

**WRITTEN STATEMENT OF THE REPUBLIC OF CUBA TO
THE INTERNATIONAL COURT OF JUSTICE
REGARDING THE REQUEST OF A CONSULTATIVE
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?

INTRODUCTION

The General Assembly of the United Nations, through resolution ES-10/14 of 8 December 2003, requested the emission of a Consultative Opinion, in conformity with Articles 96 of the UN Charter, and 65 of the Statute of the Court.

The situation in the Occupied Palestinian Territories continues to be cause for deep concern to the Republic of Cuba. For more than 50 years, Israel, the occupying Power, has been responsible of continuous and flagrant violations of human rights, of International Humanitarian Law and of International Law in said territories.

Since Israel, the occupying Power, initiated, on April 14, 2002, the construction of a wall in the Occupied Palestinian Territory, including in and around East Jerusalem, departing from the Armistice Line of 1949 (Green Line) and from the relevant provisions of International Law, numerous defenseless civilians have lost their lives or been injured.

It is totally impossible to estimate the degree of mourning imposed to Palestinian families, of pain to the mothers of the Palestinian children who have died as a result of the violence exerted by the occupying Power, and of the systematic humiliation to which the Palestinian people is subjected. The Palestinian economy has likewise suffered a devastating blow as a result of the construction of the wall.

The Government of the Republic of Cuba observes with serious concern that, in spite of the multiple appeals by the international community to Israel, the occupying Power, to put an end to violence, and “stop and reverse the construction of the wall¹, that has brought about the confiscation and destruction of Palestinian lands and resources, the disruption of the lives of thousands of protected civilians and the annexation of extensive tracts of land, Israel continues to follow an aggressive escalation that increasingly makes it more difficult to achieve a just and lasting peace in the region.

The occupying Power, with the construction of the wall, goes against the provisions of the Fourth Geneva Convention of 12 August 1949 relative to the Protection of Civilian Persons in Time of war, principles of International Law enshrined in the United Nations Charter and principles of International Humanitarian Law, as well as a number of resolutions adopted by the General Assembly and the Security Council.

The impunity with which Israel, the occupying Power, has acted during all these years is a consequence, *inter alia*, of the failure of the Security Council, where the consideration of this situation has been characterized by double standards and the lack of democracy and transparency, particularly by one of its Permanent Members, that has exercised the obsolete privilege of the veto on 27 occasions. This has led the occupying Power not to recognize any limit whatsoever, either legal, ethical, or humanitarian regarding its actions in the Occupied Palestinian Territories.

The Government of the Republic of Cuba condemns the acts of annexation, the excessive use of force without establishing distinctions between civilians and combatants, the creation of a humanitarian crisis through the limitations imposed to the circulation of goods and persons, the inhuman treatment of children, the generalized destruction of goods and, more recently, the territorial expansion implied by the construction of the wall.

At the same time, Cuba reaffirms its firm and unwavering solidarity with the Palestinian people in its struggle for the establishment of a

¹ The U.N. General Assembly, on 21 October 2003, adopted, in the continuation of its Tenth Emergency Session, resolution ES-10/13, which in its paragraph 1 “*Demands* that Israel stop and reverse the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem, which is in departure of the Armistice Line of 1949 and is in contradiction to relevant provisions of international law”.

sovereign and independent State, with East Jerusalem as its capital, and for the return of all the occupied Arab territories. We are convinced that only determined and firm actions by the international community will be able to save the negotiating process and facilitate the achievement of a just and lasting peace in the Middle East.

This situation must cease. Israel, the occupying Power, has the obligation of putting an end to the construction of the wall and reverting its consequences. The international community should not recognize the control by the occupying Power of the Palestinian territory delimited by the wall.

The International Court of Justice should act in a decisive and unanimous manner in favor of peace and justice. Every minute, innocent persons die and are permanently humiliated. Each new stone placed for the lifting of the wall of separation continues to accentuate the illegal Israeli occupation, and perpetuates the system of "apartheid" established by Israel in the Occupied Palestinian Territories. Furthermore, with these actions, Israel moves the possibility of reaching a negotiated, just and lasting solution to the Palestinian-Israeli conflict further along into the future.

I. Legal consequences of the construction of the wall from the point of view of the principles and norms of International Law.

In the view of the Republic of Cuba, the analysis carried-out by the distinguished Judges of the International Court of Justice on this issue should take into consideration the following elements:

The construction of the wall by the occupying Power in the Occupied Palestinian Territories, including in and around East Jerusalem, violates the following principles of International Law enshrined in the Charter of the United Nations:

A. The prohibition of the threat or use of force.

As described in the Report of the Secretary General², presented in compliance with resolution ES-10/13 of the General Assembly of the United Nations, the layout predicted for the construction of the wall in the Occupied Palestinian Territories does not follow the Armistice

² Report of the U.N. Secretary General, prepared in compliance with resolution Es-10/13 of the General Assembly (A/ES-10/248).

Line of 1949 (Green Line), generally accepted by the international community as the border between Israel and Palestine and as the demarcation between both territories³. The wall follows a layout that incorporates to the occupying Power considerable portions of Palestine. At present, the wall enters between 6 and 7 kms. in said territory. If the layout foreseen by the authorities of the occupying Power is applied, the wall would deviate from the Armistice Line of 1949 (Green Line) up to 22 kilometers in several places, annexating important portions of the West Bank and of in and around East Jerusalem.

The occupying Power, with these actions, would *de facto* establish a new border by means of the use of force.

The reality on the field does not corroborate the affirmation of Israel, the occupying Power, that the wall is conceived exclusively for security purposes without the intention of modifying the political borders. In reality, it is conceived to cover half of the population of settlers in the West Bank and East Jerusalem, thus proving that its ultimate end is to further guarantee the position of the said settlers and the illicit annexation of those territories.

The wall has all the characteristics of a permanent structure. Its construction (structure of concrete, wire, observation towers and electronic monitoring means) will be extremely costly. According to calculations presented by the media, approximately 1.5 billion US dollars will be spent for that end⁴. This only confirms the permanent nature of the wall, with the obvious purpose of creating *de facto* situations that would eventually condition the solution of the conflict according to the interests of the occupying Power. With this measure the occupying Power would consolidate its policy of territorial expansion and forced acquisition of territory that has characterized its actions. The United Nations Charter and the Geneva Conventions of 1949 prohibit annexations of this kind, which in International Law are tantamount to "conquests". "Conquests", or the "acquisition of territories by the use of force", were banned by the prohibition of the use of force imposed by the Kellogg-Briand

³ Security Council resolution 242, while ordering the withdrawal of Israeli armed forces from the territories occupied during the conflict of 1967, *de jure* recognized the Armistice Line of 1949 (Armistice Line of 1949 (Green Line)) as the demarcation of borders between Israel and Palestine.

⁴ According to information provided by the Spanish Television on 12 November 2003.

Pact of 1928⁵ and by paragraph 4, Article 2 of the Charter of the United Nations.

The prohibition of the acquisition of territories by force applies independently of the fact that the territory be acquired as a result of an act of aggression or legitimate defense. The Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (resolution 2625 (XXV) of 24 October 1970), establishes that **“the territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognized as legal”**. This prohibition is confirmed in resolution 242 (1967) of the Security Council and in the Oslo Agreements. Said agreements establish that **“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”**⁶.

The construction of the wall in the Occupied Palestinian Territories qualifies also as an illicit act of annexation in accordance with the provisions of resolutions 478 (1980) and 497 (1981) of the Security Council, which declare that the acts of Israel geared at the annexation of East Jerusalem and the Golan are null and void, and should not be recognized by States.

B. The equality of rights and the self-determination of peoples.

The right to self-determination is closely linked with the concept of territorial sovereignty. A people can only exercise the right to self-determination within a territory. The amputation of the Palestinian territory by means of the construction of a wall is a serious violation of the right to self-determination of the Palestinian people, since it considerably reduces the size of the self-determination unit (already small) within which such right should be exercised.

⁵ During the holding of the Paris Pact (1928), 63 nations subscribed the Treaty for the Renunciation of War, also known as the Briand-Kellog Pact, by which they renounced war as an instrument of their respective national policies, and committed themselves to resolve international conflicts by peaceful means. It is considered a consuetudinary norm of International Law.

⁶ Provisional Agreement between Israel and Palestine on the Eastern Bank and the Gaza Strip, 28 September 1995.

II.- The construction of the wall violates the provisions of the resolutions of the General Assembly and the Security Council.

The construction of the wall should be seen in the context of the Israeli settlements in the Occupied Palestinian Territories, which have been the object of resolutions adopted by the United Nations.⁷

The Government of the occupying Power is determined to consolidate those settlements. There is consensus in the international community with regard to the Israeli settlements in the Palestinian territories, which have repeatedly been considered as a violation of paragraph 6, Article 49 of the Fourth Geneva Convention, prohibiting the occupying Power from transferring part of its own civilian population to the territory it has occupied. It is clear that the dismantling of the settlements is a fundamental issue in the context of a political solution of the Israeli-Palestinian conflict. This has been evident from the resolutions adopted in that regard by the General Assembly and the Security Council, and from the different negotiating processes that have been carried-out during the last period.

III.- The construction of the wall violates principles and norms of the International Humanitarian Law.

- The occupying Power intends to justify the construction of a wall in the Occupied Palestinian Territories as being a security measure by virtue of the exercise by States of their right to legitimate defense. In accordance with the Charter of the United Nations and International Law, States have the right to exercise said right individually or collectively in the case of an armed attack for the protection of its legitimate security interests, and in cases of strict military necessity. Nevertheless, those actions should be compliant with international human rights norms and International Humanitarian Law. The action adopted by Israel, the occupying Power, of building a wall in the Occupied Palestinian Territories is not justified by military necessities and goes against the principle of proportionality. It is a disproportionate answer to its security interests, moves away from measures of that character and acquires the nature of punishment, humiliation and conquest.

⁷ Resolution 242 of 22 November 1967, resolution 446 of 22 March 1979 and resolution 54/38 of the General Assembly should be taken as references.

- Though it is accepted that combatants participating in armed conflict be faced by situations of mortal danger, International Humanitarian Law tries to limit the damages to be suffered by civilians by requiring that all parties in the conflict respect the principles of distinction and proportionality. The principle of distinction, enunciated in Article 48 of Additional Protocol I to the Geneva Conventions of 12 of August of 1949, establishes that **"the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives"**. The acts or threats of violence whose main purpose is to terrify the civilian population are forbidden (Article 51, paragraph 2). The principle of proportionality, enunciated in Article 51, paragraph 5 b) prohibits attacks against a military objective when it may be expected to **"cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated"**.

The construction of the wall in the Occupied Palestinian Territories, included East Jerusalem, and the inclusion within its limits of the illegal Israeli settlements, with the intention of carrying-out territorial expansion, *de facto* annexation or conquest, places seriously in doubt that the occupying Power is acting in good faith by arguing reasons of security for its actions.

IV.- Legal Consequences of the construction of the wall from the point of view of the principles and norms of International Humanitarian Law.

A. Applicability of the Geneva Convention of August 12, 1949 regarding protection of civilian persons in times of war (Fourth Geneva Convention) to the Occupied Palestinian Territory, including in and around East Jerusalem.

Though Israel, the occupying Power, has said that the Fourth Geneva Convention is not applicable to the Occupied Palestinian Territory as it is "not a territory of a High Contracting Party as

required by the Convention”,⁸ the applicability of this Instrument to said territories enjoys extensive international recognition.

In the view of the Republic of Cuba, the analysis to be carried-out by the distinguished Judges of the International Court of Justice on this issue, should take into account the following elements:

- By its resolution 3210 (XXIX) of 14 October of 1974, the General Assembly of the United Nations recognized the Palestine Liberation Organization (PLO) as the representative of the Palestinian people. Approximately one month later, by its resolution 3237 (XXIX), the General Assembly granted to said organization the status of Observer to the U.N.
- By its resolution 43/177 of 15 of December of 1988, the General Assembly of the United Nations recognized the proclamation of the State of Palestine carried-out by the National Palestinian Council on 15 November that same year. Since then, and by decision adopted in resolution 43/177 itself, the designation “Palestine” has been used, instead of “Palestine Liberation Organization”, to name the entity that, with full recognition of the international community, represented the interests of the Palestinian people in the framework of the United Nations.
- Outside the U.N. context, a very large majority of the international community recognized formally the PLO as the representative of the Palestinian people. This was materialized in the fact that a large number of States established bilateral relations with said organization, and even, in a number of cases, it has been granted full diplomatic status. The Republic of Cuba recognizes the Palestinian State and maintains diplomatic relations at the level of Ambassadors.
- On June 21, 1989, the Federal Department of Foreign Affairs of Switzerland, Depository of the Four Geneva Conventions of 1949 and its two Additional Protocols of 8 of June of 1977, received a communication dated 14 June 1989 addressed to the Office of the United Nations in Geneva by the Permanent Observer of Palestine, regarding the participation of Palestine in the four Geneva

⁸ Annex 1, paragraph 3 of the Report of the U.N. Secretary General, prepared in compliance with resolution ES-10/13 of the General Assembly (A/ES-10/248)

Conventions of 12 August 1949 and its two Additional Protocols of 1977.⁹

- The communication delivered by the Permanent Observer of Palestine demonstrates the consent of Palestine in being obliged by the four Geneva Conventions of 12 of August of 1949 and its two Additional Protocols of 8 of June of 1977.

- The Fourth Geneva Convention does not define the term "High Contracting Parties". Therefore, there is no argument in said legal Instrument to exclude the possibility that the entity internationally recognized as the representative of the Palestinian people acquire the obligations and rights foreseen by the Convention.

- Likewise, it should be said that, according to a number of resolutions adopted by the Security Council and the General Assembly of the United Nations¹⁰, which summarize the point of view of the international community, the Fourth Geneva Convention is applicable to the Occupied Palestinian Territory, including East Jerusalem.

- In accordance with this analysis, the argument that the Occupied Palestinian Territory should not be considered as belonging to a High Contracting Party would not seem sustainable.

Keeping in mind the elements previously expressed, and basing ourselves on Articles 1, 2 (second and first paragraphs) and 6 of the Geneva Convention of 12 of August of 1949 relative to the Protection of Civilian Persons in Time of War, the Republic of Cuba considers that said legal instrument, ratified by the State of Israel in 1951, is applicable to the Occupied Palestinian Territories, including East Jerusalem. At the same time, as occupying Power, Israel is also legally obliged by other consuetudinary norms relating to occupation, according to the stipulations of the Rules annexed to the Hague Convention on laws and costumes of land wars of 18 October of 1907.

⁹ Page 17 of the Report by the U.N. Secretary General regarding the situation of the Additional Protocols to the Geneva Conventions of 1949, on the protection of victims of armed conflict (A/57/164)

¹⁰ Among others, resolutions 58/97, 57/125, 56/60, 55/131, 54/77, 53/54, 52/65 and 51/132 of the U.N. General Assembly, all of which reaffirm the applicability of the Fourth Geneva Convention to the Occupied Palestinian Territories, including in and around Jerusalem.

Not to accept the applicability of the Fourth Geneva Convention to the Occupied Palestinian Territories, including East Jerusalem, would be tantamount to placing the Palestinian population residing in those territories in a situation of defenselessness against the actions of Israel, the occupying Power. Therefore, those persons should be considered as “protected persons”, according to the definition of this condition in article 4 of said Convention.

In general terms, the Fourth Geneva Convention protects the civilian population in occupied territories against the abuses by the occupying Power; it is particularly ruled that no discrimination be exercised against that population, that it be protected against all forms of violence, and that, in spite of the occupation, it may carry-out, in as much as possible, a normal life, according to its own laws, culture and traditions.

B. Violations by Israel, the occupying Power, of the Fourth Geneva Convention of 12 of August of 1949 relative to the Protection of Civilians in Time of War.

Keeping in mind the information supplied in the Report of the U.N.¹¹ Secretary General, the construction by the occupying Power of the wall in the Occupied Palestinian Territories has caused important humanitarian and socioeconomic damages to the Palestinian population residing in said territories.

In the view of the Republic of Cuba, as a result of the construction of the wall and of the severe humanitarian and socioeconomic conditions that this has had and will continue to have for the population of the Occupied Palestinian Territories, the occupying Power incurs in the following violations of the Fourth Geneva Convention of 1949:

- By separating up to now 22 Palestinian locations from access to schools¹², and by impeding the free circulation of Palestinians in both sides of the wall, the occupying Power is violating the provisions of Article 50, paragraph 1, according to which “the

¹¹ Report by the U.N. Secretary General prepared in compliance with resolution ES-10/13 of the General assembly (A/ES-10/248)

¹² Data provided by the Central Statistical Office of Palestine, quoted in paragraph 23 of the Report by the U.N. Secretary General prepared in compliance with resolution ES-10/13 of the General assembly (A/ES-10/248)

occupying Power shall, (...) facilitate the proper working of all institutions devoted to the care and education of children”.

- By separating up to now 30 locations from access to health services¹³ and 8 from the primary sources of water provision¹⁴, and by impeding the free circulation of Palestinians on both sides of the wall in order to accede to hospitals and other medical centers, the occupying Power is violating the provisions of Article 56, according to which, *inter alia*, “(...) **the occupying Power has the duty of ensuring and maintaining, (...) the medical and hospital establishments and services, public health and hygiene in the occupied territory...**”

- With the destruction of dwellings, stores, cultivated lands and other goods belonging to the Palestinian population for the construction of the wall, the occupying Power is violating Article 53, according to which “**any destruction by the occupying Power of real state 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.**” In Cuba’s view, the exception foreseen in this Article is not applicable to this case.

- As a result of the construction of the wall and of the establishment of arbitrary restrictions to the movement of persons and Palestinian goods from one side of the wall to the other, access by the Palestinian population to their lands, jobs, markets and other sources of subsistence has been severely limited, with which the Palestinian economy has been severely affected and its population has been subjected to unsustainable conditions. In face of this situation, the occupying Power has not fulfilled its obligation to provide these persons with the opportunity to find paid employment, according to provisions included in paragraph 1, Article 39.

- Likewise, the occupying Power has not fulfilled the provisions of paragraph 2 of said Article 39, according to which “**where a Party to the conflict applies to a protected person methods of control which result in his being unable to support himself, and especially if such a person is prevented for reasons of security**

¹³ Ibidem

¹⁴ Ibidem

from finding paid employment on reasonable conditions, the said Party shall ensure his support and that of his dependents”.

- In this context, the occupying Power has not fulfilled the provisions of paragraph 1, Article 55, according to which **“(...) the occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate”.**

- Keeping in mind the previously mentioned violations of the rights of the “protected population”, in this case the Palestinian population residing in the Occupied Palestinian Territories, the occupying Power is violating article 47 of the Fourth Geneva Convention of 1949, according to which **“protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention (...)”**

All the violations of the provisions of the Fourth Geneva Convention of 1949 above described, have caused a worsening of the humanitarian crisis in the Occupied Palestinian Territories. Furthermore, they represent a humiliation to the Palestinian people by virtue of Article 27 of said Instrument, according to which **“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 (...)”** In fact, the construction of the wall, with its concrete structure, its wire, its towers of observation and its electronic monitoring means, creates a population of prisoners.

International Humanitarian Law, while conferring certain rights to the occupying Power, also imposes limits to the scope of its powers. Considering that it is only a temporary administrator of the occupied territory, the occupying Power should not interfere in its original social and economic structures, organization, legal system or demography. It should ensure the protection, the security and the well being of the population that lives under occupation. This also implies that, if the occupation were to be prolonged, the normal development of the territory should be permitted.

According to interpretations of the facts described in the Report of the U.N. Secretary General, as well as from other public sources consulted, nothing of what has been previously quoted has been fulfilled by the Power occupying Palestinian territories.

The extreme humanitarian crisis imposed by the occupying Power to the Palestinian population since the construction of the wall, as described in the Report of the Secretary General and in other public sources, may be classified as a crime of extermination, as it constitutes the intentional infliction of conditions of life, calculated to bring about the destruction of part of a population, in this case the Palestinian population.

Therefore, Israel, as a State party to the Fourth Geneva Convention and, at the same time, as occupying Power, should comply with the obligation emanating from Article 1, common to the four Geneva Conventions, according to which the High Contracting Parties undertake to respect and to ensure respect of said Convention in all circumstances.

FINAL CONSIDERATIONS

The Government of the Republic of Cuba considers it difficult to accept that the following elements may be considered an answer proportionate to the perception of security of the occupying Power: the excessive use of force, the lack of distinction between civilians and combatants, the creation of a humanitarian crisis as a consequence of the limitations imposed to the circulation of goods and persons, the death and the inhuman treatment of children, the generalized destruction of goods and, ultimately, the territorial expansion by means of the construction of the wall.

The construction of the wall in the Occupied Palestinian Territories, including East Jerusalem, and the inclusion within its limits of the illegal Israeli settlements, the intention of which is non another than territorial expansion, *de facto* annexation, or conquest, put seriously in doubt the good faith of the occupying Power when addressing security reasons.

Israel, the occupying Power, persists in serious violations of the provisions of the Fourth Geneva Convention of 1949. It still refuses to accept the *de jure* applicability and even the application of the Convention to the Occupied Palestinian Territory, including Jerusalem, thus showing its refusal to respect the will of the international community, which for more than 30 years has confirmed the applicability of the Fourth Geneva Convention to the Occupied Palestinian Territories, including in and around East Jerusalem.

The Government of the Republic of Cuba expects that the International Court of Justice, while emitting the Consultative Opinion requested by U.N. General Assembly resolution ES-10/14 of 8 December 2003, recognizes that the construction of the wall by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, is illegal and in violation of the norms and principles of International Law, including the Fourth Geneva Convention of 1949 and the pertinent resolutions of the Security Council and the General Assembly.

The Government of the Republic of Cuba equally expects that the International Court of Justice recognize the international responsibility derived for the occupying Power by the illicit acts previously expressed. Likewise, the Government of the Republic of Cuba considers that the stopping of the process of construction of the wall in the Occupied Palestinian Territory cannot be postponed, and requests that the Court demand Israel, the occupying Power, that the wall be totally demolished and that it unrestrictedly fulfills International Law and International Humanitarian Law.