

WRITTEN STATEMENT
OF
THE KINGDOM OF SAUDI ARABIA

January 30, 2004

I. INTRODUCTION AND SUMMARY

1. This written statement is filed pursuant to the Court's order of 19 December 2003. That order authorized the filing of written statements to furnish information on the question submitted to the Court by the United Nations General Assembly on 8 December 2003 for an Advisory Opinion.¹ The question is as follows:

"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?"

2. It is the submission of the Kingdom of Saudi Arabia that the occupation by Israel of the Occupied Palestinian Territory, including in and around Jerusalem, is illegal, that the Israeli settlements in Palestinian territory are illegal, that the Separation Wall, which is intended to create a *de facto* territorial annexation of those settlements and the contiguous land between those settlements and territory of Israel is illegal, and that the actions of the occupying Power to accomplish this

¹ U.N. General Assembly Resolution ES-10/14 (2003).

illegal annexation are having serious humanitarian consequences and are thus illegal and constitute grave breaches of humanitarian law under the Fourth Geneva Convention of 1949.²

3. Furthermore, it is also the submission of the Kingdom of Saudi Arabia that the Separation Wall is not a necessary and proportional response to terrorism, that it manifestly is a rejection of the Road Map and other efforts to find a peaceful solution with two States living in harmony, and thus is a violation of United Nations Security Council Resolutions 1515 (2003), 1397 (2002), 338 (1973), and 242 (1967), and that it engages the international responsibility of the occupying Power.

4. On this basis, the Kingdom of Saudi Arabia believes that in answer to the question of the General Assembly, the Court should declare that the Separation Wall is illegal and, accordingly, that the legal consequences of said Separation Wall include the following:
 - (i) that the Separation Wall being illegal, its construction must cease and what exists must be removed;

² Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, 75 U.N.T.S. 287, entered into force 21 Oct. 1950 (hereafter "Fourth Geneva Convention of 1949").

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- (ii) that the Separation Wall being illegal, the Palestinian people who have had property confiscated or suffered other economic harm are entitled to the return of their property and consequential damages for injuries suffered;
 - (iii) that the Separation Wall and the associated actions of the occupying Power infringing upon the rights of the protected civilian population of Palestine are grave breaches of humanitarian law;
 - (iv) that the Separation Wall is an act of bad faith by a party to a negotiation mandated by United Nations Security Council resolutions which frustrates the objectives of those resolutions and thus is entitled to no weight in the negotiations nor in the legal relationship between those parties;
 - (v) that the Separation Wall does not absolve the occupying Power of its duties under the Fourth Geneva Convention of 1949 to the protected civilian population of Palestine throughout the Occupied Palestinian Territory, including in and around Jerusalem; and
 - (vi) that the Separation Wall attempts to defeat the right of self-determination of the Palestinian people and thus is a serious breach by the occupying Power of an obligation under a preemptory norm of general international law, requiring all States to cooperate to bring the breach to an end, not to recognize as lawful the situation created, and not to render any assistance to the occupying Power in this regard.

II. THE COURT IS COMPETENT TO RENDER AN ADVISORY OPINION AS REQUESTED BY THE GENERAL ASSEMBLY AND THERE IS NO COMPELLING REASON FOR IT NOT TO DO SO

5. In the *Nuclear Weapons Case*³ a number of arguments were put forward as to why the Court should not render an Advisory Opinion in that circumstance. The Court assessed those arguments in paragraphs 10-19 of its Advisory Opinion and determined that it had the competence to deliver the opinion on the question therein posed by the General Assembly, and that there were no compelling reasons for it not to do so. The same is true here.
6. In this situation, the Court has the competence to deliver the opinion. The body requesting the opinion is the General Assembly, which is authorized by Article 96, paragraph 1, of the United Nations Charter to request "an advisory opinion on any legal question." The question set forth is clearly a legal question as it requests the Court's opinion of the legal consequences of actions taken by an occupying Power having reference to the principles and rules of international law, including the Fourth Geneva Convention of 1949 and relevant resolutions of the General Assembly and Security Council.
7. Furthermore, there are no compelling reasons for the Court not to do so. The question is clear, the sources of law are clear, and the facts are clear as they are

³ *The Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996 (July 8) (hereafter "*Nuclear Weapons Case*").

set forth in the Secretary-General's Report of 24 November 2003.⁴ Thus, the mandate is neither vague nor abstract. Moreover, while some may argue that an opinion in this matter might adversely affect negotiations, the view of the majority of States that passed the resolution is to the contrary. The Court was faced with a similar argument in the *Nuclear Weapons Case* and was not persuaded that such an argument was a compelling reason not to render its opinion. The same is true here.

8. As the Court noted in the *Nuclear Weapons Case*, "There has been no refusal, based on the discretionary power of the Court, to act upon a request for an advisory opinion in the history of the present Court"⁵ The *Status of Eastern Carelia* case,⁶ which represents the one instance where the Permanent Court of International Justice declined to act upon a request for an advisory opinion, is not relevant here. In that case, the Permanent Court declined to give an advisory opinion where the request called for the determination of a question of fact, which constituted the main point in a dispute actually pending between two States, one of which was not a Member of the League of Nations and refused to participate in the Court's proceedings.⁷ This situation is quite different. The facts are clear and the purpose of the request is not to decide a factual dispute pending between two

⁴ Report of the United Nations Secretary-General Prepared Pursuant to General Assembly Resolution ES-10/13, U.N. Doc A/ES-10/248, 24 Nov. 2003 (hereafter "Secretary-General's Report of 24 November 2003").

⁵ *Nuclear Weapons Case*, I.C.J. Reports 1996, p. 235, para. 14.

⁶ PCIJ, Series B, No. 5 (1923).

⁷ *Ibid.*, pp. 27-29.

States, but to receive a legal opinion to guide the United Nations. Members of the United Nations are bound by Article 96 of the Charter, which empowers the General Assembly to request advisory opinions on any legal question.

III. THE SEPARATION WALL IS ILLEGAL

A. The Occupation of the Occupied Palestinian Territory, Including in and around Jerusalem, is the Result of the Illegal Use of Force and thus is Illegal

9. In 1947 the United Nations proposed to partition mandated Palestine into two States, one Arab and one Jewish, with Jerusalem being internationalized.⁸ Before the plan could be acted upon, Israel declared itself a State and expanded to occupy much of the territory proposed to form the Arab Palestinian State and much of Jerusalem. War resulted. In 1949 an armistice was declared, and a line formed, called the Green Line, separating Israel from Palestinian land. The Green Line was much less favorable to Palestine than what had been envisioned by the United Nations in 1947.
10. In 1967 Israel initiated a war and became the occupying Power in what is now called the Occupied Palestinian Territory, including in and around Jerusalem.
11. The initiation of hostilities in 1967 by Israel was without legal justification and in violation of Article 2, paragraph 4, of the United Nations Charter. Its occupation of Palestinian territory was accomplished in connection with this illegal use of

⁸ U.N. General Assembly Resolution 181 (II) (1947).

force. Further, the occupying Power has since failed to exercise its responsibilities in the aftermath of victory including fulfillment of obligations imposed by international humanitarian law with respect to the protected civilian Palestinian population in the territory it occupies. For 37 years it has occupied Palestinian territory during which it has continuously confiscated private property and imposed policies creating economic and social hardships for the protected civilian Palestinian population in clear violation of international law.

B. Israeli Settlements in the Occupied Palestinian Territory,
Including in and around Jerusalem, are Illegal

12. Once Israel had successfully occupied Palestinian lands militarily in 1967, it began a program of encouraging and supporting and protecting Israeli settlements in the Occupied Palestinian Territory, including in and around Jerusalem.⁹ Each step of this process has involved the confiscation and destruction of Palestinian land and resources. Each step has been a breach of the responsibilities of the occupying Power under the Fourth Geneva Convention of 1949, as each step has violated the rights of the protected civilian population of Palestine and resulted in the *de facto* annexation of large areas of territory.¹⁰

⁹ See Report of the Security Council Commission Established Under Resolution 446 (1979), U.N. Doc S/13679, paras. 45-51, 4 Dec. 1979; Report of the Security Council Commission Established Under Resolution 446 (1979), U.N. Doc S/13450, paras. 220-228, 12 Jul. 1979.

¹⁰ See U.N. Security Council Resolution 465 (1980); U.N. Security Council Resolution 476 (1980); U.N. General Assembly Resolution 56/61 (2001); Report of the Special Rapporteur 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

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13. While the Palestinian population have many grievances against the occupying Power, no one should doubt that its deliberate program to encourage, support and protect Israeli settlements in the Occupied Palestinian Territory, including in and around Jerusalem, is paramount of those grievances.
14. This has been recognized by the international community repeatedly. The Security Council has determined Israeli settlements to be illegal and a flagrant violation of the Fourth Geneva Convention of 1949, and that actions taken by the occupying Power to change the physical character, demographic composition, institutional structure or status of the Occupied Palestinian Territory, including in and around Jerusalem, to be without legal validity.¹¹ For more than 30 years the General Assembly has regularly passed resolutions recording the fact that these settlements are illegal and an obstacle to peace and to economic and social development¹² and has specifically condemned settlement activities in Jerusalem.¹³

accordance with Commission resolution 1993/2 A, U.N. Doc E/CN.4/2004/6, para. 41, 8 Sept. 2003 (hereafter "Special Rapporteur's Report of 8 September 2003").

¹¹ U.N. Security Council Resolution 446 (1979); U.N. Security Council Resolution 452 (1979); U.N. Security Council Resolution 465 (1980); U.N. Security Council Resolution 471 (1980); U.N. Security Council Resolution 476 (1980); U.N. Security Council Resolution 478 (1980).

¹² Such resolutions include: U.N. General Assembly Resolution 2851 (1971); U.N. General Assembly Resolution 31/106 (A, C) (1976); U.N. General Assembly Resolution 35/122 (B, C) (1980); U.N. General Assembly Resolution 37/222 (1982); U.N. General Assembly Resolution 44/48 (A,C) (1989); U.N. General Assembly Resolution 46/162 (1991); U.N. General Assembly Resolution 51/133 (1996); U.N. General Assembly Resolution 52/66 (1998); U.N. General Assembly Resolution 55/132 (2001).

¹³ U.N. General Assembly Resolution ES-10/2 (1997); U.N. General Assembly Resolution ES-10/3 (1997); U.N. General Assembly Resolution ES-10/4 (1997).

C. The Separation Wall is a *de facto* Annexation of Territory
by the Occupying Power and It is Illegal

15. The Secretary-General's Report of 24 November 2003 sets forth relevant facts sufficient for the purposes of this Written Statement. Paragraph 8 states:

"Based on the route on the official map, including depth barriers and East Jerusalem, approximately 975 square kilometers, or 16.6 percent of the entire West Bank, will lie between the Barrier and the Green Line. This area is home to approximately 17,000 Palestinians in the West Bank and 220,000 in East Jerusalem."

In addition, the Report continues:

"If the full route is completed, another 160,000 Palestinians will live in enclaves, areas where the Barrier almost completely encircles communities and tracts of land."

This is the situation for the Palestinian people. As for the Israeli settlements, the Report states:

"The planned route incorporates nearly 320,000 settlers, including approximately 178,000 in occupied East Jerusalem."

The facts are thus clear. Nearly 17 percent of the land of the West Bank is lost to Palestinians, the property of 237,000 Palestinians is affected, and another 160,000 must live in enclaves, while 320,000 Israeli settlers in illegal settlements in the Occupied Palestinian Territory, including in and around Jerusalem, are physically encompassed within the territory of Israel.

16. The Separation Wall is part of a pattern of wholesale violations of United Nations Security Council Resolutions 242 (1967) and 338 (1973) which call for the withdrawal of the occupying Power. Nonetheless, in spite of the censures and the objection of the international community, the occupying Power proceeds to expand into additional territory and hold it by force notwithstanding Article 2, paragraph 4, of the United Nations Charter. The same pattern followed in East Jerusalem¹⁴ and in the Golan Heights¹⁵ simply continues with full disregard of international law by the occupying Power.

17. The Separation Wall has been widely condemned within the international community. Even those States that abstained in the vote on General Assembly Resolution ES-10/14 requesting this Advisory Opinion almost universally condemned the Separation Wall. Furthermore, even the President of the United States has stated publicly concerns and opposition:

"You asked about the fence. I have said the fence is a problem to the extent that the fence is a opportunity to make it difficult for a Palestinian state to emerge. There is a difference between security and land acquisition. And we have made our views clear on that issue."¹⁶

In spite of this overwhelming condemnation, the occupying Power proceeds in the construction of the Separation Wall, and rationalizes its conduct as a response to

¹⁴ U.N. Security Council Resolution 478 (1980).

¹⁵ U.N. Security Council Resolution 497 (1981).

¹⁶ President George W. Bush, Remarks at White House Press Conference (28 Oct. 2003), *available at* <http://www.whitehouse.gov/news/releases/2003/10/20031028-2.html>.

terrorism and denies the application of international humanitarian law to its occupation of the Occupied Palestinian Territory, including in and around Jerusalem. Given the scale of the project, and the history of the actions of the occupying Power, its claim that the Separation Wall is only a temporary measure is hardly credible.

18. Both the 1907 Hague Regulations¹⁷ and the Fourth Geneva Convention of 1949 make clear that the occupying Power has a general duty to respect and protect private property. Article 46 of the 1907 Hague Regulations states the simple proposition:

"Private property cannot be confiscated."

Article 53 of the Fourth Geneva Convention of 1949 likewise states:

"Any destruction by the occupying Power of real or personal property belonging individually or collectively to private persons . . . is prohibited, except where such destruction is rendered absolutely necessary by military operations."

As discussed below, the Separation Wall cannot be excused as an absolute necessity. Further, in all events it is not a military operation within the meaning of the Fourth Geneva Convention of 1949, but a disproportionate security

¹⁷ Hague Convention (IV) Respecting the Laws and Customs of War on Land and its Annex: Regulations Concerning the Laws and Customs of War on Land, 3 Martens Nouveau Recueil (ser. 3) 461, entered into force 26 Jan. 1910 (hereafter "1907 Hague Regulations").

measure. Thus, this occupying Power acts repeatedly in breach of these basic duties and denies they are applicable to its conduct. This denial stands against the Declaration of High Contracting Parties to the Fourth Geneva Convention of 1949, 5 December 2001,¹⁸ which states in part:

"[T]he participating High Contracting Parties reaffirm the applicability of the Fourth Geneva Convention to the Occupied Palestinian Territory, including East Jerusalem."

D. The Separation Wall Imposes Undue Suffering on the Protected Civilian Population of Palestine and Therefore is Illegal

19. The Report of the Special Rapporteur of the Commission on Human Rights of 8 September 2003 sets out the facts about the profound effect the Separation Wall is having upon the civilian population of Palestine.¹⁹ The situation is dire and it gets worse every day. The World Bank concluded in 2002 that internal and external closure of the Occupied Palestinian Territory, including in and around Jerusalem, constitutes the proximate cause of the Palestinian economic crisis.²⁰ The Separation Wall exacerbates the problem. Palestinians between the Separation Wall and the Green Line are cut off from their land and work places. The Separation Wall also enclaves Palestinian towns and villages making the movement necessary for people to carry on normal lives impossible:

¹⁸ Declaration of Conference of High Contracting Parties to the Fourth Geneva Convention (Geneva, 5 Dec. 2001), available at <http://www.eda.admin.ch/eda/e/home/foreign/hupol/4gc/docum2.Par.0006.UpFile.pdf>.

¹⁹ Special Rapporteur's Report of 8 September 2003, para. 17.

²⁰ See *Fifteen Months – Intifada, Closures and Palestinian Economic Crisis An Assessment*, World Bank, 18 Mar. 2002, available at, [http://lnweb18.worldbank.org/mna/mena.nsf/Attachments/complete/\\$File/complete.pdf](http://lnweb18.worldbank.org/mna/mena.nsf/Attachments/complete/$File/complete.pdf).

"Every day thousands of Palestinians must pass through these checkpoints in order to travel from home to work, to reach schools and hospitals and to visit friends and family. Every day Palestinians are compelled to waste hours passing through these checkpoints.

...

Accounts of rudeness, humiliation and brutality at the checkpoints are legion. Ambulances are often delayed and women give birth to children at checkpoints.

...

Unable to go to work, to buy food, to go to school, to visit hospitals or bury their dead, [the Palestinians] are confined within the walls of their own homes"²¹

The occupying Power's checkpoints, in the words of the Special Rapporteur, constitute "the institutionalization of the humiliation of the Palestinian people."²²

20. The Special Rapporteur's description of the humanitarian effects of the Separation Wall makes clear that the Wall is an obvious violation of the Fourth Geneva Convention of 1949, Article 27 of which states:

"Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity."

Furthermore Article 32 states:

²¹ Special Rapporteur's Report of 8 September 2003, para. 17.

²² *Ibid.*

"The High Contracting Parties specifically agree that each of them is prohibited from taking any measure of such a character as to cause the physical suffering or extermination of protected persons in their hands. This prohibition applies . . . to any . . . measures of brutality whether applied by civilian or military agents."

21. The Separation Wall imposes suffering and hardship, which does not distinguish between the civilian population and combatants. The Declaration of High Contracting Parties to the Fourth Geneva Convention of 1949, 5 December 2001, makes clear the obligation of the occupying Power to make such distinctions:

"The participating High Contracting Parties call upon the parties to the conflict to ensure respect for and protection of the civilian population and civilian objects and to distinguish at all times between the civilian population and combatants and between civilian objects and military objectives. They also call upon the parties to abstain from any measures of brutality and violence against the civilian population whether applied by civilian or military agents and to abstain from exposing the civilian population to military operations."²³

22. Further, the Separation Wall constitutes a collective punishment that affects all Palestinians and makes no distinction between the civilian population at large and those that commit hostile acts, and thus clearly violates both the 1907 Hague Regulations and the Fourth Geneva Convention of 1949.

Article 33 of the Fourth Geneva Convention of 1949 states:

²³ Declaration of Conference of High Contracting Parties to the Fourth Geneva Convention (Geneva, 5 Dec. 2001), available at <http://www.eda.admin.ch/eda/e/home/foreign/hupo/4gc/docum2.Par.0006.UpFile.pdf>.

"No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited."

Article 50 of the 1907 Hague Regulations likewise states:

"No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible."

E. The Separation Wall Frustrates the Negotiations Mandated by Relevant United Nations Security Council Resolutions and Will Deny the Palestinian People the Right of Self-Determination

23. The Separation Wall is more than the illegal annexation of territory by the occupying Power which imposes undue hardships on protected people. It is a deliberate effort to frustrate the express will of the international community of two States living side-by-side in harmony. The Separation Wall if it stands will further exacerbate the differences between the parties, increase the flow of refugees, and make most unlikely the emergence of a viable Palestinian State.
24. Furthermore, the sovereignty, territorial integrity and political independence of every State in the region as well as the right of its people to live within secure and recognized boundaries has been a long-standing objective of the United Nations.²⁴ This includes the right of the Palestinian people to exercise their right of self determination on their own territory. The Separation Wall if it stands, will make a

²⁴ See U.N. Security Council Resolution 242 (1967).

mockery of the efforts of the international community to fulfill this objective. The Separation Wall of the occupying Power will reduce the Occupied Palestinian Territory, including in and around Jerusalem, to a few enclaves completely encircled and cut-off from each other making it impossible to constitute a viable State.

25. The Separation Wall is an act of bad faith by a party to a negotiation intended to enhance its position and to make a negotiated solution less likely. The Separation Wall will substantially modify the characteristics of the Occupied Palestinian Territory, including in and around Jerusalem, to conform to the point of view of only one party to the negotiations, making a mutually acceptable result impossible to achieve.

IV. THE DEFENSE OF THE OCCUPYING POWER THAT THE SEPARATION WALL IS REQUIRED TO PROTECT ITSELF AGAINST TERRORISM IS NOT ADEQUATE IN LAW TO EXCUSE ITS UNLAWFUL ACTS

A. General Observations

26. Terrorism is a scourge of international life which creates legitimate security concerns. However, limits exist on what may be done in the name of security at the expense of human rights and other international obligations.

B. The Obligations of the Occupying Power

27. The rights and duties of occupying Powers are regulated by international law. As the governing authority, the occupying Power must take all measures necessary to ensure public order and safety.²⁵ Since its authority is only transitional in nature, however, the aforementioned must be accomplished while respecting the existing administration, economy, legal system, and general life of the occupied community.²⁶ Thus, an occupying Power owes moral and legal duties to the protected people in the territory that it occupies. The occupying Power in the Occupied Palestinian Territory, including in and around Jerusalem, utterly fails in meeting these responsibilities.

C. The Separation Wall is Not a Military Necessity

28. The Separation Wall is not a military necessity that absolves the occupying Power of its duties to the protected civilian population of the Occupied Palestinian Territory, including in and around Jerusalem, under international humanitarian law. The Separation Wall does not meet the test of necessity in international law, whether it is viewed generally or in terms of military requirements.

²⁵ 1907 Hague Regulations, Art. 43.

²⁶ Lord McNair, *The Legal Effects of War*, p. 370 (1966).

29. The International Law Commission's Draft Articles on State Responsibility set forth the applicable tests for judging whether an argument of necessity may excuse an illegal act.²⁷ Article 25 provides:

"1. Necessity may not be invoked by a State as a ground for precluding the wrongfulness of an act not in conformity with an international obligation of that State unless the act:

a. Is the only way for the State to safeguard an essential interest against a grave and imminent peril; and

b. Does not seriously impair an essential interest of the State or States towards which the obligation exists

2. In any case, necessity may not be invoked by a State as a ground for precluding wrongfulness if:

. . .

b. The State has contributed to the situation of necessity."

30. This understanding of the meaning of "necessity" in international law clearly rebuts any and all arguments of the occupying Power that the Separation Wall is necessary and thus excuses its illegal acts. The Separation Wall clearly impairs the rights of the Palestinian people and further inhibits the road to peace and to self-determination. Furthermore, in all events, the occupying Power may not evoke necessity as its occupation of the Occupied Palestinian Territory, including

²⁷ Draft Articles on Responsibility of States for Internationally Wrongful Acts, *in* Report of the International Law Commission on the Work of Its Fifty-third Session, UN GAOR, 56th Sess. Supp. No. 10, at 43, U.N. Doc. A/56/10 (2001) (hereafter "Draft Articles on State Responsibility").

in and around Jerusalem, and its illegal settlements therein, have manifestly "contributed to the situation of necessity." This general understanding of the legal meaning of "necessity" in international law is fully applicable in humanitarian law where "military necessity" is provided for.

D. The Separation Wall is Disproportional as a Security Measure and Article 51 of the Charter is Not Applicable

31. The occupying Power has indicated in speeches in the General Assembly that its actions are justified under Article 51 of the United Nations Charter. However, Article 51 is not applicable. Individual acts of terrorism cannot be equated to an armed attack that justifies measures of self-defense beyond national borders. Furthermore, international law is clear that even where self-defense may be justified, obligations under international humanitarian law remain. As the Court said of the rules of international humanitarian law in its Advisory Opinion in the *Nuclear Weapons Case*, they constitute "intransgressible principles of international customary law."²⁸
32. Moreover, the Separation Wall as a security measure is far from a necessary and proportional response. The Separation Wall is well within Palestinian territory. It is not built along the Green Line. It is built in such a way to place a substantial and expanding percentage of the West Bank and East Jerusalem on the Israeli side of the Wall. Further, it is built in such a way to ensure geographic contiguity

²⁸ *Nuclear Weapons Case*, I.C.J. Reports 1996, p. 257, para. 79.

between the territory of Israel and its illegal settlements in the Occupied Palestinian Territory, including in and around Jerusalem, and to further facilitate the expansion of those illegal settlements in continuing and accelerating violation of the duty found in Article 49 of the Fourth Geneva Convention of 1949 not to "transfer parts of its own civilian population into territory it occupies".

33. While there is no armed attack within the meaning of the United Nations Charter justifying the invocation of self-defense under Article 51 by the occupying Power, it is instructive to assess the conditions of a necessary and proportionate response as the Court has done in recent cases where self-defense has been invoked. As the Court said in the *Case Concerning Oil Platforms* repeating from its Advisory Opinion in the *Nuclear Weapons Case*, "The submission of the exercise of the right of self-defense to the conditions of necessity and proportionality is a rule of customary international law."²⁹ In the *Nicaragua* case, the Court said that "self-defense would warrant only measures which are proportional to the armed attack and necessary to respond to it"³⁰ The Separation Wall does not meet these tests.
34. The Separation Wall makes no distinctions between terrorists and the civilian population of Palestine. It is a grossly disproportionate response to terrorism. In

²⁹ *Case Concerning Oil Platforms*, (Islamic Republic of Iran v. United States of America), *Judgment*, 2003 I.C.J., para. 76 (Nov. 6) (hereafter "*Case Concerning Oil Platforms*").

³⁰ *Case Concerning Military and Paramilitary Activities In and Against Nicaragua* (Nicaragua v. United States of America), *Judgment*, I.C.J. Reports 1996, p. 94, para. 176 (June 27).

the *Case Concerning Oil Platforms*, the Court said in this regard: "[the Court] cannot close its eyes to the scale of the whole operation."³¹ As for "necessary," the Separation Wall is far from the only measure that might diminish the risk of terrorism; one obvious measure would be for the occupying Power to comply with relevant United Nations resolutions, withdraw its settlements from the Occupied Palestinian Territory, including in and around Jerusalem, and engage in good faith negotiation.

E. The Separation Wall is a Grave Breach of Humanitarian Law

35. As shown above, the confiscation of private property by the occupying Power is illegal under humanitarian law, and as discussed above cannot be justified by the argument of necessity. Moreover, the confiscation of private property is carried out without meaningful legal recourse and wantonly. Such actions by an occupying Power constitute a "grave breach" of the Fourth Geneva Convention of 1949. Article 147 states:

"Grave breaches . . . shall be those involving any of the following acts: . . . extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly."

36. The confiscations are without meaningful legal recourse because, as noted in the Secretary-General's Report of 24 November 2003, such confiscations "become effective on the date that they are signed and are valid even if they are not

³¹ *Case Concerning Oil Platforms*, 2003 I.C.J., para. 77.

personally served on the property owners."³² The confiscations are wanton because the occupying Power carries out these confiscations with no regard to their humanitarian impact.

37. The duties of the High Contracting Parties to the Fourth Geneva Convention of 1949 in the circumstance of a "grave breach" is set forth in Article 146. It provides for the duty to enact legislation to provide penal sanctions for persons that commit, or that order others to commit, a "grave breach," and to prosecute such persons in its own courts or in the courts of other States. The foregoing duties apply to the 191 States that are party to the Fourth Geneva Convention of 1949, including Israel.

V. CONCLUSION: THE SEPARATION WALL HAS THE FOLLOWING LEGAL CONSEQUENCES

38. The Separation Wall is an international wrongful act by the occupying Power and thus entails its international responsibility.³³ There are thus legal consequences.³⁴ The first obligation is to cease performance of the internationally wrongful act,³⁵ not to repeat it,³⁶ and to make full reparation.³⁷ Reparation includes restitution,³⁸

³² Secretary-General's Report of 24 November 2003, para. 17.

³³ Draft Articles on State Responsibility, Art. 1.

³⁴ *Ibid.*, Art. 28.

³⁵ *Ibid.*, Arts. 29, 30.

³⁶ *Ibid.*, Art. 30(b).

³⁷ *Ibid.*, Art. 31.

³⁸ *Ibid.*, Art. 35.

which in this case requires destruction of the Separation Wall, compensation³⁹ and satisfaction.⁴⁰

39. Accordingly:

- The Separation Wall being illegal, its construction must cease;
- The Separation Wall being illegal, it must be removed;
- The Separation Wall being illegal, property confiscated must be returned;
- The Separation Wall being illegal, economic harm suffered because of its construction to date must be compensated;
- Being a "grave breach" of humanitarian law States Parties to the Fourth Geneva Convention of 1949 are obliged to take action under Article 146;
- The Separation Wall is an act of bad faith by a party to a negotiation that is mandated by United Nations resolutions which frustrates the objectives of those resolutions. It is entitled to no weight in negotiations or in the legal relationship between the parties;
- The Separation Wall does not absolve the occupying Power of its duties under the Fourth Geneva Convention of 1949; and

³⁹ *Ibid.*, Art. 36.

⁴⁰ *Ibid.*, Art. 37.

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- The Separation Wall attempts to defeat the right of self-determination of the Palestinian people and thus is a serious breach by the occupying Power of an obligation under a preemptory norm of general international law, requiring all States to cooperate to bring the breach to an end, not to recognize as lawful the situation created, and not to render any assistance to the occupying Power in this regard.

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40. The Kingdom of Saudi Arabia respectfully submits the foregoing to the International Court of Justice as information to assist the Court to render an Advisory Opinion on the question posed by the General Assembly.