

Cour internationale de Justice

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INTERNATIONAL COURT OF JUSTICE

REQUEST FOR ADVISORY OPINION

**LEGAL CONSEQUENCES OF THE CONSTRUCTION OF A
WALL IN THE OCCUPIED PALESTINIAN TERRITORY**

STATEMENT OF THE GOVERNMENT OF IRELAND

JANUARY 2004

1. INTRODUCTION

- 1.1 On 8 December 2003, by resolution A/RES/ES-10/14, the General Assembly of the United Nations requested the International Court of Justice to furnish an advisory opinion, pursuant to Article 65 of the Statute of the Court, 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?”

- 1.2 Ireland has consistently and regularly made clear its position regarding the legality of Israel's actions in constructing the wall and, in particular, with regard to its route. Prior to the referral to the International Court of Justice, Ireland had voted in favour of General Assembly resolution ES-10/13, which was sponsored by the Member States of the European Union and was adopted on 21 October 2003 by 144 votes to 4, with 12 abstentions. In paragraph 1 of that resolution, the General Assembly –

“*Demands* that Israel stop and reverse construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem, which is in departure of the Armistice Line of 1949 and is in contradiction to relevant provisions of international law”.

Statements reflecting this demand have been made by the European Union on a number of occasions and Ireland has fully participated in and supported these statements.¹

- 1.3 Ireland has decided to submit this written statement, which deals with the issue of substance before the Court, because Ireland is firmly committed to the clear objective of the two States, Israel and a viable and democratic Palestinian State, living side by side in peace and security, in the framework of a comprehensive peace in the Middle East, as laid out in the Road Map presented by the Quartet to the parties on 30 April 2003. In this context, Ireland has welcomed the unanimous endorsement of the Road Map by the Security Council in resolution 1515 (2003) of 19 November 2003. It is Ireland's view that the Road Map represents the framework for progress towards lasting peace and security in the Middle East.
- 1.4 Ireland is deeply concerned by the situation in the region and has noted that, despite support given by the international community to the quest for a just and lasting solution, the opportunity for peace set out in the Road Map has not been seized by the concerned parties. Ireland fully supports the report of the

¹ EU Presidency Statements: 5 August 2003, 11 September 2003, 16 October 2003, 21 October 2003.

United Nations Secretary-General of 24 November 2003² made pursuant to General Assembly resolution ES-10/13 of 21 October 2003 in which he made the following observation:

“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.”³

- 1.5 In June of 2003, the European Council had called upon Israel “to reverse the settlement policy and activity and end land confiscations and the construction of the security-fence, all of which threaten to render the two-State solution physically impossible to implement”.⁴ Further, the European Council, while recognising Israel’s right to protect its citizens from terrorist attacks, issued the following statement at its meeting in Brussels on 16 and 17 October:

“The European Council is particularly concerned by the route marked out for the so-called security fence in the Occupied West Bank. The envisaged departure of the route from the “Green Line” could prejudice future negotiations and make the two-State solution physically impossible to implement. It would cause further humanitarian and economic hardship to the Palestinians. Thousands of Palestinians west of the fence are being cut off from essential services in the West Bank, Palestinians east of the fence will lose access to land and water resources”.⁵

This statement was re-iterated on behalf of the European Union to the General Assembly of the United Nations by way of the Explanations of Vote furnished by the Presidency of the European Union on behalf of the Member States on their abstention from the vote on resolution-10/14. Ireland has consistently regretted the fact that Israel is not in compliance with the General Assembly’s demand that it stops and reverses the construction of the wall in the Occupied Palestinian territories and this view was similarly reflected in the Explanations of Vote referred to.

- 1.6 While recognising Israel’s need for security, Ireland considers the wall to be seriously detrimental to the implementation of the Road Map. Ireland believes that the wall amounts to an obstacle to the peaceful resolution of the conflict and the establishment of a viable Palestinian state. The path of the wall departs from the Armistice Line of 1949 (“Green Line”), and cuts deep into Palestinian land, sometimes on the basis of the confiscation of land. This

² A/ES-10/248.

³ Ibid, para.30.

⁴ Presidency Conclusions – Thessaloniki, 19 and 20 June 2003, 11638/03, p.23.

⁵ Presidency Conclusions – Brussels, 16 and 17 October 2003, 15188/03, p.16.

entails serious humanitarian and economic consequences together with serious infringements of recognised human rights principles and norms for the Palestinian population. While recognizing Israel's right to protect its citizens from terrorist attacks, Ireland, (as a member State of the European Union) has urged the Government of Israel, in exercising this right, to fully respect international law, in particular human rights and international humanitarian law including the Geneva Convention relative to the Protection of Civilian Person in Time of War, of 12 August 1949 ("the Fourth Geneva Convention"), the Regulations annexed to the Hague Convention on the Laws and Customs of War on Land, of 18 October 1907 ("the Hague Regulations") and the Additional Protocol of 18 June 1977 to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts ("the First Additional Protocol") and has urged Israel to exert maximum effort to avoid civilian casualties and take no action that aggravates the humanitarian and economic plight of the Palestinian people. Ireland has actively participated as a member of the European Union in calling upon Israel to abstain from any punitive measures which are not in accordance with international law and to reverse its settlement policy and to dismantle settlements built after March 2001.

2. APPLICABLE LAW

- 2.1** It is the view of Ireland that the legal framework, within which the legality of the wall being constructed in the Occupied Palestinian Territory must be considered, consists of two main bodies of law: namely, international humanitarian law and international human rights law.

International humanitarian law

- 2.2** It is the view of Ireland that the Fourth Geneva Convention is applicable in the occupied Palestinian territory. That this is the case has been accepted by both the Security Council and the General Assembly of the United Nations.

- 2.3** The Security Council in its Resolution 681 (1990), of 20 December 1990:

"Urge[d] the Government of Israel to accept *de jure* the applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to all the territories occupied by Israel since 1967 and to abide scrupulously by the provisions of the Convention".⁶

- 2.4** Similarly, the General Assembly in its Resolution 56/60 on the applicability of the Fourth Geneva Convention to the Occupied Palestinian Territory, including Jerusalem, and the other occupied Arab territories, of 10 December 2001, reaffirmed that the Fourth Geneva Convention is applicable to the

⁶ See paragraph 4 of the Resolution, footnote omitted.

Occupied Palestinian Territory and demanded that Israel accept the *de jure* applicability thereof in that territory and that it comply scrupulously with its provisions.⁷

- 2.5** This view is shared by the High Contracting Parties to the Fourth Geneva Convention (with the notable exception of Israel) and was endorsed by the Conference of High Contracting Parties to the Fourth Geneva Convention convened on 15 July 1999, following the recommendation made by the General Assembly in its Resolution ES-10/6 of 9 February 1999.
- 2.6** It is also clear that the Hague Regulations are applicable in the Occupied Palestinian Territory and indeed Israel has invoked Article 23 thereto to justify its actions in constructing the wall.
- 2.7** It is common ground amongst all interested parties that the route of the wall in the process of construction runs through the territory of the Occupied Palestinian Territory. The Secretary General of the United Nations in his report to the General Assembly of 24 November 2003⁸ notes that the completed portions of the wall deviate more than 7.5 kilometres from the Green Line in certain places to incorporate certain settlements and that the planned route, if fully constructed, would deviate up to 22 kilometres in places from the Green Line.
- 2.8** The construction of the wall involves destruction by Israel, as the Occupying Power, of real and personal property in the Occupied Palestinian Territory. Such destruction is prohibited by Article 53 of the Fourth Geneva Convention, absent circumstances rendering such destruction absolutely necessary by military operations. Furthermore, such destruction breaches Article 23(g) of the Hague Regulations concerning the laws and customs of war on land of 18 October 1907, which states that: "it is especially forbidden: (g) to destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war." The construction of the wall might arguably breach Article 147 of the Fourth Geneva Convention, which makes "extensive destruction and appropriation of property" a "grave breach" of the Convention if it is "not justified by military necessity and carried out unlawfully and wantonly".
- 2.9** While Israel claims justification for its actions on the basis of Article 23(g) of the Hague Regulations, it has not shown that its stated goal in constructing the wall, namely the security of Israel, could not be achieved by alternative means, such as constructing the wall within Israeli territory. Indeed, the route taken by the wall indicates that its purpose is to protect Israeli citizens illegally settled in the Occupied Palestinian Territory, contrary to Articles 49 and 147 of the Fourth Geneva Convention. Nor has it shown that any destruction or appropriation is necessitated by military operations. It is thus clear that these

⁷ See paragraphs 1 and 2 of the Resolution.

⁸ Doc A/ES-10/248.

measures have not been taken in accordance with international humanitarian law.

International Human Rights Law

2.10 It is the view of Ireland that international human rights law, most notably the International Covenant on Economic, Social and Cultural Rights of 16 December 1966 ("the ICESCR") and the International Covenant on Civil and Political Rights ("the ICCPR") of 16 December 1966 is applicable in the Occupied Palestinian Territory. Israel ratified both Covenants on 3 October 1991 and thereby undertook to comply with the standards laid down therein. It is clear that Israel cannot sustain in law a claim that it is not bound by the terms of the Covenant in respect of its actions in the Occupied Palestinian Territory either on the basis that it is not responsible for its actions in the Occupied Palestinian Territory or on the basis that international human rights law has no application to situations governed by international humanitarian law and is limited to the protection of a state's own citizens in time of peace.

2.11 Article 2 of the International Covenant on Civil and Political Rights specifically provides that: "[e]ach State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and *subject to its jurisdiction* the rights recognised by the Covenant, *without distinction of any kind*, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."⁹ The Human Rights Committee has clearly affirmed Israel's obligation to apply its provisions in the Occupied Territory, as follows:

"The Committee is deeply concerned that Israel continues to deny its responsibility to fully apply the Covenant in the occupied territories. In this regard, the Committee points to the long-standing presence of Israel in these territories, Israel's ambiguous attitude towards their future status, as well as the exercise of effective jurisdiction by Israeli security forces therein. In response to the arguments presented by the delegation, the Committee emphasizes that the applicability of rules of humanitarian law does not by itself impede the application of the Covenant or the accountability of the State under article 2, paragraph 1, for the actions of its authorities. The Committee is therefore of the view that, under the circumstances, the Covenant must be held applicable to the occupied territories and those areas of southern Lebanon and West Bekaa where Israel exercises effective control."¹⁰

2.12 Similarly, insofar as the International Covenant on Economic, Social and Cultural Rights is concerned, the Committee on Economic, Social and Cultural Rights has confirmed that Israel is bound by its obligations under the

⁹ See paragraph 1, emphasis added.

¹⁰ Paragraph 10 of the Committee's concluding observations of 18 August 1998 on Israel's initial report to it: see Doc CCPR/C/79/Add.93.

Covenant in respect of its activities in the Occupied Palestinian Territory, as follows:

“The Committee notes with concern that the Government's written and oral reports included statistics indicating the enjoyment of the rights enshrined in the Covenant by Israeli settlers in the occupied territories but that the Palestinian population within the same jurisdictional areas were excluded from both the report and the protection of the Covenant. The Committee is of the view that the State's obligations under the Covenant apply to all territories and populations under its effective control.”¹¹

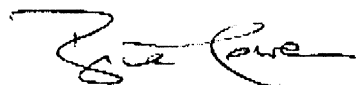
- 2.13** It is also clear that the human rights guarantees provided by the Covenants apply in times of armed conflict: Article 4 of the International Covenant on Civil and Political Rights provides that States Parties may derogate from some, but only some, of the rights contained in the Covenant in “time of public emergency which threatens the life of the nation” but only where such emergency is officially proclaimed; any such derogation is limited to “the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.” Any such derogation must be notified to the Secretary General of the United Nations. The inclusion of such a provision in the Covenant clearly illustrates the applicability of international human rights law in times of armed conflict save in the exceptional circumstances and subject to the limitations and procedures laid down therein. It is also clear that the rights guaranteed by the Covenants are generally applicable to non-citizens: that this is the case is illustrated by Article 2.3 of the ICESCR, which provides that developing states may restrict the economic rights of non-nationals and by Article 25 of the ICCPR, which provides that “citizens” have certain political rights, such as the right to vote. Other rights guaranteed by the Covenants are clearly applicable to all individuals irrespective of nationality, as illustrated by the use of terms such as “[e]very human being” (Article 6 ICCPR), “[n]o one” (Article 7 ICCPR), “[e]veryone” (Article 9 ICCPR, Articles 6, 7, 8, 9, 11, 12, 13 and 15 ICESCR), “[a]ll persons” (Article 10 ICCPR), “[e]very child” (Article 24 ICCPR).
- 2.14** The Report of the Secretary General of the United Nations of 24 November 2003 sets out the factual situation arising out of the construction of the wall. Section C.7 of the Report headed “The establishment of closed areas” illustrates the restrictions on the right of freedom of movement of Palestinians arising out of the construction of the wall. Section D of the Report, headed “Humanitarian and socio-economic impact”, refers again to restrictions on the right to movement of Palestinian people and their goods and the “serious socio-economic harm” caused by such restrictions: including loss of, or severe limitations on access to, land, jobs and markets. These restrictions, which include limitations on access to agricultural land, have threatened food

¹¹ Paragraph 8 of the Committee's concluding observations of 4 December 1998 on Israel's initial report to it: see Doc E/C.12/1/Add.27.

security and access to medical and educational services. The report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Palestinian territories occupied by Israel since 1967, of 8 September 2003,¹² also outlines the factual situation arising out of the construction of the wall in the Occupied Palestinian Territory and illustrates the restrictions on freedom of movement and the socio-economic lives of the Palestinian people. These restrictions clearly impact negatively on the rights guaranteed by both Covenants: *inter alia*, the rights to life (Article 6 ICCPR), freedom of movement (Article 12 ICCPR), work (Article 6 ICESCR), adequate standard of living (Article 11 ICESCR), health (Article 12 ICESCR) and education (Article 13 ICESCR).

3. CONCLUSION

- 3.1 Ireland respectfully suggests to the Court that the issues addressed above are of fundamental importance and relevance to the substance of the referral. Ireland respectfully suggests that these issues should be taken into account in determining the legal consequences arising from the construction of the wall.



¹² See Doc E/CN.4/2004/6.