

Check Against Delivery



Statement by Richard Falk

**SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN
RIGHTS IN THE PALESTINIAN TERRITORIES OCCUPIED
SINCE 1967**

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Mr. Chairman, distinguished delegates:

1. The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 took up his position on 1 May 2008, following appointment by the Human Rights Council. The Special Rapporteur of the mandate was expelled from Israel on 14 December 2008, and despite repeated formal efforts to discuss future visits to the occupied Palestinian territory (oPt), Israel has ignored all such approaches without providing any explanation.

2. The full report A/64/328, of 25 August 2009, has been submitted to the GA and takes particular note of the continuing unlawful non-cooperation of Israel with the work of the mandate-holder. Along similar lines, Israel has denied entry and cooperation with the Human Rights Council (HRC) Fact-Finding Mission headed by Judge Richard Goldstone. As suggested in earlier reports this non-cooperative behaviour is setting an unfortunate precedent for HRC/United Nations (UN) relations with members States of the United Nations, as well as interfering with the work of the mandate. As earlier, it is recommended that the UN General Assembly or the HRC request clarification of the legal consequences of this non-cooperative behaviour by referring the issue to the International Court of Justice (ICJ) for an Advisory Opinion. As a result of the inability of the Special Rapporteur to carry out site visits, this report relies heavily on the work of others, especially a variety of independent and reliable human rights non Governmental organisations and the work of various actors within the UN System.

3. The report covers developments taking place primarily from December 2008 to July 2009 and several issues will be addressed in detail, mainly the Gaza crisis, the accountability gap, the ICJ Advisory Opinion on Israeli Security Wall, settlement expansion, Palestinian self-determination and gaps in International Humanitarian Law. Since the formal presentation of the report, the release of the Goldstone Report on 15 September is of particular significance in relation to the commitment of the mandate to the protection of human rights in occupied Gaza. This report challenges the United Nations as never before to implement fully documented findings on the commission of war crimes primarily by Israel, but also by Hamas during Operation Cast Lead (27 December 2008-18 January 2009).

The report's significance is to propose steps that look toward accountability, either by way of the Security Council monitoring domestic proceedings, or the International Criminal Court or through recourse to universal jurisdiction. Such developments if allowed to go forward would be a major achievement for proponents of the rule of law in relation to Israel's heretofore impunity with respect to the administration of the occupied Palestinian territories. The report also gives a role to this assembly to ensure that such accountability measures are undertaken, as well as a role in securing compensation for victims and in promoting a legal discussion on weapons and tactics to prevent future suffering (recommendation in paragraph 1971 in the report).

4. On the Gaza crisis, although the ceasefire established by the parties on 18 January 2009 has generally held, the overall situation in Gaza has continued to deteriorate in a manner that discloses patterns of grave breaches of the Fourth Geneva Convention and violations of international human rights law which have implications

under international criminal law. Due to the persistence of the blockade of the Gaza Strip, insufficient basic necessities are reaching the population; health conditions have further worsened putting all Gazans at risk; building materials needed for the repair and reconstructions of homes and buildings destroyed by the Israeli Defence Force (IDF) during the 22 day Gaza War have been disallowed entry. The United Nations System is challenged on an emergency basis to take some tangible action to render protection to the civilian population of Gaza.

5. On accountability, there have by now been several authoritative reports with convergent and mutually reinforcing confirmation of war crimes allegations, culminating in the Goldstone Report. There have been a variety of civil society initiatives around the world that have involved boycotts of cultural and sporting events, cancellations of contracts and investments, and a variety of protests directed at perceived Israeli violations of international humanitarian law. There have also been some governmental actions along similar lines. A recent decision by the British government to cancel contracts for the delivery of spare parts to the Israeli navy was based on objections to the manner in which Israel has conducted recent military operations. It is notable that Amnesty International has called for a complete arms embargo on both Israel and Hamas in light of its conclusions discussed above regarding the Israeli military operation in Gaza of last winter.

6. The fifth anniversary of the Advisory Opinion on Israeli Security Wall on 9 July 2009 calls attention to several factors: (1) despite the near unanimity of the ICJ (14 judges against one) that the wall as located on occupied Palestinian territory was unlawful and should be immediately dismantled, Israel has continued construction of the wall, now about 2/3 complete; (2) the defiance of an ICJ definitive ruling on international law is a serious violation by Israel of its obligations as a member of the United Nations and as a sovereign State; even though embodied in an "Advisory Opinion", the decision of the Court represents an authoritative assessment of international law and was also accepted as authoritative by the General Assembly in a resolution ES-10/15 passed in 2004; (3) the failure of the United Nations System to make more of an effort to implement such a clear and widely supported conclusion of international law is a further indication that Palestinian rights are not respected and that Israel enjoys a situation of de facto impunity; (4) continued Palestinian nonviolent demonstrations at wall construction sites have been met with excessive force by Israeli security forces resulting in several deaths and numerous casualties. *anti*

7. On settlement expansion, despite many calls for a settlement freeze, including by this Assembly, the United States President Obama and the Quartet, reports indicate that settlement expansion continues in both East Jerusalem and the West Bank. It has been made clear by the Palestinian Authority and the United States Government that any further progress on the 'roadmap' depends on an unconditional Israeli temporary freeze on settlement growth. It should be noted that such a freeze, even if agreed upon, does not deal with the underlying illegality of the settlements as set forth in Article 49(6) of the Fourth Geneva Convention.

8. On Palestinian self-determination, the most fundamental international human right whose realization has been thwarted by Israeli occupation of Palestinian territories is the inalienable right of self-determination as enshrined in Article 1 of both international human rights covenants. It has been widely assumed that the

exercise of this Palestinian right would be brought about through bilateral negotiations, reinforced by the role of the United States, more recently by the Quartet (that has involved direct UN participation) and encouraged by the international community as a whole. Because the exercise of this right has been so long deferred and because the Palestinian situation under occupation endures multiple forms of unlawfulness, it is of utmost urgency to work toward a peaceful solution and an end to Israeli occupation.

9. It is relevant to this report, then, to take note of two sets of contradictory developments, some negative, others seemingly positive, bearing on the right of self-determination. The main negative development is the seeming unwillingness of the recently elected Israeli government to endorse in the international consensus on a sovereign Palestinian State comprising the West Bank, Gaza, and East Jerusalem as its capital; the inability on the Palestinian side to achieve unified and legitimated representation that would seem to be a precondition for meaningful peace negotiations is another negative development.

10. The positive developments involve clear formulations of the importance of forward progress with respect to self-determination on the basis of an end to Israeli occupation and the establishment of Palestinian statehood. To this effect, President Obama stated on 4 June 2009 in Cairo: *"the situation for the Palestinian people is intolerable, and America will not turn its back on the legitimate Palestinian aspiration for dignity, opportunity and a State of their own."* Such sentiments positions were reiterated by the Security Council in its statement of 11 May 2009, and by the Quartet on 26 June 2009: It agreed: *"that Arab-Israeli peace and the establishment of a State of Palestine in the West Bank and Gaza in which the Palestinian people can determine their own destiny is in the fundamental interests of the international community."* UNSC 1860 also called for renewed and urgent efforts by the parties and the international community to achieve a comprehensive peace based on the vision of a region two democratic States, Israel and Palestine, live side by side in peace with secure and recognized borders, as envisaged in Security Council resolution 1850 (2008) and recalls also the importance of the Arab peace initiative.

11. As far as gaps in International Humanitarian Law (IHL) are concerned, the prolonged occupation of Palestinian territories, as well as recent military operations by Israel, have revealed three gaps in IHL that deserve to be noticed and closed as soon as possible: (1) denial of a right by civilians to depart from a combat zone. This right was denied to all civilian inhabitants of Gaza during Operation Cast Lead with the exception of a few hundred Gazan residents with foreign passports and members of a small Christian community in Gaza. There seem to be a variety of issues posed here about the occupiers' duty to protect the civilian population as most fully described in Additional Protocol I to the Geneva Conventions, which is binding because its norms are incorporated into customary international law despite Israel not being a party to this treaty; (2) the denial of internationally donated reconstruction aid to repair war damage in Gaza due to maintenance of blockade in violation of Article 33 of Geneva IV. This blockage of reconstruction aid could be treated as an instance of prohibited collective punishment, but because it raises a distinct set of post-combat issues that are not explicitly addressed by IHL it might be best handled by the adoption of a further protocol to the Geneva Conventions; (3) As a specific result of

prolonged occupation of the oPt, now in its 42nd year, coupled with restrictions on mobility imposed by the occupying power, anguishing family fragmentations have added to Palestinian suffering and are unacceptable from the perspective of international human rights.

Against this backdrop the report offers a series of recommendations to the United Nations and requests their serious consideration:

(a) The General Assembly should request an Advisory Opinion from the ICJ on the obligations and duties of members States of the UN to cooperate with the Organization and its representatives;

(b) Members States of the UN should be encouraged to use national means, including courts, to fulfill their obligations under the Fourth Geneva Convention, Articles 146-149, with respect to implementing international criminal law as pertains to the occupied Palestinian territory;

(c) Respect for international law and for all Palestinian legal rights, including human rights, should henceforth be an integral element in future peace negotiations;

(d) Consideration should be given to imposing limits on the supply of arms to the parties to the Israel/Palestine conflict;

(e) The unlawfulness of Israeli settlements should be confirmed, and steps taken to move beyond the freeze, and in the direction of dismantling, with due respect for the human rights of all affected;

(f) That consideration be given to requesting the International Committee of the Red Cross or some other designated body to study and make recommendations as to the special problems arising from *prolonged occupation*.

Thank you Mr. Chairman