



**DEPORTATION OF PALESTINIANS AND OTHER ISRAELI PRACTICES
AMONG THEM THE MASSIVE IMMIGRATION AND SETTLEMENT OF
JEWS IN ALL OCCUPIED TERRITORIES IN VIOLATION OF
INTERNATIONAL LAW PARTICULARLY THE FOURTH GENEVA
CONVENTION OF 1949**

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DEPORTATION OF PALESTINIANS AND OTHER ISRAELI PRACTICES AMONG THEM THE MASSIVE IMMIGRATION AND SETTLEMENT OF JEWS IN ALL OCCUPIED TERRITORIES IN VIOLATION OF INTERNATIONAL LAW PARTICULARLY THE FOURTH GENEVA CONVENTION OF 1949

I. INTRODUCTION

A. Background

1. The item “Deportation of Palestinians in Violation of International Law particularly the Fourth Geneva Convention of 1949 and the Massive Immigration and Settlement of Jews in Occupied Territories” was taken up, at the AALCO’s Twenty-Seventh Session, held in Singapore (1988), at the initiative of the Government of the Islamic Republic of Iran.¹ The Government of Islamic Republic of Iran, after a preliminary exchange of views had submitted to the AALCO Secretariat a Memorandum, and the Secretariat was called upon to study the legal consequences of the deportation of Palestinians from occupied territories.

2. At the Thirty-Fourth Session held in Doha (1995) the Organization, *inter alia* decided that this item be considered in conjunction with the question of the Status and Treatment of Refugees. At its Thirty Fifth Session (Manila, 1996) after due deliberations the Secretariat was directed to continue to monitor the developments in the occupied territories from the view point of relevant legal aspects.

3. At the subsequent Sessions, the scope of the item was enlarged, *inter-alia*, to include, at the Thirty-Seventh Session, “Deportation of Palestinians and other Israeli Practices”, and the item “Deportation of Palestinians and other Israeli Practices among them the Massive Immigration and Settlement of Jews in the Occupied Territories in Violation of International Law Particularly the Fourth Geneva Convention of 1949” was placed on the agenda of the Thirty-Eight Session (Accra 1999).

4. At the Thirty-Ninth (Cairo, 2000) Session, it was decided to further enlarge the scope of the item and the Secretariat was directed to monitor the developments in (all) occupied territories from the viewpoint of relevant legal aspects. The item has since been seriously discussed at the successive Sessions of the Organization as part of its Work Programme.

B. Deliberations at the Fiftieth Annual Session of AALCO (2011-Colombo, Democratic Socialist Republic of Sri Lanka, 27 June – 1 July 2011)

5. **Dr. Hassan Soleimani, Deputy Secretary-General of AALCO** introduced the agenda item and said that the Blockade of Gaza, a very critical aspect of the Israeli/Palestinian conflict,

¹ During that Session the delegation of the Islamic Republic of Iran pointed out that: “The Zionist entity (Israel) had deported a number of Palestinians from Palestine, the deportation of people from occupied territory, both in past and recent times constitutes a violation of the principles of international law, as well as, provisions of international instruments and conventions such as the Hague Conventions of 1899 and 1907, the UN Charter of 1945, and the Geneva Convention Relative to Protection of Civilian Persons in time of War, 1949 all of which prohibit deportation as a form of punishment, in an occupied territory.”

was put in place by Israel in June 2007. On 15 June 2011 the Gaza Strip has entered the fifth year of a full blockade by land, air and sea. Since the blockade started, it had left more than 1.5 million Palestinian men, women and children trapped in the Gaza strip. The closure of all its borders, had in fact taken away from the Palestinian civilians their “right to seek refuge in other territories”, a situation that had the potential of acquiring yet another violation of human rights of Palestinian people. He added that the blockade of Gaza was a form of “collective punishment”, and Israel’s continuing blockade of Gaza represented a flagrant violation of international law. The massive military operation in the occupied Gaza Strip had caused grave violations of international humanitarian law and the human rights of the Palestinian civilians therein. The illegal Israeli siege imposed on the occupied Gaza Strip, including the closure of border crossings and the cutting of supply of food, medicine and fuel, constituted collective punishment of Palestinian people and had lead to terrible humanitarian and environmental consequences. Recently the UN Relief and Works Agency for Palestine Refugees (UNRWA) had estimated an unemployment rate of 45.2 percent, one of the highest rates in the world.

6. Thereafter, he stated that the Israeli settlement of Jewish population in OPT was in clear violation of article 49 of the Fourth Geneva Convention. These acts were intended to change the physical character and demographic changes in the OPT. The DSG added that equally disturbing were the recent developments in East Jerusalem, including the increase in the number of demolitions. The DSG recalled that in July 2004, the International Court of Justice (ICJ) had issued its landmark Advisory Opinion confirming the illegality of building the wall in the West Bank and the illegality of building settlements in the Occupied Territory, and deplored that the historic ruling ICJ remained a dead letter and the Israeli Government had continued the construction of the wall and building settlements in defiance of the Advisory Opinion and in violation of the Fourth Geneva Convention and the General Assembly resolutions. The DSG mentioned that in September 2011 the Question of the Statehood of Palestine (UN Resolution 377, “Uniting for Peace”) would be discussed at the Sixty-Sixth Session of the United Nations General Assembly. Thereafter he noted that deliberations at the previous Annual Sessions of AALCO reaffirmed that the resolution of the Israeli-Palestinian conflict through negotiations should be firmly placed on the principles of international law. It was also very important to take into account the widely supported United Nations Security Council and UN General Assembly resolutions 242, 338 and 1515 which affirm the legal obligation of Israel to withdraw from Palestinian territories obtained in 1967.

7. The Delegations of **Palestine, Japan, Pakistan, Democratic People’s Republic of Korea, Islamic Republic of Iran, Arab Republic of Egypt, Bangladesh, Republic of Indonesia, State of Qatar, and Malaysia** presented their statements on the topic.

8. The **Delegation of Palestine** made a power point presentation wherein the delegation traced the history of the Israeli-Palestine conflict since the 1967 war and the subsequent developments that had adversely affected Palestine in all aspects. The delegation decried the continuing colonial settlement put in place by Israel in violation of the principles of international law, humanitarian law and the human rights law. The delegation emphasized that they had come to participate at the Fiftieth Annual Session of AALCO with a collective dream of a whole nation which was sick and tired of the ongoing conflict for more than six decades and unfortunately the agony continued. The delegation said that the international community through the United

Nation's General Assembly in 1947 decided to partition Palestine into two States. The Jewish State had been in existence since 1948 and the time had come that the Palestinian people got their independent State. Deportation of Palestinians, the delegation said, had started even before the creation of Israel with the objective of displacing the Palestinians with Jewish settlers and since then the Palestinian people has been subjected to a systematic campaign of displacement either at the hand of Israel or indirectly as a result of the difficult situation that existed. Therefore the time had come to address the issue of the displaced Palestinians. In conclusion the delegation hoped that when the matter was taken up at the forthcoming Sixty-Sixth Session of the UN General Assembly, their aspirations would be met. In that regard, the delegation sought the support of Member States of AALCO.

9. The **Delegation of Japan** shared the concerns expressed by many delegations about the conditions in the occupied territories, particularly in the Gaza Strip. The delegation recognized new measures announced by Israel regarding the admission of entry into Gaza of civilian goods, but would keep an eye on their full and prompt implementation so that it would lead to actual improvement in the social and living conditions of the Palestinian people. The delegation was glad to inform that six humanitarian assistance projects in Gaza, undertaken by Japan which had been suspended by Israel were recently admitted to restart.

10. With regard to the Israeli settlement activities in the West bank, including East Jerusalem, Japan had repeatedly called Israel to completely freeze those activities. Having said that, the delegation added that Japan firmly supported a two-state solution whereby Israel and a future independent Palestinian State live side-by-side in peace and security, which would most probably be achieved based on 1967 lines, with mutually agreed swaps. At the same time, the delegation was convinced that the best and only way to achieve that goal was through direct negotiation, based on the relevant UN Security Council Resolutions, the Madrid Principles, the Road Map, the agreements previously reached by the parties and the Arab Peace Initiative. The delegation requested AALCO members to help create an environment conducive to such direct negotiations between the Palestinians and the Israelis.

11. The **Delegation of Pakistan** stated that presently the situation in the occupied Palestinian territories was experiencing substantial developments. The ceasefire was a positive development which had created an atmosphere of relief, and hoped that the situation in the Palestinian territories would improve to the satisfaction of the Palestinian people. On the other hand the hope that the Annapolis process had given seemed to be fading due to the continued illegal settlements being pursued by Israel, in total disregard of the relevant UN resolutions, international law and norms were aimed at changing the demographic structure of the areas and were detrimental to the interests of the Palestinian population. However, on the economic front the Donors Conference in Paris and the Investment Conference were encouraging.

12. The delegation added, that Pakistan denounced the illegal practices of settlements and desecration of the Al-Aqsa, which has immense spiritual importance for the Muslims throughout the world. Such and other Israeli actions aimed at changing the demographic composition and character of Al-Quds Al-Sharif, were against the provisions of international law, UN Resolutions as well as the voice of the international community and would seriously jeopardize the peace process. Pakistan supported the international efforts of the international community on ending

such Israeli violations and called on Israel to respect international humanitarian law and stop the illegitimate activities, lift the siege on Gaza and take all measures for preservation of the Holy places. Finally, the delegation supported the resolution of the Palestinian issue in accordance with the relevant United Nations Security Council and UN General Assembly resolutions, with Al Quds Al Sharif as its capital.

13. The **Delegation of the Democratic People's Republic of Korea** said that despite the number of UN Security Council and General Assembly resolutions adopted to end the violation of international law by Israel in the occupied Palestinian Territories on the well established principles of international law yet there was no solution in sight to the plight of the people of Palestine. The delegation appreciated the fact that AALCO had since a long time deliberated on the important issue and represented the positions of its Member States in other international fora like the United Nations. The delegation reaffirmed their country's support and solidarity to the struggle of the Palestinian people for the restoration of their legitimate right including the right of self-determination; right to return to the State, the right to establish an independent State and the struggle of Arab people to achieve lasting peace in the Middle East.

14. The **Delegation of the Islamic Republic of Iran** appreciated the document prepared by the AALCO Secretariat on the topic. The delegation condemned the Israeli Authorities for breaching the International human rights and humanitarian law by preventing the humanitarian aids from the people of Gaza strip. The delegation added that the experts in the Human Rights Council had confirmed that Israeli political and military officials had committed international crimes, in particular war crimes and crimes against humanity and the crime of genocide. The result of investigations done by some regional and international organizations lead to the fact that Israeli officials and soldiers were responsible for committing those crimes in Gaza. These facts the delegation added were in full public knowledge and in that regard posed a question, what was the "shared responsibility" to react against those heinous crimes and what role the organization could play in that respect.

15. The delegation added that the Government of Iran on many occasions and in different forums had announced that the Israeli criminals should be brought to justice for their actions or omissions. The delegation believed that currently the international community was confronted with a situation, in which all the governments as well as the international community could demonstrate that "all are equal before the law" and to show its veracity and impartiality to confront the international crimes. Finally, the delegation said that Islamic Republic of Iran believed that the world community should in a united manner take urgent measures to stop future criminal attacks which bore all the trademarks of collective punishment, crimes against humanity and war crimes. In addition the international community must urge the occupying power to fulfil its obligations and pay due attention to the conclusions of the ICJ Advisory Opinion presented in the case concerning the "Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory".

16. The **Delegation of the Arab Republic of Egypt** said that the Israeli actions in the occupied Palestinian territories were in flagrant violation of all established principles of international law and were a grave threat to the peace and security of the Middle East and the world in general. Therefore it was vital that the international community cooperated to bring that

dangerous situation to an end. For that it was necessary that Israel remove all the illegal settlements from the Palestinian Occupied Territories and remove the separation wall, which were the cause of major hardships to the people of Palestine. The delegation said that the new Government in the Arab republic of Egypt was doing its best to ease the situation in the Middle East. The delegation said that the Egyptian position had been made in many previous sessions of the Organization, and maintained that Israel should end its occupation of Palestinian territories and restore the 1967 borders, and arrive at a solution based on the principles of peace and justice.

17. The **Delegation of Bangladesh** appreciated the report prepared by the AALCO Secretariat on the topic and agreed with the draft resolution annexed therewith and accordingly called upon AALCO member countries to take necessary measures to implement the items contained in it. The delegation through their General Statement had stated that Bangladesh position had been categorical and consistent in extending full support to the Palestinian people including their right to have an independent State of their own with Jerusalem as its capital based on the various principles of international law, the four Geneva Conventions and the implementation of the relevant United Nations Security Council resolutions particularly 338, 425 and 242 and General Assembly resolutions on the formula for peace calling upon Israel to withdraw from all occupied Palestinian territories and also relevant resolutions on the return of Palestinian refugees to their own land . Bangladesh also extended full support to any development aimed at resolving the Arab-Israel dispute calling for a lasting and durable peace. The following important issues were flagged which had to be taken into account by the international community: (i) inalienable rights of the Palestinian's return to their homeland; (ii) taking into account the pre-existing border before the 1967 Arab-Israeli war; (iii) recognizing the rights of the Palestinian people to have Jerusalem (Al Quds Al Sharif) as its capital and (iv) Israeli settlements in all the occupied Palestinian territory must be stopped.

18. The **Delegation of the Republic of Indonesia** said that the Israeli-Palestinian conflict had been a fundamental and lasting dispute between Israel and the Arab countries due to which a long suffering had been caused to the innocent civilian people. Many efforts to reach peace had been made but they had been halted by Israel's accelerated establishment of illegal settlement and wall construction in West Bank including East Jerusalem. The delegation felt that that atrocity undermined all efforts to restart peace talks between Palestine and Israel, jeopardizes the vision of the two-state solution and further complicates the conflict in the region. The delegation stressed the urgency of undertaking efforts to help advance a fair and credible peace process based on the relevant UN resolutions, including the UNSC resolutions 242, 338, 425, 1397, 1515 and 1850, the Madrid terms of reference, including the principle of land for peace, the Arab Peace Initiative and the Quartet Roadmap, bearing in mind the objective of achieving a peace settlement by September 2011.

19. Indonesia believed that illegal Israeli actions in the Palestinian Occupied Territories could neither help the cause of peace, nor could Israel reasonably expect them to be allowed to stand unchallenged. The delegation added that it was time to halt the illegal policies that breed hatred, violence and tension. The delegation reiterated their governments support to the Palestinians legitimate struggle to establish their own state based upon the vision of two states living side by side in peace and harmony. Lastly, in line with the result of the 16th Ministerial Conference and Commemorative Meeting of the Non-Aligned Movement held in Bali, Indonesia

on 23-27 May 2011, the delegation urged the Members of AALCO that had not yet extended recognition to the State of Palestine to do so and hoped that AALCO members would remain at the forefront of support for the historic march of the Palestinian people to freedom and peace.

20. The **Delegation of the State of Qatar** said that the establishment of Israel was illegal and its atrocities against the unarmed people of Palestine were in flagrant violation of principles of international law. The delegation said that it was difficult to imagine the suffering of the people of Gaza who were denied access to all humanitarian and medical aid, and whatever aid was forthcoming it was blocked by Israel, therefore the delegation requested the members of AALCO to continue to give legal support to the people of Palestine.

21. The **Delegation of Malaysia** stated that Israel's occupation of Palestine had been an issue of concern at the international fora for a very long time. The delegation maintained that these atrocities in Palestine had been going on for a long time and these acts of violence were against the Security Council Resolution 446 (1979) which called upon Israel as the occupying power to abide by the Fourth Geneva Convention of 1949. These acts had been condemned by the world community being inhuman and amounting to grave breaches of international law particularly human rights law and international humanitarian law. The denial of rights to the Palestinian people had worsened due to the continuous illegal settlements. The delegation also condemned the blockade of Gaza which severely hindered the progress towards reconstruction in the Gaza strip and hamper the movement of people. The delegation said that even though Israel had lifted the blockade the attack by Israel on MV Mavi Marmara, a humanitarian convoy went against principles of international law. Lastly, the delegation urged the international community to compel Israel to end its inhuman and illegal practices immediately; including the building of settlements in the occupied territories and the time had come for the international community to turn the words to tangible action by bringing to halt Israel's violation of Palestinian rights. The delegation added that violence had undermined the foundation of the peace process between Palestine and Israel and the solution to that must be based upon compromise between both Parties and not on conflict and violence.

22. Pursuant to RES/50/S 4 adopted at the Fiftieth Annual Session of AALCO on 1st July 2011, the AALCO Secretariat closely followed the events in the occupied territories from the view point of relevant legal aspects during the period from September 2011 till March 2012, and ascertained that the situation of human rights in the Occupied Palestinian Territory has seen a significant deterioration in many parts of the Territory, particularly in the Gaza Strip. Another significant event during the reporting period was the discussion centered on the "Statehood" of Palestine in the United Nations General Assembly and the response that it elicited from the Member States. The events reported in this brief as well as the efforts of the international community towards the situation in the Occupied Palestinian Territories, are illustrative of the events during the last one year and are in no way exhaustive.

C. Issues for focused deliberation at the Fifty-First Annual Session of AALCO, 2012

1. Violations of international law, particularly international human rights law and humanitarian law, committed by the Government of Israel in the Occupied Palestinian Territory (OPT)

- *Special focus on the Renewed Israeli military excesses in the Occupied Palestine Territories with reference to the Fourth Geneva Convention of 1949 and United Nations Security Council and General Assembly Resolutions*
- *War Crimes committed in Gaza by Israeli forces including blockade of Gaza*
- *The developments in the ICC and the recent decision of the ICC Prosecutor*

2. Establishing peace in the Middle East

- *The role of the international community to pressurize Israel to comply with its international obligations*
- *Highlighting the need for establishing an independent sovereign State of Palestine as a prelude to establishing everlasting peace in the Middle East*

II. ISRAEL'S VIOLATION OF INTERNATIONAL LAW, PARTICULARLY INTERNATIONAL HUMANITARIAN LAW AND HUMAN RIGHTS LAW

23. For well over four decades, Israel has administered a military occupation of the West Bank, the Gaza strip and East Jerusalem in consistent and relentless defiance of the will of the international community.² The international consensus has been expressed through widely supported resolutions passed by the UN Security Council (UNSC) and UN General Assembly (UNGA). The Security Council Resolutions 242 and 338 affirmed the legal obligation of Israel to withdraw from Palestinian territories occupied in the 1967 six-day war. This must be the end point of any peace process that can lead to a lasting and just peace. However, Israel the occupying power continues to defy the will of the international community, and the horrific atrocities perpetrated on the civilian population in the OPT beginning from 27th December 2008, which continue in one form or the other till date have clearly demonstrated this trend.

A. Violations of Fourth Geneva Conventions in the Occupied Palestinian Territory (OPT)

24. Until such time as Israel respects its obligation under the Fourth Geneva Convention concerning the Protection of Civilian Persons in Time of War, 12 August, 1949, as well as other principles of international law in particular those provisions of the Convention that require an occupying power to protect the status quo, human rights and prospects for self determination of the occupied people, violations of the rights of Palestinian civilians shall continue. The Convention also obliges all State Parties to enforce the Convention in the face of “grave breaches”. Since 1967, Israel has refused to accept this framework of legal obligations. Not only has it failed to withdraw from the occupied territories, but during the occupation, Israel has created heavily armed settlements, bypass roads and security zones in the midst of a future Palestinian State that seriously compromises basic Palestinian rights.

25. Various provisions of the Fourth Geneva Convention dealing with the protection of civilians are applicable to the Occupied Palestinian Territory (OPT). There have been large-scale violations of the Convention obligations by Israel to the utter dismay of the international community. Both parties to the conflict are parties to the Geneva Conventions.

². Beyond Oslo: The new uprising International law and the al-Aqsa Intifada – Middle East Report 219, Winter 2002

26. Israel claims that it is not in “occupation” of OPT but is in “administration” and therefore, does not come under the purview of the Fourth Geneva Convention and the law of belligerent occupation. To justify its position Israel resorted to legal fiction and attempted to bring forth doctrinal justification developed in vacuum. Accordingly, Missing Reversioner theory was developed to strengthen its arguments for its non-compliance with Fourth Geneva Convention and law of belligerent occupation.³ This theory contended that Jordan and Egypt were not the legitimate sovereigns in OPT. Since there was no ousted legitimate sovereign “a missing reversioner” to whom the territory would revert, Israel could make possession of OPT given that Israel has a relatively stronger title to the territories. This is argued on the basis of strange interpretation of common article 2 of the Geneva Conventions. Article 2 reads: “The Convention shall...apply to all cases of partial or total occupation of the territory of a High Contracting Party...” Thus it is argued that the object and purpose of the law of belligerent occupation is to protect the rights of the ousted sovereign holding valid legal title.

27. However, these justifications of Israel were strongly refuted by international law scholars⁴ as “strained and artificial in character”, and commanded little or no respect among “highly qualified publicists” or within the “organized international community” and also it did not receive any support from the international community.

28. In 1976, the President of the UN Security Council, after consulting all the members and concluding that the majority agreed, stated that, ‘The Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, is applicable to the Arab territories occupied by Israel since 1967.’⁵ In 1980, by a vote of 14 to none, with one abstention, the Security Council censured the enactment by Israel of a ‘basic law’ on Jerusalem, which it found to constitute a violation of international law that did not affect the continued application of the Fourth Convention.⁶ It decided not to recognize the ‘basic law’ and other actions seeking to alter the character and status of Jerusalem. Similarly, UN General Assembly also has been reiterating that Israel is bound by the obligations of the Fourth Geneva Convention in OPT. In its 5 December 2001 Declaration, the reconvened International Conference of High Contracting Parties to the Fourth Geneva Convention expressed its deep concern over the deteriorating humanitarian situation, reaffirmed the applicability of the Convention to Occupied Palestinian Territory, including East Jerusalem, and reiterated the need for full respect for the Convention in that Territory.⁷ It is of relevance to quote the International Court of Justice in this regard, which reiterated the paramount importance of the international humanitarian law:

³. The argument was first put forward by Yehuda Blum, ‘The Missing Reversioner: Reflections on the Status of Judea and Samaria’, 3 *Israel Law Review* 279 (1968).

⁴. See Richard A. Falk & Burns H. Weston, ‘The Relevance of International Law to Israeli and Palestinian Rights in the West Bank and Gaza’, in Emma Playfair, ed., *International Law and the Administration of Occupied Territories: Two Decades of Israeli Occupation of the West Bank and Gaza Strip*, (Oxford: Clarendon Press, 1992). 132. Yoram Dinstein, an Israeli professor of law at Tel Aviv University, has dismissed the theory being “based on dubious legal grounds”. Yoram Dinstein, ‘The International Law of Belligerent Occupation and Human Rights’, 8 *Israeli Yearbook on Human Rights* 104, 107 (1978); W. Thomas Mallison & Sally V. Mallison, *The Palestine Problem in International Law and World Order*, (London: Longman, 1986).

⁵. UN SC Presidential Statement: UN doc. S/PV.1922, 26 May 1976.

⁶. SC res. 478 (1980).

⁷. Conference of High Contracting Parties to the Fourth Geneva Convention: Declaration, Geneva, 5 December 2001.

“It is undoubtedly because a great many rules of humanitarian law applicable in armed conflict are so fundamental to the respect of the human person and “elementary considerations of humanity” as the Court put it in its Judgment of 9 April 1949 in the Corfu Channel case (I.C.J. Reports 1949, p. 22), that the Hague and Geneva Conventions have enjoyed a broad accession. Further these fundamental rules are to be observed by all States whether or not they have ratified the conventions that contain them, because they constitute intransgressible principles of international customary law... These rules indicate the normal conduct and behaviour expected of States.”⁸

29. Thus, Israel’s compliance with the Fourth Geneva Convention is not optional based on unilateral interpretations. Therefore, enumeration of Israeli activities in the OPT that violated the Fourth Geneva Convention and other relevant provisions of international law would become an exhaustive list as it has violated almost every provision of the Fourth Geneva Convention. Some of the glaring illegal activities of Israel are mentioned below.

1. Annexation and Illegal Expropriation of Palestinian Land

30. Since 1967, Israel has engaged in a systematic campaign of usurpation of Palestinian land in the OPT for the purpose of establishing exclusively Jewish colonies. This illegal campaign is implemented through two methods: one is annexation in and around occupied East Jerusalem and the second is the policies of expropriation in the remaining OPT. The Israeli government passed a number of Acts that extended its municipal law and jurisdiction to occupied East Jerusalem annexing the city in violations of international law. The law and policy of Israel in respect of other parts of OPT is also similar to that implemented in occupied Jerusalem with an exception that it has not been formally annexed. Host of military orders are used to implement these policies. For example, Military Order No. 59 (1967), permitting the Israeli government to declare all lands not registered with them as “State lands”, thereby restricting their use to Israeli authorities; Military Order No. 58 (1968), authorizing Israeli authorities to confiscate lands of those “absent” during the 1967 census; Military Order No. 70 (1967), allowing Israeli authorities to arbitrarily declare any locale a “closed military area” transferring all use to the State; Military Order no. 150, enabling the state to expropriate land belonging to “absentee” Palestinian owners, or individuals who were not accounted for in an Israeli census following the 1967 war; Military Order No. 321 (1968), authorizing the State to unilaterally expropriate Palestinian land for “public” purposes, which is always for the exclusive Jewish use; Military Order No. S/1/96, allowing Israeli authorities to unilaterally declare Palestinian land a “closed military area” and Military Order No. T/27/96, permitting Israeli authorities to expropriate Palestinian land for “public” purposes.

31. All these activities are clearly in violation of the Fourth Geneva Convention. Article 47 of the Fourth Geneva Convention makes annexation of the occupied land as an illegal act.⁹

⁸. *Legality of the Threat of Use of Nuclear Weapons*, Advisory Opinion, ICJ Reports, 1996, 226, 257, paras. 79, 82.

⁹. Article 47 reads as follows:

Similarly, article 147 of the Convention declares as a grave breach of any extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully.¹⁰ Article 146 of the Convention places an obligation on the High Contracting Parties to enact effective penal sanctions for persons who have committed, or ordered to be committed, "grave breaches" of the Convention. In addition, Article 146 requires each High Contracting Party "to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and [it] shall bring such persons, regardless of their nationality, before its own courts". If it does not do so, it must extradite such suspects to any other High Contracting Party on request if that state has sufficient evidence to commence a prosecution.

2. Jewish Colonial Settlements

32. For more than four decades now, the creation of Jewish Settlements has been a central component of Israel's efforts to consolidate control over the Gaza Strip and the West Bank, including East Jerusalem. Israeli settlement construction has served not only to facilitate territorial acquisition and to justify the continuing presence of Israel armed forces on Palestinian lands, but also to limit the territorial contiguity of areas populated by Palestinians and thereby to preclude the establishment of a viable independent Palestinian State.

33. Israel has been practicing its colonial settlement policy since 1967 which is aimed at settling the Jewish population in the OPT to make the local population a minority community and for other forms of subjugation. According to a plan prepared by Mattiyahu Drobles of the Settlement Department of the World Zionist Organization, in 1980; "the best and most effective way of removing every shadow of doubt about our intention to hold on to Judea and Samaria [i.e., the West Bank] forever is by speeding up the [Jewish colonial] settlement momentum in these territories. The purpose of settling the areas between and around the centers occupied by the minorities [that is, the Palestinian majority in the West Bank] is to reduce to the minimum the danger of an additional Arab state being established in these territories. Being cut off by Jewish settlements, the minority population will find it difficult to form a territorial and political continuity."¹¹

34. Thus, the total settlement population reached 213,672, in West Bank and Gaza Strip, 170,400 in East Jerusalem and 17,000 in Golan Heights.¹² These acts of settlement of Jewish

Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory.

¹⁰. Article 147 defines "grave breaches" as "wilful killing, torture or inhuman treatment, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, wilfully depriving a protected person of the rights of fair and regular trial, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly."

¹¹. Mattiyahu Drobles, master plan for the Development of Settlement in Judea and Samaria (1980), cited by Ardi Imseis, 'On the Fourth Geneva Convention and the Occupied Palestinian Territory', *Harvard International Law Journal*, Vol. 44, No. 1, 2003, p. 104.

¹². For more details in this regard see; <http://www.fmep.org/>

population in OPT is in clear violation of article 49 of the Fourth Geneva Convention which says that ‘the Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies’. These acts are intended to change the physical character and to bring demographic changes in the OPT. This policy is being continued by Israel despite its condemnation in unequivocal terms by the international community.¹³

3. Deportation of Palestinians

35. Israel has resorted systematically to deportation of Palestinians since 1967 onwards. These deportation decisions were taken summarily without any appeal procedure. The deported Palestinians included various groups of people like lawyers, professors, teachers, doctors, trade unionists, religious leaders and human rights activists. This is in clear violation of article 49 of the Fourth Geneva Convention, which prohibits deportation of protected persons from the occupied territory. Article 147 of the Convention also prohibits this act and categorizes it as the “grave breach” of the Convention.

36. Apart from the above-mentioned acts Israel also indulged in the deprivation of the rights of fair trial, torture and inhuman treatment, extra judicial killings and executions. All these acts are in clear violation of the Fourth Geneva Convention and other important human rights instruments.

4. Construction of the Wall in the Occupied Palestinian Territory

37. The International Court of Justice (ICJ), rendered its Advisory Opinion in the case concerning the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Request for advisory opinion)*. Highlights of the Opinion include: The construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated regime, are contrary to international law (14 votes to 1); and Israel is under an obligation to terminate its breaches of international law; it is under an obligation to cease forthwith the works of construction of the wall being built in the Occupied Palestinian Territory, including in and around East Jerusalem, to dismantle forthwith the structure therein situated, and to repeal or render ineffective forthwith all legislative and regulatory acts relating thereto, in accordance with paragraph 151 of this Opinion (by 14 votes to 1). (Details of the Advisory Opinion: See Report on the Item AALCO/44/NAIROBI/2005/SD/S 4, pp.10-15)

38. The United Nations General Assembly Tenth Resumed Emergency Special Session on 20 July 2004, overwhelmingly adopted a resolution demanding Israel to comply with the ICJ Advisory Opinion on *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*. It called upon the Israel to halt construction on its security barrier in the

¹³. For e.g., UN Security Council Resolution 465 of 1980 says: “...all measures taken by Israel to change the physical character, demographic composition, institutional structure or status of the Palestinian and other Arab territories occupied since 1967, including Jerusalem, or any part thereof, have no legal validity and that Israel's policy and practices of settling parts of its population and new immigrants in those territories constitute a flagrant violation of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War and also constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East.”

West Bank; tear down the portions built on the Palestinian land; and provide reparations to Palestinians whose lives have been harmed by the wall. 150 countries voted in favor of the resolution and six countries against, with ten abstentions. The resolution also called on both Israel Government and the Palestinian Authority to immediately implement their obligations under the Road Map, which calls for a series of parallel and reciprocal steps by each party leading to two States living side by side in peace by 2005. It called on all UN Member States to comply with their obligations as contained in the finding by the ICJ, which include a duty “ not to recognize the illegal situation resulting from the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem”. It also called upon the Member States not to render aid or assistance in maintaining the situation created by such construction. The resolution requested the UN Secretary General to set up a register of all damage caused to all the natural or legal persons in connection with Israel’s construction of the barrier.

39. A resolution to establish a Register of Damage arising from the construction of separation wall by Israel in the Occupied Palestinian Territory was adopted as the General Assembly continued its tenth special emergency session on Israeli actions in the Occupied Palestinian Territory.

40. Introduced by Iraq, on the United Nations Register of Damage calls for the establishment of the Register and an office to serve as a comprehensive record of the damage caused to all natural and legal persons as a result of the building of the wall. The office would be composed of a three-member board, an executive director and a secretariat. As a subsidiary organ of the Assembly, the office would operate under the administrative authority of the Secretary-General.

B. UN Security Council and General Assembly Resolutions

41. The UN consensus is particularly persuasive since majority of UN Member States recognize the Palestinian right of self-determination. This right is also legitimate from the fact that Palestine was a mandated territory, administered as a sacred trust by the United Kingdom. The UN has made clear the legal rights and duties in the OPT in a series of widely supported resolutions, including the following:

(i) UNGA Resolution 181 (ii) concerning the Future Government of Palestine (November 29, 1947) establishes the parity of the two peoples with respect to their respective rights to establish states on the former mandated territory of Palestine, and the duty of both states to respect both minorities and the special juridical status of Jerusalem.

(ii) UNGA Resolution 194 (iii) (December 11, 1948) affirms the right of Palestinians to return to their original homes and lands, and to receive compensation for any losses incurred, as well as the right of resettlement for those Palestinian refugees choosing not to return and compensation for their losses. The UN established the UN Conciliation Commission to uphold the rights of Palestinian refugees.

(iii) UNSC Resolution 242 and 338 (November 22, 1967), and October 22, 1973) require Israeli withdrawal from the territory occupied during the 1967 and 1973 wars, and call for a just settlement of the refugee problem.

(iv) UNGA Resolution 34/70 (December 6, 1979) asserts the need for any solution of the conflict to be in accordance with the right of self-determination, regardless of what the parties might negotiate.

(v) UNGA Resolution 43/177 (December 15, 1988) acknowledges the 1988 Palestinian proclamation of a Palestinian state as consistent with UNGA Resolution 181.

(vi) UNSC Resolutions 476, 480, 1322, 1397, 1402 and 1403 (1980, 1980, 2000, 2002, 2002, 2002) reaffirm the basic principle of International Law that it is inadmissible to acquire territory by force or conquest, as well as the unconditional applicability of the Fourth Geneva Convention to the civilian population of occupied territory. Also Resolutions 1405 (2002) of 19 April 2002, 1435 (2002) of 24 September 2002, 1515 (2003) of 19 November 2003 and 1544 (2004) of 19 May 2004, 1850 (2008) and 1860 (2009) are of great relevance to the Palestinian cause.

C. Resolutions adopted at the Sixty-Sixth Session of the United Nations General Assembly (2011)

42. As many as 18 resolutions relating to the question of Palestine were adopted at the Sixty-Sixth Session of the United Nations General Assembly. The most important resolutions related to: Permanent sovereignty of the Palestinian people in the Occupied Palestinian territory, including East Jerusalem and of the Arab population in the occupied Syrian Golan over their natural resources¹⁴; the right of the Palestinian people to self-determination¹⁵; Assistance to Palestinian people¹⁶; Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem¹⁷; Applicability of the Geneva Convention relative to the protection of the Civilian Persons in the Time of War, of 12 August 1949, to the Occupied Palestinian territory, including East Jerusalem, and the other Occupied Arab Territories¹⁸; Palestinian refugees properties and their revenues¹⁹; Assistance to Palestinian refugees²⁰; Peaceful settlement of the question of Palestine²¹; and Committee on the Exercise of the Inalienable Rights of the Palestinian People²².

¹⁴ A/RES/66/225

¹⁵ A/RES/66/145

¹⁶ A/RES/66/118

¹⁷ A/RES/66/79

¹⁸ A/RES/66/77

¹⁹ A/RES/66/75

²⁰ A/RES/66/72

²¹ A/RES/66/17

²² A/RES/66/14

III. OTHER MAJOR DEVELOPMENTS

A. Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories²³: 22 September 2011

43. The General Assembly by its resolution 2443 (XXIII)²⁴ Established The Special Committee (the Committee) to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories in the year 1968. The mandate of the committee is to investigate Israeli practices affecting the human rights of the population of the occupied territories. The report was submitted pursuant to General Assembly resolution 65/102²⁵ by which the Committee was requested to continue investigating the Israeli policies and practices in the Occupied Palestinian territory, especially the violations of the Geneva Convention Relative to Protection of Civilian Person in the Time of War and to consult with the International Committee of the Red Cross to ensure welfare of the persons in the occupied territory and to report to the Secretary General. The Committee was also requested to investigate the treatment and status of the prisoners and detainees in Israeli prisons and detention centers in the Occupied Territory.

44. Detailing out the activities of the Special Committee, the report notes that since the establishment of the committee, the Government of Israel has refused to recognize or cooperate with it. The report notes that efforts to communicate and initiate dialogue with the Permanent Representative of Israel to the United Nations met with failure owing to lack of response from the latter. The committee also notes that a request by the committee to grant full access to the occupied territories and permission to hold discussions with the relevant human rights authorities in Israel evoked no response from the State of Israel. Owing to such practice of non-recognition and non-cooperation, the report notes that, the committee's annual mission to the region was unable to directly access all the occupied territories or to hold consultations with the relevant authorities. Yet the committee carried out its first ever visit to the occupied Palestinian territory, specifically to the Gaza strip by crossing Egypt's border with Gaza. The committee held Meetings at Gaza and at Jordan. The committee sought wide range of views on the Israeli practices inviting Palestine, and Syrian victims, witnesses and Non-Governmental Organizations. The committee also made visit to the Ash-Shati refugee camp and housing construction projects of the UNRWA.

45. The report separately deals with the situation of Human rights in the occupied territories of Gaza Strip, The West Bank, including East Jerusalem and Syrian Golan

1. The situation in Gaza

46. The situation in Gaza was addressed separately as the committee observed the situation therein first hand and to give prominence to the widespread violations resulting from the blockade by Israel. The committee affirmed that the Gaza strip is an integral part of the occupied

²³ A/66/370 (22 September 2011)

²⁴ A/RES/2443 (XXIII)(19 December 1968)

²⁵ General Assembly resolution 65/102 (20 January 2011)

Palestinian territory and that Israel maintains its position as occupier. The report makes an overarching observation that the blockade, which has been in place for more than four years continues to collectively punish the civilian population and that the blockade neither undermines the support for the de facto authorities in Gaza nor does it enhance Israel's security. The blockade, which is in violation of international legal obligations, was observed to have a grave impact on the children of Gaza. The other most urgent concerns were the enforced restrictions on freedom of movement within Gaza, which particularly impacts agriculture and fishing and restrictions on the import of materials necessary for reconstruction of the infrastructure and facilities destroyed by Israel during operation "Cast Lead".

47. The report details on the negative impacts caused by the blockade on economic activity, which has resulted in growth of unemployment and decrease in real wages. It notes that Gaza's private sector has nearly come to a halt and that 38 percent of the families struggle with food insecurity. The report also details the high incidence of physical and mental health problems that result from the ongoing blockade. This was noted as to lead to social disorder and the growth of the tendency amongst some to resort to violence to solve problems. Pregnant women were observed to be suffering particularly with incidents of depression, obesity and anemia being common. They were also found to be lacking access to adequate nutritional facilities. It was also noted that 95 percent of all water resources in Gaza was found to be unfit for consumption and this was leading to further health problems, especially among the new born babies. It was also alleged by some that the Israeli Government makes restrictions on importation on food stuffs based on a calculation of the minimum amount of nutrition required only for survival.

48. The committee, after first hand appraisal of the situation noted that the devastation of infrastructure that happened during operation "Cast Lead" still remains. The report notes that owing to the restrictions in importation of materials and the slow rate at which reconstruction plans are approved, the reconstruction of Gaza is made impossible. The report also noted that owing to the blockade, people have been dependent on illegal channels to obtain materials and medicines, which was not trustworthy and was of inferior quality. The committee also noted the immediate need to reconstruct water treatment and power facilities, the lack of which severely impacted public health and healthcare facilities. Concerns were also raised about the lack of access to cooking gas caused by Israeli restrictions its importation.

49. The report then noted that the enforcement of the blockade by restricting freedom of movement within certain areas of Gaza, including its maritime area impacts agricultural and fishing industries, and further that allegations of the use of live wire to enforce restrictions often result in injury and death. The establishment of the so called "buffer zone" excluded around 35 percent of Gaza's land territory from agricultural use and has been practically confiscated by Israel. It was alleged further that operation had destroyed 60,000 dunums of agricultural land, greenhouses and wells, and cattle, poultry and sheep stocks, with immediate losses estimated to be around \$200 million. It was also noted that continuing violence meant that land and crops that were replanted were being frequently redestroyed. The report also noted the complaints that agriculture was being impacted due to the poor quality and scarce availability of water. The committee noted that owing to diversion of traditional water sources by Israel, the farmers had limited access to water. Ban on agricultural exports was also another cause of concern, as this limited the gains of produce as there was only a local market available for sale. The committee

also received complaints regarding the decline in the fishing industry caused by Israeli restrictions on the area of fishing and on export of fisheries. The establishment of the “buffer zone” with the restrictions on movement within the zone and ambiguities about the actual extent of the areas was observed to have led to the killing of several persons especially children.

50. On the situation of children in Gaza, the committee noted the prevalence of frequent exposure to violence, including being the victims of such violence, a general feeling of helplessness and lack of opportunities, obstructions to the right of education and rapidly deteriorating physical and mental health being the matters of immediate concern. The committee also noted the high rates of anemia, malnutrition, rising numbers of cases of epilepsy and other behavioral problems. The report also notes that another major cause of complaint was the grim situation of access to education and the poor quality of existing facilities for education and a decrease in school enrolments. The UNRWA plans for construction of schools faces obstructions in the form of restrictions on import of construction materials and school supplies. Restrictions on movement further worsened the situation as education could not be pursued at neither at West Bank nor abroad. Serious concern was also expressed about the situation of the large number of children who live near the buffer zone – who cannot attend classes at night (as most schools operate on a double shift basis) as such night time travel can invite aggression from Israeli guards. Report also notes the increase in incidents of child labour, in particular and near the buffer zone. It was also noted that every year up to 17,000 students graduated from school and then could not find jobs. The view was repeatedly expressed that that lack of opportunities and hope greatly increased the probability of youths being encouraged to extremism.

2. The Situation in West Bank, including East Jerusalem

51. The part of report concerning the situation in West Bank and East Jerusalem was prepared after meeting 19 victims, witnesses and representatives of organizations in Amman. The report states that it received communications of the continuation of acts violating human rights and humanitarian laws, as was in the previous years. The most prominent concern according to the committee was the continuing confiscation of Palestinian lands, the demolition of homes and other infrastructure and the consequential displacement of families, the continuing expansion of settlements and the continuing acts of violence against the citizens and their property. The report notes that numerous complaints were also received regarding the impact of these activities on children.

52. Witnesses testified on the active confiscation of lands in the West Bank – that 17,684 dunums of land had been confiscated between August 2010 to June 2011 and 893 Palestinian homes had been demolished during that period. With respect to expansion of settlements, the members were informed that 9,204 housing units for Israelis were being constructed during the time of the mission. Witnesses also highlighted some of the environmental impacts of Israeli settlements, including the effects caused by solid waste, sewage water and manufacturing refuse that was being dumped on Palestinian territory. Concerns were raised over the information that plans were underway for the construction of approximately 50,000 more housing units in the West bank over the next decade. Attention was also drawn to the construction of the wall that took up about 10 percent of the territory in West Bank and isolated Palestinians from the rest of the West Bank. The *de facto* annexation of farmlands that contain homes and other structures in

the Jordan Valley also received significant attention. The discriminatory practices adopted by Israel in the allocation of water resources were also pointed out. The establishment of “closed military zones” and massive expansion of settlements and the designation of certain areas as natural reserves in Area C were also pointed out. The committee observed that this constituted a violation of the right and the ability of Palestinians to freely dispose of their natural wealth and resources and affected their right to livelihood. The attention of the Special Committee was drawn to the urgency of the situation of the Bedouins in Area C. The committee was told that their homes were under an immediate threat of demolition and consequential displacement.

53. In addition, the Committee was briefed on Israel’s plans to relocate approximately 2,300 Bedouins living in Area C. The purpose of the planned relocation of the Bedouins was to make room for the expansion of Israeli settlements. Such practices were found to affect cattle breeding by the Bedouins and their food security.

54. The committee was apprised of the situation of Palestinians living in East Jerusalem. While it was an integral part of the occupied territory of Palestine and 36 percent of the population was Palestinians, only 9 percent of the municipal budget was allocated for their needs. 70 percent of the Palestinian population who lived there were below the poverty line, which then forced them to concentrate on livelihood and sustenance and refrain from political activity. The Committee was informed that \$60 million in fines for “illegal” building had been levied against Palestinians in the past 10 years, while 1,074 home demolitions had been carried out by Israeli authorities against Palestinians in the same period. Heavy fines were also charged for the demolition of their homes, which has often lead the Palestinians to demolish their own homes. The committee was then apprised of two forms of institutionalized discrimination with an objective to drive the Palestinians away from East Jerusalem: The Israeli practice of not identifying the Palestinian neighborhoods on official street signs thereby implicitly denying or erasing knowledge of their existence and the practice of restricted access to zoning, municipal planning, municipal budgets and basic services to lower Palestinians’ standards of living. Practices that restrict Palestinian construction of buildings, confiscation properties and homes, the lack of zoning plans for East Jerusalem, lack of infrastructure provisions to support new buildings, and measures that made documentation of ownership impossible and the non registration of plots was also referred to.

55. Elaborating on the violence committed by Israeli settlers against Palestinians and their properties, the report noted that the committee was informed that that nearly 500,000 Israeli settlers occupied over 40 per cent of the land in the West Bank and that 30 per cent of the Israeli settlements has been built on privately owned Palestinian land. The escalation of incidents of violence perpetrated by the settlers on the civilians of Palestine was also noted. The direct and extensive cooperation between the settlement organizations of Israel and its authorities has also been noted. Such cooperation extended to surveying and confiscation of Palestinian Lands and demolition of Palestinian structures. The protection granted by the authorities to Israeli settlers who attack Palestinian civilians and their properties was also noted and several incidents of such nature were elaborated. The overtly discriminatory nature of the practices of law enforcement vis-à-vis the settlers and the Palestinians were highlighted.

56. On the situation of Children in this territory, testimonies focused on the practices of arrest and detention of children and acts that impeded their right to education. The prevalence of large number of drop out of schools and their involvement in child labour was also highlighted. The lack of basic facilities for education, such as lack classrooms was also pointed out. Such measures also gave rise to complete lack of any form of instruction for a large number of children. The committee was also apprised of the incidents where the private schools run by Palestinians, that provided free education were demolished by the occupiers. Restrictions on movement further impeded access to education. The difficulties caused by the wall were also highlighted. In addition to this, incidents of violence committed by the settlers on children while on their way to the school were also pointed out as a reason for the dropping attendance in schools. Serious concern was expressed over the practice of detention of children by the settlers. The Committee was told that at least one child in every Palestinian family in Silwan had been detained by Israel in 2010. The increase in detention of children between the age group 8 and 10 was also noted. The treatment meted out to these children while in custody was described and confirmed as being amount to cruel, inhuman or degrading treatment or punishment. Reference was also made to the discriminatory nature of the sentencing practices of the Israeli courts that imposed heavy fines, not within the reach of the Parents for the release of their children. This then caused the continued detention of children for extended periods. Practices that separate the child from its family or that force them to live outside their family was also referred to. The detention was alleged to impede the right to education, noting that such mass detentions were often operationalized during exam periods. The committee was informed that 72 per cent of Palestinian children in the West Bank had been arrested at least once; 16 per cent had been arrested more than once; and 50 per cent of children arrested did not meet a lawyer or family member for months. It was also brought out that similar to Gaza, there were increasing incidences of post-traumatic stress disorder, bedwetting and a proclivity to respond aggressively to pressure among children in the West Bank.

57. The committee was also briefed extensively on the situation of the Palestinians detained by Israel. The concerns raised included the legal status of such prisoners; family visits; access to proper medical care; conditions and treatment during detention; concerns particular to female detainees; access to education for detainees; and administrative detention and other forms of incarceration of heightened concern. As to the number of persons detained, the numbers ranged between 5900 to 7000 with 260 children, 36 women and 220 administrative detainees and 9 parliamentarians who were also detained. Attention was also brought to the practice of detention of the bodies of persons who died during military engagements or other attacks. Incidents of prolonged administrative detentions without framing of charges based on secret evidence were also brought to light. The practice of continuation of detention despite the conclusion of sentence was also brought to light. Questions were also raised on the legal status of the detainees under international law. The application of domestic legislation or Ottoman laws to Palestinian detainees was also noted. Their status as political prisoners or prisoners of war was the moot question. The practice of disallowing family visits for nearly five years then was also testified to. The non materialization of promises to facilitate such visits and other flagrant violations of international humanitarian laws were also brought out. Other allegations included the lack of medical treatment and adequate medical facilities. Some complaints were also raised about the practice of testing pharmaceuticals on detainees and deaths caused by it. Testimonies were received about the general deprivations of food, clothes books and other such basic needs. There

were also allegations of treatments and conditions that amounted to cruel, inhuman and degrading treatment, such as prolonged solitary confinement, deprivation of sleep, beatings, insults, denial of freedom to observe religious practices, denial of access to lawyers, being forced to remain in awkward positions for long hours etc. increasing use of psychological torture methods, including threats of suffocation and sexual assaults were also noted. It was also testified that complaints of such acts have not been investigated by the authorities. The situation of female detainees, along with information on inhuman treatment of pregnant women was also brought out.

3. Situation in occupied Syrian Golan

58. Owing to developments in the Syrian Arab Republic, the committee was unable to make a visit to the territory and hence engagement was made through teleconferences. Several concerns regarding Israel's compliance with its international legal obligations in relation to its occupation of the Syrian Golan were raised and it was found to be in consistence with the information obtained in the previous years, specially on the detention of persons, restrictions on the freedom of movement, the use of landmines and restrictions on access to water for agricultural uses. Complaints were received about the high prices that had to be paid for water, compared to the Israeli settlers, who were also granted greater access to water resources. An incident of total cut of water supply was also reported. Restrictions on movement that resulted in prevention of meeting family members, and the building of a wall that is expected to further worsen this situation was also noted. Incidents where live fire was used against protestors which resulted in deaths, the use of landmines and the inhuman and cruel conditions under which the detainees were held were also testified to.

4. Conclusions and recommendations

59. On an examination of these conditions, the committee made the following conclusions and recommendations:

- a. The government of Israel was called on to cooperate with the implementation of its mandate, in accordance with the obligations cast by the General Assembly Resolutions regarding the same
- b. The General Assembly and the Security Council was requested to adopt measures to address Israel's long track record of non-cooperation.
- c. The committee found the situation of children on the occupied territory as "alarming"
- d. Israel was called on to take immediate measures to improve the health conditions of the children, including the facilitation of travel outside Gaza for medical treatment.
- e. Israel was called on to desist from practices that resulted in the denial of the children's right to education and allow the constriction of schools as requested by the UNRWA recovery plans.
- f. Israel was *encouraged* to consider the political consequences for the children of Gaza who are being raised in an atmosphere of depravation and lack of opportunities.

- g. Israel was called on to bring its policies and practices concerning arrest, detention, sentencing and treatment of minors in line with international laws and standards. Perpetrators of such criminal acts are also to be brought to justice and persons involved in policing and judicial processes are to be imparted training on the applicable international standards.
- h. Israel was called on to adopt measures to ensure the enjoyment of the right to education, including construction of classrooms and stopping activities that impede movement are to be stopped.
- i. Israel was called on to bring its policies and practices concerning arrest, detention, sentencing and treatment of Palestinians in line with International laws and standards, including the assurance of due process and fair trial rights and prevention of torture or cruel, inhuman or degrading treatment or punishment.
- j. The General Assembly was urged to take action to compel Israel to meet its international obligations concerning Palestine, in particular regarding the issues raised in the present and previous reports of the committee.
- k. The committee noted the activities of Israel in the occupied territory to constitute a form of collective punishment of civilians, which was adjudged to be in violation of International Humanitarian Laws and Human Rights obligations.
- l. The committee reiterated the call for Israel to lift its illegal siege of Gaza, including actions to ensure access to sufficient food, medicines and other basic supplies and services, in line with Security Council Resolution 1860 (2009)²⁶.
- m. Israel was called on to clarify the restrictions that it intends to enforce on the freedom of movement within Gaza and to inform the residents and the security forces of the same. Actions were to be taken to ensure that the security forces do not enforce such restrictions using live weapons fire. Such restrictions must also respect the critical agricultural and fishing industries in Gaza. Further, the maritime policy was to be brought in line with the Oslo Accords.
- n. The committee noted the continuation of the practices recorded and highlighted by the committee in its previous reports.
- o. Israel was called on to desist from any further confiscation of lands or demolition of homes in the occupied areas and ensure the return of the confiscated lands to its rightful owners.
- p. Noting that East Jerusalem was an integral part of Palestine, Israel was called on to end its policies and practices that oppress the population of East Jerusalem and end the institutionalized discrimination against the inhabitants.
- q. Effective steps to end violence against Palestinians by Israeli settlers were called for.
- r. Israel was called on to ensure access to water for Syrians, and end the discriminatory practices regarding the same.

IV. THE QUESTION OF STATEHOOD OF PALESTINE

60. The question of Palestine was discussed by the General Assembly as a part of the attention that it bestowed on the conflict situation in the Middle East and in the context of the human rights and refugee aspects. It was in 1974 that the question was then again approached by

²⁶ S/2009/1860 (8 January 2009)

the General Assembly as a national question in the light of the 1967 war and the continuing occupation of its territory. In its resolution 3210 (XXIX)²⁷ the General Assembly recognized and invited the Palestine Liberation Organization (PLO) as the representative of the Palestinian people to participate in its deliberations at the plenary meetings on the question of Palestine. In resolution 3236 (XXIX)²⁸, the General Assembly reaffirmed and specified the inalienable right of the Palestinian People, which included the right to self-determination, to national independence and sovereignty. Vide resolution 3237 (XXIX)²⁹ the Palestine Liberation Organization was granted the observer Status and was invited to participate in the sessions and in the work of the General Assembly in the capacity of an observer. The PLO has established a Permanent Observer mission since 1974 at U.N. headquarters in New York and another one in Geneva.

61. Regarding the participation of the PLO in the Security Council, at its 1859th meeting through a decision by a vote, on 4 December 1975, it was decided that an invitation be extended to PLO to participate in the debate on the situation in the Middle East and also that the same rights of participation as those conferred on a Member State when it is invited to participate in a discussion be extended to it. Vide Resolution 43/177³⁰ the General Assembly acknowledged the proclamation of the State of Palestine by the Palestine National Council in 1988 and decided that the designation "Palestine" shall be used instead of PLO in the United Nations System. In 1994, the General Assembly without a vote adopted a resolution³¹ approving the report of the Preparatory Committee for the Fiftieth Anniversary of the United Nations in which the Committee had authorized its Chairman to issue a letter to the Permanent Observer of Palestine confirming that the arrangements decided for the Special Commemorative Meeting of the General Assembly on the occasion of the Fiftieth Anniversary of the U.N. shall apply also to Palestine in addition to all the member and observer States.

62. On 23 September 2011, H.E. the President of Palestine delivered to the UN secretary General the official application for recognition of a Palestinian State by the UN and a membership in the same organization.

63. On 31 October 2011, the General Council of UNESCO voted in favour of admitting Palestine as a member state. This membership became effective on November 23, 2011.

²⁷ A/RES/3210 (XXIX) (14 October 1974)

²⁸ A/RES/3236 (XXIX) (22 November 1974)

²⁹ A/RES/3236 (XXIX) (22 November 1974)

³⁰ A/RES/43/177 (15 December 1988)

³¹ A/RES/49/12 (24 May 1995)

V. DEVELOPMENTS AT THE SIXTY-SIXTH SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY

A. Statement by H.E. Mr. Mahmoud Abbas, President of The State of Palestine

64. H.E. The President noted that the question on Palestine is intricately linked with the United Nations through the resolutions adopted by the various Organs of the United Nations and its Agencies and through the essential role of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, which in his opinion embodied the international responsibility towards the plight of Palestinian refugees. The President noted the aspiration and desire of the State of Palestine for a more effective role for the United Nations to work to achieve a just and comprehensive peace in the region and to ensure the protection of the legitimate national rights of the people of Palestine. The President also highlighted the continued co-operation extended by Palestine towards the efforts at negotiating an agreement for a peaceful settlement of the issue. Asserting the authority of the PLO as the sole representative of the people of Palestine, the following commitments and assertions were made: (1) That the goal of the Palestinian People is the realization of their inalienable national rights in their independent state of Palestine, in conformity with the resolutions of international legitimacy and the attainment of a peaceful solution in accordance with resolution 194 as stipulated in the Arab Peace initiative. (2) That the PLO will adhere to the renouncement of violence, including all forms of terrorism and that it will adhere to all agreements signed with Israel. (3) The preparedness to return to negotiations, in accordance with the resolutions of international legitimacy. (4) That the people will continue to protest peacefully against the construction of the wall and (5) That no unilateral steps shall be taken and only peaceful methods of resolution, relying on political and diplomatic solutions shall be adopted.

65. Asserting the right of the peoples of Palestine to self determination, the President highlighted the efforts made over the last years for building and strengthening institutions of governance in the country, which included the implementation of the plans to enhance and advance the judiciary and the apparatus for maintenance of order and security, to develop the administrative, financial and oversight systems to upgrade the performance of institutions and to enhance self-reliance with a view to reduce foreign aid. The efforts made at State building – at securing public order and security of the persons of the citizens, strengthening the role of women through laws and participation, ensuring public freedoms and the promotion of judicial authority and rule of law and creating mechanisms to ensure responsibility and transparency in the working of institutions and “entrenching the pillars of democracy as the basis of Palestinian political life” was also referred to. Attention was also drawn towards the measures taken towards achieving democratization and its progress. The President also referred to the reports issued by the United Nations, the World Bank, the Ad Hoc Liaison Committee (ALC) and the International Monetary Fund that has confirmed and applauded these measures and the efforts towards these directions, which was pointed out as confirming the readiness of the Palestinian people and their institutions for Independence.

66. Drawing attention to the application³² made by the State of Palestine for its admission to the United Nations as a full member on the basis of 4 June 1967 borders and with Al-Quds Al – Sharif as its capital, the President requested expeditious transmission of the request to the security council and called on member states who were yet to recognize Palestine to do so.

B. The Response Of AALCO Members To The Statement

67. H.E. The King of **Baharin** supported the call of the State of Palestine and described this as a “propitious opportunity” to do justice to the Palestinian people. The representative of **Botswana** called on both Palestine and Israel to remain engaged in the negotiations on the basis of a two state solution in which the two peoples will live in side by side and in harmony. The Representative of **Brunei Darussalam** welcomed South Sudan’s membership in the United Nations and commended all the parties who were involved in the dialogue, negotiation and its final resolution. The deepest wish was then expressed that those sentiments may soon be expressed to the parties directly involved in the efforts to reach a fair and equitable two-state solution in Palestine. The representative of **Cyprus** said that it was vital to continue with the peace process on the basis of the principles outlined in the United Nations Resolutions and that both Israelis and Palestinians deserved a peaceful and stable future within the framework of the two independent States. Support was then extended to a free and independent Palestinian State alongside Israel within the 1967 borders.

68. The representative of the **Democratic Republic of Korea** supported Palestine’s request for membership, describing it to be the obligation of the international community to do so. He also described it to be the inalienable right of the Palestine people to put an end to the Israeli occupation and to create an independent State of their own. The representative of **Egypt** described the failure of the efforts to find a peaceful solution to the question of Palestine despite two decades of negotiations as a deprivation of the rights of the peoples of Palestine to acquire their legitimate fundamental rights and their right to acquire freedom and to establish their own independent state on the basis of the 1967 borders with East Jerusalem as its Capital.

69. The representative also reiterated the support of the **Non-Aligned Movement** to the struggle of Palestinian people to regain their legitimate rights for the establishment of the independent Palestine State and its admission as a full member of the United Nations. The representative of **Gambia** supported and recognized an independent and sovereign Palestinian State within the confines of the 1967 borders and said that an independent Palestinian State with full rights and privileges like any other is long overdue and that it was the only guarantor of lasting peace in that region. The representative of **India** extended its support for the Palestinian peoples struggle for a sovereign, independent, viable and united State of Palestine with East Jerusalem as its capital and to live with secure and recognizable borders side by side and at peace with Israel.

70. The representative of **Indonesia** described as legitimate the aspirations and rights of the people of Palestine to live in their homeland and extended its support for the Palestine’s quest for full Membership in the United Nations. The representative of **Iraq** pointed out that it was doing everything in its capacity to support the struggle of Palestinian People in getting all its rights to

³² A/66/371 and S/2011/592 (23 September 2011)

establish an independent State with Jerusalem as the capital and it endorsed and supported the application of Palestine for international recognition of the Palestine State. Further, the international community was also called on to stand by the Palestinian people. The representative of **Jordan** described the two state solution that meets the needs of both the sides as the only solution for lasting peace and extended its support for the right of the people of Palestine to statehood, which was described as their right to seek in United Nations and to which support was extended with a call on the other Members to extend such support.

71. The representative of **Kenya** extended his support for the two state solution where the territorial integrity of Palestine within the 1967 borders would be upheld and the peace and security of Israel was also guaranteed. He further stated that it was their hope that Palestine would be welcomed into the community of nations with full Membership in the United Nations. The representative of **Kuwait** referred to the duty of the international community to pressure Israel to enable the Palestinian people to obtain their right to self determination and the establishment of their State with East Jerusalem as its capital. He further renewed the full commitment of the State of Kuwait to support Palestine's bid and its endeavor to obtain membership in the United Nations as an independent and full Member State.

72. The representative of Lebanon underscored the rightfulness of the Palestinian efforts at earning the recognition of the State of Palestine and its full membership with the United Nations, in line with its right to self-determination. The representative of **Malaysia** supported Palestine's application to the United Nations and welcomed the readiness of both the parties to hold talks on the basis of the existing international framework. The delegate further supported the rights of the Palestinian people for an independent State, based on the two nation solution. Emphasizing on the duty of the international community to restore to the Palestinian people their right to statehood, the representative of **Mauritius** extended its support to the application of Palestine for full Membership.

73. The representative of **Nepal** described it to be its principled position to support a fully independent and sovereign State of Palestine, based on the UN resolutions and it look forwards to its materialization at the earliest. The representative of **Oman** pointed out that there was responsibility on the World and the United Nations to find a just and comprehensive solution to the Palestinian problem and the establishment of the State of Palestine on based on the 1967 borders and the recognition of the State as a Member of the United Nations would lead to more serious negotiations. The representative of **Pakistan**, supporting the application of Palestine for membership in the United Nations, said that it was their principled position that they support the Palestinian people's right to an independent homeland with Al Quds Al Sharif as its capital. The representative of **People's Republic of China** supported Palestine's membership in the United Nations and stated that support is also extended to efforts to achieve the two State solution through political negotiations to establish a State of Palestine that enjoys full sovereignty with East Jerusalem as its capital.

74. The representative of **Senegal** affirmed its support for Palestine and its application for Statehood and its international recognition. The representative of **Somalia** supported the right of Palestine to become a full member of the Community of Nations and called on other member states to support the peaceful and democratic aspirations of the Palestinian people. The

representative of **South Africa** expressed support for the Palestinian authority and its intention to seek United Nations Membership for the State of Palestine and further described it to be a decisive step towards achieving lasting peace for the people of Middle East. The representative of **Sri Lanka** declared support for the application of the State of Palestine for membership. Reminding that though the matter had been subjected to repeated references in the General Assembly by many countries, the international community was not able to make the right of the Palestinian people to a State of their own a reality. Describing the present developments to be a window of opportunity, the Member States were urged to seize the same and take decisive action rather than discussion.

75. The representative of **Sudan** affirmed its support for the efforts of the Palestinian people to establish their independent state and to obtain a full membership at the United Nations. The representative of **Syrian Arab Republic** extended support to the application by Palestine and described the international community's pursuit of the recognition of Palestine's statehood to be legitimate and called on all Member States to support the application. Extending support for the application by Palestine, the representative of **Turkey** described the recognition of the demands of the Palestinian people to a State and allowing them to take their place at the United Nations as foremost among the path towards peace. The representative of **United Arab Emirates** in his statement said that the core of the solution of the issue of Palestine lies in the establishment of a full fledged sovereign State of Palestine within the 1967 borders with East Jerusalem as its capital. The representative of **Saudi Arabia** extended its support to the application by Palestine and called on other Member States to recognize the State of Palestine on the borders of 1967 with East Jerusalem as its capital and to grant it full membership of the United Nations.

VI. DEVELOPMENTS IN THE UNITED NATIONS SECURITY COUNCIL

76. On 23 September 2011, the State of Palestine preferred an application for admission to the membership of the United Nations³³. At its 6624th meeting, on 28 September 2011, the Security Council had before it the application and in the absence of a proposal to the contrary, the President of the Council referred the application to the Committee on the Admission of New Members for examination and its report. At its 109th and 110th meetings, held on 30 September and 3 November 2011, respectively, the Committee considered the application. The **Report of the Committee on the Admission of New Members concerning the application of Palestine for admission to membership in the United Nations**³⁴ notes the following: In the course of consideration of the application, it was noted that the stipulations mentioned in Article 4 of the Charter would not be the only consideration and that Committee's work, whatever its outcome, should be mindful of the broader political context.

77. The view was expressed that a two-State solution via a negotiated settlement remained the only option for long-term sustainable peace and that the final status issues had to be resolved through negotiations. Support was expressed for a two-State solution based on pre-1967 borders, resulting from political negotiations, leading to an independent State of Palestine with East Jerusalem as its capital. It was stressed that Palestine's right to self-determination and recognition is not contrary to Israel's right to exist. On the criterion of statehood, reference was

³³ S/2011/592

³⁴ S/2011/705 (11 November 2011)

made to the 1933 Montevideo Convention on the Rights and Duties of States, which declares that a State as a person of international law should possess a permanent population, a defined territory, a government and the capacity to enter into relations with other States. With regard to the requirements of a permanent population and a defined territory, the view was expressed that Palestine fulfilled these criteria. It was stressed that the lack of precisely settled borders was not an obstacle to statehood. With regard to the requirement of a government, the view was expressed that Palestine fulfilled this criterion. However, it was stated that Hamas was in control of 40 per cent of the population of Palestine; therefore the Palestinian Authority could not be considered to have effective government control over the claimed territory. It was stressed that the Palestine Liberation Organization, and not Hamas, was the legitimate representative of the Palestinian people. With regard to the requirement that a State have the capacity to enter into relations with other States, the view was expressed that Palestine fulfilled this criterion. With regard to the requirement that an applicant be “peace-loving”, the view was expressed that Palestine fulfilled this criterion in view of its commitment to the achievement of a just, lasting and comprehensive resolution of the Israeli-Palestinian conflict. With regard to the requirement that an applicant accept the obligations contained in the Charter and be able and willing to carry out those obligations, the view was expressed that Palestine fulfilled these criteria. The view was expressed that the Committee should recommend to the Council that Palestine be admitted to membership in the United Nations.

78. A different view was expressed that the membership application could not be supported at this point in time and an abstention was envisaged in the event of a vote. Yet another view expressed was that there were serious questions about the application, that the applicant did not meet the requirements for membership and that a favourable recommendation to the General Assembly would not be supported. Further, it was suggested that, as an intermediate step, the General Assembly should adopt a resolution by which Palestine would be made an Observer State. In summing up the debate at the 110th meeting of the Committee, the Chair stated that the Committee was unable to make a unanimous recommendation to the Security Council.

VII. DEVELOPMENTS AT THE THIRTY-SIXTH GENERAL CONFERENCE OF UNESCO

79. On 31st Oct, 2011 Palestine became the 195th member of United Nations Education, Scientific and Cultural Organization (UNESCO). In its 36th General Conference, 107 Member States voted in favour of Palestine’s membership, 14 against and 51 abstained from voting. An account of the voting of AALCO members is appended as Annexure II.

80. The membership of Palestine into UNESCO may open the doors to other United Nation specialized agencies that have individualized process of admission Membership of UNESCO would imply that Palestine can apply for World Heritage classification for their cultural sites in the Occupied Territories and could also receive funding from UNESCO for preservation and restoration projects. Damage to such heritage cites would be a violation of International Law for

which Member States can take action. Membership to UNESCO would also open the doors to acceding to several treaties and standards and their application.³⁵

VIII. INTERNATIONAL RECOGNITION OF THE STATE OF PALESTINE

81. The State of Palestine maintains a network of diplomatic missions to countries that have recognized or has partially recognized the State. These are predominantly in Africa, Asia and Eastern Europe. In addition to this, Palestine also maintains delegations and other representative offices that represent the Palestinian Authority to other states and multilateral organizations, of which their agents may be accorded some degree of recognition similar to that of other diplomats. According to the Palestine Liberation Organization Negotiations Affairs Department, more than 127 States Members of the United Nations recognize Palestine to date.³⁶ A list of AALCO members with whom Palestine maintains diplomatic relations as on 25 January 2011 can be found in Annexure III.

IX. DEVELOPMENTS AT THE INTERNATIONAL CRIMINAL COURT

82. In January 2009, the Palestinian National Authority lodged a declaration with the Registrar of the Court under Article 12 (3) of the Rome Statute, accepting the jurisdiction of the Court for the purpose of identifying and prosecuting the authors and accomplices of the acts committed in Palestine Territory since July 2002. In the course of the examination of the issues related to its jurisdiction, the Office of the Prosecutor (OTP) is conducting a preliminary examination to determine the existence of a basis to proceed and in the course of which the question whether the declaration of acceptance meets the Statutory requirements is also being examined. The OTP on holding deliberations and seeking opinions published on 3 May 2010 a 'Summary of submissions on whether the declaration lodged by the Palestinian National Authority meets statutory requirements'³⁷. The determination on the issue by the OTP is pending.

83. The summary makes an outline of the submissions made to the OTP concerning this issue and the Statehood of Palestine in International Law is an issue on which States and other experts had made submissions.

³⁵ The 1970 [Convention](#) on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property; The UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, 1995; The 1956 Recommendation on International Principles Applicable to Archaeological Excavations; Application of the mechanisms of Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation; The International Code of Ethics for Dealers in Cultural Property, 1999.

³⁶ Report of the committee on the Exercise of the Inalienable Rights of the Palestinian People, A/66/35 (7 November 2011), available at :
<<http://unispal.un.org/unispal.nsf/796f8bc05ec4f30885256cef0073cf3a/13f28f0963f95ee385257943004fe121?OpenDocument>> accessed 25 March 2012.

³⁷ Available at: <<http://www.icc-cpi.int/NR/rdonlyres/D3C77FA6-9DEE-45B1-ACC0-B41706BB41E5/282852/PALESTINEFINAL201010272.pdf>> accessed 27 March 2012.

84. A set submissions made to the OTP examined the declaration in the light of general rules for attributing Statehood under International Law, which included the question of recognition and the criteria for statehood enunciated in the Montevideo Convention of 1933.³⁸ A number of submissions observed that as such Palestine has been recognized only by 97 states and is tacitly treated as such by a number of other states. It was pointed out that there are states that recognize the passport issued by it and it has been accorded diplomatic status in several countries. It has also been argued that 1988 declaration of independent by the Palestine National Council was not in relation to any new State and that it was only declarative of a pre-existing territory. Yet others have however pointed out that a significant number of States have not recognized Palestine and that the national case law of a number of states has held that the PNA lacks one or more attributes stipulated in the Montevideo Convention. It was also been pointed out that the PNA itself appeared to be considering Statehood in aspirational terms, to emerge as a part of a future comprehensive settlement.

85. Regarding Palestine's membership of international organizations, submissions have observed that the issue reflects geo-political considerations rather than a principled application of international law and there has not been a uniform practice in this regard as some organizations have granted admission while others have not. It has also been argued that the acknowledgement by the General Assembly of "the proclamation of the State of Palestine by the Palestine National Council" in resolution 43/177, with only Israel and United States casting voting against, demonstrates that Palestine was recognized as a State by the international community. It has also been pointed out that The UN Security Council has routinely allowed Palestine to participate in Security Council sessions where relevant issues were on its agenda, arguably enabling it to participate in the capacity that is limited to States. Counter submissions note that that Palestine has been routinely treated as a non-State entity by international organizations : That for instance UN treats it as an observer that cannot vote. It was also pointed out that during negotiations for the establishment of the ICC Palestine did not participate as a State, but was placed under the category of "Other organizations". It was also pointed out that when the PLO submitted in June 1989 to the Government of Switzerland ratification documents for the Geneva Conventions of 1949, the answer of Switzerland was that it could not decide on the issue because of the "uncertainty within the international community as to the existence or the non-existence of a State of Palestine".

86. In terms of the attribute of statehood, a number of submissions agreed that Palestine satisfies the requirement of a population. But ambiguity was pointed out to exist for the category "a defined territory". A number of submissions asserted that the territorial integrity of Palestine has been recognized by the General Assembly, the Security Council and the International Court of Justice and that Palestine's limited control of the full extent of if its territory does not affect such integrity and that fragmentation is not a relevant criterion in this regard. Others have argued that fragmentation and indeterminacy of the Palestinian territories undermines the requirement of a defined territory and that borders were one of the issues left unresolved by the Oslo Accords. It was also noted that competing claims exist on certain portions of the territory in question.

87. Some submissions indicated that the Montevideo convention requires not just a government but also one that effectively exercises control. It was pointed out that is questionable

³⁸ *Montevideo Convention on the Rights and Duties of States* (26 December 1933)

whether such control – both *de facto* and *de jure* exists in the Palestinian territories. It was argued in terms of international practice that there exists no support for a proposition that statehood can be based exclusively on the right to self-determination without such a factual realization. It was pointed out that recognition predicates on firstly the attainment of effective control within foreseeable time and that the effective control was already being exercised only over a part of the territory. Namibia was cited as the only example was despite lack its territory being exclusively under foreign control (of South Africa). It was pointed out that this single example could not be demonstrative of a general practice to allow the entitlement of self-determination to override the criterion of effective government. In terms of the law of occupation, it was pointed out that neither the West Bank nor the Gaza strip was independent and sovereign prior to the occupation by Israel and hence the argument that occupation does not affect sovereignty cannot apply in the case. it was also pointed out that the PNA was exercising authority as a result of Oslo accords by which limited powers were transferred to it by Israel and that 60% of West Bank remained under the effective control of Israel. It was also pointed out that the powers not transferred to PNA are with Israel. Even with regard to internal security and public order within West Bank and Gaza, Israel continues to carry the responsibilities for defense against external threats from sea and the air, the protection of borders as well as the overall security of Israeli settlements. Such restrictions, according to some submissions limit the exercise of effective control of PNA over significant portions of its territory and hence negate Palestinian claims of Statehood.

88. As to the *Capacity to enter into relations with the other states* a number of submissions noted that Palestine has entered into a number of agreements and has ratified regional conventions within the framework of International organizations in which it participates as a member state. It was also pointed out that the ability of PLO/PNA to conduct negotiations and sign agreements, as provided in the Oslo Accords has been in practice broadly interpreted, including the establishment of embassies and foreign posts. However a contra view has also been express that the PNA lacks the general capacity to conduct foreign relations under the Accords as the critical functions held to be indispensable to statehood are expressly excluded from its powers and responsibilities – which includes the establishment abroad of embassies and consulates or permitting their establishment in West Bank or the Gaza Strip and the appointment and admission of diplomatic and consular relations and the exercise of diplomatic functions.

89. A final set of arguments were based on the situation before 1948, during the Ottoman era and the later League of Nations Mandate Period, which sought to determine whether the Palestine claims to sovereignty is a continuation of a pre-existing State. a number of submissions argued that the 1988 declaration of independence was in relation to an extant statehood and not by an entity that purported to be a new state. The declaration referred to the Covenant of the League, thus indicating a pre-existing claim. It was suggested that after the demise of the Ottoman Empire, Palestine had become an independent State, when the British administered it under the League of Nation's mandate System, where it was assigned a class A mandate - in the category belonging to independent States. It was also pointed out that even during the mandate era, Treaties were concluded by the administrating power to which Palestine was registered a party under the League of Nations Treaty Series. Palestinians had also lost the Ottoman citizenship and gained a new Palestinian nationality and passports. The pre-existing title to

sovereignty was also pointed out to be reflected in the 1947 General Assembly resolution that out the partition plan envisaging two provisional states.

Determination by the Office of the Prosecutor

90. On 3 April 2012, the office of the prosecutor issued a statement denying the its competence to decide on the question of Palestine's acceptance of the jurisdiction of the International Criminal Court.³⁹ The OTP notes in its statement that Court lacks universal jurisdiction and that it requires either the sanction of the Security Council or a "State" under Article 12 can confer jurisdiction on the Court by either becoming a party to the Rome Statute or by making an *ad hoc* declaration accepting the jurisdiction of the Court. According to the OTP, the issue then was what was a "State" for the purpose of Article 12. It was also pointed out that Article 125 also provides that the Rome Statute was open to accession by all "States" and that any such State that intends to become a party to the Statute was to deposit an instrument of accession with the Secretary-General of the United Nations. Noting that where it was controversial or unclear as to whether such an applicant constituted a "State", the practice of the Secretary General was to follow or seek the directive of the General Assembly on the matter, the OTP concluded that the competence for determining whether Palestine was a "State" for this purpose was with the Secretary General. It was also noted that the Assembly of States Parties of the Rome Statute could also decide to address the matter in accordance with article 112(2)(g) of the Statute. The OTP thus concluded that it has no authority to make a determination on the competence of Palestine to accept the jurisdiction of the Court and that it is for the relevant organs of the United Nations to make such a determination.

91. The OTP further noted that though more than 130 Governments and several international organizations have recognized Palestine, the United Nations General Assembly has deemed it to be an "observer". Noting that an application has been submitted by Palestine for admission to the UN as a full member and that though this process has no direct link with the declaration lodged to the Court by Palestine, this would however 'inform the current legal status of Palestine' for the interpretation and application of Article 12. The OTP also noted that it could in future consider all allegations of crimes committed in Palestine if the competent organs of the UN or the Assembly of the States Parties resolve the legal issue relevant to an assessment of Article 12 or if the Security Council makes a reference providing jurisdiction.

X. COMMENTS AND OBSERVATIONS OF AALCO SECRETARIAT

92. Precisely, forty-five years have elapsed since Israel first illegally occupied the Palestinian Territories in 1967, however despite all legal efforts exerted by the international community to persuade Israel to stop its illegal expansionist settlement activities and declare Palestine as an Independent State, occupation continues till date, without an early solution in site.

93. The developments in both Israel and Palestine have direct effect on the peace process. Creating an atmosphere conducive for peace should be the priority of both Israelis and

³⁹ The Statement is available at : <<http://www.icc-cpi.int/NR/rdonlyres/C6162BBF-FEB9-4FAF-AFA9-836106D2694A/284387/SituationinPalestine030412ENG.pdf>> accessed 9 April 2012.

Palestinians. The urgency of the international community should be to establish an independent and sovereign Palestinian State, which is democratic in character and could have peaceful coexistence with its neighbours and in consonance with the Resolutions of the UN General Assembly and Security Council.

94. It is also noted that the settlements established by Israel on Palestinian territory and in East Jerusalem are in clear violation of International Law and this has been established beyond doubt by the International Court of Justice (ICJ) in its 2004 ruling, *Legal consequences of the construction of a wall in the occupied Palestinian territory*. Israel opposed the General Assembly's resolution asking the ICJ to render its opinion on this question.

95. An occupation regime that refuses to earnestly contribute to efforts to reach a peaceful solution should be considered illegal. The occupant has a duty under international law to conduct negotiations in good faith for a peaceful solution⁴⁰. It would seem that an occupant who proposes unreasonable conditions, or otherwise obstructs negotiations for peace for the purpose of retaining control over the occupied territory, could be considered a violator of international law.

96. The international consensus has been expressed through widely supported resolutions passed by the UN Security Council (UNSC) and UN General Assembly (UNGA). The UN Security Council Resolutions 242, 338, and 1515 affirmed the legal obligation of Israel to withdraw from Palestinian territories obtained in the 1967 six-day war. The principle of land for peace laid down in these resolutions must be the end point of any peace process that can bring lasting peace, since all Israeli measures are for so called security reasons.

97. Israel is obliged to respect and be bound by the relevant principles of international law contained in the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August, 1949, in particular those provisions of the Convention that require an occupying power to protect the status quo, human rights and prospects for self-determination of the occupied people. Since 1967, Israel has refused to accept this framework of legal obligations. Not only has Israel failed to withdraw from the occupied territories, it has in fact created heavily armed settlements, bypass roads and security zones in the midst of a future Palestinian state that seriously compromises the basic Palestinian rights.

98. The issue concerning the Statehood of Palestine has been debated by the various United Nations Organs since 1947. However, no amicable solution of the issue has been found yet. The Legal Status of Palestine, both in the United Nations and as an independent State recognized as such by other Members of the international community is a vexed question that has evoked different reactions from both the groups of States – that has aligned in favour and not in favour of Palestine's Statehood. The recognition of Palestine as a full member of the United Nations and as an independent State throws up several issues in International Law.

99. The act of Recognition being a discretionary political act, a prerogative of a recognizing state, a resolution of collective recognition by the General Assembly will not bind other states that have refused to recognize the new state nor will it guarantee UN membership. Nevertheless

⁴⁰ Camp David Negotiations of 2000

the resolution will hold a great deal of legal implications for the State of Palestine in its international affairs: Resolution recognizing Palestine could have the effect of allowing Palestine access to international fora and many multilateral treaties which allows membership on the basis of majority of members and not subjected to the veto of a Member of the Security Council. This would allow Palestine to have a greater say and stronger footing to participate and negotiate in international discussions and processes affecting the well being and development of the people of Palestine. Recognition would also give a stronger edge to Palestine in adhering to International treaties. Such adherence would allow Palestinian to have access to stronger international mechanisms for the effective enforcement of International Humanitarian Laws and Human Rights Laws. Recognition will also help in supporting the declaration lodged by the PLO accepting the jurisdiction of the International Criminal Court, which depends on the determination of statehood of the Palestine.

100. However, there are also issues that require consideration before according collective recognition such as that the territory claimed by Palestine is currently in dispute and this needs to be resolved before recognition can be granted: that the Palestinian National Authority (PA) does not have sufficient governmental control over the Palestinian territory and that the Palestinian move would be a unilateral act which aims to change the status of territory which may be prohibited by the instruments governing the Middle East Peace Process.

101. However it is also argued that despite the important symbolic political value of United Nations Membership it would not bear any significant legal implications as such. By seeking UN admission, Palestine does not claim a right to statehood, but rather the rights flowing from an existing statehood status. The importance of granting recognition to Palestine would lie in its political significance. Full membership and voting rights would help Palestine gain further political leverage to pressure the international community to comply with its responsibility to bring Israel's violations of International law and particularly International Humanitarian law to an end. By raising the State of Palestine on an equal footing with other States and accruing such legitimacy in the international legal order. Further, Palestine would be better situated to claim its rights from the international community, in particular the means to exercise the right to self-determination.

102. Until all the rights accorded to the Palestinian people by virtue of the principles enshrined in international law, are respected by Israel, the Palestinian right of resistance to the occupation, established by a consensus within the UN would continue. The UN consensus is particularly persuasive because the Palestinian right of self-determination is recognized by a majority of States, the UN has made clear the legal rights and duties in the Israeli-Palestinian conflict in a series of widely supported resolutions, as well as in the Road Map and Arab Peace Initiative.

103. AALCO as the only inter-governmental legal Organization in the Asian and African region would continue to reiterate the urgent need on the part of the international community to seriously address all of the above mentioned grave violations and severe breaches of international law, including international humanitarian law, being committed by the occupying power, against the Palestinian people. In the resolutions adopted at the successive Annual

Sessions, AALCO has demanded that the Occupying Power “Israel”, comply fully with the provisions and principles of the Charter of the United Nations, Universal Declaration of Human Rights, the Regulations annexed to the Hague Convention of 1907 and the Geneva Conventions in particular the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, in order to protect the rights of Palestinians.

ANNEXURE I

[List of AALCO Members who expressed support to Palestine's application for full Membership at the 66th Session of the United Nations General Assembly, 2011]

Bahrain	Syria
Egypt	Turkey
Gambia	United Arab Emirates
India	Qatar
Indonesia	
Iraq	
Jordan	
Kenya	
Kuwait	
Lebanon	
Malaysia	
Mauritius	
Nepal	
Oman	
Pakistan	
Peoples Republic of China	
Saudi Arabia	
Senegal Somalia	
South Africa	
Sri Lanka	
Sudan	

ANNEXURE II
[Voting of AALCO Members at the 36th General Conference of the UNESCO]

Member States that voted in favour of the Resolution

Syria	Myanmar	Iran	Nepal
Egypt	Sri Lanka	Kenya	Mauritius
India	Pakistan	Kuwait	Tanzania
Indonesia	Ghana	Malaysia	Bangladesh
Iraq	Jordan	Nigeria	Gambia
Qatar	Somalia	Yemen	Cyprus
China	Bahrain	Lebanon	Libya
Botswana	Saudi Arabia	Turkey	Oman
Senegal	South Africa	DPR of Korea	
Brunnei Darussalam	United Arab Emirates		

Member States that abstained from voting

Cameroon	Uganda	Singapore	Republic of Korea
Thailand	Japan		

Member States who were Absent from Voting

Mongolia Sierra Leone

ANNEXURE III

[List of AALCO Members with whom Palestine Maintains Diplomatic Relations]

Bahrain (Embassy)	Sri Lanka (Embassy)
Bangladesh (Embassy)	Sudan (Embassy)
Cyprus (Embassy)	Syria (Embassy)
Democratic People's Republic of Korea (Embassy)	Tanzania (Embassy)
Egypt (Embassy)	Turkey (Embassy)
The Gambia (Embassy)	Uganda (Embassy)
Ghana (Embassy)	India (Embassy)
United Arab Emirates (Embassy)	Saudi Arabia (Embassy)
Indonesia (Embassy)	Senegal (Embassy)
Iran (Embassy)	South Africa (Embassy)
Iraq (Embassy)	
Japan (General Mission)	
Jordan (Embassy)	
Kenya (Embassy)	
Kuwait (Embassy)	
Lebanon (PLO Office)	
Libya (Embassy)	
Malaysia (Embassy)	
Nigeria (Embassy)	
Oman (Embassy)	
Pakistan (Embassy)	
China (Embassy)	
Qatar (Embassy)	
Yemen (Embassy)	

ANNEX-IV

Draft Resolution for the Fifty-First Annual Session

AALCO/RES/DFT/51/S 4
22 JUNE 2012

THE DEPORTATION OF PALESTINIANS AND OTHER ISRAELI PRACTICES AMONG THEM THE MASSIVE IMMIGRATION AND SETTLEMENT OF JEWS IN ALL OCCUPIED TERRITORIES IN VIOLATION OF INTERNATIONAL LAW PARTICULARLY THE FOURTH GENEVA CONVENTION OF 1949 (*Deliberated*)

The Asian-African Legal Consultative Organization at its Fifty-First Session,

Having considered the Secretariat Document No.AALCO/51/ABUJA/2012/S 4,

Noting with appreciation the introductory remarks of the Deputy Secretary-General;

Recalling and reiterating the decisions taken at the consecutive Annual Sessions of the Asian-African Legal Consultative Organization since 1988, when the topic was first introduced on the agenda of the Organization, in particular the decisions adopted on 22 April 1998 and 23 April 1999,

Also recalling and reiterating the resolutions adopted on 23 February 2000; RES/40/4 of 24 June 2001; RES/41/4 of 19 July 2002; RES/42/3 of 20 June 2003; RES/43/S 4 of 25 June 2004; RES/44/S 4 of 1 July 2005; RES/45/S 4 of 8 April 2006; RESW/46/S 4 of 6 July 2007; RES/47/S 4 of 4 July 2008; RES/48/S 4 of 20 August 2009; RES/49/S 4 of 8 August 2010 and RES/50/S 4 of 1 July 2011,

Having followed with great interest the deliberations on the item reflecting the views of Member States;

Being concerned with the serious obstacles created by the occupying power, which hinder the achievement of a just and lasting peace in the region;

Recognizing that the massive Israeli military operation in the Occupied Palestinian Territories, particularly in the occupied Gaza strip, has caused grave violations of the human rights of the Palestinian civilians therein and international humanitarian law, and exacerbated the severe humanitarian crisis in the Occupied Palestinian Territories;

Also recognizing that the Israeli siege imposed on the occupied Gaza strip, including the closure of border crossings and the cutting of the supply of fuel, food and medicine, constitutes collective punishment of Palestinian civilians and leads to disastrous humanitarian and environmental consequences;

Welcoming the international and regional initiatives for peace in the Middle East;

Condemning Israel's acts of violence and use of force against Palestinians, resulting in injury, loss of life and destruction, coercive migration and deportation in violation of human rights and the Fourth Geneva Convention of 1949;

Stressing the need to compliance with existing Israeli – Palestinian agreements concluded in order to reach a final settlement;

Being concerned about the continuing dangerous deterioration of the situation in the Occupied Palestinian Territories, including East Jerusalem and Gaza strip, the continuous deportation of Palestinians from their homeland, and the continuing serious and systematic violation of human rights of the Palestinian people by Israel, the occupying power, including that arising from the excessive use of force, the use of collective punishment, the occupation and closure of areas, the confiscation of land, the establishment and expansion of settlements, the construction of a wall in the occupied Palestinian Territories, the destruction of property and infrastructure, use of prohibited weapons and all other actions designed to change the legal status, geographic composition of the Occupied Palestinian Territories, including East Jerusalem and Gaza strip, and about war crimes and crimes against humanity committed in these territories, and calling for the implementation of the relevant United Nations resolutions on the humanitarian situation of the Palestinian people;

Recalling the Advisory Opinion rendered by the International Court of Justice in the case concerning the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, and related General Assembly Resolution (A/RES/ES-10/15 of 20 July 2004 and ES-10/17 of 15 December 2006), as well as the United Nations initiative of establishment of a Register of Damage arising from the construction of the separation wall;

Being deeply concerned about the tenacity of Israel in proceeding with the construction of wall in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated regime, which is contrary to international law;

Acknowledging with deep concern that the Security Council is still unable to adopt a resolution stipulating the illegality of the Israeli expansionist wall;

Expressing its support to the Arab Peace Initiative for resolving the issue of Palestine and the Middle East, adopted by the 14th Arab Summit held in Beirut (Lebanon) on 28 March 2002 and reaffirmed in the 19th Summit Conference of the League of Arab States, Riyadh, 28-29 March 2007 as well as other peace initiatives, including the Quartet Road Map;

Taking note of conclusions and outcomes of all events held at both regional and international levels aiming at the achievement of a just, durable and comprehensive solution of the question of Palestine;

Affirming that a comprehensive, just and durable solution can only be achieved by ending the occupation in pursuance of the Charter of the United Nations, existing agreement

between the parties and the relevant Security Council and General Assembly resolutions, which will allow all the countries of the region to live in peace, security and harmony:

1. **Urges** its Member States to take part in the peace process/efforts exerted by the international community for the achievement of a just and comprehensive solution of the question of Palestine on the basis of relevant Security Council resolutions, including 242 (1967), 338 (1973), 425 (1978), 1397 (2002) and 1860 (2009); and relevant General Assembly Resolutions, including 194 (1949) on the formula of “land for peace” and the legitimate rights of the Palestinian people, and expressing solidarity with the Palestinian people and their elected leadership.
2. **Takes note** of the United Nations Secretary General’s Board of Enquiry as transmitted on 4 May 2009 to the Security Council as well as the findings of the recent report of the Special Rapporteur of the Human Rights Council and other regional organizations.
3. **Also takes note** of the report of the Independent Fact Finding Committee on Gaza presented to the League of Arab States on 30 April 2009.
4. **Strongly condemns** the shocking developments that have continued to occur in the Occupied Palestinian Territory, including East Jerusalem, including the deportation of Palestinians from their homeland, the large number of deaths and injuries, mostly among Palestinian civilians, the acts of violence and brutality against Palestinian civilians, the widespread destruction of public and private Palestinian property and infrastructure, the internal displacement of civilians and the serious deterioration of the socio-economic and humanitarian conditions of the Palestinian people.
5. **Demands** that Israel, the Occupying Power, comply fully with the provisions and principles of the Charter of the United Nations, Universal Declaration of Human Rights, the Regulations annexed to the Hague Convention of 1907 and the Geneva Conventions in particular the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, in order to protect the rights of Palestinians.
6. **Also demands** that Israel positively respond to the 2009 Report of Mr. Richard Falk the Special Rapporteur for the Palestinian Territories Occupied Since 1967 and 2010 Report and Recommendations of Justice Goldstone, United Nations Fact Finding Mission on the Gaza Conflict in order to protect the rights of Palestinians.
7. **Further Demands** that Israel comply with its legal obligations as mentioned in the Advisory Opinion rendered by the International Court of Justice in the case concerning the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, and related General Assembly Resolution (A/RES/ES-10/15 of 20th July 2004).

8. **Strongly demands** that Israel stop and reverse the construction of the wall in the Occupied Palestinian Territory.
9. **Strongly deplores** the Israeli blockade of the Gaza strip and its consequent human rights and humanitarian law violation and the Israeli attack against the humanitarian aid Flotilla.
10. **Further demands** for an immediate cessation of all acts of violence, including all acts of terror, provocation, incitement and destruction of property and calls for the immediate and full withdrawal of Israeli (occupying) forces from Palestinians territories in implementation of Security Council Resolutions, including 1402 (2002), 1403 (2002), 1515 (2003), and 1544 (2004) as a first step for ending the Israeli occupation of Palestinian territories occupied since 1967.
11. **Calls upon** Israel to ensure the return of refugees and displaced Palestinians to their homes and the restoration to them of their properties, in compliance with the relevant UN resolutions.
12. **Directs** the Secretariat to closely follow the developments in occupied territories from the view point of relevant legal aspects.
13. **Decides** to place the item on the provisional agenda of the Fifty-second Annual Session.