

# *Report*

## **International Fact-finding Mission**

### **Failing the Palestinian State, Punishing its People: the Impact of the Economic Strangulation on Human Rights within the Occupied Palestinian Territory**

- I. Introduction
- II. The Background of the Mission
- III. The Deterioration of the Socio-economic Situation in the Occupied Palestinian Territory
- IV. The Promises and the Shortcomings of the Temporary International Mechanism (TIM)
- V. Conclusions

#### **I. Introduction**

The current report is the outcome of an extensive research over the period from June to October 2006. A mission of the International Federation for Human Rights visited Israel and the Occupied Palestinian Territory (OPT) between 25 June and 2 July 2006. The mission was in close coordination with Médecins du Monde (Doctors of the World), which in parallel conducted an evaluation of the evolution of the health situation in the Gaza Strip on the basis of a large inquiry among the medical and health care personnel of hospitals and clinics. The mission was set up in order to examine the situation of economic and social rights in Gaza and the West Bank<sup>1</sup> almost a year after Israel ‘disengaged’ from the Gaza strip and three months after Israel and the international community decided to suspend all contact with the Palestinian Authority government and to interrupt all aid channelled to and via that government. This was because a Hamas-led government had come to power on 29 March 2006 following elections held on 25 January 2006. The mission’s goal was to determine how the conditions under which the ‘disengagement’ from the Gaza Strip took place impacted the economic and social rights of the inhabitants of the Gaza Strip. It also set out to determine the impact on the inhabitants of the Gaza Strip and the West Bank of the policies adopted by Israel and the international community following Hamas’ being voted into power.

Members of the mission met with a wide panel of actors in the field representing a wide variety of movements. They met at the Israeli Ministry of foreign affairs with Ms Orli Gil, Head of NGO Unit, Division of International Organisations; Mr Daniel Taub, Principal Deputy Legal Adviser; and Mr Eli Avidar, in charge of humanitarian and economic relations with the Palestinian Authority. The members also met with representatives of several ministerial departments of the Palestinian Authority, including the Minister of Finance Mr. Omar Abdel-Razeq ; Mr. Ahmad Abbas and Mr. Khalil Nijem from the Ministry of Planning ; Mr. Fawas Sh. Muhahed from the Ministry of education. They met with several persons from the Palestinian legislative council, including its president, Mr. Aziz Dweik and Mr. Iyad Muhammad, director of the legislative council in charge of protocol services. They also met with Mrs. Khalida Jarrar, member of the legislative council and member of the Popular Front for the Liberation of Palestine (PFLP).

Members of the mission also met with, and received information from, the Palestinian Central Bureau of Statistics, where they met with its president, Mr. Luay Shabaneth, as well as with several of his close co-workers. The members of the mission also has meetings with members of the Palestinian Red Crescent Society, including Dr. Wael Qadan, director of health services at Ramallah hospital, and Mr. Mutasem Awad, international humanitarian law coordinator; several Palestinian civil society organisations, among which the Palestinian General Federation of Trade Unions and human rights organisations such as Al-Haq, FIDH member organization; and representatives of the business world, including representatives of the banking sector. They also met with several Israeli NGOs, including the Association for Civil Rights in Israel, member of the FIDH.

During the mission, and since returning from their mission, the members of the mission met with a large number of representatives of international agencies, including the World Health Organisation and the United Nations Office for the Coordination of Humanitarian Affairs – OCHA. They had several meetings with workers from the European Union from the General Direction of humanitarian aid (ECHO) and the European Commission’s Technical Assistance Office for the West Bank and the Gaza Strip, as well as members of the cabinet of Mrs. Benita Ferrero-Waldner, Commissioner for External Relations & European Neighbourhood Policy. A contact sought with the cabinet of Commissioner Louis Michel, Commissioner for development aid, did not lead to a meeting. They met with Ambassador Marc Otte, the European Union’s special representative for

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<sup>1</sup>This report refers to Gaza and the West Bank as ‘the Occupied Palestinian Territory.’ We have chosen to use the singular in order to underscore the unity of these two geographic areas upon which the ‘Roadmap’ presented to the Palestinians and the Israelis in 2003 foresees the establishment of an independent, viable and democratic Palestinian state; we also sought to point out that in spite of the Israeli disengagement from the Gaza Strip, this area remains under Israeli general control, as it monitors access to this zone, completely dominates its economic life, and undertakes military operations therein with complete international impunity.

the peace process in the Middle East.<sup>2</sup>

The members of the mission also met with a member of Finland's permanent mission to the European Union and counsellor of the Finnish presidency of the Union at a time when Finland was just taking over the presidency. Lastly, they met with several members of the Norwegian mission to the Palestinian Authority, including Norway's representative, Mr. Sten Arne Rosnes.

Throughout their visit, they received the support of the Palestinian Center for Human Rights, to whom they wish to express their deepest gratitude.

This report will outline the general context in which the mission took place (II). It will then describe the state of economic and social rights in the West Bank and the Gaza Strip, as it was observed by the members of the mission (III). A specific section addresses the design and the implementation of the Temporary International Mechanism (TIM), imagined by the European Union upon the request of the Quartet for the Middle East and approved by the Quartet in June 2006 in order to meet the immediate humanitarian needs of the Palestinian population (IV).

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<sup>2</sup> Mr. Marc Otte succeeded Mr. Miguel-Angel Moratinos in July 2003 following the latter's resignation : see Joint Action 2003/965/CFSP, OJ L 184, 23.7.2003, Joint Action 2004/534/CFSP, OJ L 234, 3.7.2004, Joint Action 2005/99/CFSP, OJ L 31, 4.2.2005, Joint Action 2006/119/CFSP, OJ L49 of 21.02.2006.

## II. The Background of the Mission

### 1. The disengagement from the Gaza Strip

The mission of the FIDH mission took place in the following context. In June 2004, Israeli Prime Minister Ariel Sharon announced his intention to withdraw the Israeli defence forces from the Gaza Strip and to dismantle the settlements that had been set up there since the beginning of the occupation of the Gaza Strip after the Six Day War of June 1967. This decision was approved of by the Israeli parliament (Knesset) in October 2004. Generally speaking, this initiative was well received by the international community, which saw it as an opportunity to relaunch the peace process in the Middle East. A number of actions clearly indicate its desire to contribute to the success of the disengagement, such as increased financial aid to the Palestinian Authority (PA), and more specifically, for the Gaza Strip. On 8 December 2004, the World Bank presented to the Ad Hoc Liaison Committee for Assistance to the Palestinian People (AHLC) a report wherein the World Bank explains that stimulating the Palestinian economy is an essential element of the Israeli/Palestinian peace process<sup>3</sup>. The Bank nevertheless indicated that there were three pre-conditions which, if fulfilled, will lead the donors to substantially increasing their donations : improving security, removing the 2000-odd restrictions on the movement of the Palestinian population, and achieving progress in governance and in the setting up of institutions<sup>4</sup>. On 8 July 2005, during the G8 Summit at Gleneagles, the States represented at the Summit committed themselves – on the condition that the parties concerned respect their own commitments – to providing three billion USD per year during the following three years, effectively doubling the amount provided theretofore<sup>5</sup>. Furthermore, in the Spring of 2005, the Quartet for the Middle East (made up of the European Union, the United Nations (UN), the United States and the Russian Federation) nominated James Wolfensohn, former president of the World Bank, their special envoy on disengagement.

Although some of Israel's public opinion and a significant percentage of settlers vehemently opposed disengagement, Israel's withdrawal from the Gaza Strip was completed by 12 September 2005. This disengagement was the result of an initiative taken unilaterally by Israel, without any consultation with the Palestinians. Nevertheless, on 15 November 2005, with the assistance of United States Secretary of State Condoleeza Rice, the European Union High Representative for the Common Foreign and Security Policy Javier Solana and the international community's envoy for the Israeli withdrawal from the Gaza Strip, James Wolfensohn, an agreement was reached concerning the movement and access of people entering and leaving the Gaza Strip. This Agreement on movement and access gave the PA control over the border passage in Rafah, on the frontier between the Gaza Strip and Egypt, and granted the European Union a 'third party' role in supervising the implementation of the agreement.

Near the end of 2005, the international donors came under mounting pressure. On 30 November 2005, for the fourth year in a row, the humanitarian agencies, noting that the poverty rate had risen in 2005 as compared to 2004, launched an appeal for funds.<sup>6</sup> In December, the World Bank issued its first Economic Monitoring Report. According to this report, the Bank believed the situation to be mediocre at best, but believed that an economic revival was still possible, provided that the

<sup>3</sup> World Bank, *Stagnation or Revival? Israeli Disengagement and Palestinian Economic Prospects*, 8 December 2004

<sup>4</sup> A number of economic indicators were thereafter established by the Bank, the European Commission and the United States in order to determine whether these pre-conditions for economic growth were being fulfilled, and the task of monitoring and evaluating progress was assigned to the World Bank.

<sup>5</sup> World Bank, *The Palestinian Economy and the Prospects for its Recovery, Economic Monitoring Report to the Ad Hoc liaison Committee*, *op. cit.*, § 41.

<sup>6</sup> Humanitarian Appeal 2006: West Bank and Gaza Strip, 30 November 2006.

Palestinians and the Israelis made greater efforts in the future than had been made in 2005.<sup>7</sup> According to the World Bank, economic recovery was possible without a considerable amount of additional aid from the donors.<sup>8</sup>

## **2.The election of the Palestinian Legislative Council and Hamas’ coming to power**

On 25 January 2006, elections for the Palestinian Legislative Council (PLC) took place in Gaza and the West Bank. All the international observers supervising these elections agreed that they took place under satisfactory conditions. These elections led to the victory of Hamas, who – with 41 % of votes in its favor – gained a majority of seats within the PLC. On January 30th, just days after the elections, the Middle East Quartet set out three principles for continued engagement with the Palestinian authority : renunciation of violence, the recognition of the right of Israel to exist, and the acceptance of previously existing agreements. This last condition is in reference to the Oslo Agreements signed between Israel and the Palestinian Liberation Organization and the ‘Roadmap’ issued by the Quartet on 30 April 2003.<sup>9</sup> The Quartet specifically stated that both parties had to respect their previous commitments, among which those concerning movement and access. The Council of the European Union expressed its expectation that the newly elected PLC would support the formation of a government:

‘... committed to a peaceful and negotiated solution of the conflict with Israel based on existing agreements and the Roadmap, and committed to the rule of law, reform and good management. On this basis the European Union stands ready to continue to support Palestinian economic development and democratic state building’.

On 6 February 2006, Paul Wolfowitz, president of the World Bank, declared that the Bank would continue to provide Palestine with aid in spite of the previous week’s election results.<sup>10</sup>

On 19 February, the Israeli Prime Minister declared that, as Hamas had won the majority of seats in the Palestinian Legislative Council, the Palestinian Authority had – *de facto* – become a ‘terrorist authority’ and would be treated as such. Israel decided, consequently, to stop handing over to the Palestinian Authority the customs duties that Israel collects on its behalf, as is provided for in one of the protocols of the Oslo Accords. These funds are the main single source of revenue for the Palestinian Authority. On 7 March 2006, the World Bank released 42 million USD in order to save the Palestinian Authority from financial crisis and to prevent the suspension of basic social services. On March 15, the World Bank published its second Economic Monitoring Report within which it studies the various measures envisaged by Israel and the international community in response to Hamas’ victory in the elections of January 2006.<sup>11</sup>

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<sup>7</sup> World Bank, *The Palestinian Economy and the Prospects for its Recovery, Economic Monitoring Report to the Ad Hoc liaison Committee*, op. cit., § 41.

<sup>8</sup> World Bank, *The Palestinian Economy and the Prospects for its Recovery, Economic Monitoring Report to the Ad Hoc liaison Committee*, op. cit., § 24.

<sup>9</sup> This ‘Roadmap’ designed to provide a permanent and global resolution to the Israeli /Palestinian conflict by 2005, was first issued by President G. Bush on 24 June 2002. It received the support of the other members of the Quartet in July and in September 2002. The Roadmap calls for the creation of an independent, viable and democratic state alongside Israel and its other neighbors in peace and security. It establishes a timetable for the achievement of this goal. It emphasizes that ‘A two-state solution to the Israeli-Palestinian conflict will only be achieved through an end to violence and terrorism, when the Palestinian people have a leadership acting decisively against terror and willing and able to build a practicing democracy based on tolerance and liberty, and through Israel’s readiness to do what is necessary for a democratic Palestinian state to be established, and a clear, unambiguous acceptance by both parties of the goal of a negotiated settlement.’

<sup>10</sup> *World Bank Chief Backs Continued Palestinian Aid*, Report, World Bank, 6 February 2006.

<sup>11</sup> *Economic Update and Potential Outlook*, World Bank, 15 March 2006.

On 21 February, Mr. Mahmoud Abbas (Abou Mazen), member of Fatah and successor to Yasser Arafat as president of the Palestinian Authority, gave Ismail Haniyeh of Hamas three weeks to form a government (with the possibility of an extension of 2 weeks). A government was constituted by Hamas on 29 March 2006 without the participation of Fatah, led by prime minister Ismail Haniyeh. However, the Hamas government did not state that it agreed with the conditions set by the Quartet. As a result, the European Commission put on hold all assistance to, or through, the Palestinian government and its ministries. This decision was endorsed by the Council of the Union on 11 April. On May 1<sup>st</sup>, 2006, James Wolfensohn, criticizing the decision to suspend western aid, resigned from his post.<sup>12</sup>

### **3.The reaction of the international community**

Following warnings from international agencies that the non-restitution of VAT taxes and customs duties by the Government of Israel (which it owes the Palestinian Authority under the Oslo Agreements) would lead within weeks to a serious humanitarian crisis, which could be particularly acute in the Gaza Strip, the Quartet asked on 9 May the European Union to prepare an interim funding mechanism which would ensure that the basic needs of the Palestinian population could be met, by providing aid directly to or via the services of the presidency of the PA, allowing the international donors to maintain their refusal to deal with the Hamas government of the PA. This resulted in the European Union proposing a Temporary International Mechanism (TIM), endorsed by the Quartet on 17 June, with initial implementation measures adopted already at the end of June. This mechanism is designed to be limited in time and in breadth, aimed merely at addressing the immediate humanitarian needs of the Palestinian population in the West Bank and the Gaza Strip.

### **4. The crisis of the end of June 2006**

Simultaneously, Fatah and Hamas began negotiations in order to establish a government of national unity, based on a common platform, to put an end to the crisis precipitated by the halt of international aid and Israel's refusal to hand over customs duties collected on behalf of the PA. On 25 June, these negotiations led to an agreement entitled the National Conciliation Document, based on the prisoners' initiative (devised by eminent Palestinians from various parties held in Israeli prisons). This document is designed to help the PA break out of its diplomatic isolation and prevent an escalation of the humanitarian crisis in the Gaza Strip and in the West Bank.

In the meantime, however, the situation on the ground suddenly took a turn for the worse. On 9 June 2006, following an attack that left seven members of the same family dead on a Gaza beach, Hamas declared that it was putting an end to the truce (or unilateral cease-fire) declared in March 2005. On 25 June, a squadron composed of the Committees of Popular Resistance, the Qassam Brigades and the Army of Islam (a previously unknown group), killed two Israeli soldiers and kidnapped a third at the check-point of Kfer Shalom, on the southern border of the Gaza Strip. The Palestinian groups declared that the soldier would not be released if certain conditions were not fulfilled. The Israeli Prime Minister refused to negotiate the soldier's release, and launched a military operation within hours of his capture – Operation Dispelled Illusion, later renamed Summer Rains. On 28 June, tanks entered the Gaza Strip and armed troops headed for Gaza airport. Low flying aircraft launched air strikes and broke through the sound barrier directly above civilian areas. The Gaza Strip power station was destroyed, leaving 50 percent of the population without electricity. Israel declared that the operation also aimed at preventing Palestinian fighters from

<sup>12</sup> Le Monde, 2 May 2006.

continuing to launch rocket attacks from the Gaza Strip. On 29 June, several PA ministers were arrested in the middle of the night in Ramallah and its outskirts, under the accusation of belonging to a terrorist organization. Numerous members of the Palestinian Legislative Council were also arrested, making it impossible for the PLC to continue functioning. Others, such as Aziz Dweik, president of the Palestinian Legislative Council, who were not at their residences on the night of 29 June, would be arrested later.

## **5. Preliminary conclusions of the FIDH mission**

The FIDH mission returned to Paris and Brussels on 2 July. The FIDH launched an immediate call based on the initial findings of the mission. The goal at the time was to underscore the impact, as witnessed by the mission, of the financial sanctions imposed on the PA following Hamas' taking of office on 29 March 2006 – sanctions which were threatening the PA's viability and, consequently, the viability of the peace process itself. The FIDH wanted to denounce first of all the Israeli government's refusal, in clear violation of its international commitments, to hand over the taxes and customs duties collected on the PA's behalf. It added that this refusal was further aggravated by the international community's refusal to deal directly with the PA. This refusal had the direct consequence of speeding up the PA's bankruptcy and, more indirectly, was weakening the ability of the Quartet, and more specifically that of the European Union, to put pressure on the Israeli government in order to force it to pay the PA the money the Israeli government owed it. The temporary international mechanism (TIM) did not make up for the impact of the sanctions, because it did not allow for the payment of the wages of Palestinian civil servants. In the meetings held following the mission's return, the FIDH was extremely clear about the effect of Israel and the international community's attitude towards the PA : it was leading to further radicalization of the Palestinian people; it was exacerbating competition between Hamas and Fatah, on the one hand, and between the government and the presidency on the other, leading towards possible open conflict between rival factions; it was leading to the bankruptcy of the Palestinian Authority, postponing as a result the existence of an independent Palestinian state on the West Bank and in the Gaza Strip, and, subsequently, pushing back a final peaceful resolution in the Middle East; in the final analysis, this attitude was creating the necessary conditions either for a return to full Israeli occupation, despite the apparent unwillingness of Israel to accept the responsibilities inferred by its status of occupying power, or for the emergence of a "failed state" – an impotent state in which extremist groups, including terrorists, might prosper and, from their base in the West Bank and in the Gaza Strip, threaten Israeli civilians.

Sadly, three months later, we see these predictions coming true. Most of the PA's employees have been on strike since the beginning of September to protest against non-payment of their salaries since March 2006. This strike has had a particular impact on the education and health sectors : the majority of hospitals in the West Bank have ceased practicing medical interventions. The strike is having a greater impact on the West Bank even than the Gaza Strip. In the meantime, the threat of civil war is rife. Hamas' refusal to recognize Israel, reiterated on October 8th by Prime Minister Ismail Haniyeh, is an obstacle to the establishment of a national unity government. The demonstrations held against the Hamas government, by security forces protesting against the non-disbursement of their salaries, as well as the demonstrations in favor of Hamas, are becoming more and more violent. Between 27 September and 3 October, 12 Palestinians were killed and 164 were wounded in interpalestinian fighting in the Gaza Strip. 8 other Palestinians were killed in Gaza on the weekend of October 1<sup>st</sup>, and 87 others wounded in armed clashes between the supporters of Hamas and the supporters of Fatah.<sup>13</sup>

Since the FIDH mission returned, the humanitarian situation in the Gaza Strip and the West Bank

<sup>13</sup> OCHA Weekly Briefing Notes/ *Protection of Civilians* Report No. 175, for 27 September- 3 October 2006.

has further deteriorated. At the time this report is being concluded (9 October 2006), the consequences of the destruction of the Gaza power station are still being felt : on average, Gaza inhabitants receive, in shifts organized by neighborhood, between 6 and 8 hours of electricity per day. Israeli armed forces are still present in large numbers in the Gaza Strip, regularly intervening in inhabited areas, causing considerable damage in the process : according to the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), for example, 132 houses were destroyed during a single week in September.<sup>14</sup> The Karni check-point is regularly closed off, occasionally for long periods of time. Cases of diarrhea among children under 3 years of age have shot up (56% more cases in August 2006 than in August 2005), quite possibly as a consequence of the deterioration of water quality. The hospitals of the Health Ministry lack essential medication. Since 25 June, Gaza fishermen have been forbidden access to the coast, meaning that there has been no fish in Gaza for the past two months, and that 35 000 people who depend on fishing for their livelihood are seeing their unique source of revenues threatened. Infrastructure and agricultural areas are continuing to be destroyed. Basically, the destruction of Palestinian society and of the Palestinian Authority has continued, and has even gotten worse since the mission has returned. This report was written to denounce the instruments of that destruction, and to sound the alarm about its inevitable consequences.

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<sup>14</sup> OCHA Weekly Briefing Notes No. 171, for 20-26 September 2006.



### III. The deterioration of the socio-economic situation in the Occupied Palestinian Territory

#### 1. Prioritising freedom of movement to and from the West Bank and Gaza

International agencies have underlined the impact of the prolonged occupation of Palestine on its economy, in particular since the beginning of the Intifada in September 2000: economic growth, employment, poverty, trade and finance have all suffered the damaging consequences. In 2003, the United Nations Conference on Trade and Development (UNCTAD) considered that the collapse of Palestine's economy demonstrated excessive economic dependence on the Israeli economy, caused by years of occupation. It was estimated that 55% of goods for personal consumption of Palestinians were imported from Israel, and that 71% of the Palestinian trade deficit resulted from commercial exchanges with Israel. According to UNCTAD, the dependence of the Palestinian economy impedes the multiplying effect of international aid within the Palestinian territories, and this effect is in fact experienced to a much greater degree in Israel<sup>15</sup>. Furthermore, in 2002, trade in Palestinian goods and services represented less than 2% of Israel's external trade, compared to 5% ten years earlier.

For several years, poverty and unemployment have been rising at an alarming rate in the Gaza strip and the West Bank. According to the World Bank, 'The security measures that Israel has imposed in the West Bank and Gaza during the Intifada continue to result in severe economic depression and fiscal compression'<sup>16</sup>. Since 2000, the income per inhabitant has fallen by almost 30%, and half the population now lives below the poverty line, with less than 2 USD per day. The World Bank considered that the financial crisis threatening the Palestinian Authority carried serious risks for the peace process. It was in this context that, in July 2005, the G8 member states decided to double financial aid to the Palestinian Authority (PA).

The international financial organisations consider that the economic development of Palestine depends on a transformation from an economy based on export of labour to Israel, to an economy based on export of goods and services to Israel and the rest of the world. This change requires, in due course, a revision of the customs union between Israel and the PA.<sup>17</sup> However, the priority must be reform of the controls on borders and exports. Increased aid from donors will not produce the desired effects on Palestinian economic growth while restrictions on access to and from the occupied territories persist.<sup>18</sup> At the time of disengagement by Israel from the Gaza strip, reform of controls of crossing points and improvements to freedom of movement were declared to be priorities by the international community.<sup>19</sup> According to the *ad hoc* Liaison Committee, the objectives of ensuring the security of Israel, and improving freedom of movement of Palestinians, are entirely compatible.<sup>20</sup> James Wolfensohn, the Special Envoy of the Quartet for Disengagement, considered the improvement of freedom of movement a priority of his mission. An agreement on

<sup>15</sup> UN Press Release, « War torn Palestinian economy needs to bridge relief and development says UNCTAD Report », 16 September 2003, PAL/1961, TAD/1953.

<sup>16</sup> World Bank, *West Bank and Gaza*, Proposed Public Financial Management Reform Trust Fund.

<sup>17</sup> According to the World Bank, it is in the interests of the Palestinians to reform the customs union regime in order to achieve greater economic independence. However, certain aspects require immediate attention: the quantitative restrictions and authorisations required in order to import certain goods (petrol, gas, telecommunication equipment); trade agreements with the League of Arab States are only permitted for certain categories of goods; the PA does not receive the taxes from *indirect* imports into the West Bank and Gaza via Israel (a loss estimated at 174 million USD); see *Technical Paper III – Export Possibilities Under a Reformed Border Regime*, p. 4.

<sup>18</sup> See for example, Humanitarian Appeal 2006, *West Bank and Gaza Strip*, 30 November 2005.

<sup>19</sup> See for example, UN News Service, 22 November 2005, "Ibrahim Gambari calls for increased freedom of movement in the Palestinian territories".

<sup>20</sup> See *ALHC Chairs summaries from the meetings of December 2004 and December 2005*.

the crossing points encouraged by the US, was signed in November 2005, and the European Union accepted a third-party monitoring role in Rafah, on the Egyptian border.<sup>21</sup>

## **2. The impact of the elections of 25 January 2006**

The priorities fixed by the international community at the time of disengagement from Gaza - increased financial assistance and increased freedom of movement of goods and persons – were radically changed after the parliamentary elections in Palestine held on 25 January 2006. On 30 January, the members of the Quartet set out the conditions for the maintenance of international aid, which represented 25% of the PA's monthly budget in 2005. On 19 February, the Israeli government suspended the repayment of customs duties and tax levied on behalf of the PA, representing 50% of the PA's monthly budget.<sup>22</sup>

The measures adopted by the Israeli government and the international community since the elections are contributing to a deepening financial crisis in Palestine and threaten to provoke the collapse of Palestine's institutional structures (2.1). It is not possible to envisage – as the international community did initially – that NGOs and the private sector generally can assume the 'social' role attributed to the PA since the Oslo accords (2.2). The situation is leading to the deterioration of the economic and social situation in the OPT, including health conditions and access to education (2.3).

### 2.1. The regime of international sanctions and the financial crisis of the Palestinian Authority

The measures adopted by Israel since the 19 February and by the international community since the Hamas formed a government on 29 March, aim to sanction the Hamas government for failing to conform to the conditions set out by the Quartet. In fact, these measures amount to a policy of economic sanctions targeting the Palestinian people.<sup>23</sup>

#### **a) The non-payment of taxes and customs duties by Israel**

Since the victory of Hamas in the January 2006 elections, the Government of Israel has refused to refund to the Palestinian Authority the VAT and customs duties, levied on its behalf, on goods imported into the OPTs.

This represents the single most significant factor in the bankruptcy of the PA. Each month, the operation of the PA requires approximately 165 million USD. During 2005, internal taxes amounted to an average of 30 million USD. The contributions of the donors community represented 30 million USD. VAT and customs duties amounted to 60 million USD, representing 36% of the PA's monthly budget and approximately 50% of the funds actually available, as this budget was structurally in deficit. Largely due to VAT and customs duties being withheld by the Government of Israel, with the exception of the payment of certain bills of Israeli utility companies since May, public servants of the PA have not received their salaries since March 2006. The PA has 152,000 public servants. It is estimated that an average of 6 persons are dependent on the support of each of

<sup>21</sup> See Council of the European Union, General Affairs and External Relations, 7 November 2005, *Middle East Peace Process – Council Conclusions*, §5; Council of the European Union, General Affairs and External Relations, 21-22 November 2005, *Middle East Peace process – Council Conclusions*, §2.

<sup>22</sup> See United Nations, *Assessment of the future humanitarian risks in the OPT*, 11 April 2006, p. 1.

<sup>23</sup> According to John Dugard, 'In effect the Palestinian people have been subjected to economic sanctions- the first time that an occupied people have been so treated', United Nations Press Release, *Human rights in Palestine*, 21 June 2006.

them. Thus, over 900,000 persons – almost one quarter of the total population of the OPTs – are affected by the non-payment of salaries to the public servants of the OPTs, and are currently essentially without any source of income.

The impact on the population of the non-payment of salaries in the public sector is especially significant in Gaza, where almost 40% of those employed work for the PA. As public servants earn significantly more than employees in the private sector, this means that the non-payment of salaries creates an immediate serious problem of liquidity within the economy both of the West Bank and of the Gaza Strip, which is particularly acute in Gaza.<sup>24</sup>

#### **b) The suspension of aid to the Palestinian Authority by the international community, particularly by the European Union and its member states**

The consequences brought about by the politics of the Israeli government are further aggravated by the suspension of international aid that was directly or indirectly channelled towards the government of the Palestinian Authority (PA). In addition to amounting to a loss of revenue for the PA itself (which, while not insignificant, is significantly less than the Palestinian VAT and customs duties retained by Israel), this decision has an impact on the capacity of the PA to respond to the needs of the population. More than anything, the consequences of this decision are alarming on a political level: in the eyes of the Palestinian population, the governments in question (and the European Union in particular) have lost their potential to be mediators between Israel and the PA—and this at the very moment when the region needs a strong political initiative which would allow dialogue to be taken up again between the parties.

The suspension of all aid to the PA government or passing through that government is being justified by the European Union as a measure aimed at ensuring that no funds will pass into the hands of the Hamas, an organization still listed by the European Union as a terrorist organisation. It is worth recalling where this position originated. The European Union first refused to put Hamas on its list of terrorist organisations, withstanding the pressure exercised in this respect by the USA and the UK; initially, only the terrorist wing of Hamas (Hamas-Izz al-Din al-Qassem) featured on this list.<sup>25</sup> However, when it updated its list on 12 September 2003 by written procedure, the Hamas was included in the list, following a suicide bombing in Israel which Hamas refused to condemn.<sup>26</sup> This led to the European Union having to break off all contact with the PA since the coming into power of Hamas, and EU officials are in principle held to avoid all contact with PA officials.

This attitude is influenced more by ideology than by a pragmatic appreciation for the advantages of pursuing the dialogue with the PA and its government; such dialogue should aim to get Hamas step by step to revise its declared positions regarding, most notably, the recognition of the state of Israel. It is noteworthy that, on 15 January 2006, Norway distanced itself from the European Union's attitude vis-à-vis Hamas. Instead, it decided that it would no longer align itself with any list other than that published by the UN. Their decision was explained in a press release by the fact that 'a continued alignment with the EU list could cause difficulties for Norway in its role as neutral facilitator in certain peace processes. Norway's role could become difficult if one of the parties

<sup>24</sup> See *Assessment of the Future Humanitarian Risks in the Occupied Palestinian Territory*, United Nations (Office for the Coordination of Humanitarian Affairs – OCHA), 11 April 2006; and *The Impending Palestinian Fiscal Crisis, Potential Remedies*, World Bank, 7 May 2006.

<sup>25</sup> See Council Decision of 27 June 2003 implementing Article 2(3) of Regulation (EC) n° 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decision 2002/974/EC, OJ L 160 of 28 June 2003, p. 81.

<sup>26</sup> Council Decision of 12 September 2003 implementing Article 2(3) of Regulation (EC) n° 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decision 2003/480/EC, OJ L 229 of 13 September 2003, p. 22.

involved was included on the EU list, and the opportunities for contact would subsequently be restricted.<sup>27</sup> It is precisely this position as mediator, the capacity to listen to all concerned parties with a view to making a contribution to finding a solution, which the European Union seems to have lost in the current climate. In speaking to FIDH's *chargés de mission*, the Norwegian representatives have confirmed their solidarity with the conditions imposed by the Quartet on 30 January 2006. Similarly, they have indicated that 'continued Norwegian support to the Palestinian government depends on Hamas clearly taking steps in order to fulfil the general opinion of the international community [as defined by the requirements of the Quartet]. So far, Hamas has not used this option'. However, they then added: 'It is not expected that all requirements will be fulfilled at once, but it is expected that there will be a clear process towards right direction. The Norwegian role will be to contribute to a dialogue and mutual trust in order to create a development that can result in mutual acceptance and negotiations between Israel and Palestinians. Norway is open to dialogue with the Palestinian government. However, form and level of the dialogue will have to be assessed continuously. The stability in the Middle East is best served if a democratically elected Palestinian government is successful. However, this will only be possible if the government makes clear moves towards the general opinion of the international community'.<sup>28</sup> In that way, Norway limited its contacts with Hamas representatives, while at the same time explicitly expressing its desire to preserve a dialogue with all parties concerned.

Certainly, the refusal to deal with the PA since the taking over of governmental powers by Hamas and the suspension of any aid for the PA government, has partially been offset by the decision to provide humanitarian assistance to the Palestinian population. As early as 10 and 11 April, the Council of the European Union declared that it would be reexamining its assistance towards Palestinians, while continuing its humanitarian aid: 'The EU is reviewing its assistance to the Palestinians against the new government's commitment to the [...] principles. The Council recalled that the absence of such commitment will inevitably have an effect on direct assistance to the government. The EU will continue to provide necessary assistance to meet the basic needs of the Palestinian populations'.<sup>29</sup> Social and economic aid that brings with it legal or financial ties with the Palestinian Authority represents about 45% of European Union assistance to Palestine. The remainder is made up mostly of the following subdivisions: 20% are humanitarian aid; 22% relate to the financing of UNRWA and UN agencies; and 10% concern specific projects, mostly through NGOs. Concretely, the decision of the Council of the European Union of 10-11 April has led the Commission :

- to suspend the budgetary aid given through the *World Bank Trust Fund* as intermediary;<sup>30</sup>
- to suspend any projects administered by or in cooperation with the ministers of the Palestinian Authority;
- and, withdraw 20 to 30 experts and consultants that were working in offices of the PA.

Projects linked to infrastructure, health, education, 'tax computer system' and others have thus been temporarily suspended.<sup>31</sup> In suspending their financial assistance to the PA, the member states were aware of the risk of the PA collapsing completely. The French Minister of Foreign Affairs said on 30 January: 'We are the primary provider of aid to the Palestinians [...]. This aid is vital for the

<sup>27</sup> Kingdom of Norway, Ministry of Foreign Affairs, Press release n° 02/06, available at <http://odin.dep.no/ud/english/news/news/032201-070016/dok-bn.html>.

<sup>28</sup> Correspondance of Mr. Knut Olav Krohn Lakså, Senior Executive Officer of the Norwegian Representation to the Palestinian Authority, 7 July 2006.

<sup>29</sup> EU, Conclusions of the Council, 10-11 April 2006, Document 7939/06 (Presse 95).

<sup>30</sup> The *Public Financial Management Trust Fund* was established in the beginning of 2004. It is a body that allows donors to provide increased budgetary assistance, but where each successive instalment is subject to the realisation of a number of conditions tied to the reform of the management of finances; see description in The World Bank, Report N°32339, Implementation Completion Report on a Grant in the Amount of US\$ 20 million to the West Bank and Gaza for a public Sector Management Reform Structural Adjustment Operation, 12 May 2005, pp. 2 and following. The Reform Fund is itself inspired by the mechanism devised by the European Commission between November 2000 and December 2002.

<sup>31</sup> See Internal Note, *EC Assistance to the Palestinians*, 27 April 2006, paras. 4 et 5.

survival of the Palestinian Authority.<sup>32</sup>

More fundamentally, the decision to suspend all aid has led the international community to abandon its institution building efforts (about US\$ 7 billion have been invested in the establishment and functioning of the PA since the Oslo Accords). Instead, the international community now focuses on strictly humanitarian aid, thereby marginalising the PA institutions and making any long-term planning impossible.

The *Temporary International Mechanism* (TIM) - drawn up by the European Union and endorsed by the Quartet - falls within the framework of these aims, having no intention of contributing to the establishment of the institutions and focusing on the need to respond to the immediate needs of the population. On 17 June, the Quartet's declaration described the mechanism proposed by the European Union as:

...the mechanism facilitates *needs based assistance directly to the Palestinian people*, including essential equipment, supplies and support for health services, support for the uninterrupted supply of fuel and utilities and basic needs allowances to poor Palestinians.

### **e) The application of national anti-terrorist legislation and interruption of financial services.**

The application of anti-terrorist legislation in the banking sector adds to the already considerable impact of Israel's refusal to pay the amounts due to the Palestinian Authority, and of the redirecting of aid from the international community towards purely humanitarian ends. On 7 May 2006 the World Bank in its report entitled *The Impending Palestinian Financial Crisis* states:

Commercial banks in West Bank and Gaza have been reminded of their potential legal liability under US anti-terror legislation, leading them to withhold services to the PA; this is impeding the PA's ability to receive transfers of funds from abroad (in particular from Arab League donors), and to operate an international payments system. Similar concerns have also led two major Israeli banks to announce that they will sever their relationship with Palestinian banks [...].<sup>33</sup>

Funding any activity in the Occupied Palestinian Territory becomes extremely difficult, due to the fears of the financial institutions of links with banks established in the OPT, even when there are no links between those bodies and the PA. In particular, certain Israeli banks have decided – sometimes in violation of their contractual obligations – to close the accounts of Palestinian banks with minimal advance notice citing the need to comply with ‘the strict requirements of the legislation in Israel and abroad as well as the changing circumstances’. These restrictions threaten not only Palestinian banks, but also all financial institutions operating services in the OPT. The partners of these institutions currently fear both legal and non-legal i.e. political sanctions, if they maintain their relationship with individuals or legal entities in the OPT.

The FIDH has witnessed how financial services in the OPT find it extremely difficult to continue functioning in these circumstances because their partners fear for their assets in the United States, which might be targeted by sanctions initiated by the Office of Foreign Assets Control, (OFAC). This situation has made it impossible for the States of the Arab League to pay out their normal financial assistance to the Palestinian Authority. It has also severely undermined the possibility of using of the private sector as the principal channel of aid to the Palestinians, which had been the intention of international actors, since payments to the private sector have been

<sup>32</sup> See Declaration available from <http://www.diplomatie.gouv.fr>, in tab “Legislative Elections (25.01.06) ».

<sup>33</sup> *Economic Update and Potential Outlook*, World Bank, 7 May 2006, para 4

suspended.<sup>34</sup>

## 2.2 The private sector and the Humanitarian NGO's do not constitute an alternative

It is unrealistic to think that the private sector and non-governmental organizations, whether local or international, can take over the tasks hitherto performed by the Palestinian Authority, even assuming that these actors are willing to do so.

These tasks are too weighty to be taken on by the private sector. On 13 April 'Doctors without Borders' (Médecins sans Frontières) declined the role of 'social worker'. The organization expressed the view that 'humanitarian aid does not have the competence, the means or the responsibility to substitute for the Palestinian Authority, to manage social services, to run the ministries and the public system and pay the salaries of civil servants'.<sup>35</sup> The United Nations Office for the Co-ordination of Humanitarian Affairs (OCHA) stated 'It is not possible to transfer the responsibility of public health to the UN or NGOs.'<sup>36</sup>

Moreover, substituting the private sector and NGO's for the Palestinian Authority for the provision of basic social services would assume they possessed much greater resources. As the United Nations stressed: 'The delivery of aid is likely to be more expensive due to the additional overhead/administrative costs of funding through multiple alternative smaller-scale sources. The effectiveness of the targeting of assistance will be reduced without co-ordination with the PA'. Furthermore, the humanitarian aid which UN agencies could provide depends on the funding they receive, but to date this funding has been seriously insufficient. For example, according to OCHA, the UN Consolidated Appeal Process (CAP) launched for 2006 has not received sufficient funding up till now.

Due to their fears that they might be acting in violation of foreign legislation on the financing of terrorist groups, certain international NGO's have suspended their programmes in the Occupied Palestinian Territory. Those remaining may feel compelled to channel their aid according to political criteria. For example, all those signing contracts or beneficiaries of US Aid were notified on 26 April 2006 that contracts should not be entered into not only with any PA official under the authority of any government minister of the PA, but also with any mayor, deputy mayor, village council member affiliated to a Designated Terrorist Organisation (DTO) such as Hamas.<sup>37</sup> Therefore, aid is likely to be distributed according to political criteria, depending on whether any given municipality is affiliated to Hamas or not.

## 2.3 The impact of the measures on the economic and social situation.

In March 2006, the World Bank had sought to model the potential impacts of a combination of the actions of the Government of Israel and of the international donor community. The worst scenario assumed a) continued withholding by the Government of Israel of the VAT and customs duties collected on behalf of the PA ; b) border trade restrictions comparable to those enacted in 2005 ; c) a 50 percent reduction in the average 2005 level of daily labor flows into Israel from Gaza and the West Bank ; and d) a reduction in donor disbursements of 200 million USD, or 15 percent, as

<sup>34</sup> See OCHA, *Humanitarian Update, Special Focus – Can business relieve the suffering?*, April 2006

<sup>35</sup> For the NGO's, this confusing of roles runs counter to the independence of NGO's. See "Palestinian Territories: Doctors without Borders refuse the role of 'social workers'", Press release, 13 April 2006.

<sup>36</sup> OCHA, *Humanitarian Update, Special Focus – Emerging Humanitarian Risks*, January 2006.

<sup>37</sup> US Aid to the West Bank and Gaza, Note no. 2006-WGB-17 (26 April 2006).

compared with 2005. The decline of the Palestinian economy under these assumptions were already rated as dramatic. It was estimated that by end 2006, average personal income would decrease by 30 percent in real terms ; that unemployment would increase to 40 percent (from 23 percent in December 2005) ; and that poverty levels would climb from 44 percent to 67 percent<sup>38</sup>. In May 2006, the World Bank comments : ‘Based on evolving Government of Israel and donor policies, these projections now appear too rosy’.<sup>39</sup>

The impact of non-payment of public sector salaries is particularly worrisome. For instance, the 36,000 schoolteachers employed in the public schools depending on the Ministry of Education provide education to 82% of the pupils in the West Bank and 52% of the pupils in Gaza (where the presence of the United Nations Relief and Works Agency (UNRWA) is more important). The last salary received by these schoolteachers was in February 2006. Despite the fact that absenteeism was limited until the Summer, a strike broke out in September, which was followed by a large number of schoolteachers. Similarly, the Ministry of Health accounts for 62% of primary health clinics while NGOs and UNRWA account for 30% and 8.5% respectively. The Ministry of Health runs 22 general hospitals while UNRWA runs one and NGOs run 12. The Ministry of Health is the central provider of a number of essential services, including all vaccinations. It also provides services which NGO’s cannot supply like radiology and laboratory examinations.

On 19 April, the United Nations warned of an imminent humanitarian crisis and in June the World Health Organisation (WHO) published its first report monitoring health indicators especially aimed at measuring the effect of stopping international financial aid to the Palestinian authority. Whereas the WHO observed that it is too soon to record a rise in infant mortality for example, it points out a rise in the number of babies born in Ministry of Health hospitals and a reduction in private or NGO hospitals. According to the WHO, this development could be the result of the deterioration in the economic conditions of the Palestinian people who are turning away from private structures as these have become unaffordable. The WHO also reports a reduction of available stocks of medicines which can only be expected to last for another two months. Strategies for rationalizing the use of medicines are now being implemented, a move which could seriously impact upon the quality of care: not prescribing certain medicines which are unavailable, prescribing medicines which would be second choice etc. As has already been said, these tendencies were confirmed during the months from July to September: the outbreak of strikes in the structures which depend on the Ministry of Health and difficulties with hospital medical supplies have led, over the past three months, to a clear deterioration in the health services in the Occupied Palestinian Territories.

### **3.The Israeli withdrawal, the restrictions on movement and the economic and social deterioration in the Gaza Strip**

In the Gaza Strip two circumstances in particular have played a role. First of all, the conditions in which the Israeli withdrawal took place did not guarantee the economic viability of this territory (3.1). Secondly the restrictions imposed on the entry and exit of persons and goods, especially severe since the withdrawal, led to a true strangulation of its economy (3.2.). Such restrictions on freedom of movement are of course not specific to Gaza. The World Bank has stated in many of its reports that the restrictions on freedom of movement were the main cause of the Palestinian economic decline in general.<sup>40</sup> But the severity of the restrictions imposed on Gaza – which justify

<sup>38</sup> On 7 March 2006, the World Bank get a financial aid of 42 millions USD states to enable the PA to face up to the financial crisis, to sustain basic public services to the Palestinian population and to partly maintain income payments to PA employees; World Bank, News release N°2006/296/MNA, 7 March 2006.

<sup>39</sup> *The Impending Palestinian Fiscal Crisis, Potential Remedies*, World Bank, 7 May 2006.

<sup>40</sup> See World Bank, *The Palestinian Economy and the Prospects for its Recovery, Economic Monitoring Report to the Ad Hoc liaison Committee, opere citato., para 29*: ‘Today’s Palestinian economy still operates at well below its potential, with real GDP per capita almost 30% lower than in 1999 [...]. The inability of the Palestinian economy to fully use its productive potential is first

the fact the Strip is called ‘the largest prison in the world’ or simply ‘the open sky prison’ is worth particular examination.

### 3.1. The condition of the Israeli withdrawal from Gaza

#### **a) The industrial zone of Erez**

Established at the beginning of the 1970’s, Erez is the first industrial zone of the OPT. Designed to favour Palestinian and Israel investment, it is set up in the Northern part of the Gaza Strip, on Palestinian land next to the Erez crossing point but under Israeli control. Some 200 enterprises, half of which were Palestinian businesses,<sup>41</sup> were established there, the zone covering 47 hectares. The zone was closed during 2004 and Israel let it be known that it would leave the zone.

In the discussions relating to the withdrawal, the Israel State declared itself in favour of the zone being handed over to the Palestinians.<sup>42</sup> In the retreat plan presented in April 2004, Israel finally stated that it ‘would consider the continuation of activity on the present basis on two conditions: (1) the existence of appropriate safety precautions; (2) the express recognition by the international community that continuing activity would not be considered as a continuation of Israel’s control of the zone’. In reality, the zone was closed following Israeli withdrawal. Before this, the Erez industrial zone employed some 4000 Palestinian workers. The workers who were employed there have not been able to find work elsewhere.

#### **b) Agricultural infrastructures**

In the aftermath of the disengagement, the Israeli government and the Palestinian Authority decided to put the UNDP in charge of removing the rubble of the settlement’s houses. As for the greenhouses in the settlements, it was agreed that they would be managed temporarily by the *Palestinian Economic Development Company* (which had been set up by the Palestinian Authority). It was anticipated that 3000 Palestinian jobs could be created thus and that, *provided there are no problems with the frontier crossing*, the greenhouses would be able to generate revenue of 50 million US dollars per season.<sup>43</sup> However, this plan never saw the light of day.

### 3.2. The restrictions of movement to and from the Gaza Strip

As far as the movement of persons and goods is concerned, the situation in the Gaza Strip can be summed up in the following way. The movement of persons from Gaza to Israel and the West Bank takes place at the Erez crossing point, while the movement of merchandise uses the Karni crossing point. Movement to and from Egypt goes through Rafah. In August 2005 the Israeli government insisted on the construction of an extra, distinct terminal for the movement of merchandise between Egypt and the Gaza Strip. Citing the preservation of Israeli security controls, and despite the initial opposition of the Palestinian Authority, Israel insisted that the transport of merchandise should go through Kerem Shalom in Israeli territory and not through Rafah.<sup>44</sup>

In 2004, the World Bank judged that the economic crisis in the OPT was due to restrictions on

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and foremost the result of restrictions on movement of people and goods’. See also OCHA, territorial Fragmentation of the West Bank, May 2006.

<sup>41</sup> They were textile enterprises, wooden furniture, plastics and chemicals, etc.

<sup>42</sup> Israel’s position has not always been clear: early on, Israel also stated that control of the Zone should revert to ‘*an agreed upon Palestinian or international body*’. See The services group, US AID and the World Bank, *Stagnation or Revival? Israeli disengagement and Palestinian Economic Prospects. Technical paper 11. Industrial Estates*, December 2004, p.2.

<sup>43</sup> See Office of the Special Envoy for Disengagement, *Periodic Report*, September 2005, pp3-4.

<sup>44</sup> Haaretz, “Israel to build Israeli-Palestinian-Egyptian Terminal in South”, 9 August 2005.



movement of persons and goods imposed by Israel. ‘Without a major reform of the closure regime, however, the Palestinian economy will not revive and Israel’s security gain may not be sustainable’.<sup>45</sup> The Karni crossing point was identified as ‘a major bottleneck’ which, given the delays while waiting and the resultant costs, had led ‘Palestinian consignees to abandon cargo rather than pay clearance and storage fees’<sup>46</sup>.

The controls at the borders constitute a major constraint on the economic development of the Gaza Strip. First it should be noted that the transport of goods by the Palestinians towards or through Israeli territory is particularly expensive: the cost of the ‘border crossing’ exceeds the cost of transport by lorry (by reason of the ‘back-to-back system in use and the time spent waiting). Furthermore, the procedures accompanying the decisions to close the crossing points are applied in an inconsistent and non transparent way. If the transport of goods between Gaza and the West bank is expensive, it is equally unpredictable. Transport across Israeli territory can only be done by lorries registered in Israel, and Israeli cargoes entering Gaza have priority over those coming from the West Bank, which deprives Palestinian goods of all comparable advantage.<sup>47</sup> The effect of all these factors taken together is to increase between 50 and 100% the costs of transport of goods between Gaza and the West Bank.

In the agreement of 15 November 2005 relating to access to Gaza which was concluded in the aftermath of Israel’s disengagement, the parties agreed on the following points:

the passage must operate continuously;

Israel will authorize the export of all agricultural produce for the 2005 harvest;

the number of export lorries passing through Karni will be 150 per day and 400 for the end of 2006 (this number does not include the export of agricultural produce for which, according to the agreement, Israel must permit rapid and continuous export to avoid the deterioration of the merchandise).

The agreement also contains arrangements relating to the passage of bus convoys transporting persons between Gaza and the West Bank from 15 December 2005 and convoys of lorries carrying merchandise from 15 January 2006. Finally it provides that Israel will place no obstacle to the construction of the port which the international community of donors was to finance; and that the rebuilding of the airport will be considered : “The parties agreed on the importance of the airport. Discussion will continue on the issues of security arrangement, construction and operation”.<sup>48</sup> In his periodical report of September 2005, James Wolfensohn noted that the question of the airport was crucial for the export of agricultural products; the European Commission had said that it was ready to prepare a feasibility study concerning the port of Gaza.<sup>49</sup>

The application of these provisions of the agreement of 15 November 2005 has proved very problematic throughout the whole of 2006. Concerning the movement of goods and in spite of important technological resources (a scanner financed by USAID) destined to replace the largely ineffectual back-to-back system by a mechanism permitting the intact passage of cargos, there was no noticeable improvement in the passage to and from Gaza. On 28 February 2006 in a report evaluating the passage and the commercial facilities, the World Bank emphasized that ‘a judicious

<sup>45</sup> The services group, US AID and The World Bank, *Stagnation or Revival? Israeli Disengagement and Palestinian economic prospects. Technical Paper 1. Borders and Trade Logistics*, December 2004, p.1

<sup>46</sup> The services group, US AID and The World Bank, *Stagnation or Revival? Israeli Disengagement and Palestinian economic prospects. Technical Paper 1. Borders and Trade Logistics*, December 2004, para 11.

<sup>47</sup> The services group, US AID and the World Bank, *Stagnation or Revival? Israeli Disengagement and Palestinian economic prospects. Technical paper 1. Borders and Trade Logistics*, December 2004, para 16.

<sup>48</sup> *The Palestinian Economy and the Prospects of its Recovery*, *op. cit.*, annex 4 – *Agreement on Movement and Access*, pp. 39-40. The Gaza international airport, financed by funds from the European Union, was opened in 1998 by Presidents Y. Arafat and B. Clinton, before being closed and destroyed by Israel. The damage was estimated at 8 million US dollars: see. European Parliament, “Disengagement from Gaza and the Northern West Bank and challenges ahead”, DGEXPo/B/PolDEP/Note/2005-No214, Sept. 2005, p.4, note 2.

<sup>49</sup> Office of the Special Envoy for Disengagement, *Periodic report*, September 2005, p.3.

mixture of modern management and the use of new scanning technology will make it possible to create a regime that provides both high levels of security *and* commercial efficiency, and thereby is of benefit to *all* parties'. Nevertheless it pointed out: 'very little has been implemented and the system that exists today is virtually unchanged from that which existed in December 2004'.<sup>50</sup> According to the World Bank, Karni, the only crossing point permitting import and exports of goods for 1.4 million Palestinians, constitutes at the same time a physical barrier to Palestinian trade (delays, damage to goods); it is discriminating regarding goods coming from the West Bank (they are submitted to controls to which goods coming from Israel are not submitted); and it gives rise to corruption on both sides of the frontier by the lack of transparency and the unpredictability of the procedures.<sup>51</sup>

It can be concluded from this that the export of Palestinian goods is being seriously hampered. The Karni crossing point has been closed very regularly since the disengagement, in particular since January 2006. Thus according to the statistics drawn up by the UN Office for the Coordination of Humanitarian Affairs (OCHA) and the Palestinian Ministry of National Economy, the average daily figures for freight lorries crossing at Karni for the period from May 2005 to April 2006 are as follows:

Month	Imports	Exports
May 2005	216	38
June 2005	254	38
July 2005	219	33
August 2005	210	30
September 2005	140	23
October 2005	103	9
November 2005	225	30
December 2005	204	56
January 2006	78	23
February 2006	148	41
March 2006	71	7
April 2006	102	4.5

These figures show that imports to the Gaza Strip in transit through the Karni crossing point are significantly greater than goods authorized for export.

They also show that the quantity of exports authorized to leave the Gaza Strip has decreased markedly since January 2006, and that at no time has the figure of 150 export lorries agreed in November 2005 been reached. The frequent closures are justified by concerns for security: at the Israeli Ministry for Foreign Affairs, the representatives of the FIDH were told that the alerts have been numerous during the last months and that the closure of Karni was justified in order to protect the installation from the risk of attack by militant Palestinian groups. However, these repeated closures seem disproportionate. The reasons for security cited do not justify the inability of the Israeli government to organize Karni in such a way as to allow more lorry traffic in conditions which take account of Israel's legitimate preoccupations concerning security. The present situation makes it impossible for Palestinian producers to pursue their activities, especially taking into account that the products in question are mainly of an agricultural nature and will rot if they are not exported on time.<sup>52</sup> Moreover, once again citing security concerns, the Israeli government has

<sup>50</sup> World Bank, *An Interim Assessment of Passages and Trade Facilities*, 28 February 2006, para 3.

<sup>51</sup> World Bank, *An Interim Assessment of Passages and Trade Facilities*, 28 February 2006, para 5.

<sup>52</sup> The government of Israel has pointed out that as an alternative to the Karni crossing, the crossing at Kemer Shalom could be used for transporting goods from Gaza to Israel. However the capacity of Kemer Shalom is grossly insufficient to meet the needs of Palestinian exports.

required that goods passing through Karni should be packaged in a specific way to facilitate checking the contents, which is a further obstacle especially for small producers.

The movement of persons is especially affected by crossing controls: the crossing between Gaza and the West Bank is limited to officials and businessmen who have obtained a special permit with Israeli authorities. It is reckoned that only 10% of Gaza's population is likely to be given a permit by the Israeli authorities to enable them to go to the West Bank. Movement of persons through Erez has also been subjected to increasing constraints: from November 2005 to March 2006 the flow was 1,284 per day compared with 1,841 per day for January and February 2005. Moreover, Erez was closed during almost all of January 2006.<sup>53</sup> Furthermore, convoys of buses and lorries between Gaza and the West Bank never saw the light of day. Undertakings on this front were not respected.

In fact in April 2006 the Israeli government had still not given the assurance that it would not 'interfere' in the construction of the port and no discussion had taken place concerning the airport.<sup>5</sup>

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<sup>53</sup> World Bank, *An Interim Assessment of Passages and Trade Facilities*, 28 February 2006, para 12. In February 2005, the Israeli government had undertaken to issue 15,000 work permits in order to encourage the economic stability of Gaza. This undertaking was never honoured.

<sup>54</sup> Office of the special envoy for disengagement, Eleventh report on the *Implementation of the Agreement on Movement and Access*, 21 April 2006.

## **IV. The promises and the shortcomings of the Temporary International Mechanism (TIM)**

As already mentioned, international agencies pointed out on numerous occasions the humanitarian crisis that would inevitably arise as a result of the measures taken by the Israeli government and the international community. The World Bank, for example, stated that:

continued fiscal crisis could lead to the termination of social and administrative services to the population and increasing poverty. In its extreme form, the PA could cease to carry out its functions and law and order would consequently deteriorate.<sup>55</sup>

It is with a view to avoiding the catastrophic consequences of a breakdown of basic social services that the international community set up the *Temporary International Mechanism (TIM)*.

### **1. The mechanism**

On 9 May 2006, the Quartet mandated the European Union to propose a mechanism that would satisfy the basic needs of the Palestinian people while remaining within the framework of the principles formulated by the Quartet on 30 January, and thus circumventing the Hamas-led Palestinian Authority government as well as the ministers of the Palestinian Authority. The European Commission made a proposal along these lines in a remarkably short time, and this proposal was subsequently endorsed by the Council of the European Union on 16 June. On 17 June, the Quartet in its turn approved the mechanism proposed by the European Union, describing it in these terms:

the mechanism facilitates needs based assistance directly to the Palestinian people, including essential equipment, supplies, and support for health services, support for the uninterrupted supply of fuel and utilities, and basic needs allowances to poor Palestinians.

The TIM should ensure direct distribution of assistance to the Palestinian people. It should cover three types of expenditure under three different schemes:

- I. Basic supplies and non-wage expenditures for the health sector and basic compensation for persons providing health care.
- II. Support for uninterrupted provision of services, including fuel.
- III. Basic allowances to meet the basic needs of the poorest segment of the population.

Items I and II are based on existing mechanisms: the World Bank's Emergency Services Support Programme (ESSP) and the European Community's Interim Emergency Relief Contribution (IERC). Item III aims to create a safety net for the most underprivileged families (which could of course include families living below the poverty line as a result of the suspension of payment of salaries to public servants working for the Palestinian Authority). Implementation of this third item would require the creation of a new programme to enable money to be transferred to the bank accounts of the Palestinians as soon as possible.

The TIM was implemented with remarkable speed. As early as 23 June, the European Union announced its intention to contribute up to 105 million euros towards the temporary international

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<sup>55</sup> *Ibid.*, §5.

mechanism for the Palestinian people. At the same time, a team of 24 officials from the European Commission was sent to Jerusalem to identify needs so that the mechanism could be put into operation. On 11 July, a first contribution was made in the form of fuel for Palestinian hospitals. The first payments to Palestinian healthcare workers within the context of the TIM were made on 27 July. Finally, on 1 September, with the payment of the first social allowances to people in the Palestinian Territories in a situation of urgent need, all three aspects of the TIM were operational.

On 25 September, at a time when the Quartet was deciding to extend the temporary international mechanism for an addition period of three months and to broaden its scope, the provisional results of TIM implementation were as follows.<sup>56</sup> 40,000 of the country's neediest Palestinian families were due to start receiving allowances, this aid being in addition to other allowances already paid to healthcare workers (approximately 11,500 people), to people having suffered a sudden drop in income, and to retired people. Families normally supported through the social welfare scheme of the Palestinian Authority would each receive 270 euros. In all, the temporary international mechanism achieved the following results:

- 1.3 million people living in the Gaza Strip have access to water and sanitation facilities and health services ;
- over 600,000 people will receive social allowances, including 12,000 healthcare workers, 55,000 public service workers and very low-income retired people, as well as 40,000 of the neediest families ;
- 2 million litres of fuel have been delivered to ensure the continuity of the power supply, in particular for hospitals and water and sanitation facilities in the Gaza Strip, following the destruction of a Gaza power plant on 28 June.

## **2. The promises of the TIM**

The FIDH does not wish to minimize the features of the TIM which are most promising. First of all, the TIM should facilitate the restitution by Israel of the tax and customs duties owed to the Palestinian Authority under the Oslo Agreements. Crucially, all agree that no mechanism is likely to ensure the provision to the Palestinian population of essential services unless Israel agrees to resume revenue transfers – and that it would thus make little sense to establish a mechanism unless Israel is prepared either to resume transfers direct, or to route the clearance revenues through the bypass mechanism –. It is in this respect that the adoption of the TIM should be seen as an encouraging development. This mechanism should ensure that more pressure will be exercised on Israel in to fulfil its obligations. Indeed, the TIM ensures that the channels serving to meet the basic of the Palestinian population bypasses the Hamas-led government of the PA. It therefore constitutes an open invitation to Israel to pay the monies it owes without being able to invoke the risk of financing a government whose members belong to a political group which still has not explicitly renounced violence, recognized Israel, and agreed to comply with previously signed agreements – i.e., with the Oslo agreements and the Roadmap –. It also constitutes a response to an argument put forward by the Government of Israel when its representatives met with the FIDH delegation, according to which its refusal to reconstitute the VAT taxes and customs duties is rendered legitimate by the prohibition to fund an organisation it considers to be 'terrorist'.

Moreover, by placing the President of the PA, Mr Mahmoud Abbas, in the position of the central interlocutor for the implementation of the mechanism, the TIM may weaken the unilateralist position of Prime Minister Olmert and his Kadima party, that there is no credible partner on the

<sup>56</sup> Press release IP/06/1251, 25 September 2006.

Palestinian side with whom to negotiate. According to this position, Israel has no partner for peace : while no discussion with the Hamas-led government can be imagined, the President of the PA Mahmoud Abbas is presented by Prime Minister Olmert as lacking the authority it requires to be a credible peace partner. However, while the decision of the European Union and the other members of the Quartet not to have exchanges with the new government of the PA may a fortiori justify the position of the Israeli government in its own refusal to treat that government as an interlocutor, the TIM deliberately seeks to reinforce the standing of President Abbas, making the refusal of the Government of Israel to pursue negotiations with him even less tenable than previously.

### **3. The dangers associated with the TIM**

On the other hand however, the FIDH sees a number of dangers associated with the implementation of the TIM. Before detailing these dangers, it should first be emphasized that the TIM, while proposed by the European Community (it was devised by the European Commission before being formally approved by the Council of the Union on 16 June), has been agreed to by the Quartet on 17 June. Its first version was more ambitious : it included, in particular, the payment of salaries to the personnel of the Ministries of Health and of Education. The amendments made to the mechanism, in order both to ensure that agreement could be reached within the Quartet, and that there would a chance to convince Israel to contribute to the mechanism by paying through this channel the money it owed to the PA, are concessions made to partners of the European Union. However, these partners not only seek to ensure that no money from the donors community will reach the Hamas and thus may be used to finance terrorist activities ; their intention is, according to a number of well-informed Western diplomats, that the Hamas government fails ; and they are more generally are intent to weaken the PA, rather than to reinforce its institutions. In the view of the FIDH, the question should be asked whether the European Union should thus constrain its diplomacy by seeking, even at the cost of pursuing a coherent policy, to achieve a consensus with partners whose agenda appears to be markedly different from its own. The search within the Quartet of a consensus among its members, in practice, has implied that the most restrictive approach has emerged. This approach is confined to meeting the humanitarian needs of the Palestinian population.

For the sake of consensus within the Quartet, the European Union has sacrificed the ambition of institution-building in order to facilitate progress towards the establishment of a stable and viable Palestinian State. It turns the clock backwards in the achievement of peace in the Middle East, based on the Oslo agreements and on the Roadmap. The FIDH shares the following comment made in this respect on 21 June 2006 by Prof. J. Dugard, the UN Special Rapporteur on the situation of human rights in the Occupied Palestinian Territory ::

At present there is a need for creative diplomacy to find a formula that will enable Israel and the Palestinian Authority to resume negotiations for a peaceful settlement and respect for human rights. Hamas' refusal to recognize Israel's right to exist and renounce violence will not be changed by isolation but by engagement and diplomacy. Unfortunately the United States is unprepared to play the role of peace facilitator. This leaves the EU and the UN as the obvious honest brokers between Israelis and Palestinians. Whether either of these bodies can play this role while remaining part of the Quartet is questionable. The image of both the EU and the UN has suffered substantially among Palestinians as a result of the Quartet's apparent support for economic isolation, under the direction of the United States. Their credibility and impartiality are seriously questioned by Palestinians. However, they remain the bodies most likely to achieve peace and promote human rights in the region. In these circumstances both bodies should seriously consider whether it is in the best interests of peace and human rights

in the region for them to seek to find a peaceful solution through the medium of the Quartet.<sup>57</sup>

The most immediate risks associated with the TIM are the following:

The more immediate risks associated with the TIM are the following. First, the TIM does not meet the pressing question of the payment of salaries to the employees of the Palestinian Authority, with the exception of the allowances it provides for health care providers under its first window. In order to justify this, some Western diplomats the FIDH has spoken to have put forward the argument that the payment of salaries of the PA public servants would be in violation of the prohibition of the financing of the Hamas as a terrorist organisation. This argument lacks plausibility. The initial proposals floated by the European Commission after it was asked by the Quartet, on 9 May, to devise a temporary international mechanism to meet the needs of the Palestinian population in the face of an impending humanitarian crisis, included payment of salaries to the health and education public servants, which demonstrates that the payment of salaries at least was not excluded as a matter of principle.<sup>58</sup>

Moreover, by paying salaries to the public servants of the PA, the international donors would not be giving funds to the Hamas as such ; indeed, it would not even be funding the PA itself, but the individual employees of the PA, the vast majority of which are not affiliated to Hamas, but are either loyal to the Fatah or to other political groups, or have no specific political affiliation whatsoever.

The continued non-payment of the salaries is especially worrisome, in the view of the FIDH. The PA public servants fulfil a central role in providing public services to the Palestinian population ; their contribution is essential, in particular, for the distribution and allocation of humanitarian aid itself. Essential rights such as the right to education or the right to work are being violated or risk being violation as a result of the non-payment of public salaries. The non-payment of the salaries of 65,000 members of the security forces, a significant number of which possess light weapons, creates an extremely dangerous situation from the point of view of the maintenance of law and order, and augments significantly the risk of violence erupting, both within Palestinians and against Israeli occupying forces. Moreover, if civilian employees were paid while security employees were not, disruption as well as anger at the operators of the mechanism would be likely

Indeed, there is some ambiguity in the position of the European Union itself on the question of the payment of salaries. The European Union, through the voice especially of the Member of the European Commission in charge of External Relations and European Neighbourhood Policy Ms Benita Ferrero-Waldner, has repeatedly pressed Israel to resume the payment of the VAT and customs duties it owes to the PA, *in order to allow for the payment of salaries to public employees.*<sup>5</sup>

<sup>9</sup> The Western diplomats the FIDH spoke with insisted on more than one occasion that they felt that the international community of donors should not compensate for the failure of the Government of Israel to comply with its obligations to the PA by ensuring the payment of salaries which the PA cannot afford in the absence of the restitution of the VAT and customs duties collected by Israel on behalf of the PA. These diplomats also acknowledged that humanitarian aid required for its distribution and management that the PA administration be able to function effectively. However, as suggested by certain interlocutors of the FIDH on the side of the Israeli government, this can

<sup>57</sup> Press release, 21 June 2006.

<sup>58</sup> World Bank states in its report that "the European Commission and a number of OECD donors have been exploring ways to maintain income payments to PA employees and to sustain basic public services to the Palestinian population"; the World Bank, May 7, 2006, §19.

<sup>59</sup> For instance, in a speech to the European Parliament plenary held on 26 April 2006, Commissioner Ferrero-Waldner stated : '[The support of the Union to the PA budget in the past] covered less than 10% of the salary bill. A real problem now is Israel withholding Palestinian customs and tax revenues. These are Palestinian taxes which people have already paid. Withholding them means that basic services won't be delivered, salaries cannot be paid, and families will suffer (...)'

hardly be seen as consistent with a position according to which the payment of those salaries would in fact result in support of the Hamas, although this is the position adopted by the European Union and, since it endorsed the TIM, by the other members of the Quartet.

Second, in its present form, the TIM also could marginalize the institutions of the PA, thus nullifying the efforts of the international community since over ten years to establish progressively the institutions of a future Palestinian State, in accordance with the 'two States' solution advocated in the Roadmap. As J. Solana emphasised in a speech to the European Parliament, one of the key objectives of the EU is to maintain the institutional structure of the Palestinian Authority, in which the EU has invested so much effort and money. Its continuity is indeed deemed essential if an independent, democratic and viable Palestinian State were to eventually become a reality.<sup>60</sup> Non-payment of the salaries of public servants substantially weakens institutional structures and it must be recognised that this would not only mean that the aim of the TIM would not be achieved, but also that the TIM would be counter-productive. By giving a central role to the Presidency of the PA while bypassing the government, it may create tensions within the Palestinian Authority between the Presidency and Ministers. In the worst-case scenario, Mahmoud Abbas may be seen as a complicit in the sanctions adopted by the international community, and the legitimacy of the Hamas be reinforced by it being placed in the position of the victim. This would not only mean that the TIM would not have fulfilled its professed objectives : it would mean that it will have contributed to producing which directly contradict its intentions.

#### 4. The alternatives

On 7 May 2006, the World Bank proposed an interim funding mechanism which would ensure a strict control of the use of funds in support of the PA, to ensure that these funds would not serve to promote terrorism, but would strictly serve to pay salaries directly on the accounts of the public employees or to finance projects of the PA. The FIDH is struck by the fact that a number of safeguards were established during the period 2004-2005, upon the request of the international community of donors, and especially of the European Union, in order to ensure that the money channelled to the Palestinian Authority would be used for good purposes. It would be relatively easy to reinforce this further, and to conceive of a mechanism adapted from the successful multi-donor Holst Trust Fund, which was used in the mid-1990s to support the nascent PA by the payment of salaries in the health and education sectors and for the purchase of supplies and equipment. Under such a scheme, the administrator of the bypass mechanism would receive contributors' funds and, with the assistance of a Payments Agent, would disburse them to the authorized recipients. An auditing mechanism could be put in place in order to carry out spot checks to ensure that the funds arrive at their final destination; that the list of salary recipients are accurate; that equipment which is funded is indeed purchased and arrives at destination.<sup>61</sup>

In the view of these serious risks associated with the TIM in its present form, the FIDH has asked the Western diplomats it could meet with, including interlocutors from the European Commission, why it had not been envisaged, instead of the TIM as currently adopted, to devise a funding mechanism along the lines proposed by the World Bank. No convincing answer was offered. First, we have been told, a practical difficulty would be that the Arab bank has frozen the funds destined to the PA in any case as a result of fear of litigation if seen to be dealing with a government controlled by a proscribed terrorist organisation under US/EU law. All have acknowledged,

<sup>60</sup> Speech by J. Solana, « Middle East Peace Process », Appearance before the EU Parliament, Strasbourg, 5 April 2006

<sup>61</sup> This proposal is made by the World Bank in its document on *The Impending Palestinian Fiscal Crisis, Potential Remedies*, 7 May 2006 ; and in an informal note from the DFID of April 2006, *Financing Basic Services to Palestinians outside PA Systems*, cited by World Bank.



however, that this does not constitute an insuperable obstacle, as a bypass could have been obtained to facilitate the implementation of the scheme. Second, it has been remarked that such a mechanism would require an agreement of the Ministry of Finance of the PA, and in principle, the signature of such an agreement by the Minister of Finance himself. This, we have been told, would not be possible as a political decision has been made by the Quartet that direct contacts with Hamas could not take place unless the principles set forth by the Quartet on 30 January (renunciation of violence, recognition of Israel, and respect for past agreements) are complied with. The FIDH concludes that the viability of the PA – and, thus, of the hope in the establishment of an independent Palestinian state in the future, as envisaged in the Roadmap – is seen as less important than the essentially symbolic question of whether or not a member of the Hamas could sign a convention, as Minister of Finance, in the name of the PA, with the representatives of the Quartet.

## V. Conclusions

In 1997, an FIDH mission undertaken in the context of the sealing off of the OPT issued the following declaration: “(...) the hopeless conditions we encountered are a source of revolt and violence. Only extremists and fundamentalists can benefit from this exasperation”<sup>62</sup>.

Nearly 10 years later, the facts bleakly confirm the truth of this warning. In a fundamentally transformed international context, the despair of the local populations is greater than ever and reaching the limits of endurance. A deep-rooted reason for this situation can be clearly identified: it is the open disregard and organised violation of Palestinians’ rights, both as individuals and as a people. While Israel’s concern for the security of its citizens is perfectly legitimate and well-founded, nothing can justify or excuse a policy and attendant practices which aim to bankrupt the State of Palestine and which make its people the primary victims. The organised economic suffocation of the Occupied Palestinian Territory is having a disastrous impact on the human rights of its inhabitants – an impact full of danger for an already somber future, if the responsibilities of the State of Israel and the international community are not urgently and correctly addressed.

### 1. The obligations of Israel under the Oslo Agreements

In February 2006, after the Palestinian elections, and before the formation of a Palestinian government, Israel decided not to refund the VAT revenue and the custom duties that, under the Oslo Agreements, were due to the Palestinian Authority. This decision is a clear violation of its obligations on the part of Israel. The Palestinian Authority’s inability, as a result, not only to pay the wages of its civil servants, but also to meet the needs of its people in such crucial sectors as health, education, roads or water services is already having a serious effect on living conditions. In the World Bank’s view,

‘it is (...) worth noting that continued withholding by GOI of Palestinian revenues (...) would reduce available total budget resources between US\$700-750 million in 2006. [...] *A fiscal outlook of this nature is incompatible with continuity in essential government operations*’.<sup>63</sup>

### 2. The obligations of Israel as the Occupying Power in Gaza and the West Bank.

The FIDH is concerned about claims made by Israel that it should not be considered as an Occupying Power of the Gaza Strip in the meaning of the Geneva Convention relative to the Protection of Civilians in Time of War, of 12 August 1949 (Fourth Geneva Convention). It notes that the disengagement from the Gaza Strip was decided by Israel in order to ‘dispel claims regarding Israel’s responsibility for the Palestinians in the Gaza Strip’, the position of Israel being that after following the disengagement, ‘there will be no basis for claiming that the Gaza Strip is occupied territory’.<sup>64</sup> These are unacceptable statements. The FIDH shares the view of the international agencies who consider, as stated by John Dugard, Special Rapporteur of the Commission on Human Rights on the situation of Human Rights in the Occupied Palestinian Territories, that:

<sup>62</sup> FIDH, *From despair to revolt?*, Report no. 249, November 1997. See also FIDH, *Israel/Palestine: despairing of peace*, Report no. 234, March 1997.

<sup>63</sup> *Economic Update and Potential Outlook*, World Bank, March 15, 2006, §11.

<sup>64</sup> The disengagement plan – General outline, communicated by the Office of the Prime Minister of the Government of Israel, 18 April 2004. Available from [www.israel-mfa.gov.il](http://www.israel-mfa.gov.il)

Gaza will remain occupied territory subject to the provisions of [Fourth Geneva Convention] as a result of Israel's continued control of the borders of Gaza. The withdrawal of Jewish settlers from Gaza will result in the decolonization of Palestinian territory but not result in the end of occupation.<sup>65</sup>

More generally, the FIDH recalls that, as the Occupying Power in the West Bank and Gaza, Israel bears the responsibility for the welfare of the Palestinian population.<sup>66</sup> If, due to the refusal of Israel to reconstitute the VAT taxes and customs duties it owes the PA, 'the PA becomes unable to provide basic services to the Palestinian population and donors withhold assistance, the emphasis will shift back to Israel to resume its legal obligation'.<sup>67</sup>

Under the Geneva Conventions, the occupying power shall 'with the cooperation of the national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children. (GC IV, Article 50, §1). Furthermore, should the local institutions be inadequate for the purpose, 'the Occupying Power shall make arrangements for the maintenance and education, if possible by persons of their own nationality, language and religion, of children who are orphaned [...]' (GC IV, Article 50, §3). Concerning the health of the civilian population, the Geneva Conventions specify that 'To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate' (GC IV, Article 55, §1). Under Article 56 'To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring and maintaining, with the cooperation of national and local authorities, the medical and hospital establishments and services, public health and hygiene in the occupied territory [...]' (GC IV, Article 56, §1). Finally, the Occupying Power shall facilitate relief schemes on behalf of the population if it is inadequately supplied (GC IV, Article 59, §1); such relief consignments however shall in no way relieve the Occupying Power of any of its obligations under the aforementioned Articles (GC IV, Article 60).

### **3. The obligations of Israel and the international community under the International Covenant on Economic, Social and Cultural Rights**

As clearly recognized by the International Court of Justice in its Advisory Opinion of 9 July 2004 on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Israel is bound by the International Covenant on Economic, Social and Cultural Rights in the territories it occupies since 1967. It is also under an obligation 'not to raise any obstacle to the exercise of such rights in those fields where competence has been referred to Palestinian authorities'.<sup>68</sup> This is also the view adopted by the Committee on Economic, Social and Cultural Rights.<sup>69</sup> By withholding the equivalent of 50 to 60 million USD in VAT taxes and customs duties monthly, the Government of Israel is making it impossible for the PA to meet the needs of its population and to ensure that its elementary social and economic rights are respected.

There is also a responsibility of the international community of donors under the International Covenant on Economic, Social and Cultural Rights. As recently summarized by Prof. John Dugard,

<sup>65</sup> General Assembly, doc. A/60/271, 18 August 2005, p. 2.

<sup>66</sup> See also Resolution adopted by the Council for Human Rights, 6 July 2006.

<sup>67</sup> UN (OCHA), *Assessment of the future humanitarian risks in the occupied Palestinian territory*, 19 April 2006.

<sup>68</sup> International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, at para. 102-113.

<sup>69</sup> Committee on Economic, Social, and Cultural Rights, Concluding Observations of the Committee on Economic, Social and Cultural Rights : Israel, 23 May 2003 (E/C.12/1/Add.90), at § 31 (reaffirming the view "that the State party's obligations under the Covenant apply to all territories and populations under its effective control").

the Special Rapporteur on the situation of human rights in the Occupied Palestinian Territory : ‘Since Hamas was elected to office there has been a concerted effort to withhold funds from the Palestinian Authority, its agencies and projects. (...) Donor countries and agencies have also cut their funding drastically as a result of the fact that Hamas is classified as a terrorist organization by both the United States and the European Union. The decision of the US Treasury to prohibit transactions with the Palestinian Authority (PA) has had a profound effect on banks that are unprepared to transfer funds to the PA, its agencies and its projects, and on NGOs engaged in projects with the PA. In effect the Palestinian people have been subjected to economic sanctions – the first time that an occupied people have been so treated. Inevitably this economic strangulation has had a severe impact on the economic life of Palestinians and their human rights. About one million of Palestine’s 3.5 million population are directly affected by the non-payment of salaries while, indirectly, the whole population suffers economically. Moreover, as the Palestinian Authority is responsible for over 70 per cent of schools and 60 per cent of health care services in the OPT both education and health care have suffered substantially. At the same time, both unemployment and poverty figures have risen and continue to rise’.

Whatever its political legitimacy, the design and the implementation of such sanctions must comply with the requirements of the International Covenant on Economic, Social and Cultural Rights. As emphasized by the UN Committee on Economic, Social and Cultural Rights, it is essential in the adoption of economic sanctions to ‘distinguish between the basic objective of applying political and economic pressure upon the governing elite of the country to persuade them to conform to international law, and the collateral infliction of suffering upon the most vulnerable groups within the targeted country’.<sup>70</sup> By suspending aid to or through the government of the Palestinian Authority while devising with the TIM an alternative scheme to meet the basic needs of the population, the international donors’ community sought to exercise pressure on the Hamas in order to ensure that it agrees to the principles set forth by the Quartet on 30 January, but seeks to spare the Palestinian population. This distinction fails in the context of the OPT, however. Essential needs such as education or security will not be fulfilled through the provision of humanitarian aid. Even the humanitarian aid which does arrive, for instance in the sector of health, requires an effective administration within the PA for its distribution.

The FIDH cannot but be struck that no impact assessment on the social and economic rights of the Palestinian has preceded the decision by international donors to suspend aid to or through the PA government after Hamas took office on 29 March. That decision was adopted for political reasons, in disregard of the needs of the Palestinian population. The UN Committee for Economic, Social and Cultural Rights has emphasized that the party or parties responsible for the imposition, maintenance or implementation of the sanctions, whether it be the international community, an international or regional organization, or a State or group of States, are imposed three obligations under the International Covenant on Economic, Social and Cultural Rights, which all the EU Member States have ratified : first, the rights guaranteed under the Covenant must be taken fully into account when designing an appropriate sanctions regime; second, ‘effective monitoring, which is always required under the terms of the Covenant, should be undertaken throughout the period that sanctions are in force’ ; third, ‘the external entity has an obligation “to take steps, individually and through international assistance and cooperation, especially economic and technical” in order to respond to any disproportionate suffering experienced by vulnerable groups within the targeted country’.<sup>71</sup> The current sanctions regime needs to be assessed on the basis of these requirements. For the reasons explained above, apart from its political costs, the TIM endorsed by the Quartet on the basis of the proposal of the European Union would not appear to meet these conditions.

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<sup>70</sup> UN Committee on Economic, Social and Cultural Rights, General Comment No. 8: The relationship between economic sanctions and respect for economic, social and cultural rights, adopted at the seventeenth session of the Committee (1997), UN doc. E/1998/22. §4.

<sup>71</sup> Id. § 12,13 abd 14.

Paris and Brussels, 9 October 2006