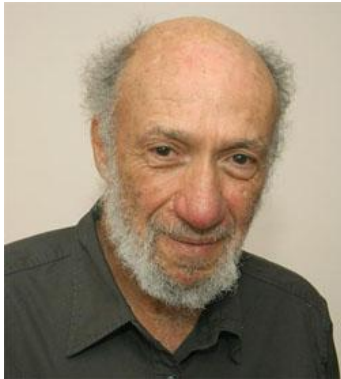


## **Richard Falk: "I believe that Hamas should be treated as a political actor".**

*Richard Falk is the UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967. In 2001 Falk served on a United Nations High Commissioner for Human Rights (OHCHR) Inquiry Commission for the Palestinian territories with John Duggard. He is also an American Professor Emeritus of International Law at Princeton University with a long and distinguished career in academics, politics and law. He recently gave this exclusive and revealing interview to the Middle East Monitor's Dr Hanan Chehata*



### **EXCLUSIVE INTERVIEW - With Prof. Richard Falk**

**By Dr Hanan Chehata**

**HC:** Following your appointment as UN Rapporteur to the Occupied Palestinian Territories in 2008 you traveled to Israel in order to begin your investigations. Can you tell us a little more about how you were received by Israel?

**RF:** I was denied entry and expelled at Ben Gurion Airport when I tried to enter Israel for the purpose of carrying out my duties as UN Special Rapporteur. These duties consist mainly of reporting on Israeli compliance with human rights obligations in the Occupied Palestinian Territories, and include duties of compliance with respect to international humanitarian law. Israeli authorities confined me for more than 15 hours in a detention cell with five other detainees before putting me on a plane. I was given no explanation beyond that my expulsion order came from the Israeli Foreign Ministry that had objected to my appointment from the outset. As my itinerary on the West Bank had been previously submitted to the Israeli embassy in Geneva, and as visas had been granted to the two UN employees assisting me on the mission, it seems clear that Israel wanted to have the incident at the airport rather than tell me in advance that I would be denied entry. The UN High Commissioner for Human Rights and other UN officials did object to the Israeli refusal to allow me to do my job as Special Rapporteur. It should be pointed out that the UN Charter in Article 2(2) requires Members to cooperate with the UN in carrying out its functions, and that this duty is reinforced by an international treaty outlining this duty of cooperation.

**HC:** You were denied entry into the OPT. Have you been allowed at any point to enter the territory? If not, how have you been able to do your job?

**RF:** I have tried repeatedly through formal requests to Israeli authorities to gain entry to the OPT, and these requests have been ignored rather than denied. There may be a possibility of visiting Gaza on an official basis based on Egyptian cooperation. This has so far been difficult to arrange. As far as doing my job is concerned, it is certainly a major disadvantage to be denied entry, but my reporting job can be done without any handicap due to the abundance of open and diverse sources of information and documentation on the critical dimensions of the occupation. I would have to rely on such sources in any event even if access was possible.

**HC:** In light of the way that Israel has reacted to you and your reports and more recently to the Goldstone report it seems that Israel's regard for the UN, if anything, has become more hostile. Why do you think Israel seems to hold the UN in such contempt and is there any way for the UN to compel Israel to cooperate with their investigations and abide by UN recommendations?



**RF:** Israel has a rather opportunistic approach to the UN. It is hostile when it is the object of criticism, and it rejects the authority of the UN in relation to its duties as the Occupying Power of the Palestinian Territories. It consistently complains about the bias of the UN, especially the Human Rights Council, and attacks those that serve the UN as civil servants or appointed officials. Most recently it has mounted a series of vicious attacks on Richard Goldstone who headed a fact-finding mission to assess allegations of Israeli and Hamas war crimes associated with the Gaza War (Operation Cast Lead) that took place between 27 December 2008 and 18 January 2009.

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At the same time, Israel participates fully in the General Assembly, and uses its relationship with the United States to block adverse decisions in the Security Council. What was unusual about its response to the Goldstone Report was the extremely high profile repudiation of the findings and recommendations. Normally, as with the 14-1 Advisory Opinion of the International Court of Justice on the unlawfulness of the separation wall built on occupied Palestine, Israel merely rejects the external criticism of its policies, and moves on with very little commentary, especially by its top political leaders. We must assume that the Goldstone Report touched a raw nerve in the Israeli political sensibility that explains its almost hysterical reaction, including vindictive attacks on the person of Justice Goldstone, himself a devoted Zionist and distinguished international jurist. It would seem that the conclusion that Israel had deliberately targeted civilians and the civilian infrastructure of Gaza in violation of the international criminal law was too authoritative a repudiation of Israeli policies toward the occupation to be ignored. The fact that the Goldstone Report also recommended that steps be taken to implement these conclusions by holding those responsible for the behavior to be criminally responsible was a further challenge to the legitimacy of Israel's claims to be upholding its security by launching Operation Cast Lead.

**HC:** Why have the UN taken no measures against Israel for their breaches of international law?

**RF:** The quick answer is that the geopolitical impunity enjoyed by Israel is a consequence of unconditional U.S. support, and a reluctance in most European countries to be critical of Israel given the lingering sense of guilt about the Holocaust. A more thoughtful response is that there have been periodic attempts within the UN to hold Israel accountable for violations of international law. The General Assembly and Human Rights Council have frequently condemned Israeli policies in the OPT. The ICJ found that the separation wall was unlawful as constructed on Palestinian territory, and the General Assembly accepted these conclusions overwhelmingly. The Goldstone Report is itself a gesture in the direction of holding Israel accountable for war crimes and crimes against humanity as perpetrated in Gaza. In this sense there have been a variety of efforts to condemn Israeli policies and practices from the perspective of international law, but an insufficient will to implement these efforts, and so the end result is a sense of the virtual irrelevance of international law as a behavioral constraint on Israel.

**HC:** Is the USA the biggest factor impeding the UN in coming to the aid of Palestinians?

**RF:** I think that in the absence of US support, the UN would be acting vigorously on behalf of the Palestinian struggle for self-determination, including the imposition of an embargo on arms sales and support for economic sanctions. The European countries would in this altered setting in all likelihood stand aside, neither being strong supporters of UN actions on behalf of the Palestinians, nor defenders of Israel.



**HC:** Israel opposed your appointment from the very beginning making allegations that you were biased against their state. Is there any justification whatsoever to these claims?

**RF:** As I have responded, by now many times, I am not biased, but dedicated to being truthful and accurate, as well as interpreting the relevance of international law and human rights standards as objectively as possible. It is true that I have been critical of Israel in the past, but again on the basis of a widely shared consensus as to the facts and their most reasonable legal implications. The test of bias should be distorted treatment of facts or strained interpretations of law. To be critical of official Israeli policies is not to be anti-Israeli any more than to be critical of American foreign policy, which I have been over the years, means that I am anti-American. To be a citizen in a democracy, or to be a world citizen, means to follow the guidance of your conscience wherever that might lead.

**HC:** You have been depicted as a supporter of Hamas, how do you respond to such claims?

**RF:** Again, my effort has been to describe the actuality of Hamas's positions on contested issues and to report upon its actual role in the OPT, especially Gaza. I have been impressed by the Hamas effort to negotiate a ceasefire with Israel from the time of its election in January 2006, and its consistent effort to reestablish a ceasefire, including one for a long duration. I have also taken note of the refusal of Israel to take advantage of such diplomatic opportunities, and its insistence on treating Hamas as a terrorist organization with whom no negotiations can occur. I have also criticized Israel for punishing the population of Gaza by imposing a blockade that restricts the flow of food, medicine, and fuel to subsistence levels, or worse. Such a blockade is a flagrant form of collective punishment prohibited by Article 33 of the Fourth Geneva Convention. I believe that Hamas should be treated as a political actor, that the blockade should be terminated immediately, and that the UN should insist on the end to the blockade as a condition of Israel's normal participation in the activities of the Organization.

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**HC:** It seems that supporters of Israel try to equate the words anti-Semitic with anti-Zionist which are of course two different things. They have accused people such as Judge Goldstone, Prof. Ilan Pape, Prof. Avi Shlaim and you of being "self-hating" Jews. How do you feel about this?

**RF:** It seems more extreme even than this. Justice Goldstone, for instance, is pro-Zionist, and yet stands viciously accused of being a self-hating Jew, apparently because he dared to be critical of Israel. This means that any defection from either the official policies of the state of Israel or from the Zionist project will be occasion for a Jew to be branded as 'self-hating.' It is my view that the Jewish tradition considered biblically and over the course of time would require a Jew to honor conscience and truthfulness above tribal identities should these conflict.

**HC:** As a Jewish gentleman yourself how do you feel about the fact that Zionists and the Israeli government claim to speak in the name of all Jews?

**RF:** As my prior answer suggests, no government has the authority to speak in the name of others, and certainly Zionism, a movement I have never supported, and Israel, a state to which I owe no special allegiance, is not entitled to represent me because I happen to be Jewish. I have real problems with any coerced allegiance



to a political or religious entity, and believe that the crime of treason sets up an unacceptable potential tension between the dictates of conscience and subservience to the will of the state.

**HC:** In 2007 you described the Israeli policies towards Palestine as a "[holocaust-in-the-making](#)". Given the tightening of the siege on Gaza, which has now lasted over 1000 days, Operation Cast Lead etc.. would you now say that the situation has developed into a full blown holocaust?

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**I lament the continuation of the siege of Gaza, consider it a crime against humanity, and feel that the UN and many states are complicit to varying degrees.**

**RF:** This is a delicate issue of language. Genocide is a word with a great emotional resonance, and special historic associations for the people of Israel. I wrote these words before I was appointed as Special Rapporteur, and although I would not retract them, I have refrained from using the word genocide since accepting the UN job. There is an ambiguity in the word genocide: it has legal, moral, and political connotations. It would be difficult to establish a genocidal intent on Israel's part, given the way in which the ICJ approached the issue in the Bosnia Case. At the same time, I lament the continuation of the siege of Gaza, consider it a crime against humanity, and feel that the UN and many states are complicit to varying degrees.

**HC:** Your predecessor Prof. John Dugard compared the situation in the Occupied Palestinian Territories to that of apartheid South Africa. Is this a view that you concur with after your own experiences there?

**RF:** Comparisons of this sort can be illuminating, although misleading at the same time. There are many indications of rigid separation, especially on the West Bank, as well as discriminatory regulations that make the situation for Palestinians resemble that of the black Africans suffering under apartheid, and deserving of comparable opprobrium. At the same time there are differences: the South African leadership defended apartheid as a preferable policy for race relations, whereas the Israelis do not offer an ideological justification for their separate treatment of the two peoples, claiming either the security rigors of occupation or the inevitable consequences of being 'a Jewish state.' Prolonged occupation of the West Bank, East Jerusalem, and the Gaza Strip, along with the second class citizenship imposed on the Palestinian minority living behind the green line, are humanly abusive, but distinctive in their character, and it is important to understand these realities on their own terms.

**HC:** The world is watching as genocide unfolds in Palestine and yet nothing is being done to stop it. What can be done, and what should be done by the international community at this stage to ensure that the rights of the Palestinian people are protected?

**RF:** It is a scandalous refusal to take seriously the pledge after World War II of 'never again.' The liberal democracies in Europe and North America have allowed their hatred of Hamas to be a justification for inflicting and sustaining a humanitarian catastrophe on an entire civilian population denied even the option to become refugees. Even neighboring Arab governments have done far too little by way of opposition. And the UN has been largely mute. If ever there was a case where the imposition of sanctions was justified it would be in relation to Israel so long as it maintains the Gaza blockade. Civil society initiatives have challenged the

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Israeli policies most effectively, including such dramatic efforts as those associated with the Free Gaza Movement and Viva Palestina. These symbolic challenges expose the failures of the international community as

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constituted by the government of sovereign states to do uphold international law and international morality even in extreme situations of the sort that exists in Gaza, and add political weight to the BDS movement that is gathering strength in various parts of the world. The Palestinian solidarity movement has become the successor to the Anti-Apartheid Campaign as the most important popular struggle on behalf of global justice in the early 21<sup>st</sup> century. Of course, there are two time horizons that must be taken into account: the emergency horizon in Gaza that requires with utmost urgency the ending of the blockade; the justice horizon throughout occupied Palestine that requires a just peace at the earliest possible time.

**HC:** Israel has stated that it launched Operation Cast Lead as an act of “self-defence”. However you, and many others, have said that this is not an honest depiction of how events unfolded and that there are other “[unacknowledged](#)

[reasons](#)” as to why Israel launched its mass assault on the citizens of Gaza. Could you tell us what you think those “*unacknowledged reasons*” might be?

**RF:** Of course, unacknowledged reasons are kept secret because their admission would be awkward. As the question suggests, Israel had a diplomatic option by way of a ceasefire if security and self-defense were its concerns. The more plausible explanations for the timing and undertaking of Operation Cast Lead are the following: to redeem the reputation of the Israeli Defense Forces, which had been damaged by their operational failures in the Lebanon War of 2006; to send Iran a message that the IDF was ready to inflict major damage on an adversary without concern for the limitations of international law or world public opinion; to show Israeli domestic public opinion that the Kadima leadership was determined to use whatever force required to uphold Israeli state interests; to destroy Hamas, and reestablish Fatah control in Gaza, and unified Palestinian representation under the auspices of the Palestine Authority; striking Gaza aggressively while the supportive George W. Bush was still in the White House, and prior to the arrival of the untested Barack Obama; obtaining the release of the single IDF soldier held captive, Gilad Shalit, which would have been hailed in Israel as a sentimental victory.

**HC:** [Colonel Desmond Travers](#) (a co-author of the Goldstone report) has recently called for certain weapons that Israel has used, or has been suspected of using, to be banned internationally, including white phosphorus, Dense Inert Metal Explosives (DIME), flechettes and Tungsten. Would you support him in this call?

**RF:** Yes, definitely. All of these weapons inflict cruel injuries, and are already considered unlawful if used in proximity to civilians, which was done throughout Operation Cast Lead.

**HC:** You have pointed out that Hamas were democratically elected in a free and fair election, that it had proposed a 10 year truce with Israel and has, over the years, expressed readiness to work with other Palestinian groups and yet it is still regarded by Israel and its allies as a terrorist organisation. Isn't it about time for Israel, the Quartet and others to sit down and talk with Hamas?

**RF:** It was a mistake from the outset not to take Hamas at their word as turning away from violence and toward political action. When initially elected Hamas established a one-year ceasefire unilaterally, which they kept



despite a series of Israeli provocations, including the assassination of Hamas leaders by missile attack. It would seem that Israel, and the United States, were comfortable with the situation of divided Palestinian leadership, and with the accompanying argument that there was no Palestinian partner with whom Israel could negotiate. Hamas has basically displayed a willingness to establish a ceasefire, including one of long duration, along its border with Israel. International actors should even now, however belatedly, treat Hamas as the de facto governmental authority in the Gaza Strip and treat it diplomatically as a normal political entity. To attach the label 'terrorist organization' is to signal an unwillingness to substitute diplomacy for violence and a refusal to lift the cruel and criminal siege that is now causing such damage to the physical and mental health of the entire civilian population of Gaza.

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**HC:** You have said that “*the [American public](#) in particular gets 99% of its information filtered through an exceedingly pro-Israeli media lens.*” What is your take on the coverage of the situation by the media in Europe?

**RF:** I am less familiar with the European coverage, but my strong impression is that although it is generally favorable to Israel, it is less unbalanced in its reportage, and more objective. Also, there is greater access to sources sympathetic to the Palestinian struggle, including Al Jazeera.

**HC:** The Palestinian Authority recently called for the deferral of your last report on the OPT, why have you not insisted on its immediate debate in the Human Rights Council?

**RF:** I do not possess the authority to challenge what takes place in the Human Rights Council. I have conveyed my disappointment to the High Commissioner for Human Rights, and I hope that the report will be discussed at the June meeting of the HRC, and that these difficulties will not recur in the future. The report is a comprehensive attempt to depict the unlawful dimensions of the Israeli occupation of the Palestinian territories.

**HC:** Is there any hope that Israel will be held accountable for its war crimes against the Palestinian people?

**RF:** I am not optimistic about accountability being achieved by way of the appropriate international procedures, especially referral to the International Criminal Court for further investigation and possible indictment. The geopolitical veto exercised by the United States on behalf of Israel, possibly reinforced by the EU, will block the implementation of the recommendations in the Goldstone Report probably without ever coming to a formal vote. Perhaps, if public pressure is heightened the geopolitical protection of Israel will become visible rather than, as at present, provided behind closed doors and in the deep recesses of the UN bureaucracy.

But there are two other ways in which some degree of accountability might be achieved: first, as recommended in the Goldstone Report, reliance on *universal jurisdiction*, which potentially empowers national criminal courts to investigate charges of war crimes and crimes against humanity with respect to Israeli military or political leaders who could be detained or extradited to face charges if entering a country that has introduced universal jurisdiction provisions into its law; second, as undertaken already by the Russell Foundation in Brussels, the formation of a citizens' tribunal with a panel of jurors made up of respected moral authority figures, and passing upon the allegations against named Israeli officials. This kind of initiative would



be symbolic in nature, but it would provide a documentary record, encourage support for BDS forms of nonviolent coercion, and represent an expression of condemnation of those accused and found guilty by world public opinion and by parts of the world media.

**HC:** You have the unenviable task of being an academic in an American university and a UN human rights Rapporteur in Palestine, how difficult has it been for you to function in both environments after your criticism of Israeli human rights policies?

**RF:** The tension is present, but so far has not been too serious. There is a shift in mood throughout the United States, making criticism of Israeli policies less controversial than had been the case in the past. The long arm of AIPAC and the Israeli Lobby remains dominant in Washington, D.C., but there is less impact than in the past on the country as a whole.

