

MWP 2004/32bis*
30 January 2004

Written Statement of Lebanon

[Translation]

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

**Request for an advisory opinion submitted by the United Nations General Assembly
to the International Court of Justice**

**Statement of Lebanon pursuant to Article 66, paragraph 2, of the Statute of the Court
and to the Order of the Court dated 19 December 2003**

1. The Government of Lebanon,

Having regard to the Order given by the International Court of Justice on 19 December 2003 concerning the request for an advisory opinion, submitted to it by the United Nations General Assembly in its resolution A/RES/ES-10/14 of 8 December 2003, concerning the legal consequences of the construction of a wall in the Occupied Palestinian Territory,

Having regard to the letter of 19 December 2003 from the Registrar of the Court to the Minister for Foreign Affairs and Lebanese Expatriates, enclosing a copy of the said Order and indicating that the Court had thereby decided that the Member States of the United Nations were likely to be able to furnish information on all aspects raised by the question,

Has the honour to transmit herewith to the International Court of Justice the following statement.

2. By its resolution A/RES/ES-10/14 of 8 December 2003, entitled “Illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory”, the United Nations General Assembly decided

*Reissued for technical reasons.

“in accordance with Article 96 of the Charter of the United Nations, to request the International Court of Justice, pursuant to Article 65 of the Statute of the Court, 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 [submitted pursuant to resolution ES-10/13 of 21 October 2003], considering the rules and principles of international law, including the Fourth Geneva Convention of 1949, and relevant Security Council and General Assembly resolutions?”

3. This statement will first address the preliminary matters of the jurisdiction of the International Court of Justice to give such an opinion, and the propriety of its intervention, before going on to examine the substance of the question put to the Court.

I. The jurisdiction of the Court and the propriety of its intervention

4. Article 96 of the United Nations Charter provides, in paragraph 1: “1. The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.”

Article 65 of the Statute of the International Court of Justice states:

“1. The 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.

2. Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request containing an exact statement of the question upon which an opinion is required, and accompanied by all documents likely to throw light upon the question.”

5. It can be seen that the only prerequisites laid down by those articles for the admissibility of such a request by a duly authorized body are that the request for an opinion should concern a question of a legal nature and that the question should be laid before the Court by means of a written request containing an exact statement of the question upon which the opinion is required. Those conditions are thus met in the present case.

There is no rule whereby any particular question should be submitted by the Security Council rather than by the General Assembly. Similarly, there is no rule precluding the seisin of the Court for an advisory opinion on a question relating to a specific situation or of which the response may have specific political, social, economic or humanitarian implications, provided the question is itself of a legal nature, that is to say where the response would consist of the indication of a legal rule.

6. It is true that Article 12 of the Charter stipulates in its first paragraph that “While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests.” However, a request for an advisory opinion is in no event covered by that clause. On the contrary, a request submitted by the General Assembly falls within the normal exercise of its ordinary powers pursuant to Articles 10, 11 and 13 of the Charter.

Article 10 thus provides that “The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter . . .”

The question submitted to the Court is, moreover, closely related in a number of aspects to the activities and concerns of the General Assembly, in particular the progressive development of international law (Art. 13, para. 1 (a)) and the realization “for all without distinction as to race, sex, language, or religion” of “human rights and fundamental freedoms” (Art. 13, para. 1 (b)).

7. It is appropriate to refer at this point to the Court’s Advisory Opinion of 8 July 1996 concerning the *Legality of the Threat or Use of Nuclear Weapons*, in which (para. 13) the Court, for its part, refers to its Advisory Opinion of 1975 on *Western Sahara* (*Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 18, para. 15), where the Court stated that questions “framed in terms of law and rais[ing] problems of international law . . . are by their very nature susceptible of a reply based on law . . . [and] appear . . . to be questions of a legal character”.

In the present case, the Court is invited to identify the “legal consequences” of the construction of the wall, “considering the rules and principles of international law”, which thus constitutes a legal question.

8. In its above-mentioned Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons*, the Court stated (para. 13):

“The fact that this question also has political aspects, as, in the nature of things, is the case with so many questions which arise in international life, does not suffice to deprive it of its character as a ‘legal question’ and to ‘deprive the Court of a competence expressly conferred on it by its Statute’ (*Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1973*, p. 172, para. 14).”

The Court then added:

“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 . . . Furthermore, as the Court said in the opinion it gave in 1980 concerning the interpretation of the agreement of 25 March 1951 between the WHO and Egypt:

‘Indeed, in situations in which political considerations are prominent it may be particularly necessary for an international organization to obtain an advisory opinion from the Court as to the legal principles applicable with respect to the matter under debate . . .’ (*I.C.J. Reports 1980*, p. 87, para. 33.)

The Court moreover considers that the political nature of the motives which may be said to have inspired the request and the political implications that the opinion given might have are of no relevance in the establishment of its jurisdiction to give such an opinion.”

9. We conclude from the foregoing that there are no legal grounds to preclude the Court, in the present case, from exercising its powers under Article 96 of the Charter and Article 65 of its Statute.

10. With regard to the discretionary nature of the Court's decision whether or not to give an advisory opinion, it is appropriate to refer to subsequent passages from the Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons* (paragraphs 14-19), where the Court states:

“Article 65, paragraph 1, of the Statute provides: ‘The Court *may* give an advisory opinion . . .’ (Emphasis added.) This is more than an enabling provision. As the Court has repeatedly emphasized, the Statute leaves a discretion as to whether or not it will give an advisory opinion that has been requested of it, once it has established its competence to do so. In this context, the Court has previously noted as follows:

‘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.’”

11. In the present case, should the Court abstain, on grounds of impropriety, from rendering an advisory opinion, in spite of the jurisdiction it derives from Article 65, paragraph 1, of the Charter?

During the debate which preceded the adoption by the General Assembly of resolution A/RES/ES-10/14, certain representatives, whilst condemning the construction of the wall by Israel, considered that the seisin of the Court would not help the efforts of the two parties to relaunch a political dialogue or that an advisory opinion from the International Court of Justice would not be welcome in the political context underlying the territorial dispute between Israel and Palestine. On this subject, the Lebanese Government feels that it is paradoxical to consider that the clarification of a point of law would be capable of precluding the peaceful settlement of a conflict or that the Court should not give an opinion in a conflictual context. Quite the contrary; a significant precedent in this respect is the ICJ's Advisory Opinion of 21 June 1971 on the *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*. It will be recalled that, in that case, it was contended that even if the Court had competence to give the opinion, it should nevertheless, as a matter of judicial propriety, refuse to exercise its competence, in view of the Court's alleged disability to give the opinion “because of political pressure to which the Court . . . has been or might be subjected”. However, the Court considered that it was not proper to entertain those observations, because it “acts only on the basis of the law, independently of all outside influence or interventions whatsoever”.

12. The principle whereby the International Court of Justice is entitled to rule even where the parties concerned by the solution are currently negotiating, or where it is to be hoped that they will resume suspended negotiations, is upheld by the Court even in the context of a contentious case brought to it by one of the parties. By way of example, in its Judgment of 26 November 1984 (jurisdiction and admissibility) in the case concerning *Military and Paramilitary Activities in and against Nicaragua (I.C.J. Reports 1984, p. 440, para. 106)*, citing its Judgment in the case concerning the *Aegean Sea Continental Shelf (I.C.J. Reports 1978, p. 12, para. 29)* the Court confirmed that: “even the existence of active negotiations in which both parties might be involved should not prevent both the Security Council and the Court from exercising their separate functions under the Charter and the Statute of the Court”.

13. Need it be pointed out that, in the present case, it is precisely the construction of the wall — the subject-matter of the opinion requested — that is capable of impeding the resumption of negotiations between Israel and the Palestinians, and not the Court's opinion? On this subject,

the observations of the United Nations Secretary-General, in the conclusion to his report A/ES-10/248 are quite clear. That report rightly states (in para. 29) that the placing of most of the wall on occupied Palestinian land could impair future negotiations.

II. The merits

A. The facts

14. It will be recalled that in its resolution ES-10/13, adopted on 21 October 2003, the United Nations General Assembly demanded 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. The resolution further requested the United Nations Secretary-General to report periodically on Israel's compliance with that resolution.

15. On 24 November 2003 the United Nations Secretary-General presented a report (A/ES-10/248) concluding that Israel had not complied with General Assembly resolution ES-10/13.

16. In that report, the United Nations Secretary-General indicated that the Barrier, once completed, would stretch 720 km along the West Bank (para. 6). The part already completed, excluding East Jerusalem, mostly runs within Palestinian territory and in certain places deviates 7.5 km from the Green Line to incorporate Israeli settlements, while encircling Palestinian population areas. The planned route of the Barrier, once completed, will deviate up to 22 km in places from the Green Line.

17. Moreover, and according to the same report (para. 8), the route of the Barrier, as shown on the official map published by the Israeli Ministry of Defence, deviates from the 1949 Armistice Line (Green Line) such that some 975 sq. km or 16 per cent of the entire West Bank will lie between the wall and that line, separating an area inhabited by 237,000 Palestinians (17,000 in the West Bank and 220,000 in East Jerusalem). In addition, if the planned route of the Barrier is fully completed, another 160,000 Palestinians will live in enclaves — areas where the Barrier almost completely encircles communities and tracts of land. Moreover, the planned route incorporates 320,000 settlers, including approximately 178,000 in East Jerusalem. The Barrier reaches an average width of 50-70 m, increasing to as much as 100 m in some places. It is supplemented by secondary barriers forming loops which encroach even deeper into Palestinian territory. Land is regularly requisitioned. Requisition orders become effective on the date they are signed, even if they have not been served on the owners (para. 17).

18. The report further states (paras. 19-22) that the orders given by the Israeli army prohibit anyone from entering the zone in the north-west part of the West Bank that lies between the Barrier and the Green Line ("Closed Area"), or from remaining there, unless otherwise authorized by virtue of a document issued by the Israeli army. That measure affects 73 sq. km, inhabited by 5,300 Palestinians in 15 communities. It does not apply, however, to Israeli citizens, Israeli permanent residents and those eligible to emigrate to Israel in accordance with the Law of Return; they can move into, out of and within the Closed Area without a permit. Moreover, even for authorized persons, access and regress are regulated by the schedule of operation of the access gates. They are only open for 15 minutes, three times a day. Since the inhabitants are denied regular access to their farmlands, jobs and public services, it is to be feared that Palestinians may be obliged to leave the region, especially as in the past, Israel has already expropriated land for not

being adequately cultivated, pursuant to military orders or through enforcement of legislation specific to the West Bank inherited from the Ottoman and Jordanian régimes.

19. The construction of the Barrier has had implications for the humanitarian, social and economic situation of the Palestinian population.

20. The Barrier is capable of deepening the fragmentation of the West Bank. The resulting closure system consists of a series of checkpoints and roadblocks that severely restrict the movement of Palestinian people and goods, causing serious socio-economic harm. Recent reports by the World Bank and the United Nations show that the construction of the wall has dramatically increased such damage in communities along its route, through the loss of, or severely limited access to, land, jobs and markets. According to the Palestinian Central Bureau of Statistics, the wall has separated 30 localities from health services, 22 from schools, eight from primary water sources and three from electricity networks (Secretary-General's report, para. 23).

21. Palestinians living in enclaves between the wall and the Green Line are facing some of the harshest consequences of the construction of the wall. For example, it surrounds the town of Qalqiliya, with the only exit being controlled by a military checkpoint. This has isolated the town from almost all its agricultural land, while surrounding villages are separated from its markets and services. A United Nations hospital inside the town has experienced a 40 per cent decrease in caseloads. Further north, the Barrier has created an enclave around the town of Nazlat Issa, whose commercial areas have been destroyed to make way for the construction of the Barrier (*ibid.*, para. 24).

22. The Barrier's route through the city of Jerusalem is restricting the movements of tens of thousands of urban Palestinians, as well as their possibility of entering the city in order to find work there or to benefit from essential social services, notably schools and hospitals. This situation is raising concerns about the Palestinians' right to work, health, education and an adequate standard of living (*ibid.*, para. 26).

23. The Secretary-General's report also describes the implications that the construction of the wall has had on agriculture and on food resources: according to the FAO, an additional 25,000 people are now registered as recipients of food assistance (*ibid.*, para. 25).

24. This situation will result in inadmissible harm to the living conditions of hundreds of thousands of Palestinians, as well as in new movements of refugees and displaced persons.

25. It is of interest to note that Israel's Defence Minister stated on 3 March 2003 to the British daily *The Guardian* that the Israeli Government was envisaging a Palestinian State divided into seven cantons centred on the main Palestinian cities, each sealed off by the Israeli army and separated from other West Bank areas, which would become part of Israel. The construction of the wall, as explained by the United Nations Secretary-General in his report, is capable of deepening that fragmentation of Palestinian territory by the creation of enclaves separated from each other, together with the annexation by Israel of broad tracts of Palestinian land. The construction of the wall would thus be a means of unilaterally defining the borders of the future Palestinian State and would represent yet another of the many examples of encroachment by Israel into the West Bank, thus jeopardizing the viability of the future State.

B. Norms of public international law which have been breached by the construction of the wall

26. The entire series of actions committed by Israel, as described above, together with their consequences and the harm they have caused — and are still causing — run counter to the Fourth Geneva Convention of 12 August 1949, in particular Article 27, concerning the treatment of protected persons, Article 49, prohibiting the transfer of populations, Article 50, concerning the care and education of children, Article 52, which stipulates that “all measures aiming at creating unemployment or at restricting the opportunities offered to workers in an occupied territory, in order to induce them to work for the occupying Power, are prohibited”, Article 53, prohibiting any destruction of real or personal property, Article 55, laying down the duty of the occupying Power to ensure food and medical supplies for the population of occupied territories, Article 56, concerning the maintaining of medical and hospital establishments and services, and Article 59, concerning the provision of relief consignments to the population of occupied territories.

27. On numerous occasions, Israel has presented objections to the applicability of the Fourth Geneva Convention to the Occupied Palestinian Territory and to Jerusalem. The United Nations General Assembly, however, has on numerous occasions affirmed that applicability, including in resolution A/RES/ES-10/14 itself.

28. It should also be recalled, as mentioned in resolution A/RES/ES-10/14, that a Conference of High Contracting Parties to the Fourth Geneva Convention was convened on 15 July 1999 to discuss measures to enforce the Convention in the Occupied Palestinian Territory, including Jerusalem, and that the Conference was reconvened at Geneva on 5 December 2001, when a declaration was adopted.

29. At the first United Nations Conference on measures to enforce the Convention in the Occupied Palestinian Territory, including Jerusalem, held at Cairo on 14 and 15 July 1999, the participants had already emphasized the universal character of the Geneva Conventions and the fact that their provisions had always been accepted as norms of customary international law (final document, para. 2).

30. The Lebanese Government considers that the construction and maintaining of the wall constitute a violation of general principles of law, which are simply restated by the Fourth Geneva Convention, and in particular, to use the words of the International Court of Justice in its decision in the *Corfu Channel* case (*United Kingdom v. Albania, I.C.J. Reports 1948*), “certain general and well recognized principles, namely: elementary considerations of humanity, even more exacting in peace than in war”.

31. The provisions of the Fourth Geneva Convention must not be interpreted to the letter or restrictively, but as a restatement of general principles of law, whose validity is on a par with that of treaty provisions, albeit more general in scope, and should therefore be regarded as applying to the current situation involving Israel and the Occupied Palestinian Territory.

32. It is of interest to note in this respect that the International Court of Justice, in its 27 June 1986 Judgment on the merits of the case concerning *Military and Paramilitary Activities in and against Nicaragua* (*Nicaragua v. United States of America*) (*I.C.J. Reports 1986*, pp. 96-97, para. 181), described as follows the coexistence between non-conventional rules and written rules which, in that case, were contained in the United Nations Charter:

“However, so far from having constituted a marked departure from a customary international law which still exists unmodified, the Charter gave expression in this field to principles already present in customary international law, and that law has in the subsequent four decades developed under the influence of the Charter, to such an extent that a number of rules contained in the Charter have acquired a status independent of it.”

33. The independence of non-conventional norms, such as the “basic general principles of humanitarian law”, in relation to written instruments, is affirmed in the same Judgment (*Nicaragua v. United States of America*, p. 114, para. 220), where the Court states that the Geneva Conventions merely give “specific expression” to those principles.

34. It hardly matters that Israel and the Occupied Palestinian Territory are not “High Contracting Parties” to the Geneva Conventions, since those Conventions are not confined to establishing reciprocal benefits for the signatory States alone, but embody humanitarian principles which are valid *erga omnes*.

35. The same principle of interpretation in the light of custom or of underlying general principles should be adopted with respect to all the instruments referred to in resolution A/RES/ES-10/14 itself, in particular the Regulations annexed to the Hague Convention respecting the Laws and Customs of War on Land of 1907.

36. The construction of the wall is contrary to the principle of the development of “friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples”, a principle set forth in Article 1 of the United Nations Charter, just as it also runs counter to the spirit of United Nations General Assembly resolution 2625 of 24 October 1970, entitled “Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations”. The fact that those instruments were initially intended to govern relations between sovereign States and that the Occupied Palestinian Territory does not yet fit into that category, must not disallow the principles embodied in those provisions.

37. The construction of the wall and its consequences, including the humiliation suffered by the inhabitants concerned, also constitute violations of the Universal Declaration of Human Rights, in particular Article 1, enshrining the dignity of human beings, Article 13, concerning freedom of movement and residence, Article 17, paragraph 2, providing that no one shall be arbitrarily deprived of his property, and Article 26 concerning the right to education; those actions also violate the International Covenant on Civil and Political Rights, in particular Article 1 (right of self-determination), Article 12 (liberty of movement), Article 24 (protection of children), as well as the International Covenant on Economic, Social and Cultural Rights, in particular Article 11 (right to an adequate standard of living, right to be free from hunger), Article 12 (right to health) and Article 13 (right to education). All those instruments, construed to the letter, were admittedly intended at the outset to govern relations between the authorities of a State and persons or groups on the territory of that State, but the fact that they now embody unquestionable universal values, which are valid in all places, means that they apply *mutatis mutandis* to the situation in issue.

38. The construction of the wall and the resulting situation correspond to a number of the constituent acts of the crime of apartheid, as enumerated in Article 2 of the International Convention on the Suppression and Punishment of the Crime of Apartheid, adopted by the General

Assembly on 30 November 1973: that is to say, the denial of the liberty and dignity of a group, the deliberate imposition on a group of living conditions calculated to cause its physical destruction in whole or in part, measures calculated to deprive a group of the right to work, the right to education and the right to freedom of movement and residence, the creation of ghettos, the expropriation of property, etc. Such actions constitute measures of collective punishment.

39. The construction of the wall on the Occupied Palestinian Territory is contrary to resolution 181 (II) of 29 November 1947, providing for the termination of the Mandate and the partition of Palestine into Arab and Jewish States.

40. It is also at odds with Security Council resolutions 242 (1967) and 338 (1973) and constitutes a violation of the principle, recognized in international law, of the inadmissibility of the acquisition of territory by force.

41. The construction of the wall constitutes a violation of Security Council resolutions 1397 (2002) and 1515 (2003).

42. It runs counter to the United Nations resolutions in which it is affirmed that the actions taken by Israel, as the occupying Power, to change the status and demographic composition of East Jerusalem, have no legal validity and are null and void.

43. It is contrary to United Nations General Assembly resolution ES-10/13 of 21 October 2003, which demanded 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.

44. In various statements, Israel has claimed that the construction of the wall is consistent with the right of self-defence afforded to States by Article 51 of the United Nations Charter. However, in the spirit of Article 51, the exercise of that right may only consist of immediate and instantaneous measures pending the exercise by the Security Council of its authority and responsibility under the Charter in order to maintain or restore peace. Moreover, the actions that the construction of the wall is intended to prevent are not consonant with the definition of aggression as given in resolution 3314, adopted by the General Assembly on 14 December 1974, without forgetting that the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, which certain parts of the separation wall are designed to protect, have already been condemned by a number of United Nations resolutions declaring them illegal. Lastly, security requirements do not explain why the wall has been built on the other side of the Green Line within the Occupied Palestinian Territory.

C. The legal consequences of the construction of the wall

45. What, then, are the legal consequences of the construction of the wall?

46. First, Israel must put an end to the wrongful act it is committing by building the wall; it must discontinue the construction and demolish the sections already built, both the concrete part and the various fences, barriers or ditches designed for the same purpose.

47. Israel must then annul any land requisitions that have been ordered for the purposes of building the wall and developing an area around it, and must restore the status quo that existed prior to the construction of the wall.

48. Lastly, Israel must compensate those persons who have suffered from the construction of the wall.

On behalf of the Lebanese Government,
The Minister for Foreign Affairs
and Lebanese Expatriates

(Signed) Jean OBEID.
