

Written Statement of the Kingdom of Belgium

[Translation]

Question concerning the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*

I. Introduction

1. On 8 December 2003, the United Nations General Assembly adopted resolution A/RES/ES-10/14, whereby, pursuant to Article 65 of the Statute of the Court, it requested the International Court of Justice to urgently render an advisory 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?”

Resolution A/RES/ES-10/14 was adopted by a vote of 90 in favour and 8 against, with 74 abstentions. Belgium, in line with the other Member States of the European Union, abstained.

Resolution A/RES/ES-10/14 refers to the United Nations Secretary-General’s report of 24 November 2003, prepared in accordance with General Assembly resolution A/RES/ES-10/13 (A/ES-10/248).

In that report, which contains summaries of the legal positions of the Government of Israel and of the Palestine Liberation Organization, the Secretary-General arrives at the conclusion that Israel has not complied with the General Assembly’s demand that it “stop and reverse the construction of the wall in the Occupied Palestinian Territory”.

2. Further to the Order of 19 December 2003, whereby the Court fixed 30 January as the time-limit for the submission of written statements on the question by Member States of the United Nations, Belgium has the honour to submit its observations to the Court.

3. Belgium considers that it is not opportune to respond to the question submitted by the General Assembly for the following reasons:

- this opinion may have a negative impact on the implementation of the “road map”;
- this opinion will not be capable of giving guidance to the General Assembly, as it has already ruled on the matter.

4. Belgium wishes to point out that there is no dispute as to Israel’s right to provide for the security of its citizens and to protect itself against terrorist attacks.

However, the continuing construction of the “barrier” along its current route, together with the continuing acts of violence and terrorism in the region, constitute a major impediment to the achievement of a comprehensive peace settlement in the Middle East. The “road map” presented by the Quartet to the parties on 30 April 2003, endorsed by United Nations Security Council resolution 1515 of 19 November 2003, constitutes the framework for progress on the road to peace and lasting security in the Middle East.

II. Appropriateness of an opinion by the Court

A. Article 65 (1) of the Statute of the Court

5. Article 65 (1) of the Court’s Statute provides that “[t]he Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request”.

The Court thus has discretion to decide whether or not it is appropriate to respond to a request for an opinion.

The Court has stated that “only compelling reasons should lead it to refuse to give a requested advisory opinion” (*Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter)*, *Advisory Opinion*, *I.C.J. Reports 1962*, p. 165).

Belgium is of the opinion that in the present case, there are sufficiently compelling reasons for the Court to decline to give an advisory opinion.

B. This opinion may have a negative impact on the implementation of the “road map”

6. The question submitted by the General Assembly is predominantly political in nature.

The rendering of an advisory opinion could undermine the complex diplomatic negotiations underway, as well as the political efforts deployed for the settlement of the conflict in the Middle East.

In line with the position of the European Union, as expressed by the Italian representative (General Assembly Press Release of 8 December 2003, GA/10216), Belgium considered that the proposed request for an advisory opinion from the Court would not help the efforts of the two parties (Israel and the Palestinians) to relaunch a political dialogue and that such a request was therefore not appropriate.

C. This opinion will not be capable of giving guidance to the General Assembly, as it has already ruled on the matter

7. The Court describes the *raison d’être* of an advisory opinion as follows:

“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 the law.” (*Advisory Opinion on the Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations*, *I.C.J. Reports 1989*, p. 188.)

8. The United Nations General Assembly, in its resolution ES-10/13 of 21 October 2003, presented by Italy on behalf of the European Union, “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”.

In his report prepared in accordance with General Assembly resolution ES-10/13, the Secretary-General observed as follows:

“I acknowledge and recognize Israel’s right and duty to protect its people against terrorist attacks. However, that duty should not be carried out in a way that is in contradiction to international law, that could damage the longer term prospects for peace by making the creation of an independent, viable and contiguous Palestinian State more difficult, or that increases suffering among the Palestinian people.” (A/ES-10/2488, para. 30.)

In that resolution ES-10/13, the General Assembly not only identified the applicable law but also expressly declared the wall to be in contradiction to international law. Accordingly, the General Assembly does not require any guidance from the Court concerning the lawfulness of the Security Fence.

III. Conclusions

9. On the basis of the foregoing, Belgium contends that it is not appropriate for the Court to render an opinion on the question of the legal consequences of the construction of a wall in the Occupied Palestinian Territory.
