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الفدرالية الدولية لحقوق الإنسان

BRIEFING NOTE

Failing the Palestinian State : The human rights impact of the economic strangulation of the Occupied Palestinian Territory

A mission of the International Federation for Human Rights was in Israel and in the Occupied Palestinian Territory (OPT) between 25 June and 2 July 2006. The mission was set up in order to examine the situation of economic and social rights in Gaza and the West Bank, almost one year after Israel 'disengaged' from the Gaza strip and three months after Israel and the international community decided to suspend all contacts with the government of the Palestinian Authority and to interrupt all aid channelled to and via that government, following the taking into office a government led by the Hamas on 29 March 2006 after elections were held on 25 January 2006. A report will be prepared on the basis of the findings of the mission. This note summarizes its preliminary conclusions.

1. The context of the mission

The mission of the FIDH took place in the following context. On 12 September 2005, the disengagement from the Gaza strip of Israel was formally completed. This was a unilateral initiative from Israel, with no consultation with its Palestinian counterpart. However, on 15 November 2005, negotiators from Israel and the Palestinian Authority achieved an agreement on movement and access from and to Gaza, which was facilitated by US Secretary of State Condoleezza Rice, European Union High Representative for the Common Foreign and Security Policy Javier Solana and the international community's envoy for the Israeli disengagement from Gaza, James Wolfensohn. One of the aspects of the FIDH mission was to assess the evolution of the socio-economic situation in Gaza, one year after disengagement and the unilateral proclamation by Israel that it will refuse to accept its responsibilities as the Occupying power in the OPTs.

On 25 January 2006, elections for the Palestinian Legislative Council took place in Gaza and the West Bank. These elections led to the victory of the Hamas, who – with 41 % of the votes in its favor – gained a majority of seats within the PLC. Within days after the elections, the Middle East Quartet (composed of the EU, the UN, the US and the Federation of Russia) 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 existing agreements. However, when the Hamas government took office on 29 March, it did not state that it agreed with those conditions. 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. 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, while maintaining the refusal to deal with the Hamas government of the PA. This resulted in the European Union proposing a Temporary International Mechanism (TIM), which the Quartet endorsed on 17 June and which is now entering implementation phase.

2. The degradation of the social and economic rights in the Occupied Palestinian Territory

Poverty and unemployment are rising in dramatic proportions in the Gaza strip and in the West Bank. 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 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. In May 2006, the World Bank comments : ‘Based on evolving Government of Israel and donor policies, these projections now appear too rosy’.¹

This pessimism is shared by the FIDH, which calls upon the international community and the Government of Israel to avert both an imminent humanitarian crisis and the collapse of the institutions of the PA. At the source of this crisis are a number of factors, which include the following :

1. The fiscal crisis of the Palestinian Authority

Since the victory of Hamas at the January 2006 elections, the Government of Israel has refused to pay to the Palestinian Authority the VAT duties and customs it collects on its behalf, on the goods which are imported in the OPTs, as agreed in the 19 April 1994 Protocol on Economic Relations between the Government of the State of Israel and the P.L.O., representing the Palestinian people.² This represents the single most important factor of the bankrupt situation in which the PA finds itself. Each month, the functioning of the PA requires approximately 165 million USD. During 2005, internal taxes amounted to 30 million USD on average. The contributions of the community of donors represented 30 million USD. VAT duties and customs amounted to 60 million USD, representing 36% of the monthly budget of the PA and approximately 50% of the funds actually available, as this budget was structurally in deficit. Largely as a result of the withholding of these VAT duties and customs by the Government of Israel, with the exception of the payment of certain bills of Israeli utility companies since May, the salaries of the public servants of the PA have not been paid since March 2006. The PA has 152,000 public servants, on whose support it is estimated that 6 persons on average are dependent. 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 important 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 implies that, in effect, 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.³

¹ *The Impending Palestinian Fiscal Crisis, Potential Remedies*, World Bank, 7 May 2006.

² As supplemented by Annex V of the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, of 28 September 1995.

³ 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.

The Government of Israel has stopped handing over to the PA VAT and customs duties in violation of its legal obligations cited above. The resulting impossibility for the PA not only to pay the salaries of the public servants, but also to meet the needs of the population in certain crucial sectors such as health, education, waste collection, or water and sewage, is already having a serious impact on the population's living conditions.

This impact is all the more important that the Palestinian population has been led to rely heavily upon the public sector. 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 January. Despite the fact that absenteeism has been limited until now, our interlocutors have expressed doubts that these schoolteachers would continue working after the vacations end in September. 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.

The interruption of international aid either to the government of the Palestinian Authority or passing through the government, which is presented as a measure intended to ensure that no funds pass into the hands of the Hamas, an organization still listed by the European Union among the terrorist organisations,⁴ is adding to the consequences of these policies of the Government of Israel. Apart from the loss of revenue this represents for the Palestinian Authority itself – which, while not negligible, is far less significant than the withholding by Israel of the Palestinian customs and tax revenues –, the results of this decision are, at the political level, extremely worrisome. It amounts to a shift of the efforts of the international community, from institution-building (approximately 7 billion USD have been invested in the establishment and functioning of the Palestinian authority since the Oslo agreements) to strictly humanitarian aid, marginalizing the institutions of the PA and rendering any planification impossible.

2. The alternatives of the private sector and humanitarian NGOs

It is entirely unrealistic to believe that the private sector and non-governmental organisations, whether local or international, can take over the tasks hitherto assumed by the PA, even assuming a willingness of these actors to do so. First, the tasks are too considerable to be managed by the private sector. Second, funding any activity in the Occupied Palestinian Territory becomes extremely difficult, due to the fears of the financial institutions to have links with banks established in the OPT, even in the absence of any links of those entities to the PA. In particular, certain large Israeli banks have decided with minimal advance notice – sometimes in violation of their contractual obligations – to close the accounts of Palestinian banks, 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

⁴ The EU initially resisted putting the Hamas on its list of terrorist organisations, despite the pressure exercised in this regard by the United States and the United Kingdom : only the terrorist wing of the Hamas (Hamas-Izz al-Din al-Qassem) was initially listed (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 28.6.2003, p. 81). 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 for which the Hamas apparently claimed responsibility (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 13.9.2003, p. 22). It is noteworthy that, on 15 January 2006, Norway decided that it will no longer align itself with any other list than that published by the UN. The 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 involved was included on the EU list, and the opportunities for contact were thus restricted’ (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>). As a result of this decision, Norway may not apply to Hamas the same restrictions as to the EU countries.

Palestinian banks, but all financial institutions operating services in the Occupied Palestinian Territory. The partners of those institutions currently fear both legal and non-legal, i.e., political sanctions, if they maintain their relationship with individuals and legal entities in the OPT. The FIDH has witnessed that financial services in the OPT find it extremely difficult to continue functioning in these circumstances, as they business partners fear for their assets in the United States, which may be targeted by sanctions from the Office Foreign Assets Control. Third, the humanitarian aid which UN agencies could provide depends on the funding they receive, but this funding is hitherto seriously insufficient. For instance, according to OCHA, the UN Consolidated Appeal (CAP) launched for 2006 remains to this day seriously underfunded. Fourth, due to their fears that they might be acting in violation of foreign legislation on financing of terrorist groups, certain international non-governmental organisations have suspended their programs in the Occupied Palestinian Territory. Those which remain may feel compelled to channel the aid they do provide according to political criteria. For instance, all contractors and grantees of US Aid have been notified on 26 April 2006 that contacts are proscribed not only with any PA official under the authority of any minister of the government of the PA, but also with any mayor, deputy mayor, village council member, affiliated with a Designated Terrorist Organisation (DTO) such as the Hamas.⁵ Aid therefore risks being distributed according to political lines, depending for instance on whether any particular municipality is Hamas or not.

3. The specific situation of the Gaza Strip

Other factors in the current socio-economic crisis in the OPTs are specific to Gaza, and may be related to the conditions in which the disengagement of Israel from the Gaza Strip took place. Prior to the disengagement from Gaza, the Erez industrial zone, situated in the Northern part of the Gaza Strip, employed some 4000 Palestinian workers. In the disengagement plan it presented in April 2004, Israel stated that it ‘will consider the continued operation of the zone on the current basis, on two conditions:

- i. The existence of appropriate security arrangements.
- ii. The express recognition of the international community that the continued operation of the zone on the current basis shall not be considered continued Israel control of the area’.

In fact however, the Erez industrial zone has been closed since the disengagement took place, and the workers previously employed there could not find alternative employment elsewhere.

Even more importantly, the export of Palestinian goods has been seriously hampered. The Karni crossing point has been very regularly closed since the disengagement took place, and especially since January 2006. Thus according to the data collected by the UN Office for the Coordination of Humanitarian Affairs (OCHA) and the Palestinian Ministry of National Economy on the average daily truckloads crossing at Karni, the figures are the following for the period May 2005-April 2006⁶ :

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

⁵ US Aid West Bank and Gaza, Note No. 2006-WGB-17 (26 April 2006).

⁶ *Humanitarian Update*, April 2006 (published by OCHA).

These figures show that significantly more imports enter the Gaza Strip through the Karni crosspoint than goods exported from the Gaza Strip are allowed through. They also show that the quantity of exports allowed to leave the Gaza Strip are in serious diminution since January 2006. frequent closures are being justified by security concerns : security alerts, we have been told, have been frequent during the last few months, and Karni is being closed in order to protect the installations from the risk of a violent attack by Palestinian militant groups. However, the frequency of the closures appears disproportionate. The security reasons invoked do not justify the failure by the Government of Israel to organize Karni in order to ensure that it can allow for more frequent passages of trucks, in conditions which respect the legitimate concerns of Israel for its security. The current situation results in making it impossible for Palestinian producers to pursue their activities, especially taking into account the fact that the products concerned are mostly agricultural products which will spoil if they are not exported on time.⁷ Moreover, again invoking security concerns, the Government of Israel has required that the goods crossing the Karni crosspoint be prepared following certain specifications to facilitation verification of the content, which also constitutes an impediment, especially for the smaller producers.

3. The deficiencies of the Temporary International Mechanism (TIM)

a) The mechanism

On 9 May, the Quartet mandated the European Union to propose a mechanism which should meet the basic needs of the Palestinian population, while remaining within the principles formulated by the Quartet on 30 January and, thus, bypassing the Hamas-led government of the Palestinian Authority and the Ministries of the PA. The Temporary international Mechanism (TIM) is also supposed to facilitate the resumption by Israel of the payments it owes to the PA, as such payments could be made through the TIM, thus not leading to financing the PA itself, but covering instead the basic needs of the Paelstinians.

The TIM should ensure direct delivery assistance to the Palestinian people; and be limited in scope and duration. It should cover three types of expenditures, according to three different schemes:

- I. essential supplies and non wage expenditures for the health sector, and basic allowances to health care service providers;
- II. support for the uninterrupted supply of utilities, including fuel;
- III. basic needs allowances to meet the essential needs of the poorest segment of the population.

Windows I and II will be based on existing mechanisms (the Emergency Services support Programme – ESSP – of the World Bank, and the Interim Emergency Relief Contribution – IERC – of the European Community). Window III aims to create a social safety net for the families most in need (which could of course include families falling under the poverty line due to the suspension of the payment of salaries to the public servants of the PA). This third window requires a new programme to be implemented in order to make payments into the bank accounts of Palestinians as soon as possible. Although delays can be expected with regard to this third window, the implementation of the TIM has already begun, with immediate substantial commitments of the European Community to contribute to the mechanism and with the dispatching of a team of 24 public servants of the Commission in Jerusalem to commence with the effective implementation.

b) The promises of the TIM

The FIDH does not wish to minimize the features of the TIM which are most promising. Crucially, all

⁷ The Government of Israel has indicated that, as an alternative to the Karni crosspoint, the crosspoint of Kemer Shalom could be used for the passage of goods from Gaza to Israel. However, the capacity of Kemer Shalom are notoriously insufficient to meet the needs of the Palestinian exports.

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 retribute 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 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.

c) 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 partners, 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 that will 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'.⁸

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. 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*.⁹ 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 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

⁸ Press Release, 21 June 2006.

⁹ 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 (...)'.

endorsed the TIM, by the other members of the Quartet.

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 Road Map. 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.

d) 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 2003-2005, 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.¹⁰

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, 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.

4. Preliminary Conclusions

In the report it shall publish on the basis of the findings made in the course of the inquiry mission of

¹⁰ 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 the World Bank.

June-July 2006, the FIDH intends to develop its legal conclusions on the basis of two sets of norms.

a) A reaffirmation of 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’.¹¹ 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: ‘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’¹².

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. 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’.¹³

b) 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’.¹⁴ This is also the view adopted by the Committee on Economic, Social and Cultural Rights.¹⁵ 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, 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

¹¹ 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

¹² General Assembly, doc. A/60/271, 18 August 2005, p. 2.

¹³ UN (OCHA), *Assessment of the future humanitarian risks in the occupied Palestinian territory*, 19 April 2006.

¹⁴ International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, at para. 102-113.

¹⁵ 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 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 rise⁷.

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’.¹⁶ 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’.¹⁷

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.

Paris and Brussels, July 6th, 2006.

¹⁶ 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.

¹⁷ Id.

