

Check against delivery



**Statement by Richard Falk**

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

63rd session of the General Assembly  
Third Committee  
Item 64 (c)  
23 October 2008  
New York



Document (A/63/326)

**Mr. Chairman, distinguished delegates**

**The Special Rapporteur on the situation of human rights in the Palestinian territories occupied by Israel since 1967 took up his position on 1 May 2008 after having been appointed by Human Rights Council. Up to this point the Special Rapporteur has been unable to arrange a visit to Israel and the occupied Palestinian territories. It is the hope and intention of the Special Rapporteur to take all necessary steps to secure entry in the near future, and is seeking the cooperation of the government of Israel in this effort. Only a country visit will enable first-hand observation.**

**A full report has been submitted to the General Assembly, and is now available as formal document A/63/326, dated 25 August 2008. It relies on the best available open sources as well as on observations gathered during a private visit to Israel in July 2008 that included a short trip to Ramallah, as well as nearby Israeli settlements. The scope and substance of the report adheres to the mandate, and describes the de facto realities as accurately as possible in Gaza and the West Bank. It seeks to update prior reports of the preceding Special Rapporteur, as well as highlight encroachments on human rights and international humanitarian law that are of recent origin or that currently pose particularly urgent challenges to the wellbeing of the Palestinian population that remains under occupation. The issues associated with the occupation are assessed by reference to the relevant rules and standards embodied in international humanitarian law and the international law of human rights, especially as bearing on the duties of Israel as the occupying power. The basic legal framework is set forth in the Fourth Geneva Convention Relative to the Protection of Civilians in Time of War (1949); additional insight into the bearing of customary international law may also be gained from Geneva Additional Protocol I Relating to the Protection of Victims to International Armed Conflict (1977).**

**The Special Rapporteur wishes to call attention to two sets of developments that bear directly on the protection of human rights in the Palestinian territories. Firstly, the Annapolis Joint Statement of 27 November 2007 that was supposed to reinvigorate the peace process, and specifically, understood to commit Israel both to ease restrictions on movement of Palestinians subject to occupation and to freeze settlement expansion activity. As the report makes clear, neither of these undertakings has been fulfilled: in fact, additional checkpoints and blockages on the West Bank have added to the daily hardships associated with movement for the Palestinians, and settlements expansion has continued, actually at an accelerated rate. These developments seriously violate the human rights of Palestinians as well as diminish their prospects for the future.**

**The second development concerns the ceasefire between Gaza and Israel negotiated through the good offices of Egypt. The ceasefire, which went into effect on 20 June 2008, has been generally effective in reducing the level of political violence, but it has so far not delivered on Israeli assurances of an easing of the entry and exit of goods and persons. If anything, existing evidence discloses a harsher regime of**

confinement and siege imposed on the Gazan population. The report notes with a sense of urgent concern the difficulty experienced by Palestinians seeking exit permits to receive specialized medical treatment in Israel or elsewhere that is not available in Gaza. Such delays and denial of permission has resulted in a growing number of tragic deaths, severe mental and physical suffering, and constitutes a violation of the duty of the occupying power under the Fourth Geneva Convention to take all reasonable steps to protect the health and wellbeing of the population under occupation, with exceptions only to the extent absolutely necessary for upholding security. These restrictions appear unrelated to credible security claims, and hence a punitive form of collective punishment, which is consistent with the overall maintenance of the siege that has been applied to Gaza since July 2007. Such a pattern violates Article 33 of the Fourth Geneva Convention that unconditionally prohibits 'collective penalties,' which in this instance are being imposed on the entire Gaza population. This unrectified situation, despite urgent calls in prior reports of the Special Rapporteur holding this mandate, creates a particular challenge for members of the General Assembly. More specifically, the persistence of the siege and related restrictions on civilian normalcy in Gaza and the West Bank challenge members of the United Nations. One such challenge is to for parties to the Geneva Convention to carry out their legal obligation stated in common Article 1: "The High Contracting Parties undertake to respect and *to ensure respect for* the present Convention in all circumstances." (emphasis added).

The report also takes note of the refusal of the government of Israel to comply with the legal conclusions reached in the advisory opinion of the International Court of Justice in *The Legal Consequences of of the Construction of a Wall in the Occupied Palestinian Territory* (A/ES-10/273, and Corr. 1) (2004), which was supported by 14 of the 15 judges, and overwhelmingly endorsed by the General Assembly. The maintenance and continued construction of the wall has produced widespread violations of the duty of Israel as occupying power to respect and protect the property and other rights of the occupied civilian population. It is the view of the Special Rapporteur that it would be appropriate for the General Assembly to recommend a second advisory opinion that directly addressed the Palestinian right of self-determination, which is the subject of common Article 1 of the two major human rights covenants, and considered to be such a fundamental norm of customary international law as to be exempt from modification even by treaty. Given the persistent violation of Palestinian rights and the long duration of the occupation, stretching over a period of more than 40 years, as well as the severe hardships associated with the unlawful features of the occupation, that it is a matter of urgency for the United Nations to act decisively on behalf of the occupied Palestinian population. This call for action seems like a highly appropriate instance for the implementation of the commitment formally expressed by various organs of the United Nations to exercise a 'responsibility to protect' a vulnerable population enduring an unfolding humanitarian catastrophe.

The report also calls attention to the abuse of Mohammed Omer, a journalist from Gaza, who had been granted permission to leave to receive the coveted Martha

**Gellhorn Prize for Journalism. Mr. Omer, 24, was the youngest recipient ever of the prize. According to reports, verified by subsequent witnesses, Mr. Omer was detained and beaten at the Allenby Crossing on 26 June 2008 as he attempted to reenter Israel on his way his home in Gaza. Mr. Omer had been previously assisted by the Dutch government in securing his exit permit, and has again been supported in his effort to leave Gaza by way of Egypt to receive needed medical treatment in Europe resulting from the border incident. Mr. Omer is by all accounts a courageous journalist with no political affiliation or record of activism, and so this is a purely humanitarian issue. It also appears to be part of a pattern of making it difficult for journalists to report on the situation in either Gaza or the West Bank.**

**A related concern involves Gaza confinement that has taken various additional forms, but all restrictive of individual and collective rights inconsistent with limiting encroachments upon the occupied civilian society of the Palestinian territories to absolutely necessary security measures. Two examples of many can be given. (1) According to the Palestinian Centre of Human Rights (PCHR) an estimated 250 students with fellowships for study in foreign universities have been denied exit permits, including as many as seven students granted high prestige Fulbright Scholarships to study at American universities. (2) The widely respected director of PCHR, Raji Sourani, has himself been denied permission to travel, in the last several months, to international conferences at which he was an invited speaker. Such restrictions diminish the future prospects of an educated and informed Palestinian society, and seem consistent with a pattern of denying the world a transparent awareness of the structure and conditions of the occupation.**

**The report emphasizes the deepening health crisis that is afflicting the Palestinians living under occupation. The evidence of this crisis is overwhelming, concerning both the serious deterioration of the mental and physical health of the Palestinians as a whole (findings of several independent NGO reports) and the extreme precariousness of the health system due to insufficient medical supplies and the impossibility of importing equipment and parts needed for repairs. The right to health is recognized as a fundamental human right in several applicable international treaty instruments. The denial or long delays prior to the issuance of exit permits to Palestinians seeking medical treatment has resulted in several deaths while awaiting permission to leave.**

**The report also takes note of the continued expansion of Israeli settlements on the West Bank in violation of Article 46(6) of the Fourth Geneva Convention. This expansion also complicates any eventual realization of Palestinian rights of self-determination, and at present adds to the burdens faced by Palestinians seeking to move from place to place on the West Bank, also a prohibited interference with civilian life that cannot be justified by the security interests of the occupying power.**

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

- (a) The General Assembly should ask the International Court of Justice for a legal assessment of the Israeli occupation of Palestine territory from the perspective of the Palestinian right of self-determination;**
- (b) The assistance of the Security Council should be sought in the implementation of the 2004 advisory opinion of the International Court of Justice on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*;**
- (c) In the light of persisting gross violations of the Geneva Conventions over a long period of time, serious consideration should be given to the legal obligations of the parties to these treaties “to ensure respect” for the substantive undertakings as called for in common article 1. An initial step might be to urge the Government of Switzerland, as repository for the Geneva Conventions, to convene a meeting of States parties with the purpose of exploring how to carry out their legal duties, given the persistent and severe violation of the legal regime of occupation by Israel;**
- (d) Serious note should be taken by all relevant agencies of the United Nations of the failure of Israel to fulfil its pledges at the Annapolis summit to halt settlement expansion, to ease freedom of movement on the West Bank and to attend to the humanitarian needs of the Palestinians under occupation;**
- (e) The United Nations should explore its own responsibility with respect to the well-being of the Palestinians living under unlawful conditions of occupation, particularly bearing on abuses of border control, freedom and independence of journalists, and the general crisis in health care, especially in Gaza;**
- (f) In view of the health crisis in Gaza, members of the international community, including the United Nations, should resume economic assistance as a matter of the highest priority. In the face of an impending humanitarian catastrophe, the responsibility to do what is possible to mitigate human suffering is serious. It is a responsibility towards the civilian population of Gaza, and is not dependent on whether Hamas satisfies the political conditions set by Israel, nor is it dependent on whether the ceasefire holds.**

**Thank you Mr. Chairman.**