



SVERIGES AMBASSAD

Cour internationale de Justice

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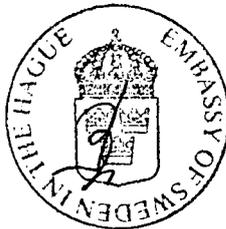
Embassy of Sweden
The Hague

The Embassy of Sweden presents its compliments to the International Court of Justice and, with reference to the letter of 19 December 2003 from the Court's Registrar to the Ambassador of Sweden to the Netherlands concerning the request for an advisory opinion by the United Nations and its Member States, has the honour to submit the enclosed reply.

Due to time constraints the statement is submitted in English only. The Embassy regrets that it is not possible to furnish an additional French version of the statement, as would have been appreciated by the Court.

The Embassy of Sweden avails itself of this opportunity to renew to the International Court of Justice the assurances of its highest consideration.

The Hague 30 January 2004



The International Court of Justice

THE HAGUE

1. This written statement is submitted subsequent to the Court's order of 19 December 2003 with reference to the United Nations General Assembly's request for an advisory opinion in its Resolution ES-10/14.
2. The General Assembly requests that the Court respond to the question "what are the legal consequences arising from the construction of the wall being built by Israel". The Assembly has so far explained its view of the legal situation only in rather general terms, by stating that the barrier is "in contradiction to relevant provisions of international law" (Resolution ES-10/13). In view of the fact that the General Assembly now has requested the Court's opinion, the Swedish Government has no objection to the Court's examination of the issue put before it.
3. The Swedish Government presents the following comments on the substance of the issue. The Swedish Government has, for the purposes of this written statement, relied on the United Nations Secretary-General's report, dated 24 November 2003 and prepared pursuant to Resolution ES-10/13 (A/ES-10/248).
4. Israel has serious and legitimate security concerns. The construction of a barrier on Israeli territory would not have been in contravention of international law. However, it is the view of the Swedish Government that the building of a barrier on occupied territory violates international law in several respects. The Government submits the following arguments in support of its position.
5. According to a basic principle of public international law, as set out in the Friendly Relations Declaration (annexed to General Assembly Resolution 2625 (XXV) (1970)) and Security Council Resolution 242 (1967), territory cannot legally be annexed as a result of the use of force. Further, as confirmed by the Security Council in resolution 242 and other resolutions, the territories that have been under Israeli control since 1967 are occupied territories.

Territory that is under occupation, including territory illegally annexed, is subject to the rules of international humanitarian law governing occupation, notably the 1907 Hague Regulations (HR) and the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War (GCIV), according to which the occupying power shall be regarded only as administrator of the occupied territory (cf., for example, Article 55, HR). Israel is a party to the Geneva Conventions, while the Hague Conventions, including the Hague Regulations, are recognised as international customary law, as stated by the International Court of Justice in its Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons (ICJ Reports, 1996, p 257).

6. The construction of a barrier on occupied territory is not in itself an annexation. However, the construction of the barrier contradicts the basic rationale underlying the law of occupation, namely that the occupying force shall not introduce any changes in the occupied territory that are not required by its legitimate security interests or the interests of the population of that territory.
7. The construction and consequences of the barrier is in violation of certain specific obligations under international humanitarian law.

Israel has requisitioned and destroyed property, including houses, for the purpose of the construction of the barrier. Some of this property has been public, some private. An occupying force may not “destroy or seize the enemy’s property, unless such destruction or seizure be imperatively demanded by the necessities of war” (Article 23 (g), HR). Further, private property may be requisitioned only “for the needs of the army of occupation” (Article 52, HR). If the route of the barrier beyond the Green Line has been determined by needs other than those of the army, then there seems to be no valid justification for requisitions of land. Lastly, Article 53 of GCIV provides that destruction of property is justified only where it is rendered “absolutely necessary by military operations”.

The barrier also severely hampers the access of civilians to their farmland and health care. This raises concern regarding the compliance with the obligations laid down in Articles 55 and 56 of the Fourth Geneva Convention and with the provision on child care in Article 50.

8. In addition, the construction and consequences of the barrier may violate human rights law. International human rights law is fully applicable to the occupied territories and binding on Israel in those territories. The application of human rights law in armed conflict has been confirmed by the International Court of Justice in its Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons (ICJ Reports, 1996, p 240). The application in the occupied territories of the two International Covenants on Human Rights of 1966 and of the Convention on the Rights of the Child (CRC), to which Israel is a party, has been confirmed by, respectively, the Human Rights Committee (CCPR/CO/78/ISR of 21 August 2003), the Committee on Economic, Social and Cultural Rights (E/C.12/1/Add.90 of 23 May 2003), and the Committee on the Rights of the Child (CRC/C/15/Add.195 of 9 October 2002).

The restrictions on access by Palestinians to the closed area between the barrier and the Green Line and the limited passage through the barrier may violate the right to liberty of movement in accordance with Article 12.1 of the International Covenant on Civil and Political Rights (ICCPR). The resulting obstacles to access to workplaces, farmland, health services and schools raise questions of possible violations of several provisions of the International Covenant on Economic, Social and Cultural Rights (ICESCR): the right to work (Article 6), the right to adequate standard of living (Article 11), the right to health care (Article 12) and the right to education (Article 13). In addition, the following rights under the CRC may be affected by the same restrictions: the right to health care (Article 24), the right to an adequate standard of living (Article 27) and the right to education (Article 28).

The demolition of houses for the purposes of constructing the barrier may amount to unlawful interference with home in violation of Article 17 of the ICCPR as well as Article 16 of the CRC, and a violation of the right to adequate standard of living including housing under Article 11.1 of the ICESCR.

The different requirements for Palestinians and Israelis when it comes to obtaining permits in order to be granted access to and remain in the closed area raise

concerns about violations of the right to equality before the law as provided in Article 26 of the ICCPR.

9. Violations of international law resulting from the construction of the barrier entail legal consequences. Israel must stop and reverse the construction of the barrier, as demanded by Resolution ES-10/13. This follows from general principles of international law, as codified by the International Law Commission in Articles 30 and 31 of its Articles on Responsibility of States for Internationally Wrongful Acts, annexed to UN General Assembly Resolution 56/83 (2001).

Further, compensation must be awarded for harm already suffered, as provided in Article 3 of the Fourth Hague Convention of 1907, which expresses international customary law, and Article 2(3) of ICCPR.

10. Another consequence of the illegality of the construction of the barrier is that, under international customary law as codified in Article 16 of the Articles on Responsibility of States for Internationally Wrongful Acts, third states must not aid and assist Israel in its measures. Further, serious breaches of obligations under peremptory norms entail additional legal consequences for third states, as set out in Article 41 of the said Articles.
11. Lastly, the legal situation with regard to the barrier is the same for East Jerusalem as for the rest of the territories occupied in 1967 (cf., i.a., UN Security Council Resolution 478 (1980)). In this regard it is suggested that the Court might consider whether the enjoyment of the regime pertaining to the Holy Places, the so-called status quo, has been affected by the construction of the barrier.


Björn SKOLD
Ambassador of Sweden