



World Chronicle

UNITED NATIONS

PROGRAMME: No. 920 recorded 13 November 2003

GUEST: John Dugard
UN Special Rapporteur on Human Rights in the
Palestinian Territories

JOURNALISTS: Betsy Pisik, *The Washington Times*
James Bone, *The Times (London)*

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"Security Measures and Human Rights in the Palestinian Territories"

The need to respect human rights versus the need for security – it's a dilemma all societies must grapple with, but perhaps nowhere is it as controversial as in the Middle East. On this edition of World Chronicle, the guest is John Dugard, the UN's Special Rapporteur on Human Rights in the Palestinian Territories – a mandate that Israel has described as 'one-sided' and 'irrelevant'. How effective can the work of a human rights rapporteur be when one side – the Israeli Government – refuses to meet with him? Why does the mandate not extend to violations of Israeli civil rights by Palestinian suicide bombers? Does the barrier – variously referred to as a 'separation wall' or as a 'security fence' – violate the human rights of Palestinian refugees? These are some of the questions asked by the journalists on the programme.

WORLD CHRONICLE is produced by the News & Media Division, Department of Public Information, United Nations, New York, NY 10017, U.S.A.

Duration: 28:00"
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ANNOUNCER: From United Nations Headquarters in New York, this is **World Chronicle**, an unedited interview programme about major global issues. Here now to introduce our guest is the host of today's **World Chronicle**.

LITTLEJOHNS: I'm Michael Littlejohns, and this is **World Chronicle**. The need for security versus the need to respect human rights – perhaps nowhere is this debate as controversial as in the Middle East. And our guest today is no stranger to controversy – he is John Dugard, the UN's Special Rapporteur on Human Rights in the Palestinian Territories. Joining us in the studio are Betsy Pisik of the *Washington Times* and James Bone of *The Times of London*.

LITTLEJOHNS: Professor Dugard, the Israelis have not recognized your mandate and they've accused you of pursuing a political agenda. How do you respond to their criticisms and their failure to cooperate with you and doesn't this make your job extremely difficult?

DUGARD: Yes. Well, I'm concerned about the failure of the Israelis to recognize my mandate because that means that when I visit the region I am obliged to speak to non-government officials in Israel – mainly in NGOs and in the universities – while I'm able to speak with the officials from the Palestinian authority. And there are many occasions on which I really would like to be able to ask the Israeli government for advice, or to ask them to give me the answer to questions that I have, and so certainly this failure to recognize my mandate does make my task more difficult. On the other hand, I must be quite frank that the Israeli government has always been very courteous towards me and they have never place any obstacles in the way of my visits to the territories.

LITTLEJOHNS: Do you often go into Israel to interview people?

DUGARD: I visit Israel and Palestine twice a year and I spend time in both Israel and Palestine.

LITTLEJOHNS: About equal amounts of time?

DUGARD: Well, obviously more time in the Palestinian territories. I use Jerusalem as my base and I consult with people in both Palestine and Israel. As far as the other question is concerned, the allegation that I have a political agenda, obviously this is a way of discrediting my reports but I have no political agenda. I'm a human rights lawyer and my sole task is to attempt to report fairly on the human rights position in the Palestinian territories.

LITTLEJOHNS: But you have been extremely critical in your comments, both in writing and in statements?

DUGARD: Yes, I have been critical. At the same time I've always been prepared to accept that Israel does have very serious security concerns and that these have to be taken into account.

PISIK: So, I am wondering, you've repeatedly – in your reports you mention the government of Israel and the official actions that impact on the human rights in the territories. Does your mandate also require you to look into the actions or roles of the Palestinian leadership as well?

DUGARD: No. This is a difficulty. My mandate directs me to concern myself with Israeli actions, but it's very difficult for me not to look at the actions of the Palestinians. So in my reports, for instance, I have always drawn attention to the fact that suicide bombers have been responsible for committing atrocities in Israel. Strictly speaking, that is beyond my mandate but obviously I could not ignore it.

PISIK: And in a rare act of praise the Israelis have noticed that? That you stepped beyond the mandate to at least acknowledge that they are responding to something in many cases. But in terms of official Palestinian actions, I mean the lack of elections and actions taken by the Palestinian Authority, the ability of their own security apparatus or others, I mean, is that also part of your mandate?

DUGARD: No, that's not part of my mandate. In my discussions, private discussions, with members of the Palestinian Authority I obviously do raise questions of this kind because they are of concern to me as a human rights lawyer but this is not part of my mandate and I do not report on the human rights violations of the Palestinian Authority, and clearly there are human rights violations on their part.

BONE: That sounds like a bit of a slanted mandate, so let's explain to the viewers how you get a mandate like that out of the UN system. It's created by the Human Rights Commission? Can you explain the mechanics of how a mandate like that emerges from the UN system?

DUGARD: Well, the Commission on Human Rights has mandated me – it has created the post of Special Rapporteur on the Occupied Palestinian Territories to look into the violations of human rights and international humanitarian law by the occupying powers. So the emphasis is very much on the fact that Israel is the occupying power. That's what gives this mandate its unique position.

BONE: And from your point of view is that totally beyond dispute that Israel is the occupying power in international law? Because Israel sometimes makes the argument that because it took that territory in a defensive – in an act of self-defence in an aggressive war in 1967, it shouldn't be considered an occupying power. But is that a totally unattainable argument legally?

DUGARD: No. Israel doesn't take that position completely. Israel has purported to annex East Jerusalem and the Golan Heights and so in respect to those two territories, Israel claims to be the sovereign power. But in respect of the rest of the West Bank and Gaza, Israel accepts that it is the occupying power. The area of dispute concerns the binding effect with the application of the Fourth Geneva Convention in the Occupied Territories. Israel is a party to the Fourth Geneva Conventions, including the Fourth Geneva Convention on Civilians. but Israel argues that the Fourth Geneva Convention is not applicable to this situation because there is no sovereign power that has been displaced. Because you will recall that in 1967 when Israel entered the West Bank and Gaza, Jordan was the occupying power as it were of the West Bank and Egypt was the occupying power of the Gaza Strip. And so Israel accepts that it is the occupying power and that customary international rules relating to belligerent occupation apply. And Israel has repeatedly stated that it will apply the Fourth Geneva Convention to a large extent, particularly in respect of its humanitarian provisions. But there is one stumbling block and that concerns the prohibition on settlements contained in the Fourth Geneva Convention. And the reason that there is this contradiction between the international community as a whole and Israel over the settlements is that Israel had denies that the Fourth Geneva Convention governs its powers as the belligerent occupant in the territories.

LITTLEJOHNS: Professor Dugard, you've been very critical in your reporting to the UN and in statements about the Israeli decision to erect a security wall because of the threats and actions that they have encountered from the Palestine side. Don't you feel that the Israelis have a right to protect themselves no matter how they do it? It's been called an apartheid wall, would you say that in fact in South Africa there was no such thing during the apartheid regime, so it's a bit of a misnomer? But don't you see any justification at all for what the Israelis are doing there?

DUGARD: Well, if it was really a security wall one would expect it to be built along the recognized boundary between the two entities, between Israel and the West Bank, the future state of Palestine. But in fact the wall does not follow this recognized boundary; it intrudes deeply into Palestinian territory. When I was last in the region in June, it included some six or seven kilometres but now there are plans to go a step deeper into the Palestinian territory. And I have no reservations about Israel's right to build a wall along the.....

LITTLEJOHNS: On their own terms.

DUGARD: ...on the border, my complaint is that it should not be built in Palestinian territory.

BONE: And this is a violation of international law? What is this provision of international law that they violate to do that?

DUGARD: Well, the question is one of fact really whether this is a wall that may be seen as an act of annexation, whether it may be seen purely as a security wall/fence. The Israeli position is that this is purely a security measure which, I presume by pure chance, has gone into the Palestinian territory to incorporate Israeli settlements. But if one sees the wall or the barrier or the fence, however you like to describe it, it has all the characteristics of a permanent structure and so I've suggested that this is a form of *de facto* annexation....

BONE: But isn't annexation a legal thing where country either does or doesn't annex something? Like you said, Israel annexed East Jerusalem and the Golan heights but it hasn't annexed the West Bank and Gaza. Isn't it a legal concept annexation?

DUGARD: Well, I'm suggesting that if I looked at the facts that one can draw the necessary inference that Israel's intention is to annex the territory. That if one looks at the wall as a structure and the way in which the wall incorporates the Israeli settlements into Israeli territory as it were on the Israeli side of the wall, that this may be seen as an act of annexation.

BONE: Are there any...

LITTLEJOHNS: But wait a minute. How does it violate human rights, which is your mandate?

DUGARD: My mandate is to investigate violations of human rights and international humanitarian law. International humanitarian law is largely to be found in the Geneva Conventions and there is a prohibition in the Fourth Geneva Convention on the annexation of occupied territory, Article 47. But, of course, as far as human rights are concerned my argument is that the construction of the wall has very serious implications for human rights in the Palestinian territory, particularly in respect of freedom of movement.

PISIK: I wonder if you could talk about that a little bit? For example, in seeing what has been published about the projection of the wall there are certain areas such as the Palestinian town, village, city, Qalqiliya, is going to be surrounded by this wall. These inhabitants are going to be completely cut off from the rest of the territory but also their freedom of movement within the Israeli side, I presume, can be no better than it is now, which is to say they're not allowed in at all. It sometimes seems difficult for their lives to get worse and yet I suppose that's a possibility. Do you see that this wall will in fact back fire in terms of security or is this something that the human rights dimension of those who are stuck on, if you will, the wrong side of the wall, what do you think is happening with that?

DUGARD: Well, I think there are certain communities like Qalqiliya that will now become enclaves. Qalqiliya is already surrounded by the wall except for an outlet which will allow it to maintain contact with the West Bank and of course, the difficulty is that that checkpoint is manned in a fairly arbitrary manner, but there is access to the West Bank. It is however very difficult and it means that people who had previously done shopping in Qalqiliya

now go elsewhere, so I understand that shopkeepers are leaving Qalqiliya and closing down and so it's becoming a less viable city. But I think one should make it a point – look at it largely from the point of view of the Palestinians who will be caught in this area between the so called “Green Line” – the border between Israel and Palestine and the wall. In effect, on the Israeli side of the wall. Now, they will have to get permits to live in their own homes and they won't be able to travel, to remain there freely, and they will have difficulty crossing the wall to get back into the West Bank where their schools, clinics, hospitals, families are situated - so that they will be denied access to the rest of the West Bank.

PISIK: Has that permit application begun yet?

LITTLEJOHNS: Betsy, just a minute, I'm afraid we have to interrupt.

This is **World Chronicle**. Our guest is John Dugard, the Special Rapporteur on Human Rights in the Palestinian Territories.

We're talking about the impact of security measures on the Palestinian refugee population, here's a report on the Palestinian housing crisis produced by the UN Relief and Works Agency for Palestine Refugees, UNRWA.

VIDEO ROLL-IN

NARRATOR: The children of the Ouda family in Gaza have grown used to the sound of bulldozers. But this is the moment they feared for months. Numerous houses have been destroyed in their neighbourhood but the family has been staying on in their home, in the hope they won't lose it. The parents have tried to keep up the spirits of the children for weeks, virtually imprisoned in their own home. But with a bulldozer right outside the house, the father, Mahmoud, is unable to keep his composure in front of his family. The Ouda family's house is spared this time. But more than 10,000 people in the Gaza Strip have not been as lucky. Since the beginning of the intifada more than a thousand homes have been destroyed. Israel says house demolition is necessary in the fight against terrorism.

UNRWA, the United Nations aid organization for the Palestine refugees, estimates it will cost 22 million dollars to re-house all those currently homeless. This month the agency handed over newly built shelters for 86 families in Khan Younis in the south of the Gaza Strip. Thirty-seven more refugee families can move into new homes when the entire project is finalized this fall. Construction work was repeatedly delayed because of the difficulties of getting building materials delivered on time.

HANSEN: We have faced a great many obstacles and I think it is a miracle that after six months or eight months, it is actually finished and done from scratch from the beginning, when you consider the obstacles we often had with bringing in building materials across the

checkpoints and with all the interim closures that have been part of life in this part of Gaza for very long.

NARRATOR: But these refugees cannot escape the memories of their own homes having been destroyed.

SALAMA (VO): On 21 August 2002, the bulldozer started destroying houses around us. We fled. When we returned our house was completely demolished. We felt so afraid of the sound of tanks. It was horrifying. We didn't expect to get a new house. We didn't expect anyone to care about what happened to us.

VIDEO OUT

LITTLEJOHNS: Betsy, I had to interrupt your question, would you like to repeat it?

PISIK: Sure, and just to incorporate some of the video. The Israelis say that they have had to demolish these houses because they belong to the Palestinian suicide bombers or terrorists or others who they feel must be punished. Whether that is entirely the case of all the demolitions has been disputed, but in the context of that, it's been repeatedly also charged that the Israeli authorities don't issue housing permits, construction permits, residency permits, travel permits. Conceivably, this is another element or aspect of the human rights violations. Is that something that's in a report or is that something that you see easing in time or getting worse with the construction of this wall?

DUGARD: Well, the destruction of houses and property remains a very serious issue. There are some houses that are destroyed, particularly in the region of East Jerusalem, on the grounds that they have not – they have been built without the necessary permits. Other houses have been destroyed on the basis that members of the family were responsible for terrorist bombings. But, of course, the difficulty is that there are many houses that have been destroyed for other reasons simply as part of military necessity. For instance, a few weeks ago, three thirteen-story apartment buildings were destroyed in the Gaza Strip and yet to the settlement of Gnet Zirin, the Israeli settlement of Gnet Zirin, and the Israeli justification for this was that shots had been fired from that region and they had reason to believe that if these apartment buildings were occupied that they would be used for snipers who would fire upon the Israeli settlement of Gnet Zirin. So rather than allow that to happen three thirteen-story apartment buildings accommodating apparently some 150 apartments were destroyed. And, of course, in a society which housing is a serious problem that creates very serious consequences. And one should also to mention that in Rafah, the town next to the Egyptian border, Israel has recently launched a very serious attack against houses in that region on the basis that they have been looking for tunnels between Egypt and Gaza. But in the process a large number of innocent people have been killed, injured, and their homes had been destroyed.

LITTLEJOHNS: So this is really a case of collective punishment, isn't it?

DUGARD: Yes. Of course the question of proportionality in this context is a very difficult one and I have suggested in my reports that the Israeli response to suicide bombings has been disproportionate and Israel has objected strongly to that suggestion. But I think if one looks at the overall picture, on the one hand, one has suicide bombings in Israel, which are deplorable and cannot be justified and must be condemned. On the other hand, you have Israel's response, which takes the form of imprisonment of suspects. There are some 6,000 Palestinians in Israeli prisons, extra-judicial assassinations in which innocent bystanders are often caught up, but then in addition to that, as part of the attempt to produce security in the region, checkpoints are introduced, curfews are imposed in the cities, and the result is that innocent civilians suffer dramatically in terms of unemployment, poverty, and so on. And so then the question is how do you weigh up the Israeli response to acts of individual territory? It's a very difficult task and I don't question that fact.

BONE: But in the situation you gave of the – upon the buildings where people are using it to snipe at an Israeli settlement, in your view, what is the proper response?

DUGARD: Well, in this case the buildings were not occupied. There was an expectation that if they were occupied they would be used in this way because there had been other sniper shots from this region.

BONE: So nobody lost their houses because of that?

DUGARD: Well, people expected – No, people had prospective houses there and is that proportionate? Does one destroy three 13-story buildings because sniper shots are fired from a building?

BONE: But what's your answer? Do you or not?

DUGARD: I would say it's disproportionate.

BONE: So what should they do instead?

DUGARD: Well, of course this is the big question of what should be done and I think that the answer is that the occupation should be brought to an end as soon as possible...

BONE: So they should vacate the settlement rather than – is that the idea?

DUGARD: Well, obviously the settlements should not be there in the first place. One of the difficulties with the settlements is that one has some 400,000 settlers in the West Bank and Gaza and much of the Israeli security apparatus is designed to ensure the protection of the settlers who are there illegally anyway. And so it's the protection of these illegal settlers that gives rise to this security situation in the West Bank and Gaza. So, if you ask what the remedy is, in the first place the settlers, or the settlements, should be dismantled. But then, when should we need to see a situation which the whole question of the occupation is addressed.

And of course, that is what the road map was doing. The mode road map peace initiative, but it seems to have come to an end at present.

PISIK: I wonder what sort of role do you see for other nations specifically the United States in terms of trying to curtail some of these activities that can be considered human rights violations. Do you see Washington being able to exert any pressure on Israel in terms of specific measures?

DUGARD: Well I think the role of the United States is crucial - everyone except particularly the Palestinians accept that without the firm hand of the United States, nothing would be achieved. But there is a very real concern that the United States is not behaving in an even-handed manner, that it is too supportive of Israel and not prepared to come down firmly on Israel when it misbehave. And this is demonstrated by the Wall where the US administration has made it very clear that it does not approved of the Wall. And it has also indicated that settlements should be frozen but Israel goes ahead with the war and at the same time the number of settlers is increasing rapidly.

PISIK: Have you spoken to any US official? Is that part of your mandate - to discuss your concerns?

DUGARD: When I...I mean Geneva, I do speak to members of the US Mission. I can't say that these have been a very positive dialogue but I should try harder.

LITTLEJOHNS: Mr. Dugard that's all the time we have, thank you for being with us on this edition of **World Chronicle**.

Our guest has been the UN's Special Rapporteur on Human Rights in the Palestinian Territories, John Dugard.

He was interviewed by Betsy Pisik of the Washington Times, and James Bone of The Times of London.

I'm Michael Littlejohns. Thank you for joining us. We invite you to be with us for the next edition of **World Chronicle**.

ANNOUNCER: Electronic transcripts of this programme may be obtained free of charge by contacting World Chronicle at the address on your screen:

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