

Cour internationale de Justice

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INTERNATIONAL COURT OF JUSTICE

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

(REQUEST FOR ADVISORY OPINION)

STATEMENT OF THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS

30 JANUARY 2004

I INTRODUCTION

1. In Resolution ES-10/14, adopted on 8 December 2003 by the Resumed Tenth Emergency Special Session of the General Assembly of the United Nations (UN), the General Assembly decided to request the International Court of Justice ("the Court") urgently to give 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?".

2. In its Order of 19 December 2003, the Court designated 30 January 2004 as the time limit within which written statements must be submitted to it by the UN and by States which are entitled to appear before the Court, in accordance with Article 66(2) of the Court's Statute.
3. As the Netherlands is a member State of the UN and by virtue of Article 92 of the UN Charter also a party to the Statute of the Court, it wishes to avail itself of the opportunity given by the Court's Order of 19 December 2003 to States entitled to appear before the Court to make a written statement on the above-mentioned request by the UN General Assembly for an advisory opinion from the Court.

II OBSERVATIONS ON THE COURT'S COMPETENCE AND DISCRETION TO GIVE THE SAID ADVISORY OPINION

1. Under Article 96(1) of the UN Charter, the UN General Assembly may request the Court to give an advisory opinion on any legal question. Article 65(1) of the Court's Statute governs the competence of the Court to give an advisory opinion. The question submitted to the Court for an advisory opinion concerns the *legal consequences* of the construction of a wall¹ in the Occupied Palestinian Territory, and therefore constitutes a legal question.

¹ In this Statement, the Netherlands will use the term "wall", as used in the request for an advisory opinion, without implying that it is a more accurate or appropriate term than "security fence", "barrier" or whatever other term may be employed.

In the opinion of the Netherlands Government, the UN General Assembly must be deemed competent to request the advisory opinion.

2. If the Court considers the UN General Assembly competent to request, and itself competent to give, the advisory opinion concerned, the Netherlands Government would nonetheless draw attention to the fact that the Court's power to give advisory opinions is a discretionary one. As stated by the Court itself in the *Western Sahara Case* (ICJ Rep. 1975, p. 21, para. 23):

“In exercising this discretion, the International Court of Justice, like the Permanent Court of International Justice, has always been guided by the principle that, as a judicial body, it is bound to remain faithful to the requirements of its judicial character even in giving advisory opinions. If the question is a legal one, which the Court is undoubtedly competent to answer, it may none the less decline to do so.”

3. In the Advisory Opinion on *Legality of the Threat or Use of Nuclear Weapons* the Court, citing several previous cases, stated that only “compelling reasons” should lead it to decline to give an advisory opinion (ICJ Rep. 1996, p. 235, para. 14). The Netherlands Government believes that there are compelling reasons why, in this particular case, the Court should decide to abstain from giving the advisory opinion requested.
4. On 8 December 2003, in a statement on behalf of the European Union, the Acceding Countries and nine other European States, before the Resumed Tenth Emergency Special Session of the UN General Assembly, the Permanent Representative of Italy urged

“all sides in the region to immediately implement policies conducive to dialogue and negotiations”.

With regard to the request for the Court's advisory opinion on the legality of the construction of the wall in the Occupied Palestinian Territory, he concluded that the proposed request

“will not help the efforts of the two parties to re-launch a political dialogue and is therefore inappropriate.”

For this reason the Netherlands abstained on Resolution ES-10/14 (which was adopted by 90 votes to 8, with 74 abstentions).

5. The Netherlands believes that the establishment of a Palestinian State, living side by side with Israel in peace and security, must be realised through political dialogue and negotiations. If the Court decides to comply with the General Assembly's request, there is a real danger that this would undermine the re-launching of such a political dialogue on all aspects of a comprehensive peace settlement.

III LEGALITY OF THE CONSTRUCTION OF THE WALL IN THE OCCUPIED PALESTINIAN TERRITORY

6. The Netherlands does not consider it necessary to make substantive observations on the merits of the legal question submitted to the Court for an advisory opinion. The Netherlands has expressed its view on the legality of the construction of the wall in the Occupied Palestinian Territory in the General Assembly, to which view it respectfully refers the Court below.
7. The Netherlands voted in favour of Resolution ES-10/13 adopted on 21 October 2003 by the Resumed Tenth Emergency Special Session of the General Assembly of the United Nations (which was adopted by 144 votes to 4, with 12 abstentions), in which the General Assembly reiterated (preamble):

"its call upon Israel, the occupying Power, to fully and effectively respect the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949";

and demanded (operative para. 1):

"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".

8. In the above-mentioned statement of 8 December 2003, on behalf of the European Union, the Acceding Countries and nine other European States, before the Resumed Tenth Emergency Special Session of the General Assembly of the United Nations, the Permanent Representative of Italy recalled that the European Union presented Resolution ES-10/13. In this statement he also stated:

"While recognizing Israel's right to protect its citizens from terrorist attacks, the European Union urges the Government of Israel, in exercising this right, to fully respect international law, in particular human rights and international humanitarian

law including the Fourth Geneva Convention and to exert maximum effort to avoid civilian casualties and take no action that aggravates the humanitarian and economic plight of the Palestinian people.”

IV CONCLUSION

9. The Netherlands is convinced that the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem, in departure of the Armistice Line of 1949, is in contradiction to relevant provisions of international law. The Netherlands is also convinced that the request for an advisory opinion from the Court will not help the efforts of the two parties to re-launch a political dialogue and is therefore inappropriate. The Netherlands therefore respectfully requests the Court to exercise its discretion to decline to answer the question put to it by the UN General Assembly in this case.

Johan G. Lammers

Representative of the Kingdom of the Netherlands

30 January 2004