finally, even if the question on which an advisory opinion is required represents a dispute between two states or between a state and the UN itself, this should not prevent the Court from issuing an advisory opinion thereon.

The jurisprudence is clear in that such a dispute does not prevent the Security Council or the UN from requesting the Court to give an advisory opinion in this regard, even if the other party to the dispute opposed, so long as the question which requires an advisory opinion is a legal question<sup>9</sup>.

In fact, this opinion is not only based on Article (96) of the Charter, but also on the text of Articles (14) and (37) of the Charter. The first authorizes the General Assembly "to recommend measures for the peaceful adjustment of any situations, regardless of its origin, which it deems to impair the general welfare or friendly relations among nations", while the second authorizes the Security Council "to recommend such terms of settlement as it may consider appropriate..".

It is clear that the above two texts did not exclude legal solutions from the scope of measures or terms that any of the two U.N. organs may recommend to settle the dispute in question.

The consistent practice of the International Court of Justice confirms this jurisprudence. In the advisory opinion issued by the Court on March 30, 1950 concerning the interpretation of the peace treaties between Bulgaria, Hungary, and Romania, where the three countries refused to request the advisory opinion of the Court in this regard, claiming that requesting an advisory opinion threatens a principle of the International Law, namely that taking any judicial procedures concerning legal questions raised between states is forbidden without obtaining their prior consent, the Court responded to such opposition as follows:

*"This obligation reveals a confusion between the principles governing contentious procedures and those which are applicable to advisory opinions. The consent of States, parties to a dispute, is the basis of the court's jurisdiction in contentious cases. The situation is different in regard to advisory proceedings. The*

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<sup>8</sup>. I.C.J. Reports, 1962, p. 155

<sup>9</sup>. Conforti, op.cit., p. 263

*court's reply is only an advisory character: as such, it has no binding force. It follows that no state, whether a member of the United Nations or not, can prevent the giving of an advisory opinion which the United Nations considers to be desirable in order to obtain enlightenment as to the course of action it should take. The Court's opinion is not given to the State, but to the organ which is entitled to request it*"<sup>10</sup>.

The Court reaffirmed this position in an advisory opinion issued on December 15, 1989, concerning the interpretation of Article (6) of Chapter 22 of the Convention on the Privileges and Immunities of the UN, where a dispute arose between Romania and the UN, after Romania prevented one of its citizens employed by the UN, named Mazilu, from departing Romania. As a result, the Economic and Social Council, based on the authorization granted by the General Assembly, requested the International Court of Justice to give an advisory opinion in this regard, based on the fact that the aforementioned employee was a member of the Sub-Committee on Racial Discrimination and Protecting Minorities.

Article (8) of Chapter 30 of the said Convention states that in case of a dispute between the UN and one of its member States regarding the interpretation and implementation of this treaty, the UN may request an advisory opinion from the International Court of Justice in this regard, and such opinion shall be binding on both parties. Thus, Romania made a reservation on this text that such an obligation cannot be accepted in advance.

The problem which arose in this context was whether the International Court of Justice was entitled to issue the advisory opinion despite this reservation based on the general provision of Article (96) of the Charter, maintaining that such an opinion was advisory and not legally binding, in accordance with its jurisdiction to issue advisory opinions upon the request of an agency permitted to do so by the UN Charter or by the General Assembly. The Court replied positively.

In the light of the above, we conclude that, (i) the Court has adopted a broad definition of "questions of a legal nature" which constitute the parameters of its jurisdiction to issue advisory opinions, and (ii) the Court found no reason to preclude exercise of its function to issue legal opinions within its jurisdiction when a legal question was mixed with other political factors or when identifying the nature of such question was in dispute.

The Court in fact adopted a commended approach, as any approach to the contrary would have paralyzed the Court's ability to exercise its advisory function. The reason is that it is very rare that any question submitted to the UN would be void of any political impact, especially that a request for an advisory opinion is never made unless a dispute on the matter exists. Such dispute in itself is a political situation, which should not prevent a request for any advisory opinion nor impede the jurisdiction of the Court to issue such an opinion.

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<sup>10</sup>. I.C.J, 1950, p. 71

We further conclude that the opposition by a State party to a dispute presented to the UN, against the other party's right to request an advisory opinion from the Court on a legal question does not preclude the right of such other party to request the advisory opinion, nor does it prevent the Court's jurisdiction to issue the required opinion.

## **2. The Discretionary Authority of the International Court of Justice to Issue or Refrain from rendering Advisory Opinions**

The text of Article (65) of the International Court of Justice Statutes may be interpreted to mean that the satisfaction of the conditions for an advisory opinion to qualify as such does not necessarily oblige the Court to issue such an advisory opinion. This may be inferred from the wording of the text: "*the Court may give an advisory opinion ...*"

Tracing the facts of the Court precedents referred to above, we conclude that those who objected to the Court's jurisdiction to issue advisory opinions, particularly those who claimed that the condition related to the legal nature of the question was not satisfied and that such question had a political character, have also raised the issue of the discretionary authority of the Court to refrain from issuing the advisory opinion, even if all conditions were met.

The answer to this question lies in the consistent practice adopted by the Court. Although the Court has always stressed upon its discretionary authority pursuant to the text of Article (65) of its Statute to issue or to refrain from issuing advisory opinions, yet the Court restricted such discretion to what it called "Urgent reasons/ raisons decisives".

In other words, the Court may not refrain from issuing the requested advisory opinion when the required conditions are satisfied, unless there are urgent reasons preventing such issuance. A careful review of the Court's rulings shows that the Court has never refrained from issuing an advisory opinion whenever the required conditions were met.

The only precedent where the Court refrained from issuing an advisory opinion was when the WHO requested an opinion from the Court, and the Court found that one of the conditions required to issue the advisory opinion for specialized agencies was missing, which is that the opinion in question must fall within the competence of such agency.<sup>11</sup>

In fact, the Court's consistent practice to respond positively to requests for issuing advisory opinions concerning legal questions is in harmony with the spirit of the UN Charter and with its requirements of full cooperation between the organs of the UN. This has been implicitly referred to in many of the Court's advisory opinions.

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<sup>11</sup>. WHO requested the International Court of Justice, based on the authorization from the UN an advisory opinion regarding the legitimacy of potential use of nuclear weapons in armed international conflicts. The Court refused to give the required opinion on the grounds that this question does not fall within the legal questions over which WHO has jurisdiction, while the Court responded to the General Assembly's request for an advisory opinion on the same question, a matter which has a clear indication.

Examples of such opinions include the advisory opinion issued by the Court concerning the reservation on the Convention on the Prevention and Punishment of the Crime of Genocide<sup>12</sup>, and the opinion issued by the Court regarding the consequences of the judgments by the Administrative Court of the UN.<sup>13</sup>

On the other hand, the apparent meaning of the text of Article (65) of the Statutes of the International Court of Justice, regarding the Court's discretionary authority to issue advisory opinions is a single theoretical argument significantly outbalanced by a group of articles of the Charter that oblige the organs of the United Nations to cooperate with each other. In addition, the Court's consistent precedents in this regard, represent, in our opinion, a clear definition of the discretionary authority of the Court to issue legal opinions and its limitations.

It should be noted that among the most sensitive matters related to requesting an advisory opinion from the Court is when there exists a potential conflict between the judicial jurisdiction of the Court and its advisory jurisdiction. In such cases, the Court should, as Conforti rightly pointed out,<sup>14</sup> decide on such matters clearly because the existence of a dispute among states or between a state and the UN should not by any means preclude the Court's ability to exercise its advisory jurisdiction, as there is no justification for the Court to sacrifice such advisory jurisdiction for the sake of its judicial jurisdiction.

Any argument to the contrary would enable any State party to a dispute to solely block the Court's ability to exercise its advisory jurisdiction..

We now have to answer the essential question on the matter under consideration:

**Does the question referred by the UN General Assembly to the International Court of Justice, which represents the subject of the advisory opinion requested by the Assembly, fulfill the required conditions? In other words: Is the question of a "legal nature" that qualifies for issue of an advisory opinion?**

Based on the above, we may conclude that the substance of the question introduced by the General Assembly to the Court focuses basically on the legal consequences of building the separation wall in the light of the rules and principles of International Law, including the Fourth Geneva Convention of 1949, and the relevant resolutions issued by the General Assembly and Security Council.

All those consequences represent in essence applications and interpretations of the rules of International Law and relevant international conventions with the UN Charter and the Fourth Geneva Convention, and include the International Covenants

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<sup>12</sup>. I.C.J. Reports, 1996, p.1971

<sup>13</sup>. I.C..J. Reports, 1956, p.68

<sup>14</sup>. Conforti BENEDETTO, op.cit., p. 266

on Civil and Political Rights as well as on for Economic, Social and Cultural Rights as well as the relevant Security Council and General Assembly resolution (as will be detailed in the substantive section of this Memorandum). Moreover, an opinion on such matters falls clearly among the legal questions eligible for advisory opinions, according to Article (96) of the UN Charter.

In light of the above mentioned considerations and the consistent precedents of the Court, we submit that the International Court of Justice would be in full consistency with its previous practice when responding to the request made by the General Assembly and issue an advisory opinion thereon.



## **SECOND: HISTORICAL BACKGROUND AND FACTS**

Since various memoranda submitted to the Court by Arab countries and the League of Arab Nations, have elaborately depicted the historical background of this issue, therefore, the Arab Republic of Egypt would like to refer thereto in order to avoid repetition.

As for the demographic, humanitarian, and socio-economic facts and impacts, it is suffice to refer to Report CA/ES- 10/248 of the Secretary General of the United Nations dated 24 November 2003.

### THIRD: THE LEGAL STATUS OF THE PALESTINIAN TERRITORY (THE WEST BANK, INCLUDING EAST JERUSALEM, AND GAZA STRIP)

It is impossible to understand the legal nature of the Palestinian territory without acknowledging the special status of the Palestinian Territory under mandate during the period between 1922 and 1948, a matter on which we refer to the memoranda which elaborated on the historical background. It is sufficient here to refer to the United Nations' Resolution 181 (II) "Future Government of Palestine" issued on 29 November 1947, by virtue of which the General Assembly resolved to establish two States in the Palestinian Territory: a Jewish State and an Arab State, to internationalize Jerusalem and to set up an economic union between both States.

We draw the Court's attention that the declaration to establish an Israeli State on 15 May 1948 was followed by the State's acceptance of the General Assembly's aforementioned resolution on the partition of Palestine and its resolution 194 of 1948 on the refugees' right of return to their homeland. Such acceptance took place during the extensive discussions of the Ad-Hoc Political Committee of the General Assembly prior to voting on Israel's admission as a United Nations member, where **Mr. Aba Eban**, then the special representative of the State of Israel confirmed Israel's abidance by and respect of the resolution on the partition of the Palestinian Territory, the internationalisation of Jerusalem and the Palestinian refugees' right of return to their homeland. This was reflected in the General Assembly's resolution 273 (III) issued on 11 May 1949 admitting Israel as a United Nations member.<sup>15</sup>

In light of the above, it may be concluded that Israel's admission as a United Nations member was based on specific terms, the most important of which are the following:

- i. That its boundaries will be the same boundaries as defined by resolution 181 (II) of 29 November 1947.
- ii. That it abides by the terms of resolutions 181 (II) of 29 November 1947 and 194 (III) of December 1948.

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<sup>15</sup> The aforementioned resolution states the following:

Noting furthermore the declaration by the State of Israel that it "*unreservedly accepts the obligations of the United Nations Charter and undertakes to honour them from the day when it becomes a Member of the United Nations*",

*"Recalling its resolutions of 29 November 1947 and 11 December 1948 and taking note of the declarations and explanations made by the representative of the Government of Israel before the ad hoc Political Committee in respect of the implementation of the said resolutions, The General Assembly, acting in discharge of its functions under Article 4 of the Charter and rule 125 of its rules of procedure,*

1. *Decides that Israel is a peace-loving State which accepts the obligations contained in the Charter and is able and willing to carry out those obligations;*
2. *Decides to admit Israel to membership in the United Nations."*

iii. That it cooperates with the United Nations in implementing these resolutions regarding:

- (a) Internationalization of Jerusalem area;
- (b) It abides by Chapter 2 of resolution 181 (II) of 29 November 1947, namely:
  - (1) Freedom of conscience; (2) No discrimination of any kind shall be made by the inhabitants on the ground of race, religion, language and sex; (3) All persons within the jurisdiction of the state shall be entitled to equal protection of the law; and (4) No expropriation of land owned by an Arab in the Jewish State (by a Jew in the Arab State) shall be allowed except for public purposes.
- (c) It abides by the terms of resolution 194 (III) of 11 December 1948 by allowing the repatriation of the Arab refugees and paying compensation for those who choose not to return.

Since Israel has ignored the foregoing terms and committed flagrant violations against the rights of the Palestinian people throughout the years following the declaration of its establishment and until its aggression against neighbouring Arab countries in 1967, the most serious of its violations against the terms and vows made thereby, being its constant attempt to prevent the establishment of an Arab State (Palestinian State) as stated in the partition resolution by virtue of which it was established. Such violations of the rights of the Palestinian people also included transcending the boundaries defined by the General Assembly's resolution 181 of 1947, as the only parts not falling under Israeli control were the West Bank and Gaza Strip (The West Bank including East Jerusalem fell under Jordanian rule and Gaza Strip fell under Egyptian administration) until the military operations broke out in the June 1967 War, during which Israel occupied the West Bank including East Jerusalem and Gaza Strip. So, the entire Palestinian territory with the same boundaries as at the time of the British mandate fell under Israeli control.

Ever since, the status nature of the Palestinian territories occupied in 1967 has become an issue and Israeli circles have propagated theories claiming that the West Bank and Gaza Strip were not under the sovereignty of any other country and that Israel's occupation of these two territories entailed its sovereignty over them, or at least their consideration as no man's land, since both Egypt and Jordan lacked the legal grounds to claim the re-control of these two territories, which gives Israel the right to dispose of them in that context. It accordingly took the initiative to null and void declare its annexation of East Jerusalem and to consider Jerusalem as a unified city.

However, the international community soon challenged these false allegations by virtue of Security Council resolution 242 of 22 November 1967<sup>16</sup> which decisively decided on the legal status of the Arab territories occupied in 1967, naturally including the Palestinian territories (the West Bank including East Jerusalem and Gaza Strip) deeming them occupied territories from which Israel must withdraw. Besides, a number of other resolutions adopted by the General Assembly and the Security Council, especially regarding the status of East Jerusalem, have confirmed that they are occupied territories and that Israel's control of said lands are a result of its occupying authority.

It is without doubt that the discussions held at the special session of the United Nations' General Assembly between 19 June and 3 July 1967 and those held at the various Security Council meetings starting on 5 June and ending on 22 November 1967, which resulted in the unanimous adoption of resolution 242, best interpret the Security Council's resolution, as they are considered the preliminary works which clearly reveal the Security Council's intention to adjust the legal status of the Palestinian territories that came under Israeli occupation in 1967.

The clear statements made by Mr. George Brown, the Secretary of State for Foreign Affairs of the United Kingdom before the General Assembly at its session 1529 held on 21 June 1967 are the best evidence that withdrawal from Palestinian territories applies to all the occupied Palestinian territories, including East Jerusalem, which accordingly affirms the legal characterization of all Arab territories under the Israeli control as occupied territories. In this connection, he resolved:

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16 Security Council Resolution 242 (1967)

The Security Council

Expressing its continuing concern with the grave situation in the Middle East

Emphasizing further that all Member States in their acceptance of the Charter of the United Nations have undertaken a commitment to act in accordance with Article 2 of the Charter.

1. Affirms that the fulfillment of Charter principles requires the establishment of a just and lasting peace in the Middle East which should include the application of both the following principles:
  - (i) Withdrawal of Israel armed forces from territories occupied in the recent conflict;
  - (ii) Termination 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;
2. Affirms further necessity
  - (a) For guaranteeing freedom of navigation through international waterways in the area;
  - (b) For achieving a just settlement of the refugee problem;
  - (c) For guaranteeing the territorial inviolability and political independence of every State in the area, through measures including the establishment of demilitarized zones;
3. Requests the Secretary General to designate a Special Representative to proceed to the Middle East to establish and maintain contacts with the States concerned in order to promote agreement and assist efforts to achieve a peaceful and accepted settlement in accordance with the provisions and principles in this resolution;
4. Requests the Secretary-General to report to the Security Council on the progress of the efforts of the Special Representative as soon as possible."

It is worth mentioning that the Security Council has reconfirmed this resolution by virtue of resolution No. 338 issued on 22 October 1973.

*"I should like, if I may, to set out certain principles which I believe should guide us in striving collectively for a lasting settlement. Clearly, such principles must derive from the United Nations Charter, Article 2 of the Charter provides that:*

*"All Members shall refrain in their international relations from the threat of use of force against the territorial integrity or political independence of any State..."*

*Here the words "territorial integrity" have a direct bearing on the question of withdrawal, on which much has been said in previous speeches. I see no two ways about this; and I can state our position very clearly. In my view, it follows from the words in the Charter that war should not lead to territorial aggrandisement.*

*Reports suggest that one particular point may be of special urgency. This concerns Jerusalem. I call upon the State of Israel not to take any steps in relation to Jerusalem which would conflict with this principle. I say very solemnly to the Government of Israel that, if they purport to annex the Old City or legislate for its annexation, they will be taking a step which will isolate them not only from world opinion but will also lose them the support that they have."*

The characterization of Palestinian territories that fell under Israeli control in 1967 as occupied territories has been confirmed by statements made by the various delegates of the great powers in the Security Council. We especially refer to the statements made by Lord Caradon of the United Kingdom who was known for having drafted the famous text of resolution No. 242 and especially the phrase "withdrawal from occupied territories", and who referred to and confirmed the statement previously made by the British Secretary of State for Foreign Affairs in the speech referred to herein above at the special round of the General Assembly, as Lord Caradon stated:

*"If I had to sum up the policy which has been repeatedly stated by my Government, I would go back to the words used by my Foreign Secretary in the General Assembly less than a month ago. These were his words:*

*'I should like to repeat what I said when I was here before: Britain does not accept war as a means of settling disputes, not that a state should be allowed to extend its frontiers as a result of a war. This means that Israel must withdraw. But equally, Israel's neighbours must recognise its right to exist, and it must enjoy security within its frontiers. What we must work for in this area is durable peace, the renunciation of all aggressive designs, and an end to policies which are inconsistent with peace.' "*

He stated further:

*"In our resolution we stated the principle of the 'withdrawal of Israeli armed forces from territories occupied in the recent conflict' and in the preamble we emphasised 'the inadmissibility of the acquisition of territory by war.' In our view, the wording of those provisions is clear. We believe that it would be a serious error to attempt at this stage to vary or add to them. Nor are we prepared to alter the wording of the remainder of the resolution, including that concerning the necessity of securing a lasting peace, which I emphasise again, was prepared with the greatest care after listening long patiently to the views put to us by those directly concerned."*

After that, the words of Mr. Bernard, the representative of France at the Security Council were decisive regarding this issue, as he stated, prior to voting on this resolution, at the Security Council session of 22 November 1967:

*"We must admit, however, that on the point which the French delegation has always stressed as being essential- the question of withdrawal of the occupation forces- the resolution which has been adopted, if we refer to the French text which is equally authentic with the English, leaves no room for any ambiguity, since it speaks of withdrawal 'des territoires occupés', which indisputably corresponds to the expression 'occupied territories'.*

*We are likewise gratified to hear the United Kingdom representative stress the link between this paragraph of his resolution and the principle of inadmissibility of the acquisition of territories by force, and quote the words used last September by his Secretary of State for Foreign Affairs in the General Assembly."*

*In his statement, Mr. George Brown, expressing a concern shared by his French colleague, also said:*

*"I believe that Jerusalem too requires a special mention here. The British position was made quite clear when, with the vast majority of the Members of this Assembly, we voted this summer for the resolutions calling on Israel to do nothing to prejudice the status of Jerusalem."*

The United Nations' General Assembly and the Security Council issued a great number of resolutions that confirmed the legal status of Palestinian territories as occupied territories, including East Jerusalem, and called upon Israel to abide by International Humanitarian Law and the Fourth Geneva Convention.<sup>17</sup> It is worth

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<sup>17</sup> Especially the Security Council resolutions issued after resolution No. 242, the most important of which is resolution No. 250 (1968) 27/4/1968, 251 (1968) 2/5/1968, 252 (1968) 21/5/1968, 267 (1969) 3/7/1969, 298 (1971) 25/9/1971, 338 (1973) 22/10/1973, 446 (1979) 22/3/1979, 452 (1979) 20/7/1979, 465 (1980) 1/3/1980, 476 (1980) 30/6/1980, 478 (1980) 20/8/1980, 904 (1994) 18/3/1994, 1073 (1996) 28/9/1996, 1397 (2002) 12/3/2002.

referring to some of these resolutions, which were frequently adopted especially after Israel's application of its settlement policy on Palestinian occupied territories, including resolution 446 (1979) stating:

*"Affirming once more that the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 is applicable to the Arab territories occupied by Israel since 1967, including Jerusalem,*

1. *Determines that the policy and practices of Israel in establishing settlements in the Palestinian and other Arab territories occupied since 1967 have no legal validity and constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East.*
2. *Strongly deplores the failure of Israel to abide by Security Council resolution 237 (1967) of 14 June 1967, 252 (1968) of 21 May 1968 and 298 (1971) of 25 September 1971 and the consensus statement by the President of the Security Council on 11 November 1976 and General Assembly resolutions 2253 (ES-V) and 2254 (ES-V) of 4 and 14 July and 32/5 of 28 October 1977 and 33/113 of 18 December 1978.*
3. *Calls once more upon Israel, as the occupying Power, to abide scrupulously by the 1949 Fourth Geneva Convention, to rescind its previous and to desist from taking any action which would result in changing the legal status and geographical nature and materially affecting demographic composition of the Arab territories occupied since 1967, including Jerusalem, and, in particular, not to transfer parts of its own civilian population into the occupied Arab territories;"*

The Preamble of Security Council resolution 465 of 1 March 1980 states:

*"Affirming once more that the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1948 is applicable to the Arab territories occupied by Israel since 1967, including Jerusalem."*

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The United Nations General Assembly also issued several resolutions confirming the consideration of Palestinian territories as occupied territories, including in particular, resolution No. 2253 (ES-V) 4/7/1967, 2254 (1967) 14/7/1967, 2443 (XXIII) 19/12/1968, 2546 (XXIV) 11/12/1969, 2727 (XXV) 15/12/1970, 2851 (XXVI) 20/12/1971, 77/54- 6/12/1999, 78/54- 6/12/1999, 79/54- 6/12/1999, ES-1017- 20/10/2000, 50/55- 1/12/2000, 131/55- 8/12/2000, 132/55- 8/12/2000, 133/55- 8/12/2000, 134/55- 8/12/2000, 36/56- 3/12/2001, 60/56- 10/12/2001, 61/56- 10/12/2001, 62/56- 10/12/2001, (ES-10/8)- 20/12/2001, (ES-10/9)- 20/12/2001, (ES- 10/10)- 7/5/2002, (ES-10/11)- 5/8/2002, 107/57- 3/12/2002, 108/57- 3/12/2002, 111/57- 3/12/2002, 124/57- 11/12/2002, 125/57- 11/12/2002, 126/57- 11/12/2002, 27/57- 11/12/2002, (ES-10/13) - 21/10/2002, 22/58- 3/12/2003, 97/ 85- 9/12/2003, 98/58- 9/12/2003, 99/85- 9/12/2003.

Paras 5 and 6 of the same resolution state:

- “5. *Determines that all measures taken by Israel to change the physical character, demographic composition, institutional structure or status of the Palestinian and other Arab territories occupied since 1967, including Jerusalem, or any part thereof, have no legal validity and that Israel’s policy and practices of settling parts of its population and new immigrants in those territories constitute a flagrant violation of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War and also constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East;*
6. *Strongly deplores the continuation and persistence of Israel in pursuing those policies and practices and calls upon the Government and people of Israel to rescind those measures, to dismantle the existing settlements and in particular to cease, on an urgent basis, the establishment, construction and planning of settlements in the Arab territories occupied since 1967, including Jerusalem.”*

Though Israel debated for some time the status of the West Bank and Gaza Strip as occupied territories in order to pursue its settlement policy with the aim of annexing the greatest possible parts of these lands to its own territory, it soon retreated gradually from this stance. This took place in two stages, the first being Israel’s repeated declaration of its de facto obligation to apply the Fourth Geneva Convention from a “humanitarian perspective.”

That was followed by the agreements which Israel concluded with the Palestinian Liberation Organisation (PLO). A fundamental principle prevailed in all these agreements, which is the territorial unity of the West Bank and Gaza Strip, a matter which was conveyed in Article 4 of the Declaration of Principles for Self- Rule Arrangements (13 September 1993), stating:

*“Jurisdiction of the Council will cover West Bank and Gaza Strip territory, except for issues that will be negotiated in the permanent status negotiations. The two sides view the West Bank and the Gaza Strip as a single territory unit whose integrity will be preserved during the interim period.”*

There is no doubt that deeming the West Bank and Gaza Strip as occupied territories entails certain obligations on Israel which are in total contradiction with the construction of the separation wall, subject of the requested Advisory Opinion. Such obligations are specifically as follows:

- (1) Israel’s obligation to respect the rules of the International Humanitarian Law mandatorily applicable in the occupied territories, whether those stated in The Hague Conventions of 1899 and 1907 or in the Geneva Conventions of 1949, especially the Fourth Geneva Convention on the Protection of Civilian Persons in time of war.



- (2) Israel's obligation not to prejudice the territorial safety and integrity of the West Bank, including East Jerusalem and the Gaza Strip, in application of its international obligations, in accordance with the United Nations resolutions and the bilateral conventions concluded between Israel and the PLO.

1. **Israel's obligation to respect the rules of the International Law applicable in occupied territories: Military Occupation Law (The Hague Regulations on War on Land).**

Since the end of the nineteenth century, the world community has been keen on recording the rules of war law, including the legal principles governing and regulating military occupation and the status of territories under occupation. On grounds of a large number of texts codifying some customary rules of International Law as well as some reliable practices carried out internationally, The Hague Regulations annexed to The Hague's Fourth Convention of 1907 on War on Land Laws and practices (Articles 42 to 56) and the Geneva Convention on the Protection of Civilian Persons at the Time of War signed on 12 August 1949 and Articles 27 to 34 and 47 to 78, tackled war occupation and identified the authorities of the occupying power and the duties of the persons on the occupied territory. They also identified the duties of the occupying power towards them and the rights they are entitled to.

It is undisputed that military occupation does not entail the transfer of the sovereignty of a state having legitimate sovereignty over a territory to the occupying state. This only grants temporary and limited authorities to that state to enable it to manage the occupied territory. The conventional theory of the War Law determines the authorities of the occupying force by way of war as stated above. Since the original state remains entitled to the sovereignty of the occupied territory, and since war occupation creates a temporary situation and a de facto status, then the authorities of the occupying force in totality are confined to securing the management of the occupied territory and ensuring proper order thereat. Such authorities are limited and must be interpreted narrowly.

Even though we are not depicting the authorities of occupying forces in detail, it is sufficient to highlight the authorities of occupying forces with regard to public and private properties in an occupied territory.

- (a) **The Treatment of Public Properties in an Occupied Territory**

The first paragraph of Article 53 of The Hague Regulations on War on Land dated 1907 on moveable properties owned by the state, the territory or part of the territory of which is occupied, states the following:

*"An army of occupation can only take possession of cash, funds, and realisable securities which are strictly the property of the state, depots of arms, means of transport, stores and supplies, and generally, all moveable property belonging to the state which may be used for military operations."*

As regards to state owned real estate and lands located in the occupied territory, Article 55 of The Hague Regulations states:

*"The occupying state shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile state, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct."*

**(b) Private Property**

It is indisputable that the occupying force may not seize private properties in the occupied territory since such private properties in the occupied territory are not deemed by any means as war gains. The occupying force may not seize such properties, as it should respect and protect them, whether they be moveable assets or real estates. Article 46 of The Hague Regulations stressed the necessity of respecting private properties in an occupied territory and the forbiddance of confiscating same, as it states:

*"Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected. Private property cannot be confiscated."*

**2. Israel's Obligation Not to Prejudice the Territorial Integrity of Palestinian Occupied Territory: The West Bank (including East Jerusalem) and Gaza Strip:**

Since Israel has specific legal obligations, then it should adjust its conduct and behaviour as a force occupying Palestinian territory in accordance with the principles and provisions of the International Humanitarian Law as has been previously demonstrated. Israel's construction of the separation wall, which entails the confiscation of Palestinian lands owned by Palestinian citizens who are inhabitants of occupied Palestinian territory and the confiscation of lands which fall within the public domain are in violation of specific provisions of The Hague Regulations on War on Land of The Hague's Fourth Convention of 1907 as has been previously demonstrated, and the Fourth Geneva Convention as shall be detailed hereinafter.

Moreover, the construction of the wall, with all the consequences thereof, constitutes a flagrant Israeli violation of its international legal obligations not to prejudice the territorial integrity of the West Bank, including East Jerusalem and Gaza Strip. Such obligations are set out in General Assembly resolution 273 (3), by virtue of which Israel was admitted as a United Nations member, as well as in a great number of Security Council and General Assembly resolutions, especially those adopted since 1967 to this very date, and in the bilateral agreements concluded between Israel and the PLO or the Palestinian National Authority.

**(a) The United Nations' General Assembly's Resolution Admitting Israel as a United Nations Member**

The United Nations' General Assembly issued its resolution 273 (III) on 11 May 1949 admitting Israel as a United Nations member, in which it clearly referred in its Preamble to the resolution on the partition of Palestine, the resolution on the refugee's right of return, and the declarations and clarifications made by the representative of the Israeli State before the special Political Committee regarding those two resolutions.<sup>18</sup> By referring to the discussions held by that Committee, the statements by Mr. Aba Eban, the Representative of the provisional Government of Israel, regarding the boundaries, affirming that his Government accepts the boundaries determined by the partition resolution for the Israeli State, with the possibility of making some minor amendments thereto after holding negotiations in this regard, are incorporated by reference. In his statements he confirmed the following:

*"Mr. Eban then stated the views of his Government on the boundary question, remarking that they did not seem to constitute a major obstacle on the road to a settlement. The fact that an Arab state had not arisen in the part of Palestine envisaged by the resolution of 29 November 1947, as well as the circumstances of war and military occupation, rendered essential a process of peaceful adjustment of the territorial provisions laid down in that resolution. The General Assembly itself had twice endorsed the need of such a peaceful adjustment and its representatives had even from time to time made proposal for effecting changes in the territorial dispositions of that resolution. The view expounded by the Israeli Government during the first part of the third session was that the adjustment should be made not by arbitrary changes imposed from outside, but through agreements freely negotiated by the Governments concerned. The principle had commended itself to the overwhelming majority of the General Assembly which had declined to endorse any specific territorial changes and had dealt with the problem in paragraph 5 of resolution 194 (III) which called upon Governments and authorities concerned to extend the scope of the negotiations provided for in the Security Council resolution of 16 November 1948 and to seek agreement by negotiations conducted either with the Conciliation Commission or directly with a view to a final settlement of all questions outstanding between them."*<sup>19</sup>

The statements made by the representative of the Israeli Government before the Ad-Hoc Political Committee of the United Nations' General Assembly, which

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<sup>18</sup> Please refer to footnote 15 for the complete text of this resolution.

<sup>19</sup> Ibid, p. 241.

were deemed as conditions for Israel's admission as a United Nations member, reveal that the Israeli State had accepted the boundaries defined by the resolution on the partition of Palestine. It had declared its acceptance of and obligation to respect the boundaries outlined by the same resolution for the Arab State. It agreed not to make any territorial adjustments to the boundaries outlined by the resolution between both states except by an agreement to be concluded between the concerned States. Moreover, the acceptance of the internationalization of Jerusalem, constitutes an obligation to respect the entire partition resolution and obligates Israel not to obstruct the execution of resolution 181 of 1947, even if not accepted by the Palestinian people, who believed that it prejudiced their legitimate rights.

Such Israeli obligation is deemed a specific legal obligation which was a condition for the United Nation's recognition of Israel as a State and its admission as a member thereof. This obliges Israel not to carry out any act that may prejudice the territorial integrity of the territories on which a Palestinian State should be established, since such kind of prejudice may obstruct the establishment of such a State, which would, in turn, prevent the United Nations from carrying out its legal and political obligations towards the Palestinian people and granting it its political independence and the territorial integrity of the territory on which an independent Palestinian State should be established. Therefore, Israel's occupation of the parts outside the boundaries defined by the partition resolution, its occupation of the West Bank and Gaza Strip in 1967, and its decision to annex East Jerusalem, constitute violations of its legal obligations under the resolution by virtue of which it was admitted as a United Nations member. It should be noted that the discussions held at the special session of the United Nations' General Assembly held directly after the 1967 War (19 June - 3 July 1967) and the General Assembly discussions resulting in the issuance of Security Council resolution 242 (1967) in November 1967, reflect the importance of safeguarding the territorial integrity of the Palestinian territories under Israeli occupation since that date.<sup>20</sup> Its confirmation of this principle with respect to member States of the United Nations, implies its confirmation of such principle with

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20 General Assembly- fifth Emergency Session, June, United Nations General Assembly Officials Records,

1526<sup>th</sup> Plenary Meeting, June 19, 1967  
 1529<sup>th</sup> Plenary Meeting, June 21, 1967  
 1530<sup>th</sup> Plenary Meeting, June 21, 1967  
 1531<sup>st</sup> Plenary Meeting, June 22, 1967  
 1532<sup>nd</sup> Plenary Meeting, June 22, 1967  
 1533<sup>rd</sup> Plenary Meeting, June 23, 1967  
 1536<sup>th</sup> Meeting, June 26, 1967  
 1537<sup>th</sup> and 1538<sup>th</sup> Plenary Meetings, June 27, 1967  
 1539<sup>th</sup> Plenary Meeting, June 28, 1967  
 1542<sup>nd</sup> Plenary Meeting, June 29, 1967  
 1546<sup>th</sup> Plenary Meeting, June 23, 1967  
 Official Records of the Security Council  
 1373<sup>rd</sup> Meeting, November 9, 1967  
 1379<sup>th</sup> Meeting, November 16, 1967  
 1381<sup>st</sup> Meeting, November 20, 1967  
 1382<sup>nd</sup> Meeting, November 22, 1967

respect to the Arab State (the Palestinian State) which the United Nations undertook to establish within the boundaries defined by General Assembly resolution 181 (Third Round), the State which has been in the process of being established since that date. The construction of the separation wall is yet a new obstruction to its establishment.

**(b) United Nations Resolutions**

We have previously referred to a great number of Security Council and General Assembly resolutions condemning the procedures and measures carried out by Israel on the Palestinian occupied territories and Israel's violation of its legal obligations, especially its construction of settlements and the transfer of Jewish immigrants to Palestinian territories. It is sufficient here to point out to one of the Security Council resolutions, in which the Council condemned such measures. That is resolution 471 (1980) issued on 5 June 1980, in which the Council reaffirmed in its Preamble, resolution 465 (1980) referred to herein above, and stated the following:

*"Reaffirming its resolution 465 (1980) by which the Security Council determined 'that all measures taken by Israel to change the physical character, demographic composition, institutional structure or status of the Palestinian and other Arab territories occupied since 1967, including Jerusalem, or any part thereof, have no legal validity and that Israel's policy and practices of settling parts of its population and new immigrants in those territories constitute a flagrant violation of the Geneva Convention relative to the Protection of Civilian Persons in Time of War and also constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East and strongly deplored the 'continuation and persistence of Israel in pursuing those policies and practices.'"*

.....

4. *Calls again upon the Government of Israel to respect and to comply with the provision of the Geneva Convention relative to the Protection of Civilian Persons in the Time of War, as well as with the relevant resolution of the Security Council.*

(...)

6. *Reaffirms the overriding necessity to end the prolonged occupation of the Arab territories occupied by Israel since 1967, including Jerusalem.' "*

The above position was repeated in a large number of Security Council and General Assembly resolutions, referred to herein above. It is sufficient to refer to the General Assembly resolution ES-10/14 issued on 3 December 2003 in particular, requesting the advisory opinion on the legal consequences of Israel's construction of the separation wall on the Palestinian territories, in which it enumerated relevant Security Council resolutions as well as International Law principles and provisions

binding on Israel, which the separation wall is considered a flagrant violation, as this resolution states:

*“The General Assembly,*

*Reaffirming its resolution ES-10/13 of 21 October,*

*Guided by the principles of the Charter of the United Nations,*

*Aware of the established principles of international law on the inadmissibility of the acquisition of territory by force,*

*Aware also that developing friendly relations among nations based on respect for the principle of equal rights and self-determination of people is among the purposes and principles of the Charter of the United Nations,*

*Recalling relevant General Assembly resolutions, including resolution 181 (II) of 1947, which partitioned mandated Palestine into two States, one Arab and one Jewish;*

*Recalling also the resolutions of the tenth emergency special session,*

*Further recalling relevant Security Council resolutions, 242 (1967) of 22 November 1967, 338 (1973) of 22 October 1973, 267 (1969) of 3 July 1969, 298 (1971) of 25 September 1971, 446 (1979) of 22 March 1979, 452 (1979) of 20 July 1979, 465 (1980) of 1 March 1980, 467 (1980) of 30 June 1980, 478 (1980) of 20 August 1980, 904 (1994) of 18 March 1994, 1073 (1996) of 28 September 1996, 1397 (2002) of 12 March 2002 and 1515 (2003) of 19 November 2003.*

*Reaffirming the applicability of the Fourth Geneva Convention, as well as Protocol I Additional of the Geneva Convention to the Occupied Palestinian Territory, including East Jerusalem,*

*Recalling the Regulations annexed to The Hague Convention respecting Laws Customs of War on Land of 1907,*

*Welcoming the convening of the Conference of High Contracting Parties to the Fourth Geneva Convention on measures to enforce the Convention in the Occupied Palestinian Territory, including Jerusalem, at Geneva on 15 July 1999,*

*Expressing its support for the declaration adopted by the reconvened Conference of High Contracting Parties at Geneva on 5 December 2001,*

*Recalling in particular relevant United Nations resolutions*

*affirming that Israeli settlements in the Occupied Palestinian Territory, including the East Jerusalem, are illegal and an obstacle to peace and to economic and social development as well as those demanding the complete cessation of settlement activities,*

*Recalling also relevant United Nations resolutions affirming that actions taken by Israel, the occupying Power, to change the status and demographic composition of Occupied East Jerusalem have no legal validity and are null and void,*

*Noting the agreements reached between the Government of Israel and the Palestine Liberation Organisation in the context of the Middle East peace process,*

*Gravely concerned at the commencement and continuation of construction by Israel, the occupying Power, of a wall in the Occupied Palestinian Territory, including in and around East Jerusalem, which is in departure from the Armistice Line of 1949 (Green Line) and which involved the confiscation and destruction of Palestinian land and resource, the disruption of the lives of thousands of protected civilians and the de facto annexation of large areas of territory, and underlining the unanimous opposition by the international community to the construction of that wall,*

*Gravely concerned also the even more devastating impact of the projected parts of the wall on the Palestinian civilian population and on the prospects for solving the Palestinian- Israeli conflict and establishing peace in the region (...)"*

#### **(c) Bilateral Agreements between the Palestinian and Israeli Parties**

Israel has specific legal obligations to respect the territorial integrity of the West Bank, including East Jerusalem and the Gaza strip. Such legal obligations are based on rules and provisions of International Law, United Nations resolutions, in particular those issued by the Security Council and the General Assembly, including the resolution on Israel's admission as a United Nations member, referred to above.

Moreover, the peace process that commenced in Madrid under the sponsorship of the United States and the Former Soviet Union in October 1991 resulted in concluding a number of international agreements between the Palestinian and Israeli sides. Such agreements stressed the obligation of Israel to respect the territorial integrity of the West Bank and Gaza Strip, and to regard them as one integral territory, that is the territory on which the Palestinian people are to establish their state. This is based on its rights of self determination, and in application of the resolutions of the Security Council, in particular resolutions 242 and 338, and the other relevant Security Council and the General Assembly resolutions.

It is worth mentioning that the two sides have recognized the Armistice Lines established upon the entry by Israel into the Armistice agreements with its neighboring Arab countries. Such lines represent the borders between Israel and the occupied Palestinian territories, and beyond which lines Israel must withdraw pursuant to the above mentioned Security Council resolutions, and in application of the land for peace principle, which is considered the basis of the peace process commenced in the Madrid conference of 1991.

We have previously referred to Article (4) of the Declaration of Principles, which was signed by the two parties in Washington D.C, United States of America, on 13 September, 1993. Thereunder, the two sides agreed to consider the West Bank and Gaza Strip as a single territorial unit. This was also affirmed in the preamble of the interim agreement on the West Bank and the Gaza Strip, which was signed in Washington D.C between Israel and the Palestinian Liberation Organization, on 28 September 1995.

*"Recognizing that these elections will constitute a significant interim preparatory step towards the realization of the legitimate rights of the Palestinian people and their just requirement and will provide a democratic basis for the establishment of Palestinian institutions;"*

Article 11 of the said agreement provides in its first paragraph, as follows:

*"1. The two sides view the West Bank and the Gaza Strip as a single territorial unit, the integrity and status of which will be preserved during the interim period."*

Article 17 of the same agreement refers to the Declaration of Principles of 1993, and stipulates that the authority of Palestinian National Council covers the West Bank and the Gaza Strip, being a single territorial unit.

Paragraph 7 of Article 31 of the said declaration provides that:

*"7. Neither side shall initiate or take any step that will change the status of the West Bank and the Gaza Strip pending the outcome of the permanent status negotiations."*

In summary, the construction of the separation wall, considering all effects arising therefrom, conflicts with and violates Israel's obligations under the agreements entered into with the Palestinian side. Such construction represents, in reality, a flagrant violation of the said agreements as it de facto annexes parts of the occupied Palestinian territories, whose territorial integrity Israel is bound to preserve. Such construction, moreover, impedes the establishment of a Palestinian State (Arab State), which Israel has accepted pursuant to the General Assembly resolution that admits Israel as a U.N. member, and is bound to assist the United Nations in facilitating such establishment.



## **Fourth: Violations of International Humanitarian Law, particularly the Fourth Geneva Convention of 1949**

International Law prohibits use of force in international relations, condemns occupation of the land of others, and brands same as illegitimate and illegal. However, such law does not overlook the painful reality of armed conflicts that are unfortunately still used by some countries as a means for resolving their disputes with other. This matter called for intervention by the international community in order to mitigate the severe impact of using force, to prevent extension of its impact to civilian non-combatants, and to stop it from being used against civilian objects.

It is established jurisprudence of International Law that the four Geneva Conventions of 1949 embody the customary rules of International Humanitarian Law. Some of such rules are now deemed *Jus Cogens*, and may not be breached except upon the emergence of subsequent legal rules that have the same capacity and regulate the same subject. In fact, the international community has made giant strides in establishing the rules of International Humanitarian Law in the form of the said four conventions.

As such, all states in the international community are directly subject to all the rules provided in the said Geneva Conventions, whether or not they are parties thereto. This is in view of the fact that such rules lay down the customary rules of International Law on the matters they regulate, regardless of their contractual or long standing customary nature.

Specifically, the Fourth Geneva Convention of 1949 relative to the protection of civilian persons in time of war is totally applicable to the Gaza Strip and the West Bank, including East Jerusalem. In other words, the said convention applies to the whole of the land that is under the Israeli occupation since 1967, as Israel is an occupying power thereof. This opinion enjoys consensus among the international community, except for certain unfounded Israeli opinions. In support of our opinion, we refer to the United Nations Resolution No. A/58/155 issued on 15 July 2003, which provides in its operative part 1, 2 and 3 of the preamble, as follows:

*"The General Assembly,*

- 1. Reaffirms that the Geneva Convention relative to the Protection of Civilian Persons in time of War, of 12 August 1949, is applicable to the Occupied Palestinian Territory, including East Jerusalem and other Arab territories occupied by Israel since 1967.*
- 2. Demands that Israel accepts the de jure applicability of the Convention in the Occupied Palestinian Territory including East Jerusalem and other Arab territories occupied by Israel since 1967, and that it complies scrupulously with the*

*provisions of the Convention.*

3. *Calls upon all High Contracting Parties to the Convention, in accordance with Article I common to the four Geneva Conventions, to continue to exert all efforts to ensure respect for its provisions by Israel, the occupying Power, in the Occupied Palestinian Territory, including East Jerusalem, and other Arab territories occupied by Israel since 1967”.*

In such context, the conference of the High Contracting Parties to the Fourth Geneva Convention, in its special session held in Geneva on 15 July, 1999, pursuant to the United Nations Resolution No. ES-1016, affirmed that the said Fourth Convention is legally and totally applicable:

*“...The participating High Contracting Parties reaffirmed the applicability of the Fourth Geneva Convention to the Occupied Palestinian Territory, including East Jerusalem. Furthermore, they reiterated the need for full respect for the provisions of the said convention in that Territory. Taking into consideration the improved atmosphere in the Middle East as a whole, the Conference was adjourned on the understanding that it will convene again in the light of consultations of the development of the humanitarian situation in the field.”*

In view of continuous deterioration of the situation in the occupied Palestinian territories, the High Contracting Parties to the Fourth Geneva Convention held another meeting in Geneva on 5 December 2001, in which they reiterated the applicability of the said Convention to the West Bank and the Gaza Strip, as follows:

*“Taking into account Article I of the Fourth Geneva Convention of 1949 and bearing in mind the United Nations General Assembly Resolution ES-10/7, the participating Contracting Parties reaffirm the applicability of the Convention to the Occupied Palestinian Territory, including East Jerusalem and reiterate the need for full respect for the provisions of the said Convention in that territory. Through the present Declaration, they recall in particular the respective obligations under the Convention of all High Contracting Parties (par.-4/7), of the parties to the conflict (par. 8-11) and of the State of Israel as the Occupying Power (par. 12-15).”*

In fact and according to the relevant maps, the construction of the separation wall will actually devour tremendous areas of the Palestinians territories in the West Bank, particularly in such areas populated with Israeli settlements, which are deemed by themselves an ongoing war crime. Article 49 of the Fourth Geneva Convention bars the occupying power from building settlements in the occupied territories for the benefit of its own civilians. It provides as follows: *“The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies”.*

The same Article prohibits the occupying state from taking measures to displace the population in the occupied territories out of their land. It provides:

*"Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.*

*Nevertheless, the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement. Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased.*

*The Occupying Power undertaking such transfers or evacuations shall ensure, to the greatest practicable extent, that proper accommodation is provided to receive the protected persons, that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated.*

*The Protecting Power shall be informed of any transfers and evacuations as soon as they have taken place.*

*The Occupying Power shall not detain protected persons in an area particularly exposed to the dangers of war unless the security of the population or imperative military reasons so demand.*

*The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies."*

Similarly, the construction of the separation wall, in the form delineated on the maps and which exists in reality, will annex large portions of private and public property of the Palestinian people. This runs counter to the express provision of Article 53 of the Fourth Geneva Convention of 1949, which provides that:

*"Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations."*

History is full of violations by Israel of International Humanitarian Law in the Palestinian territories occupied since 1967. The United Nations resolutions have therefore frequently and explicitly condemned same. In such context, we recall, by

way of example and without limitation, United Nations resolution 465 on settlements, which was adopted unanimously on March 1<sup>st</sup> 1980. In its operative part, paragraphs 5, 6 and 7 provide that the Security Council:

*"Determines that all measures taken by Israel to change the physical character, demographic composition, institutional structure or status of the Palestinian and other Arab territories occupied since 1967, including Jerusalem or any part thereof have no legal validity and that Israel's policy and practices of setting parts of its population and new immigrants in those territories constitute a flagrant violation of the Geneva Convention relative to the Protection of Civilian Persons in Time of War and also constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East.*

*Strongly deplores the continuation and persistence of Israel in pursuing those policies and practices and calls upon the Government and people of Israel to rescind those measures, to dismantle the existing settlements and in particular to cease, on an urgent basis, the establishment, construction and planning of settlements in the Arab territories occupied since 1967, including Jerusalem, calls upon all States not to provide Israel with any assistance to be used specifically in connection with settlements in the occupied territories."*

In view of the excessive violation by Israel of its legal obligations under the Geneva Conventions of 1949, the United Nations General Assembly called upon the international community to exert all efforts to force Israel to respect such conventions being an occupying force in the occupied Palestinian territories, including Jerusalem and the other Arab territories occupied since 1967.

Paragraph 3, A/58/155 of General Assembly Resolution of 15 July 2003 provides that the General Assembly:

*"Calls upon all States to the Convention in accordance with article I common to the four Geneva Conventions, to exert all efforts in order to ensure respect for its provisions by Israel, the occupying Power, in the Occupied Palestinian Territory, including Jerusalem and other Arab territories occupied by Israel since 1967".*

It is deplorable that the violations by Israel of the principles of International Humanitarian Law have finally culminated in its building of a separation wall. At this point, we assert that the international community does not only undertake a moral obligation or a political responsibility regarding such violations, but also assumes an express legal obligation to respect and ensure the application of the Fourth Geneva Convention in all circumstances. Article I of the Convention provides that:

*"The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances."*

## FIFTH: VIOLATIONS OF INTERNATIONAL LAW ON HUMAN RIGHTS

In addition to the full respect and application of the rules of the International Humanitarian Law, the occupying power has an obligation to observe the rules of International Law as regards human rights, as such rules constitute the general principles of law provided for the benefit of people everywhere under all circumstances. The international community has made significant strides in the field of human rights to the extent that the principles of human rights have become a source of pride for humanity. From the legal perspective, human rights principles constitute a significant part of the rules of international codified law, and they are not merely guidelines. As a result, all states are under a legal obligation to strictly apply human rights rules, an obligation from which they cannot escape.

In view of the above, jurisdiction of the State has diminished to give way to the legal rules of human rights. Under the title: “*The Protection of Individuals and Groups: Human Rights and Self-Determination*”, Professor Brownlie confirms:

*“To impose responsibility on a state on the international plane, it is necessary for the complainant to establish that the matter is subject to international law or, more precisely, is not a matter purely within the area of discretion which international law designates as sovereignty. The modern rule is stated in terms of the reserved domain of domestic jurisdiction and bears very closely on the question of human rights”.*

The same professor Brownlie further adds that:

*“The domestic jurisdiction reservation does not apply if the United Nations agency is of the opinion that a breach of a specific legal obligation relating to human rights in the Charter itself has occurred”.*<sup>15</sup>

Definitely, such rules are binding to all countries under all circumstances. This means that the Occupying Power must respect the basic principles of human rights in the occupied territories. In other words, the Occupying Power may not violate such rights in the land under its occupation and must observe such obligation in the same manner applied in its own territory.

Accordingly, Israel is under an obligation to respect the conventions related to human rights and to the customary rules, which are in certain cases mandatory and have the force of imperative rules of law, such as the rules prohibiting racial discrimination.

Human Rights Watch has categorically and expressly condemned the building by Israel of the separation wall and has affirmed Israel’s obligations in this regard, as follows:

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<sup>15</sup> BROWNLIE, Ian, *Principles of Public International Law*, fourth ed., 1990, p.552.

*"Israel has also ratified numerous human rights treaties that oblige it to uphold rights to freedom of movement, and access to education, health care, work and water. These include the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention on the Rights of the Child. In August (2003), the U.N. Human Rights Committee said that "in the current circumstances, the provisions of the (ICCPR) apply to the benefit of the population of the Occupied Territories, for all conduct by (Israeli) authorities or agents in those territories that affect the enjoyment of right enshrined in the Covenant and fall within the ambit of State responsibility of Israel under the principles of public international law.*

*Under Article 12 of the International Covenant on Civil and Political Rights (ICCPR), freedom of movement can be restricted for security reasons but the restrictions should be limited to what is necessary and proportionate. As defined by the U.N. Human Rights Committee, the authoritative human rights body interpreting the ICCPR, the restrictions should not make movement the exception rather than the norm. The barrier, however, is creating walled-in enclaves confining terms of thousands of people. It will institutionalize a system in which all movement is sharply restricted except to a handful of permit-holders, and endanger Palestinians' access to basic services like education and medical care". (Human Rights Watch, Israel: West Bank Endangers Basic Rights, U.S. should deduct costs from loan guarantees (New York, October 1, 2003))".*

In addition, by way of example and without limitation, the said separation wall constitutes a violation of the rights to free movement, and to access to health care and education services, and constitutes an infringement upon Palestinian property. It also impedes the application of the rule prohibiting acquisition of land by force, and of the rule on the right to self-determination.

In such context, under the title *"Rights Protected"* Rebbecaa M.M. Wallace reviewed the rights prescribed under the ICCPR and the ICESCR and underscored that:

*"Both Covenants recognize the right of all peoples to self-determination and the right to freely dispose of their natural wealth and resources."*<sup>16</sup>

Under the title *"Annexation and the Wall"*, John Dugard, the rapporteur of the Human Rights Committee stated in his report on his visits during 22-29 July 2003 to the occupied territories:

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<sup>16</sup> WALLACE, Rebecca, *International Law*, Third ed., 1997, p.210.

*"The wall has serious implications for human rights. It further restricts the freedom of movement of Palestinians, restricts access to health and education facilities and results in the unlawful taking of the Palestinian property. However, the wall has more serious implications as it violates two of the most fundamental principles of contemporary international law the prohibition on the forcible acquisition of territory and the right to self-determination."*

## SIXTH: IRRELEVANCE OF THE ARGUMENT OF SECURITY REASONS

Security necessity does not justify committing serious violations of the principles of International Law, since security measures must be proportionate to the extent of necessity and must employ legitimate means. Military necessity, moreover, means the absolutely necessary requirements that are indispensable for achieving military objectives.

Aggression is categorically prohibited according to the rules of International Law. Paragraph 1 of Article (5) of United Nations General Assembly resolution 3314, adopted on 18 December 1974, and which defines aggression, provides that:

*"No consideration of whatever nature, whether political, economic, military or otherwise, may serve as a justification for aggression."*

We must always bear in mind that military objectives must basically be legitimate in themselves in compliance with laws and customs of war. No fair person would regard the isolation of an entire population in a large prison within a part of such people's own land and the confiscation of other areas of such land, a legitimate military objective, under the pretext that some "terrorists" among the said people infiltrate into Israel to carry out "terrorist acts". Moreover, the applicability of the rules of International Humanitarian Law cannot be disrupted under the pretext of military necessity, except when the relevant rule itself provides for such exception and lays down its limits.

Further, claims of legal self-defense do not justify building the said wall. International Law specifies a framework for exercising such right, under the control and supervision of the Security Council. This is in compliance with Article (51) of the UN Charter, and the rules of international custom.<sup>17</sup>

Accordingly, confiscation of private and public property and any destruction or loss of any kind resulting from the construction of the wall constitutes a complete and evident war crime, as such confiscation and destruction have not occurred as a result of an absolute necessity to achieve a legitimate military objective. Israel itself interprets it as "security measure" for protecting its people and settlers who are illegally located in the occupied territory. The meaning of "security measure" is a totally different concept from that of "military objective".

Thus, the Occupying Power remains obliged to respect human rights in the occupied territory, irrespective of the basis of its authority. In this connection, we recall the International Court of Justice in the case of South West Africa ruled that:

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<sup>17</sup>. WALLACE, Rebecca, op. cit, pp. 252-253.



*"Under the Charter of the UN, the Mandatory had obliged itself to observe and respect, in a territory having an International status, rights and fundamental freedoms for all without distinction to race".*<sup>18</sup>

Military necessity does not justify violating the rules of International Law. The High Contracting Parties to the Fourth Geneva Convention, in a meeting held in Geneva on 5 December 2001, stressed this meaning in its final declaration, as follows:

*"The participating High Contracting parties stress the Fourth Geneva Convention, which takes fully into account imperative military necessity, has to be respected in all circumstances."*

Moreover, the report of the UN Secretary General presented to the General Assembly on 24 November 2003 affirmed the above as follows:

*"In keeping with the request of the General Assembly in resolution Es – 10/13, I have concluded that Israel is not in compliance with the Assembly's demand that it "stop and reverse the construction of the wall in the Occupied Palestinian Territory."*

*"Israel has repeatedly stated that the Barrier is a temporary measure. However, the scope of construction and the amount of occupied West Bank land that is either being requisitioned for its route or that will end up between the Barrier and the Green Line are of serious concern and have implications for the future. In the midst of the Road Map process, when each party should be making good-faith confidence-building gestures, the Barrier's construction in the West Bank cannot, in this regard, be seen as anything but a deeply counterproductive act. The placing of most of the structure on occupied Palestinian land could impair future negotiations".*

*"I acknowledge and recognize Israel's right and duty to protect its people against terrorist attacks. However, that duty should not be carried out in a way that is in contradiction to international law, that could damage the longer-term prospects for peace by making the creation of an independent, viable and contiguous Palestinian State more difficult, or that increases suffering among the Palestinian people. After so many years of bloodshed, dislocation and suffering, it should be clear to all of us, as well as to the parties, that only through a just, comprehensive, and lasting peace settlement based on Security Council resolutions 242 (1976) and 338 (1973) can the security*

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<sup>18</sup> I.C.J., reports, 1971, p. 57.

*of both Palestinians and Israelis be assure. There is wide support in the international community for a two-State solution – Israel and Palestine living side by side in peace and security within secure and recognized borders, as called for by the Security Council in resolutions 1397 (2002) and 1515 (2003). That support must urgently be marshaled to assist the parties in achieving that end”.*<sup>19</sup>

In view of the above, the UN Secretary General concluded that even if we assume for the sake of argument that Israel's objective in building the wall is protecting its security, it has nevertheless carried out such undertaking in a manner that flagrantly violates International Law. The first component of such violation, in our opinion, is that it violates the principle prohibiting acquisition of land by force, a matter which constitutes a fundamental basis for the peaceful settlement of the Middle East conflict. Building the wall also constitutes a flagrant violation of the principles of International Law and UN Charter, which stipulate that force may not be used in international relations.

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<sup>19</sup>. A/ES-10/248, 24 November 2003, p. 7.

## SEVENTH: SUBMISSIONS

In the light of the above, the construction by Israel of the separation wall constitutes a flagrant violation of International Law and a serious breach of Israel's obligations as the Occupying Power in the Palestinian territory. Moreover, the commencement of and persistent continuation to build the said separation wall violates the rules of International Humanitarian Law, and the principles of human rights, particularly, the rules prohibiting racial discrimination. The Palestinian people locked up in ghettos created by the separation wall are denied the right to free movement, and access to basic services such as education and health care. Moreover, their right to self-determination is prejudiced.

It is evident that building this isolation wall cannot be justified by military necessity or self-defense requirements.

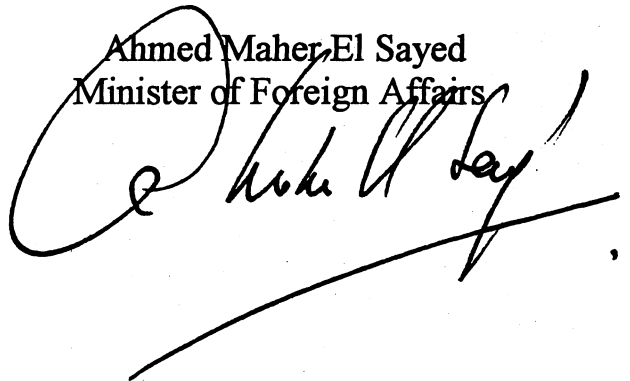
## NOW, THEREFORE,

The Arab Republic of Egypt respectfully calls upon the International Court of Justice, pursuant to its jurisdiction to issue advisory opinions in accordance with Article (96) of the U.N. Charter, and Article (65) of its Statutes, to declare:

*"that* Israel's construction of the separation wall in the occupied Palestinian territories is unlawful, pursuant to the rules and principles of International Law, the Fourth Geneva Convention of 1949, and the relevant resolutions of UN Security Council and General Assembly *that* Israel shall be held liable for the consequences arising therefrom, *and that accordingly* Israel should undertake to restore the status quo ante."

On Behalf Of  
The Arab Republic of Egypt

Ahmed Maher El Sayed  
Minister of Foreign Affairs

A large, stylized handwritten signature in black ink, which appears to read 'Ahmed El Sayed', is written over the printed name and title. The signature is fluid and cursive, with a long horizontal stroke at the bottom.