



**STATEMENT BY PROFESSOR JOHN DUGARD
SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS
IN THE PALESTINIAN TERRITORIES OCCUPIED BY ISRAEL
SINCE 1967**

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1. The situation in the Occupied Palestinian Territory continues to challenge the commitment of the international community to human rights. The past year has seen the withdrawal of Israeli settlers and forces from Gaza but it has also witnessed the continued territorial expansion of Israel into the West Bank, with a concomitant infliction of human rights violations on the Palestinian people.
2. In August and September 2005 Israel successfully withdrew its settlers and forces from Gaza. The Israeli Government is to be congratulated on both its decision to withdraw and on the manner in which it executed this withdrawal. The withdrawal of settlers ends the colonization of Gaza, frees more land for the Palestinian people and provides the people of Gaza with an opportunity to govern themselves and to manage their lives without the presence of an occupying army. It is a significant and welcome contribution to peace in the region.
3. Gaza may no longer be colonized, but it is still controlled by Israel. Israel controls the borders of Gaza, its territorial sea and its airspace. Its residents are denied free access to the West Bank and neighbouring countries. Israel strictly controls the traffic of goods into and out of the territory. In the weeks following the withdrawal Israel subjected Gaza to intensive bombardment and sonic booms and it has revived its practice of targetted killings of militants. Over 650 Palestinian prisoners from Gaza are still detained in Israeli jails. In these circumstances, and in the light of the fact that Gaza is a component of the Palestinian territory that remains largely physically occupied by Israel, it is impossible to seriously suggest that Israel has ceased to be an occupying power. Israel therefore remains subject to the obligations of international humanitarian law, including the obligation to promote the welfare of the people of Gaza. While Israel may not be able to fulfil all its humanitarian obligations in Gaza as it no longer has a presence there, it is clearly obliged not to impede access to medical care and other resources.
4. In my report I predicted that Israel would drag out decisions on the future of Gaza to distract world attention from its territorial expansion in the West Bank by means of the construction of the wall (or barrier) and settlements. Unhappily, this prediction has proved to be accurate. This will be the theme of my intervention today.
5. The wall Israel is constructing will, when completed, run for over 700 kilometres, of which only 150 kilometres (less than 20 per cent) will run on the Green Line – the de facto border between Israel and the Occupied Palestinian Territory (OPT). Already 240 kilometres have been completed. The wall penetrates deep into Palestinian territory but it will penetrate still further to include the major settlement blocs of Gush Etzion (near

Bethlehem), Ma'aleh Adumim (near Jerusalem) and Ariel (near Nablus). This will divide Palestine into separate cantons and destroy the contiguity of the territory. It is estimated that some ten per cent of Palestinian land will be included on the Israeli side of the wall. This will enclose some 170,000 settlers (not including those in East Jerusalem) and 49,000 Palestinians, living in 38 villages.

6. Israel claims that the wall is constructed for security reasons, to prevent suicide bombers from entering Israel. The Israeli High Court of Justice has recently (Mara'abe v. Prime Minister of Israel, 15/9/2005) ruled that the construction of the wall within Palestinian territory is justified as a security measure to protect both Israel itself and the lives and safety of Jewish settlers within the OPT. In so deciding it has accepted the assurances of the military that the wall was constructed for security purposes (paras. 32, 70). I remain unconvinced that Israel's security concerns, legitimate as they are, could not have been met by constructing the wall (barrier) along the Green Line. I have seen large sections of the wall and I find it hard to accept that the route of the wall has been chosen entirely for topographical security reasons. A better explanation is that the route of the wall has been chosen to enclose the major settlements. The wall will enclose 170,000 settlers, that is 76 per cent of the West Bank settler population, and 56 settlements.
7. The flaw in the reasoning of the Israeli High Court is that it accepts the right of Israel to build a wall to protect its settlers but carefully fails to deal with the question whether settlements are illegal (para. 19). Settlements are illegal under international law. Article 49 (6) of the Fourth Geneva Convention prohibits them; and the International Court of Justice has unanimously found settlements to be unlawful. Once one accepts this, Israel's security rationale for building the wall in the OPT crumbles. It is surely not possible for Israel to unlawfully place thousands of settlers in the occupied West Bank and then to lawfully build a security wall to protect them. To me it seems clear that the purpose of the wall is to protect illegal settlements; that the wall will continue as long as settlements remain; that Israel has no intention of withdrawing its major settlements from the West Bank; and that this means that the territory between the wall and the Green Line has been de facto annexed by Israel. Prime Minister Sharon acknowledged this in an interview on Channel 10 on 29 August 2005 when he declared that the main settlement blocs in the West Bank would remain under Israeli sovereignty.
8. Israel is also using the wall as an instrument to dramatically change the character of East Jerusalem, which it occupies illegally. These changes serve three purposes:
 - (a) The reduction of the number of Palestinians in the city. Some 40 per cent of the 230,000 Palestinians in Jerusalem will lose their status as Jerusalemites and be transferred to the West Bank.

- (b) The increase in the number of illegal Jewish settlers in Jerusalem. Already there are some 184,000 Jewish settlers in East Jerusalem and this figure will soon grow as a result of the inclusion of the settlement of Ma'aleh Adumim (with a present population of 35,000) in Jerusalem.
- (c) The transformation of East Jerusalem into a Jewish city in order to undermine Palestinian claims to the city as the capital of a future Palestinian state.
9. The wall, and the occupation of the West Bank, essentially serve the interests of the settlers. But in the process, they inflict serious human rights violations on Palestinians.
- The right of the Palestinian people to self-determination is seriously undermined by the diminution and fragmentation of Palestinian territory. What remains of the Palestinian territory is hardly viable as a state.
 - Palestinians living in the “closed zone” between the wall and the Green Line, and those living close to the wall, are subjected to a humiliating and discriminatory permit system which seriously impedes their freedom of movement and access to hospitals, schools, lands and family. Indeed Israel’s own High Court recently held that the wall at the settlement of Alfei Menashe disproportionately injured the fabric of life of Palestinians in the “closed zone” and should be re-routed (para. 116).
 - Freedom of movement is seriously impaired by checkpoints, “flying checkpoints”, closures and curfews.
 - Personal freedom is endangered by the large-scale arrest and detention of Palestinians. There are nearly 9,000 Palestinian prisoners in Israeli jails, of whom 700 were arrested in the past few weeks. Poor prison conditions and allegations of torture continue. Moreover, the targeted killing of militants has resumed. On the positive side, the Israeli High Court has recently outlawed the Israeli Defence Forces practice of employing Palestinians as human shields when they enter Palestinian areas and homes.
 - Security operations, the destruction of homes, the restrictions on freedom of movement and the confiscation and destruction of land to build the wall have generated a humanitarian crisis. Approximately half of the Palestinian population live below the official poverty line of US dollars 2.10 per day. Both health care and education have deteriorated substantially. Homelessness resulting from military home demolitions, particularly in Gaza, is pervasive.
10. Military occupation, expanding settlements and now the wall, have devastated Palestinian society. Both humanitarian law and human rights have suffered drastically. In 2004 the International Court of Justice gave legal expression to the concerns of the international community about the treatment of Palestinians when it held the wall to be illegal, settlements to be unlawful, and many features of Israel’s occupation practices to be contrary to humanitarian law and human rights law. It remains for the political organs of

the international community to convert this legal opinion into political action. Sadly, this is not being done. The Security Council refuses to endorse the Court's Advisory Opinion. Moreover, the "Quartet", comprising the United Nations, the European Union, the United States and the Russian Federation, which is the body charged with the task of advancing peace in the region, fails to mention the Court's Opinion in its statements on the situation in the OPT (see statements of 23 June and 20 September) and makes only passing reference to the wall, which (unlike the International Court) it prefers to call by its more euphemistic name – the "separation barrier". It is hard to understand how the United Nations, as members of the Quartet, can be a party to statements which deliberately ignore the pronouncement of its own judicial body, as endorsed by the General Assembly. Surely, the United Nations should, instead, be actively engaged in implementing an Opinion which represents the law of the United Nations.