



Statement by Richard Falk

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

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As this is my last report to the General Assembly in my term as Special Rapporteur on the 'Situation of human rights in the Palestinian territories occupied since 1967' it is appropriate to describe some of the difficulties that have faced the mandate-holder in discharging the functions of the position. The most salient of these difficulties involves the non-cooperation of the Government of Israel. Israel has refused to fulfill its obligations as a member of the United Nation by its failure to allow the special rapporteur to enter Israel so as to visit periodically and without interference the occupied territories of the West Bank, East Jerusalem, and Gaza ever since his expulsion on 14 December 2008 from Ben Gurion Airport when attempting to enter the country. This level of non-cooperation greatly exceeds that associated with the efforts of my predecessor, the distinguished South African international lawyer, John Dugard, who was allowed to enter Israel for purposes of the mandate, but improperly denied access to Israeli political and military officials charged with administering the occupation. It should be pointed out that this Israeli procedure of non-cooperation was extended to such related important United Nations undertakings, including the "Fact Finding Mission on the Gaza Conflict," widely known as 'the Goldstone Report,' and more recently in relation to the fact-finding panel appointed by the Human Rights Council to investigate the allegations surrounding the flotilla incident of 31 May 2010. In each of these instances Israel reinforced its posture of non-cooperation by engaging in a 'politics of deflection,' defaming the messenger and the auspices rather than contesting and responding to the findings and recommendations of the reports.

The United Nations may also be faulted for its failure to respond more strongly to complaints arising from this Israeli pattern of non-cooperation. It sets a most unfortunate precedent that has been coupled by the unwillingness to implement the recommendation made by my prior reports, as well as in relation to the Goldstone Report. Widely held impressions of Israeli impunity are thereby encouraged, as well as the lack of political will within the United Nations itself to take the obligations of international law seriously, or even its own charter.

This mandate has also been hampered to some extent, as well, by the Human Rights Council and by the Palestinian Authority. In my initial report to the Human Rights Council I proposed that the mandate be reformulated to allow for the consideration of Palestinian as well as Israeli violations of international human rights law, international humanitarian law, and international criminal law, but this proposal was widely criticized and never acted upon. There were understandable concerns about creating the false impression that both parties, the occupier and the occupied, were equally responsible in a structure in which one side was in control and the other being victimized. The realities of fact and law preclude such false symmetry, and have the advantage of balancing the scope of inquiry. This adjustment would take some account of criticisms of an impression of bias and unfairness embedded in the language but not the works of the mandate. It was not to be, due to strong opposition to making any modification in the existing scope of the mandate.

Although in recent months I have enjoyed helpful cooperation from the Palestinian Authority by way of feedback and the supply of helpful information pertaining to the occupation, earlier in my tenure I felt considerable pressure from the Palestinian Authority on my independence as a special rapporteur, particularly with respect to reporting accurately on the situation within Gaza. I was also disappointed by the failure of the Human Rights Council to do more to support my independence, despite me forwarding a formal complaint to the Coordinating Committee. As with the issue of non-cooperation, there is an unfortunate precedent set if the Human Rights Council is not more vigilant in its protection of mandate-holders.

The Report itself focuses on several important developments pertaining to the occupation. It points out that due to the very acute issues associated with the persisting blockade of Gaza, there has been a tendency to overlook Israeli encroachments on the rights of the Palestinian people living in the West Bank and East Jerusalem. It concludes significantly that the cumulative effects of the settlements, the security wall, and the extensive settler-only road network has been to convert the conditions of de jure 'occupation' into a set of circumstances better understood as de facto 'annexation.' In a different manner, but with comparable results, the extension of Jewish presence in East Jerusalem by way of unlawful settlements, house demolitions, revocations of Palestinian residence rights, makes it increasingly difficult to envisage a Palestinian capital in East Jerusalem, another widely assumed premise of the Quartet Roadmap and expectations associated with past and present inter-governmental negotiations.

Such an assessment is important as it has been assumed that the occupation was temporary and reversible in conformity to Security Council Resolution 242 calling for Israeli withdrawal from territory occupied during the 1967 War and forming the political and ethical foundation for the widely-held assumption that Palestinian rights of self-determination would be satisfied by the establishment of an independent and sovereign Palestinian state on presently-occupied territories. International negotiations, including those currently paused, have proceeded on that assumption. However, if the conditions on the West Bank and East Jerusalem are substantially irreversible for political and practical reasons, it becomes misleading and diversionary to continue adherence to the 'two-state consensus.'

To the extent that this annexationist perception is accurate, it lends credibility to the assertion that the Israeli occupation has many features of "settler colonialism," and if so, runs directly contrary to the rights of all peoples to live free of alien rule, a position affirmed in common Article 1 of both international human rights covenants and an elemental feature of international customary law. This view is furthered by the apartheid features of the occupation based on dual and discriminatory legal structure for the occupied Palestinians and the unlawfully-present settler population, the restrictions on Palestinian mobility, permit and residence manipulations, and roads on which Palestinians are disallowed. To indicate these apartheid features is not intended to suggest a comparison with apartheid South Africa, but to call attention to the anti-apartheid norm embodied in the Convention Against the Crime of Apartheid, and then incorporated into the Rome Statute of the International Criminal Court (1998) that in Article 7 made apartheid a distinct crime against humanity.

Because so much attention has been devoted to Gaza during the course of the last several years, it is often assumed that material conditions in the West Bank are acceptable. Such an impression is strengthened by reports that economic growth in the West Bank reached 8.5 percent in 2009, mainly as a result of capital investment clustered around Ramallah. What is not sufficiently noticed is the actual living realities of the people. For instance, in a 2009 study by Save the Children, UK (STCUK) entitled "Life on the Edge" it was reported that in Area C, which is totally under Israeli military administration and comprises 60 percent of West Bank territory, the conditions of the more than 40,000 Palestinians are worse than in Gaza. According to STCUK, 79 percent of the communities in Area C are unable to provide sufficient nutritious food to the Palestinian inhabitants as compared to 61% of communities in Gaza. STCUK concluded that the overall situation in Area C for all human necessities including health clinics, food, water, and shelter had reached "a crisis point."

Another important set of issues surrounds a surge of settler violence directed against the person and property of Palestinians living in the West Bank and East Jerusalem, including documented attacks on mosques and the burning, and even poisoning, of many olive trees on Palestinian land. Here, too, the response of the international community to this unlawful violence has been disappointing, as has been consistent failures of the Israeli occupying forces to fulfill their obligations to protect Palestinians and their property and to apprehend Israeli perpetrators.

The situation in Gaza remains disturbing from the perspective of human rights and international law despite the welcome partial-easing of the comprehensive blockade in the aftermath of the 31 May attack on the six-ship flotilla carrying humanitarian assistance. As the British Prime Minister observed on 27 July 2010 during a visit to Turkey, "Gaza cannot and must not be allowed to remain a prison camp." According to the latest available information, the entry of basic necessities to Gaza remains at one-third the level that existed prior to when the blockade was established in June 2007. Furthermore, the economy of Gaza had depended on the ability to export, and this has continued to be prohibited by Israeli policy, with the resulting destruction of more than 90% of Gazan entrepreneurial activity. The blockade is a form of collective punishment, prohibited by Article 33 of the Fourth Geneva Convention, and was declared unlawful by the Human Rights Council mission tasked with investigating the flotilla incident on the further reasoning that the suffering inflicted on the civilian population of Gaza was disproportionate to any Israeli security justification. The fact-finding mission report also found, in conformity with the overwhelming consensus among informed opinion, that the attacks on the flotilla in international waters were contrary to international law and reliant on excessive force. It should be pointed out that the isolation of the 1.5 million residents of Gaza for several years, including the disallowance of study in West Bank universities and normal social contact with family members, exerts enormous psychological pressure that is contrary to the obligations of the occupying power to ensure as much normalcy as possible for the occupied civilian population, subject only to legitimate security concerns.

Finally, it seems relevant to call attention to two of the recommendations in the report that arise from the legal analysis of the occupation. In particular, it is time, after 43 years, to acknowledge the intolerable burdens of 'prolonged occupation' on a civilian population. The report urges a formal study of the human rights aspects of prolonged occupation under either the auspices of the Human Rights Council or of a respected organization such as the International Committee of the Red Cross or Human Rights Watch. Such a study should pay particular attention to the plight of persons confined to refugee camps in the occupied territories and neighboring countries, as well as to overall human rights, which is an aggravated consequence of occupation. The other recommendation that seems responsive to recent developments is to encourage United Nations support for both efforts to send humanitarian assistance direct to the people of Gaza in defiance of the persistence of the unlawful blockade and the Boycott, Divestment, and Sanctions (BDS) Campaign that seeks to respond to the failure of Israel to uphold its obligations under international law with respect to the Palestinian people. The BDS campaign represents a recognition that neither governments nor the United Nations are prepared or able to uphold Palestinian rights. In this respect, it should be recalled that the anti-apartheid campaign of the late 1980s was strongly endorsed by the United Nations.