



**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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CONTENTS

I.	Introduction	
	A. Background	1-2
	B. Deliberations at the Forty-Eighth Annual Session of AALCO (2008-Putrajaya, Malaysia, 17-20 August 2009)	2-2
	C. Issues for focused consideration at the Forty-Ninth Session of AALCO, 2010	2-2
II.	Israel's Violation of International Law, Particularly International Humanitarian and Human Rights Law	3-30
	A. Violations of Fourth Geneva Conventions in the Occupied Palestinian Territory (OPT)	3-5
	1. Annexation and Illegal Expropriation of Palestinian Land	5-6
	2. Jewish Colonial Settlements	6-7
	3. Deportation of Palestinians	7-8
	4. Construction of the Wall in the Occupied Palestinian Territory	8-9
	B. UN Security Council and General Assembly Resolutions	9-9
	C. Resolutions adopted at the Sixty-Fourth Session (2009) of the United Nations General Assembly	10-10
	D. Israeli atrocities (War Crimes) in Gaza and the consequent Human Rights Violations: The Goldstone Report on Gaza	10-17
	E. Other Major developments	17-26
	F. Responses of the International Community	27-30
III.	Comments and Observations of AALCO Secretariat	30-35
IV.	Draft Resolution for the Forty-Ninth Session	36-39

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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.

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.”

B. Deliberations at the Forty-Eighth Annual Session of AALCO (Putrajaya, Malaysia, 17th – 20th August, 2009)

5. At the Forty-Eighth Session of AALCO, the delegations condemned the continued violation of international law, particularly international humanitarian law and human rights law, by the Government of Israel. The delegations also highlighted illegal actions by Israel, including forceful deportation of Palestinians, illegal settlements in the OPT, and military excesses against the Palestinian people. One delegation suggested the establishment of a Centre for documentation related to Palestine. Another delegation suggested that an Independent Commission of Board of Enquiry to be established within AALCO to explore possible ways and means to bring the perpetrators of crime against the Palestinians to justice. Yet another delegation suggested the Secretary-General of AALCO to constitute a team of experts to conduct a possible study on how the existing resolutions adopted by the General Assembly and Security Council as well as the principles of international law can be implemented.

6. Pursuant to RES/48/S 4 adopted at the Forty-Eighth Session of AALCO on 20th August 2009, the AALCO Secretariat closely followed the developments in the occupied territories from the view point of relevant legal aspects during the period from September 2009 till June 2010, and found out 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. The developments 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 developments during the last one year and are in no way exhaustive.

C. Issues for focused consideration at the Forty-Ninth Session of AALCO (2010)

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*

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

7. For almost 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, every positive step taken towards that end is brought back seven steps by Israel the occupying power, the horrific atrocities perpetrated on the civilian population in the OPT beginning from 27th December 2008 have clearly demonstrated this trend. The latest in the series of these blatant human rights violations against the helpless population of Gaza was the deadly attack on 31 May 2010 by the Israeli forces on “Freedom Flotilla”, the Turkish ships convoy, carrying humanitarian aid for the population of Gaza. The violations committed by Israel in relation this act have been elaborated on page 25 of this report.

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

8. 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.

9. 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. Since October 1967, Israel has taken a consistent position that the Geneva Convention is *de jure* not applicable to the West Bank and the Gaza Strip.

10. 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

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

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.

11. Therefore, it is argued that because Jordan and Egypt were not the legitimate sovereigns in the OPT prior to 1967 owing to their alleged unlawful aggression against Israel in 1948, that territory can not be said to constitute the 'territory of a High Contracting Party'. According to this line of thinking, the legal standing of Israel in the Occupied Territory is that of a State which is lawfully in control of territory in respect of which no other States can show better title.

12. It is further argued in this regard that Israel possesses better title over OPT in comparison to Jordan and Egypt based on the concept of "defensive conquest". Based on this concept it is argued that Israel came into control of the OPT in 1967 through a defensive war against Jordan and Egypt and neither of them held valid legal title to that territory, and therefore it has a perfect legal control over OPT.

13. However, these arguments 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. 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

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.

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:

“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

14. 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

15. 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

⁶. SC res. 478 (1980).

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

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

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.

16. 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 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

17. For more than 36 years 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

⁹. Article 47 reads as follows:

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."

by Palestinians and thereby to preclude the establishment of a viable independent Palestinian State.

18. 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

19. 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 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

20. 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

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/>

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.”

Convention also prohibits this act and categorizes it as the “grave breach” of the Convention.

21. 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

22. 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)

23. 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 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.

24. 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.

25. 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

26. 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-Fourth Session (2009) of the United Nations

27. As many as 17 resolutions relating to the question of Palestine were adopted at the Sixty-Fourth Session of the United Nations General Assembly. The most important resolutions related to ; Follow-up to the report of the United Nations fact-Finding Mission on the Gaza Conflict (II)¹⁴, Permanent sovereignty of the Palestinian people in the Occupied Territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan over their natural resources¹⁵, Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem¹⁶, Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem and the occupied Syrian Golan¹⁷, Applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian territory, including East Jerusalem and the other occupied Arab territories¹⁸, Work of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and other Arabs of the Occupied Territories¹⁹, Palestine refugees' properties and their revenues²⁰, Operations of the United Nations Relief and Works Agency for the Palestinian Refugees in the Near East²¹, Persons displaced as a result of the June 1967 and subsequent hostilities²², Assistance to Palestine refugees²³, Jerusalem²⁴, Peaceful settlement of the question of Palestine²⁵, Division for Palestinian Rights of the Secretariat²⁶, Committee on the Exercise of the Inalienable Rights of the Palestinian People²⁷ and Follow-up to the report of the United Nations Fact Finding Mission on the Gaza Conflict²⁸.

D. Israeli atrocities (war Crimes) in Gaza and the consequent Human Rights Violations: Report of the United Nations Fact Finding Mission on the Gaza Conflict. The Goldstone Report and its Conclusions and recommendations: 23 September 2009

28. The lack of protection of civilians and the escalation of violence have been significant factors in the overall human rights and humanitarian law situation in the Occupied Palestinian Territory.

¹⁴ A/RES/64/254

¹⁵ A/RES/64/185

¹⁶ A/RES/64/94

¹⁷ A/RES/64/93

¹⁸ A/RES/64/92

¹⁹ A/RES/64/91

²⁰ A/RES/64/90

²¹ A/RES/64/89

²² A/RES/64/88

²³ A/RES/64/87

²⁴ A/RES/64/20

²⁵ A/RES/64/19

²⁶ A/RES/64/17

²⁷ A/RES/64/16

²⁸ A/RES/64/10.

29. On 3 April 2009, the President of the Human Rights Council established the United Nations Fact Finding Mission on the Gaza Conflict²⁹ with the mandate “to investigate all violations of international human rights law and international humanitarian law that might have been committed at any time in the context of the military operations that were conducted in Gaza during the period from 27 December 2008 and 18 January 2009, whether before, during or after.

30. The President appointed Justice Richard Goldstone, former judge of the Constitutional Court of South Africa and former Prosecutor of the International Criminal Tribunals for the former Yugoslavia and Rwanda, to head the Mission. The other three appointed members were: Professor Christine Chinkin, Professor of International Law at the London School of Economics and Political Science, who was a member of the high-level fact-finding mission to Beit Hanoun (2008); Ms. Hina Jilani, Advocate of the Supreme Court of Pakistan and former Special Representative of the Secretary-General on the situation of human rights defenders, who was a member of the International Commission of Inquiry on Darfur (2004); and Colonel Desmond Travers, a former Officer in Ireland’s Defence Forces and member of the Board of Directors of the Institute for International Criminal Investigations.

31. The Mission interpreted the mandate as requiring it to place the civilian population of the region at the centre of its concerns regarding the violations of international law.

32. The facts investigated by the Mission, factual and legal findings in The Occupied Palestinian Territory: The Gaza Strip, are given below briefly in order to highlight the specific areas that were looked into by the fact finding Mission.

33. **The Blockade:** The Mission focused on the process of economic and political isolation imposed by Israel on the Gaza Strip, generally referred to as blockade. The blockade comprises measures such as restrictions on the goods that can be imported into Gaza and the closure of border crossings for people, goods and services, sometimes for days, including cuts in the provision of fuel and electricity. Gaza’s economy was further severely affected by the reduction of the fishing zone open to Palestinian fishermen and the establishment of a buffer zone along the border between Gaza and Israel, which reduces the land available for agriculture and industry. In addition to creating an emergency situation, the blockade has significantly weakened the capacities of the population and of the health, water and public sectors to respond to the emergency created by the military operations. The Mission held the view that Israel continues to be duty bound under the Fourth Geneva Convention and to the full extent of the means available to it to ensure the supply of foodstuff, medical and hospital items and other goods to meet the humanitarian needs of the population of the Gaza strip without qualification.

²⁹ A/HCR/12/48 (Advance 1) Executive Summary dated 23 September 2009.

34. The impact of the military operations and of the blockade on the people of Gaza and their human rights: The Mission examined the combined impact of the military operations and of the blockade on the Gaza population and its enjoyment of human rights. The economy, employment opportunities and family livelihoods were already severely affected by the blockade when the Israeli offensive began. Insufficient supply of fuel for electricity generation had a negative impact on industrial activity, on the operation of hospitals, on water supply to households and on sewage treatment. Import restrictions and the ban on all exports from Gaza affected the industrial sector and agricultural production. Unemployment levels and the percentage of the population living in poverty or deep poverty were rising.

35. In this precarious situation, the military operations destroyed a substantial part of the economic infrastructure. As many factories were targeted and destroyed or damaged, poverty, unemployment and food insecurity further increased dramatically. The agricultural sector similarly suffered from the destruction of farmland, water wells and fishing boats during the military operations. The continuation of the blockade impedes the reconstruction of the economic infrastructure that was destroyed.

36. The razing of farmland and the destruction of greenhouses are expected to further worsen food insecurity despite the increased quantities of food items allowed into Gaza since the beginning of the military operations. Dependence on food assistance increases. Levels of stunting and thinness in children and of anemia prevalence in children and pregnant women were worrying even before the military operations. The hardship caused by the extensive destruction of shelter (the United Nations Development Programme reported 3,354 houses completely destroyed and 11,112 partially damaged) and the resulting displacement particularly affects children and women. The destruction of water and sanitation infrastructure aggravated the pre-existing situation. Even before the military operations, 80 per cent of the water supplied in Gaza did not meet the World Health Organization's standards for drinking water. The discharge of untreated or partially treated wastewater into the sea is a further health hazard worsened by the military operations.

37. The military operations and resulting casualties subjected the beleaguered Gaza health sector to additional strain. The number of persons suffering from mental health problems is also bound to increase.

38. Children's psychological learning difficulties are compounded by the impact of the blockade and the military operations on the education infrastructure. Some 280 schools and kindergartens were destroyed in a situation in which restrictions on the importation of construction materials meant that many school buildings were already in serious need of repair.

39. The Mission's attention was also drawn to the particular manner in which women were affected by the military operations. The cases of women interviewed by the Mission in Gaza dramatically illustrate the suffering caused by the feeling of inability to provide children with the care and security they need. Women's responsibility for the household

and the children often forces them to conceal their own sufferings, resulting in their issues remaining unaddressed. The number of women who are the sole breadwinners increased, but their employment opportunities remain significantly inferior to men's. The military operations and increased poverty add to the potential for conflicts in the family and between widows and their in-laws

40. The Mission acknowledges that the supply of humanitarian goods, particularly foodstuffs, allowed into Gaza by Israel temporarily increased during the military operations. The level of goods allowed into Gaza before the military operations was, however, insufficient to meet the needs of the population even before hostilities started, and has again decreased since the end of the military operations. From the facts ascertained by it, the Mission believes that Israel has violated its obligation to allow free passage of all consignments of medical and hospital objects, food and clothing (article 23 of the Fourth Geneva Convention). The Mission also finds that Israel violated specific obligations which it has as the occupying Power and which are spelled out in the Fourth Geneva Convention, such as the duty to maintain medical and hospital establishments and services and to agree to relief schemes if the occupied territory is not well supplied.

41. The Mission also concludes that in the destruction by the Israeli armed forces of private residential houses, water wells, water tanks, agricultural land and greenhouses there was a specific purpose of denying sustenance to the population of the Gaza Strip. The Mission finds that Israel violated its duty to respect the right of the Gaza population to an adequate standard of living, including access to adequate food, water and housing. The Mission, moreover, finds violations of specific human rights provisions protecting children, particularly those who are victims of armed conflict, women and the disabled.

42. The conditions of life in Gaza, resulting from deliberate actions of the Israeli armed forces and the declared policies of the Government of Israel – as they were presented by its authorized and legitimate representatives – with regard to the Gaza Strip before, during and after the military operation, cumulatively indicate the intention to inflict collective punishment on the people of the Gaza Strip in violation of international humanitarian law.

43. Finally, the Mission considered whether the series of acts that deprive Palestinians in the Gaza Strip of their means of sustenance, employment, housing and water, that deny their freedom of movement and their right to leave and enter their own country, that limit their access to courts of law and effective remedies could amount to persecution, a crime against humanity. From the facts available to it, the Mission is of the view that some of the actions of the Government of Israel might justify a competent court finding that crimes against humanity have been committed.

44. In its report the Mission also considered the following points:

- * Attacks by Israeli forces on government buildings and persons of Gaza authorities, including police.

- * Obligation on Israel to take feasible precautions to protect the civilian population and civilian objects in Gaza
- * Indiscriminate attacks by Israeli forces resulting in the loss of life and injury to civilians
- * Deliberate attacks against the civilian population
- * The use of certain weapons
- * Attacks on the foundations of civilian life in Gaza: destruction of industrial infrastructure, food production, water installations, sewage treatment plants and housing
- * The use of Palestinian civilians as shields
- * The Occupied Palestinian Territory: the West Bank, including East Jerusalem

- * Deprivation of liberty: Gazans detained during the Israeli military operations of 27 December 2008 to 18 January 2009
- * Objectives and strategy of Israel's military operations in Gaza
- * Restrictions on the freedom of movement in the West Bank

Conclusions and recommendations³⁰

A. Conclusions:

45. The Mission was of the view that Israel's military operation in Gaza between 27 December 2008 and 18 January 2009 and its impact could not be understood or assessed in isolation from developments prior and subsequent to it. The operation fitted into a continuum of policies aimed at pursuing Israel's objectives with regard to Gaza and the Occupied Palestinian Territory as a whole. These resulted in violations of international human rights and humanitarian law.

46. The continuum was evident most immediately with the policy of blockade that preceded the operations and those in the Mission's view amounted to "collective punishment intentionally inflicted by the Government of Israel on the people of the Gaza Strip". When the operations began, the Gaza Strip had been under a severe regime of closures and restrictions on the movement of people, goods and services for almost three years. The effects of the prolonged blockade did not spare any aspect of the life of the Gazans.

47. An analysis of the modalities and impact of the December-January military operations also sets them, in the Mission's view, in a continuum with a number of other pre-existing Israeli policies with regard to the Occupied Palestinian Territory. The progressive isolation and separation of the Gaza Strip from the West Bank, a policy that began much earlier and which was consolidated in particular with the imposition of tight closures, restrictions on movement and eventually the blockade, were among the most apparent. Several measures adopted by Israel in the West Bank during and following the military operations in Gaza also further deepen Israel's control over the West Bank,

³⁰ A/HCR/12/48 (Advance 2) dated 24 September 2009

including East Jerusalem, and point to a convergence of objectives with the Gaza military operations. Such measures include increased land expropriation, house demolitions, demolition orders and permits to build homes in settlements, greater and more formalized access and movement restrictions on Palestinians, new and stricter procedures for residents of the Gaza Strip to change their residency to the West Bank. The cumulative impact of these policies and actions would make prospects for all kinds of integration between Gaza and the West Bank more remote.

B. Recommendations

48. The Mission subsequently made recommendations to a number of United Nations bodies, Israel, and the international community on (a) accountability for serious violations of international humanitarian law; (b) reparations; (c) serious violations of human rights law; (e) the use of weapons and military procedures; (f) the protection of human rights organizations and defenders; (g) the blockade and reconstruction; and (h) follow-up to the Mission's recommendations.

49. **Human Rights Council:** In view of the gravity of international human rights and humanitarian law and against humanity that it has reported, the Mission recommends that the United Nations Human Rights Council should request the United Nations Secretary-General to bring this report to the attention of the United Nations Security Council under Article 99 of the Charter of the United Nations so that the Security Council may consider action according to the Mission's relevant recommendations. It *inter alia* recommended that the Human Rights Council should bring the Mission's recommendations to the attention of the relevant United Nations human rights treaty bodies so that they may include review of progress in their implementation, as may be relevant to their mandate and procedures, in their periodic review of compliance by Israel with its human rights obligations. The Mission further recommends that the Human Rights Council should consider review of progress as part of its universal periodic review process.

50. **United Nations Security Council:** The Mission recommends that the Security Council should require the Government of Israel, under Article 40 of the Charter of the United Nations: **inter alia**

(i) To take all appropriate steps, within a period of three months, to launch appropriate investigations that are independent and in conformity with international standards, into the serious violations of international humanitarian and international human rights law reported by the Mission and any other serious allegations that might come to its attention;

(ii) To inform the Security Council, within a further period of three months, of actions taken, or in process of being taken, by the Government of Israel to inquire into, investigate and prosecute such serious violations.

51. **Prosecutor of the International Criminal Court:** with reference to the declaration under article 12 (3) received by the Office of the Prosecutor of the International Criminal Court from the Government of Palestine, the Mission considers

that accountability for victims and the interests of peace and justice in the region require that the Prosecutor should make the required legal determination as expeditiously as possible.

52. **United Nations General Assembly:** The Mission *inter alia* recommends that the General Assembly should request the Security Council to report to it on measures taken with regard to ensuring accountability for serious violations of international humanitarian law and human rights in relation to the facts in this report and any other relevant facts in the context of the military operations in Gaza, including the implementation of the Mission's recommendations. The General Assembly may remain apprised of the matter until it is satisfied that appropriate action is taken at the domestic or international level in order to ensure justice for victims and accountability for perpetrators. The General Assembly may consider whether additional action within its powers is required in the interests of justice, including under its resolution 377 (V) on uniting for peace.

53. **State of Israel:** The Mission *inter alia* recommends that Israel should immediately cease the border closures and restrictions on passage through border crossings with the Gaza Strip and allow the passage of goods necessary and sufficient to meet the needs of the population, for the recovery and reconstruction of housing and essential services, and for the resumption of meaningful economic activity in the Gaza Strip;

54. The Mission recommends that Israel should cease the restrictions on access to the sea for fishing purposes imposed on the Gaza Strip and allow such fishing activities within the 20 nautical miles as provided for in the Oslo Accords. It further recommends that Israel should allow the resumption of agricultural activity within the Gaza Strip, including within areas in the vicinity of the borders with Israel;

55. Israel should initiate a review of the rules of engagement, standard operating procedures, open fire regulations and other guidance for military and security personnel. The Mission recommends that Israel should avail itself of the expertise of the International Committee of the Red Cross, the Office of the United Nations High Commissioner for Human Rights and other relevant bodies, and Israeli experts, civil society organizations with the relevant expertise and specialization, in order to ensure compliance in this respect with international humanitarian law and international human rights law. In particular such rules of engagement should ensure that the principles of proportionality, distinction, precaution and non-discrimination are effectively integrated in all such guidance and in any oral briefings provided to officers, soldiers and security forces, so as to avoid the recurrence of Palestinian civilian deaths, destruction and affronts on human dignity in violation of international law;

56. The Mission recommends that Israel should allow freedom of movement for Palestinians within the Occupied Palestinian Territory - within the West Bank, including East Jerusalem, between the Gaza Strip and the West Bank, and between the Occupied Palestinian Territory and the outside world - in accordance with international human rights standards and international commitments entered into by Israel and the

representatives of the Palestinian people. The Mission further recommends that Israel should forthwith lift travel bans currently placed on Palestinians by reason of their human rights or political activities;

57. The Mission recommends that Israel should release Palestinians who are detained in Israeli prisons in connection with the occupation. The release of children should be an utmost priority. The Mission further recommends that Israel should cease the discriminatory treatment of Palestinian detainees. Family visits for prisoners from Gaza should resume.

58. **International Community:** The Mission **inter alia** recommends that the States parties to the Geneva Conventions of 1949 should start criminal investigations in national courts, using universal jurisdiction, where there is sufficient evidence of the commission of grave breaches of the Geneva Conventions of 1949. Where so warranted following investigation, alleged perpetrators should be arrested and prosecuted in accordance with internationally recognized standards of justice. The Mission recommends that States involved in peace negotiations between Israel and representatives of the Palestinian people, especially the Quartet, should ensure that respect for the rule of law, international law and human rights assumes a central role in internationally sponsored peace initiatives.

E. Other Major Developments

UNRWA Emergency Appeal: 20 January 2010

59. The protracted crisis in the occupied Palestinian territory (oPt), which began with the onset of the *Al Aqsa intifada* in late-2000, has now raged for almost a decade. During this period, living levels of Palestinians across the West Bank and Gaza Strip have slumped, ravaged by a combination of Israeli-imposed restrictions on access and movement and persistent conflict, including episodes of intense violence towards the civilian population and repeated destruction of physical assets.

60. The past 12 months saw the most destructive assault in the recent history of the oPt. Operation Cast Lead, which Israel prosecuted in Gaza between 27 December 2008 and 17 January 2009, resulted in the death of almost 1,400 Palestinians, including 347 women and 209 children, and more than 5,000 injuries. It also brought massive destruction of public and private property, infrastructure and productive capacity, prompting the expansion of an already extensive humanitarian relief effort.

61. The war was preceded by a crippling siege on Gaza's borders, which is still in place. The blockade - imposed following Hamas's takeover in mid-2007 - has had devastating consequences on all aspects of life for the 1.4 million residents of Gaza, over two-thirds of whom are refugees registered with UNRWA. The ban on exports and extensive curbs on imports have all but destroyed the formal private sector, leading to dramatic increases in poverty and unemployment levels and enabling the growth of an illegal 'tunnel economy' beneath the border with Egypt. The blockade extends to the materials and equipment needed to rebuild homes and infrastructure destroyed during the

war, stymieing all meaningful reconstruction and recovery efforts and leaving the population increasingly vulnerable and overwhelmingly dependent on aid handouts. Barring a few exceptions, including small numbers of patients and students, this population remains trapped inside Gaza's borders. The provision of basic services - health, education and public utilities - continues to be severely degraded by a lack of materials, equipment, funds and unresolved internal political strife, whilst fuel shortages render the supply of electricity and water sporadic.

62. In the West Bank, there have been some signs of improvements in conditions over the past year, due to the easing of movement restrictions between some major Palestinian cities east of the Barrier, reduced levels of Israeli-Palestinian violence and the transfer of substantial financial support to the caretaker PA government. However, greater freedom of movement has come at the expense of the entrenchment of Israeli measures to control and limit Palestinian access to land and resources, causing further fragmentation of West Bank territory and segregation of the indigenous population. The impact of Israeli actions in the West Bank has been largely palliative and will likely remain so absent changes in the fundamentals of the context, namely the continued occupation of Palestinian land and the illegal consolidation and expansion of settlements.

63. For many Palestinians in the West Bank, access to economic resources and basic services continues to be severely restricted, limiting opportunities for sustainable growth and development. Access to East Jerusalem, the Jordan Valley and areas between the Barrier and the Green Line is particularly constrained, and the Palestinian population of these areas is particularly vulnerable. Living conditions of many communities in East Jerusalem and Area C are further aggravated by risk of displacement and regular exposure to settler violence.

64. Palestine refugees, who account for around 40 percent of the total population of the oPt and more than two-thirds in Gaza, continue to suffer the worst impacts of the crisis. Consistent with trends over the past few years, they typically endure higher levels of poverty, unemployment and food insecurity than non-refugees.

65. To assist and protect refugees and safeguard their basic rights and freedoms, UNRWA launched a new appeal for emergency assistance in 2010. This appeal would target the most vulnerable refugees in the oPt, in particular the population of Gaza and communities in the West Bank most affected by closures and access restrictions. Support would be given to Palestinians facing acute protection concerns or living in particular hardship and those at risk of displacement or loss of livelihood.

66. UNRWA will provide relief assistance in the form of: (1) emergency livelihoods support, including food aid, job creation and cash assistance for families in poverty or facing acute shocks; (2) support to access essential basic services, particularly basic education, health and environmental health services and; (3) emergency shelter support for families whose homes have been damaged or destroyed through conflict or natural crises.

67. The Agency will also protect Palestine refugees through a broad range of strategies that promote respect for their human rights, as enshrined under international humanitarian law. This includes: (1) enhanced monitoring, reporting and advocacy on human rights violations; (2) provision of community mental health services to address the psycho-social distress caused by violence, closure and hardship; (3) outreach and mobile services for isolated communities and those at risk of displacement in the West Bank and; (4) the maintenance of a rapid response mechanism in the event of acute crises affecting refugee communities.

UN Special Rapporteur warned that Israeli Military Order was “In Breach of International Law”: 19 April 2010

68. The UN Special Rapporteur on the situation of human rights in Palestinian territories occupied since 1967, Richard Falk, warned that two Israeli Defense Forces Military Orders were in breach of the Fourth Geneva Convention and violate the International Covenant on Civil and Political Rights.

69. Mr. Falk noted that “a wide range of violations of international human rights and international humanitarian law could be linked to actions carried out by the Government of Israel under these Orders, with particular gravity in the event that young persons become victims of their application.”

70. “The Orders appear to enable Israel to detain, prosecute, imprison and/or deport any and all persons present in the West Bank,” noted the Special Rapporteur, basing his concern on Israel’s new definition of the term ‘infiltrator:’ “A person who entered the Area unlawfully following the effective date, or a person who is present in the Area and does not lawfully hold a permit.” “Even if this open-ended definition is not used to imprison or deport vast numbers of people, it causes unacceptable distress,” the UN independent expert said. Mr. Falk further noted that “it is not at all clear what permit, if any, will satisfy this Order.”

71. Mr. Falk warned that deportations under the two new Orders could take place without judicial review, and that detained persons could be imprisoned for 7 years, unless able to prove that their entry was lawful, in which case they would be imprisoned for 3 years.

72. The UN Special Rapporteur recalled that Israel is party to the fourth Geneva Convention, which outlines its obligations as the Occupying Power in the West Bank. Article 49 of this Convention states that “individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.”

73. Mr. Falk also noted that, despite the fact that Israel is party to the International Covenant on Civil and Political Rights, of 16 December 1966 “the Orders establish a system that allows Israel to deport people without having their right to judicial review properly fulfilled, or possibly not reviewed at all.” He stressed that “the Orders do not even ensure that detainees will be informed in their own language that a deportation order has been issued against them.”

UN Secretary-General welcomes Israel-Palestine proximity talks: 10 May 2010

74. The Secretary-General Ban Ki-moon said that he was encouraged by the start of Israeli-Palestinian proximity talks, voicing hope that they would lead to direct negotiations between the two sides. According to reports, it was announced yesterday that indirect talks mediated by the United States had begun between Israel and the Palestinians.

75. The Secretary-General had long stressed that there was no alternative to a two-State solution.

76. Earlier this year he said that he was committed to helping the sides reach a settlement in the next two years.

One Year After – Gaza Early recovery and Needs Assessment – UNDP Report: 24 May 2010

77. More than a year after Israel ceased its military operations against the Gaza Strip, and despite intensive efforts to initiate recovery, three quarters of the damage inflicted on buildings and infrastructure remained unrepaired and unreconstructed. Around USD 527 million were required to just return the Gaza Strip to the state it was in on December 26, 2008, on the eve of the 23-day conflict. This represented a fraction of the total needs required to “build back better”, that is to ensure that Gazans achieve a measure of well being that extends beyond the levels of 2008, through large scale construction to address population growth, maintenance and repair to reverse the degradation of public and private infrastructure which has occurred under the blockade of the Gaza Strip.

78. “Operation Cast Lead”, as the Israeli army called its campaign against the Gaza Strip, constituted one of the most violent episodes in the recent history of the occupied Palestinian territory. The Palestinian Centre for Human Rights estimated that 1,417 Palestinians were killed, 313 of whom were children, 116 women and 988 men. More than 5,380 were injured, of whom 1,872 were children, 800 were women and 2,520 were men. Between 40-70% of the wounded suffered severe traumatic injuries, and eleven percent among the injured have become permanently disabled. At least 6,268 homes were destroyed or severely damaged. The civilian population suffered further from damage to electricity, water and sewage systems. Military operations also caused substantial damage to schools, universities, hospitals, health centers, businesses, factories and farmland and public governance facilities, including presidential, parliamentary,

ministerial, rule of law, civil society, and local administration buildings and archives, destroying an already weakened institutional capacity.

79. **Obstacle to Reconstruction :** The blockade has been a major obstacle to repairing the damage done by Israeli air attacks and destruction. Nearly none of the 3,425 homes destroyed during Cast Lead have been reconstructed, displacing around 20,000 people.

80. A closer look revealed that the infrastructure which remains unrepaired is often that which is most essential to the basic needs and well-being of the Gaza population.

81. **International Mobilization for Gaza:** International mobilization for the reconstruction of Gaza began shortly after the end of operation "Cast Lead". Based on a damage and needs assessment spearheaded by the UN in collaboration with local authority counterparts and national NGOs, the Palestinian National Authority put forward the Palestinian National Early Recovery and Reconstruction Plan for Gaza (PNERRP) at the Sharm El-Sheikh Donor Conference of 2 March 2009³¹. More than USD 1.3 billion was pledged by international donors in support of the plan. More than a year after the Sharm El-Sheikh Conference, few of these pledges have materialized, and Gaza's reconstruction continues to be hampered by Israel's blockade and by internal Palestinian divisions.

82. **Gaza's Lifeline – The Tunnel Economy:** To circumvent the blockade and acquire goods for a dignified life, Gazans have begun to rely on old and new tunnels that cross from Rafah into Egypt. Gaza's tunnel economy has been ongoing for more than 15 years and has always been driven by commercial imperatives and the shortage of goods in Gaza. Before disengagement in 2005, the Israeli army waged a constant battle to suppress tunneling. The army flooded the border area, created mini-earthquakes with explosives and conducted house to house searches. Each time they blocked a tunnel, the operators would dig another one to bypass the blockage and re-connect with the main shaft. In 2007, tunneling switched from being a secretive enterprise to one conducted in the open, with hundreds of tunnels being constructed beneath the border watch towers.

OPT: Aid fleet bound for Gaza: 26 May 2010

83. "Freedom Flotilla" Six cargo ships with more than 10,000MT of humanitarian aid, mostly building materials, medical equipment and medicines, set sail for the Gaza Strip on 27 May in a symbolic attempt by activists to break the three-year Israeli blockade, said the Turkish NGO, Foundation for Human Rights and Freedoms and Humanitarian Relief (IHH), local Palestinian NGOs and authorities in Gaza.

84. Scores of smaller vessels carrying about 750 passengers from an estimated 140 nations are part of the "flotilla", which would attempt to dock in Gaza City on 28 May, said Jamal Al Khoudary, chairman of the Committee to Break the Siege and independent parliament member, in Gaza. Passengers included 50 parliamentary members from the

³¹ See AALCO/48?PUTRAJAYA/2009/S 4, pg23-25

European Union (EU) and Arab nations, and Israeli Knesset member Hanin Zoabi, said Al Khoudary.

85. Cargo ships originating from several countries, including Algeria, Turkey and Kuwait, were transporting equipment, such as Magnetic Resonance Imaging (MRI) machines, unavailable in Gaza, CT scanners, X-ray and kidney dialysis machines, said IHH deputy director Osama Obdo in Gaza. Donors from Greece, Ireland and Sweden contributed to the fleet. Construction materials included 6,000MT of cement, 6,000MT of concrete and 2,000MT of iron, as well as milk, paper and school supplies.

86. Turkey, said to be the largest donor to the shipment, called on Israel to lift its blockade of Gaza and to allow the aid to reach the territory.

87. Gaza's formal economy had collapsed since the blockade which began in June 2007. More than 60 percent of households were food-insecure, according to a joint 25 May statement by the UN Humanitarian Coordinator for the occupied Palestinian territories, Philippe Lazzarini, humanitarian aid agencies, and the Association of International Development Agencies (AIDA). On 31st May 2010 these ships were attacked by Israeli forces, resulting in the death of 10 civilian peace activists and injuries to many others.

Security Council in its Emergency Session condemns acts resulting in civilian deaths during Israeli Operation against Gaza-bound aid convoy: 31 May 2010

88. The Security Council expressed deep regret at the loss of life and injuries resulting from the use of force during the Israeli military operation early on 31 May 2010 in international waters against the convoy sailing to Gaza, and condemned those acts which had killed at least 10 civilians and wounded many more.

89. Twelve hours after convening an emergency session on Monday in response to the Israeli "operation" on the Gaza-bound maritime convoy, the Council issued the statement, read out by Claude Heller of Mexico, whose delegation leads the Council in June (Lebanon was the Council President until midnight, 31 May), requesting the immediate release of the ships, as well as the civilians held by Israel.

90. The Council urged Israel to permit full consular access, to allow the countries concerned to retrieve their deceased and wounded immediately, and to ensure the delivery of humanitarian assistance from the convoy to its destination.

91. It took note of the statement of United Nations Secretary-General on the need to have a full investigation into the matter and it called for a prompt, impartial, credible and transparent investigation conforming to international standards.

92. Stressing that the situation in Gaza was not sustainable, the Council re-emphasized the importance of the full implementation of resolutions 1850 (2008) and 1860 (2009). In that context, it reiterated its grave concern at the humanitarian situation

in Gaza and stressed the need for the sustained and regular flow of goods and people to Gaza, as well as unimpeded provision and distribution of humanitarian assistance throughout the enclave. The Council also expressed support for the proximity talks.

93. At an earlier meeting Oscar Fernandez-Taranco, Assistant Secretary-General for Political Affairs, briefed the Council on the incident, reporting that Israeli naval forces had boarded a six-ship convoy, which had been heading towards Gaza. The stated purpose of the convoy was to deliver humanitarian aid to Gaza and to break the Israeli blockade on Gaza, he said, making clear the United Nations has “no independent information on what transpired”.

94. He said that in the lead-up to the events, the Israeli authorities had conveyed their intention, both publicly and through diplomatic channels, not to allow the convoy to reach Gaza. The Israeli authorities had stated that if the convoy proceeded, contrary to those warnings, they would divert it to an Israeli port, inspect the cargo, facilitate the entry of only those goods that were allowed into Gaza in accordance with Israel’s blockade, and deport those on-board.

95. The organizers of the convoy had indicated their intention to proceed with their convoy and to attempt to deliver their full consignment of cargo to Gaza and to break the blockade, he said. And a committee of persons organized by the de facto Hamas authorities in Gaza had been formed to receive the convoy.

96. Turkey’s Foreign Minister, Ahmet Davutoğlu, said he was distraught by the incident, which was a grave breach of international law and constituted banditry and piracy — it was “murder” conducted by a State, without justification. A nation that followed that path lost its legitimacy as a respectable member of the international community. The children of Gaza, meanwhile, did not know where their next meal was coming from; they had received no education and had no future. Today, many humanitarian workers returned home in body bags. Israel had “blood on its hands”.

97. High-seas freedom, he said, freedom of navigation, was one of the oldest forms of international law; no vessel could be stopped or boarded without the consent of the captain or flag State. Any suspected violation of the law did not absolve the intervening State under international law. To treat humanitarian delivery as a hostile act and to treat aid workers as combatants could not be deemed legal or legitimate. Any attempt to legitimize the attack was futile.

98. This was an attack on the United Nations and its values, he said, adding that the international system had suffered a sharp blow, and now “it is our responsibility to rectify this and prove that common sense and respect to international law prevails”. Israel must be prepared to face the consequences of its crimes. The processes in place had been suffocated by that one single act. Israel had become an advocate of aggression and the use of force. He called on the people of Israel to express dismay. Steps must be taken to reinstate Israel’s status as a credible partner and responsible member of the international community.

99. The Palestinian Authority had declared a state of mourning for three days, said the Permanent Observer of Palestine to the United Nations, adding that everyone was a victim, to be mourned as martyrs of Palestine. It was high time for the Security Council to take decisive measures against Israel, which always acted beyond the law, he stressed. The continuation of the Gaza blockade and the starvation of the people who lived there was what had led to today's crime and had allowed hundreds around the world "to be on our side".

100. The Minister promised that the fleets would continue to come until the blockade was ended and the suffering ameliorated for the Palestinian people. The attack of those unarmed civilians aboard foreign ships in international waters was more proof that Israel acted as a country beyond the law. Hence, the international community must take "urgent and suitable" measures. It was time for the Council to put an end to the unjustifiable blockade imposed on 1.5 million Palestinians and to implement its resolution 1860 (2009). In this regard it may be mentioned that, Article 23 of the Fourth Geneva Convention has recognized the rights of civilians living in the areas under foreign occupation to receive material humanitarian aid. Article 59 of the Fourth Geneva Convention also has made the occupier duty bound to give permission to the caravans carrying humanitarian aid to enter the occupied territories, if the essential goods available in the occupied territories are not enough for the life of the people under occupation. Likewise, Articles 69 and 70 of the Additional Protocol to the Geneva Conventions has also mentioned that the occupying Government is duty bound to receive humanitarian aid for the people residing in the territories under its occupation. Article 55 of the First Additional Protocol of 1977 also has clearly prohibited attack against civilians. The contents of this article are considered to be a general norm and all Governments including members and non-members to the Protocol must implement the same. The same Article also prohibits violence with a view to spread terror among civilians. Therefore, attack by the Israelis in the free waters carrying the humanitarian aid violates international humanitarian law.

101. Context for the tragedy, many Security Council Members said, were the Israeli restrictions on Gaza, which they insisted must be lifted, in line with resolution 1860 (2009). The current closure was deemed unacceptable and counterproductive, and ending it was among the highest priorities of many of their Governments and of the international community as a whole. There were calls for continued humanitarian reconstruction aid and economic development assistance for Gaza, with some speakers saying Monday morning's events had also highlighted the need, once again, for a comprehensive solution to the Arab-Israeli conflict.

102. Additional statements were made by the representatives of the United Kingdom, Mexico, Brazil, Austria, Japan, Nigeria, United States, Russian Federation, Uganda, China, France, Gabon, Bosnia and Herzegovina, and Lebanon.

Children and Armed Conflict: Security Council discussed this issue on 22 June 2010

103. Pursuant to the Report of the United Nations secretary-General (S/2010/181) on “Children and Armed Conflict”, the Security Council at its 6341st meeting on 16 June 2010 deliberated upon this report. The Representative of Palestine stated that the situation of children in armed conflicts, including foreign occupation, from which the children of Palestine continued to suffer, remained a matter of grave concern.

104. The fact that the Secretary-General has had to appoint a Special Representative for Children and Armed Conflict and that the Security Council must continue, along with the General Assembly, Human Rights Council and other United Nations organs and agencies, to address this very serious matter year after year was a sad testament to the failure of the international community to live up to its commitments and legal obligations to protect children from the scourge of armed conflicts.

105. Children in situations of armed conflict continued to be the victims of appalling human rights violations, exploitation and grave crimes. Millions of children were forced to live in fear, hunger, poverty, isolation and despair among their devastated families and communities. Their rights to life, to health, to education, to food, to family, to development and to be nurtured and protected were grossly violated. Failure to provide them with the protection they were entitled to under international humanitarian and human rights law has deepened their suffering, with immense socio-economic, humanitarian, political and security consequences for their societies and nations.

106. Urgent action was required to uphold the commitment to protecting children from the horrors of armed conflict, among them children living under foreign occupation. It was necessary to ensure respect for their rights in accordance with the Convention on the Rights of the Child, the Universal Declaration of Human Rights and all other relevant legal instruments, including the Fourth Geneva Convention.

107. He said what was missing is not intention, as evidenced in the international declarations and positions reaffirmed time and again. What was missing is the will to directly address the crises being faced by children in situations of armed conflict and to thus render the debating of this global dilemma unnecessary. This would require, among other steps, real measures to ensure the accountability of those found to be persistently committing grave violations against children in armed conflict. There must be zero tolerance for the perpetration of crimes against children in all cases, without exception. Excuses should not be made or accepted for violations of the rights, safety and innocence of children.

108. The lack of accountability for systematic human rights violations and war crimes against civilians in armed conflict has fostered a vicious culture of impunity that had only prolonged conflicts and compounded the vulnerability and suffering of innocent civilians. He said without doubt that this had been the case in the Israeli-Palestinian conflict, where Israel, the occupying Power, had been permitted to act with impunity, in total disrespect

of all norms of international law and relevant United Nations resolutions, resulting in a heavy price being paid by Palestinian children.

109. Generations of Palestinian children had been traumatized by decades of human rights violations by Israel, the occupying Power. In this regard, he recalled a telling reflection by the Special Representative of the Secretary-General for Children and Armed Conflict, Ms. Coomaraswamy, to whom he expressed appreciation for her tireless efforts to call attention to the plight of children in armed conflicts and to advocate for their protection and well-being. In a 2007 report after her visit to the occupied Palestinian territory, she noted that this ongoing conflict has created “a palpable sense of loss and a feeling of hopelessness that places the children of the West Bank and Gaza apart from all other situations”.

110. Tragically, the plight of Palestinian children had not improved since her last report on the situation there. Their situation had deteriorated in all respects, in particular in the Gaza Strip, where children — who constitute over half of the population, the majority of them refugees — continue to be tormented by the occupation policies, particularly Israel’s illegal and shameful blockade imposed in collective punishment of the entire population.

111. The critical situation of children in the occupied Palestinian territory, including East Jerusalem, was reflected in the Secretary-General’s recent report on children and armed conflict (S/2010/181). While that important report provided a brief, sterile glimpse into the pervasive and intense suffering of Palestinian children during the reporting period, particularly in the aftermath of the Israeli military aggression against the Gaza Strip in December 2008, it nevertheless conveyed a grim picture of what Palestinian children continue to endure under Israeli occupation.

112. Children also endured forcible and violent interrogation, detention, arrest and physical and mental ill-treatment and torture by the occupying forces, including threats of rape and sexual assault against children between the ages of 12 and 15. At least 305 children remained in Israeli jails, 42 of them under the age of 15.

113. There are grave violations of children’s rights to health and to education as a result of Israel’s destruction of schools and health centres, the blockade’s obstruction of necessary medical and school supplies, and blatant discrimination against Palestinian schools in East Jerusalem. At least nine children died in Gaza while waiting for Israeli permits to travel outside the territory to receive life-saving medical treatment.

114. Children also continued to be victims of settler attacks, being shot, beaten and threatened while walking to school, tending livestock or playing outside their homes. Their right to food had been grossly violated in blockaded Gaza, where thousands have been afflicted by hunger, malnutrition, anaemia, stunted growth and other diseases as a result. The socio-economic conditions and overall well-being of children also continued to decline as a result of Israel’s intentional obstruction of livelihoods and impoverishment of the majority of the population.

F. Responses of the International Community

Statement by the Coordinating Bureau of the Non-Aligned Movement on the Situation in the Occupied Palestinian Territory, including East Jerusalem, 29 September 2009

115. The Members of the Non-Aligned Movement (NAM) expressed their serious concern about the situation in the Occupied Palestinian Territory, including East Jerusalem, as a result of continuing illegal actions by Israel, the occupying Power. In particular, NAM expressed grave concern about the ongoing illegal Israeli settlement colonization campaign being carried out in the Occupied Palestinian Territory, with shocking intensity in and around Occupied East Jerusalem, and the inhumane, unlawful Israeli blockade that continued to be imposed on the Palestinian civilian population in the Gaza Strip and the resultant dire humanitarian crisis.

116. NAM expressed alarm at recent attacks carried out by the occupying forces, including extremist settlers, against Palestinian worshippers at Al-Haram Al-Sharif compound in Occupied East Jerusalem. NAM condemned Israel's continuing provocations, aggression and illegal actions against the City's holy sites and against its Palestinian inhabitants. NAM reiterated its condemnation of all illegal Israeli actions and provocative measures aimed at altering the demographic composition, geographic nature, character and status of Occupied East Jerusalem and the rest of the Occupied Palestinian Territory. NAM expressed grave concern that, in defiance of the clear international consensus rejecting such colonization activities and in flagrant breach of international law, Israel continued to construct settlements and the Wall in the Occupied Palestinian Territory, especially in and around East Jerusalem, where the occupying Power also continued, *inter alia*, to demolish Palestinian homes, to evict Palestinian families from their homes, to confiscate Palestinian land and properties and to carry out excavations in the City, including in the vicinity of Al-Haram Al-Sharif compound.

117. NAM reiterated its demand for the immediate cessation of all Israeli violations of international law, including humanitarian and human rights law, including an end to its illegal blockade on the Gaza Strip and all settlement activities, which were deepening the suffering of the Palestinian people and undermining the prospects for peace. NAM called upon the international community, particularly the Security Council, to uphold its responsibilities and to take the necessary action to compel Israel, the occupying Power, to comply with all of its legal obligations, including under the Fourth Geneva Convention, and with its commitments under the Quartet Road Map.

118. NAM calls for a redoubling of efforts aimed at the achievement of a just, lasting and comprehensive peace on the basis of the relevant United Nations resolutions, the Madrid terms of reference, the Arab Peace Initiative and the Road Map. In this regard, NAM reaffirms its unwavering support for the realization by the Palestinian people of their inalienable rights, including their right to self-determination, with the establishment

of their contiguous, viable and independent State of Palestine, with East Jerusalem as its capital, and a just solution for the plight of the Palestine refugees on the basis of General Assembly resolution 194 (III).

ICC Prosecutor receives Palestinian Minister of Justice, Arab League and Independent Fact-Finding Committee: 16 October 2009

119. On 16 October, the Prosecutor of the International Criminal Court (ICC), Luis Moreno-Ocampo, received a Palestinian delegation headed by Dr. Ali Khashan, Minister of Justice of the Palestinian National Authority (PNA). Dr. Khashan was accompanied by the Palestinian Ambassador to the Netherlands, Nabil Abuznaid, and a team of legal experts including Vaughan Lowe QC, Professor of International Law at Oxford University. The Prosecutor also received members of the Independent Fact-finding Committee led by Professor John Dugard and members of the Arab League Secretariat, in the context of ongoing consultations.

120. The PNA delegation submitted a preliminary report presenting its legal arguments in support of the declaration lodged on 22 January 2009, accepting the jurisdiction of the Court over crimes committed in Palestine. The Office would carefully examine all supporting arguments submitted, starting with the initial issue of whether the declaration by the PNA accepting the exercise of jurisdiction by the ICC met with the statutory requirements. The Prosecutor said "We appreciate the efforts undertaken by the PNA and the extensive legal arguments presented on a highly complex area of law."

Middle East Quartet: Statement issued on 19 March 2010

121. United Nations Secretary-General Ban Ki-moon, Russian Foreign Minister Sergey Lavrov, United States Secretary of State Hillary Rodham Clinton, United States Special Envoy for Middle East Peace George Mitchell, and High Representative for Foreign Affairs and Security Policy of the European Union Catherine Ashton -- met in Moscow on 19 March 2010. They were joined by Quartet Representative Tony Blair.

122. Reaffirming the fundamental principles laid down in its statement in Trieste on 26 June 2009, the Quartet welcomed the readiness to launch proximity talks between Israel and the Palestinians. The Quartet emphasized that the circumstances which made it possible to agree to launch the proximity talks be respected. The proximity talks were an important step towards the resumption, without preconditions, of direct bilateral negotiations that resolve all final status issues as previously agreed by the parties. The Quartet believed that these negotiations should lead to a settlement, negotiated between the parties within 24 months, that ends the occupation which began in 1967 and results in the emergence of an independent, democratic and viable Palestinian State living side by side in peace and security with Israel and its other neighbours. The Quartet reiterates that Arab-Israeli peace and the establishment of a peaceful State of Palestine in the West Bank and Gaza is in the fundamental interests of the parties, of all the States in the region and of the international community. In this regard, the Quartet called on all States to support dialogue between the parties.

123. The Quartet reiterated its call on Israel and the Palestinians to act on the basis of international law and on their previous agreements and obligations -- in particular adherence to the Road Map, irrespective of reciprocity -- to promote an environment conducive to successful negotiations, and reaffirmed that unilateral actions taken by either party could not prejudice the outcome of negotiations and would not be recognized by the international community. The Quartet urged the Government of Israel to freeze all settlement activity, including natural growth, to dismantle outposts erected since March 2001, and to refrain from demolitions and evictions in East Jerusalem.

124. Recalling that the annexation of East Jerusalem was not recognized by the international community, the Quartet underscored that the status of Jerusalem was a permanent status issue that must be resolved through negotiations between the parties, and condemned the decision by the Government of Israel to advance planning for new housing units in East Jerusalem. The Quartet reaffirmed its intention to closely monitor developments in Jerusalem and to keep under consideration additional steps that may be required to address the situation on the ground. The Quartet recognized that Jerusalem was a deeply important issue for Israelis and Palestinians, and for Jews, Muslims and Christians, and believed that through good-faith negotiations, the parties could mutually agree on an outcome that realized the aspirations of both parties for Jerusalem, and safeguards its status for people around the world.

125. The Quartet further calls on all States in the region and in the wider international community to match the Palestinian commitment to State-building by contributing immediate, concrete and sustained support for the Palestinian Authority.

126. The Quartet was deeply concerned by the continuing deterioration in Gaza, including the humanitarian and human rights situation of the civilian population, and stressed the urgency of a durable resolution to the Gaza crisis.

127. Recognizing the significance of the Arab Peace Initiative, the Quartet looked forward to closer cooperation with the parties and the Arab League, and urged regional Governments to support publicly the resumption of bilateral negotiations, enter into structured regional dialogue on issues of common concern, and take steps to foster positive relations throughout the region in the context of progress towards comprehensive peace on the basis of United Nations Security Council resolutions 242, 338, 1397, 1515 and 1850, and the Madrid principles, including through the conclusion of peace agreements between Israel and Syria and Israel and Lebanon.

Security Council - Israel must freeze settlements: 14 April 2010

128. A United Nations official reiterated the world body's calls on Israel to freeze its settlement activity in the West Bank, saying that while a partial restraint on construction was welcomed, it was insufficient and fuelled a crisis of confidence that had kept talks between the parties from resuming.

129. “This policy falls short of Israel’s Roadmap obligation of a full settlement freeze and excludes settlement activity in East Jerusalem,” Under-Secretary-General for Political Affairs B. Lynn Pascoe told the Security Council during the open session.

130. Calling the situation on the ground “fragile”, Mr. Pascoe said in a briefing on the Middle East that the transfer of Israeli settlers into the heart of the Palestinian neighbourhood of Sheikh Jarrah in East Jerusalem had led to further incidents of violence between Palestinian residents and the settlers. In a development he described as “worrisome,” Mr. Pascoe noted an Israeli military order giving the military commander the power to evict a broad category of people deemed not to be residents of the West Bank. “This could have the effect of enabling Israeli authorities to deport these individuals and has provoked strong Palestinian and Arab reaction,” he said.

131. Special Coordinator Robert Serry had raised the issue with Israeli authorities and his office will continue to monitor this development closely, he added. “Implementing this order would constitute a breach of the Fourth Geneva Convention, in particular its Article 49, which prohibits forcible transfers as well as deportations of protected persons, individual or mass, from the occupied territory,” said Zahir Tanin, Vice-Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People, who addressed the Security Council following Mr. Pascoe’s statement.

132. The Palestinian Authority requires an estimated \$100 million a month in external financing for recurrent budgetary expenditures, but since January, only an estimated \$174 million has been transferred. “Projected shortfalls in the Palestinian Authority’s budget could undermine its reform and State-building agenda. Member States are encouraged to commit funds they pledged, wherever possible through direct support to the Palestinian Authority,” Mr. Pascoe said.

III. COMMENTS AND OBSERVATIONS OF THE AALCO SECRETARIAT

133. Gaza has been under heightened Israeli blockade since June 2007. The massive military operation in the occupied Gaza Strip has 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, constitutes collective punishment of Palestinian people and leads to disastrous humanitarian and environmental consequences.

134. The crisis has been further aggravated by the war crimes perpetrated by the Israeli State on 31 May 2010 against the “Freedom Flotilla”, the Turkish ships convoy, carrying humanitarian aid for the population of Gaza. Despite, the international community decrying in strongest terms Israel’s blockade of Gaza and its illegal action against the Freedom Flotilla, Israel remains unrepentant.

135. The attacks on Gaza between 27 December 2008 and 18 January 2009 and with the closure of all its borders, had in fact taken away from the Palestinian civilians their

“right to seek refuge in other territories”, and this new situation had the potential of acquiring yet another violation of human rights of Palestinian people. Many of the concerns raised by the Special Rapporteur, Mr. Richard Falk merit serious consideration and he has very eloquently elaborated the violations and non-compliance with established principles of international law by the State of Israel on the civilians in the Occupied Palestinian Territory. The Gaza offensive defied all the principles enshrined in International Humanitarian Law as Israel launched the most disproportionate attack against innocent civilians.

136. The deliberate destruction of the Gaza Strip's electricity power station, water networks, bridges, roads and other infrastructure is a clear violation of the Fourth Geneva Convention of 1949 and has major and long-term humanitarian consequences for the inhabitants of the Gaza Strip. As the occupying power, Israel is bound under international law to protect and safeguard the basic human rights of the Palestinian population.

137. Justice Richard Goldstone, Chairman of the UN Fact Finding Mission stated that he and the Members of the Commission had accepted the Mission because they deeply believed in the rule of law, human rights law, humanitarian law, and the principle that in armed conflict civilians should to the greatest extent possible be protected from harm. He also believed that pursuing justice was essential and that no state or armed group should be above the law. Failing to pursue justice for serious violations during any conflict would have a deeply corrosive effect on international justice.

138. The Mission detailed a number of specific incidents in which Israeli forces launched direct attacks against civilians with lethal consequences. The facts had established that there was no military objective or advantage that could justify those attacks. It was clearly underscored that the effects of the blockade that Israel had imposed on Gaza Strip for some years amounted to reprisals and collective punishment and constituted war crimes.

139. The report pointed out in unambiguous terms that the Government of Israel's right to protect its citizens in no way justifies a policy of collective punishment of a people under effective occupation, destroying their means to live a dignified life and the trauma caused by the kind of military intervention the Government of Israel called Operation Cast Lead. This had contributed to a situation where young people grow up in a culture of hatred and violence, with little hope for change in the future.

140. Justice Goldstone also noted that lack of accountability for war crimes and possible crimes against humanity had reached a crisis point in Gaza; the ongoing lack of justice was undermining any hope for a successful peace process and reinforcing an environment that fosters violence. Time and again, it had been experienced that overlooking justice only lead to increased conflict and violence. Thus, it was the responsibility of the international community to find a meaningful basis for the pursuit of peace and security for all the people in the region. Only that way would the human dignity and security of those people be realized.

141. It needs to be noted that people were not the only victims of the hostilities, also affected has been the peace process that had been underway since the Annapolis Conference that was held in November 2007. At this juncture the international community is faced with the twofold challenge of providing humanitarian assistance and engage in early recovery and reconstruction but also the need to recover and reconstruct the political processes: among Palestinians, between Palestinians and Israelis, and between Israel and the Arab world.

142. 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 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. As noted by an eminent scholar the past 60 years had been “long on resolutions, but short on resolve”.

143. For any conflict resolution under international law it is very important to take into account its most fundamental norms, known as “peremptory norms” –by would - be peacemakers, not for “legalistic” reasons, too often seen as irrelevant to the dynamics of the conflict, but because they embody quintessential principles of fairness and justice. International law does not allow states to disregard peremptory norms in the conduct of their international relations, nor may they enter into agreements that conflict with them.³²

144. In the context of the Israel - Palestine conflict, there are two such peremptory norms with the deepest implications for the resolution of its territorial aspects. They are the democratic principle of the right to self - determination by a majority population in previously mandated territories, and the prohibition against the acquisition of territory by war, which applies to aggressors and victims alike. It is because so far it has been largely ignored that all previous peace initiatives have come to grief. It is important to stress that their role in the perception of the fairness of any proposed terms for a permanent status agreement and the sustainability of such an agreement over time. There are other considerations that also touch on the fairness of an agreement that need to be addressed by the international community in moving the parties to an accord that will end the conflict and result in “two states living alongside each other in peace and security.”

145. As Israeli leaders so often demand that Palestinians make “concessions” that match Israeli “concessions,” it is important to note that Palestinians have not asked Israel to make any territorial concessions – i.e., give up any of the territory Israel acquired in the war of 1948 – nor has Israel ever indicated it would under any circumstances consider doing that. What Palestinians have asked is that Israel return Palestinian territory on which Israel has illegally established settlements, and to which it has transferred its own population, in violation of treaty obligations and international law. To describe the return of illegally confiscated Palestinian territory as Israeli concessions not only enrages

³² The Israel Palestine Conflict in International Law: Territorial Issues by Iain Scobbie and Sarah Hibbin, School of Oriental and African Studies, London, 2/2010, Introduction

Palestinians but compromises their rights even before negotiations for a peace agreement begin.

146. That the settlements established by Israel on Palestinian territory and in East Jerusalem are in clear violation of International Law international law and of several agreements that Israel and the PLO signed 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. Not surprisingly, Israel and Israel's supporters have sought to dismiss the standing of the International Court's opinion because it is "nonbinding" and "merely advisory."

147. In a landmark Advisory Opinion rendered by the International Court of Justice in July 2004, the Court found that the construction of the wall being built by Israel, were contrary to international law, and that Israel was under an obligation to comply with its obligations under international law; to dismantle it and make reparation for all damage caused by the construction of the wall. The Court also wanted the United Nations, and especially the General Assembly and the Security Council, to consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall and the associated regime, taking due account of the present Advisory Opinion.

148. There is also a widespread misconception as to what constitutes "improper intervention" by outside parties in the Israel - Palestine conflict, and the impermissibility of an "imposed settlement." In fact, the international community has not sought to impose a settlement, but is demanding that the parties abide by their obligations under international law and implement commitments to which they obligated themselves in a number of previous accords, including the Oslo Accords, the Road Map and the Annapolis understandings.

149. But more to the point, international law actually *requires* that when it comes to peremptory norms, such as the right to self-determination and the impermissibility of acquiring territory by war, both the UN *and individual states* do whatever they can to secure their implementation. The General Assembly Resolution 2625 (24 October, 1970), is accepted to be an authoritative interpretation of the fundamental legal principles expressed in the provisions of the UN Charter.

150. This places another layer of obligation on Israel: "Not only is it bound to negotiate in good faith to end the occupation, but also it is under a peremptory duty to promote Palestinian self - determination." This peremptory duty is one which binds all states, and, by extension, the United Nations.

151. Israel's occupation policies and its vast settlement enterprise have been based on the contrary assumption – that if no peace agreement is reached with the Palestinians, the resolutions' "default setting" is Israel's indefinite occupation of Palestinian lands and people. If this reading were correct, the Security Council Resolutions 242 and 338 would have served as an irresistible invitation to Israel – and to all occupiers – to avoid peace

talks in order to preserve the status quo, which of course is exactly what Israel has been doing.

152. An occupation regime that refuses to earnestly contribute to efforts to reach a peaceful solution should be considered illegal. Indeed, such a refusal should be considered outright annexation. The occupant has a duty under international law to conduct negotiations in good faith for a peaceful solution. 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.

153. 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.

154. 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, during the occupation, it has created heavily armed settlements, bypass roads and security zones in the midst of a future Palestinian state that seriously compromise basic Palestinian rights.

155. Another important point to be considered is that in order to arrive at any tangible solution another aspect that must get duly resolved is the question of Palestinian refugees, a central aspect of the Arab-Israeli conflict, which seems to have moved somewhat to the periphery of the attention span of the international community, this issue should not be deferred indefinitely and must be resolved in accordance with General Assembly resolution 194 (1948).

156. While arriving at any possible solution to the problem various initiatives taken by the international community, for example the Beirut Initiative of Peace adopted by Arab Summit also need to be considered. That prominent Pan Arab initiative opened a new era of peace and normalization between “All Arab States and Israel transcend in force the principle of land for, not only peace, but peace, security, good neighborliness and normalization”.

157. Until all the rights accorded to the Palestinian people by virtue of the principles enshrined in international law are respected by Israel and given to the Palestinian people, the Palestinian right of resistance to the occupation, due to Israeli refusal to implement

the underlying directives, 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.

158. 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” should seize all the opportunities provided by the international community if it wants real peace, security and good neighbourly relations with the Palestinian people now and for future generations, as well as for its own people, who also endure this traumatic situation. In this hour of crisis, it is the duty of the Asian-African countries to support and to declare solidarity for the Palestinian struggle for an independent nation.

ANNEX-I

Draft Resolution for the Forty-Ninth Annual Session

AALCO/RES/DFT/49/S 4
8 AUGUST 2010

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 Forty-Ninth Session,

Having considered the Secretariat Document No.AALCO/49/DAR ES SALAAM/2010/S 4,

Having heard 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 and RES/48/S 4 of 20 August 2009,

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

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

Being aware of the Israeli disengagement from Gaza strip and parts of Northern West Bank,

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 for 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 Territory, including East Jerusalem, the continuous deportation of Palestinians from their homeland, and about the continuing systematic violation of the 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 reoccupation and closure of areas, the confiscation of land, the establishment and expansion of settlements, the construction of a wall in the occupied Palestinian Territory, the destruction of property and infrastructure, and all other actions by it designed to change the legal status, geographic composition of the Occupied Palestinian Territory, including East Jerusalem, 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 dire humanitarian situation of the Palestinian population,

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 convening of the Annapolis Conference on Palestine on 27 November 2007, the Sharm-el Sheikh understandings (2009) and other international and regional events promoting peace in the Middle East,

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 agreements 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 active 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. **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,

3. **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, 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;

4. **Also 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);

5. **Strongly demands** that Israel stops and reverses the construction of the wall in the Occupied Palestinian territory;

6. **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 Palestinian 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 land occupied since 1967;

7. **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;

8. **Strongly deplores** the Israeli blockade of the Gaza and its consequent human rights and humanitarian law violations;

9. **Directs** the Secretariat to closely follow up the developments in occupied territories from the view point of relevant legal aspects; and

10. **Decides** to place the item on the (provisional agenda of its Fiftieth Session) or (as and when required).