At the end of May 2011 Global Policy Forum associate Harpreet Paul interviewed UN Special Rapporteur Richard Falk. Falk is an international law and international relations scholar who taught at Princeton University for forty years. Since 2002 he has lived in Santa Barbara, California, and taught at the local campus of the University of California in Global and International Studies and since 2005 chaired the Board of the Nuclear Age Peace Foundation.

In 2001 Falk served on a United Nations (UN) High Commissioner for Human Rights Inquiry Commission for the Palestinian territories with John Dugard, who was then the UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967.

In 2008, Falk replaced John Dugard as the Special Rapporteur and has been outspoken in his criticism of Israeli policy in Gaza, the West Bank and the occupied territories. He has called for sustainable peace that realizes the rights of all Palestinians, and is broader and deeper than ending the occupation or establishing a Palestinian state.

The interview is split into four sections. A transcript of the interview, together with descriptions of the four parts, can be found below.

**Part 1: Background**
Falk provides a brief historical outline of the Israel/Palestine conflict, suggests that the situation in the Palestinian occupied territories is similar to apartheid South Africa and discusses his relationship, as UN Special Rapporteur, with the state of Israel.

**Part 2: Goldstone Report and Civil Society Action**
This section covers the UN Fact Finding Mission on the Gaza Conflict (also known as the ‘Goldstone Report’), the inability of the UN to enforce the findings contained within this report and the sending of peaceful flotillas to the Gaza Strip. Falk says the UN Secretary General’s statements encouraging governments to refrain from allowing flotillas (carrying peaceful humanitarian assistance to be sent to Gaza in order to challenge the Israeli blockade of Gaza) “is to take the side of the unlawful collective punishment of the people of Gaza and to deny civil society the democratic prerogative of non-violent humanitarian solidarity.” The interview took place before the Greek Costal Guard prohibited the US flotilla (“The Audacity of Hope”) from embarking on its journey to Gaza at the end of June 2011.

**Part 3: US-UN Relationship**
This section looks at the relationship between the US and the UN, the ‘Responsibility to Protect Doctrine’ and the rule of law. Permanent membership and veto powers within the UN Security Council for China, Russia, US, UK and France allow such countries to further their own geo-strategic politics.

**Part 4: Statehood and the Future**
Richard Falk suggests that there is no legitimate peace process, discusses the impending unilateral declaration of Palestinian statehood, expected in September 2011, and outlines his hopes for the future.
Harpreet Paul: I am speaking with Richard Falk. Richard, can we go back to the beginning of the conflict between Israel and Palestine. Would you be able to provide a brief historical context of the current conflict - particularly from the end of the British mandate in the region and the United Nations’ role there since 1948?

Richard Falk: Yes. Of course it’s a complicated story and in some ways it really needs to go back further than that to the idea of a Jewish homeland that came out of the Balfour declaration at the end of World War One - which was a pure colonialist decision that the British government would lend their support to the idea of a Jewish homeland and a Jewish homeland that was supposed to be established in a manner that wouldn’t disturb the situation of the people living in historic Palestine. It was after the First World War that the British became the mandatory power and administered the territory over that period of time with a growing population of Jewish immigrants that gradually became a significant minority in the Palestinian area under mandatory control. There emerged a growing effort by that minority to get rid of the British mandated presence. After World War Two and the holocaust, there was a strong push in Europe and the international community to, one might say, overcome the failures of the liberal democracies to do more to stop Hitler’s genocidal policy toward the Jewish people in Europe. To some extent it inhibited what might be described as a just solution to the future of Palestine right then at the end of World War Two. There was the tragedy of the Jewish people but the way to deal with that was not to create a tragedy for the Palestinian people. So, what has transpired historically is that one tragedy has been superseded by a second tragedy.

The UN decided to partition the former mandate that the British no longer wanted to administer and they gave, at the time, 55% of the historic territory to the insipient Jewish nation and 45% to the Palestinian nation. This seemed unfair and unacceptable at the time to the Palestinians and Arabs. It was another decision made by a Euro-centric world that never bothered to consult the people that were supposed to be subjected to that decision. Even though - as the history has evolved since 1948 - the Palestinians would be very happy to accept the partition that was then provided, because over time Israel has taken more and more of the land that was originally allotted to the Palestinians. After the 1967 war it [Israel] has occupied the entire historic Palestine. Before the 1967 war and after the 1948 war (which was the so-called ‘War of Independence’) Israel occupied 78% of the land. Instead of the 55% that the UN had given to the Jewish homeland, it now had 78%. It is a remarkable Palestinian acquiescence in that reality (which I think exhibited the PLO [Palestine Liberation Organization] and the Palestinian National Council’s interest in a peaceful resolution of the conflict) that in 1988 they accepted the idea of two states - the Palestinian state being the remaining 22% of the historic Palestinian mandate. Ever since 1988 there have been a complex series of international developments but the essential development, I believe, has been the encroachment of Israel on that 22% through the settlement expansion, through demographic changes in East Jerusalem and through the building of the unlawful wall within occupied Palestinian territories and an elaborate road system. Some have estimated as much as 40% of the remaining 22% is no longer under Palestinian authority. So one has a historic evolution of the conflict which has one essential feature, that is, the longer it goes on the lower the expectations are for the Palestinian realization of any kind of just allocation of historic Palestine and that applies not only to the West Bank but also to the city of Jerusalem. The other reality that I think is historically very important is that it is almost unprecedented that a people would live under a harsh occupation for this length of time (ever since 1967, which is now 44 years). And, for a refugee population of almost five million to be in that kind of situation for a period that is more than 63 years is more than extraordinary for what that means in terms of life experience. Just to be in a refugee camp for a few days is something that is very hard to endure. But to do that for generation after generation is quite extraordinary. I think people just don’t realize that by just recounting the numbers and having a statistical realization of how prolonged this occupation and refugee reality has been.
**Harpreet Paul:** John Dugard has likened the situation in Palestine to apartheid. Could you speak a little more about the situation there?

**Richard Falk:** Yes, I would say that it’s very analogous to apartheid and in a certain way more so in the West Bank than in Gaza. In Gaza there is a unified internal Palestinian authority. In the West Bank there are really two legal systems being applied – one for the settlers and one for the occupied Palestinian people. The settlers enjoy all the protections of the law and order of Israel and the occupied Palestinians are essentially without rights and subject to military administration. Then you have the road network (that has been created in relation to the settlements) for Israeli’s only and which is definitely a dual standard and the use of security controls where settlers are controlled in a moderate and gentle way, despite their recourse to violence against the occupied people. Whereas, lethal security measures are routinely used by the Israeli armed forces and security forces at the checkpoints. In all respects there is a dual order maintained in the West Bank that is completely analogous to the kind of duality one found in apartheid South Africa. It should be underscored that according to the Rome Statute (which set up the International Criminal Court) apartheid is a crime that does not depend on establishing a resemblance to what existed in racist South Africa. It is essentially a discriminatory system of dual law and a dual political regulatory system that privileges one part of the society and is punitive toward the other.

**Harpreet Paul:** What has been your personal relationship with the Israeli authorities as the UN Special Rapporteur?

**Richard Falk:** I would hardly describe it as perfect. At the end of 2008, when I attempted to carry out a mission to the West Bank and East Jerusalem and Gaza, I was detained at the airport and then expelled and have not been permitted to enter the occupied territories, despite repeated attempts to do so. Now that the Egyptian border is open at Rafah it will probably be possible for me to visit Gaza at least. I tried to do that last month [April, 2011] but at that time the UN said it was too insecure in Gaza and wouldn’t let me continue from Cairo to Gaza. But, I’m hopeful in the coming months.

**Part 2: Goldstone Report and Civil Society Action**

**Harpreet Paul:** The UN has urged Palestinians (and those that sympathize with the fate of the Palestinian people) not to provoke Israel. What does it mean when, for example, the protests on the Nabka and the sending of peaceful flotillas are seen as acts of provocation by the United Nations rather than legitimate expressions of resistance to occupation?

**Richard Falk:** I think it exhibits the one sidedness that is so pervasive in the international community with respect to this conflict. That the [UN] Secretary General should use his office and influence to try to persuade governments, including the Mediterranean countries, to not allow peaceful humanitarian assistance to be sent to Gaza to challenge the blockade is to take the side of the unlawful collective punishment of the people of Gaza and to deny civil society the democratic prerogative of non-violent humanitarian solidarity. And, it is notable in relation to this conflict, that it is only civil society that has challenged the unlawful blockade. Governments have been unwilling and unable to do anything. And, whilst the UN itself has criticized the blockade, as have many world leaders, the Israelis’ have learned that they can defy international law and world public opinion and suffer no adverse consequences. And, that message is sent over and over again, most notably by Washington. So, it is a very strange unusual situation where this small state, Israel, seems to be manipulating at will a dominant superpower that is seemingly frozen with fear to challenge [Israel’s] policies and yet claims to be the only country capable of mediating the conflict.
Harpreet Paul: Can you talk a little bit more about the blockade in Gaza and also about Operation Cast Lead and the following UN inquiry lead by [Richard] Goldstone and what the implications are of the report in seeking to bring about some level of accountability?

Richard Falk: The Goldstone report is one of the most prominent examples of a UN attempt to hold Israel and its leadership accountable for observing international humanitarian law. Judge Goldstone, who was a South African constitutional judge and a widely respected figure on the international scene (known for his Zionist sympathies), headed a distinguished group of four members who completed a fact finding mission that reached a set of conclusions that were nothing surprising. Lots of investigations had come to the conclusion that Operation Cast Lead (the Israeli attack on Gaza at the end of 2008) violated, flagrantly, a series of fundamental provisions of the Geneva Conventions. What the Goldstone report did was to recommend strongly that those findings be implemented by some effort to hold the perpetrators accountable. It first encouraged Israel and Hamas to do self-investigations and take appropriate action, and, if that failed, then the international community should act. What the United States has done (at Israel’s urging) has been to attack the [Goldstone] report and to use its influence within the UN to prevent any implementation of the recommendations.

And so the Goldstone Report, on one level, seems to legitimate civil society initiatives such as “Boycott, Divestment and Sanctions.” It lends, I think, indirect support to the freedom flotilla effort to give help to the people of Gaza but it also illustrates the inability of the UN to implement its own very credible conclusions when they run against geo-political strategies. So, you have this improvement in generating an authoritative sense of what international law requires but lacks a capacity to implement its own findings. That implementation, if it is to occur, depends on civil society initiatives such as the Palestinian Solidarity Movement that has been growing on a global level and has been widely regarded, recently, as a sequel to the campaign that was so successful in relation to South Africa in the late 1980’s.

Harpreet Paul: Can you talk about the pressure that Israel and the US have put on the UN for it to retract some of its findings in the Goldstone Report?

Richard Falk: I think that what the US, at the urging of Israel, has been doing is to paralyze any effort to carry forward the recommendations of the Goldstone report. It has publically attacked the report as one sided whereas, in reality, a fair reading of the report would suggest that it leaned over backwards in several crucial respects to give Israel the benefit of doubt. First of all by placing undue emphasis on what Hamas was doing in a situation where they were being subjected to a very one sided attack and where they had almost no capacity to defend themselves. It is not that their violation should have gone unnoticed. But, in the setting of operation Cast Lead and looking at the casualty ratios, it is clear that Israel was using its superior military capabilities against an essentially defenseless Gazan population. And, in addition to that, there has been a sense that somehow pushing the accountability agenda would interfere with the prospects for negotiations and a diplomatic solution. This has always been used as an argument by Israel and the United States to insulate Israel from criticism about its unlawful policies. So we see a continuation of that pressure within the UN system that is often not very visible. Occasionally it surfaces in public statements but the main pressure is brought to bear behind scenes. It is expressed by the effort of the Secretary General to discourage governments from allowing ships to join the anticipated second freedom flotilla that’s supposed to head for Gaza at the end of June and which could provoke a new kind of confrontation with Turkey and others that are countries that have refused to use their governmental authority to prevent such humanitarian assistance.

[Editor’s note: At the end of June 2011, the Greek Costal Guard prohibited the US flotilla “The Audacity of Hope” from leaving the harbor. The Greek authorities allege that the flotilla experienced technical problems and so it was unsafe for it to sail. Allegations of deliberate sabotage have been made.]
Harpreet Paul: You talked a little bit about the UN's inability to enforce its findings. How do you think the lack of an enforcement mechanism within the UN impacts upon its legitimacy?

Richard Falk: I think it’s a definite limitation of the role and authority and legitimacy of the UN. At the same time, it is important to appreciate that the UN’s symbolic role on issues of this type is extremely important. In other words, even if the UN cannot enforce the Goldstone report, or refuses to enforce it, it is still an authoritative judgment as to the unlawfulness of what Israel did. It has the effect of re-enforcing initiatives by individuals and civil society organizations, NGOS and others that feel more empowered to take action in light of the failure of the UN and the inter-governmental system to implement these dimensions of international law.

Harpreet Paul: The UN and the International Court of Justice as well as the European Union have commented on the illegality of the settlements that Israel has continued to develop on the occupied territories, but the US vetoed a UN resolution earlier this year – in February – that would have reflected the International Court of Justice, the UN and the EU position on the illegality of the settlements. What has been the relationship between the US and the United Nations in seeking to bringing about a just or a more peaceful solution to the conflict?

Richard Falk: I think the essential US position (regardless of the president or the leadership) has been to suggest that only a negotiated settlement agreement between the parties could produce a sustainable peace. Therefore, they [the US] have viewed any UN initiative based on trying to make Israel comply with international law as somehow inconsistent with that vision of the appropriate path to peace and have, therefore, opposed any independent assessments of Israeli behavior. That, in effect, has given Israel a green light to continue to defy international law – which they have done repeatedly and flagrantly perhaps most dramatically by maintaining an unlawful blockade on the 1.5 million people living in Gaza. This is a blockade that has been maintained ever since 2007 and is a very explicit form of collective punishment that is unconditionally prohibited by Article 33 of the Fourth Geneva Convention. Israel has defied international law also by attacking the so called ‘Freedom Flotilla’ on May 31st 2010 in international waters using excessive violence and also trying to enforce this unlawful blockade.

So, with the United States (despite the President continuing often to say how committed the country is to the rule of law and how different it is from the Bush presidency), if you look at it from the point of this conflict, there is perfect continuity in unconditionally supporting Israel and being one sided in every significant respect with regard to the diplomacy connected to the conflict.

Harpreet Paul: Legal scholars such as yourself and Marjorie Cohn have spoken out against the inconsistent way in which international law is applied - most recently in relation to the “Responsibility to Protect” doctrine. I wondered if you could speak a little about that.

Richard Falk: It’s a very important issue and is hard to understand without an appreciation that the rule of law depends, for its legitimacy, on treating equals equally. If equals are treated unequally then what is called the rule of law is really just another version of the rule of power. What is very notable in this conflict and in relation to a doctrine like “R2P” (or “Responsibility to Protect”) is the reliance on double standards – that is, using the norms of international law when they correspond to geo-political interests and neglecting them when they contradict geopolitical positions. And, nothing illustrates that better in recent times than the enthusiasm for humanitarian intervention in relation to the Libyan conflict (even though that seems like a civil war), versus the absolute silence relating to the vulnerability and suffering that the people of Gaza have experienced over a four year period of unlawful blockade and bad water, insufficient electricity, insufficient medical supplies - barely subsistence living. There is a situation where one would think it was the poster child of the rational for a “Responsibility to Protect”
being vested in the international community. Particularly in relation to occupied Palestine which is in some sense a legacy of the failure of the UN to solve this conflict way back at the end of World War Two.

**Harpreet Paul:** What does it mean for the legitimacy of the UN if doctrines like “Responsibility to Protect” are applied inconsistently or used further geo-strategic political goals rather than to do as the name of the doctrine suggests - to protect all civilians?

**Richard Falk:** I think it re-enforces the sense that the UN in some situations – not in all situations – is an instrument of great power politics rather than an alternative to it. I think when the UN was established and the Charter was agreed upon, the notion that was widely prevalent and hoped for was that there would be a framework of law and behavior that would apply to all states – the strong as well as the weak. Of course, there’s some ambiguity in the UN system. Especially in the Security Council where the five permanent members [China, Russia, US, UK and France] – essentially the winners in World War Two – were given a power of veto and permanent membership which means, in effect, that they only have to obey the Charter when they wish to. It [compliance to the rule of law] is discretionary for them and obligatory for every other member of the UN. This is a kind of constitutional recognition of double standards. One can say it is either a realistic accommodation to geo-politics or it shows that you should never have expected the rule of law to apply on a global level within the UN framework.

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**Part 4: Statehood and the Future**

**Harpreet Paul:** What do you make of the recent discussions of returning to the 1967 borders with agreed land swaps?

**Richard Falk:** I think it’s a strange kind of controversy. In one way, reaffirming the 1967 borders with agreed land swaps should have been nothing new – it is in the UN Security Council resolution 242 that goes back to 1967. The clarification that President Obama made when he spoke to AIPAC [the American Israel Public Affairs Committee] and others was that Israeli’s could pursue not only their settlement blocks (through land swaps) but could also demand certain kinds of territory for security purposes. This means a great deal of encroachment on the remnant of historic Palestine that is available for a Palestinian state. So, I view this whole emphasis on the territorial nature of the relationship of the two countries as a gigantic diversion from a clear Israeli diplomatic and nationalist consensus that does not really want to transform the status quo. Israeli objections to the original Obama speech at the State Department (where he enunciated his support for the 1967 borders, subject to land swaps), I think, was just an attempt to make the prospect of negotiations untenable - untenable to the Palestinians and undesirable from the perspective of the Israeli’s.

**Harpreet Paul:** The president of the Palestinian National Authority, Mahmoud Abbas, has that he will make a unilateral declaration of Palestinian statehood at the United Nations this September [2011]. What do you think this would mean for the peace process, particularly as the US has said that it would prefer a negotiated peace settlement and would vote against any resolution emerging from Palestine’s declaration at the UN? And what does it mean for the future of the peace process and the US’ diplomatic role within it?

**Richard Falk:** I would say first of all that there is no credible peace process - it is a diversion from an Israeli apparent resolve to continue the status quo while expanding the settlements, altering the demographic make-up of East Jerusalem, making it more difficult for Palestinians to live there and more desirable for Jews to move there. This dynamic which has been converted into a claim that these are facts on the ground that must be taken into account in any peace negotiation, actually, is a way of constantly whittling away at the Palestinian prospects for self-determination in the form of a distinct Palestinian sovereign, independent state. And indeed, more and more people, I think, have come to the conclusion that the ‘two-states consensus’ is no longer a credible conception of a
sustainable and just peace. And, that only a single state (that was premised on secular principles and respected the fundamental rights of both peoples) would have any prospect of resolving the conflict in a manner that was just and sustainable and so one has to put a great emphasis on that fundamental circumstance.

The Palestinians, if anything, have been too patient and too willing to accept the role of Israel’s leading supporter and ally as a mediating diplomatic force. The move to the UN to seek recognition of Palestinian statehood and ideally membership in the UN is, it seems to me, a belated gesture of frustration with the obvious failure of direct negotiations which have been tried over and over again during the course of the past twenty years. The UN has made a unanimous Security Council resolution (all the way back in 1967) calling on Israel to withdraw from the territory it occupied during that Six Day War. So I feel that the Palestinian move to acting outside this phony peace process is, at least, recognition of two things. One is that there is no genuine peace process. The Israeli’s are not interested in negotiating an outcome that would provide the Palestinians with a viable independent state. Secondly, going to the UN in this way is finally an indirect expression of a loss of confidence in any constructive US role in the process. I think that those are both important.

What flows from the effort at the UN is unclear and difficult to predict. It will have a mobilizing effect, I believe, on public opinion – especially in Europe. It could have some legal consequences if the statehood of Palestine was acknowledged and the continued unlawful occupation was confirmed, it would further undermine the legitimacy, not of Israel as a state, but of Israel as an occupying power. I think that would be significant.

Harpreet Paul: What would be the next steps in trying to ensure security, accountability, human rights and dignity for the Palestinian people following a unilateral declaration of Palestinian statehood at the United Nations?

Richard Falk: I think one has to wait to see how that plays out. But I think a logical step would be to either try to have the International Court of Justice again pronounce on the legal consequences of UN General Assembly recognition of Palestinian statehood, or to try to invoke the authority of the International Criminal Court [ICC]. Although the jurisdictional authority [of the ICC] is limited to events that take place after membership in it has been established by adhering to the treaty. So, I’m not sure how relevant that would be. And then I think there would be an intensification of civil society initiatives along the lines of the movement that was so effective against South African apartheid in the 1980s.

Harpreet Paul: Thank you very much for your time Richard. I’d like to conclude by asking you what your concerns and hopes are for the long term and immediate future for people in the region.

Richard Falk: I think that developments in the region, particularly in Egypt, are generally hopeful in relation to the Palestinian struggle. The Arab Spring is one where the basic popular energies definitely moved in the direction of the democratization of the political arrangements existing in these various countries. The outcomes, it is clear, remain quite uncertain, including in Egypt. But, what is clear is that these governments - to restore any kind of stability - will have to make substantial concessions to these democratic forces. And, one of the concerns of the democratic forces is a more committed attitude towards helping the Palestinians gain some kind of peaceful and just solution to the conflict. This has already been expressed, to a degree, by the Egyptian government’s announced opening of the Rafah crossing – which allows a certain number of Gazans’ (who can go back and forth) with limited freedom of mobility. It does not ease the blockade in so far as its prohibition on exports from Gaza or imports of needed reconstruction materials as well as food and medicine and fuel. So the situation seems rather poor in the short run. There is no indication that the present Israeli government (which is a rather extremist form of political Zionism controlling the policies of Israel at the present time) will alter in their stance to any significant degree. Further, there is no indication that US support for this government will diminish to any significant degree. So, I think the Palestinians have to hope for a longer term build-up of pressure on Israel to alter the way in which it [Israel] views its own security and its own future. Israel really will have to have a South African “moment of truth” where it faces, in a more realistic way, what the alternatives are that confront it. Hopefully there will be some kind
of unanticipated transformation in the Israeli outlook - which will then have an effect on Washington. In meantime, I think the Palestinians are pinning their hopes on what I would call [a] legitimacy war. They are trying to mobilize global support and pursue the BDS ["Boycott, Divestment and Sanctions"] campaign [against Israel] and mobilize other civil society initiatives, continue to exert what pressure is possible within the UN system and to continue to hope that public opinion, and a more a vigilant regional atmosphere with respect to the conflict, will have some tangible political results. But these are hard to anticipate at the present time. In the meantime the ordeal of the occupation and the continued confinement to refugee camps tragically goes on whilst the rest of the world watches.