

## Speech Richard Falk

Ladies and gentlemen,

It's a great privilege and a great challenge to speak at the outset of this important symposium. I commend United Civilians for Peace for organising this event, and I think that the auspices of civil society express a profound truth about the status of international law, respect for the authority of the United Nations, and generally the quest for justice in settings such as the Palestinian one, where that quest for justice is inconvenient geopolitically. And what I'm trying to express by this preliminary remark is that we have to take account of the fact that international law only matters to the powerful, to governments and even the UN, when it is consistent with power priorities of major states. So this sort of meeting really should have been organised by governments. *They* have the obligation - as was suggested in the introductory statement - to see to it that Israel complies with the Advisory Opinion. The UN has a secondary obligation as representative of the international community and also as historic organ of international society that initiated a process by dividing the Palestinian mandate way back in 1947. So one would have supposed there was a continuing responsibility for the UN to implement the decision of its own highest judicial body, the ICJ. And the fact that that decision, that Advisory Opinion, was affirmed by a majority of the General Assembly, underscores the reality of the conclusions reached by the ICJ in the Advisory Opinion.

And I'd make one more introductory point along this line. And that is that when the ICJ in this instance reached a decision by 14 to 1, that is very notable since the ICJ consists of jurists of the legal systems of most societies in the world. Maybe it is overly weighted in favour of the western countries, has many rather conservative judges among the fifteen. The fact that it reached a decision by this strong majority is very notable, particularly in a context as controversial as the Palestinian-Israeli conflict is. So when you have a majority that is this one-sided it really is sending us a message. It is saying international law is so clear on these issues that there is no reasonable basis for questioning the authority of the outcome. And in fact even the lone dissenting judge (which probably would not surprise you to be told it was the American judge), even he endorsed 90 percent of the substance of the majority outcome, including the interference by the construction of the Wall on occupied Palestinian territory with the fundamental Palestinian right of self determination. So you really have a rarity in international jurisprudence: an unanimous decision by such a diverse body of judges. So one would expect at least a show of respect to international law. That this did not happen means international law is ignored where it interferes with the imperatives of power. This is an important lesson for civil society. But there is another lesson. And that is that international law does matter to a civil society dedicated to the pursuit of justice. If one considers the history of the quest for justice: it always depended on struggle of people, not on the conscience of governments. So part of the challenge is to make it politically inconvenient for governments to resist the force of international law. And that was great success in a sense of the anti-apartheid movement. It made it politically inconvenient to continue apartheid. So the challenge for civil society is to make it consistently inconvenient for centres of power to ignore the imperatives of international law and global justice. And so civil society has a tremendous challenge but also an opportunity to change the political equation. Then international law becomes an instrument of the powerful - when it serves their interests. And so again, our challenge is to make it serve the interests of the powerful. And we can only do that by making them uncomfortable with ignoring the clear mandate of international law.

Let me try to make six points about the significance of the Advisory Opinion of the ICJ and set the stage for those who follow me on this podium. Our initial speaker already set forth very clearly for us the character of the clear and definitive conclusion of the illegality of the Wall, and the fact that it is not just an event but an entire process of occupation which is a continuous example of defiance of the authority of international law and of the UN. And the essence of that conclusion of the ICJ - I quote from part of the Advisory Opinion because it

emphasizes the extent to which the behaviour of Israel is contradictory to the minimum requirements of international law. It is language that summarizes the essence: construction of the Wall by Israel as occupying power in the occupied Palestinian territories is contrary to international law. "Israel is under obligation to cease forthwith the construction, dismantle the structures and make reparations". And I would add the point that all members of the UN had a supplemental obligation to see to it that the ICJ findings would be respected.

It is important to recognise that the construction of this wall from an international law perspective is so deeply inconsistent with the international humanitarian law obligations of an occupying power, because of the fact that it is constructed on Palestinian territory. If it were constructed along the 1967 boundary, it would still be morally and politically objectionable but it would probably not have been a cause of the expression of these legal grievances. The essential legal point is the location of the wall inside occupied Palestinian territory. And I would just note in passing that here in Europe, I suppose, the infamous Berlin Wall represents the ordeal confronting a people that is confined by a wall and the guards, and the shooting, and the symbolic degree to which that emphasizes or epitomizes the absence of human solidarity. What walls represent is dividing people, coercively and homicidally. But if the Soviet Union had dared to build that wall even a few inches on West Berlin's territory, that would have been the start of World War III. If you take seriously the notion of boundaries, this failure by Israel to respect the boundary that the international community had established unanimously in the Security Council back in 1967, when it called upon Israel to withdraw from the territory it had occupied in the 1967 war. So remember that this is the most prolonged occupation in history and it is itself in defiance of the unanimous view of the UN Security Council. And yet there is silence about the refusal to withdraw. This sends a message: international law does not matter if it is inconvenient to the powerful. That is why I want to stress that civil society's challenge is to change that calculus of those who hold the cards of power.

I want to make a second point, a somewhat more technical point. And that is that some have commented on the fact that because this is labelled 'advisory', it is discretionary. This is the unfortunate choice by the drafters of the statute of the ICJ not to give this function of the court a more authoritative sound. But in fact an Advisory Opinion in this kind of situation represents the clear assessment by the most qualified judges in the world of what the requirements of international law are. You can not get a more authoritative opinion on the requirements of international law. This is particularly true if an Advisory Opinion is so strongly supported by such various judges. So the fact that this is an 'Advisory' Opinion does not mean this isn't an authoritative decision. And it was recognized in a great majority of the General Assembly by accepting a resolution with the call upon Israel to comply.

The third point is one I have already alluded to, but it is a central point. What may be more important than the decision itself is the degree to which Israel's defiance of that decision has never been challenged by the US, by the EU, and even by the UN. And that means that their own authority is not taken seriously by themselves. One would have expected some kind of alternative argument but this was never made. In fact the United States and Israel rejected the Advisory Opinion before even reading it. They never made even a gesture of saying: we must take this seriously, also if we do not agree with the outcome. But it is clear there was no respectable way to make a counter argument. So it would be embarrassing to have attempted to refute the authority of Advisory Opinion. And therefore it probably appeared preferable to ignore it rather than arguing with it. But I think that only underscores the central point that if such pronouncements of international law are to be taken seriously, it is up to the peoples of the world to do so. Governments are not prepared to do it. And it is important that the disillusionment that comes from this failure of the intergovernmental system does not entirely undermine the Palestinian confidence in the achievement of fundamental rights, including by peaceful means. It is very important for such struggles that pronouncements of international law are not allowed to be treated as mere words or worse - propaganda in the

hands of the powerful. And that is true for the UN as well. It depends on this peoples' enforcement. And that is what undermined the legitimacy of East European governments in the last stage of the Cold War.

A fourth point, very important one, is that Israel's response to the Advisory Opinion is so important to emphasise - not only of the wall itself but because it is a microcosm of Israeli violations of international humanitarian law and of the human rights of the Palestinian people. It is of course not only the wall that is illegal and that is causing great suffering. It is also the settlements that are protected by the wall. It is also the whole pattern of continuing unlawful occupation. And in recent months it has become most salient in relation to the imposition of collective punishment on the people of Gaza. That includes not only the attacks of December but also the continuing blockade of essential goods and even reconstruction materials.

There is a fifth point which is connected with the false use of security as rationale for this wall. This is important for political understanding. If the objective was security, then there would be little incentive to defy international law by constructing it on Palestinian territory. But it is quite clear that part of the motivation was to seize additional land so as to be in position to not withdraw from the whole of the occupied Palestinian territories, but also to insulate the illegal settlements from any future peace process. So, in other words: the wall also hides and expands other aspects of unlawful occupation. It is not about security. The fear was penetration of pre-1967 Israel, but 90.000 Palestinians are now trapped in the zone between the wall and the 1967 boundary. They would be angered by this. And the wall does not stop rockets fired over it. So it is not about security. It is about land, it is about consolidating control over settlements, and giving the Palestinians a sense of being an imprisoned population that should see itself as having no option but to surrender.

The sixth point is that there is such a failure to uphold international law - five years passed and the wall is still being built. Why should we call attention to this embarrassing set of circumstances? And what I would suggest - and I think it goes to the situation as it more broadly exists - is that this un-enforced and unlawful activity is a very important element in the conduct of what I call the second war. This is the legitimacy war which is often overlooked. These conflicts are often conceived in relation to the military relation of forces. But if you look at the crucial conflicts of the last half century: most of them were resolved not on the military battlefield (the first war) but in terms of who eventually prevailed in the legitimacy war. And this Advisory Opinion is an enormous help for waging the legitimacy war for which the entire world is - in a sense - a symbolic battlefield. And if again the anti-apartheid movement is a very good instance of understanding how, what appeared to be the militarily weaker side, suddenly changed the climate through its mobilisation of civil society throughout the world. And this is happening with regard to the Palestinian struggle. They are winning the legitimacy war. There is an active robust movement. To encourage boycotts of sports and culture, to boycott academic institutions. To encourage companies to divest, especially with regard to ties with the occupation. The United States had total military dominance in Vietnam, it won every battle and lost the war. It is very important not to exaggerate the relevance of military power. In that sense it is restoring our confidence in the power of people that is really at stake in this struggle at this stage. Thus in emphasizing this Advisory Opinion we are calling to people throughout the world to join in this conduct of the legitimacy war. We are witnesses to the helplessness of the UN and the world of states to achieve justice for the Palestinians. And as so often in the past the hope of the oppressed lies not with the power centres of the world but with the peoples of the world, as the true creators of history. We are all, whether we acknowledge it or not, potential participants in this legitimacy war. And I end with the words of the great Jewish philosopher Abraham Heschel, who said, and I quote: few are guilty but all are responsible. And we all are responsible. Thank you very much.