



**Statement by Prof. John Dugard
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Occupied Palestinian Territory**

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I visited the Occupied Palestinian Territory (OPT) at the end of September 2007. Although the Israeli Government refuses to talk to me as it does not recognize my mandate it did, as on previous visits, facilitate my travels in the OPT. For this I am most grateful.

The situation in the OPT described in my report A/62/275 of 17 August 2007 has not improved. On the contrary, it has worsened.

Gaza remains an imprisoned society as a result of the complete closure of the main crossings at Rafah (for persons to Egypt) and Karni (for the import and export of goods via Israel). Israel refuses to recognize Gaza as an occupied territory, which it clearly is under international law, and instead has declared Gaza to be a "hostile entity". One of the consequences of this declaration is that Israeli banks have discontinued dealings with banks in Gaza – which has serious implications for Gazans who use the Israeli shekel as currency. The humanitarian crisis continues and over 80 per cent of the population is living below the official poverty line. IDF military incursions are a frequent occurrence as are the targeted assassinations of Palestinian militants. Indeed 12 Palestinians were killed by the IDF on the day I visited Gaza. Israel justifies its actions as defensive operations in response to the firing of Qassam rockets from Gaza into Israel. While the firing of such rockets is to be condemned, Israel's response is disproportionate and fails to distinguish clearly between civilian and military targets.

There have been some improvements in the West Bank since the seizure of power in Gaza by Hamas – the release of almost 350 prisoners, the payment of some of the tax moneys due to the Palestinian Authority, the relaxation of travel restrictions in the Jordan Valley and the granting of residence permits in the West Bank to 3,500 Palestinians. These improvements are, however, offset by:

- the increase in the number of checkpoints and roadblocks (now 571)
- the increase in the number of military incursions and arrests
- the continued construction of the Wall, with the associated harmful consequences for those living near the Wall
- the continued expansion of settlements (last week Israel announced that it would confiscate Palestinian land in the villages of Abu Dis, Sawahreh, Nabi Mousa and al-Khan al-Ahmar in the Jerusalem Governorate for the construction of a road to facilitate Israel's settlement expansion in East Jerusalem near to the Ma'aleh Adumim settlement)
- the ongoing humanitarian crisis.

There are some 11,000 Palestinians in Israeli jails. A genuine desire to enter into serious peace talks is usually accompanied by a release of prisoners. The failure of Israel to release prisoners on a meaningful scale suggests that it is not ready for a settlement of final status issues.

Today I wish to address three issues:

1. Self-Determination
2. The consequences of prolonged occupation
3. The role of the United Nations in the promotion of human rights in the OPT.

1. Self-Determination

The right of the Palestinian people to self-determination is seriously threatened by the dispute between Fatah and Hamas. Every effort should be made to restore Palestinian unity so that the right to self-determination of the Palestinian people as a whole may be exercised. The United Nations should be playing a role in the process of Palestinian reconciliation by trying to restore a government of national unity to represent the people as a whole. Unfortunately the Quartet, of which the United Nations is a member, has by giving its support to one faction against the other further divided the Palestinian people.

2. Prolonged Occupation

This year saw the fortieth anniversary of Israel's occupation of the West Bank, Gaza and East Jerusalem. The consequences of such a prolonged occupation are not clear – particularly when the occupation is accompanied by colonialism (there are nearly half a million settlers in the West Bank and East Jerusalem); and contains elements of apartheid (there are a host of laws and practices that discriminate against Palestinians in favour of settlers). It is suggested that the International Court of

Justice be asked for an Advisory Opinion on the legal consequences for Israel, the occupied Palestinian people and third States resulting from this prolonged occupation. Advisory Opinions serve a useful function in clarifying the law and providing legitimacy. The four advisory opinions requested by the United Nations in respect of South West Africa/Namibia illustrate the importance of this international procedure.

3. The Role of the United Nations

There are some who believe that it is not the function of a Special Rapporteur to publicly raise the question of the role of the United Nations in the peace process conducted by the Quartet. This issue is, however, one that is debated in the OPT and within the UN itself, albeit mainly behind closed doors. In my view it is my responsibility to address this issue directly within the UN family – and the Third Committee is certainly part of the UN family. I respect the views of those who believe that this issue should not be publicly discussed but, on the other hand, I disagree with this position because of my independent status as Special Rapporteur.

The United Nations is the ultimate protector of human rights in the international community. In the OPT, UN agencies, such as UNRWA, OCHA and the OHCHR, promote and protect human rights in a dedicated manner. Serious questions are, however, asked about the compatibility of the United Nations role in the Quartet with its role as the principal protector of human rights.

The Quartet, which reports to the Security Council, has not been established by resolution of the Security Council or the General Assembly. Despite its dubious legal foundation it has assumed primary responsibility for the management of the peace process between Israel and the Palestinians.

The Quartet, comprising the United States, the Russian Federation, the European Union and the United Nations, is dominated and guided by the political will of its most powerful member, as recently shown by the “End of Mission Report” of the former UN envoy to the Quartet, Mr. Alvaro de Soto.

Unfortunately the Quartet pays little attention to the human rights of the Palestinians. Regular statements issued by the Quartet (for instance, the most recent of 23 September) make little, if any, mention of the human rights violations inflicted on the Palestinians – military incursions, arrests, the Wall, checkpoints, settlements and the humanitarian crisis. The Quartet has never even acknowledged the 2004 Advisory Opinion of the International Court finding the Wall constructed in Palestinian territory to be illegal. In its latest statement it welcomes the steps taken by Israel to “improve conditions on the ground” with no mention of the fact that human rights violations have intensified in recent months. The fact that the United Nations is a party to these statements and to the imposition of sanctions against the Palestinians by the Quartet has led to a serious loss of confidence in the UN in the OPT. This is particularly true of Gaza which has been largely abandoned by the Quartet.

In these circumstances the question must be asked whether the best interests of the United Nations are served by remaining in the Quartet; where it is used to legitimize the pro-Israeli position of the Quartet? In my report I have suggested that the Secretary-General ensure that the Quartet adopt a more pro-active position on the human rights front by signalling to Israel that its violations of human rights in the OPT can no longer be tolerated and that it must comply with the 2004 Advisory Opinion of the International Court of Justice holding that Israel must dismantle the Wall being built in Palestinian territory. The Quartet should also be persuaded to do its best to achieve Palestinian unity in order to promote the exercise of Palestinian self-determination and to desist from supporting one faction against another.

If the Secretary-General is unable to persuade the Quartet to adopt an even-handed and impartial approach to the Israel/Palestine dispute, and one which takes account of Palestinian human rights, I suggest that the Secretary-General should consider withdrawing the United Nations from the Quartet. This is not an appeal to the UN to withdraw from the Quartet. Instead, it is an appeal to the Secretary-General and his senior staff to consider the role of the UN in the Quartet with special regard to the human rights situation. If the Secretary-General and his staff are convinced that quiet diplomacy within the Quartet is more likely to advance human rights than withdrawal from the Quartet,

so be it. What I am really calling for is a serious debate on the subject amongst all UN stakeholders. This suggestion, I believe, reflects the views of the overwhelming majority of States in the United Nations.
