

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

**REQUEST FOR ADVISORY OPINION**

**WRITTEN STATEMENT OF THE ORGANISATION OF THE ISLAMIC CONFERENCE**

**January 2004**

*[Translation by the Registry]*

## Introduction

1. In accordance with the possibilities open to it under the proceedings initiated before the International Court of Justice, the Organisation of the Islamic Conference has the honour to submit to the Court its observations on the request for advisory opinion formulated by the General Assembly of the United Nations on 8 December 2003 regarding the legal consequences arising from the construction of a wall in occupied Palestinian territory.

2. By way of introduction, and with a view to illuminating the spirit in which it is submitting its observations, the Organisation of the Islamic Conference would recall that it is currently composed of 57 member States, bound by a Charter dating from 4 March 1972<sup>1</sup>. Palestine, which is recognized as a State by all members of the Organization, is itself a full member. Over and above the general aim of strengthening solidarity and co-operation between member States, the Charter specifically includes among its objectives: “support of the struggle of the people of Palestine, to help them regain their rights and liberate their land”<sup>2</sup>. It is thus hardly surprising that the Organisation of the Islamic Conference is currently deeply concerned by the deterioration in the situation imposed upon the Palestinian people, subjected since 1948 to denial of its fundamental rights, and by the growing violence affecting the region.

3. One of the most threatening factors in that deterioration is the project undertaken by Israel, and currently being pursued with a determination to bring it to completion, of a “security fence”, which would effectively seal off the West Bank and create enclaves therein. Described as a measure to protect the Israeli population, but in reality a measure to extend and protect Israeli settlements, the wall has two direct effects: massive appropriation of Palestinian land and restrictions on the living conditions of the local population. A fortified barrier 8 m in height, it will follow a winding course of some 720 km, in places deviating significantly from the Green Line of the June 1949 Armistice, thus representing a further territorial encroachment. It is to include watchtowers, 300 m high [*sic*], protected by 4-m-deep ditches and barbed wire. It will encompass some 16.6 per cent of the current West Bank territory, affecting 237,000 Palestinian inhabitants. A further 16,000 other Palestinians will, as a result of the barrier, find themselves enclaved. The wall will represent a further example of the violent and enduring nature of the Israeli-Palestinian conflict and of Israel’s abandonment of attempts to settle the situation by negotiations undertaken in good faith. That is the focus of the concerns of the United Nations General Assembly.

4. Believing that only a full and just settlement of the Palestinian question in all its aspects can restore peace, that the Government of Israel is venturing down a blind alley in daily stepping up its repression of the Palestinians and its violations of their rights, and that this is gravely damaging not only to the development of the Palestinian people but also to that of the Israeli people and to regional equilibrium, the Organisation of the Islamic Conference hopes that the advisory opinion requested of the Court will help produce a precise legal characterization of all aspects of the situation and thereby facilitate settlement. It wishes to use the opportunity to participate in the proceedings offered to it by the present Statement respectfully to draw the attention of the Court to the following points:

- the issue of its jurisdiction in this case and of the admissibility of the request for an opinion;
- the lack of any legal basis for Israel’s presence on the Palestinian territory where the wall is being built;

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<sup>1</sup>All information regarding the Organization can be found on its website: <http://www.oic-oci.org>.

<sup>2</sup>Charter of the Islamic Conference, Art. II, A, fifth subparagraph.

- the violations of the provisions of the Fourth Geneva Convention of 1949, and of the other rules of the law of war, resulting from this action;
- and, finally, the grave breaches of the fundamental rights of Palestinians resulting from the very presence of the wall.

### **Jurisdiction and admissibility**

5. This matter has been brought before the Court under Article 96 of the United Nations Charter, paragraph 1 of which provides: “1. The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.”

The language used here dispenses the Court from the obligation to verify whether the question put to it falls within the scope of activity of the organ having taken the initiative to make the request. Moreover, under the terms of Article 10 of the Charter, the General Assembly may discuss any questions or matters within the scope of the Charter and, under Article 11, any questions relating to the maintenance of international peace and security. Peace has long been seriously under threat in Palestine, and the General Assembly has repeatedly expressed its concern on the matter. Its request to the Court for an opinion regarding an action with disastrous consequences for peace in the Middle East is an expression of that concern. It falls within the scope of the tasks incumbent upon it.

6. As regards the issue of whether this is indeed a legal question, it suffices to examine the very form of words used in the question posed in the present case, in which the Court is asked 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, and the Court must do so “considering the rules and principles of international law, including the Fourth Geneva Convention of 1949, and relevant Security Council and General Assembly resolutions”.

7. To object that the situation involves political aspects is to miss the point. Thus:

“Whatever its political aspects, the Court cannot refuse to admit the legal character of a question which invites it to discharge an essentially judicial task, namely, an assessment of the legality of the possible conduct of States with regard to the obligations imposed upon them by international law.” (*Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion of 8 July 1996, I.C.J. Reports 1996 (I)*, p. 73, para. 16.)

8. With reference to that dictum of the Court, the legal character of the question posed here is strengthened by the fact that the Court is not being asked to rule on a hypothetical action, the “potential” conduct of various States, as in the *Nuclear Weapons* case. Here we are dealing with a concrete act, carried out by a specific State: construction of a wall several hundred kilometres long within a territory occupied by force. That act of extreme gravity has aroused the opposition, and doubtless the indignation, of a good number of other States because it represents yet another manifestation of use of force by the State of Israel in violation of the provisions of the Charter, but also because of the illegal and unjust consequences which it entails for the population of Palestine. Thus the legality of this act, and its multiple consequences, falls to be assessed in light of the international obligations incumbent upon the State having initiated it.

9. Can it, however, be said that what is at stake here is a dispute in which the Court's advisory function is being diverted from its true purpose and wrongly used as a substitute for a contentious function which cannot be exercised in the absence of consent by the parties concerned? The Court has on a number of previous occasions accepted that it may exercise its advisory function when faced with a dispute, whether between States, or between a State and an international organization: "Differences of views among States on legal issues have existed in practically every advisory proceeding; if all were agreed, the need to resort to the Court for advice would not arise." (*Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, I.C.J. Reports 1971, p. 24, para. 34.)

10. A request for an advisory opinion is a proceeding independent of whether or not a State has accepted the Court's jurisdiction:

"The jurisdiction of the Court under Article 96 of the Charter and Article 65 of the Statute, to give advisory opinions on legal questions, enables United Nations entities to seek guidance from the Court in order to conduct their activities in accordance with law . . . As the opinions are intended for the guidance of the United Nations, the consent of States is not a condition precedent to the competence of the Court to give them." (*Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations*, Advisory Opinion of 15 December 1989, I.C.J. Reports 1989, pp. 188-189, para. 31.)

Or again:

"no State, whether a Member of the United Nations or not, can prevent the giving of an Advisory Opinion which the United Nations considers to be desirable in order to obtain enlightenment as to the course of action it should take. The Court's Opinion is given not to the States, but to the organ which is entitled to request it; the reply of the Court, itself an 'organ of the United Nations', represents its participation in the activities of the Organization, and, in principle, should not be refused." (*Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase*, Advisory Opinion of 30 March 1950, I.C.J. Reports 1950, p. 71.)

11. Thus there is no need to pursue the "dispute" issue any further. The essential point is whether or not the question posed in the request for opinion is of a legal character. Whether or not there is a specific dispute involved in the request is irrelevant. The purpose of the advisory function is to give legal advice to the organs and institutions requesting it. And it is indeed advice of this nature which the General Assembly is seeking in its resolution of 8 December 2003. Establishing the state of international law, that is to say precisely identifying the rules in force at a given moment, how they interact and their relationship with general principles, and effectively applying them, is a necessary condition for the establishment of international public order, which is itself the foundation for peace. However, international public order has been seriously undermined by the situation which has developed in Palestine since 1947.

The General Assembly requires the services of the Court in order to define the legal position in relation to a specific situation. It will then be in a better position to consider how to seek to put an end to the serious disorder which is rendering the prospects for peace ever more remote.

12. We are confident that the Court will have full regard to the permissive terms of the instruments governing its jurisdiction in regard to advisory opinions, so as to consent to respond to the request addressed to it. This is a reflection of its position within the United Nations system,

where it is under a duty to contribute in this way to the smooth operation of the Organization as a whole. There would have to be decisive reasons to induce it to refuse. There are, on the contrary, a great many positive reasons why the Court should agree to enlighten the General Assembly, as well as all Member States and other intergovernmental organizations, in regard to the legal aspects of a situation which is giving particular cause for concern.

**Lack of legal basis for Israel's presence on the Palestinian Territory  
where the wall is being built**

13. It would not be appropriate to devote space here to the aberration whereby a people like the Jewish people, part of which today constitutes the Israeli population, having fallen victim over long and tragic periods of its history to the inhuman methods of segregation and enclosure practised by the States on whose territories its members had made their homes, having lived through the painful experience of ghettos, should today use against a neighbouring people procedures of which it was once itself the victim. While the matter remains inexplicable, it must be addressed in light of a central tenet of Zionist doctrine, one unacceptable in terms of international law, namely the denial of national rights to the Palestinian people.

14. The General Assembly asks the Court to rule on the wall by reference to the corpus of rules and principles of international law, whilst specifically mentioning certain elements of that law. It is therefore necessary to address the matter in two stages: first we have to consider the legality of the Israeli presence in Palestine in light of international law, and then the legality of the specific act of construction of a wall of the kind envisaged here. The first stage requires us to view the projected construction (a construction already partially completed by Israel) in the context of a long series of violations of the rules and principles governing relations between peoples and States. What we have seen in reality has been an accumulation of grave breaches of international law, whereby Israel has expressly or implicitly manifested its territorial ambitions over the entirety of mandated Palestinian territory, as well as its long-standing objective of denying Palestinian existence, that is to say, the right of the Palestinians to achieve their own national destiny. Those represent multiple violations of the two underlying central principles of international law, namely the prohibition on the acquisition of territory by force and the right of self-determination.

15. Since its creation, Israel has paid scant heed to the fundamental rule of non-acquisition of territory by force. Since the first Israeli-Arab war of 1948/1949 and the withdrawal of the Arab armies, Israel has considered the territories occupied beyond the agreed armistice line as conquered, defending them militarily, incorporating them into its territory and establishing its rule there, without giving the slightest indication that these were provisional measures. That attitude was so flagrantly in breach of the provisions of the United Nations Charter that Israel's first application for admission to the United Nations on 29 December 1948 was rejected by the Security Council, which doubted Israel's capacity to comply with its own undertakings. Israel was admitted only in May 1949, following a debate in the course of which it was requested to give assurances regarding its intention to respect the principles of the Charter, and in particular General Assembly resolutions 181 and 194.

16. Notwithstanding that solemn undertaking, Israel continued with its integration of the territories occupied in 1948, including the western part of Jerusalem, which in January 1950 was declared the capital of Israel. Then in 1967, during the Six-Day War, the Israeli army forcibly occupied the entire West Bank and the Gaza Strip (as well as Syria's Golan Heights and Egyptian Sinai). This occupation of the whole of Palestine, the annexation of East Jerusalem and the policy of all-out colonization ever since — substantially accelerated in recent years — confirm Israel's refusal to comply with the rules which govern the international community and can guarantee it

peace. These features are characteristic of a determined policy of expansionism. The opening of negotiations with the Palestine Authority in 1993 was not an indication of a true and sincere change of heart. The pursuit of colonization as a State policy, under strong military protection, is concrete evidence of a process of conquest prohibited by contemporary international law. The pretext of security which occasioned the wall project will result, as the United Nations Secretary-General noted in his Report, in a further illegal seizure of 975 sq. km, 16.6 per cent of the West Bank.

17. Israel's policy since its beginnings also violates the principle of self-determination, a principle forcefully recalled by the Court:

“In the Court's view, Portugal's assertion that the right of peoples to self-determination, as it evolved from the Charter and from United Nations practice, has an *erga omnes* character, is irreproachable . . . it is one of the essential principles of contemporary international law.” (*East Timor (Portugal v. Australia)*, Judgment, *I.C.J. Reports 1995*, p. 102, para. 29.)

18. That right was asserted in favour of the Palestinian people on their liberation from Ottoman domination, which was replaced by a British Mandate under the aegis of the League of Nations. Thus, the Covenant of the League of Nations and the system of Mandates embodied a first, as yet limited, draft of the right of peoples to self-determination. However, in the case of Palestine that remarkable advance in international law in consequence of the new international régime would not lead, as in the case of other peoples under the Mandates system, to full independence and respect for territorial integrity. It is true that the Mandate also embodied the Balfour Declaration, introducing a strong element of ambiguity into the situation.

19. Thus began the period through which we are still living today, involving the co-existence of two incompatible dreams corresponding to two irreconcilable promises: that of the Palestinians in search of their sovereignty on the basis of the affirmation of the right of peoples to self-determination, subsequently confirmed in theory by advances in international law, and that of the Zionist movement, promoting among its Jewish adherents worldwide the notion that their future lay in a land which could be theirs, between the Mediterranean and the Jordan. Nonetheless, during the period leading up to the Second World War, despite the difficulties created by the constant arrival of Jewish immigrants and the references in the Balfour Declaration to a Jewish National Homeland, despite the spasmodic eruptions of violence reflecting the rising incompatibility between the two dreams, the terms of international law remained clear. The Palestinian people living under Mandate was one of those communities whose “existence as independent nations [could] be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatory until such time as they [were] able to stand alone” (Article 22 of the Covenant of the League of Nations of 28 June 1919).

And the territorial framework for that existence as a nation was that of the Mandate.

20. It was one of history's blackest eras that accelerated the course of events: the heinous crime, the crime against humanity, of which the Jewish people were the victim. That monstrous project originated in Europe, the product of régimes which had initially presented a popular, respectable face to the world. Those Arab States then already enjoying sovereignty and the Arab peoples, whatever their form of government, took no part in this tragic page of history. They manifested no hostility towards their Jewish populations, many of which were of substantial size and well established, as in the Maghreb. When the tide of horror receded after the war, a shocked Europe accepted the Zionist project, without securing the consent of the Arab States, and above all that of the people concerned, the Palestinian people.

21. However, on 26 June 1945 the United Nations Charter inaugurated a new chapter in the emancipation of mankind by including in Article 1, among its Purposes: “respect for the principle of equal rights and self-determination of peoples”. The right of the Palestinian people, protected during the preceding period by the terms of the Mandate, increased in importance from 1945, being further safeguarded by the terms of Article 2, paragraph 4, of the Charter, which prohibits the use of force, notably against territorial integrity. But here those safeguards would be to no effect, for the State of Israel was in process of creation. This was the result of a political will, on which there can be no question here of passing judgment, although it was difficult to find an adequate legal basis for it, clashing as it did with the then emerging sovereignty of the Palestinian people. It was United Nations General Assembly resolution 181, the “Partition Resolution”, that would serve as the framework. This was an attempt to impose on the Palestinians a *fait accompli*, in the form of the sacrifice of half of the territorial base for the exercise of their right of self-determination. It was a simple recommendation, carrying the legal force normally accorded to General Assembly recommendations.

22. These historical events inaugurated an era which is still with us today, characterized by the use of force unrestrained or controlled by law. Israel took advantage of the events of 1948/1949 to enlarge the territory allocated to it by resolution 181. Then the 1967 War led to the Israeli occupation of the West Bank and Gaza. Notwithstanding the recognition accorded to the State of Israel and its *de facto* existence, which the Organisation of the Islamic Conference does not call into question here, Israel’s territory remains undefined. There is only one way to make good this shaky foundation: to make peace with Palestine. In 1947 there was a lack of will on the part of the international community as a whole, but above all on the part of a State of Israel that was in process of implanting itself in the region — of any will to negotiate with a people of whom a substantial sacrifice was being demanded. Out of respect for that people, those concerned should have had the patience to wait until it was resigned to making the exceptional effort demanded of it, assisting it with offers of co-operation and development. But nothing was done.

23. In their haste to build an unreservedly Israeli society, the country’s rulers fostered in their people and in all potential immigrants to the Jewish State the notion that Palestine was “a land without people for a people without land”. The very hard line then taken by Israeli policy towards the Arabs has subsequently never really been modified (which could only happen as a consequence of peace). It has taken differing forms and varied in intensity according to the period concerned. But its constant feature has been to ignore its opponents’ existence, eliminating them if necessary. The massacres of the years 1948/1949 are now public knowledge<sup>3</sup>. Those taking place today are different in character, but retain the same objective. The desire to expel the Palestinians and systematically to reduce the territory habitable by them has been continuously expressed for more than 50 years, through the expropriation of land, confiscation of property and the long-standing policy of major colonization.

24. Whatever political parties have been in power in Israel, the State has relentlessly supported actions aimed at rendering irreversible the occupation of that part of the Palestinians’ territory reserved to them by resolution 181. The treatment of the Palestinian Authority and its Head during the siege of Mukata in 2002-2003, the targeted assassinations of leading Palestinian political figures forming the backbone of Palestine’s political elite, the acceptance of responsibility for those crimes by Israeli governments, the open discussions among Israeli politicians on the possible expulsion or disappearance of the Palestinian leader, confirm Israel’s fundamental opposition to the development of a free and sovereign Palestine society.

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<sup>3</sup>For an overall account, see: Dominique Vidal with Joseph Algazy, “Le péché originel d’Israël. L’expulsion des Palestiniens revisitée par les ‘nouveaux historiens’ israéliens”, *Les Editions de l’Atelier*, Paris, 2002.

25. Palestine ultimately resigned itself to accepting the cohabitation imposed upon it on its own land. Various official statements and speeches confirm this<sup>4</sup>. Despite its military occupation and the clear imbalance of forces, Palestine entered into the Oslo negotiations and strove to prolong that dialogue. The negotiating stages were not respected by its opponent and the day-to-day rights of the Palestinians have been gravely affected by measures taken on the pretext of steps towards peace.

26. Reduced by their sufferings to a state of despair, the Palestinian people have twice risen up against the occupier in a struggle known as the Intifada. That action simply represented enforcement of a right recognized by contemporary international law. Thus General Assembly resolution 2625 of 24 October 1970 recommends that States should:

“[B]ring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned; and bearing in mind that subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle, as well as a denial of fundamental human rights, and is contrary to the Charter . . .

In their actions against, and resistance to, such forcible actions in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and to receive support in accordance with the purposes and principles of the Charter.”

27. However, that gravely unequal struggle has led to increased repression by Israel, a heavily militarized State in receipt of powerful support from its allies. As their plight continued inexorably to worsen, extremist movements emerged among the Palestinians, resulting in the worst form of violence — violence committed by human beings who have lost all notions of humanity: terrorist attacks. Palestine’s political leaders have unhesitatingly condemned such violence, but so far have not had the means to eliminate it. Other States, too, have had to cope with this plague of our times without being truly able to contain it. It is also true that the Palestinian Authority has both been called upon by Israel to bring the attacks to an end while at the same time being placed in a situation where it is unable to exercise any control over events as a result of Israel’s attacks on its police, its buildings, and its leaders, the premises of the Palestinian Authority having been bombed on a number of occasions. Thus Israel’s argument of defence against terrorist attacks is unsustainable. Those attacks are the dramatic result of the injustice done to Palestine. They cannot justify further illegal actions.

28. However, in a situation where the way forward would be an active initiative for peace, Israel, ignoring international law, has maintained its unlawful and unjustified military presence on the territory of a deeply wronged people and continued to proliferate its manifestations of aggression. Thus every action taken by Israel in Palestine has been characterized by illegality, the inherent illegality of the Israeli presence. The specific, spectacular act of construction of this separation wall whose legal consequences the Court has been called upon to assess, is imbued with that inherent illegality. It falls within the logical scheme which has to date governed Israel’s policy, namely the consistent aim of territorial annexation, initially carried out *de facto* and then ratified *de jure* as soon as possible thereafter. The wall is one manifestation among others — albeit

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<sup>4</sup>Statement of Yasser Arafat to the European Parliament at Strasbourg on 13 September 1988 and paragraph 7 of the Declaration of Independence of the State of Palestine:

“Despite the historical injustice inflicted on the Palestinian Arab people resulting in their dispersion and depriving them of their right to self-determination, following upon United Nations General Assembly resolution 181 (1947), which partitioned Palestine into two states, one Arab, one Jewish, yet it is this resolution that still provides those conditions of international legitimacy that ensure the right of the Palestine Arab people to sovereignty and independence.”

more substantial and significant — of that objective. This was emphasized by the United Nations General Assembly in resolution ES-10/13, in which it condemns this initiative and demands that Israel abandon the project:

*“Particularly concerned* that the route marked out for the wall under construction by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, could prejudge future negotiations and make the two-State solution physically impossible to implement and would cause further humanitarian hardship to the Palestinians.”

Independently of this first point, Israel’s action must also unhesitatingly be declared illegal for two further series of reasons.

### **Violations of the Fourth Geneva Convention and of other provisions of the law of war**

29. It is thus clear that the wall planned and already partially completed by Israel is located on territory militarily occupied by force. The Court is bound to note that fact and to draw the appropriate legal consequences therefrom. We must now begin a further stage in our examination of the legal consequences of the construction of the wall, namely that concerning the consequences of the provisions of the law of war. During the era when warfare was part of States’ sovereign rights, a body of rules known as the laws of war was formulated. The United Nations Charter introduced a prohibition on the use of force. The law of war has nonetheless retained its relevance, for combat situations may arise in the course of collective security operations or in situations of self-defence pending consideration of the matter by the Security Council (Article 51 of the Charter). Such situations of authorized military confrontation require a legal framework to govern the conduct of the belligerents. But it may also happen that States ignore the prohibition on the use of force and engage in warfare contrary to international law. The law will then come back into its own as a form of subsidiary instrument serving to reintroduce legality into a situation where there has been a breach of the law. Such is the situation in Palestine. And while the Israeli military presence is in itself contrary to law, it is however necessary to consider whether, in the course of its presence, the occupying army is respecting the laws of war.

30. Ever since the beginnings of the conflict, Israel has denied that the situation in Palestine can be subject to the provisions of the Geneva Conventions of 12 August 1949. Israel’s argument, which is incorrect, is restated in the Annex to the Secretary-General’s report<sup>5</sup>. Ignoring the history of the end of the Mandate, the right of the Palestinian people to accede to full sovereignty, the fact that a large number of other States have already recognized the statehood of the PLO and the commitment entered into by the Palestine Liberation Organization, which applied on 21 June 1989 to accede to those Conventions, the Jewish State relies on legal technicalities, based on the fact that Palestine is not formally party to the Convention. In so doing it ignores the fact that that instrument has acquired customary force, a point on which it is unnecessary to dwell, since the General Assembly has ruled thereon a number of times. It suffices to recall here that the Assembly again does so in its recitals to the resolution of 8 December 2003 whereby it seised the Court of the request underlying the present proceedings: *“Reaffirming* the applicability of the Fourth Geneva Convention as well as Protocol I Additional to the Geneva Conventions to the occupied Palestinian territory, including East Jerusalem”.

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<sup>5</sup>Annex I to the Report of the Secretary-General prepared pursuant to General Assembly resolution ES-10/13 (Doc. A/ES-10/248).

The nature of the militarily occupied territory was moreover recognized in the Washington Interim Agreement of 28 September 1995 (Article XVII).

31. Israel, after having long sought to evade any legal characterization of its presence in Palestine, today does not deny that this is a military occupation. Annex I to the Secretary-General's report demonstrates this. However, Israel attempts to impose its own choice of instruments applicable. It concedes that the Hague Regulations apply, but denies that the Geneva Conventions do so. The Court cannot accept such a subjective position. If we consider the legal *corpus* governing the laws of war, then it is clear that all of those rules having acquired customary force are of universal application, whilst the purely conventional rules apply to all States having acceded to the relevant instruments. On one or other basis, the following apply to the situation created by Israel in the Occupied Palestinian Territory: the Hague Conventions and Regulations, the 1949 Geneva Conventions (to which Israel has acceded), as well as the Additional Protocols of 1977 in respect of their provisions having customary force. It is in light of this body of law that the decision to build the wall and begin its construction must be examined. It can then be seen that the construction represents a serious violation of the provisions concerning the prohibition on movement or transfers of population and the availability of food supplies, as well as of those aimed at protecting property against action by the occupying Power.

32. The projected wall involves forced transfers, direct or indirect, of the Palestinian population, which finds itself isolated or obliged to live under impossible conditions in enclaved villages. It also serves as an opportunity for the absorption into territory under Israeli protection of some 343,000 settlers. However, current rules of law do not permit an occupying power to carry out transfers of the occupied population or to transfer to occupied territory population from its own territory (Fourth Geneva Convention, Article 49, paras. 1 and 6). Article 147 defines these as grave breaches, that is to say war crimes. On these various points, the inhabitants of Palestine are refused the protection which should be accorded to them. They are forced to leave their homes, since their land, their fields and their businesses are disappearing, swallowed up by the vast areas necessary for construction work on this gigantic project, and above all — as can be seen in those areas where construction is already complete — because of the way it operates as a separation fence dividing up Palestinian territory. The Security Council has already condemned Israel on a number of occasions for its previous population transfers<sup>6</sup>. The Israeli Government and its courts, before which the issue has repeatedly been brought, have refused to apply Article 49 on the basis of arguments to which it is impossible to subscribe. They invoke the general arguments mentioned above, as well as the fact that the Geneva Conventions have never been incorporated into Israeli domestic law, but above all they contend that the deportations and population transfers referred to in those Conventions mean those carried out by the Nazis during the Second World War and that the population movements provoked in Palestine are of a different nature and justified by security requirements. It is unnecessary to conduct a detailed refutation of this position, given that resolutions of the Security Council, which are binding on all States under Article 25 of the Charter, have confirmed that Article 49 applies to the situation in Palestine. The majority view in doctrine confirms that Israel's argument is wrong on this point<sup>7</sup>.

33. This project involves, and will further involve if it is to be completed, massive violations of Palestinian property rights. Ten per cent of the area of the West Bank is envisaged. Two

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<sup>6</sup>For the list of such resolutions, see Éric David, "Principes de droit conflits armés". Brussels, Bruylant, 1994, p. 438, footnote 6.

<sup>7</sup>See Stephen Bowen, "Human Rights, Self-determination and Political Change in the Occupied Palestinian Territories". Nijhoff, The Hague, Boston, London, 1997, pp. 29 *et seq.* See also Adam Roberts, "Prolonged Military Occupation: The Israeli-Occupied Territories 1967-1988"; in *International Law and the Administration of Occupied Territories*. Emma Playfair, Clarendon Press, Oxford 1992, pp. 44 *et seq.*

per cent has already been confiscated following summary procedures communicated to the inhabitants in Hebrew. Tens of thousands of olive trees have been uprooted. The confiscated areas include 31 wells, representing millions of cubic metres of water of which the Palestinians are being deprived. Israeli bulldozers have destroyed some 35,000 m of water pipes (both for drinking and for agriculture). Some 10,000 animals no longer have access to grazing. Several hundred houses or buildings have been destroyed, mainly shops, which are sources of revenue<sup>8</sup>.

34. This series of measures, co-ordinated by the Israeli Ministry of Defence, is in clear violation of various provisions of international law and engages Israel's international responsibility. Thus it is in breach of Article 46 of the Hague Conventions of 29 July 1899 and 18 October 1907 Regarding the Laws and Customs of [Land] Warfare, which requires that the private property of individuals be respected, and of Article 53, which limits the extent to which the occupying Power may requisition moveable property belonging to the State and thus excludes all private property. Under the terms of the Fourth Geneva Convention, which are more precise than those of the Hague Conventions, the occupying Power is prohibited from seizing or destroying real or personal property belonging to the inhabitants of the occupied territory (Article 53). It has a duty to ensure the food supply of the population (Article 55). All of these acts, like those concerning transfers of populations, fall within the terms of Article 147, which lists the grave breaches constituting war crimes, including therein: "destruction and appropriation of property, not justified by military necessity and carried out unlawful and wantonly".

35. The position of the Israeli Government on this issue is to deny the applicability of the relevant articles of the Geneva Convention, just as it does for that instrument in general. It accepts that the Hague Regulations do apply, but, by a distorted interpretation of the exception for necessities of war (Article 23 (g)), seeks to justify the massive property seizures in which it is engaged. That argument will be unacceptable to the Court. There is overwhelming evidence confirming Israel's covert agenda and demonstrating that security is used as a pretext to further territorial ambitions which it seeks to render irreversible, as is confirmed by the disproportion between the size of the areas confiscated and military necessities.

36. Thus the construction of a separation wall traversing the Palestinian Occupied Territory is not only an element of an inherently illegal situation but also constitutes grave breaches of the law of armed conflicts, in other words, major war crimes.

#### **Aggravated violations of the Palestinians' fundamental rights as a result of the construction of the wall**

37. In a chronic situation of continuous, very serious violations of human rights throughout the Palestinian territories, Israel, by building this wall, is massively aggravating its deprivation of the Palestinians' most basic human rights. There is little point in describing that aggravation here in detail. The Court is aware of it through the Secretary-General's Report and the dossier annexed thereto. Public opinion has been made aware by the network of Human-Rights Watch Associations: Palestinian, Israeli and international. The reports of Amnesty International are entirely credible sources of information<sup>9</sup>.

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<sup>8</sup>This information is regularly updated by the Palestinian Environmental NGOs Network: [www.pengon.org](http://www.pengon.org)

<sup>9</sup>See Amnesty International "Israel and the Occupied Territories, Surviving under Siege: the Impact of Movement Restrictions on the Right to Work". AI: MDE 15/001/2003 EFAI.

38. We need only recall here the list of rights with whose exercise the wall particularly interferes: the right to life (in particular by making it impossible to reach hospitals within a reasonable time), the right to freedom of movement on one's own territory (which will be restricted to the specific gates in the wall and regulated by the Israeli army), the right to protection against arbitrary or illegal intrusions into private and family life, and the protection of the home (tens of thousands of Palestinians have had their homes destroyed), the fundamental rights of children, the right to health, the right to education, the right to work (these three categories of right are sometimes hindered to the point of disappearance as a result of the restrictions on movement), the right to respect for private property (which has ceased to exist as a result of arbitrary expropriations), the right to an adequate standard of living (as a result of the dramatic increase in poverty among the affected parts of the population), the right to culture.

39. When taken to task on these issues, the Israeli Government relies on an argument which the Court will surely find surprising. That argument is included in the summary of the Israeli Government's legal position:

“4. Israel denies that the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both of which it has signed, are applicable to the occupied Palestinian territory. 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 of citizens from their own government in times of peace.”

40. This is an argument which denies in a single paragraph a half-century of painfully acquired progress in the field of human rights. It is true that in the situations so tragically described by the Jewish philosopher, Hannah Arendt, namely that between the two World Wars or during the years of the Second World War, when hordes of stateless refugees, migrants tossed on the cruel tide of history, were deprived of rights because they were deprived of a State, persecuted by their own State and unwelcome elsewhere. She deplored the fact that rights were accorded to human beings only through the medium of their State and depended on the goodwill of States<sup>10</sup>. It is precisely this lacuna that the series of instruments known as the International Bill of Human Rights seeks gradually to make good. It is for that reason that the 1948 Declaration was stated to be Universal, so that no human being should be excluded, for whatever reason, from the path to human dignity and equality. And that was why, following the Declaration, Covenants of a binding nature were drawn up and adopted. Those States which have acceded to them urge the other States to do so, in order that within the human community every individual should ultimately enjoy the same rights. And even though not all States have formally acceded, acquiescence in principle to those rights enables them to be regarded as having the force of general custom. Can we then accept that a population rendered particularly vulnerable by the war situation inflicted upon it has no entitlement to that heritage?

41. The Israeli position represents a major and dangerous regression. International law was originally conceived as a complex law. It provided a framework for relations between States, the political actors in the societies emerging in the European Renaissance in the fifteenth century. But legal theory did not exclude the notion of norms valid “between peoples”, meaning that the world community, as a community of human beings, was perceived as a reality. The following centuries consolidated the power of the State and decolonization on every continent rendered this form of political power a worldwide phenomenon, emphasizing the inter-State nature of international law.

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<sup>10</sup>Hannah Arendt, *The Origins of Totalitarianism. Imperialism*. New York: Harcourt, Brace Jonanovich, 1968 [1951]. P. 178: “the right to have rights or the right of every individual to belong to humanity, should be guaranteed by humanity itself”.

However, the great tragedies of the twentieth century, the fact that States could become the abode of monsters, compelled a return to a more complex system, in which individuals derived their rights from the obligations entered into by their States, but might enjoy those rights independently of such obligations. And the notion of the human community, overlapping with and supplementing the community of States, is today becoming a reality.

42. To reduce the rights of the Palestinians, as the Israeli Government proposes, to issues of humanitarian law, is to accept a category of sub-humans, excluded from the rest of mankind. Moreover, in noting that Israel restricts the humanitarian law applicable to the Palestinians to the Hague Regulations of 1907, and immediately renders that law nugatory by arguing that the limited protection accorded by it has to give way to the necessities of war, the Court will have understood that Israel is thereby manifesting its intention to deny the existence of the Palestinian people, condemning them to remain without any prospect of justice or freedom. The opinion requested of this Court will enable it to provide salutary clarification by strongly reaffirming the inalienable and universal nature of human rights regardless of the circumstances in which a particular group finds itself. It will result in condemnation of the plan to construct a wall, on grounds of the massive violations that this will cause to the fundamental rights of the Palestinian people.

### **Submissions**

43. For the reasons set out above in the various sections of this Statement, which the Organisation of the Islamic Conference reserves the right to develop and supplement in its oral argument before the Court, it is apparent that the rules and principles of international law, and in particular the Fourth Geneva Convention of 1949 and the relevant resolutions of the United Nations Security Council and General Assembly, must lead the Court to find that construction of the wall which Israel, the occupying Power, is in process of building in occupied Palestinian territory is illegal. That construction is an act of force carried out in breach of the Geneva Conventions. Moreover, it involves flagrant violations of the fundamental human rights of the Palestinian people. The legal consequences must necessarily be to condemn the State responsible for this action and to recall to it its obligation to destroy what has been built and to make reparation for all of the violations committed by it.

30 January 2004

On behalf of the Organization of the Islamic Conference  
Abdelouahed BELKEZIZ.  
Secretary-General  
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