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Talking Points: The International Court of Justice (ICJ) Advisory Opinion on the Construction of a Wall in the Occupied Palestinian Territory.

Summary of the Ruling

The ICJ advisory opinion of July 9th 2004 contained the following main points:

- (1) The construction of the wall in occupied Palestinian territory is contrary to international law
- (2) Israel is under an obligation to cease construction of the wall and dismantle the structure that has been built so far
- (3) Israel is under an obligation to make reparation for all damage caused by the wall's construction
- (4) All States are under an obligation not to recognize the illegal situation resulting from the construction of the wall, nor to render aid or assistance in maintaining the situation

Implications of the Ruling

- (1) **Occupied, not disputed territories:** The status of the West Bank, the Gaza Strip, and East Jerusalem has been categorically declared as under military occupation, in which the Fourth Geneva Convention is fully applicable (Paragraphs 78 and 101). The debate over whether these territories are 'occupied' or 'disputed' has now ended.
- (2) **Binding law; non-binding judgment:** Although the media has emphasised the 'non-binding' character of this ruling, the ICJ advisory opinion is actually an interpretation and application of existing international laws, which are, in fact, binding. Israel is party to the Geneva Conventions, the International Covenant on Civil and Political Rights, the Hague Regulations, the UN Charter, and other relevant international laws, all of which are binding upon it. As the highest legal authority in the world, the ICJ's interpretation of these laws cannot be ignored.
- (3) **The 'Uniting for Peace' procedure:** The ICJ has validated the 'Uniting for Peace' formula, under which the UN General Assembly (GA) can discuss and make recommendations on issues which have been stalled by vetoes in the Security Council (Paragraphs 29-34). The United States has recently attempted to discredit the 'Uniting for Peace' procedure, because it has been used to circumvent vetoes cast by the US in the Security Council - particularly on the Palestinian question. However, the ICJ has now reaffirmed the procedure, citing precedents from when the US created and invoked it, and investing greater power and authority in the General Assembly.
- (4) **It's all about the location:** The ICJ judgement clarifies that it is the location of the wall, not the concept of the wall, which is illegal. If Israel had built the wall on its own side of the 1949 Armistice line it would not be in violation of international law. Although the Israeli government has protested that the ICJ ruling ignores questions of terrorism and security, which are its stated reasons for the construction of the wall, paragraphs 116 and 139-142 of the ruling actually deal with this question in some depth. The court recognizes that: "Israel has to face numerous indiscriminate and deadly acts of violence against its civilian population [and] it has the right, and indeed the duty, to respond in order to protect the life of its citizens." However, the ICJ clarifies that "the measures taken are bound nonetheless to remain in conformity with applicable international law" (paragraph 141).
- (5) **The obligations of all states:** In addition to clarifying Israel's obligations to dismantle the wall and pay reparations, the ICJ also emphasised the obligations of *all* states not to provide aid or assistance to the illegal situation that results from the construction of the wall. This raises the possibility of sanctions. In 1971 the ICJ ruled that the South African occupation of Namibia was illegal, calling on states not to lend any recognition, support or assistance to it. Using language that was very similar to the recent ruling, the ICJ opinion on South Africa began a process that led to the imposition of sanctions by the Security Council. In

the case of Israel it is extremely unlikely that the Council will adopt resolutions that implement sanctions because of the threat of a US veto. However, this does not diminish the significance of the Court's identification of every state's responsibilities, nor does it preclude the possibility of bilateral sanctions.

- (6) **The settlements and international law:** As well as ruling on the separation wall, the ICJ also considered the policy of building settlements in occupied territory, concluding that "the Israeli settlements... have been established in breach of international law" (Paragraph 120). As the settlement programme in the West Bank continues to expand, this is an important part of the ruling that may also be followed up at the United Nations

What will happen next?

- (1) **The General Assembly:** On 20th July the UN General Assembly issued resolution A/ES-10/18, which acknowledged the advisory opinion of the ICJ and demanded that Israel comply with its obligations to dismantle the wall and make reparations for the damage. This resolution was adopted with an overwhelming majority of 150 in favour with 6 against, and is significant because it received the support of all EU member states. The General Assembly is likely to continue reconvening on this matter.
- (2) **The Secretary General:** The General Assembly resolution requested the Secretary General to establish a register of damage caused by the construction of the wall, with a view to recording the extent of the damage should reparations ever be paid.
- (3) **Switzerland:** The General Assembly resolution invited Switzerland, as the depository of the Geneva Conventions, to report to the General Assembly on the matter of ensuring that Israel complies with its obligations under the Fourth Geneva Convention.
- (4) **The High Contracting Parties to the Fourth Geneva Convention:** The ICJ ruling and the General Assembly resolution call upon parties to the Geneva Conventions to ensure Israel's compliance with this part of international law. The General Assembly called for the resumption of the Conference of High Contracting Parties to the Fourth Geneva Convention in order to pursue this. The United States has stated that it will not attend.
- (5) **Israel:** Israel has not recognised the ICJ's authority and jurisdiction over this matter, and has therefore said that they will disregard the Court's ruling. Israel has indicated that it will continue the construction of the separation wall, in violation of the international laws cited in the ruling.
- (6) **The Security Council:** In order to enforce the ICJ ruling and make Israel to comply with international law, the Security Council would have to pass a resolution under Chapter VII of the Charter. The ICJ recommended this in its advisory opinion, saying: "the United Nations, and especially 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" (Paragraph 160). However, no action is expected to be taken on the Security Council because of the threat of an American veto. It is quite possible that some Security Council members will table a resolution and allow it be vetoed, in order to illustrate that the United States is blocking action being taken on the ICJ ruling.
- (7) **The Peace Process:** The United States has objected that the ICJ ruling and subsequent GA resolution "interferes with peace efforts in accordance with the Roadmap." However, the peace process has moved very little over the past twelve months, and it is likely to remain static because the US has disengaged until after the November elections. A recent analysis by the British government's Department for International Development (DFID) warned that "the role of the USA, the country with the most leverage over Israel, is key" and "without action soon, there is a real danger that facts on the ground may make a viable two state solution almost impossible." In light of this, the use of international law and the ICJ ruling is crucial to compensating for US disengagement. The UN follow-up to the ruling can be used to place pressure on Israel to slow down the rapidly developing facts on the ground, and prevent what DfID calls the "gradual disappearance of the prospects for creating a viable Palestinian state".