

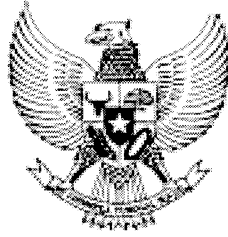
Cour internationale de Justice

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**Request by the United Nations General Assembly
for an Advisory Opinion on the Question of
What are the Legal Consequences Arising
from the Construction for the Wall being Built by Israel,
Occupying Power, in the Occupied Palestine Territory, including
in and around East Jerusalem**

**Written Statement Submitted
by the Government of the Republic of Indonesia
to the International Court of Justice.**

29 January 2004



DEPARTMENT OF FOREIGN AFFAIRS
REPUBLIC OF INDONESIA

Jakarta, 29 January 2004

No. 73/P0/I/2004/61

The Registrar
International Court of Justice
Peace Palace
The Hague
THE NETHERLANDS

Sir,

In accordance with the Court's Order of 19 December 2003 and Article 66, paragraph 2, of the Statute of the Court, I have the honor to transmit to you the enclosed written statement of the Government of the Republic of Indonesia on the request for Advisory Opinion on the question of what are the legal consequences arising from the construction for the wall being built by Israel in the Occupied Palestine Territory, including East Jerusalem.

Please Accept, Sir, the assurances of my highest consideration.

Arif Havas Oegroseno
Director for Treaties on Political, Security
and Territorial Affairs

**WRITTEN STATEMENT BY
THE GOVERNMENT OF THE REPUBLIC OF INDONESIA ON
THE REQUEST FOR ADVISORY OPINION ON THE QUESTION OF
WHAT ARE THE LEGAL CONSEQUENCES ARISING
FROM THE CONSTRUCTION FOR THE WALL BEING BUILT BY ISRAEL,
OCCUPYING POWER, IN THE OCCUPIED PALESTINE TERRITORY , INCLUDING
IN AND AROUND EAST JERUSALEM**

With reference to an urgent request for an advisory opinion submitted by the United Nations General Assembly (UNGA Resolution A/RES/ES-10/14 of 8 December 2003) on the question of what are the legal consequences arising from the construction of the Wall being built by Israel in the Occupied Palestine Territory, including East Jerusalem, The Government of the Republic of Indonesia has been invited by the International Court of Justice to furnish information on all aspects raised by the question.

In response to the invitation, the Government of the Republic of Indonesia has the honor to submit the following information:

Power of the Court to Render Its Advisory Opinion on the Question

1. Israel argues that the United Nations General Assembly Resolution A / RES/ ES-10/14 requesting the International Court of Justice for an advisory opinion on the question of what are the legal consequences arising from the construction of the Wall being built by Israel in the Occupied Palestine Territory, including East Jerusalem, is a politically biased text.¹ It also argued that the question is so highly political that the Court has no discretion on the matter. Therefore, Israel is very likely to appeal to the Court to decline to render the opinion requested by the UN General Assembly Resolution by exercising its discretionary power as provided by Article 65 Paragraph 1 of the Statute of the International Court of Justice.

¹ Statement by Ambassador Dan Gillerman, Permanent Representative of Israel to the UN General Assembly Tenth Emergency Special Session, New York, 8 December 2003.

2. The Government of the Republic of Indonesia reiterates that the Court has been constantly mindful of its responsibilities as the principal organ of the United Nations². Furthermore, in its Advisory Opinion of 30 March 1950, the Court made it clear that, as an organ of the United Nations, its answer to a request for an advisory opinion “represents” its participation in the activities of the Organization, and, in principle, should not be rejected.³ Moreover, in its Advisory Opinion of 20 July 1962, citing its Advisory Opinion of 23 October 1956, the Court stressed that “only compelling reasons should lead it to refuse to give a requested advisory opinion”.⁴ For that reason, the Court, once it has established its competence, has never refused to act upon a request for advisory opinion.⁵

3. The Government of the Republic of Indonesia also finds no compelling reasons preventing the Court to give the advisory opinion requested by the United Nations General Assembly. It is also important to affirm that, although there are some political aspects of the request of advisory opinion on legal consequences arising from the construction of the Wall, it does not suffice to deprive it of its character as a legal question. The Government of Republic of Indonesia considers that the question put to the Court by the General Assembly is indeed a legal one, since the Court is asked to rule on the compatibility of the construction of the wall being built by Israel in the Occupied Palestine Territory, including East Jerusalem with the relevant principles and

² Article 92 the United Nations Charter

³ See Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950, p. 71; see also Reservation to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Report 1951, p. 19; Judgment of the Administrative Tribunal of the ILO upon Complaint Made against Unesco, Advisory Opinion, I.C.J. Reports 1956 p. 86; Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion, I.C.J Reports 1962, p. 155; and Applicability of the Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations, Advisory Opinions, I.C.J Reports 1989, p. 189.

⁴ Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion, I.C.J. Report 1962, p. 155. See also Applicability of Article VI Section 22, of the Convention on the Privileges and Immunities of the United Nations, Advisory Opinion, I.C.J Reports 1989, pp. 190 - 191, paragraph 37; and Legality of threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J Reports 1996 (I), p. 235, paragraph 14.

⁵ See legality o the Threat or Use of Nuclear Weapons, Advisory Opinions, I.C.J Reports 1996 (I), p. 235, paragraph 14.

rules of international law.⁶ Therefore, in line with *Advisory Opinion on Legality of the Threat or Use of Nuclear Weapons*⁷, the Government of the Republic of Indonesia maintains that political aspects of the motives which may be said to have inspired the request of advisory opinion on this particular issue and the political implications that the opinion given might have are of no relevance to the Court in exercising its discretionary power on this matter.

Absence of Legal Justification for Constructing the Wall

4. With regard to legal justification to build the Wall, Israel defends its action by asserting its legitimate right to protect itself from armed attacks. Israel also believes that the construction of the Wall as a defensive measure is consistent with Article 51 of the Charter of the United Nations, as well as its inherent right to self-defense and Security Council Resolutions 1368 (2001) and 1373 (2001). It also argues that the Wall is temporary and has no political significance. Furthermore, it argues that the construction of the Wall does not prejudge subsequent negotiations over the borders of a Palestinian state, since it is not intended to change the legal status of the territory.

5. On the issue of self defence, the Government of the Republic of Indonesia believes that security measures must be taken in accordance with internationally recognized legal norms and principles. In this regard, the Government of the Republic of Indonesia underscores that the entitlement to resort to self defence is subject to certain constraints which are inherent in the very concept of self defence itself. As the Court stated in the case concerning *Military and Paramilitary Activities in and against Nicaragua*⁸: “there is specific rule whereby self defence would warrant only measures proportional to the armed attack and necessary to respond it, a rule well established in

⁶ See *legality o the Threat or Use of Nuclear Weapons*, Advisory Opinions, I.C.J Reports 1996 (I), p. 234, paragraph 13.

⁷ See *legality o the Threat or Use of Nuclear Weapons*, Advisory Opinions, I.C.J Reports 1996 (I), p. 234, paragraph 13.

⁸ *Nicaragua v. United States of America*, I.C.J. Reports 1986, p.94, paragraph 176

customary international law". The requirement of necessity and proportionality means that self defence must not be retaliatory or punitive, the aim should be to halt and repel attacks. Hence, the construction of the Wall could only be justified, if it meets the requirement of necessity and proportionality.

6. The Government of the Republic of Indonesia asserts that the measure of constructing the Wall clearly and without any doubt fails to meet requirement of necessity. It is unconceivable that the Wall can be considered as necessity, when Israeli forces already exercise military control over each and every large Palestine town through checkpoints, curfews and closures. Doubt have also been expressed as to whether the Wall be effective, and thus bringing the fundamental question whether it is "necessary".⁹ It is clear that the Wall is ineffective for the purpose for which Israel claims, i.e., halting attacks against it as a self defence. Rather to serve its security interest, the construction of the Wall is manifestly intended to create facts on the ground that prevents any possibility of Palestinian territorial contiguity. It constitutes unlawful annexation in the language of Security Council resolutions 478 (1980) and 497(1981). Moreover, the construction of the Wall is also directed to further racist and apartheid policy, since the Wall divides populations on the basis of race and ethnicity. In fact, what emerges is a picture of a systematic Israeli policy to diminish the capacity and potential of the Palestinian people to achieve self-determination by isolating the Occupied Palestine Territory, including East Jerusalem, from each other and the outside world, paralyzing their economies and augmenting their dependency on Israel. Furthermore, Israel's claim that the Wall is designed entirely as a security measures with no intention to alter political boundaries is simply unsupported by the facts on the ground.

7. The Government of the Republic of Indonesia maintains that the construction of the Wall is disproportionate and excessive. The collateral damage has become the rule rather than the exception of the actions taken by Israel. The Wall has serious

⁹ Report of the Special Rapporteur of the Commission of the Commission on Human Rights, John Dugard, on the situation of human rights in the Palestinian Territories occupied by Israel since 1967, submitted in accordance with Commission Resolution 1993/2 A, Commission on Human Rights, Sixtieth session, E/CN.4/2004/6, 8 September 2003, p. 7. paragraph. 8.

implications as it violates two of the most fundamental principles of international law, namely: the prohibition of the forcible acquisition of territory and the rights to self-determination. Furthermore, The Wall does not follow the Green line, that is the 1967 boundary between Israel and Palestine which is generally accepted as the border between the two entities. Instead, it follows a route that encroaches very substantial parts of Palestine within Israel. At present, the Wall intrudes up to seven kilometers within Palestine, with plans to penetrate deeper into Palestinian territory. It also constitutes a wide array of serious violations of human rights and international law. The harms that have been inflicted include, but not limited to:

- Extensive destruction of Palestinian homes and other properties which is contrary to the Fourth Geneva Convention;
- Infringement on the freedom of movement contrary to the International Covenant on Civil and Political Rights, and in violation of obligations of the Fourth Geneva Convention;
- Infringement on the rights to education, to work, and to adequate standard of living and health care contrary to the Convention on the Rights of the Child and the International Covenant on Economic, Social and Cultural Rights and violation of the obligations of the Fourth Geneva Convention; and
- Violation of the prohibition against arbitrary interference of home, contrary to the International Covenant on Economic, Social and Cultural Rights, and the freedom to choose one's residence, contrary to the International Covenant on Civil and Political Rights and violation of the protections provided in the Fourth Geneva Convention as a result of the permit system established in the Closed Area.

8. The Government of the Republic of Indonesia argues that Israel's claim on the temporary nature of the Wall is dubious. Israel points to the fact that the land in question has been requisitioned by military order only until 31 December 2005. However, nothing prevents the orders themselves from being renewed without limitation

in the future. It would seem difficult for Israel to justify the enormous cost of the Wall if it were to be dismantled in 2005 or shortly thereafter.

9. Israel's claim that the Wall has no political significance should not be sustained. In line with the Report of the Secretary General prepared pursuant to General Assembly Resolution ES-10/13 (A/ES-10/248), Indonesia observes that 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 Wall and the Green Line are of serious concerns and have political implications for the future. It could damage the longer-term prospect for peace by making the efforts to establish an independent, viable, and contiguous Palestinian State unreasonably difficult, if not , impossible.

APPLICABILITY OF INTERNATIONAL HUMANITARIAN LAW IN THE OCCUPIED PALESTINE TERRITORY, INCLUDING EAST JERUSALEM

10. In justifying its flagrant systematic violations of fundamental general principles of humanitarian law, Israel has taken position that, since Article 2 of the Fourth Geneva Convention states that the Convention applies only to occupation of the territory of the High Contracting Party, and since the West Bank and East Jerusalem are not within the recognized territory of any High Contracting Party, Israel is not legally bound to the apply the Convention to those places. It further argues that the annexation of the West Bank and Gaza Strip by Jordan and Egypt was never internationally recognized, so there was no "legitimate ousted sovereign".¹⁰ Hence, Israel further argues that it possesses only administrative responsibilities that Jordan and Egypt held, and that therefore the Fourth Geneva Convention does not apply. Moreover, Israel holds its occupation of the West Bank and the Gaza Strip is *sui generis* since it did not gain control of these territories in an aggressive war, but as a result of defensive actions, and therefore it is not subject to Occupiers Law.

¹⁰ See paragraph 3 of the Summary legal position of the Government of Israel, Annex 1 of Report of the Secretary-General prepared pursuant to General Assembly resolution ES-10/13 (A/ES-10/248, 24 November 2003)

11. The Government of the Republic of Indonesia underlines the fact that a High Contracting Party to the Fourth Geneva Convention has legal obligations to respect and to ensure respect for the provisions of the Fourth Geneva Convention in all circumstances.¹¹ It also reasserts the application of the Fourth Geneva Convention to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.¹² Consistent with the provisions of the United Nation Security Council Resolution 681 (1990) and the United Nations General Assembly Resolution 56 / 60, the Government of the Republic of Indonesia considers that Israel is under legal obligation to apply the Fourth Geneva Convention to the Occupied Palestine Territory, including East Jerusalem. Since the Convention is not concerned with the sovereignty of parties to conflict, it must apply to all cases in which territory is occupied in the course of an armed conflict, irrespective of the status of the territory. Moreover, given the purposes and objectives of the Fourth Geneva Convention are to protect civilian inhabitants of territory which comes under foreign control, the Convention does not concern itself with the nature of the force which brought about the occupation. Thus, there is nothing in the provisions of the Fourth Geneva Convention which distinguishes between the occupation of territory through defensive or aggressive action. For that reason, the claim of non-applicability of the Fourth Geneva Convention has been categorically rejected by the International Committee of the Red Cross (ICRC) and High Contracting Parties to the Geneva Conventions.

APPLICABILITY OF INTERNATIONAL HUMAN RIGHTS LAW IN THE OCCUPIED PALESTINE TERRITORY, INCLUDING EAST JERUSALEM.

12. Israel contends that neither the 1966 International Covenant on Civil and Political Rights (ICCPR) nor the 1966 International Covenant on Economic, Social, and Cultural Rights (ICESCR) is applicable to the Occupied Palestine Territory, including East

¹¹ Article 1 of the Fourth Geneva Convention.

¹² Article 2 of the Fourth Geneva Convention.

Jerusalem, despite it has ratified both treaties. It asserts that humanitarian law is the protection granted in a conflict situation such as the one in the West Bank and Gaza Strip, whereas human rights treaties were intended for the protection from their own in times of peace.¹³ Israel also maintains that human rights law is concerned only with state's treatment of its own national within its borders, and not its treatment of aliens.

13. Clearly stated in *its Advisory Opinion on Legality of the Threat or Use of Nuclear Weapons*, the Court denied the view of Israel that human rights law should not be applied in a conflict situation. The Court observed that the protection of the International Covenant of Civil and Political Rights does not cease in times of war.¹⁴ Human Rights Committee also emphasized that the applicability of rules of human rights law does not by itself impede the application of the Convention or the accountability of the State under Article 2 paragraph 1 for actions of its authorities. It was the view that the Convention must be held applicable to the Occupied Palestine Territory, including East Jerusalem, where Israel exercises effective control.¹⁵ This view has also been affirmed by international community that State Parties are obliged to apply human rights conventions to all persons under their control, regardless of sovereignty issues. Therefore, as a State Party to the Convention, Israel has legal duties to ensure the protection of human rights in the Occupied Palestine Territory, including East Jerusalem.

SUBMISSION

In view of the afore-mentioned legal facts, the Government of the Republic of Indonesia has the honor to submit that the Court is of the opinion:

¹³ See paragraph 4 of the Summary legal position of the Government of Israel, Annex 1 of Report of the Secretary-General prepared pursuant to General Assembly resolution ES-10/13 (A/ES-10/248, 24 November 2003)

¹⁴ See *legality o the Threat or Use of Nuclear Weapons*, Advisory Opinions, I.C.J Reports 1996 (I), p. 239, paragraph 25

¹⁵ Consideration of Report Submitted by State Parties Under Article 40 of the Covenant, Concluding observation of the Human Rights Committee: Israel, Human Rights Committee, Sixty-third session, 18 August 1998, CCPR/C/79/Add 93 paragraph 10.

1. That the construction of the Wall by Israel in the Occupied Palestine Territory, including East Jerusalem, departing from the armistice line of 1949 is illegal under relevant norms and principles of international law and must be ceased and reversed.
2. That Israel is under legal obligations to restore land and private properties forcibly seized for the construction of the Wall, to pay full compensation, to annul all measures enacted regarding the Wall, to cease restriction on freedom of movement in the Occupied Palestine Territory, including East Jerusalem.
3. That Israel is under obligations to fully and effectively respect the Fourth Geneva Convention as well as Additional Protocol I to the Geneva Conventions to the Occupied Palestine Territory, including East Jerusalem.
4. That all norms and principles as provided by international human rights conventions shall be respected in the Occupied Palestine Territory, including East Jerusalem, and therefore Israel is under obligations to stop its grave breaches of international human rights law, and to bring all the perpetrators of human rights atrocities to justice.
5. That Israel is under obligations to co-operate with international humanitarian organization, including International Committee of the Red Cross and the UN Human Rights Committees.
6. That the United Nations Security Council should consider flagrant and systematic violation of international law norm and principles by Israel, particularly the international humanitarian law, and take all necessary measures to put an end these violations.
7. That Members States of the United Nations are under obligations to recognize the illegality of the construction of the Wall. They are also under obligations not to recognize Israel as sovereign over any areas of Occupied Palestine, including East

Jerusalem, not to recognize any other change in the status of the territories Occupied by Israel, not to take any measures supporting or facilitating the unlawful actions by Israel.

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