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INTERNATIONAL COURT OF JUSTICE

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

(REQUEST FOR AN ADVISORY OPINION)

WRITTEN STATEMENT

SUBMITTED BY

NAMIBIA

30 JANUARY 2004

PHK.

Mr. President,

The construction by Israel, the occupying Power, of a wall in the occupied Palestinian Territory, including in and around East Jerusalem, which has involved confiscation and destruction of Palestinian land, resources and the disruption of the lives of protected civilians constitute a violation of international humanitarian law, in particular the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949.

Mr. President,

Israel has indicated in paragraph 3 of Annex I attached to the Secretary-General's report prepared pursuant to General Assembly resolution ES-10/13 contained in document A/ES-10/248, that despite having ratified the Fourth Geneva Convention it has not incorporated it into its domestic legislation. The point is that Israel is a State Party to the Convention, and as such it undertook to respect all the obligations contained in that Convention. The fact that Israel has not incorporated it into its domestic legislation, does not exempt it from its obligations. The incorporation issue is an internal matter, which does not affect its international obligations. It should be noted that the provisions of the Geneva Convention is in existence for more than 50 years, hence it has become part of international customary law. The Convention is binding upon Israel and it must therefore fulfill the obligations assumed in good faith.

Mr. President,

Israel's assertion in paragraph 4 of the document quoted above, that human rights treaties were intended for the protection of citizens from their own Government in times of peace, and therefore, 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 not applicable to the occupied Palestinian territory, is not correct. It is true that humanitarian law applies in situations of international or non-international conflict. Human rights law on other hand establishes rules for harmonious development of the individual in society. The main purpose of both, which is important, is to safeguard human dignity in all circumstances. Thus, both laws are applicable to the occupied Palestinian territory.

The establishment of settlements and placing of most of the structure of the wall on occupied Palestinian land, which is in departure from the Armistice Line of 1949, not only violate the provisions of the Convention, but also disregard relevant General Assembly and Security Council resolutions, including Security Council resolution 446 (1979). This resolution calls upon Israel once again, "as the occupying Power, to abide scrupulously by the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to rescind its previous measures and to desist from taking any action which would result in changing the legal status and geographical nature and materially affecting the demographic composition of the Arab territories occupied since 1967, including Jerusalem, and, in particular, not to transfer parts of its own civilian population into the occupied Arab territories". Despite that call, which was made 33 years ago, Israel continues to establish settlements, and the construction of the wall constitutes an additional violation by Israel, in disregard of UN resolutions.

Mr. President,

Israel's continuing refusal to comply with relevant General Assembly and Security Council resolutions, such as 242 (1967), 338 (1973) and 1397 (2002) is in conflict with its obligations it assumed under the United Nations Charter, in particular paragraph 2 of Article 2 of the UN Charter, which require Member States to fulfill in good faith the obligations assumed by them in accordance with the Charter. The continuing disrespect of these resolutions also put in question the authority of the General Assembly and the Security Council which adopted these resolutions.

Mr. President,

It is in view of the above, that Namibia strongly believes that the construction of the wall violates the provisions of relevant international law, therefore, it must be removed.



On behalf of the Government of the
Republic of Namibia