

WRITTEN STATEMENT BY THE GOVERNMENT THE REPUBLIC OF SENEGAL

[Translation]

In its request to the International Court of Justice, by its resolution adopted on 8 December 2003, to urgently render an advisory opinion on the question of the “legal consequences of the construction of a wall in the Occupied Palestinian Territory”, the United Nations General Assembly asked the Court to reply, from the standpoint of international law, to 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?”

This request, based on the provisions of Article 96 of the Charter of the United Nations and Article 65 of the Statute of the Court, constitutes the most recent addition to a long list of requests for opinions from the General Assembly to the Court since the latter’s establishment, a fact that should dispel any possible doubt as to the Assembly’s competence to approach the Court on this occasion for an advisory opinion.

Moreover, the many opinions given by the Court over more than half a century have made a substantial and effective contribution to the articulation, interpretation and progressive development of the rules of international law¹.

These two grounds amply justify the decision by the Government of Senegal strongly to support the request from the United Nations General Assembly.

Other equally compelling substantive grounds reinforce the conviction of the Senegalese Government that recourse to the Court for an opinion would clarify, in terms of the obligation to respect international law, a situation which, if allowed to persist, would seriously jeopardize peace in the region.

The substance of these grounds consists in the effective commission of serious breaches of well-established rules and principles of international law relating to methods of acquisition of territory, the consequences of the exercise of territorial jurisdiction, respect for human rights such as freedom of movement and economic, social and cultural rights, or compliance with the rules of international humanitarian law, especially those contained in the Fourth Geneva Convention of 1949 and its Additional Protocol No. 1 of 1977.

These serious breaches led to the adoption of resolution A/ES-10/13 of 21 October 2003, whereby the General Assembly, addressing the question of the construction of a wall by Israel in the Occupied Palestinian Territory, demanded that the Jewish State halt construction of the wall, which is in departure of the Armistice Line of 1949 and thus seriously infringes relevant provisions of international law.

¹Mention should be made of the content of United Nations General Assembly resolution 171 (II), which as early as 1947 stressed the “Need for greater use by the United Nations and its organs of the International Court of Justice.” In the same resolution, the General Assembly stated “that it is . . . of paramount importance that the Court should be utilized to the greatest practicable extent in the progressive development of international law, both in regard to legal issues between States and in regard to constitutional interpretation”.

It follows that, although the Jewish State has the right and duty to protect its people against terrorist attacks, as recognized by the United Nations Secretary-General in his report on the implementation by Israel of resolution A/ES-10/13 of 21 October 2003, the construction of a wall in Palestinian territory, on the basis of the existing plan, could not be undertaken without seriously violating international law and gravely undermining the prospects for peace in the short or long term.

The argument of the right to preventive self-defence invoked by the Jewish State to justify the construction of the wall, a project that relies on the confiscation of private Palestinian land or its annexation through the incorporation of Jewish settlements in large portions of the West Bank, is tantamount in practice to an illegal annexation inasmuch as it is prohibited by the Charter of the United Nations and the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War in the same way as the annexation of East Jerusalem and the Golan Heights.

For the aforementioned reasons, the Government of Senegal hopes that the International Court of Justice will render an opinion on the legal consequences of the construction of this wall.

(Signed) Absa Claude DIALLO.

For the Minister of State, Minister for Foreign Affairs,
and, by delegation, the Ambassador, Secretary-General
