

## FOREWORD

*John Dugard*

The Palestine/Israel conflict is a dispute about land and people, about competing territorial claims and about the rights and duties of peoples that live in the former mandated territory of Palestine. It is primarily a political dispute but at the same time it is a legal dispute, a dispute whose principle features are characterized by legal argument. To mention just some of the legal questions that arise: is the 1948/49 Armistice Line (the 'Green Line') the border between Israel and Palestine? Or is the border to be fixed by the wall Israel is presently constructing in the West Bank? Do Palestinian refugees enjoy a right of return to Israel? Does Gaza remain occupied territory following the withdrawal of Israeli settlers and army in 2005? Are Israeli settlements in the West Bank and Jerusalem unlawful colonial enterprises? Is Israel bound by international human rights conventions in the Occupied Palestinian Territory? Is the Fourth Geneva Convention on civilians in armed conflict binding on Israel in the Occupied Palestinian Territory? Do Palestinians have a right of self-determination? Are the targeted killing of Palestinian militants, the demolition of houses, sonic booms, the destruction of power plants, the closure of schools and the obstruction of health care contrary to international humanitarian law?

Legal disputation is a regular feature of international discourse. The absence of a compulsory system of adjudication in international law allows parties to debate competing claims without, in most cases, fear of legal contradiction. But the Palestine/Israel debate is different. Although there is no binding judicial decision on questions of the kind raised above, the international community has spoken on many of these issues through authoritative organs charged with the task of interpreting and pronouncing on international law. The International Court of Justice in its 2004 Advisory Opinion has held the wall presently being built by Israel in Palestinian territory to be illegal, and given approval to the Green Line as the lawful border. In its Opinion, it has also held the Fourth Geneva Convention and international human rights conventions to be binding on Israel in the Occupied Palestinian Territory. And it has unanimously held settlements to be illegal. The finding that the Fourth Geneva Convention and international human rights conventions are applicable to the Occupied Palestinian Territory provides answers to many of the questions concerning the violation of human rights and humanitarian law. The Security Council has spoken on the illegality of settlements and the annexation of East Jerusalem. And the International Committee of the Red Cross, the body charged with the task of monitoring the Fourth Geneva Convention has likewise judged many of Israel's actions in the Palestinian Territory to be unlawful.

Although many of the legal questions surrounding the Palestinian issue have been convincingly answered, important questions remain about the consequences of illegal situations and actions. In addition there is need to portray the reasoning that leads to many conclusions and the historical and political context in which the legal questions have arisen. Herein lies the value of the present work edited by Victor Kattan. It places the Palestine/Israel conflict squarely in a legal context and demonstrates how legal norms inform the debate on subjects such as the rights of refugees, borders, the status of East Jerusalem, self-determination, access to water, the occupation of Palestine, statehood, the construction of the wall in Palestine and the negotiations for a peaceful settlement of the dispute. The essays selected provide clear evidence of the extent to which international law itself has become a casualty of the Palestine/Israel conflict. Moreover, as scholarly writings, they present this evidence in a reasoned and balanced manner.

Despite the evidence of Israeli illegal actions, many governments and individuals prefer to accept Israel's expansive security justification for its actions or to ignore these illegal actions on the ground that geo-political considerations override international law. This is a dangerous attitude as it not only undermines respect for the rule of law in international relations but at the same time provides a precedential shield for other international wrongdoers. This is evident in the decision-making of the UN Human Rights Council where the failure of the West to take a firm line on Israeli violations of international law has led to the refusal of the developing world to cooperate in the condemnation of human rights violations by other states.

Clearly nothing will change until there is a change in public opinion. The present carefully selected essays, which provide a broad overview of the legal issues surrounding the Palestine/Israel conflict, will contribute to a greater awareness of the legal debate and, hopefully, to a change in public opinion. They may—should—also make it clear that a negotiated settlement in the region that is not premised on international law and ignores the normative dimension is destined to fail—as sadly illustrated by the failure of the Oslo Accords of 1993/1994.