

[Editor's Note: For 22 days, from Dec 27, 2008 to January 18, 2009 there was an Israel/Palestinian conflict in the occupied Gaza strip. On January 29, 2009, a panel was held at the World Economic Forum Annual Meeting in Davos, Switzerland, titled "Gaza: The Case for Middle East Peace." The following article is a report about that panel. It appeared in OhmyNews International on February 22, 2009 at: http://english.ohmynews.com/articleview/article_view.asp?menu=c10400&no=384849&rel_no=1 (No longer available.)]

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What Principles Guide the UN in Creating a Palestinian-Israeli Peace Framework?

**Davos Talks by Recep Tayyip Erdogan and Amr Moussa
on Steps Needed to Build Peace Process**

by Ronda Hauben

Part I. – Analysis of Situation

The Palestinians in Gaza continue to suffer under the siege created by Israel and Egypt closing the border crossings into Gaza. Who is responsible? What can be done to get the siege lifted?

Such questions are on the minds of many people around the world. The siege of Gaza has gone on for many months and continues, even after the devastation, deaths and injuries of the Palestinians caused by the recent 22-day Israeli military assault on Gaza.

Though these are serious questions, they rarely get public attention and discussion. One recent exception surprisingly was a panel held at the World Economic Forum in Davos last month. The panel session was titled "Gaza: The Case for Middle East Peace." David Ignatius of the Washington Post was the moderator. On the panel were the UN Secretary-General, Ban Ki Moon, the Secretary-General of the Arab League Amr Moussa, the Prime Minister of Turkey, Recep Tayyip Erdogan and the President of Israel, Shimon Peres.

In his instructions to the panel, Ignatius asked members to discuss, "What needs to be done to prevent the Middle East peace process from slipping back."¹

After Ban Ki-moon gave a short set of comments, Erdogan was called on to speak. He proposed that "we need to do a proper analysis of the current situation in order to determine what steps need to be taken."

He pointed to the period six months earlier when there was a cease fire agreed to by Israel and Hamas. The Turkish Prime Minister reminded the audience that for six months there had been "No problem for rocket attacks" on Israel. The Israeli obligation for the cease fire then was "to lift the embargo," that Israel had imposed on Gaza.

But Israel didn't fulfill its part of the truce agreement.

Erdogan went on to discuss what he saw as one of the key problems to be solved if the circumstances of the Palestinians had any chance of being improved.

That problem was how to heal the breach between the Palestinian factions, particularly between Hamas and Fatah.

Erdogan pointed to the fact that Hamas had won the parliamentary election of January 2006. Actually Hamas won 76 of 132 seats, while Fatah only got 43.²

Erdogan explained, "We are talking about democracy. So if we would like to see democracy take root, then we must respect first of all the people who have received the votes of the people of the country they are running in."

“So we may not like them, but we have to respect the process,” he emphasized.

Instead, Israel arrested several of Hamas government ministers and members of Parliament and put them in prison. Erdogan described how in the middle of December 2008, he had asked Prime Minister Olmert, as a gesture of good will, to release these prisoners, along with the Palestinian women and children they had in Israeli prisons. Olmert told Erdogan that he would talk to his colleagues in Israel and respond the next day. No response was forthcoming. Four days later Israel started the war on Gaza.

Erdogan expressed his conviction that the UN should be taking the lead in working to solve the Palestinian crisis and that he was hopeful that the new U.S. administration would put its weight behind a solution.

“There’s got to be a new opening and Hamas must be considered in the process,” Erdogan proposed. He offered Turkey’s help in the process.

Part II. – Occupation Breeds Resistance

Next the moderator asked Amr Moussa to speak to the question of how to achieve unity among the Palestinians, and what he felt the new U.S. administration could do to help the situation.

Moussa said there must be a recognition that Israel’s assault on Gaza “was not just a reaction for some rockets being launched against Southern Israel.” This situation in Gaza and in the rest of the Palestinian territory is a problem of a foreign military occupation, he explained.

“The siege, the blockade of Gaza,” Moussa maintained, “is a very severe situation.” He argued that “you cannot ask people in Gaza living in starvation and hunger because of the blockad ... to be calm and ask them why do you throw stones against your occupiers?” “This,” Moussa said, “is against the nature of people. You strangle them, you starve them and then you ask them to be quiet?”

He went on to refer to Israel’s claim that the smuggling into Gaza must be stopped. Moussa said, “You strangle them, not a single window of opportunity, and then you talk to them about illicit trade?”

Instead, “If you want to prevent this, you have to open the crossing points,” Moussa explained. “You have to give them food, you have to give them water, to give them medicine.”

He added that the “Palestinians had believed the call for them to practice democracy, to have an election.”

But then he described how when, “ Hamas won, and half an hour, twenty-five minutes after the announcement of the results of the election, Hamas was served notice that aid would be suspended and then came the blockade.”

“It is not a question of Israel reacting to some rockets,” Moussa emphasized, “it is much deeper than that, it is an action of occupation, it is an action of blockade, then a reaction of resistance, then the reaction of destruction carried out by Israel.”

Moussa also referred to Israel’s failure to respond to the Arab initiative.

In 2002, the Arab nations decided at a Summit that they were ready, at their highest levels, to agree to peace with Israel. They proposed to recognize Israel and carry out any agreements signed with Israel in exchange for the creation of a Palestinian State with borders similar to those before 1967. But in the seven years that transpired after the offer of the initiative, Israel failed to respond in any authorized way to the authorized message from the Arab summit.

Referring to Ban Ki-moon’s brief presentation to the panel, Moussa said there are three or four things that need to be done now. He listed these as a cease fire, opening of the crossings,

stopping illicit traffic and the reconciliation between the Palestinians.

Moussa also said he had another point to make. But the moderator cut him off, before he could explain.

Unfortunately, instead of providing for a similar short period for the Israeli president to make his comments, the moderator allowed Peres to speak for twice the time he had given to each of the two previous speakers. When Erdogan asked for time to respond to Peres, however, Ignatius told him there was no time. This led Erdogan to leave the panel in protest.

The issues raised by these two talks were a significant statement of what is needed to deal with the crisis facing the Palestinians in Gaza.

Part III. – Principles for UN Actions in Palestinian Crisis

Had there been time for discussion in the panel held at Davos, it would have been helpful to put this discussion in the context of a United Nations General Assembly document presented in January 2008.³

This document is a report by the Human Rights Rapporteur John Dugard, discussing what he believes to be the law governing the United Nations participation in the Palestinian situation.

Dugard refers to the problem represented by the Quartet, comprised of the European Union, Russia, United Nations, and United States which was established in 2002 to facilitate the Middle-East Peace Process negotiations. and the UN's participation in it, with the Secretary-General representing the UN.

Dugard explains how on July 20, 2004 the General Assembly adopted resolution ES-10/15. This resolution called on Israel to comply with the Advisory Opinion of the International Court of Justice issued by the court titled the "Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory."⁴

The International Court of Justice is the judicial organ of the United Nations. It is, according to Dugard "now part of the law of the United Nations." In addition the General Assembly by a large majority gave its approval to the decision. As such the Advisory Opinion is one of the authoritative statements of the applicable international law relating to the framework for peace in the Middle East.

While this law isn't binding on three of the Quartet members, the U.S., Russia, or the EU (though the Russians and the EU members did vote in favor of the UN resolution approving the advisory opinion), the UN as a member of the Quartet is bound by the Advisory Opinion. As a representative of the UN, the Secretary-General, Dugard argues, is by law obliged to uphold the principles of the Advisory Opinion in his participation in the Quartet.

The Secretary-General or his representative is by law obliged to be guided by the Opinion and to endeavor in good faith to do his or her best to ensure compliance with the opinion.

In his statement about what is happening in the Palestinian situation, Dugard points to the fact that Palestine is an occupied territory and that Israel has obligations regarding its treatment of the Palestinians.

Dugard argues that the root cause of the violence in the Israeli-Palestinian context is the occupation, not any act of Hamas or others.

He notes that the right of the Palestinian people for self-determination is in general recognized. But such a recognition "should not take the form of support – political, economic or military – for one [Palestinian] faction at the expense of the other."

A critical factor in the Palestinian situation is the need for reconciliation between the two major Palestinian factions, Fatah and Hamas, Dugard maintains. The Quartet explains Dugard,

instead “pursues a divisive policy of preferring one faction over the other, of speaking to one faction but not to the other; of dealing with one faction while isolating the other.”

In negotiations between the Palestinian Authority and Israel, what was being done was a negotiation among unequal partners. The problem with this is that it doesn't make it possible to have the negotiations reflect a normative framework.

As the UN draft resolution A/HRC/7/17 of Dugard's report states: “In the opinion of the Special Rapporteur negotiations should take place within a normative framework, with the guiding norms to be found in international law, particularly international humanitarian law and human rights law, and the Advisory Opinion of the International Court of Justice and Security Council resolutions.”

“Negotiations on issues such as boundaries, settlements, East Jerusalem, the return of refugees and the isolation of Gaza should be informed by such norms and not by political horse-trading,” Dugard's report advises.

The experience of the negotiations that led to a democratic South Africa in the mid 1990s is offered as an example in Dugard's report, as it places the efforts toward a solution to the problem within a framework of accepted democratic principles, and international law (with special reference to human rights law).

Part IV – Need for Normative Framework

What the presentations by Erdogan and Moussa at the World Economic Forum and the UN report document by Dugard have in common is that they look for the underlying principles that are needed to guide efforts to settle the Palestinian-Israeli crisis.

These principles are based on the obligations under international law, established and accepted by most of the international community via its support for the Advisory Opinion. The Palestinians are in a situation where they suffer from Israeli occupation.

These principles include:

- 1) Recognizing the Palestinian right to resist occupation.
- 2) Treating the Palestinian factions of Fatah and Hamas with equality so as to encourage unity.
- 3) Letting Israel know that it has the obligation to negotiate with the Palestinians in a way that is conducive to recognizing and implementing the principles of international law, not in a way that treats the Palestinians as less than equals.
- 4) That the UN uphold the principles of international law.

A particular example of the need to apply these principles is raised by Dugard's report when it discusses the role the UN Secretary-General has played in the Quartet. The U.S., the EU, Russia and the UN (represented by the Secretary-General) are part of the Quartet which is supposedly providing a framework for peace negotiations between Israel and Palestine.

The problem Dugard observes is that the Quartet does not recognize the principles of the Advisory Decision. While this is a course of action that can be taken by the U.S., the EU or Russia, it is not appropriate for the Secretary-General acting on behalf of the UN to discard these principles. Dugard's report proposes that the Secretary-General is “in law obliged to be guided by the Opinion and to endeavor in good faith to do his or her best to ensure compliance” with it. In this context he proposes that it is necessary for the Secretary-General to either withdraw from the Quartet or to explain “why he is unable to do so and how he justifies remaining in the Quartet in the light of its refusal to be guided by the law of the United Nations.”

Unless international law becomes the framework under which the international community,

including the UN's Secretary-General, operates to work toward a solution to the Gaza crisis, there seems no way to end the devastation that the Israeli government believes it has the right to inflict on the Palestinians.

The recent panel at Davos on the crisis in Gaza demonstrated that there are nations like Turkey and international representatives like the Secretary-General of the Arab League willing to explain to the world the principles needed to guide the efforts for a peaceful solution. It is imperative that there be serious discussion around the world about these principles and also efforts to hold the UN and other international and national entities accountable for the implementation of these principles.

Notes:

1. A webcast of the session is online at: Gaza: The Case for Middle East Peace:

https://www.youtube.com/watch?v=cR4zRb_Py2kY.

For a partial transcript:

<https://wewritewhatwelike.com/2009/01/31/transcripts-of-erdogan-moussa-peres-and-erdogan-again-at-davos/>.

2. Scott Wilson, " Hamas Sweeps Palestinian Elections, Complicating Peace Efforts in Mideast," *The Washington Post*, Jan. 27, 2006; Page A01. Available at:

<https://www.washingtonpost.com/archive/politics/2006/01/27/hamas-sweeps-palestinian-elections-complicating-peace-efforts-in-mideast/8a4a4412-5f9b-4583-8607-51c7dd3781f4/>.

3. General Assembly Draft Resolution A/HRC/7/17 21 January 2008, Human Rights Situation in Palestine and Other Occupied Arab Territories. Report of the Special Rapporteur on the Situation of human rights in the Palestinian territories occupied since 1967, John Dugard. Available at:

<https://www.rightdocs.org/doc/a-hrc-7-17/>.

4. Advisory opinion requested by General Assembly on Dec. 8, 2003 from International Court of Justice regarding legal consequences of construction of the wall built by Israel in the Occupied Palestinian Territories. Issued July 9, 2004.

<https://www.icj-cij.org/case/131>.

Among the advisory opinion's principle findings were:

- 1) Palestinian people have the right to self determination.
 - 2) Israel is under a legal obligation to comply with 4th Geneva Convention in Occupied Palestinian Territories
 - 3) Israel is bound by international human rights conventions in the Occupied Palestinian Territories.
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