



Islamabad Institute of  
Conflict Resolution - IICR



Legal Forum for  
Kashmir - LFK



*Expert Series*

# Military Occupation, Settler Colonialism & International Law

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PROF. DR. RICHARD A. FALK



## ABOUT IICR

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**Islamabad Institute of Conflict Resolution – IICR** is Islamabad based independent and nonpartisan research institute (think-tank) ardent to being a source of impartial research for the government officials, scholars, journalists, young researchers, activists, and academicians. It deems to work on regional and global security issues in an unbiased manner and initiate discourses on conflict and conflict resolution.

To strengthen the debate on peaceful coexistence, geo-political to geo-economic shift, and to avert the future crisis, IICR works with governments, think-tanks, universities, journalists, field experts, policy makers, and civil societies.

IICR is on mission to link research and policy through analysis and youth training to comprehend the state policies and global affairs. IICR aims to conduct in-depth research to propose sound solutions and policy recommendations to deal with humanitarian and security challenges of Pakistan and the region.

[www.iicrpk.org](http://www.iicrpk.org)

## ABOUT LFK

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The **Legal Forum for Kashmir - LFK** is an international legal Advocacy group working on the conflict in Kashmir. Its members are indigenous people of the occupied territory in Jammu and Kashmir. The aim of the organisation is to defend the political, social and human rights of Kashmiris and to promote the UN sanctioned Right of Self-Determination.

In today's world, the notion of conflict resolution necessitates that those who continue to be denied their rights or remain excluded be given an opportunity to present their case. Unfortunately, it remains the case that Kashmiris themselves continue to be marginalised, even invisibilised, in most discussions or narratives on the conflict. LFK has, therefore, been established to fill the gap, providing an international forum through which its members can become effective participants and contributors in the international community.

LFK works to address the consequences of marginalisation, working with its members. As an independent organisation, LFK advocates, nationally and internationally, the Right of Self-Determination and respect for human rights in Occupied Kashmir through legal research, documentation and capacity-building to address, under international law, the violations of individual and collective rights of Kashmiris.

[www.lfkashmir.com](http://www.lfkashmir.com)

A close-up portrait of Prof. Dr. Richard A. Falk, an older man with a white beard and balding head, wearing a dark suit and a blue lanyard. He is speaking into a microphone with a red dot, and his right hand is raised in a gesture. The background is a blue wall with a faint UN logo.

## PROF. DR. RICHARD A. FALK

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**Richard Anderson Falk** is Albert G. Milbank Professor Emeritus of International Law at Princeton University and Visiting Distinguished Professor in Global and International Studies at the University of California, Santa Barbara. In 2001, he served on a three-person Human Rights Inquiry Commission for the Palestine Territories that was appointed by the United Nations, and previously, on the Independent International Commission on Kosovo.

He is the author or coauthor of numerous books, including *Religion and Humane Global Governance*; *Human Rights Horizons*; *On Humane Governance: Toward a New Global Politics*; *Explorations at the Edge of Time*; *Revolutionaries and Functionaries*; *The Promise of World Order*; *Indefensible Weapons*; *Human Rights and State Sovereignty*; *A Study of Future Worlds*; *This Endangered Planet*; co-editor of *Crimes of War*. He serves as Chair of the Nuclear Age Peace Foundation's Board of Directors and as honorary vice president of the American Society of International Law. Falk also acted as counsel to Ethiopia and Liberia in the Southwest Africa Case before the International Court of Justice. He received his BS from the Wharton School, University of Pennsylvania; LLB from Yale Law School; and JSD from Harvard University. In March 2008, the United Nations Human Rights Council appointed Falk to a six-year term as a UN Special Rapporteur on Palestinian human rights.

## Question 1: Professor we'd like to hear from you about certain aspects of the military occupation and settler colonialism. How has International law and International Humanitarian Law failed Palestinians, Kashmiris, and people in other occupied territories, protect people under the Jus in Bello?

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**Prof. Falk:** Thank you very much. These issues have preoccupied me for many decades. And they've often frustrated me because international law is not implemented very effectively unless it is supported by strong political will. In other words, the legal having international law on your side is helpful in mobilizing support in civil society.

But it doesn't create a transforming politics. Unless other factors are present, as the Palestinian people have another like Western Sahara have discovered if geopolitics interferes, it has generally achieved control over any changes that would go in the direction of self-determination of the people of the affected place in this instance, Kashmir.

And that tells the story until there is a sufficient mobilization of opposition within the country that effectively diminishes the influence of external actors.

And so far, India has been successful in suppressing internal dissent and internal claims of self-determination and has been able to maintain a discriminatory framework of control.

So, you have that as the background and international law is definitely on the side of the Kashmiri geopolitics proven prevents that right under international law to be implemented.

And it will only change if the power tanks on the ground are mounted a sufficient challenge to the control mechanisms that are imposed at the present time. So, that presents my introductory view of the situation but you are free of course, to ask any follow-up questions.



## Question 2: Despite numerous resolutions passed by UNSC on Palestine and Kashmir for respecting the right of Self-determination, both are under prolonged military occupation of India and Israel. The occupying powers use their military might and exceptional soft power to block such resolution, moreover the international community is also taking side of aggressor frustrating international law. What are the other remedies for the oppressed peoples in Palestine and Kashmir?

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**Prof. Falk:** That's a very important question. And there is no easy answer. Each situation is unique and has to be understood in relation to its particular geographic and historical and geopolitical context. Having said that, one advantage that Kashmir has from a legal political point of view is that India is not a permanent member of the Security Council, and therefore, has no right of veto.

The Palestinians have suffered from the fact that the United States consistently cast its right. It casts a veto in support of Israel's unlawful behavior. So, you do have an important legal distinction there. Still, as your question suggests, India is able to use its soft and hard power to frustrate the implementation of international law.

No matter how many resolutions are passed in favor of the Kashmiri right of self-determination.

It has succeeded in being able to block them up to this point. And one can only see a change in that structure of frustration in the event that other geopolitical actors seem to intervene on the Kashmiri's side, particularly the United States and secondarily, perhaps, China, or Russia, but these probabilities are quite remote because they would be seen as creating major geopolitical tension.

And so the best prospect, as I've suggested in my earlier remarks, would be for the Kashmiris themselves to make Kashmir ungovernable as a dominated place of occupation, it is only by making it ungovernable as well as illegitimate that the situation may be subject to him important modification

### Question 3: How do you see the contemporary armed liberation movements as far as Kashmir or Palestine is concerned, solely resisting the occupation?

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**Prof. Falk:** As I suggested, each situation has originality based on the facts on the ground, and certain intangible issues such as the leadership of the opposition to the leadership of the occupying power, and the degree to which the occupying power is prepared to pay heavy costs for maintaining the occupation. And the degree to which the indigenous people, the people claiming self-determination, are prepared to sacrifice their lives and their well-being in order to secure liberation.

In other words, it is a struggle of the sort that was characterized by several anti-colonial wars. One thing, especially the Vietnam War that went on for first, a decade with the French, and then another decade, with the US. And that kind of mobilization under these conditions is extremely difficult for the Kashmiris because they don't have access to sufficient international support, at least at this stage, to combine their internal struggle with international solidarity initiative.

See, one of the things that helped Vietnam immensely, was the degree to which the Vietnamese struggle was able to gain support from Peace minded people and groups and even governments around the world.

And it was very effective in mobilizing support and part of the effectiveness was a result of a large number of overseas expatriate Vietnamese.

The unity was somewhat politicized, especially in France. They played a very big role in creating an atmosphere with which did eventually impose such heavy costs on the occupier that it gave up the occupation.

And it's in that context that one has to think of Kashmir, ***How can it mobilize the international community to support the struggle inside Kashmir, in the event that the strategy of pursuing self-determination by making Kashmir ungovernable or governable, only at an unacceptable price? How is that possible tactically?***

I'm not sufficiently familiar with the particulars of either the Indian situation or the Kashmiri situation to give an intelligent answer on that the only additional thing I would say is India itself managed its war of colonial liberation from Great Britain partially by Gandhi very effectively mobilizing supportive international opinion and maybe one can learn from these experiences to devise a tactical strategy that will have meaningful results.



#### Question 4: You have been advocating and supporting BDS movement of Palestine against Israel, what would be your suggestions when Kashmiris face a similar problem? Also, what is the role of International Criminal Court (ICC) or having some Independent Criminal Tribunal for Atrocity crime perpetrated by India in Kashmir?

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**Prof. Falk:** Here as I have been saying, I'm not familiar with the originality and peculiarity particularity of the Kashmiri situation sufficiently to give that kind of pragmatic answer. The BDS movement has been successful, partly because there is a lot of Palestinian presence and activism on which to build a movement, especially in Europe and the United States. And there is a lot of unease even among liberal Jews so you have an atmosphere where such solidarity initiatives can find support. At this stage, there isn't enough awareness of the Kashmiri problems, at least in the west, to enable such a tactic to have much hope of success in the short run at any rate.

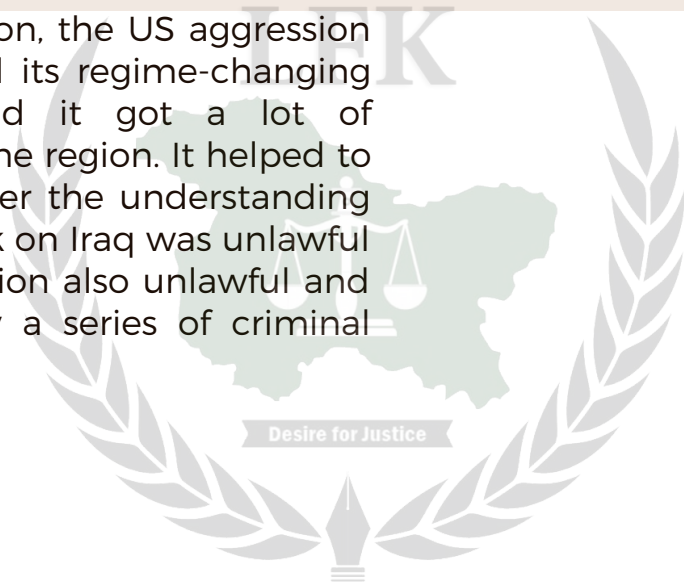
Yes, I think the three things that are suggested by what you just said. **First**, *'an appeal to the Human Rights Council in Geneva'*. Developing this argument for abuse, abuse of occupation, torture, and other fundamental encroachments on human rights over a long period of time, and the need to appoint a special rapporteur for Kashmir. There's such a Special Rapporteur for Palestine, which I actually served for six years. And it's continuing to the present, it can't change, the situation on the ground, but it can add to the symbolic movement in favor of Kashmir on an international level, which at some point will be translated into a substantive movement that can achieve change.

So, I would encourage the exploration of whether that support can be found through a sympathetic government with the establishment of a Special Rapporteur for Kashmir, based on these various facts, I suppose Pakistan would be the logical sponsor of such a call for a new special rapporteur, but there may be other countries that would join with Pakistan.

A **second** initiative would be to *'submit the evidence that you just recited through a government or through individuals, or an NGO, to the International Criminal Court in The Hague'*, and call for a formal investigation of Indian India's crimes associated with the occupation. I'm under the impression that India, as you suggested is not a party to the Rome Statute governing the ICC, and therefore, it's more problematic to try to use the ICC. But it's been somewhat successfully used by the Palestinian Authority in calling for an investigation of Israeli crimes since 2014 when it became a party itself to the statute.

So, you'd have to get a country that was a party to the statute to call for this investigation, and therefore to endow the International Criminal Court with jurisdictional authority. The **third** and most easily viable action that could be taken would be the *'formation of a people tribunal'*.

Project Most healthfully in a country that was concerned with the issues, but was not seen as a part of them to either side in the issues and have expert testimony and a panel of jurors or judges who ideally would be highly respected and draw media attention and be credible in that role that has proved to be very effective in these situations where geopolitics by blocks the implementation of international law, there was a very effective Iran Iraq war tribunal in Istanbul in 2005. That drew into question, the US aggression against Iraq, and its regime-changing intervention. And it got a lot of publicity the in the region. It helped to make much wider the understanding of why the attack on Iraq was unlawful and the occupation also unlawful and characterized by a series of criminal acts.





**Question 5: Do you think the multilateral organizations (primarily UN) are actually a part of this mess as they have failed to resolve the long-standing issue of Kashmir, and due to their incapacity, they have been aiding the initiation of settler colonialism or prolonging this military occupation? Isn't it a failure of the multilateral organizations?**

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**Prof. Falk:** Yes, well, I tried to indicate my understanding of how to make use of the International UN system. These resolutions that have supported Kashmiri's self-determination have not been capable of being implemented in view of India's opposition. And so I think the appeal by way of the Human Rights Council is the most opportune way to use existing multilateralism on behalf of the Kashmiri struggle.

And as I suggested, it could be complemented by an appeal to civil society through the formation of a high-level people's tribunal that documented the abuse of Palestinian of Kashmiri rights and tried to bring forth evidence of the crimes that have been committed against the Kashmiri people over a period of 74 years. That couldn't be a very powerful document.

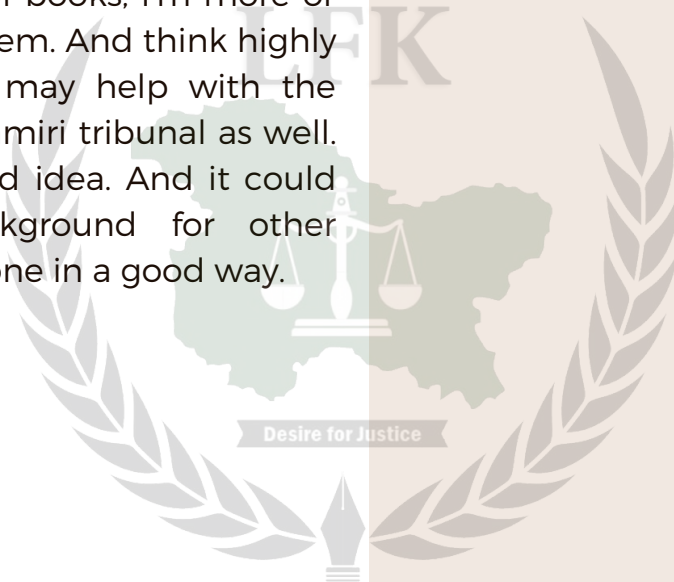
It was very effective also in the Philippines in opposition to the dictatorship of Ferdinand Marcos and led to the uprising of the so-called People Power Revolution led by Maria Corazon Aquino initially back in the 1980s. So, this tactic of using civil society tribunals as a way of mobilizing popular support and educating a much wider segment of the public has a long and I think important history.

## Question 6: In conclusion, how do you see the Third World approach to international law?

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**Prof. Falk:** I think that's a very good suggestion. You know, that there is Third World Approaches to International Law (TWAIL) organization. And I would encourage you to ask them to devote a special issue to the Kashmir problem.

They have a journal, and they're also producing a series of books, I'm more or less involved with them. And think highly of them that they may help with the organizing of a Kashmiri tribunal as well. So that's a very good idea. And it could serve as the background for other initiatives if it was done in a good way.







## **EXPERT SERIES**

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A project launched by Islamabad Institute of Conflict Resolution - IICR in collaboration with Legal Forum for Kashmir - LFK to document the expert opinion on Military Occupation, Settler Colonialism and International Law with reference to Indian Occupied Kashmir.