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Report of the International Court of Justice

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Note

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

I. SUMMARY

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19. During the period under review the Court also received from the General Assembly the request for an advisory opinion on the question of the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory.

20. On 9 July 2004, the Court, rendered its Advisory Opinion, in which it first addressed the questions of its jurisdiction to give the requested opinion and of the judicial propriety of exercising that jurisdiction. The Court found, unanimously, that it had jurisdiction to give the advisory opinion requested and decided, by fourteen votes to one, to comply with that request.

21. Before addressing the legal consequences of the construction of the wall, the Court then considered the question of the legality of the construction of the wall. It found, by fourteen votes to one, that

“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”.

22. With regard to the legal consequences of the violations found, the Court distinguished between the consequences for Israel, those for other States, and, where appropriate, for the United Nations.

As regards the consequences for Israel, the Court, by fourteen votes to one, found that:

“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”; and that “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”.

Concerning the consequences for other States, the Court found, by thirteen votes to two, 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; 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”.

With regard to the United Nations finally, the Court found, by fourteen votes to one, 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 the associated régime, taking due account of the present Advisory Opinion.”

23. The Court concluded its reasoning in the Advisory Opinion by stating that the construction of the wall must be placed in a more general context. In this regard, it noted that Israel and Palestine are “under an obligation scrupulously to observe the rules of international humanitarian law”. The Court expressed the view that 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 drew 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”.

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V. JUDICIAL WORK OF THE COURT

97. During the period under review a total of 26 cases – 25 contentious cases and one advisory case – were pending, 20 of which remain so.

98. Over this period the Court received a request for an advisory opinion from the General Assembly concerning the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory.

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B. Request for an advisory opinion

1. Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory

237. On 8 December 2003, the General Assembly of the United Nations adopted resolution [A/RES/ES-10/14](#) (A/ES-10/L.16) in which, referring to Article 65 of the Statute of the Court, it requested the International Court of Justice 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 resolutions?”

238. The Request for an Advisory Opinion was transmitted to the Court by the Secretary-General of the United Nations in a letter dated 8 December 2003 which was received in the Registry on 10 December 2003.

239. By an Order of 19 December 2003, the Court decided that the United Nations and its Member States were likely, in accordance with Article 66, paragraph 2, of the Statute, to be able to furnish information on all aspects raised by the question submitted to the Court for an advisory opinion and fixed 30 January 2004 as the time-limit within which written statements might be submitted to it on the question in accordance with Article 66, paragraph 4, of the Statute. By the same Order, the Court further decided that, in the light of resolution ES-10/14 and the report of the Secretary-General transmitted with the request, and taking into account the fact that the General Assembly had granted Palestine a special status of observer and that the latter was co-sponsor of the draft resolution requesting the advisory opinion, Palestine might also submit a written statement on the question within the above time-limit.

240. By the aforesaid Order, the Court also decided, in accordance with Article 105, paragraph 4, of the Rules of Court, to hold public hearings during which oral statements and comments might be presented to it by the United Nations and its Member States, regardless of whether or not they had submitted written statements, and fixed 23 February 2004 as the date for the opening of the said hearings. By the same Order, the Court decided that, for the reasons set out above, Palestine might also take part in the hearings. Lastly, it invited the United Nations and its Member States, as well as Palestine, to inform the Registry, by 13 February 2004 at the latest, if they were intending to take part in the above-mentioned hearings. By letters of 19 December 2004, the Registrar informed them of the Court’s decisions and transmitted to them a copy of the Order.

241. Ruling on requests submitted subsequently by the League of Arab States and the Organization of the Islamic Conference, the Court decided, in accordance with Article 66 of its Statute, that those two international organizations were likely to be able to furnish information on the question submitted to the Court, and that consequently they might for that purpose submit written statements within the time-limit fixed by the Court in its Order of 19 December 2003 and take part in the hearings.

242. Pursuant to Article 65, paragraph 2, of the Statute, the Secretary-General of the United Nations communicated to the Court a dossier of documents likely to throw light upon the question.

243. By a reasoned Order of 30 January 2004 regarding its composition in the case, the Court decided that the matters brought to its attention by the Government of Israel in a letter of 31 December 2003, and in a confidential letter of 15 January 2004 addressed to the President pursuant to Article 34, paragraph 2, of the Rules of Court, were not such as to preclude Judge Elaraby from sitting in the case.

244. Within the time-limit fixed by the Court for that purpose, written statements were filed by, in order of their receipt: Guinea, Saudi Arabia, League of Arab States, Egypt, Cameroon, Russian Federation, Australia, Palestine, 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, Ireland on behalf of the European Union, Cyprus, Brazil, Namibia, Malta, Malaysia, Netherlands, Cuba, Sweden, Spain, Belgium, Palau, Federated States of Micronesia, Marshall Islands, Senegal, Democratic People’s Republic of Korea.

245. In the course of hearings held from 23 to 25 February 2004, the Court heard oral statements, in the following order, by: Palestine, South Africa, Algeria, Saudi Arabia, Bangladesh, Belize, Cuba, Indonesia, Jordan, Madagascar, Malaysia, Senegal, Sudan, League of Arab States, Organization of the Islamic Conference.

246. At a public sitting held on 9 July 2004, the Court delivered its Advisory Opinion, the final paragraph of which reads as follows:

“For these reasons,

THE COURT ,

(1) Unanimously,

Finds that it has jurisdiction to give the advisory opinion requested;

(2) By fourteen votes to one,

Decides to comply with the request for an advisory opinion;

IN FAVOUR : President Shi; Vice-President Ranjeva; Judges Guillaume, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Elaraby, Owada, Simma, Tonka;

AGAINST : Judge Buergenthal;

(3) Replies in the following manner to the question put by the General Assembly:

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;

IN FAVOUR : President Shi; Vice-President Ranjeva; Judges Guillaume, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Elaraby, Owada, Simma, Tonka;

AGAINST : Judge Buergenthal;

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;

IN FAVOUR : President Shi; Vice-President Ranjeva; Judges Guillaume, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Elaraby, Owada, Simma, Tonka;

AGAINST : Judge Buergenthal;

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;

IN FAVOUR : President Shi; Vice-President Ranjeva; Judges Guillaume, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Elaraby, Owada, Simma, Tonka;

AGAINST : Judge Buergenthal;

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;

IN FAVOUR : President Shi; Vice-President Ranjeva; Judges Guillaume, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Rezek, Al-Khasawneh, Elaraby, Owada, Simma, Tonka;

AGAINST : Judges Kooijmans, Buergenthal;

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.

IN FAVOUR : President Shi; Vice-President Ranjeva; Judges Guillaume, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Elaraby, Owada, Simma, Tonka;

AGAINST : Judge Buergenthal.”

Judges Koroma, Higgins, Kooijmans and Al-Khasawneh appended separate opinions to the Advisory Opinion of the Court; Judge Buergenthal appended a declaration; Judges Elaraby and Owada appended separate opinions.

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VIII. PUBLICATIONS, DOCUMENTS AND WEB SITE OF THE COURT

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The Court also prepares bilingual printed versions of the instruments instituting proceedings in a case before it (Applications instituting proceedings, Special Agreements) as well as Requests for an Advisory Opinion. In the period under review, the Court received and printed the request for an advisory opinion in the case concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory.

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266. During the hearings on the request for an advisory opinion in the case concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, from 23 to 25 February 2004, and at the time of the reading of the Court's opinion in that case, on 9 July 2004, the Court's proceedings were broadcast live and in full on the Court's website. The decision to web-cast the reading was taken in response to the exceptional interest shown by the general public, civil society organizations and the media worldwide, and in view of the Court's very limited seating space for the public and media representatives at the Peace Palace in The Hague.

The website can be visited at the following address: <http://www.icj-cij.org>.

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D. Budget of the Court for the biennium 2004-2005

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277. ... The 2004-2005 budget was prepared in advance of the United Nations urgent request for an Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestine Territories. In view of the extraordinary and unforeseen costs, associated inter alia, with security requirements and media demands, incurred for the issuance of the Opinion, it appears certain that the 2004-2005 budget will require additional funds. The Court strongly hopes that the grant of such funds will be rapidly agreed, so that it may continue efficiently to carry out the mission entrusted to it by its Statute, an integral part of the Charter of the United Nations.

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SHI Jiuyong,
President of the International
Court of Justice.
The Hague, 9 August 2004.
