



PALESTINIAN CENTRE FOR HUMAN RIGHTS

26th of June, 2005.

Dear Professor Dugard,

I want to take this opportunity to thank you for your trip to the Occupied Palestinian Territory (OPT) in the context of a shifting political situation which promises to ensure a precarious future for the Palestinian civilian population who, as you know, have been living under belligerent Israeli occupation since 1967.

Before addressing the key areas of concern of your visit I wish to take this opportunity to focus on the issue of protection for Palestinian civilians, which is a cornerstone of international humanitarian law, in particular the Fourth Geneva Convention. In particular I want to draw your attention to comments which were made by Brigadier-General Eival Giladi that the Israeli military response during, and in the aftermath, of the disengagement of Israeli settlers could involve “major collateral damage” for the civilians inside the Gaza Strip. This comments were echoed by others, including Shaoul Mofaz who specifically threatened the use of F-16 airplanes against civilian targets in the Gaza Strip. I am deeply concerned at this escalation in rhetoric by an Israeli government minister and other high ranking officials in the Israeli military establishment.

Palestinian civilians have been subjected to intensive activity by the Israeli military over the course of the *Intifada* which includes the use of ground and air incursions into densely populated civilian areas. The civilian population of the OPT have already suffered “major collateral damage” in respect of the numbers of killings and injuries inflicted upon them. The threat announced by one of Prime Minister Sharon’s own government Ministers and by a senior military advisor represents an unprecedented set of comments in which Israel openly declares that “innocent people on one side” will be placed directly at risk.

I believe that this is a further indication that the Israeli military and political establishment is not focused on efforts to bring peace – rather, as its comments and activities indicate, there is a clear case to be made that the Israeli establishment is institutionalising the effects of the *Intifada*.

Since the declaration of a *hudna* (ceasefire, 17th March 2005) by the Palestinian armed factions the Israeli response has been to continue with the policies of killings (though at a reduced level – 24 Palestinians have been killed, 5 of whom were children), injuries (also at a reduced level), expansion of



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settlements, construction of the Wall and imposition of checkpoints and closures across the OPT. It has, in fact, been business as usual by the Israeli military.

The comments made by the Mofaz and his Brigadier-General are symptomatic of a set of policies by the Israeli government which views the protection of the Palestinian civilian population (legally under its control) as an obstacle to political expansion and land annexation. The continued construction of the Wall inside the territory of the West Bank, the continued imposition of systems of closures and checkpoints and the proposed Gaza disengagement plan all indicate this.

The humanitarian effect of the construction of the Wall has been emphasized on a number of separate occasions. While that humanitarian situation continues to deteriorate in many areas across the West Bank I want to draw your attention to the issue of the legal response to the construction of the Wall. Almost one year ago the International Court of Justice issued an advisory opinion on the legal consequences of the construction of the Wall inside the territory of the West Bank. Despite considerable hope that the judgment, by the International Court of Justice, generated much of the anticipated results have failed to materialise. The international community has largely chosen to over or side-step the issue of the Court's judgment – even among those states which finally acquiesced to both the jurisdiction and decision of the Court.

They have, instead, chosen to defer to domestic Israeli responses to the issue. However I wish to re-emphasise my long-held position that the Israeli domestic legal avenues for the protection of Palestinian civilians have proven themselves to be consistently inadequate. The Israeli High Court has continued to serve the interests of the political and military establishment in relation to any or all activities within the OPT.

From the initial fact that the Israeli High Court neither recognises nor applies the Fourth Geneva Convention to the fact that it has a historical record of permitting torture -Palestinian civilians feel somewhat vindicated in finding little hope for protection from this Court.

This process of placing limitations on the protections afforded to civilians inside the OPT was continued in the context of the recent response by the Israeli State attorney to the I.C.J.'s judgment. Having examined this response I contend that it fails to respond adequately to the very genuine and real concerns of the civilian population who will be affected by the construction of the Wall – the population of both the West Bank and the Gaza Strip. The document sets about to undermine and degrade the status of the International Court and, from this position, continues with the weak approach to International Law which has characterised the Israeli response since the beginning of this belligerent occupation. It obfuscates key issues which the International Court elucidated.¹

¹ PCHR has produced a position paper on this issue entitled *Securing the Wall from International Law: An Initial Response to the Israeli State Attorney*, available at www.pchrgaza.org.



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The inadequacy of the Israeli legal response is of no surprise to those who have been active in this field for some time. However my concern lies with the willingness of the international community to let the Advisory Opinion slip into obscurity. This approach creates a vacuum into which the flawed and disingenuous reasoning of the Israeli Court is allowed to flourish – so placing severe limitations on the protection afforded to Palestinian civilians and, so, providing for the very situation we are faced with today.

The occasion of your visit to the OPT is an opportunity for me to re-emphasise that protection for Palestinian civilians, which is still not being afforded to them, must stem from the international community satisfying its obligations (as clarified by the International Court's judgment) to “ensure protection”. Anything short of this will lead, inevitably, to the institutionalisation of the conditions of the *Intifada* and to increased social, economic, civil, political and cultural problems in the future.

It is in this context that I wish to comment on the expansion of settlements, the separation of Jerusalem from the rest of the OPT and the continued closure, checkpoint and curfew system still being imposed across the OPT. The Israeli response to the Palestinian *Intifada* has produced a humanitarian crises of unparalleled proportions. While it is my fundamental contention that the actions of the Israeli political and military establishment must be viewed holistically – such that we see the disengagement plan in the context of its relation to the Wall, and the Wall as a product of the settlements, and the settlements as a product of the land annexation policy which produced the occupation in the first instance – I also acknowledge that we must examine each within their own sphere of existence.

The attempt, now almost complete, to isolate and separate Jerusalem from the rest of the West Bank must be viewed, however, as among the most serious problems facing the population of the OPT. The policy by the Israeli government of accelerating settlement expansion across the West Bank and Jerusalem will have substantial and serious long term consequences for the possibility of the Palestinian population exercising their right to self-determination. The policy of extending the permit system so that citizens of Jerusalem will be prevented from traveling to the West Bank is one which effectively eliminates the possibility of Jerusalem participating in any state-building exercises. The chaos which was seen in Jerusalem throughout the election of a new Palestinian president was clear evidence of this. Voters were prevented from accessing polling centres and serious and substantial problems were observed by both international and Palestinian observation teams.

The separation of the West Bank, Jerusalem and the Gaza Strip is enforced by a serious of permanent and temporary checkpoints, which are often fortified by military watchtowers, walls, fences and ditches. Since the *Sharm el Sheik* summit Israel has publicly declared that it has eased the restrictions on freedom of movement. This easing in restrictions represents the difference between suffocation and asphyxiation – the same policy is being applied, but under a different guise. Temporary or “flying” checkpoints imposed by the police or military have replaced the small number of permanent structures which are now no longer manned. In the period between November 2004 to March 2005 UNOCHA



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reports only a decrease of 75 (from 680 to 605) in the numbers of barriers to movement observed throughout the West Bank.

Inside the Gaza Strip severe restrictions have continued to be imposed on the sealed areas inside settlement blocs - these include al Mawasi, al Sayafa and a number of smaller sealed areas (al Mawasi, al Sayafa and the smaller sealed areas are home to between 5000-6000 Palestinian civilians). Restrictions have also continued for Palestinian fishermen are generally prevented from accessing the 20 nautical miles of sea promised in the Oslo Accords – recently fishermen have been allowed access to 10 nautical miles of sea on the days they have been allowed out to fish. However of particular importance is the continued pressure being placed on civilians wishing to travel outside of the Gaza Strip. The Rafah international crossing point remains the only source of oxygen for the suffocated Gaza Strip. The restrictions, inefficiencies and difficulties involved in passing through the terminal remain a serious deterrent for most civilians wishing to leave the Gaza Strip. Severe delays, massive curtailment on “official” opening hours and security restrictions remain in place. Civilians who are actually granted permission to pass through are still subjected to the possibility, on their return, of spending at least one or two nights at the crossing.

Such restrictions on freedom of movement, a basic right, can be expected to intensify as the construction of the West bank annexation Wall continues, towards its 2005 conclusion date, as well as during and after the Gaza disengagement plan.

The anticipated plan to remove Israeli settlements from the Gaza Strip and to reposition Israeli soldiers alongside the border areas of the Strip is likely to be a key issue on the international agenda for the coming months.² I remain substantially concerned that in the midst of the media horde which will descend on the Gaza Strip, alongside 25,000 Israeli soldiers and border police, there will be severe restrictions on freedom of movement for Palestinian civilians over the coming months. The timeline for the disengagement seems unpredictable – however, given the mutual decision between the two sides that the Israeli military should demolish the settler’s homes it may take a number of months rather than the initially anticipated six weeks.

During that time it seems almost inevitable, especially given the comments referred to above, that Palestinian civilians will under-go an intensified period of suffering as a result of closures inside the Gaza Strip and between the Gaza Strip and the rest of the OPT and, significantly, to the outside world. The policy of collective punishment which has been imposed by the military, using the checkpoint, closure and curfew system, is, in all likelihood, going to be extended to facilitate the removal of settlers and their property. The various options for removal of property faced by the Israeli military inevitably drag serious observers towards this conclusion. The use of either the *Philidelphi* route or the settler only road at Abu Houli checkpoint for the removal of the settlers in the large Gush Katif bloc will be

² PCHR has produced a position paper on this issue entitled *Sharon’s Gaza Redeployment Plan: An end to Human Rights not an end to Occupation*, available at www.pchrgaza.org.



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required. As such there must be serious concerns about the closure of the Rafah international crossing point and about the possibility of Gaza, once again, being divided into at least three parts. I also remain gravely concerned

that the imposition of an increased number of checkpoints around the Gaza Strip will place additional pressure on access for humanitarian supplies and access for international human rights defenders.

Thus the immediate future for the Gaza Strip is relatively bleak. The anticipation of massive military strikes by the Israeli military, in clear and intentional violation of international humanitarian law, alongside increased closures across the Gaza Strip does not allow much optimism.

The long term future of the Gaza Strip is also in a precarious, and most probably, difficult position. The Israeli plan to disengage has already facilitated a shift in the discourse away from the occupation, away from the implementation of international humanitarian law and away from the construction of the Wall in the West Bank. Rather international discourse has focused on the plight of the Gaza settlers. This is despite the fact that under the specifics of the Fourth Geneva Convention (and clearly under the terms of the ICJ's judgment) they are responsible for grave breaches of the Convention.

I believe that the primary consequence of the disengagement plan will be to end the possibility of Palestinian self-determination by institutionalising the situation of the *Intifada* in respect of restrictions of freedom of movement. At this stage the Israeli plan clearly reserves the right to engage in military activity within the Gaza Strip, will keep control of the air-space, sea and land borders of the Gaza Strip and, thus, will continue with the occupation. Notwithstanding my own concerns about the internal security chaos within the Gaza Strip, which is outside the remit of your own mandate, I remain deeply concerned that the Gaza Strip prison is in fact being established on a permanent basis.

There is little or no reason to believe that access between the West Bank and the Gaza Strip will improve – indeed with the completion of the Wall access is likely to deteriorate even further. Despite some suggestions to the contrary there is little or no reason to believe, on the basis of the currently proposed disengagement plan, that access from the Gaza Strip to the outside world will improve dramatically. However, even in the event that access through Rafah international crossing point improves and that access to the sea or air space around Gaza improves - I believe that the distance between the West Bank, Jerusalem and the Gaza Strip (institutionalised by the checkpoint system) makes it virtually impossible to even discuss hopes for a Palestinian state. Indeed the Gaza disengagement plan places, as Dov Weisglass stated, the peace process and a Palestinian state “in formaldehyde” – formaldehyde, it should be remembered is what they use to store dead bodies in.

Despite all of this I am drawn to comments you made in an essay some 15 years ago when discussing the possibility of an opinion from the International Court of Justice on the situation in the OPT “In the long term it is possible that an opinion...might lead to the exercise of self-determination in the OPT, the



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withdrawal of Israel, and the creation of a Palestinian state.”³ One year after the ICJ Advisory Opinion, which vindicated much of what Palestinian civil society has been saying since the occupation began, I

believe that with persistent and continuous pursuit of the rule of law self-determination remains an achievable goal for the Palestinian people.

I want to reiterate my thanks for your visit and to remind you that should you require any specific statistical data about any of the issues discussed here then I will be happy to provide it upon your request.

Warm regards,

Raji Sourani
Director
PCHR

³ J. Dugard *Enforcement of Human Rights in the West Bank and Gaza Strip*, from International Law and the Administration of Occupied Territories; Playfair, E., ed. (Oxford 1992), p473.