

## Parliamentary Assembly Assemblée parlementaire

### Situation in the Middle East

**Doc. 10594**

20 June 2005

**Opinion** <sup>[1]</sup>

Committee on Legal Affairs and Human Rights

Rapporteur for opinion: Mr Kevin McNamara, United Kingdom, Socialist Group

#### I. Conclusions of the Committee

1. The Committee on Legal Affairs and Human Rights strongly supports the draft resolution tabled by the Political Affairs Committee.
2. The Committee's main preoccupation remains the lack of respect of fundamental human rights and international humanitarian law by both Israel and the Palestinian authority. It wishes therefore to propose some amendments to the draft resolution.

#### II. Proposed amendments to the draft resolution

The Committee proposes the following amendments:

##### **Amendment A:**

After paragraph 5, insert the following paragraph:

"In this regard, the Assembly, recalling its Resolution 1420 (2005), strongly urges the Government of Israel to review its position concerning the construction of the security wall taking into account the advisory opinion adopted by the International Court of Justice in 2004. The Assembly considers, along with the International Court of Justice, that the construction of the wall is contrary to international law."

##### **Amendment B:**

After paragraph 6, insert the following paragraph:

"The Assembly is appalled by the decision made in February 2005 by Palestinian leader Mahmoud Abbas to end the moratorium on the death penalty decided by his predecessor in 2002. It is shocked by and strongly condemns the execution of four detainees on 12 June 2005. It therefore decides to enter into a dialogue with the Palestinian Legislative Council, in order to support legislators in their endeavours to reinstitute a moratorium on executions and abolish the death penalty and to engage the opponents of abolition in an informed debate."

##### **Amendment C:**

After paragraph 6, insert the following paragraph:

"The Assembly expresses its concerns over the serious deficiencies of the Palestinian judicial system. It stresses the need for serious reforms with a view to strengthening democratic institutions, right of free expression, implementing the rule of law and ensuring the respect of human rights in the legislative, legal and administrative fields."

##### **Amendment D:**

In paragraph 11, replace "calls on" by "urges".

##### **Amendment E:**

In paragraph 11, replace sub-paragraph ii. with:

"immediately stop building the wall in the Occupied Palestinian Territory, including in and around East Jerusalem, immediately stop land and property confiscation as well as home demolition, dismantle forthwith the structure situated therein, repeal or render ineffective forthwith all legislative and regulatory acts relating thereto, and make reparation for all damage caused by the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem."

##### **Amendment F:**

In paragraph 12, replace "calls on" by "urges".

##### **Amendment G:**

In paragraph 12, after sub-paragraph iii., insert the following:

"outlaw the death penalty without delay;"

##### **Amendment H:**

In paragraph 13, replace sub-paragraph ii with:

"ensure that school textbooks do not contain ideas and thoughts leading to racial, political or religious hatred."

##### **Amendment I:**

At the end of paragraph 14 ii. add "and to the abolition of the death penalty".

#### III. Explanatory memorandum

by Mr McNamara, Rapporteur for opinion

1. The report presented by the Political Affairs Committee takes stock of the situation in the Middle East, six months after the election in January 2005 of Mahmoud Abbas to the presidency of the Palestinian Authority, and evaluates the progress made towards durable peace since the adoption of the Assembly's last report during the January 2005 session. The Committee on Legal Affairs and Human Rights has not much to add to this report which covers its main concerns, including those related to the lack of respect of fundamental human rights.

2. There is no doubt that progress has been made. The ceasefire remains in force but it is fragile and hangs by a thread. The situation remains tense. Israel and the Palestinian Authority continue to blame each other for numerous incidents. Security remains a major concern. We are far from the vision of a viable Palestinian state living alongside Israel in peace and security, as advocated by the Parliamentary Assembly echoing Resolution 1397 (2002) of the United Nations Security Council.

3. Assembly Resolution 1281 (2002) remains in my opinion valid, especially when it states that "a comprehensive settlement in the Middle East should include withdrawal from the occupied Arab territories, the establishment of a Palestinian state, and guarantees for Israel's security and that of all the states and peoples of the region", whilst sharing the United Nations Security Council's "vision of a region where two States, Israel and Palestine, live side by side within secure and recognised borders".

4. The United Nations Security Council has endorsed the Middle East Road Map towards a permanent, two-State solution to the Israeli-Palestinian conflict, and in its Resolution 1515 (2003) has called on the parties "to fulfil their obligations under the Roadmap in cooperation with the Quarter and to achieve the vision of two States living side by side in peace and security".

5. However, implementation of the Road Map seems to have broken down. As regards the withdrawal from Gaza and the West Bank, Israel agreed to hand over five West Bank towns during negotiations over a truce with the Palestinians in February 2005. So far, it has returned only Tulkarem and Jericho to Palestinian control. Qalqilya, Bethlehem, Jenin and Ramallah remain in Israeli hands.

6. As regards **Israel**, there are still concerns about the continuation of the construction of the wall, despite the Advisory opinion adopted by the International Court of Justice in 2004 (reproduced in Appendix II), the confiscation of land and property and home demolitions, especially in Jerusalem and West Bank, and the extension of Jewish illegal settlements. In this regard, the Assembly Resolution 1420 (2005), in which it calls on the Government of Israel to review its position concerning the construction of the security wall should be recalled in the draft resolution in more severe terms. The Assembly must clearly state, along with the International Court of Justice, that the construction of the wall is a violation of international law and contradicts the Road Map.

7. According to Amnesty International <sup>[2]</sup>, in 2004, "some 700 Palestinians died, including about 150 children. Most were killed unlawfully, in reckless shootings, shelling or air strikes on refugee camps and other densely populated areas throughout the West Bank and Gaza Strip. Israeli forces continued to carry out extrajudicial executions of members and leaders of Hamas and other Palestinian groups, in which bystanders were frequently killed or injured. Stringent restrictions imposed by the Israeli army on the movement of Palestinians in the Occupied Territories caused widespread poverty and unemployment and hindered access to health and education facilities. Israel continued to expand illegal settlements and to build

a fence/wall through the West Bank, confining Palestinians in isolated enclaves cut off from their land and essential services in nearby towns and villages. Routine destruction of Palestinian homes, land and property in the West Bank and Gaza Strip was stepped up in the biggest wave of house demolitions in the Gaza Strip since the beginning of the intifada (uprising). In May the Israeli army destroyed some 300 homes and damaged about 270 others in a refugee camp in Rafah, leaving close to 4,000 Palestinians homeless. In the West Bank, Israel continued to build a 600-kilometre fence/wall encircling and cutting off Palestinian towns and villages, despite the ruling by the International Court of Justice. The fence/wall and hundreds of Israeli army checkpoints and blockades throughout the Occupied Territories continued to hinder or prevent Palestinians' access to their land, their workplaces and to education, health and other crucial services."

8. In its Resolution 1544 (2004), the United Nations Security Council calls on Israel "to address its security needs within the boundaries of international law". This is quite clearly not the case.

9. In its last resolution - Resolution 1420 (2005) on *Prospects for peace in the Middle East* - the Assembly called on *inter alia* the Government of Israel to:

i. halt the military operations and extrajudicial executions of militants of Palestinian extremist organisations;

ii. consider the withdrawal of military forces and settlers from Gaza as a part of the peace process in co-operation with the Palestinian side and not as an isolated step;

iii. review its position concerning the construction of the security wall taking into account the decision of the International Court of Justice;

iv. put an end to the construction and expansion of the illegal settlements without any further delay.

Again, one can but conclude that these calls have not been heeded at all; the Assembly resolution has stayed a dead letter.

10. On the **Palestinian side**, respect for human rights can be legitimately questioned. Particularly worrisome are developments regarding the death penalty. In February 2005, Palestinian leader Mahmoud Abbas decided to end the moratorium on the death penalty declared by his predecessor, Yasser Arafat, in 2002. On 12 June last, four detainees sentenced to death were executed.

11. Moreover, as regards the fight against terrorism, the dismantlement of Palestinian terrorist groups is far from being completed. According to Amnesty International, Palestinian armed groups killed 109 Israelis — 67 of them civilians and including eight children — in suicide bombings, shootings and mortar attacks.

12. Palestinian Prime Minister Ahmed Qurei, who has pledged to make the restoration of law and order one of his top priorities, recognised quite recently that Palestinian security personnel were themselves behind hundreds of attacks against civilians. Allegations that forces under the authority of the Palestinian Authority are engaging in terrorist acts and inciting violence have to be investigated without delay.

13. If I may express some words of criticism of the report presented by the Political Affairs Committee, I regret that it neglects important questions such as democratic and legal reforms of Palestinian institutions. While concentrating on security issues and the peace process, the report does not address the need for serious reforms with a view to strengthening democratic institutions, implementing the rule of law and ensuring the respect of human rights in the legislative, legal and administrative fields.

14. The Committee thus concludes that granting the Palestinian Legislative Council an observer status permitting greater involvement in the Assembly's activities should be contingent upon the PLC not being found to be in flagrant violation of the Council of Europe's fundamental ideals and principles. The abolition of the death penalty is therefore a prerequisite.

## Appendix I

### **PACE President condemns executions by the Palestinian Authority**

Strasbourg, 13.06.2005 – The President of the Parliamentary Assembly of the Council of Europe (PACE), René van der Linden, today strongly condemned yesterday's execution of four convicted murderers by the Palestinian Authority.

"Death is not justice and will never be," he said. "The death penalty will not help to curb violence. In a long process of sharing our experience, we have succeeded in making the territory of our 46 member states a *de facto* death-penalty-free zone. Our ambition is now to extend it beyond the European continent," the PACE President stressed.

He said these executions would cast a shadow over relations between PACE and the Palestinian authorities (\*), especially against the background of the forthcoming debate on the *Middle East* at the PACE plenary session (Strasbourg, 20-24 June).

He urged Palestinian President Mahmoud Abbas to do everything in his power to make sure the practice of executions is banished. He called on the Palestinian authorities to do their utmost to ensure that the principles of human rights, democracy and the rule of law, which are the hallmarks of civilised society in general and of the Council of Europe in particular, are observed.

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(\*) In [Resolution 1245 \(2001\)](#), PACE resolved to invite representatives of the Palestinian Legislative Council to participate in the Parliamentary Assembly and its committee meetings whenever the Middle East issue appears on the agenda and to continue to closely observe the situation through its competent committees and holdperiodical debates in the plenary as well as colloquies, seminars etc.

## Appendix II

### **International Court of Justice**

#### **Press Release 2004/28**

#### **Legal Consequences of the Construction of a Wall**

#### **in the Occupied Palestinian Territory**

#### **Advisory Opinion**

#### **The Court finds that the construction by Israel of a wall in the Occupied Palestinian**

#### **Territory and its associated régime are contrary to international law; it states**

#### **the legal consequences arising from that illegality**

THE HAGUE, 9 July 2004. The International Court of Justice (ICJ), principal judicial organ of the United Nations, has today rendered its Advisory Opinion in the case concerning the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (request for advisory opinion).

In its Opinion, the Court finds unanimously that it has jurisdiction to give the advisory opinion requested by the United Nations General Assembly and decides by fourteen votes to one to comply with that request.

The Court responds to the question as follows:

"A. By fourteen votes to one,

The construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated régime, are contrary to international law";

"B. By fourteen votes to one,

Israel is under an obligation to terminate its breaches of international law; it is under an obligation to cease forthwith the works of construction of the wall being built in the Occupied Palestinian Territory, including in and around East Jerusalem, to dismantle forthwith the structure therein situated, and to repeal or render ineffective forthwith all legislative and regulatory acts relating thereto, in accordance with paragraph 151 of this Opinion";

"C. By fourteen votes to one,

Israel is under an obligation to make reparation for all damage caused by the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem";

"D. By thirteen votes to two,

All States are under an obligation not to recognize the illegal situation resulting from the construction of the wall and not to render aid or assistance in maintaining the situation created by such construction; all States parties to the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 have in addition the obligation, while respecting the United Nations Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention";

"E. By fourteen votes to one,

The United Nations, and especially the General Assembly and the Security Council, should consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall and the associated régime, taking due account of the present Advisory Opinion."

#### Reasoning of the Court

The Advisory Opinion is divided into three parts: jurisdiction and judicial propriety; legality of the construction by Israel of a wall in the Occupied Palestinian Territory; legal consequences of the breaches found.

[...]

#### Legality of the construction by Israel of a wall in the Occupied Palestinian Territory

Before addressing the legal consequences of the construction of the wall (the term which the General Assembly has chosen to use and which is also used in the Opinion, since the other expressions sometimes employed are no more accurate if understood in the physical sense), the Court considers whether or not the construction of the wall is contrary to international law.

The Court determines the rules and principles of international law which are relevant to the question posed by the General Assembly. The Court begins by citing, with reference to Article 2, paragraph 4, of the United Nations Charter and to General Assembly resolution 2625 (XXV), the principles of the prohibition of the threat or use of force and the illegality of any territorial acquisition by such means, as reflected in customary international law. It

further cites the principle of self-determination of peoples, as enshrined in the Charter and reaffirmed by resolution 2625 (XXV). As regards international humanitarian law, the Court refers to the provisions of the Hague Regulation of 1907, which have become part of customary law, as well as the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 1949, applicable in those Palestinian territories which before the armed conflict of 1967 lay to the east of the 1949 Armistice demarcation line (or "Green Line") and were occupied by Israel during that conflict. The Court further notes that certain human rights instruments (International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights and the United Nations Convention on the Rights of the Child) are applicable in the Occupied Palestinian Territory. The Court ascertains whether the construction of the wall has violated the above-mentioned rules and principles. It first observes that the route of the wall as fixed by the Israeli Government includes within the "Closed Area" (between the wall and the "Green Line") some 80 percent of the settlers living in the Occupied Palestinian Territory. Recalling that the Security Council described Israel's policy of establishing settlements in that territory as a "flagrant violation" of the Fourth Geneva Convention, the Court finds that those settlements have been established in breach of international law. It further considers certain fears expressed to it that the route of the wall will prejudice the future frontier between Israel and Palestine; it considers that the construction of the wall and its associated régime "create a 'fait accompli' on the ground that could well become permanent, in which case, . . . [the construction of the wall] would be tantamount to de facto annexation". The Court notes that the route chosen for the wall gives expression in loco to the illegal measures taken by Israel, and deplored by the Security Council, with regard to Jerusalem and the settlements, and that it entails further alterations to the demographic composition of the Occupied Palestinian Territory. It finds that the "construction [of the wall], along with measures taken previously, . . . severely impedes the exercise by the Palestinian people of its right to self-determination, and is therefore a breach of Israel's obligation to respect that right".

The Court then considers the information furnished to it regarding the impact of the construction of the wall on the daily life of the inhabitants of the Occupied Palestinian Territory (destruction or requisition of private property, restrictions on freedom of movement, confiscation of agricultural land, cutting-off of access to primary water sources, etc.). It finds that the construction of the wall and its associated régime are contrary to the relevant provisions of the Hague Regulations of 1907 and of the Fourth Geneva Convention; that they impede the liberty of movement of the inhabitants of the territory as guaranteed by the International Covenant on Civil and Political Rights; and that they also impede the exercise by the persons concerned of the right to work, to health, to education and to an adequate standard of living as proclaimed in the International Covenant on Economic, Social and Cultural Rights and in the Convention on the Rights of the Child. Lastly, the Court finds that this construction and its associated régime, coupled with the establishment of settlements, are tending to alter the demographic composition of the Occupied Palestinian Territory and thereby contravene the Fourth Geneva Convention and the relevant Security Council resolutions.

The Court observes that certain humanitarian law and human rights instruments include qualifying clauses or provisions for derogation which may be invoked by States parties, inter alia where military exigencies or the needs of national security or public order so require. It states that it is not convinced that the specific course Israel has chosen for the wall was necessary to attain its security objectives and, holding that none of such clauses are applicable, finds that the construction of the wall constitutes "breaches by Israel of various of its obligations under the applicable international humanitarian law and human rights instruments".

In conclusion, the Court considers that Israel cannot rely on a right of self-defence or on a state of necessity in order to preclude the wrongfulness of the construction of the wall. The Court accordingly finds that the construction of the wall and its associated régime are contrary to international law.

Legal consequences of the violations found

The Court draws a distinction between the legal consequences of these violations for Israel and those for other States.

In regard to the former, the Court finds that Israel must respect the right of the Palestinian people to self-determination and its obligations under humanitarian law and human rights law. Israel must also put an end to the violation of its international obligations flowing from the construction of the wall in the Occupied Palestinian Territory and must accordingly cease forthwith the works of construction of the wall, dismantle forthwith those parts of that structure situated within the Occupied Palestinian Territory and forthwith repeal or render ineffective all legislative and regulatory acts adopted with a view to construction of the wall and establishment of its associated régime, except in so far as such acts may continue to be relevant for compliance by Israel with its obligations in regard to reparation. Israel must further make reparation for all damage suffered by all natural or legal persons affected by the wall's construction.

As regards the legal consequences for other States, the Court finds that all States are under an obligation not to recognize the illegal situation resulting from the construction of the wall and not to render aid or assistance in maintaining the situation created by such construction. The Court further finds that it is for all States, while respecting the United Nations Charter and international law, to see to it that any impediment, resulting from the construction of the wall, in the exercise by the Palestinian people of its right to self-determination is brought to an end. In addition, all States parties to the Fourth Geneva Convention are under an obligation, while respecting the Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention.

Finally, the Court is of the view that the United Nations, and especially the General Assembly and the Security Council, should consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall and its associated régime, taking due account of the present Advisory Opinion.

The Court concludes by stating that the construction of the wall must be placed in a more general context. In this regard, the Court notes that Israel and Palestine are "under an obligation scrupulously to observe the rules of international humanitarian law". In the Court's view, the tragic situation in the region can be brought to an end only through implementation in good faith of all relevant Security Council resolutions. The Court further draws the attention of the General Assembly to the "need for . . . efforts to be encouraged with a view to achieving as soon as possible, on the basis of international law, a negotiated solution to the outstanding problems and the establishment of a Palestinian State, existing side by side with Israel and its other neighbours, with peace and security for all in the region".

*Reporting committee:* Political Affairs Committee

*Committee for opinion:* Committee on Legal Affairs and Human Rights

*Reference to committee:* Res. 1013 (1993), Res. 1103 (1996), Res. 1183 (1999), Res. 1245 (2001), Rec. 1541 (2001), Res. 1281 (2002), Res. 1294 (2002)

*Opinion* approved by the committee on 20 June 2005

*Secretaries to the committee:* Mr Drzemczewski, Mr Schirmer, Ms Clamer, Mr Milner

<sup>[1]</sup> See [Doc 10570](#), report of the Political Affairs Committee.

<sup>[2]</sup> Amnesty International Report 2005 - <http://web.amnesty.org/report2005/isr-summary-eng>