

Statement by Richard Falk, Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Presented to the Eighth Session of the Human Rights Council, 16 June 2008, item 7 on OPT

Mr. President,
Distinguished Members of the Human Rights Council,
Excellencies,
Ladies and Gentlemen

This is my first appearance before the Human Rights Council under the mandate addressing the human rights situation in the Occupied Palestinian Territories. I wish to thank the Council for selecting me to carry out the mandate under circumstances that are bound to be challenging. I have accepted this appointment fully mindful of the responsibilities it entails, and am determined to carry out the mandate to the best of my ability. In this setting, such a commitment means, above all, an objective and impartial approach to both the facts and the law pertaining to the application of human rights legal standards and international humanitarian law to the conditions existing in the Palestinian territories.

I have been asked to present formally the final report of the distinguished former Special Rapporteur, John Dugard, who set an admirably high standard in his reports submitted over the course of the past six years. I have known Professor Dugard for forty years, and from our first meeting in South Africa, I have found him to be a model scholar and world citizen, dedicated to truth-telling and to fulfilling in the highest manner the vocation of the legal profession on the basis of informed understanding and an objective appreciation of all matters in dispute. I will do my best to carry forward the mandate according to these same standards.

I wish to call to the attention of the members of the Human Rights Council the availability of Professor Dugard's final report. It surveys the overall situation in the Occupied Palestinian Territories in a very comprehensive manner, and I urge everyone concerned with this subject-matter to consider carefully its findings and recommendations.

At the outset of my role as mandate-holder I wish to raise an issue of concern to me in relation to my wish to make the work of this mandate as effective as possible. The mandate as now formulated applies only to Israeli violations of human rights and international humanitarian law in the Occupied Palestinian Territories. This has allowed critics of the Human Rights Council and of the reports of this particular mandate to complain about the bias and one-sidedness of the approach taken. With all due respect, I believe that such complaints have considerable merit. Moreover, in the past, critics of the reports have been able to deflect the attention of the media and the public from the *substance* of the findings by an exaggerated emphasis on the *one-sidedness* of the mandate. Therefore, I would respectfully ask the Council to consider expanding the mandate to also encompass inquiry into Palestinian violations of international humanitarian law, but not of alleged

violations of human rights within the Palestinian territories. It is my view that a mandate along these lines would enhance the credibility and effectiveness of the reports presented by the Special Rapporteur, and would respond in a constructive way to criticisms that have been made in the past, and yet maintain the focus of attention on core concerns of the Human Rights Council with the suffering inflicted on the Palestinian people as a result of the prolonged Israeli occupation. I realize that I have raised a delicate issue, but it seems to me to be one that needs to be confronted as directly as possible both to achieve the purposes of the mandate and to insulate the Human Rights Council from those who contend that its work is tainted by partisan politics.

My acceptance of this assignment is based on many years of study and contact with the conflict between Israel and the Palestinian people, including periodic visits to the area. I am dedicated to the possibility that this conflict can be resolved in ways that are fair and just to both sides, but believe that this can only happen if the guidelines of international law are allowed to shape the peace process designed to achieve a solution. The mandate provides the parties with an opportunity to exhibit a willingness to respect the constraints of international law and of human rights in their behavior with one another.

In this spirit, I very much endorse Professor Dugard's recommendation that the International Court of Justice be asked to give an Advisory Opinion on the observance of applicable international humanitarian law by the occupying power, as well as on the relevance of resolutions of the General Assembly and Security Council relating to the legal duties of the occupying power and the governmental representatives of the occupied people. Such a turn to the highest judicial body of the United Nations would help to express the confidence of the international community that a just peace between Israel and the Palestinian people can only be achieved by invoking the procedures and guidelines of international law, a mutually beneficial alternative to war and violence. But such a move will be helpful only if the parties to the conflict are prepared to substitute law for force. The recent past is not encouraging. The Advisory Opinion of the World Court on Israel's security wall issued in 2004, and backed by a 14-1 vote, was not implemented, nor were serious efforts made to comply with its main legal conclusions. Such disregard tends to invite a cynical view of international law, and to make force seem like the only option for a people struggle to exercise their right of national self-determination.

It is not possible to approach the mandate without expressing a grave concern for the present circumstances confronting the Palestinians subject to the occupation, especially the 1.5 million Palestinians living in Gaza. Of course, I will not offer any specific conclusions or recommendations until I have had the opportunity myself to assess the facts in relation to the applicable rules of international humanitarian law and international human rights. It seems desirable even in advance of my own effort to prepare a report on the conditions in the Occupied Palestinian Territories to alert the Council to a dire situation in Gaza that daily threatens the health and wellbeing of the entire population. The focus on Gaza

is justified by the extremity of the occupation policies being pursued by Israel, but the issues associated with the West Bank and Jerusalem are also serious, especially to the extent that any future possibility of the successful establishment of a Palestinian state is being daily undermined by the ongoing unlawful extension of Israeli settlements.

In conclusion, it is my deepest wish that I will be able to report in the future to the Council on improvements in the condition of the Palestinian people living under military occupation, on diminishing violence, and on a consistent willingness by Israel to carry out its duties as the occupying power in compliance with applicable international humanitarian law.

