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Richard Falk: Maintaining the Unlawful Siege of Gaza is a Crime against Humanity

Richard Falk and Kourosh Ziabari

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As the dust surrounding Israel's one-month aggressive incursion into the beleaguered Gaza Strip begins to settle, the international law experts, UN officials, scholars and intellectuals are reviewing and examining the different aspects of the massive onslaught in which some 1,900 Palestinians were killed and thousands of others became homeless and dispossessed.

A high-ranking UN official believes that Israeli policies in the Occupied Palestinian Territories and the Gaza Strip are discriminatory and criminal according to the principles of international law.

As noted by Prof. Richard Falk, Israel's policies and practices against the subjugated nation of Palestine are overtly apartheid and should be condemned by the International Criminal Court.

Maintaining that "apartheid is authoritatively considered one form of crime against humanity," Prof. Falk said that apartheid policies don't necessarily need to resemble the system of racial segregation and discrimination that existed in South Africa from 1948 to 1999, but "what is

necessary for the crime to be committed is systematic discrimination against a specific group identified by reference to ethnicity, race, religion, and encoded into its governing structure.”

Prof. Falk believes that “the maintenance of the unlawful blockade of goods to and from Gaza is well established as a form of collective punishment of the occupied civilian population of Gaza, and a flagrant violation of the most fundamental obligation of the Geneva Conventions and international humanitarian law.”

Richard Falk is a world-renowned professor of international law and the United Nations Special Rapporteur on the situation of human rights in the occupied Palestinian territories. He was appointed to the position in 2008 and replaced Prof. John Dugard, with whom Iran Review conducted an exclusive interview last week. For his outspoken criticism of Israel and its treatment of the Palestinian people, Falk was harshly criticized by the UN Secretary General Ban Ki-moon.

Falk started his teaching career at Ohio State University and Harvard in the late 1950s. He moved to Princeton University in 1961 and became the Albert G. Milbank Professor of International Law and Practice there. In 1985, he was made a Guggenheim Fellow and retired from teaching in 2001.

On the recent massive military operations into the Gaza Strip by Israel which was coded “Operation Protective Edge”, Iran Review spoke to Prof. Richard Falk, a professor emeritus of international law at Princeton University and the UN Special Rapporteur on Palestine. The following is the text of the interview.

Q: A number of political commentators and legal experts have argued that the policies of Israel in the Occupied Territories resemble those of apartheid, violate the 1966 Convention on the Elimination of all forms of Racial Discrimination and are in breach of the 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid. Do you agree with this analogy? Can we trace the footsteps of apartheid in the policies and practices of the Israeli government?

A: By the 1973 Convention and the Rome Treaty establishing the International Criminal Court, apartheid is authoritatively considered one form of ‘crime against humanity.’ It does not depend on establishing a ‘resemblance’ to the racist structure that existed in South Africa during its apartheid period. What is necessary for the crime to be committed is systematic discrimination against a specific group identified by reference to ethnicity, race, religion, and encoded into its governing structure. This discrimination is multi-faceted in the West Bank as between Israeli settlers who enjoy civil rights and the rule of law and the indigenous Palestinians who are without rights and the rule of law, and have been subject to an oppressive military administration that has endured for more than 47 years in the West Bank and East Jerusalem. Settler only roads, the separation wall, checkpoints, and insecure residence permits, especially in Jerusalem are some of the expressions of this overtly discriminatory regime that would seem to qualify as a massive instance of the international crime of apartheid. The multiple Israeli laws discriminating against the Palestinian minority of 1.5 million living in pre-1967 Israel has also been described by some as ‘apartheid,’ but the case is not as clear.

Q: The United States and its European allies usually justify Israel's military operations in the Occupied Territories and its time-to-time incursions into the Gaza Strip as "self-defense", claiming that Israel simply responds to the rockets fired into the Israeli cities by Hamas. They never talks of the necessity for Israel to adhere to the principles of proportionality and distinction. Is the massive killing of civilians, mostly children and women, police officers, who by the virtue of international law are considered as civilians in the wartime, and other non-combatants justifiable as a practice of self-defense?

A: First of all, an unbiased timeline of the three major Israeli military attacks on Gaza in 2008-09, 2012, and 2014 were each provoked by Israeli acts calculated to induce Hamas retaliatory rockets. As well, the maintenance of the unlawful blockade of goods to and from Gaza is well established as a form of collective punishment of the occupied civilian population of Gaza, and a flagrant violation of the most fundamental obligation of the Geneva Conventions and international humanitarian law. As such, it is a continuing provocation of the people of Gaza and its governing authority. The reliance on indiscriminate rockets is a violation of the law of war, despite the very limited damage being caused. Taken in isolation, such threats to Israeli security could justify defensive measures in response, but would also require Israel to seek non-military means to uphold their security.

Hamas has indicated its readiness for a permanent truce if Israel lifts the blockade and negotiates withdrawal from occupied Palestine, and it has done its part in the past to maintain several temporary ceasefire arrangements, which have been broken by Israeli acts of aggression. Leaving these concerns aside, it is also clear that the three major Israeli assaults on Gaza have each been grossly disproportionate in the scale of violence and indiscriminate in their scope of destructiveness or worse, targeting forbidden structures, including residences, hospitals, mosques, schools, UN facilities. In effect, Israel has no legitimate claim of defensive force, and the force that it has deployed violates international criminal law. Additionally, Hamas has a right of resistance, but must exercise this right in accordance with international humanitarian law, and its requirement that force be limited to military targets.

Q: The United Nations Fact Finding Mission on the Gaza Conflict in 2009 concluded that Israel had committed war crimes and possibly crimes against humanity in the 22-day incursion into the Gaza Strip, or what the IDF had called the Operation Cast Lead, in which around 1,400 Palestinian citizens were massacred. It called on Israel and Hamas to conduct investigations into their conduct during the conflict, and demanded the Security Council to refer the case to the International Criminal Court in The Hague if the belligerents failed to investigate the war crime allegations. However, Israel refused to comply with the Goldstone Report, and then no international legal institution took action to hold Israel accountable. Does it mean that the international law is so frail and unbinding that Israel can ignore it ostentatiously and maintain its past policies?

A: It is correct that the Human Rights Council via the Goldstone Report established convincingly that Israel had been seemingly guilty of serious forms of criminality in the course of the military operation in 2008-09, but that its recommendations were not implemented. This does reveal a weakness in the implementation of international law, and its vulnerability to what might be called a geopolitical veto. If geopolitics is differently aligned as it was in relation to Libya in

2011 or in relations to the sanctions imposed on Iran, and more recently Russia, international law will be ‘enforced’ even when the basis for law enforcement does not exist.

Outside commercial and routine international relations, the effectiveness of international law is dependent on the political climate. The Palestinian claims to be protected under international humanitarian law are tragically put aside in deference to these political factors that assure Israel and its leaders of de facto impunity for the crimes it commits. At the same time, there is a growing responsiveness of people throughout the world to Palestinian grievances and victimization, and the Goldstone Report was influential in increasing grassroots support around the world for BDS campaign, and it would be helpful to have Goldstone II, of course, without Goldstone, even though it is highly unlikely that the UN would be able to implement its findings, but it might embarrass the ICC, and even an investigation by the ICC would be a symbolic setback for Israel in the ongoing ‘legitimacy war.’

It is important to keep in mind that the outcome of wars in the last 75 years has been controlled not by the side that has the more powerful military capabilities but by the side that seizes and holds the high moral and legal ground. Israel controlled these symbolic heights, at least in the West, until a decade ago, but the Palestinians started to reverse those realities in the 2006 Lebanon War, and that process has now gone much further during the massacre and devastation in this latest Israeli onslaught against the Gazan essentially engaged within the crowded confines of the Gaza Strip.

Q: What do you think about the international community’s response to the recent Israeli offensive into the Gaza Strip, which as I talk to you, has cost the lives of around 1,800 Palestinians? Why is President Obama so silent and indifferent towards this outright carnage? Is this a conduct which one may expect of a Nobel Peace Prize laureate?

A: The international response, including by the UN, has both been shockingly feeble, even calls for a ceasefire have been met by defiant refusal on the part of Israel. The theme articulated in the West that Israel ‘has the right to defend itself,’ first in response to the rockets, and later the tunnels, fails to take any account of the degree to which Israel launched a vicious anti-Hamas campaign after the kidnapping incident on the West Bank on June 12, accusing Hamas with no evidence, arresting as many as 500 Palestinians suspected of links with Hamas, house demolitions, nighttime raids on family dwellings, lockdowns of towns and villages, air strikes in Gaza. On the basis of past experience it is clear that Israel was expecting rockets to be fired in response, and intending to launch a major military operation for a variety of goals, including the punishment of Palestinians for forming a unity government in early June that brought the Palestinian Authority and Hamas together for the first time and a show of force intended to make Palestinians, including in the West Bank and East Jerusalem accept the permanence of Israeli occupation. President Obama should be ashamed of lending support to such indiscriminate and disproportionate uses of force, resulting in such devastation of an already impoverished and stressed Gaza. Perhaps, most shocking of all, has been the pro-Israeli posture struck by Egypt and Saudi Arabia, as well as other Arab governments with the notable exception of Qatar.

These governments, besides being subject to American influence, are primarily expressing their hatred and fear of political Islam as associated with the Muslim Brotherhood, of which Hamas is

seen as offshoot. This opposition to political Islam is stronger than is the opposition to Israel, which is regarded as a fixed reality in the region in any event. Israel is also aligned with Saudi Arabia, UAE, and other regional actors in the sectarian tensions that relate to Iran.

Q: In one of your recent articles, you criticized BBC for it lopsided coverage of the developments in Gaza and that producers from the British broadcaster called you several times to feature you on their shows about the Gaza war, but retreated from their invitation abruptly and without any clear explanation. Is there any pressure on BBC and other mainstream media outlets by the interest groups and foreign lobbies to adopt certain editorial policies, notably in favor of Israel to justify its massive military operation in the besieged Gaza Strip?

A: Yes, it has been troubling, although not surprising, that the mainstream media has by and large avoided allowing critics of Israel to express their views. My experience with the BBC has also been repeated with the American media. It is a failure of democracy when on an issue of this sort the public debate is limited to the side favored by the government and powerful lobbies. The society itself is more divided. But Washington and the media act as if there is unified support for Israel, and there are many attempts by Zionist groups to discipline university professors and journalists who step out of line. It is a sad commentary on the way a free society is supposed to operate.

Q: In November 2012, the UN General Assembly overwhelmingly voted to grant Palestine non-member observer State status and recognize Palestine as one of the serious candidates of permanent UN membership. How much do you consider it as important for Palestine to be recognized in the international organizations officially and establish formal diplomatic relations with the different world countries? Palestine currently has diplomatic relations with some 130 world countries, and the approval of its membership in UNESCO in 2011 and its non-member observer state membership in the UN General Assembly infuriated Israelis a great deal. Why do you think the Israelis have been so angry at these developments?

A: It is difficult to understand Israel's motivation. It seems related to their expansionist vision of Israel, which depends on a Palestinian state never coming into existence. Now that Palestine has been acknowledged as a state by the General Assembly, it creates a clear point of antagonism with this effort by Israel to occupy permanently or to incorporate formally at least most of the West Bank. It has already acted unilaterally to annex East Jerusalem in defiance of the UN. Palestinian statehood also carries the potential of recourse to the International Criminal Court, which would be treated by Israel as a virtual act of war. Any use of international law to challenge Israeli policies and practices is perceived as a greater threat to Israeli ambitions than is Palestinian armed resistance, and is demeaned by the epithet of 'lawfare.'

Q: What's your perspective on the continued settlement constructions by Israel on the Palestinian lands? The settlements have been a major sticking point in the peace talks and even the United States government as the largest military and financial benefactor of Israel has voiced its concern over the settlements which are preceded by the destruction of Palestinian homes and the evacuation of Palestinian citizens from their cities and homes.

Are the settlement constructions legal and permissible according to the principles of international law?

A: The Israeli settlement phenomenon has been almost universally condemned as a violation of Article 49(6) of the 4th Geneva Convention, which forbids the transfer of population from the Occupying Power to that of Occupied society. Israel has continually flaunted the international consensus that has viewed settlements as unlawful encroachments on Palestinian territory that also makes the idea of a negotiated settlement of the conflict increasingly unrealistic. There more than 500,000 settlers in over 100 settlements. The collapse of the negotiations in April of 2014 after months of fruitless effort signals the end of the road for the idea that diplomacy could solve the conflict in a framework where the most partisan state pretended to serve as intermediary.

The Gaza massacre once again achieving no political victory for Israel should also signal the end of the road for those favoring a military solution. What is left? The combination of Palestinian resistance, possibly a third intifada, perhaps generalized to become the first global intifada, together with the militant tactics of nonviolent solidarity with the Palestine national movement, and dedicated to the goals and methods of the BDS (boycott, divestment, and sanctions) campaign reinforced by calls for an arms embargo on sales to or from Israel.