



**STATEMENT BY MR. RICHARD FALK, UN SPECIAL RAPPOREUR
ON THE SITUATION OF HUMAN RIGHTS
IN THE PALESTINIAN TERRITORIES OCCUPIED SINCE 1967**

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Mr. President,

Distinguished Members of the Human Rights Council,

Honoured Representatives of Civil Society Organizations

Excellencies,

Ladies and Gentlemen,

The report you have before you was prepared in response to the request contained in HRC Resolution S-9 for an assessment of the international law issues presented by the Israeli military operations in Gaza covering the period 27 December 2008 - 18 January 2009.

I will not repeat the findings contained in that report here. I do, however, wish to highlight certain conclusions:

Confirmed figures compiled by the Palestinian Centre for Human Rights indicate that 1,434 Palestinians were killed during the 22 day military assault, including 960 civilians (288 children, 121 women), 239 police officers, and 235 militants or fighters. 5,303 Palestinians were wounded, including 1,606 children and 828 women.

In sum, around 1 out of every 225 Gazans were either killed or injured during the 22 days, and this figure, large as it is, does not take account of

the widespread trauma experienced by the population exposed to intensive warfare, especially the mental harm to children, constituting 53% of the Gazan population.

During the same period 13 Israelis were killed and 200 wounded, both by indiscriminate and unlawful rocket fire across the border into Israeli territory and by fighting and friendly fire incidents inside Gaza. Three of the 13 Israelis killed were civilians who died as a result of rocket fire.

The fact that six times more Palestinian civilians than combatants were reportedly killed strongly suggests a failure on the part of Israel to respect the fundamental legal obligation to conduct military operations permitting the distinction between military and civilian targets. To the extent that the combat zone was so densely populated by civilians, it meant that, with the types of weaponry relied upon, there was no lawful way to carry out the Israeli military operations.

The overall ratio of deaths 1,434:13 is suggestive of the one-sidedness of the military encounter, and provides a basis for challenging the legality of initiating a military assault with modern weaponry against an essentially defenseless society.

This indictment of Israeli tactics is strongly reinforced by a feature of the military operations that is unique in contemporary warfare: namely, coercively confining the Gazan civilian population to the combat zone during the Israeli military operations which effectively denied the Palestinians in Gaza a refugee option. Such a war policy should be treated as a distinct and new crime against humanity, and should be formally recognized as such, and explicitly prohibited.

It is notable that those living in Gaza with foreign passports were given the possibility of leaving the Gaza Strip - while Palestinians (including the sick and disabled, orphans, the elderly and the wounded) were not.

This has given rise to allegations of an anti-Palestine vindictiveness, which has been reinforced by the widespread eyewitness reports of racist graffiti written on the walls of private dwelling places in Gaza, as well as such hostile acts as urinating and defecating in Palestinian homes where functioning bathrooms were available. In the Zeytoun district of Gaza, where 27 members of the Samouni family were killed in their houses, Israeli soldiers left behind messages with a hateful content directed at the Palestinian people, not their military adversary, including the following: "Die you all," "Make war not peace," "Arabs need to die," "There will be

a day when we kill all the Arabs,” “A good Arab is an Arab in the grave,”
“Peace now, between Jews and Jews, not Jews and Arabs.”

Chilling individual testimonies of Israeli soldiers that participated in the Gaza military operations tell of the killing of innocent civilians, pointless destruction, expulsions of families from homes seized as temporary outposts, disregard for human life and a tendency towards brutalization. It has also been reported that rabbis connected with the IDF encouraged Israeli soldiers to view the combat as a religious war between good and evil, leading to the suspension of legal and moral constraints.

As the noted Israeli journalist, Amira Hass has written in Haaretz: “Not all the soldiers wrote graffiti, but the comrades and commanders of those who did neither stopped them nor erased what they had scrawled... They felt free to write what they did because they—like the pilots and operators of the missile-bearing drones—knew they had received from their government and commanders a free hand to attack a civilian population... What they wrote on the walls reflects their understanding of the spirit of their mission.”

Distinguished Members of the Human Rights Council,

The unlawful blockade of Gaza, which had been in place for 18 months prior to the 27 December attacks has been continued in the period since a ceasefire was separately declared by the two antagonistic parties. It not only constitutes a continuing collective punishment of the entire population of Gaza that directly contravenes Article 33 of Geneva IV, but it also results in a violation of virtually all their economic and social rights.

The delivery of humanitarian aid to the people of Gaza, who are experiencing life threatening and health deteriorating conditions continues to be hampered by the blockade, but also by the refusal of donor countries and Israel to deal with the actual administrative realities that currently exist in Gaza.

Abundant evidence exists of severe violations of the Geneva Conventions and Additional Protocol I. It should be observed that Protocol I is the most comprehensive legal instrument delimiting the obligations of combatants to protect civilian society under wartime conditions. Protocol I is expressive of customary international law, which makes it binding on all States, whether or not they have formally ratified the Protocol, and deserves more attention than it has generally received. It is notable that there have been numerous calls for organs of the United Nations to

confirm or refute war crimes allegations arising from the military operations in Gaza.

Since I drafted my report, the Chief Prosecutor of the International Criminal Court has announced that he is actively considering whether he has the legal authority to carry out an investigation pursuant to a Declaration formally submitted on 21 January 2009 by the Palestinian National Authority (PNA), that recognizes the jurisdiction of the Court for the purpose of identifying, prosecuting and judging the authors and accomplices of acts committed on the territory of Palestine since 1 July 2002.

A letter by 16 signatories, including former chief prosecutor for the international criminal tribunals for former Yugoslavia and Rwanda, Richard Goldstone; Nobel laureate Archbishop Desmond Tutu; and former UN High Commissioner for Human Rights Mary Robinson was sent on 16 March 2009 to the UN Secretary General calling for a “prompt, independent and impartial” investigation of war crimes associated with the Israeli military operation in Gaza as well as allegations of unlawful conduct on the part of Hamas. The signatories declared that they were “shocked to the core” by the events in Gaza. They insisted that “the world must vigilantly demand respect for these standards [in the Geneva

Conventions] and investigate and condemn their violations.” In calling upon the Secretary-General to establish a commission of inquiry, they also urged that the scope of inquiry not be limited to damage endured by the attacks on UN facilities.

Along these lines, several governments have urged that steps be taken by the United Nations to investigate charges of Israeli war crimes, and if confirmed, to establish mechanisms to impose accountability. On a civil society level the Bertrand Russell Foundation in Brussels has announced its intention to proceed with a citizens’ tribunal that would pass symbolic judgment on the war crimes allegations.

As long as Palestinian basic rights continue to be denied, the Palestinian right of resistance to occupation within the confines of international law and in accord with the Palestinian right of self-determination is bound to collide with the pursuit of security by Israel under conditions of prolonged occupation. In this respect, a durable end to violence on both sides requires an intensification of diplomacy with a sense of urgency, and far greater resolve by all parties to respect international law.
