

International Court of Justice

Advisory Opinion Proceedings

On

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

Palestine

Written Statement (30 January 2004)

And

Oral Pleading (23 February 2004)

Preface

1. In October of 2003, increasing concern about the construction by Israel, the occupying Power, of a Wall in the Occupied Palestinian Territory, including East Jerusalem, in departure from the Armistice Line of 1949 (the Green Line) and deep into Palestinian territory, brought the issue to the forefront of attention and debate at the United Nations. The Wall, as it has been built by the occupying Power, has been rapidly expanding as a regime composed of a complex physical structure as well as practical, administrative and other measures, involving, *inter alia*, the confiscation of land, the destruction of property and countless other violations of international law and the human rights of the civilian population. Israel's continued and aggressive construction of the Wall prompted Palestine, the Arab Group, the Non-Aligned Movement (NAM) and the Organization of the Islamic Conference (OIC) to convey letters to the President of the United Nations Security Council in October of 2003, requesting an urgent meeting of the Council to consider the grave violations and breaches of international law being committed by Israel.
2. The Security Council convened to deliberate the matter on 14 October 2003. A draft resolution was presented to the Council, which would have simply reaffirmed, *inter alia*, the principle of the inadmissibility of the acquisition of territory by force and would have decided that the "*construction by Israel, the occupying Power, of a wall in the Occupied Territories departing from the armistice line of 1949 is illegal under relevant provisions of international law and must be ceased and reversed*".
3. During the debate that was held, 44 representatives addressed the Council on the matter. The overwhelming majority of representatives expressed their opposition to Israel's construction of the Wall in the Occupied Palestinian Territory and expressed their concern about the violations of international law, including of the Fourth Geneva Convention, being committed by Israel through its construction of the Wall and about the humanitarian hardships being imposed on the Palestinian people. Many asserted that the Wall would present a major obstacle to the implementation of the Quartet Road Map and the two-State solution to the Israeli-Palestinian conflict.
4. However, when the draft resolution was presented to the members of the Security Council for a vote on the evening of 14 October 2003, it was not adopted due to a veto cast by the United States, a permanent member of the Council. The result of the vote on draft resolution S/2003/980 was 10 in favor (Angola, Chile, China, France, Guinea, Mexico, Pakistan, Russian Federation, Spain, Syria), 1 against (United States of America) and 4 (Bulgaria, Cameroon, Germany, United Kingdom) abstentions. Thus, the Security

Council failed to act when the issue of the construction of the Wall in the Occupied Palestinian Territory was brought before it.

5. In light of these developments, the tenth emergency special session was resumed on 21 October 2003 to consider the situation in line with the General Assembly's "Uniting for Peace" resolution, namely resolution 377 (V) of 1950, which resolved that if the Council *"fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, a breach of the peace or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations for collective measures..."*.
6. The General Assembly also conducted a serious and constructive debate on the issue and two draft resolutions were submitted for consideration, including one that would have requested the International Court of Justice (ICJ) to issue an advisory opinion on the Wall. After intense negotiations and wide consultations, including with the European Union, the members of the EU introduced a new draft resolution, with the understanding that the cosponsors of the original two drafts would not insist on a vote on those drafts. The EU- cosponsored draft resolution was adopted on 21 October 2003 as resolution ES-10/13 by an overwhelming majority of 144 in favor, 4 against and 12 abstentions.
7. Three specific elements are important to highlight with regard to resolution ES-10/13. The first is that the resolution 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"*. Second, it requested the Secretary-General to report on compliance with the resolution, and, third, it made clear that upon receipt of the Secretary-General's first report further actions should be considered, if necessary, within the United Nations system. The wording of that third element reflected a compromise on the means of following-up the issue, including the possibility of a request for an advisory opinion from the ICJ on the legal consequences in case of non-compliance.
8. Israel responded to resolution ES-10/13 with its usual blatant contempt and disregard. Immediately following the resolution's adoption, Israeli officials defiantly declared that it was Israel's intention to continue constructing the Wall. Indeed, Israel continued and actually accelerated the construction of the Wall in the Occupied Palestinian Territory. In addition, the occupying Power continued to commit countless other violations of international law in an effort to institute and sustain the regime of the Wall. It continued to confiscate and destroy even more Palestinian land, to destroy more Palestinian property, and to impose severe restrictions on the freedom of movement of persons and goods in the area, including by imposing a permit system requiring Palestinian inhabitants of the area to apply for permission to remain in their homes or work their land. By this time, entire Palestinian communities were being encircled in walled enclaves, hundreds of Palestinian civilians were being displaced, and thousands of Palestinians were being imprisoned between the Wall and the Armistice Line of 1949 (Green Line) and isolated and separated from each other and from their jobs, schools, hospitals, farmlands and markets. Moreover, it had become starkly evident that there was

an undeniable and intricate correlation between the route of the Wall and the illegal Israeli settlements in the Occupied Palestinian Territory and the water resources in the area as well as between the route of the Wall and Israel's longstanding illegal policies and practices with regard to Occupied East Jerusalem.

9. Pursuant to resolution ES-10/13, the Secretary-General presented a report (A/ES-10/248) on 24 November 2003, which contained a factual presentation on the Wall as well as the conclusion that "*Israel is not in compliance with the Assembly's demand that it stop and reverse the construction of the wall in the Occupied Palestinian Territory*". Accordingly, the tenth emergency special session was resumed on 8 December 2003 to consider the findings in the Secretary-General's report and to consider a draft resolution that was presented to follow up the issue by means of taking further action within the United Nations system. During that resumed session on 8 December, the Assembly adopted resolution ES-10/14 by a large majority of 90 votes in favor, 8 against and 74 abstentions. Resolution ES-10/14 requested the ICJ 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, considering the rules and principles of international law, including the Fourth Geneva Convention of 1949, and relevant Security Council and General Assembly?*"
10. The day after the adoption of resolution ES-10/14, the Secretary-General conveyed to the ICJ a letter informing it of the Assembly's request and transmitting the text of the adopted resolution. The Secretary-General then proceeded, as required, to prepare the dossier of documents relevant to the matter to be brought before the Court.
11. On 19 December 2003, the ICJ issued an order inviting the United Nations and its Member States to furnish information on all aspects raised by the question submitted to the Court for advisory opinion. Further, the Court decided that, "*taking into account the fact that the General Assembly has granted Palestine a special status of observer and that the latter is co-sponsor of the draft resolution requesting the advisory opinion, Palestine may also submit to the Court a written statement on the question*". The Court fixed 30 January 2004 as the deadline for the submission of written statements on the question and fixed 23 February 2004 as the date for the opening of hearings during which oral statements could be presented to the Court by the United Nations, its Member States and Palestine, regardless of whether or not they had submitted written statements. Following requests made to the Court respectively by the League of Arab States and the Organization of the Islamic Conference (OIC) to participate in the advisory proceedings, the Court conveyed letters also authorizing the League of Arab States and the OIC to participate in both the written and the oral phases of the proceedings.

12. By the 30 January 2004 deadline, 49 participants¹ presented written statements to the Court. This number of participants included the United Nations, which submitted an updated report of the Secretary-General on the Wall in the form of a written statement. The overwhelming majority of written statements presented clear and comprehensive legal analyses on the illegality of the Wall as well as the legal consequences arising from its construction by Israel and expressed very clear positions in favor of the admissibility of the case and on the relevance of an advisory opinion by the Court on the matter.
13. Palestine submitted a substantial written statement to the Court, which was composed of four parts - an introduction, a factual background, a legal analysis and conclusions - in addition to submitting a volume of documentary annexes and a third volume of maps and photographs. Israel submitted a lengthy statement, which it claimed focused only on the argument of inadmissibility while, in fact, attempts were repeatedly made throughout the statement to justify the construction of the Wall through the presentation of a detailed case on terror attacks and through political arguments, including on the Road Map.
14. Significantly, not a single participant during the written phase of the proceedings (other than Israel) argued in favor of construction of the Wall or tried to defend the Wall's construction. A group of States, however, chose to make arguments against the admissibility of the case, taking the position that the Court should not render an advisory opinion. In addition to Israel, this included 13 States, namely Australia, Micronesia, Marshall Islands, Palau, United Kingdom, United States, Czech Republic, Germany, Netherlands, Italy, Belgium, Cameroon and Canada. Another group of States – about 6 or 7 – essentially left it to the Court to decide on the admissibility but affirmed clear positions on the illegality of the Wall. All of the rest of the written statements were very clear on both the admissibility and the merits of the case.
15. The oral phase of the Court's proceedings began, as scheduled, on 23 February 2004 at the Peace Palace at The Hague. Fifteen (15) participants presented oral statements to the Court over the course of three days, including 4 countries that had not participated in the written phase of the proceedings. The 15 participants in the oral hearings included, in the order in which they addressed the Court, the following: Palestine, South Africa, Algeria, Saudi Arabia, Bangladesh, Belize, Cuba, Indonesia, Jordan, Madagascar, Malaysia, Senegal, Sudan, League of Arab States and Organization of the Islamic Conference. It is significant to note that none of the countries that argued against the admissibility of the case during the written phase of the proceedings participated in the oral phase.
16. During the oral hearings, a very solid legal case was made by the participants on all aspects of the matter considering international law, including international humanitarian law and human rights law. Of course, the Fourth Geneva Convention figured

¹ In addition to Palestine, the following written statements were submitted to the ICJ: (listed in the chronological order in which the Court received the statements): Guinea, Saudi Arabia, League of Arab States, Egypt, Cameroon, Russian Federation, Australia, United Nations, Jordan, Kuwait, Lebanon, Canada, Syria, Switzerland, Israel, Yemen, United States of America, Morocco, Indonesia, Organization of the Islamic Conference, France, Italy, Sudan, South Africa, Germany, Japan, Norway, United Kingdom, Pakistan, Czech Republic, Greece, Ireland (on its own behalf and, separately, on behalf of the European Union), Cyprus, Brazil, Namibia, Malta, Malaysia, Netherlands, Cuba, Sweden, Spain, Belgium, Palau, Micronesia, Marshall Islands, Senegal and Democratic People's Republic of Korea.

prominently into such legal analyses in addition to, *inter alia*, the Hague Regulations of 1907, Protocol I Additional to the Geneva Conventions, the Charter of the United Nations, UN resolutions, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Right of the Child. Many references were also made to relevant UN reports, including of the Secretary-General, the Special Rapporteur of the Commission on Human Rights on the situation in the occupied Palestinian territories, and the World Bank, and also to the statement by the International Committee of the Red Cross on the Wall.

17. The Court allotted Palestine a full session (half a day) to make its oral pleading to the Court. In addition to an introductory statement made by the Head of the Delegation, Palestine also made a brief factual presentation about the Wall, which was followed by oral statements by four lawyers who presented a thorough legal analysis on the matter. The four oral statements covering the legal aspects dealt with: (1) The question of admissibility of the request. (2) The question of the application of international humanitarian law and international human rights law in the Occupied Palestinian Territory. (3) The violations of international humanitarian law and human rights law as a result of the construction of the Wall. (4) The violation of the right to self-determination, the relationship to the Road Map and finally, of course, the legal consequences arising from Israel's violation of international law by its continuing construction of the Wall.²
18. The Court allotted 45 minutes each to the other participants in the oral phase. All of the statements that were made before the Court were very helpful and were of a high legal and technical caliber. In addition to all of the written statements submitted to the Court, all of the oral statements made before the Court are posted on the ICJ web site (www.icj-cij.org).
19. In all, there were a total of 53 participants in the Court's advisory proceedings, who participated either through the presentation of written statements, oral statements or both. This represents a high number of participants in terms of the Court's history of advisory proceedings. Among those who participated in both phases were members of the NAM Troika. The Chair, Malaysia, was represented at the oral hearings by the Foreign Minister and South Africa and Cuba were represented by their Deputy Foreign Ministers.
20. Palestine has always been confident about the procedural aspects as well as the legal basis and merits of the case. International law is clear on the rights and obligations of the occupying Power and on the prohibition of certain actions in occupied territory. At the same time, it is important to reaffirm the political, legal and moral responsibility of the United Nations, particularly the General Assembly, towards the question of Palestine until it is resolved. The International Court of Justice, as the principal judicial organ of the United Nations, clearly has a role to play now with regard to the question of Palestine. Palestine is even more confident in this respect after the written and oral phases of the

² The following are the names of those who spoke on behalf of Palestine during the oral hearings of the Court, listed in the order in which they appeared: Head of Delegation, Ambassador Nasser Al-Kidwa; Factual Presentation by Ms. Stephanie Koury; Legal Arguments by Professor James Crawford, Professor Georges Abi-Saab, Professor Vaughan Lowe and Professor Jean Salmon.

proceedings and trusts that the Court will render an important advisory opinion on this crucial matter. The Wall, if completed, will result in the *de facto* annexation of nearly half of the Occupied Palestinian Territory, preventing the emergence of a viable, independent Palestinian State and thus rendering the two-State solution physically impossible to implement. The role of an advisory opinion by the Court therefore cannot be underestimated. Indeed, the advisory proceedings of the ICJ represent an important and historical juncture in the United Nations' efforts to address the different aspects of the question of Palestine. In this regard, the successful outcome of the proceedings will be important not only for Palestine but for the integrity of international law and the future of the international system.

21. It is Palestine's firm hope that Israel will heed carefully what the Court will say and that Israel will adhere to the Court's ruling on the matter and to the relevant provisions of international law and resolutions of the United Nations. The international community has a great responsibility and obligation to ensure that this will be the case. Appropriate follow up by States, as well as the General Assembly, as the requesting organ, and other relevant organs of the United Nations, including the Security Council, is imperative. This must be done to ensure compliance by Israel or to further consider the situation in the event of non-compliance.
22. It is Palestine's ardent hope and expectation that the Court will render an advisory opinion versed in international law that will contribute to the resolution of this serious and urgent problem of the Wall and will thus aid in salvaging the prospects for peace. A good advisory opinion by the Court and its implementation will provide a new opportunity for genuine efforts towards ending the Israeli occupation, ending the Israeli-Palestinian conflict and achieving a peace settlement. It is hoped, as was clearly expressed by Palestine before the Court, that this advisory opinion will trigger a chain of events similar to that which led to the independence of Namibia following the Court's advisory opinion in that case. This will pave the way for a new future for both the Palestinian and Israeli peoples as well as for all the peoples of the Middle East region.

International Court of Justice

Advisory Opinion Proceedings

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***“Legal Consequences of the Construction of a Wall
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Palestine

Written Statement*

30 January 2004

* For ease of use, Appendix 2, Appendix 3 and Volume 2 Documentary Annex are not attached to this printing of the Written Statement.

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PART A. INTRODUCTION AND COMPETENCE

Chapter 1. INTRODUCTION

1. This Written Statement is filed in accordance with the Order of the Court dated 19 December 2003 in response to the United Nations General Assembly's request for an advisory opinion on the legal consequences of the construction of a Wall in the Occupied Palestinian Territory. This introductory chapter examines the terms of the Request, discusses its scope and outlines the structure of this Written Statement.

(1) The Terms of the Request

2. The request was made by the United Nations General Assembly in Resolution A/ES-10/14 of 8 December 2003. In that resolution, the General Assembly decided, pursuant to Article 96, paragraph 1, of the United Nations Charter, to request the International Court of Justice to give an urgent 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?”

3. The Request was transmitted to the Court by the United Nations Secretary-General in a letter dated 8 December 2003.¹

4. By an Order dated 19 December 2003, the Court fixed 30 January 2004 as the time limit within which written statements relating to the question may be submitted to the Court. Referring to both General Assembly Resolution A/ES-10/14 and the report of the UN Secretary-General transmitted to the Court with the request, and noting “the fact that the General Assembly has granted Palestine a special status of observer and that the latter is co-sponsor of the draft resolution requesting the advisory opinion”, the Court decided that “Palestine may also submit to the Court a written statement on the question within” the time limit of 30 January 2004.

5. Palestine welcomes the opportunity to take part in the written and oral phases of this advisory proceeding and to furnish information on all aspects raised by the Request.

6. It is evident that Palestine is directly concerned with the subject-matter of the Request and has a special interest in the advisory opinion of the Court.² By deciding to invite Palestine to participate in this advisory proceeding, the Court acknowledged that Palestine has such a special interest. As the Court's Order of 19 December 2003 recalls, Palestine was a co-sponsor of Resolution A/ES-10/14 along with 26 Member States of the United Nations.

¹ See ICJ Communiqué 2003/42 (10 Dec. 2003).

² In connection with the Court's advisory jurisdiction, commentators have referred to “States and other entities directly concerned.” Shabtai Rosenne, *The Law and Practice of the International Court, 1920-1996*, Vol. II (3rd ed., 1997), p. 993.

Palestine spoke in support of Resolution A/ES-10/14 in the General Assembly.³ Palestine also spoke in support of Resolution A/ES-10/13 of 21 October 2003, which was co-sponsored by the European Union. In this resolution, the 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 the relevant provisions of international law.”⁴

7. The preamble to Resolution A/ES-10/14 refers to “the confiscation and destruction of Palestinian land and resources, the disruption of the lives of thousands of protected civilians and the de facto annexation of large areas of territory” in connection with Israel’s construction of the Wall in Occupied Palestinian Territory. The resolution also points to “the even more devastating impact of the projected parts of the wall on the Palestinian civilian population and on the prospects for solving the Palestinian-Israeli conflict and establishing peace in the region.”

(2) Scope of the Present Request

8. The terms of the Request establish the scope of the advisory opinion requested from the Court. It is important at the outset to be clear what this case is about and what it is not about.

9. The Court is asked to advise the General Assembly on the legal consequences arising from the construction of the Wall in the Occupied Palestinian Territory, including in and around East Jerusalem. The existing and proposed route of the Wall, and its associated regime of restrictions, will be described in more detail in Chapter 6. The route of the Wall is shown on the fold-out map which is attached to this Written Statement.

10. The Court is not asked to determine the territorial boundaries of the Occupied Palestinian Territory. It is not necessary for the Court to determine the precise boundaries of the Occupied Palestinian Territory, including East Jerusalem, in order to answer the question posed by the General Assembly. It is sufficient on any view that a significant length of the Wall runs through Occupied Palestinian Territory, and that it has major impacts on that territory, both currently and for the future.

11. Two basic issues *are* implicit in the question presented to the Court for its Opinion. The first is the notion of Occupied Palestinian Territory, the territory of the Palestinian people, a people entitled to self-determination under international law, as has been repeatedly reaffirmed by the General Assembly and the Security Council. The second is that the Wall itself and its legal consequences involve not only its construction but also its operation. For the Wall is not just a fence; it is a regime, a regime of isolation, discrimination and the denial of rights which does not tally with its ostensible motive, security. Except for short distances, the Wall has not been and will not be built along the Green Line, the well-known line separating Israel from the Occupied Palestinian Territory. Nor is it operated in any way which would be consistent with its avowed motive of securing Israel from attacks. Rather it is an attempt unilaterally to change the status of the Occupied Palestinian Territory including

³ See General Assembly Press Release GA/10216 of 8 December 2003, text from <www.un.org/News/Press/docs/2003/ga10216.doc.htm>.

⁴ See General Assembly Press Release GA/10177 of 20 October 2003, text from <www.un.org/News/Press/docs/2003/ga10177.doc.htm>.

the *de facto* annexation of large areas, and a precursor of an imposed unilateral settlement by Israel in lieu of a settlement endorsed by the international community—an attempt to impose a “solution” in defiance of international law.

12. In this Written Statement Palestine will focus on the legal issues presented by the existing and proposed construction and operation of the Wall. To give an opinion on these legal issues requires some background to Palestine and its legal status, and this is provided in Chapter 3. But it does not require the Court to resolve all issues that historically have divided, and that presently divide, Palestine from Israel. For the point is that the Wall is a new, and most serious, cause of further division—of division to the point of entire exclusion—of permanent separation not of Palestine from Israel but of one major part of the Occupied Palestinian Territory from the residue of that territory.

13. Thus, in this Written Statement, Palestine focuses on the specific question asked—on the Wall, its effects and its legality. Palestine reserves its position in respect of all questions and issues other than those specifically addressed in this Written Statement.

(3) Terminology

14. The following phrases and terms are frequently used in this Written Statement, and are defined as follows:

Additional Protocols: Protocol I Additional to the Geneva Conventions and relating to the Protection of Victims of International Armed Conflicts, and Protocol II Additional to the Geneva Conventions and relating to the Protection of Victims of Non-International Armed Conflicts adopted 8 June 1977, entry into force 7 December 1978, text published in 1125 U.N.T.S. 3 (1979). Protocol I is included as Dossier no. 61 accompanying the UN Secretary-General’s submission.

Additional Protocol I: Protocol I Additional to the Geneva Conventions and relating to the Protection of Victims of International Armed Conflicts, adopted 8 June 1977, entry into force 7 December 1978. Protocol I is included as Dossier no. 61 accompanying the UN Secretary-General’s submission.

Bertini Report: Mission Report by Ms. Catherine Bertini, Personal Humanitarian Envoy of the Secretary-General, of 19 August 2002 included as **Annex 14** in Annex Volume 2 accompanying this Written Statement.

B’Tselem 2002 Report: the May 2002 report of B’Tselem (the Israeli Information Center for Human Rights in the Occupied Territories) entitled “*Land Grab: Israel’s Settlement Policy in the West Bank*” included as **Annex 12** in Annex Volume 2 accompanying this Written Statement.

B’Tselem 2003 Report: the April 2003 report of B’Tselem entitled “*Behind the Barrier: Human Rights Violations as a result of Israel’s Separation*”

Barrier” included as **Annex 13** in Annex Volume 2 accompanying this Written Statement.

Closed Zone: the zone, sometimes also referred to as “buffer zone,” “seam zone” or “security zone,” constituted by the area between the Green Line and the Wall.

Declaration of Principles: the Declaration of Principles on Interim Self-Government Arrangements concluded between Israel and the Palestine Liberation Organisation in Washington, D.C. on 13 September 1993 as part of the Oslo Peace Process, text published in *Palestine Year Book of International Law*, vol. 7 (1992-1994), p. 230; included as Dossier no. 65 accompanying the UN Secretary-General’s submission.

Dugard Report (2003): the Report of the Special Rapporteur of the Commission on Human Rights, John Dugard, on the situation of human rights in the Palestinian territories occupied by Israel since 1967, submitted in accordance with Commission Resolution 1993/2 A, UN Doc. E/CN.4/2004/6 (8 September 2003); included as **Annex 6** in Annex Volume 2 accompanying this Written Statement.

Fourth Geneva Convention: Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War, done at Geneva on 12 August 1949, 75 U.N.T.S. 287 (1950); included as Dossier no. 60 accompanying the UN Secretary-General’s submission.

Geneva Conventions: collectively, the Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, the Geneva Convention II for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, the Geneva Convention III relative to the Treatment of Prisoners of War, and the Geneva Convention IV relative to the Protection of Civilian Persons of War, adopted 12 August 1949, 75 U.N.T.S. (1950).

Green Line: for purposes only of this Written Statement, the line defined in the Armistice Agreement concluded in 1949 between Israel and Jordan.

ICCPR: the International Covenant on Civil and Political Rights, 999 U.N.T.S. 172 (1983); included as Dossier no. 62 accompanying the UN Secretary-General’s submission.

ICESCR: the International Covenant on Economic, Social and Cultural Rights, 993 U.N.T.S. 3 (1983); included as Dossier no. 63 accompanying the UN Secretary-General’s submission.

ICRC: the International Committee of the Red Cross.

IDF:	Israel Defense Forces.
ILC:	the International Law Commission of the United Nations.
ILC Articles:	the Articles on Responsibility of States for Internationally Wrongful Acts adopted by the ILC on 9 August 2001.
Hague Regulations:	the Annex to the 1907 Hague Convention IV Respecting the Laws and Customs of War on Land, 18 October 1907, 36 Stat. 2277, T.S. No. 539; included as Dossier no. 57 accompanying the UN Secretary-General's submission.
Occupied Palestinian Territory or OPT:	the Palestinian territory of the West Bank, including East Jerusalem, and the Gaza Strip occupied by Israel since 1967, as further explained in Chapter 7 of this Written Statement. This term is sometimes referred to in this Written Statement as the " Occupied Palestinian Territory, including East Jerusalem ".
Oslo Accords:	the agreements and protocols concluded between Israel and the Palestine Liberation Organisation as part of the Oslo Peace Process between 1993 and 1999 and detailed in Chapter 3 of this Written Statement.
Oslo Peace Process:	the 1990s Israeli-Palestinian peace process leading to the Oslo Accords.
Quartet:	the collective of the United States, the Russian Federation, the European Union and the United Nations responsible for current peace initiatives, including the Road Map.
Road Map:	the Performance Based Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict, UN Doc. S/2003/259 (2003), endorsed by the United Nations Security Council in its Resolution 1515 adopted on 19 November 2003, UN Doc. S/RES/1515 (2003); included as Dossier no. 70 accompanying the UN Secretary-General's submission.
Wall:	the integrated system of concrete walls, fences (including electric fences), barriers, barbed wire zones, ditches, trenches, trace paths, patrol roads, and fortified guard towers being built by Israel in the Occupied Palestinian Territory, as shown on the maps listed in Annex Volume 1 accompanying this Written Statement, including the regime (regulations, measures, policies, actions and practices) pertaining thereto and further described in Chapter 6 of this Written Statement.
UNRWA:	the United Nations Relief and Works Agency for Palestine Refugees in the Near East created by United Nations General Assembly Resolution 302 (IV) of 8 December 1949.

UNSCOP:

the United Nations Special Committee on Palestine established by the United Nations General Assembly on 15 May 1947.

Ziegler Report:

the report of the Special Rapporteur of the Commission on Human Rights, Jean Ziegler, on the right to food in the Occupied Palestinian Territories occupied by Israel since 1967, UN Doc. E/CN.4/2004/10/Add.2 of 31 October 2003; included as Dossier no. 56 accompanying the UN Secretary-General's submission.

(4) Structure of this Written Statement

15. This Written Statement is divided into four Parts. Chapter 2, which completes this **Part A**, argues that the Request is admissible and that, in accordance with its constant jurisprudence, the Court should respond to it.

16. **Part B** addresses the Factual Background to the Request. It consists of three Chapters. Chapter 3 outlines a chronology of the main developments concerning Palestine, so far as they are relevant to the Request. Chapter 4 explains how Israel's history of attempts unilaterally to change the legal status of the Occupied Palestinian Territory threatens to culminate in the Wall and its consequences. Chapter 5 discusses Israel's practices as Occupying Power, explaining the current security situation as this relates to and is exacerbated by the Wall. **Part C** (Chapter 6) examines the route and regime of the Wall.

17. **Part D** examines the legal considerations raised by the Request. The first two Chapters (Chapters 7 and 8) are concerned with the applicable law. Chapter 7 establishes that Israel is in occupation of Palestinian Territory, which is affected by the regime of the Wall. Chapter 8 outlines the applicable international law in the Occupied Palestinian Territory. Chapter 9 outlines the principal violations of the applicable law by Israel through the construction and maintenance of the regime of the Wall. Chapter 10 examines the consequences of these violations in terms of denial of self-determination to the people of Palestine. The legal consequences for Israel and the international community are examined in Chapter 11.

18. The Written Statement ends with a summary of conclusions. Attached to the Written Statement are three appendices.

19. Annexed to this Written Statement is a volume of maps and graphics (Volume 1), and 14 documentary annexes, mostly consisting of published reports on the Wall from third parties, which are reproduced for the convenience of the Court (Volume 2).

Chapter 2. THE COURT IS COMPETENT TO GIVE THE ADVISORY OPINION REQUESTED, AND THERE ARE NO COMPELLING REASONS PREVENTING THE COURT FROM GIVING ITS OPINION

(1) The Court is competent to give the requested advisory opinion

20. Article 96, paragraph 1, of the United Nations Charter provides: “The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.”
21. Article 65, paragraph 1, of the Court’s Statute stipulates: “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.”
22. These two provisions suffice to establish the competence of the General Assembly to request an advisory opinion from the Court and the competence of the Court to give the requested opinion.⁵
- (a) Jurisdiction *ratione personae*: the request was made by a duly authorized organ
23. As the Court explained in its reply to the General Assembly’s most recent request for an advisory opinion: “For the Court to be competent to give an advisory opinion, it is thus necessary at the outset for the body requesting the opinion to be ‘authorized by or in accordance with the Charter of the United Nations to make such a request. The Charter provides in Article 96, paragraph 1, that: ‘The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.’”⁶
24. Referring to Articles 10-13 of the Charter, the Court concluded that “in the present case, the General Assembly has competence in any event to seise the Court.”⁷
25. In making the request the General Assembly is also acting in the spirit of the recommendation set forth in its Resolution 171A (II) of 14 November 1947 on the “Need for greater use by the United Nations and its organs of the International Court of Justice,”⁸ and in the context of the call by former UN Secretary-General Boutros-Ghali in his “Agenda for Peace” that “United Nations organs turn to the Court more frequently for advisory opinions.”⁹

⁵ As the Court reiterated in its most recent Opinion, “the advisory nature of the Court’s function ... is governed by the terms of the Charter and of the Statute.” *Difference relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, I.C.J. Reports 1999*, p. 62, para. 26.

⁶ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226, at 232, para. 11.

⁷ *Ibid.* at 233, para. 11.

⁸ A/RES/171A (II), United Nations, *Repertory of the United Nations Organs*, vol. V, Articles 92-111 of the Charter. See also the Assembly’s fresh appeal contained in resolution 3232 (XXIX), “Review of the role of the International Court of Justice.”

⁹ Boutros Boutros-Ghali, *Agenda for Peace*, 1992, p. 22.

Consecutive Presidents of the Court have made appeals before the General Assembly for greater recourse to the advisory function of the Court.¹⁰

(b) The Resolution was validly adopted from the procedural point of view

26. The Court's jurisprudence affirms the presumption of validity of a resolution of a properly constituted organ of the United Nations. In reply to South Africa's argument that the resolution of the Security Council which requested an advisory opinion of the Court in the *Namibia* Case was invalid, the Court stated:

“A resolution of a properly constituted organ of the United Nations which is passed in accordance with that organ's rules of procedure, and is declared by its President to have been so passed, must be presumed to have been validly adopted.”¹¹

27. Resolution A/ES-10/14 of 8 December 2003 was adopted by a recorded vote of 90 in favour to eight against. The resolution was properly adopted by the constitutionally required majority of the members of the United Nations which voted on the matter. It must be considered as the expression of the legally valid will of the General Assembly.

28. The number of abstentions and absences from the vote has no effect on the validity and procedural regularity of the resolution adopting the request. Rule 86 of the Assembly's Rules of Procedure¹² defines the terms “members present and voting,” which appear in paragraphs 2 and 3 of Article 18 of the United Nations Charter to mean members casting an affirmative or negative vote and so as to exclude those that abstain or are absent from the vote. A long practice of the General Assembly has supported and applied this Rule.

29. In any event, as the Court stated in the Opinion it gave in 1996 concerning the *Legality of the Threat or Use of Nuclear Weapons*:

“Once the Assembly has asked, by adopting a resolution, for an advisory opinion on a legal question, the Court ... will not have regard ... to the distribution of votes in respect of the adopted resolution.”¹³

(c) The Resolution adopting the request was *intra vires* the Assembly

30. Pursuant to Article 96, paragraph 1, of the United Nations Charter, the General Assembly “may request” an advisory opinion from the Court. Having decided to make the request, the presumption must be that the General Assembly has validly exercised its power

¹⁰ See, e.g., *I.C.J. Yearbook 1991-1992*, p. 205, at 210-211; *I.C.J. Yearbook 1992-1993*, p. 249, at 252; *I.C.J. Yearbook 1994-1995*, p. 207, at 213; *I.C.J. Yearbook 1995-1996*, p. 270, at 281; *I.C.J. Yearbook 1997-1998*, p. 288, at 292.

¹¹ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 16, at 22, para. 20; see also *Legality of the Use by a State of Nuclear Weapons in Armed Conflict, Advisory Opinion, I.C.J. Reports 1996*, p. 66, at 82, para. 29.

¹² See UN Doc. A/520/Rev.15.

¹³ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226, at 237, para. 16. The fact that the resolution embodying the request in that instance had been “adopted with substantial numbers of negative votes and abstentions (i.e., 78 votes in favour, to 43 against, with 38 abstentions) obviously did not prevent the Court from rendering its advisory opinion. *Ibid.* at 255, para. 71.

in this particular case. To place a restrictive interpretation on the power of the General Assembly to initiate advisory proceedings on a legal question would run contrary to the clear intention of Article 96 of the Charter.

31. Unlike “[o]ther organs of the United Nations and specialized agencies,” whose power to request advisory opinions is restricted to legal questions “arising within the scope of their activities,” the Assembly’s power is not so restricted under Article 96 of the Charter. The Court has affirmed the Assembly’s broad authorization under the Charter.¹⁴

32. The powers of the General Assembly are broadly stated in Chapter IV of the United Nations Charter and include the power to “discuss any questions or any matter within the scope of the present Charter” (Article 10). The question falls squarely within the ambit of the Assembly’s extensive mandate under the Charter, which embraces a broad scope of activities. This mandate includes questions of human rights, self-determination and decolonization. In addition, Article 11 of the Charter authorizes the General Assembly to (a) consider general principles of co-operation in the maintenance of international peace and security (Article 11, paragraph 1), and (b) discuss any questions relating to the maintenance of international peace and security brought before it by any member of the United Nations or, in certain circumstances, a State which is not a member of the United Nations (Article 11, paragraph 2).

33. Thus, issues pertaining to the situation of human rights, self-determination, the use of force *et al.* in the Palestinian territory occupied by Israel since 1967, including the legal consequences of the construction and operation of the Wall in the Occupied Palestinian Territory, fall squarely within the General Assembly’s express powers and activities as provided by its constituent instrument.

34. As the practice of the General Assembly confirms, the subject-matter of the request is one the Assembly has regularly addressed in the course of its activities. Its long-standing interest and engagement in Palestine and in the right to self-determination, and the maintenance of other human rights, of the Palestinian people is well-known. It has been manifested in the annual debates of several of the Assembly’s main committees relating *inter alia* to self-determination and decolonization in general and the question of Palestine in particular; in the regular meetings of the Assembly’s Committee on the Exercise of the Inalienable Rights of the Palestinian People since 1975; in plenary debates concerning the question of Palestine, and the many Assembly resolutions on that question; in the holding of the tenth emergency special session on “Illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory,” (dating back to 1997, when Israel began construction of a new settlement south of East Jerusalem);¹⁵ and also in the commissioning of numerous studies on the situation of human rights in the Palestinian territories occupied by Israel since 1967, including the section regarding the Wall.¹⁶ Thus, the practice of the

¹⁴ See *ibid.*, at 233, para. 11. That the drafters of the Charter intended to provide the General Assembly with a *general access* to the advisory system was underscored by a former President of the Court in a statement before the Sixth Committee of the General Assembly in 1994. See *I.C.J. Yearbook 1994-1995*, p. 215, at 219.

¹⁵ Thus, resolution A/ES-10/13 of 21 October 2003, adopted by a vote of 144 in favour to four against, 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 embodying the request for an advisory opinion was adopted as part of the Assembly’s tenth emergency special session.

¹⁶ See, e.g., the report of the UN Secretary-General of 28 November 2003, UN Doc. A/ES-10/248. The Secretary-General’s report was submitted pursuant to paragraph 3 of General Assembly resolution A/ES-10/13.

General Assembly confirms both its competence in this case and its present active involvement in the issue. The Assembly clearly has an interest in knowing the legal effects of Israel's occupation of the Palestinian territories occupied since 1967, and more particularly in the legal consequences of the construction of the Wall being built by Israel in the Occupied Palestinian Territory, including in and around East Jerusalem.¹⁷

35. The question submitted relates to a matter of direct concern to the United Nations. Violations of the United Nations Charter are of such concern. The report of 8 September 2003 of the Special Rapporteur of the Commission on Human Rights on the situation in the Palestinian territories occupied by Israel since 1967, which is referenced in Resolution A/ES-10/14, characterized the construction of the Wall as "conquest in international law, ... prohibited by the Charter of the United Nations ...".¹⁸ The United Nations at large has an interest in assuring strict compliance by its Member States with the purposes and provisions of the Charter, including with respect to the resolutions adopted under the Charter by its main bodies. Israel has a long record of non-compliance with the pertinent resolutions of the Security Council and the General Assembly, including most recently Resolution A/ES-10/13 of 21 October 2003, as confirmed by the Secretary-General of the United Nations in his report dated 28 November 2003. This led to the Assembly's request for an advisory opinion embodied in Resolution A/ES-10/14.

(d) Jurisdiction *ratione materiae*: the Court is asked to give an opinion on a legal question

36. Both Article 96, paragraph 1, of the United Nations Charter and Article 65, paragraph 1, of the Court's Statute require that the question forming the subject-matter of the request should be a "legal question." As explained below, the advisory opinion requested in the present case relates to a "legal question" within the meaning of those provisions.

37. It should be recalled that it is for the requesting organ –and not for a Member State– to formulate the terms of a question that it wishes to ask.¹⁹ The objective of the question is clear: to determine the legal consequences of the construction of the Wall being built by Israel in the Occupied Palestinian Territory in light of the applicable international legal framework.²⁰

38. The question put by the General Assembly in this case is similar to the one which led the Court to give the Opinion in 1971 concerning the *Legal Consequences for States of*

Cf. *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226, at 233, para. 12. Other recent examples are the reports of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories (UN Doc. A/58/311) and of the Special Political and Decolonization Committee (Fourth Committee) (UN Doc. A/58/473 and Corr.1) referenced in General Assembly resolution A/RES/58/99 of 9 December 2003 and resolution A/RES/58/97 of 9 December 2003.

¹⁷ Cf. *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951*, p. 19.

¹⁸ See Dugard Report (2003), at 2, 8, para. 14.

¹⁹ See *Difference relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, I.C.J. Reports 1999*, p. 62, para. 36.

²⁰ Cf. *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226, at 238, para. 20.

*the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970).*²¹

39. As the Court stated in the Opinion it gave in 1975 in *Western Sahara*, 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.”²²

40. The Court can give a legal answer to the question posed in this case. The advisory opinion requested by the General Assembly relates to “the legal consequences” of the construction of the Wall in the Occupied Palestinian Territory “considering the rules and principles of international law, including the Fourth Geneva Convention of 1949, and relevant Security Council and General Assembly resolutions.” This language makes it clear that the Request concerns the *international legal aspects* of the construction of the Wall, and only such aspects. To rule on the legal consequences of the construction of the Wall in the Occupied Palestinian Territory, the Court must identify the existing “rules and principles of international law,” interpret them and apply them to the construction and operation of the Wall, thus offering a reply to the question posed based on international law.²³

41. The question posed in this case is not an abstract question, but is directly related to a specific instance, or concrete situation, namely, Israel’s construction and operation of the Wall in the Occupied Palestinian Territory, including in and around East Jerusalem.²⁴ The

²¹ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 16, at 17, para. 1 (“What are the legal consequences for States of the continued presence of South Africa in Namibia, notwithstanding Security Council resolution 276 (1970)?”).

²² *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 18, para. 15. See also *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226, at 234, para. 13.

²³ Cf. *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226, at 234, para. 13. The question of the applicability of a treaty, of which the Fourth Geneva Convention referred to in the request constitutes an example, to a given situation has been dealt with by the Court under its advisory jurisdiction. See, e.g., *Interpretation of Peace Treaties with Bulgaria, Hungary and Rumania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 71; *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947, Advisory Opinion, I.C.J. Reports 1988*, p. 12, at 26, para. 33; *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations, Advisory Opinion, I.C.J. Reports 1989*, p. 177, at 187, para. 28 (“The question which is the subject of the request, involving as it does the interpretation of an international convention in order to determine its applicability, is a legal question.”); *Difference relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, I.C.J. Reports 1999*, p. 62, at 187, para. 26. Moreover, the Court has consistently affirmed that the interpretation of treaty provisions constitutes “an essentially judicial task” (*Certain Expenses of the United Nations, Advisory Opinion, I.C.J. Reports 1962*, p. 155; *Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter), Advisory Opinion, I.C.J. Reports 1947-1948*, p. 61 (“[t]o determine the meaning of a treaty provision ... is a problem of interpretation and consequently a legal question”); *Competence of the General Assembly for the Admission of a State to the United Nations, Advisory Opinion, I.C.J. Reports 1950*, pp. 6-7; *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, I.C.J. Reports 1980*, p. 87, para. 33. In its most recent Opinion, the Court concluded that the condition of a legal question was satisfied based on the fact that the opinion requested related to the interpretation of a treaty that was mentioned in the request. See *Difference relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, I.C.J. Reports 1999*, p. 62, para. 26. The terms of the request in that case did not specifically invite the Court to engage in an interpretation of the treaty referred to in the request. While the request in this case specifically mentions the Fourth Geneva Convention, the wording of the request (“considering the rules and principles of international law, including”) indicates that its scope is not limited to that or any other treaty.

²⁴ Regarding the nature of the legal question, the Court has declared: “According to Article 96 of the Charter and Article 65 of the Statute, the Court may give an opinion on any legal question, abstract or

Request arose from circumstances of practical necessity and urgency. (Indeed, since the Request was made there seems to have been a further increase in the rate of construction of the Wall.) The question posed does not require the Court to make speculative statements.

42. Most, at least, of the significant facts in this case are uncontroversial. The establishment of certain facts in this case is clearly within the scope of the Court's judicial function and cannot transform the question into a non-legal one.²⁵

43. The facts upon which the Court can rely in responding to the Request are well-documented. They are before the Court in the documents accompanying the Request, in particular the report of the Secretary-General referenced in the resolution embodying the Request,²⁶ and the report of the Special Rapporteur of the United Nations Commission of Human Rights on the situation of human rights in the Palestinian territories occupied by Israel since 1967.²⁷ The Secretary-General's report informed the United Nations membership in clear and unambiguous terms that construction of the Wall was ongoing. It also described the construction and other activity in relation to the route of the Wall and its humanitarian and socio-economic impact on the Palestinian people. It is undisputed, and is amply supported by those reports and by the documents annexed to this Written Statement, that Israel is constructing and maintaining a Wall in the Occupied Palestinian Territory, and what the existing and projected course, location and impact of the Wall is.

44. The Assembly's request seeks the Court's advice on the legal consequences of the construction of the Wall in the Occupied Palestinian Territory "as described in the report of the Secretary-General." Despite the different context, the views expressed by the Court in its most recent Opinion are apposite for purposes of the present case. In that instance, the request from the requesting body included the words "taking into account the circumstances

otherwise." *Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter), Advisory Opinion, 1948, I.C.J. Reports 1947-1948*, p. 57, at 61. See also *Effect of Awards of Compensation made by the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1954*, p. 47, 51; *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 16, at 27, para. 40; *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226, at 236, para. 14.

²⁵ As the Court has explained on a previous occasion: "The Government of South Africa has also expressed doubts as to whether the Court is competent to, or should, give an opinion, if, in order to do so, it should have to make findings as to extensive factual issues. In the view of the Court, the contingency that there may be factual issues underlying the question posed does not alter its character as a 'legal question' as envisaged in Article 96 of the Charter. The reference in this provision to legal questions cannot be interpreted as opposing legal to factual issues. Normally, to enable a court to pronounce on legal questions, it must also be acquainted with, take into account and, if necessary, make findings as to the relevant factual issues. The limitation of the powers of the Court contended for by the Government of South Africa has no basis in the Charter or the Statute." *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 16, at 27, para. 40. Moreover, "a mixed question of law and fact is none the less a legal question within the meaning of Article 96, paragraph 1, of the Charter and Article 65, paragraph 1, of the Statute." *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 12, at 19, para. 17.

²⁶ See UN Doc. A/ES-10/248. The Secretary-General's report was based in large part on information from United Nations offices on the ground in the Occupied Palestinian Territory (including field monitoring), World Bank reports, a World Food Programme Survey, Israeli Ministry of Defense documents (including an official map of the route of the Wall, Israeli Cabinet Decisions, and military Orders), and other materials available to the United Nations, including those in the public domain. See *id.* at paras. 2-3, 6, 9, 23 and 25. The Secretary-General's report also notes that Israel and Palestine were consulted in the preparation of the report and includes a summary of their legal positions in Annex I and II. See *id.* at para. 2.

²⁷ See Dugard Report (2003).

set out in paragraphs 1 to 15 of the note of the Secretary-General” The Court reached the following conclusion based on these words:

“It is clear that the reference in the request to the note of the Secretary-General was made in order to provide the Court with the basic facts to which to refer in making its decision.”²⁸

45. Similarly, the Report of the Secretary-General was included in the request embodied in Resolution A/ES-10/14 in order to provide the Court with the basic facts to which to refer in making its decision in the present case. The Court can render its advisory opinion based on these basic facts, and as necessary on other facts of public record.

(2) There are no compelling reasons preventing the Court from giving the requested advisory opinion

46. Notwithstanding the permissive language of Article 65, paragraph 1, of the Court’s Statute, and the affirmation by the Court, since the *Eastern Carelia* Case in 1923 (which shall be discussed at length later), that the exercise of its consultative function is “discretionary,” the present Court has never declined to give a requested advisory opinion through an exercise of discretion. Indeed, no admissible request for an advisory opinion from any organ has ever been refused.

47. Already in 1950, this Court declared:
“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.”²⁹

48. Still more emphatically, in 1956, the Court said that only “compelling reasons” would lead it to refuse giving a requested opinion.³⁰ On a more recent occasion, the Court summarized its practice in the granting of advisory opinions as follows:

“The Court has constantly been mindful of its responsibilities as ‘the principal judicial organ of the United Nations’ (Charter, Art. 92). When considering each request, it is mindful that it should not, in principle, refuse to give an advisory opinion. In accordance with the jurisprudence of the Court, only ‘compelling reasons’ could lead it to such a refusal ... There has been no refusal, based on the discretionary power of the Court, to act upon a request for advisory opinion in the history of the present Court.”³¹

²⁸ *Difference relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, I.C.J. Reports 1999*, p. 62, para. 39. Similarly, the Court’s predecessor once decided that “it must accept the findings of the Committee [appointed by the League of Nations to investigate the matter to which the request for advisory opinion related] on issues of fact unless in the records submitted to the Court there is evidence to refute them.” *Jurisdiction of the European Commission on the Danube, Advisory Opinion, 1927, P.C.I.J., Series B, No. 14*, p. 46.

²⁹ *Interpretation of Peace Treaties with Bulgaria, Hungary and Rumania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 65, at 71.

³⁰ *Judgments of the Administrative Tribunal of the ILO upon Complaints Made against UNESCO, Advisory Opinion, I.C.J. Reports 1956*, p. 86.

³¹ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226, 235, para. 14 (including references to earlier jurisprudence).

- (a) The question put to the Court is both urgent and relevant, and is likely to have a practical and contemporary effect

49. The Court has declared that:

“[t]he function of the Court is to give an opinion based on law, once it has come to the conclusion that the questions put to it are relevant and have a practical and contemporary effect, and consequently, are not devoid of object and purpose.”³²

50. By Resolution A/ES-10/14, the General Assembly requested the Court “urgently to render its advisory opinion” on the question submitted. The urgency and relevance of the question are underscored by the events which have taken place since the Request was received by the Registry of the Court. Thus, on 18 December 2003, only eight days after the Court received the Assembly’s request, Israel’s Prime Minister gave a keynote address at the “Herzliya Conference” in which he laid out a “Disengagement Plan” according to which Israel would soon take unilateral measures affecting Israel’s borders with Palestine. The Prime Minister said specifically: “Israel will greatly accelerate the construction of the security fence.” The speech leaves no doubt about plans to impose a unilateral settlement on the Palestinian territory occupied by Israel by severing them along the line of the Wall.

51. It is evident that an advisory opinion on the request made by the General Assembly will be of great practical value and of real importance for the Assembly in its consideration of the situation. Resolution A/ES-10/13 of 21 October 2003, constituting the Assembly’s first pronouncement on the Wall, referred in paragraph 3 to “further actions [which] should be considered, if necessary, within the United Nations system.” In this context, it does not matter that legal aspects relating to the Wall are being considered in other fora, including Israel’s highest court.³³ Consequently, the question put to the Court is not devoid of object or purpose.³⁴

52. The request by the General Assembly in this case gives the Court an opportunity to clarify important questions of international law of direct and practical relevance to an item which has been on the agenda of the General Assembly for many years, and as to which the General Assembly has been a major actor.³⁵ Answering the request by the Court would enlighten the Assembly on the legal aspects involved and the legal context for its continuing involvement in the future of Palestine.³⁶

53. An advisory opinion on the specific question put to the Court would not adversely affect the ongoing efforts to solve the larger Israeli-Palestinian question. On the contrary, a statement by the Court on the legal consequences of the construction of the Wall in the

³² *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 12, at 37, para. 73.

³³ See *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226, at 233, para. 12.

³⁴ Cf. *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 12, at 37, para. 73.

³⁵ Cf. *id.* at 37, para. 72 (“In general, an opinion given by the Court in the present proceedings will furnish the General Assembly with elements of a legal character relevant to its further treatment of the decolonization of Western Sahara.”).

³⁶ See *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations, Advisory Opinion, I.C.J. Reports 1989*, p. 177, at 188-189, para. 31 (“The jurisdiction of the Court under Article 96 of the Charter and Article 65 of the Statute, to give advisory opinions on legal questions, enables United Nations entities to seek guidance from the Court in order to conduct their activities in accordance with law.”).

Occupied Palestinian Territory under international law can facilitate such efforts by authoritatively establishing the present legal situation. An independent and impartial pronouncement by the Court on the legal consequences of Israel's construction of the Wall is in no way incompatible with the pursuit of negotiations, now or in the future.

54. Rather, it is actions such as Israel's decision to continue and accelerate its construction of the Wall in the Occupied Palestinian Territory, especially in and around East Jerusalem, notwithstanding the resolutions of the United Nations which are far more likely to be detrimental to on-going efforts, in the United Nations and elsewhere, to solve the larger Israeli-Palestinian question. Palestine maintains its hope that Israel will cease its construction activities in the face of these advisory proceedings. Continued construction and operation of the Wall can only destroy the potential for any negotiated settlement of the Israeli-Palestinian conflict.

(b) The Eastern Carelia Case is distinguishable from the present case

55. The precedent of the *Eastern Carelia* Case as dealt with by the Permanent Court of International Justice is of no relevance to the present case.³⁷ In that case, the Council of the League of Nations had asked the Permanent Court if the Treaty between Finland and Russia of 14 October 1920 and its Annex relating to the recognition of the autonomy of Eastern Carelia, a Russian region, was binding on the Soviet Federative Republic of Russia. The Council had adopted its resolution after Finland, a Member State of the League of Nations, brought a contentious dispute between itself and Soviet Russia, a non-Member State, before the Council notwithstanding the fact that Soviet Russia rejected the invitation to submit the question of Eastern Carelia to the examination of the Council on the basis of Article 17 of the Covenant of the League.

56. The main ground of the decision of the Permanent Court to refuse to give its opinion was that the League Council was not competent, absent the consent of Soviet Russia, to handle the issue under the Covenant and was, therefore, incompetent to request an advisory opinion.

57. According to the Permanent Court, there were other "cogent reasons" justifying its refusal to give an advisory opinion, especially that the Court could not ascertain controverted questions of fact in the absence of a party. The Permanent Court pointed out that the request encompassed a dispute between Finland and Soviet Russia, that the latter was not a member of the League of Nations, that it had not consented to the competence of the Court, and that it refused to participate in the Court's proceedings.³⁸

58. Despite frequent requests by States, since 1949, that it should not on a particular matter give an advisory opinion for reasons of judicial propriety, the present Court has never

³⁷ *Status of Eastern Carelia, Advisory Opinion, 1923, P.C.I.J. Series B, No. 5.*

³⁸ The Permanent Court's refusal was mainly based, *not* as it is sometimes alleged, on the absence of Soviet Russia's consent to the advisory procedure itself. In fact, the Court said that it was "unnecessary" *in casu* to deal with the issue "whether questions for advisory opinion, if they relate to matters which form the subject of a pending dispute between nations, should be put to the Court without the consent of the parties." *Ibid.* at 27. That was not the issue. The Court found its main ground for refusal upstream, namely, in the incompetence of the Council to deal with the question.

acted upon the exception applied by the Permanent Court in the *Eastern Carelia* Case and has never exercised its discretion not to give an advisory opinion requested from it.

59. There are strong reasons for this record and why the sole precedent of the Permanent Court is not governing in this case.

60. First, it should be noted that no organic relation existed between the Permanent Court of International Justice and the League of Nations. At the time (1923), the Statute of the Permanent Court did not include any provisions specifically dealing with advisory proceedings, which may explain the cautious attitude displayed by the Permanent Court in the *Eastern Carelia* Case.

61. In contrast, the International Court of Justice is the principal judicial organ of United Nations pursuant to Article 92 of the United Nations Charter and Article 1 of the Statute, which forms an integral part of the Charter. This fact, in combination with the wording of Article 96 of the Charter and Article 65 of the Statute, has important ramifications for the Court's approach to its advisory jurisdiction, as was demonstrated above.³⁹

62. Second, a major reason for the dismissal in the *Eastern Carelia* Case was that the Permanent Court regarded the central issue before it as one of fact which it could not resolve without the participation of both disputing States.⁴⁰ On this point, in the words of the Court in the *Namibia* Case, the *Eastern Carelia* Case "is not relevant, as it differs from the present one."⁴¹ In the present case, the Court is not confronted with a question involving extensive factual issues which could not be elucidated without hearing both Israel and Palestine or which it could not establish on its own failing such participation. Soviet Russia, the State that refused to cooperate with the Council and the Permanent Court, was not at the time a Member State of the League of Nations. Israel is a Member State of the United Nations.⁴² Palestine for its part is a permanent observer fully participating in this proceeding. The Request concerns territory which has always been within the remit of the United Nations from its earliest days.

63. Whether or not Israel participates in this proceeding is irrelevant. As was demonstrated above in connection with the requirement of a "legal question," the establishment of relatively simple facts is within the scope of the Court's judicial function. As the Court has stated, "the issue is whether the Court has before it sufficient information and evidence to enable it to arrive at a judicial conclusion upon any disputed questions of fact

³⁹ Referring to the impact of the status of the Court as the "principal judicial organ" of the United Nations on the *Eastern Carelia* Case, no lesser authority than Sir Hersch Lauterpacht concluded that the *Eastern Carelia* Case "can no longer be regarded as a precedent of authority." Sir Hersch Lauterpacht, *The Development of International Law by the International Court* (2nd ed., 1958), p. 248. See also Shabtai Rosenne, *The Law and Practice of the International Court, 1920-1996*, Vol. II (3rd ed., 1997), p. 1061 ("the comparison is between two unlikes.").

⁴⁰ *Status of Eastern Carelia, Advisory Opinion, 1923, P.C.I.J. Series B*, No. 5, p. 29 ("The question put to the Court ... can only be decided by an investigation into the facts underlying the case." (emphasis added)).

⁴¹ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 16, at 23, para. 31.

⁴² The Web site of BBC News included the following report on 9 December 2003, the day following the adoption of the Assembly's request for an advisory opinion: "Israel reaffirmed its determination to defend itself at the court in The Hague. 'We aren't running away', said Raanan Gissin, a senior adviser to Israeli Prime Minister Ariel Sharon. 'We will fight our battle at The Hague .. We'll present our case'" BBC News report, text at <www.bbc.co.uk/2/hi/middle_east/3302637.stm>.

the determination of which is necessary for it to give an opinion in conditions compatible with its judicial character.”⁴³ The Court can rely on United Nations documents in the record in establishing the facts in this case and on publicly available information setting forth in detail the position of Israel with regard to the Wall being built by it in the Occupied Palestinian Territory.

64. It is recalled that the Permanent Court emphasized in the *Eastern Carelia* Case that: “the Court does not say that there is an absolute rule that the request for an advisory opinion may not involve some enquiry as to fact”⁴⁴

There are independent sources of information regarding the construction of the Wall and the regime it represents. This includes the United Nations documents submitted to the Court.⁴⁵

65. Third, the fact that the matter to which the present request for an opinion relates is in dispute between Israel and Palestine is not in itself a ground for refusing to comply with the request. As the Court has stated:

“the existence, in the background, of a dispute the parties to which may be affected as a consequence of the Court’s opinion, does not change the advisory nature of the Court’s task, which is to answer the questions put to it”⁴⁶

66. While in the present case the question asked by the General Assembly does relate to an important controversy between Israel and the majority of the Member States of the United Nations, as is clear from General Assembly Resolutions A/ES-10/13 and A/RES/A/ES-10/14, the Court itself has recognized that underlying each request for an advisory opinion it is probable that there will be a controversy which has led the organization to make the request:

“Differences of view amongst States on legal issues have existed in practically every advisory proceeding; if all were agreed, the need to resort to the Court for advice would not arise.”⁴⁷

⁴³ *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 12, at 28-29, para. 46.

⁴⁴ *Status of Eastern Carelia, Advisory Opinion, 1923, P.C.I.J. Series B*, No. 5, p. 28. As the Court has explained, “it was the actual lack of ‘materials sufficient to enable it to arrive at any judicial conclusion upon the question of fact’ (*P.C.I.J., Series B, No. 5*, p.28) which was considered by the Permanent Court, for reasons of judicial propriety, to prevent it from giving an opinion.” *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 12, at 28, para. 46. See also Manley O. Hudson, *The Permanent Court of International Justice, 1920-1942, A Treatise* (1943), p. 498 (“In the *Danube Commission Case*, the Court stated that since the facts had been investigated by the League of Nations it was not ‘proper to make new investigations and enquiries’; the Rumanian Government had refused to accept the facts found by a League committee, but the Court thought that it should ‘accept the findings of the Committee on issues of fact unless in the records submitted to the Court there is evidence to refute them.’” *Jurisdiction of the European Commission of the Danube, Advisory Opinion, 1927, P.C.I.J., Series B*, No. 14).

⁴⁵ It also includes official United Nations Web sites. For example, the Humanitarian Information Centre in the Occupied Palestinian Territory of the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) maintains a Web site which includes maps pertaining to the Wall in the Occupied Palestinian Territory and United Nations translations of military orders of the Israel Defense Forces declaring the “seam zone” a closed area. See <www.reliefweb.int/hic-opt/top.htm>.

⁴⁶ *Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1973*, p. 166, at 171, para. 14. For a summary of the Court’s earlier jurisprudence on this point, see Sir Gerald Fitzmaurice, *The Law and Procedure of the International Court of Justice*, Vol. Two (repr. 1995), pp. 566-567.

67. Moreover, as the Court stated in the Opinion it gave in 1973 concerning the *Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal*: “[t]he existence, in the background, of a dispute the parties to which may be affected as a consequence of the Court’s opinion, does not change the advisory nature of the Court’s task, which is to answer the questions put to it”⁴⁸

(c) The giving of an advisory opinion does not depend on the consent of any particular State or group of States, and no State can prevent the giving of an opinion

68. The fact that Israel has voted against the resolution adopting the request does not constitute a compelling reason preventing the Court from giving an advisory opinion. The Court has repeatedly affirmed that “[t]he Court’s Opinion is given not to the States, but to the organ which is entitled to request it”⁴⁹

69. The Court has made it clear that:
“[n]o State ... can prevent the giving of an Advisory Opinion which the United Nations considers to be desirable in order to obtain enlightenment as to the course of action it should take.”⁵⁰

70. The Court has indicated that by becoming a party to the Charter and the Statute, a State has given its consent to the exercise of the Court’s advisory jurisdiction.⁵¹ Indeed, it has pointed out that a State “*could not validly object* to the General Assembly’s exercise of its powers ... to seek an opinion on questions relevant to the exercise of those powers.”⁵² Similar to the situation in *Western Sahara*, the present case: “arose during the proceedings of the General Assembly and in relation to matters with which it was dealing. It did not arise independently in bilateral relations.”⁵³

71. In sum, the Court is entitled “to act independently of any formal expression of consent on the part of States individually”⁵⁴ and the giving of the opinion does not depend on

⁴⁷ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 16, at 25.

⁴⁸ *I.C.J. Reports 1973*, p. 171, para. 14 (cited with approval in *Difference relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, I.C.J. Reports 1999*, p. 62, para. 25).

⁴⁹ *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 71. See also *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226, at 235, para. 14.

⁵⁰ *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 71; see also *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations, Advisory Opinion, I.C.J. Reports 1989*, pp. 188-189.

⁵¹ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 16, at 23, para. 31.

⁵² *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 12, at 24, para. 30 (emphasis added).

⁵³ *Ibid.* at 25, para. 34.

the consent of any particular State or group of States. It is not for any State or organ to decide in lieu of the General Assembly on the “desirability” or the “opportunity” of the request or to overrule it, when the Assembly has already considered it desirable.

72. The Court has even gone as far as to say:
“It is not for the Court itself to purport to decide whether or not an advisory opinion is needed by the Assembly for the performance of its functions. The General Assembly has the right to decide for itself on the usefulness of an opinion in the light of its own needs.”⁵⁵

(d) The mere fact that the question may have been politically motivated cannot prevent the Court from rendering its advisory opinion

73. The Court has stated that, as a rule, it will not question the propriety of the requesting organ’s action.⁵⁶

74. The Court has consistently affirmed that it “cannot attribute a political character to a request which invites it to undertake an essentially judicial task.”⁵⁷ Where the Court has been asked to characterize a particular form of behaviour with respect to the provisions of treaty and customary international law, the Court is performing a task which is essentially legal. The concrete legal question on which the Court’s opinion has been requested relates to the compatibility of the construction of the Wall in the Occupied Palestinian Territory with international law. In asking the Court to characterize the behaviour (i.e., the construction of the Wall in the Occupied Palestinian Territory) in the context of rules of positive law, the General Assembly is inviting the Court, in effect, to carry out a task which falls within the normal exercise of its judicial powers.

75. In connection with the Assembly’s previous request for an advisory opinion, the Court neatly summarized its jurisprudence on “political” aspects.⁵⁸

76. It is thus clear from the Court’s jurisprudence that it is not for the Court to delve into the motivation which leads a duly authorized organ to request an advisory opinion on a legal question obviously falling within the jurisdiction of that organ, even when that question relates to an issue which has other important political facets. In the request before the Court,

⁵⁴ Shabtai Rosenne, *The Law and Practice of the International Court, 1920-1996*, Vol. II (3rd ed., 1997), p. 989.

⁵⁵ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226, at 235, para. 16.

⁵⁶ *Ibid.*

⁵⁷ *Certain Expenses of the United Nations, Advisory Opinion, I.C.J. Reports 1962*, p. 155; *Condition of Admission, Advisory Opinion, I.C.J. Reports 1947-1948*, p. 61; *Competence of the General Assembly for the Admission of a State to the United Nations, Advisory Opinion, I.C.J. Reports 1950*, pp. 6-7; *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, I.C.J. Reports 1980*, p. 87, para. 33.

⁵⁸ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226, at 234, para. 13. The Court’s earlier jurisprudence has affirmed that it is not concerned with the motives which prompted the decision to make the request and that it will have no regard for the circumstances which led to the making of the request. See, e.g., *Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter), Advisory Opinion, 1948, I.C.J. Reports 1947-1948*, p. 57, 61; *Competence of the General Assembly for the Admission of a State to the United Nations, Advisory Opinion, I.C.J. Reports 1950*, p. 6.

the legal questions are clear and the Court can answer them without enquiring into any apparent or hidden political motives or other political facets of the issue.⁵⁹

(3) Conclusion

77. For the reasons set out above, the Court is competent to give an advisory opinion in this case on the basis that the General Assembly is competent to request an advisory opinion from the Court on the subject-matter of the request, and there are no compelling reasons preventing the Court from giving its opinion on the question submitted.

⁵⁹ On a previous occasion, the Court clearly indicated that the existence of a political controversy at the background of the question put to the Court is no reason for it to decline to give the advisory opinion requested. See *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, *Advisory Opinion*, *I.C.J. Reports 1971*, p. 16, at 27, para. 27.

PART B. FACTUAL BACKGROUND

Chapter 3. A CHRONOLOGY OF THE MAIN EVENTS CONCERNING PALESTINE

(1) The Territory of Palestine

78. Historically, Palestine is the territorial unit that was ultimately demarcated and defined by the League of Nations soon after the close of the First World War. It was made subject to the mandate regime (Class ‘A’) established by Article 22 of the League’s Covenant and Britain was designated the Mandatory Power in 1922. The mandate over Palestine became operative when the Council of the League of Nations approved it on 29 September 1923.

79. The mandate regime over Palestine incorporated what was known as the Balfour Declaration, which was issued by Britain on 2 November 1917. The Declaration, in its final text, provided for the establishment in Palestine of a Jewish national home:

“it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country.”

These two safeguard clauses were introduced into the Balfour Declaration upon the insistence of the British government.

80. In the period between 1917, when Britain was able to oust the Ottoman forces from Palestine, and 1948, Britain was, first, the occupying power, and from 1923, became the mandatory power in Palestine. In both capacities, Britain exerted efforts to facilitate the creation of the ‘Jewish national home’. It relaxed the immigration procedures and removed restrictions on the sale and/or acquisition of land to Jewish immigrants. However, this policy created the conditions for rising tensions and disturbances in Palestine between Jewish immigrants and Palestinian inhabitants.

81. With the increase of tension in Palestine between Palestinian inhabitants and Jewish immigrants and the demise of the League of Nations, Britain formally requested, on 12 April 1947, the UN Secretary-General to convene a special session of the General Assembly for the creation of a special committee to prepare for the discussion of the question of Palestine.⁶⁰

82. On 15 May 1947, the UN General Assembly adopted a resolution authorizing an eleven-country Special Committee on Palestine (‘UNSCOP’) to study and make recommendations relevant to the question of Palestine.

83. The UNSCOP report, made public in September 1947, contained two proposals for Palestine. The majority of the UNSCOP members proposed the partition of Palestine into (1)

⁶⁰ As the Court decided in 1950 with regard to South West Africa (Namibia), the winding up of the League of Nations in 1946 did not put an end to the international status of mandated territories. The General Assembly assumed the exercise of supervisory authority over all mandated territories which had not become independent by 1946, and did so whether or not those territories were transferred to the Trusteeship System. The exercise of this authority was consistently upheld by this Court in a series of advisory opinions.

an Arab State, that was allocated 42.88% of the territory of historical Palestine; (2) a Jewish State that was allocated 56.47% of that territory; and (3) an independent Jerusalem in 0.65% of Palestine to be under a UN Trusteeship system. The plan also proposed an economic union between the Arab and Jewish States. On 29 November 1947, the General Assembly, favouring the UNSCOP partition plan, adopted the two-State plan in Resolution 181 (II) by a vote of 32 in favour to 13 against with 10 abstentions.

84. On 15 May 1948, British troops and administration withdrew from Palestine. On or about that day, the 'Jewish Agency for Palestine' unilaterally declared a sovereign State of Israel on the "strength" of General Assembly Resolution 181 (II).

85. In the period between December 1947 and January 1949, war broke out. In the first six months, the fighting was local in nature, fought between Jewish paramilitary groups and Palestinian inhabitants. After that, the war was fought between Arab and Israeli armies. As a result of that war, the Israeli army occupied about one-half of the land that was allotted to the Arab State in Resolution 181 (II). Mandated Palestine was effectively dissected into three territorial parts. The largest part came under Israeli control. The second largest part, now known as the West Bank including East Jerusalem, came under Jordanian control, and was subsequently merged with the Hashemite Kingdom of Jordan on 24 April 1950.⁶¹ The third part, now called the Gaza Strip, came under Egyptian control and later was put under the administration of the Egyptian Government with the approval of the League of Arab States on 13 April 1950.

86. The war ended with the Armistice Agreements concluded between Israel and Egypt in February 1949, Lebanon in March 1949, Jordan in April 1949, and Syria in July 1949. The area of the West Bank, including East Jerusalem, was demarcated in the Jordanian-Israeli Armistice Agreement and the Armistice Line came to be widely known as the "Green Line." The area of the Gaza Strip was demarcated in the Egyptian-Israeli Armistice Agreement.

87. On 11 May 1949, Israel was admitted as a member of the United Nations following the recommendation made to the General Assembly by the Security Council in Resolution 69 of 4 March 1949. In admitting Israel, the General Assembly, in Resolution 273 (III), specifically referred to Israel's undertakings to implement Resolution 181 (II) and Resolution 194 (III) of 11 December 1948 as well as to the declarations and explanations made by the representative of Israel before the *ad hoc* Political Committee in respect of the implementation of those resolutions.

88. On 5 June 1967, the Six Day War erupted. Israel was able to occupy the whole of the Gaza Strip and the whole of the West Bank (including East Jerusalem), in addition to other territories in Egypt and Syria.

89. On 22 November 1967, the UN Security Council unanimously adopted Resolution 242 (1967), which has become the basic platform for a peaceful settlement in the Middle East. This resolution upholds, *inter alia*, the principle of the non-admissibility of the acquisition of territory by force and demands that Israel's armed forces should withdraw from territories "occupied in the recent conflict". The reference in the resolution to the recently occupied territories obviously meant those territories situated beyond the Armistice Lines

⁶¹ In July 1988, Jordan announced that it was cutting its legal and administrative ties with the West Bank, thereby rescinding the 1950 Act of Union.

(this of course included Egyptian and Syrian territories occupied by Israel in June 1967). In particular, and for the purpose of this case, these territories are the West Bank, including East Jerusalem, and the Gaza Strip which are the subject of reference in the ensuing analysis. (Henceforth, the West Bank and the Gaza Strip are called the Occupied Palestinian Territory ('OPT').)

90. The Israeli Government began its functions in the Occupied Palestinian Territory as an Occupying Power. Since 1967, Israel has been governing the Occupied Palestinian Territory by virtue of Military Orders that the army commanders in the West Bank and the Gaza Strip issue from time to time. The conclusion of the Oslo Accords did not lead to a change in that practice in spite of the fact that the Declaration of Principles⁶² and the Interim Agreement⁶³ provided for the withdrawal of the Israeli Military Government from the Occupied Palestinian Territory. Israel's occupation of the Occupied Palestinian Territory is discussed in detail in later chapters of this Written Statement.

(2) Jerusalem

91. Under the Partition Resolution 181(II), Jerusalem was designated as a *corpus separatum* under an international regime to be administrated by the UN. However, when the 1947/48 war broke out, the Israeli forces occupied West Jerusalem and the Jordanian army remained in East Jerusalem. The *de facto* division of the City of Jerusalem was formalized in the Jordan-Israel Armistice Agreement of 1949.

92. On 23 January 1950, Israel declared that Jerusalem was its capital. No other State recognized this declaration. However, after the Six Day War in June 1967, Israel initially utilized local legislation to change the legal status of the entire area of Jerusalem. On 27 June 1967, the Israeli Parliament (the Knesset) passed three laws as a result of which the Israeli government incorporated the whole of Jerusalem area into the municipal and administrative spheres of its government. (See Chapter 4 for more details in this regard.)

93. On 30 July 1980, Israel's Knesset adopted the Basic Law: Jerusalem, Capital of Israel.⁶⁴ Article 1 reads: "Jerusalem, complete and united, is capital of Israel". Article 2 provides that "Jerusalem is the seat of the President of the State, the Knesset, the Government and the Supreme Court".

94. The UN General Assembly responded to this Israeli action by adopting Resolution 35/169E on 15 December 1980, in which the Assembly affirmed in operative paragraph (2):
"that the enactment of the 'Basic Law' by Israel constitutes a violation of international law and does not affect the continued application of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, in the Palestinian and other Arab territories occupied since June 1967, including Jerusalem;..."

The Assembly's position has been consistently upheld in subsequent resolutions.⁶⁵

⁶² Articles XIII and XV. See note 71 *infra*.

⁶³ Article X, Annex I, Art. 1.5. See note 75 *infra*.

⁶⁴ Laws of the State of Israel, Vol. 34 (1979/80), p. 209.

⁶⁵ For example, 42/209 B, C & D; 44/42 of December 8, 1989.

95. The Security Council has, likewise, consistently rejected any attempt by Israel to change the legal status of Jerusalem. In its Resolution. 252 (1968) of 21 May 1968, the Council:

“*Consider[ed]* that all legislative and administrative measures and actions taken by Israel, including expropriation of land and properties thereon, which tend to change the legal status of Jerusalem are invalid and cannot change that status;”

96. This resolution was followed by Resolution 267 (1969) of 3 July 1969. Further, in Resolution No. 271 of 15 September 1969, the Council called upon Israel, in operative paragraph 4, to adhere to the Fourth Geneva Convention and international law “governing military occupation”. In its Resolution 298 (1971) of 25 September 1971, the Council:

”*Urgently call[ed]* upon Israel to rescind all previous measures and actions and to take no further steps in the occupied section of Jerusalem which may purport to change the status of the City.....”

97. The Security Council reacted to the Basic Law and adopted Resolution 478 (1980) of 20 August 1980 by 14 votes in favour to none against, with one abstention, and expressed its deep concern over the enactment of the Basic Law by Israel. The Council:

“*Affirm[ed]* that the enactment of the ‘basic law’ by Israel constitutes a violation of international law and does not affect the continued application of the [Fourth] Geneva Convention [...] in the Palestinian and other Arab territories occupied since June 1967, including Jerusalem”

and determined to consider all actions taken by Israel, in particular the ‘basic law’, as null and void. The Council called on those states having established diplomatic missions at Jerusalem to withdraw such missions from the Holy City.

98. The Council has been consistent in treating Jerusalem as an occupied territory and in calling on Israel to adhere to the Fourth Geneva Convention.⁶⁶

(3) The Palestinian People

99. On 31 December 1931, the British Government conducted a census in Palestine, the results of which were published in the *Census of Palestine*.⁶⁷ The results showed that there were slightly more than one million people living in Palestine, of whom about 84% were Palestinian Arabs and about 16% Jews. Most of the Jewish population consisted of recent immigrants. The last officially released statistics for the Palestinian population were published in December 1947, showed that there were about 1.3 million Palestinians and about 590,000 Jewish residents at that time. This fact demonstrates that, even after the influx of Jewish immigration, the majority of the population consisted of Palestinian Muslims and Christians.

⁶⁶ For example, Resolution 694 of 24 May 1991; and Resolution 1073 of 28 September 1996.

⁶⁷ E. Mills (ed. 1932) *Census of Palestine 1931 – Population of Villages, Towns and Administrative Area*.

100. The Partition Plan of 1947, as mentioned above, allocated less than 43% of the territory for about 70% of the population, and about 56% of the territory for about 30% of the population. As such, the Palestinian people rejected the plan.

101. As a result of the events in the years between 1947 and 1949, the Palestinian people suffered ultimate defeat, resulting in the loss of 78% of the Palestinian territory and the subversion of their right to self-determination, and the creation of a severe refugee problem, with at least half of the Palestinians uprooted from their homes and land.

102. On 11 December 1948, the General Assembly adopted Resolution 194 (III), paragraph 11 of which resolved that:

“the refugees wishing to return to their homes and live in peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for the loss or damage to property which, under the principles of international law or in equity, should be made good by the Governments or authorities responsible”.

This resolution has been repeatedly upheld, virtually every year, by the UN General Assembly.

103. On 8 December 1949, the General Assembly passed Resolution 302 (IV), which established the UN Relief and Works Agency for Palestine Refugees (‘UNRWA’). The number of refugees that were registered with UNRWA had reached 940,000 by that time.⁶⁸

104. This tragedy was augmented when the June War of 1967 gave birth to a new class of refugees, now called ‘displaced persons’. Their number reached 325,000 persons. The Security Council, in Resolution 237 (1967) of 14 June 1967 called upon Israel “to facilitate the return of those inhabitants who have fled the areas since the outbreak of hostilities”.

105. In spite of the fact that the number of refugees and displaced persons has doubled several times, their problem remains unresolved.

106. The Palestinian people, however, were able to re-gain recognition of their right of self-determination on the international level. In Resolution 2649 (XXV) of 30 November 1970, the General Assembly expressed concern that, because of alien domination, many peoples were being denied the right of self-determination. The Assembly condemned those governments which denying the right to peoples “recognized as being entitled to it, especially the peoples of southern Africa and Palestine”. In Resolution 2672 C of 8 December 1970, the General Assembly stated that it:

“1. *Recognizes* that the people of Palestine are entitled to equal rights and self-determination in accordance with the Charter of the United Nations;
Declares that full respect for the inalienable rights of the people of Palestine is an indispensable element in the establishment of a just and lasting peace in the Middle East.”

⁶⁸ Annual Report of the Secretary-General on the Work of the Organization, July 1, 1948 to June 30, 1949, p. 102.

107. This recognition has been continuously affirmed by the General Assembly and by other organs of the United Nations. As a matter of record, the world community at large now recognizes the right of the Palestinian people to an independent and viable State.

(4) The Palestinian Representative Entity

108. After the demise of the Ottoman Empire on the heels of the First World War, and the British occupation of Palestine, an Arab congress, consisting of representatives of various Palestinian cities and towns, convened in Haifa in 1920. That Congress elected the Arab Executive Committee ('AEC') which functioned until 1936. In that year, the AEC was succeeded by the Arab Higher Committee ('AHC'), which exhibited a considerable degree of effectiveness within the Palestinian community. Both the AEC and the AHC gained recognition at various political levels, including with the Mandatory Government. The AHC appeared before the British Royal Commission in 1937 as the representative of the Palestinian people. The British Government also invited the AHC to participate in the first and second London Conferences of 1939 and 1946.

109. When UNSCOP visited Palestine in its search for a solution, it invited the AHC to participate and present the views of the Palestinian people. The AHC also participated as a recognized body in the deliberations of the UN General Assembly's First Committee in May 1947. On 1 April 1948, the Security Council in Resolution 43 (1948) called upon
"the Jewish Agency for Palestine and the Arab Higher Committee to make representatives available to the Security Council for the purpose of arranging a truce between the Arab and Jewish communities of Palestine;"

110. When the UNSCOP Partition Plan was made public, the AHC declared itself the Government of All Palestine.⁶⁹ The new government was recognized by five Arab States and Afghanistan. It joined the Arab League where it participated with full voting rights on all issues concerning Palestine. It continued to entertain that status until it was succeeded in 1964 by the Palestine Liberation Organisation.

111. On 20 May 1964, the Palestine National Council ('PNC') convened in Jerusalem and declared the creation of the Palestine Liberation Organisation (the 'PLO'). The PNC participants were Palestinians representing their respective communities. The PNC elected the PLO's executive branch which was called the Executive Committee which, in turn, elected the Chairman of the Committee. The PNC subsequently decided to elect a Central Council to act on its behalf between regular PNC sessions.

112. The PLO asserted that it was the sole and legitimate representative of the Palestinian people. After the June war of 1967, the PLO gained status and recognition. It became a full member of the League of Arab States, and in 1973, the Arab Summit held in Algiers, recognized the PLO as the "sole representative of the Palestinian people."

113. Outside the Arab region, the PLO received international recognition which enhanced its status. In addition to diplomatic recognition by over 100 States, the UN General Assembly adopted Resolution 3236 of 22 November 1974, in which it recognized that the PLO was the "representative of the Palestinian people [...]". On that same date, the Assembly adopted

⁶⁹ Text in the Palestine Yearbook of International Law ('Palestine YBIL'), Vol. 4 (1987/88) p. 294.

Resolution 3237, granting observer status to the PLO and inviting it to participate in the sessions and the work of the Assembly in that capacity.

114. At its 1859th meeting on 4 December 1975, the UN Security Council likewise decided to invite the PLO to participate in its discussion concerning the Israeli raids against Palestinian refugee camps in Lebanon. That invitation was extended to the PLO with the same rights of participation accorded under rule 37 and not on the basis of rule 39 of the Council's provisional rules of procedures. Rule 37 applies to “[a]ny Member of the United Nations which is not a member of the Security Council...”; rule 39 applies to ‘persons’. The Council now routinely invites Palestine to participate when the Council discusses the situation in the Middle East, including the Palestinian question.

115. On 20 December 1988, the UN General Assembly adopted Resolution 43/177, according to which the Assembly expressed its awareness of the proclamation of the State of Palestine by the Palestine National Council in line with General Assembly Resolution 181 (II) and in exercise of the inalienable rights of the Palestinian people. The Resolution acknowledged the proclamation of the State of Palestine by the PNC on 15 November 1988 and,

“[d]ecide[d] that, effective as of 15 December 1988, the designation of ‘Palestine’ should be used in place of the designation ‘Palestine Liberation Organisation’ in the United Nations system ...”

116. On 7 July 1998, the General Assembly overwhelmingly adopted Resolution 52/250, conferring upon Palestine additional rights and privileges of participation, which are reserved for Member States, including the sponsorship of draft resolutions related to the question of Palestine.

117. With such a representative capacity and status, the PLO signed with Israel all agreements and correspondences that have been produced under the so-called Oslo peace process. On 9 September 1993, Yasser Arafat, the Chairman of the PLO Executive Committee, exchanged with Mr. Yitzhak Rabin, then Israeli Prime Minister, letters of Mutual Recognition by the PLO and Israel.⁷⁰ The Declaration of Principles on Interim Self-Government Agreements of 13 September 1993,⁷¹ Agreement on the Gaza Strip and the Jericho Area of 4 May 1994,⁷² Agreement on Preparatory Transfer of Powers and Responsibilities of 29 August 1994,⁷³ Protocol on Further Transfer of Powers and Responsibilities of 27 August 1995,⁷⁴ the Israeli – Palestinian Interim Agreement on the West Bank and the Gaza Strip of 28 September 1995,⁷⁵ Protocol Concerning the Redeployment in Hebron of 17 January 1997,⁷⁶ Sharm El-Sheikh Memorandum of 4 September 1999,⁷⁷ Protocol Concerning Safe Passage between the West Bank and the Gaza Strip of 5 October 1999⁷⁸, and subsequent arrangements, were all signed and executed by the State of Israel and the PLO.

⁷⁰ The Palestine YBIL., Vol. 7 (1992/1994), p. 230.

⁷¹ *Ibid.*, p. 232.

⁷² *Ibid.*, p. 243.

⁷³ The Palestine YBIL., Vol. 8 (1994/1995), p. 315.

⁷⁴ *Ibid.*, p. 341.

⁷⁵ *Ibid.*, p. 353.

⁷⁶ The Palestine YBIL., Vol. 9 (1996/1997), p. 437.

⁷⁷ The Palestine YBIL., Vol. 11 (2000/2001), p. 339.

⁷⁸ *Ibid.*, p. 343.

(5) The Palestinian Authority

118. Following the signing of the Declaration of Principles, the Palestine Central Council, acting on behalf of the PNC, convened in Tunis on 10-11 October 1993. In that meeting, the Council endorsed the Oslo Agreement and resolved to establish the Palestinian Authority ('PA'), nominated Yasser Arafat to be the president of the PA and authorized him to select its members. The PA was made accountable to the PLO Executive Committee.

119. The PA was structured like any council of ministers, with each member to carry one portfolio. The Palestinian security forces that were established were kept under the command of Mr. Arafat. The PA remains responsible for the negotiations with the State of Israel, but its ultimate authority is the PLO.

120. On 20 January 1996, a general election was held and the Palestinians in the OPT elected, Mr. Yasser Arafat as the president, and elected their first legislative body, the Palestinian Legislative Council (the 'PLC').⁷⁹ Palestinians living in East Jerusalem participated in these elections and elected seven members to the Council.⁸⁰ The PLC consists of 88 representatives. This body is still functioning in the Occupied Palestinian Territory despite the expiration of its term on 4 May 1999. Under the prevailing coercive situation in the Occupied Palestinian Territory, further elections have not yet been possible.

⁷⁹ This arrangement was expressed in article IV of the Interim Agreement of 1995.

⁸⁰ *Ibid.*, Article II (3).

Chapter 4. ISRAEL'S ATTEMPTS TO CHANGE THE LEGAL STATUS OF THE OCCUPIED PALESTINIAN TERRITORY, INCLUDING EAST JERUSALEM

(1) Settlement Policy and Practice: An Overview

121. With the exception of East Jerusalem, Israel never formally annexed the Palestinian territory that it occupied in 1967. This does not mean that Israel preserved the legal status of the Occupied Palestinian Territory. Successive Israeli Governments have been pursuing since 1968 the illegal policy of colonizing the Occupied Palestinian Territory, including East Jerusalem, through the transfer of parts of Israel's own civilian population to the territory.⁸¹ Carrying this out has entailed a host of physical, legal and administrative changes within the territory, which have resulted in the seizure of over 41.9 per cent⁸² of this territory by Israel.

(a) Phases of settlement activities⁸³

122. It is possible to distinguish three phases of settlement activities.

(i) *The First Phase: the Allon Settlement Plan*

123. First conceived in 1967, the Allon Plan, named after then Defense Minister, Mr. Yigal Allon, was submitted to several Israeli cabinets from 1968 to 1970. Although it was never officially approved,⁸⁴ it served until 1977 as a guideline for the establishment of Israeli settlements in the West Bank. The plan's guiding assumptions were that Israel must have defensible borders which must be based on the Jordan River and the Rift Valley and the Judean desert. Security borders must also be political borders. Only if Israeli settlements existed along its length would the border be political. Defensible borders, Mr Allon argued, therefore require a chain of Jewish settlements which themselves must be under Israeli sovereignty, but without the annexation of a large Palestinian population. The Allon Plan served as a basis for the Alignment (Labor coalition) platforms of 1974, 1977, 1981, 1984 and 1988. (See Annex Volume 1, Map 6, Israeli Settlement Plans in the Occupied Palestinian Territory)

(ii) *The second Phase: 'Gush Emunim' Settlements*

124. Gush Emunim (the Block of the Faithful), a right-wing Israeli movement based on religious ideology, was founded in February 1974 with the objective of settling in all parts of the 'land of Israel'. The adoption of their settlement strategy by the Likud Party, the right wing alliance that opposed the Labor party and which won the 1977 elections marked a historic departure from the Labor policy of territorial compromise. The Gush Emunim

⁸¹ *Question of the Violation of Human Rights in the Occupied Arab, Including Palestine*, Report of the Human Rights Inquiry Commission established pursuant to Commission Resolution S-51 of 19 October 2000.18

⁸² B'Tselem 2003 Report, p. 116, Annex 13 in Annex Volume 2 accompanying this Written Statement.

⁸³ This is adapted from Benvenisti, Meron, *The West Bank Data Project: A Survey of Israel's Policies*, American Enterprise Institute for Public Policy Research, Washington D.C. 1984.

⁸⁴ Gazit, Shlomo, *The Carrot and the Stick, Israel's Policy in Judea and Samaria, 1967-68*, B'nai B'rith Books, Washington D.C. 1995. p. 156-7.

settlement strategy was articulated by Mattitiahu Drobles in what is known as the Drobles Plan. It was based on the following principles:

Settlements should not be isolated. 'Near each existing settlement other settlements should be built, so that blocs would be formed.'

A barrier of settlements should be built to 'give a sense of security to the rift valley settlers – our first defensive wall in the east – and prevent a situation, whereby they would find themselves pressed from East and West by hostile populations.'

Settlements should fragment the territorial continuity of the Palestinians. To achieve this, settlements must be built between and around Palestinian population centres 'with the objective of reducing to the minimum the possibility for the development of another Arab state in these regions. It would be difficult for the minority population to form a territorial continuity and political unity when it is fragmented by Jewish settlements.'

125. However, because of the apparent shortage of ideologically motivated settlers prepared to leave the metropolitan areas and live in small, remote and isolated settlements, the policy of settling Israeli Jews in the central mountain region of the West Bank was not a success.

(iii) The Third Phase: Suburbia

126. During the third phase, a new strategy was developed which emphasized demographic objectives, in addition to security and ideological ones. The Likud government (1977-84) sought to attract average Israelis interested in improving their quality of life. It was hoped that these suburban settlers, in order to protect their economic investment in a higher quality of life, would create a strong lobby that would prevent any political solution based on territorial compromise. The settlements in the West Bank were being turned into suburbs with easy and quick access to main metropolitan areas in Israel.

127. With the adoption of this strategy, settlement figures began to show a substantial increase. In 1984 there was a 60.5% growth rate bringing the settler population from 27,000 in 1983 to 44,146 in 1984. By 1993, the date of the signing of the Declaration of Principles between Israel and the PLO, there were 120,000 Israeli settlers in the West Bank (excluding Jerusalem) living in 150 settlements, and 160,000 in East Jerusalem living in 9 settlements. At present there are some 395,000 Israeli settlers living in the West Bank, of which 177,000 live in East Jerusalem.⁸⁵ (See Volume 1, Pictures 24 - 28)

(b) Methods of appropriating land for Israeli settlements

(i) Declaration of land as State land

128. When the occupation began, the land owned by Jews before 1948 and administered by the Jordanian Custodian of Enemy Property in the West Bank was estimated at 30,000 dunums out of a total area of 5.50 million dunums (a dunum is 1,000 sq.m.). These lands were located mainly in the Jerusalem metropolitan area and the Etzion Bloc, situated south of Jerusalem. By 2003, land appropriated, *inter alia*, for Israeli settlements in the West Bank (including Jerusalem) constituted 2,346,000 dunums i.e. 41.9 percent of the total area of the

⁸⁵ Israeli Central Bureau of Statistics, 2002.

West Bank.⁸⁶ Israel has claimed that no privately owned land was taken by its military authorities for the use of Israeli settlers – only public land, or the so-called ‘state’ land. The argument regarding the illegality of using the natural resources (including land) in occupied territories for the benefit of the occupier and the transfer of the occupier’s population to the occupied territory, is discussed in Chapter 9, below. The intention here is to respond to the Israeli claim that the settlements were established on ‘state’ land and that no private lands were confiscated from Palestinians in the Occupied Palestinian Territory for the construction of Israeli settlements.

129. According to the World Bank,⁸⁷ the total area of state land, namely land registered in the name of the Jordanian Government prior to the beginning of the occupation, is estimated at approximately 13 percent of all West Bank land.

130. Yet, by 1984 Israel was claiming that 40 percent⁸⁸ of such land fell in the category of state land and was to be used exclusively for Israel’s own Jewish population. What legal ploy did Israel use to boost the proportion of land falling under this category from 13 to 40 percent?

131. A 1993 World Bank survey of the land law concluded that the Ottoman Land Code had no concept of ‘state’ or ‘public’ land. The argument went as follows: “At the advent of the British Mandate all land in Palestine was divided into two categories: *waqf* (charitable or religious trust land administered by the Islamic Shari’a courts) and *mulk* (being all land not *waqf*). The Land Code considered all *mulk* land as being owned in the first instance, by the Sultan. Substantial land was given in perpetuity to residents and taxed accordingly. It was generally residential, urban or village property and a title deed (‘taboo’) was given to the owner and was easily transferred by changing the title in the local register, maintained, in part, for the tax collector’s convenience. Non-urban, non residential land was divided into three categories: *miri*, *matrouk* and *mawat* land. *Miri* land could be considered available for private, exclusive use if cultivated. If the land remained fallow or not used for three years or more, it could be categorized as *mahlul* and made available to another user (and thus be a continuous source of tax revenue). *Matrouk* land was for public use: for example, for roads, parks or pasture. Its ownership remained with the Sultan but its use was recognized as available for a particular group or village or district which was charged with its keeping. *Mawat* land was vacant land not in any person or group’s possession or use. It was considered land that lies at such a distance from a town or village that a human voice cannot be heard at the nearest inhabited place. The Ottoman Land Code had no concept of ‘state’ or ‘public’ land.”⁸⁹

132. The concept of ‘state land’ was introduced during the British Mandate in the 1922 Order-in-Council.⁹⁰ The 1922 Order defined public lands as “all lands in Palestine by virtue of Treaty Convention, Agreement or Succession and all lands which are or shall be acquired

⁸⁶ B’Tselem 2002 Report, Annex 12 in Annex Volume 2 accompanying this Written Statement. The authors calculate the total area of the West Bank at 5608000 dunums which includes the areas annexed to Jerusalem. The calculation does not include the no man’s land and the proportionate area of the Dead Sea.

⁸⁷ World Bank, *Developing the Occupied : An Investment in Peace*, Volume 3 Private Sector Development, World Bank 1993, p. 113.

⁸⁸ Land Grab Report: Israel’s Settlement Policy in the West Bank, May 200, op. cit. p.51

⁸⁹ World Bank. op. cit. p. 113

⁹⁰ “1922 Order-in-Council,” cited in *Laws of Palestine*, London (1933), vol. III. P. 2569.

for the public service or otherwise.” The prior ownership rights of the Sultan were transferred to the British High Commissioner.

133. It is apparent from the definition that public lands were restricted to lands subject to the control of the government and used in the execution of its purposes. They did not include land which was not the subject of a grant to the public, and, therefore, did not include *miri*, *mawat*, and *matrouk* lands.

134. Jordanian civilian rule over the West Bank extended from 1951 to 1967. Pursuant to its reform legislation, Jordan organized land settlement in the West Bank and began to survey and formally register all land. By the time of the 1967 war, this process was still incomplete. Only approximately 40 percent of the land in the West Bank had been registered. As noted above, out of this, 13 percent was registered in the name of the Jordanian Government.⁹¹

135. It was never the practice during this period for the Jordanian Government, nor is it now the practice of the government in Jordan, to consider all lands except land falling in the *waqf* and *mulk* categories as state land. It is, therefore, correct to conclude that in June 1967, out of the area of registered land, state lands comprised only that 13 percent of West Bank land which was already registered in the name of the Jordanian Government.

136. Upon its occupation of the Occupied Palestinian Territory in 1967 Israel moved to assert control, but not outright ownership, over land registered in the name of the Jordanian Government. By virtue of Military Order 59, these lands passed to the Custodian of Government Property.

137. In 1968, Israel suspended the process of land registration that had begun in Palestine under the British mandate in 1928.⁹² That process was complex but had afforded considerable due process to claimants, especially in respect of pasture and cultivable land.

138. In late 1979, the Israeli Office of the Custodian of Absentee Property began a survey of West Bank land to determine the extent of private land (i.e., registered land) and government land. As already mentioned, this survey determined that 40 percent of all land in the West Bank could be declared to be state land.⁹³ The Israeli official arrived at this inflated figure using the fallacious assumption that land in the West Bank could be deemed to be state land unless it was either registered or under continuous cultivation for a period of over ten years.⁹⁴ In both cases, the burden of proof was imposed on the Palestinians claiming to own land to prove that it was not state land.⁹⁵

139. While the Israeli military occupation had suspended the process of land registration for the Palestinians, Israel in effect pursued it for the Israeli settlers through these unilateral declarations by the area commander that large areas land were state land. This led to the registration of the previously unregistered land (which constituted the majority of the land) in the name of Israeli Government and quasi-government agencies for the benefit of Israeli settlers. By 1986 virtually all this land was transferred to the Custodian of Government Land

⁹¹ World Bank, op. cit. p. 113

⁹² Military Order 291(1968).

⁹³ World Bank op. cit. p. 114-5.

⁹⁴ Shehadeh, Raja, *Occupier's Law, Israel*, Institute for Palestine Studies, Washington, D.C 1985, p. 31. Benvenisti, Meron and Shlomo Khayat, *The West Bank and Gaza Atlas*, The Jerusalem Post, 1988, p. 61

⁹⁵ Military Order 364 (1969)

and put under the administrative jurisdiction of the Israeli Settlement councils in the Occupied Palestinian Territory.⁹⁶

140. Prior to the Israeli occupation of the West Bank, there was only one Land Register for all the inhabitants of the area, to which the public had free access. After 1967, Israel restricted access to the existing Land Register and created another register. This new Register, created by virtue of an Israeli Military Order,⁹⁷ was used exclusively for the purpose of registering land in the name of Israeli owners. This Register was kept not in the West Bank but in Israel. Eventually, it came to be merged with the records in the Israel Lands Administration Authority in Israel, where Israeli state lands are registered.

141. In this way, the Land Registration Department of the West Bank which until 1967 served as the only register for all West Bank land, came to be used as the register only for land left for the use of Palestinians. The Israel Land Administration Authority, on the other hand, became the register of the land controlled by the Israeli Government and reserved for the use of Israeli settlers. In this manner, the seizure of some 41.9 percent of Palestinian land by Israel was achieved. As to the remaining land, it continued to be in Palestinian hands but was subject at any moment to seizure by the Israeli forces, a process that is on going to this day.

(ii) Other methods of land seizure

142. In their quest to take possession of land in the occupied territories, the Israeli authorities have, according to Meron Benvenisti,⁹⁸ “been using every legal and quasi-legal means in the book and are inventing new ones to attain their objectives.” These means have included: acquisition of land owned by Palestinians who happened to be outside the West Bank when the occupation began (absentee land is estimated at 430,000 dunums⁹⁹), expropriation for public purposes (which accounted for the acquisition of 150,000 dunums seized or designated for seizure by 1988¹⁰⁰), requisitioning for military purposes (which accounted for the acquisition of 50,000 dunums of land by 1988¹⁰¹), and declaration of land as closed for military purposes which accounted for the acquisition of one million dunums of land by 1988. However, none of these means has brought more land under Israeli control than the method described above of declaring unregistered land as state land and placing it under Israeli control for the exclusive use of Israeli settlers.

143. Despite the territorial aspects of the Oslo Accords, the Declaration of Principles signed between Israel and the PLO in 1993, and the Interim Agreement signed in 1995, the entry into force of these Accords did not enable the Palestinians to alter the illegal policies and practices by which Israel had been acquiring the majority of West Bank land. When, in accordance with the Interim Agreement, Israel transferred jurisdiction to the Palestinians over land registration, Israel was only transferring control over land registered in the West Bank Land Register, not land registered in the Israeli Register. Thus, the majority of the land controlled directly and exclusively by Israel for the use of Israeli settlers remained out of the

⁹⁶ World Bank, *op. cit.* p.115.

⁹⁷ Military Order 569, Order Regarding Registration of Transactions in Special Lands, 1974.

⁹⁸ West Bank Data Project, *op. cit.* p. 30

⁹⁹ West Bank Data Project, *op. cit.* p.30.

¹⁰⁰ West Bank and Gaza Atlas. *op. cit.* p. 62.

¹⁰¹ West Bank and Gaza Atlas, *op. cit.* p. 62.

purview of Palestinian control. The attempt of Palestinian negotiators to alter this by expanding the definition of land registration in Article 22 of Annex III dealing with the transfer of this sphere was in vain.

(iii) Land use planning as a method for restricting Palestinian use of the land

144. Land registration was not the only process by which Palestinian land came to be designated for the use of Israeli settlers. Town planning was just as important, both in enforcing the acquisition of Palestinian land for the Israeli settlers and in establishing separate structures for the settlements.

145. Palestinian law in the West Bank defines four types of development plans: regional plans, outline plans, detailed plans and parcellation schemes. Two regional plans were prepared during the time of the British Mandate. The first was the Samaria Regional Plan (referred to as ‘S15’) which covers the northern part of the West Bank and the Jerusalem Regional Plan (referred to as ‘RJ5’) which covers most of the West Bank. The purpose of regional plans was to provide a context for preparing outline plans for villages.

146. The Israeli Higher Planning Authority in the West Bank claimed to have discovered these old regional plans in 1980 (in the case of the RJ5) and 1985 (in the case of S15).¹⁰² Amendments were then made to these plans, whereby the locations of Israeli settlements were identified and large areas were reserved for their future development. The Palestinian population had increased at least four-fold since these plans were first prepared, yet no modification or amendment took this into account.¹⁰³ In their amended form, the plans served a double purpose. They were used to restrict Palestinian development, and also to allow maximum room for the establishment and development of Israeli settlements.¹⁰⁴

147. One of the amendments to these regional plans was in the form of the regional Partial Outline Plan for roads No. 50. This plan is based on two earlier plans prepared in Israel: Road Plan T/M/A/3 and the 1983-1986 Plan prepared by the World Zionist Organization, which sought to integrate Israeli and West Bank road networks, connect settlements to Israel and by-pass Palestinian centres of population.¹⁰⁵

148. In 1967, the Palestinian’s main transport artery in the West Bank ran north to south. However, beginning in the early 1970’s, Israel began to introduce an east-west system of ‘bypass’ roads, the purpose of which has been defined by the Israeli Ministry of Defense as being to:

“enable [Israelis] to travel in the Occupied Territories without passing through Palestinian population centres;
permit Israelis to travel across the Green Line by the shortest route;
maintain ‘an internal fabric of life’ within the Israeli settlement blocs; and
ensure that Palestinian traffic did not pass through the settlements.”¹⁰⁶

¹⁰² From Occupation to Interim Accords, p. 83

¹⁰³ From Occupation to Interim Accords, op. cit, p.83

¹⁰⁴ From Occupation to Interim Accords, p. 83; West Bank and Gaza Atlas, p. 55-56; B’Tselem 2002 Report, p. 89, Annex 12 in Annex Volume 2 accompanying this Written Statement.

¹⁰⁵ From Occupation to Interim Accords, op. cit. p.83

¹⁰⁶ State Comptroller, Annual Report 48 (in Hebrew) (Jerusalem; 1998), pp. 1032-1033. as cited in B’Tselem (2002) Land Grab: Israel’s Settlement Policy in the West Bank, p. 50

149. The initial east-west road roads built in the early 1970's by Israel, as the Occupying Power, linked the Jordan Valley settlements with coastal areas in the territory of the state of Israel.¹⁰⁷ The introduction of the Road Plan No. 50 in 1983-84 introduced a comprehensive east-west system, the goal of which was to “integrate the Israeli and West Bank systems and to promote Jewish settlement in all parts of the West Bank.”¹⁰⁸ Creating accessibility to settlement areas would also serve to increase demand in these areas.¹⁰⁹

150. When Road Plan No. 50 was placed on deposit in 1984, 1600 objections were submitted against it by Palestinians who felt aggrieved because of the extensive damage it was going to cause to their lands.¹¹⁰ The special committee, composed entirely of Israeli officers, which considered these objections decided in its session on 12 March 1991 to reject them.¹¹¹

151. As with settlement expansion, throughout the Oslo process by-pass road construction continued unabated. Between 1994 and 1997, 159.2 km of by-pass roads were constructed; and in 1999 Israeli planning authorities approved 14 new by-pass roads, entailing the confiscation of some 10, 219 dunums (2,532 acres) of Palestinian land.¹¹² As of 2000, Israel had requisitioned approximately 160,000 dunums, in order to build its by-pass road network of some 400 kilometers.¹¹³

152. For over three years Palestinian access to these roads, constructed on Palestinian land, has been restricted. Since the start of the second *intifada* in September 2000, some 750 road blocks and barriers have been placed, preventing Palestinians from using the old roads,¹¹⁴ while their access to the new roads created in according with Road Plan No. 50 continues to be restricted.¹¹⁵

153. Likewise, the borders of the Palestinian population centres, both towns and villages, were circumscribed by the statutory zoning plans completed by Israel in the Occupied Palestinian Territory before the Palestinian Authority took over. This was because the areas

¹⁰⁷ Israeli Proposed Road Plan for the West Bank, A question for the International Court of Justice, as annexed in “Letter Dated 5 February 1985 from the Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People addressed to the Secretary-General. A/40/119; S/16943, 7 February 7, 1985.

¹⁰⁸ Benvenisti, Meron, the West Bank and Gaza Atlas, the West Bank Data Base Project, 1988, p. 35

¹⁰⁹ Benvenisti, Meron, the West Bank and Gaza Atlas, the West Bank Data Base Project, 1988, p. 35

¹¹⁰ Shehadeh, Raja, “From Occupation to Interim Accords: Israel and the Palestinian”, Kluwer International, 1997, p. 83

¹¹¹ Shehadeh, Raja, “From Occupation to Interim Accords: Israel and the Palestinian”, Kluwer International, 1997, p. 83

¹¹² Question of the Violation of Human Rights, supra note 87.

¹¹³ Question of the Violation of Human Rights in the Occupied Arab, including Palestine, Report of the Human Rights Inquiry Commission established pursuant to Commission Resolution S-51 of 19 October 2000, p. 18.

¹¹⁴ “West Bank Barrier: Humanitarian Access and the Jerusalem Wall, United Nations Officer for the Coordination of Humanitarian Affairs, 3rd December 2003, p. 5; See www.reliefweb.int/hic-opt

¹¹⁵ Despite the ostensibly inclusive wording of Article 27 of Annex III of the Interim Agreement of 1995 the Palestinian Authority had no control over most of the road system in the West Bank because it fell in what the Agreement designated as area C which remained under the exclusive territorial jurisdiction of Israel. Article 27(1), Annex III states, “Powers and responsibilities in the sphere of Planning and Zoning in the West Bank and the Gaza Strip shall be transferred from the military government and its Civil Administration to the Palestinian side. This includes initiating, preparing, amending and abrogating Planning Schemes, and other legislation pertaining to issues regulated by Planning Schemes (hereinafter: ‘Planning Schemes’) issuing building permits and supervising and monitoring building activities.’

over which the Palestinian Authority had territorial jurisdiction were determined by the Interim Agreement and could only be increased with Israel's agreement.

154. Prior to the signing of the Declaration of Principles in September 1993, outline plans for some 400 Palestinian towns and villages had already been prepared,¹¹⁶ mainly by the Israeli planning authority in the West Bank. Most of these consisted of plans crudely drawn by felt-tip markers on aerial photographs.¹¹⁷ The most outstanding feature of these crudely prepared plans was the plan boundary. Rather than define the area for which planning policies are to be prepared, the boundary identified the zone within which all Palestinian urban development was to be confined.¹¹⁸

155. One report described the corresponding process for the Israeli settlements in the Occupied Palestinian Territory as follows:

“Meanwhile, outline plans for the settlements were made by the same planning authority, followed by detailed plans which took fully into consideration present and future needs for the development of the Jewish areas. In this way, the future spatial development of Palestinian areas was circumscribed and restricted, Arab settlement blocs were prevented and Jewish settlement blocs were established providing the maximum possible space for their future expansion. Through the implementation of Road Plan number 50, these were connected to each other and to Israeli centers while by-passing Palestinian towns and villages.”¹¹⁹

156. All these schemes were given statutory effect and became, in fact, part of the law of the land prior to the signing of the Oslo Accords. It was this highly discriminatory and segregated town planning reality under the cloak of law, which influenced the content of the Accords.

(2) Effects of the presence of Settlements and Settlers in the Occupied Palestinian Territory

(a) Economic and Development Effects

157. Settlements, together with the road network, destroy the territorial integrity of Palestine.¹²⁰ The settlements and by-pass roads limit the possibility for urban and economic development, by the seizure of land and by blocking the physical expansion of Palestinian villages and towns.¹²¹ (See Annex Volume 1, Picture 27 - 28) They also further undermine economic development by restricting Palestinian movement and impeding the flow of commerce and workers from one Palestinian area to another.¹²² For example, along the main north-south transport artery for the Palestinian population, the Occupying Power is able to

¹¹⁶ B'Tselem 2002 Report, p. 87, Annex 12 in Annex Volume 2 accompanying this Written Statement.

¹¹⁷ From Occupation to Interim Accords, p. 83, 1997.

¹¹⁸ B'Tselem 2002 Report, p. 87, Annex 12 in Annex Volume 2 accompanying this Written Statement.

¹¹⁹ From Occupation to the Interim Accords, p. 83-84.

¹²⁰ *Question of the Violation of Human Rights in the Occupied Arab Territories, Including Palestine*, report of the human rights inquiry commission established pursuant to Commission Resolution S-5/1 of 19 October, E/CN.4/2001/121, 16 March 2002, p. 18, Annex 10 in Annex Volume 2 accompanying this Written Statement.

¹²¹ *Ibid.*

¹²² *Ibid.*

control the main transport artery of the Palestinian population by creating and preventing the expansion of Palestinian construction and development toward the road and by preventing the connection of Palestinian communities located on different sides of the road.¹²³

(b) Conditions for Violence

158. The presence of settlements and settlers contribute to increased rates of violence against Palestinians, including direct violence by settlers. Measures taken to protect Israeli settlements and settlers involve an increase in military presence in inhabited areas and have given rise to violent encounters between the Israeli occupying forces and the Palestinian population.¹²⁴ Moreover, many of the acts of violence that have been carried out by the Israeli occupying forces and settlers that have resulted in Palestinian deaths or injuries have occurred on heavily defended roads leading to settlement or in the proximity of settlements.¹²⁵ Furthermore, much of the Palestinian property bulldozed by the occupying forces prior to the construction of the wall was destroyed for the security of settlers, and not in the interests of military security.¹²⁶

159. Notwithstanding UN Security Council Resolution 904 (1994), which “called for measures to be taken to guarantee the safety and protection of the Palestinian civilians throughout the occupied territory” (in the wake of the 1994 massacre by an Israeli settler against Palestinian worshippers in Al-Haram Al-Ibrahimi mosque in Al-Khalil (Hebron)), Palestinians are still routinely subjected to Israeli settler violence. The UN Special Rapporteur of the Commission on Human Rights noted in his March 2002 report, the phenomena of settler violence:

“Protected by the Israeli military, and exempt from the jurisdiction of the courts of the Palestinian Authority, settlers have committed numerous acts of violence against the Palestinians and destroyed Palestinian agricultural land and property”.¹²⁷

(3) Financial Incentives for Settling in the Occupied Palestinian Territory

160. Realizing that for its settlement policies to be successful, non-ideological citizens also had to settle in the Occupied Palestinian Territory,¹²⁸ successive Israeli governments have used financial subsidies to attract Israeli citizens to settle in the Palestinian territory. Accordingly, the Israeli Government classifies Israeli settlements as “Area of National Priority—A or B”, which entitles them to generous financial benefits. As one report put it:

¹²³ B’Tselem 2002 Report, p. 81, Annex 12 in Annex Volume 2 accompanying this Written Statement.

¹²⁴ International Committee of the Red Cross *Annual Report*, September 2001 p. 327.

¹²⁵ *Question of the Violation of Human Rights in the Occupied Arab Territories , including Palestine*, Report of the Human Rights Inquiry Commission established pursuant to Commission Resolution S-51 of 19 October 2000, para 70, p. 18.

¹²⁶ *Question of the Violation of Human Rights in the Occupied Arab Territories , including Palestine*, Report of the Human Rights Inquiry Commission established pursuant to Commission Resolution S-51 of 19 October 2000, para 70, p. 18.

¹²⁷ *Question of the Violation of Human Rights in the Occupied Arab , including Palestine*, Report of the Human Rights Inquiry Commission established pursuant to Commission Resolution S-51 of 19 October 2000, para 70, p. 18.

¹²⁸ “Barak Renews Hi-Priority Status for Settlements”, Press Release, Peace Now, December 30, 2000.

“The National Priorities Map is an important tool for the implementation of government policy. The map enables channeling of substantial funds to areas that the government wishes to develop. Designation of a locality as having the status of National Priority A gives that locality a formidable incentives package.”¹²⁹

161. These incentives and benefits include, *inter alia*, a 7% income tax break, housing grants, subsidized mortgages, free schooling from the age of three, free school bussing, and grants for businesses in industry, agriculture, and tourism.¹³⁰

162. The Israeli Government ministries that transfer budgetary resources to settlements include the Israeli Ministries of Transportation, Housing and Construction, Trade and Industry, Defense, the Settlement Department of the Agriculture Ministry, and the Israel Lands Authority. Most ministries are institutionally and functionally linked with the settlement enterprise, as most, if not all contribute to their maintenance, expansion, and provision of services.

163. Throughout the 1990’s, the Israeli Government favoured the local settlement authorities in the Occupied Palestinian Territory as compared to local authorities in Israel. Per Capita transfers in this regard were 150% higher.¹³¹ In fact, the total per capita budget available to the local settlement authorities in the Occupied Palestinian Territory was more than forty percent higher than the national average throughout the 1990s.¹³²

(4) Extending territorial jurisdiction

164. Israeli governments have sought to avoid the problems that would be caused by *de jure* annexation, particularly in the international arena, choosing instead to pursue policies of *de facto* annexation. The Israeli Government, the Knesset, and the IDF Commanders, with the blessing of the Israeli High Court of Justice, have altered Israeli and military legislation with the objective of enabling *de facto* annexation of settlements to the territory of the State of Israel.¹³³ Israel began imposing extra-territorial application of Israeli laws to the settlement areas in the Occupied Palestinian Territory and to Israeli Jewish citizens irrespective of their location in the Occupied Palestinian Territory.¹³⁴ The jurisdiction of Israeli courts was extended to Israeli civilians for offences committed in the Occupied Palestinian Territory. Civil disputes between Israeli settlers or between a settler and Palestinian also fell under Israeli jurisdiction. The effect of these measures was to encourage more Israeli citizens to move to the settlements, thus contributing to the growth of settlements.¹³⁵

¹²⁹ “Barak Renews Hi-Priority Status for Settlements”, Press Release, Peace Now, December 30, 2000; See also B’Tselem Land Grab Report, Chapter 5, “Benefits and Financial Incentives.”

¹³⁰ See <http://www.ariga.com/peacenowsettlementbudgetreport.htm>

¹³¹ *Land Grab Report: Israel’s Settlement Policy in the West Bank*, May 2002, p. 84.

¹³² *Ibid*, p. 84.

¹³³ *Ibid*, p. 65.

¹³⁴ Emergency Regulations (Offenses in the Administered – Jurisdiction and Legal Assistance), 5727-1967. In 1977, the name was amended to read “Judea and Samaria, the Gaza Strip, the Golan Heights, Sinai and South Sinai, as reported in B’Tselem 2002 Report, p. 65, Annex 12 in Annex Volume 2 accompanying this Written Statement. Some of these principles were confirmed by Annex IV, Protocol Concerning Legal Matters, of the Interim Agreement between Israel and the PLO, 1995.

¹³⁵ Rules of Civil Procedure (Furnishing of Documents for the Administered), 5730-1969, Kovetz Takkanot 2482, p. 458, as reported in B’Tselem 2002 Report, p. 65, Annex 12 in Annex Volume 2

(5) International reaction to Israeli settlements policy and practice

165. The reaction by the international community to Israel's settlement activities in the Occupied Palestinian Territory, including East Jerusalem, has been firm and consistent in its opposition to such unlawful policies and practices. The UN Security Council, in Resolution 446 (1979) of 22 March 1979 determined "that the policy and practices of Israel in establishing settlements in the Palestinian and other Arab territories occupied since 1967 have no legal validity" and constitute a serious obstruction to achieving peace.¹³⁶ In that same resolution, the Council called once more upon Israel to "abide scrupulously by the 1949 Fourth Geneva Convention, to rescind its previous measures and to desist from taking any actions 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."¹³⁷ By way of Resolution 446 (1979), the Council also established a Commission to examine the situation relating to the settlements.¹³⁸

166. In yet another Security Council resolution on the matter, the Council, in Resolution 465 (1980) of 1 March 1980, reiterated its prior determination and condemnations regarding Israel's settlement policies and practices and called upon "all States not to provide Israel with any assistance to be used specifically in connexion with settlements in the occupied territories."¹³⁹

167. The UN General Assembly has also consistently expressed its strong opposition to and condemnation of Israeli settlement policies and practices, including by its tenth emergency special session. An annual resolution of the Assembly addresses specifically "Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan", in which the Assembly, *inter alia*, reaffirms the applicability of the Fourth Geneva Convention to the Occupied Palestinian Territory, including East Jerusalem, and to the occupied Syrian Golan; reaffirms that Israeli settlements are illegal and an obstacle to peace and economic and social development; and reiterates its demand for the complete cessation of all Israeli settlement activities.¹⁴⁰

(6) Annexation and the regime in East Jerusalem

(a) Legislation and *de jure* annexation

168. The main developments concerning Jerusalem were noted in Chapter 3, in the general context of Palestine's history. Here those developments are set in the context of Israel's consistent policy of annexation of Palestinian territory. At the end of the 1948 war Israeli military forces held the western sector of Jerusalem and Jordanian forces held the

accompanying this Written Statement. Many of these rules and procedures were enshrined in Annex IV, Protocol Concerning Legal Matters, of the Interim Agreement between Israel and the PLO of 1995.

¹³⁶ S/RES/446 (1979).

¹³⁷ *Ibid.*

¹³⁸ See reports of the Commission contained in UN documents S/13450; S/13450/Add.1, S/13450/Corr.1; S/13679; and S/14268.

60 S/RES/4465 (1980); See also S/RES/452 (1979); S/RES/476 (1979); S/RES/478 (1980).

¹⁴⁰ See for example resolution A/58/98 of 9 December 2003.

eastern sector. In January 1950 the Israeli Knesset (Parliament) declared Jerusalem to be the capital of Israel.

169. Following the Israeli military conquest of East Jerusalem, the Knesset passed on 27 June 1967, Amendment 11 to the Law and Administrative Ordinance of 1948 which applied jurisdiction to all areas held by the Israeli military forces. The amendment provided that “the law, jurisdiction and administration of the State shall extend to any area of Eretz Israel designated by the government by order.”

170. In conjunction with the Law and Administrative Ordinance, mentioned above, a municipal order was made on 28 June 1967 by virtue of which the Minister of Interior declared that the boundaries of the Jerusalem Municipality would be extended to about 70 km² – an area about ten times that of the Jordanian East Jerusalem municipality.¹⁴¹

171. Having thus extended the jurisdiction of Israeli law into an expanded East Jerusalem, on 29 June 1967 Israel dissolved the Jordanian East Jerusalem Municipality, thereby asserting sole Israeli administrative control over the occupied eastern sector of the city. The declared aim of these political and administrative steps, according to the Israeli authorities at the time, was to render the integration of East Jerusalem “irreversible and not negotiable.”¹⁴²

172. A number of Israeli institutions were brought into East Jerusalem to consolidate its integration into Israel. Among these were the Ministry of Justice, the District Court, the Labor Court of Appeal, and the National Security Institute.

173. Companies in East Jerusalem which were registered in Jordan, but listed their main office or place of business in East Jerusalem, were asked to re-register as Israeli companies. Most companies refused, so Israel automatically re-registered them converting them from Jordanian to Israeli companies.¹⁴³

174. Israel extended its law over Al-Haram Al-Sharif and Holy Places through the June 1967 Protection of Holy Places Law.¹⁴⁴ This law gave the Israeli government authority over access and freedom of worship in the Holy Places. This control was reinforced through a 1993 Israeli Supreme Court ruling which stated that Israeli law was applicable in the Al-Haram Al Sharif area.

175. In this manner, Israel gained administrative control over the business life, the holy sites, the land surrounding East Jerusalem and the East Jerusalem Municipal Council.

176. On 30 July 1980 a further step was taken by Israel to consolidate these changes. The “Basic Law: Jerusalem, Capital of Israel” was adopted by the Knesset. This law declared that “Jerusalem, complete and united, is the capital of Israel.”¹⁴⁵

¹⁴¹ Klein, Menachem, *Jerusalem: The Contested City*, (Hurst, 2001).

¹⁴² *Report of the Secretary-General under General Assembly Resolution 2254 (ES-V)*, UN Document S/8146 and A/6973, point 35.

¹⁴³ Legal and Administrative Matters (Regulation) Law (Consolidated Version) 5730-1970, Laws of the State of Israel, Articles 6 to 14.

¹⁴⁴ Protection of the Holy Places Law, 5727, 1967.

¹⁴⁵ Israel Ministry of Foreign Affairs website: The Law of the Land/Basic Laws/Jerusalem.

(b) Status of Palestinian Jerusalemites

177. The Israeli measures relating to Palestinian Jerusalemites are aimed at restricting their numbers and creating conditions for their enforced displacement.

178. During the Jordanian civilian rule over the city from 1951 to 1967 Jordan issued Palestinian residents of Jerusalem with Jordanian passports. Following the Israeli occupation of East Jerusalem, Israeli law was amended so that these Jordanian citizens residing in East Jerusalem were not given automatic enemy status. This was achieved through Article 4 of the Legal and Administrative Matters (Regulations) Law (Consolidated Version) 5730-1970. As of the date of this law, Palestinian Jerusalemites have been issued with an Israeli identity card that is different from the card issued to Palestinians in the rest of the Occupied Palestinian Territory.

179. In keeping with the status of East Jerusalem as territory to which Israeli law applies, Palestinian Jerusalemites who remained in the city during the June 1967 occupation were granted Israeli residency permits under the Law of Entry into Israel, 1952 and the Entry to Israel Regulations, 1974.

180. The Israeli Minister of Interior is empowered by Israeli laws and regulations to revoke the residency rights of Palestinian Jerusalemites. These rules do not apply to Palestinians from the rest of the West Bank or the Gaza Strip. They also do not apply to Israeli citizens. There are at present 215,400 Palestinian Jerusalem identity card holders.¹⁴⁶ To retain his or her Jerusalem identity card a Palestinian Jerusalemite must:
not acquire any other nationality or citizenship¹⁴⁷
prove that Jerusalem is their 'centre of life' since 1994 - such proof consists of paying municipal tax within Jerusalem
not live abroad for more than 7 years¹⁴⁸
not marry a non-resident spouse – otherwise they must apply for a rarely granted family unification order.

181. The absence of a residence permit deprives these families of regular health and social services and prevents their children from attending public Israeli schools. In May 2002 all family unification applications were frozen by the Israeli government. Prior to September 2000, only 5% of those who applied received permits.¹⁴⁹

182. By limiting the number of Palestinians in the city in every possible manner, Israel continues to attempt to integrate East Jerusalem into the 'Jewish State.' Yet 'unified' Jerusalem remains as divided as ever, with limited interaction between the inhabitants of the divided city and with the eastern section suffering from severe and readily apparent systematic discrimination in almost every sphere of life.

¹⁴⁶ *West Bank Barrier: Humanitarian Access and the Jerusalem Wall*, United Nations Office for the Coordination of Humanitarian Affairs, 3rd December, 2003, p3.

¹⁴⁷ Article 11 of the Law of Entry into Israel 1952

¹⁴⁸ *Ibid.*

¹⁴⁹ *Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied*, A/58/311, 22nd August 2003, pp 40.

(7) Other Illegal Measures Related to Occupied East Jerusalem

183. In its 48th session, the UN Commission on Human Rights, while addressing the question of the violation of human rights in the Occupied Arab territories, including Palestine, strongly condemned the construction and expansion of the Israeli settlements, including the expropriation of land, and the construction of by-pass roads.¹⁵⁰ The Commission further condemned:

1. "... the expropriation of Palestinian homes in Jerusalem, ... the revocation of identity cards of the citizens of East Jerusalem, the imposition of fabricated and exorbitant taxes with the aim of forcing the Palestinian citizens of Jerusalem, who cannot afford to pay these high taxes, out of their homes and out of their city, preparing in this way the path for the Judaization of Jerusalem,..."¹⁵¹

184. These statements reflect the two main aspects of Israeli policy in and around Jerusalem. The first is the energetic and extensive building of roads and settlements across and around occupied East Jerusalem with the aim of creating an indivisible infrastructure of roads linking the favoured Israeli settlements encircling the Eastern part of the city to Israel. The second involves the measures taken to limit natural Palestinian demographic growth and force Palestinians out of the city.

(a) Moving the Border around East Jerusalem

185. At present East Jerusalem has a series of checkpoints and temporary barriers that have been constructed around it since 1990, preventing access by West Bank Palestinians into the city. By restricting the right of access of Palestinians to occupied East Jerusalem the Israeli government is further consolidating the city's integration with Israel. It has also been moving, in a *de facto* manner, the former border (the 'Green Line') from where it fell before the occupation to the external perimeter of the unified city as determined by the series of checkpoints and temporary barriers Israel has placed at the outskirts of East Jerusalem and deep into the West Bank.

(b) House Demolitions

186. When the aim is to limit the demographic growth of a population in a certain area, a limit is placed on the right of the community to develop spatially. This is normally achieved through zoning plans and regulations. Israel has been using these practices against the Palestinian residents of East Jerusalem since the early days of the occupation. Where it is at all possible to obtain a building license the Israeli authorities have inflated the cost of these licenses to further deter Palestinian expansion. Permits for construction in East Jerusalem cost upwards of \$25,000, compared to \$6,000 to \$10,000 in the West Bank¹⁵², making 'legal' building in Jerusalem very expensive for most Palestinians.

¹⁵⁰ *Commission on Human Rights Resolution 2003/6* of 15 April 2003, para. 6

¹⁵¹ *Ibid.*, para. 7

¹⁵² *UN Habitat: Progress Report of the Executive Director*, HSP/GC/19/2/Add.3, 13th May, 2003

187. Both the difficulty of obtaining building permits and the high cost of the fees imposed encourage many Palestinians in East Jerusalem to build without a license. When this happens, the Israeli authorities take punitive action. In the last three years alone, 4,000 houses have been demolished across the West Bank, Gaza and East Jerusalem.¹⁵³ This is part of a systematic policy for acquiring control over Palestinian populated land and manipulating demographics, thus creating the conditions for enforced displacement of people. Currently 28,000 Palestinian dwellings in Jerusalem are under threat of ‘administrative destruction’.¹⁵⁴

(c) Dual Transportation Networks

188. The Israeli government has closed down the Palestinian road network linking East Jerusalem with the West Bank through the use of more than 70 barriers. Vehicles bearing a Palestinian license plate – and often also pedestrians, are physically unable to access these roads. Since 1995, a system of by-pass roads has been constructed linking the Jewish suburbs established in the West Bank and annexed to Jerusalem with the western side of the city. With the exception of those Palestinians who are granted special permits to use these by-pass roads, this road network is essentially an Israeli-only road network

189. Blocking the old road network linking East Jerusalem to the West Bank and constructing an Israeli-only network has had the effect of further isolating East Jerusalem from the West Bank, making it physically harder, if not impossible, for most West Bank Palestinians to have access to East Jerusalem. Because of the central location of East Jerusalem, the denial of access to the city to Palestinians has not only meant denying them the right to have access to the city but has also further divided the West Bank itself into two parts, the northern and southern, with the movement between them made very difficult.

190. West Bank Palestinians are prohibited from travelling within the West Bank or to or from Jerusalem on Israeli buses. Israeli buses operating between Jerusalem and the West Bank only stop in settlements. Contrary to the terms of the Interim Agreement, the number of Palestinian buses allowed on the road is restricted by the Israeli authorities. These measures further isolate the West Bank from Jerusalem through preventing free movement.

(d) Settlement Construction

191. Consolidating Israeli military control over East Jerusalem through the creation of facts on the ground has been achieved through settlement activity dating back to almost immediately after the 1967 war. The purpose of settlement construction remains consistent with its original conception, namely to alter the demographics of the city, create infrastructure which blurs the border through Jerusalem, and further limit Palestinian natural growth or contiguity by building in strategic Palestinian areas.

192. Extensive land confiscations have occurred and continue to occur, ostensibly for ‘security reasons’. The land is then used for the purpose of settlement construction, or for

¹⁵³ *Statement by Special Rapporteur on Adequate Housing Regarding House Demolitions in Occupied Palestinian*, 6th November, 2003.

¹⁵⁴ *Report of the Special Rapporteur on Adequate Housing as a component of the right to an adequate standard of Living. Report of visit to the occupied Palestinian*, 5-10 January 2002: 10 June 2003, E/CN.4/2003/5/Add.1 2002.

road networks to link settlements. For the purpose of construction of the Wall, 2680 *dunums* (670 acres) have so far been confiscated in the Jerusalem area.¹⁵⁵ Since 1967, out of a total area of 36 km² in East Jerusalem, 24.5 km² have been expropriated for construction of settlements.¹⁵⁶

193. In 2003 alone the Israeli Government started preparing the ground for two new settlements in East Jerusalem: ‘Nof Zahar’ and ‘Kedimet Zion’, both planned initially to comprise 400 housing units. In May – June, the Israeli government also unveiled plans for the construction of 11,806 housing units in the Occupied Palestinian Territory. The majority of these planned units are for settlements around the occupied East Jerusalem area.¹⁵⁷ The necessary authorizations were to be finalized by the end of the year.¹⁵⁸ Further, in August 2003, the Israeli government launched the Eitam plan, which provides funding for purchases of apartment housing in National Priority Areas.¹⁵⁹ Twice the amount of funding is available for housing purchased in the occupied East Jerusalem area as for housing in other areas eligible under the program.¹⁶⁰

194. The total number of settlements in and around East Jerusalem now stands at over 27, not including the ‘illegal outposts’. As of December 2002, the total number of settlers in East Jerusalem came to over 177,000.¹⁶¹

(8) Conclusions

195. In sum, for more than three decades, Israel has been engaged in the colonization and attempted annexation of the territory under its occupation since 1967. Israel has done so through the illegal acquisition of territory and the illegal transfer of parts of its civilian population, the institutionalization of a separate structure of life and dual system of law and other measures intended to change the demographic composition of the Occupied Palestinian Territory, including in particular in East Jerusalem.

196. The Wall that is now being built by Israel in the Occupied Palestinian Territory is the culmination of these Israeli policies and practices, leading to the *de facto* annexation of large areas of territory, especially areas in which there is a heavy concentration of settlements. The Wall cannot be understood except in the context of such longstanding, unlawful Israeli policies and practices. It is an attempt to usurp maximum areas of land while containing the Palestinian ‘demographic factor’ within the Wall, precluding any real prospect for the realization of a viable and independent Palestinian State.

¹⁵⁵ *West Bank Barrier: Humanitarian Access and the Jerusalem Wall*, United Nations Office for the Coordination of Humanitarian Affairs, 3rd December, 2003, p3.

¹⁵⁶ Palestinian Academic Society for the Study of International Affairs, *2004 Diary*, p312.

¹⁵⁷ *Ibid.*

¹⁵⁸ *Report of the Committee on the Inalienable Rights of the Palestinian People*, A/58/35, 9th October, 2003, pp 21; Report on Israeli Settlement within the Occupied , July – August 2003, vol.13, no.4, p. 8

¹⁵⁹ Elazar Levin, “A four month window of opportunity,” *Globes Real Estate Supplement*, August 17, 2003.

¹⁶⁰ *Ibid.*

¹⁶¹ Jerusalem Central Bureau of Statistics, 2002.

Chapter 5. THE POLICIES AND PRACTICES OF ISRAEL, THE OCCUPYING POWER, AND THE SECURITY SITUATION IN THE OCCUPIED PALESTINIAN TERRITORY

(1) Introduction

197. In addition to the seizure of Palestinian land and the transfer of its nationals to the Occupied Palestinian Territory, including East Jerusalem, as explained in the preceding Chapter, Israel, the Occupying Power, has also, from the outset of its occupation, carried out systematic policies and practices violating the human rights of the Palestinian civilian population and violating fundamental norms of international humanitarian law and international human rights law. For almost three decades, such policies and practices had been imposed on the Palestinian population in the Occupied Palestinian Territory “without any real or perceived security threat to or retaliation against Israel. However, the continuation and intensification of these actions and their cumulative effects ultimately generated, by the mid-1990s, a cycle of violence that characterizes the situation prevailing today. As stated by the UN High Commissioner for Human Rights, Mary Robinson, in her report of 29 November 2000, following her visit to the Occupied Palestinian Territory: “An inescapable conclusion is that much of the present situation has to do with the daily reality of life under occupation, including what the Palestinians see as the numerous daily humiliations imposed upon them.”¹⁶²

198. Israeli policies and practices have created the conditions underlying the current instability, turmoil and “security issues”, including the suicide bombings, in response to which Israel claims it must build the Wall in the Occupied Palestinian Territory to protect its citizens. Moreover, Israeli actions, including the destruction of the Palestinian security apparatus, have seriously undermined the effectiveness of any Palestinian efforts in the security arena. A brief examination of Israel’s policies and practices is necessary for a more thorough understanding of the current situation on the ground, including as it relates in particular to the matter of the Wall that Israel is building in the Occupied Palestinian Territory, including East Jerusalem.

(2) Israeli Policies and Practices

199. Since the start of its occupation of the West Bank, including East Jerusalem, and the Gaza Strip in 1967, Israel has utilized military orders to regulate all facets of Palestinian life and has also done so by invoking the Defence (Emergency) Regulations of 1945, despite the fact that they were revoked by Britain as of 14 May 1948.¹⁶³ Since then, Israel has used the regulations to justify, *inter alia*, the use of extrajudicial punishments, such as deportations, home demolitions and administrative detentions, in violation of the human rights of the Palestinian civilian population under occupation.

¹⁶² Report of the United Nations High Commissioner for Human Rights and Follow-Up to the World Conference on Human Rights, UN Doc. E/CN.4/2001/114 (29 November 2000), para. 23; reprinted as Annex 9 below.

¹⁶³ Raja Shehadeh, *Occupiers’ Law: Israel and the West Bank*, (IPS, Washington, D.C., 1988)

200. The United Nations General Assembly and Security Council have consistently addressed the issue of the broad human rights abuses and violations committed by Israel in the Occupied Palestinian Territory, repeatedly condemning Israel's policies and practices in this regard and calling upon it to cease its violations and to comply with the provisions of the Fourth Geneva Convention.¹⁶⁴ Also, in 1968, the General Assembly established the *Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories*,¹⁶⁵ which, despite Israel's refusal to cooperate, has submitted periodic reports on the matter to each Assembly session.¹⁶⁶ In response to the continuing gravity of the situation, in 1993, the UN Commission on Human Rights decided to appoint a Special Rapporteur "to investigate Israel's violations of the principles and bases of international law, international humanitarian law and the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, in the Palestinian territories occupied by Israel since 1967", who has reported regularly to the Commission, with the most recent report submitted on 8 September 2003.¹⁶⁷

201. In defiance, *inter alia*, of the resolutions of the General Assembly, the UN Security Council and the Commission on Human Rights calling upon Israel to cease its violations and to uphold the UN Charter and comply with international law, Israel has persisted in carrying out its unlawful policies and practices *vis-à-vis* the Palestinian people. From the outset of the occupation, Israel imposed various measures severely damaging the social fabric of Palestinian population. For example, it prohibited all forms of civil liberties, banned freedom of expression and assembly, and censored all press and media.¹⁶⁸ Restrictive constraints were also placed on the medical sector and the educational system, including closures of schools and universities for prolonged periods, particularly during the years of the first Palestinian intifada that began in 1987.

202. The Palestinian economy was also harmed by Israel's imposition of a series of restrictive laws and measures in the Occupied Palestinian Territory that stunted the development of the economy and seriously debilitated it.¹⁶⁹ Such policies served to transform the territory into a captive market for Israel and a source of cheap labour.

¹⁶⁴ S/RES/237 (1967); S/RES/271 (1969); S/RES/446 (1979); S/RES/452 (1979); S/RES/465 (1980); S/RES/468 (1980); S/RES/469 (1980); S/RES/471 (1980); S/RES/476 (1980); S/RES/478 (1980); S/RES/484 (1980); S/RES/592 (1986); S/RES/605 (1987); S/RES/607 (1988); S/RES/608 (1988); S/RES/636 (1989); S/RES/641 (1989); S/RES/672 (1990); S/RES/673 (1990); S/RES/681 (1990); S/RES/694 (1991); S/RES/726 (1992); S/RES/799 (1992); S/RES/904 (1994); S/RES/1322 (2000); S/RES/1435 (2002) The General Assembly began to recall the Fourth Geneva Convention in this regard with its resolution 2546 (XXIV) of 11 December 1969 and has annually reaffirmed its applicability to the OPT. This has included, but is not limited to, an annual resolution specifically on its applicability. (See resolutions A/58/97 of 9 December 2003; A/58/98 of 9 December 2003; A/58/99 of 9 December 2003; A/58/21 of 3 December 2003 and A/58/229 of 23 December 2003)

¹⁶⁵ A/2443 (XXIII) of 9 December 1968. In 1989, the name of the Committee was changed by resolution A/44/48 (A) to *Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories*.

¹⁶⁶ The first report of the Special Committee was submitted on 5 October 1970 (A/8089). The most recent report was submitted on 22 August 2003 (A/58/311)

¹⁶⁷ Resolution E/CN.4/1993/2 (A+B) of 19 February 1993. The first report by the Special Rapporteur was submitted on 13 December 1994 (E/CN.4/1995/19). The most recent report by the Special Rapporteur (Dugard Report (2003)) was submitted on 8 September 2003 (E/CN.4/2004/6).

¹⁶⁸ Raja Shehadeh, 1988.

¹⁶⁹ *Origins and Evolution of the Palestine Problem, 1971-1988* (UN, New York, 1990); See also reports of the Special Committee to Investigate Israeli Practices.

203. The deportation of Palestinian civilians from the Occupied Palestinian Territory is another unlawful practice that has been carried out by Israel over the decades. Deportations have typically been effected through extrajudicial administrative orders taken by Israeli military commanders. Within just the first decade of the occupation, permanent expulsions by Israel totalled more than 1,522 Palestinians.¹⁷⁰ The UN Security Council has adopted several resolutions condemning this unlawful practice by Israel, beginning with Resolution 468 of 8 May 1980.¹⁷¹ Most recently, Israel has begun the practice of deporting Palestinians from the West Bank to the Gaza Strip.

204. Israel has also persisted in the practice of mass round-ups and mass and individual arrests as well as the arbitrary detention and imprisonment of Palestinian civilians, in the Occupied Palestinian Territory and in facilities located within Israel, without charge, without access to legal representation, without trial, and often without contact with their families.¹⁷² Currently, more than 6,000 Palestinian civilians, including women and youths, are being held in Israeli detention centres or prisons.¹⁷³ Israel has also subjected Palestinians in custody to abuse and physical ill-treatment, including torture, and to unhygienic and inhumane conditions.¹⁷⁴

205. Throughout its occupation of the Palestinian territory, Israel has caused extensive physical destruction to Palestinian homes and property, particularly through its practice of home demolitions. Thousands of Palestinian homes, including refugee shelters, have been destroyed during the course of Israel's more than thirty-six-year occupation as a means of collective punishment and also as a severe penalty in relation to the stringent restrictions imposed by Israel with regard to building permits for Palestinians. In addition, the occupying forces have destroyed thousands of dunums of land and extensively abused and exploited the natural resources in the Occupied Palestinian Territory.

206. Israel has also engaged in other forms of collective punishment of the Palestinian civilian population, including the imposition of severe restrictions on the freedom of movement of persons and goods within the Occupied Palestinian Territory and between the territory and the outside world. It has imposed such restrictions through the establishment of military checkpoints and roadblocks and a complex system of requirements involving identity cards, residency permits and travel permits. Prolonged curfews, at times lasting for days or weeks, have at times been imposed on entire Palestinian cities, towns, villages and refugee camps. The result has been the immobilization of the Palestinian people in their own land and, during curfews, imprisonment in their homes, prevented from access to their work, schools, medical care and even to food supply and clean water. The impact on the social, economic and health conditions of the Palestinian people has been grave.

207. With the outbreak of the first intifada in December 1987, Israel began a new chapter in the types and magnitude of its oppressive policies and practices in the Occupied Palestinian Territory. The above-mentioned policies and practices intensified in addition to a

¹⁷⁰ B'Tselem (The Israeli Information Center for Human Rights in the Occupied Territories), www.btselem.org/English/Deportation/Statistics.

¹⁷¹ S/RES/468 (1980). See also S/RES/469 (1980); S/RES/484 (1980); S/RES/607 (1988); S/RES/608 (1988); S/RES/636 (1989); S/RES/641 (1989); S/RES/694 (1991); S/RES/726 (1992); S/RES/799 (1992).

¹⁷² See Dugard Report (2003), see also reports of the Special Committee to Investigate Israeli Practices, including A/58/311 (22 August 2003), dossier no. 53 accompanying the Secretary-General's submission.

¹⁷³ Dugard Report (2003), para. 29.

¹⁷⁴ *Ibid.*, paras. 30-32.

rise in violence against of the civilian population. The actions of the Israeli occupying forces began to involve, *inter alia*, excessive beatings and the physical harassment of the Palestinian population, as embodied in the “iron fist” policy instituted by Israel to quell the Palestinian resistance.¹⁷⁵ Moreover, the occupying forces increased their use of tear gas in confined areas and the use of rubber-coated as well as live ammunition against the unarmed civilian population, killing and wounding thousands of Palestinian demonstrators.

208. In reaction to the precipitous deterioration of the situation in the Occupied Palestinian Territory, the UN Security Council adopted Resolution 605 (1987) on 22 December 1987. In that resolution, the Council strongly deplored “those policies and practices of Israel, the occupying Power, which violate the human rights of the Palestinian people in the occupied territories, and in particular the opening of fire by the Israeli army, resulting in the killing and wounding of defenceless Palestinian civilians.”¹⁷⁶ The Council also requested the Secretary-General to submit a report “containing his recommendations on ways and means for ensuring the safety and protection of Palestinian civilians under Israeli occupation”.¹⁷⁷ Thereafter, the issue of the provision of protection for the Palestinian civilian population in the Occupied Palestinian Territory became prominent on the agenda of various UN organs. Resolution 605 (1987) was shortly followed by two other Council resolutions on the matter, including Resolutions 607 (1988) of 5 January 1988 and 608 (1988) of 14 January 1988.

209. In the years after the outbreak of the first Palestinian intifada, the Palestinian civilian population suffered extensive loss of life, including massacres. This included the killing of more than 20 Palestinian worshippers at Al-Haram Al-Sharif in Occupied East Jerusalem on 8 October 1990. In response to the increased perpetration of violence against the civilian population by Israel, the UN Security Council adopted Resolution 672 (1990) on 12 October, in which it expressed “alarm at the violence which took place on 8 October at the Al Haram Al Shareef and other Holy Places of Jerusalem resulting in over twenty Palestinian deaths and to the injury of more than one hundred and fifty people, including Palestinian civilians and innocent worshippers.”¹⁷⁸ Another incident constituting a massacre was the killing of Palestinians civilians by an Israeli settler in Al-Haram Al-Ibrahimi Mosque in Al-Khalil (Hebron) on 25 February 1994. In resolution 904 (1994) of 18 March 1994, the Security Council condemned “the massacre in Hebron and its aftermath which took the lives of more than 50 Palestinian civilians and injured several hundred others” and called for “measures to be taken to guarantee the safety and protection of the Palestinian civilians throughout the occupied territory.”¹⁷⁹ Soon thereafter, on 6 April 1994, the first Palestinian suicide bombing was carried out in Afula, killing 8 Israeli civilians.

210. The situation in the Occupied Palestinian Territory was greatly influenced and altered by political breakthroughs that occurred with the signing by the Government of Israel and the Palestine Liberation Organisation (‘PLO’) of the Declaration of Principles on Interim Self-Government Arrangements on 13 September 1993. Preceded by letters of mutual

¹⁷⁵ *Origins and Evolution of the Palestine Problem, 1917-1988* (UN, New York, 1990). See also reports of the Special Committee to Investigate Israeli Practices.

¹⁷⁶ S/RES/605 (1987).

¹⁷⁷ Ibid; Report of the UN Secretary-General submitted pursuant to resolution 604 (1987) is contained in document S/19443 of 21 January 1988.

¹⁷⁸ S/RES/672 (1990); UN Secretary-General submitted a report pursuant to resolution 672 (1990) contained in document S/21919 of 31 October 1990.

¹⁷⁹ S/RES/904 (1994)

recognition, the Declaration of Principles envisaged a gradual process for the withdrawal of the Israeli occupying forces from the Occupied Palestinian Territory. The Interim Agreement concluded by the two sides in 1994 detailed the mechanisms for the re-deployment of Israeli occupying forces from Palestinian territory to be carried out in three phases, beginning in October 1996 and ending within 18 months of election of the Palestinian Legislative Council in September 1997.

211. The first redeployment took place in 1994 from Gaza City and Jericho, thereby allowing for the deployment for the first time of Palestinian Security Forces ('PSF'). In the absence of established Palestinian governmental and policing institutions however the various branches of the PSF were faced with the challenge of immediately grouping and fulfilling their responsibilities, which involved a wide range of tasks, including *inter alia* the maintenance of public law and order in the areas that were to be under Palestinian control.

212. Despite the progress made in the peace process between the two sides and the establishment of a Palestinian self-governing authority ('Palestinian Authority') in 1994 in addition to the establishment of the PSF, the situation on the ground in the Occupied Palestinian Territory did not markedly improve. With the lapse of the five-year transitional period agreed upon in the Declaration of Principles and the continuation of settlement activities, friction between the two sides began to increase once again. Israel's intransigent pursuit of its settlement campaign in the Occupied Palestinian Territory led to the convening by the UN General Assembly of its Tenth Emergency Special Session in April 1997 to address in particular Israeli actions in Occupied East Jerusalem in connection with its plans to construct new settlements in the area.¹⁸⁰

213. Despite the mounting tensions and the exacerbation of socioeconomic conditions in the Occupied Palestinian Territory, peace process negotiations continued over the following years in an effort to implement the agreements reached towards negotiations for a final settlement. Yet, the third and largest phase of redeployment, in which the Israeli forces should have redeployed from all of the West Bank, with the exception of areas to be discussed during the permanent status negotiations, including Jerusalem, the settlements and specified military locations in the Occupied Palestinian Territory, was never fulfilled. As such, on 28 September 2000, the day the second Palestinian intifada began, Israel still had exclusive control of 61 per cent of the West Bank (Area C), with overriding security control over an additional 21 per cent (Area B). The Palestinian Authority ('PA') had control only over non-contiguous areas of the territory covering about 18 per cent of the West Bank (Area A). (As of June 2002, Israel had reoccupied all of Area A and, within one week, had assumed full security control over the entire West Bank, which remains the situation today, with the exception of Israeli redeployment from some population centres.)

(3) The Current Security Situation

¹⁸⁰ A/ES-10/2 of 25 April 1997. The UN Secretary-General submitted a report pursuant to A/ES-10/2, contained in document A/ES-10/6-S/1997/494 (26 June 1997). This ultimately led to the convening of a Conference of High Contracting Parties to the Fourth Geneva Convention in July 1999 and in December 2001, which adopted a declaration reaffirming the applicability of the Convention to the OPT and calling for respect of the Convention and ensuring its respect in all circumstances. The text of the Declaration of 5 December 2001, dossier no. 67 accompanying the Secretary-General's submission.

214. The second *intifada*, triggered by the events of 28 September 2000 in connection with the visit by then Likud leader Ariel Sharon to Al-Haram Al-Sharif in Occupied East Jerusalem, elicited a violent response by the Israeli occupying forces to Palestinian demonstrations.¹⁸¹ Contrary to accusations of orchestration, the *intifada* erupted following that event in a culmination of the rising tensions caused by the political deadlock and the deterioration of socioeconomic conditions resulting from Israeli policies and practices. As noted in the report of the Human Rights Inquiry Commission, “The insistence of the IDF that the Palestinian demonstrators, humiliated by years of military occupation which has become part of their culture and upbringing, have been organized and orchestrated by the Palestinian Authority either shows an ignorance of history or cynical disregard for the overwhelming weight of the evidence.”¹⁸²

215. From the outset of this *intifada*, the Israeli occupying forces used excessive and indiscriminate force, using all forms of military weaponry, against the Palestinian civilian population, resulting in the widespread killing and wounding of civilians and physical destruction throughout the Occupied Palestinian Territory.¹⁸³ The UN Security Council responded immediately to the situation by adopting Resolution 1322 (2000) on 7 October, in which the Council deplored “the provocation carried out at Al-Haram Al-Sharif in Jerusalem on 28 September 2000, and the subsequent violence there and at other Holy Places, as well as in other areas throughout the territories occupied by Israel since 1967, resulting in over 80 Palestinian deaths and many other casualties.”¹⁸⁴

216. While the occupying forces continued to use excessive force against the civilian population in the Occupied Palestinian Territory, the period after the outbreak of the second *intifada* also witnessed a rise in suicide bombings by Palestinians against Israeli civilians in Israel. The first Israeli civilians killed by such Palestinian acts since the start of the *intifada* were two people who were killed in a car bombing on 2 November 2000. By that time, 148 Palestinians, including children, had already been killed by the Israeli occupying forces.¹⁸⁵ By the end of the year 2000, at least 322 Palestinians had been killed by the occupying forces and 37 Israelis, including members of the occupying forces, had been killed by Palestinian attacks.

217. It must be emphasized that, from the outset, the Palestinian leadership has been unequivocal in its condemnation of such attacks on Israeli civilians. The leadership has repeatedly condemned, and continues to stand firmly against, the suicide bombings as morally wrong, unjust acts that must cease. A distinction must be made, however, between such unlawful acts of violence against Israeli civilians in Israel and acts of Palestinian

¹⁸¹ See Provisional Verbatim of UN Security Council S/PV.4204 of 3 October 2000, S/PV.4202 (Resumption 1) of 4 October 2000 and S/PV.4204 (Resumption 2) of 5 October 2000. See also UN documents A/55/432-S/2000/921 of 29 September 2000; A/55/437-S/2000/930 of 2 October 2000; and A/55/440-S/2000/936 of 2 October 2000 (Letters to President of the Security Council)

¹⁸² *Report of the human rights inquiry commission established pursuant to Commission resolution S-5/1 of 19 October 2000*, E/CN.4/2001/121 (16 March 2001), para. 48, Annex 10 in Annex Volume 2 accompanying this Written Statement.

¹⁸³ See the reports E/CN.4/2001/114, and E/CN.4/2001/121, Annexes 9 and 10 in Annex Volume 2 accompanying this Written Statement.

¹⁸⁴ S/RES/1322 (2000).

¹⁸⁵ See letters of the Permanent Observer of Palestine to the United Nations to the President of the UN Security Council and the UN Secretary-General (beginning with A/55/432 of 29 September 2000, A/ES-10/39-S/2000/1015 of 24 October 2003 to A/ES-10/255-S/2003/1206 of 26 December 2003)

resistance to the Israeli occupation and to military attacks by the occupying forces, as a matter of international law and irrespective of the position taken by the Palestinian leadership calling for a cessation of all acts of violence.

218. In the months and years following the onset of the second intifada, Israel intensified and escalated its repressive and unlawful policies and practices against the Palestinian civilian population in the Occupied Palestinian Territory on a scope and scale unprecedented since the beginning of its military occupation in 1967. Using all means of heavy weaponry, including tanks, helicopter, gunships, warplanes and bulldozers, the Israeli occupying forces have engaged in the use of excessive and indiscriminate force and launched countless military attacks, endangering the safety and well-being of the Palestinian civilian population. This has included violent raids and incursions into Palestinian population centres, aerial bombardments and missile attacks targeting Palestinian buildings and vehicles, typically located in densely populated civilian areas, as well as sniper attacks. The Israeli occupying forces have also routinely used Palestinian civilians as human shields during military attacks. As a result of such practices, the occupying Power has, since 28 September 2000 and as of 21 January 2004, killed a total of 2,708 Palestinian civilians, including men, women and children, and has wounded more than 40,000 other people, thousands of whom now suffer permanent disabilities.¹⁸⁶ From the start of the intifada and up until 1 January 2004, more than 800 Israelis, including both civilians and members of the occupying forces, have been killed.

219. Among the Palestinians killed by the Israeli occupying forces, many have been killed by extrajudicial execution (assassination), a policy publicly acknowledged to be pursued by the Government of Israel. Israeli assassinations of “militants” have often been carried out during periods of relative calm or even of some advancement in the peace process, typically reigniting the cycle of violence and undermining any peace efforts. In one of many examples, for a month after the declaration of a unilateral cease-fire by the Palestinian side on 16 December 2001, not a single Israeli civilian was injured or killed by a Palestinian from the Occupied Palestinian Territory. However, on 14 January 2002, Israel assassinated a leader of Al-Aqsa Brigades, Raed Karmi, in Tulkarem. The group retaliated by carrying out an attack on 17 January 2002 and thus the violence flared up again. According to the Special Rapporteur of the UN Commission on Human Rights on the situation of human rights in the Palestinian territories occupied by Israel since 1967, from October 2000 to April 2003, the occupying forces “killed more than 230 Palestinians, including 80 children, women and innocent bystanders, in assassination actions” between October 2000 and April 2003 alone.¹⁸⁷

220. At the same time, Israel has inflicted vast physical damage and destruction in the Occupied Palestinian Territory since September 2000.¹⁸⁸ Thousands of Palestinian homes, properties and vehicles have been destroyed. The Palestinian infrastructure has been severely damaged due to the destruction of roads and electricity, water and sewage networks by the

¹⁸⁶ *Ibid.* This figure represents the number of Palestinians directly killed by the occupying forces. It does not include those Palestinians who have died as a result of other Israeli practices in the Occupied Palestinian Territory, such as those who have died at checkpoints after being prevented from accessing medical care.

¹⁸⁷ Dugard Report (2003), para. 24.

¹⁸⁸ *Ibid.* See also Commission on Human Rights, Report of the High Commissioner, E/CN.4/2001/114, Annex 9 in Annex Volume 2 accompanying this Written Statement; Commission on Human Rights, Report of the Human Rights Inquiry Commission, E/CN.4/2001/121, Annex 10 in Annex Volume 2; A/58/311; Report of the Commissioner-General of UNRWA (A/58/13).

occupying forces. Thousands of *dunums* of agricultural land have been razed and hundreds of thousands of productive trees have been uprooted.

221. Also in collective punishment of the Palestinian population, Israel has dramatically intensified and entrenched its restrictions on the freedom of movement of persons and goods, including medical and humanitarian, in the Occupied Palestinian Territory. Movement is restricted between and within Palestinian cities and villages and to and from the territory by means of hundreds of checkpoints and roadblocks, around every town and major road junction, dividing the territory internally.¹⁸⁹ These restrictions, along with the imposition of broad military closures and prolonged curfews, have disrupted every aspect of Palestinian daily life and have brought the damaged Palestinian economy to a near standstill, with rising and inordinate rates of unemployment and widespread poverty among the population. World Bank estimates that at least 60 percent of the Palestinian population is living below the poverty line and unemployment stands at approximately 53 percent of the workforce.¹⁹⁰ The cumulative socioeconomic consequences have been devastating, amounting to a dire humanitarian crisis. As stated in the Mission Report of the UN Secretary-General's Personal Humanitarian Envoy, Catherine Bertini:

“Palestinians are subject to a variety of closures, curfews, roadblocks and restrictions that have caused a near-collapse of the Palestinian economy, rising unemployment, increased poverty, reduced commercial activities, limited access to essential services (such as water, medical care, education, emergency services) and rising dependency on humanitarian assistance. The restrictions affect almost all activities, rendering most Palestinians unable to carry out any semblance of normal life and subject to daily hardships, deprivations and affronts to human dignity.”¹⁹¹

222. Some of the above-mentioned measures and actions carried out by the Israeli occupying forces in the Occupied Palestinian Territory constitute grave breaches of the Fourth Geneva Convention within the meaning of Article 147 of the Convention, *inter alia*, but not limited to, wilful killings, wilfully causing great suffering or serious injury to body or health, unlawful confinement and the extensive destruction and appropriation of property, as detailed in Chapter 9. For example, some of the acts committed by the Israeli occupying forces during the assault on the Jenin refugee camp and its inhabitants in April 2002 can be considered as such.¹⁹² Another example is the extrajudicial killing of Salah Shehada, on 23 July 2002, in his home in a densely populated area in Gaza by the dropping of a one ton bomb on his home, which resulted in the killing of a total of 15 civilians, including children, the wounding of more than 150 people and vast physical destruction.¹⁹³

223. The Israeli military escalation in the Occupied Palestinian Territory since September 2000 not only targeted the civilian population but targeted the Palestinian Authority as well. The occupying forces carried out numerous direct attacks and bombardments against PA

¹⁸⁹ Dugard Report (2003), para. 17; See also Commission on Human Rights, Report of the Human Rights Inquiry Commission, E/CN.4/2001/121, Annex 10 in Annex Volume 2 and *Mission Report by Ms. Catherine Bertini, Personal Humanitarian Envoy of the Secretary-General*, of 19 August 2002 (hereinafter, *Bertini Report*), Annex 14 in Annex Volume 2 accompanying this Written Statement.

¹⁹⁰ *Two Years of Intifada, Closures and the Palestinian Economic Crisis*, The World Bank, 5 March 2003.

¹⁹¹ Bertini Report, para. 4, Annex 14 in Annex Volume 2 accompanying this Written Statement.

¹⁹² See report of the UN Secretary-General in A/ES-10/186 of 30 July 2002; Human Rights Watch Report *Jenin: IDF Military Operations* (May 2002, Volume 14, No. 3 (E).

¹⁹³ A/ES-10/185-S/2002/827 of 23 July 2002

facilities and institutions including, *inter alia*, ministries and security and intelligence installations. The occupying forces even launched attacks against the compound of the President of the PA, Yasser Arafat, in Ramallah, where he has been under siege since December 2001.¹⁹⁴ The impact on the Palestinian security apparatus has been severe, as it has been virtually incapacitated and immobilized, similar to the PA as a whole. Moreover, in January 2003, Israel ended the security and civil cooperation and coordination that had been established with the PA, further detrimentally impacting the work of the Palestinian security services.

224. Numerous efforts have been undertaken at the international level, including through the United Nations, to address the critical situation in the Occupied Palestinian Territory. This has included the establishment of the Fact-Finding Committee, headed by former U.S. Senator George Mitchell, which presented the “Mitchell Report”,¹⁹⁵ as well as the Security Council’s repeated examination of the situation and its adoption of Resolutions 1402 (2002) of 30 March 2002, 1403 (2002) of 4 April 2002, 1405 (2002) of 19 April 2002, and 1435 (2002) of 24 September 2002. Efforts have also been undertaken by other international actors, including initiatives by the U.S. as well as by other members of the Quartet. Regrettably, none of these efforts has been successful in ameliorating the situation and bringing a resumption of the peace process.

(4) Conclusions

225. The current situation in the Occupied Palestinian Territory is one in which Israeli occupying forces are now present in or around all Palestinian population centres and stringent restrictions on movement continue to be imposed, in the midst of which the Palestinian people continue their efforts to overcome the adverse consequences of the loss of human life and destruction, including that of their institutions, that has been incurred by Israel. The humanitarian crisis being faced by the Palestinian people has been fundamentally aggravated by Israel’s construction of the Wall in the Occupied Palestinian Territory, including East Jerusalem, as the expropriation of land, the obstruction of movement and the isolation of Palestinian cities and villages from one another further exacerbate the dire socioeconomic conditions and deepen the frustration and despair of the population. As stated by the UN Secretary-General’s Personal Humanitarian Envoy in her Mission Report, “[i]t must be recognized that the social and economic misery of the Palestinian people is a serious obstacle to achieving lasting peace and security. Sharply declining living conditions help destabilize the political environment and increase the sense of desperation that is so successfully exploited by extremists.”¹⁹⁶

226. It is unquestionable that suicide bombings against civilians in Israel must cease. It is also unquestionable that States have the right and responsibility, within the confines of international law, to protect their citizens. However, the notion that Israel is a peaceful and passive country under attack is baseless. A fundamental change in Israeli policies and practices, consistent with Israel’s obligations under international law, is an essential prerequisite for any amelioration of the situation on the ground. Palestine affirms that the way to provide security for the two sides is by the cessation of the above-mentioned unlawful

¹⁹⁴ S/RES/1435 (2002)

¹⁹⁵ Report of the Sharm El-Sheikh Fact Finding Committee (Mitchell Report), 30 April 2001.

¹⁹⁶ Bertini Report, para. 12, Annex 14 in Annex Volume 2 accompanying this Written Statement.

Israeli policies and practices and the termination of the occupation and not by the building of walls, even if built on Israeli territory. Overcoming the current situation, including the security situation, and moving forward towards a peaceful settlement are contingent upon compliance with international law and adherence to the two-State solution and the realization of the inalienable rights of the Palestinian people.

PART C. THE WALL

Chapter 6. The Wall Being Built by Israel in the Occupied Palestinian Territory, including in and around East Jerusalem

(1) Introduction

227. The Wall that is being built by Israel is being constructed almost entirely in the Occupied Palestinian Territory, including in and around East Jerusalem, in departure from the Armistice Line of 1949 (Green Line). It is a whole regime, composed of a complex structure as well as practical, administrative and other measures. It encircles entire communities in walled enclaves and, if completed, will wall-in almost all of the Palestinian population. It has resulted in vast destruction and has entailed the confiscation of thousands of dunums of Palestinian land and has already imprisoned thousands of Palestinians between it and the Green Line. There is a clear correlation between the route of the Wall and the illegal Israeli settlements in the Occupied Palestinian Territory and water resources as well. The Wall is having a devastating socioeconomic impact on the Palestinian people. It clearly aims at the *de facto* annexation of large areas of the Occupied Palestinian Territory and makes the viability of a Palestinian State and the implementation of the two-State solution almost impossible. The purpose of this Chapter is to outline and depict the existing, approved and projected route of the Wall, and to explain the regime of the Wall and accompanying measures and effects and the Wall's social and economic impact on the Palestinian people in the Occupied Palestinian Territory.

228. For the purposes of this Written Statement, construction of the Wall is divided into Phases I, II and III, described below, based on dates of approval by the Israeli Cabinet. In some cases final decisions may not have been taken but reliable projections are possible.¹⁹⁷

(2) The Route of the Wall: Existing, Decided and Projected Phases

(a) Phase I of the Wall

229. On 14 April 2002, the Israeli Cabinet decided to establish a 'permanent barrier' in the 'seam area' between the West Bank and Israel on 14 April 2002. To implement this decision, the "Seam Area Administration", headed by the Director General of the Ministry of Defense, was established. In early June 2002, the Seam Area Administration completed plans for Phase I of the Wall, to run from the northwest edge of the West Bank, near the village of Salem, to the Israeli settlement of 'Elqana' in the central West Bank (See Map 3: The Wall in the West Bank, and Briefing Map). A plan was also devised to build a Wall in the north and

¹⁹⁷ 'Phase I' corresponds to Israel's Stage 1 of construction and 'Phase II' corresponds to Israel's Stages, 2, 3 and 4. These are sometimes referred to as Phases or Stages A and B.

south of East Jerusalem (See Map 4: The Wall in East Jerusalem). On 23 June 2002, the Israeli Government approved, in its decision 2077, the plan in principle and, on 14 August 2002, the Cabinet approved the final route of Phase I. Construction of Phase I of the Wall was mostly completed by the end of July 2003.

230. Israel has asserted that ‘operational considerations’ were the principal factors affecting the route of Phase I of the Wall. These considerations included three principal components.

Topography: According to Israel:

“The selection of the topographic route of the barrier was derived from security reasons. The barrier must pass through, to the greatest extent possible, areas from which the surrounding territory can be controlled, in order to prevent harm to forces operating along the route, and to enable the forces to operate observation points that overlook both sides of the fence.”¹⁹⁸

Security Area: According to Israel:

“The fear is that the barrier will not prevent every penetration, and that security forces will not be able to arrive in time to thwart the crossing of potential attackers. A geographic security area is necessary to enable the combat forces to chase the terrorists within... [the West Bank] before they are able to cross into Israel and disappear within the population.”¹⁹⁹

Leaving as Many Settlements as Possible West of the Barrier: According to Israel,

“The fear is that erection of the barrier will channel the attacks to these communities, so it was decided to have the fence pass east of these settlements in order to provide protection for them and for the access roads that reach them.”²⁰⁰

(b) Phase II of the Wall

231. Phase II was approved by the Israeli Cabinet on 1 October 2003. It comprises the following extensions of the Wall.

232. Initiating the eastern part of the Wall, one section was extended from Salem east to the Jordan River. Another section was extended south from Al Mutilla to Tayasir, which is scheduled for completion in March 2004 (See Map 3: The Wall in the West Bank, and Briefing Map).

233. Further to an Israeli Cabinet decision on 5 September 2003, the constructed segments of the Wall in and around East Jerusalem (except in the area of ‘Ma’ale Adumim’) were extended (See Map 4: The Wall in East Jerusalem).

¹⁹⁸ Israeli State Response, Sec. 18-19, in *Sa'al 'Awani 'Abd al Hadi et al. v. Commander of IDF Forces in the West Bank*, HCJ 7784/02, as reported in B'Tselem 2003 Report, p. 32.

¹⁹⁹ *Ibid.*

²⁰⁰ *Ibid.*

234. The Wall was extended southwards from the settlement of ‘Elqana’ in the direction of Jerusalem, and from the settlement of ‘Gilo’ to South Mount Hebron (See Map 4: The Wall in the West Bank, and Briefing Map).

235. Phase II was scheduled for completion in 2005. However, on 18 December 2003, Prime Minister Ariel Sharon announced that “Israel will greatly accelerate the construction of the security fence” in anticipation of a unilateral Disengagement Plan.²⁰¹ Orders were issued for construction along the entire blueprint of the Wall simultaneously, instead of building it stage after stage.²⁰²

(c) Projected Phase III of the Wall

236. In March 2003, the Israeli Prime Minister announced plans for the construction of a Wall running along the Jordan Valley. Although the route has not yet been officially approved by the Cabinet, an Israeli Government decision to build the eastern Wall is reported to have been taken.²⁰³ According to the Dugard Report (2003, para. 11), it is “widely expected that following completion of the Wall separating Israel from the West Bank on the western side, an eastern side will be constructed, along the mountain ridge west of the Jordan Valley, which will separate Palestine from the Jordan Valley.” This section of the Wall is projected to run along the Allon Road (Highway 80) from Tayasir to Al-Ram and continue southward from Abu Dis to Um Diraj, linking with the approved phase of the Wall southeast of Al-Khalil (Hebron).²⁰⁴ (See Map 3: The Wall in the West Bank, and Briefing Map) A territorial outlet for Palestinian passage to Jordan is projected to run from Ramallah to the border with Jordan via Jericho.

(d) East Jerusalem

237. As indicated above, the route of the Wall weaves in and around Occupied East Jerusalem. As described in the report of the UN Secretary-General, submitted pursuant to General Assembly resolution A/ES-10/14, “The existing barrier and planned route around Jerusalem is beyond the Green Line and, in some cases, the eastern municipal boundary of Jerusalem as annexed by Israel. Completed sections include two parts totalling 19.5 kilometres that flank Jerusalem, and a 1.5-kilometre concrete wall in the eastern Jerusalem neighbourhood of Abu Dis. The planned route includes a section due east of Jerusalem that links up with the existing Abu Dis wall; levelling of land has started at its southern end.” The report further asserts, “A second section runs through the northern Jerusalem suburb of Al-

²⁰¹ Prime Minister Ariel Sharon’s Speech at the Herzliya Conference, 18 December 2003.

²⁰² Amir Rapaport, *Ma’ariv*, 24 December 2003.

²⁰³ Ze’ev Schiff, “Something’s afoot along the fence,” *Ha’aretz*, 30 December 2003. Other reports indicating plans for the Jordan Valley Wall include, Geoffrey Aronson, “Sharon Government’s Separation Plan Defines Palestine’s Provisional Borders,” *Report on Israeli Settlement in the Occupied Territories*, Vol. 13, No. 4, July–August 2003, p. 4; Ha’aretz Service, “US Opposes Israel’s Plan for Jordan Valley Fence,” *Ha’aretz*, 21 July 2003; Eyal Weizman, “Ariel Sharon and the Geometry of Occupation, Part 3,” 15 September 2003, www.opendemocracy.net/themes/article.isp?id=2&articleID=1476; cf., Jonathan Cook, “Thwarting the State,” *Al-Ahram Weekly* on-line, Issue No. 61, 27 March – 2 April 2003.

²⁰⁴ Estimates of the length and route are based on press reports from military sources detailing both the location and length of the Wall, meetings with Israeli officials involved in planning the route, and calculations based on the total length of the approved routes and the total projected length of the Wall. See Ben Kaspi, *Ma’ariv*, 14 January 2004.

Ram, which will be cut off from Jerusalem, and links with the existing northern barrier section at the Qalandia checkpoint. A third section will surround five Palestinian communities north-west of Jerusalem, creating a 2,000-acre enclave with 14,500 people. A gap remains in the planned route due east of Jerusalem near the settlement of Maale Adumim.²⁰⁵

(e) Summary: The Wall Depicted by Reference to the Green Line

238. In this section, Palestine provides specific references to the length and location of the Wall at the time of writing this Statement.

To date 186 km of the Wall have been completed in the northern and central (Jerusalem) West Bank.

An additional 25 km are currently under construction.

381 km of the Wall have also been approved for construction.

An additional 196 km can be projected based on recommendations by the Israeli military.

According to these figures, the total length of the Wall once completed, based on current information, will be 788 km.

(i) Sections of Phase I and II Completed to Date

239. Six sections of the Wall have been completed to date. (See Maps 12a-12k: The Wall in the West Bank, Sections a-l)

Location	Length of Wall
Salem/Mutilla:	31 km
Jordan River/Mutilla:	9 km
Salem/Masha (Salfit):	126 km
Ramallah/Jerusalem:	9 km
Bet Sahur/Bethlehem/Jerusalem (South):	10 km
Abu Dis/Al 'Eizariya:	1 km
Total:	186 km

(ii) Sections of Phase II Currently Under Construction

240. Three sections of the Wall are currently under construction. (See Briefing Map)

Location	Length of Wall
Abu Dis/Al 'Eizariya:	14 km
Mutilla/'Mehola' (Jordan River):	6 km
Rantis:	5 km
Total:	25 km

²⁰⁵ Report of the Secretary-General prepared pursuant to General Assembly resolution ES-10/13, UN Doc A/ES-10/248 of 24 November 2003, dossier n. 52 accompanying the Secretary-General's submission.

(iii) Approved Trajectory of Phase II

241. Six sections of the Wall have been approved for immediate construction. The internal Jerusalem enclaves have been approved and announced around the suburbs of Jib-Bir Nabala, Al Ram, Anata, Hizma, Shufat Refugee Camp and around Al Walaja. (See Briefing Map)

Location	Length of Wall
Masha/'Ariel'/Ramallah:	132 km
Mutilla/Tayasir (Jordan Valley):	14 km
'Gilo' (Bethlehem)/Um Diraj (A-Khalil):	129 km
Double Walled Areas:	
—Qibya:	25 km
—Bet Ur:	42 km
Internal Jerusalem Enclaves:	
—Jib:	17 km
—Al Walaja:	5 km
Al Ram/Anata:	17 km
Total:	381 km

(iv) Projected Trajectory of Phase III

242. There are additional projected sections of the Wall recommended by the Israeli military. The Jordan Valley/Hebron Hills trajectory from Tayasir to Um Diraj is approximately 196 km. (See Map Briefing Map)

(f) Correlation of the Wall Route to the Green Line

243. Of the total length of all three phases (788 km), only 6 per cent of the Wall will be located within 100 meters of the Green Line, and that almost entirely on the Occupied Palestinian Territory. Of Phase I of the Wall constructed to date, only 22 per cent is located within 100 meters of the Green Line, and that almost entirely on Occupied Palestinian Territory.

244. Specifically, of the completed sections of Phase I and II built on the Occupied Palestinian Territory:

41 km of the Wall are within 100 m of the Green Line.

3 km of the Wall are between 100 m and 200 m of the Green Line.

17 km of the Wall are between 200 m and 1000 m of the Green Line.

124 km of the Wall are between 1000 and 8000 m from the Green Line.

(3) The Regime of the Wall and Accompanying Measures and Effects

(a) Physical Structure and Characteristics of the Wall

245. Sections of the Wall in Jerusalem, Abu Dis, Qalqiliya, Tulkarem, Nazlat Issa and Salem are 8 meters high and constructed of concrete (See Photographs 4, 5 and 12). The concrete Wall is lined with watch towers approximately 300 meters apart in areas such as Qalqiliya and Tulkarem. (See Photograph 3) There are 13 watch towers that surround the city of Qalqiliya alone. At the time of this Written Statement, approximately 9 km of the Wall, including 2 km in Jerusalem, is constructed of concrete. However, because of the current pace of construction of the Wall, these figures are increasing every day.

246. The majority of the Wall complex varies in width between 30 and 100 meters. In most cases areas bordering the Wall are considered closed military zones and access is severely restricted (See Photograph 15). The Wall complex includes a number of components. The dimensions of the following components are drawn from a cross-section of the Wall in Qalqiliya, but they are representative of much of the remainder of the Wall. (See Cross-Section of the Wall Complex graphic and Photographs 1 and 2) In the sequence of the cross-section, the components include:

A stack of coils of barbed and razor wire, 5 meters deep and 3 meters high.

A trench 3 meters deep and 1.5 meters wide.

A paved road for Israeli patrols, 6 meters wide.

A sand trace path to detect footprints, 5 meters wide.

An electrified fence, with automatic sensors, 2.5 meters high on a 60 cm high concrete base.

A dirt area 10 meters wide.

Another trench 3 meters deep and 1.5 meters across.

Another stack of 6 coils of barbed and razor wire, 5 meters deep and 3 meters high.

On either side of the Wall complex are buffer zones and ditches.

Surveillance cameras are installed along the Wall complex.

The Israeli press has reported that ‘remote control’ automatic machine guns are to be installed in the Gilboa area.²⁰⁶

247. In addition to these components, there are 37 gates built along Phase I of the Wall. (See Map 13: The Wall and the Closed Zone, and Photographs 13 and 14) Approximately half of these gates are operating, though they have minimal and fluctuating opening times. (See Appendix 2: ‘Closed Zone Permit System’).

248. Overall, the physical Wall complex is integrated into a larger system of barriers, including natural topographical features, the road network, fixed checkpoints, ‘flying’ checkpoints, dirt mounds, cement blocks and gates on secondary roads. Altogether, this system of closure and enclosure is farther reaching than the linear features of the Wall itself. (See Map 11: The Wall and West Bank Topography, and Map 5: The Wall and Closure in the West Bank).

(b) Walled Enclaves

²⁰⁶ Felix Frish, “Revelation: The separation wall will shoot at terrorists ‘by itself’”, *Ynet*, 22 September 2003.

249. The Wall, if the three phases are completed, will wall-in almost the whole of the Palestinian population in two large Bantustan-like enclaves in addition to East Jerusalem. Phases I and II have actually created and will be creating several additional small enclaves along the route of the Wall. As such, the Wall creates several kinds of enclosed areas. Qalqiliya is the clearest example, as a city of 41,000 inhabitants that is completely encircled by the Wall and is closed off by a single gate (See Map 12b: The Wall in the West Bank, Section b: Qalqiliya Area). There are also ‘double-Walled’ areas in which a second wall extends from the principal Wall and encircles and encloses a certain area. For example, a second Wall is under construction west of Baqa Sharqiya. Land confiscation orders have also been issued for a second Wall east of Tulkarem. Land has also been confiscated and levelled for construction of a second Wall around Qibya, as well as around Bet Ur (See Map 3: The Wall in the West Bank, and Briefing Map). These are distinct from enclaves, which are walled-in communities not connected to the principal Wall, such as Jib and Al Walaja (See Map 4: The Wall in East Jerusalem, and Jerusalem inset on Briefing Map). Enclosed areas will create harsher conditions of isolation because Palestinians will be separated in every way from their land and their surrounding communities.

(c) Property Demolition and Levelling of Land

250. In June 2002, the Israeli Civil Administration began issuing demolition orders for Palestinian houses along and near the route of the Wall, primarily under the pretext of lack of building permits.²⁰⁷ For construction of Phase I of the Wall at least 280 demolition orders were issued to the communities of Nazlat ‘Issa, Baqa a-Gharbiya, Baqa a-Sharqiya, Azzun ‘Atma, Umm a-Rihan, and Dhaher al-Malah. Most of the property is residential.²⁰⁸

251. In addition to residential dwellings, approximately 21,002 *dunums* (5,251 acres) of land have been razed for construction of Phase I of the Wall. This includes agricultural infrastructure, cropland, greenhouses, a children’s playground in Al Tayba, a secondary school in Ras ‘Atiya, shops, and animal shelters.²⁰⁹

(d) Establishment of a Closed Zone and a Permit System²¹⁰

252. On 2 and 7 October 2003, the Government of Israel issued four military orders (No. 378) declaring the area, in the Occupied Palestinian Territory, between the Wall and the Green Line a ‘Closed Zone’, and establishing an onerous permit system for residents living in and workers accessing this area. The four orders are:

²⁰⁷ See Chapter 4 for Israeli planning policy in the West Bank.

²⁰⁸ B’Tselem 2003 Report, p. 24.

²⁰⁹ Palestinian Central Bureau of Statistics, *Survey on the Impact of Separation Wall on the Localities Where it Passed Through*, 2003, August 2003, p. 7.

²¹⁰ On the implementation of the permit system in individual villages, see further Appendix: “Closed Zone Permit System,” Part A; and generally, Local Aid Coordination Committee, *The Impact of Israel’s Separation Barrier on Affected West Bank Communities*, Update No. 3, 30 November 2003 dossier no. 88 accompanying the UN Secretary-General’s submission.

Declaration Concerning Closing an Area No. S/2/03 (Seam Zone) – 2 October 2003 (with attached map)
General Permit to Enter the Seam Zone and to Stay in it – 2 October 2003
Regulations Regarding Entry and Stay Permits to the Seam Zone – 7 October 2003
Regulations Regarding Permit for Permanent Residents in the Seam Zone – 7 October 2003
These four military orders were distributed to local village councils on 9 and 10 October 2003.²¹¹

253. The military orders require Palestinian residents within the Closed Zone to obtain permits to live in their own homes, remain on their land, and to travel. Palestinians not residing in the Closed Zone but whose land, business, or work is situated inside the Closed Zone are also required to obtain permits.

254. Although Palestinians are required to obtain permits to remain on their property, the permits do not constitute proof of ownership of land. The procedures detailed in the military orders for acquiring permits are not only complicated, but the criteria by which a permit is granted or denied is not specified. The burden of proof of permanent residency or access is on the Palestinian owner of property.

255. The military orders grant the Heads of the local Israeli District Coordinating Offices ('DCO') or a 'Committee' established by the Head of the Israeli Civil Administration in the Occupied Palestinian Territory full authority to determine Palestinians' ability and legal right to remain in their homes, on their land or to access their property, and for what period of time.

256. There is inconsistent, unpredictable and unreliable application of the permit system throughout the Closed Zone. To date, many Palestinians who are residents of villages situated within the Closed Zone have been denied permits. Moreover, the permits are issued for periods of only one, three or six months, requiring repeated renewal and enabling Israeli authorities to isolate and contain Palestinian communities. For the most part, permanent residency permits in the Closed Zone have not been issued for periods longer than six months, or exceptionally for one year.

257. Initially, significant numbers of Palestinians who depend on their land for their livelihood did not receive permits. Others in the same village who are not able to work the land, such as the elderly and small children, did receive permits. Also, within single families, some members received permits while others did not. In many cases, the principal income earner did not receive a permit, affecting entire families.

258. The Israeli Government has denied Palestinians permanent residency permits on the grounds of 'security', despite the fact that these Palestinians had been living and working in their villages for many years. No details were provided regarding the specific security threat posed by an individual whose application has been rejected. Denial of permits on 'security' grounds is the same justification that has been used by Israel to refuse Palestinians permission to enter the territory of the State of Israel or to travel abroad. By January 2004, most villagers had received permanent residency permits for varying periods of time. Some of

²¹¹ For the full text of the four military orders, see the translation by the UN Office for the Coordination of Humanitarian Affairs, www.reliefweb.int/hic-opt.

those who had initially been denied permits on ‘security’ grounds were given permits for no longer than three months.

259. By mid-November 2003, as many as seventy-five per cent of residents of some villages had not received access permits.²¹² A number of farmers had reduced or given up cultivating their crops due to lack of access. In some cases, villagers objected to the permit system altogether and refused to accept permits issued, for fear that this would legitimise the permit system and the measures associated with it, resulting in harsh punitive closure measures. Both the denial of permits and the required acceptance of permits are features of controlling the Palestinian presence in the Closed Zone.

260. The owners of farmland in the Closed Zone, as in other agricultural businesses, are highly dependent on labourers, generally young men under the age of thirty-five, to work the land. In the majority of cases only the owners of land have received permits, but labourers necessary for cultivating and harvesting crops have not. Consequently, land owners have not been able to cultivate and harvest crops, suffering more economic hardship, while more labourers are threatened with unemployment, exacerbating the already dire humanitarian situation in the Occupied Palestinian Territory. Young Palestinian men of a similar age are categorically denied permits to enter the territory of the State of Israel.

261. Most significantly, possession of a permanent residency or access permit does not assure in any way an individual’s freedom of movement into or out of the Closed Zone. Gates along the Wall are closed most of the time, or open only for short fifteen minute periods and at the discretion of soldiers. The opening times fluctuate, and procedures are applied haphazardly.²¹³ Furthermore, two critical checkpoints near the Green Line have been moved 3 km deeper inside the West Bank, rerouting the movement patterns of villagers.

262. During the month of October 2003 alone, the gates along the Wall were closed for approximately 18 to 22 days straight, primarily because of Israeli Jewish holidays. By closing these gates, Israel is applying the same procedures that it applies to crossing points between the Occupied West Bank and the territory of the State of Israel. This closure has had dire economic effects on the areas within the Closed Zone and those communities dependent on agricultural produce and poultry from these areas. For example, in the village of Falamyia alone, hundreds of citrus trees are dying due to lack of irrigation. In the village of Jayyus, approximately 90 per cent of the guava crop was lost. Also, one of the largest poultry farmers in the West Bank lost his entire stock of 8000 chickens. The same poultry farmer had previously lost 7000 chickens due to sustained gate closures in August 2003.

263. In some areas, gates re-opened around the weekend of 24 to 27 October 2003, but for only five to fifteen minute periods, two to three times a day. These hours are inconsistent with the farmers’ working hours and limited vehicle use is permitted, if at all. Donkey-carts and tractors are primarily permitted, but not trucks necessary for transporting produce to market. Consequently, farmers cannot cultivate, harvest and market their crops. Moreover, mainly school children and teachers have been allowed to utilize the gates under the new permit procedures. Inconsistent opening times ensure that students and teachers are frequently late to class. Also, villages reliant on the delivery of water by tankers are being denied water, as tankers cannot complete their deliveries during the limited opening times.

²¹² For the breakdown of permits by village, see Appendix: “Closed Zone Permit System,” Part A.

²¹³ On gate closures in Jayyus and Qalqiliya, for instance, see Appendix: “Closed Zone Permit System,” Parts B and C. Also see Photographs 16-22.

Generally, basic supplies—including poultry, bread and vegetables—are delivered by trucks, but because of the lack of permits and closure of gates the goods are moved by a ‘back-to-back’ system (unloading from one truck and reloading onto another at checkpoints) which increases transportation costs (See Photograph 23).

264. In other areas, such as the village of Attil (near Zayta) and the city of Qalqiliya, although farmers have been granted permits to access their land, the gates remain closed. For example, the gate for Attil and one of the gates for Zayta have never been opened since they were installed. Other gates have remained closed since 4 October 2003, such as the northern gate in Qalqiliya. In other cases, as a result of the Wall, the distance to farmers’ land is great: for example in Daba, where farmers must make a 30 km round trip. Despite Israel’s recent announcements of the easing of restrictions, including extended opening times of gates, the opposite is occurring. For example, near the Daba area in the Closed Zone, two smaller gates used for Bedouin school children were sealed shut in early January 2004.

265. Between the issuance and renewal requirements of permits, and the closures of gates and checkpoints, Israeli authorities are able to manage the ebb and flow of Palestinian life in and around the Closed Zone. Israeli measures and procedures are forcing Palestinian residents to reconsider the viability of remaining in areas where freedom of movement does not exist or where permits are not granted to landowners and/or labourers and the ability to pursue a livelihood is thus severely restricted.

266. In some cases, Palestinians have been told explicitly that they cannot live in their home area, leading to the de-population or displacement of parts of the Closed Zone. For example, one farmer in Jayyus living in the Closed Zone was told in early January 2004 by an Israeli officer that he and his family would have to move to the east of the Wall, with the rest of the villagers. In another case, an elderly Zayta farmer living in the Closed Zone received a permit, but his daughter, and principal labourer, did not. In yet another case, the Arab Ramadin (Bedouin) living in the Closed Zone were recently issued with military orders to stop work on six shelters where they are currently living (with demolition orders expected to follow, as happened in the nearby village of Wad Irsha). Israeli Civil Administration officers informed local officials in Qalqiliya that the Arab Ramadin would have to be relocated.

(e) De Facto Annexation and Confiscation of Land

267. The regime of the Wall separates the Palestinian people from the land between the Wall and the Green Line. This, along with the practical, administrative and other measures described above, amounts to *de facto* annexation of this land by Israel. If all 788 km of the Wall are completed, then more than 43.5 per cent of the West Bank will be located outside the Wall.²¹⁴ This will leave 56.5 per cent of the West Bank as enclosed Palestinian areas. Of this figure, 2 per cent of the West Bank will be inside walled enclaves. Such a *de facto* annexation is occurring in addition to the direct confiscation of land taking place in relation to the construction of the Wall.

²¹⁴ ‘Outside’ the Wall refers to land and communities located west of the Western Wall or east of the projected Eastern Wall. ‘Inside’ the Wall refers to land and communities to be encircled by the Wall or enclosed within enclaves.

To date, 95 square km of land, or 1.6 per cent of the West Bank, is outside the completed section of Phase I of the Wall between Salem and Masha (Salfit).

An additional 661 square km will be outside the approved Phase II of the Wall (including around 'Ariel', 'Adumim' and Al-Khalil (Hebron)). This is almost an additional 11.4 per cent of the West Bank, bringing the total land outside the already constructed and approved Western sections of the Wall to 13 per cent of the West Bank.

If the recommended sections of the Eastern Wall in Phase III are completed, then approximately another 1786 square km of land, or 30.5% of the West Bank, will be outside the Wall. This will bring the total area outside the Wall to 2541 square km, or 43.5 per cent of the West Bank, leaving 56.5 per cent as walled-in Palestinian areas.

In Jerusalem, approximately 336 square km will be outside the Wall over a length of 145 km, which includes the settlement blocs of 'Giv'on', 'Adumim' and 'Etzion West'.

268. The majority of military orders issued for the seizure of land for the construction of Phase I of the Wall are valid until 31 December 2005. However, the indefinite extension of the orders is not prevented by military legislation. These orders state that the basis of land seizure is military necessity, and the orders become effective on the date of signature. Landowners, in general, learn of the confiscation orders only when notices are placed on their land, often just tacked to a tree, despite the obligation to deliver copies of the orders directly to landowners. This method of notification has proven arbitrary at best. While earlier orders detailed the appeals process, subsequent orders failed to explain the right to appeal, although affected parties can still file a petition to the Israeli High Court of Justice.

269. The Israeli Military Commander, who is responsible for issuing the military orders for the confiscation of property, has the power to override any recommendations made by the Legal Advisor in appeals by landowners against the confiscation order. Therefore, although the landowner has the right to appeal against the confiscation order, the appeal process is problematic. Additionally, many affected landowners have experienced difficulties in proving ownership, because the land registration system in the West Bank is not updated.²¹⁵

270. Despite the fact that military orders provide that landowners have the right to request compensation for confiscation of land, no process by which this may be done is in place. According to the Israeli Defense Forces, landowners may seek compensation for damage to land and structures as a fixed sum, in addition to a fee for usage of the land. The Israeli Ministry of Defense calculates the rate of compensation, which only covers property that has been confiscated or damaged for construction of the Wall and depth barriers. Property that has been damaged due to the landowner's inability to access the property in order to cultivate it is not included in calculations of compensation. To date, the majority of landowners have not applied for compensation, primarily from fear that agreeing to take the compensation would legitimize the confiscation process.

(f) Displacement and Other Demographic Effects

271. Currently, approximately 13,500 Palestinians are located outside Phase I of the Wall. However, the number will rise to 343,300 if all three phases are completed. There are currently 15 Palestinian villages with approximately 13,500 residents located outside the completed sections of Phase I of the Wall. There will be an additional 60 Palestinian villages

²¹⁵

See Chapter 4.

and towns located outside the sections of the Wall that are under construction or that have been approved in Phase II.

The total number of 75 villages and towns constitute 13 per cent of all recognized West Bank Palestinian localities. The total number of inhabitants will be nearly 336,000 Palestinians (some 65 per cent made up of East Jerusalem residents), comprising about 14.5 per cent of the Palestinian population of the West Bank.

With completion in the Jordan Valley of Phase III of the Wall, there will be a total of 91 Palestinian villages and towns located outside the Wall. This will bring the total number of inhabitants located outside the Wall to 343,300 comprising 14.9 per cent of the Palestinian population of the West Bank.

In addition, 156 Palestinian towns and villages will be directly affected²¹⁶ by the Wall because they will be cut off from their land. The inhabitants of these towns and villages number 522,000, comprising 22.6 per cent of the Palestinian population of the West Bank. Altogether, the number of Palestinians who will be located outside all three Phases of the Wall or who will have lost land to the other side of the Wall will be 865,300, or 37.5 per cent of the Palestinian population of the West Bank.

272. The Wall will isolate Palestinians living in the Occupied Palestinian Territory, including East Jerusalem, intensifying the economic, social, and cultural hardships they already face as a result of a strict closure policy that has been in effect since the beginning of the second Palestinian intifada in September 2000.²¹⁷ The Wall disconnects Palestinian populations, concentrating and confining separated parts of the community in different areas, surrounding them with barriers and military personnel and restricting their movement outside of their confined areas in a controlled manner.

273. The implications of the Wall on all aspects of the social fabric of Palestinian life are wide reaching. This has already been evidenced in the creation of pockets of isolated and vulnerable population clusters that have been severed from basic social services and networks, populations that have already suffered greatly over the past three years from a strict Israeli imposed closure policy.²¹⁸ (See Map 5: The Wall and Closure in the West Bank)

²¹⁶ 'Directly affected' communities refers to either those villages located outside the Wall or those villages located inside the Wall, but whose land is located outside the Wall. Directly affected communities include: in Phase I, 26 localities with 73,000 individuals; in Phase II, 105 localities with 311,000 individuals; and in Phase III, 25 localities with 138,000 individuals.

²¹⁷ Between 11-19 August 2002, Ms. Catherine Bertini, Personal Humanitarian Envoy to the UN Secretary-General, travelled to the region in order to assess the humanitarian situation. In her mission report, Bertini noted, "The situation is a crisis of access and mobility. Palestinians are subject to a variety of closures, curfews, roadblocks and restrictions that have caused a near-collapse of the Palestinian economy, rising unemployment, increased poverty, reduced commercial activities, limited access to essential services (such as water, medical care, education, emergency services) and rising dependency on humanitarian assistance. The restrictions affect almost all activities, rendering most Palestinians unable to carry out any semblance of a normal life and subject to daily hardships, deprivations and affronts to human dignity (...) There is a consensus among all parties, and this report confirms, that the current regime of closures and curfews is having a devastating impact on the Palestinian population, both on their economy and the humanitarian situation." Catherine Bertini, Personal Humanitarian Envoy of the UN Secretary-General, *Mission Report: 11-19 August 2002*, pp. 1 & 4, www.reliefweb.int/library/documents/2002/un-opt-19aug.pdf. The report appears as Annex 14 to this Written Statement.

²¹⁸ The Report of the Mission to the Humanitarian and Emergency Policy Group (HEPG) of the Local Aid Coordination Committee (LACC) *The Impact of Israel's Separation Barrier on Affected West Bank*

274. According to a household survey conducted by the Palestinian Central Bureau of Statistics in October 2003, 91% of households surveyed caught between the Wall and the Green Line indicated a negative impact on social activities, while 83.3% of households surveyed indicated a negative impact on cultural activities.²¹⁹ Access has become one of the foremost factors in determining sustainability of social services in affected areas. Some of the most frequently reported problems of accessing services occur in relation to education, health, and water resources, in addition to solid waste disposal.²²⁰

275. Social conditions already are deteriorating near the completed sections of the Wall. As with the economy, this deterioration provides a glimpse of the conditions that would be likely to prevail throughout the West Bank if the Wall were completed. The continued delivery of essential social services in affected communities depends critically on the ability of providers and targeted beneficiaries to circumvent Israeli controls and checkpoints, for example, by using agricultural back roads and open fields. According to officials at the Palestinian Ministries of Health and Education in Qalqilya and Tulkarem, for example, this has been the case for health staff travelling to carry out regular vaccinations, and teachers and doctors commuting to village schools and clinics.²²¹ Villages located between the Wall and the Green Line are the communities most directly affected by the Wall. The completion of the Wall will have a devastating affect on the Palestinian community, further degrading the Palestinian economy, increasing unemployment and poverty, reducing commercial activities, limiting access to essential services (such as education, medical care, emergency services, water) and increasing dependency on humanitarian assistance.

276. The Wall will have serious implications for Palestinians as regards to residence and migration, primarily the destruction or loss of household structures and displacement from areas most affected by the Wall on both sides. By October 2003, 5.0% of households west of the Wall and 4.9% on the eastern side of the Wall changed or intended to change their place of residence.²²² In the northern West Bank, a total of 402 households were displaced due to

Communities, (4 May 2003), identified four main areas of concern in the construction of the Wall regarding social effects: 1. The creation of pockets of very isolated and vulnerable population clusters with a highly inadequate social infrastructure, compounded by a thin local distribution of NGO and UNRWA service providers as compared to other areas of the West Bank; 2. Aggravated stress on local public service providers, due to further duplication and dispersal of facilities, staff and resources in order to accommodate mobility restrictions; 3. Additional erosion of educational enrolments and attainment among the affected population and, in particular, in rural communities, adding to the ranks of a 'lost generation' of Palestinian children; 4. Increased vulnerability of the chronically ill and individuals requiring emergency and specialist care. Similarly, increased vulnerability of women and children. (p.37). The Report is among the dossiers submitted by the Secretary-General, as Dossier no. 85.

²¹⁹ Palestinian Central Bureau of Statistics, *Impact of the Separation Wall on the Socioeconomic Conditions of Palestinian Households in the Localities in which the Separation Wall Passes Through*, (October 2003), December 2003, p. 5.

²²⁰ Follow-Up Report to the Mission to the Humanitarian and Emergency Policy Group (HEPG) of the Local Aid Coordination Committee (LACC), *The Impact of Israel's Separation Barrier on Affected West Bank Communities: Access Issues in "Stage A Localities" – Update Number 3*, 30 November 2003, p. 12. The Report appears in the dossiers submitted by the Secretary-General, as Dossier no. 88.

²²¹ Report of the Mission to the Humanitarian and Emergency Policy Group (HEPG) of the Local Aid Coordination Committee (LACC), *The Impact of Israel's Separation Barrier on Affected West Bank Communities*, (4 May 2003), p. 38. The Report appears in the dossiers submitted by the Secretary-General, Dossier no. 85.

²²² Palestinian Central Bureau of Statistics, *Impact of the Separation Wall on the Socioeconomic Conditions of Palestinian Households in the Localities in which the Separation Wall Passes Through* (October 2003), December 2003, p.5.

the Wall, 113 of which are in the Jenin Governorate, totalling 2,323 individuals.²²³ Of particular concern to local inhabitants is the possibility of increased uprooting and displacement as a result of harsher living conditions, including high levels of social and economic marginalization, property demolitions and protracted access restrictions in threatened villages. High-risk communities include ‘Azzun ‘Atma, Ras at Tira, and Ad Dab’a in Qalqilya, and Khirbet ‘Abdallah al Yunis, Dhaher al Malih, and Umm ar Rihan in Jenin, with an estimated total population of approximately 2,700 people.²²⁴

277. Destruction caused to houses as a result of Wall construction is also a determining factor in population displacement. Housing units amounting to 19.3% of households located west of the Wall and 30.1% of households east of the Wall were totally or partially destroyed. 8.7% of households on the west side of the Wall indicated that their houses were subject to harm totally or partially, while 23.1% in the east indicated the same.²²⁵

278. Additional possible factors leading to internal displacement as a consequence of the Wall’s construction may include:

- a) Migration of individuals or families from their places of residence due to damage to, or complete destruction of these residences;
- b) Migration of either individuals or families possessing Israeli identification from the West Bank to Israel;
- c) Attempted migration of individuals or families to or from those areas believed to fall in between the Wall and the Green Line;
- d) Movement of traders to those areas in close proximity to planned terminals in the Wall, in order to facilitate the flow of goods between the West Bank and Israel.²²⁶

279. Population migration as a consequence of Wall construction in the northern West Bank is occurring. Migration to Israel of males with Israeli Identification Cards has been the most common type of population movement, and was generally initiated once construction began in earnest.²²⁷ However, increased isolation, lack of social services, property requisitioning and destruction may lead to greater population displacement as construction of the Wall continues.

(4) Correlation of the Route of the Wall to Settlements, Roads and Water Resources

(a) Relationship of the Wall to Settlements and Roads

²²³ Palestinian Central Bureau of Statistics, *Survey on the Impact of Separation Wall on the Localities Where it Passed Through, 2003*, Press Conference on Survey Results, (August 2003).

²²⁴ Report of the Mission to the Humanitarian and Emergency Policy Group (HEPG) of the Local Aid Coordination Committee (LACC), *The Impact of Israel’s Separation Barrier on Affected West Bank Communities*, (4 May 2003), p. 46. The Report appears in the dossiers submitted by the Secretary-General, Dossier no. 85.

²²⁵ Palestinian Central Bureau of Statistics, *Impact of the Separation Wall on the Socioeconomic Conditions of Palestinian Households in the Localities in which the Separation Wall Passes Through (October 2003)*, Press Conference on Survey Results, (December 2003).

²²⁶ Follow-Up Report to the Mission to the Humanitarian and Emergency Policy Group (HEPG) of the Local Aid Coordination Committee (LACC), *The Impact of Israel’s Separation Barrier on Affected West Bank Communities: Jenin Governorate – Update Number 1*, (31 July 2003), p. 16. The Report appears in the dossiers submitted by the Secretary-General, Dossier no. 86.

²²⁷ *Ibid.*, p. 21

280. The Dugard Report (2003) (para. 12) makes the following observation about the relationship of the Wall and settlements:

“The Wall must be seen in the context of settlement activity and the unlawful annexation of East Jerusalem. Settlements in East Jerusalem and the West Bank are the principal beneficiaries of the Wall....”

In the words of an Israeli expert on West Bank topography and planning, the Wall is part of a hermetical logical chain of excessive territorial-based ‘security’ pursued by Israel:

“It started with the making of a line of settlements along the Jordan Valley, then continued with the seeding of strategic settlement points across the depth of the territory, then with an attempt to collect all points within separate and convoluted barrier lines.”²²⁸

281. The constructed and approved sections of the Wall situate approximately 80 percent of the settler population to the west of the Wall.²²⁹ With the projected eastern Wall along the Jordan Valley, an additional 8 per cent of settlers will be situated outside of the Wall. (See Map 9: The Wall and Israeli Settler Population in the West Bank). The completed, approved and projected route of the Wall delineates Israeli-defined geo-strategic areas, and hence, Israel’s integrated system of settlements and by-pass roads.²³⁰

282. The route of the Wall is pushed away from the Green Line, apparently to incorporate the main east-west by-pass roads and north-south linkages for these settlements. For example, the route of the Wall in the ‘Alfe-Menashe’ settlement area corresponds to the settlement road under construction linking the existing Highway 5 and ‘Alfe-Menashe’ to the new Highway 55, also under construction. (See Qalqiliya inset on Briefing Map, and Map 12b: The Wall in the West Bank - Section b: Qalqiliya Area). The route of the Wall delineating the ‘Ariel finger’ of settlements encompasses the existing roads, namely Routes 5, 55 and the current extension of a new road 55 under construction. Similarly, in Phase II, Route 60, which is situated to the west of Bethlehem, serves to link the settlements of ‘Har Gilo’ and ‘Gilo’ (South of Jerusalem) with the ‘Etzion’ bloc, situated south. (See Bethlehem West inset on Briefing Map).

283. The route of the Wall facilitates continued settlement expansion. It serves to consolidate the presence and viability of settlements in areas regarded by Israel as of strategic importance to it. The planned expansion areas and the regional jurisdictional areas of the settlements correspond to the approved and projected routes of the Wall, indicating that the route of the Wall has been determined in order to accommodate continued settlement expansion in ‘authorized areas’ as well as future settlement development. (See Map 8: The Wall and Israeli Settlement Expansion in the West Bank)

²²⁸ Eyal Weizman, “Ariel Sharon and the Geometry of Occupation, Part 3,” 15 September 2003, p. 7, www.opendemocracy.net/themes/article.jsp?id=2&articleID=1476.

²²⁹ This figure is based on calculations from the 2003 settler population figures drawn from the Israeli Knesset Research Centre. Israeli figures may differ because Israel illegally annexed East Jerusalem and therefore does not consider settlers in East Jerusalem as part of the population of the Occupied Palestinian Territory.

²³⁰ These areas include a 10-15 km belt running the length of the Jordan Valley, a strip running north of the Jerusalem-Jericho road reaching and including the Latrun salient, the entire Judean desert from Mt. Hebron to the Dead Sea, Jerusalem, and a wedge east of Qalqiliya and Tulkarem running north-south along the ridge to separate the Palestinian population in the Occupied Palestinian Territory from the Palestinians living inside Israel.

284. For example, the enclosure of Qalqilya by the Wall into a ‘bottle-neck’ is apparently caused by the ‘Zufin’ and ‘Alfe Menashe’ settlements situated to the north and south of Qalqilya, respectively, and by the Israeli settlement expansion areas (as shown by blue shades on the inset map of Qalqilya on the Briefing Map). Palestinian access to and use of land must first be limited and then denied if these settlements are going to be able to expand geographically in accordance with these authorized plans, and settlers are to enjoy movement and access to and from the territory of the State of Israel. For example, the settlements of ‘Zufin’ and ‘Alfe Menashe’ are both planned to expand to approximately six and two times, respectively, their current sizes on Palestinian cultivated areas. (See Qalqilya inset on Briefing Map, where the blue areas represent planned settlement expansion.) Two illustrative examples in Phase II are the settlements of ‘Ofarim’ and ‘Efrat’. The route of the Wall will enable the settlement of ‘Ofarim’ to fully realize its planned growth to approximately eleven times its current size, and the settlement of ‘Efrat’ to approximately three and a half times its current size. (See Bethlehem West inset on Briefing Map; see also Map 8: The Wall and Israeli Settlement Expansion). Similarly, in order to build the by-pass roads for use by Israeli settlers, Palestinian access to and use of land must be denied.²³¹

285. In East Jerusalem, preparations have begun for two new settlements, ‘Nof Zahav’ and ‘Kedimet Zion’, that are situated to the west of the Wall. In the area northwest of Jerusalem, the location and route of the double-Walled enclave areas correspond with the Israeli plans for expanding and linking the settlements of the ‘Givon settlement bloc’²³² and facilitate planned northern expansion of the west Jerusalem suburb of Mevaseret Zion across the Green Line on the Palestinian village lands of Beit Iksa and Beit Surik.

286. The settlement areas in which the majority of tenders were issued by the Israeli Ministry of Housing and Israeli Land Authority in 2003 also correspond to the route of the Wall. Of the known 2,127²³³ construction tenders issued by these two government agencies, all are for settlements²³⁴ situated to the west of the Wall, with the exception of tenders for the ‘Neve Deklim’ settlement in Gaza and for ‘Ma’ale Adumim’ in the West Bank, around which the route of the Wall is not yet determined. Furthermore, publication of the final route of the Wall has reportedly increased housing sales in settlements such as ‘Modi’in Ilit,’ and ‘Beitar Ilit,’ which are located to the west of the Wall.²³⁵

287. The Wall entrenches the pattern of separation created by Israel’s settlements in the Occupied Palestinian Territory and the grid of by-pass roads built to link these settlements with each other and to the territory of the State of Israel. For example, the decision to wall Qalqilya from the east allows the free movement of settlers between the area of the

²³¹ See Chapter 4 on Israeli land seizure policies for construction of by-pass roads and settlements.

²³² This bloc includes the settlements of ‘Bet Horon,’ including ‘Givon Ha Hasasha,’ ‘Givat Ze’ev,’ ‘Har Adar,’ and, ‘Ha Samuel.’

²³³ The Israeli Government publishes these tenders in the Israeli press and on the Ministry of Housing and Construction web-site. See Foundation for Middle East Peace, “Snapshots of Settlement Expansion”, Report on Israeli Settlement in the Occupied Territories, Vol. 13, No. 6, November – December 2003, p. 12. In addition, 400 tenders for ‘Har Homa’ were announced in late September 2003.

²³⁴ These settlements are ‘Ariel,’ ‘Beitar Illit,’ ‘Efrat,’ ‘Elkana,’ ‘Har Adar,’ ‘Givat Ze’ev,’ ‘Har Homa,’ and ‘Karne Shomron’.

²³⁵ Foundation for Middle East Peace, “Settlement Time Line,” *Report on Israeli Settlement in the Occupied Territories*, Vol. 14, No. 1, January-February 2004, p. 13.

settlements of ‘Ariel’ and ‘Alfe-Menashe’ and the Green Line by limiting Palestinian access on the old Route 55 in the Occupied Palestinian Territory.²³⁶

288. In Phase II, the approved route of the Wall which retains the ‘Ariel finger’ of settlements will permanently prevent Palestinian access to this area. Currently, access in this area is regularly denied or severely restricted because of the presence of Route 5 and Route 446, Israeli military patrols, and threats of violence by Israeli settlers residing in the ‘Brukhin’ settlement. (See Briefing Map, ‘Ariel Finger’). Similarly, in the southern West Bank, Route 60, which is the main thoroughfare linking Bethlehem to Al-Khalil (Hebron), will be situated to the west of the Wall, permanently restricting Palestinian access to this road.²³⁷

289. Increasing the trend towards further separation and isolation, the route of the Wall is creating new artificial patterns of movement of Palestinian people and goods. The route of the Wall encloses Qalqilya from the south and Habla from the north, ensuring that Palestinians are not able to cross or utilize settler by-pass Route 55 in order to access their lands.²³⁸ Similarly, because of the construction of the Wall in the Occupied Palestinian Territory near the ‘Ariel finger’, the residents of the Qalqilya area wishing to reach Nablus will have to detour significantly to do so. Rather than travelling 31 km directly to Nablus, the residents will have to travel around the ‘Shomron’ settlements and the Wall, travelling east to Azzun, north to Jayyus, up to Kufr Jammal, then eastwards toward Nablus via Funduk or Beit Lid, increasing the distance by a minimum of 46 km, an increase of one-half on the distance of the direct route. Likewise, the distance between Bidya to Salfit via Harris is approximately 11.8 km without the Wall and Settlements. The reroute around ‘Ariel’ settlement necessitates a detour via Azzun, Kufr Sur, Funduk, Immatin, Huwara and Iskaka to arrive at Salfit after a 61.3 km journey, approximately five times the distance of the direct route. (See Briefing Map)

(b) Relationship of the Wall to Water Resources

290. The West Bank contains three main water aquifers: the Western, the Eastern, and the North-Eastern. The Western and North-Eastern aquifers extend beyond the Green Line and are shared with Israel. (See Map 10: The Wall and Water Resources in the West Bank)

291. The soil of the West Bank is rocky and difficult to drill; well field quality varies greatly from one location to another. The area along the northern and western edge of the

²³⁶ Since the construction of the Wall, the eastern gate at Qalqilya has been the only possible point of entry into and exit out of Qalqilya. Access is controlled by Israeli military presence. The construction of the eastern gate/checkpoint has restricted or denied Palestinians access to Route 55, which is the main road from Qalqilya leading eastward to Nablus, and sections of which are also used by Israeli settlers. Ze’ev Schiff, “Fence route is moved, scrapping 2 enclaves,” *Ha’aretz*, 12 December 2003.

²³⁷ Currently, Palestinians are only allowed to use parts of Route 60 if they have been issued a permit. Route 60 was originally built as the main north-south artery linking Palestinian towns prior to the 1967 occupation.

²³⁸ Many of the settler by-pass roads serve as functional barriers by their design. Some of the roads do not have access/entry points in Palestinian areas. Other roads have fences or walls that run parallel to the road, in effect, dividing villages from each other and preventing access across the road for the Palestinian populated areas situated near the roads. For example, the Palestinian town of Old Beit Hanina is now severed from Beit Hanina by a fenced-in highway, Highway 1, which links West Jerusalem with Israeli settlements in north-west Jerusalem. Palestinian residents of Old Beit Hanina must make long detours or cross through a tunnel under the Highway to access Beit Hanina.

West Bank where the Wall is being constructed contains some of the Western aquifer's best well fields. Accessing the water is much easier and cheaper in this area of the West Bank than further east.

292. Groundwater is the main source of water in the West Bank. Most of the water supply for Palestinian use in the West Bank is secured from groundwater resources through wells.

293. The construction of the Wall is having a severe impact on water access, use, and allocation, particularly for the communities located close to the Wall's path and for those communities who are now constricted between the Wall and the Green Line.

294. Water access problems have already been caused and are likely to worsen as the construction of the Wall is completed. There are instances where residents' houses lie east of the Wall while their wells and water networks lie entirely west of the Wall. In other instances, residents' wells are east of the Wall while their farm lands are west of the Wall. This has entailed and will continue to entail a considerable reduction in the use of water by West Bank Palestinians. World Bank field examinations have identified several difficulties concerning water access, especially by private and communal owners of wells.²³⁹

295. As a result of diminishing access to water sources and farm lands, the Palestinian agricultural economy will suffer significantly. Once the western section of the Wall is completed, it is estimated that the annual value of agricultural production in the West Bank is predicted to decrease by 22.8 percent and by a total of 41.7 percent once the eastern section of the Wall is constructed.²⁴⁰ This will also lead to the loss of the current status of food security in the West Bank, which might lead to further malnutrition-related diseases among West Bank children.²⁴¹

296. The current course of the Wall along the northern and western portions of the West Bank affects Palestinian allocations of shared water resources. The 2 km to 6 km wide strip along the northern and western West Bank contains critical hydrological well fields, which now fall between the Wall and the Green Line.

297. Projections of the eastern course of the Wall suggest that when the Wall is completed, the West Bank will no longer be a co-riparian to the Jordan River or the Dead Sea. The Jordan Valley is potentially one of the main areas for Palestinian agricultural expansion. If Israel were to construct the eastern section of the Wall, it would obstruct Palestinian access to the water of the Jordan River, and this potential of the valley would be undermined. Furthermore, the territory marked for the Wall in and around East Jerusalem and the Jordan Valley areas commonly includes the eastern slopes that control the headwaters of the eastern aquifer, where Israel has already drilled many wells to supply its settlements in the OPT.

²³⁹ See *The Impact of Israel's Separation Barrier on Affected West Bank Communities*, Report of the Mission to the Humanitarian and Emergency Policy Group of the Local Aid Coordination Committee, 4 May 2003.

²⁴⁰ Applied Research Institute Jerusalem, "Undermining Peace, Israel's Unilateral Segregation Plans in the Palestinian Territories," December 2003.

²⁴¹ Preliminary results of the first survey conducted by CARE International in August 2002 indicated an increase in the number of malnourished children with 22.5 percent of children under the age of 5 suffering from acute or chronic malnutrition in the West Bank and Gaza.

(5) The Social and Economic Effects of the Wall

(a) Social Effects of the Wall

298. The Wall is having a significant impact on the social fabric of communities in the Occupied Palestinian Territory, such as traditional and kinship ties, marriage, social and religious activities, and restriction on movements for women. Social relations and activities of Palestinian communities living to the west of the Wall have been more affected than those living to the east of the Wall. A Palestinian Central Bureau of Statistics ('PCBS') survey on communities affected by the Wall found that 90.6% of households west of the Wall were not able to visit their relatives, compared to 63.5% living east of the Wall. The ability to conduct social and cultural activities has been negatively impacted for 83.3% of households surveyed to the west of the Wall and 48.4% of households to the east of the Wall. The Wall has become an obstacle for marriage between individuals living on opposite sides of the Wall for 50.4% of those surveyed. Family members have been isolated from one another, with 50.9% of communities living to the west of the Wall already separated from their relatives and 37.3% living east of the Wall separated from their relatives.²⁴²

299. No permits are given to pursue family relationships. Members of different villages on both sides of the Wall are related through kinship or marriage. They are part of either core families, or larger entities, like an *a'ella* (extended family) or '*hamula*' (clan). The Wall has separated several communities from their previously close-by relatives.²⁴³

300. As a result of construction of the Wall, many family members are now isolated from each other, and villages that traditionally inter-married have been unable to do so. People of Nazlat Isla, a village now located west of the Wall, have social relations to all nearby villages as well as to Baqa al-Sharqya on the Green Line. Approximately 70 of the male villagers have married across the Green Line. In accordance with prevailing custom, most of these women moved to the West Bank to live with their husband's family. Yet, now with construction of the Wall, some men have rented places across the Green Line to live there once the Wall is completed. Women from Baqa al-Sharqya who have married in Israel have all moved across the Green Line. For them it becomes difficult now to return and visit their families.²⁴⁴

²⁴² Palestinian Central Bureau of Statistics, *Impact of the Separation Wall on the Socioeconomic Conditions of Palestinian Households in the Localities in which the Separation Wall Passes Through (October 2003)*, Press Conference on Survey Results, (December 2003), p. 5.

²⁴³ For example, the majority of the population of Khirbet Jubara stems originally from the village of A Ras. 250 people migrated to their nearby gardens in 1967/1972 to better cultivate their land. In the 1970s Khirbet Jubara became administratively an independent village. However, family ties and marriage relations have remained as close. People from both villages still have an identity as 'one' village. They still share economic resources, and are integral part of a 'social network', in which family members support each other. Only recently, the villages were geographically divided through the Wall. Khirbet Jubara is now located in the Closed Zone. Since the construction of the Wall, people from Khirbet Jubara can access A Ras through the gate that is opened twice a day. From A Ras, only farmers with a permit are allowed to visit their land in the Closed Zone, although these permits are not permanent and may not be continuously renewed. Other villagers are not allowed to cross into Khirbet Jubara and visit their relatives.

²⁴⁴ Interview with Abu Ashraf, member of village council in Nazlat Isa, 6 November 2003. Follow-Up Report to the Mission to the Humanitarian and Emergency Policy Group (HEPG) of the Local Aid Coordination Committee (LACC), *The Impact of Israel's Separation Barrier on Affected West Bank Communities: Access Issues in "Stage A Localities" – Update Number 3*, (30 November 2003), p. 14.

301. Many of the smaller Palestinian villages trace their origin from larger towns in the West Bank. Though their members have migrated at some point in history, they still maintain relationships with the town. Often the inhabitants of far off areas stem from the same ‘*hamula*’. Religious and ceremonial occasions, especially weddings and funerals, require the attendance of members of the larger family, to pay respect and to contribute money to the event, significant features of these social occasions. Especially in societies with a weak state structure, such social occasions are extremely important to continuously redefine the social cosmos of a people and emphasize their common identity.²⁴⁵

302. A significant portion of the Palestinian community holds close ties to land and activities involving land. With increasing confiscations of land for construction of the Wall, activities related to land use have diminished. For example, harvesting olives has traditionally not only played an integral role in livelihood activity for communities, but has also served to draw communities together during harvest time through the act of harvesting and associated cultural activities. Communities that have lost agricultural land to the Wall can no longer participate in such activities.

303. The construction of the Wall is having a particular impact on women and their mobility, given social norms relating to travel (the widespread unacceptability of travelling alone after dark or staying away from home for the night, for example). Women who have married outside their village are facing increasing difficulty in visiting relatives. A growing tendency to allow women to only marry men on the same side of the Wall is emerging in communities that have become isolated by the Wall, as is a trend to marry girls young as a result of Wall restrictions, so that the father can avoid having to send them to school or university under insecure circumstances.²⁴⁶

304. The Wall is taking a psychological toll as well on Palestinians affected by it, many of whom have expressed a sense of hopelessness with regard to the future of their communities. Initial studies indicate that psychological impacts of the Wall on affected populations include depression, feelings of anxiety and hopelessness, feelings of isolation, thoughts of suicide, and symptoms of Post-Traumatic Stress Disorder. These effects have resulted from a lack of social support systems due to isolation, limited social relations as people are confined to their homes, disintegration of family and social relationships, and an increase in unemployment and poverty.²⁴⁷

(b) Economic Effects of the Wall

(i) *Macro Economic Impact*

²⁴⁵ The population of Ras Tireh and Ras Atyia originally stems from Kaffr Thulth and share the same *hamula*. Now the Wall is separating the villagers in Ras Tireh from nearby close relatives in Ras Atyia and other related villages, such as Kaffr Tulth. People in Ras Tireh state that they feel very isolated. Only a far-located gate allows them access to Ras Atyia, while relatives from Ras Atyia cannot cross into their village.

²⁴⁶ Follow-Up Report to the Mission to the Humanitarian and Emergency Policy Group (HEPG) of the Local Aid Coordination Committee (LACC), *The Impact of Israel's Separation Barrier on Affected West Bank Communities: The "Jerusalem Envelope" – Update Number 2* (30 September 2003), p. 17. The Report appears in the dossiers submitted by the Secretary-General, Dossier no. 87.

²⁴⁷ Palestinian Counselling Center, *Mental Health Effects on the Israeli Apartheid Wall on Palestinians in the Qalqiliya District: Pilot Questionnaire* by the Palestinian Counselling Center, October 2003, p. 6.

305. The Wall and its attendant policies deprive Palestinians of their economic resources, and their ability to efficiently utilize them to serve Palestinian development interests. Palestinian economic resources such as land, water, labour and skills are either being confiscated by the construction of the Wall or remain unemployed due to lack of access.

306. Once completed, the Wall will create separate enclaves that are not territorially adjacent to each other. Even if movement between them is allowed, under administered conditions, the Palestinian national market will effectively be cut into a series of disconnected markets. The ability to trade services and goods or to seek jobs in the entire Palestinian market will become unpredictable and expensive due to Israeli denial of unrestricted movement of people and goods.

307. The Wall will impair Palestinian economic development and Palestinian economic planning as its route confiscates and isolates Palestinian economic resources and dissects the Palestinian market. Thousands of Palestinians depend on farming as their main livelihood, particularly in the northern West Bank governorates, where nearly 40 percent of the West Bank's agricultural land is located.²⁴⁸ The Wall already is depriving Palestinians of a portion of this means of subsistence through the confiscation of thousands of *dunums* of rich agricultural land that have already been destroyed or isolated. Even if the Israeli system of agricultural gates were implemented, the increased travel time and expense involved would drive up transaction costs significantly. The uncertainty about the future status of the land also discourages cultivation and may result in even higher prices for agricultural products.

308. With the inability to produce competitively and to access foreign markets with minimum expenses, the Palestinian market, as in the post 1967 era, will become hostage to the 'competitive' Israeli market. Israeli exports will become more competitive than Palestinian goods; and foreign goods will become easier to import through an Israeli interlocutor. The economic reality that would be created would make opting for disengagement from Israel and diversifying relations in the 'future' very difficult.

(ii) Micro Economic Impact

309. In the process of constructing Phase I of the Wall in departure from the Green line, Israel has confiscated Palestinian land, destroyed Palestinian economic resources, and impeded Palestinian access of goods, vehicles and people to Palestinian areas.

310. Land Confiscation: Inhabitants of 37 West Bank communities, with a total population of 108,776, lost lands for the construction of the Wall.²⁴⁹ By August 2003, over 124,323 *dunums* (31,081 acres) of land under private Palestinian ownership, and mostly containing orchards, field crops and greenhouses, were confiscated to erect the Wall.²⁵⁰

²⁴⁸ Report of the Mission to the Humanitarian and Emergency Policy Group (HEPG) of the Local Aid Coordination Committee (LACC), *The Impact of Israel's Separation Barrier on Affected West Bank Communities*, 4 May 2003, p. 43. The Report appears in the dossiers submitted by the Secretary-General, Dossier no. 85.

²⁴⁹ Follow-Up Report to the Mission to the Humanitarian and Emergency Policy Group (HEPG) of the Local Aid Coordination Committee (LACC) - "The Impact of Israel's Separation Barrier on Affected West Bank Communities: Access Issues in "Stage A Localities" – Update Number 3", 30 November 2003, p. 6. The Report appears in the dossiers submitted by the Secretary-General, Dossier no. 88.

²⁵⁰ Palestinian Central Bureau of Statistics, *Survey on the Impact of the Separation Wall on Localities Where it Passed Through, 2003*, (August 2003), p. 7. According to the survey, 62,623 *dunums* (15,656 acres)

311. Destruction of Economic Resources: For the construction of the first phase of the Wall, more than 100,000 trees were uprooted (of which 83,000 were olive trees), causing serious damage to more than 2,500 acres of land, and more than 30,000 meters of irrigation network and water pipelines have been destroyed²⁵¹ (See Photographs 6-8). In the process of constructing the first phase of the Wall, commercial facilities located in the route of the Wall or in its vicinity have been destroyed. For example, nearly 200 shops comprising the main commercial centre in Nazlat Isa in the northern West Bank were demolished for construction of the Wall²⁵² (See Photographs 9-12).

312. Inaccessible Economic Resources Due to Movement Restrictions: Economic resources that have not been demolished or destroyed by the Wall have been diminished due to lack of access. Access of farmers to agricultural land they own or cultivate outside the Wall has been problematic due to permit restrictions and difficulties in obtaining permits for farming vehicles. The Wall also isolates residents from 50 underground water wells that are relied upon for drinking water and agriculture.²⁵³ Additionally, as grazing activities require continual access to the land, restrictions on access to lands have resulted in the death of livestock.

313. Access to Markets: Prior to construction of the Wall, local markets were significantly dependent on Israeli consumers purchasing lower cost goods and services from Occupied Palestinian Territory. The construction of the first phase of the Wall has rendered this impossible. Costly and burdensome ‘back-to-back’ transportation has been introduced for the transport of goods between areas outside the Wall and areas falling inside the Wall.

314. Access to Employment: Palestinians now living outside the Wall face difficulty accessing the employment market. Palestinians face more difficulty accessing the job market that now exists outside the Wall because of the need for permits to enter or leave the closed areas. At least 23.6% of the population living to the west of the Wall with only one employed household member have changed their work totally (activity and place of work), compared with 21.7% of those living east of the Wall.²⁵⁴

(iii) Economic Consequences of Phase I

315. The construction of the Wall has led to four principal economic consequences: loss of economic assets, loss of potential investment, higher transaction costs of produce, and higher rates of unemployment.

316. Loss of Economic Resources: Permanent confiscations of economic resources, damaging economic resources or the inability to employ economic resources have all resulted in the permanent loss of economic resources.

contained olive trees, 18,522 *dunums* (4,631 acres) were cropland, 9,800 *dunums* (2,450 acres) were pastureland and 8,008 *dunums* (2,002 acres) were cultivated with citrus trees. Additionally, 21,002 *dunums* (5,251 acres) of privately owned land were levelled.

²⁵¹ Palestinian Agricultural Relief Committee, *Needs Assessment Study and Proposed Intervention 4*, (2003).

²⁵² Palestinian Monitoring Group, “Special Report: Land Confiscation and Destruction of Property—Focus: Nazlat Isa, Zayta, and Baqa Sharqiya,” 4 September 2003.

²⁵³ *Ibid.*

²⁵⁴ Palestinian Central Bureau of Statistics, *Impact of the Separation Wall on the Socioeconomic Conditions of Palestinian Households in the Localities in which the Separation Wall Passes Through (October 2003)*, Press Conference on Survey Results, (December 2003), p. 5.

317. Loss of Potential Investment: Uncertainty concerning the future of areas outside the Wall has led to a decrease in economic investment opportunities. Uncertainty poses particular dilemmas for agricultural producers, including whether to plant at all, the choice of crops to plant, and the level of investment in planting. Loss of potential investment affects areas outside the Wall due to lack of accessibility and increased risk of destruction, as well as areas remaining inside the Wall as they become segregated enclaves with no potential for economic prosperity. Even if an investor wished to invest in the Closed Zone, Israeli restrictions would make such investments practically impossible.

318. Higher Transaction Costs of Produce: Because of the difficulty, or lack, of access for both people (requiring permits and passage through gates) and goods (requiring back-to-back shipment), transportation and production/cultivation costs have become exponentially higher.

319. Higher Unemployment Rate: Phase I of the construction of the Wall has resulted in increased unemployment rates in Palestinian areas, both outside and inside the Wall.

320. Collectively, the above economic consequences of the Wall and its attendant policies are depriving the Palestinians of their ability to utilize their economic assets and to determine their economic policies, and are causing increasing poverty among the population.

(c) Health Effects of the Wall

321. The Wall has restricted access to health facilities in communities enclosed as a result of its construction, particularly those living between the Wall and the Green Line, and threatens to further imperil health services. This has aggravated the already degraded level of health services as a result of increased restrictions of movement and the military closures that have been imposed by the Israeli occupying forces since the beginning of the current intifada.

322. After construction of the Wall, 80.1% of residents west of the Wall and 48.3% of residents east of the Wall will need to travel more than 4 km to reach the nearest hospital. Additionally, the Wall will pose an obstacle to access necessary health services for 73.7% of households west of the Wall and 38.6% east of the Wall.²⁵⁵

323. Nine of the 15 communities in the Closed Zone west of the Wall lack a medical facility entirely and rely on travelling health care professionals for medical services. The Wall has made such travel and access nearly impossible.²⁵⁶ Many other affected localities in the north provide basic preventive and primary services, but rely on the three main cities

²⁵⁵ Palestinian Central Bureau of Statistics, *Impact of the Separation Wall on the Socioeconomic Conditions of Palestinian Households in the Localities in which the Separation Wall Passes Through (October 2003)*, December 2003, p. 5. Statistics are based on a household survey of 890 households in Palestinian localities where the Wall passes through. 195 households were located west of the separation Wall and 695 east of the separation Wall.

²⁵⁶ Health workers are unable to reach these areas as often if at all because of increased time travel, costs involved in transportation, and irregular Wall gate opening times. For instance, residents of 'Azun 'Atma, a village of 1,500 east of the Wall, now have less frequent access to traveling health workers and cannot get into Qalqiliya for emergency services. For detailed case studies, see: Report of the Mission to the Humanitarian and Emergency Policy Group (HEPG) of the Local Aid Coordination Committee (LACC), *The Impact of Israel's Separation Barrier on Affected West Bank Communities*, (4 May 2003), p. 41 (which appears in the dossiers submitted by the Secretary-General, as Dossier no. 85), and B'Tselem 2003 Report, p. 17.

(Qalqilya, Tulkarem, and Jenin) for specialized and emergency care, and for regular dialysis and chemotherapy treatments.²⁵⁷ Construction of the Wall in the south, particularly in the area in and around Occupied East Jerusalem ('Jerusalem Envelope'), has made access to health facilities problematic for Palestinians residing outside of the Wall. This will be the case for the entire West Bank if access to East Jerusalem hospitals that provide specialized medical services not available anywhere else in the West Bank is restricted because of the Wall.²⁵⁸

324. Regular preventive health services, which have already been undermined by existing mobility restrictions, have been further hindered due to inability of residents to access medical facilities. For example, UNRWA reports a 52% decrease in women attending post-natal care. Prior to the intifada, 95% of women gave birth in hospitals. This has fallen to 50% in some areas, and there are at least 39 documented cases of women giving birth at checkpoints.²⁵⁹ Additionally, regular vaccination programs have been pushed back, though with great effort some vaccinations have continued.²⁶⁰

325. Without access to health facilities, residents are more vulnerable to sanitation problems, water-borne diseases, higher infant mortality, and lack of emergency services. Rapid and effective emergency care has become increasingly inaccessible unless provided by Israeli hospitals. The continued construction of the Wall will only compound these and other problems, delaying mobile clinics, ambulances and the distribution of medical supplies and vaccines. It will also increase the strain on public health providers by further dispersing facilities, staff and resources and adding to the burden and cost to village health centres.

326. Sanitation is also a significant concern for communities bordering the Wall on either side. Many of these communities employ trucking services that periodically remove sewage and garbage from local holding facilities. The Wall has prevented the trucks from accessing some villages and raised the cost of doing so for others, increasing the risk of waste-related disease in these communities. Smaller communities, for example Dhaher al Malih in the Jenin Governorate, have been particularly impacted by access constraints affecting waste management. Since construction of the Wall began, many communities located along its path have been unable to dispose of their garbage because they cannot gain access to disposal sites located outside the municipal limits.²⁶¹

²⁵⁷ These include Umm a-Rihan, Khirbat 'Abdallah al-Yunis, Khirbat a-Sheikh Sa'ad, Khirbat Dhaher al-Malah, Nazlat Abu Nar, Khirbet Jubara, Ras a-Tira, Khirbet a-Dab'a, and Arab a-Ramadeen al-Janubi. UNOCHA, *Monthly Status Report: The West Bank Wall, July 2003*, p. 4.

²⁵⁸ For example, Augusta Victoria Hospital is the only hospital in the West Bank providing kidney dialysis. Similarly Mukassad Hospital provides specialized heart care treatment. See: Follow-Up Report to the Mission to the Humanitarian and Emergency Policy Group (HEPG) of the Local Aid Coordination Committee (LACC), *The Impact of Israel's Separation Barrier on Affected West Bank Communities: The "Jerusalem Envelope – Update Number 2*, (30 September 2003), p.4. The Report appears in the dossiers submitted by the Secretary-General, Dossier no. 87.

²⁵⁹ UNRWA, *Impact of the First Phase of the Security Barrier on the Qalqilya, Tulkarm and Jenin Districts*, (July 2003), p.6.

²⁶⁰ Report of the Mission to the Humanitarian and Emergency Policy Group (HEPG) of the Local Aid Coordination Committee (LACC), *The Impact of Israel's Separation Barrier on Affected West Bank Communities*, (4 May 2003), p.42. The Report appears in the dossiers submitted by the Secretary-General, Dossier no. 85.

²⁶¹ *Ibid.*

(d) Education Effects of the Wall

327. Construction of the Wall, and the associated isolation and restrictions, has impacted access to education. Across the Tulkarem, Qalqilya and Jenin Governorates, the Wall has directly affected 7,400 students, while at least 150 teachers in the Tulkarem Governorate now face severe difficulty reaching their schools. Problems in the Qalqilya Governorate are particularly acute because of the single checkpoint in Qalqilya city and the winding route of the Wall there. Physical damage to educational facilities has occurred to structures near the route of the Wall; and Israeli authorities have prevented other schools from adding space to relieve overcrowding.²⁶²

328. In the Tulkarem district, with the largest number of communities enclosed by the Wall, Palestinian Ministry of Education officials estimated that at least a month of the 2003/4 school year has already been lost in 2003 alone, due to curfews or movement restrictions imposed because of razing or construction associated with the Wall, and that approximately 650 out of 1964 teachers currently encounter difficulty in reaching their classes.²⁶³ Additionally, increased poverty rates associated with the Wall will impact the ability of students to attend school, as families become increasingly unable to pay school fees.

329. Several villages between the Wall and the Green Line have no primary or secondary school in their community, forcing students to cross the Wall to reach their classes (See Photographs 21 and 22). As a consequence of delays at crossings and gate closures, access to education for these students is now problematic.²⁶⁴ Additionally, permits are required to cross Wall gates for both students and teachers. The issuing of permits to date has not been systematic; teachers in some villages or districts have received permits to cross Wall gates to reach their schools, which others have not, as has also been the case with schoolchildren.

330. The increased difficulties teachers and students are facing in reaching schools and universities because of the Wall have played a significant role in degrading the educational process. According to a recent survey conducted by the Palestinian Central Bureau of Statistics, 13.9% of households east of the Wall with at least one of their members attending school or university faced difficulties reaching their school/university, while 29.4% of such households west of the Wall experienced increased difficulties. School functioning has also been disrupted by the inability of teachers to reach schools, with 45.3% east of the Wall and 74.6% west of the Wall experiencing difficulties reaching schools. Additionally, movement to and from the locality of residence of 86.5% of female students who live to the west of the Wall was restricted, while 77.4% of female students living to the east of the Wall experienced restrictions.²⁶⁵

²⁶² *Ibid.* p. 40.

²⁶³ *Ibid.*

²⁶⁴ In Ar Ras, 44 of 172 students in primary school must come through the Wall every morning from their hometown of Khirbet Jubara. Another 46 students from Khirbet Jubara go to the high school in Kafr Sur. During closures or Israeli holidays, gates are not open, and these students cannot attend classes. On other days, passage through the gates is delayed, sometimes for hours. Follow-Up Report to the Mission to the Humanitarian and Emergency Policy Group (HEPG) of the Local Aid Coordination Committee (LACC), *The Impact of Israel's Separation Barrier on Affected West Bank Communities: Access Issues in "Stage A Localities" – Update Number 3*, (30 November 2003), p. 13. The Report appears in the dossiers submitted by the Secretary-General, Dossier no. 88.

²⁶⁵ Palestinian Central Bureau of Statistics, *Impact of the Separation Wall on the Socioeconomic Conditions of Palestinian Households in the Localities in which the Separation Wall Passes Through (October 2003)*, Press Conference on the Survey Results, (December 2003), p.6.

331. The psychological impact on students having to cross Wall gates or attend classes in close proximity to the Wall has not yet been quantified. Given the increased time needed in order to reach classrooms and the, at times, arduous routes taken, and the overcrowding of classrooms due to access restrictions, student's ability to concentrate and learn may be significantly lowered. The daily subjection to the military on the route to school, and the possible safety risks implied, will undoubtedly have a longer-term impact on Palestinian schoolchildren.

332. Students wishing to pursue post-secondary education will face severe restrictions on their ability to attend universities and colleges with the imposition of the permit regime and travel restrictions associated with the Wall. This will also limit the areas of study available to post-secondary students. Subjects such as Law and Medicine, for example, are only available at a small number of universities.

(e) Effects of the Wall on the Cultural Heritage

333. Cultural heritage is a component of the cultural identity of the Palestinian community and an integral part of human heritage. The Wall separates hundreds of archaeological and cultural heritage sites from communities in the Occupied Palestinian Territory, including East Jerusalem. Moreover, few salvage operations were carried out in the process of construction of the Wall, indicating that no proper environmental and archaeological damage assessments were conducted before its construction.

334. During the first phase of the Wall, approximately 230 major archaeological sites were cut in the Closed Zone, in addition to 1,751 minor sites and cultural heritage features, such as caves, tombs, cemeteries, sanctuaries, towers, and wine and grape presses.²⁶⁶ The Wall has also enclosed some of the most significant natural sites, including the natural forest of Umm er-Rihan, south of Jenin.

335. In the southern part of the West Bank, large areas of archaeological sites will be located to the west of the Wall. In the Ramallah area alone, more than 500 sites will be situated to the west of the Wall. Additionally, the proposed eastern route along the Jordan Valley will place over 1,000 archaeological sites and features in the eastern part of the West Bank which, except for the Jericho area, is under Israeli control.

336. In the Bethlehem district, a large number of archaeological sites in Al Khader and Housan villages have been demolished or annexed to nearby settlements.²⁶⁷ Destruction of a number of archaeological sites has already occurred as a result of construction of the Wall, including a Byzantine archaeological site damaged in October 2003 during construction of the Wall in Occupied East Jerusalem.²⁶⁸

²⁶⁶ Dr. Hamdan Taha, Director General, Department of Antiquities and Cultural Heritage, Palestinian Ministry of Tourism and Antiquities, *The Separation Wall: An Archaeological Atrocity*, 16 January 2004, p. 1.

²⁶⁷ These include: Kh. Hammouda, Kh. Qedis, Kh. El-Keneiseh, Kh. Deir Baghel and ancient water springs such as Ain el-Kalbeh Ain Qadis, Ain et-Taqa and Ain el-Qaniseh in addition to the Qedis caves and the caves of Daher el-Matarseh. Other archeological sites, including Kh. Ed-Deir, Kh. El-Aid, Kh. Farash, ASin Faris Ain el-Masayeh Ain Abu Zeid, Ain el-Faqeh, and Ain Abu Kleibeh were annexed to the settlement of 'Bitar Aleat.' Other sites in the village El-Jaba'a and Wadi Fukin were also annexed to the nearby settlement. The archaeological sites of Kh. El-Khamasah have been totally damaged. *Ibid.*, p. 2.

²⁶⁸ Khirbet Salah is located east of the town of Abu Dis in Jerusalem and features the remains of a Byzantine monastery. In construction of the Wall, bulldozers were sent to the area to begin work without

337. The continued direct impact of the Wall on the cultural heritage will include: destruction of archaeological sites; destruction of natural heritage; destruction of historical and natural landscape; isolating archaeological sites from their cultural settings; confiscation of archaeological remains; and disruption of the geographic integrity of Palestinian areas.²⁶⁹

(6) Conclusions

338. The Wall is not built on the Green Line. Practically the entire Wall is built in the Occupied Palestinian Territory. The Wall divides and isolates Palestinians from Palestinians and Palestinians from their land. It creates enclaves and fragments the territorial integrity and contiguity of the Occupied Palestinian Territory. In addition to its extensive impact on all aspects of Palestinian life in and even beyond the communities directly affected by the Wall, the Wall regime undermines Palestinian capacity for sustainable livelihood.

339. The Wall is designed to protect and ensure the expansion of Israeli settlements in the Occupied Palestinian Territory, including in and around East Jerusalem. In addition to the approved settlement expansion areas, nearly 80 per cent of the settler population in the West Bank and East Jerusalem will be located outside the Wall.

340. The Wall is designed to ensure Israel's permanent control over natural resources in Occupied Palestinian Territory. The high-quality water sources in the West Bank have been exploited by Israeli since 1967. Most of Israel's yearly extraction of fresh water from West Bank aquifers is consumed by settlements.

341. The Wall regime is part of a wider system of road networks, settlement expansion and infrastructural integration with Israel. The scale and nature of the Wall project entrenches Israel's presence in Occupied Palestinian Territory.

342. The construction of the Wall has already caused permanent damage to the Occupied Palestinian Territory in terms of land levelling, home demolitions and by radically altering Palestinian daily economic and social life.

coordination with the Israeli Archaeological Authority (IAA). A substantial part of the site was demolished and levelled, causing irreversible damage, before work was halted by the IAA. Not enough time was given for archaeologists to finish work on the site and, after 3 weeks, the site was levelled and the Wall was completed over the site.

²⁶⁹ *Ibid.* p. 2.

Terminology in Security Council Resolutions since 1967

Resol ution	Terminology used
242 (1967)	“territories occupied in the recent conflict”
446 (1979)	“the Arab territories occupied by Israel since 1967, including Jerusalem” “the occupied Arab territories”
452 (1979)	“the Arab territories occupied since 1967, including Jerusalem” “the occupied Arab territories”
465 (1980)	“the Arab territories occupied since 1967, including Jerusalem; “the Arab territories occupied by Israel since 1967, including Jerusalem” “the Palestinian and other Arab territories occupied since 1967” “the occupied territories” “the territories under occupation”
476 (1980)	“Arab territories occupied by Israel since 1967, including Jerusalem”
478 (1980)	“the Palestinian and other Arab territories occupied since June 1967, including Jerusalem”
484 (1980)	“the Arab territories occupied by Israel in 1967”
605 (1987)	“the Palestinian and other Arab territories occupied by Israel since 1967, including Jerusalem; “the occupied territories; “under Israeli occupation”
607 (1988)	“the occupied territories; “Palestinian and other Arab territories occupied by Israel, since 1967, including Jerusalem”
608 (1988)	“the occupied Palestinian territories” “the occupied territories” “the Palestinian and other Arab territories occupied by Israel since 1967, including Jerusalem”
636 (1989)	“the occupied Palestinian territories” “Palestinian territories, occupied by Israel since 1967, including Jerusalem, (and to the other occupied Arab territories)”
641 (1989)	“the occupied Palestinian territories” “the Palestinian territories, occupied by Israel since 1967, including Jerusalem”
672 (1990)	“all the territories occupied by Israel since 1967”
681 (1990)	“under Israeli occupation” “the Palestinian territories occupied by Israel since 1967, including Jerusalem” “the occupied territories” “all the territories occupied by Israel since 1967”
694 (1991)	“the Palestinian territories occupied by Israel since 1967, including Jerusalem”
726 (1992)	“the occupied Palestinian territories” “the Palestinian territories occupied by Israel since 1967, including Jerusalem” “the occupied territories”
799 (1992)	“the territories occupied by Israel since 1967, including Jerusalem” “the Palestinian territories occupied by Israel since 1967, including Jerusalem”
904 (1994)	“the territories occupied by Israel in June 1967, including Jerusalem” “the occupied territory”
1322 (2000)	“the territories occupied by Israel since 1967”
1397 (2002)	“Palestine (two-State vision)”
1402 (2002)	“Palestinian cities”
1435 (2002)	“Palestinian cities”
1515 (2003)	“Palestine (two-State vision)”

PART D. LEGAL ANALYSIS

Chapter 7. ISRAEL IS IN OCCUPATION OF PALESTINIAN TERRITORY

(1) Introduction

343. The Request for the present Opinion refers to the location of the Wall in “Occupied Palestinian Territory, including in and around East Jerusalem”. The term ‘Occupied Palestinian Territory’ (OPT) is well accepted in the practice of United Nations bodies including the General Assembly and the Security Council. It or similar phrases have been used ever since 1967 both by the Security Council and the General Assembly. This can be seen for example from the Table, opposite, which records the terminology used in Security Council resolutions from 1967 to date.

344. In this Chapter, certain clarifications will be offered as to the meaning and content of the term ‘Occupied Palestinian Territory’, and it will be established that the international law of occupation is applicable to that territory and to Israel as occupier. In Chapter 8, the content of the applicable international law, including both international humanitarian law and international human rights law, will be clarified.

345. That Israel has been, and remains, in occupation of Palestinian territory is internationally uncontroversial. The occupation resulted from the Six Day War between Israel, Jordan, Syria and Egypt in June 1967. All of these States were at the time and remain High Contracting Parties to the Fourth Geneva Convention: see Article 2, first sentence. There is no doubt that the 1967 War was an international armed conflict within the meaning of the Geneva Conventions. During this armed conflict Israeli armed forces invaded and occupied, *inter alia*, the West Bank and the Gaza Strip, which represented about one-half of the territory that had been allocated to the Arab State under the partition plan in General Assembly Resolution 181(II) of 1947.²⁷⁰ Reference has already been made to these events in Chapter 3 of this Written Statement.

346. The proper characterization of Israel’s current status in respect of this territory remains that of an occupier. Under international law, an Occupying Power does not have sovereignty over the territory subject to its occupation. It merely exercises authority over the territory on a temporary basis.²⁷¹ Furthermore, the essential test is one of actual overall control.²⁷² It does not matter that day-to-day administration may be exercised by local authorities. Territory once occupied remains occupied until a definitive withdrawal from that territory, or a definitive, internationally acceptable settlement. Neither of these events has occurred.

347. All States, whether occupying States or third States, are prohibited from obtaining territory as a result of a threat or use of force. The proposition that title to territory cannot

²⁷⁰ Already in 1948-9 Israel had occupied about half of the territory allocated to the Arab State.

²⁷¹ See in particular Articles 4 and 47 of the Fourth Geneva Convention.

²⁷² See Article 42 of the 1907 Hague Regulations.

validly be obtained by force is so fundamental and indisputable that elaborate citation of authority is not required before the Court. It follows that the traditional law on occupation of territory, as embodied in the Fourth Geneva Convention of 1949, has been powerfully reinforced by modern international law.

(2) The regime of occupied territory

(a) In general

348. The law of occupation comprises rules of customary international law embodied in particular in the 1907 Hague Regulations and the Fourth Geneva Convention. It is widely accepted that these instruments reflect customary international law and are not limited to relationships as between States parties only.²⁷³ But even as a treaty, the Fourth Geneva Convention is applicable in its own terms to the situation created in 1967. The Convention is stipulated, in Article 2, to apply to “all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties.” In 1967, as a result of an international armed conflict between parties to the Convention, Israel occupied territory which was not its own. It remains in occupation, and there has been no internationally accepted settlement concerning the territory. The resulting legal situation, opposable *erga omnes* by reason of the customary international law status of the relevant rules, is also opposable to all the States Parties to the Fourth Geneva Convention, consisting of 190 States, the vast majority of the members of the international community. In fact, as demonstrated below, this situation has been expressly recognized by the Conference of the High Contracting Parties to the Fourth Geneva Convention. Correspondingly it is a legal situation of which all United Nations organs can take notice and on the basis of which they should act.

349. The definition of occupation in international humanitarian law depends essentially on questions of fact. According to the definition in Article 42 of the 1907 Hague Regulations:

“Territory is considered occupied when it is *actually placed under the authority of the hostile army*. The occupation extends only to the territory where such authority has been established and can be exercised.” (emphasis added)

350. The litmus test to determine if territory is occupied is whether the territory is under the authority of a hostile power. The underlying assumption is that the hostile power has ‘effective control’ over the territory in question. In other words, whether a hostile power is exercising effective control is a question of fact. Article 42 otherwise makes no statement about the status of occupied territory. In particular, it does not speak about possible legal claims to the territory or about the legality of the foreign power’s presence on the territory (for example, in the context of an asserted right of self-defence). Such questions are irrelevant to the question of whether the territory is occupied.

351. An Occupying Power may not abandon or neglect its obligations towards the civilian population under occupation by choosing not to exercise ‘effective control’ when it is militarily capable of doing so. As the Special Rapporteur of the Commission on Human Rights on the situation in the Palestinian territories occupied by Israel since 1967 has noted:

²⁷³ *Legality of the Threat or Use of Nuclear Weapons. Advisory Opinion, 8 July 1996, I.C.J. Reports 1996, p. 266, at 256 (para. 75), 257 (para. 79), 258 (para. 82).*

“... [O]ccupation is concerned with the interests of the population of an occupied territory rather than those of a displaced sovereign... The test for the application of the legal regime of occupation is not whether the occupying power fails to exercise effective control over the territory, but whether it has the ability to exercise such power, a principle affirmed by the United States Military Tribunal at Nuremberg in *re List and others* and others (The *Hostages Case*) in 1948.”²⁷⁴

352. In the *Hostages Case*, the Military Tribunal at Nuremberg took the position that even temporary territorial control by partisans would not necessarily remove the state of occupation:

“While it is true that the partisans were able to control sections of these countries at various times, it is established that the Germans could at any time they desired assume physical control of any part of the country. The control of the resistance forces was temporary only and not such as would deprive the German armed forces of its status of an occupant.”²⁷⁵

353. The existence of ‘effective control’ by the Occupying Power is thus measured by its actual ability to assume the responsibilities that attach to an Occupying Power, namely the ability to issue and enforce directives to the inhabitants of the territory, and not by its willingness to do so.

354. The legal status of occupation is not excluded by the persistence of armed resistance by the occupied population. The major military manuals since 1949 provide strong evidence in support of this proposition. For example, the *British Manual of Military Law* provides:

“Occupation does not become invalid because some of the inhabitants are in a state of rebellion, or through occasional successes of guerrilla bands or ‘resistance’ fighters. Even a temporarily successful rebellion is not sufficient to interpret or terminate occupation, provided that the authority of the legitimate government is not effectively re-established and that the Occupant suppresses the rebellion at once.”²⁷⁶

Similarly, the *United States Field Manual* states:

“Occupation, to be effective, must be maintained... Nor does the existence of a rebellion or the activity of guerrilla para-military units of itself cause the occupation to cease, provided the occupant could at any time it desired assume physical control of any part of the territory. If, however, the power of the occupant is effectively displaced for any length of time, its position towards the inhabitants is the same as before occupation.”²⁷⁷

²⁷⁴ Report of the Special Rapporteur of the Commission on Human Rights on the situation in the Palestinian territories occupied by Israel since 1967, A/56/440, para. 7, Annex 1 in Annex Volume 2 accompanying this Written Statement.

²⁷⁵ *United States v. Wilhelm List et al*, 11 *Trial of War Criminals Before the Nuremberg Military Tribunals*, 1230, 1243 (1948).

²⁷⁶ *The Law of War on Land, Part III Manual of Military Law* (The War Office, 1958) §509.

²⁷⁷ *The Law of Land Warfare, Field Manual* (U.S. Department of the Army, July 1956) § 360.

355. By the time that the Hague Regulations were adopted, it was already a clearly established principle that military occupation of territory as a result of war did not confer sovereignty upon the Occupying Power.²⁷⁸ The two key principles governing the regime of belligerent occupation were that occupation was a temporary state of affairs and that no unilateral change in the status of the territory by the occupier was permitted. The International Military Tribunal at Nuremberg held that even where the State whose territory was occupied had been completely overwhelmed, annexation remained unlawful and did not transfer title so long as the Occupying Power remained at war with the allies of the State concerned.²⁷⁹ Purported annexations of occupied territory were expressly prohibited.

356. These principles remain applicable to the regime of occupation today, with the proviso that the triggering event is occupation in the context of an international armed conflict, whether or not a declared war. A purported annexation of occupied territory by an Occupying Power will be ineffective to alter the status of the territory or its inhabitants, who remain subject to the law of occupation. According to Article 47 of the Fourth Geneva Convention:

“Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territory and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory.”

357. The ICRC’s Commentary to Article 47 states:

“occupation as a result of war, while representing actual possession to all appearances, cannot imply any right whatsoever to dispose of territory. As long as hostilities continue the Occupying Power cannot therefore annex the occupied territory, even if it occupies the whole of the territory concerned. A decision on that point can only be reached in the peace treaty. That is a universally recognized rule which is endorsed by jurists and confirmed by numerous rulings of international and national courts.”²⁸⁰

358. Moreover, certain conduct usually associated with annexation of territory – in particular the direct or indirect transfer to occupied territory of the occupier’s civilian population, or the transfer of part of the population from occupied territory – constitutes a war crime.²⁸¹

(b) Application of the regime of occupation to Palestine

²⁷⁸ Oppenheim, *International Law* (6th ed, London 1944) pp. 432- 4.

²⁷⁹ Cmd. 6964, 65.

²⁸⁰ ICRC (ed. Pictet), *Commentary. IV Geneva Convention relative to the Protection of Civilian Persons in Time of War* (Geneva, 1958) 275.

²⁸¹ See Additional Protocol I, Art. 85 (4)(a); see also Rome Statute of the International Criminal Court, 17 July 1998, Art. 8(2)(a)(iv), (b)(viii).

359. The international law regime of occupation applies *a fortiori* to a mandated territory whose people have not achieved self-determination and which has been occupied by a State as a result of an international armed conflict. Such a conflict does not terminate the mandated status of the territory.²⁸² It does not put an end to the rights of the people concerned.²⁸³ It certainly does not confer sovereignty on the Occupying Power. The regime of occupation under international law is applicable to such a territory until a legitimate settlement is achieved, endorsed by the United Nations, and accepted by the international community.

360. In the *Namibia Opinion*,²⁸⁴ this Court was asked to advise the Security Council of the legal consequences of South Africa's continued presence in Namibia in violation of Security Council Resolution 276 (1970). The Court affirmed the principle of non-annexation, as one of the two principles of paramount importance underlying the mandates system under Article 22 of the Covenant of the League of Nations. Regarding Article 22, the Court said:

“...the Government of South Africa has dwelt at some length on the negotiations which preceded the adoption of the final version of Article 22 of the League Covenant, and has suggested that they lead to a different reading of its provisions. Be that as it may, the final outcome of the negotiations, however difficult an achievement, was a rejection of the notion of annexation. It cannot tenably be argued that the clear meaning of the mandate institution could be ignored by placing upon the explicit provisions embodying its principles a construction at variance with its object and purpose.”²⁸⁵

361. The principle that the territory occupied by Israel in 1967 may not be unilaterally annexed, or its status otherwise unilaterally changed, has been accepted and acted on by the international community as a whole. In particular, in 1967, the Security Council adopted Resolution 242 (1967):

“The Security Council,

Expressing its continuing concern with the grave situation in the Middle East, *Emphasizing* the inadmissibility of the acquisition of territory by war and the need to work for a just and lasting peace in which every State in the area can live in security,

Emphasizing further that all Member States in their acceptance of the Charter of the United Nations have undertaken a commitment to act in accordance with Article 2 of the Charter,

1. *Affirms* that the fulfilment of Charter principles requires the establishment of a just and lasting peace in the Middle East which should include the application of both the following principles:

(i) Withdrawal of Israel armed forces from territories occupied in the recent conflict;

²⁸² This was confirmed by this Court in the series of opinions from *International Status of South-West Africa*, I.C.J. Reports 1950, p. 128 to *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)*, ICJ Reports 1971, p. 6.

²⁸³ *Ibid.* And see United Nations Charter, Article 80.

²⁸⁴ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)*, I.C.J. Reports 1971, p. 6.

²⁸⁵ *Ibid.*, p.30.

(ii) Termination of all claims or states of belligerency and respect for and acknowledgment of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force; [...]"

362. On 30 July 1980 Israel attempted to annex East Jerusalem by enacting the 'Basic Law: Jerusalem, Capital of Israel, 30 July 1980'. This act elicited the condemnation of the Security Council in numerous resolutions, commencing with Resolution 476 (1980), in which the Security Council resolved:

"Having considered the letter of 28 May 1980 from the representative of Pakistan, the current Chairman of the Organization of the Islamic Conference, as contained in document S/13966 of 28 May 1980,

Reaffirming that acquisition of territory by force is inadmissible,

Bearing in mind the specific status of Jerusalem and, in particular, the need for protection and preservation of the unique spiritual and religious dimension of the Holy Places in the city,

Reaffirming its resolutions relevant to the character and status of the Holy City of Jerusalem, in particular resolutions 252 (1968) of 21 May 1968, 267 (1969) of 3 July 1969, 271 (1969) of 15 September 1969, 298 (1971) of 25 September 1971 and 465 (1980) of 1 March 1980,

Recalling the Fourth Geneva Convention of 12 August 1949 relative to the Protection of Civilian Persons in Time of War,

Deploring the persistence of Israel, in changing the physical character, demographic composition, institutional structure and the status of the Holy City of Jerusalem,

Gravely concerned over the legislative steps initiated in the Israeli Knesset with the aim of changing the character and status of the Holy City of Jerusalem,

1. *Reaffirms* the overriding necessity to end the prolonged occupation of Arab territories occupied by Israel since 1967, including Jerusalem;

2. *Strongly deplores* the continued refusal of Israel, the occupying Power, to comply with the relevant resolutions of the Security Council and the General Assembly;

3. *Reconfirms* that all legislative and administrative measures and actions taken by Israel, the occupying Power, which purport to alter the character and status of the Holy City of Jerusalem have no legal validity and constitute a flagrant violation of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War and also constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East;

4. *Reiterates* that all such measures which have altered the geographic, demographic and historical character and status of the Holy City of Jerusalem are null and void and must be rescinded in compliance with the relevant resolutions of the Security Council;

5. *Urgently calls* on Israel, the occupying Power, to abide by this and previous Security Council resolutions and to desist forthwith from persisting in the policy and measures affecting the character and status of the Holy city of Jerusalem;

6. *Reaffirms* its determination in the event of non-compliance by Israel with this resolution, to examine practical ways and means in accordance with

relevant provisions of the Charter of the United Nations to secure the full implementation of this resolution.”

363. That resolution was followed by Resolution 478 (1980), in the Security Council

“*Reaffirming again* that the acquisition of territory by force is inadmissible,

Deeply concerned over the enactment of a "basic law" in the Israeli Knesset proclaiming a change in the character and status of the Holy City of Jerusalem, with its implications for peace and security,

Noting that Israel has not complied with resolution 476 (1980),

Reaffirming its determination to examine practical ways and means, in accordance with the relevant provisions of the Charter of the United Nations, to secure the full implementation of its resolution 476 (1980), in the event of non-compliance by Israel,

1. *Censures* in the strongest terms the enactment by Israel of the "basic law" on Jerusalem and the refusal to comply with relevant Security Council resolutions;

2. *Affirms* that the enactment of the "basic law" by Israel constitutes a violation of international law and does not affect the continued application of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, in the Palestinian and other Arab territories occupied since June 1967, including Jerusalem;

3. *Determines* that all legislative and administrative measures and actions taken by Israel, the occupying Power, which have altered or purport to alter the character and status of the Holy City of Jerusalem, and in particular the recent "basic law" on Jerusalem, are null and void and must be rescinded forthwith;

4. *Affirms also* that this action constitutes a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East;

5. *Decides* not to recognize the "basic law" and such other actions by Israel that, as a result of this law, seek to alter the character and status of Jerusalem and calls upon:

(a) All Member States to accept this decision;

(b) Those States that have established diplomatic missions at Jerusalem to withdraw such missions from the Holy City.”

364. Israel remains in occupation of the West Bank including East Jerusalem, and the Gaza Strip. While there has been a partial transfer of certain powers and responsibilities from Israel to the Palestinian Authority (the precise features of which need not be examined by the Court) in respect of some parts of Palestinian territory, Israel remains in overall control of the Occupied Palestinian Territory, including East Jerusalem. According to the UN Special Rapporteur on the Occupied Palestinian Territory:

“The Oslo Accords leave Israel with the ultimate legal control over all of the OPT and the fact that for political reasons it has generally chosen not to exercise this control over the ‘A’ zones, when it undoubtedly has the military capacity to do so (as illustrated by the Israeli military incursion into the ‘A’ zone town of Beit Jala in August 2001), cannot relieve Israel of its responsibilities as an occupying power.”²⁸⁶

365. Nor does Palestinian resistance against the occupying power remove the legal status of ‘occupation’ in the Occupied Palestinian Territory. As long as Israel maintains its effective control over Palestinian territory, it is under occupation in international law. Important consequences flow in respect of the applicable law, which are discussed in the next Chapter.

(3) The Request does not require the Court to determine the boundaries of Palestine

366. The Terms of the Request for the advisory opinion are the following:

“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?”

367. In order to answer this question the Court needs only to take account of the fact that a wall is being built by Israel in the Occupied Palestinian Territory, including in and around East Jerusalem. It need not determine where the precise boundaries of the Occupied Palestinian Territory lie. The essential facts, on which the Court can securely rely, are simple: wherever the precise boundaries of Palestine may lie, it is universally accepted (including by Israel) that the greater part of the Wall has been built by Israel well inside Palestinian territory. This position is graphically demonstrated in the attached maps.²⁸⁷ It cannot admit of any doubt.

(a) The division of ‘Mandated Palestine’

368. The Court has already been provided with a description of the historical background of Palestinian territory in Chapter 3. Only a brief recapitulation is necessary.

369. Palestine was in 1914 an undivided part of the Ottoman Empire without separate status. It was occupied by British troops in 1917 and came to be disposed of as part of the post-war settlement.

²⁸⁶ Report of the Special Rapporteur of the Commission on Human Rights on the situation in the Palestinian territories occupied by Israel since 1967, A/56/440, para. 7, Annex 1 in Annex Volume 2 accompanying this Written Statement.

²⁸⁷ See Annex volume 1

370. The Mandate for Palestine was established in the aftermath of the Treaty of Versailles. Article 22 of the Covenant of the League of Nations established the basic parameters of the Mandate system. Under this system Palestine was an “A” class mandate. The League Council approved the terms of the British mandate on 24 July 1922.²⁸⁸ It came into force on 29 September 1923. The territorial basis of Palestine under the Mandate was subject to an amendment approved in November 1922 which authorised Great Britain to divide the territory into two, excluding what was then referred to as Transjordan (now the Hashemite Kingdom of Jordan). This was effected in 1928, with League of Nations approval. Jordan’s full independence was achieved in a Treaty of Alliance with the United Kingdom signed on 22 March 1946, within the territories delineated in 1928. That situation has been recognised by Israel on numerous occasions, including in 1994.²⁸⁹ As a result, Mandated Palestine was limited to the territories to the west of the Jordan River.

371. On 18 February 1947, Britain announced that it was referring the question of Palestine to the United Nations and would withdraw its administration of the Mandate by 1 August 1949. On 29 November 1947, the General Assembly adopted Resolution 181 (II). This Resolution incorporated a plan for the partition of Palestine into two states (one Arab and one Jewish), for economic union between them, and for the internationalization of Jerusalem. Boundaries were set out in the Resolution for ‘the Arab State’, ‘the Jewish State’ and Jerusalem.

372. Great Britain withdrew from Palestine at midnight on 14-15 May 1948. Hostilities broke out, leading to Armistice Agreements in 1949. Israel was shortly afterwards admitted to the United Nations.

373. It has never been disputed that Israel in 1949 did not include areas of the West Bank, or East Jerusalem, or the Gaza Strip. That remains the situation. Nothing that has happened since 1949 has given any international recognition to any extension of Israeli territory to cover any of these areas. It results that Israel is in occupation of all the areas beyond the ceasefire line of 1949 (the so-called Green Line).

374. The principle of two States (one Arab and one Jewish) in Palestine has remained in place since Resolution 181 (II). This is evident in the principal agreements concluded between the Palestine Liberation Organisation and Israel since 1993 and in resolutions of the General Assembly and Security Council adopted since General Assembly Resolution 181(II).

375. Although certain developments have occurred in the territory first occupied in 1967, the fact is that Israel remains in overall control of this territory and Israeli forces remain in occupation of the West Bank, including East Jerusalem, and the Gaza Strip. These areas are together referred to as the ‘Occupied Palestinian Territory’, because the territory is not part of the territory of the State of Israel; it is territory of the Palestinian people, destined for a Palestinian State whose right to exist was recognized by Resolution 181(II), and has been widely recognised ever since.

²⁸⁸ LNOJ vol.3, No 8 Pt II (August 1922) 798 – 802, 817 – 825.

²⁸⁹ Israel-Jordan, Treaty of Peace, 26 October 1994, Art. 3(2): 2042 *United Nations Treaty Series* 395.

(b) Recognition of the Division of Mandated Palestine: Agreements between Israel and Palestine

376. As noted in Chapter 3, the principal agreements concluded between the Palestine Liberation Organisation and Israel in the Middle East Peace Process since 1993 are as follows:

Exchange of correspondence (Arafat-Rabin), 9 September 1993;²⁹⁰

Israel-Palestine Liberation Organisation, Declaration of Principles on Interim-Self Government Arrangements, 13 September 1993 (Declaration of Principles);²⁹¹

Israel-Palestine Liberation Organisation, Agreement on the Gaza Strip and the Jericho Area, 4 May 1994;²⁹²

Israel-Palestine Liberation Organisation, Agreement on Preparatory Powers and Responsibilities, 29 August 1994;²⁹³

Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, 28 September 1995;²⁹⁴

Note for the Record (Ross-Netanyahu-Arafat), 17 January 1997;²⁹⁵

Israel-Palestine Liberation Organisation, Protocol concerning the Redeployment in Hebron, 17 January 1997;²⁹⁶

Israel-Palestine Liberation Organisation, Wye River Memorandum, 23 October 1998;²⁹⁷

Israel-Palestine Liberation Organisation, Sharm El-Sheikh Memorandum, 4 September 1999.²⁹⁸

377. The 1993 Declaration of Principles commences with Article 1 in the following terms:

“The aim of the Israeli-Palestinian negotiations within the current Middle East peace process is, among other things, to establish a Palestinian Interim Self-Government Authority, the elected Council (the “Council”), for the Palestinian people in the West Bank and the Gaza Strip, for a transitional period not exceeding five years, leading to a permanent settlement based on Security Council Resolutions 242 and 338. It is understood that the interim arrangements are an integral part of the whole peace process and that the negotiations on the permanent status will lead to the implementation of Security Council Resolutions 242 and 338.”²⁹⁹

378. The Interim Agreement on the West Bank and the Gaza Strip included a provision on territory in the following terms:

“Article XI
Land

²⁹⁰ Text in (1992-4) 7 *Palestine YBIL* 230.

²⁹¹ (1993) 32 ILM 1525.

²⁹² (1994) 33 ILM 622.

²⁹³ (1995) 34 ILM 455.

²⁹⁴ (1997) 36 ILM 551.

²⁹⁵ (1997) 36 ILM 655.

²⁹⁶ (1997) 36 ILM 650.

²⁹⁷ (1998) 37 ILM 1251.

²⁹⁸ (1999) 38 ILM 1465.

²⁹⁹ (1993) 32 ILM 1527.

1. The two sides view the West Bank and the Gaza Strip as a single territorial unit, the integrity and status of which will be preserved during the interim period.”

379. The Wye River Memorandum and the Sharm El-Sheikh Memorandum both outlined further steps to be taken by the parties to implement the Interim Agreement. Both of these Memoranda adopted the categorization of land used in the Interim Agreement, referring to Areas ‘A’, ‘B’, and ‘C’ to describe Palestinian territory, which was explained briefly in preceding chapters of this Written Statement.

380. The most recent text concerning the peace process is the “Performance Based Road Map to a Permanent Two-State Solution to the Israeli-Palestinian Conflict” (the ‘Road Map’).³⁰⁰ This instrument does not affect the status of territory or change any borders.

381. It is evident from this review that as between Israel and Palestine, it is accepted that Mandated Palestine was divided into Israeli and Palestinian areas.

(c) Recognition of the Division of Mandated Palestine: The Position of the United Nations

382. The notion of two territorial entities emerging from ‘Mandated Palestine’ is evident in General Assembly and Security Council resolutions on Palestine.

383. The General Assembly has adopted numerous resolutions on Palestine since its adoption of Resolution 181 (II) in 1947. A standard feature of the General Assembly’s resolutions is the reference to the Armistice Line of 1949 (the ‘Green Line’) when referring to events taking place in the Occupied Palestinian Territory.

384. For example, in Resolution A/ES-10/14 of 8 December 2003 the General Assembly resolved that it was:

“Gravely concerned at the commencement and continuation of construction by Israel, the occupying power, of a wall in the Occupied Palestinian Territory, including in and around East Jerusalem, which is in departure from the Armistice Line of 1949 (Green Line) and which has involved the confiscation and destruction of Palestinian land and resources, the disruption of the lives of thousands of protected civilians and the de facto annexation of large areas of territory, and underlining the unanimous opposition by the international community to the construction of that wall.”

385. In its earlier resolution, A/ES-10/13 of 21 October 2003, the General Assembly demands that Israel stop and reverse the construction of the Wall in the Occupied Palestinian Territory, including in and around East Jerusalem, of which the General Assembly said:

³⁰⁰ A Performance-Based Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict’ UN doc S/2003/529. This instrument was endorsed by the Security Council on 19 November 2003 in Resolution 1515 (2003); UN doc S/RES/1515 (2003).

“[...] is in departure of [*sic.*] the Armistice Line of 1949 and is in contradiction to relevant provisions of international law.”³⁰¹

386. The notion of two territorial entities emerging from ‘Mandated Palestine’ has been affirmed by the Security Council. The Security Council has over a long period of time endorsed a vision of “two States living side by side with recognized borders” (to adopt the language of Resolution 1397 (2002)) in the Mandated Palestine. This vision is seen most recently in Resolution 1515 (2003) in which the Security Council endorsed the Road Map in the following terms:

“The Security Council,
Recalling all its previous relevant resolutions, in particular resolutions 242 (1967), 338 (1973), 1397 (2002) plus the Madrid principles,
Expressing its grave concern at the continuation of the tragic and violent events in the Middle East,
Reiterating the demand for an immediate cessation of all acts of violence, including all acts of terrorism, provocation, incitement and destruction,
Reaffirming its vision of a region where two States, Israel and Palestine, live side by side within secure and recognized borders,
Emphasizing the need to achieve a comprehensive, just and lasting peace in the Middle East, including the Israeli-Syrian and Israeli-Lebanese tracks,
Welcoming and *encouraging* the diplomatic efforts of the international Quartet and others,
1. *Endorses* the Quartet Performance-based Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict (S/2003/529);
2. *Calls on* the parties to fulfil their obligations under the Roadmap in cooperation with the Quartet and to achieve the vision of two States living side by side in peace and security;
3. *Decides* to remain seized of the matter.”

(d) International recognition that the Palestinian territory is occupied within the meaning of the Fourth Geneva Convention

387. It can safely be asserted that practically every State in the world – with the exception of Israel – recognises that Palestinian territory is occupied territory within the meaning of the Fourth Geneva Convention.

388. Since the commencement of Israel’s occupation of the Occupied Palestinian Territory, the United Nations General Assembly and Security Council have resolved on numerous occasions that the Fourth Geneva Convention is applicable to the OPT. The following resolutions of the Security Council are to this effect:

SC Resolution 1322, UN SCOR, 55th Sess., UN Doc S/RES/56 (2000)
SC Resolution 904, UN SCOR, 49th Sess., UN Doc S/RES/50 (1994)
SC Resolution 799, UN SCOR, 47th Sess., UN Doc S/RES/ 48 (1992)
SC Resolution 726, UN SCOR, 47th Sess., UN Doc S/RES/48 (1992)

³⁰¹ A/ES-10/13, 21 October 2003.

SC Resolution 694, UN SCOR, 46th Sess., UN Doc S/RES/47 (1991)
 SC Resolution 681, UN SCOR, 45th Sess., UN Doc S/RES/46 (1990)
 SC Resolution 673, UN SCOR, 45th Sess., UN Doc S/RES/ 46 (1990)
 SC Resolution 672, UN SCOR, 45th Sess., UN Doc S/RES/46 (1990)
 SC Resolution 641, UN SCOR, 44th Sess., UN Doc S/RES/45 (1989)
 SC Resolution 636, UN SCOR, 44th Sess., UN Doc S/RES/45 (1989)
 SC Resolution 608, UN SCOR, 43rd Sess., UN Doc S/RES/44 (1988)
 SC Resolution 607, UN SCOR, 43rd Sess., UN Doc S/RES/44 (1988)
 SC Resolution 605, UN SCOR, 42nd Sess., UN Doc S/RES/43 (1987)
 SC Resolution 592, UN SCOR, 42nd Sess., UN Doc S/RES/42 (1986)
 SC Resolution 484, UN SCOR, 35th Sess., UN Doc S/RES/36 (1980)
 SC Resolution 478, UN SCOR, 35th Sess., UN Doc S/RES/36 (1980)
 SC Resolution 476, UN SCOR, 35th Sess., UN Doc S/RES/36 (1980)
 SC Resolution 471, UN SCOR, 35th Sess., UN Doc S/RES/36 (1980)
 SC Resolution 469, UN SCOR, 35th Sess., UN Doc S/RES/36 (1980)
 SC Resolution 468, UN SCOR, 35th Sess., UN Doc S/RES/36 (1980)
 SC Resolution 465, UN SCOR, 35th Sess., UN Doc S/RES/36 (1980)
 SC Resolution 452, UN SCOR, 34th Sess., UN Doc S/RES/35 (1979)
 SC Resolution 446, UN SCOR, 34th Sess., UN Doc S/RES/35 (1979)
 SC Resolution 271, UN SCOR, 24th Sess., UN Doc S/RES/24/Rev.1 (1969)

389. Numerous resolutions of the General Assembly have likewise affirmed the application of the Fourth Geneva Convention in the Occupied Palestinian Territory and demanded Israel to accept the Convention's *de jure* application in the Occupied Palestinian Territory. For example, the most recent resolution, voted for by an overwhelming majority of States, with only nine States voting against, provides:

“The General Assembly,
Recalling its relevant resolutions,
Bearing in mind the relevant resolutions of the Security Council,
Recalling the Regulations Annexed to the Hague Convention IV of 1907, the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and relevant provisions of customary law, including those codified in Protocol 1 Additional to the Geneva Conventions,
Having considered the reports of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories and the relevant reports of the Secretary-General,
Considering that the promotion of respect for the obligations arising from the Charter of the United Nations and other instruments and rules of international law is among the basic purposes and principles of the United Nations,
Noting the convening of the meeting of experts of High Contracting Parties to the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, at Geneva from 27 to 29 October 1998, at the initiative of the Government of Switzerland in its capacity as the depositary of the Convention, concerning problems of application of the Convention in general and, in particular, in occupied territories,

Noting also the convening for the first time, on 15 July 1999, of a Conference of High Contracting Parties to the Fourth Geneva Convention, as

recommended by the General Assembly in its resolution ES-10/6 of 9 February 1999, on measures to enforce the Convention in the Occupied Palestinian Territory, including East Jerusalem, and to ensure respect thereof in accordance with article 1 common to the four Geneva Conventions, and aware of the statement adopted by the Conference,

Welcoming the reconvening of the Conference of High Contracting Parties to the Fourth Geneva Convention on 5 December 2001 in Geneva and stressing the importance of the Declaration adopted by the Conference, and underlining the need for the parties to follow up the implementation of the Declaration,

Welcoming and encouraging the initiatives by States parties to the Convention, both individually and collectively, according to article 1 common to the four Geneva Conventions, aimed at ensuring respect for the Convention,

Stressing that Israel, the occupying Power, should comply strictly with its obligations under international law, including international humanitarian law,

1. *Reaffirms* that the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, is applicable to the Occupied Palestinian Territory, including East Jerusalem, and other Arab territories occupied by Israel since 1967;
2. *Demands* that Israel accept the *de jure* applicability of the Convention in the Occupied Palestinian Territory, including East Jerusalem, and other Arab territories occupied by Israel since 1967, and that it comply scrupulously with the provisions of the Convention;
3. *Calls upon* all High Contracting Parties to the Convention, in accordance with article 1 common to the four Geneva Conventions, to continue to exert all efforts to ensure respect for its provisions by Israel, the occupying Power, in the Occupied Palestinian Territory, including East Jerusalem, and other Arab territories occupied by Israel since 1967;
4. *Reiterates* the need for speedy implementation of the relevant recommendations contained in its resolutions of the tenth emergency special session with regard to ensuring respect by Israel, the occupying Power, for the provisions of the Convention;
5. *Requests* the Secretary-General to report to the General Assembly at its fifty-ninth session on the implementation of the present resolution.³⁰²

³⁰² GA Res 58/97, UN GAOR, 58th Sess., UN Doc A/RES/58/97 adopted on 9 December 2003. Only six states voted against the resolution: Israel, Marshall Islands, Federated States of Micronesia, Nauru, Palau, United States of America. Additional resolutions of the United Nations General Assembly to this effect include the following: GA Res 57/125, UN GOAR, 57th Sess., GA Res 56/204, UN GAOR, 56th Sess., UN Doc A/56/49 (2001); GA Res ES-10/8, UN GOAR, 56th Sess., UN Doc A.ES-10/8 (2001); GA Res 56/60, UN GOAR, 56th Sess., UN Doc A/56/49 (2001); GA Res 55/131, UN GOAR, 55th Sess., UN Doc A/55/49 (2000); GA Res 54/77, UN GOAR, 54th Sess., UN Doc A/54/49 (1999); GA Res 53/54, UN GOAR, 53d Sess., UN Doc A/53/49 (1998); GA Res 52/65, UN GOAR, 52d Sess., UN Doc A/53/49 (1997); GA Res 42/160 C, UN GOAR, 52d Sess., UN Doc A/42/49 (1987); GA Res 32/91, UN GOAR, 32d Sess., UN Doc A/32/45 (1977); GA Res 2252 (ES-V), UN GOAR, UN Doc A/6798 (1967).

390. Other United Nations bodies share this view: for instance, the United Nations Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and other Arabs of the Occupied Territories³⁰³ and the Special Rapporteur for the Occupied Territories appointed by the United Nations Commission on Human Rights.³⁰⁴

391. Particularly strong evidence of this is provided in the Declaration of High Contracting Parties to the Fourth Geneva Convention of 5 December 2001.³⁰⁵ The Declaration reflects “the common understanding reached by the participating High Contracting Parties to the reconvened Conference of High Contracting Parties to the Fourth Geneva Convention.” The Declaration, *inter alia*: reaffirmed “the applicability of the Fourth Geneva Convention to the Occupied Palestinian Territory, including East Jerusalem” (paras. 1, 3); called on “all parties, directly involved in the conflict or not, to respect and to ensure respect for the Geneva Conventions in all circumstances” (para. 4); stressed that “the Fourth Geneva Convention, which takes fully into account imperative military necessity, has to be respected in all circumstances” (para. 5) called on “the Occupying Power [i.e., Israel] to fully and effectively respect the Fourth Geneva Convention in the Occupied Palestinian Territory, including East Jerusalem, and to refrain from perpetrating any violation of the Convention” (para. 12).

392. In accordance with Article 31(3)(b) of the Vienna Convention on the Law of Treaties of 1969, in interpreting a treaty there shall be taken into account: “any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;”.

The Declaration of 5 December 2001 amounts to an authentic interpretation of the Fourth Geneva Convention, and an authentic and compelling application of the requirements of the Convention to the Occupied Palestinian Territory. It is respectfully submitted that it should be given strong, indeed decisive, weight by this Court. This is particularly so when it is supported and corroborated by the International Committee of the Red Cross, which has repeatedly made it clear that the Fourth Geneva Convention is applicable to the Occupied Palestinian Territory.³⁰⁶

(4) Conclusion

393. To summarize, for the reasons given above, it is universally accepted that the Palestinian territory is occupied territory as a matter of customary international law and within the meaning of the Fourth Geneva Convention. The Court need do no more than identify the legal consequences that arise from such parts of the Wall - by far the largest proportion of it - as have been built by Israel within Palestinian (rather than Israeli) territory.

³⁰³ The Reports of the Special Committee can be seen in UN Doc A/57/207 and UN Doc A/57/421.

³⁰⁴ Report of the Special Rapporteur of the Commission on Human Rights on the situation in the Palestinian territories occupied by Israel since 1967, A/56/440, paragraphs 7 and 8, Annex 1 in Annex Volume 2 accompanying this Written Statement.

³⁰⁵ This is reprinted as Annex 11 to this Written Statement and Secretary-General’s Dossier no. 67.

³⁰⁶ See, e.g., International Committee of the Red Cross, Statement to the Conference of High Contracting Parties to the Fourth Geneva Convention, Geneva, 5 December 2001, *International Review of the Red Cross*, vol. 84, No. 847, September 2002, pp. 692-695; reprinted as Annex 11 in Annex Volume 2.

Chapter 8. ISRAEL IS BOUND BY INTERNATIONAL HUMANITARIAN LAW AND INTERNATIONAL HUMAN RIGHTS LAW IN RESPECT OF ITS CONDUCT IN OCCUPIED PALESTINIAN TERRITORY

(1) Introduction

394. The applicable law governing Israel's rights and duties in the Occupied Palestinian Territory, including East Jerusalem, is both international humanitarian law and international human rights law. Israel has previously disputed the application of each of these aspects of international law to the Occupied Palestinian Territory. The next two sections outline the reasons why these laws are applicable in the Occupied Palestinian Territory.

395. Before turning to these issues, a proviso is necessary. Israel's rights in relation to the construction and operation of the Wall can be no more extensive than those of an Occupying Power. There is, indeed, a question whether Israel can claim even those rights. The Geneva Conventions plainly intended that occupations should be temporary, and the generally-accepted view is that occupations should cease once hostilities have ceased, or very soon thereafter. It was never envisaged that occupation should be a long-term situation or that states should be able to claim the right to remain as Occupying Powers over the long term, a situation which borders on conquest, prohibited by a peremptory norm of contemporary international law. It is, however, now almost 36 years since the outbreak of the armed conflict that gave rise to the occupation of the Occupied Palestinian Territory relevant to these proceedings.

396. Nevertheless, it is not necessary for this question to be addressed in order to respond to the Request for an advisory opinion in this case. It is one of the basic axioms of international humanitarian law that its provisions apply in situations of armed conflict regardless of the legality of the initial resort to armed force. The *jus in bello* applies whenever there is in fact an armed conflict, and for so long as an occupation arising from an international armed conflict subsists in fact. That is the case here.

(2) International Humanitarian Law

397. International humanitarian law is binding upon Israel in respect of its occupation of the Occupied Palestinian Territory, including East Jerusalem. It became binding at the moment Israel occupied territory that was not part of the State of Israel and remains binding while Israel remains in occupation of such territory.

398. International humanitarian law is comprised, in the Court's words, of "a corpus of treaty rules the great majority of which [have] already become customary and which [reflect] the most universally recognized humanitarian principles."³⁰⁷ It comprises rules governing the actual conduct of armed conflict and belligerent occupation (more recently referred to simply

³⁰⁷ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226, at 258 (para. 82).

as ‘occupation’). These rules are expressed mainly in the Hague and Geneva Conventions and Additional Protocols, and general or customary international humanitarian law.

399. As an aspect of international humanitarian law, the law of occupation applies to the governance of occupied territories, including the conduct of an occupying power towards protected persons during occupation. These rules of general international law were codified in the 1907 Hague Regulations annexed to Hague Convention IV on the Laws and Customs of War on Land (the Hague Regulations) as well as the 1949 Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War (the Fourth Geneva Convention). There are currently 190 State parties to the Fourth Geneva Convention.

(a) Basic principles of international humanitarian law in the Hague and Geneva Conventions

400. The general framework of international law governing occupation is provided in Articles 42 to 56 of the 1907 Hague Regulations and in Section III of the Fourth Geneva Convention. A convenient starting point is Article 43 of the Hague Regulations, which provides:

“The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore and ensure, as far as possible, public order and safety, *while respecting, unless absolutely prevented, the laws in force in the country.*” (emphasis added).

This provision undoubtedly expresses a rule of general international law.

401. The Occupying Power must thus respect the laws in force in the country, and must not deprive protected persons of their rights by unnecessary and disproportionate changes. The duty is emphasized in Article 47 of the Fourth Geneva Convention which insists that protected persons shall not be deprived of the Convention’s protection “by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory.” In the Commentary on Article 47, the ICRC states:

“This provision [Article 43] of the Hague Regulations is not applicable only to the inhabitants of the occupied territory; it also protects the separate existence of the State, its institutions and its laws. This provision does not become in any way less valid because of the existence of the new Convention, which merely amplifies it so far as the question of the protection of civilians is concerned.”³⁰⁸

402. The protection of the separate existence of the occupied territory is also reflected in the Hague Regulations by the protection they provide not only for private property (Articles 46 and 47), but also to public real property and natural resources, of which the occupying power “shall be regarded only as administrator and usufructuary” and “must safeguard the capital of these properties and administer them in accordance with the rules of usufruct” (Article 55).

³⁰⁸ International Committee of the Red Cross, *Commentary, IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (ICRC, 1958) pp. 273 – 4.

403. The Fourth Geneva Convention contains a number of further requirements for the benefit of protected persons. These fall into two categories. The first category of provisions applies to the benefit of all protected persons in an international armed conflict or occupied territory. Foremost amongst this group of provisions is the obligation to provide humane treatment in Article 27. The second category of provisions specifically apply to protected persons who are in occupied territory. These provisions are outlined in Section III of the Fourth Geneva Convention. An Occupying Power must not transfer or deport protected persons from occupied territory nor deport or transfer parts of its own population into the occupied territory (Article 49), seize or destroy real or personal property “except where rendered absolutely necessary by military operations” (Article 53), or alter the status of public officials in the occupied territory (Article 54). It must ensure food and medical supplies and services of the population to the fullest extent possible (Articles 55 and 56) and respect the laws in force at the commencement of occupation while restoring and maintaining public order and safety (Article 64).

404. Certain violations of the Fourth Geneva Convention are regarded as grave breaches. Under Article 147:

“Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: wilful killing, torture or inhumane treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.”

405. The scope and content of these obligations is further discussed in so far as they are relevant in relation to the Wall being built by Israel in the Occupied Palestinian Territory in Chapter 9.

(b) Israel’s obligation to comply with international humanitarian law in the Occupied Palestinian Territory

406. Israel is a party to the four 1949 Geneva Conventions. It is not a party to the Additional Protocols to the Geneva Conventions nor to the 1907 Hague Conventions.

407. It is widely accepted that the Hague Conventions and the annexed Hague Regulations are declaratory of general international law. The Court confirmed this to be so in the *Nuclear Weapons* Advisory Opinion in 1996.³⁰⁹ Israel’s own Supreme Court has also taken this position.³¹⁰

³⁰⁹ *Legality of the Threat of Nuclear Weapons, Advisory Opinion, 8 July 1996, I.C.J. Reports 1996*, p. 226 at 258 (para. 80).

³¹⁰ *Teachers’ Housing Cooperative Society* case, HC 393/82, p. 802. The Court applied Article 43 of the Hague Regulations, which it said engendered a “broad and flexible framework”. See also *Ajuri v. IDF Commander in West Bank*, Case N° HCJ 7015/02 [2002] Israel Law Reports 1, Supreme Court of Israel, September 3, 2002, paras. 131-133, 138, 144, especially 155-162. “This court has held that the prohibition on

408. Despite this the Government of Israel has made statements which appear to suggest that it is not bound to apply the Hague Regulations or the Geneva Conventions since they are not incorporated into its domestic law.³¹¹ Any such argument must fail. It is well established in international law that reliance on internal law as justification for failure to comply with an international obligation is excluded. The International Law Commission's *Articles on Responsibility of States for Internationally Wrongful Acts*, annexed to General Assembly Resolution 56/83 of 12 December 2001, refer to this basic principle in Articles 3 and 32:

“Article 3

The characterization of an act of a State as internationally wrongful is governed by international law. Such characterization is not affected by the characterization of the same act as lawful by internal law.

Article 32

The responsible State may not rely on the provisions of its internal law as justification for failure to comply with its obligations under this Part [sc. the obligations of cessation and reparation].”

The extensive range of authorities in support of these basic propositions, including many decisions of this Court and its predecessor, is set out in the ILC's commentaries to these Articles.

409. At one time, Israel accepted that the Fourth Geneva Convention was applicable as a matter of law in the Occupied Palestinian Territory.³¹² This acceptance proved to be short-lived and was revoked. Since the revocation, Israel has formally denied the applicability of this Convention whilst declaring that it had decided to act *de facto* in accordance with its humanitarian provision.

410. Any such distinction between *de facto* and *de jure* application of the Convention in the Occupied Palestinian Territory must be rejected. The International Committee of the Red Cross expressed its own reservations at a Meeting of Experts on 27 October 1998 in these terms:

“Certain belligerents have agreed only to *de facto* application of the Fourth Geneva Convention, at times making even that conditional upon reciprocity... However, it would be unacceptable to allow – still less encourage – a set of parallel rules to be established, a sort of sub-category of the law, which might

forcible transfer is a rule of international treaty-based law, and thus is not applicable in domestic law unless it is enacted into the domestic law. However, this conception has changed, both in international public law and in the judgments of this court. Now, it is almost undisputed that the Fourth Geneva Convention reflects customary law and binds all states – even those that have not signed it – because it enshrines basic principles accepted by all states.”

³¹¹ Report of the Secretary-General prepared pursuant to General Assembly Resolution ES-10/13, A/ES-10/248, 24 November 2003, Annex I.

³¹² Military Order No. 3, 7 June 1967, Art. 35: “The Military Court...must apply the provisions of the Geneva Convention dated 12 August 1949 Relative to the Protection of Civilians in Time of War with respect to judicial procedures. In case of conflict between this Order and said Convention, the Convention shall prevail.”. This Article was subsequently deleted by Military Order 144 on 22 October 1967.

or might not be respected, according to the whims of the party applying it, despite the fact that the States have categorically committed themselves to recognizing legal texts that set out precise rights and obligations. Political conditions should under no circumstances be allowed to weaken the protection to be enjoyed by civilians under hard law.”³¹³

411. There is, furthermore, no legal basis for drawing a distinction between those rules of the Fourth Geneva Convention that are humanitarian in nature and those that are not. The entire Fourth Geneva Convention is humanitarian in nature. The Convention is devoted exclusively to the protection of civilians in time of war.

412. As demonstrated in Chapter 7, the Fourth Geneva Convention has *de jure* application in the Occupied Palestinian Territory, both as a multilateral treaty which is applicable in terms to the still unresolved situation following the 1967 War, and because it is in all relevant respects reflective of general international law. As this Court has affirmed of the Hague and Geneva Conventions, “these fundamental rules are to be observed by all States whether or not they have ratified the conventions that contain them, because they constitute intransgressible principles of international customary law”.³¹⁴ The International Criminal Tribunal for the Former Yugoslavia³¹⁵ and the Eritrea-Ethiopia Claims Commission³¹⁶ have endorsed this view in their own work.

413. In addition, a number of provisions of Additional Protocol I of 1977 reflect customary international law, especially where they are developments or specifications of standards contained in the 1949 Geneva Conventions.

(3) International Human Rights Law

414. The applicable law in the Occupied Palestinian Territory is international humanitarian law and international human rights law. Although important aspects of international human rights law have entered into customary international law, it is sufficient for present purposes to rely on the universal human rights treaties which Israel itself has accepted by becoming a party to them.

415. Israel is a party, in particular, to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Cultural and Social Rights (both of which it ratified on 3 October 1991).³¹⁷ In particular Article 2(1) of the International Covenant on Civil and Political Rights provides that each State Party “undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction” the rights recognized in the Covenant. The term “within its territory and subject to its jurisdiction” in

³¹³ International Committee of the Red Cross, “General Problems in Implementing the Fourth Geneva Convention”, Meeting of Experts, 27 October 1998.

³¹⁴ *Legality of the Threat of Nuclear Weapons*, Advisory Opinion, 8 July 1996, ICJ Reports 1996, p. 226 at 257-(para. 79).

³¹⁵ See, e.g., *Prosecutor v. Tadić*, judgment of 7 May 1997, 112 ILR 1, 179 ff.

³¹⁶ Eritrea-Ethiopia Claims Commission, *Partial Award – Prisoners of War*, 1 July 2003, 42 ILM 1056, paras. 39 – 41.

³¹⁷ Israel is also a party, *inter alia*, to the Convention on the Prevention and Punishment of the Crime of Genocide (ratified on 9 March 1950), the Convention Relating to the Status of Refugees (ratified on 1 October 1954), the Slavery Convention (signed on 12 September 1955) and the United Nations Convention on the Rights of the Child (ratified on 3 October 1991).

Article 2(1) is disjunctive; States Parties are bound to apply the Covenant to territories over which they exercise jurisdiction, including as a belligerent occupant.

416. Thus the United Nations Human Rights Committee is correct in concluding that the International Covenant on Civil and Political Rights applies to the benefit of the populations in the Occupied Palestinian Territory.³¹⁸

417. Israel maintains that the applicable law in the Occupied Palestinian Territory is international humanitarian law rather than international human rights law. In its view, there is a well established distinction between the two areas of international law and in times of armed conflict, the applicable law is international humanitarian law. The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights are said by Israel to not be applicable during armed conflict, but only during peacetime.³¹⁹

418. Many international human rights treaties explicitly state that they apply in both times of war and peace. For example, Article 2(2) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984 provides:

“2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.”

419. The Genocide Convention likewise provides in Article 1:

“The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.”

420. Many international and regional human rights conventions, including the ICCPR, contain provisions permitting States to derogate from certain provisions of the convention during war: see especially Article 4 of the ICCPR. The explicit exception for derogation during war clearly implies that absent derogation, the human rights convention will apply fully during war. Moreover, it sets a limit to the kinds of derogation that will be acceptable even in time of war or national emergency, and it confers a special status upon non-derogable rights—many of which, as will be seen, are violated by Israel’s construction and operation of the Wall in the Occupied Palestinian Territory.

³¹⁸ The Human Rights Committee has twice examined periodic reports by Israel to the Committee. The Committee has issued observations on both of these occasions affirming that the Covenant applies in the OPT: *Concluding Observations of the Human Rights Committee: Israel*, 21 August 2003, CCPR/CO/78/ISR, para. 11, Annex 8 in Annex Volume 2 accompanying this Written Statement; *Concluding Observations of the Human Rights Committee: Israel*, 18 August 1998, CCPR/C/79/Add.93, para. 10, Annex 7 in Annex Volume 2. Such a view was also taken by the Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel*, E/C.12/1/Add.90, 23/05/2003, paras. 15 and 31; *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel*, E/C.12/1/Add.69, 31/08/2001, paras. 11 and 12.

³¹⁹ Israel’s position is outlined, for example, in *Report of the Secretary-General prepared pursuant to General Assembly Resolution ES-10/13, A/ES-10/248*, 24 November 2003, Annex I; *Israel’s Report to the Human Rights Committee*, CCPR/C/ISR/2001/2, para. 8.

421. The UN Human Rights Committee states, in its most recent draft General Comment on Article 2,

“the Covenant applies also in situations of armed conflict to which the rules of international humanitarian law are applicable. While, in respect of certain Covenant rights, more specific rules of international humanitarian law may be relevant for the purposes of the interpretation of Covenant rights, both spheres of law are complementary, not mutually exclusive.”³²⁰

422. As this Court pointed out in the *Nuclear Weapons* Advisory Opinion, there is a conceptual distinction between the body of international law comprising international humanitarian law and that of international human rights law. At the same time the Court affirmed the continued application of international human rights law to territories affected by armed conflict, subject to the application of international humanitarian law as a *lex specialis*. The Court was presented with the argument that the ICCPR applied only to the protection of human rights in peacetime. The Court said:

“The Court observes that the protection of the International Covenant of Civil and Political Rights does not cease in time of war, except by operation of Article 4 of the Covenant whereby certain provisions may be derogated from in a time of national emergency. Respect for the right to life is not, however, such a provision. In principle the right not arbitrarily to be deprived of one’s life applies also in hostilities. The test of what is an arbitrary deprivation of life, however, then falls to be determined by the applicable *lex specialis*, namely the law applicable in armed conflict which is designed to regulate the conduct of hostilities. Thus whether a particular loss of life, through the use of a certain weapon in warfare, is to be considered an arbitrary deprivation of life contrary to Article 6 of the Covenant, can only be decided by reference to the law applicable in armed conflict and not deduced from the terms of the Covenant itself.”³²¹

The relationship between international humanitarian law and international human rights law is thus not one of exclusion but of coordination. Where international human rights law deals in general terms with some matter (e.g. “arbitrary” deprivation of life) which is regulated in more detail and specificity by international humanitarian law, the latter provides the content to the applicable law, i.e. it determines the scope of the legal standard. Where on the other hand international human rights law excludes certain treatment entirely – e.g. torture – then that treatment remains internationally unlawful at all times and places including during armed conflict or occupation.

423. Israel is bound by international human rights in both general international law and in treaty. These treaty obligations include not only the international human rights treaties binding upon Israel, but also the Israel–Palestine Liberation Organisation Interim Agreement on the West Bank and the Gaza Strip (the ‘Interim Agreement’). By virtue of the Interim Agreement, both Israel and the Council are obliged to:

³²⁰ See Human Rights Committee: Draft General Comment on Article 2: the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/74/CPR.4/Rev.4 (advance version), para. 11. This General Comment has not yet been adopted as a whole, but para. 11 reproduced in the text is already adopted.

³²¹ *I.C.J. Reports 1996*, p. 226, at 240, para. 25.

“...exercise their powers and responsibilities pursuant to this Agreement with due regard to internationally-accepted norms and principles of human rights and the rule of law.”³²²

This provision requires Israel to have due regard to international human rights as well as international humanitarian law.

424. Israel’s arguments have been rightly rejected at the international level, including by the United Nations Human Rights Committee. The Human Rights Committee has identified Israel’s failure to recognize the application of the Fourth Geneva Convention in the Occupied Palestinian Territory as one of its principal subjects of concern. On two occasions, in commenting on Israel’s periodic reports, it has recommended that Israel re-consider its position and include in future periodic reports information regarding the application of the Fourth Geneva Convention in the Occupied Palestinian Territory. On both occasions, it has squarely rejected Israel’s argument that the application of international humanitarian law during an armed conflict precludes the application of the Covenant, or the accountability of States parties to the Covenant for their actions outside their own territories including occupied territories.³²³ Similar conclusions have been drawn by the Committee on Economic, Social and Cultural Rights.³²⁴

(4) Conclusion

425. Accordingly the applicable law in the Occupied Palestinian Territory, including East Jerusalem, is the international humanitarian law and international human rights law.

426. In the past Israel has attempted to circumvent the application of both international humanitarian law, particularly the Fourth Geneva Convention, and international human rights conventions such as the International Covenant on Civil and Political Rights, in order to be relieved from international responsibility for its policies and practices and events taking place in the Occupied Palestinian Territory. Israel’s arguments have been widely rejected in both the practice of the United Nations and other international bodies such as the International Committee of the Red Cross. The correct position is that under international law, Israel’s status of occupier binds it to act in compliance with both international humanitarian law and international human rights law.

³²² Article XIX, Israel–Palestine Liberation Organisation: Interim Agreement on the West Bank and the Gaza Strip, 28 September 1995: text in (1997) 36 *ILM* 551.

³²³ See *Concluding Observations of the Human Rights Committee: Israel*, 21 August 2003, CCPR/CO/78/ISR, para. 11, Annex 8 in Annex Volume 2 accompanying this Written Statement; and *Concluding Observations of the Human Rights Committee: Israel* CCPR/C/79/Add.93, 18 August 1998, para. 10, Annex 7 in Annex Volume 2.

³²⁴ Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel*, E/C.12/1/Add.90, 23/05/2003, paras. 15 and 31; *Concluding Observations of the Committee on Economic, Social and Cultural Rights : Israel*, E/C.12/1/Add.69, 31/08/2001, paras. 11 and 12.

Chapter 9 ISRAEL'S VIOLATIONS OF THE APPLICABLE LAW THROUGH THE CONSTRUCTION AND MAINTENANCE OF THE REGIME OF THE WALL

Introduction

(1) The framework of legal analysis

427. The previous two Chapters have demonstrated that the existing and planned Wall lies in the Occupied Palestinian Territory; that Israel's rights in that territory are those of an Occupying Power.

428. This Chapter presents Palestine's submissions regarding the legal principles applicable to the situation. The explanation of the factual background in Chapters 3–6 indicates that the Wall has consequences that constitute violations of specific provisions of international law. The latter part of this Chapter addresses those violations. But the fundamental legal issue is the legality of the Wall. Its very construction and maintenance violates international law. It is as if one person were to build a wall in a garden belonging to another. The Wall will indeed have serious adverse and unlawful effects; but the fundamental point is that it should not be there at all.

429. Accordingly, after a section (section 2) briefly recalling the applicable rules and principles of international law, the next section (section 3) of this Chapter is concerned with the basic question of the legality of the construction of the Wall. That is followed by section 4, which is concerned with specific violations of the international law governing occupation. Section 4 considers provisions of international humanitarian law and international human rights law together. Although these are distinct bodies of law whose implementation is subject to distinct procedures, it has been thought helpful to organize section 4 according to the nature of the harm resulting from the Wall.

(2) The principles of international humanitarian law

430. As Chapters 7 and 8 explained, Israel's rights in the Occupied Palestinian Territory, including East Jerusalem, are those of an Occupying Power. The rights are derived from international humanitarian law and their exercise is subject to constraints imposed both by international humanitarian law and by international human rights law. The main principles of international humanitarian law that are of fundamental importance in this case were summarized in Chapter 8. They are as follows.

431. First, given the peremptory prohibition of the acquisition of territory by force, there can be no possibility that the rights of the Occupying Power derive from the exercise of its sovereignty over the territories. Such rights as the Occupying Power possesses, it possesses over territory to which, *ex hypothesi*, it has no sovereign title. There can, accordingly, be no presumption in favour of the existence of any rights in favour of the Occupying Power. Rather, the Occupying Power must demonstrate the basis of its entitlement to take any action in the occupied territory.

432. Second, the Occupying Power has an obligation to “take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country”: Hague Regulations, Article 43. That provision, which undoubtedly expresses a rule of customary international law, embodies both a right and also duties. The Occupying Power has the right, and also the duty, to take measures to secure public order and safety; and it also has the duty to do so within the framework of the laws already in force in the country, “unless absolutely prevented”. This reflects the principle that, in the words of one distinguished commentary, “political institutions and public life in general should ... be allowed to continue with as little disturbance as possible.”³²⁵

433. Third, it is the Occupying Power that has, by virtue of its occupation of the territory, the legal obligation “to the fullest extent of the means available to it” to ensure “the food and medical supplies of the population”, and to ensure and maintain medical and public health services in the occupied territory.³²⁶ This is a particular expression of its responsibilities for the overall welfare and rights of the occupied population, reflected also in the continued applicability of international human rights law in the occupied territory.³²⁷

434. Fourth, the Occupying Power may requisition goods and services to the extent that they are necessary to satisfy the needs of the occupation army. As it is put in Article 52 of the Hague Regulations:

“Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country.”

435. Fifth, the right to destroy private property is limited by the criterion of the absolute necessities of military operations. In the words of Article 53 of the Fourth Geneva Convention,

“Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.”

436. Sixth, the rights to requisition and destroy property in order to meet the needs of the occupying forces are subject to overriding limitations resulting from the principle of proportionality. The principle is not spelled out in this form in either the Hague or the Geneva Conventions; but it is plainly a fundamental principle pervading the entirety of international humanitarian law and implicit in the concept of necessity.

437. In the present context, these principles indicate the limitations upon the actions that Israel, as the Occupying Power, may take in the Occupied Palestinian Territory, including

³²⁵ Dieter Fleck (ed.), *The Handbook of Humanitarian Law in Armed Conflicts*, (OUP, 1995), section 531.

³²⁶ 1949 Fourth Geneva Convention, Articles 55, 56.

³²⁷ See, e.g., the Concluding Observations of the Human Rights Committee: Israel, UN Doc. CCPR/CO/78/ISR, 21 August 2003, paragraph 11, Annex 8 in Annex Volume 2 accompanying this Written Statement.

East Jerusalem. Israel has the right to construct and maintain the Wall if, but only if, Israel can demonstrate that it has such rights under the law of occupation. That law recognizes that the Occupying Power has military necessities. It does so by giving the Occupying Power specific rights to take certain actions where military necessity so requires. Those specific rights are the only rights that Occupying Powers possess in relation to occupied territory. There is no *general* right to take action on the ground of military necessity.

438. Israel's rights must be established in relation to the actual Wall: that is to say, the Wall as it is being constructed, operated and planned by Israel as the Occupying Power, along the actual route that it follows. They must also be demonstrated in relation to the actual necessity that is said to justify the construction and operation of the Wall. Like other exercises of powers having an international aspect, the propriety of exercises of the claimed rights may be reviewed by an international tribunal.³²⁸

439. This point should be underscored. There is no doubt that Israel has, in principle, the right to construct a wall on Israeli soil, along the Israeli side of the Green Line. Israel's legal obligations would of course affect the manner in which such a wall would be built and operated. For example, prohibited weapons could not be used in the security systems incorporated in the wall. But Israel plainly has both the legal right to build a security wall on its own territory along the Green Line and the practical possibility and ability to do so.

440. The central issue in this case is, therefore, whether in the light of that possibility Israel has any right to build the Wall *outside* its territory, along the route that it has chosen, and to maintain in respect of that physical barrier to movement the regulatory regime that it has put in place.

(3) There is no lawful basis for the building of the Wall

441. The rights of an Occupying Power are of a nature quite different from the rights of a sovereign government. The point was made by Sir Hersch Lauterpacht:

“...the administration of the occupant is in no wise to be compared with ordinary administration, for it is distinctly and precisely military administration. In carrying it out the occupant is totally independent of the constitution and the laws of the territory, since occupation is an aim of warfare, and the maintenance and safety of his forces and the purpose of war, stand in the foreground of his interest, and must be promoted under all circumstances and conditions. But, although as regards the safety of his army and the purpose of war the occupant is vested with an almost absolute power, as he is not the sovereign of the territory he has no right to make changes in the laws, or in administration, other than those which are temporarily necessitated by his interest in the maintenance and safety of his army and the realisation of the purpose of war. On the contrary, he has the duty of administering the country according to the existing laws and the existing rules of administration; he must ensure public order and safety, must respect family honour and rights, individual lives, private property, religious convictions and liberty.”³²⁹

³²⁸ See *Anglo-Norwegian Fisheries, I.C.J. Reports 1951*, p. 116, at 132.

³²⁹ Hersch Lauterpacht, *Oppenheim's International Law*, vol. II, (7th ed. Longmans, 1952), p. 437.

442. Military necessity provides no general, blanket justification for actions in occupied territory, but only a justification *within the specific provisions* of international humanitarian law. Moreover, the specific provisions of international humanitarian law treat military necessity in different ways.

443. Thus, the seizure of property is permissible only “for the needs of the army of occupation.”³³⁰ Seizures or requisitions of property in the broader interests of the Occupying Power, or to satisfy the needs of units other than the army of the Occupying Power, are not permitted. In the present context there is a clear distinction between takings of Palestinian property to meet the needs of the Israeli army and takings to meet the needs of Israeli civilians. The former may be legally justifiable; the latter certainly is not.

444. Destruction of property, in contrast, is permissible only for a more limited purpose. It is permissible only “where such destruction is rendered absolutely necessary by military operations.”³³¹ There are two limiting criteria in that phrase.

445. First, the necessity must arise from ‘military operations’. That is not the same as ‘military occupation’. In the midst of battle it may be necessary for a tank to move through an orchard or a field, destroying the crops on the way. In the relative calm of a subsequent occupation, there is neither the need nor the excuse for such destruction. If the Occupying Power wishes to seize and destroy property during the subsequent occupation, it must do so through the formal processes of requisition; and that is permissible only in order to meet the needs of the occupying army. Second, the necessity must be ‘absolute’. There is no question of a ‘balance of convenience’ or ‘reasonable necessity’: there must be no alternative whatever to the destruction of the property.

446. The concept of necessity is also applied with a precise meaning in the context of the rights and duties of the Occupying Power in relation to the restoration and maintenance of public order. Under the Hague Regulations, that duty must be exercised “while respecting, unless absolutely prevented, the laws in force in the country”.³³² Article 64 of the Fourth Geneva Convention prescribes the principle in slightly different terms, entitling the Occupying Power to modify the penal laws of the occupied territory to the extent necessary to protect the security of the Occupying Power, or to the fulfilment of its duties to restore and maintain peace and maintain orderly government.³³³ These formulations are somewhat wider than the notion of what is necessary to meet the needs of the occupying army or of military operations; but it is still strictly confined to a necessity that cannot be detached from the military necessity facing an Occupying Power.

447. In all cases, the military necessity must be related to the needs of the occupation. An Occupying Power may occupy a territory in order to achieve its military objectives: but the military occupation of the territory is not in itself a legitimate military objective. The Fourth

³³⁰ Hague Regulations, Article 52.

³³¹ Fourth Geneva Convention, Article 53.

³³² Hague Regulations, Article 43.

³³³ Article 64 reads as follows: “Art. 64. [1] The penal laws of the occupied territory shall remain in force, with the exception that they may be repealed or suspended by the Occupying Power in cases where they constitute a threat to its security or an obstacle to the application of the present Convention. [2] The Occupying Power may, however, subject the population of the occupied territory to provisions which are essential to enable the Occupying Power to fulfil its obligations under the present Convention, to maintain the orderly government of the territory, and to ensure the security of the Occupying Power, of the members and property of the occupying forces or administration, and likewise of the establishments and lines of communication used by them.”

Geneva Convention recognises that States will sometimes use armed force, lawfully or unlawfully, to achieve their aims, and it sets out legal obligations that must be observed in the course of using armed force, including obligations relating to military occupation –the *jus in bello*. It emphatically does not and could not make military occupation an independent lawful objective. To do so would contradict the *jus cogens* prohibition on the acquisition of territory by force.

448. Israel, as the Occupying Power, does not have the right to maintain whatever level of military occupation it chooses in the Occupied Palestinian Territory, including East Jerusalem, independently of the aims of the initial armed conflict. The military occupation began in 1967. Israel has since made peace treaties with Egypt and Jordan, although the issue of the occupied territories remains unresolved, as those treaties recognise. The justification for the continuing occupation is unclear, but appears close to a circular argument: that Israel must maintain a military presence in the West Bank in order to protect its facilities in Israel and the West Bank against attacks from those who oppose Israel’s continuing occupation of the Palestinian territory, including East Jerusalem.

449. The Wall is not necessary for security purposes, as will be explained. The legal significance of this point is fundamental. The construction and operation of the Wall are beyond Israel’s rights and violate international law. There being no necessity for the Wall, no further inquiry is needed. In particular, the question of proportionality does not arise, because the requirement that the Wall be a proportionate response to threats facing Israel would arise only if the initial military necessity were demonstrated. In any event, however, the Wall is also a demonstrably disproportionate response to the situation in the Occupied Palestinian Territory.

(a) The Wall lacks any justification as a security measure

450. Palestine faces an immediate problem in presenting its case. A report of a Special Rapporteur to the UN Commission on Human Rights noted that “[t]here is no transparency surrounding the construction of the Wall and its final course seems to be known only to an inner circle of the military and political establishment within Israel.”³³⁴ That has both procedural and substantive implications.

451. Procedurally, while Palestine is able to make precise submissions regarding the Wall as it currently exists and as reflected in plans that have already been published, the lack of transparency makes it difficult for Palestine to present a precise case addressed to the entire planned course of the Wall. Only when the Wall becomes a fact on the ground does its route become clear and specific argument against it become possible. Substantively, the uncertainty concerning the route and the construction of the Wall and any gates that might be left in it, and concerning the timetable for its construction, is itself a cause of great difficulty for those who must try to plan their lives so as to cope with the arrival of the Wall.

452. This section is, accordingly, based upon Palestine’s knowledge of works already executed and of plans already published, and upon the best information that Palestine has been able to obtain concerning Israel’s plans for the continuation of the Wall project.

453. There is no doubt that a State may, in principle, fortify its boundary so as to prevent unlawful incursions into its territory. The use of defensive walls to protect particular military

³³⁴ Dugard Report (2003), para. 11.

installations or facilities belonging to an Occupying Power is, in principle, similarly unobjectionable. A wall around a military compound, or a police station or embassy may be a prudent and proportionate measure to avert the risk of attacks upon the facilities contained within the wall. Israel's Wall does not surround vulnerable military facilities. It surrounds Palestinians.

454. As was explained in Chapter 6 of this Written Statement, the Wall, as presently constructed or planned, extends throughout practically the whole of the West Bank and is almost entirely built in the Occupied Palestinian Territory. Furthermore, it is widely reported that the Israeli Government intends that the Wall should encircle the entire West Bank –or, more precisely, that the Wall should encircle a much reduced area of the West Bank well inside the Green Line.³³⁵ No official plan for the eastern Wall has been published; but the report has been given credence by, for instance, the Special Rapporteur to the UN Commission on Human Rights.³³⁶

455. In those locations where the Wall follows the Green Line, but is wholly or partly constructed on territory on the Palestinian side of the Green Line, the Wall may in a general sense be said to 'defend' Israeli territory. It is nonetheless unlawful. Plainly, the Wall could have been built upon Israeli territory. There is no *need* for it to be built on Palestinian territory. The requisitioning or confiscation of the land on which the Wall is constructed is, accordingly, in violation of international law. The question of the legality of the 'requisitioning' or confiscation of the land on which the Wall is constructed is addressed further below.

456. Most of the Wall does not follow the Green Line. Most of it is built well inside the Occupied Palestinian Territory, including East Jerusalem. The Wall is said to be necessary to prevent and obstruct attacks upon Israel from the West Bank. The threats against which the Wall is allegedly intended to guard are not threats of rocket or artillery attack. (And if they were, given the very small size of Palestinian territory, it is unclear what protection the Wall could in fact offer.) The threats are, primarily, threats of suicide or other bombers, presumably travelling in all or most cases by motorized transport and therefore along known roads or tracks, to attack Israeli targets.

457. There is no reason to suppose that a wall built, say, 5 km from the Green Line offers any greater protection to Israeli territory than a wall built on the border itself. As was seen in Chapter 5, Israel says that it needs to have a closed zone into which it can chase potential bombers who elude apprehension at checkpoints in the Wall. This argument is unconvincing. Any such individuals could be chased if the Wall were on the Green Line: they could be chased into Israeli territory. If there are particularly vulnerable sites in Israel near to the Wall, those sites can themselves be protected.

458. Moreover, the possibility of potential attackers remaining undetected at checkpoints surely points to a need to improve the efficiency of checkpoints rather than to divert the Wall. This very point was made within the Israeli Government. The Israeli State Comptroller commented in his July 2002 report on the Closed Zone (the 'seam zone') that "IDF

³³⁵ See e.g., B'Tselem 2003 Report, p. 3, Annex 13 in Annex Volume 2 accompanying this Written Statement.

³³⁶ Dugard Report (2003), para. 11.

documents indicate that most of the suicide terrorists and car bombers crossed the seam area into Israel through the checkpoints, where they underwent faulty and even shoddy checks.³³⁷

459. Furthermore, the chances of a potential bomber avoiding apprehension and then being identified in sufficient time to be detained in the Closed Zone are so small as to be fanciful, and certainly no rational basis for a decision to re-route the Wall away from the Green Line. That this is not the reason for the route of the Wall is clear from the fact that the width of closed zone between the Wall and the Green Line is far from uniform. It mostly varies from around 5km to around 22km, and in some places (notably in the north) is practically non-existent.

460. What, then, might be the reasoning behind the decision to push the Wall deep into the Occupied Palestinian Territory, leaving an estimated 43% of the West Bank land area outside the Wall? Israel has offered no adequate explanation of the justification for the Wall, beyond bald assertions of its security interest. The explanation is self-evident. There are three main kinds of location where the route of the Wall departs significantly from the Green Line:

- i. there are the locations in which the Wall is pushed inside Palestinian territory in order to leave Israeli civilian settlements or other civilian facilities in the West Bank outside the Wall;
- ii there is the segment of the Wall around East Jerusalem;
- iii there is the planned Eastern segment of the Wall, which runs alongside the river Jordan.

(b) The Wall may not be diverted to protect Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem

461. As the maps in Annex Volume 1 to this Written Statement show, the route of the Wall is very obviously designed to put settlements in the Occupied Palestinian Territory such as ‘Ariel’, ‘Ma’ale Adumim’, and ‘Etzion’, outside the Wall. The question is whether the civilian settlements may be given special protection by means of shifts of the course of the Wall from the Green Line.

462. Occupying Powers have the right, during the period of military occupation, to defend their military facilities in the occupied territory. Israeli army installations inside the Occupied Palestinian Territory may accordingly be defended, by the usual military methods of defensive structures, surveillance, and intelligence-gathering. (Of course, those of them that lie inside the course of the Wall cannot be protected by the Wall; and there is no evidence that the Wall has been constructed to protect any military facilities lying between the Wall and the Green Line).

463. The legal position of the civilian settlements is quite different. International humanitarian law stipulates, in Article 49(6) of the Fourth Geneva Convention, that “the Occupying Power shall not deport or transfer parts of its own civilian population into the

³³⁷ State Comptroller of Israel’s *Seam Zone Investigation Report No. 2 (July 2002)*, as quoted in Dugard Report (2003), para. 8.

territory it occupies”. The establishment by the Occupying Power of civilian settlements in occupied territory is not only a violation of international law, it is declared to be a ‘grave breach’, and a war crime, by Article 85 of Additional Protocol I to the Geneva Conventions.

464. The prohibition in Article 49(6) of the Fourth Geneva Convention is not confined to the forcible transfer by an Occupying Power of parts of its population into the occupied territory. In the words of a Legal Adviser to the U.S. State Department,

“It seems clearly to reach such involvements of the occupying power as determining the location of settlements, making land available and financing of settlements, as well as other kinds of assistance and participation in their creation.”³³⁸

465. There is no doubt that Israel has assisted in the establishment of many of the settlements in the West Bank in the ways described in that passage, and that Israel’s actions in the relevant area constitute a ‘transfer of parts of its own civilian population into the territory it occupies’, in violation of Article 49(6).³³⁹ Israel’s settlement policy, in so far as it affects the Wall, was described in Chapter 4.

466. Just as the transfer of civilian populations into occupied territory is unlawful, so, too, are the settlements accommodating the transferred populations unlawful. This is well established. The illegality of the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, has been clearly, consistently and repeatedly affirmed by States and international bodies, including the UN Security Council.³⁴⁰

467. The settlements being unlawful, there can be no legal right to protect them by diverting the course of the Wall away from the Green Line. The conclusion is inescapable. The same reasoning applies to facilities and infrastructure, such as roads, built in the Occupied Palestinian Territory, including East Jerusalem, in order to support the civilian settlements. As the Wall cannot lawfully be built in order to protect an unlawful civilian settlement so, too, it cannot lawfully be built in order to protect a road constructed in order to serve that settlement, for instance.³⁴¹

(c) The Wall may not be diverted to protect annexed territory in East Jerusalem

468. It is a peremptory principle of international law that territory may not be acquired by the use of force. Israel has nonetheless purported to annex East Jerusalem and extensive areas around it. As was explained in Chapter 7, the Security Council decided not to recognize the purported annexation of East Jerusalem. That determination binds Member States under Article 25 of the United Nations Charter.³⁴² The diversion of the Wall from the Green Line in this area is a plain attempt, further to long-established Israeli policies and practices, to ignore that binding determination (which sets out the position which is anyway clearly established in

³³⁸ *Digest of US Practice in International Law* [*DUSPIL*] 1978, p. 1575 at 1577.

³³⁹ *DUSPIL* 1978, 1575-1578; Letter of H.J. Hansell, Legal Adviser, U.S. Department of State, to House Committee on International Relations, (21 April 1978), 17 *ILM* 777 (1978).

³⁴⁰ See Chapter 7, above, and Appendix 1.

³⁴¹ See the UN Commission on Human Rights, Resolution 2003/7 of 15 April 2003.

³⁴² *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, *Advisory Opinion*, *I.C.J. Reports 1971*, p. 16 at 53.

international law) and to treat the annexed territory in Jerusalem as if it had sovereignty over it.

469. The position in relation to that part of the Wall that protects East Jerusalem is, accordingly, similar to that in relation to those parts of the Wall that protect illegal Israeli settlements in the West Bank. As Israel has no proprietary rights in that area of the Occupied Palestinian Territory, it cannot divert the course of the Wall away from the Green Line to protect that area as such.

(d) There is no justification for the construction of the Wall in the eastern part of the West Bank

470. What possible reason could there be for continuing the route of the Wall inside the eastern boundary of the West Bank? The eastern border of the West Bank is Palestine's boundary with Jordan. There can scarcely be a fear of an attack coming from the east: Israel and Jordan concluded a peace treaty in 1994. If there were a threat from the Occupied Palestinian Territory towards the east, it is Jordan, not Israel, which would be threatened. If the fear is that bombers from the West Bank would travel east, and then north or south and into Israel by a roundabout route, and if a wall is a suitable response, the obvious solution is to construct the Wall up to the Israeli border with Jordan in the north and the south. Building the Wall inside the West Bank along the Jordan Valley is patently not justified by any consideration of security.

471. Palestine has in general not speculated here on Israel's motives for its actions; but in this case it is difficult to see that there can be any reason behind the proposed route of the Wall other than a desire to extend Israeli territory along the Jordan Valley. This would be a further *de facto* annexation of territory, which would enclave the West Bank, isolate it both from Gaza and from Jericho, and have a dramatic and very serious detrimental effect upon Palestine's ability to exist as a viable State and have stable economic, social and political links with its neighbours. Not only would it be lacking in any legal justification; it would also be a move incompatible with Palestine's right to realise its self-determination in independence.³⁴³

(e) The Wall is an attempt to change the status of the Occupied Palestinian Territory, including East Jerusalem

472. Israel has no need to build the Wall for security reasons in the Occupied Palestinian Territory. The Wall appears to be an attempt to change the legal status of the Occupied Palestinian Territory, including East Jerusalem.

473. The prohibition on changes to the status of occupied territory is a fundamental rule of international humanitarian law and a corollary of the prohibition on the acquisition of territory by force. Its breach is a distinct and serious violation of international law. The rule has been repeatedly and forcefully reaffirmed, specifically in relation to the Occupied Palestinian Territory, including East Jerusalem, by the Security Council. One example is Resolution 446 (1979) which called:

³⁴³

See below Chapter 10.

“...once more upon Israel, 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 territory occupied since 1967, including Jerusalem, and, in particular, not to transfer parts of its own civilian population into the occupied Arab territory.”

474. The concept of a ‘change in the status of a territory’ is not defined in the Geneva Conventions or in any other authoritative international instrument. Its meaning must be arrived at by consideration of the use of the term and the role that it plays in the system of international humanitarian law.

475. The concept of a change in the legal status of a territory is plainly wider than the concept of annexation. It would be absurd if a State could assert all the rights of a territorial sovereign over territory occupied by force and avoid the legal prohibition on the forcible acquisition of territory by the device of avoiding a formal transfer of title and avoiding the language of sovereignty. Likewise, if the Security Council in Resolution 446 had meant to confine its injunction to annexation, it could have said so expressly, and in fewer words than it in fact used.

476. The role of the prohibition within international humanitarian law also underlines its breadth. The ‘no change of status’ principle is secured in the Fourth Geneva Convention by the duty to respect the existing laws in the territory, reinforced by the prohibition on the acquisition of territory by use of force.³⁴⁴

477. The ‘status’ of territory is constituted by the system of legal rules that are applicable in it and by the factual power to control events within the territory. In a case where areas of territory are designated from which the residents are expelled, in circumstances not permitted by Article 49 of the Fourth Geneva Convention, the status of the territory is changed. So, too, in a case where residents are required to obtain permits to remain in their homes, or to travel between their home and places of work, education and healthcare, or any other parts of their territory, the status of the territory is changed. The same is true when large numbers of citizens of the Occupying Power are implanted in the Occupied Palestinian Territory in areas marked out for them by the Wall.

478. All these changes in the legal regime of the Occupied Palestinian Territory have been, and are being, brought about as a result of the Wall, which renders the changes more intractable and with time irreversible. Israel has stated that the Wall is not intended to change the status of the territory that it cuts through and that the Wall is intended to be temporary:³⁴⁵ but this is unconvincing. As the Rapporteur to the UN Human Rights Committee noted:

“the settlement structure in Gaza seems removable by negotiations on final status in a manner that at present does not appear likely in relation to the West Bank”³⁴⁶

³⁴⁴ UN Charter, Article 2(4); UNGA Res. 2625 (XXV).

³⁴⁵ See Annex I to the Report of the Secretary-General, A/ES-10/248, 24 November 2003, included as Dossier no. 52 accompanying the UN Secretary-General’s submission.

³⁴⁶ UN Doc. E/CN.4/2001/121, 16 March 2001, paragraph 21, Annex 10 in Annex Volume 2 accompanying this Written Statement.

Precisely the same observation may be made about the Wall. The cost –estimated at NIS 10 million per kilometre³⁴⁷ of the 788 km Wall– suggests something very different from a temporary security measure designed to operate in the short period before the enjoyment of Palestinian statehood is secured through the steps outlined in the June 2003 ‘Road Map’, which envisaged a final and comprehensive settlement of the Israel-Palestinian conflict by 2005.³⁴⁸

479. The fears concerning the intended permanence of the Wall are borne out of experience of Israel’s past practice in relation to the Occupied Palestinian Territory. As a report by the Israeli human rights organization, B’Tselem, put it:

“In the past, Israel has used “requisition for military needs” orders as a means to take control of Palestinian land to establish settlements. These lands were never returned to their owners. It is now clear that Israel did not intend to seize the land for a temporary period, but to expropriate it permanently.”³⁴⁹

480. Furthermore, the legal changes, and the restrictions on residence and movement in the vicinity of the Wall, are already bringing about a clear change in the demographic structure of the Occupied Palestinian Territory, not only in relation to the illegal settler population but also in relation to the Palestinian population. In Qalqiliya, for example, it is reported that around 600 shops and enterprises have closed as a result of the construction of the Wall,³⁵⁰ and an estimated 6,000 to 8,000 people have already left the area.³⁵¹ Faced with a choice of remaining in a walled-off town, perhaps requiring residence permits, perhaps needing permission for daily crossings of the Wall for work or education or medical care, and moving elsewhere, it is unsurprising that there is increasing evidence of widespread displacement of the population of the Occupied Palestinian Territory, including East Jerusalem, from areas outside the Wall.

481. Coupled with the still-increasing number of people moving into the unlawful settlements, the change in the demographic structure of the Occupied Palestinian Territory is dramatic. It is one of the most serious effects of the Wall, unlawfully changing the ‘facts on the ground’ in a way that Palestine is powerless to prevent, and which will be very difficult to reverse. It is a *de facto* annexation of the area outside the Wall, coupled with a displacement of the population throughout the Occupied Palestinian Territory.

(f) Conclusion on Israel’s right to construct the Wall

482. Palestine submits, accordingly, that Israel, as Occupying Power, has no right to construct the Wall in the Occupied Palestinian Territory, including East Jerusalem. The Wall is an attempt by Israel unilaterally to change the legal status of the Occupied Palestinian Territory through which it cuts. The construction of the Wall violates international law.

³⁴⁷ B’Tselem 2003 Report, p. 7, Annex 13 in Annex Volume 2 accompanying this Written Statement.

³⁴⁸ See Report of the Secretary-General, A/ES-10/248, 24 November 2003, paras. 28 - 31, included as Dossier no. 52 accompanying the UN Secretary-General’s submission.

³⁴⁹ For extensive discussion on this subject, see B’Tselem 2002 Report, Annex 12 in Annex Volume 2 accompanying this Written Statement.

³⁵⁰ Dugard Report (2003), para. 10.

³⁵¹ Ziegler Report, para. 51.

(4) The effects of the Wall violate international law and render it a disproportionate measure

483. The previous section focused on the absence of any necessity for the Wall, such as is required as a precondition for the limited rights that Israel enjoys as the Occupying Power. Even if a case could be made out that those requirements in the relevant provisions of the law of occupation are met, that would not render Israel's conduct lawful. International humanitarian law requires that measures taken by an Occupying Power that are *prima facie* lawful must nonetheless be proportionate to the circumstances that create the necessity for the measures. The Wall being built in the Occupied Palestinian Territory is a disproportionate response.

484. The effects of the Wall were outlined in Chapter 6 above and are described in more detail in reports to the United Nations, of which some of those most directly relevant to these proceedings are annexed to this Written Statement.³⁵² They are summarized in the following paragraphs, which are directed to two distinct legal issues. First, the effects constitute distinct violations of particular rules of international humanitarian law and of international human rights law, both of which are applicable in the Occupied Palestinian Territory, including East Jerusalem.³⁵³ International humanitarian law applies as a *lex specialis*, but does not exclude international human rights law, which continues to apply.³⁵⁴ In any case, some of these rights are non-derogable, and must be respected in all circumstances; and even the other rights can only be derogated to the extent strictly required by the exigencies of the situation, i.e., subject to a strict condition of proportionality. Second, the hardship caused to the population of the Occupied Palestinian Territory, including East Jerusalem, by these effects renders the Wall a disproportionate measure and therefore incompatible with the law of occupation.

(a) The Wall violates the right to freedom of movement

485. The practical restrictions on freedom of movement arising from the Wall are, in summary, as follows:

Physical prevention of movement within the Occupied Palestinian Territory, including East Jerusalem, by the Wall, in extreme cases by the walling-in of towns in enclaves;

Imposition of unjustifiably lengthy detours and delays on movements within the Occupied Palestinian Territory, including East Jerusalem;

³⁵² See Annexes 1-11 and 14 in Annex Volume 2 accompanying this Written Statement.

³⁵³ See Chapter 8.

³⁵⁴ See Chapter 8. See Ziegler Report, para. 25: "United Nations bodies have also repeatedly reaffirmed the applicability of human rights law in the OPT, including the Security Council (resolution 237 (1967)) and the Special Rapporteur of the Commission on Human Rights on the situation of human rights in the OPT, John Dugard (see E/CN.4/2002/32 [*This report is reprinted as Annex 2 in Annex Volume 2 accompanying this Written Statement*]), the Committee on Economic, Social and Cultural Rights and other treaty bodies. This is also reaffirmed in the 1995 Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (art. XIX)." See also the decision of the Inter-American Commission on Human Rights on Precautionary Measures in Guantanamo Bay, Cuba, 12 March 2002, 41 ILM 532 (2002); *Loizidou v. Turkey*, European Court of Human Rights, Series A, No. 310, paragraph 62 (1995)..

Arbitrary and unpredictable access through gates in the Wall, isolating people, land and property outside the Wall from those inside;

Imposition of restrictions on movement upon Palestinian people in the area around the Wall in a discriminatory and degrading manner.

486. The right to freedom of movement is secured by Article 12 of the International Covenant on Civil and Political Rights. That provision stipulates that:

“1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.³⁵⁵

4. No one shall be arbitrarily deprived of the right to enter his own country.”³⁵⁶

487. Restrictions on the right may be imposed under Article 12(3) only within narrow limits. The UN Human Rights Committee stated that:

“The permissible limitations which may be imposed on the rights protected under article 12 must not nullify the principle of liberty of movement, and are governed by the requirement of necessity provided for in article 12, paragraph 3, and by the need for consistency with the other rights recognized in the Covenant.”³⁵⁷

³⁵⁵ The Human Rights Committee has specified, notably in its General Comments Nos. 27 and 29, the conditions under which such restrictions are permissible. The conditions include necessity and proportionality. In paragraph 13 of General Comment No. 27, “Freedom of movement (art.12)”, CCPR/C/21/Rev.1/Add.9 of 02 November 1999, it said “the restrictions must not impair the essence of the right ...; the relation between right and restriction, between norm and exception, must not be reversed. The laws authorizing the application of restrictions should use precise criteria and may not confer unfettered discretion on those charged with their execution”: cf., paragraphs 11 to 18. In General Comment No. 29, “States of Emergency (art. 4) ”, CCPR/C/21/Rev.1/Add.11 of 31 August 2001, paragraph 1 it said “The restoration of a state of normalcy where full respect for the Covenant can again be secured must be the predominant objective of a State party derogating from the Covenant”: cf., paragraphs 4, 7 and 9.

³⁵⁶ The right to freedom of movement is also asserted in Article 13 of the Universal Declaration of Human Rights.

³⁵⁷ (Human Rights Committee, General Comment 27: Freedom of movement (Art.12) : UN Doc. CCPR/C/21/Rev.1/Add.9, 02 November 1999, paragraph 2. See also paragraphs 14, 15 and 17 of the General Comment: “(14) Article 12, paragraph 3, clearly indicates that it is not sufficient that the restrictions serve the permissible purposes; they must also be necessary to protect them. Restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve the desired result; and they must be proportionate to the interest to be protected. (15) The principle of proportionality has to be respected not only in the law that frames the restrictions, but also by the administrative and judicial authorities in applying the law. States should ensure that any proceedings relating to the exercise or restriction of these rights are expeditious and that reasons for the application of restrictive measures are provided. ... (17) A major source of concern is the manifold legal and bureaucratic barriers unnecessarily affecting the full enjoyment of the rights of the individuals to move freely, to leave a country, including their own, and to take up residence.”

488. Article 12 is subject to derogation in time of public emergency threatening the life of the nation.³⁵⁸ Israel made, in 1991, a declaration derogating from the Covenant, but only in respect of Article 9 of the Covenant (which concerns arbitrary detention). In any event, the Covenant does not allow an unfettered derogation from obligations. Derogations are only permitted:

“to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin”³⁵⁹

489. The regime of the Wall plainly goes beyond what is “strictly required by the exigencies of the situation.” That is evident from its route, and from the practice of the Israeli authorities in operating controls at the Wall, as described in Chapter 6 above and in the United Nations reports annexed to this Written Statement. The violation of the freedom of movement reaches an extreme form in Palestinian towns such as Qalqilya, which are completely surrounded by the Wall and Israeli roadblocks. They have become isolated enclaves, cut off from the Occupied Palestinian Territory both inside and outside the Wall.

490. Moreover, as was explained in Chapter 6, the regime of the Wall is explicitly discriminatory, imposing upon Palestinians restraints that are not imposed upon Israeli citizens or those prospectively entitled to Israeli citizenship. This discriminatory aspect of restrictions on movement in the Occupied Palestinian Territory was the subject of criticism by the Committee on Economic, Social and Cultural Rights even before the Wall was begun. The Committee noted “with concern that these restrictions apply only to Palestinian and not to Jewish Israeli citizens.”³⁶⁰ That is not to say that the restrictions would be lawful if they applied to Palestinians and Israelis alike. The restrictions are unlawful because they are unnecessary and disproportionate. Their discriminatory aspect, which extends across a wide area including rights of residence and acquisition of land, does, however, aggravate the seriousness of the violation of the rights secured by the Covenant.

491. International humanitarian law does not itself prescribe a specific freedom of movement. Rather, it regulates the right of an Occupying Power to impose restrictions upon the population of occupied territory. The first limitation is that any change to the law of the occupied territory must be:

“essential to enable the Occupying Power to fulfil its obligations under [the Fourth Geneva Convention], to maintain the orderly government of the territory, and to ensure the security of the Occupying Power, of the members and property of the occupying forces or administration, and likewise of the establishment and lines of communication used by them.”³⁶¹

³⁵⁸ International Covenant on Civil and Political Rights, Article 4.

³⁵⁹ International Covenant on Civil and Political Rights, Article 4. Cf., Article 2.1 of the Covenant: “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

³⁶⁰ UN Doc. E/C.12/1/Add.27, 4 December 1998, paragraph 17.

³⁶¹ Fourth Geneva Convention, Article 64.2.

492. That obligation is also reflected in Article 43 of the Hague Regulations, which obliges the Occupying Power to fulfil its duties concerning the restoration and maintenance of public order “while respecting, unless absolutely prevented, the laws in force in the country.”

493. In addition to the overriding need to demonstrate the absolute necessity of new restrictions on the population, in adopting and applying measures the Occupying Power must treat the people “without any adverse discrimination based, in particular, on race, religion or political opinion.”³⁶² It must secure for them as normal conditions of life as possible.

494. Those requirements stipulated by the Fourth Geneva Convention are routinely violated by Israel in the building and operation of the Wall. Again, descriptions of these practices are set out elsewhere and will not be repeated here.

495. The restrictions on movement lead to violations of other fundamental rights protected by international law, notably the rights to earn a livelihood, to access to food, to access medical care and education, to family life, and the right to self-determination. The sweeping consequences of the limitations on movement were noted by the Special Rapporteur of the UN Commission on Human Rights on the right to food, who reported as follows in October 2003:

“An unprecedented level of restrictions on the movements of Palestinians inside the Occupied Territory is depriving Palestinians not only of their freedom of movement, but also of their right to food. The extensive imposition of curfews, road closures, permit systems, security checkpoints and ‘back-to-back’ truck off-loading systems, which require that most trucks be off-loaded on one side of a checkpoint and reloaded onto another truck on the other side, imposed by the occupying military forces are producing the humanitarian crisis. The USAID-funded study argues that ‘The onset of the Intifada in September 2000 and the subsequent Israeli military incursions, closure and curfews have devastated the Palestinian economy and undermined those systems the Palestinian civilian population relies on for basic needs, including food and health’. The World Bank agrees that ‘the proximate cause of the Palestinian economic crisis is closure’. Restrictions on movement mean that many Palestinians cannot feed themselves: they cannot go to work, go to harvest their fields or go to buy food. For many Palestinians, the inability to feed their families is leading to a loss of human dignity, often heightened by bullying and humiliation at checkpoints.”³⁶³

496. The rights to earn a livelihood, to access to food, to access medical care and education, and to family life, are addressed in the following paragraphs.

(b) The Wall violates the right to earn a livelihood

497. The impact of the Wall upon the communities in the Occupied Palestinian Territory, and in particular its economic impact, is the subject of a continuing series of studies, commonly known as the ‘World Bank reports’, commissioned by the international donor

³⁶² Fourth Geneva Convention, Article 27.

³⁶³ UN Doc. E/CN.4/2004/10/Add.2, 31 October 2003, paragraph 11.

community (through the Humanitarian and Emergency Policy Group ('HEPG'), consisting of the European Union Presidency, the European Commission, the Government of Norway, the U.S. Government, UNSCO, and the World Bank), plus the International Monetary Fund. Four of the reports, dating from May, July, September and November 2003, are included in the dossier submitted by the UN Secretary-General to the Court.³⁶⁴ A further report is due to be published by 31 January 2004, but is not yet available. These reports are based upon extensive and detailed studies of the position on the ground.

498. The picture that emerges from those reports is the same as that which emerges from other reports to UN bodies. The Wall separates Palestinian proprietors from the land that they own and farm. Even if proprietors themselves have access to their lands, the tending and harvesting of produce almost always requires that other workers and suppliers also have access to the land; and the Wall is impeding it. In some cases the Wall is preventing water reaching crops or animals. All of these effects undermine the ability of Palestinians to earn a livelihood.

499. Access to crops and access of the crops to markets is not a matter in which time is irrelevant. The harm inflicted by delays may be irremediable. The Special Rapporteur on Food reported as follows:

“Journeys that would have taken a few minutes now take several hours or days ... The movement of goods is controlled by the back-to-back off-loading system. With numerous checkpoints, this dramatically increases the costs of transporting food and agricultural produce. Permission to cross at checkpoints for agricultural produce and other food can be refused for days without explanation. At various checkpoints in the West Bank, the Special Rapporteur saw truckloads of fruit and vegetables rotting under the sun.”

500. The Palestinian economy is being wrecked by the restrictions on movement in the Occupied Palestinian Territory. Those restrictions are now being made permanent in the Wall that is being built through the Occupied Palestinian Territory. They affect all sectors of the economy. If workers earn no money, they have none to spend in shops which employ other workers, and all of which depend on those in service and other sectors of the economy. But such wide-ranging effects are not simply indirect: *all* the Palestinian people in the Occupied Palestinian Territories directly face the difficulty travelling to and from their place of work, or to find work, unless they stay very close to their homes.

501. Parties to the International Covenant on Economic, Social and Cultural Rights, including Israel, are bound to recognize the right of all individuals to gain a living. Article 6 of the Covenant reads as follows:

“1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.”³⁶⁵

³⁶⁴ Secretary-General's Dossier no. 85 to 88.

³⁶⁵ States Parties to the Covenant are permitted to subject Covenant rights to limitations determined by law, but “only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society”: International Covenant on Economic, Social and Cultural Rights, Article 4.

502. States Parties to the Covenant are obliged, by Article 2(1), to “take steps ... to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the ... Covenant”, and in Article 2(2) to guarantee that the rights “will be exercised without discrimination”. The UN Committee on Economic, Social and Cultural Rights, explained the nature of the obligations under the Covenant:

“(1)...while the Covenant provides for progressive realization and acknowledges the constraints due to the limits of available resources, it also imposes various obligations which are of immediate effect. Of these, two are of particular importance in understanding the precise nature of States parties’ obligations. One of these... is the "undertaking to guarantee" that relevant rights "will be exercised without discrimination ...”

(2) The other is the undertaking in article 2 (1) "to take steps", which in itself, is not qualified or limited by other considerations. ...

(9) The principal obligation of result reflected in article 2 (1) is to take steps "with a view to achieving progressively the full realization of the rights recognized" in the Covenant. ...It thus imposes an obligation to move as expeditiously and effectively as possible towards that goal. Moreover, any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.”³⁶⁶

503. The Wall has severely limited rights of movement within the Occupied Palestinian Territory. Palestine submits that Israel, as a State Party, is under an obligation not to adopt regressive laws, policies or practices, running contrary to the purposes of the Covenant, which hamper or obstruct the exercise of rights under the Covenant. Where individuals are prevented from earning a livelihood by physical or legal constraints that are not justified as proportionate responses to a threat to public order (or to the rights of another individual), the right to a livelihood is violated.

(c) The Wall violates fundamental rights to welfare

504. There are several rights that may be grouped together under the heading of ‘rights to welfare’, which it is convenient to treat together. These are the rights to food, the right of access to medical care, and the right of access to education. These are addressed in turn in the following paragraphs.

505. The effect of the Wall in preventing agricultural production and trade has been noted. So have restrictions on mobility that make it difficult or impossible to earn money to buy food, and even to travel to neighbouring towns to buy food. The expropriation and confiscation of agricultural land to build the Wall also is threatening the right to food.³⁶⁷ In

³⁶⁶ Committee on Economic, Social and Cultural Rights, General Comment 3, ‘The nature of States parties obligations (Art. 2, para.1 of the Covenant)’ (Fifth session, 1990), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 45 (1994).

³⁶⁷ Ziegler Report, para. 16.

various ways, the Wall is having a significant effect upon the ability of the Palestinian people to feed themselves.

506. A report submitted to the UN Commission on Human Rights on 31 October 2003 states that over 22% of Palestinian children under five years of age suffer from malnutrition and around 15.6% of those under 15 suffer from acute anaemia. Food consumption has fallen by 25-30% per capita; and more than half of Palestinian households eat only once per day.³⁶⁸ The same report states that:

“...approximately 280 rural communities in the OPT ... have no access to wells or running water and are completely dependent on water delivered by municipal and private water tankers that frequently has to be purchased from the Israeli water company, Mekorot. The price of such water has risen by up to 80 per cent since September 2000 as a result of the increase in transport costs due to closures. The quality of most water brought in by tanker no longer meets World Health Organization drinking water quality standards.”³⁶⁹

507. Not all of these effects are attributable to the Wall. Some arise from restrictions on movement elsewhere in the Occupied Palestinian Territory. But they demonstrate what the effects of restrictions on movement are; and the Wall is consolidating those restrictions in a structure that divides the Occupied Palestinian Territory into several enclaves in a more absolute and permanent manner than any measures previously taken by the Israeli Government.

508. Israel has a legal duty, as the Occupying Power, to ensure food and water supplies to the population of the Occupied Palestinian Territory, including East Jerusalem, to the fullest extent of the means available to it.³⁷⁰

509. The UN Special Rapporteur on the Right to Food concluded that Israel was violating that obligation:

“As the occupying Power, the Government of Israel has obligations to ensure the right to food of the Palestinian people. The Special Rapporteur believes that the actions being taken in the OPT by the occupying forces violate the right to food.

The effective ‘imprisonment’ of certain communities, such as Qalqilya, by the new security fence / apartheid wall must be halted immediately.”³⁷¹

510. The effects of the Wall in preventing students and teachers from attending places of education are noted in Chapter 6 and in many of the reports in the UN Secretary-General’s Dossier.³⁷² So, too, have the effects of restraints on movement in preventing ambulances and

³⁶⁸ Ziegler Report, para. 9.

³⁶⁹ Ziegler Report, para. 14.

³⁷⁰ Fourth Geneva Convention, Article 55. Cf., International Covenant on Economic, Social and Cultural Rights, Article 11; Universal Declaration on Human Rights, Article 25.

³⁷¹ Ziegler Report, paras. 58, 59.

³⁷² See Dossier nos. 55, 56 and 85-88 accompanying the UN Secretary-General’s submission.

patients from reaching hospitals and medical centres, and preventing medical staff from reaching patients.³⁷³

511. The Wall thus violates rights to food and water, to education, and to medical care. These rights should be enjoyed by all Palestinians; and they are secured with particular rigour for children by the 1989 Convention on the Rights of the Child, to which Israel is a party.³⁷⁴

512. These effects are, furthermore, incompatible with Israel's obligations assumed by it under the International Covenant on Economic, Social and Cultural Rights.³⁷⁵ The welfare rights established in that Covenant are not absolute, in the sense that every State Party to the Covenant is bound to secure them fully for every individual. The rights are, however, progressive; and the UN Commission on Economic, Social and Cultural Rights has explained that every State Party has:

“(10) ...a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, prima facie, failing to discharge its obligations under the Covenant.”³⁷⁶

513. Palestine submits that States Parties are under an obligation not to adopt regressive laws, policies or practices, running contrary to the purposes of the Covenant, and that where individuals are prevented from having access to food, education and medical facilities by physical or legal constraints that are not justified as proportionate responses to a threat to public order (or to the rights of another individual), the rights of access to food, education and healthcare are violated. It submits that Israel's conduct also violates these rights.

(d) The Wall violates the right to family life

514. By comparison with the rights to freedom of movement, to earn a livelihood, and to welfare, the right to family may appear less important. That is not so. Violation of the right to family life is capable of destroying communities, at the level of the family, the town or village, and the nation.

515. The right to family life is affirmed in many international instruments. For example, Article 17 of the International Covenant on Civil and Political Rights stipulates:

³⁷³ See the reports reprinted in Annex Volume 2, as Annexes 1-6, 9 and 14, included as Dossier nos. 56 and 85-88 accompanying the UN Secretary-General's submission.

³⁷⁴ See in particular Articles 24, 27, 28.

³⁷⁵ ICESCR Articles 12, 13. Cf., the Universal Declaration on Human Rights, Article 26.

³⁷⁶ Committee on Economic, Social and Cultural Rights, General Comment 3, 'The nature of States parties obligations (Art. 2, para.1 of the Covenant)' (Fifth session, 1990), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 45 (1994).

“1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.”³⁷⁷

516. The Wall is making it difficult or impossible for families, which are the primary unit of social care in the Occupied Palestinian Territory, to continue to function. It impedes visits to care for sick or infirm parents or children, or for child-minding for working parents. It impedes social contacts and marriage and family-building. Violation of the right to family life is eroding the basis of Palestinian society in the Occupied Palestinian Territory.

(e) The Wall is a form of collective punishment

517. The Wall strikes at Palestinian interests in the most fundamental way. It strikes at the right to dignity of each individual Palestinian.³⁷⁸ The pervasive and debilitating effect of being deprived of dignity in one’s own country, particularly in circumstances where there is overt legal discrimination in favour of unlawful civilian settlements, is one of the hardest to bear of all the indignities and hardships to which the Palestinians are forcibly exposed.

518. These hardships are imposed, not upon those who have committed or who are suspected of planning attacks, but upon the entire non-Israeli population of the Occupied Palestinian Territory. The existence of the Wall renders life in the Occupied Palestinian Territory insecure and unpredictable. It disrupts life, and makes travel over even short distances dependent upon the whims of young, armed soldiers manning the checkpoints.

519. All of the violations summarized above affect the Palestinian population of the Occupied Palestinian Territory at large. The effects are neither confined to, nor even targeted at, identified wrongdoers. They are collective measures of intimidation and punishment of the population. This is incompatible with Article 33 of the Fourth Geneva Convention, which stipulates that “[c]ollective penalties and likewise all measures of intimidation or of terrorism are prohibited”, and Article 75 of Additional Protocol I, which in this respect at least represents customary international law.³⁷⁹

520. The same conclusion was reached in respect of restrictions on movement in the Occupied Palestinian Territory generally by the Special Rapporteur of the Commission on Human Rights, who reported that:

“...checkpoints divide the West Bank into a patchwork of cantons. Since March 2002, permits have been required to travel from one district to another.

³⁷⁷ The right is also secured by and Article 16 of the Convention on the Rights of the Child Cf., Article 23 of the Covenant, which stipulates that “[t]he family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”

³⁷⁸ Article 1 of the Universal Declaration of Human Rights proclaims that: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” The preamble of the Declaration declared that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”

³⁷⁹ See Dieter Fleck (ed.), *The Handbook of Humanitarian Law in Armed Conflicts*, (OUP, 1995), section 507. Cf., the US Judge Advocate General’s School, US Army, *Operational Law Handbook*, JA 422 at 18-2 (1977): “..the US views [inter alia, Article 75 of Additional Protocol I] as customary international law.”.

..... These measures have not prevented the movement of militants between different towns or regions or between Palestine and Israel. They do not protect settlements which are already well protected by the IDF. Instead, internal checkpoints restrict internal trade within the OPT and restrict the entire population from travelling from village to village or town to town. They must therefore be seen as a form of collective punishment.”³⁸⁰

(f) The Wall violates property rights of Palestinians

521. The violations of international law discussed so far are all general, in the sense that they affect the entire population of the Occupied Palestinian Territory, including East Jerusalem. There is a further category of violations that affects specific Palestinians: the violations of property rights.

522. Chapter 6 described the taking and destruction of property that the construction of the Wall has entailed and continues to entail. Property is taken, not just for the Wall itself, but also for the adjacent security zone, and for the siting of supporting facilities.

523. The right to the peaceful enjoyment of property is one of the rights most firmly established in the jurisprudence of international human rights law.³⁸¹ It is recognized, for example, in Article 17 of the Universal Declaration on Human Rights.³⁸² In international humanitarian law, the right is protected in the special circumstances of a military occupation by the provisions on the requisitioning³⁸³ and the destruction of property.³⁸⁴

524. In so far as property is simply destroyed by Israel, by the bulldozing of fields and orchards for example, the action is unlawful as wanton destruction not necessitated by military operations, in violation of Article 53 of the Fourth Geneva Convention.

525. Where Palestinian property is seized or requisitioned by Israel, the violation is of a different nature. The illegality flows from two defects in the requisitioning. First, as was shown above, it lacks any justification as action necessary to satisfy the needs of the Israeli army. It is incompatible with Article 52 of the 1907 Hague Regulations. That provision applies the broader principle, itself set out in Article 55 of the Hague Regulations, that the Occupying Power is merely an administrator and usufructuary of occupied territory.

526. Second, it is in many instances also unlawful because it violates basic procedural rights of the owners. Notices of requisition are not necessarily served on owners: they may be affixed to trees or posts somewhere on the property. The procedure for ‘appeals’ requires compliance with expensive and burdensome formalities, and it was reported recently that “every appeal against the requisitioning of land (numbering in the hundreds) made to the

³⁸⁰ Dugard Report (2003), para. 19. See also Prof. Dugard’s report dated 29 August 2002 and addendum dated 16 September 2002, and his report dated 17 December 2002, reprinted as Annexes 3, 4 and 5 in Annex Volume 2 accompanying this Written Statement.

³⁸¹ As reflected in, *inter alia*, Protocol 1 to the European Convention on Human Rights.

³⁸² “Article 17. (1) Everyone has the right to own property alone as well as in association with others. (2)

No one shall be arbitrarily deprived of his property.”

³⁸³ Hague Regulations, Article 52.

³⁸⁴ Fourth Geneva Convention, Article 53.

military Appeals Committee has been rejected. So, too, have all the applications for relief from the Israeli High Court.³⁸⁵ The process of the takings violates basic procedural rights, firmly established in international law. They are unlawful takings of property, and no *effective* remedies are available to those whose rights are violated.

527. Moreover, as has been noted, the effect of the Wall in preventing the use of property by its owners constitutes a further category of violations of property rights. Examples detailed elsewhere in this statement include the instances of owners being forced to sell agricultural properties because they can no longer visit the property sufficiently frequently to maintain it and keep its produce alive.³⁸⁶

(g) The Wall violates the right of the Palestinian people to self-determination

528. The Wall violates the right of the Palestinian people to self-determination, as enshrined in common Article 1 of the two Covenants. This matter is addressed in the following Chapter, but it is appropriate to refer to it here because the UN Committee on Economic, Social and Cultural rights has explicitly tied that matter to the Covenant. In its Concluding Observations concerning a report submitted by Israel it said:

“39. The Committee urges the State party to respect the right to self-determination as recognized in article 1 (2) of the Covenant, which provides that ‘in no way may a people be deprived of its own means of subsistence’. Closure restricts the movement of people and goods, cutting off access to external markets and to income derived from employment and livelihood. The Committee also calls upon the Government to give full effect to its obligations under the Covenant and, as a matter of the highest priority, to undertake to ensure safe passage at checkpoints for Palestinian medical staff and people seeking treatment, the unhampered flow of essential foodstuffs and supplies, the safe conduct of students and teachers to and from schools, and the reunification of families separated by closures.”³⁸⁷

(5) The Wall is not justified by self-defence

529. Finally, turning to the *jus ad bellum*, Israel is reported to rely upon the right of self-defence to justify the Wall. This argument is misconceived.

530. First, the right of self-defence as it has long been understood is not applicable to circumstances such as those prevailing in the Occupied Palestinian Territory, including East Jerusalem. The requirements for a valid exercise of the right of self-defence are well established in international law. There must be an armed attack upon the State, which can be prevented and which can only be prevented by the taking of forcible measures. The measures

³⁸⁵ Details appear in Annex I to *The Impact of Israel's Separation Barrier on Affected West Bank Communities: a follow-up report to the Humanitarian and Emergency Policy Group (HEPG) and the Local Aid Coordination Committee*, September 30, 2003. This report is dossier no. 87 accompanying the UN Secretary-General's submission.

³⁸⁶ B'Tselem 2003 Report, Annex 13 in Annex Volume 2 accompanying this Written Statement.

³⁸⁷ E/C.12/1/Add.27, 4 December 1998, para. 39.

that may be taken in self-defence are, moreover, strictly limited by the twin criteria of necessity and proportionality. The minimum of force must be used, and even then it may be used only if the forcible measures employed are proportionate to the harm that is to be averted.³⁸⁸

531. The construction of the Wall fails to meet these criteria at practically every step. The violence in the Occupied Palestinian Territory is not on a scale or of a nature equivalent to an ‘armed attack’ against Israel in the sense required for the exercise of a right of self-defence.³⁸⁹ Self-defence in international law cannot be triggered by individual criminal acts which call for police and prosecutorial action, and not military action.

532. Furthermore, the right of self-defence applies so as to justify forcible measures to ward off an attack that is in the course of being committed –an actual, present attack. Some authorities extend the right to circumstances where an imminent armed attack has been commenced. No authority supports the view that the right of self-defence extends so far as to provide a justification for the taking of measures that, far from being responses to an actual or imminent attack, are prophylactic, preventive measures intended to ensure that no attack can be put into effect. It is not a general right for a State to take forcible measures outside its territory in order to prevent the commission of crimes within the State.

533. The right of self-defence is, moreover, subject to the principle of proportionality. The force used must be proportional to the actual or imminent harm. As has been shown, the Wall is not a proportionate response to terrorist attacks.

534. The argument fails for a second reason. The entitlement of States to use force is accommodated and regulated by the Law of War, the *jus in bello*. The Fourth Geneva Convention permits forcible measures against civilian populations, subject to strict limits. That exhausts the legal rights of an Occupying Power. A State may not use all of its powers under the Fourth Geneva Convention and the Laws of War and then decide that those powers are inadequate and invoke the more general right of self-defence, which belongs to the *jus ad bellum*, in order to avoid the constraints of international humanitarian law.

(6) Concluding remarks

535. This Chapter has sought to identify the specific violations of international humanitarian law and of international human rights law that result from the construction and operation of the Wall in the Occupied Palestinian Territory, including East Jerusalem. The next Chapter continues the legal analysis by addressing the question of the violation of the Palestinian People’s right to self-determination in international law.

³⁸⁸ *Oil Platforms, I.C.J. Reports 2003*, paras. 43, 51, 57, 73-75.

³⁸⁹ *Ibid.*

Chapter 10. VIOLATIONS OF THE RIGHT OF THE PALESTINIAN PEOPLE TO SELF-DETERMINATION

536. The right of the Palestinian people to self-determination is clearly recognized by the international community and the United Nations, and that right is gravely violated by the construction of the Wall by Israel in the Occupied Palestinian Territory.

(1) The right of the Palestinian people to self-determination as recognized by the international community and the United Nations

537. The existence of the principle of equal rights and self-determination of peoples is no longer a matter of dispute in international law. The matter was clearly ascertained by the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (Resolution 2625(XXV) of 24 October 1970), which stated *inter alia*:

“ By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all people have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter. ”

538. The Court has acknowledged that right *inter alia* in the following statement in its Judgment of 30 June 1995 in the case concerning *East Timor*:

“The principle of self-determination of peoples has been recognized by the United Nations Charter and in the jurisprudence of the Court (see *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, pp. 31-32, paras. 52-53; *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, pp. 31-33, paras. 54-59); it is one of the essential principles of contemporary international law.”³⁹⁰

539. The application of this principle to Palestine is also no longer in dispute. The principle was rooted in UN General Assembly Resolution 181 (II) of 29 November 1947, which set forth a plan partitioning Palestine into two States, one Arab and one Jewish, with an economic union between them and with Jerusalem as a *corpus separatum*. It took some time, however, for the rights of the Palestinian people to be fully established in the United Nations.

540. In its Resolution 2535 B (XXIV) of 10 December 1969, the General Assembly stated that it “ 1. [r]eaffirms the inalienable rights of the people of Palestine.” In subsequent

³⁹⁰ *East Timor (Portugal v. Australia), Judgment, I.C.J. Reports 1995*, p. 90, at p. 102, para. 29.

years, the General Assembly has consistently reaffirmed that the Palestinians are a People and has specified their rights. Thus, in Resolution 2649 (XXV) of 30 November 1970, the Assembly:

“ 2. Recognizes the right of peoples under colonial and alien domination in the legitimate exercise of their right to self-determination to seek and receive all kinds of moral and material assistance, in accordance with the resolutions of the United Nations and the spirit of the Charter of the United Nations;

3. Calls upon all Governments that deny the right to self-determination of peoples under colonial and alien domination to recognize and observe that right in accordance with the relevant international instruments and the principles and spirit of the Charter;

4. Considers that the acquisition and retention of territory in contravention of the right of the people of that territory to self-determination is inadmissible and a gross violation of the Charter;

5. Condemns those Governments that deny the right to self-determination of peoples recognized as being entitled to it, especially of the peoples of southern Africa and Palestine. ”

541. The General Assembly in resolution 2672 C (XXV) of 8 December 1970 further “[r]ecognizes that the people of Palestine are entitled to equal rights and self-determination, in accordance with the Charter of the United Nations.” A further step was taken with Resolution 3236 (XXIX) of 22 November 1974, in which the General Assembly:

“ 1. [r]eaffirms the inalienable rights of the Palestinian people in Palestine, including:(a) The right to self-determination without external interference;(b) The right to national independence and sovereignty ”³⁹¹.

542. General Assembly Resolution ES 7/2 (July 1980) in turn mentions expressly among the inalienable rights of the Palestinian people:

“(b) The right to establish its own independent sovereign State”.

543. Contemporary resolutions of the General Assembly express their full support for the right of the Palestinian people to self-determination. For instance, in Resolution 58/163 of 22 December 2003, which was adopted by a vote of 169 in favour to five against (Israel, Marshall Islands, Micronesia, Palau, and the United States of America), with no abstention, the General Assembly:

“Affirming the right of all States in the region to live in peace within secure and internationally recognized borders,

³⁹¹ Other resolutions affirming the inalienable rights of the Palestinian people include: A/RES/33/24, 29 November 1978; A/RES/34/44, 23 November 1979; A/RES/37/43, 3 December 1982; A/RES/38/17, 22 November 1983.

1. Reaffirms the right of the Palestinian people to self-determination, including the right to their independent State of Palestine”.

544. The Security Council moved less quickly than the General Assembly. Thus, Resolution 242 (1967) of 22 November 1967, confirmed by Resolution 338 (1973) of 22 October 1973, affirmed the following principles :

“ (i) Withdrawal of Israel armed forces from territories occupied in the recent conflict;

(ii) [...] respect for and acknowledgment of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force”.

545. In Resolution 1397 (2002) of 12 March 2002, the Council stated more clearly that Palestine is among the States in the region possessing the right to live within secure boundaries:

“ *Affirming* a vision of a region where two States, Israel and Palestine, live side by side within secure and recognized borders.”

546. More recently, Resolution 1515 (2003) of 19 November 2003 quoted that paragraph and added that the Council:

“ 1. Endorses the Quartet Performance Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian conflict (S/2003/529);

2. Calls on the parties to fulfil their obligations under the Roadmap in cooperation with the Quartet and to achieve the vision of two States living side by side in peace and security. ”

547. It is indisputable that when reference is made to the right of the Palestinian people to self-determination, one is concerned with a people in a given territory: i.e., the Occupied Palestinian Territory, including East Jerusalem; in other words, all the Palestinian territories which were occupied by Israel in 1967.

(2) The construction of the Wall gravely infringes the right of the Palestinian people to self-determination

548. It is submitted that construction of the Wall gravely infringes the right of the Palestinian people to self-determination. As the above developments demonstrate, the construction of the Wall affects the exercise of the right of the Palestinian people to self-determination in the following ways:

a) To the extent that the Wall departs from the Green Line and is constructed in the Occupied Palestinian Territory, including in and around East Jerusalem, it severs the territorial sphere over which the Palestinian people are entitled to exercise their right

- of self-determination. To the same extent the Wall is also a violation of the legal principle prohibiting the acquisition of territory by the use of force;
- b) The route of the Wall is designed to change the demographic composition of the Occupied Palestinian Territory, including East Jerusalem, by reinforcing the colonial Israeli settlements in the Occupied Palestinian Territory and facilitating their extension – in disregard of the fact that these settlements are themselves illegal according to international law;
 - c) By the creation of Palestinian enclaves, of discrimination against the Palestinian population vis-à-vis the Israeli settlers, and of unbearable economic conditions, the Wall is having the clear and foreseeable effect of the forced displacement of the Palestinian population into increasingly limited areas regarded as safe and livable for Palestinians. The Wall is intended to reduce and parcel out the territorial sphere over which the Palestinian people are entitled to exercise their right to self-determination. Such a policy aims at establishing non-contiguous Palestinian areas similar to Bantustans, prohibited by international law;
 - d) The Wall violates the right of the Palestinian people to permanent sovereignty over their natural resources in the Occupied Palestinian Territory, including East Jerusalem, and destroys the economic and social basis of the life of the Palestinian people;
 - e) The Wall endangers the feasibility of a viable State for the Palestinian people and consequently undermines future negotiations based on the ‘two State’ principle.

(a) The Wall severs the territorial sphere over which the Palestinian people are entitled to exercise their right to self-determination and constitutes a violation of the legal principle prohibiting the acquisition of territory by the use of force

549. The link between the right of the Palestinian people to exercise self-determination over the whole of the Occupied Palestinian Territory, including East Jerusalem, and the construction of the Wall is well established by the Special Rapporteur of the Human Rights Commission, Professor John Dugard, in his report to the Commission on the situation of human rights in the Palestinian territories occupied by Israel:

“15. The right to self-determination is closely linked to the notion of territorial sovereignty. A people can only exercise the right of self-determination within a territory. The amputation of Palestinian territory by the Wall seriously interferes with the right of self-determination of the Palestinian people as it substantially reduces the size of the self-determination unit (already small) within which that right is to be exercised.”³⁹²

550. At the same time, the Wall amounts to an incorporation of a significant part of Palestinian land into the territory of Israel, and consequently a violation of the principle prohibiting the acquisition of territory by the use of force and the acquisition of territory by annexation. Here again, Professor Dugard's report describes the situation accurately:

“ 14. [...] the wall is manifestly intended to create facts on the ground. It may lack an act of annexation, as occurred in the case of East Jerusalem and the Golan Heights. But its effect is the same: annexation. Annexation of this kind goes by another name in international law — conquest. Conquest, or the

³⁹²

Dugard Report (2003), para. 15.

acquisition of territory by the use of force, has been outlawed by the prohibition on use of force contained in the Kellogg-Briand Pact of 1928 and Article 2, paragraph 4, of the Charter of the United Nations. The prohibition of the acquisition of territory by force applies irrespective of whether the territory is acquired as a result of an act of aggression or in self-defence. The Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV) of 24 October 1970, annex) declares that ‘the territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognized as legal’. This prohibition is confirmed by Security Council resolution 242 (1967) and the Oslo Accords, which provide that the status of the West Bank and Gaza shall not be changed pending the outcome of the permanent status negotiations. The Geneva Convention relative to the Protection of Civilian Persons in Time of War (the Fourth Geneva Convention) provides that protected persons in an occupied territory shall not be deprived of the benefits of the Convention ‘by any annexation ... of the occupied territory’ (art. 47).³⁹³

551. This point of view is unquestionably shared by the General Assembly of the United Nations, whose Resolution ES-10/13 of 21 October 2003 reaffirms in its Preamble “the principle of the inadmissibility of the acquisition of territory by force.”

552. Several delegations came to the same conclusions in their speeches before United Nations organs:

France:

“The permanent nature of the wall means that the territories between the wall and the Green Line will be de facto incorporated by Israel and under its control. Moreover, the inadmissible nature of the acquisition of territory by force is a fundamental principle of Security Council resolution 242 (1967), on which the peace process is based.”³⁹⁴

Jordan:

“We condemn the construction of the separation wall, which entrenches the Israeli occupation of the Palestinian territories, devours more land and imposes a de facto situation on the future Palestinian State, in the sense that it cuts deeply into the Palestinian territories and does not conform to the Green Line of June 1967. The completion of the wall means the annexation of more than 10 per cent of the land of the West Bank to Israel and the imprisonment of more than 95,000 Palestinian citizens between the wall and the Green Line of June 1967.”³⁹⁵

Malaysia, on behalf of the Non-Aligned Movement:

“The construction of the wall itself constitutes a flagrant violation of international law and international humanitarian law, as it seeks to effectively alter the territorial

³⁹³ *Ibid.* para. 14.

³⁹⁴ UN Doc. S/PV.4841, p. 18.

³⁹⁵ S/PV.4841, p. 31.

integrity of the West Bank and accomplish the de facto annexation of the occupied Palestinian territory.”³⁹⁶

Islamic Republic of Iran, on behalf of the Organization of the Islamic Conference:

“The Israeli regime's building of a separation wall deep into occupied Palestinian territory, together with the continued construction of Jewish settlements in the same occupied territory, is a further violation of international law and of the basic rights of the Palestinian people. It is another means for achieving the Israeli goal of depriving the Palestinians of their inherent national rights and, as such, it is having a serious impact on all aspects of the Palestinian question.”³⁹⁷

553. Numerous other States have made declarations asserting a similar position: for example, Cuba,³⁹⁸ Guinea,³⁹⁹ Libyan Arab Jamahiriya,⁴⁰⁰ Pakistan,⁴⁰¹ Syrian Arab Republic,⁴⁰² South Africa,⁴⁰³ Pakistan,⁴⁰⁴ and Zimbabwe.⁴⁰⁵

554. The Quartet of the U.S., Russian Federation, European Union and the United Nations expressed the same opinion in its statement of 26 September 2003:

³⁹⁶ S/PV.4841, p. 41.

³⁹⁷ General Assembly, Emergency Special Session, 21st meeting, 20 October 2003, A/ES-10/PV.21, p. 14.

³⁹⁸ “The building of the separation wall, the expansion of settlements and the construction of security routes between the settlements and Israel constitute a clear territorial expansion, to the detriment of the Palestinian people and its inalienable right to enjoy self-determination and to establish its own independent and sovereign State” (S/PV.4841, pp. 29-30).

³⁹⁹ “Clearly, the separation wall, whose route cuts seriously and deeply into Palestinian territories, is a pernicious way to continue and expand the settlement of occupied territories and to deprive the Palestinian people of a territorial element that is essential to the full exercise of its sovereignty” (S/PV.4841, p. 17).

⁴⁰⁰ “The Security Council is meeting today to discuss the problem of the separation wall being built in the occupied Palestinian territories as a security construction but which is in reality a part of Israel’s long-term plan to annex additional territories by force” (S/PV.4841, p. 38).

⁴⁰¹ “It is imperative to recognize that the separation wall is an unlawful annexation of occupied Palestinian territory” (S/PV.4841, p. 22).

⁴⁰² “The building of the expansionist wall is nothing but a continuation of Israeli colonialist activities. [...] It is also a violation of the firm principle of international law that prohibits the acquisition of the territories of others by force” (General Assembly, Emergency Special Session, 21st meeting, 20 October 2003, A/ES-10/PV.21, p. 9).

⁴⁰³ “We believe that Mr. Dugard [the Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Palestinian territories occupied by Israel since 1967] is correct in his assertion that we should avoid political euphemisms and rather state in precise and legally accurate terms that ‘what we are presently witnessing in the West Bank is a visible and clear act of territorial annexation under the guise of security.’” (S/PV.4841, pp. 35-36).

⁴⁰⁴ “The separation wall is being built in clear violation of international law and Israel's commitments under bilateral and international agreements. The wall does not follow the so-called ‘Green Line’ and in effect cuts deep into Palestinian lands. As such, it runs contrary to the fundamental principle of international law, which deems illegal the acquisition of territory by the use of force” (General Assembly, Emergency Special Session, 21st meeting, 20 October 2003, A/ES-10/PV.21, p. 17).

⁴⁰⁵ “The building of the wall, which ignores the legitimate concerns of the Palestinian people, has resulted in the confiscation of Palestinian land, destruction of their livelihoods and annexation of their land. People have been cut off from their farmlands, work places, schools, health facilities and other social services” (General Assembly, Emergency Special Session, 21st meeting, 20 October 2003, A/ES-10/PV.21, p. 20).

“The Quartet members reaffirm that, in accordance with the road map, settlement activity must stop, and note with great concern the actual and proposed route of Israel's West Bank fence, particularly as it results in the confiscation of Palestinian land, cuts off the movement of people and goods and undermines Palestinians' trust in the road map process, as it appears to prejudice final borders of a future Palestinian State.”⁴⁰⁶

- (b) The route of the Wall is designed to change the demographic composition of the Occupied Palestinian Territory, including East Jerusalem, by reinforcing the Israeli settlements and by facilitating their extension - in disregard of the fact that these settlements are illegal according to international law

555. It has been shown in Chapters 4 and 6, and in the annexed United Nations reports, that the Wall entrenches the Israeli settlements in the Occupied Palestinian Territory. The link between the construction of the Wall and the protection and extension of settlements is again well established by the Special Rapporteur of the Human Rights Commission, Professor John Dugard, in his report to the Commission on the situation of human rights in the Palestinian territories occupied by Israel:

“Like the settlements it seeks to protect, the Wall is manifestly intended to create facts on the ground.”⁴⁰⁷

556. Although said in a veiled way, the speech made by Israeli Prime Minister Ariel Sharon at the “Herzliya Conference” on 18 December 2003, seems to confirm that the Wall is intended to include in Israel a substantial part of the Israeli settlements, which lie between the Wall and the Green Line, in accordance with Israel’s unilateral “Disengagement Plan” :

“The Disengagement Plan will include the redeployment of IDF forces along new security lines and a change in the deployment of settlements, which will reduce as much as possible the number of Israelis located in the heart of the Palestinian population. We will draw provisional security lines and the IDF will be deployed along them. Security will be provided by IDF deployment, the security fence and other physical obstacles.”⁴⁰⁸

557. The fact that the Wall is primarily conceived to reinforce the colonial settlements of Israel in the Occupied Palestinian Territory, including East Jerusalem, is evidenced by the statements of many delegations. For example:⁴⁰⁹

⁴⁰⁶ Quartet statement, New York, 26 September 2003, Annex to the Letter dated 6 October 2003 from the Secretary-General addressed to the President of the Security Council, S/2003/951.

⁴⁰⁷ Dugard Report (2003), para. 14.

⁴⁰⁸ In P.M. Speeches, text *available at* <http://www.first.gov.il/first/english/Html/homepage.htm>

⁴⁰⁹ See also the statements made by the following delegations :

- Syrian Arab Republic: “ Israel plans to enclose within the wall large settlements established in occupied Palestinian territories, containing more than 200,000 settlers. Thus, Israel is not only violating the Fourth Geneva Convention by building those settlements but goes even further by annexing those settlements to Israel. [...] Those actions are, in fact, war crimes under the Fourth Geneva Convention and its Additional Protocol I. Therefore, Israel should be deterred from continuing and no legal or political legitimacy should be granted to its actions ” (S/PV.4841, p. 12).

European Union: Presidency Conclusions, Copenhagen European Council, 12 and 13 December 2002 :

“ [...] In this context, the European Council is alarmed at the continuing illegal settlement activities, which threaten to render the two-State solution physically impossible to implement. The expansion of settlements and related construction, as widely documented including by the European Union's Settlement Watch, violates international law, inflames an already volatile situation, and reinforces the fear of Palestinians that Israel is not genuinely committed to end the occupation. It is an obstacle to peace. The European Council urges the Government of Israel to reverse its settlement policy and as a first step immediately apply a full and effective freeze on all settlement activities. It calls for an end to further land confiscation for the construction of the so-called security fence. [...]”⁴¹⁰

France :

“This will be a permanent structure that will permanently change geographic and demographic data. The building of the wall can only encourage the development of settlements and aggravate the already serious problems that these are causing.”⁴¹¹

Russian Federation:

“The unlawful settlement activity on the Palestinian territories and the construction of the so-called separation wall, which has resulted in the seizure of Palestinian lands, must be immediately halted. Such actions run counter to the concept of the establishment of two independent States, Palestine and Israel”⁴¹².

- Libyan Arab Jamahiriya : “ The construction of the wall is also an attempt by Israel to reaffirm its annexation of East Jerusalem. Moreover, the Israeli occupying authorities are pursuing the establishment of illegal settlements in occupied Palestinian territories, including East Jerusalem, thus revealing their expansionist intentions and their offhand attitude towards international efforts to achieve a peaceful solution to this problem ” (S/PV.4841, p. 38).

- Saudi Arabia : “ That plan seeks to erase and completely abolish the Green Line in several areas and to annex the Israeli settlements to Israel, creating narrow alleys between cities and other populated Palestinian areas, which the Israeli Government views as separate cantons that will be controlled by Israel, which will allow the Palestinians to manage their own internal affairs, so that Israel will be spared the burden of a foreign population ” (S/PV.4841, p. 36).

- South Africa : “ The acceleration of the construction of a separation wall, as well as the expansion of illegal settlements on Palestinian land, is an act of annexation that is inconsistent with Israel's obligations under the internationally accepted road map of the Quartet ” (General Assembly, Emergency Special Session, 21st meeting, 20 October 2003, A/ES-10/PV.21, p. 12).

⁴¹⁰ European Council Declaration on The Middle East, Presidency conclusions, Copenhagen European Council, 12 and 13 December 2002, Annex III, Doc./02/15, p. 13, http://europa.eu.int/futurum/documents/other/oth121202_en.pdf. See also the Declaration by the Presidency, on behalf of the European Union, on the situation in the Middle East, 11 September 2003 : “ [...]The European Union urges the two parties to remain strongly committed to the need of an ongoing dialogue and to the implementation of the road map, and, in this regard, to take the following measures : [...] The Israeli government: [...] freezing all settlement activities and the building of the security wall along a track that jeopardises a political solution to the conflict ” (P/03/108, 12400/03 (Presse 261), http://www.europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=PESC/03/108|0|AGED&lg=EN&display)).

⁴¹¹ S/PV.4841, p. 18.

⁴¹² S/PV.4841, p. 15.

Germany:

“Thus Germany urges the Government of Israel to halt its continuing settlement activities and stop the construction of the so-called security fence. While recognizing Israel’s need for security, we consider the security fence to be detrimental to the implementation of the road map”.⁴¹³

China:

“Israel must stop building the separation wall and stop expanding settlements.”⁴¹⁴

Islamic Republic of Iran, on behalf of the Organization of the Islamic Conference:

“ The policy of building a wall is supplemental to the policy of expanding illegal Jewish settlements in the occupied territory. The illegal settlements in the West Bank, built against the will of the international community, will benefit first and foremost from the wall. Likewise, illegal Jewish settlements are expanding parallel with the completion of the wall that perpetuates racism.”⁴¹⁵

558. The specific situation in the zone now between the Green Line and the Wall should not lead one to overlook the fact that the Israeli policy of settlements –wherever they might be located in the Occupied Palestinian Territory – is by itself a violation of international law, as is recognised by numerous sources:

(i) Security Council resolutions

559. Numerous Security Council resolutions have declared the illegality of the Israeli policy of settlements. For example:

Resolution 446 (1979) of 22 March 1979:

“The Security Council,

1. Determines that the policy and practices of Israel in establishing settlements in the Palestinian and other Arab territories occupied since 1967 have no legal validity and constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East;

[...]

3. Calls once more upon Israel, as the occupying Power, to abide scrupulously by the 1949 Fourth Geneva Convention, 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.”

⁴¹³ S/PV.4841, p. 19.

⁴¹⁴ S/PV.4841, p. 20.

⁴¹⁵ General Assembly, Emergency Special Session, 21st meeting, 20 October 2003, A/ES-10/PV.21, p. 14.

Resolution 465 (1980), of 1 March 1980:

“The Security Council,

5. Determines that all measures taken by Israel to change the physical character, demographic composition, institutional structure or status of the Palestinian and other Arab territories occupied since 1967, including Jerusalem, or any part thereof, have no legal validity and that Israel's policy and practices of settling parts of its population and new immigrants in those territories constitute a flagrant violation of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War and also constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East;

6. Strongly deplores the continuation and persistence of Israel in pursuing those policies and practices and calls upon the Government and people of Israel to rescind those measures, to dismantle the existing settlements and in particular to cease, on an urgent basis, the establishment, construction and planning of settlements in the Arab territories occupied since 1967, including Jerusalem;

7. Calls upon all States not to provide Israel with any assistance to be used specifically in connexion with settlements in the occupied territories;

(ii) General Assembly resolutions

560. Numerous General Assembly resolutions have established the illegality of the Israeli policy of settlements. For instance, Resolution 32/5 of 28 October 1977 states:

“The General Assembly,

Expressing grave anxiety and concern over the present serious situation in the occupied Arab territories as a result of the continued Israeli occupation and the measures and actions taken by the Government of Israel, as the occupying Power, and designed to change the legal status, geographical nature and demographic composition of those territories,

Considering that the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949,^{1/} is applicable to all the Arab territories occupied since 5 June 1967,

1. Determines that all such measures and actions taken by Israel in the Palestinian and other Arab territories occupied since 1967 have no legal validity and constitute a serious obstruction of efforts aimed at achieving a just and lasting peace in the Middle East;

2. Strongly deplores the persistence of Israel in carrying out such measures, in particular the establishment of settlements in the occupied Arab territories;

3. Calls upon Israel to comply strictly with its international obligations in accordance with the principles of international law and the provisions of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949;

4. Calls once more upon the Government of Israel, as the occupying Power, to desist forthwith from taking any action which would result in changing the legal status, geographical nature or demographic composition of the Arab territories occupied since 1967, including Jerusalem. ”

561. Particularly relevant is the latest General Assembly resolution on this matter, Resolution A/58/98 of 9 December 2003, which emphasizes the linkage between settlement activities and the annexation of territory and the prohibition of that activity in all of the Occupied Palestinian Territory, including East Jerusalem, on both sides of the Wall :

“Israeli Settlements in the Occupied Palestinian Territory, including Jerusalem, and the Occupied Syrian Golan

The General Assembly,

[...]

Reaffirming the applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, 1 to the Occupied Palestinian Territory, including East Jerusalem, and to the occupied Syrian Golan,

[...]

Welcoming the presentation by the Quartet to the parties of the road map to a permanent two-State solution to the Israeli-Palestinian conflict, and noting its call for a freeze on all settlement activity,

Aware that Israeli settlement activities have involved, inter alia, the transfer of nationals of the occupying Power into the occupied territories, the confiscation of land, the exploitation of natural resources and other illegal actions against the Palestinian civilian population,

Bearing in mind the detrimental impact of Israeli settlement policies, decisions and activities on efforts to achieve peace in the Middle East,

Expressing grave concern about the continuation by Israel of settlement activities in violation of international humanitarian law, relevant United Nations resolutions and the agreements reached between the parties, including the construction and expansion of the settlements in Jabal Abu-Ghneim and Ras Al-Amud in and around Occupied East Jerusalem,

Expressing grave concern also about the construction by Israel of a wall inside the Occupied Palestinian Territory, including in and around East Jerusalem,

and expressing its concern in particular about the route of the wall in departure from the Armistice Line of 1949, which could prejudge future negotiations and make the two-State solution physically impossible to implement and would cause the Palestinian people further humanitarian hardship.

Reiterating its opposition to settlement activities in the Occupied Palestinian Territory, including East Jerusalem, and to any activities involving the confiscation of land, the disruption of the livelihood of protected persons and the de facto annexation of land [...].

1. Reaffirms that Israeli settlements in the Palestinian territory, including East Jerusalem, and in the occupied Syrian Golan are illegal and an obstacle to peace and economic and social development;

2. Calls upon Israel to accept the de jure applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, 1 to the Occupied Palestinian Territory, including East Jerusalem, and to the occupied Syrian Golan and to abide scrupulously by the provisions of the Convention, in particular article 49;

3. Reiterates its demand for the complete cessation of all Israeli settlement activities in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan;

4. Demands 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 from the Armistice Line of 1949 and is in contradiction to relevant provisions of international law; [...]

5. Urges all States parties to the Geneva Convention relative to the Protection of Civilian Persons in Time of War to ensure respect for and compliance with its provisions in all the Arab territories occupied by Israel since 1967, including Jerusalem ”.

This Resolution was adopted by an overwhelming majority of 156 votes in favour to 6 votes against (Israel, Nauru, Palau, Marshall Islands, Micronesia, and the United States of America), with 13 abstentions.

(iii) The Declaration of the High Contracting Parties to the Fourth Geneva Convention

562. In the Declaration of High Contracting Parties to the Fourth Geneva Convention, issued on 5 December 2001, the Parties:

“reaffirm the illegality of the settlements in the said territories [*sc.*, Occupied Palestinian Territory, including East Jerusalem] and of the extension thereof.”
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563. This position is based on Article 49 of the Fourth Geneva Convention which states categorically: “[...] The occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.” The Rome Statute of the International Criminal Court, in force since 1 July 2002, includes among the war crimes within the jurisdiction of the International Criminal Court the “transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies” (Article 8 (2) (b) (vii)).

- (c) By the creation of Palestinian enclaves, discrimination against and humiliation of the Palestinian population, and the creation of unbearable economic conditions, the Wall is having the clear and foreseeable effect of the forced displacement of the Palestinian population into increasingly limited areas regarded as safe and livable for Palestinians. The Wall is part of a policy of reducing and parcelling out the territorial sphere over which the Palestinian people are entitled to exercise their right to self-determination, establishing non-contiguous Palestinian areas similar to Bantustans.

564. In the previous Chapters, in particular Chapters 4 and 6, it has been described how the construction of the Wall is having several grievous effects:

The Wall creates walled enclaves which artificially divide the Palestinian population from their own environment, encircles them with hostile Israeli settlements and prohibited roads reserved for Israeli settlers, and establishes non-contiguous areas similar to the Bantu homelands of the former apartheid regime of South Africa. Although the term Bantustans may appear improper, as one of its features was a fictitious grant of ‘sovereignty’ to each homeland, the rationale is the same. Progressively a process is under way limiting any ‘Palestinian State’ to Palestinian cities and villages comprised of a number of separate enclaves without sovereignty and with no resources for self-sustenance and no possibility of free circulation for the population, and surrounded by Israeli sovereignty in the interstices between the enclaves.

it discriminates against the Palestinian population and in the interest of the illegal Israeli settlers, by *inter alia*:

the denial of the right to liberty, infringement of their freedom or dignity;

arbitrary arrest and illegal imprisonment;

the imposition of living conditions calculated to cause the displacement of the Palestinian population;

the imposition of measures preventing the Palestinian population from participation in the political social, economic and cultural life, impeding their right to work and access to education and health facilities, limiting the right to move freely within or outside their country and their the right to freedom of residence;

the expropriation of their land and property, destruction of their houses, orchards, and other property.

565. Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination of 7 March 1966, to which Israel is a Party, defines “racial discrimination” as:

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Para 12, Secretary-General’s Dossier no. 67.

“any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”

566. In the case concerning the Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), the Court defined apartheid in the following way:

“130. The application of this policy [apartheid] has required, as has been conceded by South Africa, restrictive measures of control officially adopted and enforced in the Territory by the coercive power of the former Mandatory. These measures establish limitations, exclusions or restrictions for the members of the indigenous population groups in respect of their participation in certain type of activities, fields of study or of training, labour, employment and also submit them to restrictions or exclusions of residence and movement in large parts of the Territory.

131. Under the Charter of United Nations, the former Mandatory had pledged itself to observe and respect, in a territory having an international status, human rights and fundamental freedoms for all without distinction as to race. To establish instead, and to enforce, distinctions, exclusions, restrictions and limitations exclusively based on grounds of race, colour, descent or national or ethnic origin which constitute a denial of fundamental human rights is a flagrant violation of the purposes and principles of the Charter.”⁴¹⁷

567. The similarity with the situations in the Occupied Palestinian Territory is blatant. The Ziegler Report to the UN Commission on Human Rights characterizes Israel’s policy as follows:

“3. The strategy of “Bantustanization”

18. For many Israeli and Palestinian commentators, the policy of land confiscation is inspired by an underlying strategy of gradually isolating Palestinian communities into separate territorial areas or “Bantustans”. Michael Warschawski has pointed to a conscious policy of “Bantustanization” of the OPT. A senior Israeli commentator, Akiva Eldar, has written about the explicit use of the Bantustan concept by Israeli Prime Minister Sharon, who once “explained at length that the Bantustan model was the most appropriate solution to the conflict”. The term “Bantustan” historically refers to the separate territorial areas designated as homelands under the South African apartheid State. Creating such “Bantustans” would deprive a future Palestinian State of any coherent land base and international borders, and prevent the building of a Palestinian nation with the capacity to realize the right to food for its people.

19. The building of the security fence/apartheid wall is seen as a concrete manifestation of this “Bantustanization”, as is the extension and building of

⁴¹⁷ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 16, at p. 57, paras. 130-131.

new settlements and settler roads, which are cutting up the West Bank and the Gaza Strip into barely contiguous territorial units. Looking at detailed maps of the actual and future direction of the security fence/apartheid wall and settlements, which the Israeli and Palestinian authorities, as well as NGOs, provided to the Special Rapporteur, it seems that this strategy is in the process of being realized. According to Jeff Halper, Coordinator of the Israeli Committee against House Demolitions, the road map offers hope, explicitly referring to the “end of the Occupation”, yet it comes at a time “when Israel is putting the finishing touches on its 35-year campaign to render the Occupation irreversible.”⁴¹⁸

568. As was explained in Chapter 6, the Wall in various ways causes displacement of the Palestinian population, especially from the Closed Zone, and encircles the Palestinian population in a series of enclaves. The effect is the disruption of the demographic unity and the territorial integrity of the Occupied Palestinian Territory, including East Jerusalem, the partitioning of the territory, and the perpetuation and increase of the colonization of the territory by Israel. As was noted in Chapter 9, these effects constitute grave breaches of international law.

(i) Enclaves

569. Many delegations to the United Nations have denounced the wrongfulness of the Israeli policy⁴¹⁹ of creating enclaves. For example:

France:

“The route [of the Wall] also seriously damages the viability of a future Palestinian State, which would be likely to find itself reduced to a collection of isolated enclaves.”⁴²⁰

Afghanistan, as Vice-Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People:

“Last August, the Israeli authorities published expropriation warrants to erect the wall referred to as the ‘Jerusalem envelope’. Some 50,000 Palestinians could thus be relegated to enclaves situated on the Israeli side. True, the wall separates Israelis from Palestinians, but — and this is the real tragedy — it also separates Palestinians from Palestinians.”⁴²¹

⁴¹⁸ Ziegler Report, para. 18-19. Footnotes omitted, Secretary-General’s Dossier no. 56.

⁴¹⁹ See also the declarations made by the following delegations :

- Pakistan: “ A viable Palestinian State, as envisaged in the Quartet’s road map, cannot be established in the bantustans that will be created by the separation wall. The peace which Israel seeks will not result from the continuing illegal occupation and suppression of a Palestinian population in these lands which is hostile and aggrieved ” (S/PV.4841, p. 22).

- Syrian Arab Republic: “ First, the route traced by the wall is far removed from the borders of the territories occupied since 1967, penetrating deep into Palestinian territories. This reveals the Israeli Government’s real intention: to create facts on the ground allowing them to set borders as they wish, thus placing the Palestinian people in large bantustans and isolating them ” (S/PV.4841, p. 12).

- Guinea : “ In addition, [the Wall] is the expression of a policy known as “bantustanization”, whose objective is to create enclaves that are not viable, denying any freedom of movement to the Palestinian people and reserving the most fertile and most productive lands for the occupier ” (S/PV.4841, p. 17).

⁴²⁰ S/PV.4181, p. 18.

⁴²¹ General Assembly, Emergency Special Session, 21st meeting, 20 October 2003, A/ES-10/PV.21, p. 10.

(ii) Segregation amounting to bantustanization

570. Some delegations to the UN have expressly described Israel's policy in terms of the creation of Bantustans. For example:

Organization of the Islamic Conference:

“The wall furthers the ‘bantustanization’ of the West Bank into hundreds of small, dependent entities that cannot sustain themselves and that are more akin to small, disconnected open-air prisons surrounded by Israeli military checkpoints and settlements.”⁴²²

Cuba:

“Building new physical divisions in the occupied Palestinian territory makes the opportunities for a lasting and just settlement to the conflict to become even more distant. ‘Bantustanization’ of the occupied Palestinian territories creates new changes in the field, which further complicate any future negotiations on permanent status and make it impossible to establish a Palestinian State in which all its territory is contiguous.”⁴²³

(iii) Discrimination

571. Again, numerous delegations have criticised the discriminatory aspect of the Israeli policy in relation to the construction of the Wall in the Occupied Palestinian Territory, including East Jerusalem. For example:

United Kingdom:

“We are particularly alarmed by Israel’s issuing of a military order declaring the land between the fence and the Green Line a closed zone, where Palestinian residents must apply for permits to remain in their own villages.”⁴²⁴

Saudi Arabia:

“It is thus clear that the purpose of this racist wall is not to ensure security, as insolently claimed by Israel, but to confiscate more land, and to humiliate and oppress the Palestinian people creating conditions making it difficult or impossible for them to live within their own country and on their own land.”⁴²⁵

(iv) Displacement of population

572. Several delegations have emphasized that Israel's construction of the Wall implies illegal displacement of population. For example:

Malaysia, on behalf of the Non-Aligned Movement:

⁴²² S/PV.4841, p. 41.

⁴²³ S/PV.4841, p. 30.

⁴²⁴ S/PV.4841, p. 13.

⁴²⁵ S/PV.4841, p. 36.

“ The wall gravely violates the Fourth Geneva Convention in that it involves the illegal de facto annexation of massive areas of Palestinian land and resources, the transfer of a large number of Palestinian civilians and further denial of human rights among the Palestinians, resulting in increased dire humanitarian consequences among an already deprived people.”⁴²⁶

- (d) The Wall violates the right of the Palestinian people to permanent sovereignty over their natural resources in the Occupied Palestinian Territory, including East Jerusalem, and destroys the economic and social basis of the life of the Palestinian people

573. In the previous Chapters, in particular Chapters 4 and 6, it has been explained that the construction of the Wall has deleterious effects on the environment, deprives the Palestinian population of their land and their work, and closes off their access to and impedes the management of their water resources. It destroys the roots of the local Palestinian economy. As described *inter alia* in the Secretary-General’s October 2003 report submitted to the Court, the socio-economic impact of the Wall is intense.

574. Apart from the wrongfulness of this conduct with regard to the provisions of humanitarian law and fundamental human rights, as explained in Chapter 9, it is appropriate to underline the fact that these Israeli policies also hamper the permanent sovereignty of the Palestinian people over their natural resources.

575. Since 1973 the General Assembly has drawn attention to this general problem in the Occupied Palestinian Territory. Thus, Resolution 3175 (XXVII) "Permanent sovereignty over natural resources in the occupied Arab territories" of 17 December 1973, stated *inter alia*:

“The General Assembly,

Bearing in mind the relevant principles of international law and the provisions of the international conventions and regulations, especially the Fourth Geneva Convention concerning the obligations and responsibilities of the occupying Power,

Recalling its previous resolutions on permanent sovereignty over natural resources, including resolution 1803 (XVII) of 18 December 1962, in which it declared the right of peoples and nations to permanent sovereignty over their natural wealth and resources, [...]

Recalling also its resolution 3005 (XXXVII) of 15 December 1972, in which it affirmed the principle of the sovereignty of the population of the occupied territories over their national wealth and resources and called upon all States, international organizations and specialized agencies not to recognize or co-

⁴²⁶ General Assembly, Emergency Special Session, 21st meeting, 20 October 2003, A/ES-10/PV.21, p. 11. See also the declaration made before the General Assembly on the 8 December, A/ES-10/PV.23, p. 11.

operate with, or assist in any manner in, any measures undertaken by the occupied Power to exploit the resources of the occupied territories or to effect any changes in the demographic composition or geographic character of institutional structure of those territories,

1. Affirms the right of the Arab States and peoples whose territories are under foreign occupation to permanent sovereignty over all their natural resources;
2. Reaffirms that all measures undertaken by Israel to exploit the human and natural resources of the occupied Arab territories are illegal and calls upon Israel to halt such measures forthwith;
3. Affirms the right of the Arab States and peoples whose territories are under Israeli occupation to the restitution of and full compensation for the exploitation and looting of, and damages to, the natural resources, as well as the exploitation and manipulation of the human resources, of the occupied territories;
4. Declares that the above principles apply to all States, territories and peoples under foreign occupation, colonial rule or apartheid. ”

576. More recently, the General Assembly, in Resolution A/57/269 of 20 December 2002 concerning “Permanent sovereignty of the Palestinian people in the Occupied Palestinian Territory, including Jerusalem, and of the Arab population in the occupied Syrian Golan over their natural resources”, reaffirmed:

“ the inalienable rights of the Palestinian people and the population of the occupied Syrian Golan over their natural resources, including land and water;“.

577. The recent Resolution A/58/493 of 18 December 2003, with the same title, addressed both the general situation created by Israel in the Occupied Palestinian Territory, including East Jerusalem, and the special regime created by the construction of the Wall. It provides as follows:

“The General Assembly,

[...] Reaffirming the principle of the permanent sovereignty of peoples under foreign occupation over their natural resources,

Guided by the principles of the Charter of the United Nations, affirming the inadmissibility of the acquisition of territory by force, and recalling relevant Security Council resolutions, including resolutions 242 (1967) of 22 November 1967, 465 (1980) of 1 March 1980 and 497 (1981) of 17 December 1981,

Reaffirming the applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, 2/ to the Occupied Palestinian Territory, including East Jerusalem, and other Arab territories occupied by Israel since 1967,

Expressing its concern at the exploitation by Israel, the occupying Power, of the natural resources of the Occupied Palestinian Territory, including East Jerusalem, and other Arab territories occupied by Israel since 1967,

Expressing its concern also at the extensive destruction by Israel, the occupying Power, of agricultural land and orchards in the Occupied Palestinian Territory during the recent period, including the uprooting of a vast number of olive trees,

Aware of the detrimental impact of the Israeli settlements on Palestinian and other Arab natural resources, especially the confiscation of land and the forced diversion of water resources, and of the dire economic and social consequences in this regard,

Aware also of the detrimental impact on Palestinian natural resources of the wall being constructed by Israel inside the Occupied Palestinian Territory, including in and around East Jerusalem, and of its grave effect on the economic and social conditions of the Palestinian people,

1. Reaffirms the inalienable rights of the Palestinian people and the population of the occupied Syrian Golan over their natural resources, including land and water;
2. Calls upon Israel, the occupying Power, not to exploit, cause loss or depletion of or endanger the natural resources in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan;
3. Recognizes the right of the Palestinian people to claim restitution as a result of any exploitation, loss or depletion of, or danger to, their natural resources, and expresses the hope that this issue will be dealt with in the framework of the final status negotiations between the Palestinian and Israeli sides. [...]"

578. Here again various delegations have emphasized the importance of the encroachments on this inalienable sovereign right of the Palestinian people. For example: Declaration of the European Union, Fourth Meeting of the Association Council EU – Israel, Brussels, 17 – 18 November 2003:

“[...] The EU is particularly concerned by the route marked out for the so-called security fence in the Occupied West Bank and East Jerusalem. The envisaged departure of the route from the ‘green line’ could prejudice future negotiations and make the two-State solution physically impossible to implement. It would cause further humanitarian and economic hardship to the Palestinians. Thousands of Palestinians west of the fence are being cut off from essential services in the West Bank, Palestinians east of the fence will lose access to land and water resources.”⁴²⁷

League of Arab States:

⁴²⁷ Declaration of the European Union, Fourth Meeting of the Association Council EU – Israel, Brussels, 17 – 18 November 2003, 14796/03 (Presse 328), <http://ue.eu.int/pressData/en/er/77932.pdf>.

“ The economic repercussions of the construction of the wall include the almost total destruction of the Palestinian economy; the isolation of the Palestinian people in encircled islands...”⁴²⁸

Afghanistan, as Vice-Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People:

“The part of the wall that has already been built led to the illegal confiscation of some 1,100 hectares of Palestinian land that had been a significant source of income. Some Palestinian farmers are now facing the possibility of yet another electronic steel fence, which would prevent them from gaining access to the olive trees that their families have been growing for generations.”⁴²⁹

South Africa:

“As Commissioner of the European Union Chris Patten recently noted, satellite photographs of the West Bank show that 45 per cent of Palestinian water resources, 40 per cent of Palestinian farmland and 30 per cent of the Palestinian people themselves will ultimately end up on the Israeli side of the separation wall.”⁴³⁰

Committee on the Exercise of the Inalienable Rights of the Palestinian People:⁴³¹

“The route of the wall would limit Palestinian access to water wells, some of the best in the West Bank. Because of its position atop the western groundwater basin, the wall would have a severe impact on water access, use and allocation. Phase 1 of the wall has already affected at least 50 communal wells, meaning that they are either isolated west of the wall or in the "buffer zone" east of the wall. It has also led to the destruction of some 35 kilometres of water pipes.”⁴³²

579. Numerous other States have made declarations expressing a similar position: for example, Malaysia,⁴³³ United Arab Emirates,⁴³⁴ Pakistan,⁴³⁵ Syrian Arab Republic,⁴³⁶ and Qatar.⁴³⁷

⁴²⁸ S/PV.4841, p. 24.

⁴²⁹ General Assembly, Emergency Special Session, 21st meeting, 20 October 2003, A/ES-10/PV.21, p. 10.

⁴³⁰ General Assembly, Emergency Special Session, 21st meeting, 20 October 2003, A/ES-10/PV.21, pp. 12-13.

⁴³¹ The Committee is composed of the following Member States: Afghanistan, Belarus, Cuba, Cyprus, Guinea, Guyana, Hungary, India, Indonesia, the Lao People's Democratic Republic, Madagascar, Malaysia, Mali, Malta, Namibia, Nigeria, Pakistan, Romania, Senegal, Sierra Leone, South Africa, Tunisia, Turkey and Ukraine.

⁴³² Report of the Committee on the Exercise of the Inalienable Rights of the Palestinian People, Official Records, Fifty-eighth Session, Supplement No. 35 (A/58/35), 9 October 2003, par 26, <http://domino.un.org/unispal.nsf/9a798adb322aff38525617b006d88d7/618f78e6c6dce8ac85256de3005376b8!OpenDocument.para.26>.

⁴³³ “Large portions of the wall are being constructed deep into occupied Palestinian territory, separating Palestinians from their agricultural land and water resources. The wall is designed to engulf settlements. Besides the massive confiscation of fertile Palestinian land, valuable subterranean water reservoirs have also been annexed” (S/PV.4841, p. 26).

⁴³⁴ “ The separation wall, which is built deep inside Palestinian villages and cities — 6 kilometres deep in some areas — will result in the de facto annexation of thousands of acres of private and public Palestinian lands, which contain water and other natural resources [...]” (S/PV.4841, p. 31).

⁴³⁵ “There is little doubt that the wall separates the Palestinians from their own cities and resources. It isolates, fragments and in some cases impoverishes those affected by its construction ” (S/PV.4841, p. 22).

- (e) The Wall endangers the feasibility of a viable State of Palestine and consequently undermines the future of negotiations based on the ‘two State’ principle

580. As a result of all the consequences mentioned in the preceding paragraphs, the Wall makes the existence of a viable Palestinian State impossible. It would be a State composed of enclaves, surrounded by Israeli by-pass roads and settlements, and cut in several pieces by walls – and it should not be forgotten that among the Israeli plans is the prolongation of the Wall along the Jordan Valley (the Eastern Wall): — Under these conditions, where would the boundaries of the Palestinian State lie, completely encircled and sliced up as every part of it is, with the Israeli occupying forces stationed at every checkpoint? If the Wall is completed, the concept of a Palestinian State becomes meaningless in the absence of an international border.

581. Consequently, the Wall cannot but deprive of all meaning the expected outcome of the negotiations between Palestine and Israel, which envisaged a ‘two State’ solution and not the acquisition by Israel of territory by force.

582. The so-called “security line” promoted by Israel aims clearly at prejudging the future negotiations. Nobody believes in its temporary character. The majority of States view this Wall as a *de facto* annexation of large areas of the territory where the principal Israeli settlements are situated, and as yet another impediment to a viable Palestinian State.

583. Once again, the recent speech by Israeli Prime Minister Ariel Sharon at the “Herzliya Conference” on 18 December 2003 leaves little doubt about Israel’s real aims: “This security line will not constitute the permanent border of the State of Israel, however, as long as implementation of the Roadmap is not resumed, the IDF will be deployed along that line. Settlements which will be relocated are those, which will not be included in the territory of the State of Israel in the framework of any possible future permanent agreement. At the same time, in the framework of the Disengagement Plan, Israel will strengthen its control over those same areas in the Land of Israel which will constitute an inseparable part of the State of Israel in any future agreement.”⁴³⁸ (emphasis added)

584. The Israeli policy of *fait accompli* has been clearly condemned by the General Assembly in Resolution ES-10/13 of 21 October 2003 :

“ Particularly concerned that the route marked out for the wall under construction by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, could prejudice future

⁴³⁶ “The most dangerous aspect of the construction of the wall is its creation of a de facto situation on the ground and that it isolates the Palestinians on both sides of the wall, prevents them from communicating with each other and from benefiting from their own natural resources and produces new environmental situations that will lead to more poverty, displacement and deprivation among the Palestinians ” (General Assembly, Emergency Special Session, 21st meeting, 20 October 2003, A/ES-10/PV.21, p. 9).

⁴³⁷ “The situation has continued to deteriorate, particularly since Israel’s decision to build the separation wall, which has been condemned by the international community — even including a portion of Israeli society — given its negative effects on the economic and social life of the Palestinian people, on the movement of citizens and on free trade. The wall has annexed the lands of 25 Palestinian towns, completely destroying their economies and cutting them off from one another ” (S/PV.4841, p. 34).

⁴³⁸ In P.M. Speeches, text available at <http://www.first.gov.il/first/english/Html/homepage.htm>.

negotiations and make the two-State solution physically impossible to implement and would cause further humanitarian hardship to the Palestinians.
”

585. This Israeli policy cannot be viewed otherwise than as a violation of the Security Council resolutions adopted in this regard, starting with Resolution 242 (1967) of 22 November 1967, and including Resolution 1397 (2002) of 12 March 2002 and Resolution 1515 (2003) of 19 November 2003.

586. Numerous delegations have emphasized the incompatibility of the Wall with the ‘two State’ solution. For example:

European Union (declaration of the Italian Presidency, speaking also on behalf of the acceding countries, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia, the associated countries, Bulgaria, Romania and Turkey, and the European Free Trade Association countries, Iceland and Liechtenstein, members of the European Economic Area) :

“[The Wall] undermines Palestinian trust in the road map and appears to prejudice the final borders of a future Palestinian State. The current and planned path of the security fence is unacceptable.”⁴³⁹

Malaysia, on behalf of the Non-Aligned Movement:

“ With regard to the separation wall, we believe that its construction is severely jeopardizing the creation of a viable contiguous Palestinian State and the realization of the two-State solution. The Israeli Government says that the wall is necessary to protect Israel from terrorists. But the plans for the wall, and the actual construction itself, indicate that it is more than just a security wall. It appears to be a devious way to create new facts on the ground and impose a unilateral solution which would prejudice the outcome of future negotiations on the boundaries of the two States, Israel and Palestine.”⁴⁴⁰

France:

“The planned route, if indeed followed, prejudices the borders of the future Palestinian State. The continued building of a wall of separation following a route that departs from the Green Line would de facto indicate that Israel no longer recognizes resolution 242 (1967) as an essential basis for negotiations with the Palestinians.”⁴⁴¹

United Kingdom:

“But more important is the impact of the wall. The separation wall undermines the trust between the parties that is necessary for negotiations. It has a negative impact on the daily lives of Palestinians and it calls into question the two-State solution.”⁴⁴²

United States:

⁴³⁹ S/PV.4841, p. 42.

⁴⁴⁰ S/PV.4841, pp. 25-26.

⁴⁴¹ S/PV.4841, p. 18.

⁴⁴² S/PV.4841, p. 13.

“It is extremely important, if [the fence] is going to be built, that it not intrude on the lives of Palestinians and, most importantly, that it not look as if it is trying to prejudice the outcome of a peace agreement.”⁴⁴³

Jordan:

“We also condemn the separation wall, which consolidates Israeli occupation of Palestinian territories, devours further Palestinian land, aggravates the suffering of the Palestinian population and anticipates as a fait accompli, the future shape of the Palestinian State. While we demand that Israel cease forthwith the construction of the wall, we stress the need to respect the status of the 4 June 1967 line.”⁴⁴⁴

Japan:

“These separation fences, although it is claimed that they are intended to prevent the intrusion of terrorists, not only negatively affect the lives of Palestinians but also prejudice the final status of the negotiations, as the fence is to be extended inside the Green Line.”⁴⁴⁵

Senegal, as Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People:

“This Barrier is a means of unilaterally setting the borders of the future Palestinian State – whatever our Israeli friends may say – and this Barrier is likely, without any doubt, to compromise negotiations on final status once the parties reach that stage.”⁴⁴⁶

Committee on the Exercise of the Inalienable Rights of the Palestinian People:

“The construction also endangers international efforts aimed at resolving the conflict and realizing the vision of a region where two States, Israel and Palestine, would live side by side in peace and security, as outlined in the Road Map. With these concerns in mind, the Committee calls upon the international community, most notably the Security Council and the General Assembly, to attach the necessary importance to this issue, with a view to stopping the de facto annexation of Palestinian land and the construction of the wall by the occupying Power.”⁴⁴⁷

587. Other delegations have expressed the same opinion in their statements, including South Africa,⁴⁴⁸ Syrian Arab Republic,⁴⁴⁹ Guinea,⁴⁵⁰ Switzerland,⁴⁵¹ and India.⁴⁵² Likewise,

⁴⁴³ S/PV.4841, p. 23.

⁴⁴⁴ A/58/PV. 16, p. 27.

⁴⁴⁵ S/PV.4841, p. 32.

⁴⁴⁶ General Assembly, Tenth Emergency Special Session, 21st meeting, 8 December 2003, A/ES-10/PV.23, p. 13.

⁴⁴⁷ Report of the Committee on the Exercise of the Inalienable Rights of the Palestinian People, Official Records, Fifty-eighth Session, Supplement No. 35 (A/58/35), 9 October 2003, para. 73.

⁴⁴⁸ “The building of a separation wall is a pretext to occupy more land and makes a negotiated settlement even harder to achieve” (S/PV.4841, p. 35).

⁴⁴⁹ “[The route traced by the Wall] would make it impossible to achieve the objective of the peace process with the Palestinians which is: to establish a Palestinian State in the territories occupied since 1967, with East Jerusalem as its capital” (S/PV.4841, p. 12).

the Secretary-General of the United Nations stated that he “views both the security wall and settlements in the West Bank built on Palestinian land as serious obstacles to the achievement of a two-State solution.”⁴⁵³

588. In conclusion, the Wall is completely incompatible with the right of the Palestinian people to self-determination.

⁴⁵⁰ “ It runs counter to the vision of two States, Palestinian and Israeli, living side by side within safe and internationally recognized borders. It is one of the most eloquent manifestations of the denial to the Palestinian people of the exercise of their right to full sovereignty within the framework of an independent, free and viable State ” (S/PV.4841, p. 17).

⁴⁵¹ “ Switzerland is firmly opposed to the construction of the separation wall undertaken by Israel. The wall, which is illegal under international law and contrary to the road map, is a clear obstacle to the peace process and the realization of the vision of two States ” (General Assembly, Tenth Emergency Special Session, 21st meeting, 8 December 2003, A/ES-10/PV.23, p. 22).

⁴⁵² “ More importantly, Israel's insistence on continuing with the construction of a security wall would be widely interpreted as an attempt to predetermine the outcome of any final status negotiations between Israel and the Palestinian Authority on the basis of the principle of land for peace, as called for by the relevant Security Council resolutions ” (General Assembly, Emergency Special Session, 21st meeting, 20 October 2003, A/ES-10/PV.21, p. 19).

⁴⁵³ “ Secretary-General Disturbed by Israel's Decisions on Separation Wall, New Settlements ”, Press Release, SG/SM/8913, 2 October 2003.

Chapter 11. LEGAL CONSEQUENCES OF ISRAEL'S BREACHES

589. It follows from the previous chapters that Israel, through its construction and operation of the Wall in the Occupied Palestinian Territory, including East Jerusalem, has violated, and continues to violate, a number of distinct international obligations applicable to it. Thus:

A. Israel has no right to construct and operate the Wall in the Occupied Palestinian Territory, including in and around East Jerusalem.

B. The construction and operation of the Wall violates international humanitarian law, in particular for the following reasons:

The Wall is largely built in the Occupied Palestinian Territory;

The Wall is part of a continuing attempt by Israel to change the legal status of the Occupied Palestinian Territory, including East Jerusalem, and to effect a *de facto* annexation of Palestinian territory;

The construction of the Wall and the surrounding zone has entailed the destruction of Palestinian property contrary to Article 53 of the Fourth Geneva Convention;

The construction of the Wall and the surrounding zone has entailed the requisitioning of Palestinian property contrary to Article 52 of the Hague Regulations;
Contrary to Article 64 of the Hague Regulations, the construction and operation of the Wall fails to respect the laws in force in the country;

The construction and operation of the Wall is incompatible with Israel's duties under Article 55 of the Fourth Geneva Convention in respect of ensuring food and medical supplies to the population of the Occupied Palestinian Territory;

The construction and operation of the Wall is a form of collective punishment contrary to Article 33 of the Fourth Geneva Convention, and Article 75 of Additional Protocol I which in this respect represents customary international law;

The construction and operation of the Wall is a disproportionate response to any threat that might be considered to face Israel.

C. The construction and operation of the Wall violates international human rights law, in particular for the following reasons:

The construction and operation of the Wall violates the right to freedom of movement, as established in particular in Article 12 of the International Covenant on Civil and Political Rights and Article 13 of the Universal Declaration of Human Rights;

The construction and operation of the Wall violates Israel's obligations under Article 6 of the International Covenant on Economic, Social and Cultural Rights in relation to the right to earn a living;

The construction and operation of the Wall violates Israel's obligations under Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights and Article 25 of the Universal Declaration on Human Rights, and under Articles 24 and 27 of the Convention on the Rights of the Child, in respect of the provision of adequate food and living conditions and medical care and social services;

The construction and operation of the Wall violates Israel's obligation under Article 13 of the International Covenant on Economic, Social and Cultural Rights and Article 26 of the Universal Declaration on Human Rights, and under Article 28 of the Convention on the Rights of the Child, in respect of the right to education;

The construction and operation of the Wall violates the rights of Palestinians in the Occupied Palestinian Territory to family and cultural life, as established *inter alia* in Article 17 of the International Covenant on Civil and Political Rights and Article 16 of the Convention on the Rights of the Child;

The construction of the Wall has entailed takings of property without legal justification and without proper legal process, contrary to customary international law as reflected in, *inter alia*, Protocol 1 to the European Convention on Human Rights;

The seriousness of the violations listed in the preceding paragraphs is aggravated by the fact that the operation of the Wall explicitly discriminates against Palestinians and is applied to Palestinians in a manner that degrades and humiliates them.

D. The construction and operation of the Wall violates the right of the Palestinian people to self-determination, in particular in the following respects:

To the extent that the Wall departs from the Green Line and is built in the Occupied Palestinian Territory, including East Jerusalem, it severs the territorial sphere over which the Palestinian people are entitled to exercise their right to self-determination. To the same extent the Wall is also a violation of the legal principle prohibiting acquisition or annexation of territory by the use of force;

The route of the Wall is designed to change the demographic composition of the Occupied Palestinian Territory, including East Jerusalem, by reinforcing the Israeli settlements and by facilitating their extension, in disregard of the fact that these settlements are illegal according to international law;

By the creation of Palestinian enclaves, discrimination against and humiliation of the Palestinian population, and the creation of unbearable economic conditions, the Wall is having the clear and foreseeable effect of the forced displacement of the Palestinian population into increasingly limited areas regarded as safe and livable for Palestinians;

The Wall is part of a policy of reducing and parcelling out the territorial sphere over which the Palestinian people are entitled to exercise their right to self-determination, establishing non-contiguous Palestinian areas similar to Bantustans;

The construction and operation of the Wall violates the right of the Palestinian people to permanent sovereignty over their natural resources in the Occupied Palestinian Territory, including East Jerusalem, and destroys the economic and social basis of the life of the Palestinian people;

The construction and operation of the Wall endangers the feasibility of a viable State of Palestine and consequently undermines future negotiations based on the 'two State' principle.

590. The legal consequences of such breaches must be considered separately **(1)** for Israel and **(2)** for States other than Israel.

(1) Legal Consequences for Israel

591. The breaches of international law previously enumerated constitute internationally wrongful acts within the meaning of the Articles on State Responsibility, as adopted by the ILC in 2001 and of which the United Nations General Assembly took note in resolution A/RES/56/83 of 12 December 2001.

592. The wrongful acts arising from or relating to Israel's construction and operation of the Wall are attributable to Israel and entail its responsibility under international law. As Article 1 of the ILC Articles confirms:

“Every internationally wrongful act of a State entails the international responsibility of that State.”

593. The ILC Articles comprise, in Part Two, various provisions relating to the legal consequences of an internationally wrongful act. These consequences, whose customary character cannot be disputed, include the following:

Continued duty of performance (Article 29);

Cessation and non-repetition (Article 30); and

Reparation (Article 31), taking the form of *restitution* (Article 35) and *compensation* (Article 36).

These various consequences and their application to Israel in the present case will be addressed below.

(a) Continued duty to perform the obligation breached

594. Article 29 of the ILC Articles provides:

“The legal consequences of an internationally wrongful act under this Part do not affect the continued duty of the responsible State to perform the obligation breached.”

595. In accordance with this provision, Israel's international obligations remain unaffected by the breaches committed by it in connection with its construction and operation of the Wall. The facts accomplished on the ground effect no change in the application of the legal norms. The applicable norms retain their legal value in their entirety according to the maxim *ex injuria jus non oritur* and Israel must respect them in the Occupied Palestinian Territory, including East Jerusalem.

596. Israel has received repeated warnings concerning its apparent policy of creating *faits accomplis* with the intent of reinforcing illegal settlements or implementing creeping annexation through the construction of the Wall in the Occupied Palestinian Territory, including East Jerusalem. For example,⁴⁵⁴ as was mentioned above, the Quartet responsible for the Road Map has stated:

“The Quartet members reaffirm that, in accordance with the road map, settlement activity must stop, and note with great concern the actual and proposed route of Israel's West Bank fence, particularly as it results in the confiscation of Palestinian land, cuts off the movement of people and goods and undermines Palestinians' trust in the road map process, as it appears to prejudice final borders of a future Palestinian State.”⁴⁵⁵

597. Moreover, Paragraph 13 of the Declaration of the Conference of High Contracting Parties to the Fourth Geneva Convention, adopted in Geneva on 5 December 2001, declared:

“The participating High Contracting Parties recall that according to article 148 no High Contracting Party shall be allowed to absolve itself of any liability incurred by itself in respect of grave breaches.”⁴⁵⁶

598. In conclusion, Israel has the continued duty to perform and observe all the applicable international obligations breached by it in connection with the construction and operation of the Wall in the Occupied Palestinian Territory, including East Jerusalem. In particular, Israel is obliged to recognize and accept all the obligations mentioned in Chapters 7, 8, 9 and 10, above.

(b) Cessation of the wrongful act

(i) *The principle*

599. Under the obligation of cessation, a State that is responsible for an internationally wrongful act has the obligation to put an end to it. Article 30 of the ILC Articles describes this legal consequence in the following terms:

“Cessation and non-repetition

The State responsible for the internationally wrongful act is under an obligation:

(a) To cease that act, if it is continuing; [...]”.

600. This is a classic norm. The Court referred to it in its Judgment of 27 June 1986:

⁴⁵⁴ See also the numerous declarations quoted in chapter 10, *passim*.

⁴⁵⁵ Quartet statement, New York, 26 September 2003, Annex to the Letter dated 6 October 2003 from the UN Secretary-General addressed to the President of the Security Council, UN Doc. S/2003/951.

⁴⁵⁶ The Declaration appears as Dossier no. 67 attached to the Secretary-General's submission in this case.. The grave breaches are listed in Article 147 of the Convention and Article 85 of Additional Protocol I.

“The Court (...) *decides* that the United States of America is under a duty immediately to cease and to refrain from all such acts as may constitute breaches of the foregoing legal obligations.”⁴⁵⁷

601. Orders whereby the Court indicates provisional measures frequently provide for the immediate cessation of certain conduct pending the Court’s decision on the merits. Thus, the Court’s Order of 3 March 1999 in the *LaGrand Case* provided that:

“[t]he United States of America should take all measures at its disposal to ensure that Walter LaGrand is not executed pending the final decision in these proceedings, and should inform the Court of all the measures which it has taken in implementation of this Order.”⁴⁵⁸

602. An obligation of this kind is also frequently reiterated by the United Nations General Assembly (see below for an example relating to the Wall) and by the Security Council in cases of grave breaches of international law. As the ILC Commentary emphasises:

“The function of cessation is to put an end to a violation of international law and to safeguard the continuing validity and effectiveness of the underlying primary rule. The responsible State’s obligation of cessation thus protects both the interests of the injured State or States and the interests of the international community as a whole in the preservation of, and reliance on, the rule of law.”⁴⁵⁹

(ii) Application to the present case

603. Numerous States and international organisations have called on Israel to cease its construction of the Wall. The following statements constitute representative examples:

European Union:

Presidency Conclusions, Thessaloniki European Council, 19 and 20 June 2003:

“86. The European Council calls on Israel to reverse the settlement policy and activity and end land confiscations and the construction of the so-called security fence, all of which threaten to render the two-State solution physically impossible to implement.”⁴⁶⁰

It is recalled that the European Union, with support from the candidates for accession to the Union in May 2004, introduced draft Resolution A/ES-10/L.15 in the General Assembly. This draft was overwhelmingly adopted by the Assembly on 21 October 2003 as Resolution A/ES-10/13.

⁴⁵⁷ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, I.C.J. Reports 1986, p. 149.

⁴⁵⁸ *LaGrand Case (Germany v. United States of America)*, Order, Provisional Measures, I.C.J. Reports 1999, para. 29(a).

⁴⁵⁹ Commentaries to the draft articles on Responsibility of States for internationally wrongful acts adopted by the International Law Commission at its fifty-third session (2001), *Report of the International Law Commission on the work of its Fifty-third session*, Official Records of the General Assembly, Fifty-sixth session, Supplement No. 10 (A/56/10), p. 218.

⁴⁶⁰ Presidency Conclusions, Thessaloniki European Council, 19 and 20 June 2003, http://www.europa.eu.int/european_council/conclusions/index_en.htm. See also the Declaration of the European Union, Fourth Meeting of the Association Council EU – Israel, Brussels, 17 – 18 November 2003, 14796/03 (Presse 328), <http://ue.eu.int/pressData/en/er/77932.pdf>.

Organisation of the Islamic Conference:

According to Resolution n° 1/10-Pal (Is) on Palestine Affairs, adopted at the Tenth Session of the Islamic Summit Conference (Session of Knowledge and Morality for the Progress of Ummah) Putrajaya – Malaysia, 20 - 21 Sha'aban 1424 H., 16-17 October 2003:

La Conférence :

“ 8. *Demande* au comité des quatre (Etats Unis, Fédération de Russie, Union européenne et Nations Unies) d’œuvrer de nouveau à l’instauration d’une paix juste et globale au Moyen- orient conformément aux résolutions pertinentes de la légalité internationale, aux termes de référence de Madrid et à l’initiative arabe de paix, à l’application de la feuille de route telle quelle, au déploiement de forces internationales pour garantir le calme et la stabilité dans la région et de contraindre Israël à :

[...]

- stopper la construction du ‘mur raciste’ qui dévore les terres palestiniennes, crée des faits accomplis iniques au détriment des frontières internationales de l’Etat palestinien et contribue au pourrissement de la situation dans la région ”⁴⁶¹.

- *The draft Security Council resolution tabled on 14 October 2003*

604. On 14 October 2003, Guinea, Malaysia, Pakistan and the Syrian Arab Republic introduced a draft resolution in the UN Security Council containing unequivocal language regarding the conclusions to be drawn from the breaches stemming from Israel’s construction of the Wall. The text proposed that the Security Council:

“Decide[...] that the construction by Israel, the occupying power, of a wall in the Occupied Territories departing from the armistice line of 1949 is illegal under relevant provisions of international law and must be ceased and reversed.”⁴⁶²

605. As is well known, this text was not adopted, following the veto of one permanent member of the Council.⁴⁶³ Nevertheless, the draft received 10 votes in favour from the following States: Angola, Chile, China, France, Guinea, Mexico, Pakistan, Russian Federation, Spain, and the Syrian Arab Republic.

606. Furthermore, during the debate on the draft resolution a large number of States insisted in their interventions on the pressing need for the immediate cessation of the construction of the Wall. For example:

Russian Federation:

“We are convinced that an important component for the exit strategy from the confrontation is the cessation of unilateral steps by the leadership of Israel. The unlawful settlement activity on the Palestinian territories and the

⁴⁶¹ Text available at <http://www.oic-oci.org/french/is/10/10%20is-main-f.htm>.

⁴⁶² UN Doc. S/2003/980 (emphasis added).

⁴⁶³ UN Doc. S/PV.4842, 14 October 2003. There were four abstentions: Bulgaria, Cameroon, Germany and United Kingdom.

construction of the so-called separation wall, which has resulted in the seizure of Palestinian lands, must be immediately halted.”⁴⁶⁴

Jordan:

“We call on Israel to stop the construction of the wall immediately and emphasize the need to respect the lines of 4 June 1967.”⁴⁶⁵

Japan:

“With respect to the latest Israeli decision to extend the fence, which is truly regrettable, Japan strongly requested the Israeli Government, on 1 October — the day of Cabinet approval — to refrain from implementing that decision. Today, I would like to take this opportunity to request the Israeli Government once again not to implement that decision.”⁴⁶⁶

European Union (declaration of the Italian presidency, speaking also on behalf of the acceding countries, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia, the associated countries Bulgaria, Romania and Turkey, and the European Free Trade Association countries Iceland and Liechtenstein, members of the European Economic Area):

“The European Union is strongly opposed to the construction by Israel of a separation wall in the West Bank, and urges the Government of Israel to stop its construction in the Palestinian territories, including in and around Jerusalem, and other illegal activities, such as the confiscation of land and the demolition of houses, that it entails.”⁴⁶⁷

607. Mexico,⁴⁶⁸ Pakistan,⁴⁶⁹ Yemen,⁴⁷⁰ Egypt,⁴⁷¹ and Argentina⁴⁷² made statements along the same lines.

- *General Assembly Resolution A/ES-10/13 adopted on 21 October 2003*

608. General Assembly Resolution A/ES-10/13 is particularly significant. Its text, which was introduced by the Member States of the European Union together with the acceding

⁴⁶⁴ UN Doc. S/PV.4841, p. 15.

⁴⁶⁵ UN Doc. S/PV.4841, p. 31.

⁴⁶⁶ UN Doc. S/PV.4841, p. 32.

⁴⁶⁷ UN Doc. S/PV.4841, p. 42.

⁴⁶⁸ “We therefore believe that the State of Israel must halt construction of this wall and avoid any action in Palestinian territory that cannot be justified on the basis of their legitimate right to secure borders or to prevent any terrorist acts on their own territory” (UN Doc. S/PV.4841, p. 16).

⁴⁶⁹ “[The separation wall] must be declared illegal by the Security Council, and the Government of Israel must be asked to cease, and reverse, its construction” (UN Doc. S/PV.4841, p. 22).

⁴⁷⁰ “[...] the Security Council must adopt a resolution to be implemented to force Israel to immediately halt the construction of the wall on occupied Palestinian territory and far from the Green Line, and to strictly respect its commitments, in keeping with international law and norms and with the Fourth Geneva Convention” (UN Doc. S/PV.4841, p. 28).

⁴⁷¹ “What is demanded of the Security Council today is to express international consensus on the firm demand that Israel stop the construction of the wall of separation deep inside Palestinian territory, set aside its settlement policy and assume its responsibilities as an occupying Power, in accordance with the 1949 Fourth Geneva Convention” (UN Doc. S/PV.4841, p. 29).

⁴⁷² “Israel’s construction of a wall on occupied territory is one more reason for concern. It is also a violation of international law. We therefore call for an end to the ongoing construction of the wall, especially along areas that do not follow the Green Line” (UN Doc. S/PV.4841, p. 37).

countries (Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia), states that the Assembly:

“1. *Demands* 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.”

This resolution was adopted by 144 votes in favour⁴⁷³ to four against,⁴⁷⁴ with 12 abstentions.⁴⁷⁵

609. In conclusion, Israel is under an obligation immediately to cease all internationally wrongful acts arising from or in connection with the construction and operation of the Wall in the Occupied Palestinian Territory, including East Jerusalem. Consequently, Israel has *inter alia* a duty immediately to cease the construction, planning and operation of the Wall within the Occupied Palestinian Territory, including East Jerusalem, and to conform to its obligations under Security Council resolutions. Israel has the further duty to desist from taking any further action, altering, or purporting to alter, the legal status, institutional structure, geographical and historical character and demographic composition of the Closed Zone or any part thereof, within the Occupied Palestinian Territory, including East Jerusalem, or which would prejudice the rights of the Palestinian inhabitants of the relevant area or the right of the Palestinian people to self-determination. Accordingly, Israel is under a duty to desist from transferring parts of its civilian population into the Occupied Palestinian Territory, and from causing the displacement of the Palestinian population in the relevant area.

(c) Reparation

610. Under the law of State responsibility for internationally wrongful acts, reparation constitutes, in case of injury, the classical legal consequence of responsibility. As stated by the Permanent Court of International Justice, reparation “must, so far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all

⁴⁷³ Albania, Algeria, Andorra, Angola, Antigua and Barbuda, Argentina, Armenia, Austria, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Bosnia and Herzegovina, Botswana, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Cambodia, Cameroon, Canada, Cape Verde, Chile, China, Colombia, Comoros, Costa Rica, Côte d’Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Democratic People’s Republic of Korea, Denmark, Djibouti, Dominica, Egypt, Eritrea, Estonia, Ethiopia, Finland, France, Gabon, Gambia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Hungary, Iceland, India, Indonesia, Iran, Ireland, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, , Kyrgyzstan, Lao People’s Democratic Republic, Latvia, Lebanon, Lesotho, Libya, Liechtenstein, Lithuania, Luxembourg, Malaysia, Maldives, Mali, Malta, Mauritania, Mauritius, Mexico, Monaco, Mongolia, Morocco, Mozambique, Myanmar, Namibia, Nepal, Netherlands, New Zealand, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Romania, Russian Federation, Saint Lucia, San Marino, Saudi Arabia, Senegal, Serbia and Montenegro, Sierra Leone, Singapore, Slovakia, Slovenia, Somalia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Switzerland, Syria, Thailand, The former Yugoslav Republic of Macedonia, Togo, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, United Republic of Tanzania, Venezuela, Viet Nam, Yemen, Zambia, Zimbabwe.

⁴⁷⁴ Federated States of Micronesia, Israel, Marshall Islands, United States.

⁴⁷⁵ Australia, Burundi, Dominican Republic, Ecuador, Honduras, Malawi, Nauru, Nicaragua, Papua New Guinea, Rwanda, Tuvalu, Uruguay.

probability, have existed if that act had not been committed.”⁴⁷⁶ According to the Permanent Court:

“It is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form. Reparation therefore is the indispensable complement of a failure (...).”⁴⁷⁷

611. Article 31(1) of the ILC Articles states the principle as follows: “The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act.”

612. This principle has been affirmed in the Court’s jurisprudence.⁴⁷⁸ Thus, Israel is under an obligation to make reparation for all injury caused to Palestine and the Palestinian people by the construction of the Wall and by the breaches of international law outlined in the previous chapters of this Written Statement.

(i) Reparation in the form of restitution

1. The principle

613. As described above, reparation may take various forms, including restitution (so-called *restitutio in integrum*) and compensation. According to Article 34 of the ILC Articles:

“Forms of reparation

Full reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination [...].”

614. Restitution is a form of reparation for injury which is aimed at the re-establishment of the situation which existed before the breach, by reverting to the *status quo ante*. Article 35 of the ILC Articles provides:

“Restitution

A State responsible for an internationally wrongful act is under an obligation to make restitution, that is, to re-establish the situation which existed before the wrongful act was committed, provided and to the extent that restitution:

(a) is not materially impossible;

(b) does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation.”

⁴⁷⁶ *Factory at Chorzów, Merits, 1928, P.C.I.J., Series A, No. 17, p. 47.*

⁴⁷⁷ *Factory at Chorzów, Jurisdiction, 1927, P.C.I.J., Series A, No. 9, p. 21.* The present Court most recently referred to this statement in the *LaGrand Case*. See *LaGrand Case (Germany v. United States of America), Merits, Judgment of 27 June 2001, para. 45.*

⁴⁷⁸ See, e.g., *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986, p. 149 sub (13) and (14).*

615. As the Permanent Court of International Justice stated:
“The essential principle contained in the actual notion of an illegal act - a principle which seems to be established by international practice and in particular by the decisions of arbitral tribunals - is that reparation must, so far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed. Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it - such are the principles which should serve to determine the amount of compensation due for an act contrary to international law.”⁴⁷⁹

616. This principle was recently applied by the present Court in the case concerning the *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*.⁴⁸⁰ Referring to the above-mentioned *dictum*, the Court stated: “In the present case, ‘the situation which would, in all probability, have existed if [the illegal act] had not been committed’ cannot be re-established merely by a finding by the Court that the arrest warrant was unlawful under international law.”⁴⁸¹ Consequently, it decided that “Belgium must, by means of its own choosing, cancel the warrant in question and so inform the authorities to whom it was circulated.”

2. Application in the present case

617. Restitution may take various forms: material restoration of territory, persons or property, or annulment of legal acts. In the present instance, the established breaches require the annulment of legislative acts, or decrees, or administrative acts or orders in connexion with the construction of the Wall, as well as the physical dismantlement of the Wall and the restitution of confiscated land and property. Where Israel’s wrongful acts affect any portion of the Occupied Palestinian Territory to the east of the Green line, one is faced with a situation similar to that confronting the Permanent Court in the case concerning the *Free Zones of Upper Savoy and the District of Gex*, in which it decided that France “must withdraw its customs line in accordance with the provisions of the said treaties and instruments [...]”.⁴⁸²

618. Restitution assumes particular significance, as here, when the breaches have a continuous character and where the norms infringed constitute peremptory norms of international law: the prohibition against the use of force, the prohibition against annexation, the right to self-determination, fundamental norms of international humanitarian law and of human rights law.

⁴⁷⁹ *Factory at Chorzów, Merits, 1928, P.C.I.J., Series A, No. 17*, p. 47.

⁴⁸⁰ *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, Judgment of 14 February 2002. See also *Gabcikovo-Nagymaros Project (Hungary v. Slovakia), Judgement, I.C.J. Reports 1997*, p. 7, at 81, paras. 149-150.

⁴⁸¹ *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, Judgment of February 2002, para. 76.

⁴⁸² *P.C.I.J., Series A/B, No. 46*, p. 96, at p. 172.

619. Indeed, in some cases, restitution is impossible (e.g., villages may have been erased, orchards destroyed, etc); and when reconstruction or replanting is no longer feasible, full compensation must be made.

620. In the present instance, numerous States and international organisations have called on Israel not only to cease its practices and measures connected with the Wall, but to dismantle the Wall entirely. The following examples may be given:

European Union:

Declaration of the European Union, Fourth Meeting of the Association Council EU – Israel, Brussels, 17 – 18 November 2003 :

“In this context the EU is alarmed by the designation of land between the fence and the “green line” as a closed military zone. This is a de facto change in the legal status of Palestinians living in this area which makes life for them even harder. Hence, the EU calls on Israel to stop and reverse the construction of the so-called security fence inside the occupied Palestinian territories, including in and around East Jerusalem, which is in departure of the armistice line of 1949 and is in contradiction to the relevant provisions of international law.”⁴⁸³

Organisation of the Islamic Conference:

According to Resolution no. 1/10-Pal (Is) on Palestine Affairs, adopted at the Tenth Session of the Islamic Summit Conference (Session of Knowledge and Morality for the Progress of Ummah) Putrajaya – Malaysia, 20 - 21 Sha’aban 1424 H., 16-17 October 2003:

La Conférence:

“17. Condamne la politique colonialiste et expansionniste d’Israël et Réaffirme la nécessité d’œuvrer à la cessation de toutes les opérations de colonisation, de toutes les pratiques et de tous les agissements israéliens contraires à la légalité internationale et aux accords conclus entre les deux parties; Demande au Conseil de sécurité de faire abroger ces mesures, d’exiger le démantèlement des implantations et le mur de la honte en application de sa résolution n°465 et de relancer le Comité international de Contrôle et de Surveillance pour empêcher la colonisation d’Al-Qods et des territoires arabes occupés, conformément à la résolution n°446 du Conseil de sécurité [...]”⁴⁸⁴.

621. This was also impliedly the position of all the States members of the Security Council that voted in favour of the draft sponsored by Guinea, Malaysia, Pakistan and the Syrian Arab Republic and discussed in plenary session on 14 October 2003. The draft proposed that the Security Council resolve that it:

“Decides that the construction by Israel, the occupying power, of a wall in the Occupied Territories departing from the armistice line of 1949 is illegal under relevant provisions of international law and must be ceased and reversed.”⁴⁸⁵

⁴⁸³ Declaration of the European Union, Fourth Meeting of the Association Council EU – Israel, Brussels, 17 – 18 November 2003, 14796/03 (Presse 328), <http://ue.eu.int/pressData/en/er/77932.pdf>.

⁴⁸⁴ Text available at <http://www.oic-oci.org/french/is/10/10%20is-main-f.htm>.

⁴⁸⁵ UN Doc. S/2003/980 (emphasis added).

622. The ten States voting in favour of the draft resolution were: Angola, Chile, China, France, Guinea, Mexico, Pakistan, Russian Federation, Spain and the Syrian Arab Republic. Furthermore, during the sessions devoted to the question of the Wall in the Security Council and the General Assembly, numerous States expressed themselves along the same lines. For instance:

Malaysia, on behalf of the Non-Aligned Movement:

“The NAM reaffirms its position on the Israeli expansionist wall, as clearly expressed during the debate in the Security Council on 14 October. In brief, we reiterate that the Israeli expansionist wall constructed in occupied Palestinian territory is illegal, must be dismantled and its further construction immediately discontinued [...].”⁴⁸⁶

Islamic Republic of Iran, on behalf of the Organization of the Islamic Conference:

“The fact that Israel explicitly ignored the decision of this Assembly and insisted, in its contempt for the will of the international community, on continuing the construction of the expansionist wall, brought the Secretary-General to conclude, in his report contained in document A/ES-10/248, that ‘ Israel is not in compliance with the Assembly's demand’.”⁴⁸⁷

623. Numerous other States adopted the same position, including Malta,⁴⁸⁸ Lebanon,⁴⁸⁹ Indonesia,⁴⁹⁰ Bahrain,⁴⁹¹ United Arab Emirates,⁴⁹² and Chile.⁴⁹³

624. Here again it is appropriate to recall that General Assembly Resolution A/ES-10/13, which received 144 votes in favour, stated that the Assembly:

⁴⁸⁶ General Assembly, Tenth Emergency Special Session, 21st meeting, 20 October 2003, UN Doc. A/ES-10/PV.21, p. 11. See also the declaration made by the Malaysian delegation on behalf of the Non-Aligned Movement before the Security Council, UN Doc. S/PV.4841, p. 26.

⁴⁸⁷ General Assembly, Tenth Emergency Special Session, 21st meeting, 8 December 2003, UN Doc. A/ES-10/PV.23, p. 14.

⁴⁸⁸ “Israel needs to clearly recognize the illegality of its presence in the occupied territories. This implies the reversal of the measures that are accompanying this occupation — in particular the building and maintenance of settlements and the construction of the partition wall on Palestinian territory” (UN Doc. A/58/PV.11, p. 26).

⁴⁸⁹ “Therefore Lebanon appeals to the Security Council to adopt the draft resolution, submitted by the Arab group, which considers the construction by Israel, the occupying Power, of this wall in the occupied Palestinian territories as a violation of the 1949 armistice line. The draft resolution also states that this construction is illegal on the basis of international law and requires the end of construction on the wall, the demolition of those portions that have already been built and the restoration of the status quo ante” (UN Doc. S/PV.4841, p. 50).

⁴⁹⁰ “Israel must cease its ill (*sic.*) practices, including construction of the wall, as they contradict and jeopardize the road map. In addition, the completed portions of the wall must be demolished” (General Assembly, Tenth Emergency Special Session, 21st meeting, 20 October 2003, UN Doc. A/ES-10/PV.21, p. 14).

⁴⁹¹ “The Kingdom of Bahrain calls on the Security Council, the Quartet and those countries that are sponsoring the peace process to exert pressure on the Israeli Government immediately to halt construction of the separation wall, to tear it down and to cease building settlements” (UN Doc. S/PV.4841, p. 33).

⁴⁹² “We also urge the Security Council to issue an effective resolution that categorically condemns the separation wall and demands that Israel fully and unconditionally remove the wall, in accordance with the United Nations Charter, international humanitarian law and the relevant United Nations resolutions” (UN Doc. S/PV.4841, p. 32).

⁴⁹³ “The Chilean delegation considers that the Security Council must express its views on the situation and make a strong appeal, through a resolution, for the cessation of the building of the separation wall and the dismantling of what has been built thus far” (UN Doc. S/PV.4841, p. 16).

“1. Demands 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.”

625. In conclusion, Israel is under obligation to provide reparation in the form of restitution by reversing the construction of the Wall and the regime associated with it, in the Occupied Palestinian Territory, including East Jerusalem. Israel is under obligation *inter alia* to rescind all legislative and administrative measures, policies, actions and practices taken by it in relation to the Wall, including the expropriation of land and properties within the Occupied Palestinian Territory, and must rescind all previous actions, including by the lifting of any restrictions imposed on the movement of persons and goods and on the operations of humanitarian organizations in the relevant area. Moreover, Israel has a duty to cause the immediate removal and repatriation of its civilian population transferred to the section of the Wall within the Occupied Palestinian Territory since the commencement of the construction of the Wall, to dismantle any existing settlements in the relevant area, to ensure and facilitate the safe and immediate return of any and all displaced Palestinian civilians to the relevant area, and to release any person or persons detained as a result of Israel’s construction and maintenance of the regime of the Wall.

(ii) Reparation in the form of compensation

626. It is a well established principle of international law that an injured party is entitled to compensation from the party which has committed an internationally wrongful act for the damage caused by that act.

627. Compensation may take the form of the payment of a sum of money. This legal consequence is contemplated by Article 36 of the ILC Articles:

“Compensation

1. The State responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution.

2. The compensation shall cover any financially assessable damage including loss of profits insofar as it is established.”

628. The Permanent Court of International Justice, in the *Chorzów Factory Case*, declared that it is “a principle of international law that the reparation of a wrong may consist in an indemnity.”⁴⁹⁴ In the case concerning the *Gabcikovo-Nagymaros Project*, the present Court affirmed this principle:

⁴⁹⁴ *Factory at Chorzów, Merits, 1928, P.C.I.J., Series A, No. 17, p. 27*

“It is a well-established rule of international law that an injured State is entitled to obtain compensation from the State which has committed an internationally wrongful act for the damage caused by it.”⁴⁹⁵

629. As has been seen shown in the preceding chapters, the damage caused to Palestine and the Palestinian people by the above-mentioned breaches of international law by Israel includes all the damages that will not be compensated by restitution. For instance, even if their land is restored to the farmers, the orchards replanted, and their houses rebuilt, they will still need to be compensated for the loss of income and profits during the years when they were deprived of their properties.

(2) Consequences of a penal character

630. In conformity with its obligations under international humanitarian law, Israel is bound to search for and bring before its courts persons alleged to have committed, or to have ordered to be committed, grave breaches of international humanitarian law, and to take measures necessary to suppress any other breaches of international humanitarian law arising from the construction, operation and/or planning of the Wall.

(3) Legal Consequences for States other than Israel

(a) Principles

631. In the event that an internationally wrongful act involves a grave breach of an obligation arising from a peremptory norm of international law all States are obligated to cooperate in order to bring an end to such a breach, to withhold recognition of a situation created by such a breach, and to refrain from rendering aid or assistance in maintaining that situation brought about by the breach.⁴⁹⁶

632. It will be recalled that the Court in the case concerning the *Barcelona Traction, Light and Power Company, Limited* pointed to the following distinction:

“In particular, an essential distinction should be drawn between the obligations of a State towards the international community as a whole, and those arising vis-à-vis another State in the field of diplomatic protection. By their very nature the former are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations *erga omnes*.”⁴⁹⁷

⁴⁹⁵ *Gabcikovo-Nagymaros Project (Hungary v. Slovakia)*, Judgment, *I.C.J. Reports 1997*, p. 7, at 81, para. 152.

⁴⁹⁶ See commentaries on article 38, Commentaries to the draft articles on Responsibility of States for internationally wrongful acts adopted by the International Law Commission at its fifty-third session (2001), *Report of the International Law Commission on the work of its Fifty-third session*, Official Records of the General Assembly, Fifty-sixth session, Supplement No. 10 (A/56/10), page 230.

⁴⁹⁷ *Barcelona Traction, Light and power Company, Limited*, Judgment, *I.C.J. Reports 1970*, p. 3, at 32, para. 33.

633. As examples of obligations *erga omnes* the Court referred to obligations which “derive, for example, in the contemporary international law, from outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning the basic rights of protection from slavery and racial discrimination.”⁴⁹⁸ In its Judgment of 30 June 1995 in the case concerning *East Timor*, the Court considered that “Portugal’s assertion that the right of peoples to self determination, as it evolved from the Charter and from United Nations practice, has an *erga omnes* character, is irreproachable.”⁴⁹⁹ As the Court stated in the Opinion it gave in 1996 concerning the *Legality of the Threat or Use of Nuclear Weapons*, fundamental rules of humanitarian law applicable in armed conflict have an “intransgressible” character.⁵⁰⁰

634. It follows from the above that among the violations of international law entailed by the construction and operation of the Wall in the Occupied Palestinian Territory, including East Jerusalem, Israel has committed, and is still committing, grave breaches of peremptory norms of international law imposing *erga omnes* obligations, in relation to:

The right of people to self-determination as it has developed under the United Nations Charter and in international legal practice;

The principle of non-acquisition of territory by force;

The fundamental rights of the human being;

Fundamental rules of international humanitarian law applicable in armed conflict.

635. Articles 40 and 41 of the ILC Articles are particularly relevant in the present case. They state as follows:

“Article 40

Application of this chapter

1. This chapter applies to the international responsibility which is entailed by a serious breach by a State of an obligation arising under a peremptory norm of general international law.

2. A breach of such an obligation is serious if it involves a gross or systematic failure by the responsible State to fulfil the obligation.

Article 41

Particular consequences of a serious breach of an obligation under this chapter

1. States shall cooperate to bring to an end through lawful means any serious breach within the meaning of article 40.

2. No State shall recognize as lawful a situation created by a serious breach within the meaning of article 40, nor render aid or assistance in maintaining that situation [...].”

⁴⁹⁸ *Id.*, at para. 34.

⁴⁹⁹ *East Timor (Portugal v. Australia), Judgement, I.C.J. Reports 1995*, p. 90, at 102, para. 29.

⁵⁰⁰ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226, at 257, para. 79.

636. It is particularly appropriate to recall these Articles in the context of the possible attempt by States to accept and recognize the Wall as a *fait accompli*, provided some of its excesses stemming from Israel's fundamental violations of international humanitarian law and human rights are mitigated by Israel. According to these Articles, certain obligations are incumbent on third States, including especially (i) the obligation to cooperate with a view to putting an end to any violations, (ii) the obligation not to recognize any wrongful situation, and (iii) the obligation not to render aid or assistance in maintaining such a situation.

(i) The obligation to cooperate with a view to putting an end to any violations

637. Faced with Israel's grave breaches detailed above, a concerted and coordinated effort of all States is necessary to put an end to these breaches and their effects. It is recalled that numerous calls to this effect have been made during the past months.⁵⁰¹ For example:

Declaration by the Presidency on behalf of the European Union on the situation in the Middle East, 11 September 2003:

“In order for these measures [a.o., freezing all settlement activities and the building of the security wall] to be effectively implemented, the EU reaffirms its commitment and the need for a determined and co-ordinated action by the International Community.”⁵⁰²

Final Communiqué of the Tenth Session of the Islamic Summit Conference (Session of Knowledge and Morality for the Progress of Ummah) Putrajaya – Malaysia, 20-21 Sha'aban 1424 H., 16-17 October 2003:

“[...]14. The Conference requested the international community to compel Israel to end the construction of - and remove - the apartheid wall which encroaches upon the Palestinian land, turns it into Bantustans, imposes unjust political realities and further deteriorates conditions in the region [...]”⁵⁰³

⁵⁰¹ See also the declarations made by the following delegations :

- Pakistan: “The international community has an obligation to prevent the unlawful annexation of Palestinian land. There is little doubt that the separation wall, if completed, would negate the possibility of a contiguous, viable Palestinian State. The Government of Israel must, therefore, be persuaded to cease, and reverse, the construction of the wall, which we deplore” (General Assembly, Tenth Emergency Special Session, 21st meeting, 20 October 2003, UN Doc. A/ES-10/PV.21, p. 18) ;

- United Arab Emirates: “We call on the international community to compel Israel immediately to stop the killing and aggression, to end the practice of closure and siege and to remove the separation wall, which will lead to a humanitarian and economic disaster in the West Bank. We also demand that Israel allow international humanitarian organizations to deliver emergency assistance to the Palestinian people, in accordance with international humanitarian law, especially the Fourth Geneva Convention” (UN Doc. A/58/PV.38, pp. 2-3);

- Kuwait: “We condemn those Israeli practices and policies [a. o. the construction of the wall], which have aggravated the suffering of the Palestinian people, and we call upon the international community to fulfil its obligations and compel Israel to respect international legality and cease forthwith pursuing those policies that will undoubtedly lead to further deterioration of the security situation and to increase instability in the region” (General Assembly, Tenth Emergency Special Session, 21st meeting, 8 December 2003, UN Doc. A/ES-10/PV.23, p. 2).

⁵⁰² Declaration by the Presidency on behalf of the European Union on the situation in the Middle East, 11 September 2003, P/03/108, 12400/03 (Presse 261), http://www.europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=PESC/03/108|0|AGED&lg=EN&display.

⁵⁰³ Text available at <http://www.oic-oci.org/english/is/10/10is-fc-en.htm>.

Malaysia, on behalf of the Non-Aligned Movement:

“Pressure must be brought to bear on Israel to comply with the demands of the international community in respect of this wall.”⁵⁰⁴

Senegal, Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People:

“My delegation appeals for a mobilization of the international community, including the United Nations — particularly the Security Council — and the Quartet of mediators, to make the Israeli Government listen to reason by demanding an immediate halt to the building of this wall of discord and the complete destruction of its initial segments.”⁵⁰⁵

Report of the UN Committee on the Exercise of the Inalienable Rights of the Palestinian People:

“73. The Committee stresses its strong opposition to the illegal construction by the occupying Power of the wall in the Occupied West Bank and in areas close to East Jerusalem. The Committee reminds the Government of Israel that this construction has devastating immediate and longer-term implications for the livelihood of the Palestinian people. The construction also endangers international efforts aimed at resolving the conflict and realizing the vision of a region where two States, Israel and Palestine, would live side by side in peace and security, as outlined in the Road Map. With these concerns in mind, the Committee calls upon the international community, most notably the Security Council and the General Assembly, to attach the necessary importance to this issue, with a view to stopping the de facto annexation of Palestinian land and the construction of the wall by the occupying Power.”⁵⁰⁶

638. In conclusion, all States are under an obligation to co-operate with each other to ensure respect by Israel for its obligations under international law. In particular, the High Contracting Parties to the Fourth Geneva Convention are under obligation to recognize the *de jure* applicability of the Fourth Geneva Convention to the Occupied Palestinian Territory, including the Closed Zone. Moreover, under Article 1 of the Convention all third States have the duty “to respect and to ensure respect for the present Convention in all circumstances.” Consonant with their obligations under that Convention to prosecute grave breaches of humanitarian law, each third State should insure that any person involved with the above-mentioned crimes be duly submitted to its penal jurisdiction.

639. States are also under an obligation to co-operate with the responsible United Nations and other bodies, including the United Nations Secretary-General, the Special Rapporteur of the United Nations Commission on Human Rights on the situation of human rights in the Palestinian territories occupied by Israel since 1967, the United Nations Relief and Works Agency for Palestine Refugees in the Near East, and the International Committee of the Red Cross, in the discharge of their established functions and responsibilities in the Occupied

⁵⁰⁴ UN Doc. S/PV.4841, p. 26.

⁵⁰⁵ General Assembly, Tenth Emergency Special Session, 21st meeting, 20 October 2003, UN Doc. A/ES-10/PV.21, p. 16. See also the declaration made before the Security Council, UN Doc. S/PV.4841, p. 53.

⁵⁰⁶ Official Records, Fifty-eighth Session, Supplement No. 35 (A/58/35), 9 October 2003, <http://domino.un.org/unispal.nsf/9a798adb322aff38525617b006d88d7/618f78e6c6dce8ac85256de3005376b8!OpenDocument>.

Palestinian Territory, including East Jerusalem, and to refrain from any conduct that may hinder such bodies from doing so.

(ii) Obligation not to recognize wrongful situations

640. The ILC has referred to the obligation of the international community as a whole not to recognize as lawful those situations which have been created by a serious breach within the meaning of Article 40 of the ILC Articles:

“The obligation applies to ‘situations’ created by these breaches, such as, for example, attempted acquisition of sovereignty over territory through the denial of the right of self-determination of peoples. It not only refers to the formal recognition of these situations, but also prohibits acts which would imply such recognition.”⁵⁰⁷

641. The Court expressed the pertinent principle in the Advisory Opinion it gave in 1971 in the *Namibia Case*:

“the termination of the Mandate and the declaration of the illegality of South Africa’s presence in Namibia are opposable to all States in the sense of barring *erga omnes* the legality of a situation which is maintained in violation of international law.”⁵⁰⁸

642. Subsequently, the Court’s Judgment of 27 June 1986 in the *Nicaragua Case* referred to the obligation not to recognize any territorial acquisition obtained by force.⁵⁰⁹

643. Consequently, all States are under an obligation not to recognize any Israeli sovereignty over the Occupied Palestinian Territory, including East Jerusalem, or any changes in the legal status of the Closed Zone as a result of Israel’s construction and operation of the Wall. In particular, they are under an obligation to recognize the invalidity of all legislative and administrative measures, policies, actions and practices taken by Israel in relation to the Wall. The well-established principle of the non-recognition of unlawful annexations in particular dictates this legal consequence for third States.

644. Furthermore – and without prejudice to the fact that the Security Council and the General Assembly have declared that any settlements in the Occupied Palestinian Territory, including East Jerusalem, (which necessarily includes settlements within the Closed Zone), are unlawful under international law – all States are under an obligation to recognize the illegality of any Israeli settlements established in the Closed Zone within the Occupied Palestinian Territory, including East Jerusalem, and to refrain from any acts and in particular any dealings with the Government of Israel implying recognition of the legality of such settlements..

⁵⁰⁷ Commentaries to the draft articles on Responsibility of States for internationally wrongful acts adopted by the International Law Commission at its fifty-third session (2001), *Report of the International Law Commission on the work of its Fifty-third session*, Official Records of the General Assembly, Fifty-sixth session, Supplement No. 10 (A/56/10), p. 287, para. 5.

⁵⁰⁸ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, I.C.J. Reports 1971, p. 16, at p. 56, para. 126.

⁵⁰⁹ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, I.C.J. Reports 1986, para. 188.

(iii) The obligation not to render aid or assistance to maintain an unlawful situation

645. Recent State practice shows that third States are perfectly conscious of their obligations in this regard.

646. Notwithstanding the fact that they apply primarily to States, the above obligations may be considered to apply by analogy to intergovernmental organisations. In this regard, the United Nations General Assembly and the UN Secretary-General, in taking certain positions that are in the record before the Court, have shown that they represent the clear will of the international community in relation to the matter of the Wall.

647. Many States have tried to obtain the same involvement from the United Nations Security Council. Some delegations have spoken openly on the subject. For example:

Iran:

“Thus, given the enormity of what is at stake and the international consensus on the need to stop the unlawful construction of the wall in the West Bank, it is incumbent upon the Security Council to live up to the expectations of the international community and take the necessary action with a view to upholding international law. In particular, the time has come for the Security Council to demand that the separation wall be stopped and reversed.”⁵¹⁰

Saudi Arabia:

“Given both the permanent international responsibility of the United Nations for the Palestinian question until such a time as it is resolved in all its aspects as well as the provisions of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, the Kingdom of Saudi Arabia calls upon the Security Council to fully assume its responsibilities and discharge its obligations by asserting the illegitimacy of erecting such a wall and by calling for Israel to halt its construction immediately.”⁵¹¹

648. It is regrettable that because of the use of a veto by one permanent Member, the Security Council, on which the Members States have conferred “primary responsibility for the maintenance of international peace and security” and which is supposed to act on their behalf “in carrying out its duties under this responsibility” (United Nations Charter, Article 24), was unable to respond to the call of the international community as a whole on this crucial matter.

649. Consequently, all States are under obligation to refrain from any acts and in particular any dealings with the Government of Israel lending support or assistance to be used in connection with the construction, operation and/or planning of the Wall and any Israeli settlements within the Closed Zone in the Occupied Palestinian Territory, including East Jerusalem.

⁵¹⁰ UN Doc. S/PV.4841, p. 27.

⁵¹¹ UN Doc. S/PV.4841, pp. 36-37.

(4) General Conclusion

650. As a consequence of the grave breaches of international law mentioned in Chapters 7, 8, 9 and 10, Israel is bound:

in conformity with its obligation of cessation, to cease forthwith the construction and operation of the Wall, and abide by the Security Council's resolutions concerning the settlements illegally established in the Closed Zone;

in conformity with its obligation of restoring the status quo ante, to dismantle forthwith all parts of the wall that step across the Green Line into the Occupied Palestinian Territory;

in conformity with its obligation of compensating for the damage caused, to indemnify the injured for all their material and personal losses arising from Israel's violations of its international obligations;

in conformity with its obligations under international humanitarian law, to search for and bring before its courts persons alleged to have committed grave breaches of international humanitarian law arising from the construction, operation and/or planning of the Wall.

651. As a consequence of the grave breaches of international law mentioned in Chapters 7, 8, 9 and 10, other States have:

the obligation to cooperate with each other and with the responsible international bodies, with a view to putting an end to Israel's violations;

the obligation not to recognize these wrongful situations; and

the obligation not to give aid or assistance to maintain such situations.

Chapter 12. CONCLUSIONS

652. For the reasons set out in this Written Statement, Palestine respectfully submits the following conclusions to the Court:

I. The Court is competent to give the advisory opinion requested by the General Assembly in its Resolution A/ES-10/14 of 8 December 2003, and there are no compelling reasons preventing the Court from giving its opinion.

II. The Court should reply in the following manner to the question put by the General Assembly:

A. Israel's rights and obligations in the Occupied Palestinian Territory, including in and around East Jerusalem, are those of an Occupying Power, governed by the provisions of international humanitarian law, including in particular the Hague Regulations, the Fourth Geneva Convention and customary international humanitarian law, and by the provisions of international human rights law, including in particular the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and customary international human rights law.

B. Israel has no right to construct and operate the Wall in the Occupied Palestinian Territory, including in and around East Jerusalem.

C. The construction and operation of the Wall violates international humanitarian law, in particular for the following reasons:

1. The Wall is largely built in the Occupied Palestinian Territory;

2. The Wall is part of a continuing attempt by Israel to change the legal status of the Occupied Palestinian Territory, including East Jerusalem, and to effect the *de facto* annexation of Palestinian territory;

3. The construction of the Wall and the surrounding areas has entailed the destruction of Palestinian property contrary to Article 53 of the Fourth Geneva Convention;

4. The construction of the Wall and the surrounding areas has entailed the requisitioning of Palestinian property contrary to Article 52 of the Hague Regulations;

5. Contrary to Article 64 of the Hague Regulations, the construction and operation of the Wall fails to respect the laws in force in the occupied country;

6. The construction and operation of the Wall is incompatible with Israel's duties under Article 55 of the Fourth Geneva Convention in respect of ensuring food and medical supplies to the population of the Occupied Palestinian Territory;

7. The construction and operation of the Wall is a form of collective punishment contrary to Article 33 of the Fourth Geneva Convention, and Article 75 of Additional Protocol I which in this respect represents customary international law;

8. The construction and operation of the Wall is a disproportionate response to any threat that might be considered to face Israel.

D. The construction and operation of the Wall violates international human rights law, in particular for the following reasons:

1. The construction and operation of the Wall violates the right to freedom of movement, as established in particular in Article 12 of the International Covenant on Civil and Political Rights and Article 13 of the Universal Declaration of Human Rights;
2. The Wall violates Israel's obligations under Article 6 of the International Covenant on Economic, Social and Cultural Rights in relation to the right to earn a living;
3. The construction and operation of the Wall violates Israel's obligations under Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights and Article 25 of the Universal Declaration on Human Rights, and under Articles 24 and 27 of the Convention on the Rights of the Child, in respect of the provision of adequate food and living conditions and medical care and social services;
4. The construction and operation of the Wall violates Israel's obligations under Article 13 of the International Covenant on Economic, Social and Cultural Rights and Article 26 of the Universal Declaration on Human Rights, and under Article 28 of the Convention on the Rights of the Child, in respect of the right to education;
5. The construction and operation of the Wall violates the rights of Palestinians in the Occupied Palestinian Territory to family and cultural life, as established *inter alia* in Article 17 of the International Covenant on Civil and Political Rights and Article 16 of the Convention on the rights of the Child;
6. The construction of the Wall has entailed the confiscation of property without legal justification and without proper legal process, contrary to customary international law as reflected in, *inter alia*, Protocol 1 to the European Convention on Human Rights;
7. The seriousness of the violations listed in the preceding paragraphs is aggravated by the fact that the operation of the Wall explicitly discriminates against Palestinians and is applied to Palestinians in a manner that degrades and humiliates them.

E. The construction and operation of the Wall violates the right of the Palestinian people to self-determination, in particular in the following respects:

1. To the extent that the Wall departs from the Green Line and is built in the Occupied Palestinian Territory, including East Jerusalem, it severs the territorial sphere over which the Palestinian people are entitled to exercise their right to self-determination. To the same extent the Wall is also a violation of the legal principle prohibiting the acquisition or annexation of territory by the use of force;
2. The route of the Wall is designed to change the demographic composition of the Occupied Palestinian Territory, including East Jerusalem, by reinforcing the Israeli

settlements and by facilitating their extension, in disregard of the fact that these settlements are illegal according to international law;

3. By the creation of Palestinian enclaves, discrimination against and humiliation of the Palestinian population, and the creation of unbearable economic conditions, the Wall is having the clear and foreseeable effect of the forced displacement of the Palestinian population into increasingly limited areas regarded as safe and livable for Palestinians;
4. The Wall is part of a policy of reducing and parcelling out the territorial sphere over which the Palestinian people are entitled to exercise their right to self-determination, establishing non-contiguous Palestinian areas similar to Bantustans;
5. The construction and operation of the Wall violates the right of the Palestinian people to permanent sovereignty over their natural resources in the Occupied Palestinian Territory, including East Jerusalem, and destroys the economic and social basis of the life of the Palestinian people;
6. The construction and operation of the Wall endangers the feasibility of a viable State of Palestine and consequently renders the 'two State' solution of Israel and Palestine physically impossible.

F. As a consequences of these grave breaches of international law, Israel is bound:

1. In conformity with its obligation of cessation, to cease forthwith the construction and operation of the Wall;
2. In conformity with its obligation of restoring the *status quo ante*, to dismantle forthwith all parts of the Wall in the Occupied Palestinian Territory stepping across the Green Line, to facilitate the safe and immediate return of Palestinians displaced as a result of the construction and operation of the Wall, and to restore to its owners all property seized or requisitioned in connection with the construction, operation and/or planning of the Wall;
3. In conformity with its obligation to compensate for the damage caused, to indemnify the injured for all their material and personal losses arising from Israel's violations of its international obligations;
4. In conformity with its obligations under international humanitarian law, to respect and ensure respect for the Fourth Geneva Convention, to search for and bring before its courts persons alleged to have committed or to have ordered to be committed grave breaches of international humanitarian law, and to take measures necessary to suppress any other breaches of international humanitarian law arising from the construction, operation and/or planning of the Wall;
5. To conform itself to the relevant Security Council resolutions, and heed the will of the international community.

G. As a consequence of these grave breaches of international law, other States have:

1. The obligation to cooperate, with each other and with the United Nations and other competent international bodies, with a view to putting an end to Israel's violations of international law;
2. The obligation not to recognize these wrongful situations; and
3. The obligation not to give aid or assistance to maintain such situations.

APPENDIX 1:

TABLES OF UN SECURITY COUNCIL RESOLUTIONS RESPECTING PALESTINE

This Appendix consists of tables of pertinent UN Security Council resolutions respecting Palestine in general (section I), the applicability of the Fourth Geneva Convention to the Occupied Palestinian Territory (section II), Jerusalem (section III), and Israeli settlements in the Occupied Palestinian Territory (section IV).

This Appendix was prepared by the Permanent Observer Mission of Palestine to the United Nations for purposes only of this advisory proceeding. This document does not purport to be complete.

I. Table listing pertinent Security Council resolutions respecting Palestine (General)

Resolution Number	Date Adopted	Recorded Vote
49	22 May 1948	8-0-3 (3 abstentions were Syria, Ukrainian S.S.R., U.S.S.R.)
50	29 May 1948	Draft was voted on in parts, no vote taken on text as a whole
54	15 July 1948	7-1-3 (1 against was Syria, 3 abstentions were Argentina, Ukrainian S.S.R., and U.S.S.R.)
60	29 October 1948	Adopted without a vote
127	22 January 1958	Unanimous
162	11 April 1961	8-0-3 (3 abstentions were Ceylon, U.S.S.R., United Arab Republic)
237	14 June 1967	Unanimous
250	27 April 1968	Unanimous

251	2 May 1968	Unanimous
252	21 May 1968	13-0-2 (2 abstentions were Canada, USA)
259	27 September 1968	12-0-3 (3 abstentions were Canada, Denmark, USA)
267	3 July 1969	Unanimous
271	15 September 1969	11-0-4 (4 abstentions were Colombia, Finland, Paraguay, USA)
298	25 September 1971	14-0-1 (1 abstention was Syria)
446	22 March 1979	12-0-3 (3 abstentions were Norway, U.K., USA)
452	20 July 1979	14-0-1 (1 abstention was USA)
465	1 March 1980	Unanimous
468	8 May 1980	14-0-1 (1 abstention was USA)
469	20 May 1980	14-0-1 (1 abstention was USA)
471	5 June 1980	14-0-1 (1 abstention was USA)
476	30 June 1980	14-0-1

		(1 abstention was USA)
478	20 August 1980	14-0-1 (1 abstention was USA)
484	19 December 1980	Unanimous
592	8 December 1986	14-0-1 (1 abstention was USA)
605	22 December 1987	14-0-1 (1 abstention was USA)
607	5 January 1988	Unanimous
608	14 January 1988	14-0-1 (1 abstention was USA)
636	6 July 1989	14-0-1 (1 abstention was USA)
641	30 August 1989	14-0-1 (1 abstention was USA)
672	12 October 1990	Unanimous
673	24 October 1990	Unanimous
681	20 December 1990	Unanimous
694	24 May 1991	Unanimous
726	6 January 1992	Unanimous
799	18 December 1992	Unanimous
904	18 March 1994	Draft was voted on in parts, USA abstained on two preambular paragraphs. No vote was taken on the text as a whole

1073	28 September 1996	14-0-1 (1 abstention was USA)
1322	7 October 2000	14-0-1 (1 abstention was USA)
1397	12 March 2002	14-0-1 (1 abstention was Syria)
1402	30 March 2002	14-0-0 (Syria did not take part in the vote)
1403	4 April 2002	Unanimous
1405	19 April 2002	Unanimous
1435	24 September 2002	14-0-1 (1 abstention was USA)
1515	19 November 2003	Unanimous